

CURRENTS

EXPLORING TRADITIONAL ABORIGINAL JUSTICE CONCEPTS
IN CONTEMPORARY CANADIAN SOCIETY

HUMAN RIGHTS

CONFLICT RESOLUTION

THE LAW: PAST & PRESENT

CRIMINAL LAW

CREDITS

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OVERVIEW



AIMS OF THE RESOURCE

This resource looks at questions such as how societies make laws, resolve conflicts, and deal with those who do not live up to society's standards for behaviour, as well as how Canadian and International law recognize and protect certain rights. The law-making process, conflict resolution, justice and rights are all considered from both an Aboriginal and an Anglo-Canadian perspective. This allows those using this resource to consider both the similarities and the differences between traditional Aboriginal approaches and the approaches taken by Anglo-Canadian society. It will also help students see how the existence and practices of Aboriginal people have influenced Canadian law and to better understand the relationship between Aboriginal people and others in Canadian society.

This resource includes sections on law-related topics appropriate for study by students in grades six through nine: ***The Law: Past and Present, Conflict Resolution, Human Rights and Criminal Law***. This resource is intended for teachers of middle years students in several subject disciplines, especially the social sciences, including Native Studies. However, several reviewers of the original draft strongly recommend sections for use in secondary school law classes as well.

The instructional units contain approaches and activities that emphasize the role that law plays in our society. One of the primary goals is to assist teachers as they instruct students in the basic concepts of law. Another goal is to encourage students to apply those concepts and principles as they make choices in their daily lives. For example, one simulation activity helps students explore concepts such as the role and function of law in their social and political environment. Students are encouraged to view the law from the perspective of citizens whose best interests are served by an effective democratic justice system. At a basic level, law is an expression of society's most closely held beliefs. Therefore, well-informed Aboriginal youth will be better prepared to articulate those beliefs and to influence changes in the laws that reflect the values of their communities.

Middle years students respond to variety in learning experiences. They come to the classroom with specific characteristics and needs. The program approaches included in this resource address these needs. The learning activities are "hands-on" and often require physical movement. Other program attributes include leadership opportunities for students, values development and role-plays, small group sessions, real life situations, including conflict and peer influences, and various kinds of self-expression in discussions, writing, and dramatics. Active student involvement will be key to the success of the learning experiences.

The basic concepts taught in this program appear in several sections. Although this may appear repetitive, the concepts relate to various levels of specific content. For example, ***Conflict Resolution*** includes an overview of principles and ideals. The section that includes the *Youth Criminal Justice Act* treats conflict resolution in specific terms related to specific situations. The

materials are for use across several grades, making it necessary for teachers to choose what is appropriate for their particular classes. The topics and depth of study are best determined by the teacher who knows the students and their needs. The variety of activities and instructional strategies allows the teacher to plan the most appropriate learning experiences for the students.

This resource addresses traditional Aboriginal approaches to justice as well as modern legal systems in Canada. It may also serve as a useful text for lay advocates, including court workers and social workers, who deal with youth and their law-related problems. We hope that the materials in this resource will give new insights into problems that youth experience by pointing out the impact of the present legal system and introducing traditional approaches.

Historically, Aboriginal peoples originally lived in different community groups, located from coast to coast. Many groups were nomadic. Others had established fishing or farming communities. Most had traditional gathering areas to meet for trade and social activities at certain times of the year. The cultures and languages that they developed were diverse and dynamic. It is inaccurate and misleading to generalize about such a rich tapestry of heritages. Therefore any examples that are given in this project are just that - examples. They should not be taken to represent all groups or even one group as differences evolved even from one community to the next. Not every group or community has had identical experiences since their first encounter with the European traders and settlers. Teachers are encouraged to use this as an opportunity for students to explore their own particular heritage in order to find out what may be accurate for their people.

TERMINOLOGY

The terms used most frequently to designate the original inhabitants of Canada include *Aboriginal*, *Native* and *Indigenous*. The adjective *Indigenous* is used internationally.

The term *Aboriginal* has been adopted in this project to refer to all first peoples, including the Indian, Inuit and Métis peoples of Canada, in keeping with the wording of the *Constitution Act, 1982*, section 35.

First Nations is a political term used to describe distinct, legally recognized communities of status Indians who are working to administer, protect and promote the rights of First Nations peoples. These communities are sometimes referred to as "bands", although this term is less common now.

There are national organizations representing the various Aboriginal groups in Canada. First Nations, Métis and Inuit people all have their own national groups.

A *status* or *registered* Indian is a person who is registered as an Indian under the terms of the *Indian Act*. Status or Treaty rights were given to the bands who entered a treaty with a representative of the Crown (the King or Queen of Great Britain) in the past or with the federal government. There are approximately 690,000 status Indians in Canada, of whom approximately 373,000 live on reserves.

Inuit, which means *people* in the Inuktitut language, is most frequently used to refer to some indigenous peoples of northern Canada. The singular noun Inuk is also used. For example, it is acceptable to say either an *Inuk woman* or an *Inuit woman*.

Terminology continues to evolve and it is difficult to generalize as to what might be acceptable.



Ultimately, there may be no single word that satisfies everyone. The choice of terminology may depend upon context and the personal background of an individual or group.

Source in part: Government of Canada 1994 policy guideline

Definitions of the term *Métis* vary and there does not appear to be one commonly accepted legal definition.

Consider the following excerpts from Jack Woodward's *Native Law* (1994: Carswell Loose-leaf, Chapter I).

Initially, the Métis were those persons of mixed native and European blood who resided at and were the principal occupants of the Red River Settlement. During the earlier part of the 1880s, the term Métis, "referred to persons of mixed aboriginal North American blood and European blood, usually French Canadian blood and having a Roman Catholic background." The current definition of Métis appears to extend much farther.

The Métis are included within the definition of the "aboriginal peoples of Canada" in s.35(2) of the Constitution Act, 1982. No modern federal enactment and few modern cases, however, cast light on the legal position of these people. There is no department of government which administers Métis affairs.

Definitions of Métis are found in various enactments. The Alberta Métis Betterment Act defines a Métis as a person of mixed white and Indian blood, and having not less than one quarter Indian blood (not including an Indian or non-treaty Indian as defined in the Indian Act).

More recently, the Supreme Court of Canada noted that Métis identity was more than a matter of mixed ancestry. The Court went on to say that a person claiming recognition as a Métis person also must demonstrate membership of the distinctive collective identity that shares customs, a common way of life and a geographic community. As a result, Métis status is a function of a person's place in the historic and current communal identity.

Source: *R. v. Powley*, [2003] 2 S.C.R. 207.

CASE STUDY METHOD

case law

The "law" in a given area is made up of case law, statutes, and common law principles. An actual case shows how a court interprets the "law" in a particular situation. When a Judge makes a decision on something that has never previously been decided, the case is considered to be precedent-setting. This means that the case is binding on lower courts when they decide cases with similar facts. For example, Saskatchewan Court of Appeal decisions are binding on Court of Queen's Bench and Saskatchewan Provincial Courts. In a similar way, decisions made by the Supreme Court of Canada are binding on all courts across the country. Saskatchewan courts are not required to follow court decisions from other provinces or countries. Rulings made in other jurisdictions still may be important, because lawyers may borrow the reasoning to argue their cases and try to influence the Judge. The cases included in this resource may either set a precedent or illustrate the court's response to typical disputes. In any event, the cases illustrate important principles of law and reinforce the "rule of law" concept in our democratic society.

elements of a case study

All case studies consist of the following parts...

THE FACTS

These are facts that have been brought out in the trial, or in the description of a hypothetical case. There are likely many other facts that remain unknown. During a trial, lawyers from both sides try to prove as evidence those facts that are relevant to the issues that need to be decided. The colour of a person's hair, for example, may not be important except where it may help to identify that person. In the case studies we have supplied all the relevant facts that are needed. Students may wish to know more facts, but they must assume that all the relevant details are provided and that those facts are correct.

THE LAW

A case study shows how courts apply the law to a set of facts. As mentioned earlier, the law in question could be part of a statute such as the *Charter*, previous cases or a common law principle. Discussing this with the students furthers their understanding of the legal system and how it works.

THE ISSUES

Each case study revolves around one or two issues. For example, students may have to decide if the right to be informed "without delay" about the reason for arrest means within five minutes or an hour of arrest, before going to the police station or before speaking to a lawyer. Rather than asking students to define the issues themselves, the resource uses questions to guide students through the issues. Teachers may wish to omit the suggested questions and have students decide both the issues and their answers.

Usually more than one argument may be made in a case. Students can present arguments on behalf of either the plaintiff or the defendant in a civil case, or the Crown or accused in a criminal case, and then decide as the Judge would.

It is important that students base their reasoning on what the law is and not how they feel personally. Separating how a student feels about a case from how he or she thinks the law applies to a set of facts can be difficult. This exercise, however, encourages the development of critical thinking. The students' personal evaluations of a case or the law should be dealt with after they have examined the case based on the law alone.

THE JUDGE'S DECISION

The purpose of providing the Judge's decision, and the reasons behind the decision, is not to test which students had the "right" answer. Well-founded arguments can be made in spite of a judgment to the contrary, and students who may have had a "wrong" but well-reasoned answer deserve recognition. Lower court decisions are frequently overturned by appeal courts, and even within the appeal court decisions may be split.



There are valid reasons for paying attention to what a Judge has said. Analyzing the Judge's decision and reasons may provide a line of thinking that students had not considered. If the decision comes from a higher court, the case may be an important part of the case law.

STUDENT ANALYSIS

After students have a chance to apply the law to the facts of a case and consider the Judge's decision, they may then wish to reflect on what the case means. This is where students may evaluate the case according to their own set of values. They can talk about whether or not the law is fair or how well the law is working to achieve its goals. Their conclusions may generate further discussion about law reform.

APPLICATIONS OF THE CASE STUDY

The information provided in a case study can be adapted to many activities. Here are a few ideas...

case briefs - Students prepare formal arguments from the viewpoint of either the plaintiff or defendant (Crown or accused) and present them in a written report.

debates - After preparing their arguments for the plaintiff and defendant, students may take sides and present these arguments in an oral debate.

role-playing - A group of students may role-play a set of facts and have the rest of the class suggest ways in which a dispute may be resolved. The method used to resolve the dispute could then be played out by other students.

mini mock trials - Groups of three students may role-play the parties to a dispute. Two students take the parts of plaintiff and defendant and the third person acts as mediator or Judge. The process and outcome of the groups using a mediator could then be compared with those of the groups using a Judge.

SOURCES OF LAW-RELATED INFORMATION

Many Aboriginal agencies and organizations provide information to teachers and students. Contact the First Nations Federation in your province for a complete listing.

Having access to legal information means being familiar with sources. Although statutes may be the first source that comes to mind, they have limited value for classroom use. Even people with legal training may find reading a statute heavy going. More importantly, statutes by themselves do not give a complete picture of the law. The interpretation of a statute by the courts is also important. To understand more precisely what the law is in a given area, a lawyer often has to consider statutes and the interpretation of the laws.



The work of lawyers often requires close attention to the technical aspects of interpreting the law. However, for lay people such as teachers there are many accessible sources of information that can give a good overview of the law without the technical detail that lawyers may need from statutes, case law or legal textbooks.

public legal education and information (PLEI) organizations

Public Legal Education and Information (PLEI) agencies across Canada produce easy-to-read legal information booklets, pamphlets, and videos for the public. The information from each organization tends to be specific to the laws of that province or territory. Information about federal law is also available and can be useful for teachers. Here is a list of PLEI organizations.

- Community Legal Education Association (Manitoba) www.communitylegal.mb.ca
- Community Legal Education Ontario www.cleo.on.ca
- Community Legal Information Association of Prince Edward Island www.isn.net/cliapei
- Éducaloi (Quebec Public Legal Education) www.educaloi.qc.ca
- Law Courts Education Society of British Columbia www.lawcourtsed.ca
- The People’s Law School (British Columbia) www.publiclegaled.bc.ca
- Legal Studies Program, Faculty of Extension, University of Alberta
. www3.extension.ualberta.ca/lsp
- Public Legal Education Network of Alberta www.plena.org
- Legal Services Society of British Columbia www.lss.bc.ca
- Public Legal Education and Information Service of New Brunswick . . www.legal-info-legale.nb.ca
- Public Legal Education Association of Saskatchewan www.plea.org
- Legal Information Society of Nova Scotia www.legalinfo.org
- Lethbridge Community College www.lethbridgecollege.ab.ca/community_education/public.shtml
- Public Legal Information Association of Newfoundland www.publiclegalinfo.com
- Public Legal Education and Information in Nunavut www.plein.ca
- Yukon Public Legal Education Association www.yplea.com

THE LAW: PAST AND PRESENT



PART ONE: CUSTOMARY LAW

rationale

Customary law is a part of the history of North American Aboriginal cultures. Sometimes referred to as traditional law, it encompassed basic and often 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. The origin, transmission and longevity of customary law are an integral part of the various traditional cultures. Therefore, some understanding of the cultures and the languages of Aboriginal peoples is crucial to understanding customary law. Elders are a major source for relating and interpreting the origins and evolution of customary law. However, while Elders can help us understand and appreciate customary law, both subtle and marked differences did exist from one family or community to another. One of the reasons for this is that the laws were not codified or written. Some may prefer to call them rules.

The study of customary law gives Aboriginal youth an opportunity to explore their heritage, to learn about traditional values and to appreciate the cultural importance of both their ancestors and modern-day Elders. This knowledge and appreciation can contribute to a sense of self-worth and affirmation. It also may provide guidelines for daily living in today's society. Just as there is an historical affinity of Aboriginal people to natural and spiritual elements, the ethics of customary law also can be deeply entrenched. Youth need to learn about, appreciate and acquire these ethics.

The study of customary law provides opportunities for youth to look back at timeless values while keeping an eye on current situations and issues. The process is enhanced by finding answers to questions such as the following...

How do laws and societies evolve?

What lifestyles were supported by customary law?

What has happened to traditional laws?

Do traditional laws and the values they represent 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 promotion and development of community-based law or justice. This stems from the desire to maintain many of the values

inherent in customary law. Justice committees are incorporating some customary law practices with elements of the Anglo-Canadian system of justice, while acknowledging the values of the community. Students explore reasons for doing so in this section.

Learning about customary law adds another dimension to the study of Aboriginal life and history. It helps us to see elements of the past in terms that are richer and more vibrant than we might expect. The nobility and strengths of Aboriginal ancestors can become anchors for youth of today. As First Nations develop self-determination and self-government, they look to both customary law and present day law for guidance and content. The exploration of so many facets of First Nations history and culture 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.

learning outcomes

KNOWLEDGE: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- learn that Elders can be a valuable source of historical and cultural information
- learn that there may be differences in customary laws between different communities, although the basic principles and beliefs are often similar
- know that the oral tradition of storytelling provides for the passage of customary law from generation to generation
- understand that customary laws may reflect personal and social ethics of non-confrontation, withholding overt expressions of anger, privacy and non-interference, withdrawal from difficult or unfamiliar situations, and harmonious timing of events
- learn that customary law practices are based upon the needs and interests of the community, compensation or restitution for the victim(s), family and community, and rehabilitation of the offender
- realize and appreciate that Aboriginal languages and other means of communicating are key elements in developing, sustaining and understanding Aboriginal culture
- realize that values which emphasized collective ownership, and de-emphasized individual property rights, are common to all traditional First Nations cultures

SKILLS: STUDENTS WILL BE GIVEN THE OPPORTUNITY TO...

- participate in critical and creative thinking activities designed to foster appreciation of our heritage and relate the past to present practices and events. Develop communication skills (including listening) required for gathering oral information
- learn and practice communication skills while interacting with various individuals and groups in the community
- practice using information from different sources as guidelines for personal decision-making and actions



VALUES: STUDENTS WILL BE GIVEN OPPORTUNITIES TO DEVELOP...

- knowledge of, and pride in, Aboriginal heritage, which promotes self-esteem, respect for the rights of others, and commitment and dedication to the betterment of community
- an appreciation that Aboriginal people are descendants of people who upheld and practiced the virtues of honesty, respect through patience and non-interference, communal family and social life, forgiveness, and teaching by example
- respect for the spiritual dimension of keeping personal well-being and community order in daily living
- an appreciation that a society's customary law is derived from the beliefs of the people in the context of their environment and social order

BACKGROUND INFORMATION

It would be useful for teachers to become familiar with the following...

- the meaning of customary law
- the traditional beliefs and values that shaped the cultures of tribal groups before European contact
- the methods and practices of administering customary law
- the customary laws passed down to the people who live in their First Nations communities and elsewhere
- the effects of European values and legal practices on First Nations peoples and culture

INFORMATION FOR STUDENTS

- People-resources such as Elders, grandparents and others in the community can provide information on customary law. Teachers are encouraged to relate examples from the community that illustrate customary law practices such as traditional marriage, child adoption, medical practices, and methods of conflict management and resolution.
- Parts of the following section, "Information for Teachers" may be summarized in note form for students.
- Stories and legends containing values and beliefs of ancestors that applied to customary law may be suitable for students.
- Refer to newspaper articles in the chapter entitled *Currents* for examples of customary law beliefs and practices.

INFORMATION FOR TEACHERS

Note: Teachers may wish to summarize the following for distribution to students where resource materials on the topic are limited.

A discussion of Aboriginal customary law requires an understanding of the following...

- The oral tradition of passing on information and teaching by example or modelling is the means of transmission from one generation to another in traditional Aboriginal culture.

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.
- Since the language of a society is culturally based, the study and accuracy of interpretation of the culture are dependent to a great extent on linguistic knowledge.
- Certain Anglo-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. Customary or traditional law has the following characteristics...

- it has existed since time immemorial (as long as can be remembered)
- it is based on a process of reason
- by its nature, it lends certainty about who it is supposed to affect or apply to
- it has followed a continuity and flow since its immemorial origin

The development, implementation and preservation of customary law is rooted 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 elements as well. Traditional Aboriginal laws are closely associated with harmonious relationships that allow each member of society to contribute to the welfare of the entire community, in an effective and sustainable manner. Guilt, punishment and isolation by imprisonment or banishment served a less prominent purpose than may have been seen in European models, but were applied 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 were not "legalistic" by nature when it came to settling disputes for wrongdoing. Traditionally, conflict resolution, both personal and interpersonal, was guided by spiritual means nurtured by the influences and teachings of Elders, parents, and grandparents, and was reinforced by customs and habits such as sweats and isolation. These factors contributed to the maintenance of smoothly operating families and communities, and thereby the survival of the society, in the face of difficulties posed by things like sometimes harsh climates and scarce 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' oral history 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 modelling 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. Ideally, children learned to assume their position and roles in the community in an atmosphere 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 quiet time in prayer, reflection or fasting. Lessons about life and spirituality were learned in the process. Some groups practiced “coming of age” ceremonies for males. At that time a boy might choose 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 practiced. 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 like 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 against 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 goodwill 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 family was away from the larger community.

Keeping offenders in the community was usually of prime importance. Emphasis on communal property rights, where possessions belonged to everyone in the group, simplified issues such as ownership, trespassing and theft. Because of this, theft was not often considered theft as we understand it today. 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 reintegration 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 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 their traditional ways of dealing with justice issues. They are determined to learn from the past and 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 re-instatement 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 develop a sense of self-worth, dignity and hope, then different approaches, which establish a link and continuity with the history of Aboriginal cultures, are necessary. Just as there have been changes to approaches for adults who are offenders, so also 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 nature, teaching of oral traditions to preserve cultural values and ceremonies, and rebuilding families and communities. A spiritual awakening that comes through learning sacred laws and ceremonies will become the foundation for moving forward.

INTRODUCTION AND MOTIVATIONAL SET

connecting with traditional beliefs and elements of customary law

PURPOSE

Students will explore the basis and meaning of customary law. They will read about current ideas and practices in the administration of justice in Canada as they affect Aboriginal people and determine how these are related to Aboriginal peoples’ historic traditions and beliefs. This will give the teacher an opportunity to assess student knowledge about these beliefs and traditions. The students’ abilities to relate these to daily life may also be evident. Other topics or concepts that may arise are relevance of consequences, rehabilitation, punishment, spiritual healing, and other customary law ideas.

PROCEDURE

- Refer to the definition of “customary law” in the previous section. On the chalkboard write a definition suitable for the understanding of students. For example, “Customary law is how our ancestors kept order and settled differences among the people. Customary law has existed since before anyone can remember. It guides what is acceptable or unacceptable behaviour, and it is a reasoned and consistent way of keeping order, even for today.” Give some examples of customary law and processes so that the concept has practical meaning for the students. (For example, if a man were responsible for the death of another person, he might provide food and shelter for that person’s family. When arguments arose, the individuals might be asked to spend several days alone and come together later to settle the dispute.)



- Ask students how customary law is different from other traditions or customs. Customs such as eating certain foods, playing traditional games, or wearing specific clothing may be used as examples to help distinguish these closely-related concepts.
- Ask how the values are different from the values of other cultures.
- Place students in groups of three or four and provide a copy of one of the articles contained in the chapter entitled *Currents*.
- Read the articles or have the students read them aloud.
- Using the five “W’s” of news reporting and journalism, ask the students to determine the following...

Who is the story or article about?

What is the article about?

When did the incident(s) in the article take place?

Where did the incident(s) happen?

Why did the incident(s) in the article happen?

- After determining the five “W’s” ask students specific questions to check comprehension of the basics of the article. (Older students can be encouraged to explore various reasons, both past and present, for the answers to the last question.)
- Next, talk about the values held by their ancestors and how these can be illustrated by looking at their actions and customs. Next, direct the students to underline words, phrases or sentences in the articles that refer to values, beliefs, customs, and articles or items. Explain to the students how their ancestors used or applied these values, beliefs, and customs for keeping “healthy” communities through law and order.
- Ask the students to pass their article to another group; the second group is to read and consider what was underlined by the previous group. Ask the second group to make a list of beliefs to present to the class.
- List the beliefs identified by all student groups. Add to the list any that might have been omitted and discuss each one within the context of the definition for customary law.
- Ask students to give examples of events or happenings (actions by people) that illustrate how these beliefs are practiced in their community today.
- Conclude by asking students to make a list of questions to ask the Elders of their community about the important beliefs they have with respect to law and order for their people.

Note: This is the beginning of a series of topics to be used later for interviewing Elders and others. Students could be encouraged to keep a separate section in their notebooks for this purpose.

ACTIVITIES

concepts in customary law - beliefs and practices

PURPOSE

By using inductive methods, this activity provides the students with opportunities to increase their comprehension of concepts associated with customary law. Since concepts are ideas and not concrete things, understanding is achieved through the use of examples and non-examples. The inductive procedure is outlined below. When students use the concepts in writing and speaking activities, teachers can assess the level of comprehension. The process allows students to practice using language effectively while learning new ideas.

PROCEDURE

- The sample outline given here is for two concepts. (You may wish to use others.) The teacher chooses a concept, but does not tell the students what it is. The teacher introduces the exercise by telling students what a concept is and that examples and non-examples will be given to describe a concept used in customary law. As illustrated below, write headings on the board. "Yes" and "No" may be used, or "thumbs up" for examples and "thumbs down" for non-examples.

Concept	Examples <i>Yes</i>	Non-Examples <i>No</i>
Ceremony	<ul style="list-style-type: none"> • getting together with other people • an act or series of acts • may use items like banners, costumes, etc. • people do certain things • often at the beginning or ending of an important event • a ritual • may be a celebration 	<ul style="list-style-type: none"> • everyday happening • an event not planned • not organized • doing things in no special order • plain, ordinary events
Restitution	<ul style="list-style-type: none"> • paying back • making something the same as it was before • making amends • to restore 	<ul style="list-style-type: none"> • not "paying" for mistakes • ignoring the other person's rights to have things as they were • just leave things you have done wrong • forget about paying for your mistakes



- Give descriptions and indicate if they are examples or non-examples. Students respond after one or two examples are given. They may wish to ask questions, make an observation about general meaning patterns, or tell what they think the concept is before going on to the next example or non-example.
- Continue this concept-building activity with the class by giving the concept and having the students provide examples or non-examples. When a student responds, others can demonstrate “thumbs up” or “thumbs down” to indicate example or non-example.
- Other related concepts that may be used are forgiveness, fairness, rehabilitation, communal or community, tradition, spiritual, and heritage.

learning about our heritage through stories we’ve heard

PURPOSE

This activity will strengthen students’ understanding of customary law and appreciation of their heritage. It will also allow students to develop and use public speaking skills in a safe, supportive environment.

PROCEDURE

- Begin the lesson by telling the students about the customary laws that apply to hunting, fishing and harvesting. Emphasize those laws or rules that demonstrate the First Nations traditional philosophy of “wholeness” - that everything is connected to something and to everything else. The medicine wheel may assist student understanding. Use the physical and spiritual elements that are associated with carrying out these activities, such as the idea of conservation or stewardship, and the ethic of taking from nature only what is required and useful.
- Read or tell a legend or a story as it was told by an Elder. Choose a story that includes or infers some of the traditional values and beliefs that were the basis of keeping law and order and harmony in days gone by. Suitable stories might include themes such as telling the truth, disciplining children, appreciating and preserving nature, and treating others fairly.
- Discuss with the students the meanings of these values and beliefs.
- Ask the students if they can recall their parents or other older people telling about happenings in their lives that illustrate these or other beliefs and values. Have some willing students tell their stories and discuss the themes suggested by them. (Suggest that students think about times when an older person started a story with, “When I was young ...”.)
- List the values and beliefs on the chalkboard that students identify from their stories. Check for comprehension through discussion and questions.
- Lead a discussion or have the students work in groups on this topic. Provide the following question: “What rules and laws do we practice in our community today which show we follow the values, beliefs and customs of the early days?”.
- Ask students to create an adventure or narrative that illustrates one or more of the values and beliefs explored during this session. Make this a creative language arts activity using

teaching and learning strategies appropriate for the age and grade levels of the students. Provide background information that may be used such as a hunt, the way children were taught or disciplined, or a person or family in conflict with the community.

- Some students may wish to share their stories with others. Students may read their stories, have a small group do role-plays with them or tell the story.

community-based aboriginal justice

PURPOSE

This activity provides opportunities to explore some of the issues and trends related to the development of community-based justice in Aboriginal communities, especially where community justice committees operate or where they are in the planning stages.

PROCEDURE

Resource personnel such as Elders, Community Justice Committee members, community police, band council members, Aboriginal lawyers or other legal professionals can help middle years students in their exploration of justice issues. As a resource, you may wish to review Saskatchewan Learning's guide entitled *Aboriginal Elders and Community Workers in Schools: A Guide for School Divisions and Their Partners*.

Contact resource personnel in advance. An invitational phone call, followed by a letter with details, and then a follow-up phone call to confirm the arrangements may be appropriate steps to follow.

Note: The general protocol for approaching Elders in one Cree community is as follows...

- contact an Elder four days in advance
- always make personal contact
- take tobacco to present as a gift

Find out what the customary approach is for your community. Sometimes, Elders receive payments of money. A budget could be set up to provide these services.

- Introduce the topic with a discussion on the following...

Why do all societies need rules by which people learn to live in harmony together?

What is the difference between "morality" and "laws"?

- Ask the students to help make a list of questions they have about justice practices and issues. Below are some actual student questions and responses from a discussion on justice and the law. These may be used as starters or to supplement the class responses.

We want to know how we go about getting our own justice system.

What was done to offenders in the past?



Who is there to comfort the victim?

How do we choose a lawyer?

If we can't afford or don't trust a lawyer what happens?

What alternative systems can be used instead of putting people in jail?

What is discipline? What is abuse?

Our rights are always violated by government, institutions and individuals.

What else can we learn? Why does the law deal with other peoples' lives?

- If the list is extensive and covers a variety of areas, group the responses according to likely sources of information.
- Again contact the resource person and provide the questions from the students. If arrangements have been made for the resource person to speak in class, set the time and date. An alternative to a speaking engagement may be a written response to the questions or the use of a "hands free" telephone conversation between the resource person and the class. (For the latter alternative have the class prepare for discussion and further questions in advance.)
- A good question to ask resource persons is "Where can we get further information on these topics?" If there are suggestions, assign students, either individually or in small groups, to research the topic further and report their findings to the class.
- Provide the students with the list of questions given to the resource person and assign them the task of writing the answers after the presentation. Prepare students in advance by asking them to take notes during the presentation.

making a customary law circle

Note: This activity is appropriate for students who are familiar with the Medicine Wheel.

PURPOSE

Students explore the relationships of various important elements (beliefs, values, rules, and practices) that make up the four quadrants of the "customary law" circle.

PROCEDURE

- Provide students with a series of words describing important concepts and practices related to customary law. Older students may be able to generate these in a "brainstorming" session. Examples include: spiritual, families, sharing, consensus, restitution, oral tradition, time immemorial, forgiveness, banishment, community well-being, fairness, helping, and tribal survival. Encourage students to add to the list. Refer to Appendix 2.
- Ask students to use the circles and place the terms according to the way they see the relationships that existed in early times. They can be encouraged to try more than one circle arrangement.

- Ask students to share their work with other students, and explain how they arrived at each of the various combinations. Using student art design to finish the circles makes them attractive for display.

getting involved and thinking ahead about justice in our community

PURPOSE

This activity gives students the opportunity to analyze the needs of the community and to begin to realize their ability to effect changes that will make their community a better place to live. The process allows students to use what they have learned and apply what is important to them in their situation.

PROCEDURE

- As a culminating activity, have groups of students prepare a response to the question, “What can we do, now and in the future, to bring about changes to the justice system in our community?”. This activity provides a bridge to the next section dealing with contemporary law.
- Points that may be included by the students are:
 - ▶ Ask Elders for more information on the laws of the past.
 - ▶ Decide to finish high school and become a lawyer.
 - ▶ Talk to peers and others about the importance of having good values by which to live.
 - ▶ Find out what the council is doing. What by-laws has it passed? How are citizens who break the law dealt with? What arrangements for policing exist in the community?
 - ▶ Encourage other youth to take care of property rather than getting involved in vandalism.
 - ▶ Set a good example for young children of the community.
 - ▶ Decide to become a council member and begin to learn about what the community needs and what a good councillor does.

PART TWO: LAW—MAKING AND COURTS

rationale

First Nations leaders and others have expressed the desire and need to directly influence and control the justice system that affects Aboriginal peoples. This is particularly true of situations within the Aboriginal communities. As mentioned previously, self-determination and self-government and a corresponding legal system go hand in hand. Changes such as those recommended in the *Report of the Aboriginal Justice Inquiry of Manitoba* require that Aboriginal youth, and others, understand both the traditional Aboriginal justice system and the contemporary Euro-Canadian system of Canada.



First Nations community justice committees often deal with issues of civil law and less serious criminal law. Serious and extremely violent criminal offences such as armed robbery and murder are generally kept within the established contemporary justice system. Sentencing circles and alternatives to jail, which are more characteristic of traditional justice, are being tried in some situations, sometimes with the more serious cases. In the future, it may be that civil law issues and less serious criminal offences will be dealt with through a First Nations justice system that is similar to the contemporary Anglo-Canadian system. Knowledge of the present system will assist in making informed decisions about what should be maintained or included in a more clearly defined First Nations system of law.

Research on law-related education indicates that those who understand the principles of law and who have some knowledge of laws and how the system functions are less likely to find themselves in conflict with the law. More specifically, vandalism and other offences that young people typically become involved in may decrease when young people have opportunities to learn about the law. The growth in attitudes, skills and knowledge has immediate and longer term effects.

Law-related education helps students to live peaceably with one another and with society. It teaches responsibilities as well as rights, helps in adjudication of problems, develops recognition of the rights of others, and leads students to understand methods of settling disputes. It reduces crime and violence in schools and society.

Source: E. Salow and H. Arthur, Law & Citizenship Studies in NYC Resource Guide, 1981 (Page 1) Centre for Law & Citizenship. New York, NY.

learning outcomes

KNOWLEDGE: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- examine the concept of the "rule of law"
- understand that the Canadian justice system originates from beliefs and practices of several societies that date back several centuries
- learn that Canadian laws and the Canadian legal system reflect values held by society, and that changes within the democratic processes of government are possible
- develop their understanding that statute law, including the Constitution, the Canadian *Charter of Rights and Freedoms* and various human rights codes, together with the common law, provide a fair and just system of law and order for Canadians
- understand that criminal law and civil law are categories of law that directly affect the affairs of most Canadians
- examine the court system in Canada and the people who work in it to help maintain a legal system that is consistent and predictable in its development, maintenance and delivery of justice
- comprehend and use vocabulary integral to law-making and courts education

SKILLS: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- practice various communication skills required for group social interaction, learning and problem solving

- use diagrams, flow charts, and pictograms for accessing and interpreting information
- incorporate law-related concepts and terms into writing and speaking effectively
- practice using case studies as examples of real-life situations that require analysis and judgment in decision-making

VALUES: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- appreciate that a democratic system of law represents the collective values and beliefs of the individuals that make up the democracy
- value the beliefs and practices that systematically and traditionally have maintained law and order in Canadian society
- realize the rights (protection) and responsibilities that each citizen has in order to participate in law-making and other functions of government

BACKGROUND INFORMATION

It would be useful for teachers to become familiar with the following...

- the principle of the “rule of law”
- the relationship between statute and case law
- the distinctions between two categories of law: civil law and criminal law
- the levels of the court system in Canada
- basic court proceedings, the organization of the courtroom, and legal professionals
- the Constitution of Canada and the *Canadian Charter of Rights and Freedoms*

Contact the Public Legal Education and Information (PLEI) organization in your province or territory for print, online, or audio-visual resources. A list of PLEI organizations is included in the **Overview** section. In Saskatchewan, contact PLEA at www.plea.org.

INTRODUCTION AND MOTIVATIONAL SET

life and law from morning to night

PURPOSE

This activity will help students realize that the law plays a very significant role in their daily lives.

PROCEDURE

- Indicate to the students that they are going to learn how the law “follows” them throughout the day, usually without their realization.
- Ask the students to take turns telling about the things they do or what happens to them from the time they get up in the morning until they go to bed at night. As students respond write



the events on the chalkboard from top to bottom. Choose several events listed and write beside each how the law may impact on that item. For example, "eat breakfast" could have "package labelling" or "Food and Drugs Act" written beside it. Continue by having the students suggest various ways in which laws may influence other daily events.

- Compare these with daily events where the law may not have an effect. For example, "visiting with my grandmother," or "going for a walk". Following this, ask the students to consider why laws are made, followed and enforced (public policy vs. rights of the individual, safety, protection of privacy, keeping order, respect for the law).
- Discuss some of the following with the students...
 - ▶ What might life be like without laws or by-laws? (unsafe to drive, eating food that is unsafe, danger of dogs running at large, punishment might be very harsh, increase in violence and other crimes, excessive noise levels, abuse of children, child labour, few or no schools)
 - ▶ Are all laws restrictive? (human rights laws are enabling - e.g. children's right to education, and right to protection in time of conflict and war, freedom to assemble, freedom of thought, press and speech)
 - ▶ Does law unnecessarily interfere with the way you might wish to live your life or do things?
 - ▶ What are some laws that apply only to your community? Who decides, and how are they enforced? (Community justice committees may have developed by-laws or band council may have adopted by-laws regarding traffic, education, social services, etc.)
 - ▶ Assist the student in summarizing some of the basic characteristics of the law. You can do this by engaging students in the discussion points listed in this section, as well as by referring to the specific daily events from the news or your community.
- The following statements may be helpful...
 - ▶ *Law-making, living within the law, and law enforcement promote social values through goals such as promoting democratic processes, protecting rights to a fair trial, prescribing honest business practices, establishing social programs, and protecting children.*
 - ▶ *Law protects citizens, their rights, and their property.*
 - ▶ *Law provides a framework for order in a society and ensures some degree of predictability and stability.*
 - ▶ *Law is a way of resolving conflict and disputes in an orderly way. This is done by following laws and legal processes. It may involve calling upon the services of experienced persons such as Elders, and professionals such as police, lawyers, mediators, and Judges.*

- Introduce a summary discussion on the characteristics and benefits of law by re-focusing on personal daily activities.
- Ask the students what they might do so that the laws in their lives will keep them healthy, safe, and reasonably happy and satisfied. Through leading statements related to the daily events listed previously, students might suggest...
 - ▶ learn more about the law and laws
 - ▶ become informed and participate in the political and law-making process
 - ▶ start or support community action groups
 - ▶ start or support petitions
 - ▶ write editorials
 - ▶ talk or write to elected government officials, to ask questions and give them ideas
- Conclude by reinforcing the need for each person to become informed and to participate in community life in a responsible, lawful manner.

simulation - creating a recreation centre

Note: This activity is suitable for middle years students from grades six through nine. The maturity of the group will determine the level of instruction, the results of student discussion, and the amount and depth of follow-up discussion.

Teachers may wish to break the activity into sections for more than one class period.

PURPOSE

This activity and the teacher-initiated discussions will help students understand the principle of “the rule of law”.

PROCEDURE

- Divide the class into small groups of approximately six students. Explain that a simulation is a game about real life. Give each student a copy of the handout *Creating a Recreation Centre* and ask that they read it carefully. After ensuring that students understand the situation, direct them to present and discuss their answers to the question “*What are you going to do?*”. Tell the students that the decisions they make about the problem situation must be recorded by one person chosen by the group. Allow other group leaders to emerge.
- After 10 minutes of discussion ask each recorder to read what has been written for the group. Arrive at some generalizations regarding the interactions within the groups so far. (Chaos? Questions? Disagreements? Leadership present or absent? Conflict? Planning? Arguments? Rules?)
- Give each group copies of *Questions to Consider when Playing “Creating a Recreation Centre”*. Indicate that since they are creating a community, the decisions they make are comparable to laws made by governments such as First Nations Councils.



- Allow 20-30 minutes for problem-solving discussion and recording. Ask a spokesperson from each group to tell what decisions the group made. Collect the recorded responses for later use.
- Initiate class discussion by presenting the following questions...
 - ▶ *Why are laws needed?*
 - ▶ *What kinds of rules are needed?*
 - ▶ *How are rules or laws made? (Consensus? Power groups or individuals? Majority? Compromise? Force? Secrecy? Bribes? Personal Influence or position?)*
 - ▶ *Did leaders surface in the groups? How?*
 - ▶ *What would happen if the rules could not be enforced?*
- Make a summary of the ideas listed by the various groups in response to the questions provided. Ask students to respond to the following question when it is applied to the main decisions of the group: *"What value or belief might be the basis for this decision?"* (Provide examples such as fairness, equality, freedom as needed to help students.)
- Using the information included in *The Rule of Law* provide a brief explanation. Relate this to the conclusions reached by the groups as they work through the simulation. Refer to the process used, and decisions made by the students to make rules. Discuss topics such as (a) to whom the rules applied, (b) how they could be changed, and (c) the kind of rules they made.
- Compare what was done by the groups with what happens in a democratic society such as Canada. (Constitution, law-making responsibilities, the *Charter*, elections, etc.)
 - ▶ In what ways are the laws or rules of the students similar to those in effect in our society?
 - ▶ Why might it be wise to have a constitution to set out the rules to be followed by the group of students who are in charge of making decisions for the recreation centre? Refer to the Canadian Constitution, what it states, and how it can be changed.
- For feedback to the students, conclude the activity by giving the groups your opinion. Tell students what final decisions the administration might make. Indicate what the administration might think of their plan.

CREATING A RECREATION CENTRE

Your Chief and Council have passed a resolution that will give your group of six students a large amount of money to set up a recreation centre in a reasonably well-kept building close to the school. The only conditions placed on your group are as follows...

- The recreation centre must be run by the six students in a manner that is similar to a democratic community government. To use the money, the group must present a plan on how the recreation centre will be set up and run like a community of young people.
- The only adult involvement in planning and running the project will be from Elders for guidance. You may hire adults to make renovations, repairs and to do other work you think is necessary.
- When the recreation centre is in operation all members of the community your age must be allowed to participate in making decisions on how the centre will operate. Your group will decide how the others will participate and how changes can be made in the future.
- To help you get started, the Council has determined that the purpose or goals of this recreation community are...
 - ▶ to provide opportunities for youth to spend leisure time safely and productively while enjoying social and physical activities
 - ▶ to develop a mature attitude towards community responsibilities and social interactions (good citizens)
 - ▶ to learn about government, decision-making, rule-making and financial and property management
 - ▶ to learn and use skills for communicating ideas, working with people and making good use of people's talents

Remember, the Chief and Council are looking for good ideas and actions before you get the cash!

You are on your own now! What are you going to do?

QUESTIONS TO CONSIDER WHEN PLAYING “CREATING A RECREATION CENTRE”

- ▶ *Do we know what others think of this idea? For what reasons do we need to know this?*
- ▶ *What do we need and in what order?*
- ▶ *Who will our leaders be?*
- ▶ *What should we do to get started?*
- ▶ *What decisions must be made?*
- ▶ *How will these decisions be made?*
- ▶ *What will be done to anyone who does not obey the decisions we make?*
- ▶ *How will disagreements be settled?*
- ▶ *What will happen if everyone disregards the rules?*
- ▶ *What do we have in addition to the money and a building?*

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 any way they like. For example, if a king, queen, or dictator with absolute power rules us, that person simply exercises power without guidelines. If the law rules us, leaders cannot use their power any way they like. They must apply the laws or guidelines to everyone, including to themselves.

The law should apply to everyone. No one should be exempt from the law because he or she holds a position of influence or 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.

This 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. They are elected by 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 they want to. 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, lose their jobs, or be charged with a crime.



ACTIVITIES

PURPOSE

Students will explore laws to discover that writing a good law takes time and skill; good laws, and rules, have specific characteristics that make them reasonable, enforceable and helpful.

following “the law”

PROCEDURE

- Distribute copies of the handout *Whistler’s Nuisance Bylaw* and the handout containing the newspaper article “Whistler passes nuisance bylaw outlawing cussing”.
- Key terms to be presented before beginning this activity...
 - ▶ **Interpretation...**To interpret a law is to apply it to a new 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 manner of interpreting the law; looking at exactly what the law says and the precise words used in the law; not trying to anticipate how the law-makers may have meant the words to apply to new or different circumstances.
- Read the bylaw with the students to ensure students understand the wording. Clarify through questioning the implications of the bylaw for the community and persons visiting the resort.
- In small groups have the students consider each of the situations set out following the bylaw handout and decide if the law was broken in each case.
- Refer students to the newspaper article. Discuss the article in relation to what is known about the bylaw. Ask students to consider the clarity of meaning, fairness, and enforceability.
- Distribute the handout containing the second article, “Rude-words bylaw extreme, say critics”. Discuss the article, using relevant questions from the handout *A Good Rule or Law*.

Saskatoon’s spitting bylaw

PROCEDURE

- Distribute copies of *The Public Spitting, Urination and Defecation Prohibition Bylaw*.
- Present the key terms set out in the above activity.
- Work through the bylaw using the questions at the end for discussion.

Local bylaws are often available online. Make up your own activities based on local bylaws such as Saskatoon's "anti-spitting bylaw". For example, students could research the local newspaper archives to determine what politicians, columnists, and others were saying when this bylaw was passed.

FURTHER DISCUSSION MAY INCLUDE...

- Why would a community want a nuisance bylaw that restricts actions such as loud noises, urinating in public, blocking roads, and the use of profane language?
- What is the purpose of a recreation area? (It is meant to provide pleasant surroundings for people to enjoy nature, activity and relaxation.)
- Students will become aware that it is sometimes difficult to make a judgment. Point out that it is important to look carefully at the wording and the purpose of a law or rule. While they adjudicate the cases, students may become aware of the necessity for fairness to both sides.

judging rules and laws

PURPOSE

This activity allows students to use general information about rules and laws in a practical manner. This is an elementary activity that reinforces ideas in the *A Good Rule or Law* handout.

PROCEDURE

- Make a list of rules that could be applied in schools. Include those that apply to the classroom as well as to the school in general. Some suggestions are included at the end of this activity.
- Some discussion questions about the rules may be...
 - ▶ Why did the person think the rule was necessary?
 - ▶ What other way could this problem be handled or solved?
 - ▶ What are some things that could result from this rule?
 - ▶ Is there anything wrong with the rule? Can it be applied consistently? Is it clear when it applies and to whom? Is it clear what consequences might occur if the rule is broken? Might there be exceptions to the rule?
 - ▶ Why should this rule be enforced, changed, or thrown out?
- Guide students to analyze the rules by going over the points in the handout *A Good Rule or Law*.

SUGGESTIONS

- The principal of the school noticed that food scraps were left lying around in the lunchroom. She made the following rule for the lunchroom...
 - ▶ *Prior to exiting, inhabitants who vacate this room must eradicate all personal refuse.*



- Several students consistently stood by the front entrance of the school, making it difficult for persons to freely enter and exit the building. The principal decided to make the following rule...
 - ▶ *Students are required to keep moving as they approach and leave the main entrance to the building. Those who stop will be punished. Stopping to remove outdoor footwear is the only excuse allowed.*
- In the classroom several of the grade six students were singing and humming tunes they learned in choir. Their teacher made the following rule...
 - ▶ *Expressive melodic utterances are hereby banned in this classroom pending further notification.*

your turn to make good laws

PURPOSE

Students who have been involved in the process of developing laws or rules will better appreciate the need for and purpose of having laws. They will also understand the complex nature of making good laws.

PROCEDURE

- Review the characteristics of good rules and laws as provided in the handout, *A Good Rule or Law*.
- Tell students that they will now become law-makers. Indicate that laws are usually made to allow things to happen in a certain way for the general benefit to society. For example, stop signs are often considered to be restrictive, while their main purpose is to allow traffic to flow freely and safely. Examples in school such as “no running in the halls” may appear to students to be overly restrictive. However, the main reason for such rules is to ensure the comfort and safety of everyone in the school. By giving several examples of laws and rules students will begin to realize that the purpose and intent usually stems from the desire to promote well-being in fair and just ways. This realization may help students think about the rules at schools in a more mature way.
- Ask students to give some examples of where people may need to be protected in some way or where fairness is an issue. Encourage them to think about school-related situations such as playground behavior and riding on a bus, and out-of-school situations such as traffic, hunting, and discrimination. Make a list of examples.
- In small groups, direct students to make a rule or law dealing with one of the concerns from the list. Tell students to begin by thinking about whether or not a law is necessary, why it is required (what do they want to accomplish), and whom it will affect. After creating the law, students can be asked to decide if the law will accomplish what was intended, and if it is enforceable, reasonable, and fair.
- Ask each group to present the law with the background information and encourage students from other groups to suggest changes or ask clarifying questions.
- Have each group write the laws for posting on the bulletin board with an appropriate heading such as “Laws to Live By” or “Law-making in Action”.

WHISTLER'S NUISANCE BYLAW

**RESORT MUNICIPALITY OF WHISTLER
BYLAW NO. 1076, 1994
A BYLAW TO AMEND "NUISANCE BYLAW NO. 305, 1983"**

WHEREAS the Council of the Resort Municipality of Whistler has adopted "Nuisance Bylaw No. 305, 1983";

AND WHEREAS pursuant to Section 932(b) of the Municipal Act R.S.B.C. 1979, c.290 the Council of the Resort Municipality of Whistler may by bylaw prevent, abate and prohibit nuisances;

AND WHEREAS it is deemed expedient to amend the Resort Municipality of Whistler "Nuisance Bylaw No. 305, 1983";

NOW THEREFORE the Council of the Resort Municipality of Whistler in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as the Resort Municipality of Whistler "Nuisance Amendment Bylaw No. 1076, 1994".

2. A new section 1 is hereby added to "Nuisance Bylaw No. 305, 1983":

"1. For the purposes of this Bylaw, unless the context otherwise requires, the following words shall have the meaning hereinafter assigned to them:

"nuisance" means an activity, physical condition, or anything which causes harm or annoyance or which is injurious to the health, or indecent, or offensive to the senses, or an obstruction to the lawful free use of property so as to interfere with the comfortable enjoyment of the property.

"highway" shall mean a street, road, lane, bridge, sidewalk, walkway, viaduct and any other way open to public use."

3. Section 2 of "Nuisance Bylaw No. 305, 1983" is hereby deleted and is replaced with the following:

"2. No person shall:

(a) cause any nuisance within the Resort Municipality of Whistler; or

(b) if the owner or occupier of real property within the Resort Municipality of Whistler, cause, suffer, or permit any nuisance in or upon the real property."

WHISTLER'S NUISANCE BYLAW CONTINUED

4. It is an offence for a person, whether alone or in concert with others, to obstruct or impede the lawful passage of another person in a park, on a highway or in a public place, unless permission has first been obtained from Council.
5. It is an offence for a person, whether alone or in concert with others, to make noise by shouting or using a voice amplification device in any public place, which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood, or of persons in the vicinity, unless the activity is part of a business or other activity for which a permit has been issued by the Municipality, and which is not prohibited by the Resort Municipality of Whistler "Noise Control Bylaw No. 692, 1988".
6. It is an offence for a person to use profane swearing, or indecent, obscene, or grossly insulting language in a park, public place or upon any highway, which may be easily heard or observed by other persons using the park, highway or public place.

RECONSIDERED and finally ADOPTED by the Council this 21st day of November, 1994.

After the bylaw was passed by the municipal council, the following incidents occurred. Read each and decide as a group if the bylaw was broken. Give reasons for your decision.

1. Lindsay needs to call her children for supper. She has a strong voice and the children are playing way down the block.
2. The local gym teacher, Elvis, uses a megaphone while teaching snowshoe racing and cross-country skiing skills.
3. A theater group provides drama from an open air stage in the park. When actors like Jackson and Andrew perform they insult each other in a loud manner and use firecrackers for a celebration.
4. ShayAnne's car broke down in the middle of a narrow road and traffic was blocked for at least one hour.
5. The fire department tests the outdoor emergency sirens twice a day to make sure they can be heard all over the valley.

WHISTLER PASSES NUISANCE BYLAW OUTLAWING CUSSING

WHISTLER, B.C.(CP) – This ski resort would like people’s language to be as pure as the driven snow.

That’s why Mayor Ted Nebbeling and his council have passed a nuisance bylaw outlawing swearing in public.

It also bans shouting and gross behavior and is aimed at rowdy youths who hang around the upscale holiday area 100 kilometers north of Vancouver.

“I’m embarrassed to walk in the village because of the language being used by these kids,” Nebbeling said Tuesday.

“I’ll be damned if that happens in Whistler.”

Since the bylaw was passed last month, four youths have each been fined \$100 for urinating in public but no cussers have been dealt with by the courts.

December 22, 1994. A2. The Saskatoon Star Phoenix

RUDE-WORDS BYLAW EXTREME, SAY CRITICS

WHISTLER, B.C. (CP) – It started out as just one tiny little bylaw. It's now a monster.

Its contents have been discussed on radio phone-in shows across the country. Its perceived excesses have attracted the wrath of civil-liberties groups.

All this over a bylaw that sounds like your mother threatening to wash your mouth out with soap.

Its proper name is Nuisance Amendment Bylaw No. 1076, 1994, enacted by the Whistler municipal council last month.

The impetus behind the bylaw grew out of Whistler's growing problem with bored kids who swear, block passageways, urinate in public and generally act like louts.

To Whistler Mayor Ted Nebbeling, his council members and the bylaw's supporters – of which, apparently, there are many – this kind of behavior smacks of a conscious effort on the part of marauding Visigoths to blacken the "good resort experience."

So council in the ski resort community a two-hour drive north of Vancouver passed the bylaw and threatened to fine anyone for things such as:

"Shouting or using a voice-amplification device in any public place, which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighborhood," or;

"To use profane swearing, or indecent, obscene, or grossly insulting language or

to exhibit indecent or drunken behavior in a park, public place or upon any highway."

It seemed innocent enough. If Singapore could pass laws to keep the community lout-free, why not Whistler?

But then civil-liberties groups started to question the bylaw's ambitious scope.

"They're trying to be pretty ambitious in the extent of the law they're passing," said Andrew Wilkinson, B.C. Civil Liberties Association president.

"It strikes me that they're trying to use a sledgehammer to kill a fly.

"We don't have any problem with them trying to regulate people urinating, defecating or making a lot of noise. The thing we have trouble with is when they try to dictate peoples' conduct when it really isn't annoying anyone."

Wilkinson said the association might test the bylaw in court if Whistler fined someone for something as innocuous as swearing loudly in public.

All of which delights Nebbeling.

He has become a political celebrity overnight.

"I angered civil libertarians, but we've done something that's got the attention from the rest of Canada. I have done 18 different radio shows since yesterday – Montreal, Toronto, London, Edmonton, Calgary – and all on the same issue. And everyone who called in supported it."

December 24, 1994. B15.
The Saskatoon Star Phoenix

A GOOD RULE OR LAW...

- is reasonable, fair and useful
- has clear wording and explains the meaning of words or terms that may cause confusion
- is made known to those who are expected to follow it
- is based on the values and beliefs of the people and is possible for people to follow
- is enforceable
- states who will be expected to obey it and what the consequences will be for those who disobey
- does not conflict with other rules or laws

THE PUBLIC SPITTING, URINATION AND DEFECATION PROHIBITION BYLAW, 2004 BYLAW NO. 8354

Whereas under the provisions of clause 8(1)(b) of *The Cities Act*, S.S. 2002, c. C-11.1, a city may pass bylaws respecting the safety, health and welfare of people and the protection of people and property;

And Whereas under the provisions of clause 8(1)(c) of *The Cities Act*, a city may pass bylaws respecting people, activities and things in, on or near a public place or place that is open to the public;

And Whereas under the provisions of clause 8(1)(d) of *The Cities Act*, a city may pass bylaws respective nuisances, including property, activities or things that affect the amenity of a neighbourhood;

And Whereas spitting, urinating or defecating in public, whether on a public place or privately owned property, constitutes a health risk and a nuisance which may affect the amenity of a neighbourhood;

And Whereas the City of Saskatoon wishes to enact a bylaw to prohibit public spitting, urination and defecation in the City.

Now Therefore, the Council of The City of Saskatoon enacts:

Short Title

1. This Bylaw may be cited as The Public Spitting, Urination and Defecation Prohibition Bylaw, 2004.

Definitions

2. In this Bylaw,
 - (a) "City" means The City of Saskatoon;
 - (b) "defecate" means to discharge waste matter from the bowels;
 - (c) "public place" includes all or any part of a street as defined in *The Cities Act*, a park, municipal reserve, environmental reserve, buffer strip or other property of the City;
 - (d) "spitting" means to eject phlegm, saliva, chewing tobacco juice or any other substance from the mouth;
 - (e) "street" means a street within the meaning of *The Cities Act*; and
 - (f) "urinate" means to discharge urine from the body.

THE PUBLIC SPITTING, URINATION AND DEFECATION PROHIBITION BYLAW, 2004 CONTINUED

Spitting Prohibited

3. No person shall spit on any street, on the Meewasin Valley Trail or on any improved walkway, sidewalk, path or trail in a park, municipal reserve, environmental reserve, or buffer strip.

Defecating and Urinating Prohibited

4. No person shall defecate or urinate in public on any private property or in or on a public place.

Offences and Penalties

5. (1) Every person who contravenes a provision of this Bylaw is guilty of an offence and liable on summary conviction to a fine of \$100.

(2) In default of payment of a fine imposed pursuant to subsection (1), the individual convicted may be imprisoned for a term of not more than 30 days.

(3) Notwithstanding subsection (1), a peace officer may issue a notice of bylaw violation to a person who contravenes a provision of this Bylaw. The Notice of Violation shall provide that if the person pays the City the sum of \$100 prior to the date when the person contravening the Bylaw is required to appear in court to answer a charge, the person shall not be prosecuted for the contravention.

(4) The fine may be paid:

- (a) in person, during regular office hours, to the cashier located at City Hall, Saskatoon, Saskatchewan;
- (b) by deposit, at the depository located at the main entrance to City Hall, Saskatoon, Saskatchewan; or
- (c) by mail addressed to the Office of the City Treasurer, City Hall, Saskatoon, Saskatchewan, S7K 0J5.

(5) Notwithstanding subsection (3), the \$100 penalty is reduced to \$75 if paid within 14 calendar days of the date of the Notice of Bylaw Violation. The date of payment shall be determined as follows:

- (a) for payment in person, the date of payment shall be the date payment is received by the City;

THE PUBLIC SPITTING, URINATION AND DEFECATION PROHIBITION BYLAW, 2004 CONTINUED

- (b) for payment by deposit, the date of payment shall be the date payment is deposited in the depository at City Hall; or
- (c) for payment by mail, the date of payment shall be the post-marked date on the remittance.

(6) Upon receipt of payment in accordance with subsection (5), the person contravening the Bylaw shall not be prosecuted for the contravention.

Bylaw No. 953 Amended

- 5. (1) The Public Health Bylaw is amended in the manner set forth in this section.
- (2) Section 161 is repealed.

Bylaw No. 322 Repealed

- 6. Bylaw No. 322, being a Bylaw of The City of Saskatoon prohibiting spitting in public places, is repealed.

Coming Into Force

- 7. This Bylaw shall come into force of the day of its final passing.

Read a first time this 4th day of October, 2004.

Read a second time this 4th day of October, 2004.

Read a third time and passed this 4th day of October, 2004.

QUESTIONS

- What is the purpose of this rule?
- How hard would it be to enforce this rule?
- What difficulties might arise with a rule like this?
- What could happen if someone refused to follow the rule?
- Read the handout *A Good Rule or Law*. How do the general points apply to this rule?
- Can the purpose behind the rule be met in a different way?

CONTEMPORARY LAW—MAKING AND COURTS

Note: Law-related education provides students with information that encourages self-confidence and further exploration of the law. Learning about specific laws, historical facts and case law, for example, is useful to the extent that it supports further learning and exploration of concepts, principles and ideals. Teachers are encouraged to use discretion in the amount of factual information students are required to master. Practical application of what the students learn is essential to a law-related education program.

There are several video and print publications available to teachers wishing to present these topics in the classroom. Teachers are advised to consult their provincial or territorial Public Legal Education and Information (PLEI) organization for suitable titles before beginning these topics.

teacher background information

CANADIAN LAW AND COURTS

Contemporary Canadian law sometimes is referred to as the Anglo-Canadian system of law. It is derived primarily from the British common law legal system, with French civil law being an important foundation in Quebec. Parts of our legal system originated centuries earlier, with the Greek and Roman legal systems. For the most part, however, Britain, with its common law system, remains the greatest influence on contemporary Canadian law.

Main principles from early common law courts that continue to exist in the Canadian legal system today are...

- The Rule of Law; laws apply to everyone and each person is protected by the law.
- Guilt must be proven beyond reasonable doubt.
- The accused is innocent until proven guilty.

LAWS IN CANADA

In all provinces except Quebec, there are two main sources of law - statute law and common law. Statute laws are created by government, while the common law is the law recorded in Judges' decisions through the years. Legislation passed by the federal or provincial government are referred to as *laws*. City, Band council, town and municipal legislation are called *bylaws*.

In a democratic country like Canada each eligible citizen may have some say in these laws through his or her elected representatives. Eligible voters who elect these representatives must be of a certain age and must be Canadian citizens. In the case of Band elections the voters must be members of the Band and they must be of a certain age. What the people of the country believe in or value is usually the basis for statute law. People make their views known by expressing their beliefs during elections, through letters and editorials, lobby groups and by speaking directly to government representatives.

In Canada, Members of Parliament in the House of Commons pass laws, called statutes. The members of the legislature or national assembly in each province are responsible for passing



provincial laws, also called statutes. A few examples of statute law are: the *Criminal Code*, the *Indian Act*, the *Youth Criminal Justice Act*, provincial education, social services and health Acts and provincial human rights codes.

In Canada, the *Constitution Act, 1867* distributes the power to make laws in different areas between the federal and the provincial governments. It states the rules for how the government will be run. The *Canadian Charter of Rights and Freedoms* is part of the Constitution; it protects each person from the abuse of power by the government or individuals and groups who work for the government. It includes fundamental rights and freedoms that most Canadians believe to be important for all people. Examples are freedom of religion, freedom of expression, and freedom from unreasonable search and seizure, as well as the right to a speedy and fair trial. It is important to realize that the *Charter* does not apply to disputes between private individuals. Rather, it relates to how the government must act when dealing with the citizens of Canada.

Law can also be divided into two categories: public law, which affects the public interest, and private law, which affects the interests of individuals. Criminal law is an example of public law. In Canada criminal law is statute law, passed by the Parliament of Canada. Criminal law deals with actions or behaviors so serious that they are considered to be a threat to the peace and safety of the entire population if they are not controlled and dealt with in very specific ways. The law also deals with the punishments if someone is guilty of committing crimes. Examples of criminal offences are sexual and physical assault, murder, armed robbery, treason, driving while intoxicated beyond a certain blood-alcohol level, and deliberate damage to property.

Although the main source of criminal law is the *Criminal Code*, laws contained in other federal statutes such as the *Controlled Drugs and Substances Act* and the *Youth Criminal Justice Act* are also criminal laws. Criminal offences are classified and dealt with according to how serious they are considered to be and what the penalties would be if the offenders are found guilty. Summary offences are less serious offences, with less severe penalties for convictions. Cases where summary charges have been laid are heard in Provincial or Territorial courts. Indictable offences are considered more serious and the penalty upon conviction is usually more severe, and can include a lengthy prison term. Indictable offences may result in heavy fines or a combination of prison terms and fines.

The second category of law, civil law, regulates private concerns such as debt, marriage and divorce, custody of children and property disputes. Civil law deals with issues between private citizens. Civil law is dealt with in many statutes: examples include laws concerning distributing property when a person dies, paying bills on accounts, getting a divorce and buying property. Judge-made law, or "the common law", based on previous decisions from cases dealing with a similar issue, is often applied in civil law areas. The purpose of civil law is to assist people in looking after their own matters and settling disputes when disagreement arises. Sometimes, knowing what the law states can help people to work out differences without going to court. Courts can be used to settle disputes, but going to court is often a lengthy and expensive process. People who can negotiate between themselves or seek mediation are often more satisfied with the results. Results in many of these situations are considered to be win-win by both parties. Although courts are structured to be fair and are considered to be fair, they employ adversarial methods and the final outcome is often considered a win-lose situation.

COURTS IN CANADA

Each province in Canada has a separate court system but the structure of these court systems is similar across the country. Courts are hierarchical, meaning they are arranged in a ranking, from lowest to highest. This structure resembles a pyramid, with the lowest courts dealing with the greatest number of cases and the highest court dealing with few cases each year.

In most provinces and territories, the lowest court is called Provincial or Territorial Court. Nunavut has only one level of court, the Nunavut Court of Justice. Similarly the Ontario Court of Justice is the only level of court in Ontario. In Quebec, the lowest level of court is called "Cour du Québec" or Court of Quebec. This level of court deals with many criminal matters and some family law matters. It also includes Small Claims Court for civil matters involving claims under a certain amount of money and Youth Justice Court for young people charged with criminal offences. Provincial or Territorial courts are located in many communities. In some provinces and the territories Judges travel to small, often remote communities where court is held in a town hall, school gym or other available building. Provincial and Territorial Courts handle the majority of criminal cases. The rules of court are less complicated than in the higher courts. There are no juries in Provincial or Territorial Courts.

The next level of court handles more serious criminal cases and a broad range of civil cases. The name of the court is different in different provinces and territories. In Quebec it is called the Superior Court, in some provinces and territories it is the Supreme Court and in others it is called the Court of Queen's Bench. When persons are accused of more serious criminal offences they have the option of coming before this level of court. Jury trials may take place in these courts. Appeals from Provincial Court are also heard here. These courts are located in several places in each province and territory, usually in larger towns and cities.

The next court in the hierarchy is the Court of Appeal for each province and territory. Unlike other courts, the Court of Appeal does not conduct trials. It hears appeals only, both civil and criminal, from lower courts. To appeal means to ask a higher court to reconsider a case, to see if a Judge has made a mistake about the law. There is only one Court of Appeal in each province and territory. It is usually located in the capital city of the province or territory, but some may sit in other cities as well.

The Supreme Court of Canada is the highest court in Canada. It consists of nine Judges. It has the authority to hear any type of case; it hears constitutional cases, criminal cases, and some civil cases. The Supreme Court of Canada hears very few cases each year, but those that it hears are often of national significance. It decides which cases it will hear. The Supreme Court of Canada is located in Ottawa.

The Federal Court is a national court situated in Ottawa, although it sits in many other cities across Canada. It decides cases under federal jurisdiction, such as income tax cases, copyright law, patent law, and certain lawsuits against federal government agencies such as the RCMP. The Citizenship Court is a special federal court where new Canadians officially receive their Canadian citizenship. The structure, rules and procedures in Citizenship Court are very different from other courts.

These are the main levels and types of courts in the hierarchy. Other courts with various kinds and degrees of authority exist in some parts of Canada.



In Nova Scotia, Youth Justice Court is divided between Family Court, for cases involving young people 12-15 years of age and Provincial Court for young people 16-18 years old.

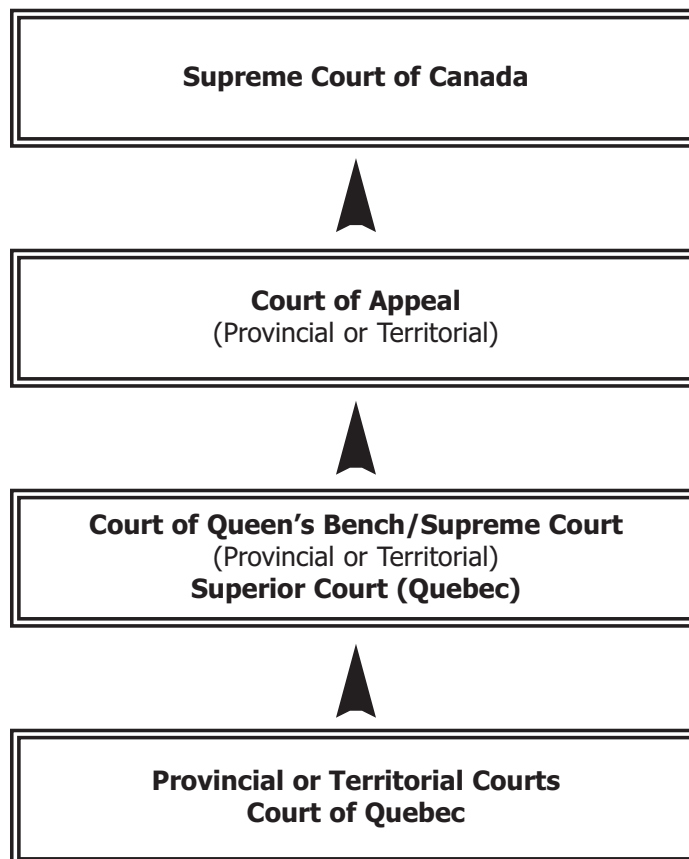
Saskatchewan Court of Queen's Bench has a Family Law Division with special provisions for dealing with matters such as divorce, custody and maintenance, child access, family violence, and child protection.

The first Cree-speaking court in Canada was created in Saskatchewan in 2001. Cree Court, a part of the Provincial Court, travels to three Aboriginal communities in northern Saskatchewan. The Judge, the Crown Prosecutor, duty counsel, and other court staff are bilingual in Cree and English.

The Gladue (Aboriginal Persons) Court in downtown Toronto is Ontario's first Aboriginal-only Provincial Court. Sentences available through Gladue Court offer a range of treatment programs and counselling services.

Contact your provincial or territorial Department of Justice or Public Legal Education and Information (PLEI) organization for more detailed information about courts in your province or territory.

COURTS IN CANADA





THE COURTROOM AND THE PEOPLE IN IT

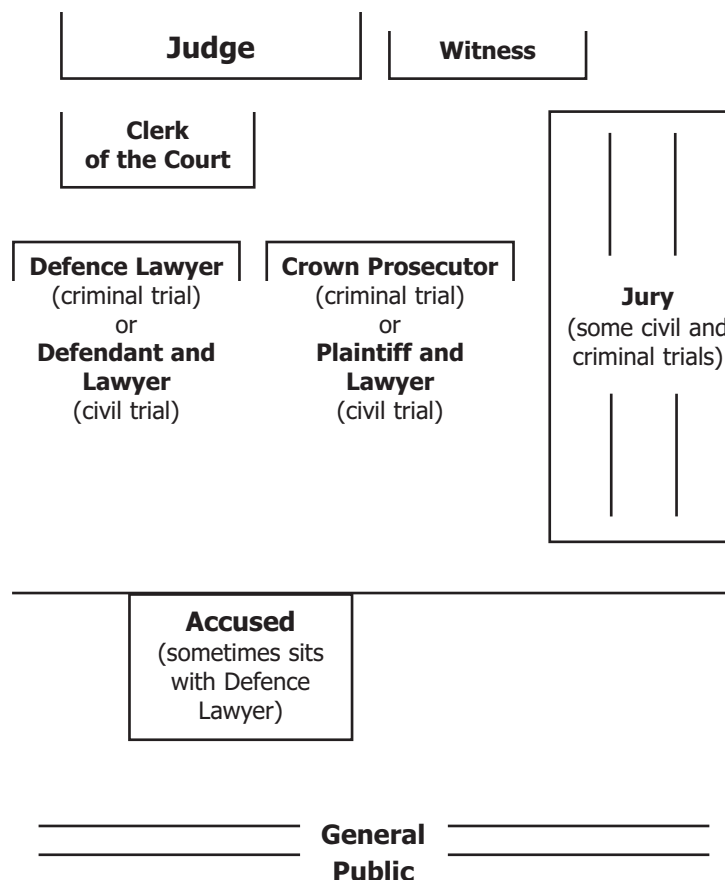
There are many people involved in law-making and the justice system in Canada. The average Canadian is most likely to come into contact with those who work directly in policing and with courthouse personnel. People who work in the various justice departments and law-making departments of government, although essential, are not as visible in our society. Even those in the enforcement professions are often “strangers” to law-abiding citizens. The second-hand and often unrealistic contact that children have through television can be misleading. Mock trials in the classroom and a visit to a court in session are very effective ways to educate about the courtroom and the people in it.

A recent informal survey of Aboriginal middle years students illustrates that these students have great interest in becoming lawyers and Judges. Providing more information about other related professions may encourage students to broaden their interests and to set a greater variety of vocational goals.

Individuals and groups who appear in courts are necessary to keep the procedures fair and orderly.

The following pages provide information on some of the more common jobs that people have in courts. A simple courtroom diagram is included below for teacher reference.

THE COURTROOM



PEOPLE WHO WORK IN COURTS

(TITLES AND DUTIES MAY VARY IN SOME PROVINCES AND TERRITORIES)

Police ... The police in Canada are independent of the government. National and provincial laws, as well as municipal bylaws, apply to them as they do everyone else. The duty of the police is to protect people and property. Rules of conduct apply to the police.

Lawyer ... Lawyers have a university education in the law: how it is made; how it works; and how it affects the lives of people. Lawyers can advise their clients about legal matters before going to court and they can represent them in court. In civil cases lawyers can often help work things out so that agreements are reached and going to court is unnecessary. In the courts some lawyers may be prosecutors (Crown Counsel) who work for the government and present evidence in court against the accused. This is referred to as representing the Crown. In sparsely populated areas of Canada the police sometimes act for the Crown. In civil cases lawyers also represent different sides of disputes. One lawyer may represent the plaintiff, the person who has a complaint, while another lawyer represents the defendant, the person who is alleged to have done something wrong. The same lawyer does not represent both sides. These lawyers are called counsel for the plaintiff or counsel for the defendant.

Judge ... Most Judges have practiced law for a certain period of time, usually a minimum of five years. Some special Judges appointed by the government, such as Citizenship Court Judges, have not necessarily been lawyers. The Judge presides over the court and everyone in the courtroom is responsible to him or her. A Judge makes decisions based on the facts presented to the court. These facts are considered according to the law or laws that may apply to the situation. Judges in Canada are independent of the government and they cannot participate in politics.

Registry Staff ... These are the people who work in the courthouse offices. They look after the legal papers and documents and court lists which tell when and where a case is to be held. The head person is called the Registrar.

Court Clerk ... This person looks after all the papers while a case is going on. The court clerk announces the name of the case when it begins, swears in or affirms witnesses and assists the Judge in keeping the case moving along. The court clerk also marks the exhibits entered as evidence and acts as custodian of the exhibits for the Court.

Community Justice Workers ... These people offer services to people in trouble with the criminal justice system. They work in organizations, either as volunteers or paid staff. The court worker program provides information about court procedures and counselling and support to offenders who are not represented by lawyers. Aboriginal court workers, who work for Aboriginal organizations such as tribal councils or band councils, work mostly with Aboriginal offenders to help with the court process. They also help these offenders understand the court system through explanation and interpretation.

PEOPLE WHO WORK IN COURTS CONTINUED

Jury ... A jury is a group of people selected by the court to listen to the evidence given during a case. The Judge usually tells them what law applies, and how it applies. The jury decides if the person is guilty or not guilty in a criminal case, or who is at fault in a civil case.

Justices of the Peace ... Many communities throughout Canada are served by Justices of the Peace who are appointed by the Crown under provincial or territorial jurisdiction. Under Section 107 of the *Indian Act* Justices of the Peace are also appointed by the Federal Cabinet. The Justice of the Peace is a judicial officer who carries out duties at a local level or within a community. They are sometimes referred to as a J.P. Their duties usually involve handling minor *Criminal Code* offences and matters related to such proceedings. These minor offences are summary conviction offences. A J.P. is not involved with serious offences such as indictable offences. The duties of a J.P. also include the following...

- grant a summons to appear in court or a warrant to search a place or to make an arrest
- issue a summons or warrant that compels a witness to attend a hearing
- hold bail hearings and release the individual if it is thought advisable
- take affidavits, declarations, and affirmations or administer oaths
- may adjourn a hearing in the absence of a Provincial or Territorial Court Judge, and may remand the accused in custody (certain limitations apply)
- perform bail hearings with respect to indictable offences

Aboriginal J.P.s are able to provide services in their local communities and they are also able to reflect the values and beliefs of their people as they carry out their work within the justice system.

The duties of a Justice of the Peace are taken very seriously, as are other aspects of the justice system in Canada. Through their roles, Justices of the Peace help to ensure that people are protected through fair and expeditious proceedings.



MORE ACTIVITIES

discussion questions

1. How do the police protect people and their property? (Investigate suspicious activity that they observe or that is reported by others; help people in time of disaster, such as car accidents and floods; write reports on incidents that might be used in a court case; do safety work in community and schools; patrol streets, roads, and lakes to maintain safety and security.)
2. What rules must the police follow when they are carrying out their law enforcement duties? (No unnecessary physical contact; no verbal abuse; duty to inform people of rights they have under the law; no searches without reasonable suspicion or a warrant; laws apply to police at all times just as they do to other citizens.)
3. In a courtroom where a criminal trial is in progress there are at least three people who have been educated as lawyers. What is each called and what role does each play? (Crown Prosecutor, defence counsel, and Judge.)

criminal law and civil law cases

PURPOSE

The handout and this activity will assist students in understanding some of the differences between criminal and civil law.

PROCEDURE

- Discuss the handout *A Comparison of Civil and Criminal Law* with students.
- Provide the *Cases for Discussion* handout to groups of students. Ask each group to read a scenario and then determine whether the situation deals mainly with civil or criminal law.

A COMPARISON OF CIVIL AND CRIMINAL LAW

	CIVIL LAW	CRIMINAL LAW
What the law is	<ul style="list-style-type: none"> • settles disputes between individuals • compensates someone injured or harmed by another's actions 	<ul style="list-style-type: none"> • protects people from physical harm or harm to property • punishes and rehabilitates offenders • discourages other offenders from committing further offences
Where the law comes from	<ul style="list-style-type: none"> • statutes that apply to specific areas (contracts, divorce, landlord and tenant, etc.) • the common law (judge-made law) 	<ul style="list-style-type: none"> • federal statutes, mainly the <i>Criminal Code</i> of Canada • common law, especially in sentencing
Who is involved	<ul style="list-style-type: none"> • plaintiff (person starting a lawsuit) versus defendant (person being sued) 	<ul style="list-style-type: none"> • the state (the Crown) on society's behalf versus the accused
What proof is needed	<ul style="list-style-type: none"> • proof on balance in favour of plaintiff or defendant 	<ul style="list-style-type: none"> • proof beyond a reasonable doubt
How a case is resolved	<ul style="list-style-type: none"> • negotiation or mediation • a judge makes a decision in favour of the plaintiff or defendant who must compensate the other 	<ul style="list-style-type: none"> • if not guilty, accused is freed • if guilty, a penalty such as a fine or prison term is given.

CASES FOR DISCUSSION

directions

Read each of the following cases and decide if it involves civil or criminal law and why. Decide which steps should be taken to resolve the situation: mediation, settlement by discussion, or court proceedings.

1. Tanner hired a carpenter to fix the shingles on her roof and paid him \$600. When it rained two weeks later the shingles began to curl up. Some blew off the roof.
2. Jean, sixteen years of age, decided to get rich quickly by grabbing a woman's purse and running away, but she had to twist the woman's arm to get the purse.
3. Ms. Cameron and her husband do not live together. She wants to settle their affairs and start a new life on her own and take care of their three children.
4. Verna was in a cafe and the waiter spilled hot coffee on her new \$200 dress. She was burned and not able to work for three days.
5. Willy Spunk and Carla Fussy live next door to one another. Willy likes to rev the motor on his Mustang, especially very late at night. Carla doesn't like it.
6. Robbie Newson sat in the bar one evening drinking with his friends. On the way home he lost control of the car, went over the ditch and broke Mr. Right's water fountain on the front yard.
7. Lizzie and Donny are both 13 years old. They left the CD store with \$75 worth of CDs they did not pay for. The security guard caught them just as they left the store.
8. Rose purchased \$500 worth of clothes, jewelry and articles like deodorant, soap, dental floss, and hair spray. She wrote out a cheque to the department store for the amount even though she knew that there was not enough money in her bank account.

CASES FOR DISCUSSION CONTINUED

Possible responses to the cases in 1 through 8. (Category of law and methods of settling the situation.)

1. Civil Law - agreement through discussion or mediation; Small Claims Court.
2. Criminal Law - (charges of assault and theft) court proceedings.
3. Civil Law - agreement through discussion, mediation, or court proceedings.
4. Civil Law - agreement through discussion, mediation; Small Claims Court.
5. Civil Law - (probably a nuisance or anti-noise bylaw) agreement through discussion; mediation; court proceedings.
6. Criminal Law - (charge of drinking and driving); court proceedings.
Civil Law - (for damage to the water fountain); agreement through discussion; mediation; Small Claims Court.
7. Criminal Law - *Youth Criminal Justice Act*; theft; extrajudicial measures or court proceedings in Youth Justice Court.
8. Criminal Law - fraud; court proceedings.



going to court (mock trial)

PURPOSE

Students will experience court proceedings through role-play and will learn the duties of various court workers. They will become aware of offences that may be dealt with in the court system.

PROCEDURE

Several methods can be used to prepare students for Mock Trial activities. Teachers are encouraged to consider at least one of the following...

- For younger students, prepare a series of short cases. In small groups have the students develop scripts for one of the cases. Review the titles and roles of people in the courtroom from the section *The Courtroom and the People in It*. Demonstrate one case as an example, using the courtroom protocol. Ask each group of students to practice their mock trial. They will decide what the Judge will say during the proceedings. Students should be encouraged to experiment with their script and make changes before presenting their case.
- Cooperate with the teacher of a secondary school law class by having the older students create a mock trial for use by younger students. Secondary school students may also be asked to demonstrate a mock trial and explain the proceedings to the younger students.
- Public Legal Education and Information(PLEI) organizations in your province or territory may have Mock Trial Kits suitable for use at various grade levels. Video tapes of court proceedings may also be available for students to view before preparing to make their mock trial presentation. Contact your PLEI provider for this assistance.
- Consider the following when conducting mock trials in the classroom. Court proceedings in smaller, remote communities may be quite different from the usual found in other parts of Canada. There may also be changes because of the desire to make the court experience more helpful and acceptable to First Nations citizens. For example, certain traditional rituals may be allowed as oath confirmation, in the place of swearing on the Bible. If an Aboriginal person cannot speak or understand English or French, he or she has a right to an interpreter. Informal proceedings and seating arrangements in the courtroom are also more likely to be found. For example, the Judge, lawyers, defendants, police and any Elders or others involved may sit in a circle or around a table. The Judge, after consultation with the people, is the person who decides what changes are appropriate.

going to court (court visit)

Note: Taking students to visit a court in session requires a considerable amount of advance planning. It is, however, a very worthwhile activity for students. If court is held within a reasonable distance of your community, students in your classroom may find this activity very rewarding.

PURPOSE

First-hand experience of court proceedings allows students to gain a better appreciation of how the law works and the impact it has on people in their communities.

PROCEDURE

- Check with the courts in your province or territory concerning the possibility of arranging a court visit.
- Check with the Public Legal Education and Information organization in your area. They may be able to make arrangements for a court visit or give you assistance in making your own.
- Teachers who are making their own arrangements for a court visit may wish to consider the following...
 - ▶ Notify the court registry staff or the police who attend court of your intention to visit the court. They may be helpful in working out the details and providing advanced information.
 - ▶ Ask someone who is familiar with the courtroom scene to visit the classroom and explain the proceedings and why they happen. This person may also be able to give students assurance that this can be a non-threatening and beneficial experience.
 - ▶ If you have not been in a courtroom while it is in session, consider making a visit before taking students.
 - ▶ Find out in advance what cases are pending and choose one that seems suitable for the maturity level of your students.
 - ▶ Provide students with information about court proceedings that will help them understand what they are observing.
 - ▶ Following the court visit have students write letters of appreciation to those people who provided support and assistance.

CONFLICT RESOLUTION



rationale

The objectives of this unit are to instill a basic understanding of conflict resolution and to motivate both teacher and student to apply this knowledge to everyday situations.

Young people learn law-related concepts such as fairness, authority, responsibility, and forgiveness from the people with whom they are in contact - people in their school, in their community and in their home. By talking with these people, students have an opportunity to discover how perspectives on various issues may differ. They may also find common themes underlying these viewpoints.

Alternative approaches to resolving conflicts can be learned in a variety of settings. Most young people spend a great deal of time watching television. They are learning approaches and attitudes towards problem-solving from fictitious characters. By exploring the messages that are being sent and the methods shown for resolving conflict, the students will become aware of positive and negative choices that they might make. Through discussion they will become more aware of the consequences that flow from the choices they make in their own lives.

This unit may be integrated into Ethics or Religious Education, Language Arts or Social Studies curricula.

learning outcomes

KNOWLEDGE: STUDENTS SHOULD DEVELOP AN UNDERSTANDING OF THE FOLLOWING...

- methods for resolving disputes including negotiation, mediation and adjudication
- the meaning of conflict, responsibility, fairness and forgiveness
- different kinds of disputes may be resolved in different ways
- rules and laws are used to judge behaviour and settle disputes
- most disputes can be settled out of court

SKILLS: STUDENTS SHOULD DEVELOP ABILITY IN...

- recognizing situations involving disagreement or conflict
- identifying alternative ways of settling disputes
- distinguishing between violent and non-violent means of resolving conflicts and analyzing alternative solutions in terms of their possible consequences
- expressing an opinion

- role-playing
- letter-writing and interviewing
- organizing, writing, summarizing and presenting a report

VALUES: STUDENTS WILL BE GIVEN OPPORTUNITIES TO DEVELOP...

- greater empathy for others by learning to see things from others' perspectives
- an awareness of non-violent means of resolving conflicts
- a feeling of comfort with using alternative approaches to conflict
- an appreciation for fairness and responsibility in relationships

background information

RESOURCES

Many resources are available for teaching techniques of conflict resolution, including a growing number of programs for training in peer or student mediation.

School-based Violence Prevention Programs: A Resource Manual

- This RESOLVE Alberta program is a web-based resource that reviews a large number of programs. It can be found at www.ucalgary.ca/resolve/violenceprevention. Also, you can go to the University of Calgary website at www.ucalgary.ca and use the search function to find "violence prevention".

Conflict Resolution Network Canada (www.crnetwork.ca)

- CRNC is a charitable organization that promotes constructive, non-violent conflict resolution. Its on-line bookstore has over 100 titles dedicated to conflict resolution, including teaching manuals and student workbooks.

The following include activities for solving conflicts and background information...

Children's Creative Response to Conflict (CCRC-Canada)

- Established in 1972 by the New York Quaker Project on Community Conflict, this organization offers workshops, publications on mediation and peace-making in Costa Rica, the United States and Canada. Resources and more information available at www.ccrcc-crc.ca

The National Film Board of Canada (NFB) (www.nfb.ca)

- The NFB has films available through their website. Using the 'search' function, and the keywords "conflict resolution", you can locate videos on this topic.

UNDERSTANDING CONFLICT

The following principles are helpful in understanding conflicts. Teachers may want to keep these principles in mind while doing the activities...



- Conflict exists. It is not going away and we are not trying to do away with it. We want to teach the skills to deal with conflict.
- Conflict can lead to growth. Conflict is not always good, but it is not always bad either. We can learn new things about ourselves and others. Through conflict we can grow.
- There are many possible solutions to any conflict. We practice generating ideas.
- How we define a conflict is related to how we resolve it. The more accurately we define a problem the more likely we are to solve it.
- Not everyone will define a problem in the same way. Often our confusion over solving a problem is related to our different definitions of a problem.
- Violence escalates. We see this over and over in conflicts.
- Positive feelings escalate, too. The more we affirm others and ourselves, the easier it becomes, and the more affirmed we feel.
- Sometimes we can find solutions in which everyone wins. Not always, but sometimes.

Source: Prutzman et al. *The Friendly Classroom for a Small Planet: Children's Creative Response to Conflict*. Page 59.

A major goal of resolving conflict is to help the parties find their own solutions so that everyone can accept the outcome.

Conflict resolution is a process. Programs used in schools often apply the following principles, starting in the earliest grades.

- Building self-esteem through affirmations of self and others. For example, recognition of positive traits and actions.
- Learning co-operation through building a sense of community. For example, participation in group activities.
- Learning to communicate through listening, speaking and observation skills.
- Learning new responses to conflict by becoming aware of the complexities of violence. This leads to creative resolutions to conflict generated by students themselves.

Source: Adapted in part from CCRC. See *The Friendly Classroom for a Small Planet*. P. Prutzman et al. 1988

The student activities in this unit are primarily directed towards the last principle - exploring and learning new responses to conflict. An objective of this unit is also to make students more aware of the approaches to resolving conflict that exist in the current legal system.

METHODS OF RESOLVING CONFLICTS

New ways of solving problems are being "discovered" every day. It may be more accurate to say "rediscovered" as some of the "new" approaches are based on very old models. For example, the talking circle and sentencing circles are, in part, derived from traditional Aboriginal practices.

As more and more people become involved in areas of alternative dispute resolution new methods or approaches are being tried. At the basis of all the different techniques are three main types of dispute resolution: negotiation, mediation, and adjudication.



Negotiation involves give and take between the parties. The parties may reach an agreement on their own or they may have a third person help them to come to some middle ground so that both are reasonably comfortable. For example, when there has been an accident, a lawyer may negotiate a settlement agreement in a personal injury claim.

There are many different models. One model useful for negotiation or mediation may include the following basic steps...

- Define the problem. Attack the problem, not the person.
- Describe what it is each side needs.
- Brainstorm or invent ideas as to how each side could get what they really want/need.
- Find out which ideas are most acceptable to both sides.

Try to reach an agreement as to which things both sides would be prepared to try.

If it doesn't work, go back to the list of ideas and see if the next most acceptable idea works.

Mediation involves a neutral person who acts as a go-between who brings the two sides together. In addition to this "middle person", others who are affected by the conflict may be involved. A mediator helps the two sides come to an agreement by helping them define the problem and come up with different ideas for resolving it. He or she does not take sides or lay blame. The mediator must remain neutral and impartial.

Neither side is pressured into accepting a settlement proposal. The solutions should be their own. Once the parties reach an agreement as to what should be done, the agreement is put into writing and both parties sign. It becomes a written contract between the parties.

Mediation can be used as an alternative to the courts. Mediation is used in family, neighbour, landlord and tenant, and consumer problems as well as in criminal matters. The potential benefits of using mediation as an alternative to the courts are many: it may be faster and cheaper than going to court; it is less threatening; and it can be less destructive to relationships where the parties must continue to deal with one another. Mediation also allows for the possibility of an offender taking responsibility for his or her actions. Restitution to the victim and not only punishment of the offender becomes more likely through mediation. Restitution may not be viewed so much as punishment as it is an "opportunity" to make amends.

Adjudication involves a third party who listens to the parties (and others who may have direct knowledge about the dispute) and then makes a decision about what should be done. This is the way the court system in Canada works. A Judge listens to both sides, to witnesses and to the arguments made by the lawyers for each side as to what law should be applied. The Judge or a jury must



decide whether the accused is guilty in a criminal case or whether the plaintiff has proven his or her claim in a civil case.

Arbitration is a form of adjudication. Labour disputes and landlord and tenant matters may go to an arbitrator who makes a decision after hearing both sides of the dispute. An Arbitration Board follows certain formalities but is less formal than a court. For example the rules about giving evidence are not as strict as those followed in a court. Both sides are bound by the arbitrator's decision, although they may have the right to appeal that decision to a court.

MEDIATION IN CRIMINAL MATTERS

Mediation is being used in criminal matters as an alternative to going through the court system. The purpose of extrajudicial sanction programs (also called diversion or mediation-diversion in adult court) is to deal with criminal behavior without laying criminal charges (pre-charge) or if criminal charges have been laid, without going to court (post-charge but pre-conviction, that is, without the Judge finding the person guilty or not guilty of the charge).

Our Anglo-Canadian justice system is built on an adversarial model. Instead of working together to solve the problem one party is pitted against the other party to prove his or her case. In a civil case the injured party (the plaintiff) presents evidence against the wrongdoer (the defendant). In a criminal case the state or community is represented by the Crown Counsel who must prove that the accused has broken the law.

The task of a Judge or jury is to decide whether the accused is guilty or not guilty. In criminal court, the accused must be acquitted if there is a reasonable doubt about his or her guilt. If found guilty, punishment in the form of a fine or imprisonment or both may be imposed. The emphasis is not on finding a result that would satisfy both parties. In the end there is a winner and a loser. Principles of sentencing include deterrence (to prevent a recurrence or to prevent others from engaging in criminal activity), the protection of society and rehabilitation.

Consider the following viewpoint...

A legal argument requires words that are contentious and bad in the Navajo sense, since their goal is not to harmonize the situation. Bad words are, by Navajo definition, those of an argumentative or irrational nature. A reasonable man is a good man; one who acts reasonably is one who collaborates in ways that harmonize differences of view and do not exacerbate or underscore them.

An adversarial proceeding is not seen as good, as rational, or as useful by persons who see conciliation of differences as the immediate goal. Navajo people attempt to compromise differences among themselves. They do not make special or seemingly irrational efforts to reinforce their differences simply to "fight." And to "win." Getting straight with society is at the core of Navajo jurisprudence. For a participant, this implies that agreement with authority and pooling one's knowledge and demonstrated wisdom and not disputing the opinions of others are what the resolution of differences is all about.

As a practical matter, these differing expectations transcend mere differences in language. Nor are they merely amusing subjects for academic inquiry. They have to do with the strong differences between Navajo and dominant Anglo conceptions of "reason" and "unreason," especially as seen in legal contexts.

Source: D. Vicenti et al. *The Law of the People. DIN'E BIBEE HA Z 'AANII A Bicultural Approach to Legal Education for Navajo Students.* Page 156



The criminal trial is concerned with deciding who is responsible for certain behaviour that is prohibited by the criminal law. If the person is found responsible (guilty) he or she may be sentenced by the Judge. Victims may appear at court to tell what happened, but historically victims have not had an opportunity to say how they were affected or what they think should happen. The reason behind this is to keep the process impartial. Everyone is to be treated equally under the law. In other words, the offence, not its effect, is the focus of the trial. The view that victims have no place in the criminal trial has been modified over the past decades. For example, victim impact statements are now provided for in the *Criminal Code* (Section 735). The *Youth Criminal Justice Act* explicitly states that the youth criminal justice system should take into account the interests of victims. The Act states that victims should be provided with information about the proceedings and given an opportunity to participate and be heard.

Mediation has a different focus. Its aim is to resolve the conflict and get to its causes. Mediation tries to reconcile the victim and offender so that they can get along in the community. It tries to re-establish a harmonious relationship between the parties.

Mediation allows the victim to be directly involved. He or she may be willing to meet with the accused. The mediator may help the two see the crime from each other's point of view and work out a fair solution. In pre-charge mediation programs criminal charges are not laid if the agreement is successful. If charges have already been laid, they may be withdrawn and the offender will not have a criminal record.

The offender must be willing to participate. The victim(s) may have a representative or substitute person speak on their behalf. The representative could be a member of their family, a friend or a member of the community. In cases involving youth, some mediation workers feel that the process will not be successful without the participation of the accused person's parent or guardian.

The focus for the offender is on accepting responsibility for his or her actions and on becoming aware of the impact that these actions have had on others. The participants must try to reach an agreement. The accused may agree to apologize in person or in writing, pay for the damage, work in the community or for the victim directly or a combination of these. If an agreement can't be reached, or if the offender fails to keep his or her promises, the case is sent back to the Crown Prosecutor's office.

Offences for which mediation may be available include theft, mischief, creating a disturbance, and assaults that don't involve serious injury. Initially, mediation was available only to first time offenders. This changed to allow mediation where the second offence involves an unrelated charge. The *Youth Criminal Justice Act* formally recognizes that a young person who has been dealt with in the past by the use of extrajudicial measures may benefit from them again. The relevant question is whether extrajudicial measures are adequate to hold a young person accountable for his or her offending behaviour.

TRADITIONAL OR CUSTOMARY METHODS OF DISPUTE RESOLUTION

In Canada, New Zealand and Australia, for example, customary or traditional practices today are most widely applied in family matters such as custody, foster care, adoption, and the division of matrimonial property.



Some scholars have observed that various Aboriginal groups' traditional systems were not based on an adversarial system like the Anglo-Canadian model. Although approaches differ among the Aboriginal groups, there are a number of things in common. Traditional methods of dispute resolution were closer to the daily lives of the people than the Anglo-Canadian system because everyone understood it, not just lawyers...

People knew how to behave and there were people in the community who could set things right. People depended on the actions of each other. If actions showed disrespect they were expected to set things right with the person who had been offended and with his family. Most bad acts could be compensated for by money or property payment to the person harmed. Traditional ways of resolving disputes emphasized repairing the damage caused. People sat down and tried to resolve differences. An admission or acknowledgment of wrongdoing was assumed when people sat down to discuss the case.

Source: Dan Vincenti *et al*, *The Law of the People: DIN 'E BIBEE HAZ 'AANII*. 1972. Page 104

In traditional society people learned to respect each other's rights. Boys and girls were treated like adults. Even small children were responsible for injuries to people or property that their actions had caused. The law of the people was not called law but religion. Law was a balance between order and individual rights.

Source: Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality*. 1992.

Punishment was never the theme of "Indian Family Law". Rather our code was a standard of behaviour addressing the needs of individual, family and community. The considerations entertained the following concepts...

- maintenance of dignity
- re-introductions
 - ▶ to self
 - ▶ to family
 - ▶ to community
- apology and from time to time compensation
- education
- crime prevention
- counselling (individual and family)
- rehabilitation

Source: First Nations of South Island Tribal Justice, British Columbia. As quoted in FSIN Tribal court symposium, Saskatoon, March 1994

Navajo clan relations are what is known as a "horizontal" legal institution. The American system of adjudication is a "vertical" system, because it relies on a hierarchy, a power structure. The traditional Navajo legal system worked without jails, police, lawyers, or courts, because it was based on relationships. People with a problem - something we call a dispute - go to a respected community leader and have that person help "talk it out" for a resolution by consensus. A horizontal system relies upon everyone being equal.

Our traditional leadership system follows that pattern. Our civil leaders are called a "naat 'aanii," which translates as a person who speaks wisely and well. It refers to someone whom the community acknowledges to be a good planner. It is something like the concept of an "elder". Planning through group discussions and general agreement to what should be done to solve a problem is a major concept in our legal philosophy. Our naat 'aanii-planners are chosen for their wisdom, creativity in solving problems, and ability to plan with others. They do not "decide" a legal case or order people to do things. They use their knowledge of Navajo traditions to teach others, help them straighten out their thinking, and relate better with each other. While a naat 'aanii is not bossy, and should not make a decision for others, we might say that his or her "word is law." In our way, the people who have disputes are the ones who should know the way to resolve it. A naat 'aanii guides the parties to identify issues, values and relationships to solve their own problem.

Source: *Navajo Justice Thinking* by Hon. Robert Razzle, Chief Justice of the Navajo Nation. November 1993 As quoted in FSIN Tribal Court symposium, Saskatoon, March 1994.

other resources for conflict resolution

In addition to the following activities, there are many other resources for conflict resolution available in print, video or online. Choose resources appropriate for your students. An excellent starting place is www.peacefulschoolsinternational.org. This website contains references to many other excellent resources.

ACTIVITIES

exploring conflict in fiction

PURPOSE

- to explore the types of conflicts that arise in relationships as portrayed on television
- to learn how to analyze conflicts in non-threatening situations such as in television shows, movies or books
- to discover other ways to deal with conflicts

PROCEDURE:

- Discuss "conflicts". Have the students give examples. Have the students identify types of conflict/disagreements/fights/violence that they have seen on television.
- Bring a TV guide to class. Make a list of favourite programs on the board.



- Have students choose a program to watch during the week. Situation comedies may be appropriate. A DVD collection of a previous season for a popular show could provide options as well. It may be possible to arrange to watch a video or DVD during class time.
- Provide each student with these points for consideration...
 - ▶ List the conflicts that arise.
 - ▶ How are they resolved? Describe what the people do and say. Were there positive or negative messages?
 - ▶ Analyze the TV personalities on the show. Is there a “hero”? How did this person handle conflict? Does he or she usually handle conflict in the same way(s)?
 - ▶ Count the number of times people respond to conflict in abusive ways. Include harsh or loud talk, swearing, name calling, pushing, physical fighting and murder.
- Have the students analyze and report to the class. Have them tell what the program was about, then give their responses to the points above.
- Discuss the following...
 - ▶ Were the ways that people handled conflict effective? Were they realistic? Were they believable?
 - ▶ Were real-life situations portrayed? Were the situations believable? What were the outcomes?
 - ▶ Have the class suggest other ways to approach and resolve conflict.
- Follow-up: Have students count the incidents of violence in their favourite program. Have them “rewrite” the script so that the situation is resolved without violence.
- Have the students rewrite a story involving a violent resolution. Encourage students to find peaceful resolutions to the conflict.

exploring real life conflict

PURPOSE

- to explore the types of conflicts that can arise in relationships
- to determine practical and effective ways to deal with conflicts
- to discover how the members of the community might respond to conflicts

PROCEDURE

Introduction: Suggested teacher script

Note: Teachers are encouraged to adopt vocabulary and provide explanations that facilitate comprehension of ideas.



What is conflict?
That's mine! Give it back!
It's my turn! That's not fair!

Everyone gets into arguments once in a while. Conflicts are a natural part of human relationships. Whether we're at school, at home or taking part in an activity outside of school, there will always be disagreements. It is how we solve life's little (and not so little!) problems that can make all the difference.

What are some of the ways in which you have seen problems at school solved? You may find that what works in some situations does not work in all situations and that what works for some people won't necessarily work for others.

Sometimes it is enough to discuss the problem between or among ourselves. In most cases we manage to work it out for ourselves. The conflict might be resolved by a compromise - a give and take - including taking turns or by finding other creative solutions. It might take an apology or an acknowledgement from one person that he or she had not acted fairly. But when we are unable to reach a compromise or find a solution and the problem continues, it may be time for someone to intervene. That someone has to be a person who can see both sides of the argument and come up with a solution that is fair to both people. In a court, that third person is a Judge. In a school setting, that person might be a friend, a teacher, the principal, a parent or another adult. When a third person is involved they may try a number of different approaches to solving the problem.

Let's use the example of two students fighting over a computer (table saw/sports equipment). They may agree to take turns. One uses it for a few days, and then it's the other person's turn. This is called reaching a compromise. The students may decide to let the teacher or another person decide who will get the computer. This is called adjudication. The third person decides on a solution and the participants are expected to accept that person's decision.

An impartial third person may encourage both people to suggest a number of different solutions and let the two sides decide for themselves what might work. This is called mediation. A mediator tries to help both people understand the other person's point of view. Mediation is being used in our legal system instead of sending young people through the courts when they have broken a law. For example, the *Youth Criminal Justice Act* includes the option of diverting young people away from the court system and using other "extrajudicial" methods of resolving the problem.

It may be helpful to use the Sharing Circle format throughout the following activities. (Refer to *The Sharing Circle* in this chapter.)

- Give an example of a conflict situation. Ask what seems to be the problem and why the people involved are not able to get along. Is it clear what each person needs or wants? Explain that in any conflict there are two sides and that the conflict often arises because the two parties are not listening to each other.
- Explain that the class will be divided into partners and each student will be assigned a certain role. The partners are to create a short skit involving some type of conflict between the two characters. Some examples of conflicts include fighting over the same item, leaving someone out of a game or activity, hitting, making criticisms or teasing.



- Divide the class into partners and assign one of the following roles to the partners...
 - ▶ friend/friend (same gender or girlfriend/boyfriend)
 - ▶ parent/daughter or parent/son
 - ▶ aunt/niece or uncle/nephew
 - ▶ brother/sister or brother/brother or sister/sister
 - ▶ student/student or student/teacher
 - ▶ teacher/teacher
 - ▶ neighbour/neighbour
 - ▶ other?
- Allow 10-15 minutes for the partners to create a skit. Give some examples if students are unable to come up with ideas on their own.
- Reassemble as a class. Ask for volunteers to explain their roles and then perform their skits. Thank them and have them rejoin the circle.
- Have the group discuss the skit performed. Ask how they think they would feel in that situation if it were real. Ask the performers how they felt in their respective roles. Have the group brainstorm ways in which the conflict could have been resolved.
- Work through all of the skits in this way.
- Additional Guidelines (for older students or for another day)
 - ▶ After each person has told his or her side of the story, the person representing the other party to the conflict repeats what the first speaker said. The first person may correct or clarify the other person's understanding of what he or she said.
 - ▶ Repeat the activity with three to a group. Assign new roles with the students taking turns in each role. The students take turns in the role of mediator helping the two main characters to resolve their problem.
 - ▶ For older or more mature students, repeat the activity with four or more to a group (a small sharing circle). In addition to the two parties in conflict, others participate by explaining how they are affected by the dispute and offer suggestions for resolving the conflict. These solutions should directly affect that person as a member of the family or of the community. The main disputants should be encouraged to find their own solutions. The emphasis is on empowerment rather than dependence on others in problem solving. Encourage participants to talk about their feelings both during and after the skits.

learning how to handle conflict

OBJECTIVE

To discover effective ways of dealing with conflict, and to encourage students to find non-violent ways of problem solving.

**PROCEDURE**

Introduction: Suggested teacher script

If conflict or disagreement is everywhere, how do we deal with it? Can we ever get rid of it entirely? What do you think?

Sometimes if we ignore someone who is teasing or bothering us they will stop when they see that we are not reacting. One solution may be to try to forget about a problem and hope that it will go away. Unfortunately this doesn't happen very often. Sometimes the problem will get bigger and bigger until we are forced to deal with it. That may mean asking someone to help.

In some ancient societies there were some very different ideas about how to settle a dispute. For example, there were "contests" (fights) in which the winner was presumed to be right. This meant, "might equalled right".

In Europe, superstition led to Trials by Ordeal. The person accused of a crime was dunked into water. The accused relied on Divine Intervention to be saved from drowning, thus demonstrating innocence.

Here are some examples of conflict and some positive and negative solutions to the conflict. What are some sensible and some silly solutions?

Make up your own situations and provide practical and impractical solutions.

It's the same problem every night. My sister and I want to watch a different channel on TV. Unfortunately, we only have one TV, so we are continually arguing.

Good Idea?

Make a list of your favourite shows and the times they are on.
Take turns picking one show for Monday, one for Tuesday, etc.
Congratulations! You are learning to compromise.

Bad Idea?

Move out and get your own TV.

It is a bit extreme and you'll have to make your own meals.

Donovan and Deidre live in an apartment building. Donovan's apartment is directly below Deidre's. They had been good friends until Deidre decided to buy a new CD player and played music very loudly. Donovan cannot get to sleep while Deidre is listening to the CD player. He knows he can make a complaint under the community's noise bylaw but will do that only as a last resort.

Good idea?

Donovan buys ear plugs.
Donovan has asked the landlord to talk to Deidre.

Bad idea?

Donovan ties a rope across the stairs hoping Deidre will break an arm.

The landlord, Ferne, acted as a go-between and helped them reach an agreement about the hours that Deidre could play the music loud (or use headphones.) This is an example of mediation. The emphasis is on meeting both sets of needs. A mediator helps them to identify their needs. They should come up with their own solutions.



For tomorrow's basketball game, there are only two shirts left: number 30 and number 47. Both Dylan and Kyra want the shirt with the number 47 on it.

Good idea?

Since it's the last game you both decide to let the coach decide who will wear it.

Bad Idea?

Change shirts every 12 minutes throughout the game.

The "Good Idea" is an example of adjudication. This is part of what happens when a person goes to court. The Judge decides whether or not the person is guilty of the crime or offence as it is described in the *Criminal Code*. The Judge then decides what the person should do to make amends and whether that person should enter a special program, pay a fine or be removed from the community and spend time in custody.

The "Bad Idea" is an example of a "negotiated" settlement. If Dylan and Kyra both agree, maybe it's not such a bad idea!

- As a class, list other examples of conflict. This may be an opportunity to revisit the situations that were discussed in the previous activity.
- In groups of 2 or 3 talk about what might really be going on for each person in the conflict and come up with some ideas for solving the problems. Try to identify which approach to conflict resolution is being used.
- Discuss the solutions as a class. Evaluate the solutions. Are the solutions reasonable? Are they fair to everyone? Are there more appropriate ways to deal with the problems?

case studies

TEACHER BACKGROUND

Everyone is affected to some degree by the judicial system. By talking to the people in the community, students may discover that people have different perspectives on justice and different opinions about what may be wrong and what may be right with the justice system.

By asking for community participation in designing a more effective system we are using a more traditional approach - a grassroots approach - to problem solving. The circle of people who teach youth about justice issues become involved in assessing what they are conveying to youth about justice.

PURPOSE

- To explore the ideas of justice within the community.
- To discover whether "justice" means different things to different people.

PROCEDURE

- Assign the following sample cases for the students to resolve.
- Divide the class into partners or groups of three or four to interview members of the community.



Have the students present the sample cases to various community members and ask how they feel the situations should be resolved. Ask them to give reasons for their answers.

- * It is recommended that the teacher phone, then follow-up by a letter to the local band council or organization or individual in advance, requesting their participation, giving a sample of the questions and explaining the role they would be asked to play.
- ▶ possibilities
 - ▷ parents
 - ▷ Elders (the title “Elder” does not necessarily signify age)

First Nations, Métis and Inuit Elders are particularly integral to the revival, maintenance and preservation of Aboriginal cultures and languages. First Nations and Métis students develop a positive identity and gain self-esteem from interacting with Elders. All students may benefit from contact with Elders.

When approaching Elders, follow the protocol (code of conduct or etiquette) that is appropriate in your community. Notice that protocol varies from community to community. The district chiefs’ office, tribal council, band council or education committee may be able to assist you. Ask these professionals what is appropriate to give, because traditions differ throughout Aboriginal communities. Initiate the cycle of giving and receiving prior to an Elder’s visit. An appropriate offering represents respect and appreciation for knowledge shared by an Elder.

In addition, if your school division normally offers honoraria and/or expense reimbursement to visiting instructors, it would be similarly appropriate to extend such considerations to a visiting Elder.

To initiate the process of dialogue and participation, a letter should be sent to the local band council requesting Elder participation, and indicating the role the Elder would have within the program. The band council may then be able to provide the names of persons who have the recognized knowledge and skills to meet your specific needs. Consult with the Elder prior to his or her visit to clarify expectations for learning opportunities.

For comprehensive information on the role of Aboriginal Elders in schools, see *Aboriginal Elders and Community Workers in Schools* (March 2001), Saskatchewan Education. For specific delineation of the distinct qualities of First Nations, Métis and Inuit Elders see *AWPI Tool Kit* (1998), Indian and Northern Affairs Canada.

Source: Saskatchewan Learning Evergreen Curriculum for Native Studies 10;
http://www.sasklearning.gov.sk.ca/docs/native10/F_L_Objectives.html#IE

- ▷ Members of the Band Council, education committee, or justice committee
- ▷ friends
- ▷ police



- ▷ a Judge, a lawyer, or a court worker
 - ▷ a teacher or a principal
 - ▷ the school nurse or other person who works in the school part or full-time
 - ▷ other support people in the community
- Discuss the viewpoints as a class. If possible, invite members of the community to the class to take part in the discussions.
 - Can the class find other ways of approaching the conflicts?
 - Revisit these sample cases after discussing *What is an Offence?* in the section titled *Principles of Canadian Law*, in the Criminal Law unit.
 - The perspectives in the final unit, *Currents*, are intended to be used in conjunction with this activity. The teacher may want to assign one “perspective” to each small group of students to discuss with members of the community (parents, elders, other family members, neighbours, etc.) and people involved with support services (police, counsellors, health care, etc.) as well as people who are part of the court system (Judges, lawyers, youth court workers, probation officers). Young people gain much of their information about the justice system from these individuals. By stimulating discussion about how different people perceive the justice system, young people will have a better understanding of the changes that are taking place.

The following sample cases and the perspectives in the *Currents* unit (handout pages - *Currents* unit), will serve as a springboard for discussions of concepts such as fairness, responsibility, restitution, and forgiveness. By discussing these cases (and perspectives), the students will learn new approaches to resolving conflict.

CASE NO. 1

Two youths throw stones from a bridge. A stone hits the windshield of a passing car. The police apprehend the youths and lay charges. What should happen from here?

QUESTIONS

1. Do you think these youths will be eligible for mediation? If yes, who should be involved in the mediation process?
2. Should the consequences be different if someone was injured?
3. Should it make any difference who the victim is?
4. How can they make amends for damage to the vehicle (restitution)?

COMMENTS

In this case mediation was allowed and the youth met with the driver. The driver of the car was an off-duty police officer. The youths agreed to provide direct service by washing police cars on Saturday mornings for a number of weeks. Do you think that this was fitting? Do you think that it was sufficient?

CASE NO. 2

A youth knew a family and waited until they were on vacation. He entered their house and took several items.

QUESTIONS

1. What are appropriate consequences for a person charged with break and enter or theft?
2. If mediation is used, who might be involved?
3. How can the community deter young people from breaking the law?

COMMENTS

The youth entered mediation and agreed to do personal service work, in this case, cutting the lawn.

CASE NO. 3

One evening teachers, parents and other members of a community met to discuss what could be done about fighting between groups of students. While they were discussing the advantages of implementing a mediation process and other options, two gangs from rival schools met for a prearranged fight in the school parking lot.

QUESTIONS

1. Who should be involved in mediation (or another approach) to resolving this ongoing conflict?
2. What suggestions can you make for helping to resolve the problems between the groups of students?

COMMENTS

In this case the community was involved in the mediation. Members of the Community Associations from both areas and the principals and vice principals were involved in the mediation process.

"The community is really the victim in this type of situation." What do you think the person who said this meant?

CASE NO. 4

Twelve year old Charlie lost his temper and started kicking a fence. His eleven year old friends Will and Joe were shocked at first. Then they decided to join him. Soon the fence was demolished. The boys did not know the owner of the fence.

During mediation the owner of the fence, Julie (the victim), said it was not enough that the twelve year old offender had agreed to try to replace the fence. She insisted that the boy would also have to "be punished".



The twelve year old said he did not have any money to replace the fence and was bitter that his friends did not have to go into mediation with him. He did not follow through on his agreement and was charged with mischief and brought to court. The Judge ordered him to do community service for twelve hours over the next three months.

QUESTIONS

1. Do you think it was fair that only one boy was held accountable?
2. Do you think the victim was being reasonable in wanting the boy punished as well as replacing the fence? Is there a difference? What do you think she had in mind when she said this?
3. What other suggestions can you make to help prevent this from happening again?

COMMENTS

The *Youth Criminal Justice Act* applies to young persons from ages 12 through 17. The boy's friends were too young to be charged under the YCJA, although they did speak with a counsellor from the school.

the sharing circle

There are many important elements to Circles. With Healing Circles only those who have completed a healing journey can lead them. Respect for the way Circles are run is very important. Free will of the participants is important. Invite an Elder to talk to the class about Circles and their use in the justice system.

The students sit in a circle or in a number of smaller circles of six to eight students. Everyone is given an opportunity to speak without interruption. An object such as a stone, a piece of wood, a seashell or a feather can be passed from student to student to signify whose turn it is to speak.

The Sharing Circle or "heart sharings" was originally a Hopi Indian tradition known as the talking stick*. Tribal members gathered in a sacred ceremonial room called a kiva for their council meetings. The meeting was structured so that each person would have an opportunity to speak while having the focused attention of everyone present. The person holding a special stick had the floor, and was not to be interrupted while speaking. The purpose of heart sharings was to give each person an opportunity to say what was in their hearts with the full attention of everyone in the room.

The ceremony evolved over time and other objects, such as a pipe or feather, were used. The students might enjoy having an opportunity to select a special object for the Circle. The important thing is that the object represents speaking from the heart with love, honesty, and compassion.

A Sharing Circle in a classroom can be used as a structured time for students to share ideas or to discuss a particular issue. It is useful when there are no right or wrong answers and the Circle is presented as a chance for students to share their feelings. It can also be a useful structure for conflict resolution. The purpose is to create a safe environment for students to share their point of view. It is easier to begin with non-emotional issues. Start with something positive each time.



For example, start the Circle by having each student tell about something good that happened that day or that week.

As students are listened to and their comments are accepted without criticism, they will feel more comfortable saying what they feel or believe. They will also learn to appreciate others' points of view. Making a group decision or coming to a consensus can follow later.

The *Guidelines for the Sharing Circle* handout can be posted in the classroom as a reminder. This is particularly helpful early in the year.

* Source: *The Magic of Encouragement* by Stephanie Marston.

GUIDELINES FOR THE SHARING CIRCLE

1. One purpose of the Sharing Circle is to express thoughts or feelings about a topic or issue. The purpose is to share ideas rather than to reach conclusions or solve problems.
2. Only the person with the special object talks.
3. The object must be passed carefully to the next person. Pass it to the left.
4. It is okay to remain silent when you hold the object. Pass the object to the next person after you have spoken, or when you are ready if you wish to remain silent.
5. Talk about what you feel or think, not about what someone else said. Remember to address your comments to the question or issue.
6. What you learn during a Sharing Circle can be shared with others. That is the idea of a Sharing Circle.
7. Be thoughtful. Do not take someone else's time.
8. Healing Circles are very different from Sharing Circles. Talk to Elders in your community about Healing Circles.



NOTES

HUMAN RIGHTS



rationale

Awareness of human rights issues has increased significantly over the past few years. We hear about infringements of human rights almost daily. However, our awareness, particularly with regard to incidents in Canada, focuses on adult human rights violations. It is important to also look at the rights of young people. Children who learn about human rights are more likely to become their own advocates, advocates for children's rights and the rights of all citizens in the future.

Historically there was a fundamental difference in the way Europeans and Aboriginal peoples viewed the world and order in the world. Aboriginal peoples understood the world in terms of relationships among things. Everything and everyone was interconnected. Europeans approached things differently. Society was seen in terms of a hierarchical order, with royalty at the top of the social pyramid. Aboriginal peoples perceived life in an inverted order with man as dependent upon all other life. Problems among people were seen in terms of disharmony. Everyone was aware of their interconnectedness with the people around them.

This unit on human rights deals with developments in contemporary Canadian and international human rights legislation and policy, in the context of how they may affect Aboriginal peoples and youth.

learning outcomes

KNOWLEDGE: STUDENTS SHOULD DEVELOP AN UNDERSTANDING OF THE FOLLOWING...

- increased knowledge of human rights
- the role of the United Nations
- the United Nations' *Convention on the Rights of the Child*
- Canada's human rights legislation, particularly the *Canadian Charter of Rights and Freedoms*
- Aboriginal rights
- the agencies, both government sponsored and non-governmental, that are involved in promotion, protection or supervision of human rights

SKILLS: STUDENTS SHOULD DEVELOP ABILITY IN...

- encouraging participants to express questions, feelings, and thoughts about human rights
- acquiring and using vocabulary related to human rights
- learning to access information about organizations and groups involved in the protection of children, both locally and outside the immediate area

VALUES: STUDENTS WILL BE GIVEN OPPORTUNITIES TO DEVELOP...

- an interest in and respect for human rights
- respect and a sense of responsibility for our own rights and those of others

background information**RESOURCES**

It would be helpful for teachers to become familiar with the following...

Convention on the Rights of the Child (1989)

A copy of the United Nations' *Convention on the Rights of the Child* is available online at www.unicef.org/crc or through the Office of the High Commissioner for Human Rights, United Nations www.ohchr.org.

Canadian Charter of Rights and Freedoms (1982)

Department of Justice Canada
<http://laws.justice.gc.ca>.

United Nations

www.un.org/aboutun

See *Basic Facts about the UN*, in the 'Background Information' section. This document includes information on the origin and structure of the United Nations as well as background on peace, disarmament, development, human rights, refugees and international law and inter-governmental agencies related to the United Nations.

Canadian Human Rights Commission

www.chrc-ccdp.ca

You can visit the CHRC website, as well as the various provincial and territorial human rights commissions for information about human rights from a national and regional perspective.

Department of Canadian Heritage

www.canadianheritage.gc.ca/progs/pdp-hrp.

The federal Department of Canadian Heritage has a human rights section that can be a good source of Canadian information about human rights.

The National Film Board of Canada (NFB)

www.nfb.ca

The NFB has films on various subject areas available through their website . Using the 'search' function, and the keywords "human rights", or 'discrimination', you can locate videos on these topics.

Human Rights Research and Education Centre

www.cdp-hrc.uottawa.ca.



United Nations Children's Fund (UNICEF) Canada

www.unicef.ca.

Written by Canadian educators for practical use in classrooms and in other educational settings, UNICEF's education resources are renowned for their quality and positive, age-appropriate approach to global issues and development.

Public Legal Education Association of Saskatchewan

www.plea.org

PLEA produces a plain language publication on human rights which provides an explanation of human rights and the history of human rights. Available in print or online.

Amnesty International Canada

www.amnesty.ca

Publishes books and teaching materials about children's human rights.

Canadian Coalition for the Rights of Children

www.rightsofchildren.ca

Over forty members including Boys and Girls Clubs of Canada, Canadian Home and School and Parent Teacher Federation, Care Canada, Defence for Children International, Save the Children Canada, UNICEF Canada, World Vision, Girl Guides of Canada, Canadian Teachers Federation, Street Kids International, The Institute for the Prevention of Child Abuse and The Hunger Project, among others.

Community Information Directories

Lists self-help groups, child protection and human rights organizations, etc. Usually available through public libraries and bookstores. If none in your area, students may want to participate in a project to compile information about resources.

Four Worlds International Institute

Faculty of Education, University of Lethbridge

<http://www.4worlds.org/>

The goal of this institute is to restore North American Aboriginal communities to health and strength. Its programs are designed to instill pride in the teachings passed down through the ages. *Walking With Grandfather* is a unit for younger grades. *The Sacred Tree Program* for junior and senior high school students uses universal concepts as teaching tools. For example, the medicine wheel is used as a model for teaching principles of personal growth and interpersonal communication. The curriculum package includes a curriculum guide, textbooks, videos and resource books.

Newspapers in Education

Some city newspapers have resource catalogues which list resource units on law, multiculturalism, immigration, social and political awareness.

INTRODUCTION: WHAT ARE HUMAN RIGHTS? WHERE DO THEY COME FROM?

human rights: the international forum

Our ideas about human rights in Canada have been influenced by a number of other countries. We have adopted ideas about certain rights that were recognized in older civilizations. For example, those considered citizens of ancient Greece enjoyed freedom of speech, equality before the law, and the right to own property, while slaves had no rights.

The *Magna Carta* forms the basis of many of our laws in Canada today. For example, the right to trial by jury and the requirement that a person cannot be arbitrarily imprisoned come from promises contained in the *Magna Carta*. By signing this document in 1215, King John of England agreed that no one, not even the king, was to be placed above the law. This idea that everyone is equal before the law is known as the "rule of law." The *Magna Carta* also stated that no freeman shall be imprisoned or outlawed (exiled) except by the "law of the land" or by "the lawful judgment of his peers".

The United States' *Declaration of Independence, 1776*, speaks about "inalienable rights" - rights that cannot be taken away - such as the right to "life, liberty and the pursuit of happiness". This was adapted from France's *Declaration of the Rights of Man and Citizen*, which also included free speech, free press, religious freedom, and freedom from arbitrary arrest.

The United Nations' *Universal Declaration of Human Rights* was formulated after the Second World War. This Declaration spoke against cruel and inhumane punishment and for equality before the law. It stated that everyone was entitled to these rights and freedoms without discrimination based on national origin, race, colour, language, sex, property, birth or other status.

Human rights movements for children began late in the nineteenth century. An international social movement to give children basic civil rights began in the 1880s, primarily because of concern for children's safety in the workplace. In 1919, Eglantyne Jebb established an organization (*Save the Children*) to help children left destitute by the First World War. In 1922, Jebb proposed a code that would lay down the duties of both governments and private agencies toward children. This 7-point *Charter of the Rights of the Child* was adopted in 1924 by the League of Nations, the forerunner of today's United Nations. This Charter codified children's rights on an international basis. It was expanded over the succeeding years to help form the basis for the 1948 *Universal Declaration of Human Rights*.

In 1979, during the *International Year of the Child*, many countries expressed concern that something more binding than a declaration was needed. A declaration was merely a statement of agreement in principle. The articles of the 1959 *Universal Declaration of Human Rights* were expanded to form the *Convention on the Rights of the Child*. This *Convention* was unanimously approved by the United Nations General Assembly in 1989 and came into force in November, 1990. Both the *Declaration of Human Rights* and the *Convention on the Rights of the Child* address civic, political, economic, social and cultural rights. The *Convention* stipulates that children have the right to care and protection from the state as well as from their families. It spells out the areas which need to be protected. The basic consideration is the best interest of the child. As a result of this focus, the *Convention* has added the right of the child to participate in decisions concerning his or her welfare.

By ratifying the *Convention on the Rights of the Child* on December 11, 1991, the Canadian government agreed to commit itself to protect children's basic rights in society. Canada must ensure that its policies and laws comply with the *Convention*.

Aboriginal peoples have also experienced a long history of struggles for rights, although many developments took place more recently than the movement for human rights for children. During the past decades there has been a growing awareness of discrimination against Aboriginal peoples. In Canada, provincial and federal human rights laws protect Aboriginal people against



discrimination. The recognition of Aboriginal rights in the Constitution is also significant. Internationally, the need for increased awareness of the rights of Aboriginal peoples is being recognized and addressed. For example, 1993 was declared by the United Nations as the International Year of the World's Indigenous People; December 10, 1994 marked the beginning of an International Decade of the World's Indigenous People.

human rights: made in Canada

Canada has its own human rights laws, both federal and provincial.

The *Canadian Charter of Rights and Freedoms* protects people in Canada from the actions of governments by guaranteeing fundamental rights and freedoms. The *Charter* recognizes the following human rights and freedoms...

- the right to life, security of person, the enjoyment of property and the right not to be deprived of the latter two without due process of law
- the right to equality before the law and protection under the law
- the freedom of speech, religion, peaceful assembly and association and freedom of the press
- the right of citizens to participate in the democratic process (for example, to vote)

These freedoms exist without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. See handout *Made in Canada*.

The *Canadian Human Rights Act* applies where the person being accused of discrimination falls within federal jurisdiction. This includes federal government employees, bank workers, RCMP personnel and transportation bodies such as VIA Rail. The *British North America Act of 1867* (now the *Constitution Act, 1982*) divided the powers of jurisdiction over various matters between the federal and provincial governments.

Provincial human rights acts or codes apply where the complaint involves a matter falling within provincial jurisdiction, such as education, housing or employment. In 1947 Saskatchewan became the first province in Canada to pass a Bill of Rights (now part of *The Saskatchewan Human Rights Code*). Every province has legislation protecting people against discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age, marital status or mental or physical disability. Provinces have gradually amended their own human rights legislation so that the areas protected are generally the same as those protected by the *Charter of Rights and Freedoms*, although some variation remains.

The *Indian Act* is a federal statute that governs official members of First Nations. Originally passed in 1876, the *Indian Act* consolidated legislation relating to a particular group of people. This Act distinguishes between "status" and "non-status" Indians. In western Canada, treaty lists were used to define who was a band member, thus the term "treaty" rather than "status" may be more common in the west. Rights included the right to the use of reserve lands held by the bands, access to federal funding for programs such as housing, health care, education and a waiver of some taxes.

Under the *Indian Act*, the federal government holds reserve land in trust. In other words, the *Indian Act* prohibits the selling of land designated as reserve land.

For Europeans, land was a commodity that could be bought and sold. The Aboriginal peoples of Canada did not practice personal land ownership. To the Plains Indians, for example, people did not own land. They cared for it and preserved it for future generations.

Source: Wanuskewin Heritage Centre, Saskatchewan.

In the Plains Indian culture, avoiding personal ownership of land meant that stewardship of the land was more of a collective role, rather than being left to the discretion of individual decision-makers.

In the past, *Indian Act* "rights" could be lost. For example, until 1986, women lost their status or treaty rights if they married a man who was not registered as a status Indian. This practice arose from a very old English law which prohibited married women from owning land. In England, women once took on the legal identification of their husbands. These European and English concepts became part of the *Indian Act* even though many tribes in eastern Canada and British Columbia were *matrilineal*. (They traced the ownership of family property through females rather than males.) This situation changed through an Indian woman by the name of Sandra Lovelace, who brought a complaint to the United Nations. Canada, in response to worldwide disapproval, made changes to the *Indian Act* so that women no longer lost their status rights through marriage. Status rights were returned to women and children who had lost them. See *Lovelace v. Canada* 1981, 2 H.R.L.J. 158, 1983; *The Canada Human Rights Y.B.* 305 (U.N.H.R.C.).

What was the significance of treaties?

Aboriginal rights stem from a people's right to exist as a distinct society and a right to survive on their own homelands. Treaty rights in Canada emerged from the international treaties signed between the British Crown and the First Nations of this land. These agreements are an acknowledgment of the newcomers' use of the First Nations' territories. Many treaties included provisions for medicine chests, education, hunting, trapping and fishing.

Beverly Scow, *Education: An Aboriginal and Treaty Right. Legal Perspectives* Volume 14, No. 4 May 1990

Canada's Constitution has recognized existing Aboriginal rights since 1982. These rights, however, could be extinguished through a treaty agreement prior to 1982. A provincial statute may also extinguish a right where the purpose of the law is to regulate the use of land. The Supreme Court of Canada held in *R. v. Sparrow* that "unless there is a very good reason for passing a law which interferes with an Aboriginal right and unless that law only interferes with the right in the least intrusive way possible, the law will infringe s.35 of the *Constitution Act, 1982*, and will be declared unconstitutional".

Source: S. Imai, K. Logan, G. Stein *Aboriginal Law Handbook* 1993. Carswell. Page 24.

MADE IN CANADA

Canada has its own human rights laws, both federal and provincial.

The *Canadian Charter of Rights and Freedoms* protects Canadians from the actions of governments by protecting the following fundamental rights and freedoms...

- equality rights for all individuals
- legal rights
- democratic rights
- fundamental freedoms including speech, conscience and religion, association and peaceful assembly
- mobility rights (the right to live and seek employment anywhere in Canada)
- minority language education rights
- Canada's multicultural heritage
- Aboriginal people's rights

Both the federal and provincial governments must ensure that these fundamental rights and freedoms are upheld. However, the rights and freedoms found in the *Charter* are subject to section 1 which states:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

This section attempts to balance individual rights and freedoms with the interests of the community. An example may be the right to freedom of peaceful assembly. If the actions of a group interfere with the education of other students, then the police or the school administration may have a legal right to limit the group's right to assemble.

ACTIVITIES

introducing the united nations *convention on the rights of the child*

PURPOSE

To develop an understanding of some of the rights protected by the *Convention on the Rights of the Child* and to encourage an application of this knowledge through student-generated materials. These materials, pictures, stories or skits may be used to teach other students about children's rights.

PROCEDURE

The following may require 3-4 sessions, depending upon the background and maturity of the students.

- Introduce background about the United Nations. (See Teacher Background Information.)
 - ▶ Ask whether the students are familiar with the United Nations. What role or roles does the U.N. play in international affairs?
 - ▶ Roles include peacekeeping, emergency aid and economic development. Students may be familiar with the United Nations and the countries it is active in from the news. Ask students to collect newspaper or magazine articles or note stories from radio or television that report on or discuss activities of the United Nations.
- Introduce the short history of the development of human rights and the role of the United Nations in formulating the *Declaration of Human Rights* after the Second World War and the 1990 *Convention on the Rights of the Child*. Explain that a "Convention" is intended to have more impact than a "Declaration," which is more a statement of intent. Explain that the *Convention* is a document drawn up and agreed to by member countries of the United Nations. Explain that it is the responsibility of the governments that sign the *Convention* to make sure those rights are protected.

Discuss Canada's commitment to uphold the rights and freedoms set out in the *Convention on the Rights of the Child* by implementing policy and laws that protect and enhance those rights and freedoms.

- Introduce the contents of the *Convention*. This may be done in one of several ways and over several days.
 - ▶ Ask students what is meant by a "right". Distinguish things people "need" from things people "want". To distinguish needs from wants, introduce the following scenario. Allow 20-30 minutes. Brainstorm as a class or have students work individually or with a partner.

Imagine you are going on a camping trip with the class. Make a list of everything you will need to take. Everything you take must be carried in. It is a long, strenuous hike, so you will need to take only what you absolutely need. Revise your list. Separate the items into a list of things you "need" to take and a list of things you "want" or would like to take.



- ▶ What things are needed for survival? What are extras for comfort/entertainment? Explain that basic needs are universal - everyone needs food, shelter, water. Explain that the U.N. has identified the basic needs that every child has a right to.
- ▶ Distinguish a right from a privilege.
- ▶ If students understand the concept of a "right," ask what other rights they might expect to find included in the *Convention on the Rights of the Child*.

Brainstorm. List the responses. Allow time to add to the list.

- ▶ Introduce the *Convention* by providing the following general groupings of rights..
 - ▷ The **right to survival** includes the right to life, the right to adequate food, clean drinking water, and basic health care.
 - ▷ The **right to protection** includes the right to be safe from all forms of abuse, neglect and exploitation and to be protected in times of war or natural disasters.
 - ▷ The **right to develop** includes a right to education and the freedoms of thought, conscience, religion, assembly and expression.
- The teacher may wish to distribute copies of the *Convention* to older students to compare with the rights previously listed and for discussion.
- Challenge the students to create their own stories, or poems with pictures to illustrate the rights.
- As an extension activity, have the students adapt their stories for a skit, role-play or puppet show for presentation to other students. Allow time for rehearsal. Consider performing for another class. Have students prepare to tell about the right they have chosen to illustrate.

A CLOSER LOOK AT THE *CONVENTION ON THE RIGHTS OF THE CHILD*

the right to survival and development

PURPOSE

To introduce basic rights under the *Convention on the Rights of the Child* including the right to adequate food, shelter, clean drinking water, and health care.

PROCEDURE

The following activities may be introduced in conjunction with health or social studies units. The activities involve research and will take several days. Involvement by parents and other members of the community is desirable.



ADEQUATE FOOD

- Find stories about survival and adequate food. Ask people in the community and search for stories in the library that include legends or myths. Explore folklore or mythology. Explore traditional stories.
- Make a cookbook using traditional recipes from your area. Students may be able to find traditional menus, methods of preparing food and ways to preserve food from family or community sources. Include a map, if possible, showing where the foods or recipes came from in their province or territory.
- Invite members of the community to prepare traditional dishes or demonstrate methods of preparing or preserving food.
- Have the students prepare some of the recipes and share them as a group.
- Write down the recipes or menus and compile them into a cookbook. Make copies for students to take home. Display a copy in the library.
- Do a comparative study of a typical meal in Canada today with a meal in your community in times past. Have eating habits changed? Compare the meal with a typical meal in a developing country.
- Start a scrapbook of stories about hunger in developing countries. Watch for newspaper and magazine articles about Canada's food banks. Discuss the role of a food bank. Keep a copy in the library or send a copy to a government representative or non-government agency. Ask for comments and additional information. Invite someone who works in a food bank to the school. Ask them to discuss the issue of food banks in Canada. If possible, arrange for the students to visit or volunteer in a food bank or other service agency. When were food banks first introduced? What happened when there was a shortage of food? Who takes responsibility for food banks today?

SHELTER

Explore traditional forms of shelter. Make cross-cultural comparisons with other areas of Canada and other countries. Look for articles about the homeless and children living on the streets. Discuss in light of the mandate under the *Convention*.

WATER

Units on safe water may be available through science curriculums. Contact UNICEF for information about projects in other countries on improving access to clean water. Find stories about unsafe water in North America.

HEALTH CARE

Contact the public health nurse or other resources for information. Obtain publications from agencies about projects in developing countries. Have the students explore whether there is a need for a project or program in their community or province.



SUMMARY

Discuss the significance of the following *Convention* Articles in light of what the students have learned about conditions in third world countries and in Canada...

Convention Article 6: Every child has an inherent right to life, and the state shall ensure to the maximum extent possible the survival and development of the child.

Convention Article 24: The child has the right to the highest level of health possible and to medical and rehabilitation services.

the right to protection

PURPOSE

- to provide information to the teacher about the right to protection from abuse, neglect and exploitation under the *Convention on the Rights of the Child*
- to increase awareness of programs in the community and elsewhere that are in place or that are being developed for the protection of children

Contact your education committee and support agencies, and provincial or local teacher federation for resource units. The areas under *Protection* (from abuse or neglect) are very sensitive issues. The teacher will need to consult with support agencies before introducing issues of exploitation and abuse with the students. There are many programs which would be helpful. Two examples are units from the *Four Worlds International Institute*, such as the *Sacred Tree*, which deal with self-esteem and peer pressure and the National Film Board video *Feeling Yes, Feeling No* (see the National Film Board at www.nfb.ca for details).

PROCEDURE

The following activities can be ongoing as the need arises throughout the year or for a block of time. Information about programs and services should be obtained in advance.

- Review the survival rights by listing them on the board and ask the students if there are other rights that they feel should be in the United Nations' *Convention on the Rights of the Child*. List those rights under Survival and Development.
- Add **Protection** as a second heading:

Survival and Development

Protection (from abuse or neglect)

The *Convention* includes the right to be safe from all forms of abuse, neglect and exploitation and to be protected in times of war or natural disaster as well as protection for special needs and against discrimination.

Introduce some or all of the following rights to protection under the United Nations' *Convention on the Rights of the Child*, listed below. Discuss what they mean. Find out what services might be available in the immediate area, nationally, and internationally to protect these rights. Perhaps the discussion can address the issue of children who have been drafted into rebel armies in some third world countries.

Have students find out about resources in their community. Invite speakers from child protection agencies to make presentations explaining what they do. Students may compile a list of programs, agencies, groups, and band counsellors available in their area. Send a copy to the school and local library. List phone numbers, such as the Kid's Help Phone in Ottawa, 1-800-668-6868.

- **Abuse/Exploitation (Convention Articles 19, 32, 33, 34, 36):** The state shall protect children from all forms of physical and mental abuse, neglect or exploitation, including sexual abuse, child prostitution and participation in pornography, and all other forms of exploitation prejudicial to the child's welfare. The state shall also provide preventive and treatment programs.

Every province in Canada has legislation that requires people to report child abuse or neglect. For example, *The Child and Family Services Act* of Saskatchewan requires every person who believes that a child is in need of protection to report this to the Department of Community Resources and Employment or to a police officer. Failure to report is an offence.

In Saskatchewan, a number of First Nations Child and Family Services Agencies have been established at various locations throughout the province. These agencies provide child protection services to First Nation families who live on reserves. These agencies deal with issues of child abuse, neglect or serious conflict affecting children within the family unit.

Contact libraries, First Nations and provincial social services, support groups or community centres for more information about the law and about services and programs available for the protection of children.

- **Child Labour (Convention Article 32):** The child has a right to be protected from economic exploitation and from performing any work that may interfere with his or her education, be harmful to the child's health or physical, mental, spiritual, moral or social development.

The state must take steps to regulate hours, ages and conditions of employment and to impose penalties for infringing these rights.

See, for example, provincial labour legislation regarding hours, wages, and working conditions. Are children protected by other provincial legislation? See provincial health and safety standards legislation.

- **Drug Abuse (Convention Article 33):** The state shall take appropriate measures to protect children from the illicit use of drugs as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of these substances.
- **Discrimination (Convention Article 2):** All rights set forth in the *Convention* shall be extended to each child, irrespective of the child's or the child's parent's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability or other status.



Compare this Article with the *Canadian Human Rights Act* and provincial human rights legislation. Are there differences? Discuss the relevance of different/same protections. Where they are the same does this reinforce the idea that human rights are universal? Are they inherent?

- ***Adoption and Separation from Families (Convention Articles 20, 21, 25, 35)***: A child either temporarily or permanently deprived of his or her family or who must be removed from the family in his or her best interests is entitled to special protection.

There is a preference for keeping a child with families of his or her own cultural background.

Placement in a foster home should be seen as a temporary solution. Placement in an institution is a solution of last resort.

Extended families have traditionally played a great role in the upbringing of children in Aboriginal communities. A grandmother, for example, might have the primary responsibility to care for a child if his or her own parents were unable to. Apprehensions of children by child protection agencies where the children are placed in homes of different heritage have been challenged. Attempts are being made to have a child placed with a family of the same cultural background. In Ontario, for example, *The Child and Family Services Act* allows for "customary guardianship". Manitoba established child and family service agencies that are community-centred and based on traditional values in the 1970s and 1980s.

Contact First Nations or provincial Department of Community Resources and Employment for information about recent developments in this area.

- ***Minority and Indigenous Peoples' Rights (Convention Article 30)***: A child belonging to an ethnic, religious, or linguistic minority or persons of indigenous origin shall not be denied the right to enjoy his or her own culture and to profess and practice his or her own religion or language.

Explore opportunities in your own community supporting these rights.

activities for exploring local resources

PURPOSE

- to help students become familiar with local governmental and non-government support groups or agencies which are involved in the protection of children
- to have students identify and explore some of the resources available within their own community that support the rights found in the *Convention on the Rights of the Child*

PROCEDURE

- Review the rights included in the *Convention* and have the students explore programs and resources within their own community. Prepare questions to ask the people involved in protecting or helping children and families.

Send these questions along with an invitation to attend the class to make a presentation about how these departments or agencies help children.

Have the students report their findings to other groups or classes through mock news releases, puppetry, posters or skits.

- Have older students identify the need for additional resources or identify changes needed to make the programs more effective or efficient. For example, students may ask whether everyone has equal access to the resources or programs. If not, why not? How can that be changed?

activities for exploring national and international resources

PURPOSE

- to introduce national and international agencies or groups that support human rights principles and to understand the role that various agencies play in the enforcement and supervision of human rights (this may include peacekeeping, health care, economic development, and emergency aid)

PROCEDURE

- As a class, collect newspaper or magazine articles about the United Nations, UNICEF, the Red Cross, or other agencies that are active in international endeavours to help people.
- Find out what they do. In small groups, find their addresses from the phone book, library, or the Internet, and write to them for more information. Ask for copies of free publications, including newsletters.
- Make a list of the types of projects or services they provide. Which countries are they trying to help? Explain what these agencies are trying to do and some of the problems they face.
- Make posters, collages, or murals to illustrate some of the things the organizations do nationally and internationally. For example, students may illustrate how the Red Cross helps overcome disease (immunization programs), malnutrition (soup kitchens), and disasters (emergency relief). Have students watch for current events. Share this information with others.
- Role-play: There has been a national disaster or war in another country. A local radio (or TV) station wants a short news summary of what has happened and what is being done to help, and what preventive measures should be taken to avoid a recurrence. Report on the role that the United Nations or other agency is playing.
- Prepare a short documentary to inform the viewers back home about what has happened, what a particular agency hopes to do and what can be done to prevent a similar occurrence in the future. Prepare an interview with an emergency relief worker. This can be a nurse, doctor, or field worker from the Red Cross, for example. Prepare a list of questions and have a partner or other group prepare the role of the interviewee.
- Explore the role of support agencies and careers: This activity will provide an opportunity for students to access information through libraries or through people in the community while exploring educational opportunities and careers in the student's own community or elsewhere. It will provide an opportunity for students to speak in front of others, and to develop self-esteem by becoming knowledgeable about a particular area.



- ▶ Set up title on a bulletin board : "The expert for today is _____ on the career of _____."
 - ▶ Provide a display table for students' projects, including photos, items related to the career, newspaper clippings.
 - ▶ Ask students to explore a career that they are interested in and to report about it to the class. Encourage students to talk to members of the community or to write letters to organizations for information.
 - ▶ Have the students make posters or collages to illustrate some of the projects or services that their agency provides.
- Suggest that the class form a Human Rights Society (HRS)...
 - ▶ define the purpose of the HRS
 - ▶ hold a competition for a Society symbol
 - ▶ make membership cards that carry this logo
 - ▶ elect officers
 - ▶ have a special notice board for HRS activities
 - ▶ find out about other human rights organizations (see next section); obtain information (examples are: civil liberties associations, Amnesty International, Human Rights Commissions); send for their publications
 - ▶ display publications in classroom or library
 - ▶ hold meetings; discuss freedoms, such as freedom of association; discuss reasonable limits on freedoms
 - ▶ invite guest speakers
 - ▶ set up sub-committees to research particular rights subjects
 - ▶ consider publishing a newsletter or articles in the school newsletter

the right to participate

PURPOSE

The following scenarios in the "The Right to Privacy" section, and in the handout *Individual Rights and Individual Responsibilities*, are intended to encourage awareness and understanding of participation and privacy rights under the U.N. *Convention* and the *Canadian Charter of Rights and Freedoms*.

BACKGROUND INFORMATION

The idea that a child has the right to participate in decisions affecting his or her own well-being is relatively new. The right to express opinions and to have those opinions considered in court processes depends upon the individual child's maturity.

Many of the participation rights under the U.N. *Convention on the Rights of the Child* are also found in the *Canadian Charter of Rights and Freedoms*. These include...

- freedom of expression
- freedom of thought, conscience and religion
- freedom of association and peaceful assembly

The U.N. *Convention on the Rights of the Child* also includes a right to privacy, a right to express an opinion and have that opinion considered in matters affecting one's well-being, and the right to have access to, and share, information from both national and international sources. The *Convention* expressly states that signatories are to make its provisions widely known to both children and adults.

For an in-depth look at how the *Charter* applies to school authorities and students visit the Saskatchewan Teachers' Federation (STF) online at www.stf.sk.ca. Search the online catalogue of the STF's Stewart Resources Centre using the keywords "School Law Charter" in the search function.

Briefly, section 32(1)(b) of the *Charter* states that the *Charter* applies to the "Legislature and government of each province in respect of all matters within the authority of the legislature of each province."

The authority of each province to make laws relating to education is found under section 93 of the *Constitution Act, 1982*.

The *Charter* applies to publicly-funded schools because such schools constitute part of government. Education is a matter that falls within provincial jurisdiction. Private schools and Band-operated schools are outside of direct provincial government organization. However, they may be bound by the *Charter*, if funding arrangements or other elements of control and input establish more of an operational bond between the school in question and the government.

THE RIGHT TO PRIVACY

- Kale's brother Brendan found his journal lying around. He began to read it.
- Chad's teacher was concerned about the change in Chad's behaviour. She found a diary in Chad's desk and began to read it, looking for clues.
- Michael had a pen pal in Lebanon (or substitute any country actively involved in war or civil strife). Michael found a sudden change in his pen pal's letters which arrived ripped and taped closed.
- Robbie was suspected by a number of people of being involved in drug dealing. Someone at the local post office took it upon themselves to open a package addressed to Robbie.

Discuss each of the above. What rights are being interfered with? What is your reaction to each situation? How much privacy should children/students/adults have?

The U.N. *Convention on the Rights of the Child* Article 16 states that children have the right to protection from interference with privacy, family, home, and correspondence.



Section 8 of the Canadian *Charter* states that everyone has the right to be secure against unreasonable search or seizure.

This legal right under the *Charter* protects individuals against actions by agents of the government. It prohibits unreasonable search or seizure. The objective of the laws which authorize search or seizure is law enforcement. The manner in which it is executed must be reasonable in relation to an individual's right to privacy. For example, police may not use unnecessary force. There must be due or reasonable cause for the search or seizure and proper authorization from a Judge or Justice of the Peace.

INDIVIDUAL RIGHTS AND INDIVIDUAL RESPONSIBILITIES

What are some answers to these questions...

- Should students be able to say whatever (do whatever or dress however) they like?
- What limits should there be on what we can say or do?
- Who should set limits?
- What are reasonable consequences for breaking school rules?

scenarios

1. Arnold has an offensive slogan printed on the jacket that he wears to school.
2. Kirk wants to carry a miniature sword back and forth to school. It is a prop in a school play.
3. Glen was smoking in the school washroom on three occasions. School rules state that if a student is caught smoking inside the school, he/she may be expelled.
4. Two students submitted an article to the school newspaper editor who published it without reading it. The article, which advertised an upcoming school dance, made insulting remarks about a group of students. It stated that this group was not wanted at the dance. The article went on to make fun of some behaviours of the small group attending the school. Some students, parents and teachers were very upset by the remarks.

The supervising teacher for the newspaper was reprimanded for having allowed the article to be printed. The student editor was banned from working on the paper for one year. The students who wrote the article were suspended. The paper was discontinued and the dance was cancelled.

5. Let's talk about...
 - freedom of expression and the right to protection from discrimination
 - reasonable limits, fairness and consequences



FREEDOM OF EXPRESSION AND OPINION

The U.N. *Convention on the Rights of the Child* Articles 12 and 13 state that...

The child has the right to express his or her views, obtain information, make ideas or information known, regardless of frontiers.

The child has the right to express his or her own opinion freely and to have the opinion taken into account in any matter or procedure affecting the child.

The child's right to express her or his own views is a guiding principle of the Convention.

States must give weight to the views of children according to their age and maturity. This applies particularly in judicial and administrative proceedings affecting the child.

However, the right to expression is subject to restrictions but only "as provided by law and that are necessary (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals".

The freedom of expression protected under section 2(b) of the *Canadian Charter of Rights and Freedoms* is not an absolute right.

An individual's right to say or do what he or she likes must be balanced with the rights of others to be protected from libel, slander and discrimination.

Section 1 of the *Canadian Charter of Rights and Freedoms* states that a right or freedom may be limited if...

- it is prescribed by law; this means that it must be under a statute or case law
- the reason for limiting the right or freedom is sufficiently important
- the method for limiting a right or freedom is reasonable and "demonstrably justified"; this means the method chosen must not be excessive and must be rationally connected to it and this "proportionality" can be shown or demonstrated in a court of law

HIDDEN WORD PUZZLE

Make your own hidden word puzzle. Have a friend find the hidden words.

Instructions:

1. Choose 5-9 words from the glossary in this section.

List them here:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. Print each word one time only, using a pencil, into the graph below. Print the words vertically, horizontally, diagonally, forwards and backwards. Try combining directions - for example, backwards and on a diagonal.
3. Fill in all the empty spaces with a random series of different letters.
4. Give your puzzle to someone else to find the hidden word.



Example for the Teacher:

p	r	o	t	e	c	t	i	o	n	r	a	o	d	r
r	c	i	g	f	n	o	i	s	s	e	r	p	x	e
e	h	k	j	b	e	r	c	a	n	v	e	r	h	s
f	a	i	r	r	d	o	i	s	m	w	q	u	r	p
n	r	r	r	n	o	i	t	n	e	v	n	o	c	e
g	t	n	a	m	u	h	y	u	x	f	g	r	l	c
x	e	g	y	d	j	r	s	t	h	g	i	r	r	t
y	r	b	f	r	e	e	d	o	m	s	i	k	t	s

Vocabulary for Human Rights

rights

fair

protection

human

freedoms

Convention

Charter

respect

expression



GLOSSARY

<i>Convention</i>	a document that sets out a set of standards covering conduct in a certain area, which has been agreed to among signing nations.
<i>Covenant</i>	An agreement or promise.
<i>Declaration</i>	A written set of agreed general principles.
<i>Discrimination</i>	Intentional or unintentional exclusion or treatment based on one or more characteristics. Make generalizations about groups of people. The result is an infringement of human rights or freedoms.
<i>Equality</i>	In the context of human rights regimes, to treat people equally does not necessarily mean treating everyone the same. Legitimate differences and needs must be recognized. An example might be in the area of affirmative action hiring programs.
<i>Fairness</i>	To give the same opportunities and apply the same standards to everyone – for example, treating everyone equally according to the law.
<i>Human Rights</i>	The fundamental freedoms and protections to which all human beings are entitled.
<i>Preamble</i>	An introductory clause in a treaty, constitution or other legal instrument that states the intent, purpose or spirit of the instrument.
<i>Prejudice</i>	To make up one's mind ahead of time; to decide or form an opinion before examining the facts.
<i>Ratify</i>	To approve or agree to formally.
<i>Right</i>	Something to which one is entitled.
<i>Stereotype</i>	A standardized mental picture we may have of certain individuals, groups, places or things, regardless of individual circumstances.

CRIMINAL LAW



rationale

Through teaching of the principles underlying legislation, students can become aware of *why* a law says what it says rather than merely *what* it says.

Principles are the goals or driving forces behind legislation. They reflect collective consensus about what is right and good for Canadian society as a whole, and are usually not specific to any given statute. One example is the protection of society from illegal behaviour. Principles affect both the substantive aspects of laws, i.e., what acts are illegal, as well as procedural aspects of law, i.e., how laws should be implemented.

Source: N. Bala, et al, *State Responses to Youth Crime: A Consideration of Principles*. May 1994. Working Document . Page 2 Department of Justice Canada. Knowledge helps in Crime prevention.

Knowledge of the law will give young people guidelines for judging their own actions. Knowledge of possible consequences for one's actions and experience in seeing a situation through the eyes of others, particularly those of the victim, may help in crime prevention.

learning outcomes

KNOWLEDGE: STUDENTS SHOULD DEVELOP AN UNDERSTANDING OF THE FOLLOWING...

- some offences under the Canadian *Criminal Code*
- some possible consequences of one's actions
- how the legal system deals with young people in conflict with the law
- that laws apply to both adults and youth
- that offences may be created by different laws

SKILLS: STUDENTS SHOULD DEVELOP ABILITY IN...

- participating in discussions and recognizing that there may be more than one answer to some of the questions discussed
- recognizing criminal actions
- finding out what the law is regarding certain actions and where to look to find out more about laws
- analyzing values and principles underlying legislation

VALUES: STUDENTS WILL BE GIVEN OPPORTUNITIES TO DEVELOP...

- an appreciation of the underlying principles of certain laws
- increased respect for the rights of others
- understanding that the more they know about the law, the more their respect for the law may increase, resulting in fewer incidents of breaking the law

background information**LAWS REFLECT SOCIETY'S VALUES**

There are many different legal systems in the world. An offence in one society is not necessarily an offence in another society. Different societies may have different sets of values. These values are reflected in the laws and the penalties imposed for breaking those laws. (See *Simulation - Creating a Recreation Centre*.) Rules evolve for deciding or recognizing what is and is not acceptable within the group. Penalties for breaking rules and ways to enforce them develop over time.

Life in Canada in pre-European contact days had considerably different demands. Values or ethics reflected the demands of the social environment, as they do today. Consider the following viewpoint of Rupert Ross in *Dancing with a Ghost*.

Even those summer congregations were not what we might expect. First of all, they were the exception to normal life rather than the rule. Further, they were not always the happy reunions we think of them as being. Inter-family mistrust and, on occasion, overt antagonism, were not uncommon. Although these summer meetings were necessary to provide opportunities for trade, certain cooperative undertakings and the finding of non-family marriage partners, it appears that each family took great care to be certain that it occupied its own separate point of land or stretch of shoreline. What existed over those summer months was not a community as we would define the term, or as we believe exists today across the North.

Traditional ethics, then, were formulated with three different contexts in mind: central ethics governing life within one's own extended family, then ethics governing occasional, controlled interaction with other families perceived to be essentially cooperative and, finally, ethics governing the very rare occasions of contact with outsiders. At no time prior to European contact, or even during the trapping era after contact, was there any need to develop ethics and rules appropriate to ongoing, daily relations with people other than those within one's own extended family. That, however, is precisely the context within which most Indian people in the North now find themselves. Their reserve communities regularly have populations as high as twelve hundred people in my region, with the majority in the five hundred range.

It is crucial that we understand that this is a new context for them. Further, the present-day, year-round and multi-family communities that constitute today's northern reserves are our creations, not theirs. Most important, we must recognize that these settlements did not evolve slowly; they were created almost overnight.

Source: Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality*. 1992. Pp. 103-104.

The main sources of law creating offences in Canada are statutes, passed by the legislatures in the various provinces, and by the Parliament of Canada. Laws about offences are interpreted or clarified as they are applied to various fact situations in court. Definitions of offences change over time as new cases are distinguished from previous cases and as statutes are amended to be more in tune with current standards or beliefs held by a community or its leaders. As we have seen in



Law-Making and Courts, common law or Judge-made law consists of Judges' decisions in individual cases. It evolves over time as the beliefs or standards in a certain community or society change.

Our laws dealing with young people in conflict with the law provide a contemporary example of how beliefs and values change over time, and of how those values and beliefs, and the approaches or practices that result from them, are not necessarily agreed upon by everyone. The *Youth Criminal Justice Act* (YCJA) represents a significant change in approach from its predecessor, the *Young Offenders Act* (YOA), which in turn embodied a radical redirection from the *Juvenile Delinquents Act* (JDA), the first comprehensive Canadian law to deal specifically with youth. The JDA, passed in 1908, gave government the authority to provide a "misdirected" child, in need of help, the "care, custody and discipline," that should have been provided by the parents. The JDA dealt with breaches of both federal and provincial law and also permitted findings of delinquency on the grounds of "sexual immorality or other similar form of vice." The YCJA, like the YOA before it, deals with criminal offences (breaches of federal law) only. The YCJA also provides thorough procedural protections for young people who break the law, just as the YOA did.

The YOA was passed in 1982 to remedy the failings of the juvenile delinquents system, which was criticized in the following terms...

The Juvenile Delinquents Act created a highly discretionary justice system for young people. The Act gave enormous power to police, judges and probation officers to do whatever they considered to be in a child's "best interests". There were no legislative guidelines governing sentencing, and youth who were sentenced to training school (reformatory) were generally subject to indeterminate committals. Young people were not always represented by lawyers, and until recent years many judges in juvenile court had no legal training. Some young people were treated too harshly. Others were treated too leniently, resulting in dangers to society as a whole. As well the administration of the Act varied across Canada.

One major criticism of the justice system created by the Juvenile Delinquents Act was that it tended to ignore the legal rights of children. If the Act had not been replaced it would now violate the Charter of Rights.

Source: Background Paper on Young Offenders Act:
Department of Justice Canada May 1994

The change to a "due process" model in the YOA was considered necessary in part because of the *Charter*, enacted in 1982, but also as an expression of a philosophy of holding young people accountable for their actions. The YOA recognized that young people had both rights and responsibilities. Although young people were answerable for illegal behaviour, they were not to be held accountable in the same manner as adults.

Despite the YOA's goals of youth accountability and responsibility, it was disparaged by law enforcement advocates as too lenient, while at the same time other interests denounced it as too harsh. However, in the years after the YOA came into force in 1984, Canada's rate of imprisonment for youth was the highest of any Western country. Moreover, young people in Canada could receive a sentence that was harsher than the sentence an adult would receive for the same crime. Reforms were undertaken to ensure that these injustices were dealt with, culminating in the new *Youth Criminal Justice Act* (YCJA). The YCJA strongly encourages the use of extrajudicial measures for less serious offences, while also adding sentences to ensure that serious criminal offenders receive appropriate sentences. The YCJA maintains all of the protections introduced in the YOA and it seeks to improve upon the YOA by articulating guiding principles that apply at each stage of youth justice proceedings.

who makes laws creating offences in canada?

FEDERAL LAWS CREATING OFFENCES

Some statutes passed by the federal government that create offences include the *Criminal Code*, the *Controlled Drugs and Substances Act*; the *Competition Act* (which regulates the actions of businesses) and the *Youth Criminal Justice Act*.

The *Constitution Act*, 1982 gives the federal government the power to make laws creating criminal offences. *Criminal Code* offences may be very serious, such as murder, aggravated assault or armed robbery (called indictable offences) or less serious, such as causing a disturbance or public mischief (called summary conviction offences).

The *Criminal Code* gives the name and definition of the offence. For some offences it sets out the greatest or least punishment that a Judge can give. The *Code* is divided into parts called sections. If people are arrested because they are suspected of having committed an offence described in the *Criminal Code*, they are charged under a section of the *Code*. For example, if John Doe is charged with lending a firearm to a person under 16, when he first goes to court, the prosecutor, court clerk, or Judge would say...

John Doe on November 12, 2004, at Small Town, Canada, did give a firearm to C.D., a person under the age of sixteen years who did not hold a permit under which he could lawfully possess it contrary to Section 93 of the Criminal Code of Canada.

For further information check your public library for copies of the *Criminal Code*. *Martin's Annual Criminal Code* contains annotations of the leading case law, and annotated copies of the *Charter of Rights and Freedoms* and the *Youth Criminal Justice Act* as appendices. Law libraries have compilations of all federal statutes. Copies of individual statutes may be obtained from the Queen's Printer or government bookstore. Statutes are also available electronically at the government of Canada website (www.laws.justice.gc.ca/en/index.html).

PROVINCIAL LAWS CREATING OFFENCES

Provincial and territorial governments may make laws that deal with less serious conduct. Matters falling within provincial jurisdiction include quasi-criminal offences and regulatory matters. Highway traffic codes, laws prohibiting drinking under a certain age, education, child welfare, licensing of businesses, health and safety requirements in rental and commercial properties are a few examples across the wide spectrum of provincial jurisdiction. The administration of the justice system within a province is also a provincial responsibility.

Copies of individual statutes may be obtained from the Queen's Printer or government bookstore, usually located in the capital city of each province or territory. Law libraries have compilations of all provincial and territorial statutes. Statutes are also available electronically. In some provinces (Alberta and Saskatchewan are two), laws are available online at the website of the Queen's Printer or through the provincial government website.



LOCAL LAWS CREATING OFFENCES

Local or municipal governments are granted the authority by provincial governments to regulate such things as parking, building codes, noise and animal control issues. These laws, called bylaws, deal with matters of a local nature.

Copies of bylaws may be obtained from municipal or band offices or the library. Depending on the municipality, selected bylaws also may be available electronically.

FIRST NATIONS LAWS CREATING OFFENCES

Band Councils may pass laws about their bands and reserves based on Aboriginal rights and treaties. These laws may go beyond the law-making powers of municipalities. Section 35 of the *Constitution Act*, 1982 recognizes existing Aboriginal and treaty rights as well as rights that may be acquired in the future by way of land claims agreements. This is being interpreted to mean that rights that existed before the *British North America Act* (now the *Constitution Act*, 1867) are to be recognized by various levels of government.

Section 25 of the *Canadian Charter of Rights and Freedoms* allows for distinct treatment for Aboriginal peoples and therefore may give Band Councils the right to more power over law-making...

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada including

- (a) *any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and*
- (b) *any rights and freedoms that now exist by way of land claims agreements or may be so acquired.*

The *Indian Act* is a federal law that defines what constitutes a band, who may be registered as a member, how the council and chief are to be elected and what bylaws a band can make.

Sections 81 and 83 of the *Indian Act* permit Band Councils to make bylaws for a wide range of purposes, including the "observance of law and order" (section 81(c)). Examples include regulation of building construction, water supplies, zoning, and removal and punishment of trespassers on reserves.

Section 107 of the *Indian Act* enables Band Councils to select a Justice of the Peace who may then be appointed by the Governor in Council. A Justice of the Peace has the authority to hear offences under the *Indian Act*, some *Criminal Code* offences and breaches of band bylaws.

The Governor in Council may make regulations which override Band Council bylaws. However rapid changes are taking place in the area of Aboriginal law throughout Canada. The right to make legislation about offences is changing as First Nations in Canada move towards clearer models of self-government.

**SUMMARY**

Some matters may be regulated by more than one level of government. Different aspects of the same subject matter may fall within the jurisdiction of different governments. The example of driving a vehicle illustrates how the different levels of government may make laws concerning different aspects of the same subject.

Federal laws prohibit criminal acts related to driving...

- driving while impaired
- dangerous driving
- driving while disqualified
- joyriding (stealing a car then abandoning it)

Provincial laws regulate driving that affects people throughout the province...

- licences for drivers
- speed limits on provincial highways
- mechanical standards for vehicles
- seat belt legislation
- insurance

Municipal laws deal with driving matters of a local nature...

- parallel and angle parking
- motorized vehicles in parks or on golf courses
- speed limits near schools
- stop signs and traffic lights

HISTORY OF YOUTH AND THE LAW

Canadians have special laws for young people ages 12 to 17. This was not always so. For a long time, a single legal system applied to everyone who broke the law. Adults could be jailed, whipped, or sentenced to death for breaking the law. Young people could suffer the same penalties as adults.

By about the year 600 A.D., the Ancient Romans decided that children under seven should not be punished as criminals.

By the 1700s, children seven to 13 could be acquitted if they had committed a crime. It was assumed they could not appreciate the nature and consequences of their conduct. However, if someone could give evidence that a particular child did have this knowledge, the child could be convicted as if he or she were an adult. One of the most common ways to prove the capability to form criminal intent was to show that the child had been before a court in the past.

By the 1800s, western societies began to develop special laws for young people. During the Industrial Revolution, many families moved from the country to the city to work in the new factories. Life in the new cities was very harsh, so some young people took to petty crimes, such as theft, to survive. If caught, they were punished as severely as adults. Gradually, people realized that the laws were too hard on young people, who were seen as victims of poverty.

In 1908 in Canada, the *Juvenile Delinquents Act* (JDA) became law. This Act applied to young people over the age of seven and up to a maximum age set by each province. In Saskatchewan the maximum age was 16. The Act treated young persons in trouble with the law as “misdirected, misguided” children, rather than as young adults who were legally responsible for their actions.

In 1984, the *Young Offenders Act* (YOA) replaced the *Juvenile Delinquents Act*. The YOA gave the young person charged with a crime more legal protections than before. It attempted to balance a young person’s rights and responsibilities. Despite the emphasis on legal protections for young people, the YOA was found to result in high rates of custodial sentences.

In 2003, the *Youth Criminal Justice Act* (YCJA) replaced the YOA. It applies to young people ages 12 through 17. The YCJA maintains procedural safeguards; encourages and provides direction concerning the use of extrajudicial measures; and adds new sentencing options. It also allows for the imposition of adult sentences in certain cases.

principles of canadian laws

WHAT IS AN OFFENCE?

1. Discuss the concept of "offence." Brainstorm as a class. Record all the suggested examples of "offences".
2. The laws in one society may differ considerably from another society's laws. Do you think the following definition of offence applies to all cultures or societies?

Behaviour or actions that a government makes laws against are called crimes or offences.

This definition says that something is an offence because the government has decided to make it an offence. Can you think of other definitions?

3. Are all offences the result of doing something? Is it ever an offence NOT to do something? For example, failing to report a crime such as child abuse?
4. On what does a government base its decision to make a particular law? Do laws reflect what is important to a particular society? Do laws reflect the values of the majority of people in a society?
5. Why do laws change? Can you find examples of laws which have been changed or are being challenged? What are the different viewpoints in favour of/against a proposed change to a law? Current issues may include changes to the legal age for driving or drinking, or same-sex marriage.
6. Starting with the premise that what constitutes an offence reflects the values that a particular society or group of people holds, ask: *What important values in the classroom (home, community) must be protected by rules or laws?*

ACTIVITIES

PURPOSE

- to develop an awareness of what is an offence under the Canadian *Criminal Code*
- to develop an awareness of possible consequences of one's actions

PROCEDURE

- ask the students to consider the following general, and specific incidents. Look at the conduct from two points of view: that of the person doing the act and that of the victim
- for each incident, ask...
 - ▶ Do you think that the conduct goes against a value that society thinks is important?
 - ▶ Do you think this conduct is or should be considered an offence?
 - ▶ Why or why not? Who should decide?
 - ▶ If you think it is a criminal offence, what type of sentence should be given? What should the consequences be?



GENERAL INCIDENTS

Discuss the following situations as a class using the questions above.

1. walking across a neighbour's lawn during the day
2. pushing someone
3. picking wild flowers
4. picking someone else's flowers
5. driving over the speed limit or without proper attention
6. drinking and driving
7. making prank telephone calls
8. writing something on a fence or walls of a bathroom

ANSWERS


1. If no permission is given by the owner of the property, this is trespassing. This is a tort (a civil rather than a criminal offence). Trespassing **by night**, however, is a *Criminal Code* offence.
2. This is called assault. Assault is a *Criminal Code* offence; it is also a tort.
3. Provinces or municipalities may have passed legislation protecting rare or endangered plants. If this is the case, it may be an offence under provincial law to pick the flowers, but it won't be a *Criminal Code* offence (the *Criminal Code* is federal legislation).
4. If this is done without the owner's consent, it is theft, a criminal offence.
5. Most traffic offences are regulated by individual provinces under Highway Traffic legislation. In some cases, the lack of proper attention may amount to criminal negligence under the Canadian *Criminal Code*.
6. This is a *Criminal Code* offence.
7. This is contrary to provincial telephone acts, but not contrary to the *Criminal Code* (unless they are harassing, threatening or intimidating).
8. Graffiti is public mischief contrary to the *Criminal Code*. This is also a tort – a wrong under civil law that the person who did it could be sued for.

SPECIFIC INCIDENTS

background

Give the following background before providing the students with the handouts: *Incident #1-The Case of the Broken Window*, *Incident #2-The Case of the Rocks on the Rails*, *Incident #3-A Loaded Gun*, and *Incident #4-The Case of the Returned Goods*.

1. Young people charged and convicted of criminal offences are usually sentenced in accordance with the provisions of the YCJA. A young person convicted of any of the crimes



illustrated in the following scenarios could be liable to a range of youth sentences up to a maximum sentence of 3 years custody and supervision. There are many sentencing options available in Youth Justice Court, and many factors that influence sentencing. The YCJA states as one of the principles of sentencing that all reasonable alternatives to custody should be considered, particularly in the case of Aboriginal youth. Extrajudicial measures are also to be used where appropriate, before the youth even gets to court. See *Extrajudicial Sanctions* handout.

2. In certain cases the sentencing provisions of the *Criminal Code* may apply. Young people convicted of an indictable offence punishable by imprisonment for more than two years could receive an adult sentence, if the prosecution applies for such an order and if the Judge agrees. Before imposing an adult sentence the Judge must decide that a youth sentence is not adequate to hold the young person accountable for his or her behaviour. In Saskatchewan, the youth must be at least 14 years old to be at risk of receiving an adult sentence. Even if the circumstances are serious enough to receive an adult sentence, it still will be handled in Youth Justice Court.
3. Explain that there are no hard and fast answers. Sentences or punishments will vary, depending upon the seriousness of the offence, the age and maturity of the youth, and the number of times the youth has been in trouble before, for example. Each situation in real life involves a number of different factors.

INCIDENT #1 – THE CASE OF THE BROKEN WINDOW

Early Sunday morning Don and Greg grabbed their pellet guns and headed out to a field for target practice. On their way to the field, Don challenged Greg to a contest to see who was a better shot. They agreed to shoot at a garbage can next to a store. Don missed the can and hit the plate glass window of a store. The boys looked at each other in horror, then ran off.

the law

The *Criminal Code*, s.430 (1); Every one commits mischief who willfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property;

questions

1. Has Don done something wrong?
2. Even though he did not plan to hit the window, should he have realized that it could happen?
3. Did Greg do anything wrong?
4. What could be some of the consequences of breaking the window?
 - a) from the store owner's point of view.
 - b) from Don and Greg's point of view.
5. Would it have made a difference if it had been a Saturday morning and the store was full of people? See *Criminal Code*, Section 430 (2), in incident #2.

INCIDENT #2 – THE CASE OF THE ROCKS ON THE RAILS

Jeff, 15, and Isaac, 16, were driving around late one night in Isaac's pickup truck.

Just for something to do, they spray-painted some stop signs, then piled some rocks in the middle of a railroad track.

the law

The *Criminal Code* section 430 (2): Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

questions

1. Should Jeff and Isaac have realized that their actions could cause injuries to others?
2. At what point does "horsing around" become an offence?
3. What consequences do you think would be appropriate?

INCIDENT #3 – A LOADED GUN

Annette became angry during an argument and pointed a gun at her friend. The gun was not loaded. She was later charged with pointing a gun at someone. Under the *Criminal Code* it doesn't matter whether or not the gun was loaded at the time. She said she didn't know that she could be charged for pointing a gun at someone if it isn't loaded and besides she was only joking. Her friend knew her better than that. She said if she had known that she could be charged with a criminal offence she would never have done it.

the law

The *Criminal Code*, section 86(1), states that anyone who points a firearm at another person, whether the firearm is loaded or unloaded, is

- (a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) guilty of an offence punishable on summary conviction.

The *Criminal Code*, section 19, states that ignorance of the law is not an excuse for committing that offence. It is not a defence to say that she didn't know what the law was. In finding a person guilty or not guilty of an offence, a Judge will not assess whether the person knew what the law was on a particular matter.

questions

1. Are you surprised that Annette didn't seem to know that pointing a gun was an offence?

What are laws based upon? Do most people obey laws because we are afraid of being punished? Or do people obey laws because they are, for the most part, based on common sense and shared values? (It is not possible to be familiar with every law on the books. Nor should it be necessary.) (See also the discussion under *What is an offence?*)

2. Should she have realized how serious her actions were?
3. What consequences do you think would be appropriate?

INCIDENT #4 – THE CASE OF THE RETURNED GOODS

Cindy and Alexis went into the local store to buy a magazine. While deciding what to buy, Cindy heard Alexis whisper, "Don't move. He can't see me now". Cindy stayed where she was while her friend put some lipstick into her pocket. The store owner was watching and told her to put it back, which she did. The girls went to leave the store but the owner said to wait right where they were while he called the police. Cindy said, "I gave it back". Alexis said, "I didn't do anything".

the law

The *Criminal Code*, s.322 (1), states that anyone who "fraudulently takes...or converts to his use or to the use of another person, anything with the intent, to deprive, temporarily or absolutely, the owner of it..." is committing a theft.

Section 21(1) states that "Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding a person to commit it; or
- (c) abets any person in committing it".

questions

1. Alexis claims she was going to put it back. She wasn't going to keep it. Also she did give it back when told to. She said she didn't know it was a crime if she gave it back. Does it make any difference whether she knew or not?
2. Cindy said she didn't do anything wrong. Would it make a difference if she knew nothing of what her friend was doing?
3. Would it make any difference if, when they were outside, Alexis gave the lipstick to Cindy and said, "Here you can have it."?

comments

1. Shoplifting is theft and it is a criminal offence. It is not a defence to claim you didn't know what the law was.
2. It is a criminal offence to help another person commit an offence. Cindy could also be charged with theft if she knowingly acted as a cover for Alexis. A person may be found guilty as an accessory to a crime either by participating in some way while the crime was being committed or by aiding the offender afterwards.
3. A person may be found guilty of possession of stolen goods even though he or she did not take the items in the first place.



IF AN ACTION IS NOT FORBIDDEN IN A CANADIAN STATUTE, IT IS NOT AN OFFENCE IN CANADA

In Canada today, all actions that are offences must be written laws. Customary laws of the First Nations peoples were oral traditions. The principles that all laws had to be written down did not exist in customary law.


1. Investigate some laws or rules that existed long ago that do not apply today. Scholastic Canada publishes a short book entitled *You can't do that in Canada*, by Beverly Spencer, a collection of "crazy laws from coast to coast". It is widely available in public libraries. Older teachers may remember that years ago there was a program on CBC television called *This is the Law*. Actors re-enacted the breaking of little known and out-dated laws from all over North America. Investigate some laws or rules that existed long ago that do not apply today. Entering "stupid laws" on your internet search engine may provide some interesting sources. Have the students draw pictures showing laws from long ago that either do not exist or that may not make any sense to enforce today.
2. If unable to research actual laws, ask the students to write some laws that they feel should exist. This could be done in conjunction with a unit on endangered species or as a way of protecting a particular group or activity.
3. Ask the students to write their own laws in conjunction with a history unit or to apply to life in another country or in a society of their own making. Challenge the students to create laws for a new society. Have the students think about fairness, reasonableness, penalties for breaking these laws and methods of enforcement.
4. How are laws changed? (Review the section on *Law-Making and Courts*)

INNOCENT UNTIL PROVEN GUILTY

Anyone who is charged with a criminal offence is presumed to be innocent until he or she pleads guilty or is proven guilty in a court. They do not have to prove that they are innocent. The onus (burden of proof) is on the state or government to prove the case that has been alleged against them.

One idea basic to the Canadian criminal justice system is that a person has to intend to commit the crime they are accused of. This is particularly important where that person is to be punished for a serious crime and may face a serious penalty such as imprisonment. This does not mean that the person had to have intended a particular consequence of the action – for example, that someone got hurt. Rather, it means that he or she merely must have intended to do the act in the first place.

Special rules apply when mentally ill people break the law. A person who is not able to form the intention to commit a criminal act may receive psychiatric treatment in closed custody rather than receiving a term in prison. Section 16 of the *Criminal Code* states that a person is not criminally responsible for an act or omission made while suffering from a mental disorder that rendered the person incapable of "appreciating the nature and quality of the act or omission or of knowing that it was wrong".



For children to be held accountable for their actions they must have the ability to understand the nature of their actions and to intend to do the action. In our society very young children are not held criminally responsible. The *Youth Criminal Justice Act* sets twelve as the age at which a young person will be held liable for his or her actions under the criminal justice system.

The presumption of innocence is one example of “due process” under the Canadian criminal justice system. A person who is arrested and jailed is entitled to be treated fairly, according to known rules. The legal guidelines within which authorities, such as the police, must operate are part of the Canadian *Charter of Rights and Freedoms*. Section 7 states...

no individual shall be deprived of life, liberty or security of the person ... except in accordance with the principles of fundamental justice.

Due process includes the right to speak with a lawyer, to be present during the trial and hear the evidence, and a right to appeal the decision on questions of the law. It also includes the right not to be arbitrarily detained or to be subject to a search or seizure unless there are reasonable grounds.

the youth criminal justice act

A brief history of the youth criminal justice legislation has been given previously. In this section, we note some of the features of the Act.

HOW THE YOUTH CRIMINAL JUSTICE ACT WORKS: SEE APPENDIX 1

1. It applies to young people from the ages of 12 through 17 who are accused of violating certain federal laws.
2. The federal offences it covers include offences under the *Criminal Code* and the *Controlled Drugs and Substances Act*.
3. It adds procedural safeguards to the legal process. It determines how accusations in the criminal process are to be handled. This includes what happens when the young person is arrested, when the young person appears in court and when the young person is sentenced.

Special protections include...

- A young person may ask to speak to a lawyer at any time. See the *Youth Criminal Justice Act*, s. 25(1).
- A pre-sentence report must be reviewed by the Judge before a young person is sentenced to custody. This report is normally prepared by the provincial social services department or ministry. This report tells about the young person’s previous convictions, about the support that he or she will have from parents and community and whether the young person would be a good candidate for participation in certain rehabilitation or treatment programs.

SOME OF THE GUIDING PRINCIPLES OF THE YOUTH CRIMINAL JUSTICE ACT

Youth criminal justice laws have been a compromise that tries to accommodate two sometimes opposing views. The first view calls for special rules for young people. This view stresses that society has a right and a need to protect itself from violent anti-social behaviour. The *Criminal*



Code is seen as necessary to control youth. Others argue that children who break the law are misguided and that a “care, guidance and treatment approach” is better.

The Preamble to the *Youth Criminal Justice Act* is a statement of purpose that reflects the policy or philosophy underlying the Act. It must be read together with the various declarations of principle, which further outline the guiding principles applicable in youth justice proceedings. The Preamble states...

Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious interventions for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons.

The Declaration of Principle isolates three goals of the Act: to prevent crime, to rehabilitate young persons who commit offences, and to ensure that a young person is subject to meaningful consequences for the offence.

Some of the principles are...

1. Young people who commit crimes should be subject to meaningful consequences for the offence (The *Youth Criminal Justice Act* s.3(1)(a)(iii)). The measures taken against young persons who commit offences should respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements (The *Youth Criminal Justice Act* s.3(1)(c)(iv)). See the case studies later in this chapter.
2. Members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood (Preamble, paragraph 1).
3. Young people have rights and freedoms in their own right. Young persons also have special guarantees of their rights and freedoms (Preamble paragraph 4, and YCJA section 3(1)(d)).
4. Extrajudicial measures are often the most appropriate and effective way to address youth crime (The *Youth Criminal Justice Act* section 4(a)). Section 4(c) says that extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence.
5. The criminal justice system for young persons must be separate from that of adults and emphasize the following: (1) rehabilitation and reintegration; (2) fair and proportionate accountability; (3) enhanced procedural protection to ensure that young persons are treated fairly; and (4) timely intervention that reinforces the link between the offending behaviour and its consequences (YCJA Declaration of Principles, section 3(1)(b)).
6. Within the limits of fair and proportionate accountability, measures taken against young persons should encourage the repair of harm done to victims and the community, and be meaningful for the individual young person, and where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration.

PREAMBLE

The Preamble to the *Youth Criminal Justice Act* sets out the philosophy of the Act. It is a statement of principle concerning policy about how to deal with young people in conflict with the law. In addition to the Preamble, the YCJA includes a statement of principles to be considered at all times when dealing with the provisions of the Act. In other words during arrest, in the police station, in the courtroom, during sentencing, and in the performance of that sentence, these principles should be in the minds of all those people in the system dealing with the young offender. On top of that, there is a separate declaration of principles to guide the use of extrajudicial measures and another to guide the imposition of sentences.

The Preamble reads as follows...

- (1) Members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood.
- (2) Communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes.
- (3) Information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available.
- (4) Canada is a party to the United Nations *Convention on the Rights of the Child* and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms.
- (5) Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons.

The following provides a way to explore how some of the principles apply in various true-to-life situations.

exploring extrajudicial measures

The term extrajudicial measures simply means measures outside of the formal court process that can be used to deal with youth crime. Extrajudicial measures can allow youth who commit offences an opportunity to be held accountable for their actions and possibly make amends to the victim and the community without appearing in Youth Justice Court and without receiving a criminal record. Extrajudicial measures can only be used if the police have reasonable grounds to believe that a young person has committed an offence.

One of the objectives of the YCJA is to reduce the use of youth courts, particularly for less serious offences. Under the Act, extrajudicial measures are presumed to be adequate to hold a young person accountable for a first, non-violent offence. The Act also requires the use of extrajudicial measures in all cases where they would be adequate to hold the young person accountable.



Extrajudicial measures are intended to encourage young persons who commit offences to repair the harm done to the victim and the community. They are also designed to encourage families and members of the community to get involved in responding to youth crime and to provide victims with an opportunity to get involved in the decision-making process. Youth Justice Committees and conferences provide a way for the community to get involved in responding to youth crime.

Restorative justice principles are a key element of extrajudicial measures. There is no single definition of this term, but the following summary proves helpful...

All restorative justice programs have some common elements. They seek healing, forgiveness and active community involvement. The programs can take place at different times after a crime has occurred — sometimes after charges have been laid; sometimes after an accused has been found guilty of an offence. Some examples of restorative justice programs include...

- *victim offender mediation*
- *family group conferencing*
- *sentencing circles*
- *consensus-based decision-making on the sentence*
- *victim offender reconciliation panels*

SOURCE: Department of Justice, *Restorative Justice* (canada.justice.gc.ca/en/ps/voc/rest.pdf)

Under the YCJA youth justice committees and conferences encourage communities to become involved in responding to youth crime and expand opportunities for restorative justice.

Youth justice committees help in the struggle against youth crime by involving the citizens of the communities affected. They are "not-so-subtle" recognition that police, prosecutors, probation officers and judges cannot stop criminal behaviour among our youth without the help of the community. The justice system cannot expect to maximize community support unless it allows for the meaningful participation of the citizenry.

Those involved in youth justice committees bring with them valuable insight into why a particular youth is misbehaving and what might usefully be done to correct this behaviour. This information can be of great assistance to the judge when crafting an appropriate disposition.

SOURCE: Alberta Solicitor General: Youth Justice Committees; Perspectives on Youth Justice Committees - A Crown Prosecutor's Perspective ©2000-2004 Government of Alberta

DISCUSSION QUESTIONS

Is youth crime a problem in your community?

How do the restorative justice elements of the YCJA fit with traditional approaches to youth crime in your community?

Are there any groups or organizations in place in your community that provide members of your community with an opportunity to become involved in dealing with youth crime?

Do you think that the concerns that youth have about youth crime are the same or different than the concerns that adult members of your community have?

What would be the benefits of bringing youth together with the larger community to discuss these issues?

extrajudicial sanctions

WHAT IS MEDIATION?

The *Youth Criminal Justice Act* provides for extrajudicial measures for youth. Programs of extrajudicial sanctions, a form of extrajudicial measures, may be set up by the province. Mediation programs are one type of program that can be set up.

Mediation offers an opportunity for a young person to come to terms with the impact of what he or she has done. It affords the offender insights into how the victim or victims have been affected and enables him or her to take responsibility for his or her actions.

WHO MEDIATES? WHAT IS THEIR ROLE?

Youth court workers, social services workers and volunteers may act as mediators. The mediator does not take sides. By remaining impartial, the mediator helps the parties see the situation from others' points of views. The mediator also helps the offender, the victim(s) and others who may be affected to reach an agreement as to what should be done.

WHAT ROLE DOES THE VICTIM PLAY?

In a courtroom, the victim was traditionally a witness who gave evidence against the accused. This is changing and the victim now may also have input into the sentencing of the offender. In mediation the victim (or a substitute who represents the interest of the victim) is a full participant and has an opportunity to tell how he or she has been affected and what needs to be done to set things right.

WHAT AGREEMENTS MIGHT BE REACHED?

Restitution, returning what was lost, or making amends may include paying for damage, personal service for the victim or working in the community. It may include an apology to the victim and to others personally, through a third party or through a letter.

The agreement is recorded and signed. If the offender does not keep his or her promise the case will be sent back to court to be decided by a Judge.

(See also *Conflict Resolution* for a discussion of mediation generally and in criminal law.)

EXTRAJUDICIAL SANCTIONS

Extrajudicial sanctions are out-of-court programs that deal with young people who have come into conflict with the law. There are various types of projects used as a way of handling young people who come into conflict with the law. Young people who commit less serious criminal offences are “diverted” away from the court system. Even if charges have been laid, the young person may be offered an alternative to going to court.

The *Youth Criminal Justice Act* provides for the use of extrajudicial sanctions. If an offender takes part in a program but fails to keep his or her promises, the matter will be sent back to court.

Who may take part in extrajudicial sanction? First of all, the young person must agree. If he or she denies involvement in the crime the matter must be heard in court and the Crown Prosecutor must present proof of that person’s guilt beyond a reasonable doubt.

Extrajudicial sanctions are rarely used for more serious offences involving violence. They are most often available in cases involving property offences such as theft, shoplifting, vandalism or break and enter. In the past, they were seldom used for second offences, but the *Youth Criminal Justice Act* states that extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour. Nothing in the Act precludes their use a second time.

Some extrajudicial sanctions programs use mediation to help resolve the conflict. Mediation enables the young person to accept responsibility for his or her actions. The offender, the victim, the offender’s parents, community or clan members, Chief and Councillors, and Elders, a mediator, or a youth justice committee may all be involved in finding a solution or solutions. Some solutions they may agree to are...

- mediation
- an apology to the victim
- replacing lost or damaged items
- community service work
- working for the victim to make up for the loss
- cash repayment
- attending special school programs
- counselling
- participating in cultural activities (sweat lodges, for example)
- other reasonable agreements
- some combination of these

The focus is on rebuilding relationships with others rather than punishing the offender. Sentencing Circles can involve the victim, relatives, Chief, Councillors and Elders, and others involved in the young person’s life.

MEDIATION

what is mediation?

Mediation is a means of resolving conflict between people. A third person helps the people involved to find their own solutions to the problems. In mediation-diversion the victim and offender have an opportunity to talk with each other. The offender learns how the victim or victims have been affected by his or her actions. The offender has a chance to take responsibility for his or her actions and can decide with the victim and others how to make amends or how to rejoin the community as an accepted member.

who mediates? what is their role?

Youth court workers, social workers, or volunteers from the community may act as mediators. A mediator does not take sides. While remaining impartial, the mediator helps the parties to see the situation from the other's point of view. The mediator helps the offender and the victim(s), parents and others who may be affected to reach an agreement as to what should be done. Elders play a key role in mediating problems and are key resource people for teaching traditional ways of handling disputes.

what role does the victim play?

In a courtroom, the victim is a witness who gives evidence against the accused. This is changing and in some regions the victim may also have input at parole hearings before an offender is released from custody back into the community. Through sentencing circles, the victim and the community decide together with the offender what needs to be done to restore harmony within the group. The victim, or someone who speaks on behalf of the victim, has an opportunity to tell how he or she has been affected and what needs to be done to set things right.

what agreements might be reached?

The victim and the offender may agree that the young person will return what has been lost, pay for the damage, or perform personal service for the victim or work in the community. The agreement may include an apology to the victim and to others personally, through a third party or through a letter.

The agreement is recorded and signed. If the offender does not keep his or her promise the case will be sent back to court to be decided by a Judge.

THE MEDIATION PROCESS

Use the words and phrases below to fill in the blanks.

Mediation is sometimes used instead of going to _____.

Generally it is a six to ten week process that starts with a referral from the _____
_____. A letter is sent to the _____, to the
parents of the young person and sometimes to another _____ from the
community.

Both parties must be willing to participate. _____ may have a representative or
substitute person to speak on their behalf. This could be a member of their
_____ or a member of the community or another _____. Some
mediation workers feel that the process will not be successful without the participation of the
accused's _____ or _____.

The focus for the accused is on accepting _____ for his or her actions and
becoming aware of the impact that their actions have had on others.

_____ for which mediation may be available include _____,
_____, or an _____ involving slaps or
threats.

The participants must reach an agreement. The accused may agree to apologize in person or
_____, pay for the _____, work in the
_____ or for the _____ directly or a combination of these. If an
agreement can't be reached or if the accused fails to keep his or her promises, the case is
sent back to the _____.

in writing

community

offences

young person

family

victims

assault

Elder

damage

Prosecutor's office

parent

creating a disturbance

mischief

court

Crown Prosecutor

offences

guardian

adult

responsibility

THE MEDIATION PROCESS – ANSWERS

Mediation is sometimes used instead of going to **court**.

Generally it is a six to ten week process that starts with a referral from the **Crown Prosecutor**. A letter is sent to the **young person**, to the parents of the young person and sometimes to another **adult** from the community.

Both parties must be willing to participate. **Victims** may have a representative or substitute person to speak on their behalf. This could be a member of their **family** or a member of the community or another **adult**. Some mediation workers feel that the process will not be successful without the participation of the accused's **parent** or **guardian**.

The focus for the accused is on accepting **responsibility** for his or her actions and becoming aware of the impact that his or her actions have had on others.

Offences for which mediation may be available include **mischief, creating a disturbance**, or an **assault** involving slaps or threats.

The participants must reach an agreement. The accused may agree to apologize in person or **in writing**, pay for the **damage**, work in the community or for the **victim** directly or a combination of these. If an agreement can't be reached or if the accused fails to keep his or her promises, the case is sent back to the **Prosecutor's office**.



sentencing

POSSIBLE YOUTH SENTENCES

The seriousness of the sentence is determined by the seriousness of the offence committed, the harm to others, the youth's prior convictions and the potential of the youth to be rehabilitated. Possible sentences include...

- a reprimand
- an absolute discharge
- a conditional discharge
- a fine
- compensation
- restitution or reimbursement of an innocent person who was harmed
- personal service or compensation in kind
- community service
- prohibition, seizure or forfeiture
- probation
- intensive support and supervision program order
- attendance order
- deferred custody and supervision order
- custody and supervision order
- intensive rehabilitation and supervision order

Source: Youth Court Statistics. 1993-1994. Statistics Canada Catalogue. 85-522 Annual.

case studies

Although the YCJA provides many opportunities for youth matters to be dealt with outside a formal court process, many cases will proceed to court and some will result in custodial sentences.

PURPOSE

The purpose of this exercise is to provide students with an opportunity to assess the law in action.

METHOD

Distribute the handout, present the facts and review the law, and then discuss the decision and questions for thought for each case study.

R. v. C.M.P.

the facts

This case involved a 17 year old young person who was charged with assault causing bodily harm. C.M.P. had attacked another girl in the washroom at school. The victim had been punched in the face, kicked in the head and threatened. The assault appeared to have been motivated by the fact that the victim had previously stolen a pair of sunglasses from C.M.P.

The young person had no criminal record. She was attending school and working part-time. The pre-sentence report indicated that the youth had some behavioural problems. She had a bad temper and could be aggressive, and overall her parents had difficulty controlling her.

Her parents were very concerned and had tried to get help for her; on the other hand, C.M.P. was not that concerned about her own behaviour and tended to minimize the impact her behaviour had on those around her.

the law

As the offence at hand was "violent" in nature, the court had discretion to impose a custodial sentence. As required by the Act, the Judge went on to ask whether the court should do so.

R. v. C.M.P. – THE DECISION

The court noted that the sentencing provisions of the YCJA emphasized rehabilitation and viewed custodial sentences as a last resort. The court was also mindful that the sentence must also hold the young person accountable and “reinforce respect for societal values”. The young person had no previous convictions and the court had no basis to believe that the young person would not comply with conditions attached to a non-custodial sentence.

In the end the court held that there were reasonable alternatives to custody and sentenced the young person to a 12-month period of probation with conditions that included no-contact with the victim, a letter of apology to the victim and counselling as recommended by a youth worker. The young person was also required to perform some community service work and pay a fine of \$200.

questions for thought

Do you think a probation order is harsher punishment than a fine? Why or why not?

What place do you think punishment plays in a probation order? How does this fit with YCJA principles generally?

What responsibility do you think parents or guardians have in relation to the actions of their children? What responsibility do they have in relation to the young person’s rehabilitation? How does this relate to an order for probation?

Have the students brainstorm about possible appropriate conditions for this probation order. What types of behaviour are they designed to control? How does this relate to the offence committed? How does this relate to the rehabilitation of the young person?

R. v. T.D.P.

the facts

A young Aboriginal person, age 15, had been found guilty of two counts of robbery that had occurred one after the other. The victims of the robberies had been punched and kicked and two other accomplices had also pepper-sprayed them.

The young person was intoxicated at the time of the robberies and had very little experience with drinking prior to this night. He and his family had recently moved to the city from a Reserve, and three cousins had recently joined the family. His transition to the city had been rough and he had himself been the victim of a robbery at gunpoint. He had no prior record.

A sentencing conference was held to give advice on an appropriate sentence. It was attended by the young person, an Elder from his community, the young person's teachers and his parents, lawyers and youth workers. The participants at the conference spoke favourably about the young person, indicating that he was a promising young athlete and was doing well in school. He had positive influences in his life and was remorseful about his involvement in the robberies.

the law

The YCJA provides for gathering people together to help make decisions regarding young persons who are involved in the youth justice system. This is called a *conference*. A conference can help identify the needs of the young person so that, where appropriate, those needs can be considered when a decision regarding the young person is made.

The YCJA requires the court to consider all reasonable alternatives to custody and to pay particular attention to the circumstances of Aboriginal offenders. The court must also consider matters such as the degree of participation by the young person with regard to the offence, the harm done to the victim, any previous record, and any other aggravating or mitigating factors that are relevant for the purpose of deciding on an appropriate sentence. Given the serious nature of the offences, a custodial sentence was a possibility, but not a requirement.

R. v. T.D.P. – THE DECISION

The Judge noted that these offences were indeed serious and that a custodial sentence had to be considered. The young person was not a minor player in the incidents – he participated fully in both robberies. The harm inflicted on the victims also had to be considered. However, the Judge was required to fashion a sentence that was the least restrictive sentence yet most likely to rehabilitate, reintegrate, and promote a sense of responsibility and acknowledgement of the harm done.

In sentencing the young person, the Judge noted...

The Conference was very valuable in this case for two reasons. First, information came to light that would not have otherwise been available about the background of this young person...Secondly, the sentencing process engaged a wide circle of persons concerned with the offending behaviour and the circumstances of the young person and they were able to communicate in a more open and effective way. Busy dockets and the formal atmosphere of a courtroom do not promote such discussions...

The parental influence is still strongly felt and provides the most appropriate context for supervising his behaviour, having regard to the recent move from their Reserve, and the level of dependence upon them. He is a relatively vulnerable youth and has proven susceptible to negative peer influences. Imposing a custodial sentence, even a deferred custody and supervision sentence, unnecessarily limits that parental role... A period of time in custody...has the potential of further traumatizing him and exposing him to negative peer influences.

The young person was sentenced to a period of probation with conditions, as this sentence was seen as more effectively contributing to the long-term protection of society. The Judge did, however, note that such a sentence for two robberies is rare and again commented on the compelling circumstances of the young person before her.

questions for thought

How does the concept of conferences fit within the general principles of the YCJA?

How could conferences be used by victims of crime?

Conferences can consume a lot of time and energy. Should conferences be reserved for more serious matters only? What do people hope to gain by holding a conference? Can this be achieved through other means?

The Judge in this case had this to say about conferences...

It can be extremely effective when the victim and offender meet. In the best circumstances each come away with a greater sense of the other person's humanity. Without a face to face encounter, the offender rarely has the opportunity to see the victim as an individual and to experience the victim's pain or unhappiness with his or her actions. The victim has the opportunity to demystify the offender and to get a glimpse of his or her challenges.

Which justice principles are at play here? How does this process fit with traditional Aboriginal ways? Is the process a positive step in the right direction? What additional aspects could be added to make the process more meaningful?

R. v. A.B.W.

the facts

In this case the court considered whether the case at hand was exceptional with aggravating features. A.B.W. had pled guilty to a single offence of breaking and entering and committing arson. The charges occurred after A.B.W. and another young person broke into an elementary school and eventually set fire to it, after stealing some items and damaging others. The events took place over a period of a couple of hours and appeared calculated and deliberate. Following the incident but before being caught, A.B.W. had clipped and saved several newspaper clippings about the incident. Damage to the school was about \$30,000 and required the school to close for 4 days to clean-up.

the law

After setting out the general and specific sentencing principles set out in the YCJA, the Judge noted...

That is a lot of wording attempting to set forth general principles. The thrust of several of these principles is that young people ought not to be jailed except in limited circumstances and only after consideration of all other alternatives.

R. v. A.B.W. – THE DECISION

The court found that it was clear that A.B.W. had not committed a violent offence, he had no history of failing to comply with court orders, and he had not demonstrated a pattern of findings of guilt in the past. The court went on to examine whether this was an exceptional case with aggravating factors that could justify a custodial sentence.

The court noted that while A.B.W. did not appear to be the “leader”, he clearly participated fully. The court also noted that the events took place over a period of a couple of hours and that this “was no mere impulsive prank, but a calculated exercise in the destruction of public property”. The fact that A.B.W. had clipped and saved several newspaper clippings about the incident was interpreted as having a disturbing “element of bravado”. The Judge described the impact as a “sort of massive sucker punch to the local community”. That said, the Judge ruled that...

[i]n its magnitude and its effect, this offence is extraordinary, and in my view it offends to such an extent that it must be met with a custodial term, despite the general principles set forth in the Youth Criminal Justice Act about the sparing use of custodial sentences.

A.B.W. was 17 years old at the time of the offence and 18 years old at the time of sentencing. A psychological report indicated that he was not at high risk for future fire-setting but at continued risk for other antisocial activities such as theft and vandalism. He was an intelligent youth but was emotionally immature and tended to follow his delinquent peers. While the court took note of these “shortcomings”, A.B.W.’s youth and ability to change were also taken into account. He was sentenced to...

- 30 days open custody followed by 15 days of supervision
- an intensive support and supervision order for a period of 9 months
- 25 hours of community work
- pay compensation in the amount of \$1,000

questions for thought

Examine each component of the sentence in this case and discuss the following questions...

- Do you think it is appropriate?
- What purpose do you think it was intended to serve?
- Are other components necessary or desirable?
- How does the sentence as a whole fit with restorative justice principles?

R. v. H.W.G.

the facts

This case involved a 15 year old Aboriginal person, H.W.G., who was convicted of robbery and other miscellaneous charges. The incident that gave rise to the robbery charge had been part of a gang initiation. It had taken place in the early morning hours when four individuals entered a convenience store wearing ski masks, two of them carrying knives. The store was robbed, and the clerk and two customers who were present were threatened with being stabbed if they didn't do as they were told.

The young person had no criminal record and had done well on judicial interim release for the charges at hand. He was remorseful and had an extremely supportive family. His paternal grandparent was a medicine man and had "considerable positive influence in the family".

H.W.G. was a good student and was also employed. Although he had fallen in with a group who appeared to be a negative influence he was breaking off with them and also had "positive peer associations" and was involved in sports and other hobbies. He was considered at low risk to re-offend.

The Judge noted that the offence could be considered violent and that, therefore, a custodial sentence could be considered.

the law

Under the YCJA, there are a number of sentencing options available to the Youth Justice Court. Many of these options do not involve a custodial sentence. In fact, under the Act, the use of custodial sentences is prohibited unless...

- the young person has committed a violent offence
- the young person has failed to comply with non-custodial orders
- the young person has committed a serious offence and has a pattern of offending behaviour
- the young person has committed a serious offence and there are other aggravating circumstances that call for a custodial sentence

Even in cases where a custodial sentence would not be prohibited under the Act, the Youth Justice Court must still explore all reasonable alternatives to custody. The Youth Justice Court can't sentence a young person to custody as a substitute for appropriate child protection, mental health or other social measures. In other words, young persons shouldn't be placed in custody "for their own good" or in situations where an adult wouldn't be jailed for the same behaviour.

Non-custodial sentencing options include reprimands, discharges, restitution, compensation orders, community service, prohibition orders, and probation. When determining a sentence, the Youth Justice Court must remember that the purpose of sentencing under the Act is to hold the young person accountable by using fair sanctions with meaningful consequences, and promoting their rehabilitation and reintegration into society. This principle is based on the belief that this is an effective way to contribute to the long-term protection of the public.

R. v. H.W.G. – THE DECISION

In sentencing this young person, the Judge noted that...

I...am mindful of the direction in the Act to consider non-custodial sanctions for all young persons, especially aboriginal young persons. I have accepted for my purposes that aboriginal young men are more vulnerable to pressure to become involved in gangs and criminal activity. This sinister presence in our city can affect young aboriginal men who come from pro-social supportive families but who may be vulnerable to the enticement and pressures of anti-social peers.

The Judge further noted that...

this young person has extricated himself from the gang influences and has done so with considerable difficulty and the support of his family.

The Judge expressed concern that the progress the young person had made could be lost if he were exposed to negative influences in an open custody setting and that, in this case, custody was “best avoided for the sake of his rehabilitation”. The young person received a Deferred Custody and Supervision Order (DCSO) for a period of six months. This type of order allows a young person to avoid custody provided that they comply with certain conditions. If conditions are broken the young person can be placed in custody for the remainder of their sentence. The order in this case included conditions that the young person attend anger management/cognitive skills/assertiveness programming and perform community service, abide by a curfew, have no contact with his co-accused, and write a letter of apology to the victim of the robbery.

It is important to note that the impact this offence had on the victim was not overlooked. The victim had indicated that he wanted the offenders to appreciate the fear that the incident had caused at the time of the incident and the concern it had caused about the potential for violence in the future. He was prepared to accept a written apology.

questions for thought

What are some arguments that can be made for moving away from custodial sentences when there are other reasonable alternatives to custody?

What are some arguments that would support the use of custodial sentences for all serious or violent offences, such as the case here?

Some people suggest that youth criminal behaviour may be less established and easier to correct with proper support and supervision, because of the young person’s level of development and maturity. How is this reflected in the YCJA generally? How is it specifically reflected in the sentencing provisions?

APPENDIX 1 : YOUTH CRIMINAL JUSTICE ACT – HOW IT WORKS

what is the *youth criminal justice act* ?

THE YOUTH CRIMINAL JUSTICE ACT (YCJA):

Sets out how we deal with young people who have committed criminal offences.

- covers young people who commit criminal offences after they become 12 years of age but before they reach 18 years
- deals with charges under the *Criminal Code*, the *Controlled Drugs and Substances Act*, and other federal laws
- does not apply to provincial laws such as liquor or traffic laws

UNDER THE YCJA, IF THE POLICE BELIEVE THAT YOU HAVE COMMITTED A CRIMINAL OFFENCE, THEY CAN...

- use extrajudicial measures, which do not require you to go to court
- charge you with an offence
- arrest you, charge you, release you, or keep you in custody (jail)

IF YOU TURN 18...

- the YCJA still applies to any offences that took place before your 18th birthday

IF YOU ARE UNDER 12 YEARS OLD, YOU CANNOT BE CHARGED WITH A CRIMINAL OFFENCE. HOWEVER...

- the police could warn you, take you home and talk to your parents
- the police, your parents or any concerned person could go to the Department of Community Resources and Employment
- the Department could take you out of your parents' care, in cases where your parents cannot control you

YOU MAY RECEIVE AN ADULT SENTENCE IF...

The Crown indicates its intention at the beginning of the court proceedings and...

- you are over 14 years old
- you are charged with a serious violent offence
- you have a criminal record involving two serious violent offences

**YOU WILL RECEIVE AN ADULT SENTENCE IF...**

- you are 16 or 17 years old
- you are convicted of murder, attempted murder, manslaughter, or aggravated sexual assault, and
- the Judge does not make an order that a youth sentence must be imposed

what are my rights if I face charges under the YCJA?**YOU HAVE THE RIGHT TO...**

- be told what you are charged with, and why, in words you understand
- have a lawyer when considering sanctions or at any stage of judicial proceedings
- talk to a parent or other adult
- have the police stop questioning you until after you have had the chance to talk to a lawyer as well as a parent or other adult
- have a lawyer and a parent or other adult with you if you give a statement to the police
- be brought before a Justice of the Peace or the court within 24 hours to determine your release
- be told of your rights in words you understand

DO I HAVE TO SAY ANYTHING TO THE POLICE WHEN I AM ARRESTED?

You are not required to tell the police anything other than to identify yourself. This gives you a chance to talk to a lawyer and a parent or other adult before you talk to the police. Any statement that you do give to the police may be used against you in court.

THE POLICE MUST TELL YOUR PARENTS...

- why and where you are in custody
- what you are charged with
- when and where you go to court
- that you have a right to a lawyer

A LAWYER CAN...

- help protect your rights
- explain the law and how court works
- help you understand the consequences of extrajudicial sanctions
- help you decide whether to plead guilty or not guilty

- help you at your bail hearing
- represent you at your trial

CAN I AVOID GOING TO COURT?

Extrajudicial measures can help you avoid court proceedings. Before charging you, the police must think about whether it is necessary to even go to court. In fact, extrajudicial measures are presumed to be adequate to deal with first-time, non-violent offences. They also may be used to deal with other situations if using such measures, instead of going to court, would hold you accountable for your offending behaviour. Options for extrajudicial measures include...

- taking no further action
- giving you a formal warning
- referring you to community programs, with your consent, to help you avoid the wrong choices that led to the offence
- using extrajudicial sanctions, such as requiring you to perform community service or pay back the victim for any harm you may have caused, counselling or treatment programs

Extrajudicial sanctions are the most formal type of extrajudicial measure. You must accept responsibility for your offending behaviour and agree to the extrajudicial sanctions. You have the right to talk to a lawyer before they are imposed. If you do not complete all of the things you are required to do under extrajudicial measures, you still could be charged and brought to court.

The province may have special rules that require permission from the government before charges can be laid in certain cases. This gives a final chance to deal with the offence without having to go to court.

what happens if I am charged and go to court?

IF YOU ARE IN CUSTODY...

- you are brought to court and the Crown Prosecutor may agree to let you out until your next court date
- you may have a bail hearing

At the bail hearing, the Judge decides whether to let you out and gives you a new date to come back to court.

SHOULD MY PARENTS COME TO COURT?

Yes. You have a better chance of being released if an adult is there. A parent or adult should always go with you to court.

**AT YOUR FIRST APPEARANCE IN COURT...**

- someone reads out your charge
- the Judge asks you if you understand
- you plead guilty or not guilty

IF YOU DO NOT HAVE A LAWYER...

- the Judge must ask you if you want one
- you have a right to ask for a lawyer or to have additional time to hire one
- if you ask, the Judge must appoint a private lawyer or send you to legal aid
- the Judge can postpone court to give you time to talk with your lawyer

IF YOU PLEAD NOT GUILTY...

- the Judge sets a date for your trial
- at the trial, the Judge listens to the evidence and decides if you are guilty or not guilty

After a finding of guilt, the court decides on an appropriate sentence. A range of sentencing options is available for the court to use.

BEFORE GIVING A SENTENCE, THE JUDGE...

- listens to any suggestions made by the Crown Prosecutor, you, your lawyer, your parents or the youth worker
- can call a conference of community members, for advice on an appropriate way to hold you accountable for the offence
- can ask for a pre-sentence report

what is a pre-sentence report?

It is a written report that gives the Judge a better understanding about you and your life. A youth worker writes the report after talking to you, your parents, teachers, and others. The victim may be interviewed as well.

In deciding what sentence to give, the youth justice court considers such things as...

- how involved you were in committing the crime
- how much harm the victim suffered
- whether you have compensated the victim or made amends to the community at large
- whether you have any prior convictions

POSSIBLE SENTENCES INCLUDE...

- a reprimand
- an absolute discharge or conditional discharge
- paying a fine of up to \$1,000
- doing community service work
- doing personal service for the victim
- paying for, replacing or returning stolen or damaged property
- probation for up to two years
- a period of custody followed by supervision in the community

For murder, the maximum sentence is ten years, of which up to six years may be in custody and the balance under supervision in the community. Second degree murder carries a maximum sentence of seven years, of which no more than four years can be served in custody. If the offence is any other type where an adult could receive life imprisonment, the maximum youth sentence is three years, of which no more than two years can be in custody. For most other offences, the maximum sentence is two years, of which 2/3 of the sentence is in custody and 1/3 supervision in the community.

what happens if I get custody and community supervision?

Custody means you are held in a correctional facility. Generally, youth correctional facilities are separate from ones for adult prisoners. If you turn 18 while in custody, you can serve the remainder of your custody in the youth facility until you turn 20. There may be some cases where you would be allowed to remain in the youth facility after you turned 20, if the authorities believe that it would be in your best interests, and would not endanger other people.

Community supervision is when you can live in the community, possibly with a parent or other responsible adult. However, you may be required to be in certain rehabilitation programs and report regularly to a youth worker.

will I have a record?**YOU WILL HAVE A CRIMINAL RECORD IF...**

- you are found guilty of an offence at your trial
- you plead guilty to an offence

YOU WILL NOT HAVE A CRIMINAL RECORD IF...

- you are referred to extrajudicial measures and successfully complete any conditions
- the charge is stayed or dismissed
- you receive an absolute discharge or a conditional discharge and successfully complete all conditions



A CRIMINAL RECORD...

- will **not** automatically disappear after you turn 18 years old
- may make it difficult for you to get a job or travel to other countries
- may make it difficult for you to get out on bail if you are arrested again
- may result in a harsher sentence if you are found guilty of a charge in the future

will my name be publicized?

Generally, your identity cannot be published. However, there may be a few exceptions, if...

- you receive an adult sentence
- you are at least 14 and have been found guilty of a presumptive offence (murder, attempted murder, manslaughter, aggravated sexual assault or any serious violent offence where an adult could be sentenced to more than two years imprisonment)
- a court allows publication of your identity, to help the police locate and arrest you

the justice system and the courts

THE POLICE

The police are the first point of contact with young persons. The police may question, charge, and in certain circumstances arrest, if they reasonably believe that the young person has committed an offence or is about to do so. Under their discretionary powers, the police may take informal or formal action. Informal action may be a warning, and/or contact with the young person's parents. If police take informal action parents may not be notified. The police may also refer the young person to a community program or resource. Formal action would consist of use of extrajudicial sanctions or an arrest. In these cases the parents must be notified. The person administering the program of extrajudicial sanction is responsible for notifying parents when extrajudicial sanctions are used. If the young person is arrested, the police must advise the young person right away of his or her right to counsel. If the offence is indictable (a more serious offence), then the young person may be fingerprinted and photographed.

ARREST

The law requires that upon arrest, the youth be informed of his or her right to a lawyer and the right to remain silent. The youth also has the right to know the charge or charges when being arrested.

To protect a young person there are special provisions for arrest and the making of a statement – the youth has the right to consult with his or her parents and a lawyer and to have them present before making any statement.

Young persons may be detained only for the protection or safety of the community or to ensure the young person's appearance in court. Usually the youth is detained in a residential setting. Young persons in temporary detention are to be held apart from adults unless a Youth Justice Court Judge orders otherwise.

THE COURTS

Young persons have the right to retain and instruct counsel at any stage. The Crown Prosecutor is responsible for determining whether there is a valid case against the young person. If there is not, no further action is taken. If there is a valid case the Crown Prosecutor may refer the young person to an extrajudicial sanctions program, if available, without bringing the case to court.

Most youth cases that go to trial involve a Judge only. There is no jury. The choice of trial by Judge and jury (preceded by a preliminary inquiry), or trial by a Judge alone (also with a preliminary inquiry) is available in some cases, but this is the exception and involves only the most serious criminal cases. For example, young people who may receive an adult sentence are entitled to this choice, as are those charged with very serious offences such as murder before the young person has turned 14.

At the start of proceedings, the Judge must ensure that the young person understands the charge and explain that the young person may plead "not guilty" or "guilty". If there is a guilty plea, the sentence may be decided at once, or there may be an adjournment while a probation officer prepares a pre-sentence report.

Medical or psychological reports may be ordered by the court at any stage of the proceedings, or may be requested by the Crown Prosecutor, defence counsel, or the young person, to assess physical or mental illness, mental retardation or learning disabilities.

A "not guilty" plea will usually result in an adjournment to a later trial date.

If a young person is arrested and detained in custody, the first court hearing will usually be concerned with continuing the detention or granting release. The Judge can release the youth to a responsible adult who will take care of the young person and exercise control over him or her. The young person must be willing to be placed in that person's care. If a parent does not attend the court hearing, the Judge may require the parent to attend subsequent proceedings. In certain circumstances, Judges may also require a young person to be detained for medical or psychological examination.

At the trial, the defence and the Crown Prosecutor present their cases, and may call witnesses. The Judge then makes a finding on the basis of the evidence brought out at the trial.

If the young person is found guilty, the Judge may require a pre-sentence report. This report must be prepared if the sentence involves custody.

Sentences available to the Judge under the *Youth Criminal Justice Act* include...

- **An absolute discharge.** There is no criminal record and no further consequences for the youth.
- **A conditional discharge.** A Judge attaches conditions to the discharge. After the young person completes the conditions the discharge is complete. The young person then has no criminal record and there are no further consequences for the youth.
- **A fine up to \$1,000.** The young person's ability to pay will be taken into consideration.
- **Restitution.** The young person must return property to its rightful owner or pay for the value of damaged or missing property.




- **Compensation of an innocent purchaser.** For example, where an item has been stolen and then purchased by an innocent third party, the goods would be returned to their rightful owner and the third party could be compensated with money.
- **Compensation.** This may be a money payment to the victim of the offence or the young person may be asked to work off the debt to the victim by performing some work directly for the victim. The victim must, of course, agree to this. This is a personal service order.
- **Personal Service Order.** A service for the victim, such as painting a fence or cutting grass, is a method of compensating the victim for the loss or damage.
- **Community Service Order.** The young person is ordered to perform work for the community, such as work for a non-profit organization. The amount of time cannot exceed 240 hours and must be completed within 12 months.
- **An order for prohibition, seizure, or forfeiture.** An item such as an ATV (all terrain vehicle) may be seized or its use prohibited for two years or more.
- **A period of probation for up to two years.** If an offence is committed while on probation, a sentence for breaching probation as well as the new offence may be imposed.
- **A Custody and Supervision Order.** A young person may receive a sentence of custody and supervision for up to two years. Two-thirds of this sentence is in custody and one-third under supervision in the community. Where an adult who committed the offence could be subject to life imprisonment, the young person may receive an order for custody and supervision of up to three years. No more than two years of this time can be in custody; the remaining period is served under supervision in the community. A young person convicted of murder may receive a longer custodial sentence: second degree murder carries a maximum sentence of seven years, of which no more than four years can be served in custody. For murder, the maximum sentence is ten years, of which up to six years may be in custody and the balance under supervision in the community.
- **Intensive Rehabilitative Custody and Supervision Order.** Young persons convicted of murder, attempted murder, manslaughter, aggravated sexual assault or a third serious violent offence, may be ordered to receive treatment and intensive supervision for a mental illness or disorder, a psychological disorder or an emotional disturbance.
- A Judge may impose additional conditions that he or she considers are in the best interests of the young person and the public.

CUSTODY

Young people may serve a sentence of custody in an “open” facility or in a “secure” or “closed” facility. Open custody facilities include facilities such as a community residential centre, a group home, a child care institution and a forest or wilderness camp. Open custody facilities are designated by the province and in most cases they are operated by community agencies.

Secure custody facilities are distinguished from open custody facilities by additional security in the building design and limitations on the young person’s freedom of movement. Most secure facilities are operated by the Ministry of Corrections and Public Safety or the Ministry of Community



Resources and Employment. Secure custody is intended as the last resort for youth who have exhausted alternative programs or placements and where the protection of society requires this sentence.

The *Youth Criminal Justice Act* limits the use of custody. It states custody cannot be used unless the young person has committed a violent offence; he or she has failed to comply with non-custodial sentences; he or she has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under the Act; or there are aggravating circumstances that make it an exceptional case. Custody can be imposed in any of these four types of cases, but not otherwise.

The Act provides that a young person may be sentenced as an adult if the youth is 14 years or older and has committed murder, attempted murder, manslaughter, aggravated sexual assault, or has committed at least two previous serious violent offences and the new offence charged involves serious violence. An adult sentence may be imposed where it can be demonstrated that a youth sentence would not be of sufficient length to hold the young person accountable.

As a general rule, a young person under the age of eighteen who receives an adult sentence serves the sentence in a youth facility.

REVIEW OF SENTENCE

The *Youth Criminal Justice Act* provides for the automatic review of a sentence to custody after one year, where the sentence is longer than one year. The young person can request a review before that time, but it is guaranteed after one year. This will permit the Youth Justice Court to look at other sentencing possibilities and consider the young person's behaviour. Sentences that do not involve a period in custody may also be reviewed; the young person may apply for a review after six months, but must show that there has been a material change in circumstances.

APPEAL

As in the adult justice system, a young person has the right to appeal. The decision of the Judge may be appealed as well as the sentence imposed by the Judge. The appeal provisions of the YCJA again emphasize that adult-type judicial processes are used in dealing with young people in Canada.

RECORDS

The police, the courts, government departments and agencies, and some other organizations and individuals keep records of their contact with a young person. The Act provides complex rules for keeping, accessing and disclosing of young persons' records. After a certain period of time records must be destroyed or may not be disclosed.

Records may not be disclosed two months after charges are dismissed, withdrawn, or in the case of a finding of guilt where a reprimand is given. If the young person is acquitted, the records may not be disclosed two months after the time for taking of an appeal has expired. If charges are stayed, with no proceedings being taken against the young person for a year, the records may not be accessed after that year has gone by.



Where extrajudicial sanctions have been used, records may not be accessed two years after the young person consents to participate in an extrajudicial sanctions program.

If the young person is found guilty, records may not be disclosed if there is no further charge or finding of guilt for a period of three years after completion of the sentence for a summary offence, and for a period of five years from completion of the sentence for an indictable offence.

Despite the general rules that records will not be made available after a certain period of time has elapsed, records of very serious offences are excepted. For example, records may be detained indefinitely in a special record repository for murder, attempted murder, manslaughter, aggravated sexual assault, and for a third serious violent offence.

A young person who reoffends after he or she turns 18 but before the period of time has passed to close the youth record will find that his or her youth record becomes part of the adult record. From then on, the rules that apply to adult records govern the access to the youth record.

The reason behind destruction and non-disclosure of records is based on the concept of a "second chance" offered to young people who come into conflict with the law and who do not reoffend. The process is automatic; a young person does not have to do anything to make sure the record is destroyed or not disclosed.

PUBLICATION

The media cannot publish the identity of a young person under the YCJA except in certain limited circumstances. This rule has been held to be a reasonable limitation on the freedom of the press because it allows the press to report information about all other aspects of the criminal case except information identifying young persons involved in the case. This emphasizes the concept of "second chance" for a young person and his or her re-entry into the community. The goal of this section is to allow young persons to have a better chance of re-establishing themselves in the community following involvement in a criminal case. Under the YCJA, Youth Justice Court is open to the public, unless the Judge decides otherwise.



GLOSSARY

- Absolute Discharge*** a disposition sometimes given to young persons found guilty of an offence. No further action is taken, and the young person is deemed not to have committed the offence – a criminal record does not result.
- Extrajudicial Measures*** out-of-court ways of dealing with a young person who has been in conflict with the law
- Extrajudicial Sanctions*** programs of extrajudicial sanctions (or penalties) often involve an agreement with the young person where the young person admits he or she did something wrong and then does something to make up for the wrong (e.g., the young person apologizes, does volunteer work for a community organization, gets counselling). The young person is not found guilty, but the extrajudicial sanctions arrangement is recorded by authorities. If the young person does not get into further trouble, the record of the extrajudicial sanctions is destroyed after two years.
- Sentence*** the penalty that a Judge gives a convicted person. For young persons, sentences can include custody and supervision, a fine, a reprimand, probation, an order that the young person pay back the victim, an order that the young person do work for the victim or the community, etc.
- Indictable Offences*** generally, indictable offences are more serious crimes (e.g. armed robbery, murder), compared to summary conviction offences, which tend to be less serious.
- Open Custody*** detention of a young person in a place such as a special home or wilderness camp.
- Pre-sentence Report*** a report prepared by a youth probation officer at the request of a Judge. The probation officer writes the report after interviewing the young person, his or her parents or guardians and other appropriate people. This report gives the background of the young person and information about the young person's present attitude. The Judge will refer to the report before sentencing the young person.
- Restitution*** return of property to its owner or payment to the victim of the crime for any damage or injury. A Youth Justice Court Judge may order that restitution take place.
- Right to Counsel*** the right to have a lawyer who acts in the interest of the accused; for a young person, this right extends to any stage of proceedings taken against him or her, including the consideration of whether to use an extrajudicial sanction.

***Secure or Closed
Custody***

detention of a young person in a youth detention centre. There may be security such as bars on the windows and locks on the doors.

***Summary Conviction
Offences***

generally, summary conviction offences are less serious offences (e.g. vandalism, shoplifting), as compared with more serious "indictable" offences.

Warrant

a court order authorizing police to arrest a person or to search a place.

Young Person

a person from 12 to 17 (inclusive).

***Youth Probation Officers/
Youth Workers***

government employees who interview young persons and prepare extrajudicial measures agreements, pre-sentence reports, and other reports for the court. They also supervise young persons who are on probation or who are performing community service or personal service orders.

TRUE OR FALSE

- | | T | F |
|---|----------|----------|
| a) Governments in each society make laws. | _____ | _____ |
| b) By making laws against a certain type of action or behaviour, a government creates offences. | _____ | _____ |
| c) Different societies have different offences because each government makes its own laws. | _____ | _____ |
| d) The federal government is the only government that can make laws about offences. | _____ | _____ |
| e) It is always a good defence to say "I didn't know that there even was a law". | _____ | _____ |
| f) If an act is not forbidden in a written Canadian law (a statute) it is not a criminal offence in Canada. | _____ | _____ |
| g) The accused is guilty until proven innocent. | _____ | _____ |
| h) The standard of proof in a criminal case is beyond a reasonable doubt. | _____ | _____ |
| i) Under the YCJA, parents should be informed of measures or proceedings involving their children. | _____ | _____ |
| j) Young people accused of crime have the same rights as adults and require additional safeguards because of their age. | _____ | _____ |

TRUE OR FALSE – ANSWERS

	T	F
a) Governments in each society make laws.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) By making laws against a certain type of action or behaviour, a government creates offences.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Different societies have different offences because each government makes its own laws.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) The federal government is the only government that can make laws about offences.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) It is always a good defence to say "I didn't know that there even was a law".	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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h) The standard of proof in a criminal case is beyond a reasonable doubt.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Under the YCJA, parents should be informed of measures or proceedings involving their children.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Young people accused of crime have the same rights as adults and require additional safeguards because of their age.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DISCUSSIONS & ACTIVITIES

1. What can a school or community do to prevent criminal activity? How can students help?
2. Find out about programs in your area for crime prevention. Invite a speaker to your class to talk about crime prevention.
3. Are there laws about offences that need to be changed? Why? How can students become involved in law-making or changing?
4. Why is it necessary to have two sets of offences (indictable and summary)?
5. Section 110 of the YCJA generally prohibits the public identification of youth and others involved with a criminal offence, including the suspect, the victim and witnesses under 18. One exception occurs when it is necessary to help apprehend a dangerous suspect. Another exception occurs where the youth receives an adult sentence. The name may be published after the youth receives an adult sentence.

Do you think this is fair? Why or why not?

6. While a young person's record will not automatically disappear when the youth turns 18, most young persons' criminal records are not kept indefinitely. The reason for destroying criminal records is to give young people a second chance.

Do you think records should be kept indefinitely? Why or why not?

Records under extrajudicial sanctions are destroyed two years from the date the young person agrees to participate.

Summary conviction records are destroyed three years after the sentence is completed.

Records of a conviction for an indictable offence are destroyed five years after the sentence is completed.

HIDDEN WORDS

Objective

A follow-up activity, to reinforce recognition of some of the offences the *Youth Criminal Justice Act* deals with under the *Criminal Code* and the *Controlled Drugs and Substances Act*.

S H O P L I F T I N G C B
 X M Y R E G R O F W B D R
 O N A R S O N Z V X A E E
 K I D N A P P I N G S F A
 M N R T S B V A U Y S H K
 A L D M P L V B T R A J A
 T L U A S S A C S Q P K N
 H J A K Q T N U L P S I D
 E H R I T Y D D G M E G E
 F D F E R W A E K H R C N
 T C R E S V L F J N T B T
 R Y J O Y R I D I N G E E
 F B G F T U S G I O Z A R
 A R E D R U M H S G U R D

Assault

Theft

Fraud

Shoplifting

Joyriding

Forgery

Manslaughter

Vandalism

Murder

Kidnapping

Drugs

Break and Enter

Arson

Trespass



NOTES

CURRENTS



CURRENT EVENTS

rationale

An important part of a law-related education program includes the study of current events that affect law-making and law enforcement. First Nations and other Aboriginal communities are pursuing methods of changing the justice system so that it accommodates the needs and cultural values of their people. Some observers suggest that the contemporary Canadian justice system has inherent characteristics that may work against the Aboriginal population who come into contact with the law. This conclusion is based on certain criminal statistics, incidents of racism, repeat arrests and trials, and increased seriousness of criminal activity. The lack of success with rehabilitation for Aboriginal youth results in higher rates of recidivism and general frustration and discontent with “the system”. Aboriginal people, including youth, require an awareness of what is taking place by way of modification and innovation in the justice system. They need to realize that changes are taking place and that these changes are influenced by the expressed needs and wishes of their people. This will provide encouragement for them to become positively involved. It will give them the confidence and hope that positive change is possible.

learning outcomes

KNOWLEDGE: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- learn how to locate and read newspaper articles and use other media such as videos, radio, TV and internet sources to determine what events are taking place
- realize that interpretation of media information requires specific skills
- understand that changes and adaptations are taking place to help meet the needs of Aboriginal people in their quest for traditional values, non-adversarial approaches and the elimination of racial discrimination in the justice system
- understand that Aboriginal justice is about Aboriginal rights exercised by individuals, such as hunting and fishing rights, and group rights such as self-government and land rights, including resources such as water and timber
- know that Aboriginal justice through justice committees and community policing has the potential to help resolve conflicts of a criminal, family, or other civil nature within their community
- learn that circle sentencing, mediation, healing lodges and other practices reflect the Aboriginal cultural values and beliefs



SKILLS: STUDENTS WILL BE GIVEN OPPORTUNITIES TO...

- practice reading and listening skills required to comprehend factual information in report and journal writing styles
- read “between the lines” and make inferences by using knowledge they may have from other sources and experiences
- use communication skills while participating in large and small group discussions
- develop and use map skills
- practice thinking and writing skills used for summarizing information
- develop and practice listening skills

VALUES: STUDENTS WILL HAVE OPPORTUNITIES TO...

- consider the influential role of traditional values in their lives today
- value the Elders and their wisdom as they help bring meaning to the lives of the people
- value the efforts being made by the people to restore healing through traditional conflict resolution
- appreciate the cultural meaning placed upon relationships with other people and in the context of one’s surroundings
- value their cultural heritage and take pride in their identity as Aboriginal peoples

BACKGROUND INFORMATION

It would be useful for teachers to become familiar with the following...

- changes in the Canadian justice system that are brought about to reflect the cultural values and beliefs of Aboriginal peoples, as well as to address various concerns with how Aboriginal peoples are affected by the justice system (these will include the historical spiritual emphasis such as prayers and sweats, other personal spiritual beliefs, individual and community healing, circle sentencing, varying degrees of isolation and banishment, mediation involving significant community and justice personnel, community policing, family group conferences, and activities promoted by Community Justice Committees)
- the school and community aspirations for dealing with youth who deviate from acceptable behavioural standards
- the peacekeeping roles played by various community people
- current and recent legal cases, especially those in criminal law that have the potential for change and modification due to Aboriginal influences (aspects of Aboriginal cultures that demonstrate the value placed on the relationships of people to their surroundings)
- justice initiatives made by local communities and tribal councils, including their Community Justice Committees (the appointment of Aboriginal justices of the peace, victim services programs, crime prevention programs and cooperative arrangements with the formal justice

system to provide opportunities for community input such as circle sentencing and community policing agreements)



STUDENT RESOURCES

Student resources are included as handouts. Teachers are encouraged to use various media with current information on the topics.

People resources such as Elders, justice committee members, community police and Chief and Council members who may provide stories, background history, related experiences and information on current government initiatives.

The handout, *From the Perspectives of...* will also be helpful to provide further information and ideas on current justice issues.

TEACHER RESOURCES

Teachers are encouraged to create and maintain a file of current events dealing with justice in Canada, especially those events that relate to Aboriginal youth and their communities.

information for teachers

The following is brief background information on some current topics receiving consideration and attention in communities and the media. Teachers are encouraged to review additional information by referring to resources such as reference books and current articles. The articles provided for this section on transitions provide limited information. Encourage students to search for additional articles or information on relevant websites, to find material that is suitable for a class current events file and bulletin board display.

NEW DIRECTIONS

Several processes consistent with the traditional values and beliefs of Aboriginal peoples are seen as alternatives to some practices in the civil and criminal justice system. These alternatives are viewed as having the potential to reduce crime and settle disputes more effectively, attend to the needs of victims, provide rehabilitation opportunities for offenders and foster the healing process for individuals and the community. One process used in many situations is circle sentencing. Another is mediation where the "triangular" approach is often modified to create a "talking" or "healing" circle. This change allows for input from several persons affected by the situation. Emphasis in most cases is on the rehabilitation of offenders and healing from within the total community. The goal of this holistic approach is restoration and rehabilitation through spiritual growth and attending to the social, physical and psychological needs of the people.

Aboriginal community justice initiatives are at various stages of development throughout Canada. The guiding principles of justice initiatives reflect the belief that a justice system is inherent to the development of self-government and that the system will work in cooperation with federal and provincial justice systems. It is also believed that justice initiatives should be community-based and controlled, and that these initiatives should create and maintain the following focus and priorities...



- crime prevention
- policing and peacekeeping
- alternatives to current court and judicial processes, such as diversion, mediation, and healing circles
- activities related to the court and judicial process such as Aboriginal court worker programs
- supervising and working with persons who have been sentenced by the court
- inmate assistance in follow-up and after care
- youth justice issues

It is further believed that justice activities should be integrated with other services already provided through health, education, and social development. Specific initiatives may include sentencing circles, victim/offender reconciliation, victim assistance programs, community education on justice issues and recovery of traditional law. A Community Justice Committee may be established to represent the community on justice issues and to determine the needs and priorities, as expressed by members of the community. It may take specific action that the community wishes and may also provide direction and supervision when community justice initiatives are in place.

The following quotation from a report by the Law Reform Commission summarizes "Aboriginal Aspirations" for their own justice system...

Aboriginal people have a vision of a justice system that is sensitive to their customs, traditions and beliefs. This vision is a natural outgrowth of their aspirations to self-government and sovereignty. They desire a criminal justice system that is Aboriginal-designed, -run, and -populated, from top to bottom.

Undoubtedly there are many contrasting visions as to what constitutes an Aboriginal justice system, but fundamental is the belief that the system must be faithful to Aboriginal traditions and cultural values, while adapting them to modern society. Hence, a formal Aboriginal justice system would evince appropriate respect for community Elders and leaders, give heed to the requirements of Aboriginal spirituality and pay homage to the relation of humankind to the land and to nature.

The Aboriginal vision of justice gives pre-eminence to the interests of the collectivity, its overall orientation being holistic and integrative. Thus, it is community-based, screening mediation and conciliation while seeking an acknowledgment of responsibility from those who transgress the norms of their society. While working toward reconciliation between the offender and the victim, an Aboriginal justice system would pursue the larger objective of reintegrating the offender into the community as a whole.

The Aboriginal vision challenges both common and civil law concepts. Statute law becomes less important. Within an Aboriginal justice system, laws would not be uniform or homogenous; they would vary from community to community, depending on customary practices. Customary law would be the binding force promoting harmony within the community.

While possessing common general characteristics, an Aboriginal justice system would of necessity be pluralistic. What such a system would actually look like is unclear. This haziness is a source of frustration. Much essential detail is missing, and Aboriginal people are hesitant to provide that detail, not because they are incapable of providing it – some communities have well-developed and well-articulated models – but because, in their view, they should not have to do so. They aspire to local control. Their contention is essentially: "Give us the keys. Let us control the system. We can hardly do worse than you have".

Source: Law Reform Commission of Canada Report No. 34, 1991. *Report on Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice.*



As self-government evolves, the concept of what a justice system should be like is being examined. Many groups, including tribal councils, have formed justice committees. The following commentaries about the justice system may be useful in opening discussions about changes various people feel are needed and in identifying approaches to justice that are presently working or being pursued as future models.

There have been many criticisms of the Canadian justice system. These criticisms concern treatment of both adults and youth. The statistics on rates of incarceration are the most disturbing...

An inquiry into imprisonment in Canada cannot fail to reveal that as a society we resort to the use of prison more frequently than most other western countries and that our use of this sanction is increasing rather than diminishing. The issue of alternatives to imprisonment is one of critical importance to a society which is committed to freedom as one of its fundamental values.

Native people come into contact with Canada's correctional systems in numbers grossly disproportionate to their representation in the community. More than any other group in Canada they are subject to the damaging impacts of the criminal justice system's heaviest sanctions.

Source: Michael Jackson: *Locking Up Natives in Canada – A Report of the Committee of the Canadian Bar Association on Imprisonment and Release*, 1989.

The need for new approaches to justice became prominent issues during the 1970s and 1980s. Statistics for the rates of incarceration of Aboriginal peoples compared to other groups made it obvious that disproportionate numbers of Aboriginal peoples were being imprisoned...

A Treaty Indian boy turning 16 by 1979 in Saskatchewan had a 70% chance of at least one stay in prison by the age of 25. A non-status or Métis boy had a 34% chance and a non-native boy of the same age had an 8% chance by comparison.

Source: John Hylton: *Locking up Indians in Saskatchewan: Some Recent Findings (1977)* in *Deviant Designations, Crime, Law and Deviance in Canada*. Editors, T. Fleming & L.A. Visano, 1983.

Native people in general are not faring well within the legal system, and native women are at an even greater disadvantage. Native women make up thirteen per cent of the female population in federal prisons. In the Yukon and Labrador, they make up almost the entire female population in certain prisons.

Treaty Indian women are 131 times more likely to be admitted to a provincial correctional centre than non-native females; non-status or Métis women, 28 times more likely.

Source: Penny Desjarlais, "Native Women and the Law." Page 8 in *Legal Perspectives* Volume 14, Number 4. May 1990.

These statistics have not greatly improved in the last twenty years. There are many theories as to why the present criminal justice system seems to be failing. There is agreement that there needs to be change. While most people would argue for a criminal justice system that is predictable and consistent, many see a need for more flexibility and more alternatives to the ways in which victims, as well as the offenders, are treated.



INTRODUCTION AND MOTIVATIONAL SET

what are they saying about justice for aboriginal youth?

PURPOSE

This activity gives students experience in dealing with different views on the same subject, in this case youth justice. They will also gain knowledge about various aspects of traditional and contemporary justice.

PROCEDURE

- Provide students with copies of the handout *From the Perspectives of...* and explain what roles the various people have.
- Ask students why different people might have different perspectives or ideas on the same subject. (Personal experiences, different kinds of information, lack of knowledge, emotional influences and age are examples.)
- There are many terms and concepts included in the “perspectives” that may require explanations. Group the students and ask each group to underline words they do not understand. Ask students to give assistance to others, use dictionaries, use the “Concepts in Customary Law” activity in the section *Customary Law*, or provide meanings orally. It is important that students understand most of the terms since they are included in other activities in this section.
- Direct each group of students to write the main ideas from the perspectives given by two or three of the individuals. (There are eleven in total.)
- Direct students to list the perspectives that are common to each of the individuals in their group. Discuss possible reasons for these similarities.
- Ask students to find perspectives that are unique to only one person. Discuss reasons for this.
- Direct students to make a chart with the names of the individuals at the top and under each name make a list of sentences that summarize each of the main ideas given by that person. It is important that students try to write these ideas in their own words, even though key words for concepts are used.
- Give students the example that follows.

Elder

- ▶ Justice is the responsibility of Aboriginal people in their communities.
- ▶ Most victims are women and the victims’ concerns are not looked after.
- ▶ Youth need a sense of belonging and identity so they have purpose in life and do not struggle with drugs and wild times.
- ▶ Elders can teach spirituality and culture in schools and prisons and in this way bring back traditional values that will start the healing.



- ▶ Traditional ceremonies such as sweat and healing lodges, or other spiritual values or philosophies adopted by individuals may be useful to help our people.
- When students understand the meanings of each of the perspectives, have groups of students make a mural that illustrates the main ideas of each person's perspective. Groups can do more than one mural or combine different perspectives on the same illustration.
- Students may create a role-play using the perspectives of two or more persons. The objective is to provide opportunities to consider different views.
- To review and summarize the activities ask students to list their perspectives on justice and the justice system. Students can share these with the class.
- Another culminating activity is to have students make arrangements to meet with one or more individuals in their community who hold the same position as those given in the *Perspectives* handout. Based on the perspectives they now have, students can list questions that help to clarify the views and possibly add different ideas from community personnel.

FROM THE PERSPECTIVES OF...

What Can Youth Learn from Others about Justice and the Justice System?

The following are some different perspectives about what young people need to know about justice. As Tribal Councils, justice committees and others struggle with what a justice system *should* look like, young people need to know about the system that is still in place. Whatever system or systems evolve, young people must be aware of the basic concepts of justice and that people may have differing views.

FROM AN ELDER'S PERSPECTIVE...

- The responsibility for justice must be given back to the communities.
- We need to gain control over the whole area of justice. The direction has to come from Elders in part. It has to be a mix of old historic law (customary law) mixed with contemporary law.
- Most victims are forgotten in the present system.
- Most victims are women.
- Young people are struggling. Some think that to have fun means to go drinking. You can have fun in other ways.
- Youth need a sense of belonging. They don't have a sense of identity. That is why they are acting up.
- Traditional values have to be brought back into our communities to start the healing process.
- Elders should go into the schools and into the correctional institutions to teach young people Indian spirituality and Indian culture.
- The spiritual beliefs are important.
- Ceremonies like the sweat lodge are working. When we are in there we are healing our spirit.
- We must go back to our own culture. We need to understand what the traditional ways were. I think that would really help us.

FROM A CHIEF'S PERSPECTIVE...

- We have to give the responsibility for justice back to the communities. Five years ago we wouldn't have talked about the control of policing. The police, in the past, only came to our doors to arrest someone or to report a death.

FROM THE PERSPECTIVES OF... CONTINUED

- In the short term we can start by setting up our own policing. In the longer term, we can work towards self-government.
- The problems of the bands are all similar.
- We must teach our young people respect. Respect for the property of others.

FROM A PARENT'S PERSPECTIVE...

- Parents need to support the young person and be willing to participate in counselling.
- Parents need to participate in the healing of the young person.
- Often parents are victims themselves, in turn having come from dysfunctional families. Their healing must take place along with the young person.

FROM AN ABORIGINAL TEACHER'S PERSPECTIVE...

- Teachers must be aware of the traditional way to teach the laws (rules) of the people. They need to be aware of cultural taboos.
- Teachers must teach the consequences of actions on a grass roots level.
- Teachers should teach through legends. They need to be aware of the seasonal approach. Traditionally winter was the season of learning. It was a time of calmness, of being together; of different generations coming together; the time for legends.

FROM A SOCIAL WORKER'S PERSPECTIVE...

- There is a need for more early prevention programs such as the new Family Preservation Program. The objective is to keep siblings out of the justice system by providing support to the families of youth who have been in trouble with the law. Activities include role-modelling, coaching and helping families to connect with other community services.
- We need to know more about traditional healing. The entire family, not just the youth who is in trouble, must be involved in a healing process.
- Lay advocates and para-professionals have a unique role. Volunteers and youth court workers, for example, can help conciliate disputes.

FROM A JUDGE'S PERSPECTIVE...

- In the past few years I have seen significant changes in the attitudes of young people who come through youth court.
- The most astounding change I've seen is in young people who have plugged in to Elders. I have seen a change in the face of a youth after working with an Elder for just a few weeks. We should be doing everything we can to build into the system opportunities for Elders to teach youth their traditions. It cannot be done by outsiders.

FROM THE PERSPECTIVES OF... CONTINUED

- The system has failed and continues to fail. We must try to find solutions so the system does not fail anyone.
- If it were up to me I would not be building more jails. I would be putting money into crime prevention. I would do more to help young people to build their self-esteem. Instead of putting money into making the system better, we should be putting money into helping people.
- Sentencing circles will not work unless the victim is a willing participant. You cannot make it work unless the victim is part of the process.
- There is a danger in putting a protocol for a sentencing circle on paper because it is still evolving. It is just in its beginning stages and what might be happening today may not be happening tomorrow. What is happening in the north will not necessarily work in the south.

FROM A LAWYER'S PERSPECTIVE...

- A lot of family service stuff comes in under the guise of criminal matters. Minor matters such as creating a disturbance and loitering would be better handled by intervention services. Now these trivial matters go to court, the youth is put on probation, assigned to a court worker who already has an enormous case load, who puts that youth into contact with an organization such as The John Howard Society to do community work.
- This whole process could be short-circuited by giving the police greater discretion in laying charges in the first place. Instead of entering the court system, more diversion should take place. They could have the youth go directly to a mediation program, part of which may involve community service.
- Community service seems constructive; it gives temporary employment to young people who may have gotten into trouble in the first place because they had nothing to do. By itself it really does nothing to solve the problem. It is simply a stopgap measure and putting youth into the court system is often out of proportion to what they have done. It makes young people and the rest of us skeptical about the system.
- The approach of pulling out the big guns for minor offences only gives youth a familiarity with the courts and they are not as likely to be intimidated as they show up again and again over the years as they enter the cycle of offence, court, probation, community service, offence, court, etc.

FROM THE PERSPECTIVES OF... CONTINUED

FROM THE POLICE PERSPECTIVE...

City Police

- Our old role was law enforcement. The new role is known as community policing. Police want to be seen as helping communities. We act as resource people, as liaisons with the communities who can put people in touch with the help that they need (in touch with other agencies). We want people to know that the police service is there if they have a problem.
- The police are proactive in crime prevention. There are programs for solvent abuse prevention, for example. We have a victim assistance program which relies heavily on volunteers to help victims. There are school liaison programs whose two-fold purpose is public relations and education.
- Young people should be taught traditional values and ideas. In particular, they need to learn respect for others. They also need to know that there are consequences for their actions.
- Larger centres in Canada have cultural units with officers from different ethnic groups. Some cities such as Saskatoon have created a position of Aboriginal Liaison Officer. Most officers take a course in cultural awareness. The course may include Aboriginal and other cultural histories, and some information about spiritual teachings. There are speakers from various organizations. Some city police services may also have their own Elder and their own sweat lodge.

Tribal Police

- A decade ago some provinces tinkered with policing by adding local people of Aboriginal ancestry. It did not go far enough. These people were not given the full powers of regular constables. Now in some communities the communities themselves have their own bylaws and the control over who works in the community.
- Originally there were no formal "Law & Order" organizations. There was no need for anything like a police service. The people themselves took care of any disagreements or wrongdoing that arose amongst them.
- Sentencing circles are not traditional. It is a contradiction. There was no jail, no sentence handed out. They are a mix of some traditional dispute settlement mechanisms with contemporary ideas.

FROM A YOUTH COURT WORKER'S PERSPECTIVE...

- Mediation is a better process than the court process. It is a better way of doing things. We feel that it is better for youth not to have contact with the court system. By participating in the mediation process, whether young or old, Aboriginal or non-Aboriginal, people are learning that there are other ways of dealing with conflict.

- Resolving conflict doesn't have to be adversarial. Resolving conflict does not mean punishment. Mediation is not about punishment. It is an opportunity to learn the consequences of one's actions. To learn about the impact their actions have had on others.
- We focus on the incident that took place. Offenders learn not just how it is going to affect them (as they would in a court setting). They learn how it is going to affect the victim. It enables the parties to put closure on the incident.
- A mediator does not take sides. He or she is there to make sure that each side is heard. Part of our role, because we're working with youth, is to try to make sure that the agreement is a fair one. If youth are treated more harshly by mediation than by the court system, they will not be willing to enter the mediation process.
- Mediation is purely voluntary. It is not like a probation order. To reach a negotiated agreement each party has to have a say. It is an agreement that has to make sense to both parties.
- It is more cost-effective. Anything you can do at the community level has to be more cost-effective.
- You have to have local involvement in the mediation process. You need to have participation at the local level by people who know the local dynamics. Victims and offenders in smaller communities and rural areas quite often know each other.
- It is in keeping with traditional methods of handling disputes. (To sit down and talk about it. Like the talking circle.) Elders we have spoken to pretty much support mediation.

FROM A YOUNG PERSON'S PERSPECTIVE...

- It is important to know about traditions and what they mean. Spirituality is important. We see the importance of the Elders' teachings. Young people are asking a lot of questions about the sweats, about what sweet grass means. After the contact with an Elder, I no longer had a need for violence.
- Everyone is talking about youths on the reserves. What about the kids on the streets in the city? They have centres where they can hang around. Is that enough?

from _____'s perspective...
(my name)



ABORIGINAL YOUTH JUSTICE IN THE NEWS

The following pages provide a sampling of articles that deal with Aboriginal youth justice issues. The articles can be used for a variety of activities designed to improve reading comprehension or debating skills, encourage discussion, lead to further investigation or follow-up research.

A number of the articles originate from the *No Crime* pages of the Young People's Press (YPP), a national news service for youth age 14 to 24 (www.nocrimetime.net) and have been reprinted with permission. The electronic magazine portion of the *No Crime* site is part of a larger project that includes youth and professional staff writing articles that relate to youth crime prevention and submitting the articles to newspapers across Canada for publication. Other articles or excerpts have been taken from news releases and reports from various levels of government and Aboriginal organizations.

It is important to remember that these articles are intended as a sampling only, and teachers are encouraged to get their students involved in finding and understanding topical pieces or even researching and writing their own.

FEDERAL SOLICITOR GENERAL CONTRIBUTES \$135,083 TO ABORIGINAL HEALING PROJECT

MISSION, BC, March 14, 2003 - Federal Solicitor General Wayne Easter today announced a Crime Prevention contribution of \$135,083 to the Aboriginal Circle Healing Lodge Society for an Aboriginal healing project.

The Healing Ourselves Helping Others Project works with at-risk Aboriginal youth and utilizes Aboriginal men and women on conditional release, who have made positive lifestyle changes and want to give something back to the community they have harmed.

"Helping youth understand they have choices is an important step toward reducing the number of Aboriginal offenders in the criminal justice system," said Minister Easter. "The federal government has pledged to expand community-based justice approaches, especially for Aboriginal youth."

Bruce Williams, the Director of the Aboriginal Circle Healing Lodge Society, said "Through innovative, community-based initiatives, Aboriginal Brothers and Sisters returning to their communities will get the necessary support to maintain a healthy way of life and youth can be supported in making positive lifestyle choices".

The project will contribute an increased understanding of and responses to the needs of at-risk urban Aboriginal youth. The Aboriginal Circle Healing Lodge Society will provide a range of services, including culturally based ceremonies and community-based healing circles. It will also offer workshops, training sessions, and referrals to professional services.

Source: Public Safety and Emergency Preparedness Canada
www.sgc.gc.ca/publications/news/20030314_e.asp

SMOOTH RIDING FOR AT-RISK YOUTH AT CAMP CARMANGAY

August 20, 2004 Calgary, Alta.

Sometimes, at-risk youth just need a break – they need a place where a kid can enjoy being a kid. That’s just what Camp Carmangay does each summer for hundreds of disadvantaged young people in Southern Alberta. The western ranching experience helps them prepare and cope with being a young person in today’s challenging world.

“We meld traditional aboriginal and western cultures to give these young people a variety of experiences that they take with them for the rest of their life,” says Cst. Paul Wagman, Calgary Police Service. “We’re a resource to police agencies in Southern Alberta and a number of community groups, who look to us to make a difference for young people at risk of criminal behavior.”

With the generous support of volunteers and sponsors, Wagman was able to launch Camp Carmangay four years ago. This early intervention program for young people aged 12 to 15 years old includes:

- Drug & alcohol awareness
- Bullying awareness and coping strategies
- Horsemanship
- Appreciating and learning about cultural diversity
- Crime education and prevention

“We want to give these kids an opportunity to build new skills, and challenge themselves physically and emotionally - we’re there to help them make good choices for their future,” adds Wagman. Camp Carmangay relies on the generous support of volunteers and sponsors to make the program a success.

Source: Camp Carmangay Media Release @
www.campcarmangay.org/Documents/media%20release%20august%202004.pdf

OCHAPOWACE FIRST NATION, SASKATCHEWAN

Located in the beautiful Qu'Appelle Valley 170 km east of Regina, this First Nation boasts the beauty of nature, a rich cultural heritage as part of the greater Cree Nation – and now an increasingly famous boxing club dominated by...girls. This young, growing First Nation community of over 1,200 people has an average age of under 20. Its biggest youth at-risk issues are alcohol and drug abuse and smoking, but there are also some problems with drunk-driving accidents, assaults, theft and vandalism, teen pregnancy, STDs, and lack of fitness and nutrition. The hit of the FNYAR [First Nations Youth At-Risk] project has been the boxing programme, which initially attracted 24 youths – 60% of them girls – and has grown as the youngsters have succeeded at provincial tournaments and achieved local fame and success. “It has shown our youth they can succeed, and this is spilling over into interest in other sports and activities and is definitely inspiring our youth to avoid or give up high-risk activities such as drugs, alcohol, crime, unwise sexual activity and smoking by providing a positive outlook on the future,” says Cheryl Thomas, the FNYAR project manager and Ochapowace’s human services director.

Source: First Nations Youth At-Risk Summaries of Pilot Projects, April 2004 @ www.fnyar.ca/atwork.html

OFFERING ALTERNATIVES TO ABORIGINAL YOUTH

*By Eddy Robinson
Young People's Press*

Perched on the steps in his baggy pants and stretched-out black t-shirt, David* speaks candidly when asked about how he became involved in crime. Looking up, the baby-faced 16-year-old cuts to the chase: "It wasn't a survival thing," he says. "It was just something to do - a rush."

David is a Native youth. With half of the Aboriginal population of Toronto now under the age of 25, he is part of a large yet marginalized group. For some, the harsh realities of life as a young Aboriginal can lead to crime.

John*, 23, knows too well how this can happen. "The trouble I got into was usually alcohol or drug related," he explains. "Alcohol played a big part in my decisions. It made me feel invincible."

He goes on to say that whenever he was under the influence his inhibitions would vanish. "Sometimes I'd be at a party, and I'd come up with these ideas - like breaking into a car and going for a joy ride. It would always start off as a joke," he remembers. "I'd come up with ideas, never planning on following through with them. And then everybody around me would be all for it."

Chris May, Youth Coordinator at the Native Canadian Centre of Toronto, says that peer pressure is only one of the factors behind youth crime. He notes that drug and alcohol abuse and violence also play a role. "Added to these pressures, Native youth have an increased burden caused by poverty and social disadvantage, racism, lack of role models, and a distrust for authority figures," he continues.

May says that given the large and ever-growing Native youth population in the city, there has been a need for more programs that provide positive alternatives for people like David and John.

It was with this goal in mind that the Native Centre - thanks to a grant from the National Strategy on Community Safety and Crime Prevention - started up its new youth initiative. As of July, 1999, the Centre has been running a holistic-based program dedicated to developing Native youth on a physical, social, emotional, and spiritual level. Among the program's goals is the inculcation of traditional values of personal and community responsibility.

May outlines the approach they are taking: giving Native youth a supervised space to spend time in during the evening; building mentoring relationships between older members of the Native community and its youth; holding information sessions on topics such as drug and alcohol abuse, sexual education, and gang violence; and bringing Native youth into regular contact with members of the Metro Toronto Aboriginal Policing Unit in both formal, and informal, settings.

OFFERING ALTERNATIVES TO ABORIGINAL YOUTH CONTINUED

Every week, the program sees 50 to 60 young people take part in the Monday evening recreation period and the Thursday evening socials. The Native Centre also offers a range of other youth activities from noon until eight p.m. daily.

May says that the program provides a safe and productive environment where young Natives can develop and grow. He believes that initiatives like this, along with educational and career counselling, will go a long way toward decreasing the number of Native youths who come into contact with the criminal justice system.

Looking back on his teenage years, John wishes he had been able to participate in a youth program like the one at the Native Centre. He thinks it may have given him the guidance and direction he needed at that time. "A program could have possibly provided an alternative to crime," says John. "Along with hanging around the right type of people."

David agrees. He thinks that young Natives can really benefit by learning from people who've "been there" and can provide guidance. "I know people my age who are still high in their chair. You can't tell them anything. They know it already," he says. "If there was someone that's been through it before, someone to guide me in the right direction, I would have thought things through," he adds.

** The names have been changed to protect the privacy of the individuals interviewed.*

Eddy Robinson, 25, is an Ojibwa-Cree who lives in Toronto. This article was published in "The Messenger", Feb./Mar. 2000.

Source: Young People's Press E-zine. No Crime Edition 1.
www.nocrimetime.net

PROGRAM TEACHES TRADITIONAL LIFE SKILLS TO MÉTIS YOUTH

*By Katie O'Connor
Young People's Press*

For countless years, the people of the Labrador Métis Nation lived by hunting, fishing and trapping. The many skills needed to follow their traditional lifestyle were passed on from one generation to the next.

Over the past few decades, though, these skills have been dying out. Traditional activities like snow-shoeing and building snow houses - once necessary for survival - have had to compete with newer pastimes like television, video games and snowmobiling.

Today, some members of the Labrador Métis Nation are trying to reverse this trend and revive their traditions. In Happy Valley-Goose Bay, a program to teach Métis children about their culture is currently in its second year. The program also hopes to help youth who are at-risk and may be headed for trouble.

Guy Poole, director of the St. Louis Métis Committee, says there has been a real need for something like the Traditional Life Skills Project. "Most kids in school today know world facts. We don't have a problem with that, but they need to know about our own culture," he says.

"Our culture has been eroded," Poole continues. "The language is gone. Our history is not being taught. Yet, the majority of students here are Métis."

At St. Louis Academy, a course in traditional life skills is being offered as part of the Social Studies program. Geared to grades six through nine, the students receive two hours of instruction per week, for 15 weeks. Approximately 30 students are taking the course.

The classes are being given by Métis Elders, many of who had become concerned about the loss of their traditions. "They felt that their culture was lost at home. It wasn't being passed down from generation to generation anymore," explains John Ping, Principal of St. Louis Academy. "Years ago, kids kept dog teams. Today, they have satellite dishes," says Ping.

Last year, the school offered seven modules: a history of the Labrador Métis; sled making; snowshoe making; traditional survival skills; hunting and trapping; knitting and sewing; and preparing traditional meals.

Because students are not allowed to take the same class twice in a row, sled making and snowshoe making - both very popular last year - will not be offered this time around.

Ping is proud that the school is offering the program. He says the students have shown a lot of enthusiasm and are eager to participate.

Charmaine is a grade nine student currently enrolled in her second Traditional Life Skills class. Last year, she studied cooking. This year, she is taking the survival skills module. "It's better than sitting in a class. We get to go outside and make snow houses and build a fire," she says.

PROGRAM TEACHES TRADITION LIFE SKILLS TO MÉTIS YOUTH CONTINUED

Charmaine says she found it amusing that there were things she had learned that her parents didn't know. "Now, I can show my parents how to make a lean-to," she says. Charmaine hopes to pass on her new-found knowledge. "Someday, I'll be able to teach my kids what to do if they're caught in a snowstorm," she says.

Poole says he has seen positive results in the two years since the Traditional Life Skills program got off the ground. "Kids have started to show an interest in their culture. Their culture is coming back to them," he says.

"Kids in trouble aren't proud people," says Poole. "If on Saturday night kids choose to go snowshoeing instead of going for a beer, that's a good thing."

Katie O'Connor is an Editor at Young People's. This article was published in "The Labradorian", March 27, 2000.

Source: Young People's Press E-zine. No Crime Edition 1.
www.nocrimetime.net

PROJECT PROMOTES RESTORATIVE JUSTICE APPROACH FOR YOUNG PEOPLE

By Elianna Lev,
Young People's Press

You thought you wouldn't get caught. The adrenaline kicked in so you didn't have time to clean up the evidence. You left a trace. Now you've been charged.

It's a scenario that many young people have found themselves in. Every year, countless kids make poor decisions and end up in trouble with the law. Many end up in custody. But changes are underway that will affect how cases like this are handled. Under the federal Government's proposed *Youth Criminal Justice Act*, many of those who commit minor offences will be dealt with by community-based programs using the "restorative justice" approach.

The idea of restorative justice is becoming increasingly popular with police and those who work in the justice system or with kids. Advocates of this approach say that instead of focusing on punishment, restorative justice seeks to repair the harm done. It emphasizes the role of victims and community members in the justice process. And it makes offenders take responsibility for their actions.

In Whitehorse, a pilot project has been launched that will see some teens appear before a Youth Justice Panel instead of going to court. The panel will be made up of representatives from a range of community agencies, such as Legal Aid, the Yukon Department of Health and Social Services, and the RCMP. The goal is to reduce the number of kids who come through the courts and to speed up the delivery of justice. The project is also a way for the various agencies working with young people to build more effective partnerships.

"Currently it's up to a Judge to decide [the young person's] level of custody," says Paddy Colfer, a program coordinator with Family and Children's Services in Whitehorse. He says the new legislation gives justice professionals a greater range of options in dealing with crimes. These include community conferences that bring together teens and those they have committed an offence against in a structured setting. "Then [the teens] can realize, 'you know, I didn't just steal a TV, I really damaged someone's life.' It's eye-opening for them," he says.

Peter Nemeth, a Whitehorse youth probation officer, sees a need for a more flexible approach. "If public safety isn't at risk, then I'd be comfortable looking at alternatives. Custody shouldn't be substituted for child protection or health or housing. That's an abuse of the system."

But he adds, "You want to have meaningful consequences". Nemeth says it's important that the needs of victims are met and that teens understand their actions have consequences.

Under the old *Juvenile Delinquent Act*, which was in effect until 1984, there had been a greater use of discretion. "Youth crime was dealt with more informally," says Colfer. "However,

PROJECT PROMOTES RESTORATIVE JUSTICE APPROACH FOR YOUNG PEOPLE CONTINUED

the *Young Offender's Act* introduced a more formal, or 'legalistic,' approach to youth crime. The use of police discretion, such as issuing warnings or cautions, tended to fall as a result." He says the new *Youth Criminal Justice Act* encourages a return to more use of discretion for less serious offences.

"It doesn't serve any purpose to criminalize the behaviour of adolescents," Colfer adds. He believes that many problems are better sorted out by a teacher, or parents, or youth themselves. "Mistakes are made growing up. We shouldn't make criminals out of youth because of that."

While many welcome the alternative measures being introduced under the Youth Justice Renewal Initiative, there are concerns that it won't affect all regions equally. Mark Kelly, who has been a youth outreach worker for 14 years, feels that kids in smaller communities might not benefit as much from the changes.

"Rural areas are where a lot of the issues are," he says, adding that young people sometimes have to go to Whitehorse to be dealt with. "I think the Act is better than the old one, except it doesn't target small remote areas."

Elianna Lev, 21, is a student at the University of Victoria.

Source: Young People's Press E-zine. No Crime Edition 3.
www.nocrimetime.net

SMALL TOWN JUSTICE

By Young People's Press

Justice is now close at hand, and not in a big city courtroom, for many youth in trouble with the law in small Northwestern Ontario communities.

"We want to serve our own people without the having to travel all the way to Thunder Bay. If we can offer services locally it helps the whole family," said Wendy Landry, co-ordinator of the Youth Justice Project.

The court diversion project, which started in late 2002, now covers Dorion, Hurkett, Red Rock, Nipigon, Schreiber, Terrace Bay, Pays Plat, Lake Helen, Beardmore, MacDiarmid and Rocky Bay.

The project does more than keep the administration of justice in smaller communities.

The program focuses on face-to-face meetings between the youth and the victims of the crime. During the meeting anyone is given a chance to explain how the youth's actions affected them and their families, and the youth is given a chance to explain him or herself and to apologize.

"In court you just sit there and they give your sentence, your fine or ticket or whatever. But with this program you'll get a chance to say you're sorry and they can hear your side," said Megan (not her real name) who was charged with theft in connection with a joyriding incident.

Megan and her parents met with the victim's family and reached a resolution acceptable to everyone.

"We had to go to a conference with the victim. We sat down with the family. We worked together to come up with a solution and restitution," she said.

"We suggested a few things, they suggested a few things. We were able to come up with something both sides liked."

Everyone agreed that Megan would pay to replace a CD that was broken and perform community service at a local festival.

Landry said reaching resolutions like that is what the program is intended to achieve.

"A lot of people may think it's easier (than going to court). But I can tell you from 20 years of correctional work that in 89 to 90 per cent of the cases that go to the courts, the youth will never be face to face with the victim."

Some sentences a youth receives in court do more harm than good, she said.

SMALL TOWN JUSTICE CONTINUED

"A lot of the kids who go into the custody programs come out better criminals. . . I've found that the support they need is in the community, not behind bars."

The program is available to youth, ages 12 to 18 who have committed non-violent crimes such as theft or vandalism and are referred to Landry by the Ontario Provincial Police. Youth must also be willing to accept responsibility for their actions and complete any agreed upon resolution.

Landry said she believes court diversion could also work on some violent crimes, and would someday like to include them in the program.

"I would like to see us handle assault cases, because simply put, youth fight. I think if we offer the same program to them we could really nip it in the bud."

She also said there is room to include more ages.

"Twelve to 18 is fine, but I would like to see us expand the ages at both ends. Nineteen is still very young."

During the past 12 months the program has helped more than 10 youth, with only one case being referred back to court. Despite an overwhelming success rate, Landry said some victims are reluctant to participate and are apprehensive about sitting in a room with the youth.

"It's hard to get people on board. If somebody has been the victim of a crime, they may not want to participate. I think if they really saw and understood the process, they'd jump to do it."

Those who do go through with it, come away with a different perspective, she said.

"It makes them feel better. It provides closure. You can really see their anger subside."

Source: Young People's Press E-zine. No Crime Edition 13.
www.nocrimetime.net

YOUNG ARTISTS GIVE BACK TO SASKATOON

*By Marcel Penton
Young People's Press*

Young people at-risk with an interest in art and giving back to their community are turning Saskatoon into an Urban Canvas.

"It's a beautiful thing: we can literally change lives," says Darrell Lechman, director of Saskatoon Urban Canvas.

"These kids are reconnecting to their community and simultaneously building a fantastic public art folio. What's more, the psychological benefits for the kids are amazing."

Urban Canvas gives 12 young people, ages 16 to 30, the opportunity to explore art in a professional, structured environment by creating building murals and other art displayed in downtown Saskatoon.

Three art professionals act as instructors and mentors to help participants acquire new skills and prepare them for the work environment over the 30-week full-time program that has run intermittently during the past three years.

Lechman, who has a background of 20 years in social services including 15 years in corrections, created the project to aid young people who face multiple barriers to employment.

Gangs and graffiti are considered problems in Saskatoon, and the local police service estimate more than 100 youth are involved in an illegal graffiti community. An estimated \$500,000 is spent annually on graffiti cleanup.

Lechman says he hopes the Urban Canvas project will attract such youth and focus their talents in a positive manner that the entire community can enjoy.

The youth can also receive mentorship and direction from more experienced art professionals in a friendly, non-judgemental environment, he says.

Along with learning art methods at the Urban Canvas workshop, young people can get help with job seeking and resume writing. Community partners provide counselling or drug rehabilitation if needed.

Youth are recruited through word of mouth and poster campaigns, and receive living allowances from Human Resources Development Canada to commit to Urban Canvas full-time. When the program ends, graduates receive certificates from HRDC and Urban Canvas to go with their own professional portfolio.

Some choose to use their portfolio and pursue art at a post-secondary level but all keep art in their lives, says Urban Canvas art co-ordinator/director Bevin Bradley.

"The kids may not necessarily become professional artists, and that's not our goal. Many of them don't know what they want to do in the future," says Bradley, who holds a B.A. in Fine Arts from the University of Saskatchewan.

YOUNG ARTISTS GIVE BACK TO SASKATOON CONTINUED

"We want to build self-confidence in these kids," she says.

Bradley says many Urban Canvas participants assist in an after school art program for youth ages 12 to 17, in mentorship roles that build further confidence and reinforce learned skills.

Nathen Wahl says he gained confidence from the project. He says he is glad he saw the posters advertising the Urban Canvas project and made the telephone call two months ago.

Wahl, 23, completed a year of animation and sketch at a local art school before it folded. He lacked post-secondary accreditation and found getting a job in graphic arts difficult.

"I needed more experience," Wahl says, "but here I learned more than just art techniques. I learned how to work with others, how to collaborate and give and take. I've learned skills besides art techniques from the project that I'll take with me for the rest of my life."

Participant Susan Dyck, 21, says she had a passion for art since childhood. She heard about Urban Canvas from a friend in the program and since beginning over a month ago, Dyck says she has learned many artistic and soft skills that will help her in whatever career she decides to pursue.

"I have had jobs in the past like waitressing, cooking and care giving. I've only been here a short time and I know more about the people here than the people I've worked with for years," she says.

Many participants do not have a background in art and it is not a requirement for participation, Bradley says.

Youth today must overcome other obstacles besides lack of work experience. Gang activity is on the increase in Saskatoon, according to local police services. In addition, the provincial crime rate has been on the increase since 2000.

"We must get to youth early and help them feel like a part of the community," Lechman says.

More than 70 per cent of Urban Canvas participants are aboriginal, and due to the growing local aboriginal community many city re-beautification projects focus on cultural art.

"(Aboriginal youth) face additional obstacles," Lechman says. "Many come off of the reserves to look for work and find town life a big adjustment."

Bradley says Urban Canvas helps young people become better people through experiencing their own creativity and that of others' around them.

"I think if you can take criticism and work with others in art then you can deal with all aspects of life," she says.

Source: Young People's Press E-zine. No Crime Edition 11.
www.nocrimetime.net

REACHING THROUGH THE CRACKS

*By Carrie Richmond
Young People's Press*

Current and former youth gang members are involved in an anti-recruitment campaign in Prince Albert schools.

P.A. Outreach's new anti-violence program, Youth Alliance Against Violence, has young people helping each other to make good choices.

"It is for kids who are exiting gangs or who have been involved in gangs," said P.A. Outreach co-ordinator Peggy Rubin.

"These kids are doing presentations in the schools, trying to talk to the kids about not getting involved in the gangs. It's youth talking to youth because that is who they listen to," Rubin said.

"Now they are doing a hip-hop thing. They are going to add a hip-hop element to the presentation. So hopefully when they go talk to the younger kids it will help. They have to get their attention first," she said.

Carrie McCloy, co-ordinator of the gang prevention program, said the youth are reaching school kids.

"We go into schools and present to kids about the dangers of being in gangs and why not to get involved and what they can do to keep from getting involved. Basically our message is to find out who they are and stick to what they believe in. Find friends that are positive to hang out with," McCloy said.

The group does drama sketches and presentations to try to reach kids before they get into a bad situation. Because once a kid is in a gang, she said, it isn't easy to leave.

"It's not so black and white. It is not an easy thing. They are in a process," said McCloy.

Rubin said all the youth in the group have first-hand experience with gang life.

"All of the kids have been involved in gangs, not all of them are out yet but they are in the process of trying to get out of the gangs, but it is very difficult," she said.

"Some of our kids say the intimidation on the street is the big thing. So even though they want to get out they still hang around with the gang because they will protect them.

"It is easy for them to come to a meeting and say they want to get out of a gang and then they are on the street the next day and they are getting beat up or whatever. So it is a lot more complicated than people think."

REACHING THROUGH THE CRACKS CONTINUED

The best way to reach youth and help them get off the streets and out of gangs is to start simply, Rubin said.

"You start with a relationship, just getting to know the kids. If you talk to the kids who have gotten off most of it comes from relationships and giving them something better to do. If they have an addiction problem we refer them to addiction services. It is about supporting them. It is more than just saying here is a number, because they won't go," she said.

That's what P.A. Outreach has been doing for five years, Rubin said. The organization has a youth drop-in centre for youth ages 12 to 19. The centre is an alternative to hanging out on the streets and offers youth access to a drug addiction counsellor and a nurse, as well as a variety of programs.

"A lot of these kids have difficulty in school or don't go to school. They don't seem to fit. They don't fit anywhere, they are basically the kids who have fallen through the cracks," Rubin said.

"We offer anything the kids are interested in as an alternative to being on the street. We do a lot of recreation and sports. We have all the services for the youth right here. We have a life skills class, job skills. We basically start classes depending on what the kids want and what the need is for that group of kids at that time," she said.

For those who don't know about the centre or services, outreach workers go to them.

"Our van goes out and works with exploited youth on the street; gives out hot chocolate and clothes and things like that. Basically any way we can support them getting off the street or referring them somewhere."

The job is difficult but the results are worth the hardship, she said. "We've been very successful . . . a lot of the kids we have gotten off the street are now working for me. We sent them to training programs and now they are outreach workers themselves," Rubin said.

McCloy agreed.

"Seeing these kids change on a daily basis, it amazes me. I didn't think that it would but it totally amazes me. Their commitment and their ability to rise above what they have been through is awesome," she said.

Source: Young People's Press E-zine. No Crime Edition 11.
www.nocrimetime.net

SIZE AN ADVANTAGE TO JUSTICE COMMITTEE

*By Debbie Sauvé
Young People's Press*

A shoestring budget, a passion for helping people and a love for the community are the ingredients that started a community justice committee now operating in two small communities in northern Ontario.

"I feel very positive about our program here in Marathon and the way that it is going," says David Giuliano, chairman of the Marathon-Manitouwadge Community Justice Committee.

"Our community involvement is endless and I feel like we do have a small town advantage," Giuliano says.

Representatives from Marathon and Manitouwadge, including Giuliano, have been meeting since September 2001 to launch a community justice alternative. The two towns, about 80 kilometres apart by road, work as one on the program with monthly meetings alternating between them.

The committee was started through the initiative of the Marathon-Manitouwadge Ontario Provincial Police detachment. The committee now works on an independent basis with continuing support from the OPP. Two officers are consultants on the committee. Other committee members come from the community and consist of anyone that wants to volunteer. "Right now, we pull together whoever we can to help out and volunteer their time to us," Giuliano said.

In its first year the Marathon-Manitouwadge committee dealt with about 15 cases. Youth and adults are referred to the committee after being involved in minor offences, such as theft under \$5,000, mischief, causing a disturbance, and fraud under \$5,000.

Those referred to the committee must be willing to admit guilt, face their victim and other interested parties to learn about the impact of their actions, and to work out what should be done about it.

"We do not deal with whether you are guilty or not," Giuliano says. "You don't even come into this process unless you are prepared to say, 'I did it.'"

A trained facilitator leads the process, which can include the youth's and the victim's family and community members. It begins with the youth acknowledging their guilt to the victim, who then has a chance to say how he or she has been affected.

Together they discuss and reach an agreement on the consequences or conditions a youth must complete within a set time. Such measures take into consideration the circumstances of the offence, the youth and the victim. Failure to complete the terms results in the youth being returned to the court system to face formal charges.

Conditions can include community service, curfews, restitution to the victim and community, counselling programs, an agreement by the youth not to associate with a person or group, voluntary suspension of privileges such as a driver's licence, and extra school time.

SIZE AN ADVANTAGE TO JUSTICE COMMITTEE CONTINUED

"In the end, what we are trying to do is restore the social fibre that has been violated," Giuliano says.

The program has many advantages over the formal judicial process, he says. It is less costly, results in a higher level of victim satisfaction, the probability of re-offending is lower and the consequences have more impact on the youth.

"Restorative justice is not a lighter way off," he says. "It goes beyond just a slap on the wrist in court by making the offender face the victim. The key element is that it is a form of constructive shame, by being confronted with your behaviour."

Giuliano says Marathon and Manitowadge's size is an advantage, noting that in larger centres, some businesses that fall victim to youth crime are not as willing to participate in restorative justice programs.

Storeowners, for example, may find themselves with several shoplifting offences at a time and not have time to work with a committee, he says.

"Being in a small town we have an advantage in that our retailers and other community members are more than willing to be a part of the process, and we are also not dealing with the quantity that a program like this would have to contend with in Toronto."

The expansion of youth justice committees in large and small communities across Ontario is a healthy move away from the court system, Giuliano says.

"The court system does not provide justice to anyone," he says. "That's why restorative justice is so important; the community can pull up its sleeves and provide that justice when the courts can't."

Until mid-December, the committee worked strictly on a volunteer basis. The members, including Giuliano, volunteered about eight hours a month. They used the Internet for communication to save money and relied on the police for help for filing and other office duties.

In early December, the Attorney General of Ontario agreed to fund the Youth Justice Committee aspect of the program. Of the \$40,000 grant, \$15,000 is intended for the committee's yearly operating budget, while \$25,000 is for their startup costs.

The committee also plans to hire a co-ordinator to take care of the administrative duties.

This funding is part of a commitment the province made in May 2000 to triple the number of youth justice committees across Ontario to 18 from six. The program also falls in line with the federal government's *Youth Criminal Justice Act*, and its focus gets communities more involved in youth justice.

Source: Young People's Press E-zine. No Crime Edition 8.
www.nocrimetime.net

PICKING UP THE EAGLE FEATHER

By Hadielia Yassiri

They say it takes a village to raise a child. Debra Murray believes a healthy child can heal a village.

She is the Aboriginal outreach co-ordinator at the Canadian Red Cross in Calgary, which has received \$50,000 in funding from the National Crime Prevention Centre for its *Picking Up The Eagle Feather* project.

The initiative aims to prevent crime by teaching urban Aboriginal youth about unhealthy relationships and how to deal with issues related to abuse, harassment and violence.

Picking Up The Eagle Feather is targeted at Aboriginal youth between the ages of 13 and 19. Seminars will be presented beginning this fall in schools and various agencies, support groups and community organizations such as Aboriginal resource centres.

A 40-minute video presentation has been developed as a teaching tool in the seminars, which have two three-hour components. "The first phase deals with domestic abuse and violence. In the second phase, we teach the youth about abusive relationships," says Murray.

In the seminars, topics such as the identification of abuse, the different types of abuse and how to deal with it are discussed. "We teach young people about the different types of abuse in the home, such as physical and sexual abuse as well as neglect and isolation. We also teach them about relationship abuse, including the legal ramifications of harassment and violence," she says.

Elder Daryl Brass will take part in the seminars, modeled after the traditional oral teachings of Aboriginal cultures. Elders hold important positions in Aboriginal communities. They are seen as conveyors and teachers of sacred teachings and traditions.

"Aboriginal youth and communities have experienced abuse for generations. They need a program that speaks to their hearts and draws from their history," he says.

"The program draws on Aboriginal traditions to address the violence and abuse that exist in Aboriginal communities. Through sacred teachings, children and youth will learn the skills and abilities to be more resilient and better able to handle past or future experiences with abuse or violence. They will experience a change guided by spirituality."

Elder Linda Brass agrees. "The teachings will show youth the impact of abuse on individuals, families and the community. Hopefully, they will connect the dots and see the effect abuse has on the big picture. Young persons will also learn that resources are available to those who want help," she says.

In addition to educating children and youth about abuse and violence and how to deal with it, the program calls on young persons to follow the ways of their elders as a means of healing and growth.

PICKING UP THE EAGLE FEATHER CONTINUED

The importance of Aboriginal teachings and culture is reflected in the program's name. Eagle feathers are traditionally given to Aboriginal community members for acts of bravery or outstanding leadership. The program calls on youth to pick up and embrace the culture, traditions and teachings of their ancestors.

"*Picking Up The Eagle Feather* aims to teach youth kindness, cleansing and healing. People become weak if they lose their cultural ways and religion. There is a gap in the teachings and understanding of Aboriginal youth today. They need to bring spirituality into their life," says Murray.

The Brasses say the process of healing Aboriginal communities begins with helping children and families.

"The elders teach us to treat ourselves well and to carry goodwill into all our relationships. These are the basic principles and values for living on Turtle Island," says Daryl Brass.

"Picking Up The Eagle Feather will empower youth, help them deal with abuse and show them a good way to live and treat others," says Murray.

Source: Young People's Press E-zine. No Crime Edition 7.
www.nocrimetime.net

EXCERPT FROM...

**International Convention on the Elimination
of All Forms of Racial Discrimination
Fifteenth and Sixteenth Report of Canada**

(covering the period June 1997 - May 2001)

JUSTICE

The Strategic Plan of the Department of Justice includes an Aboriginal core strategy: "The justice system responds to the needs and values of Aboriginal people and contributes to a more inclusive society". To accomplish this goal, Saskatchewan Justice works cooperatively with Aboriginal governments and organizations to provide Aboriginal justice programmes, such as:

- Community justice programmes involve crime prevention, public education, resolving community conflict, and alternative measures. Sixty-seven of the 72 First Nations in the province are involved in these programmes. The Aboriginal Justice Directorate of Justice Canada supports these programmes as well as adult alternative measures programmes offered by Aboriginal organizations in some urban areas.
- The Saskatchewan Aboriginal Courtworker Program helps accused people who are going through the criminal justice system by providing support to the accused, accompanying them to court dates, and explaining court proceedings to them. Currently, services are offered in 76 percent of court locations across the province by 27 courtworkers employed by 14 Aboriginal carrier agencies.
- First Nations Policing Programs involve Aboriginal communities in making decisions about the type of policing they would like in their communities. Currently there are 30 Community Tripartite Agreements with 45 First Nations that cover about 75 percent of the on-reserve population of the province. Pursuant to these agreements, police management boards provide community input to the police, and Elders work with the RCMP for culturally sensitive policing. Work is also occurring to develop community police boards in northern Saskatchewan, and to develop the File Hills Police Service, which is in the process of becoming a self-administered First Nations police service.
- Eight Aboriginal Family Violence initiatives help Aboriginal families deal with violence and abuse. The Department also supports eight Aboriginal Resource Officer Programs that help Aboriginal victims of crime and their families by providing information, support and referrals to other programmes.
- Six crime prevention initiatives focus on the needs of Aboriginal people in urban centres.

Adult Corrections entered into an agreement with the Prince Albert Grand Council in January 1997 to operate a Spiritual Healing Lodge for 25 provincial, low security offenders on the Wahpeton Reserve land, immediately adjacent to the City of Prince Albert. Corrections also

EXCERPT CONTINUED

maintained an agreement with the File Hills Tribal Council of Fort Qu'Appelle to provide Probation Services for four First Nations Communities. Further, Corrections developed a Cultural Diversity Model as part of the Induction Training for all new institutional Corrections staff.

The Aboriginal and Northern Justice Initiatives Branch was created in 2000. It is involved in a variety of projects related to justice issues in northern Saskatchewan and involving Aboriginal peoples throughout the province. The Branch's work includes building community trust and confidence in the justice system and establishing positive working relationships between Saskatchewan Justice, Aboriginal communities and other stakeholders, as well as providing policy advice and helping other Branches develop Aboriginal justice initiatives.

Cree Court — On October 1, 2001, a Cree-speaking Circuit Court Party was established in four Provincial Court locations in northern Saskatchewan. The court party travels out of Prince Albert and includes a Cree-speaking Judge, prosecutor, a Cree Legal Aid counsel, two Cree-speaking court clerks, one of which serves as an interpreter, and a Cree-speaking probation officer. This Cree Circuit Court Party attends court eight days a month at Sandy Bay, Pelican Narrows, Big River First Nation and Montreal Lake.

Circle Court — In September, 2001, a "circle court" was set up in the Saskatoon Provincial Court. This circle courtroom is used regularly as a therapeutic court for the victims and families of youth involved in crime. One of the purposes of this youth circle court is to respond to the rising level of youth recidivism and incarceration in Saskatoon. Many of the youth who accept responsibility or are convicted after trial have complex backgrounds. The youth circle court provides a more informal and relaxed environment for examination of background factors such as family life, educational status, community and professional supports. The Prince Albert Provincial Court facility in Prince Albert also has a circle court for carrying out sentencing circles and other forms of court processes that are therapeutic in nature.

Court on Reserve — The Chief Judge of the Provincial Court and Court Services have developed a protocol for the establishment of Court on Reserve. Court is presently held on Reserve at nine locations.

To view the entire report, visit the Canadian Heritage website at www.pch.gc.ca/progs/pdp-hrp/docs/cerd/2003-08-11/cont_e.cfm

HIGHLIGHTS OF RESPONSE TO COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

(Additional Information to a Government of Saskatchewan News Release)

A number of provincial government departments have directed significant funding to a broad range of initiatives in 2005-2006 that respond to the Commission's recommendations. For 2005-2006, more than \$48 million in new funding will be invested in responding to the recommendations. While some of this new funding is directed to new initiatives, some will be directed to enhancing or expanding existing programs. A number of the initiatives outlined in the Action Plan are targeted specifically to First Nations and Métis peoples, while others, though not targeted, will have a significant positive impact on Aboriginal people.

DEALING WITH THE UNDERLYING CAUSES OF CRIME

- Public education to encourage racial harmony will help eliminate racism and encourage mutual understanding and respect.
- Projects will provide Aboriginal youth with leadership training to build stronger communities for the future.
- The provincial Alcohol and Drug Strategy will be targeted to youth, Aboriginal people, street people and northern residents. Initiatives to combat the use of Crystal Meth are important components of the strategy.
- Fetal Alcohol Spectrum Disorder programs will be strengthened to provide more prevention, diagnosis and support services for individuals and families.
- The development of shared educational standards between provincial and First Nations schools will support smoother transitions for students that move between First Nations schools and provincial schools.
- To enable young people to acquire the skills they need in tomorrow's job market, 1,000 new training opportunities will be provided under Career Start.
- Aboriginal post-secondary students will receive support through the Aboriginal Bursary Program, Gradworks, the University of Saskatchewan Math and Science Enrichment Program, and the Aboriginal Apprenticeship Program.
- The Education of Youth in Custody program will help ensure young people are successful in learning once they are released from custody and return to school.
- 600 new housing units will be added in 2005, with the goal of 2,000 new units by 2008, to ensure safe, affordable housing for families.
- The new Saskatchewan Rental Housing Supplement will help ensure low-income families and households of people with disabilities have adequate places to live.

HIGHLIGHTS OF RESPONSE CONTINUED

- 500 new child care spaces will be created and families with children with special needs will no longer wait for child care.
- Crime reduction strategies will be implemented in Meadow Lake and Prince Albert.

To view the document online and see related information, visit
www.gov.sk.ca/newsrel/releases/2005/05/12-421-attachment.pdf

NOTES





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CURRENTS RESOURCE EVALUATION FORM

Your opinion matters! Please take a few minutes to complete this form and return it to PLEA by mail or fax, or visit www.plea.org/feedback to submit your opinion electronically.

Please indicate your agreement with the following statements...

Learning Outcomes

1. The handouts and activities were at an appropriate reading and interest level for students.
Strongly Agree Agree Neutral Disagree Strongly Disagree
2. The lessons in this publication engaged students in learning about law.
Strongly Agree Agree Neutral Disagree Strongly Disagree
3. The questions and activities were an appropriate means of evaluating learning objectives.
Strongly Agree Agree Neutral Disagree Strongly Disagree
4. My students know more about this area of the law than they did before I used this resource.
Strongly Agree Agree Neutral Disagree Strongly Disagree

Teaching Outcomes

1. The background information and lesson procedures were appropriate for my teaching needs.
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2. This resource was relevant to my class and unit of study.
Strongly Agree Agree Neutral Disagree Strongly Disagree

For which class(es) and unit(s) of study did you use this resource?

3. How would you rate this material compared to other law-related teaching resources?

1 2 3 4 5 6 7 8 9 10
Poor Average Excellent

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1 2 3 4 5 6 7 8 9 10
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Other Comments?

Thank you for assisting us today!

**Public Legal Education Association of Saskatchewan
#300 - 201 21st Street East, Saskatoon SK S7K 0B8
Fax: (306) 653-1869**

CURRENTS: Exploring Traditional Aboriginal Justice Concepts in Contemporary Canadian Society

This resource looks at questions such as how societies make laws, resolve conflicts, and deal with those who do not live up to society's standards for behaviour, as well as how Canadian and International law recognize and protect certain rights. The law-making process, conflict resolution, justice and rights are all considered from both an Aboriginal and an Anglo-Canadian perspective. This allows those using this resource to consider both the similarities and the differences between traditional Aboriginal approaches and the approaches taken by Anglo-Canadian society. It will also help students see how the existence and practices of Aboriginal people have influenced Canadian law and to better understand the relationship between Aboriginal people and others in Canadian society.

Each section includes teaching rationales, learning outcomes, background information, and activities.

CUSTOMARY LAW

LAW-MAKING AND COURTS

CONFLICT RESOLUTION

HUMAN RIGHTS

CRIMINAL LAW