CANADIAN CONSTITUTION

Learning Objectives
• To introduce the topic of constitutional law.
• To develop an understanding of the history and nature of the Canadian Constitution.
• To increase students’ knowledge of the responsibilities of different levels of government in Canada.

Materials
• Copies of the student handout, Canadian Constitution (one per student)
• Copies of the graphic organizer, Levels and Responsibilities of Government (one per student)
• Copies of s. 91 and s. 92 of the Constitution Act, 1867, available here: http://lois.justice.gc.ca/eng/Const/ (one per student)
• Copies of In Brief: Canadian Charter of Rights and Freedoms (optional; one per student)
• Copies of Landmark Case: The Question of Quebec Sovereignty - Reference Re Secession of Quebec, available here: http://ojen.ca/resource/3648 (optional; one per student)

Teaching and Learning Strategies
1. In groups, provide students with several definitions of a national constitution and have them make notes of key points. Take these up as a class, noting key similarities and differences.
2. As a class, brainstorm the roles and responsibilities of government, recording these for later reference. A guide for teachers is available at http://www.pch.gc.ca/special/gouv-gov/105-eng.cfm. Refer back to the key points noted by students for illustration and connection.

3. Assign the reading, discussion questions and worksheet individually or in small groups.

Teacher’s Key - Discussion Questions
2. Any two of: repatriated the Constitution; contained an amending formula; Canadian Charter of Rights and Freedoms.
3. The Constitution Act, 1867.
4. Individual rights can be limited by s. 1 of the Charter if the courts determine this limitation is reasonable, and legislatures can pass legislation contrary to the Charter under s. 33, but their ability to do so is strictly limited.
5. Answers will vary, but should reflect the unpopularity of suspending basic rights and freedoms. Students might also reflect on whether politicians, although elected, are less trustworthy than judges.

4. Invite students to complete the graphic organizer, Levels and Responsibilities of Government, and take up their answers as a class.

Extension
WHAT IS OUR CONSTITUTION FOR?
The Constitution is the supreme law of Canada, a kind of ultimate written rule-book by which all the institutions of the Canadian state must abide. If any law contradicts the Constitution, it will be held by the courts to be of no force or effect on anyone. The Constitution tells us who has the authority to make laws, how the authority is divided among the levels of government (federal and provincial), and how government power is limited to protect individual rights.

Part VII of the Constitution Act, 1867 (ss. 96 to 101) establishes the judiciary in Canada. The courts have the power to decide if the different institutions and levels of government are following the rules and acting within their constitutional authority (acting intra vires) or overstepping their authority and acting outside of their powers (ultra vires), thereby rendering their actions legally invalid.

Constitution Act, 1982
As a former British colony, under the Constitution Act, 1867 Canada still required the consent of Great Britain to change its own Constitution. This changed with the Constitution Act, 1982. This is known as the “repatriation of the Constitution”. With some small exceptions, the Constitution Act, 1867 lacked any individual guarantees of basic civil liberties against the power of the government. It also lacked a formula for changing the Constitution later on. Therefore, the second part of the Constitution – the Constitution Act, 1982 – contained an amending formula and a Charter of Rights and Freedoms. This is probably the most important part of the Constitution for ordinary people because it guarantees certain individual rights and freedoms to everyone in Canada. It also provides mechanisms to enforce these rights and freedoms by making it the law that people can seek a remedy through the courts if they feel that their Charter rights have been violated by the laws or actions of government. In this way, the Constitution Act, 1982 expanded the power of judges to ‘strike down’
laws created by legislators – rendering them of no force – if they conflict with the Charter.

CONSTITUTIONAL RIGHTS

The first part of the Constitution, the Constitution Act, 1867, gives meaning to our rights as citizens in a democracy. For example, it requires the federal government to stand for election at least once every 5 years, allowing Canadians to exercise the right to vote. However, constitutional “rights” are generally understood to be the rights and freedoms guaranteed by the Charter. These rights define the relationship between the state and citizens, and cannot be invoked in disputes between directly private persons.

Often what comes to mind when we think of Charter rights are those fundamental freedoms that are essential to a constitutional democracy, like freedom of conscience and religion and freedom of expression. However, there is much more to the Charter. Sections 7-14 outline legal rights, which pertain to interactions between individuals and the criminal justice system. These include the right to be free from unreasonable search and seizure (s. 8); the right to a lawyer when charged with an offence (s. 10(b)); and the right to be presumed innocent until proven guilty (s. 11(d)). Section 15 guarantees the right to be treated equally regardless of (among other things) race, age, religion, sex or sexual orientation (s. 15).1

OVERRIDING AND LIMITING RIGHTS

Charter rights are not absolute and may be limited in two important ways. First, s. 1 of the Charter is known as the ‘reasonable limits’ clause. It can allow a court to find that a law that infringes a certain right or freedom can remain in force if it does so within reason given the importance of its objective. For example, Parliament’s requirement that tobacco companies print federal health warnings on cigarette packages is a reasonable limit placed on what those companies are free to express on their packaging.2

Second, some politicians worried that the Charter would put too much power in the hands of the courts, rather than elected officials. The result was a compromise: s. 33. Sometimes called the ‘notwithstanding clause’, s. 33 permits the federal government and the provinces to override some sections of the Charter so that even if the law violates guaranteed rights and freedoms, it will be valid ‘notwithstanding’ the Charter. However, the power to override is limited in important ways:

• First, the clause can only be used to override ss. 2 and 7 through 15.
• Second, the declaration of override must be expressly worded and passed by a majority in the legislature.

1 Refer to OJEN resource, In Brief: Canadian Charter of Rights and Freedoms for further discussion of Charter rights. The full text of the Charter is available at laws.justice.gc.ca/eng/charter.
2 Refer to the case RJR-MacDonald Inc v Canada (Attorney General) [1995] 3 SCR 199 for more information. For the complete test used by the court to determine a ‘reasonable limit’, refer to the OJEN resource, In Brief: Section 1 of the Charter and the Oakes Test, available at www.ojen.ca/resource/980.
responsible for the law.

- Finally, a declaration only lasts five years before it must be renewed, requiring the overriding government to face an election before re-activating the clause.

Historically, the use of s. 33 has been politically unpopular and has been used by only three provinces and never by federal Parliament.

**DISCUSSION QUESTIONS**

1. What are the two basic pieces of legislation that comprise the *Canadian Constitution*?

2. Name two important differences in these two Acts.

3. Which part of the *Constitution* sets out the various responsibilities of different levels and branches of government?

4. What are the two ways in which constitutionally-protected rights and freedoms can be legally infringed upon?

5. In your opinion, why has the use of the notwithstanding clause been unpopular?
Levels and Responsibilities of Government

The Constitution defines whether various government services and sectors are within provincial or federal jurisdiction. Following the examples given, list as many federal and provincial responsibilities as you can, and give an example of the work each does.

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<th>Federal</th>
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<tr>
<td>Responsibility</td>
<td>Example</td>
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<td>National Defence</td>
<td>Training military personnel</td>
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