

## Federal Court and the Supreme Court of Canada

### ■ Overview

This unit begins our examination of Canada's legal system with a review of key components and responsibilities of Canada's federal courts. The lesson will examine the function and responsibilities assigned to the various federal courts, with specific emphasis on the Supreme Court of Canada. The lesson examines the concept of judicial independence and its significance to the integrity of our court system.

### ■ Objectives

Students will:

- Distinguish between the role and function of Canada's Federal Trial Court, Federal Court of Appeal and Supreme Court of Canada.
- Understand the different types of disputes heard in federal courts.
- Demonstrate an understanding of the concept of judicial independence.

### ■ Basics for the Teacher

See *Activity 6-1: Canada's Judicial System* for the basics for the lesson.

### ■ Student Handouts

*Activity Sheet 6-1: Canada's Judicial System*

*Activity Sheet 6-2: Supreme Court Review*

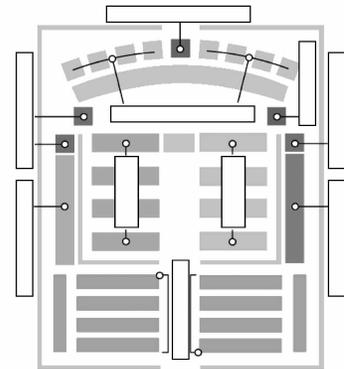
*Activity Sheet 6-3: Supreme Court Diagram*

*Activity Sheet 6-4: Law Courts Quiz Show*

### Instructions for the Teacher

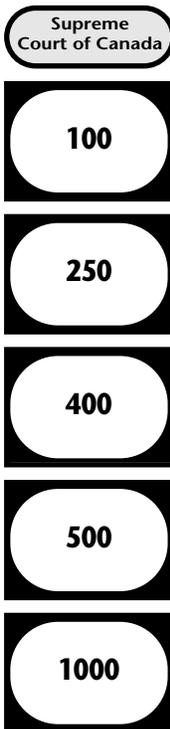
#### Activity 1: Supreme Court (SCC)

- Hand out *Activity Sheet 6-1: Canada's Judicial System* as a pre-reading exercise. This can be assigned as homework or completed in class using a note taking or pre-reading strategy (Cornell notes, SPQR).
- Students will also complete *Activity Sheet 6-2: Supreme Court Review* and *Activity Sheet 6-3: Supreme Court Diagram*.
- It is expected that students will have gaps in some knowledge and that they will have to conduct research. Direct students to the Supreme Court of Canada website (<http://www.scc-csc.gc.ca>) to access information about the function and significance of the highest court (other resources may be used as required).



## Activity 2: Law Courts Quiz Show

- Students will begin with a game with questions about Canada's judicial system - specifically the Federal Court, judicial independence and the Supreme Court of Canada.
- Hand out *Activity Sheet 6-4: Law Courts Quiz Show* (first page only) or use a transparency and put on an overhead. Place students in teams of four or five and instruct them to provide a contestant for each round of questioning.
- The students choose a category and point value. Read the question from that category and have the student answer. Each category comes with a bonus question you may insert at any time giving double the point value. The game is complete when all questions have been completed or when a team meets a predetermined score. Debrief at the end of the session.



## ■ Assessment

Both of the activity sheets for Activity 1 can be scored directly out of 10 or you can consider giving completion marks. Students will require access to the website or have resources in class to complete the diagram and questions accurately - consider this when grading the assignment.

The activity notes can be graded as part of your homework or class participation marks. The quiz game is not intended to be graded; however, the teams may receive a predetermined score based on the number of correct answers given or you may want to assign a divisor to the point total achieved by each team and assign that as a mark for each team member (eg. 10 marks = 100 points scored).

## ■ Extension Activities

1. Research the case *Beauregard v. Canada* [1986] 2 S.C.R. 56 and write a report explaining the details of the case and how this case established guidelines for judicial independence.
2. Using the Supreme Court of Canada website (<http://www.scc-csc.gc.ca>) and other resources, research one of the Chief Justices from the court. The Chief Justice has an important role in the operation of the court and is the 'face' of the court to Canadians. Those who have served in this role have made significant contributions to jurisprudence in Canada and to society. Your report can focus on key judgments, legal precedents, biographical details or legal career.
3. Conduct further investigation on the judicial system of Nazi Germany, particularly the case of the "White Rose" - a resistance group that faced a show trial under infamous Nazi judge Roland Freisler. Write a report on the absence of judicial accountability in Nazi Germany.
4. In October 1970, the federal government, under Prime Minister Pierre Elliot Trudeau, declared Canada in a state of emergency and invoked the *War Measures Act*. Investigate the origins and substance of the *War Measures Act* and discuss your position on the use of this act to deny Canadians their basic rights.

## ■ Get Involved

Visit a court near you to watch how cases are dealt with. To arrange a visit for yourself and your classmates contact <http://www.JusticeEducation.ca>

# Activity Sheet: Canada's Judicial System

Name: \_\_\_\_\_ Block: \_\_\_\_\_ Date: \_\_\_\_\_

## The Federal Court of Canada

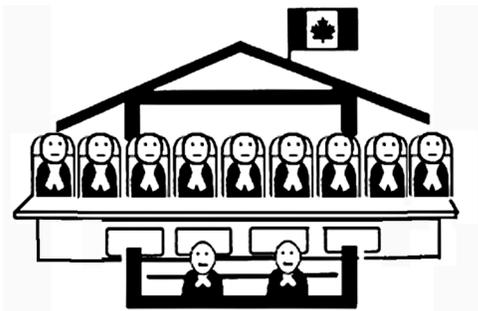
- The Federal Court, formerly called the Court of the Exchequer, contains two types of court - an appeal court and a trial court.
- The court has existed in some form since 1875 and came to its present form in 2003 when the two divisions of the Federal Court were split in two separate courts.
- In this it is distinct from the Supreme Court of Canada that sits for appeals and is not a trial court.
- The Federal Court hears disputes originating in judgments from federal tribunals and disagreements between departments of the federal government.
- The court does not use juries and at any given time 30 or more judges sit on its various bodies.

(<http://www.fct-cf.gc.ca>)

## The Supreme Court of Canada

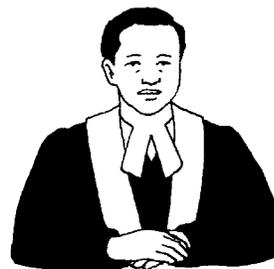
- The Supreme Court of Canada's origins date back to 1875; however, until 1949, it was not the 'court of last resort.'
- Criminal cases could be appealed to the Judicial Committee of the Privy Council of England until 1933 and civil cases until 1949.
- In 1949, the court also added two judges to reach the total of nine that sit on the court now.
- By law three of the nine judges must be from Quebec and traditionally three are from Ontario, two are from the West and one is from Atlantic Canada.
- It took some time for the first woman to sit on the court, but in 1982 Bertha Wilson broke the equality barrier.
- At present the Chief Justice of the Supreme Court is Beverly McLachlin who has resided over the court since her appointment in 2000.
- The court does not hold trials but can hear appeals from civil, criminal or federal court cases. It has the authority to grant 'leave to appeal,' meaning that it can choose to hear a case and is not mandated by any law to hear an appeal from a superior court of a province.
- In its role as the 'court of last resort' its judgments set precedent for all of Canada's lower courts and often impact the daily lives of Canadians.
- Since the inception of the *Canadian Charter of Rights and Freedoms*, the role of the Supreme Court has been more important as many of its judgments impact our legal, democratic and mobility rights in addition to our freedoms.
- Judgments need not be unanimous but a majority ruling is given in each case with dissenting judges also offering a judgment.

(<http://www.scc-csc.gc.ca>)



## Judicial Independence

- It is fundamental to our system of justice that our judges are independent, impartial and accountable as well as being free of interference from other governing bodies.
- *The Act of Settlement (1701)* written in England laid down the framework for the independence of the judiciary because it created a separation of powers between the Crown and the judiciary, though that was not its principle function. *The Constitution Act, 1987* includes this framework.
- **Basic Elements**
  - ~ Judges hold office on good behaviour and are (almost) *impossible* to remove, and then only for cause.
  - ~ Salaries are set by Parliament (for all judges on same bench, not for individual judges).
  - ~ Judges are not answerable to government or bureaucracy for judicial matters.
  - ~ Judges are drawn from and are part of an independent legal profession.
  - ~ Judicial discretion is limited by guiding principles such as jurisprudence and precedent.
- Other rules govern the impartiality of our judges with respect to the cases they hear - they must remove themselves (recuse is the term for judicial disqualification) if there is any connection with the lawyers or litigants in a case they would sit on.
- Our judges are appointed, unlike some judges in the United States that are elected, thus adding another layer of independence and absence of interference by political agendas.



- Judges are accountable because their decisions can be appealed and because they must follow the rules and procedures of the judicial system.
- Jurisprudence is the underlying philosophy of principles upon which legal rules are based and guide how new cases should be determined.
- Precedents or state decisions can be followed but courts are able to reverse themselves and provide new interpretations of the law.
- The importance of judicial independence and the rule of law cannot be underestimated. The rule of law creates an environment where all government bodies, even the law courts, are accountable to the laws of the nation.
- History is ripe with states that have not lived under the rule of law and where judicial independence has been compromised.
- The justice system of Nazi Germany witnessed the denial of fundamental rights to its citizens, particularly Jews, Gypsies and those with mental or physical handicaps.
- The courts were ruled by external bodies that could influence decisions and members of the Nazi Party were given rights denied to other German citizens. Judges were manipulated, intimidated, corrupted and punished if they failed to impose judgments consistent with Nazi party philosophy.

## Activity Sheet: Supreme Court Review

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Name: \_\_\_\_\_ Block: \_\_\_\_\_ Date: \_\_\_\_\_

(Adapted from S.C.C. website <http://www.scc-csc.gc.ca>).

1. In what year was the Supreme Court of Canada created?
  - a. 1867
  - b. 1949
  - c. 1875
  - d. 1886
2. Name the first woman appointed to the Supreme Court of Canada and the year she was appointed.
  - a. Bertha Wilson, 1982
  - b. Beverly McLachlin, 2000
  - c. Bora Laskin, 1974
  - d. Rosealie Abella, 2004
3. How many applications for leave to appeal does the court receive each year?
  - a. Between 150 and 200
  - b. Between 550 and 650
  - c. Between 1,050 and 1,150
  - d. Between 1,250 and 1,450
4. Approximately how many appeals does the Supreme Court hear each year?
  - a. 80
  - b. 135
  - c. 425
  - d. 740
5. What is the minimum number of judges (quorum) required to hear an appeal?
  - a. 3
  - b. 7
  - c. 9
  - d. 5
6. Who is the current Chief Justice of Canada?
  - a. Antonio Lamer
  - b. Beverly McLachlin
  - c. Bora Laskin
  - d. Louise Charron
7. For many years the Court's decisions could be appealed to the Judicial Committee of the Privy Council in England, but this right was later abolished in criminal cases in 1933 and in all other cases in \_\_\_\_\_.
  - a. 1937
  - b. 1982
  - c. 1949
  - d. 1967
8. The majority of appeals heard at the Supreme Court come from which of the following sources?
  - a. Applications for leave to appeal
  - b. Appeals as of right
  - c. Referred cases
  - d. Provincial civil appeals
9. The judges of the Supreme Court are appointed by?
  - a. The Prime Minister
  - b. The Cabinet
  - c. The Chief Justice of Canada
  - d. The Governor-in-Council
10. A judge appointed to the Supreme Court of Canada can serve until mandatory retirement at what age?
  - a. 65 years
  - b. 70 years
  - c. 55 years
  - d. 75 years

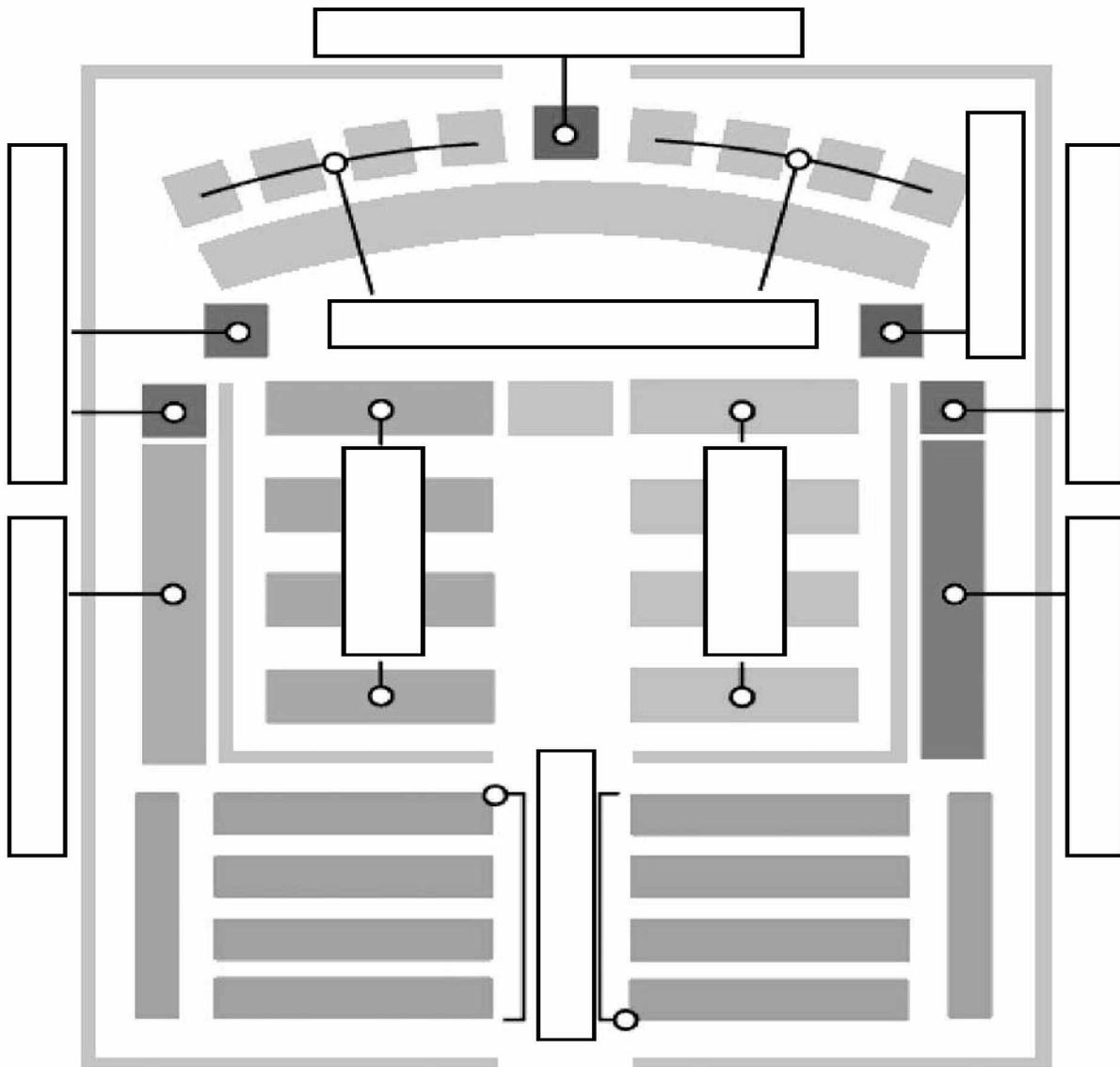
# Activity Sheet: Supreme Court Diagram

Name: \_\_\_\_\_ Block: \_\_\_\_\_ Date: \_\_\_\_\_

Find out the role of each of the following in the Supreme Court of Canada then complete the seating plan (<http://www.scc-csc.gc.ca>).

Chief Justice  
Court attendants  
The Media  
The Public  
Counsel for the Applicants

Counsel for the Respondents  
Law Clerks  
Court Attendants  
Registry Officer  
Puisne Judges



# Activity Sheet: SCC Review and Diagram

KEY

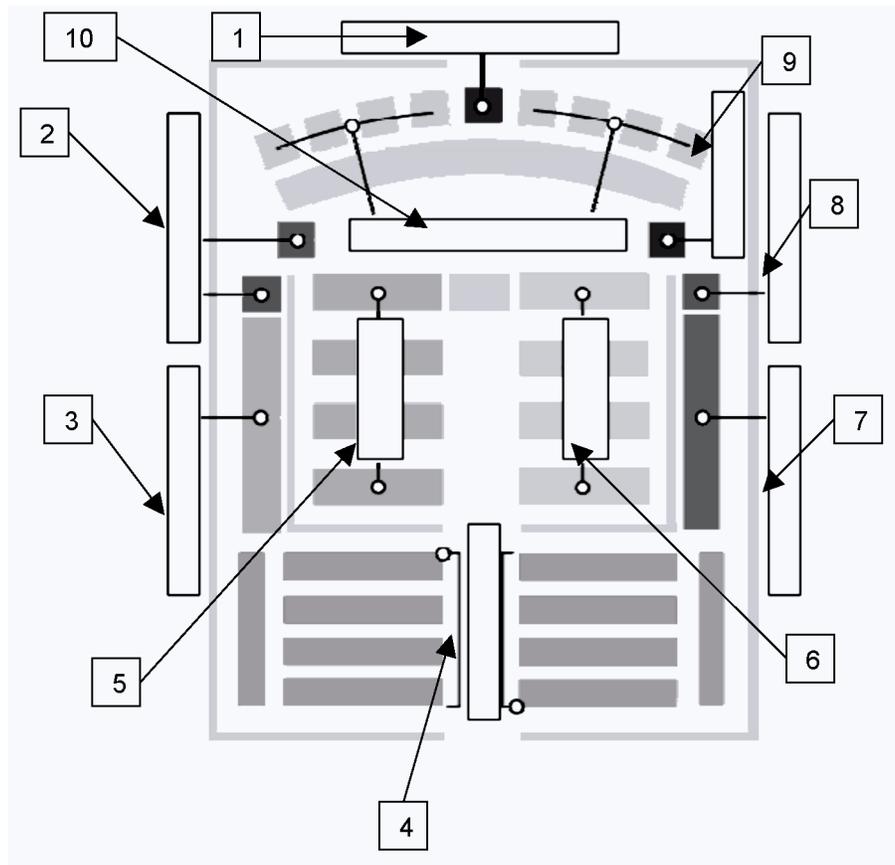
Name: \_\_\_\_\_ Block: \_\_\_\_\_ Date: \_\_\_\_\_

## Answers to Activity Sheet 6-2: Supreme Court Review

- |      |       |
|------|-------|
| 1. C | 6. B  |
| 2. A | 7. C  |
| 3. B | 8. A  |
| 4. A | 9. D  |
| 5. D | 10. D |

### Diagram Terms

1. Chief Justice
2. Court Attendants
3. The Media
4. The Public
5. Counsel for The Appellants
6. Counsel for The Respondents
7. Law Clerks
8. Court Attendants
9. Registry Officer
10. Puisne Judges



# Activity Sheet: Law Courts Quiz Show

<b>Court Terminology</b>	<b>100</b>	<b>250</b>	<b>400</b>	<b>500</b>	<b>1000</b>
<b>Supreme Court of Canada</b>	<b>100</b>	<b>250</b>	<b>400</b>	<b>500</b>	<b>1000</b>
<b>Judges</b>	<b>100</b>	<b>250</b>	<b>400</b>	<b>500</b>	<b>1000</b>
<b>Federal Court</b>	<b>100</b>	<b>250</b>	<b>400</b>	<b>500</b>	<b>1000</b>
<b>Judicial Independence</b>	<b>100</b>	<b>250</b>	<b>400</b>	<b>500</b>	<b>1000</b>

## Judicial Independence

What three things must our judges have?

What does the rule of law mean?

What is the name of the first Act that created an independent judiciary?

What is one difference between US judges and Canadian judges?

Give an example of a place where judges' decisions were influenced.

## Federal Court

What are the levels of the Federal Court?

When were the two divisions of the Federal Court split?

How is the Federal Court different from the SCC?

What are the number of judges sitting on the court?

What are cases commonly heard by the court?

## Judges

What is the primary role of a judge?

Who is the head of the SCC?

What is a decision made by a judge called?

What is the underlying philosophy of principles upon which legal rules are based?

What type of professional qualification does a judge need to become a judge?

## Supreme Court of Canada

Who is the Chief Justice of the SCC?

What are the types of cases heard?

What are the maximum number of judges sitting?

How does a case get to the SCC?

Who was the first woman to serve on the SCC?

## Court Terminology

What is the purpose of our courts?

Who is the complainant in a civil suit?

What is the term used for the Queen in criminal cases?

Who is the respondent in an appeal?

What is the type of justice system used in Canada?

Judicial Independence	Federal Court	Judges	Supreme Court of Canada	Court Terminology
Independence, impartiality and accountability.	Trial Court and Appeal Court.	Make rulings.	Beverly McLachlin.	Dispute resolution; hearing issue.
That no one is above the law.	2003.	Chief Justice.	Appeals.	Plaintiff.
The Act of Settlement 1701.	It has a trial and appeal court.	Judgment.	9 judges.	Regina or Rex.
Most elected in US; appointed in Canada.	Over 30 judges.	Jurisprudence.	By leave to appeal.	The person who is defending the appeal.
Judges in Nazi Germany.	Challenges to Federal Tribunals.	Needs to be a lawyer first.	Bertha Wilson.	Adversarial system.

**KEY**