

# CHAPTER 6

# Justice and Law

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## FOCUSING ON THE ISSUES

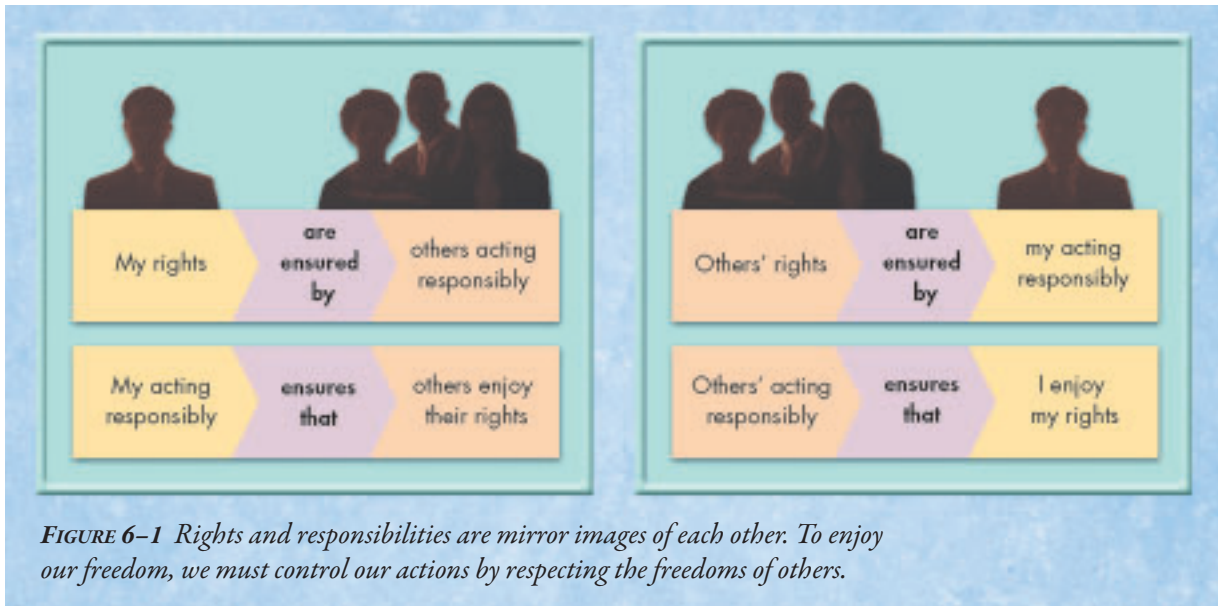
The *Constitution Act, 1982* helped reshape Canada. Citizens, regardless of background and religion, want governments to protect and advance their rights, and work for the benefit of society. Canadians are raising questions about the role of Parliament and the Senate. Canadians are more aware of the plight of the Aboriginal peoples who seek self-government.

This chapter will give you an overview of some aspects of the Canadian legal system. You will gain a better understanding of your rights, responsibilities, and role within the system. You will also see how the system can be changed to make it more responsive to your needs and to the special needs of young offenders. You will examine issues related to the reform of the Senate as well as the search for self-government by Aboriginal peoples. To help you understand the issues presented in this chapter, we will raise the following questions:

1. What are your rights and responsibilities as a Canadian?
2. Can rights be guaranteed? Why are rights sometimes restricted?
3. Why is personal responsibility important to preserving the rights of society as a whole?
4. What are the responsibilities and processes of the justice system in Manitoba?
5. What is being proposed to reform the Senate?
6. What is Aboriginal self-government, and how is it being achieved?



## RIGHTS AND FREEDOMS, RESPONSIBILITIES AND DUTIES



*FIGURE 6-1 Rights and responsibilities are mirror images of each other. To enjoy our freedom, we must control our actions by respecting the freedoms of others.*

Why do some laws prohibit you from doing something you would like to do, such as driving before the age of sixteen? To answer this question, think of a sport or game you enjoy. What would it be like if there were no rules to control the behaviour of the players, no officials to enforce the rules?

Rules of the game keep order and set expectations for how players should behave. Laws are created by formal government legislation and are designed to establish peace and social order among citizens. Laws regulate relations between people and between people and their government.

In order for our society to function properly, it is important that we understand our **rights** and **freedoms**. Freedoms are privileges that are at the very basis of a democratic government. Examples include freedom of religious worship, expression, and peaceful assembly. These freedoms allow people to meet, think, and speak openly, without fear of interference by the government.

**Rights** are granted and guaranteed by legislation or government regulation, but there are limitations to rights since the law must provide the same guarantees to all citizens. For example, the law guarantees your right to live and work wherever you please in Canada. At the same time, you cannot deprive another person of his or her home or forbid that person to work at

the job of his or her choice. Your rights, therefore, cannot be absolutely unlimited, or they would infringe on the equal rights of others.

Our freedoms and rights are outlined in laws, bylaws, and regulations at the three levels of government. By making laws, government explains the limits and extent of our rights and freedoms.

Just as laws protect our rights and freedoms, our duties and responsibilities are also explained by legislation. **Duties and responsibilities** are the obligations the laws place on people while they exercise their rights. You have the right to work at whatever job you please, but you also have the duty to pay taxes on the money you make at that job. This restriction benefits you in the long run. For example, the government uses part of your taxes to maintain the roads you travel over on your way to work.

### Thinking It Through

1. Do you think it more important for the Canadian government to advance citizens' freedoms? Or should it stress citizens' duties and responsibilities? Give examples from your own observations about contemporary Canada.

### Using Your Knowledge

2. Explain the ideas in Figure 6–1 to a classmate. Would your explanation be different if you were going to school in a country with an undemocratic government?

## Human Rights

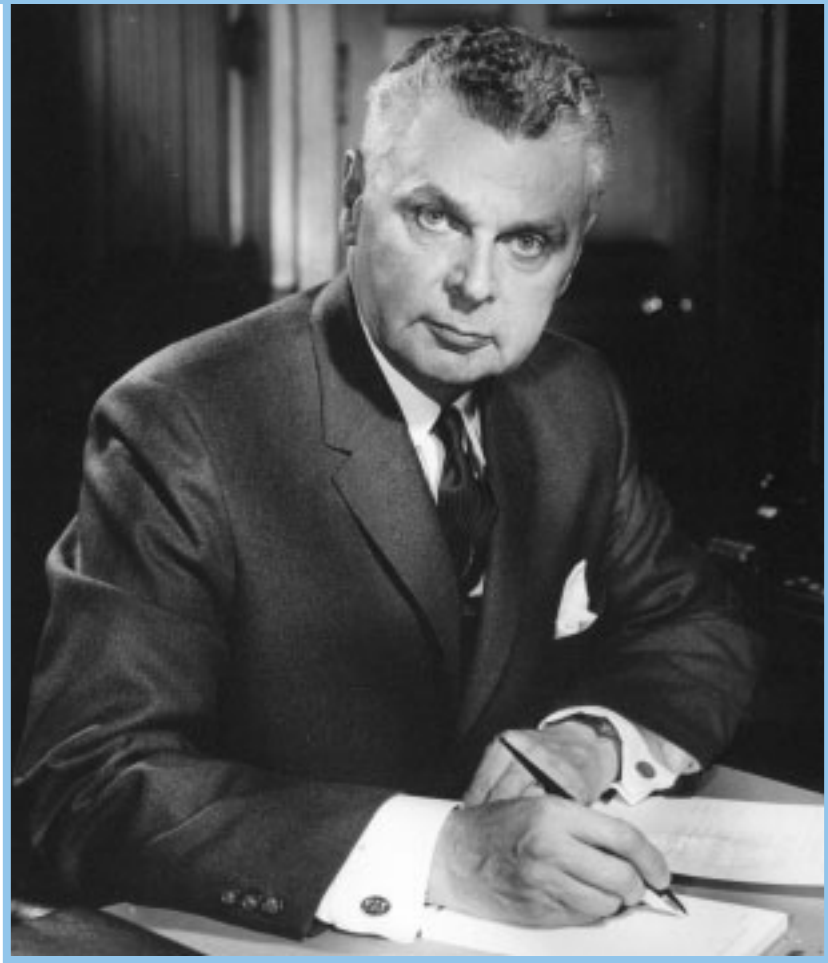
Rights that are so basic that they belong to all human beings are called human rights. In Canada, these rights are described and protected by two pieces of federal legislation: the *Canadian Bill of Rights*, passed in 1960, and the *Canadian Charter of Rights and Freedoms*, passed in 1982.

### *The Canadian Bill of Rights*

The push for written laws to protect the rights of Canadians began in 1945, at the end of World War II. There were two opposing views on the subject. Some people believed that the rights of Canadian citizens were secure enough because they were protected by traditional practices, **common law**, and the courts. Others believed that our human rights would be secure only when those rights were identified and passed into **statute law**. They argued that only then would the courts have to protect them.

**Common law** is based on the rulings by judges in court cases. **Statute law** is the body of written law that has been passed as legislation by federal, provincial and territorial, and local governments.

**FIGURE 6–2** Under Prime Minister John Diefenbaker’s government, the rights of Canadians were formally recognized and outlined in the *Canadian Bill of Rights*. Why did he want this law to be passed?



For information on the *Canadian Charter of Rights and Freedoms*, check the link on our Web site:

[www.pearsoned.ca/ccw](http://www.pearsoned.ca/ccw)

When a right is given special protection by being included in the Constitution, it is said to be **entrenched**.

John Diefenbaker was instrumental, first as a Member of Parliament from Saskatchewan and then as prime minister of Canada, in passing human rights legislation. In 1960 Diefenbaker’s government passed the *Canadian Bill of Rights*, which formally recognized the rights already held by Canadians under common law.

### ***The Canadian Charter of Rights and Freedoms***

The *Canadian Bill of Rights* remains in effect today, but it was strengthened in 1982 by the passage of the *Canadian Charter of Rights and Freedoms*. The Charter was **entrenched** in the Constitution, and in most cases it is more powerful than provincial and municipal laws.

Figure 6–3 explains the Charter. The first column lists your rights. The second column explains the rights, and the third column lists some of the issues that have been raised by these rights.

## The Canadian Charter of Rights and Freedoms, 1982

### Your Rights and Related Issues

Section	What you can do	Questions and issues
<b>One</b> Guarantee of Rights and Freedoms	<ul style="list-style-type: none"> <li>• Live as a free citizen in a democratic nation, with certain limits set by government laws.</li> </ul>	<ul style="list-style-type: none"> <li>• Should rights be suspended during riots or other violent periods?</li> </ul>
<b>Two</b> Fundamental Freedoms	<ul style="list-style-type: none"> <li>• Worship as you like.</li> <li>• Believe what you want.</li> <li>• Express your opinions openly, without fear.</li> <li>• Associate with whomever you choose.</li> <li>• Gather together peacefully.</li> </ul>	<ul style="list-style-type: none"> <li>• Should certain religious groups be exempt from Canadian laws that contradict their religious practice?</li> <li>• Should racist groups be free to organize rallies promoting hatred against others?</li> </ul>
<b>Three</b> Democratic Rights	<ul style="list-style-type: none"> <li>• Vote in elections.</li> <li>• Run as a candidate in elections.</li> <li>• Elect a new government at least once every five years (except in times of national emergency such as war).</li> </ul>	<ul style="list-style-type: none"> <li>• Should prisoners be allowed to vote?</li> <li>• Should the voting age be raised from 18 to 21?</li> </ul>
<b>Four</b> Mobility Rights	<ul style="list-style-type: none"> <li>• Enter, remain in, or leave Canada.</li> <li>• Live and work wherever you wish in Canada.</li> </ul>	<ul style="list-style-type: none"> <li>• Should local residents be chosen first for employment when major employers move into an area?</li> <li>• Should Canadians be restricted from moving to obtain better social services such as health care, education, or welfare?</li> </ul>
<b>Five</b> Legal Rights	<ul style="list-style-type: none"> <li>• Right to life, liberty, and security of person.</li> <li>• Have a fair trial if you are accused of a crime.</li> <li>• Have the right to humane treatment.</li> </ul>	<ul style="list-style-type: none"> <li>• Should these rights extend to the unborn? Does abortion deny rights or protect rights?</li> <li>• Should the legal system be sped up to better serve justice and protect rights?</li> </ul>
<b>Six</b> Equality Rights	<ul style="list-style-type: none"> <li>• Live and work, being protected by law regardless of your race, religion, national or ethnic origin, colour, sex, age, and mental or physical ability.</li> <li>• Be treated as “equal before and under the law.”</li> </ul>	<ul style="list-style-type: none"> <li>• Should sexual orientation or sexual preference be included under equality rights?</li> <li>• Should certain groups receive different treatment in order to create equality?</li> </ul>

Section	What you can do	Questions and issues
<b>Seven</b> Official Languages of Canada	<ul style="list-style-type: none"> <li>• Communicate with, and receive available services from, any federal government office in either French or English.</li> <li>• Use either French or English in any federal court.</li> </ul>	<ul style="list-style-type: none"> <li>• Is Manitoba's French-speaking population adequately served in those areas currently designated as bilingual?</li> <li>• Should languages other than French and English continue to be viewed as official languages if significant numbers of citizens speak these languages, as done in the Northwest Territories?</li> </ul>
<b>Eight</b> Minority Language Educational Rights	<ul style="list-style-type: none"> <li>• Have your children educated in either French or English where sufficient numbers of students exist.</li> </ul>	<ul style="list-style-type: none"> <li>• What are sufficient numbers to justify minority language education?</li> <li>• Should other languages qualify for the same treatment?</li> </ul>
<b>Nine</b> Enforcement	<ul style="list-style-type: none"> <li>• Take the matter to court should any of the above rights or freedoms be denied.</li> </ul>	<ul style="list-style-type: none"> <li>• Should such matters be taken to court only by the individuals involved, or should pressure groups be able to pursue a matter on behalf of an individual?</li> </ul>
<b>Ten</b> General Provisions	<ul style="list-style-type: none"> <li>• Aboriginal peoples of Canada retain their rights previously established.</li> <li>• The Charter is to be interpreted to enhance Canada's multicultural heritage.</li> <li>• The Charter applies equally to females and males.</li> <li>• References in the Charter to provinces also include the territories.</li> <li>• Religious private schools may continue to select students and teachers on the basis of religious persuasion.</li> <li>• Previous rights not mentioned continue to exist, such as the right to private property in the <i>Canadian Bill of Rights</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• Should the special status of some "status Aboriginal grants" ("Treaty nations") be extended to others (Métis, Non-Status)?</li> <li>• Should the Charter be seen as the method of promoting multiculturalism?</li> <li>• Should the Charter be used to promote the equitable treatment of women?</li> </ul>

*FIGURE 6-3 The Canadian Charter of Rights and Freedoms. Try to decide what you think about some of the questions these rights have raised.*

The Supreme Court of Canada has taken a very active role in interpreting the Charter. It has been especially active in defining the **legal rights** and the **equality rights** that are protected by the Charter. In the next two sections, we will examine these rights and consider why they are so important for us as Canadians.

## The Human Rights Commission

### FOCUS

WHAT HAPPENS when people lose their jobs or are denied housing because of racial or sexual discrimination? To whom can they complain about these unfair practices?

To deal with human rights complaints, the federal government passed the *Canadian Human Rights Act* in 1977. A Human Rights Commission administers the Act. Provincial governments have also established human rights commissions. Manitoba set up its human rights commission, The Manitoba Human Rights Commission (MHRC), in 1987.

When a federal or provincial human rights commission receives a complaint, investigators are sent to collect evidence. If the investigators decide that

human rights are in fact being denied, the commission first discusses the matter with those involved. The people accused of denying rights are given an opportunity to correct their actions. Most of the complaints are settled at this stage.

If the problem is not solved, however, the case then goes to a special board of inquiry. The evidence is then examined to determine whether human rights have in fact been denied. If the board decides that a violation has occurred, the commission can fine or otherwise penalize the guilty party in order to correct the situation. Either party can appeal the decision of the board of inquiry.

### Using Your Knowledge

3. What does it mean to entrench rights in the Constitution? What do you think would happen over time if rights were not entrenched?

### Thinking It Through

4. What is the intent of human rights legislation? Set up a debate with a classmate. Are laws protecting human rights really necessary in a democratic nation such as Canada?

5. Draw up a Charter of Responsibilities and Duties for Canadian High School Students. List 10 responsibilities and duties. How will these be enforced? By whom? Be certain to include the reason why you included each responsibility or duty in your charter.

### Inquiring Citizen

6. Investigate the activities of volunteer organizations in the field of civil liberties. Examples include The Canadian Civil Liberties Association and the Ukrainian Canadian Civil Liberties Association.



## Legal Rights

In many nations today citizens still do not have legal rights. Governments torture people or unjustly imprison people. In Canada, because of the increased danger of terrorism, governments have taken extra precautions to protect our security against terrorist attack.

In Canada, the Charter was created in part to protect Canadians against illegal use of power by governments. The Charter specifically outlines the legal rights of all Canadians. Some of these rights and the reasons for them are listed in Figure 6–4.

<p><b>The right to be secure from unreasonable search and seizure.</b> The police cannot search you, your home, or your personal belongings unless they have good reason to believe that doing so will help them discover evidence about a criminal activity.</p>	<p><b>The right against self-incrimination.</b> You can refuse to answer questions when your answers might prove you committed a crime.</p>	<p><b>The right to be considered innocent until proven guilty.</b> You do not have to prove that you did not commit the crime. Rather, it is up to the government to prove that you are guilty.</p>
<p><b>The right not to be arbitrarily detained and imprisoned.</b> The police cannot arrest you unless they have convincing evidence that you have committed a crime.</p>	<p><b>The right of habeas corpus.</b> You have to be told the reason you are being arrested. You must also be brought to trial without unnecessary delay.</p>	<p><b>The right to a fair trial. You have the right to a lawyer.</b> If you cannot afford one, the court must appoint one to defend you. You have the right to present your side of the case, and the judge must treat you in a fair manner.</p>

*FIGURE 6–4 The legal rights of Canadians are listed in the Canadian Charter of Rights and Freedoms.*

### *Human and Legal Rights and the Fight Against Terrorism*

Striking a balance between public safety and freedom is very challenging when dealing with security issues. Can we treat suspects — citizens and non-citizens — in accordance with Canada’s Charter and international rights obligations. Can our security forces effectively root out terrorism? If attacked, can Canada deal justly with the fallout?

In 2006 the Supreme Court heard a case involving three Muslim men arrested under **security certificates**. At issue was the lawfulness of these

certificates. Security certificates permit foreign-born non-Canadians thought to be a danger to be detained without charge. Amnesty International believes these certificates violate legal rights. Among these legal rights are the right of habeas corpus and the right to a fair trial.

### Using Your Knowledge

7. Think about some legal dramas you have watched on television. What human and legal rights issues are raised on these shows? Describe how one episode illustrates a right listed in Figure 6–4.

### Organize and Understand

8. Make a poster showing five rights that are relevant in the fight against terrorism in Canada. Give reasons for your choices.

### Inquiring Citizen

9. Investigate the arrest in 2006 of seventeen Canadians who were allegedly planning attacks in Canada. Did the case violate their legal rights as Canadian citizens?
10. Find out more about legal rights not listed in the text. For example, you may examine the right to bail or the right not to be tried for the same offense twice. Report to the class about cases you have found.

## Equality Rights

In the past in Canada, people were **discriminated** against on the grounds shown in Figure 6–7. For instance, in Chapter 8 you will read about the internment of Japanese Canadians by the federal government during World War II.

Two aspects of equality have been the focus of much debate: equality *before* the law and equality *under* the law. Equality before the law means that every person has the same right of access to the courts. As you saw in Figure 6–4, if a person is too poor to afford a lawyer, the court will provide one at no expense.

Equality under the law means that the law must also provide for equal treatment. The courts now argue that equal access does not guarantee equality of treatment. This has been especially so for certain groups in Canada, such as women, people of colour, and people with physical or mental challenges.

Equality under the law was included in the Charter chiefly through the efforts of women's groups. This advance in rights has been used frequently to challenge any legislation that is thought to be discriminatory and puts people who belong to certain groups in an unequal position.

The following case illustrates the difference between equality before the law and equality under the law.



*FIGURE 6–5 All Canadian citizens have a right to a lawyer.*

**Jeannette Lavell**

In 1876 Parliament passed the *Indian Act*. The Act identified which First Nations people could be known as “status Indians.” Status Indians were each given a number and enrolled in a registry in the Department of Indian Affairs. Only status Indians were legally entitled to the economic benefits that the First Nations had negotiated with the federal government. Aboriginal women who married non-Aboriginal men could be deprived of Indian status. Aboriginal men, however, were free to marry non-Aboriginal women without losing their status.

In 1970 Jeannette Lavell, a member of the Wikwemikong band on Manitoulin Island, Ontario, married a non-Aboriginal man, thus losing her Indian status.

Lavell appealed her case to the Supreme Court of Canada, charging that the *Indian Act* denied Aboriginal women equality before the law because it treated them differently than it did Aboriginal men. In 1973 the Supreme Court ruled against Lavell, stating that equality before the law means “equality of treatment in the enforcement and application of the laws of Canada.” As long as Lavell had been treated in the same manner as other Aboriginal women who married non-Aboriginal men, said the court, she had not been discriminated against.

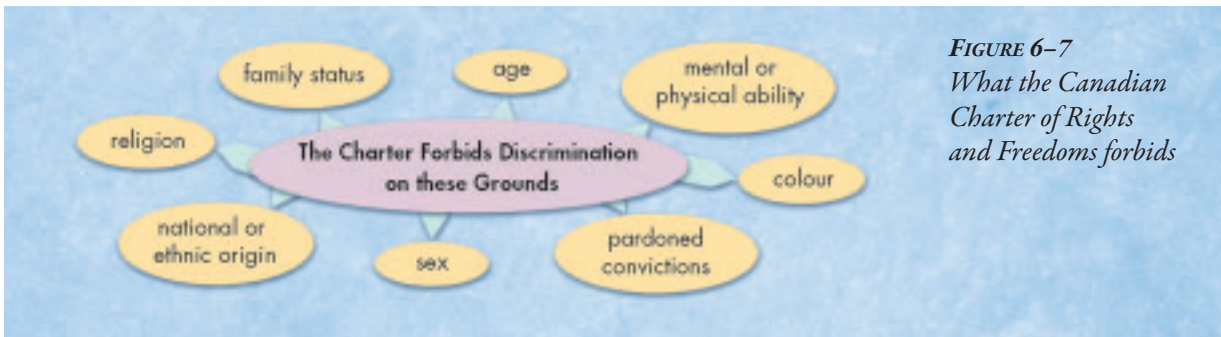
When the *Canadian Charter of Rights and Freedoms* was passed in 1982, it expanded the equality provision in the *Canadian Bill of Rights* to include equality “before and under the law.” Lavell could not be said to enjoy equality under the law because as a woman she was treated differently than a man would be in the same situation. In this sense, the law itself — the *Indian Act* — was discriminatory under the Charter. The Charter also contained a provision guaranteeing



**FIGURE 6-6** When she lost her Indian status, Jeannette Lavell appealed her case to the Supreme Court of Canada.

that Aboriginal and treaty rights were to be applied equally to men and women.

The *Indian Act* was subsequently amended by Bill C-31 in 1985. Provisions that were deemed discriminatory were struck from the Act. Aboriginal women would no longer lose their Indian status if they “married out,” and women who had lost status under the old Act could apply to have it reinstated.



**FIGURE 6-7**  
*What the Canadian Charter of Rights and Freedoms forbids*

### Thinking It Through

11. In the Lavell case the crown noted that Lavell should suffer the consequences of the law as it stood. Do you agree or disagree? Share your opinions with a classmate.

### Inquiring Citizen

12. Visit the Web site of The Manitoba Human Rights Commission. Go to the MHRC TV Student Centre on that site. Do the Code Rights Quiz or select other options.

## Another Look at Bill C-31

BILL C-31 allows for the reinstatement of those who lost Indian status under the old rules and gives Indian status to their children. However, the process and criteria for first-time registration are confusing, and still offensive, because authority to determine who can be recognized as a status Indian still lies with the federal government, not with Aboriginal peoples.

As well, the children of women reinstated under Bill C-31 are still treated less

favourably than those of men who married non-Indians before 1985. And children born of such unions after 1985 generally cannot pass their status on to their children.

Given enough time and enough marriages outside status boundaries, “status Indians” could disappear completely as a category.

A further problem is that Bill C-31 delegated authority to bands to determine who can become a band member and conse-

quently who can live on reserve lands. Those who acquired or regained status under Bill C-31 are not automatically given band membership or the rights that go with it. Access to subsidized housing on reserves is hotly contested in some places. Bill C-31 women and their children may suffer materially as well as psychologically from exclusion enforced by band decisions.

*Source: The Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, vol. 4, Perspectives and Realities (1996).*

## Using Your Knowledge

- Imagine that you attended the case of Jeannette Lavell. Using the information from the Case Study and your own thoughts about the Supreme Court's ruling, write a diary entry describing your reactions. Does the information in the excerpt from the Royal Commission change your reaction? Explain in an additional entry.
- Look again at the legal rights listed in Figure 6–4. Was Jeannette Lavell deprived of any of these rights? What rights was she deprived of?



For more information on the Manitoba justice system, check the link on our Web site:  
[www.pearsoned.ca/ccw](http://www.pearsoned.ca/ccw)

## DEMOCRACY AND HUMAN RIGHTS IN THE JUSTICE SYSTEM

### The Manitoba Justice System

The laws of the land are but one aspect of the Canadian legal system. The federal government has authority over criminal law. It sets out the procedures that must be followed. Yet it is the provinces and territories that administer justice. Each province follows similar procedures in administering justice to ensure that Canadians are treated fairly and equally across the country.

As in other provinces, Manitoba has five parts in its justice system. Two of these — the police and the courts — are examined in this section.

Citizens	Governments	Police	Courts	Prisons
<ul style="list-style-type: none"> <li>elect the government</li> <li>possess rights protected by law</li> <li>are responsible for obeying the law</li> </ul>	<ul style="list-style-type: none"> <li>make the laws</li> <li>set down punishment for crimes</li> <li>ensure order in society</li> <li>guarantee the rights of the individual</li> </ul>	<ul style="list-style-type: none"> <li>enforce the laws</li> <li>try to prevent crimes from happening</li> <li>catch those who break the law</li> </ul>	<ul style="list-style-type: none"> <li>interpret the law</li> <li>decide whether alleged offenders are guilty or innocent</li> <li>decide what punishment convicted offenders will face</li> </ul>	<ul style="list-style-type: none"> <li>carry out the punishments decided by the courts</li> <li>try to rehabilitate criminals so they will not commit crimes again</li> <li>protect the public from criminals</li> </ul>

**FIGURE 6–8** *The five parts of Manitoba's justice system. Do you think any one of these five parts is more important than the others?*

## Manitoba Police

The police are responsible for enforcing the laws in Manitoba. “D Division” of the Royal Canadian Mounted Police provides provincial, municipal, federal, and First Nation policing through its various detachments. The *Provincial Police Act* lays out the terms of this service.

The provincial police are responsible for the enforcement of laws throughout the province, except in areas that are served by the local police force. Local police forces include forces that serve larger cities such as Winnipeg and Brandon, and Aboriginal reserves. These local police forces enforce the *Criminal Code*, provincial laws, municipal bylaws, and band council laws.

## The Manitoba Criminal Court System

The courts in Manitoba deal with **criminal** and **civil law** cases. In this section, we will deal only with the criminal court system in the province.

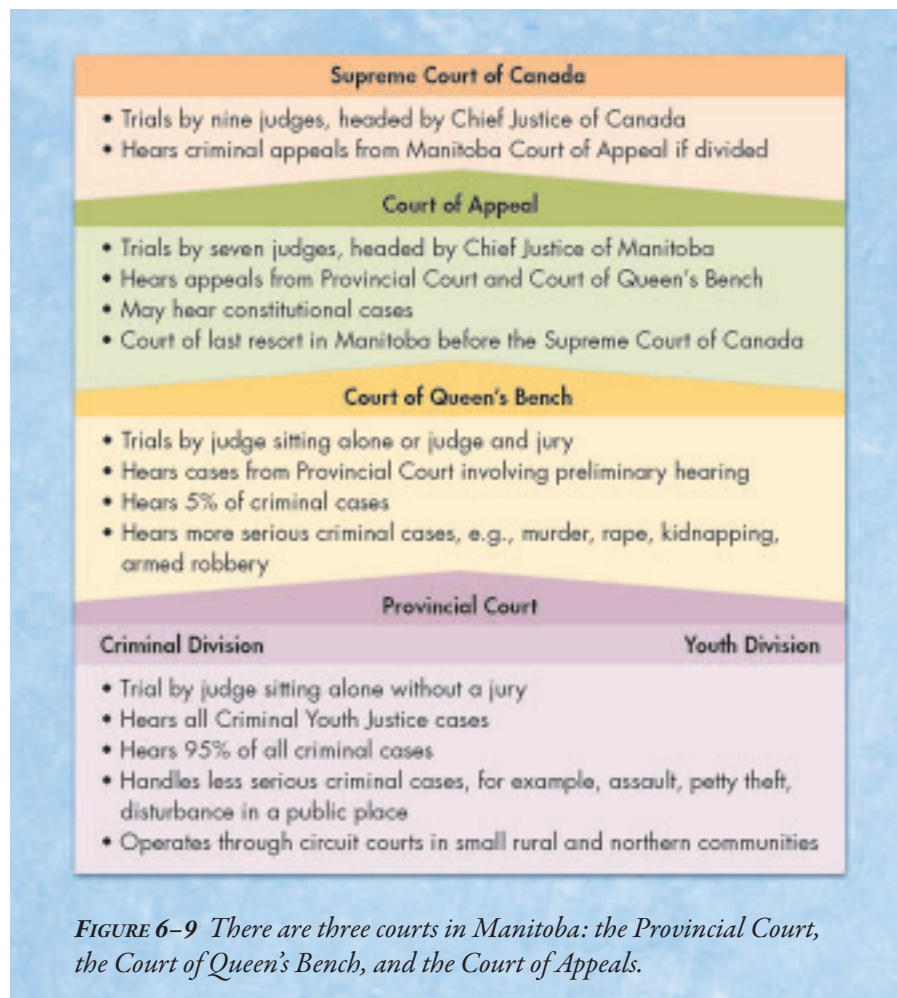


FIGURE 6-9 There are three courts in Manitoba: the Provincial Court, the Court of Queen's Bench, and the Court of Appeals.

### Complaints Against the Police:

If you feel wronged by the conduct or actions of a municipal police officer in Manitoba, you may file a complaint. The complaint may be about abuse of authority or other improper conduct. The Law Enforcement Review Agency (LERA) reviews the complaint. You may direct complaints about members of the RCMP to the Commission for Public Complaints against the RCMP.

**Criminal law** protects your rights with respect to offences against the public or society as a whole. These offences include crimes such as murder, arson, sexual assault, and theft. Although individuals are the victims of such crimes, society as a whole is harmed by these actions.

**Civil law** deals with the protection of private rights. It usually involves disputes between individuals or groups of people. These disputes may occur over property or personal relationships such as marriage. It also deals with contracts and ownership issues.

## Using Your Knowledge

15. For each of the following sample cases, examine Figure 6–9. Where are these cases most likely to be tried? Each of the defendants is an adult.
- Ignatius Dietz is charged with assault.
  - Nicole Grant is caught shoplifting a compact disc.
  - Phil Greco wants custody of his children. He is charging his former wife with abducting the children.
  - Mike Bardos is charged with breaking and entering.
  - Nick Smith is charged with operating a car theft ring, involving the theft of 50 cars in downtown Winnipeg.

## Inquiring Citizen

16. “Justice delayed, justice denied.” Test this saying against current evidence. Look through your local newspaper for articles on criminal cases. Find out the offense and the length of time it took for the case to come to court.

### Three Principles of the *Youth Criminal Justice Act*

- meaningful consequences
- rehabilitation
- reintegration into the community

## The Youth Justice System in Manitoba

An important aspect of the justice system in Manitoba deals with youth criminal acts. We will see how the present law, the *Youth Criminal Justice Act*, tries to advance the rights of youth in the justice system today.

### *The Youth Criminal Justice Act of 2003*

To address the concern that too many young people were ending up in court, the *Youth Criminal Justice Act* provides for more “extrajudicial” or outside-the-court measures. When the police investigate an incident, if they determine that a crime has been committed, they can issue a warning or refer the youth to a community program. However, if the situation appears serious, the

## FOCUS

## Judicial Sanctions and Youth Offenders

SERIOUS OFFENCES are still handled in Youth Court. Custody is only one form of sentencing. Other **sanctions** include

- a reprimand,
- a discharge with or without conditions,
- a fine,
- compensation or restitution to crime victims,
- community service,
- probation,
- intensive support and supervision in the community.

police will refer the case to the Crown or lay a charge. The accused youth may be arrested when charged, depending on the seriousness of the offence.

For the cases that go to Youth Court, the judges must consider community-based sentences as the first option. Under the *Youth Criminal Justice Act*, custody is to be reserved generally for violent or repeat offenders. If youth custody is imposed, most sentences provide the offender with some help in adjusting back into the community.

The *Youth Criminal Justice Act* appears to have worked well in the years it has been in force. Youth jail terms are less common. The Supreme Court of Canada has, in fact, ruled that courts may not try generally to deter youth crime by giving tougher sentences. It has ensured fair treatment for youth involved with the law. It has also held youth accountable for their conduct. At every stage of the process, officials attempt to take the youth's needs into account. Where possible, it directs cases to be handled outside the youth justice court system. It is now a requirement to consider community options before laying a charge. In cases that go to court, the laws encourage community-based sentences. The Act appears to be changing the outlook of young offenders and uniting them with their communities.

**Sanction** is a penalty or reward to enforce obedience to a law.

## Community-Based Program in Operation **FOCUS**

### Neighbourhoods Alive!

This is a community-based crime prevention program in operation across the province. A program, "Lighthouses", makes use of schools and

other community facilities. There, youth can get involved in positive social, recreational, and crime-prevention activities.

### Using Your Knowledge

17. Why did society realize that the legal rights of young offenders were as important as those of adults? Why do you think some people object to focusing on these rights? You may wish to refer to Figure 6–4 to assist with your answer.

### Inquiring Citizen

18. Organize a class debate with the help of your teacher. "Is the *Youth Criminal Justice Act* an effective way to deal with youth crime in society?"



## REFORMING THE SENATE

We first looked at the Senate in Chapter 5. Before we can understand why critics of the Senate are calling for its reform, we must understand the role the Senate plays in Canada's government.

### Three Functions of the Senate

The Senate's major purpose is to provide representation for regional, provincial, and minority interests. The Senate has three functions or means of realizing this purpose: legislation, deliberation, and investigation.

1. **Legislation** introduced and passed in the House of Commons must also be passed in the Senate. Similarly, any legislation that is first passed in the Senate must also be passed in the House of Commons.
2. **Deliberation** on regional concerns, public issues, and grievances can occur in the Senate. Senate deliberations bring national attention to particular concerns — the death penalty, the media — that might otherwise go unnoticed.



For more information on the Senate, check the following link on our Web site:

[www.pearsoned.ca/ccw](http://www.pearsoned.ca/ccw)



*FIGURE 6–10* Governor General Michaëlle Jean reads the speech from the throne in the Senate chamber.

3. **Investigation** by the Senate has become more important in recent years. It may form joint committees with the House of Commons. In recent years the Senate has investigated oil and gasoline prices and our national science policy, among other issues. In many cases, these investigations have had a direct influence on changes in government policy.

## Criticisms of the Senate

The effectiveness and usefulness of the Senate have often been questioned. The primary criticism today is that the Senate is dominated by the central provinces of Ontario and Québec; therefore, the concerns of the Western and Atlantic provinces are not properly addressed. This belief is especially strong in the West, where the population of some provinces such as Alberta and British Columbia has increased while their number of Senate seats has remained the same.

### Some legislation blocked by the Senate:

The Senate delayed the passage of the implementation of the *Free Trade Act* in 1988. It has also defeated bills on abortion and criminals profiting from authorship with respect to a crime.

Province	Number of Senate Seats
Ontario and Québec	24 each
Nova Scotia and New Brunswick	10 each
British Columbia, Alberta, Saskatchewan, Manitoba, and Newfoundland	6 each
Prince Edward Island	4
Yukon, Northwest Territories, and Nunavut	1 each
<b>Total 105</b>	

FIGURE 6-11 Senate seats by province

Region	Number of Senate Seats
Ontario and Québec	48
Atlantic Provinces	30
Western Provinces	24
Yukon, Northwest Territories, and Nunavut	3
<b>Total 105</b>	

FIGURE 6-12 Senate seats by region

**FIGURE 6-13**  
*Some criticisms of the Senate*



Other criticisms of the Senate include the following:

- Senate appointments are partisan. Since Senate appointees inevitably belong to the party in power, the appointments are considered patronage “plums,” or rewards for long-standing service to the party.
- The Senate is costly. All senators receive a salary of \$122 700, a research grant, an office budget, and a tax-free expense allowance.
- Some senators have a poor track record for attendance.

## Senate Reform **FOCUS**

### **SOME RECENT ATTEMPTS AT REFORM**

#### **The Meech Lake Accord and Senate Reform**

The Meech Lake Accord was an attempt at constitutional change in 1987. It was meant to address such challenges as the imbalance between federal and provincial powers, the place of Québec in Confederation, and Senate reform.

Senate reform and the other five major areas of constitutional change were to be approved or rejected as a package. Newfoundland and Manitoba did not approve the Accord. Newfoundland cited lack of compromise in negotiations from Québec and the lack of a provision for an elected Senate. In Manitoba, MLA Elijah Harper delayed passage in the Manitoba legislature. He believed special

status should be given to native people if it were to be given to Québec as in the agreement. The failure of the Meech Lake Accord again prevented reform of the Senate.

#### **The Charlottetown Accord and Senate Reform**

The Charlottetown Accord of 1992 contained similar provisions to the defeated Meech Lake Accord.

A federal committee toured the country seeking responses to the revised constitutional proposals. In a popular national vote, Canadians across the nation turned down the Accord. Some say the bundle of provisions contained something for everyone to reject. Canada had failed for a second time to amend its Constitution and reform the Senate.

- There are numerous vacancies that are left unfilled.
- Members from smaller political parties are not represented in the Senate.
- Women, Aboriginal peoples, and ethnic groups are under-represented in the Senate.

Some critics of the Senate have gone so far as to call for it to be abolished. It is too badly flawed to fix, they say, so we should get rid of it entirely. Others have argued that the Senate provides a useful function but is badly in need of reform.

## Senate Reform: Potential Changes

There is much difference of opinion about what, if anything, should be done to improve the Canadian Senate. The calls for reform take a number of approaches, but the goal in every case is the same: to improve the ability of the Senate to represent and protect regional interests. The most common recommendations for reforming the Senate are the following:

- senators should be elected rather than appointed,
- seats in the Senate should be allotted according to provincial population figures rather than by the old method of representation by major regions, and
- the Senate’s power to suspend passage of a bill from the House of Commons should be limited to 120 days.

### Active Citizenship

#### Sharon Carstairs

Senator Sharon Carstairs is one of six senators representing Manitoba in Parliament. She has volunteered at the grassroots level in politics in Nova Scotia, Alberta, and Manitoba. She is the first woman to lead the Official Opposition in a Canadian Legislative Assembly.

## Harper pledges Senate election

### ‘PM can choose’

by Jack Aubry

OTTAWA - The Conservative government intends to hold senatorial elections with or without the agreement of premiers in time for the next general federal election, Stephen Harper said yesterday.

Mr. Harper reminded reporters during a news confer-

ence that appointing senators is a power strictly held by the prime minister. The Tories included Senate reform in their election platform, and the Prime Minister said he discussed the issue last week during a meeting with the premiers.

“I raised it with the premiers in general terms. We haven’t set time lines, but it is something I would like to get on with sooner rather than later. And I would

expect that no later than the next federal election we will have a senatorial election set in place,” Mr. Harper said.

“The prime minister can choose to create an electoral process and he can choose to do so, simply at the federal level, particularly if you were able to hold Senate elections at the time of the federal election,” he said.

“So while I obviously would like to see the co-operation of

the provinces, if our government chooses to have Senate elections, then that is something we believe we can do from Ottawa,” Mr. Harper said.

Questions were raised about Mr. Harper’s commitment for an elected Senate after he appointed Conservative organizer Michael Fortier to the Senate in February in order to have a representative for Montreal at the Cabinet table. But he indicated again Mr. Fortier’s Senate seat would be vacated to allow the wealthy financier to run for a seat in the House of Commons.

“And yes, Senator Fortier’s seat is one of those that will be

up for election. Obviously, I am not opposed to other kinds of reforms. But as I say ... I told the premiers, while I would like to see more comprehensive Senate reform, one way or the other, we are committed to Senate elections,” Mr. Harper said.

It is expected Mr. Harper will hold elections for vacant Senate seats only. There are five vacancies, with a pair for Ontario and singles for Newfoundland and Labrador, New Brunswick, and Prince Edward Island.

Another half-dozen seats are expected to become free in the next two years with the depart-

ture of members who turn 75, the mandatory retirement age.

Recent polls have suggested the Canadian public is split on either abolishing the Senate, as favoured by the NDP and Bloc Québécois, or making it an effective, elected and equal body, often referred to as the Triple-E model. It has been mostly used by prime ministers as a place to reward political organizers and fundraisers.

*SOURCE: Harper pledges senate election, with premiers onside or not: “PM can choose”  
Byline: Jack Aubry, March 2, 2006, Page: A1 / FRONT (National Post version of Ottawa Citizen article.) Reprinted by permission of the Ottawa Citizen.*

## Organize and Understand

19. The Senate acts as a forum for regional, provincial, and minority concerns. What are some pressing concerns facing people in Manitoba? Might they be debated or investigated by the Senate? Why might it be important in our system of government to have this forum? Express your ideas in an open letter to your community.

## Inquiring Citizen

20. Use the Parliament of Canada Web site to find out which members of the Senate are

from Manitoba. Choose one of the senators and compile a brief biography that answers the following questions:

- What is the senator’s employment background? What special knowledge or experience does the senator have, and on what committees does he or she serve?
- Who appointed your senator? When did the senator enter the Senate, and how many more years will he or she serve?

# ABORIGINAL SELF-GOVERNMENT

## Before the Europeans

To better understand the issue of Aboriginal self-government, it may help to think about what Canada was like before the Europeans arrived. Part of the framework of our country was in place long before Canada became a nation in 1867. The land on which our country was built originally belonged to the various Aboriginal peoples who lived here for thousands of years before the arrival of people from Western Europe.

Once the Europeans arrived, however, the Aboriginal peoples found that their rights to the land and their systems of government and law were largely ignored. One framework was torn down. Two others, those of English and French Canadians, were erected in its place.



*FIGURE 6-14* Aboriginal Canada before the arrival of Western Europeans  
The political boundaries did not yet exist, but they will help you to better identify where the Aboriginal peoples settled.

## European Domination

As more and more settlers arrived from Western Europe, the Aboriginal peoples, through treaties, lost much of their land and with it much of their control over their own affairs. In the end, most of the prime agricultural and forestry land in what was to become Canada was taken from the Aboriginal peoples for the benefit of the new settlers. In return, the Aboriginal peoples were given small reserves in remote areas. By the time Canada became a nation, the federal government, as part of its treaty obligations, had taken responsibility for the education, health care, and administration of all Aboriginal peoples and reserves. The *Indian Act* of 1876 was passed for this purpose.

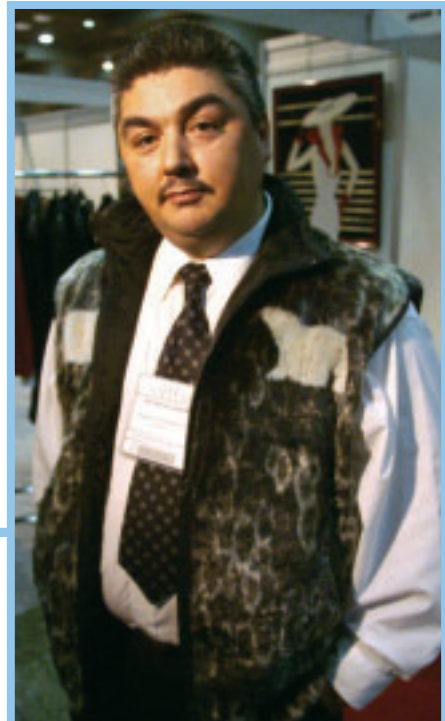
## Toward Aboriginal Self-Government

Since the early 1970s, Aboriginal leaders have been negotiating with the federal and provincial governments for the right of their people throughout Canada to govern themselves. Constitutional recognition of Aboriginal self-government means that the band councils, assemblies of elders, and other systems used by Aboriginal peoples would be legally recognized as governments. The Aboriginal peoples argue that they have an **inherent right** to self-government based on their relationship with the land before the first European settlers arrived. The Government of Canada has recognized self-government as a constitutional right. It has stated its intention to make self-government a reality within Canada.

Recent changes, such as the creation of Nunavut in 1999, have created opportunities to show self-government in action. There has also been movement toward Aboriginal self-government in order to re-establish the independence of First Nations and Métis peoples. Land claims are at the centre of this movement to self-government. The Aboriginal peoples feel that they can become truly self-reliant only when their land has been returned to them. Barring that, they wish to see a compromise worked out for its use with non-Aboriginal Canadians.

An **inherent right** is one that is thought to be self-evident or pre-existing. Aboriginal peoples claim an inherent right to self-government based on their residence on the land before the arrival of European settlers. Governments now agree with this position. Differences arise over how far the right extends. This is subject to negotiation and, if necessary, litigation (action in the courts).

*FIGURE 6-15 Peter Kilabuk, Speaker of the Nunavut Legislature*



# Who Are Canada's Aboriginal Peoples?

THE ABORIGINAL PEOPLES of Canada include **First Nation**, **Inuit**, and **Métis** peoples. The more than 50 First Nations have much in common, but they are different from one another, and very different from the Inuit, whose culture was shaped

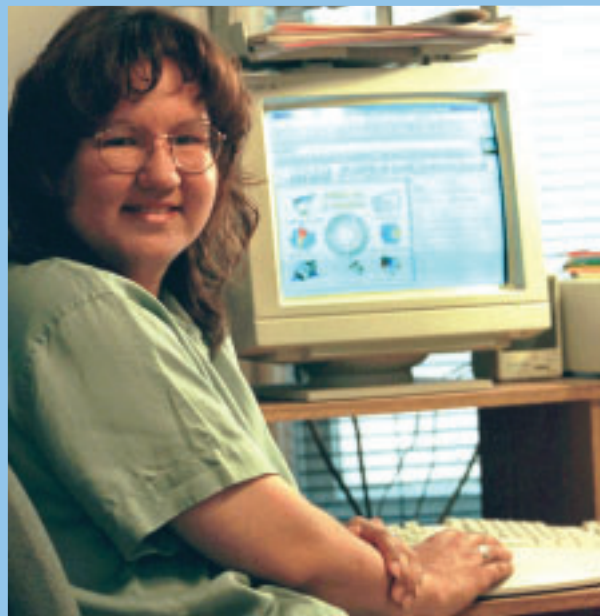
by the demanding northern environment. Different again are Métis people, who blended traditions from Aboriginal and European forebears in a unique new culture.

The **Inuit** are an Aboriginal people in northern Canada, who primarily live north of the treeline in Nunavut, the Northwest Territories, Northern Québec, and Labrador.

According to the Métis National Registry, a “**Métis**” person is defined as:

1. a person who self-identifies as a Métis;
  2. a person of Aboriginal ancestry (at least one grandparent is or was Aboriginal);
  3. a person who is not registered as an Indian or Inuit.
- However, this definition is still being discussed by various levels of government and Métis organizations.

*FIGURE 6-16 Some aspects of Aboriginal culture have changed, but some traditions continue. What traditions are shown in these photos? What changes are shown?*





## A Royal Commission Looks at Aboriginal Self-Government

Aboriginal peoples trace their existence and their systems of government back as far as memory and oral history extend. They say that the ultimate source of their right to be self-governing is the Creator. The Creator placed each nation on its own land and gave the people the responsibility of caring for the land, and one another, until the end of time.

Three other sources of the right of self-government apply to Aboriginal peoples:

1. In international law, which Canada respects, all people have a right of self-determination. Self-determination includes governance, so Indigenous peoples are entitled to choose their own forms of government, within existing states.
2. In Canadian history, the colonial powers won no “rights of conquest,” for there was no conquest. Nor was North America *terra nullius*, free for the taking, as was claimed later. In most of their early dealings with Indigenous peoples in what is now Canada, the colonial powers recognized them as self-governing nations, codifying their recognition in treaties and in the *Royal Proclamation of 1763*.
3. Aboriginal peoples’ right of self-government within Canada is acknowledged and protected by the constitution. It recognizes that Aboriginal rights are older than Canada itself and that their continuity was part of

the bargain between Aboriginal and non-Aboriginal peoples that made Canada possible.

We believe Aboriginal peoples must be recognized as partners in the complex arrangements that make up Canada. Indeed, we hold that Aboriginal governments are one of three orders of government in Canada — federal, provincial/territorial, and Aboriginal. The three orders are autonomous within their own spheres of jurisdiction, thus sharing the sovereignty of Canada as a whole. Aboriginal governments are not like municipal governments, which exercise powers delegated from provincial and territorial governments.

Source: *The Royal Commission on Aboriginal Peoples*, Report of the Royal Commission on Aboriginal Peoples, vol. 2, Restructuring the Relationship (1996).

### Using Your Knowledge

21. Find evidence in the document “A Royal Commission” that supports or does not support these interpretations: The Report asserts
- a) there are historic reasons for aboriginal self-government.
  - b) the Canadian Constitution acknowledges the right to self-government.
  - c) aboriginal government may take the form of one “Aboriginal Province.”

### Inquiring Citizen

22. Identify a First Nations community in your vicinity. With your teacher, arrange a visit to one of these communities. Prepare questions you would like to ask when you are there.
23. Search the library or Internet to make a demographic sketch of First Nations in Manitoba. Find out, for example, how many young people make up the First

Nations population. How many live in urban centres? Compare past to current populations. Determine whether current

First Nations populations could establish traditional relationships with the land, given numbers and modern life.

## The Challenge of Creating Aboriginal Self-Governments

Self-government for Aboriginal peoples does not mean that dozens of small countries will be created within the current borders of Canada. Only matters that directly affect the daily lives of their people are central to Aboriginal self-government communities. Aboriginal peoples, speaking through their leaders, believe they have the right, for example, to their own court system with their age-old ways of dealing with offences and resolving disputes. Eventually, Aboriginal leaders hope for a full justice system to complement the provincial justice system. The creation of armies, currency, and relations with other countries are not part of Aboriginal self-government.

The federal government has outlined what it thinks negotiable. The challenge is to make the negotiations meaningful. The Auditor General's Report in 2006 criticized the federal government for the absence of "meaningful consultation" with Aboriginal peoples in many areas such as health care and safe water supplies. Much more needs to be done to permit Aboriginal peoples to be self-governing and effective administrators.

The federal government views the scope of Aboriginal self-government to include:

- government structure, elections, marriage, adoption, and child welfare;
- language, culture, and religion;
- education, health, and social services;
- policing and justice; and
- land management.

Many bands do not have the population to organize and operate all these functions.

## The Inuit Achieve Self-Government

### FOCUS

IN CANADA'S FAR NORTH self-government has already advanced Aboriginal rights. Nunavut, the new self-governing territory ("Our Land" in Inuktitut), was carved out of lands from the Northwest Territories. It thereby joined Canada's two other territories, the Yukon and the Northwest Territories, in providing peace and order to its citizens.

After settling land disputes with the Dene Nation with a land claims agreement in 1993, the government of Nunavut took office in 1999, operating within the principles of Canadian parliamentary democracy. The premier heads a Cabinet with ministers who head departments, just as in

the federal, provincial, and other territorial governments. Nunavut has one senator and one Member of Parliament in Ottawa, and provides a wide range of services to its residents. As in the other territories, the federal government maintains offices to meet its obligations to Nunavut, and the challenge of providing services is great. Because of the low population density (one person per 70km<sup>2</sup>), housing, waste management, transportation, and communication needs are difficult to fulfill. However, Nunavut looks to the future as a self-governing part of Canada.

## Active Citizenship

### Harold Cardinal

Born on the Sucker Creek Cree Reserve in Alberta, Harold Cardinal was active in community affairs as a young teenager. At 23 he became the youngest president of the Indian Association of Alberta and helped create the National Indian Brotherhood (which would become the Assembly of First Nations). In 1969 his book *The Unjust Society* had an enormous effect on the way Canadians viewed Aboriginal Canadians. He was a Director General for the Department of Indian Affairs in Alberta. Later still he was a professor at the University of British Columbia.

The Assembly of First Nations (AFN), the national organization representing the interests of 633 First Nations communities, continues to push for more self-government of Aboriginal peoples. Since 2005, several Manitoba bands have achieved self-government.

The timeline on the opposite page outlines the events leading to the constitutional changes that made Aboriginal self-government possible.

## Using Your Knowledge

24. Write a radio script with classmates about the creation of Nunavut. Choose an announcer and several persons as interview subjects.

## Inquiring Citizen

25. Contact your Member of the Legislative Assembly or the federal Minister of Indian Affairs, and express your views on Aboriginal self-government. Explain what you think should be done to address the concerns of Aboriginal peoples and other Canadians about constitutional reform.
26. Research the life and actions of an Aboriginal leader. Some important and highly active leaders from the 1980s, 1990s, and 2000s include David Ahenakew, George Erasmus, Louis Bruyere, Yvon Dumont, Ron Evans, Martha Flaherty, Jim Sinclair, Charlie Watt, John Amagoalik, Ovide Mercredi, Terry Nelson, Elijah

Harper, Ron George, Sandra Lovelace, Louise Champagne, Kathy Mallet, and Sandy Funk. Your local library and Aboriginal organizations should be able to provide names of other important Aboriginal leaders in your area.

27. As a class, investigate the communities that have been granted self-governing powers. One half of the class can examine the story of the Cree, Naskapi, and Inuit of northern Québec; the other half the Sechelt of British Columbia. Each group should locate and report information on the type of government established (its structure and organization), the powers of the government, the challenges facing the government, the steps taken toward becoming independent, and the special qualities and characteristics of the communities involved. Compare findings and draw conclusions about the process of establishing an Aboriginal government.

# The Long Road to Aboriginal Self-Government

**1979-1982**

Discussions began on repatriating the Constitution. The federal government sought to revoke the existing rights of Aboriginal Canadians and have one code of rights for all Canadians. Lobbying kept special recognition of Aboriginal rights in the Constitution.

**1982-1983**

Negotiations began between the Inuvialuit and Inuit peoples to launch the process to establish the territories of Denendeh and Nunavut. The Denendeh proposal eventually failed.

**1983**

The first of four constitutional conferences was held. Amendments to the Constitution were proposed to recognize Aboriginal rights.

**1984**

The amendment to recognize Aboriginal land claims came into effect. The federal government and nine bands of Cree peoples in Northern Québec agreed to self-government in the area.

**1985**

The second conference on Aboriginal rights was held. A Canada-wide agreement on self-government was not reached. However, the Sechelt Indian Band of British Columbia successfully negotiated for self-government.

**1970s and 1980s**

**1990**

Manitoba MLA Elijah Harper stalled debate in the legislature over Aboriginal rights missing from the Meech Lake Accord. Manitoba did not approve the Accord. This event brought nationwide attention to the issue of the rights of Aboriginal peoples.

**1992**

The Charlottetown Accord recognized the right of self-government. Various Aboriginal groups saw it as a victory to make self-government a legal reality. Others opposed the Accord on the issue of land claims; they wanted a guarantee that land claims would be settled.

**1993**

An agreement was signed in Winnipeg to create 60 self-governing band governments in Manitoba. These would have legislative, judicial, executive, and administrative powers.

**1999**

The territory of Nunavut was formed. Members in its legislature come from an area in which more than 85 percent of the population is Inuit.

**2004**

A federal royal commission called for a changed relationship between Aboriginal and non-Aboriginal societies. It asked to restore the essence of the early relationship between the first settlers and the Aboriginal peoples.

**2006**

Canada's Auditor General criticized delays by the federal government in meeting Aboriginal needs. Despite some efforts in some areas, she said that many "long-standing problems remain."

**1990s**

**2000s**

## The Opportunities of Self-Government

One argument on behalf of self-government is that it allows Aboriginal leaders to be more responsive to the needs of their people than the federal government has been. Since Aboriginal governments are localized, they can provide many services like health care and education. They would then be in touch with individuals who live in the communities they represent.

It has also been argued that self-government is already working to some extent. Some First Nations communities are responsible for their own schools. Child welfare has been transferred and improved. All these improvements take time and effort.

The federal government, through Indian Affairs Canada, has a position on self-government. It says there are differences of opinion on the scope of self-government. There are differences on how it is to be applied. It considers the opinions expressed by Aboriginal leaders as “their position.” This is what can be called a legal difference of opinion between the government and the Aboriginal peoples. The federal government states that it prefers to “work out practical self-government arrangements” and that it has a distaste for “endless legal debates, which are expensive, time-consuming, and uncertain.” It was the federal government that created the process for discussing self-government issues.

## The Issue of Land Claims

To **claim** is to ask for something, especially as a right. A claim is a right to something, specifically a title to a debt, privilege, or other thing in the possession of another. If the claim cannot be completely satisfied, restitution should be made.



For more information on Aboriginal land claims and the Aboriginal Justice Inquiry Commission, check the link on our Web site.

[www.pearsoned.ca/ccw](http://www.pearsoned.ca/ccw)

### What are land claims by Aboriginal peoples?

Land **claims** are statements Aboriginal peoples make about lands they have now or used to have. The statements are of two types: Comprehensive land claims are claims based on traditional Aboriginal use and occupancy of land. Specific land claims relate to the administration of lands and other First Nations assets and to the fulfillment of treaties.

### Is the government addressing land claims in an efficient manner?

The federal and provincial governments have set up a process for looking at these claims. It is a complex process, it takes time, and, in some cases, the government seems to be dragging its heels. For example, in 2005 the AFN asked a government committee to look into a backlog of about 1000 claims. A year later the AFN addressed the issue again and it is still unresolved.



*Figure 6–17 Investigate the events in 2006 leading to this confrontation between Aboriginal protestors and the Ontario Provincial Police.*

**How do the delays in addressing land claims affect Aboriginal peoples?**

The delays affect the health and financial well-being of Aboriginal peoples. The lack of progress in settling land claims has led to frustration and violence, for example, the incidents in Caledonia, Ontario, in 2006.

**Are Métis people involved in any of these claims?**

Yes. Some of the treaty land claims are being contested by Métis who are making counterclaims. It is expected that the federal and Manitoba governments will deal with this. In 2006 the Manitoba Métis Federation went to court against the federal and provincial governments to settle long-standing claims.

**What about claims that are already settled? Does resolving these claims end disputes?**

Yes, most of the time. But development near Aboriginal lands, such as construction of dams in Northern Manitoba, may cause flooding. Métis and many off-reserve natives are affected. Settlement becomes difficult.

**Will land claims ever be settled?**

Perhaps, if all sides involved work at it and have patience, but it will take a long time. There will be much negotiation and litigation (court cases).

## The Issue of Aboriginal Justice

In 2005 Manitoba had more than 150 000 Aboriginal people — roughly 14 percent of the province’s population. Under the justice system of the province, they have the right to expect fair and equal protection of and under the law and the same services and level of service from the province as all other Manitobans.

In 1999, however, a government-appointed committee reported that Aboriginal people were not being treated like other residents. The shooting of Winnipeg Aboriginal leader J.J. Harper in 1988 triggered the need to address this situation. The report, following up on an earlier investigation in 1991, claimed that the justice system had failed Manitoba’s Aboriginal people on a massive scale. Police arrested Aboriginal people in grossly disproportionate numbers. The committee found that the Aboriginal population in some provincial prisons approached 60 percent. A similar percentage was imprisoned in federal prisons such as Stony Mountain Penitentiary. Figures for Aboriginal women and youth in jail were even higher than the figures for Aboriginal males.

It was also reported that when arrested, Aboriginal people were more likely than non-Aboriginal people to be denied bail. They spent more time in pre-trial detention and less time with their lawyers. They were also more likely to spend time in jail than to receive non-custodial sentences such as probation or supervised community service.

The report went on to note that the Manitoba justice system had failed Aboriginal people and had denied them justice.

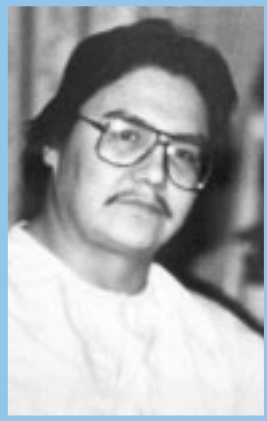
Aboriginal people in Manitoba also suffered other injustices. A long list of faults and inadequacies could be found in the system; twenty-five areas needing change were noted. Faults ranged from lack of proper legal aid to poor communication with defendants.

### *The Remedies*

The *Aboriginal Justice Inquiry Report* made a number of recommendations for reform. Some dealt with reforming the Manitoba justice system itself. Others considered efforts to establish an Aboriginal justice system to run alongside the provincial system.

The Manitoba government dealt with specific issues such as health care and child welfare. By 2005 Manitoba’s Justice Minister Gord Mackintosh claimed the government had acted on the report. More than 90 percent of the recommendations had been implemented or were underway.

Aboriginal leaders such as the Assembly of Manitoba Chiefs were unconvinced. In 2005 Southern Grand Chief Chris Henderson said he thought that only about 20 percent of the recommendations had been honoured and implemented by the Manitoba government. Aboriginal leaders thought



**FIGURE 6-18**  
*In 1988 J.J. Harper was shot and killed when police mistook him for a car thief. His death, along with the 1971 murder of Helen Betty Osborne, led Manitoba’s NDP government set up the Aboriginal Justice Inquiry. Osborne was a high school student originally from Norway House Indian Reserve who was abducted and murdered near The Pas, Manitoba.*

that more work was necessary to show cooperation. This was true, especially in relations between police and the Aboriginal community. Progress on this front was made, however, when a public safety protocol was signed between the RCMP and the Southern Chiefs' Organization. The agreement aimed at more cooperation between the provincial police in southern Manitoba and the Aboriginal community.

Full Aboriginal self-government may be far in the future. Steps toward an Aboriginal justice system have been taken by the Manitoba government and by the federal Department of Corrections. The issues are complex, and Aboriginal and non-Aboriginal communities have a long history of mistrust and impatience. Many obstacles remain. The beginning of healing and cooperation, nevertheless, can be seen in the years since the 1980s.

### ***Alternatives to Crowded Jails and Courts: Restorative Justice Sentences***

When dealing with the issue of youth offenders, we saw that too many youths, Aboriginal and non-Aboriginal, went into some form of custody. Too many adults who had committed only minor offences were also confined. To remedy this, two principles are now being used throughout the justice system: **restorative justice** and **alternative sentencing**.

Using the principle of **restorative justice**, the justice system tries to rehabilitate or reform offenders. It gives young offenders the chance to accept personal responsibility for their actions and to return to society with a desire to obey the law. They are more likely to grow and be restored to their old or better self. Restorative justice aims to allow offenders to become less anti-social and to want to become members of society who can contribute something in their own way. Restorative justice is rooted in Aboriginal traditions and is slowly being practised in Canadian criminal law. It is a principle used for treating offenders inside and outside of prison.

**Alternative sentencing** is an aspect of restorative justice that is being used across the country. A section of the *Criminal Code* now states that imprisonment is to be used only as a last resort for all Canadian offenders. In 1996 the federal government passed Bill C-41 to deal with low-risk offenders. Rather than put these offenders in custody, the court may order the offender to serve the sentence in the community. Other measures were also made available to the courts. Some other measures available include

- serving sentences in the community and meeting with police or social workers,
- making restitution to the victim of the crime,
- attending victim and offender mediation sessions, and
- meeting with many members of the community for counseling (community conferencing).



## Using Your Knowledge

28. Imagine that you are a member of a bargaining committee for the Assembly of Manitoba Chiefs. You have attended a rally where Terry Nelson, chief of the Roseau River First Nation has spoken. He said, “We need solid, economic development in our communities.” Why would this statement convince you to try to hasten land claim settlements?

## Inquiring Citizen

29. Research the Assembly of Manitoba Chiefs. Find out the names of current leaders. Examine resolutions they pass at annual meetings. What range of justice issues are discussed? Explain why health and environmental issues can also be justice issues.
30. Contact your local Member of the Legislative Assembly. Ask for information about the Aboriginal Justice

Implementation Commission. Ask the member about current Aboriginal justice issues.

31. Locate information about land claims in newspapers and magazines. Collect and categorize your information under the following headings: Band Involved, Treaty Involved, The Claim, Settlement Reached, and any other information you think important. Display your findings in a way that delivers the information in a clear manner.

## Thinking It Through

32. In what ways are traditional Aboriginal governments like municipal governments? What advantages can you see in the legal recognition of such governments for Aboriginal peoples? Can you think of any disadvantages?

## REVIEWING THE ISSUES

Modern government in Canada is becoming more responsive to the rights and freedoms of its residents. It is important for all Canadians to take part in advancing their rights and freedoms. This requires continued debate and discussion about what it means to be a Canadian and how our governments can better serve us. The challenges facing our nation — legal and human rights, a more democratic Senate, and Aboriginal self-government — are all serious matters. It is important for citizens to be actively involved in helping to shape their legal framework. In doing this, they not only protect and advance their own rights but also the rights of others.

### Using Your Knowledge

33. What amendments would you make to any of the following: the *Canadian Bill of Rights*, the *Canadian Charter of Rights and Freedoms*, or Bill C-31? Once you have itemized the changes you would make, write a short essay beginning “If I could amend (your choice of topic), I would....”

### Organize and Understand

34. Make a timeline of 10 important events from this chapter. Name them and date them by approximate year. Write a one-sentence description for each.
35. Summarize the challenges and opportunities you have read about in this chapter

using a retrieval chart. Include in your chart the following categories: Challenges, Proposed Solutions, Opportunities, Possible Problems, and Other Important Ideas.

36. Using your chart from the previous question, list the challenges and opportunities side by side, placing the biggest challenge opposite the greatest opportunity. Which is more important in your mind — the challenges we face or the opportunities we have? Why?

### Inquiring Citizen

37. Research recent issues of denial of equality: the rights of the disabled and the rights of gay persons, including same-sex marriage.