

## CHAPTER 2

### The Sources of Canadian Law: From Magna Carta to the Plains of Abraham and on to the Specifics of Statutes and Judicial Decisions

#### TRUE/FALSE

1. The *Magna Carta* established true democracy in 1215.

ANS: F

2. The *Royal Proclamation of 1763* provided for the introduction of English laws and courts in Canada and guaranteed Aboriginal self-government.

ANS: T

3. The *Quebec Act of 1774* was instrumental in establishing the French civil law in Canada.

ANS: T

4. The 1791 *Constitutional Act* was a model of representative democracy.

ANS: F

5. The form of government in Canada is called a unitary system of government.

ANS: F

6. The two conceptual classifications of law are, domestic law and international law.

ANS: T

7. Procedural law sets out the specific penalties for specific conduct by individuals.

ANS: F

8. If the law is primarily concerned with the regulation of individual matters, it will be classified as public law.

ANS: F

9. The sources of statute law in Canada are the House of Commons and the provincial and territorial legislatures.

ANS: T

10. A Bill must be read three times before it can be passed by the House of Commons or by a provincial legislature.

ANS: T

11. Unwritten judicial decisions are called case law.

ANS: F

12. Case law is not a source of Canadian law because courts are not allowed to make law; they are only allowed to interpret existing statutes.

ANS: F

13. All judicial decisions in Canada are reported.

ANS: F

14. Customary law is as significant in contemporary Canada as it has been in Britain.

ANS: F

15. The importance of judicial precedent depends upon the hierarchical placement of the court issuing the decision.

ANS: T

16. Canadian law has not been influenced by any non-British legal system.

ANS: F

17. Cocaine was the first drug prohibited in Canada by criminal law.

ANS: F

18. Archival materials, minister's notes, newspaper reports, and commission documents can be useful documents to review when trying to understand why a law was passed.

ANS: T

19. The concerns of the Canadian public and politicians about the drug trade in the 1920s were principally motivated by racism.

ANS: T

20. After the passage of the Opium and Narcotic Act, Canadians protested the extension of police powers which allowed the police to search personal residences for drugs without the use of a warrant.

ANS: F

21. The Narcotic Control Act enacted by the Diefenbaker government allowed for the medicinal use of marijuana.

ANS: F

22. Canadian courts are looking to Books of Authority for expressed and theoretical guidance.

ANS: T

### **MULTIPLE CHOICE**

1. Which legal pronouncement resulted from the 1759 Battle of the Plains of Abraham?

- a. The *Magna Carta*
- b. The *British North America Act*
- c. The *Royal Proclamation of 1763*
- d. The *Declaration of Independence*

ANS: C

2. Which legislation first made the provinces of Upper and Lower Canada into a self-governing

nation state?

- a. The *Act of Union*
- b. The *Constitution Act of 1791*
- c. The *British North America Act*
- d. The *Royal Proclamation of 1763*

ANS: A

3. After the Act of Union 1840, de facto, what did the Province of Canada become?

- a. subject to direct rule from Britain
- b. a client state of the U.S.
- c. a self-governing nation state
- d. a French colony

ANS: C

4. Any description of sources of law must take into account which of the following?

- a. conflict, compromise, and consensus
- b. conception, categories, and circumstances
- c. development, decisions, and display
- d. environment, evidence, and expectations

ANS: A

5. Which statement demonstrates the limitations for separately classifying procedural law and substantive law?

- a. Procedural law is judge-made law.
- b. Both types of law are part of Canadian domestic law.
- c. Substantive law deals exclusively with the description of offences.
- d. Some enactments contain a codification of steps to be taken in a legal proceeding.

ANS: D

6. What area of law is primarily concerned with collective interests?

- a. public law
- b. family law
- c. procedural law
- d. constitutional law

ANS: A

7. Canadian law has imported the laws of other national jurisdictions. Which of the following national jurisdictions have laws that have been imported into Canadian law?

- a. France, Britain, and Germany
- b. France, Britain, and the United States
- c. Australia, Britain, and the United States
- d. France, Germany, and the United States

ANS: B

8. Case Law and Custom are, today, written down but are classified as unwritten law. Why?

- a. Unwritten law came from a variety of sources.

- b. Unwritten law was passed down over the centuries.
- c. Unwritten law is the category of law classified as public law.
- d. These unwritten laws are written down, but they are not the product of any legislature.

ANS: D

9. Which statement best describes the process of court interpretation of ordinary legislation?
- a. It abuses the power of elected representatives.
  - b. It gives the unelected judiciary the power to protect its privileges.
  - c. It ensures the separation of judicial, legislative and executive powers.
  - d. It modifies the designs of lawmakers to conform to the real situations presented in court.

ANS: D

10. Custom, as a source of Canadian law is most closely associated with which area?
- a. family law
  - b. trade law
  - c. criminal law
  - d. constitutional law

ANS: D

11. Canada's first illegal drugs law passed in 1908. What was its background?
- a. It responded to the serious harm that opium was causing in British Columbia.
  - b. It was a copy of an American law.
  - c. It originated in a racially motivated labour confrontation.
  - d. It responded to the volume of opium imports from Japan.

ANS: C

12. What name is given to the recordings of the written transcriptions of the House of Commons?
- a. The Horton
  - b. The Hansard
  - c. The Debates of the House of Commons
  - d. The Proceedings of the House of Commons

ANS: B

13. In her book *The Black Candle*, Emily Murphy advocated for which of the following?
- a. increased penalties for the use drugs
  - b. increased penalties for the distribution of drugs
  - c. expanded powers of search and seizure for police
  - d. all of the above

ANS: D

14. When was marijuana was first added to the list of prohibited drugs in the *Opium and Narcotic Drug Act*?
- a. 1908
  - b. 1923
  - c. 1945

d. 1969

ANS: B

15. What happened after the passage of the *Narcotic Control Act* of 1961?

- a. Drug use declined.
- b. Drug use increased.
- c. Drug use remained the same.
- d. The government resigned.

ANS: B

16. Which statement best explains the reasoning for the Supreme Court's decision in *R. v. Oakes*?

- a. The court decided that the reverse onus provision in the *Narcotic Control Act* was racially motivated and should be struck down as contrary to the *Charter*.
- b. The court decided that the reverse onus provision in the *Narcotic Control Act* was necessary to control the seriousness of the drug problem in Canada.
- c. The court decided that the reverse onus provision in the *Narcotic Control Act* contravened a person's right to be presumed innocent until the crown could prove otherwise.
- d. The court decided that the reverse onus provision in the *Narcotic Control Act* should be changed so that the crown only had to prove that an accused person was guilty on the balance of probabilities.

ANS: C

17. As of 2018, the following jurisdictions have passed legislation legalizing the recreational possession of marijuana.

- a. California, Washington state, Canada, and Colorado
- b. New York, New Jersey, and New England
- c. United Kingdom, United States, and China
- d. Ontario, Quebec, and New Brunswick

ANS: A

## ESSAY

1. What is the significance of *Constitution Act* of 1791 and its impact in the early nineteenth century?

ANS: Answers will vary.

2. There is an ongoing discourse on whether statute law or judge-made law is the dominant source of Canadian law. Why? What are the considerations that are included in this debate?

ANS: Answers will vary.

3. There are various sources of Canadian law. Identify four of them and discuss their relative weight and impact.

ANS: Answers will vary.

4. Canada's first narcotics legislation was enacted in 1908. What were the factors considered by

the politicians that led to its enactment? In what sources would you find the information that would allow you to determine the answer to this question?

ANS: Answers will vary.

5. The *Canadian Charter of Rights and Freedoms* was proclaimed in April 1982. What changes did its enactment make on Canada's narcotics legislation and the ways in which it was enforced?

ANS: Answers will vary.

6. Trace the history of Canadian narcotics legislation to the present and describe the influences that molded the various versions of our drug laws over the years.

ANS: Answers will vary.