**The Source of Our Laws:**

The famous physicist Albert Einstein once remarked that “good laws have their origins in bad morals”. While you may agree or disagree with Einstein’s opinion on the origin of laws, the fact remains that our laws have roots and histories. Our laws did not magically appear without sources and influences. Jurisprudence is a term used to describe the science or philosophy of law. More broadly, it refers to being skilled or learned in law. To be so skilled requires an understanding of the roots and historical development of the laws we have today. All countries with functioning legal systems have a complex web of legal sources and influences. By understanding the roots of Canadian law we can better understand our contemporary legal system.

The sources of our laws can be divided into two main types: Primary sources and Secondary Sources . Primary sources are those that influence our ideas and values about laws over many years, sometimes centuries. They include religious doctrines, social views, philosophical views, and customs and conventions. Secondary Sources include laws and cases that have been written down to reflect the values and attitudes in primary sources of law. Specific laws, written judicial decisions, and documents such as the Canadian Charter of Rights and Freedoms are examples of secondary sources of law.

**Customs**

Long-standing customs, or commonly accepted practices, are often such important parts of a society that they influence the creation of formal laws. These customs are either entrenched in law or prohibited by law. Here is an example from ancient Russia. During the reign of Peter the Great, (1682-1725) he had to pass a law to try to change a strongly ingrained social custom. He wanted to “westernize” or modernize his country based on what he saw on a trip to western European nations. At that time in Russian society, men grew substantial beards as a sign of their status, while those in the more “modern” West did not. Peter wanted to change the custom and passed a law implementing a “beard tax”. If a Russian nobleman wanted to keep his beard, he had to pay a fee to do so. Men who paid the fee received a special medallion to indicate they had paid the tax. Those without the medallion in their possession could be stopped on the street and their beards shaved off on the spot.

**Conventions**

Conventions are another primary source of laws. Conventions are commonly accepted ways of doing things. Often they are unwritten. For example, in Canada, the party with the most seats in Parliament forms the government. However, this is not written down anywhere. As well, it is not clearly defined in writing that the leader of the party with the most seats automatically becomes the Prime Minister. Despite the fact that they are not documented and clearly defined, these conventions are consistently adhered to in Canadian politics.

You probably associate the term “convention” with the Geneva Conventions. This is a different type of convention. The Geneva Conventions refers to a series of international agreements that impose obligations on all the parties that negotiated them. They are in writing. However, they are not formally binding legal agreements. For example, you have probably heard of a nation in war time violating the Geneva Convention with regard to the treatment of prisoners of war.

**Religion**

You will find that the laws of many nations, including Canada, are based upon religious principles and values. For example, Mosaic Law, as seen in the Ten Commandments, serves as the basis for Judeo-Christian moral teachings. Thus, provisions in that law against theft, murder, and lying under oath, remain in contemporary Canadian law.

However, it is important to note that as societies change, the significance of religious values may also change. For example, not that long ago in Ontario public schools, students recited the Lord’s Prayer at the start of the school day, and Sunday shopping was illegal. Those two practices changed due to court challenges which found those laws inconsistent with a modern, religiously diverse society.

**Social and Political Influences**

If you travel to countries different from Canada, you soon become aware of how laws can change radically depending on the visited country’s social and political values. Whether it be the status of women, political freedoms, an individual’s legal rights when dealing with the authorities, the ability to voice one’s opinion, issues of racial equality, or redistribution of wealth through social programs, laws in a country reflect the social and political values held in that jurisdiction.

It is important to note that social and political values change over time. Therefore, laws may change to reflect changes in society or changes in attitudes. For example, you may remember from your studies of Canadian history that women did not have the right to vote or hold political office until well into the twentieth century.

Diagnostic Questions:

1. Why is it more important to study jurisprudence than simply to study specific laws?
2. In your own words, distinguish between primary and secondary sources of law.
3. Using the Internet, search for unusual laws. Select one. Explain the law you chose and discuss how it reflects the customs of the particular community where it was enacted.
4. Do you think that religious influences on our law are weakening? Explain, citing one specific example.
5. Society changes, values change, and consequently laws change. Identify and explain a change in law that reflects a change in society or society’s value