The *Bill of Rights* and the *Charter of Rights and Freedoms*

The Canadian *Bill of Rights*

Canada did not have a specific document or statute that clearly articulated the rights of Canadians until 1960. In that year, Prime Minister John Diefenbaker introduced the *Canadian Bill of Rights*, which gave Canadians:

1. Right to life, liberty, personal security, and property;
2. Freedom of religion, speech, assembly, and association
3. freedom of the press;
4. Right to a fair trial and legal representation.

This was progress, but because it was "just" a statute, it did not take precedence over other statutes, so if in a court case a judge had to decide between two statutes, the *Bill of Rights* and another law which contradicted the *Bill*, the judge did not have to rule in favour of the *Bill of Rights*. This meant that sometimes people's rights and freedoms were still being infringed upon.

Case History: Jeannette Lavell

Jeannette Corbiere married David Lavell in 1970, a non-Indigenous man, and subsequently was no longer deemed an Indian according to the Indian Act.

According to *The Indian Act*, 1970:

12 (1) The following persons are not entitled to be registered, namely ... (b) a woman who married a person who is not an Indian

This law limited the rights of Native women considerably. They lost rights to family property, could not live on reserve land, and could not even be buried in ancestral cemeteries. However, a Native man who married a non-Aboriginal woman did not lose his rights, and in fact his non-Native wife would receive all of the rights and privileges that women, like Jeannette Lavell, had been denied. This was discrimination on the basis of gender, and that had been outlawed by the 1960 *Bill of Rights*.

Jeannette Lavell challenged the*Indian Act*in court, and the case ended up before the Supreme Court of Canada in 1973. The court decided on a vote of 5-4 that the *Indian Act* was not required to conform to the *Bill of Rights*.

In 1985 Sandra Lovelace, a New Brunswick Native, who had also been denied Indian status because of her marriage to an American who was non-Native, took her case to the United Nations International Human Rights Commission. The Commission agreed with Lovelace, and Section 12 was repealed in 1985.

The *Charter of Rights and Freedoms*

On April 17, 1982, in front of the parliament buildings in Ottawa, Prime Minister Pierre Elliott Trudeau and Queen Elizabeth II signed the document that would bring home Canada's constitution. With this action Trudeau is said to have patriated the Constitution. A part of the new *Constitution Act*, 1982 was the *Canadian Charter of Rights and Freedoms*. For the first time in our history, Canadians could look to a document that would outline what rights and freedoms they enjoyed.

The *Charter* protects the rights and freedoms of Canadians by placing limits on the ability of the government to pass laws or take any actions that may infringe on our rights. Since Constitutional Law overrides statute law, if a law was in conflict with the *Charter*, the law was invalid. This was a significant improvement for the protection of the civil liberties of Canadians, now that those liberties were entrenched in the Constitution. In addition, the *Charter* ensured all people in Canada must be treated equally regardless of their race, religion, sex, or age. Thus the *Charter*helps to create a balance between an individual's freedom and the power of the government.

However, there was one compromise that Trudeau had to make to get the provinces to accept the *Charter*. They were given the notwithstanding clause, which gave provinces some ability to override the *Charter*. An example of the clause's use was in Quebec, where the provincial government limited the freedom of expression of non-French residents by outlawing signs in any language other than French. This prohibition was known as Bill 101. When the Supreme Court of Canada ruled the law to be unconstitutional, Quebec introduced Bill 178, and invoked the notwithstanding clause. Under the terms of the Constitution, it was allowed to stand, but it has to be renewed every five years.

Comprehension and Analysis Questions:

1. Why, legally is *The Canadian Charter of Rights and Freedoms* more binding than the *Bill of Rights* had been?
2. Infer what sorts of challenges Jeannette Lavell and Sandra Lovelace might have faced as she pursued her human rights?
3. Using external research, create a “Human Rights Report Card” for each of John Diefenbaker and Pierre Trudeau. Assign a separate letter grade for each of the Prime Ministers in the subject of Human Rights. Write a short comment for each man, noting an area of strength, and an area in which they could have done better.