**Rule of Law in Canada**

**by: Omar Ha-Redeye**

Most law students have at least some appreciation for the concept of the rule of law. In addition to the concepts of federalism and responsible government, it is considered one of the cornerstones of Constitutional Law.

This principle means that everyone is subject to the law; that no one, no matter how important or powerful, is above the law — not the government; not the Prime Minister, or any other Minister; not the Queen or the Governor General or any Lieutenant-Governor; not the most powerful bureaucrat; not the armed forces; not Parliament itself, or any provincial legislature.

This concept was best illustrated by a 1959 landmark case regarding Jehovah’s Witnesses in Quebec.

**Bailing out JW’s is not a Crime:**

In [*Roncarelli* v. *Duplessis*](http://www.uniset.ca/other/cs5/1959SCR121.html)*,* [1959] S.C.R. 121, Roncarelli used revenues from a restaurant he owned to bail out Jehovah Witnesses arrested for distributing pamphlets. In a society primarily Catholic at the time, the actions were considered to be disrupting the peace.

Duplessis was both Attorney General and Premier of Quebec at the time. He revoked Roncarelli’s licquor license and denied any renewal, specifically to limit his ability to generate such funds.

Although the province was within its power to dismiss licences at its discretion, it must be impartial and compatible with enabling statutes.

**The Rulings on the Rule of Law**

The court ruled that there is no such thing as unlimited power. Rand J. stated

In public regulation of this sort there is no such thing as absolute and untrammelled “discretion”

“…Discretion” necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair? The ordinary language of the legislature cannot be so distorted.

Because there was no reasonable reason for revoking the license other than impairing the financial ability of Roncarelli to post bail, the court considered this to be an arbitrary use of power and invalid.

**Fallout from the Case**

It took thirteen years for Roncarelli to achieve a favourable ruling by the Supereme Court of Canada. By this time, Duplessis’ goal of running him out of business was successful, and worse still, Roncarelli died soon after the decision.

The case was cited by the later Supreme Court decision in *Reference* [*Re Manitoba Language Rights,*](http://scc.lexum.umontreal.ca/en/1985/1985rcs1-721/1985rcs1-721.pdf) [1985] 1 S.C.R. 721; (June 13, 1985). Contrary to the constitution, the province had been publishing laws in English only (and not French) for around 100 years. To demonstrate the illegality of the practice, Rand J. was quoted in Duplessis,

…the rule of law [is] a fundamental postulate of our constitutional structure.

From these cases, we can obtain three broad principles about the rule of law in the Canadian consitution:

1. Every act by a public official, regardless of the official’s rank must have the authority of a particular law.
2. The law must be applied in a manner directly related to its legislative and social purpose.
3. The law must be applied in a manner consistent with the Supreme law and consistent with the Constitution.

Conditions for Rule of Law

Michael Lynk, Professor of Law at the University of Western Ontario, describes eighteen qualities he feels that define the rule of law in Canada:

1. The state must uphold and enforce laws that it enacts.
2. All are equal before the law.
3. Courts must be impartial and unbiased, and must seem to be impartial and unbiased
4. There must be a separation of powers between 3 branches of power, especially judiciary, must be judicial independence; independence of political and executive power.
5. Must be consistent application of the law, i.e. across jurisdictions
6. There is no such thing as effective right without a remedy.
7. Judicial decisions should (must) be accompanied by reasons that are publicized.
8. The legal profession should be independent of state control.
9. Any judicial decision maker must apply natural justice to the proceedings. What is natural justice? Not natural law. Procedural justice, due process. In front of an unbiased court.
10. Courts should be open to all; unhindered access
11. Legal protection for the poor. This is becoming more important.
12. Restraints on the powerful.
13. Laws are to be enacted through a democratic and transparent process.
14. Laws should be known to all. Publicized and available to all. No secret laws.
15. All actions of the State must be authorized by law.
16. All actions of the State must be consistent with Constitution.
17. Courts should be open and transparent
18. Law and order are recognized as indispensable elements of life