

What is the Rule of Law?

The preamble to *The Constitution Act, 1982* states “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law: ...”, and then goes on to set out the fundamental rights and freedoms of this country. Section 1 confirms that the rights and freedoms set out in the Charter are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. So, what, exactly is the Rule of Law?

In the 2008 case of [*Dunsmuir v. New Brunswick*](#) the Supreme Court of Canada explained this foundational legal concept:

By virtue of the rule of law principle, all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution. Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.

When an elected government enacts legislation in the absence of legal authority, for example, when the legislation is in breach of the *Charter*, then the legislative body has breached the Rule of Law. It is the function of our courts to review the acts of elected governments to ensure that they do not overreach the extent of their lawful powers. In this tension between the state and the judiciary, the courts have the final say on what does or does not comply with the paramount laws of the land. Maintaining the Rule of Law protects citizens from arbitrary, abusive or unfair legislative acts that are inconsistent with the basic values upon which our country is founded.