



Overview of Canadian Law and Courts

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The “Bijural” System

- Except for Quebec, where the civil law is based on the French Code Napoléon, Canada’s criminal and civil law has its basis in English common and statutory law.
- The Quebec Act of 1774 made Canada a “bijural” country, i.e., having two types of law.
- For matters of private law (torts, contracts, property, family), the common law is to be applied outside Quebec, civil code law applies in Quebec.
- For public law (constitutional law, governmental law) the common law is to be used in and outside Quebec.

Trial by Jury

- Under the Canadian Charter of Rights and Freedoms, individuals accused of the most serious criminal offences generally have the right to choose to be tried by a jury or by a judge alone.
- Sentencing is left to the judge.
- Trial by jury is also available in some civil litigation, but is rarely used.

Federal and Provincial Courts

- By virtue of the Constitution Act, 1867, authority for the judicial system in Canada is divided between the federal government and the ten provincial governments.
- Provincial/territorial courts
 - General jurisdiction
 - Except where excluded by statute
- Federal courts
 - Certain cases having federal jurisdiction, as specified in statute

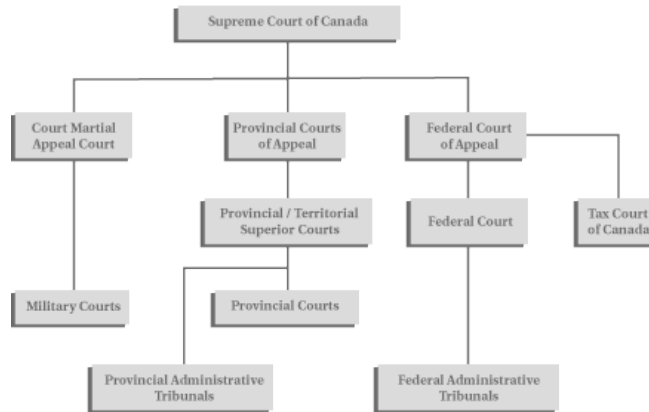
Provincial Courts

- Provincial governments are given jurisdiction over "the administration of justice" in the provinces, which includes "the constitution, organization and maintenance" of the courts, both civil and criminal, in the province, as well as civil procedure in those courts.
- The power to appoint the judges of the superior courts in the provinces - trial and appellate - is given to the federal government
- Federal government also remunerates judges and can remove them.
 - This removal power has never been exercised.

Federal Courts

- Cases having federal jurisdiction:
 - province vs. province
 - federal government vs. province
 - intellectual property cases (e.g., copyright)
 - citizenship appeals
 - Competition Act cases
 - cases involving Crown corporations or departments of the Government of Canada
 - review of decisions and actions by federal boards, commissions and tribunals

Outline of Canada's Court System



Supreme Court of Canada



- Final court of appeal
- Appellate jurisdiction over all other Canadian courts

Supreme Court of Canada



- Consists of one chief justice and eight puisne justices, all appointed by the Governor-in-Council.
- Judges serve for terms of "good behaviour"
- Mandatory retirement at age 75
- The Supreme Court Act requires that at least three judges must come from Quebec.
- Traditionally, of the other six judges, three come from Ontario, two from western Canada, and one from the Atlantic provinces.



Supreme Court of Canada

- The SCC must grant leave to an appeal before it will hearing the case.
- Leave applications are usually made in writing and reviewed by three members of the Court, who then grant or deny the request without providing reasons for the decision.
- A grant of leave is discretionary and not given routinely.
- Exception: No leave required in criminal cases where a judge on the appellate panel dissented on a point of law.



Supreme Court of Canada

An advisory role ...

- The government may ask the Court to consider questions on any important matter of law or fact, especially concerning interpretation of the Constitution.
- The SCC may also be asked questions on the interpretation of federal or provincial/territorial legislation or the powers of Parliament or the legislatures.
- (Provincial and territorial courts of appeal may also be asked to hear references from their respective governments.)

Canadian Tort Law

Three Things to Know

courtesy of Professor Jennifer L. Schulz
University of Manitoba, Faculty of Law

1. Normally, civil cases do not have jury trials (it's usually judge alone).
2. The SCC has effectively capped personal injury damage awards, such that the multi-million dollar amounts awarded by some American courts/juries are simply impossible in Canada.
3. There are cost consequences for launching an unsuccessful lawsuit. This discourages frivolous litigation because if a plaintiff sues and loses, the plaintiff will be required to pay some portion of the defendant's legal fees.

Sources

- Department of Justice Canada material on web:
<http://www.justice.gc.ca/eng/jl/index.html>
- Supreme Court of Canada website: <http://www.scc-csc.gc.ca/court-cour/sys/index-eng.asp>
- Text from the above sources was taken, in many cases, verbatim without specific notation.

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