



# CANADA'S COURT SYSTEM



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## HOW DOES CANADA'S COURT SYSTEM WORK?

Courts in Canada help people resolve disputes fairly – whether they are between individuals, or between individuals and the state. At the same time, courts interpret and pronounce law, set standards, and decide questions that affect all aspects of Canadian society.

Canada's **judiciary** is one branch of our system of government, the others being the legislature and the executive. Whereas the judiciary resolves disputes according to law – including disputes about how legislative and executive powers are exercised – the legislature (Parliament) has the power to make, alter and repeal laws. The executive branch (in particular, the prime minister and ministers, the public service, as well as a variety of agencies, boards, and commissions) is responsible for administering and enforcing the laws.

The courts interpret and apply the Constitution, as well as legislation passed by both levels of government. They also develop and apply the common law.

Canada's system of courts is complex. Each province and territory has its own courts, as well as courts that have national jurisdiction. The Supreme Court of Canada presides over the entire system.

The courts' primary task is administering justice – that is, ensuring that disputes are settled and crimes are prosecuted fairly and in accordance with Canada's legal and constitutional structure. The provinces and territories are responsible for providing everything the courts under their jurisdiction need, from building and maintaining the courthouses, to providing staff and resources, such as interpreters, court reporters to prepare transcripts, sheriffs, and registry services, to paying provincial/territorial court judges. The federal government appoints and pays judges for the superior courts in each province, as well as judges at the federal level. It is also

*The Constitution recognizes and protects Aboriginal rights and treaty rights.*



responsible for the administration of the Supreme Court of Canada and federally created courts.

*Most disputes are settled before they are heard by a judge.*

Courts are not the only mechanism for settling differences between people. Less formal processes include [alternative dispute resolution](#), private commercial arbitration, and appearing before administrative boards and [tribunals](#). Even for issues that never get to court, court decisions influence

people's choices and actions. They provide guidance on what the law is, and how people should conduct themselves to ensure they are in compliance with it.

In the sections that follow we explain the structure of the court system – how the courts are organized and how the various elements connect to one another. The final section looks at some of the principles and institutions that help keep Canada's court system fair and independent.



# HOW THE COURTS ARE ORGANIZED

Each type of court has its own jurisdiction, which means that it has the authority to decide specific types of cases. Canada has four levels of court.

1. Provincial and territorial (lower) courts:  
These courts handle most cases that come into the system. They are established by provincial and territorial governments.
2. Provincial and territorial superior courts:  
These are courts of plenary, or complete, jurisdiction established under [section 96 of the \*Constitution Act, 1867\*](#). They deal with more serious crimes and also hear appeals from provincial and territorial courts. The Federal Court is on the same level, but is responsible for deciding civil matters assigned to it by statute, such as immigration and patents.
3. Provincial and territorial courts of appeal and the Federal Court of Appeal.
4. The Supreme Court of Canada, which is the final court of appeal for Canada.

## Provincial/Territorial Courts

Each province and territory has a provincial/territorial court and hears cases involving either federal or provincial/territorial laws.

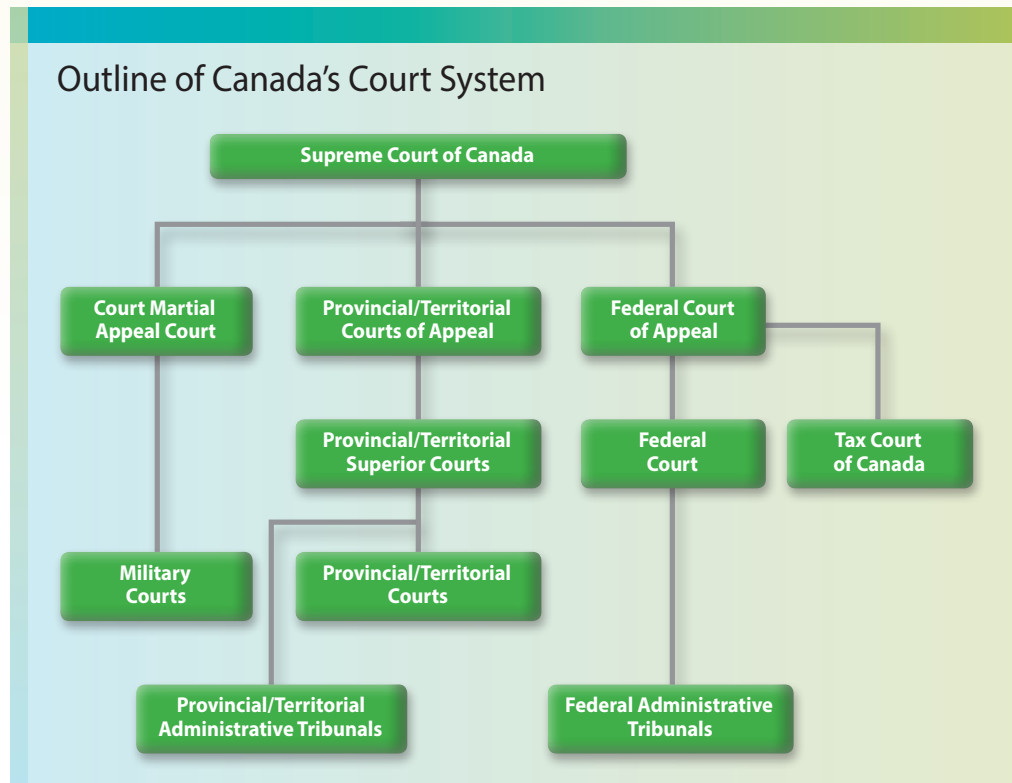
In Nunavut, the [Nunavut Court of Justice](#), which is Canada's only single-level trial court, combines the power of the superior trial court and the territorial court so that the same judge can hear all cases that arise in the territory.

Provincial/territorial courts deal with:

- most criminal offences, except the most serious ones;
- family law matters (e.g., child support, child protection, adoption, but not divorce);
- young persons from 12 to 17 years old in conflict with the law;
- traffic and bylaw violations;
- provincial/territorial regulatory offences;



- claims involving money, up to a certain amount (set by the province or territory in question);
- small claims (civil cases that resolve private disputes involving limited sums of money); and
- all preliminary inquiries (hearings to determine whether there is enough evidence to justify a full trial in serious criminal cases).



Some courts at this level are dedicated to particular types of offences or groups of offenders.

One example is the **Drug Treatment Court**.

The object of these courts is to address the needs of non-violent offenders who are charged with criminal offences that were motivated by their addiction. Those who qualify are offered judicial supervision and treatment for their addiction, with the help of community support services.

**Youth courts** handle cases for young people 12 to 17 years old who are charged with an offence under federal youth justice laws. Youth courts provide protections appropriate to the age of the accused, including protecting his or her privacy. Any court at either the provincial/territorial or superior court level can be designated a youth court.

All provinces and territories have established **Domestic Violence Courts** so that the justice system can improve its response to incidents of spousal abuse, provide better support to victims, and make offenders more accountable. These courts do this by

- decreasing court processing time;
- increasing prosecution rates;
- providing a focal point for programs and services for victims and offenders; and
- allowing police, Crown prosecutors, and, in some cases, the judiciary to specialize in domestic violence matters.

### Provincial/Territorial Superior Courts

Each province and territory has **superior courts**, which are courts of “inherent jurisdiction.” This means that they can hear cases in any area except when a statute or rule limits that authority.

The superior courts try the most serious criminal and civil cases. These include divorce cases and cases that involve large amounts of money (the minimum is set by the province or territory in question). The jurisdiction of superior courts originally came from the first courts in England, whose authority over government actions was based on Magna Carta. Proceedings in superior courts are thus a continuation of a court process

that dates right back to the beginnings of the common law system.

*In Nunavut, most of the communities are small and isolated from Iqaluit, the capital, so the court travels to them “on circuit.”*

The superior courts also act as a court of first appeal for the provincial and territorial courts that the provinces and territories maintain. Although the provinces and territories administer superior courts, the federal government appoints and pays the judges.

Although there are permanent court houses and judicial centres in all of Canada's provinces and territories, Canada's population is scattered widely across huge expanses of land, and it may be difficult for individuals to travel to a court house to have their matter heard. In response, courts often travel “on circuit” to small or isolated areas.

For example, in Nunavut, most of the communities are small and isolated from Iqaluit, the capital, so the court travels to them. The circuit court includes a judge, a clerk, a court reporter, a prosecutor, and at least one defence attorney. Interpreters are hired in the communities when possible, or travel with the circuit court when necessary. The court holds regular sessions in Iqaluit and flies to about 85 percent of all 25 communities in Nunavut, as often as every six weeks or as seldom as every two years, depending on how often it's needed.

### Family Courts

In most provinces and territories, the superior court has special divisions, such as the family division. Some superior courts have established specialized **family courts** to deal with specific family law matters, including divorce and property claims.

Several provinces (Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan) use unified family courts. This allows a single court to deal with all aspects of family law, using specialized superior court judges and services. These courts encourage constructive, non-adversarial techniques to resolve issues, and provide access to support services through community organizations. These services typically include such programs as parent-education sessions, mediation, and counselling.

### **Provincial/Territorial Courts of Appeal**

Each province and territory also has a **court of appeal**. These courts hear appeals from the decisions of the superior courts and the provincial/territorial courts. These can include commercial disputes, property disputes, negligence claims, family disputes, bankruptcies, and corporate reorganizations. Appeals are usually heard by a panel of three judges. The courts of appeal also hear constitutional questions that may be raised in appeals involving individuals, governments, or governmental agencies.



## COURTS AND OTHER BODIES UNDER FEDERAL JURISDICTION

The federal court system runs parallel to the provincial and territorial court systems and consists of the Federal Court and the Federal Court of Appeal. The judges of these courts (as well as the Tax Court of Canada, described below) are based in Ottawa, but travel across the country to hear cases. They deal with certain matters specified in federal statutes (laws), such as immigration and refugee law, navigation and shipping, intellectual property, and tax. They can also deal with matters of national defence, security, and international relations.

### The Federal Court

The Federal Court is Canada's national trial court. It hears and decides federal legal disputes whose subject matter has been assigned to the Court by Parliament.

These disputes include

- claims against the Government of Canada;
- civil suits between private parties in federally-regulated areas; and

- reviews of the decisions of most federal tribunals.

The Federal Court's jurisdiction includes

- interprovincial and many federal–provincial disputes;
- immigration and refugee matters;
- intellectual property proceedings (e.g., copyright);
- citizenship appeals;
- Competition Act cases; and
- cases involving Crown corporations or departments of the Government of Canada.

The federal courts have the power to review decisions, orders, and other administrative actions of most federal boards, commissions, and tribunals. That means most federal government decisions can be challenged in a federal court. With some exceptions, those bodies may refer questions of law, jurisdiction, or practice to one of the federal courts at any stage of a proceeding.

In some areas of law, such as maritime law, the Federal Court shares jurisdiction with the provincial superior courts. It also has concurrent jurisdiction with respect to civil claims against the federal government.

### The Federal Court of Appeal

The Federal Court of Appeal hears appeals from the Federal Court and the Tax Court of Canada, and judicial reviews of certain federal tribunals listed in the *Federal Courts Act*. Like provincial and territorial courts of appeal, its decisions can only be appealed to the Supreme Court of Canada. The Court hears most legal matters under federal jurisdiction or that involve the federal government.

It has three basic roles:

1. to ensure that federal law is applied consistently throughout Canada;
2. to conduct judicial reviews of specified federal decision makers, as listed in section 28 of the *Federal Courts Act*; and
3. to provide an avenue of appeal from decisions of the Federal Court and the Tax Court of Canada.

### Specialized Federal Courts

The federal government has created specialized courts to deal more effectively with certain areas of the law. These include the Tax Court of Canada and the courts that serve the military justice system: the military courts and the Court Martial Appeal Court of Canada. These courts have been created by statute and can only decide matters that fall within the jurisdiction given to them by those statutes. The Tax Court thus deals with tax matters defined under the *Tax Court of Canada Act* and the Court Martial Appeal Court of Canada hear appeals from courts martial.

### The Tax Court of Canada

The Tax Court of Canada is a superior court that determines cases and appeals about matters that arise under federal tax and revenue legislation. The Tax Court of Canada hears disputes between

the federal government and taxpayers after the taxpayer has pursued all other avenues provided for by the *Income Tax Act*. The Tax Court is independent of the Canada Revenue Agency and all other government departments.

### **Military Courts**

Military courts, or courts martial, are established under the *National Defence Act* to hear cases involving the Code of Service Discipline. The Code applies to all members of the Canadian Forces as well as civilians who accompany the Forces on active service. It lays out a system of disciplinary offences designed to further the good order and proper functioning of the Canadian Forces.

The Court Martial Appeal Court of Canada hears appeals from military courts. Judges in

the Court Martial Appeal Court are selected from the federal courts and other superior courts throughout the country. Like other courts of appeal, a panel of three judges hears cases in the Court Martial Appeal Court.

### **The Supreme Court of Canada**

The Supreme Court of Canada is the final court of appeal from all other Canadian courts. It has jurisdiction over disputes in all areas of the law. These include constitutional law, administrative law, criminal law, and civil law. The Court does not hold trials, but hears appeals from all other Canadian appeal courts.

The Court consists of a Chief Justice and eight other justices. Members of the Court are appointed by the federal government as new

### **DID YOU KNOW?**

Each year the Supreme Court considers an average of between 500 to 600 applications for leave to appeal and hears 65 to 80 appeals.



vacancies occur. Three judges traditionally come from Ontario, two from Western Canada, and one from the Atlantic provinces. In addition, the *Supreme Court Act* requires that at least three judges must come from Quebec.

The Supreme Court sits in Ottawa for three sessions a year – winter, spring, and fall. Each year the Supreme Court considers an average of between 500 to 600 applications for leave to appeal and hears 65 to 80 appeals.

### **What Kinds of Cases Does the Supreme Court of Canada Hear?**

The Supreme Court of Canada only hears cases that it considers to be of public importance and to have national significance. That could mean a case that raises an important issue of law, or mixed law and fact, or if the matter is, for any other reason, significant enough to be considered by the country's highest court. In limited instances, there may also be an appeal as of right. Judgements of the Supreme Court are listed at [scc-csc.gc.ca](http://scc-csc.gc.ca).

Before a case can reach the Supreme Court of Canada, it must have used up all available appeals at other levels of court. Even then, the court usually must grant permission or “leave” to appeal before it will hear the case. Leave applications are usually made in writing and reviewed by three members of the court. They then grant or deny the request without providing reasons for the decision.

The right to appeal is automatic in certain situations. For instance, no leave is required in criminal cases where a judge on the panel of a court of appeal has disagreed, or dissented, on how the law should be interpreted. It is also not required when a court of appeal has found someone guilty who had been acquitted at the original trial. That person automatically has the right to appeal to the Supreme Court.

*The Supreme Court of Canada is the final court of appeal from all other Canadian courts.*

*Administrative tribunals play an essential role in resolving disputes in Canadian society.*

The Supreme Court can also be asked by the Governor in Council to hear references. These are important questions of law, such as the constitutionality or interpretation of federal or provincial legislation, on which the Court is asked to give its opinion before an actual legal dispute arises.

The federal government may ask the Court to consider questions on any important matter of law or fact, especially about how to interpret the Constitution.

The Court may also be asked to interpret 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, which are then sometimes appealed to the Supreme Court of Canada.

### **Administrative Tribunals and Boards**

Different kinds of administrative tribunals and boards deal with disputes over the interpretation and application of laws and regulations, such as entitlement to employment insurance or disability benefits, refugee claims, and human rights.

Administrative tribunals are less formal than courts and are not part of the court system. However, they play an essential role in resolving disputes in Canadian society. Decisions of administrative tribunals may be reviewed in court to ensure that tribunals act fairly and according to the law.

## ALTERNATIVE APPROACHES

There are other approaches that can allow people to settle disputes without having to go to court.

### Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) traditionally refers to the wide variety of methods used to resolve conflicts and disputes outside the courtroom. It includes both informal, consensual processes such as negotiation as well as formal rights-based processes such as litigation.

With ADR, people can usually settle their differences in ways that are more informal, less expensive, and often quicker than formal court proceedings. Some parties prefer confidentiality and to have greater control over the selection of individuals who will decide their dispute and the rules that will govern the proceedings. The main ADR processes include:

- Mediation: An independent third party is brought in to help the parties negotiate an agreement.

- Arbitration: The parties agree to refer the dispute to a third party for judgment.
- Negotiation: The parties get together and sort out a problem between themselves.

The parties may also decide to seek the opinion of an expert chosen by both of them.

Agreements reached through mediation and negotiation are consensual, so they generally cannot be appealed. In the case of arbitration, there is a limited ability to appeal that depends on the terms of the arbitration agreement and the applicable legislation.

As with administrative tribunals, the courts and ADR work together. The courts themselves often make use of ADR. For example, some provinces now insist on mediation as part of the litigation process. However, the court system remains the appropriate forum for trying serious or violent crimes, and is also an option when parties to a dispute reject mediation or arbitration.



### Sentencing Circles

In sentencing circles, which can be part of the court process but are not separate courts in and of themselves, the court invites interested members of the community to join the judge, prosecutor, defence counsel, police, social service providers, and community elders – along with the offender, the victim, and their families and supporters – to meet in a circle format to discuss:

- the offence;
- the factors that might have contributed to it;
- sentencing options; and
- ways of reintegrating the offender into the community.

Sentencing circles can be a valuable way of getting input and advice from the community to help the judge set an appropriate and effective sentence. Often the circle will suggest a restorative community sentence involving some form

of restitution to the victim, community service, and treatment or counselling, and/or a period of custody. It is important to note, however, that the judge is not bound to accept the circle's recommendations.

Sentencing circles have been used in much of the country, mostly at the provincial/territorial court level, in minor criminal cases involving Aboriginal offenders and their victims. Various Supreme Court of Canada decisions have interpreted changes to the *Criminal Code* that instructed courts to consider alternative sentences for all offenders, and to pay particular attention to the circumstances of Aboriginal offenders. The Supreme Court found that sentencing judges must examine the unique factors which may have played a part in bringing a particular Aboriginal offender before the courts, and the types of available sanctions and sentencing procedures (including sentencing circles) which may be appropriate in light of the offender's Aboriginal heritage or identity.

# THE JUDICIARY

## Judicial Independence

Judicial independence is a cornerstone of the Canadian judicial system. That is why, under the Constitution, the judiciary is separate from and independent of the other two branches of government, the executive and legislature. Judicial independence guarantees that judges will be able to make decisions free of influence and based solely on fact and law. The principle of judicial independence has three components:

- security of tenure;
- financial security; and
- administrative independence.

**Security of tenure:** Once appointed, a judge is eligible to serve on the bench until retirement (age 75 for federally appointed judges, age 70 in some provincial/territorial jurisdictions). Judges can be removed by a joint address of Parliament or a provincial legislature, only after an independent and impartial investigation shows that there is good reason (see Judicial Conduct, below).

**Financial security:** Judges must be guaranteed sufficient compensation (including salary and pension) so they are not subject to pressure for financial considerations. In Canada, governments cannot change judges' salaries or benefits without first receiving the recommendations of an independent compensation commission.

**Administrative independence:** No one can interfere with how courts manage the legal process and exercise their judicial functions. For example, only the chief justice can choose how cases are assigned to the judges of his or her court.

Several institutions have been established to support judicial independence: these include the Canadian Judicial Council, the Commissioner for Federal Judicial Affairs, the National Judicial Institute and the Courts Administration Service. They help keep the government and the judiciary



*Nothing is more important in our justice system than having independent judges.*

separate in areas like discipline, pay and benefits, and continuing education for judges.

### How Are Judges Appointed?

The federal government appoints judges to the federal courts, the superior courts of the provinces/territories, and the Supreme Court of Canada. The Commissioner for Federal Judicial Affairs administers the [advisory committees](#), representing each province and territory, which assess the qualifications of the lawyers who apply for federal judicial appointments. For example, a candidate for a federal appointment must have been a lawyer for at least ten years to be appointed and must be qualified to practise law in the jurisdiction in question.

The provincial and territorial governments appoint judges to provincial and territorial courts. There are similar eligibility requirements for provincial and territorial appointments.

All federally appointed judges are appointed by the Governor in Council. This consists of the Governor General acting on the advice of the Prime Minister for judges of the Supreme Court of Canada and chief and associate chief justices in the provinces; and on the advice of the Minister of Justice for all other superior court judges.

### What Training Do Judges Receive?

In general, most judges have spent years in courtrooms or in the practice of law, and have extensive knowledge of court processes and the role of the judge. Once they are appointed, they can refine that knowledge by enrolling in educational programs at both the provincial/territorial and federal levels on all aspects of judging, as well as specific substantive areas of the law. The [National Judicial Institute](#) delivers programs for all federal, provincial, and territorial judges. The Institute is funded by each level of government, and regularly offers courses for new judges.

## Judicial Conduct

Each jurisdiction in Canada has a judicial council that is responsible for promoting and administering professional standards and conduct. For provincially and territorially appointed judges, each province or territory has a judicial council. Its members include judges, lawyers, and members of the general public. Judicial councils develop policies and codes of conduct to provide guidance for judges.

The [Canadian Judicial Council \(CJC\)](#) is responsible for federally appointed judges. It consists of the chief justices and associate chief justices of all of the federal courts and provincial/territorial superior courts. It promotes efficiency, consistency, and quality judicial service in these courts. One of the Council's tasks is to investigate complaints and allegations of misconduct of federally appointed judges. The [CJC](#) has also developed a set of [Ethical Principles for Judges](#). Their purpose is to help judges ensure that they maintain their independence, integrity, and impartiality.

If it finds evidence of serious misconduct, the CJC may recommend to the Minister of Justice that the judge be removed from office. The Minister of Justice may then seek the necessary approval of both the House of Commons and the Senate to have the judge removed from office. The removal processes for provincial/territorial judges vary from jurisdiction to jurisdiction, but are similarly developed to protect judicial independence and ensure that the process operates independently.

## Relevant Laws Relating to the Judiciary

The manner in which judges are appointed and administered is governed by [Part VII of the Constitution Acts of 1867 and 1982](#) and the [Judges Act](#). The [Justice Laws website](#) provides the texts of these acts. Provincial and territorial statutes and regulations can be found on the websites of the respective jurisdictions.

The following organizations also support judges in Canada:

[Courts Administration Service](#)

[Office of the Commissioner for Federal Judicial Affairs Canada](#)

[National Judicial Institute](#)

## DEFINITIONS

**Administrative law:** ensures that government deals with citizens fairly and lawfully.

**Civil law:** a body of law that outlines rules on settling disputes between individuals.

**Constitutional law:** body of law derived from the common law or a written constitution that defines the powers of the executive, legislature and judiciary and guides the duties and rights of citizens.

**Criminal law:** a body of law that defines conduct prohibited by Parliament because it threatens or harms public safety and sets out punishments for those acts.

**Governor in Council:** the governor general acting on the advice of the prime minister and cabinet.

**Judiciary:** the branch of government that includes courts of law and judges; the courts of law and judges.

**Jurisdiction:** the type of case and the physical area over which the court has legal authority.

**Litigants:** parties in a lawsuit.

**Litigation:** the process of taking legal action.

**Mixed law and fact:** An appeal court's standard of review of a lower court's order where the appeal issues are divided between question(s) of fact and question(s) of law.

**Security of tenure:** prevents the arbitrary removal of judges.

**Statute:** a law passed by the legislative branch of a government.

**Tribunal:** an administrative body that has authority in a specific area.