



# CANADA'S SYSTEM *of* JUSTICE



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# CANADA'S SYSTEM OF JUSTICE

*Note to reader: This booklet provides general information about Canada's justice system. It is not intended as legal advice. If you have a problem, you should consult a lawyer or other qualified professional.*



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# WHAT IS THE LAW?

The law affects nearly every aspect of our lives every day. We have laws to deal with crimes like robbery and murder. And we have laws that govern activities like driving a car, getting a job, and getting married. Laws give us rules of conduct that protect everyone's rights.

The rule of law, freedom under the law, democratic principles, and respect for others form the foundations of Canada's legal heritage. Every Canadian should understand the law, and the ideas and principles behind it. This publication will help readers understand

- what the law is;
- where it comes from;
- what it is for; and
- how it operates.

Laws also balance individual rights with our obligations as members of society. For example, when a law gives a person a legal right to drive, it also makes it a duty for a driver to know how to drive and to follow the rules of the road.

## Why We Need Laws

Laws are rules made by government that forbid certain actions and are enforced by the courts. Laws apply to everyone equally. If you break a law, you may have to pay a fine, pay for the damage you have done, or go to jail.

Imagine the chaos – and the danger – if there were no laws. The strongest people would be in control and people would live in fear. Drivers could choose which side of the street to drive on and no one could stop them. Imagine trying to buy and sell goods if no one had to keep promises. Or trying to hold onto your personal property or even to keep yourself safe if there were no laws against robbery or assault.

Even in a well-ordered society, people disagree, and conflicts arise. The law provides a way to resolve disputes peacefully. If two people claim the same piece of property, rather than fight they turn to the law. The courts



*The law provides  
a way to resolve  
disputes  
peacefully.*

can decide who the real owner is and how to protect the owner's rights.

Laws help to ensure a safe and peaceful society. The Canadian legal system respects individual rights and ensures that our society is orderly. It applies the same law to everybody. This includes the police, governments and public officials. All of them must carry out their duties according to the law.

### What Other Goals Do Laws Achieve?

In Canada, laws also carry out social policies. Laws allow systems to be put in place for governments to provide, for example,

- benefits when workers are injured on the job;
- [insurance when workers are unemployed](#);
- health care; and
- [loans to students](#).

Our laws also recognize and protect basic individual rights and freedoms, such as liberty

*Our laws also recognize and protect basic individual rights and freedoms, such as liberty and equality.*

and equality. This helps prevent stronger groups and individuals from taking unfair advantage of weaker groups or people.

### Public Law and Private Law

Laws can be divided into public law and private law.

**Public law** sets the rules for the relationship between the individual and society. If someone breaks a criminal law, it is seen as a wrong against society. It includes

- criminal law, which deals with crimes and their punishments;
- constitutional law, which defines the relationship between various branches of government, as well as between federal and provincial governments; it also limits the exercise of governmental power over individuals through the protection of human rights and fundamental freedoms;
- administrative law, which deals with the actions and operations of government.

If someone runs away from a store with unpaid goods, that's theft. It violates public law because it affects



other people. If you back up your car into somebody's fence, you could be violating their right to enjoy their property. That falls under private law.

**Private law** sets the rules between individuals. It is also called civil law. Private law settles disputes among groups of people and compensates victims, as in the example of the fence. A civil case is an action that settles private disputes.



## WHERE OUR LEGAL SYSTEM COMES FROM

### DID YOU KNOW?

Canada's legal system is based on the English and French systems. Explorers and colonists brought these systems to Canada in the 17<sup>th</sup> and 18<sup>th</sup> centuries. After the Battle of Quebec in 1759, the country fell under English common law, except for Quebec, which follows civil law.

Canada's legal system is based on a combination of common law and civil law.

### The Common-Law Tradition

The common law is law that is not written down as legislation. Common law evolved into a system of rules based on precedent. This is a rule that guides judges in making later decisions in similar cases. The common law cannot be found in any code or

body of legislation, but only in past decisions. At the same time, it is flexible. It adapts to changing circumstances because judges can announce new legal doctrines or change old ones.

*Quebec is the only province with a civil code.*

### The Civil-Law Tradition

Civil codes contain a comprehensive statement of rules. Many are framed as broad, general principles to deal with any dispute that may arise.

Unlike common-law courts, courts in a civil-law system first look to a civil code, then refer to previous decisions to see if they're consistent.

Quebec is the only province with a civil code, which is based on the French *Code Napoléon* (Napoleonic Code). The rest of Canada uses the common law. The *Criminal Code* is also considered a code, and it is used throughout Canada.

### Aboriginal and Treaty Rights

Aboriginal rights refer to Aboriginal peoples' historical occupancy and use of the land. Treaty rights are rights

set out in treaties entered into by the Crown and a particular group of Aboriginal people. The Constitution recognizes and protects Aboriginal rights and treaty rights.

### How Parliament Makes Laws

Democratic countries have a legislature or parliament, with the power to

### The Two Meanings of Civil Law

The term “civil law” is used to mean two quite different things, which can be a little confusing at first for people trying to understand the justice system. Sometimes the term is used in contrast to “common law” to refer to the legal system that is based on a civil code, such as the Justinian Code or the Civil Code of Quebec. In its other sense, civil law refers to matters of private law as opposed to public law, and particularly criminal law, which is concerned with harm to society at large. It is usually clear from the context which type of civil law is intended.

make new laws or change old ones. Canada is a federation – a union of several provinces and territories with a central government. So it has both a federal parliament in Ottawa to make laws for all of Canada and a legislature in each of the ten provinces and three territories that deals with laws in their areas. Laws enacted at either level are called **statutes, legislation, or acts**. When Parliament or a provincial or territorial legislature passes a statute, it takes the place of common law or precedents dealing with the same subject.

Making laws this way can be complicated. Let's use an example to explain how it works. Suppose the federal government wanted to create a law that would help control pollution.

1. Government ministers or senior public servants examine the problem carefully and suggest ways in which, under federal jurisdiction, a law could deal with pollution.
2. They would draft the proposed law.

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

3. The law has to be approved by the cabinet, which is traditionally made up of members of Parliament chosen by the prime minister.
4. This version is then presented to Parliament as a bill to be studied and debated by members.
5. The bill becomes law if it is approved by a majority in both the House of Commons and the Senate. It also needs to be **assented** to by the Governor General in the name of the Queen. All laws need royal assent.

Every province uses a similar process. The Lieutenant Governor of each province gives royal assent for laws passed by provincial legislatures.

Judges develop common law by referring to and setting precedents. They also interpret and apply statutes.

### What Are Regulations?

Because our society is so complex, more laws are being enacted today than ever before. If our lawmakers had to deal with all the details of all the laws, the task would be nearly impossible. To solve this problem, Parliament and provincial and territorial legislatures often pass laws to give departments or other government organizations the authority to make specific laws called **regulations**. Regulations carry out the purposes of the general laws or expand on them. They have the force of a law. For example, there are regulations that keep our food safe or outline what kind of storage tank to use for oil products.



## KEEPING THE LAWS UP TO DATE

### Law Reform

Every day, we hear about social issues, medical developments, and new types of technology. All of these raise moral and legal questions. These kinds of changes mean we need to constantly reform our laws so we can make sure that our system of law and justice meets the challenges of our society.

As our society grows and develops, it cannot rely entirely on tradition. Sometimes new laws are needed or old laws need to be changed.

As people change the way they live and work, some laws may become obsolete. Or new situations may arise that no existing law deals with. For example, old laws against theft did not foresee identity theft or online harassment. The same technology that enables one person to find information about another also makes it possible to steal information that was meant to be private.

### Alternative Approaches to Laws

We may even need to change the system of law and justice itself. In our court system, it can take years to settle disputes. People can settle disputes by using less formal methods. Some informal mediation methods, such as alternative dispute

resolution and landlord-tenant disputes, are already being used.

Aboriginal customs and traditions have also contributed to new ways of dealing with people, such as healing and sentencing circles, community justice, and restorative justice.

The Aboriginal Justice Strategy (AJS) is a way of diverting low-risk non-violent offenders from mainstream justice to restorative justice. As a result, offenders don't get a criminal record, they can instead make amends to their community, and funds and resources are freed up to deal with more serious offences.

The goals of the AJS are

- to give Aboriginal people a greater role in administering justice in their communities;
- to help decrease the rates of victimization, crime, and imprisonment among Aboriginal people;
- to provide better and more timely information about community

*We need to constantly reform our laws so we can make sure that our system of law and justice meets the challenges of our society.*

justice programs funded by the AJS; and

- to reflect and include Aboriginal values within the justice system.

### Changing Laws

Government legal experts are constantly examining our laws and looking for ways to improve them. Law reform committees also review laws and recommend changes. Lawyers bring questions of law to court to create change. Social action groups seek changes to laws that they consider unfair to members of Canadian society. Industry groups

and other stakeholders meet with government decision makers in an effort to present their opinions on the direction of public policy. Legislators in the federal, provincial, and territorial governments respond by introducing new laws or changing old ones.

Ultimately, though, it is the people of Canada who elect the lawmakers. We as Canadians need to decide what we want from the law and then make sure it reflects those wishes. Everyone has the right to work toward changing the law.

# THE CANADIAN CONSTITUTION



## DID YOU KNOW?

Canada was created by an act of the Parliament of the United Kingdom called the *British North America Act, 1867* (now known as the *Constitution Act, 1867*), uniting the British colonies of the United Province of Canada, Nova Scotia, and New Brunswick.

A constitution provides the fundamental rules and principles that govern a country. It creates many of the institutions and branches of government, and defines their powers.

The Constitution of Canada includes the *Constitution Act, 1867*, and the *Constitution Act, 1982*. It is the supreme law of Canada. It reaffirms Canada's dual legal system and also includes Aboriginal rights and treaty rights.

## What Does Our Constitution Say?

The Constitution sets out the basic principles of democratic government in Canada when it defines the powers of the three branches of government:

- the executive
- the legislative
- the judiciary

The Queen has the **executive** power in Canada, but in our democratic society the Queen's powers are exercised by constitutional convention on the advice of Ministers who enjoy the confidence of the House of Commons. Together, the Prime Minister and other Ministers form the cabinet, which is responsible to Parliament for government business. Ministers are also responsible for government departments, such as the Department of Finance and the Department of Justice. When we say "the government," we are usually referring to the executive branch.

Parliament is the **legislative** branch of the federal government. Parliament consists of the Queen (who is usually represented by the Governor General), the Senate and the House of Commons. Bills are debated and passed by the Senate and the House of Commons. The Governor General must also give royal assent to a bill

## DID YOU KNOW?

### The Constitution was “patriated” from the United Kingdom in 1982.

When Canada was created, it was a self-governing British colony. The *British North America Act, 1867* codified many constitutional rules for Canada, but major changes to the Constitution could only be made by the United Kingdom Parliament. In 1982, the Charter was enacted as part of Canada's Constitution along with a set of procedures allowing the Constitution to be amended in Canada.

in order for it to become a law. By constitutional convention, royal assent is always given to bills passed by the Senate and the House of Commons.

Our Constitution also includes provisions relating to the **judicial** branch of government, composed of judges. The judiciary must interpret and apply the law and the Constitution, and give impartial judgments in all cases, whether they involve public law, such as a criminal case, or private law, such as a dispute over a contract.

*Parliament is the legislative branch of the federal government.*

The Constitution only provides for federally appointed judges.

Provincial judges are appointed under provincial laws.

## What is a Federal System?

The Parliament of Canada and the provincial and territorial legislatures both have the authority or jurisdiction to make laws. Parliament can make laws for all of Canada, but only about matters the Constitution assigns to it. A provincial or territorial legislature can only make laws about matters within the province's borders.

The federal Parliament deals mainly with issues that concern Canada as a whole: trade between provinces, national defence, criminal law, money, patents, and the postal service. It is also responsible for



the three territories: Yukon, the Northwest Territories, and Nunavut. Federal law allows territories to elect councils with powers like those of the provincial legislatures.

The provinces have the authority to make laws about education, property, civil rights, the administration of justice, hospitals, municipalities, and other local or private matters within the provinces.

There are also local or municipal governments. They are created under provincial laws and can make bylaws that regulate a variety of local matters:

zoning, smoking, pesticide use, parking, business regulations, and construction permits.

Aboriginal peoples in Canada have different types of government. For example, First Nations can have a range of governmental powers over reserve lands under the federal *Indian Act*. Other Aboriginal governments, such as self-governments, exercise these powers as a result of agreements they have negotiated with the federal and provincial or territorial governments.

The *Constitution Act* includes protection for the rights of the Aboriginal peoples (Indian, Inuit, and Métis) of Canada. Section 35 of the *Constitution Act* recognizes and affirms Aboriginal rights, which are rights related to the historical occupancy and use of the land by Aboriginal peoples. This is to help Aboriginal peoples preserve their customs and traditions for future generations, as continuing cultural practices.

*It was only with the Canadian Charter of Rights and Freedoms that human rights in Canada were protected in the written Constitution.*

## The Department of Justice

The Minister of Justice is responsible for the Department of Justice, which provides legal services such as drafting laws and providing legal advice to the government and its departments. The department also develops criminal law and public law, as well as policies and programs for victims, families, children and youth criminal justice. The Minister of Justice is also the Attorney General or chief law officer of Canada.

### DID YOU KNOW?

The *Constitution Act, 1867* authorized Parliament to establish a general court of appeal for Canada, as well as any additional courts to better administer the laws of Canada. It was under this authority that the Federal Courts, the Tax Court, and the Supreme Court of Canada were established.

Section 35 also recognizes and affirms treaty rights, which are specifically set out in agreements between the Crown and particular groups of Aboriginal people.

### **Bijuralism**

Canada is a bijural country – that means it has both common and civil law systems. Matters of private law in Quebec are governed by the civil law, while the common law applies in the other provinces. Federal bills and regulations must respect both types of systems, and the legal concepts within these laws must be expressed in both English and French.

### Other Federal Systems

Australia and the United States also have federal systems where jurisdiction is divided between the federal government and the various states. In contrast, the United Kingdom has a unitary system where there is only one level of government.

# RIGHTS AND FREEDOMS IN CANADA



In Canada, the Constitution, as well as federal, provincial and territorial laws, protect our human rights and fundamental freedoms.

The *Canadian Bill of Rights*, passed in 1960, was the first federal human rights law in Canada. It guarantees many basic rights and freedoms, including the “right of the individual to life, liberty, security of the person and enjoyment of property” and the right not to be deprived of any of those rights except in accordance with “due process,” meaning basic procedural fairness.

The *Canadian Human Rights Act*, passed in 1977, also protects human rights in the federal public and private sectors (for example, banking, rail, telecommunications, inter-provincial transportation), particularly the right to equality and non-discrimination in the areas of employment, housing and the provision of services.

All provinces and territories also have human rights legislation which prohibits discrimination in employment, housing and in providing goods, services, and facilities to the public. Some provincial and territorial laws protect a broader range of rights

and freedoms. But like any legislation, these laws can be repealed or changed, so their protection can be limited.

It was only with the *Canadian Charter of Rights and Freedoms* that human rights in Canada were protected in the written Constitution.

## What Does the *Canadian Charter of Rights and Freedoms* Say?

The Constitution says that the Charter takes priority over all other legislation in Canada because it is part of the “supreme law of Canada.” It applies to all government action, meaning to the provincial legislatures and Parliament, and to everything done under their authority. This means that governments must take the Charter into account in developing all laws and policies. It also means that when an individual goes to court because he or she believes that Parliament or a legislature or a government official has violated rights or fundamental freedoms guaranteed in the Charter, the court may declare

*The interests of society must always be balanced against the interests of individuals to see if limits on individual rights can be justified.*

the law invalid if it conflicts with the Charter or provide any other “appropriate and just” remedy.

However, section 1 of the Charter also recognizes that even in a democracy, rights and freedoms are not absolute. For example, no one is free to yell “fire” in a crowded theatre, to slander someone, to engage in religious practices which cause harm to others, to spread child pornography or hate propaganda or to enter or leave Canada without any restrictions whatsoever. Parliament or a provincial legislature can limit fundamental rights, but only if it can show that the limit

- is set out in a law;
- pursues an important goal which can be justified in a free and democratic society; and
- pursues that goal in a reasonable and proportionate manner.

The interests of society must always be balanced against the interests of individuals to see if limits on individual rights can be justified.

The Charter also affirms that we are a multicultural country and that the Charter must be interpreted consistently with this ideal.

Under the Constitution, both Parliament and the provincial legislatures still have a limited power to pass laws that may violate certain Charter rights. However, this can only be done if Parliament or a provincial legislature specifically declare that it is passing a law **notwithstanding** certain provisions of the Charter. This declaration must be reviewed and re-enacted at least every five years or it will not remain in force. The declaration informs Canadians of the limits being imposed on Charter-protected rights or freedoms. It also requires the government to explain itself, to accept full responsibility for its actions, and to take the political consequences. So far, Parliament has never used the notwithstanding clause.

### What Rights Does the Charter Protect?

The Charter protects

- [fundamental freedoms](#)
- [democratic rights](#)
- [mobility rights](#)
- [legal rights](#)
- [equality rights](#)
- [language rights](#)

It also recognizes and affirms Aboriginal and treaty rights.

### **Fundamental freedoms**

- Everyone in Canada is free to practise any religion or no religion at all.
- We are free to think our own thoughts, speak our minds, to gather peacefully into groups and to associate with whomever we wish, as long as we do not infringe valid laws which protect the rights and interests of others.
- The media are free to print and broadcast news and other information, subject only to reasonable and justifiable limits set out in law.

### **Democratic rights**

- Every Canadian citizen has the right to vote in elections for Members of Parliament and representatives in provincial and territorial legislatures, and to seek election themselves, subject to certain limited exceptions (for example, minimum voting age), which have been found to be reasonable and justifiable.
- Our elected governments cannot hold power indefinitely. The Charter requires governments

to call an election at least once every five years. The only exception is in a national emergency, such as war, if two-thirds of the Members of the House of Commons or a legislative assembly agree to delay the election.

- Every citizen has the right to have their elected representatives sit at least once a year in Parliament and legislatures, so Parliament and government are held to account.

### **Mobility rights**

- Canadian citizens have the right to enter, remain in, or leave the country.
- Canadian citizens and permanent residents have the right to live or seek work anywhere in Canada. Governments in Canada can't discriminate on the basis of someone's current or previous province of residence. For example, if a person is a qualified professional, such as an accountant, in one province, another province cannot prevent him or her from working there because that person does not live there.
- However, laws can set reasonable residency requirements for certain social and welfare benefits. Provinces with an employment rate below the

national average may also set up programs for socially and economically disadvantaged residents, without having to extend them to non-residents.

### **Legal rights**

- The Charter also protects the basic human rights to life, liberty and physical and psychological safety (or “security of the person”).
- No one can be deprived of these rights except through fair legal procedures and based on clear, fair laws.
- The right to be presumed innocent until proven guilty is a basic constitutional guarantee.
- The Charter also protects everyone’s reasonable expectation of privacy in their homes, private spaces and personal information. This includes protection against unreasonable searches and seizures by police and other government authorities, who generally need a judge-approved warrant to enter your home or take other actions which interfere with your privacy.
- Everyone is also protected against being detained or arrested arbitrarily. A police officer must have reasonable grounds to believe that you have committed a crime before holding you in custody. The right to challenge the legality of your detention (also called “habeas corpus”) is expressly guaranteed in the Charter.
- The Charter also protects against random or arbitrary actions by law enforcement agencies. For example, you have the right to be told why you are being arrested or detained, to consult a lawyer without delay, to be informed of this right, and to have a court determine quickly whether this detention is lawful.
- Everyone has the right not to be subjected to any cruel and unusual punishment, including torture, excessive or abusive use of force by law enforcement officials and sentences of imprisonment which are “grossly disproportionate” to the seriousness of the crime committed.
- If you are charged with an offence under federal or provincial law you also have the right:
  - to be told promptly of the offence;
  - to be tried within a reasonable time;
  - not to be compelled to testify at your own trial;

- to be presumed innocent until proven guilty beyond a reasonable doubt in a fair and public hearing by an independent and impartial tribunal;
- not to be denied reasonable bail without cause;
- to be tried by a jury for serious charges;
- to be convicted only for an act or omission that was a crime at the time it was committed;
- not to be tried or punished twice for the same offence;
- to the benefit of the lesser punishment if the punishment for a crime changes between the time you committed the offence and the time you are sentenced;
- Everyone has the right, as a witness in legal proceedings, not to have any incriminating evidence you give used against you in later proceedings, unless you are charged with perjury (lying during legal proceedings).
- Everyone has a right to an interpreter in legal proceedings if you do not understand the language or are hearing-impaired.

### **Equality rights**

- Equality rights are at the core of the Charter. They are intended to ensure that everyone is treated with the same respect, dignity and consideration (i.e. without discrimination), regardless of personal characteristics such as race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability, sexual orientation, marital status or citizenship.
- This usually means that everyone should be treated the same by law and that everyone is entitled to the same benefits provided by laws or government policies. However, the Charter does not require that government always treat people in exactly the same way. For example, sometimes protecting equality means that rules or standards must be reasonably adapted to take account of people's differences, including by allowing people to observe different religious holidays without losing their job, or putting specific supports in place to enable

*Everyone, regardless of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability, is equal before the law.*

people with visual disabilities or hearing impairments to access government services.

- It is also constitutional to create special programs aimed at improving the situation of individuals who are members of groups that have historically experienced discrimination in Canada, including on the basis of the grounds listed above.

*Everyone has the right to use English or French in the debates and proceedings of Parliament.*

**Language rights**

English and French are Canada's official languages, according to the Charter. Both languages have equality of status and equal rights and privileges to be used in all institutions of Parliament and government of Canada.

- Everyone has the right to use English or French in any debates and other proceedings of Parliament.
- The statutes, records and journals of Parliament must be printed and published in both languages and both language versions have equal authority.
- Everyone has the right to use English or French in proceedings

before any court established by Parliament.

- Members of the public have a right to communicate with and receive services in English or French from any head office of an institution of Parliament or government of Canada. They have this same right from any office of an institution where there is a significant demand. Depending on the nature of the office, it might also be reasonable that communications and services be available in both English and French.
- Similar rights apply in New Brunswick, the only officially bilingual province in Canada. In fact, people in New Brunswick have the right to communicate and obtain services in either English or French from any office of an institution of the legislature or government of New Brunswick. Under section 16 of the Charter, the English and French linguistic communities in New Brunswick also have equality of status and equal rights and privileges, including the right to distinct educational institutions and cultural institutions that are needed to preserve and promote those communities.



- The *Constitution Act, 1867* and the *Manitoba Act* also grants people in Quebec and Manitoba the right to use English and French in debates and proceedings of the legislatures and the courts of those provinces. These provisions also require that provincial laws be enacted and published in both languages, and that both languages be used in the Records and Journals of their legislatures.
- In Quebec, citizens who received their primary education in English in Quebec, or who have a child who was or is being taught in English in Quebec, have the constitutional right to send all their children to English-language schools.

### **Minority-language educational rights**

- Every province and territory has official language minority communities (French-speaking communities outside Quebec and English-speaking minorities in Quebec).
- *Outside Quebec*, citizens whose mother tongue is French, or who have attended French primary or secondary schools in Canada, have a constitutional right to have all their children receive primary or secondary instruction in that language. This is also true if their children are, or have, attended French primary or secondary schools in Canada.

This right to minority-language instruction applies where numbers warrant, and can include the right to receive that instruction in minority-language educational facilities provided out of public funds.

### **Aboriginal and treaty rights**

As noted earlier, section 35 of the *Constitution Act, 1982* recognizes and affirms the Aboriginal and treaty rights of Aboriginal peoples.

The Charter cannot take away or diminish those rights, or any other rights or freedoms that Aboriginal peoples may acquire in the future (for example, from the settlement of land claims).

*The Charter and the Constitution protect the rights of the Aboriginal peoples (Indian, Inuit, and Métis) of Canada.*

### **Other Rights**

The Charter guarantees many basic human rights and fundamental freedoms. But we all have other rights that come from federal, provincial, territorial, international, and common law. Also, Parliament or a provincial or territorial legislature can always add to our rights.



## HOW THE COURTS ARE ORGANIZED

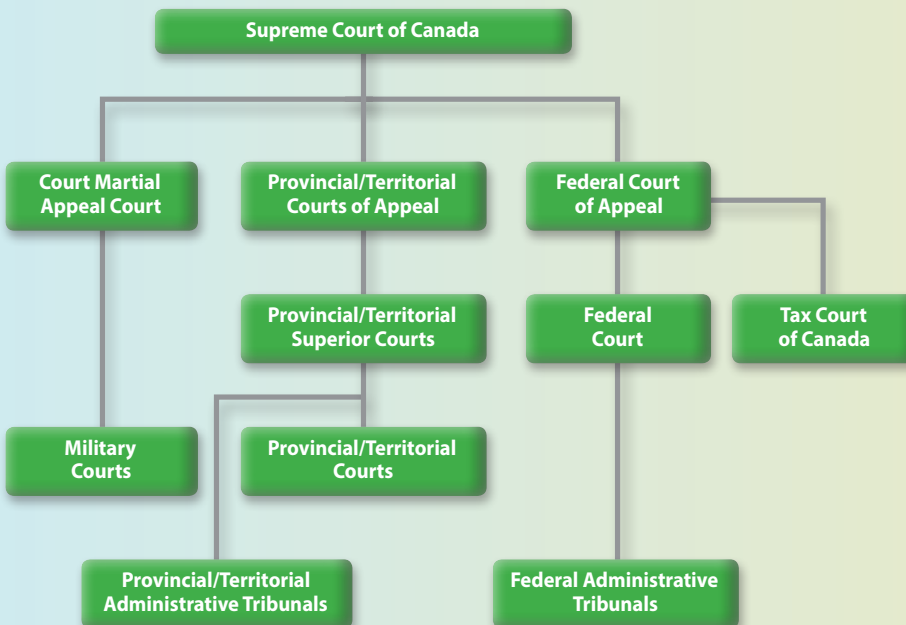
The federal and provincial and territorial governments are all responsible for the judicial system in Canada.

Only the federal government can appoint and pay judges of the superior, or upper-level, courts in the provinces. Parliament can also establish a general court of appeal and other courts. It has created the Supreme Court of Canada, the Federal Court and the Federal Court of Appeal, as well as the Tax Court.

Parliament also has exclusive authority over the procedure in courts that try criminal cases. Federal authority for criminal law and procedure ensures fair and consistent treatment of criminal behaviour across the country.

The provinces administer justice in their jurisdictions. This includes organizing and maintaining the civil and criminal provincial courts and civil procedure in those courts.

### Outline of Canada's Court System



## What Do the Federal Courts Do?

**The Supreme Court of Canada** is Canada's final court of appeal. Its nine judges represent the four major regions of the country. Three of them must be from Quebec, to adequately represent the civil law system.

The Supreme Court has two main functions.

- It hears appeals from decisions of the appeal courts in all the provinces and territories, as well as from the Federal Court of Appeal. Supreme Court judgments are final.
- It decides important questions about the Constitution and controversial or complicated areas of private and public law. The government can also ask the Supreme Court for its opinion on important legal questions.

The federal government also established the **Federal Court**, the **Tax Court** and the **Federal Court of Appeal**.

The **Federal Court** specializes in areas such as intellectual property, maritime law, federal–provincial disputes, and civil cases related to terrorism.

The **Tax Court** specializes in hearing appeals from tax assessments.

The **Federal Court of Appeal** reviews the decisions of both these courts. In fact, it is the highest court of the land for about 95 percent of all cases.

## Provincial and Territorial Level Courts

The court system is roughly the same across Canada. Except for Nunavut, each province has three levels: provincial and territorial, or lower, courts; superior courts; and appeal courts. The **Nunavut Court of Justice** has a single-level trial court.

### Provincial and Territorial Courts

Provincial courts try most criminal offences, money matters and family matters. In private-law cases involving breach of contract or other claims of harm, the courts apply common-law principles in nine provinces and the territories. In Quebec, courts apply the **Quebec Civil Code**.

Provincial courts may also include specialized courts, such as youth courts, family courts, and small claims courts. Each provincial government appoints the judges for its own courts.

## Superior Courts

Superior courts are the highest level of courts in a province or territory. They deal with the most serious criminal and civil cases and have the power to review the decisions of the provincial and territorial courts.

Superior courts are divided into two levels: trial level and appeal level.

- The trial-level courts hear civil and criminal cases. They may be called the Supreme Court, the Court of Queen's Bench, or the Superior Court of Justice.
- The appeal-level courts, or Courts of Appeal, hear civil and criminal appeals from the superior trial courts listed above.

Although the provinces and territories administer superior courts, the federal government appoints and pays the judges.

## Administrative Boards and Tribunals

There are other kinds of disputes that do not need to be dealt with in the courts. 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.

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



## CIVIL AND CRIMINAL CASES

A civil case is a private case where someone sues someone else. This is also known as a suit or action. In a criminal case, the Crown prosecutes an accused under a public-law statute such as the *Criminal Code* or the *Controlled Drugs and Substances Act*.

### How Do Civil Cases Work?

A civil action or suit starts when individuals or corporations disagree on a legal matter, such as the terms of a contract or the ownership of a piece of property. A civil suit can also result if someone is injured or property is damaged. For example, someone who breaks a leg when he or she slips on an icy stairwell may sue for compensation. The person who sues is called the plaintiff. The person being sued is called the defendant.

Civil cases are complex. A suit goes through several stages: pleadings, discovery, and the trial itself.

### Pleading

First, the plaintiff files a pleading with the court. This sets out the complaint against the defendant and the remedy the plaintiff is seeking. A court officer then issues the claim by affixing the seal of the court and signing the pleading on behalf of the

court. Copies are then delivered to, or served on, the defendant.

The defendant must provide the court with a statement of defence. If she or he does not, the court will assume that the plaintiff's allegations are true. The defendant may thus lose by default.

Both the plaintiff and the defendant are entitled to consult a lawyer. Lawyers often discuss the lawsuit to settle it before a trial is necessary. The two sides can reach a settlement at any time before the judge makes his or her decision. In fact, 98 percent of civil suits never make it to the courts.

### Discovery

Each party is then entitled to an examination for discovery before the trial. Its purpose is to clarify the claim against the defendant and lets each side examine the evidence that the other side intends to use in court.

### Trial

During the trial, it is up to the plaintiff to present facts to support the claim against the defendant. In a civil suit, the plaintiff must prove that it is probable that the defendant is legally responsible, or liable, because

a civil case is decided on a balance of probabilities. This is the standard of proof for a civil case, just as the standard of proof for a criminal case is proof beyond a reasonable doubt.

If the facts justify the remedy the plaintiff is seeking, the court will hold the defendant liable, or legally responsible.

### What Happens at a Civil Trial?

The trial begins with the plaintiff presenting evidence against the defendant. The plaintiff may call witnesses to testify to facts and present evidence: papers, photographs or other documents. The defendant may cross-examine the plaintiff's witnesses to test their evidence. The defendant then presents his or her own evidence, including witnesses. The plaintiff has the same right to cross-examine.

Throughout the trial, the judge must make sure that all the evidence presented and all the questions asked are relevant to the case. For example, in most situations, the judge will not allow testimony based on what a witness has heard from another person – this is called hearsay evidence.

At the end, both the plaintiff and the defendant summarize their arguments. The judge must then consider the evidence presented before making a decision, based on what has been proven to be most probable. He or she must decide whether the facts show that the defendant has broken a civil law, such as a law that says we are obliged to fulfill our contracts.

Depending on the suit and the court, the defendant may have a right to a trial by judge and jury. It is then up to the jury to decide which version of the facts it believes. The judge still decides which law applies and explains the evidence and the relevant laws to the jury. The jury must then consider the matter and reach a verdict.

### How a Trial Ends

If the defendant is found not liable, the judge will dismiss the case. If the defendant is found liable, the judge or jury must consider three things:

- the remedy that the plaintiff asked for in the pleadings;
- the facts; and
- how to compensate the plaintiff.

## Remedies

A remedy is a means of resolving a civil case. There are three different types.

- Monetary remedies, called damages, are the most common. The judge or jury who decides the case fixes the amount of damages. The judge or jury will take into account the expenses incurred by the plaintiff.

Where the law permits, they can also award an additional sum to compensate the plaintiff for the loss suffered as a result of the wrongdoing of the defendant.

The judge or jury is not required to award the plaintiff the amount he or she asks for. They might even award less than that amount. In Canada, a judge or jury may occasionally award “punitive” damages.

This is a larger award that expresses the disapproval of the community. These damages are meant to punish the defendant because the defendant’s behaviour was so offensive.

*In 2011–12, cases involving impaired driving (11%), theft (10%), common assault (10%), and failure to comply with an order (9%) were the most common types of cases completed in adult criminal court.*

- Declaratory remedies simply state the rights of the parties. For example, when a court interprets a will or decides who owns personal property or land, its decision is declaratory.
- An injunction is a restraining order that says that someone can or cannot do something. You could get an injunction to stop your neighbours from burning garbage or to order them to remove a junk heap from your property. Injunctions are not given automatically. In each case, the court has the discretion to make such an order or to award damages according to precedent.

## What Are Criminal Cases?

A crime is considered to be an offence against society as a whole, so it is usually the state that starts a criminal prosecution.

Criminal offences are set out in the *Criminal Code* or in other federal laws. There are two types:

- Summary conviction offences, which are the most minor cases, for example causing a disturbance; and
- Indictable offences, which are more serious and include theft, break and enter, and murder.



The person charged with a criminal offence is called the accused. The accused is always presumed innocent until proven guilty.

### Summary Offences

The accused appears before a provincial court judge for a trial that will normally proceed immediately. The maximum penalty for this type of offence is normally a \$5,000 fine, six months in prison, or both.

### Indictable Offences

An accused has three choices:

- Have a judge alone hear the case in provincial court.
- Have a judge and jury hear the case in a superior court.
- Have a judge alone hear the case in superior court.

There may be a preliminary hearing before a trial, during which a judge examines the case to decide if there is enough evidence to proceed with the trial. If the judge decides there is not enough evidence, the case will be dismissed.

Otherwise, the judge will order a full trial.

### What Happens in an Arrest?

The police must follow certain procedures to protect the rights of the accused. A person who has been arrested is first read their rights.

The police must

- tell the person that he or she has the right to consult a lawyer without delay;
- explain the reasons for the arrest and the specific charge, if one is being made.

*A crime is considered to be an offence against society as a whole, so it is usually the state that starts a criminal prosecution.*

### What Happens in Custody?

A person who is taken into custody goes to a holding cell in a detention centre. He or she has the right to appear before a justice of the peace or judge as soon as possible (usually within 24 hours). At that time a judge decides on pre-trial release or bail. In a bail hearing, the prosecutor must show why the accused should remain in custody. If a judge decides the accused should be released, the accused may be released with or without conditions. Release on bail will only be refused if there are very strong reasons for doing so.

*The median amount of time to complete an adult criminal court case declined in 2011–12, down two days from the previous year, to 117 days.*

Anyone accused of a crime also has the right under the Charter to stand trial within “a reasonable time.”

The Charter does not say what this means but the courts have provided some guidance. A judge considers four factors to determine if a trial is happening within a reasonable time:

- the length of the delay;
- the reason for the delay;
- whether the accused agreed to a delayed trial date;
- whether the delay affected the accused’s ability to put forward to a fair defence.

### **What Happens in a Criminal Trial?**

A criminal trial is a very serious matter. After all, the accused has a lot to lose: his or her liberty and the stigma of a criminal conviction. Because of that, both common law and the Charter protect the rights of the accused. For example, the prosecution must prove that the accused is guilty of

the charge beyond a reasonable doubt. Also, if any evidence is obtained that violates the accused’s Charter rights, such as through an unreasonable search and seizure, the judge may refuse to admit the evidence. In a criminal trial, an accused person cannot be required by the prosecution to give evidence.

### **Decisions in Criminal Cases**

If the accused is found not guilty, he or she will be acquitted and is then free to go.

If the accused is found guilty of a crime, the judge must decide the appropriate sentence. When making this decision, the judge must consider:

- the seriousness of the crime;
- the range of sentences possible in the *Criminal Code* or other statutes;
- preventing or deterring the offender or others from committing similar crimes;
- denouncing the harm to the victim and the illegal conduct; and
- the prospects for rehabilitation.

Judges may impose many different kinds of sentences or a combination

of penalties. These may include:

- A fine (a sum of money);
- Restitution: asking the offender to pay costs of injuries or loss of damage to property;
- Probation: release of the offender with conditions;
- Community service: an order that the offender perform a certain number of hours of volunteer work in the community;
- Imprisonment: confinement in a prison or penitentiary.

An offender who is sentenced to more than two years will be sent to a federal penitentiary. An offender who is sentenced to two years or less will go to a provincial prison.

A judge does not always have to convict, even if the accused person has pleaded guilty or been found guilty. The judge may give an offender an absolute or conditional discharge. An offender given a conditional discharge must obey the conditions imposed by the judge or face a more severe sentence. An offender who is given a discharge will not receive a criminal record for the offence.

## Can You Appeal a Decision?

The right to appeal a court's decision is an important safeguard in our legal system because a court could make an error in a trial.

In most civil and criminal cases, a decision made at one level of the court system can be appealed to a higher level. Where there is no right to appeal, permission or "leave" to appeal must be sought. The higher court may deny leave to appeal, affirm or reverse the original decision. In some cases, it will order a new trial.

Both sides in a civil case and either the prosecution or the accused in a criminal case may appeal.

Sometimes, it is only the amount of damages or the severity of the sentence that is appealed. For example, the accused may ask a higher court to reduce a sentence, or the prosecution may ask to have the sentence increased.

*The right to appeal a court's decision is an important safeguard in our legal system because a court could make an error in a trial.*



## VICTIMS OF CRIME

The criminal law process is fundamentally between the accused and the state. But there is increasing recognition of the importance of hearing victims and they are starting to have a greater voice and role in the legal process.

There is federal legislation and services to help victims.

For example, under the *Criminal Code*:

- the victim's safety must be considered in bail decisions;
- a victim's identity may be protected in appropriate circumstances;
- judges must consider victim impact statements and the harm to the victim; and
- offenders may be ordered to pay restitution (an amount of money to reimburse the victim for losses caused by the offender) as part of the sentence. They also have to pay a victim surcharge.

Victims are not allowed to decide if an appeal is brought or not because the process is between the accused and the state.

The victim can receive some information about an offender while that person is

an offender if it is relevant to the victim's safety – for example, if the offender is released once a week for counselling. Even if the victim is not in harm's way, he or she could still be traumatized by seeing the offender shopping in the same neighbourhood. The victim's physical well-being and psychological safety are considered equally important.

The federal government and provinces work together on how victims are served. For example, Canada and the provinces agreed to a baseline set of principles that govern all policies and legislation called the Canadian Statement of Basic Principles.

The Canadian Victims Bill of Rights came into force in 2015 to improve the experiences of victims of crime across the country by creating, at the federal level, clear rights for victims of crime – a first in Canadian history. To read the Canadian Victims Bill of Rights in full, please visit the [Justice Laws](#) website. You can find out more about victim-related issues in Canada at [canada.ca](#). There are also many services available across the country for victims of crime - consult the [Victim Services Directory](#) at the site above to search for services by postal code and by type.

# RESTORATIVE JUSTICE

Restorative justice came into the system from Aboriginal justice traditions. Restorative justice emphasizes the wrong done to a person as well as the wrong done to the community. It recognizes that crime is both a violation of relationships between specific people and an offence against everyone (the state).

In restorative justice programs, the victim of the crime, the offender and, ideally, members of the community voluntarily participate in discussions. The goal is

- to restore the relationship;
- to fix the damage that has been done; and
- to prevent further crimes from occurring.

Restorative justice requires wrongdoers

- to recognize the harm they have caused;
- to accept responsibility for their actions;
- to be actively involved in improving the situation; and
- to make amends to victims and the community.





## YOUTH JUSTICE

Special considerations come into play when young people commit acts that are considered criminal. The *Youth Criminal Justice Act* (YCJA) is the federal law that governs Canada's youth justice system. It applies to youth aged 12 to 17 who get into trouble with the law. The YCJA recognizes that young persons must be held accountable for criminal acts, although not in the same way or to the same extent as adults. It is in society's interest to ensure that as many young offenders as possible are rehabilitated and become productive members of society.

*The Youth Criminal Justice Act says that young people are to be held accountable in ways that are fair and in proportion to the seriousness of their offences.*

The YCJA recognizes that young people lack the maturity of adults. The youth justice system includes measures that are consistent with this reduced level of maturity. The YCJA also recognizes that young people have special needs and circumstances that must be considered when any decision is made under the Act.

While many aspects of criminal procedure are similar in the youth and

adult criminal justice systems, the YCJA establishes special procedures to ensure that young people are treated fairly and to promote their rehabilitation. For example, as a general rule, the privacy of young offenders and young victims and witnesses is protected through publication bans on their identity.

The YCJA says that young people are to be held accountable in ways that are fair and in proportion to the seriousness of their offences. These interventions should

- reinforce respect for societal values;
- encourage the repair of harm done;
- be meaningful to the offender;
- respect gender, ethnic, cultural, and linguistic differences; and
- respond to the needs of Aboriginal young persons and of young persons with special requirements.

The YCJA encourages the use of measures outside of the formal court system for less serious offences. These measures are often the most appropriate and effective way to respond to youth offending, and include options such as police warnings and referrals to community-based programs.

Youth cases that do end up in the formal court system are conducted in special youth courts. If a youth is found guilty of a criminal offence, the youth court judge must determine the appropriate sentence. The YCJA has specific sentencing provisions for young offenders that are different than the adult sentencing provisions in the *Criminal Code*.

In most cases, judges impose one of the youth sentencing options in the YCJA. However, in very serious cases, the court does have the power to

impose an adult sentence. If an adult sentence is imposed, the *Criminal Code* penalties for adult offenders are applied to the young person. This can include mandatory minimum penalties and sentences up to life imprisonment. However, a young person cannot serve any portion of a sentence in an adult prison before he or she is 18 years old.

*Canadian youth courts completed about 48,000 cases in 2011–12, down 10% from the previous year. The largest decreases were in the territories, where declines ranged from 23% to 36%.*



## THE ROLE OF THE PUBLIC

In Canada, each of us has a part in ensuring that the law works properly and that justice is done. Two ways of contributing to justice in Canada are being on a jury and testifying in court.

### **Jury Duty**

Serving on a jury is one way a citizen can carry out his or her role. A jury is a group of citizens who try an accused charged with a criminal offence. In Canada, a criminal law jury is made up of 12 jurors selected from among citizens of the province or territory in which the court is located. Any adult Canadian citizen can be considered for jury duty.

Being called for jury duty does not mean a person will be selected to serve as a juror but he or she must show up for the selection process. Some people may not be required to do jury duty by the laws of their province. Also, the prosecutor or the defence counsel may object to a particular juror if they believe there is a reason why he or she should be disqualified.

During the trial, jurors must not allow themselves to be influenced by anything except the evidence presented

in court. Jurors must make up their own minds about the truth or honesty of the testimony given by witnesses.

After both sides have called all their witnesses and presented their arguments, the judge instructs the jury on the law and on what they must take into account when making their decision.

### **Criminal Cases**

The jurors meet in a room outside the courtroom to decide whether the prosecutor has proven beyond a reasonable doubt that the accused is guilty.

All the jurors must agree on the decision or verdict – their decision must be unanimous. If they cannot all agree, the judge may discharge the jury and direct a new jury to be chosen for a new trial. After a trial, jurors are not allowed to tell anyone else about the discussions that took place in the jury room.

### **Civil Cases**

The jury must decide whether the plaintiff has proven that the defendant is liable, that is, responsible, on a balance of probabilities.



## Trial by Jury

Most civil cases in Canada are tried by judges without a jury. However, anyone charged with a criminal offence for which there can be a prison sentence of five years or more has the right to a trial by jury.

In some cases, a person charged with a criminal offence for which there can be a prison sentence of less than five years may have the right to choose trial by jury.

Some civil cases can also be tried by judge and jury.

There are only six jurors in a civil case, and the decision does not have to be unanimous as long as five of them agree on the verdict.

## Testifying in Court

A person who has information that either party in the case believes to be useful may be called to give evidence in a civil or criminal trial. Someone might have witnessed the event, know something that is important to the case, or have a document that is key to the trial.

People whose knowledge about a particular subject can help the court with answers to technical questions may also be called as expert witnesses.

If people have information they believe is related to the case, they may come forward voluntarily. If they do not, they can be summoned by subpoena to give evidence in court. A person who is subpoenaed must testify or face a penalty.

Witnesses must take an oath or affirm that they will tell the truth. They must answer all questions they are asked, unless the judge decides that a question is irrelevant.

## Know the Law

People do not have to be experts in the law. But ignorance of the law is no excuse or defence. If you are charged with an offence, for example, you cannot be excused by claiming that you did not know you were breaking the law. Because our laws are publicly debated before being passed in Parliament or a legislature, the public is expected to know what is legal and what is not.

The duty to know the law means that citizens should make sure they are

*Legal help for low-income people is as important as health care and education.*

acting legally. You can find this information from federal, provincial and territorial government offices, public libraries, public legal information associations, and the police. If, after consulting these sources of information, you are still uncertain about the law, then you should consult a lawyer.

### Who Gets Legal Aid?

Legal help for low-income people is as important as health care and education. The federal and provincial governments have set up a program to share the cost of legal services for those who qualify. Any person who meets the financial criteria and who is accused of a crime for which a conviction might mean jail or loss of livelihood may get legal aid. Some provinces also offer legal aid for civil cases, particularly in family-law matters.

## DEFINITIONS

**Jurisdiction:** the type of case and the physical area over which the courts have legal authority.

**Legislature:** government body with the power to enact, amend, and repeal laws.

**Parliament:** legislature, in Canada made up of the Monarch, House of Commons and the Senate.

**Remedy:** the means used by the law to correct injuries or enforce legal rights.

**Restorative justice:** an approach to justice that emphasizes healing for victims, holding offenders to account in a meaningful way, and involving citizens in the community.

**Subpoena:** an order to appear in court or give evidence.

**Treaty rights:** Aboriginal rights set out in a treaty.