



CANADA'S COURT SYSTEM



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FOREWORD

This booklet provides a general description of the court system in Canada – the types and levels of courts and their responsibilities. It is not intended as a user’s guide for going to court. For information on the justice system as a whole we recommend consulting the companion booklet, *Canada’s System of Justice*, also available from the Department of Justice.

The Canadian system of government depends on a dynamic relationship among its three branches – the Legislature, the Executive and the Judiciary or courts. The Legislature has the power of making, altering and repealing laws. The Executive is responsible for administering and enforcing the laws. The Judiciary has the task of settling disputes according to law – including disputes about how the legislative and executive powers are handled. Independent courts are the hallmark of a strong democratic society.

INTRODUCTION

The basic role of courts in Canada is to help people resolve disputes fairly and with justice, whether the matter is between individuals or between individuals and the state. In the process, courts interpret and establish law, set standards, and raise questions that affect all aspects of Canadian society.

It is worth noting that most disputes do not in fact end up in the courts at all. People tend to settle their differences informally – through alternative dispute resolution, for instance, or before boards and tribunals – though often with the idea of “going to court” in the background. Even when things never get to court, the courts influence people’s choices and actions. Court decisions provide guidance on what is acceptable conduct and on the nature and limits of the law.

Canada’s system of courts is complex – like the society it serves. There are several levels and types of court, and questions of jurisdiction can be difficult to sort out, especially since courts that share the same functions may go by different

names. Both the federal government and the provincial and territorial governments pass laws, and they also share the administration of justice, but the relationship is not simple. For instance, the provinces and territories are responsible for providing everything necessary for their courts, 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; yet the judges for the superior courts are appointed and paid by the federal government. Administration of the Supreme Court of Canada and federally created courts is the responsibility of the federal government.

The pages that follow focus mostly on the structure of the system – on how the courts are organized and how the various elements relate to one another. A final section looks at some of the principles and institutions that help keep Canada’s court system fair and efficient.

HOW THE COURTS ARE ORGANIZED

There are basically four levels of court in Canada. First there are provincial/territorial courts, which handle the great majority of cases that come into the system. Second are the provincial/territorial superior courts. These courts deal with more serious crimes and also take appeals from provincial/territorial court judgments. On the same level, but responsible for different issues, is the Federal Court. At the next level are the provincial/territorial courts of appeal and the Federal Court of Appeal, while the highest level is occupied by the Supreme Court of Canada. (See Figure 1.)

Provincial/Territorial Courts

Each province and territory, with the exception of Nunavut, has a provincial/territorial court, and these courts hear cases involving either federal or provincial/territorial laws. (In Nunavut, there is no territorial court – matters that would normally be heard at that level are heard by the Nunavut Court of Justice, which is a superior court.) The names and divisions of these courts may vary from place to place, but their role is the same. Provincial/territorial courts deal with most

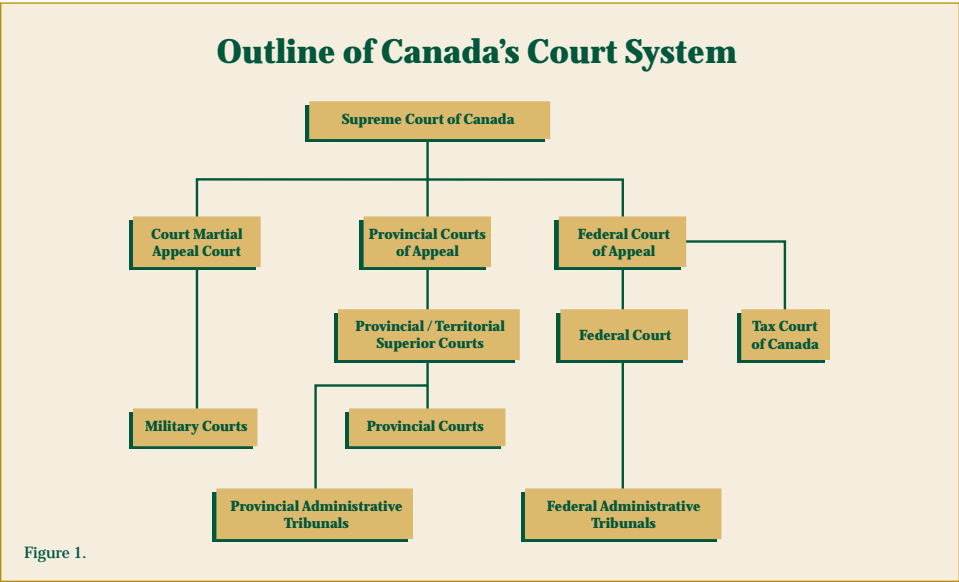


Figure 1.

criminal offences, family law matters (except divorce), young persons in conflict with the law (from 12 to 17 years old), traffic violations, provincial/territorial regulatory offences, and claims involving money, up to a certain amount (set by the jurisdiction in question). Private disputes involving limited sums of money may also be dealt with at this level in Small Claims courts. In addition, all preliminary inquiries – hearings to determine whether there is enough evidence to justify a full trial in serious criminal cases – take place before the provincial/territorial courts.

A number of courts at this level are dedicated exclusively to particular types of offences or groups of offenders. One example is the Drug Treatment Court (DTC) program, which began in Toronto in 1998, followed over several years by Vancouver, Edmonton, Regina, Winnipeg, and Ottawa. The object of the DTCs 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 an intensive combination of judicial supervision and treatment for their dependence, drawing on a range of community support services.

Youth courts handle cases where a young person, from 12 to 17 years old, is charged with an offence under federal youth justice laws. Procedures in youth court provide protections appropriate to the age of the accused, including privacy protections. Courts at either the provincial/territorial or superior court level can be designated youth courts.

Some provinces and territories (such as Ontario, Manitoba, Alberta and the Yukon) have established Domestic Violence Courts in order to improve the response of the justice system to incidents of spousal abuse by decreasing court processing time; increasing conviction rates; providing a focal point for programs and services for victims and offenders; and, in some cases, allowing for the specialization of police, Crown prosecutors and the judiciary in domestic violence matters.

Provincial/Territorial Superior Courts

Each province and territory has superior courts. These courts are known by various names, including Superior Court of Justice, Supreme Court (not to be confused with the Supreme Court of Canada), and Court of Queen's Bench. But while the names

may differ, the court system is essentially the same across the country, with the exception, again, of Nunavut, where the Nunavut Court of Justice deals with both territorial and superior court matters.

The superior courts have “inherent jurisdiction,” which means that they can hear cases in any area except those that are specifically limited to another level of court. The superior courts try the most serious criminal and civil cases, including divorce cases and cases that involve large amounts of money (the minimum is set by the province or territory in question).

In most provinces and territories, the superior court has special divisions, such as the family division. Some have established specialized family courts at the superior court level to deal exclusively with certain family law matters, including divorce and property claims. The superior courts also act as a court of first appeal for the underlying court system that provinces and territories maintain.

Although superior courts are administered by the provinces and territories, the judges are appointed and paid by the federal government.

Courts of Appeal

Each province and territory has a court of appeal or appellate division that hears appeals from decisions of the superior courts and provincial/territorial courts. The number of judges on these courts may vary from one jurisdiction to another, but a court of appeal usually sits as a panel of three. The courts of appeal also hear constitutional questions that may be raised in appeals involving individuals, governments, or governmental agencies.

The Federal Courts

The Federal Court and Federal Court of Appeal are essentially superior courts with civil jurisdiction. However, since the Courts were created by an Act of Parliament, they can only deal with matters specified in federal statutes (laws). In contrast, provincial and territorial superior courts have jurisdiction in all matters except those specifically excluded by a statute.

The Federal Court is the trial-level court; appeals from it are heard by the Federal Court of Appeal. While based in Ottawa, the judges of both Courts conduct hearings across the country. The Courts' jurisdiction includes interprovincial and federal-provincial disputes, intellectual property proceedings (e.g. copyright), citizenship appeals, *Competition Act* cases, and cases involving Crown corporations or departments of the Government of Canada. As well, only these Courts have jurisdiction to review decisions, orders and other administrative actions of federal boards, commissions and tribunals; these bodies may refer any question of law, jurisdiction or practice to one of the Courts at any stage of a proceeding.

For certain matters, such as maritime law, a case may be brought either before the Federal Court or Federal Court of Appeal, or before a provincial or territorial superior court. In this respect, the Federal Court and the Federal Court of Appeal share jurisdiction with the superior courts.

Specialized Federal Courts

In order to deal more effectively with certain areas of the law, the federal government has created specialized courts, notably the Tax Court of Canada and courts that serve the Military Justice System. These courts have been created by statute and can only decide matters that fall within the jurisdiction given to them by statute.

The Tax Court of Canada

The Tax Court of Canada gives individuals and companies an opportunity to settle disagreements with the federal government on matters arising under federal tax and revenue legislation. The Tax Court of Canada primarily hears disputes between the federal government and taxpayers after the taxpayer has gone through all other options provided for by the *Income Tax Act*. The Tax Court is independent of the Canada Revenue Agency and all other government departments. Its headquarters are in Ottawa, and it has regional offices in Montreal, Toronto and Vancouver.

Military Courts

Military courts, or courts martial, were 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 hears appeals from military courts. Its function is comparable to that of a provincial/territorial appeal court, and it has the same powers as a superior court. 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, the Court Martial Appeal Court hears cases as a panel of three.

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. A jury is a group of people, chosen from the community, who assess the facts of a case after a judge explains the law to them. They then make a decision based on their assessment. Sentencing, however, is left to the judge. Trial by jury is also available in some civil litigation, but is rarely used.

The Supreme Court of Canada

The Supreme Court of Canada is the final court of appeal from all other Canadian courts. The Supreme Court has jurisdiction over disputes in all areas of the law, including constitutional law, administrative law, criminal law and civil law.

The Court consists of a Chief Justice and eight other judges, all appointed by the federal government. 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. The Supreme Court sits in Ottawa for three sessions a year – winter, spring and fall.

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 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, who then grant or deny the request without providing reasons for the decision. Leave to appeal is not given routinely – it is granted only if the case involves a question of public importance; if it 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 Supreme Court.

In certain situations, however, the right to appeal is automatic. For instance, no leave is required in criminal cases where a judge on the panel of a court of appeal has dissented on how the law should be interpreted. Similarly, where 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 also plays a special role as adviser to the federal government. The government may ask the Court to consider questions on any important matter of law or fact, especially concerning interpretation of the Constitution. It 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.)

New Approaches

The Nunavut Court of Justice

When the territory of Nunavut was established in 1999, a new kind of court in Canada was created as well. The Nunavut Court of Justice 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. In Nunavut, most of the communities are small and isolated from the capital of Iqaluit, so the court travels to them “on circuit.” The circuit court includes a judge, a clerk, a court reporter, a prosecutor, and at least

one defence attorney. Court workers and Crown witness coordinators might also travel with the circuit court, depending on the cases to be heard. Interpreters are hired in the communities when possible, or travel with the circuit court when necessary. In addition to holding regular sessions in Iqaluit, the court flies to most communities in Nunavut at intervals that range from six weeks to two years, depending on the number of cases.

Unified Family Courts

Unified family courts, found in several provinces, permit all aspects of family law to be dealt with in a single court with specialized judges and services. The unified family courts consist of superior court judges, who hear matters of both provincial/territorial and federal jurisdiction. These courts encourage the use of constructive, non-adversarial techniques to resolve issues, and provide access to a range of support services, often through community organizations. These services differ from province to province but typically include such programs as parent-education sessions, mediation, and counselling.

Sentencing Circles

Sentencing circles, pioneered in the Yukon Territorial Court in the early 1990s, are now used in much of the country, mostly at the provincial/territorial court level and in cases involving Aboriginal offenders and victims. Sentencing circles are part of the court process, though not courts in themselves, and they can be a valuable means of getting input and advice from the community to help the judge set an appropriate and effective sentence.

Sentencing circles generally operate as follows: After a finding or admission of guilt, the court invites interested members of the community to join the judge, prosecutor, defence counsel, police, social service providers, community elders, along with the offender, the victim and their families and supporters, and meet in a circle to discuss the offence, factors that may have contributed to it, sentencing options, and ways of reintegrating the offender into the community. Everyone is given the chance to speak. Often the circle will suggest a restorative community sentence involving some

form of restitution to the victim, community service, and/or treatment or counselling. Sometimes members of the circle will offer to help ensure that the offender lives up to the obligations of the community sentence, while others may offer to provide support to the victim.

It is important to note, though, that sentencing circles do sometimes recommend a period of custody. Moreover, the judge is not bound to accept the circle's recommendations.

The Courts and Related Processes

There are many elements in the Canadian justice system which are closely related to the courts but are not strictly part of the court system. Two prominent examples are administrative tribunals and alternative dispute resolution.

Administrative Tribunals

Many disputes over administrative rules and regulations – relating, for instance, to employment insurance, disability benefits, refugee claims or

human rights – are dealt with outside the court system by various tribunals and boards. Administrative tribunals may resemble courts, but they are not in fact part of the court system. Nonetheless, they play an essential role in resolving disputes in Canadian society.

The procedure before administrative bodies is usually less formal than that in the courts. However, the courts exercise a supervisory role over administrative tribunals, which may in turn refer questions to the courts. The courts ensure that tribunals remain within their responsibilities under the law and that their procedures are fair.

Alternative Dispute Resolution Systems

Alternative Dispute Resolution (ADR) refers to the wide variety of methods by which conflicts and disputes are resolved outside the courtroom. ADR allows people to settle their differences through means that are more informal, less expensive, and often quicker than court proceedings. These include mediation (where an independent third

party is brought in to help work out an agreement) and arbitration (where both sides agree to refer the dispute to the third party for judgment). As with administrative tribunals, the relationship between the courts and ADR is complementary. The courts themselves often make use of ADR – for example, some provinces now insist on mediation as part of the litigation process. At the same time, for serious or violent crimes, or when mediation or arbitration is rejected, the formal court system remains indispensable.

KEEPING THE SYSTEM FAIR AND EFFICIENT

Judicial Independence

Judicial independence is a cornerstone of the Canadian judicial system. Under the Constitution, the judiciary is separate from and independent of the other two branches of government, the executive and legislative. Judicial independence is a guarantee that judges will make decisions free of influence and based solely on fact and law. It has three components: security of tenure, financial security, and administrative independence.

“Security of tenure” means that, once appointed, a judge is eligible to serve on the bench until the age of retirement (required at age 75 for federally appointed judges, age 70 in some provincial/territorial jurisdictions) and can be removed only if an independent investigation shows that there is good reason (see Ethics and Discipline, below).

“Financial security” means that judges should be paid sufficiently and in a manner that does not leave them in a position of dependence or subject to pressure. In Canada, governments cannot change judges’ salaries or benefits without first consulting an independent commission.

“Administrative independence” means that no

one can interfere with how courts manage the litigation process and exercise their judicial functions. For example, it is the chief justice who chooses how cases are assigned to the judges of the court.

A number of institutions foster judicial independence, notably the Canadian Judicial Council, the Commissioner for Federal Judicial Affairs and the National Judicial Institute. These institutions help maintain a distance between the government and the judiciary in areas like discipline, pay and benefits, and continuing education for judges.

Appointment and Education

Judges are appointed by the federal or provincial/territorial governments, depending on the level of court. To be appointed by the federal government to a superior court, the Federal Court, or the Supreme Court, a candidate must have been a lawyer for at least ten years. Judges appointed to provincial/territorial superior courts must also be qualified to practise law in the jurisdiction in question. There are similar requirements for provincial/territorial appointments.

In Canada, judges are not required to have any formal training on how to be a judge before they are appointed. However, once appointed, they have access to a range of programs at both the provincial/territorial and federal levels on all aspects of judging, as well as areas of the law. The National Judicial Institute, in particular, coordinates and delivers educational programs for all federal, provincial, and territorial judges. The Institute is funded by both levels of government, and regularly offers courses for new judges.

Ethics and Discipline

Each jurisdiction in Canada has a judicial council which has general responsibility for promoting professional standards and conduct. The council for federally appointed judges is made up of members of the judiciary. For provincially and territorially appointed judges, each province or territory has a judicial council whose members include judges, lawyers, and individuals from the general public. Judicial councils develop policies and codes of conduct to provide guidance for judges. They may even recommend that a judge be removed from the bench if it becomes

necessary, though few judges have in fact been removed in the history of Canada.

The Canadian Judicial Council, which is responsible for federally appointed judges, consists of the chief justices of all of the federal courts and provincial/territorial superior courts. It was created by the federal government to promote efficiency, consistency, and good service in these courts. One of the Council's tasks is to investigate complaints and allegations of misconduct on the part of federally appointed judges. If it finds evidence of serious misconduct, the Council may recommend to the Minister of Justice that the judge be removed. The Minister must in turn get the approval of both the House of Commons and the Senate before a judge can be removed from office. (The rules for provincial/territorial judges are similar, but they can be removed by a provincial or territorial cabinet.) The Council has developed a set of Ethical Principles for Judges, designed to assist judges in maintaining their independence, integrity and impartiality.

FURTHER INFORMATION

If you are interested in learning more about Canada's court system, the following publications and Web sites are well worth consulting.

The Courts

Full information on the Supreme Court of Canada and the federal courts can be found on their Web sites:

- Supreme Court of Canada: www.scc-csc.gc.ca
- Federal Court of Appeal: www.fca-caf.gc.ca
- Federal Court of Canada: www.fct-cf.gc.ca
- Tax Court of Canada: www.tcc-cci.gc.ca
- Court Martial Appeal Court: www.cmac-cacm.ca

The Courts Administration Service, established in 2003, provides support to the federal courts and is responsible for, among other things, ensuring public access to the courts and their records. Its Web site is: www.cas-satj.gc.ca.

As well, all 13 provinces and territories maintain Web sites for their courts. (For current Web addresses, consult the electronic version of this booklet on the Department of Justice Web site.)

For further information on domestic violence courts, please see the March 2003 report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, available on the Department of Justice Canada Web site (www.justice.gc.ca), under Programs and Initiatives – Family Violence.

Judges and the Law

Two pieces of federal legislation are especially important to judges and their role in Canadian society: the *Judges Act* and the *Constitution Acts 1867 to 1982*, Part VII. The Canadian Legislation Web site – www.legis.ca – provides the texts of these acts, as well as the provincial and territorial statutes and regulations.

For a detailed discussion on the subject of judicial independence, see M. L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (Ottawa: Canada Communication Group, 1995).

The following organizations and associations support and oversee judges in Canada:

- The Canadian Judicial Council
- Office of the Commissioner for Federal Judicial Affairs
- The National Judicial Institute
- The Canadian Institute for the Administration of Justice
- The Canadian Association of Provincial Court Judges
- The Canadian Legal Information Institute