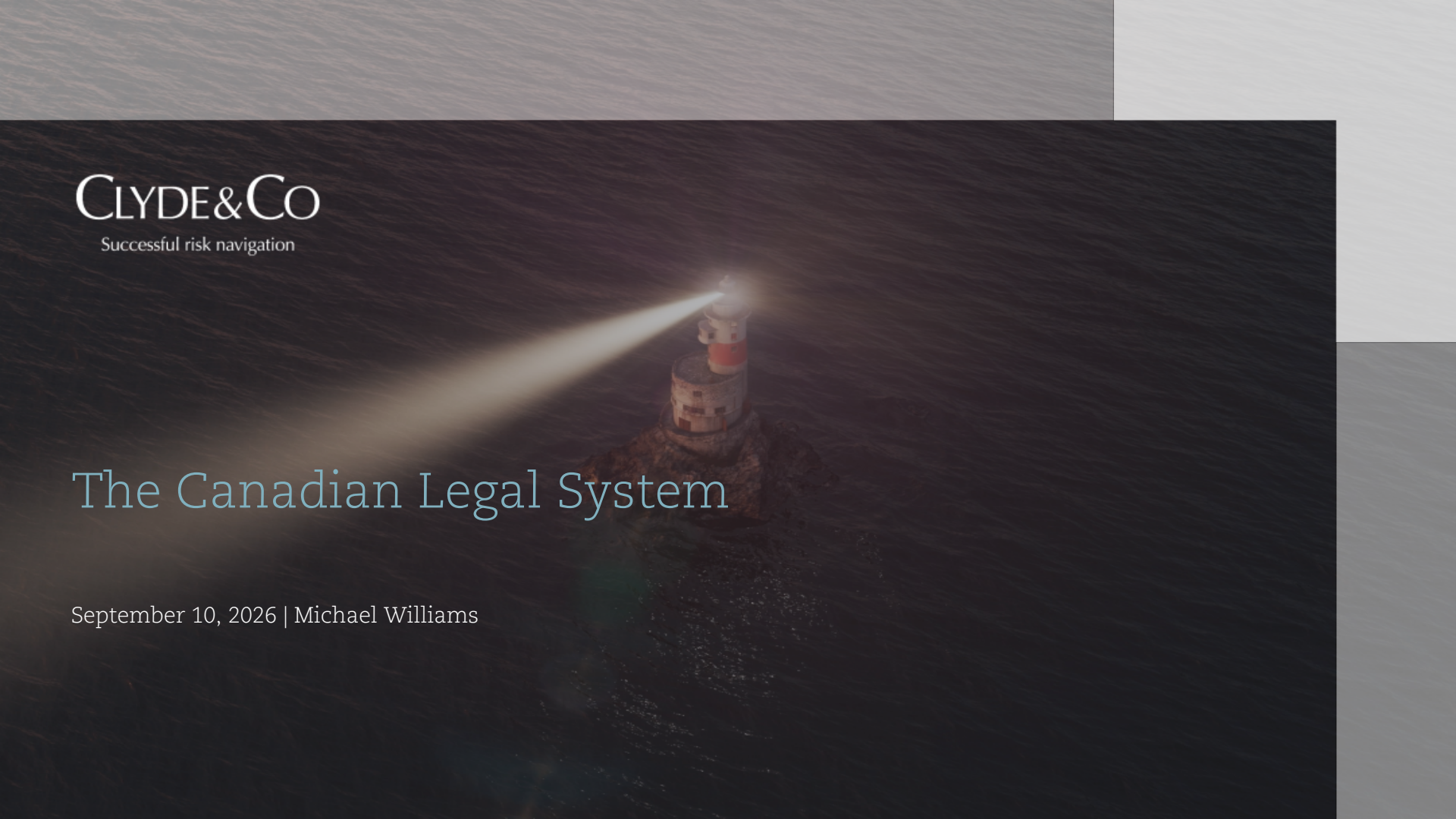




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The Canadian Legal System

September 10, 2026 | Michael Williams

Agenda

- The Canadian Constitution
- The Canadian Court System
- The Creation of Law
- Quebec Law
- Claims and Disputes

- International Law
- Contract Law and Torts
- Case Law
- Case Citations

THE CANADIAN CONSTITUTION

- The ability to create and enforce the law is derived from the Constitution
- The Canadian Constitution is the source of all legal authority in Canada
- Made up of several statutes and conventions from both British and Canadian Parliaments



THREE PRIMARY FEATURES OF THE CONSTITUTION

1.

Division of
powers

2.

Creation of the
courts

3.

*Canadian
Charter of Rights
and Freedom*

DIVISION OF POWERS

Federal Jurisdiction

- Postal service
- Criminal law
- Specific fields of patent law

Provincial Jurisdiction

- Property rights
- Contracts
- Negligence law
- Construction liens
- Laws involving architecture, engineering, geoscience

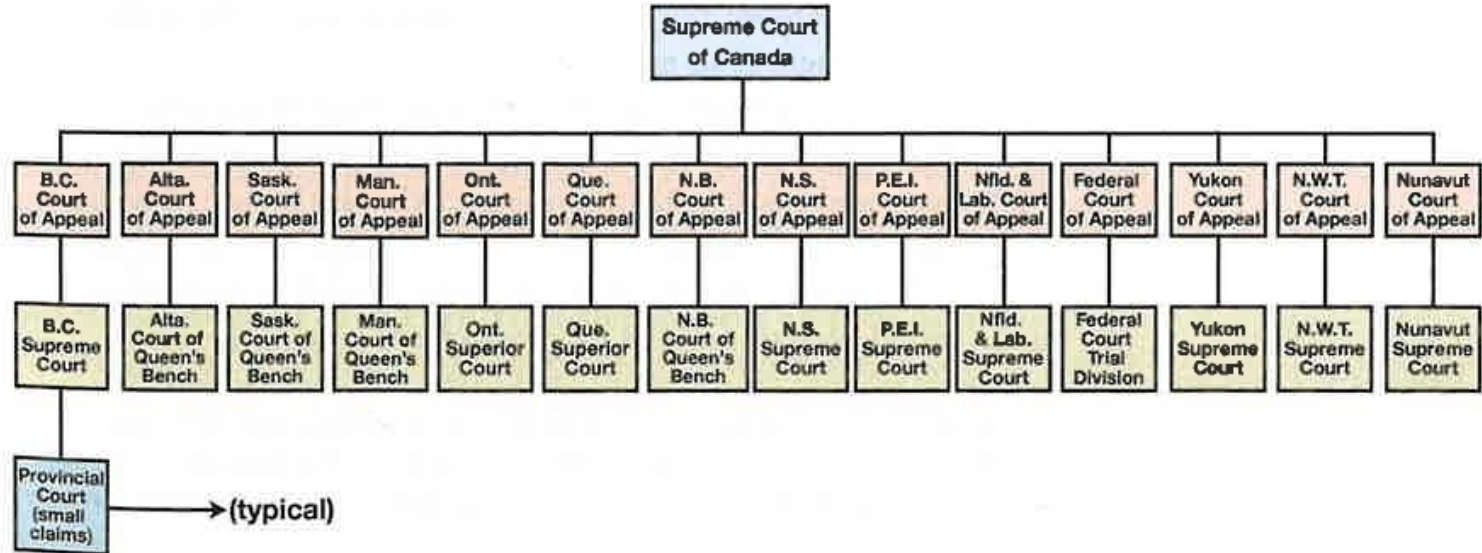
DIVISION OF POWERS

What about territories?

- Yukon, Northwest Territories and Nunavut have their own level of jurisdiction called territory
- Unlike provinces, territories are creations of federal legislation, and the federal government assigns powers to territorial governments
- In practice, territorial legislatures operate like provincial legislature. They also create legislation similar to provinces.



THE CANADIAN COURT SYSTEM



THE CANADIAN COURT SYSTEM

Federal Courts

- Deal with matters such as patents and shipping disputes
- Court systems function independently from each other
- No jurisdiction over provincial courts



THE CANADIAN COURT SYSTEM

The Supreme Court of Canada (SCC)

- Requires permission or leave from the Court to bring the appeal
- To obtain leave, need to demonstrate there is an issue of national importance
- Rare for cases involving architects, engineers, or geoscientists to go to the SCC



THE CANADIAN COURT SYSTEM

Provincial Courts

- Criminal Courts
- Family Courts
 - Deals with divorce and custody
- Civil Small Claims Courts
 - In BC:
 - the award limit is \$35,000
 - has no jurisdiction over construction liens



THE CANADIAN COURT SYSTEM

JUDGES

- Appointed by the Governor General on the recommendation of the federal government
- Cannot be removed from the Bench except for misconduct
- Must be impartial and unbiased



THE CREATION OF LAW

1.

Statute Law

2.

Common Law

3.

Indigenous Law

STATUTES

In the context of architecture, engineering, and geoscience, statutes govern:

- joint and several liability in negligence;
- construction lien rights;
- formalities of contracts; and
- workers' compensation requirements.

Judges interpret these statutes and unavoidably results in the creation of new rights and remedies



COMMON LAW

- Body of law created by judges based on principles of law and equity established and modified over hundreds of years
- Also known as judicial precedent
- All jurisdictions in Canada and the US are common law
 - Exception:
 - Quebec and Louisiana → Civil Law



INDIGENOUS LAW ≠ ABORIGINAL LAW

Indigenous Law

Legal rules derived from Indigenous traditions teachings

Not part of common law

Not created by provincial legislature of the Parliament

VS

Aboriginal Law

Body of law relating to constitutional rights of Aboriginal peoples

Includes statute and common law

PRIVATE LAW VS PUBLIC LAW

Private Law

Governs relationships between private parties

Ex. contract law, tort law, property law, employment law, insurance law, etc.

VS

Public Law

Law that applies to relationships between parties that directly affect society at large

Ex. civil rights, relationships between individuals, and various levels of government

QUEBEC LAW (CIVIL LAW)

- Architects, engineers, and geoscientists practicing in Quebec will find that their business dealings, as well as personal matters, will be governed by the *Civil Code of Quebec*
- Main difference between civil and common law:
 - In a common law jurisdiction, there are areas of law where no statute exists and the basis for the law is the case law decided by judges in the past
 - For example: contract law is subject to little or no statute law

CLAIMS AND DISPUTES

- Cause of action = legal basis for a lawsuit
- Costly, time-consuming, and uncertain
- Many disputes involving engineers, architects, and geoscientists arise from construction projects
 - Numerous parties
 - Extensive amount of documents
- Despite the complexity, many claims and disputes can be successfully resolved through law of negligence and contract
 - LEARN HOW TO PROTECT YOURSELF!



INTERNATIONAL LAW

- In Canada, international treaties are enforceable when they have been adopted through domestic legislation and used to interpret existing legislation.
 - Ex. United States-Mexico-Canada Agreement → allows Canadian engineers, geoscientists, architects, and other professionals obtain work visas to work legally in the US, regardless of state statues
- Right to work ≠ right to practice a profession
- Tax treaties between Canada and many other countries help prevent duplication of income taxes
 - BEWARE: liability for Canadian income tax may attach to individuals even if they are resident elsewhere for years

CONTRACT LAW

- Contracts = voluntary agreements between two or more parties that set out rights, responsibilities, and liabilities of the parties to each other
- Written or oral
- Fundamental principle of contract law → *whether a contract is enforceable*
- Offer, acceptance, and consideration
- Construction contracts are contracts of interest to architects, engineers, and geoscientists



TORTS

- Torts are committed by one party in violation of the rights of another, which are considered sufficiently wrong as to give rise to liability
- Negligence is the basis for the majority of tort claims
- Tort obligations are involuntary and imposed by the law
- A negligence claim is customarily asserted by a party who has been injured, either financially or physically, by the act or omission of another party



TORTS

How to prove negligence?

The plaintiff must show:

1)

At the time the event occurred, the defendant could have *reasonably foreseen* that the plaintiff would suffer an injury or loss as a result of the defendant's *failure to provide duty of care*;

2)

The defendant did not meet the *standard of care* expected of someone in their position; and

3)

The failure to meet the standard of care *caused the loss* suffered by the plaintiff.

CASE LAW

- Created by judges to make legal principles and interpret statutes
- Dependent on facts of a particular case
- Slightly different set of facts can result in a different outcome
- Lawyer must take into account several cases on the same subject and determine the impact of the rulings on the facts of the new case
- Architects, engineers, and geoscientists should NEVER attempt to read a single case and assume that the outcome will be the same in their circumstances



CASE CITATIONS

Ex. Neural Citation

Toor v Dhillon, 2020 BCCA 137

Name of the
case

Year

Name of Case #
the
court

Ex. Older Case Citation

Backman v Canada, [2001] 1 SCR 367

Name of the case

Year

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