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The Canadian Legal System

September 4, 2025 | Vanessa Reakes

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

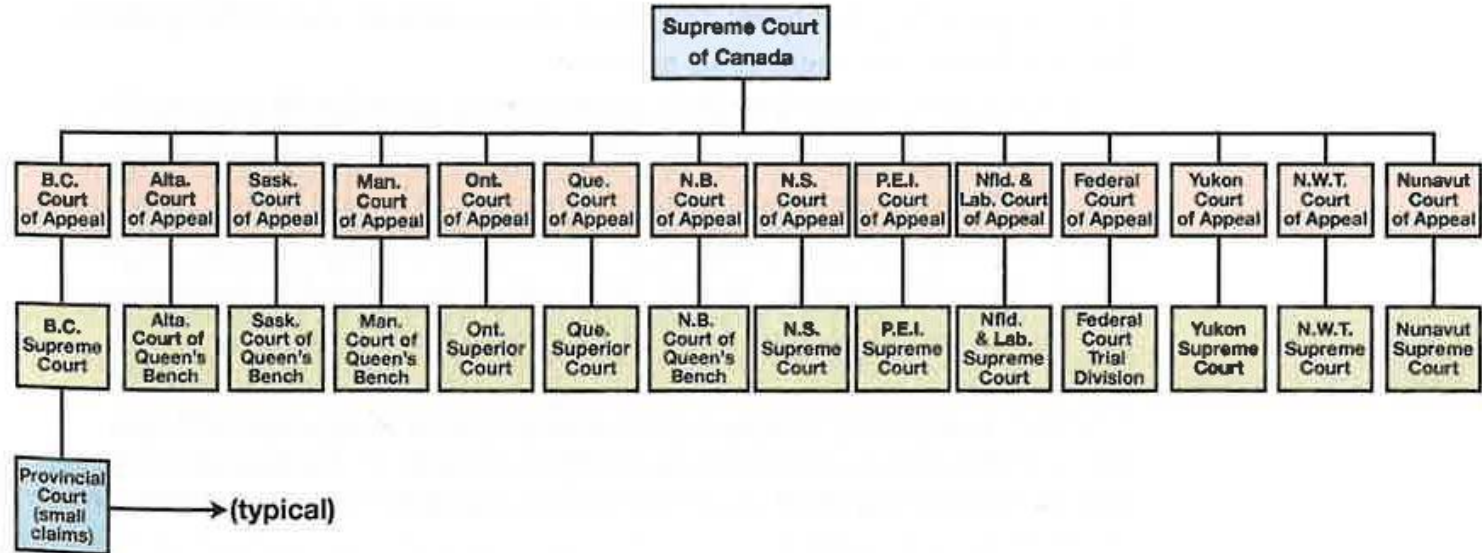
DIVISION OF POWERS

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





CANADIAN CHARTER OF RIGHTS AND FREEDOMS



Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law;

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. (4) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Mobility Rights

section 6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada; (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province and (b) to pursue the gaining of a livelihood in any province; (3) The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province that relate to the subject-matter of those rights, and (b) the laws of the province of Quebec relating to the status of persons; (4) No law of a province shall provide for the receipt of public benefits or social services (a) to persons who do not reside in that province, or (b) to persons who are not citizens of that province, or (c) to persons who are not permanent residents of that province, or (d) to persons who are not ordinarily residents of that province, or (e) to persons who are not lawfully employed in that province, or (f) to persons who are not lawfully employed in Canada.

Legal Rights

§ 70. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. 8. Everyone has the right to secure the peace of mind and the physical well-being of himself and of his family by not being arbitrarily detained or imprisoned. 10. Everyone has the right to earn on a fair and reasonable basis the wages necessary for his support and the support of his family. 11. Everyone has the right to be informed promptly of the reasons therefor, (a) if detained or arrested on suspicion of a criminal offence pursuant to s. 10(1) and to be retained in custody or imprisoned pending the proceedings on a charge or criminal offence, (b) if charged with a criminal offence, and to be released if the detention is not lawful. 11. Any person charged with a criminal offence has the right (a) to be informed without unreasonable delay of the specific offence, (a) to be tried within a reasonable time, (b) not to be found guilty of an offence unless the charge is proved beyond a reasonable doubt, (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, (d) not to be denied reasonable bail without just cause. (c) Except in the case of an offence under section 43(1) or section 480(2.1) of the Criminal Code, the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment, (d) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under the law in force at that time, or was criminal according to the general principles of law recognized by the common law of Canada or the principles of justice in a free and democratic society.

community of nations. (a) If finally acquitted of the offence, not to be tried for it again; and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and (2) If found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment. 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. 13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence. 14. A person charged with an offence has the right (a) to be informed of the charge in a language which he understands or which he is able to understand; (b) to be given the assistance of an interpreter if he cannot understand or speak the language in which the proceedings are conducted or to which he is to be subjected; (c) to have the assistance of an interpreter.

Equality Rights

— 15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

— 10(1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the government and legislature of New Brunswick. (3) The English and French versions of the Charter have equal authority. (4) The Charter has the authority of Parliament or a legislature to advance the equality of status or use of English or French. 16(1) The English language community and the French language community in New Brunswick have equality of status and equal rights and privileges as to their use in all institutions of government and in the legislature of the province. (2) It is the duty of the government of New Brunswick to provide distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities. (3) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) shall be to ensure that the English and French languages in French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in any debates and other proceedings

of the legislature. New Brunswick, 1847) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. (2) The statutes, records and journals of

[illegible]

Minority Language Educational Rights

25 231 (1) Citizens of Canada who whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside shall, if they so desire, have the right to have their children receive primary and secondary school instruction in that language in that province. 26 Citizens of Canada of whom any child has been or is to be receiving primary or secondary school instruction in English or French in that province shall, if they so desire, have their children receive primary and secondary school instruction in the same language. 27 Of the right of citizens of Canada under subsection (1) and (2) of the English or French linguistic minority population of the province in which they reside, the government shall ensure the provision of public funds to the province out of public funds of minority language instruction; and 28 In order to ensure that the number of children of citizens who have such a right is sufficient to warrant the provision of such instruction in minority language education, the government shall provide out of public funds.

Enforcement

Annex 24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedies as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

— 25. The *gauche* in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada (including all rights or freedoms that have been recognized by the Royal Proclamation of October 4, 1763) and all other rights or freedoms that may be by way of law or otherwise.

The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. 27. This Charter shall be interpreted in a manner consistent with the preservation and promotion of the following:

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of the education of persons.

30. Nothing in this Charter extends the legislative powers of this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Justice Territory and the Northwest Territories, or to the appropriate legislative authority thereof.

31. It is hereby declared that in this Charter extends the legislative powers of any body or authority.

Application of Charter

section 32(3) The President applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories, and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province, and the provisions of this section shall have no effect until three years after this section comes into force. 33(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision therein shall operate notwithstanding a provision included in section 2 or section 75 to 75.5 of this Charter. 34(1) An Act or a provision of an Act of Parliament or of the legislature of a province that purports to establish, provide for, or authorize the establishment or provision of a law, program, or activity that shall have such operation as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1). Section 37(1) applies in respect of a re-enactment made under subsection (4).

Citation

— 34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

"We must now establish the basic principles, the basic values and beliefs which hold us together as Canadians so that beyond our regional loyalties there is a way of life and a system of values which make us proud of the country that has given us such freedom and such immeasurable joy."

B. J. J.

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

Volume

Reporting
series

Page #



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Clyde & CoLLP

Vanessa Reakes

Partner, Vancouver

Vanessa.Reakes@clydeco.ca

+1 604 684-0727

www.clydeco.com