

AN OVERVIEW OF CANADIAN LAW

Glossary

Administrative Tribunal	A person, authority or agency which has the authority to take or receive information and make a ruling or decision
Act	A statute or law passed by Canada's Parliament or a provincial/ territorial legislature
Bill	The first stage in the enactment, or passing, of a law
Canadian Constitution	The supreme law of Canada. The body of law which establishes the framework of governance
Constitutional law	The laws which deal with the distribution, or exercise, of the powers between the federal and provincial/territorial government
Court	The place where trials are held before a judge, or a judge and a jury; part of the judicial system
Due process	The administration of law through the courts, following rules and principles which protect private rights; people involved must be told about what is happening (in court), and they must have an opportunity to be heard
Law	A rule that a society imposes and enforces. Laws include Acts of the Parliament of Canada and provincial/territorial legislatures
Legislature	A provincial parliament
Municipality	An urban area, city, town or village that has been incorporated and is governed by a municipal council
Parliament	Consists of three entities, The Queen, the House of Commons and the Senate
Rule of law	Guarantees legal procedures which are fair and just, and follow predictable, impartial and consistent standards
Statute	A law or an Act which expresses the will of a legislature or

Parliament

Tribunal

Any court, body, authority or person having authority to take or receive information and make a ruling or decision

What Is Law?

"Law is a series of rules -- rules that govern the relationships between individuals, rules that govern the state, and rules that govern the relationships of businesses and other associations that exist in society."¹

Canadians are governed by the rule of law. This means that disagreements are to be settled peacefully using due process--in court before a judge, or in some cases, before administrative tribunals. Due process refers to the rules which courts and tribunals must follow to make sure everyone is treated fairly.

Why Do We Need Laws?

If society ran perfectly we wouldn't need any laws. However, we need laws in order to create a safe and peaceful society. Laws help prevent our human failings (disagreements, arguments, fighting) from causing problems. Laws set out clearly what sort of behaviour Canadian society thinks is right.

Laws can be classified into four main categories:

- Criminal Law
- Civil Law
- Human Rights Law
- Constitutional Law

Criminal law deals with criminal offences as listed in the *Criminal Code of Canada*. Examples of criminal offences are sexual assault, theft, fraud, robbery, drinking and driving, and arson.

Civil law covers disagreements between people, or between companies and organizations. When people cannot solve a legal problem themselves, they can ask

¹

Gibson, D. and Murphy, T.; ALL ABOUT LAW: Exploring the Canadian Legal System
3rd ed, John Wiley & Sons, Toronto

the courts to decide for them. Civil cases include matters such as unpaid debts, estates, divorces, and consumer problems.

There are also laws which protect our human rights. In Canada human rights are protected by the *Charter of Rights and Freedoms*, and by the federal and provincial *Human Rights Acts*.

Constitutional law is the law of governance which defines the powers of the federal and provincial/territorial governments. The ultimate purpose of the *Constitution Act* is to ensure peace, order and good government. The *Charter of Rights and Freedoms* is also part of the *Constitution* and is used to ensure that governments do not abuse their powers.

Federal laws, made by Parliament in Ottawa, apply equally to everyone in Canada. Provincial/territorial laws apply equally to everyone living in the same province or territory. Municipal by-laws cover all the people living in the same municipality.

Where Do Canadian Laws Come From?

Most Canadian laws are based on the laws of England and France, the countries that first colonized Canada. The early settlers brought laws and legal traditions with them from their homelands.

French law, *le droit civil* or *Civil Code*, as used in Quebec, dates back to ancient Rome. The *Civil Code* is a statement of rules which list the general principles of law. It is a legal system based on written legal codes.

The other nine provinces and the three territories use the *common law*, a tradition of "judge-made" law which began hundreds of years ago in medieval England. In *common law* decisions made by judges in court become precedents which are then followed in future cases.

Whether a case is heard under *le droit civil* or under *common law*, the outcomes are generally similar. The difference is in the process and method followed.

A third source of Canadian law is **statutory law**. Statute is another word for an Act or Law. Statutory laws are passed in Parliament and the provincial/territorial legislatures by the elected members. The federal laws are written out in the *Revised Statutes of Canada*. Provincial law in Prince Edward Island is written in the *Revised Statutes of Prince Edward Island*.

**"One thing is certain: Laws, be they common law or statute law,
affect our lives from birth to death."²**

Who Makes The Laws?

Governments make new laws or change old laws by legislating or passing a statute. When Parliament in Ottawa or a provincial legislature, like the one in Charlottetown, passes a new statute, the new law replaces old laws and may replace common laws which dealt with the same subject.

Making new laws is a complex process. The Canadian *Constitution* sets out a federal system of government for Canada. The authority to make laws is divided between the Parliament of Canada and provincial and territorial legislatures.

Federal authority covers matters that are national in scope and includes:

- criminal law
- immigration law
- governance of banking
- income tax
- divorce

Laws made under federal authority apply equally to everyone in Canada.

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Provincial authority covers matters which are more local or private in nature and includes:

- education
- family law
- property law
- employment law
- health care, including hospitals
- regulation of motor vehicles

In some matters, there is overlap between the federal power and the provincial/territorial power. For example, family law is divided so that divorce is a federal matter but the division of family property between a divorcing couple is a provincial matter.

Local and municipal governments make by-laws rather than laws. By-laws deal with local issues such as how land may be used.

The Supreme Court of Canada is independent from government. It reviews laws to ensure that governments have used their constitutional authority properly. Many laws have been struck down by the courts because they were found to be unconstitutional.

Canada's system of governance is democratic, which means that Canadian citizens elect people to govern on their behalf. A federally elected representative is called a Member of Parliament (MP). In Prince Edward Island, an elected provincial official is called a Member of the Legislative Assembly (MLA). When we elect people to our federal or provincial government or to our city or town council, we give them the authority to make laws and by-laws for us. During election campaigns the candidates often talk about what new laws they would work to bring in if they are elected.

Canadians can suggest new laws and changes to existing laws through their elected representatives. In Canada, you will often hear people criticizing the government. This sort of discussion is expected and is often encouraged through opinion pieces published in the media and political forums.

How Are The Laws Made?

First of all, an elected member or a person who works for government, must think that there is a need for a new law. Sometimes there is a public process, and a committee travels across the country or the province/territory to hear from citizens about the proposed law. A draft of the law is then written and introduced in the federal House of Commons or provincial Legislative Assembly by one of the Members. Then the process is as follows:

Stage 1: Introduction and First Reading

- A new law is introduced as a bill in the Parliament or the provincial legislature.
- The MP (Member of Parliament) or MLA (Member of the Legislative Assembly) makes a motion to introduce the bill, talks about it, and it is read for the first time. No discussion or debate is allowed. It would be very unusual for the motion to be defeated at the first reading.

Stage 2: Second Reading

- When the bill is read a second time, the principles or reasoning behind the bill are debated. If the principle is approved, the bill goes to a Committee for a more detailed debate. If the principle is not approved, the bill is defeated and nothing more happens to it.

Stage 3: Committee Stage

- In Committee the bill is discussed section by section, and the debate looks at the actual wording of the bill. Amendments (changes to the

bill) can be made at this stage. This is another point at which there may be public consultations so that Canadian citizens have input into the proposed legislation.

Stage 4: Third Reading

- The bill goes back to the House of Commons or the Legislative Assembly for a third reading. At this point it is usually passed, and bills are rarely discussed or defeated at this stage. After a bill has passed the Third Reading, it is considered an Act of Parliament or of the Legislative Assembly, and it needs only Royal Assent and Proclamation before becoming part of our law.

Stage 5: Royal Assent

- The *Constitution* states that before an act can become a law, it must receive Royal Assent from the Governor General of Canada or the Lieutenant Governor of a province (representatives of the Queen). This requirement dates back to the origin of our laws in England. Today this is a formality and acts are automatically signed.

Stage 6: Proclamation

- After receiving Royal Assent the *Act* becomes a part of the law of Canada, or the province/territory in which it has been passed. However, it does not come into effect until a date decided by the Cabinet (the committee which consists of all the Ministers).³ If no date or condition is specified, the law is effective immediately.

Remember, everybody who lives in Canada may speak to an MLA or MP about the laws of the country. We all have the right to speak out or advocate for changes in the law.

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