



Overview of Canadian Law and Courts

Eric E. Johnson

ericejohnson.com



Konomark - Most rights sharable.

The Bijural System

- Except for Quebec, where the civil law is based on the French Code Napoléon, Canada's criminal and civil law has its basis in English common and statutory law.
- The Quebec Act of 1774 made Canada a "bijural" country, i.e., having two types of law.
- For matters of private law (torts, contracts, property, family), the common law applies outside Quebec, while the civil code applies in Quebec.
- For public law (constitutional law, governmental law) the common law is to be used in and outside Quebec.

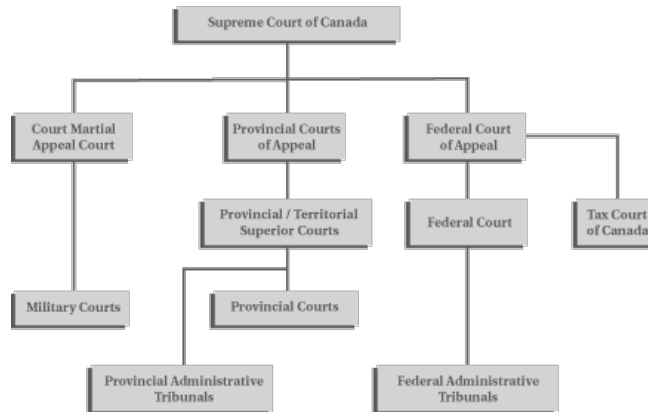
Trial by Jury

- 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.
 - Sentencing is left to the judge.
- Jury trials in civil litigation are rare. Trial courts have broad discretion to strike jury demands.
 - Cf. U.S., where jury trials in tort cases are the norm.

Federal and Provincial Courts

- By virtue of the Constitution Act of 1867, authority for the judicial system in Canada is divided between the federal government and the ten provincial governments.
- Provincial/territorial courts
 - General jurisdiction
 - Except where excluded by statute
- Federal courts
 - Certain cases having federal jurisdiction, as specified in statute
 - Examples: intellectual property, antitrust, cases where federal government is a party

Outline of Canada's Court System



Supreme Court of Canada



- Final court of appeal
- Appellate jurisdiction over all other Canadian courts

Supreme Court of Canada



- Consists of one chief justice and eight puisne justices, all appointed by the Governor-in-Council.
- Judges serve for terms of "good behaviour"
- Mandatory retirement at age 75
- 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.



Supreme Court of Canada

Getting a case before the SCC:

- The SCC must grant leave to an appeal before it will hearing the case.
 - Exception: No leave required in criminal cases where a judge on the appellate panel dissented on a point of law.
- 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.
- A grant of leave is discretionary and not given routinely.



Supreme Court of Canada

Role in tort law:

- Unlike SCOTUS, the SCC routinely hears questions of common law and other non-federal law.
- Part of the SCC's role is to assure a uniform common law (e.g., torts) throughout the country.

Canadian Tort Law

Three Things to Know

courtesy of Professor Jennifer L. Schulz
University of Manitoba, Faculty of Law

1. Normally, civil cases do not have jury trials (it's usually the judge alone).
2. The SCC has effectively capped personal injury damage awards, such that the multi-million dollar amounts awarded by some American courts/juries are simply impossible in Canada.
3. There are cost consequences for launching an unsuccessful lawsuit. This discourages frivolous litigation because if a plaintiff sues and loses, the plaintiff will be required to pay some portion of the defendant's legal fees.

Sources

- Department of Justice Canada material on web: <http://www.justice.gc.ca/eng/jl/index.html>
- Supreme Court of Canada website: <http://www.scc-csc.gc.ca/court-cour/sys/index-eng.asp>
- Litigating in Canada: A Brief Guide for U.S. Clients: <http://www.mcmillan.ca/files/Litigating%20in%20Canada%20-%20A%20brief%20guide%20for%20U.S.%20Clients.pdf>
- Text from the first two sources was taken, in many cases, verbatim without specific notation.

Copyright 2008-2018 Eric E. Johnson. All rights reserved.
Konomark. Most rights sharable. ericejohnson.com