

# LS 101 — Chapter 5: Intro to Canada's Legal History, Court System, and Charter of Rights and Freedoms

## 1 Intro to Canada's Legal History

- British North America Act — Britain could not modify laws regarding Canada without Canada's say
- Canada Act — constitution upon which powers are based for Canada
- Both the federal and provincial government have three distinct branches — legislative, executive, and judicial.
  - Legislative branch is the most powerful and can make any laws as long as they are consistent with the constitution.
  - The executive branch includes all government branches. Their powers are determined by legislation and are empowered to run various government programs, implement and enforce various laws passed by the legislative branch, and often their powers also include the right to create rules/regulations with the force of law.
  - The judicial branch of government includes the courts and judges. They are expected to be independent/free with their decisions and should only be concerned with law, not politics. Courts can also strike down laws.
- Judges have been important throughout history with the creation of “common law”, which evolved in Britain over the use of judges who would travel the countryside on circuit to hear and arbitrate cases.
- These judges did not have written laws and were often guided by local customs/traditions/values and their own judgement.
- As cases and laws evolved, attorneys to represent clients arose.
- Eventually, the practice of following precedents had become law, and so judges had essentially created a body of civil/criminal law that was common to people in England.

## 2 Overview of the Court System in Canada

- Provincial courts:
  - Lower/inferior courts.
  - Usually several divisions (youth, traffic, family, etc.).
  - Judges paid and appointed by provinces.
  - Small claims courts are an example.
  - Usually deal with less serious summary conviction offences.
- Superior courts:
  - AKA Supreme Court, Superior Court, Court of Queen's Bench, etc.
  - Two levels — trial and appeal court.
  - More formal than lower level provincial courts; parties more likely to be represented by counsel.
  - Judges in superior courts are appointed and paid by the federal government.
- Appeal Courts

- Each province has an appeal court.
- Appellant must satisfy the court that the trial-level judge did not follow rules/procedure or made an error.
- Appeal court can overturn a verdict or order a new trial.
- The Supreme Court of Canada
  - Hears appeals from the courts of appeal of all provinces.
  - Usually only when the issue has significance to the law in Canada.
  - Because the Charter gives the Supreme Court a significant role in interpreting the law, the appointment of Supreme Court Justices now has some political significance.
- The court system is meant to ensure proceedings are fair, impartial, and legitimate. One way to do so is to be open.
- On occasion, though, witnesses may be excluded from part of a hearing so their testimony isn't altered by listening to others.
- Or, judges often place media bans on publishing the names of sexual assault victims and children, evidence in preliminary hearings, and names of young people involved.
- The Criminal Justice Act allows a judge to exclude any person from a hearing to protect child witnesses and in the interest of public morals.

### **3 The Canadian Charter of Rights and Freedoms**

- Supreme law of Canada, after the Canada Act.
- Gives the government of Canada the sole responsibility of managing our law.
- The Charter does not regulate private citizens directly, but it does indirectly affect them.
- Also, each province has their own human rights code, but they must all be in accordance with the Charter.
- Note that there are some limitations on the Charter, if the government can justify them in a free and democratic society.
- One example is if it is for the greater good for society.
- Or if it protects other people's rights. For example, there are reasonable limits on the freedom of speech.
- The scope of the Charter is not absolute.
- There is a "notwithstanding clause" in the Charter, which allows a provincial/federal government to pass a law that violates fundamental rights by invoking this clause. Note that there is the "sunset" clause that voids the legislation after five years.
- Sections 7 to 14 cover the legal rights that are protected.
- Sections 7 to 10 deal with the right to life, liberty, and security of the person.
  - Abortions are legal by our constitution (does not extend to an unborn fetus).
  - There are rights to be secure from unreasonable search/seizure.
  - The police do have the rights to search suspects who are under arrest, though.
  - There is the right to not be arbitrarily detained/imprisoned, though the police do, again, have extensive rights to detain suspects.

- The right to consult and contact a lawyer.
  - The right of habeus corpus (right to go to court).
- Section 11 deals with criminal proceedings and trials. The accused has the right:
  1. Be informed without reasonable delay of the specific offence
  2. To be tried within a reasonable time
  3. Not to be compelled to be a witness against themselves
  4. Presumed innocent until proven guilty
  5. Not to be denied reasonable bail without just cause
  6. To be tried by jury if maximum penalty is imprisonment over 5 years
  7. Not to be found guilty for an offence that was not an offence when committed
  8. If found guilty/not guilty of an offence to not be tried again for the same offence
  9. If found guilty, and the punishment has been changed since the commission of the offence, be afforded the lesser punishment
- Sections 12 to 14 prohibits cruel and unusual punishment; witnesses may testify without their testimony being used against them, and parties in any proceedings have the right to the assistance of an interpreter.
- Section 15 deals with equality rights — discrimination by race/nationality/ethnic origin/religion/sex/disabilities is prohibited, and individuals have the right to equal protection and benefit of the law. This section was used to legalize gay marriage.
- The Charter effectively gives the courts a veto over legislation.
- The courts have the power to strike down or amend existing legislation.