

The Canadian Legal System

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Overview

- Sources of law
- Division of powers
- Interplay between the courts and the legislatures
- Administrative law

Why does this matter to an engineer?

- Without being able to navigate the Canadian legal system, engineers may not be able to complete projects
 - Trans Mountain pipeline: <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/343511/1/document.do>
- Engineers should be able to understand what obstacles they may encounter and know how to work with lawyers to navigate obstacles
- Engineering is a self-governed regulated profession, your privilege to practice can be revoked

Canadian Legal System

- How do you enforce your rights?
- Criminal Law vs. Civil Law
- Criminal law = a harm to society that the government investigates and prosecutes
- Civil Law = disputes between private parties
 - This includes, contract, tort, family, property, labour etc.

Canadian Legal System

- Common Law Tradition vs. Civil Law Tradition
- Common Law Tradition = Judge made law
 - Practiced in all jurisdictions across Canada, except for Quebec
 - Based on precedent (stare decisis)
 - Adversarial
- Civil Law Tradition = Codified law
 - In Canada practiced in Quebec
 - Codified law
 - Inquisitorial

Common Law Tradition

The common law tradition originated in England and is practiced in the UK, US, Canada (except for QC), Australia, New Zealand and other countries.

Civil Law Tradition

The civil law tradition originated from Roman law and is practiced in most of Europe, most of South America, most of East Asia and is the most prevalent legal system in the world.

How is law made in Canada?

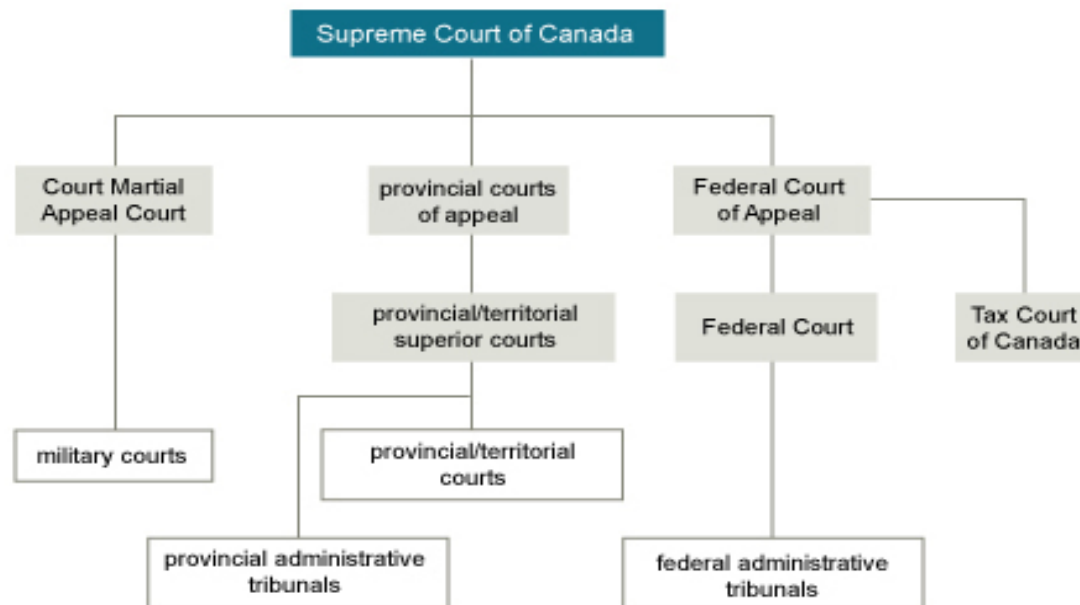
- Who enacts law?
- Division of powers
 - Three levels of government
 - Federal - responsibilities set out in the Constitution Act, 1867 and that generally affect the whole country
 - Provincial - responsibilities set out in the Constitution Act, 1867, include education, health care, some natural resources, and road regulations
 - Municipal - receive authority for these areas from the provincial governments

How is law made in Canada?

- Parliament and Provincial Legislatures pass legislation in accordance with their respective jurisdictions
- The Judiciary is a series of independent courts that interpret the laws passed by Parliament and Provincial Legislatures

The Canadian Judicial System

OVERVIEW CANADA'S COURT SYSTEM



https://www.cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_courtsystem_en.asp

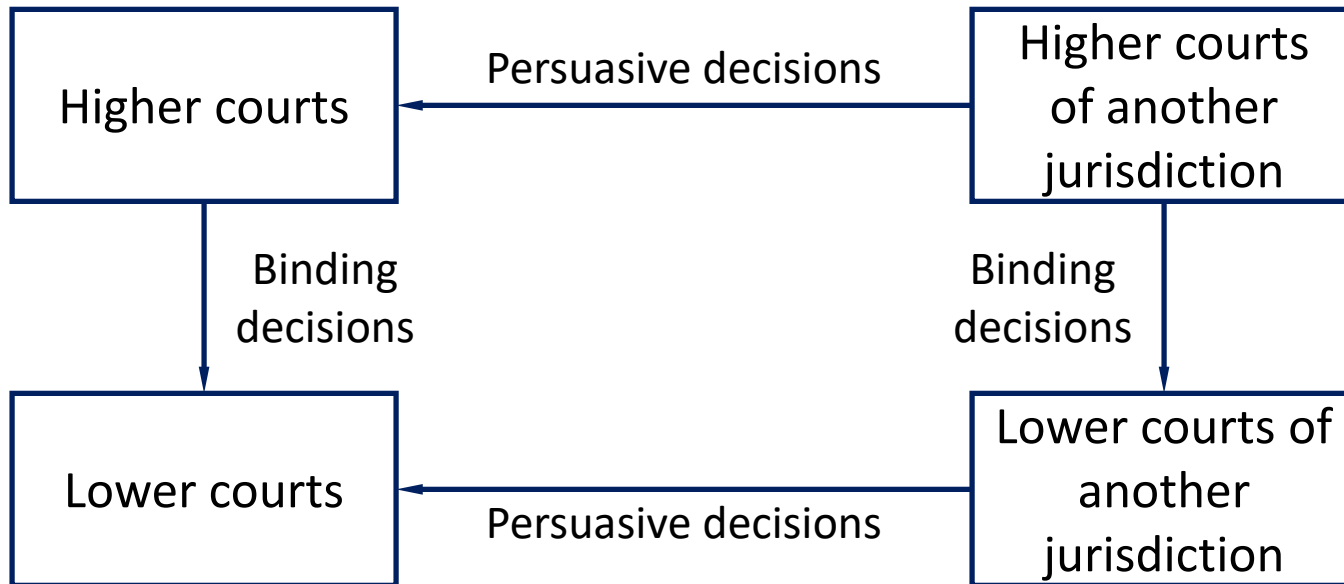
Jurisprudence/Case Law/Precedent Law/Stare Decisis

Stare Decisis is Latin for “to stand by things decided”

What does this mean?

- Decisions of provincial courts of appeal are binding on all courts in that province (provincial courts, provincial superior courts, provincial supreme courts and provincial courts of Queen’s bench)
- Decisions of the Federal Court of Appeal are binding on the Federal Court
- Decisions of the Supreme Court of Canada are binding on all lower courts, including courts of appeal
- Decisions from different jurisdictions can be persuasive but are not binding
 - Why? See next slide

Vertical and Horizontal *Stare Decisis*



Binding decisions made by higher courts must be followed by all lower courts unless there are distinguishing factors.
Decisions made by courts in other jurisdictions are not binding but may be used to influence a court's decision.

This structure leads to predictability and consistency in legal decisions. An alternative decision structure would be inefficient.

Dialogue between the Courts and the Legislatures

- Parliamentary Supremacy - Legislatures can enact laws that supersede jurisprudence as long as it complies with the Canadian Charter of Rights and Freedoms (<http://laws-lois.justice.gc.ca/eng/Const/page-15.html>)
- The Judiciary interprets whether or not legislation complies with the Canadian Charter of Rights and Freedoms
- The Legislature and the Judiciary play a role in keeping the other branch in check
- Peter Hogg introduced this interplay as the dialogue principle ([Hogg, Peter; Bushell, Allison \(1997\). "The Charter Dialogue Between Courts and Legislatures"](#))

Dialogue between the Courts and the Legislatures

Examples:

- Re Manitoba Language Rights, [1985] 1 S.C.R. 721
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/60/index.do>
- Compliance with regulations necessary but not sufficient
 - What is sufficient? Ask a lawyer.
- Class Proceedings Act, RSBC 1996, c 50

Administrative Law

- The delegation by government of quasi-judicial powers to administrative tribunals (or boards, agencies, associations)
 - https://en.wikipedia.org/wiki/Canadian_administrative_law
- Purpose of the tribunal is to regulate highly specialized activities. Members of a tribunal are practitioners, not judges.
- Tribunals are not part of the court system.

Self-governing regulated profession

- Self-governing regulated professionals in Canada include engineers, lawyers, doctors, accountants, etc.
- In Canada self-governing regulated professions are granted the authority by government statute to license professionals, and are also granted the ability to discipline licensees.

EGBC

- Engineers and Geoscientists of BC (EGBC) regulates the practice of professional engineers and geoscientists in BC
- EGBC derives its authority from the *Engineers and Geoscientists Act*, RSBC 1996, c 116 (the “**Act**”)
http://www.bclaws.ca/civix/document/id/complete/statreg/96116_01
- EGBC has a duty to uphold and protect the public interest respecting the practice of professional engineering and geoscience
- EGBC establishes bylaws (Section 10) to govern how it operates and the requirements for practicing members

EGBC

- EGBC appoints an investigation committee to investigate complaints and concerns about practicing members.
- If there are grounds to believe that a member has contravened the bylaws related to engineering practice or the Code of Ethics, the case is referred to a discipline committee.
- Pursuant to section 33(2) of the *Act* the discipline committee can impose fines or revoke the license of the member.

And the member will never have stepped foot in a court room

What are the rights of a member?

Procedural Fairness

- The member is entitled to procedural fairness
 - The right to participate in the inquiry process in a meaningful way
- Tribunals such as the EGBC discipline committee must not be biased and must not have the appearance of bias

Standard of review

- Courts can review decisions made by a tribunal.
- The standards of review can vary depending on the circumstances
 - reasonableness; or
 - correctness
- Upon review, if a court finds that there was a reasonable apprehension of bias, the decision of the tribunal will be void