

YOUR GUIDE
TO
**CANADIAN
LAW**

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This book is a result of **LegalLine.ca**, Canada's popular and most comprehensive public resource for legal information. With the assistance and support of over 8,000 Federal and Provincial Government offices and community organizations, LEGAL LINE's telephone and website services answer **36,000 enquiries every day**, and over **100 Million** to date.

Your Guide to Canadian Law consolidates the answers to the most frequently asked questions into an indispensable reference that belongs in every Canadian home, school and office. It provides the information and direction needed to make informed legal decisions.

PRAISE FOR YOUR GUIDE TO CANADIAN LAW

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Superior Court of Justice



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Lawyer, Notary, Award winning Author

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Your Guide to Canadian Law

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INTRODUCTION

All Canadians have the RIGHT to understand the laws that affect us every day. Complicated legal terms and the enormous volume of laws have always made it extremely difficult for people to get the information they need. Canadians need simple, straightforward legal information and answers. By understanding your rights and obligations, you become empowered to make informed decisions, and any fear you may have about the law diminishes.

In 1993, to help remedy this information gap, I began working on Legal Line. My goal was to bring basic understanding of the law to the public by providing answers to common legal questions through the free Legal Line telephone and website systems. We had tremendous success helping people, and received the support of over 8,000 Government and Community partners.

This book was an extension of those endeavours, and is available as a resource at police stations, court houses, and other government offices across Canada.

After the popularity of the First, Second, Third and Fourth editions of this book, we are back with an updated Fifth edition for 2024.

Your Guide to Canadian Law is available for every school, office and home in the country.

Antree C. Demakos, BA, LLB, JD

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Legal Line, Founder and Chief Information Officer

The Law Guild of Upper Canada, Founder

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Section One

GETTING JUSTICE

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GETTING JUSTICE

CANADA'S JUSTICE SYSTEM

1. **What is the federal government's role in the justice system?**
2. **What is a provincial government's role in the justice system?**
3. **What is a municipal government's role in the justice system?**
4. **If I have a problem with the justice system or laws, can an elected representative help me?**
5. **What is the role of the courts in the justice system?**
6. **What is Canada's court structure?**
7. **What role do judges play in the justice system?**
8. **What is a Justice of the Peace?**
9. **What is an ombudsperson?**

Canada's justice system is made up of two branches — the legislative arms of our various levels of governments and the courts. Thanks to Canada's Constitution, our courts are independent of the government, which means politicians and bureaucrats cannot influence or dictate how the courts administer and enforce the law. In turn, courts can only interpret the laws that governments create and cannot make their own laws. Ideally, our courts and governments check and balance the excesses of each other and, we all see justice done in the end (we hope).

Canada is a parliamentary democracy based on the British form of government. There are three levels of government: federal, provincial, and municipal. Each level has its own law-making powers and jurisdiction — often, to the exclusion of any other level of government. Towns and cities, for example, don't have the authority to create new criminal laws and the federal and provincial governments typically don't get involved in creating local by-laws, such as how many pets you can own or whether a specific street goes one-way only.

As the theory goes, the federal Parliament and provincial legislatures make the laws, and the courts interpret and enforce them. Increasingly, however, the line between our government's law-making abilities and the

courts' responsibility to merely interpret the laws is blurring. Whether laws have been poorly written or so-called “judicial activism” is at work, our courts sometimes end up making new laws by virtue of the way legislation is interpreted.

The power and authority of Canada's governments is derived from the Constitution, which draws from British Constitutional tradition and includes, among others, The Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms.

The Constitution Act created two primary levels of government in Canada — federal and provincial. The third level, municipalities, are “children” of the provinces. In other words, your local town, city, or municipality can only create laws in certain areas allowed by the province.

The Charter of Rights and Freedoms sets out the “rules of the game” for government lawmakers and imposes limits on government activity relating to our fundamental rights and liberties. These include the right to liberty, equality, freedom of religion, freedom of expression, freedom to associate with a group, and to be presumed innocent until proven guilty in a court of law.

Contrary to popular thought, these Charter rights only protect someone from government actions or government agents, and not from private citizens or businesses. For example, courts use the Charter to strike down laws or government actions that unjustifiably restrict our freedom of expression or that allow police unchecked powers to search or seize our property. If a business or fellow citizen is infringing on one of your fundamental rights, chances are the Charter will not be used to give you a remedy. Other laws, such as your province's human rights laws or the Criminal Code, will likely apply.

In creating laws, the federal government must also be mindful of the fact that the Québec Act of 1774 created two systems of law — the “civil law” in Québec and the common law in all other provinces. The common law system of justice, similar to that found in the United States, relies on the historical record of court interpretations of laws (called “precedents”). The civil law system of justice in Québec also uses court decisions to interpret the intentions and allowable authority of lawmakers, but also relies on a written Civil Code that sets out standards of acceptable behaviour or conduct in private legal relationships.

As you can tell, the boundaries of various levels of government and the courts are not always clear, sometimes making the justice system complex and frustrating for citizens.

1. What is the federal government's role in the justice system?

Parliament is comprised of three parts — the House of Commons, the Senate, and His Majesty. Members of Parliament, commonly called MPs, are elected representatives from over 300 “ridings” or regions across Canada who sit in the House of Commons, which is located in Ottawa.

The party that controls the most seats in the House of Commons forms the ruling government of the day. The Official Opposition is the party that holds the second-highest number of seats.

The so-called Upper House of Parliament is made up of over 100 Senators appointed by the Governor General on the advice of the Prime Minister.

The Parliament of Canada writes (or “drafts,” as they say), debates, and eventually approves or “enacts” all new federal laws and amendments. Before becoming an enforceable law, a proposed “Act of Parliament” is called a “Bill.”

The House of Commons is the only Constitutionally authorized body to introduce legislation concerned with the raising or spending of funds. For example, the House makes and approves laws concerning matters such as

- Immigration
- Canada Pension Plan
- Employment Insurance benefits
- Old Age Security

Other areas of law that Parliament is solely responsible for include criminal law, Aboriginal issues, income taxes, and regulations affecting national or international industries. Once new laws or amendments to existing laws are voted on and approved by the House of Commons, the proposed legislation must then be debated and voted upon by the Senate. Senators, in theory, provide a check against the potential excesses of the ruling party. If the Senate approves a law or its changes, the legislation is usually “enacted” or “proclaimed” to be in force in the weeks or months to follow by the King’s representative — the Governor General.

2. What is a provincial government's role in the justice system?

Each province or territory has its own government responsible for passing laws that fall within provincial jurisdiction. Some of the areas of law provinces are responsible for include family law, health law, labour standards, education, social services, and housing.

Similar to the federal Parliament, provincial voters elect members from their ridings to sit in the provincial legislature. These elected officials are Members of the Legislative Assembly (known as MLAs) or Members of Provincial Parliament (MPPs). The government is the party that controls the most seats in the legislature and the opposition is the party that holds the second-highest number of seats.

3. What is a municipal government's role in the justice system?

The provincial government gives the municipal governments their legislative authority. Municipalities are responsible for property taxes, property standards, zoning, business licences, and local by-laws. Municipalities are often divided into wards, and voters will elect councillors (or aldermen) who represent them at city or town council. Municipal voters also elect an overall leader, such as a mayor or reeve. Municipal governments make laws concerning areas such as:

- Smoking in public places
- Zoning
- Parking by-laws
- Property taxes

4. If I have a problem with the justice system or laws, can an elected representative help me?

If you feel you have been treated unfairly under the law or if your concern requires government action, you can write to your riding's MP, MLA, MPP, or city councillor. These people are elected officials whose job it is to represent your interests along with those of other citizens in your riding. In deciding which elected representative can best help you, it is important to know the level of government your representative works with and whether your issue is within that government's responsibility. Your MP, MLA, MPP, or councillor may be able to help you if you are having a problem with something like employment insurance or workers' compensation.

Your elected representative cannot influence the courts or any tribunals administering the law. For example, if you are charged with a criminal offence or another citizen is suing you, your elected representative can likely do little to help.

■ Where to write

If you are writing to your MP, MLA or MPP about a personal problem, write to the local office. If you are writing about a law, or something to do with the government, write to the House of Commons or your provincial legislature.

Write to your MP or a federal cabinet minister online or in Ottawa at: The House of Commons, Parliament Buildings, Ottawa, Canada, K1A 0A6. If you are writing to the Prime Minister, send to: Office of the Prime Minister, Langevin Block, 80 Wellington Street, 2nd Floor, Ottawa, Canada, K1A 0A2. You do not have to put a stamp on your letter to an MP or the Prime Minister. You can also email government representatives. Contact information is readily found on the appropriate government website.

Provincial politicians have both a local constituent office and an office in the legislature. To find the local office of your provincial politician, look at your government listings online. Municipal politicians are best contacted at your local city hall and located online as well.

■ What you should say in your letter

When writing to a federal or provincial politician, begin with the words “The Honourable” followed by their name and then MP, MPP, or MLA, whichever is applicable. When writing your letter, you should include the following information:

- Your name and address
- What you are writing about
- How you feel
- What you want done
- A date by which you want to hear about what they are going to do

It is also a good idea to send copies of your letter to the opposition party and other ministers. You can find out who your MP is online or by calling Elections Canada. To find out who your provincial politician is, contact your provincial elections offices. To find out if your problem or concern is federal or provincial, call your local government office (Conservative, NDP, Liberal, Green etc.).

5. What is the role of the courts in the justice system?

As noted above, the government makes the laws and the courts interpret and enforce them. Generally, there are two main bodies of law administered by Canada’s courts; civil law and criminal law. “Civil law” concerns private rights and remedies regarding individuals, organizations, governments, and businesses, such as settling disputes over contract obligations.

“Criminal law” punishes behaviour that not only harms the wellbeing of individual citizens, but also behaviour that is an offence against society as a whole. Theft, assault, and murder are obvious examples of crimes that deserve punishment and society’s condemnation.

How do the courts know what law is to be applied to each civil or criminal case? Canada’s courts look to many sources of information to interpret our laws. First, for example, courts consider what our government lawmakers have to say about an issue in “statutes” or “Acts” (that is, the legislation). From the Criminal Code to the Sales of Goods Act, there are literally thousands of statutes written and enforced by federal and provincial governments. Along with each statute, there may also be “regulations” that explain the administrative workings of each statute. And, in our municipalities, there are also many thousands of “by-laws” to guide the courts and law enforcement authorities.

Courts will also pay close attention to the country’s founding documents or Constitution. For example, the Canadian Charter of Rights and Freedoms contains a list of basic or fundamental rights that we, as Canadians, value and protect, such as freedom of expression and the right to be protected from unreasonable search and seizure by police.

The documents and unwritten traditions or customs that form our Constitution date from early English history to the present. The Constitution is sometimes referred to as the “Supreme Law of the Land” because it forms the basis upon which the courts determine the individual powers, and limits, of the federal and provincial legislatures.

Next, Canadian courts will look to previous cases decided by other judges. These cases, or “case precedents,” are referred to as the “common law” and can stretch back hundreds of years. In many respects, common law is simply common sense. In some instances, Canadian courts will even consider the court decisions of other countries, particularly those in the United Kingdom and the United States, if our courts have not dealt with the issue at hand.

The courts give precedents great authority and judges are often obliged to follow the same line of thinking and decision-making of previous judges, particularly when higher-level courts in the same jurisdiction (such as a provincial appeal court or the Supreme Court of Canada) have spoken on the issue.

All provinces, except Québec, use common law or “case precedents” to help decide civil and criminal matters. In Québec there is a European-based “civil law” system (don’t get confused by the use of “civil” again).

A precedent is authoritative in Québec's civil courts only because of the soundness of its reasoning, rather than the fact other judges have followed it. Québec courts are not bound to follow the previous decisions of other judges but decide cases according to the legal principles set out in a lengthy text known as the Civil Code. The Code contains basic statements or principles that were created in an attempt to address every possible legal problem. In practice, though, Québec courts generally also follow precedents.

6. What is Canada's court structure?

Sometimes, your daily newspaper will have bold headlines about a controversial court decision that you may find completely illogical or simply wrong. Understanding Canada's court structure will help you determine whether you need to hit the streets in protest or simply wait for the decision to be overturned on appeal.

Canada's court system is like a pyramid. At the top sits the Supreme Court of Canada which is the ultimate court of appeal and has the final word on the interpretation of the law of the country. Disputes involving important national or legal issues make it to this level, and this court can choose which cases it wants to hear. The Supreme Court of Canada can declare all or part of a law invalid or require all other courts in the land to follow a specific line of decision-making when dealing with similar matters. Only an Act of Parliament or legislature can change the effect of the top court's interpretation.

At the next level down is the Court of Appeal in each province. Like the Supreme Court of Canada, provincial appeal courts can refuse to hear unimportant or frivolous cases. Provincial court of appeal decisions are binding on all lower courts in their respective provinces. Other courts will seriously note decisions of their appeal colleagues from other provinces, but there is no requirement to follow the decisions of another province's appeal court.

Below each province's appeal courts are trial courts, where most civil and criminal matters are decided after hearing all the evidence, testimony, and legal arguments of a case. In most provinces or jurisdictions, there are specialized courts dealing with minor criminal offences, family law disputes, youth crime, and small claims actions.

7. What role do judges play in the justice system?

Unlike the United States, judges in Canada are never elected they are appointed by the provincial or federal government. They are the masters

of the courtroom and their role is to interpret and apply the law. They are there to keep order in the court and rule on the evidence presented to them. They hear motions, oversee jury trials, or sit in judgment of cases without juries. They can also sit as a panel or group to hear appeals of lower court cases.

■ **Judicial powers**

Judges can uphold laws or strike them down as unconstitutional. They are responsible for setting the rules governing the court and the matters before them. Their jurisdiction to hear a case depends on the matter at issue.

■ **Provincially appointed judges**

Provincial court judges are limited to hearing provincial and summary conviction offences and have jurisdiction over certain matters of family law. Generally, provincially appointed judges do not hear cases involving litigation between private parties.

■ **Federally appointed judges**

Federally appointed judges tend to hear cases where more is at stake in terms of crime and hear matters involving indictments. They are also responsible for civil litigation of commercial disputes and private litigation over things like libel, negligence, administrative law involving federal institutions, and contractual disputes.

8. What is a Justice of the Peace?

A justice of the peace (JP) is the judicial officer with whom the public usually has the first and often only contact. They have province-wide jurisdiction and preside over more than 90% of cases involving provincial offences, including complex environmental and industrial safety cases.

■ **Powers**

Justices of the peace have a broad range of power. They rule on municipal by-law infractions and hear cases about minor traffic and parking infractions. They can also receive private information from members of the public who wish to lay charges against another person. They issue summonses for people required to give evidence, and arrest warrants for those accused of a crime. They preside at bail hearings and can set the terms of the release of an accused. A justice of the peace can order mental health assessments and issue child apprehension warrants.

9. What is an ombudsperson?

Ombudsperson offices are established by provincial, territorial and federal legislation, and each office designates an individual as ombudsperson. Provincial laws give these offices the authority to investigate complaints by individuals concerning unfair treatment by a provincial or municipal government body or other provincial public authority.

Unfair treatment could include actions considered to be rude, unduly slow, negligent, unlawful, oppressive or discriminatory. The ombudsperson is an independent officer of the Legislative Assembly. They are not a representative of the person making the complaint or the organization about which the complaint is being made. Their role is to conduct impartial, confidential and independent investigations, resolve individual issues, and recommend improvements for governance.

Where there is no ombudsperson, another government department, such as the Office of the Information and Privacy Commissioner in Nunavut, the Northwest Territories and Prince Edward Island, may handle such complaints.

■ Who can you make a complaint against?

In most cases, you may make a complaint about provincial government ministries, municipal and regional governments, Crown corporations and government agencies, boards and commissions. Each provincial ombudsperson office operates differently and has jurisdiction over different bodies. Depending on the province, they may deal with complaints made against the following:

- Crown corporations such as the provincial hydro or electricity company
- Government boards such as Workers' Compensation Board, and the Human Rights Tribunal
- Hospitals and health authorities
- Schools and school districts
- Universities and colleges, and
- Professional associations such as the Law Society and the College of Physicians and Surgeons

That said, provincial ombudspersons do not have jurisdiction to investigate complaints involving federal government ministries or programs, private corporations, the courts, or the police.

■ How to make a complaint to the provincial ombudsperson

You can generally make a complaint by completing and submitting a form online or by mail. There is no fee to file a complaint. Once a complaint is made, the ombudsperson office will make a preliminary assessment to determine if the complaint is within their authority. Some complaints may be dealt with quickly without the need for a full investigation. These could include complaints about poor communication or an unreasonable delay in service. More serious complaints will usually result in an investigation. During an investigation, the ombudsperson office may do many things, such as, provide information about what steps to take to resolve a complaint; resolve complaints through consultation and discussion; make recommendations to a public authority; and/or issue reports to the Legislative Assembly.

■ Federal ombudsperson

Unlike provincial governments, the Government of Canada does not have an ombudsperson overseeing all federal departments. However, some federal government ministries and departments do have their own ombudsperson, including Taxpayers' Ombudsman, Federal Ombudsman for Victims of Crime, National Defence and Canadian Forces Ombudsman, Canada Post Office of the Ombudsman, Veterans Ombudsman, and a CBC Ombudsman.

Pop Quiz! Test Your Understanding

1. The federal government is responsible for passing laws on:
 - a) Immigration, Canada Pension Plan, employment insurance benefits
 - b) Family benefits, workers' compensation, municipal governments
 - c) Zoning, parking by-laws, property taxes

2. Provincial governments conduct business in:
 - a) The House of Commons
 - b) A legislature
 - c) Town hall
 - d) Council chambers

3. A Member of Parliament represents a:
 - a) Provincial riding
 - b) Municipality
 - c) Federal riding

4. Which of the following are rights in the Canadian Charter of Rights and Freedoms?
 - a) Right to liberty
 - b) Freedom of religion
 - c) Freedom of expression
 - d) Freedom to associate with a group
 - e) All the above
 - f) None of the above

Answers

1. a
2. b
3. c
4. e