

Source of Law in Canada: An Introduction



ENSC-406 Engineering Ethics, Law and Professional Practice
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Based on:

- slides and material originally developed by John Jenness, P.Eng. and Alan Inglis, P.Eng.
- notes from Bull, Housser and Tupper, LLP
- Web based material

Overview

1. Brief History of Canadian Law
2. The Constitution
3. The common law
4. Legislation
5. Concurrency and changes in law
6. Structure of the courts

1. A Brief History of Canadian Law

Questions:

- What is Law?
- Why is there a need for Laws?
- The development of Law is closely related to the development of civilization.
- Laws define a (complex) set of rules, terminology, symbols, players, interactions, rights, etc. for the functioning of a society.

1. A Brief History of Canadian Law (contd).

- Canada has a “constitutional” system of Government.
- The basic rules of the land are collectively referred to as the “The Constitution”.
- In Canada, The Constitution is the Supreme Law of Canada.

1.1. Law in Canada

- Canadian Law is bi-jurisdictional.
 - Federal Laws, Provincial Laws.
- The Canadian Legal system is founded in English common law (England) with influence from Scottish Law.

1.1. Law in Canada (contd).

- The Constitution defines the powers (and limits) of:
 - the federal, provincial, and territorial governments.
- It defines the powers (and limits) of:
 - the superior and inferior courts.
- It outlines the rights (and freedoms) to be enjoyed by all residents of Canada.

1.1. Law in Canada (contd).

- A Constitution contains “the most fundamental laws of a nation”.¹
- A constitution is well protected by making it hard (but not impossible) to change.
- Thus a government cannot simply change it when (or how) it wants to.
- A constitution contains one or more formulas for any amendments.
- “The Constitution” has 5 formula types.

1.1. Law in Canada (contd).

- The Constitution in Canada is the Supreme Law (constitutional supremacy).
 - Section 52: “The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”

1.1. Law in Canada (contd).

- The Federal Court system plays a role (judicial review) in interpreting the Constitution and settling disputes.
- Contains the *Charter of Rights and Freedoms*

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2. The Constitution

- Supreme law of Canada
- Defines the powers of the federal and provincial governments
- Contains the *Charter of Rights and Freedoms*
- Cannot be amended by regular Act of Parliament.

2. The Constitution: Historical Context

- The *British North America Act* (1867) - the original Constitution of Canada.
- An Act of the British Parliament.
- Any amendments had to be made by British Parliament (prior to 1982).
- Patriated (made an Act of the Canadian Parliament) in 1982.
- *Charter of Rights and Freedoms* also entrenched in the Constitution in 1982.

2. The Constitution:

Division of Powers in the BNA Act

- Federal Parliament has jurisdiction over matters of national importance:
 - foreign affairs,
 - national defense,
 - marriage and divorce,
 - banking and bankruptcy,
 - criminal law,
 - trade and commerce,
 - fisheries,
 - navigation and shipping,
 - postal service, etc.

2. The Constitution:

Division of Powers in the BNA Act

- Provincial legislatures have jurisdiction over local matters – within the bounds of the province/territory:
 - ownership of land,
 - regulation of professions,
 - civil law,
 - education,
 - health care, etc.

2. The Constitution:

Charter of Rights and Freedoms

- Sets out the rights held by all residents of Canada
- Broad rights that reflect the nature of Canadian society and democracy
- These rights are guaranteed
- The federal and provincial governments cannot pass laws that violate these rights

2. The Constitution:

Guaranteed *Rights and Freedoms*:

- Right to a fair trial and due process (extended to everyone: resident or not)
- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression
- Freedom of peaceful assembly
- Freedom of association

2. The Constitution: Limits to the Charter

- Limits are justifiable in a free and democratic society.
- Applies only to government action
 - Eg. Alberta Law:
 - Driving motorized vehicle on a highway - hold a valid Driver's License. (no problem)
 - New law that required Picture Drivers License. (A violation of Religious Freedom).
 - Law was Upheld by Supreme Court of Canada.

2. The Constitution: Limits to the Charter

- Eg. Helmet Laws: crash helmet, vs. religious headgear
 - BC Helmet Law provides for an “exemption” for the Sikh religion.
 - ON does not.
- Eg. Pastafarian headgear for Driver’s License.
 - Massachusetts permits a “pastafarian” to wear a colander for a Driver’s License photo.
 - BC does not.

2. The Constitution:

Limits to the Charter (contd).

- Temporary “Notwithstanding clause”
- Time limited to a maximum of 5 years.
- Federal, Provincial/territorial legislatures may enact a law that would otherwise violate a right or freedom in the Charter.
 - Eg. Quebec French Sign Law (1988)
 - Ruled “unconstitutional” – cannot prohibit the use of other languages on commercial signs.
 - Quebec replaced old law by a new law.

2. The Constitution: Limits to the Charter (contd).

- The bottom line: “Different strokes for different folks in different locations”.
 - It is a matter of interpretation of the law.
 - There may be different prevailing views in different provinces/territories.

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3. Common Law

- Common Law is “Judge-made” law.
- Common Law - developed mainly in England (and colonies including the US).
- Developed over-time through judicial decisions (precedent) which explain reasons.
- Authority derived from usages and customs since ancient times.
- May be altered by government legislation

3. Common Law

- British Columbia is a common law jurisdiction.
- So are all other provinces and territories, except Quebec.
 - “**Quebec law** is unique in Canada because **Quebec** is the only province in Canada to have a juridical **legal** system (pertaining to the administration of justice) under which civil matters are regulated by French-heritage civil **law**.”¹

3. Common Law: vs. Civil Law (and others)

- Quebec operates under a Civil Law system.
 - Civil Law has come from a collected set of rules – dates back to Roman Law (over 200 years old).
 - Civil Law is the most widespread legal system in the world (used in about 150 countries).
- Other major legal systems in the world include: Halakha, Canon law, and Islamic law (Sharia).

3. Common Law

- Again - the bottom line: “Different strokes for different folks in different locations”.
 - It is a matter of interpretation of the law.
 - There may be different prevailing views in different provinces/territories/countries.
 - Much conflict has started because of different interpretations.

3. Common Law

- Common Law has evolved into:
 - Contract Law and
 - Tort Law.
- Contract law: enforces the rights that arise out of a contract or an agreement (commerce related). Eg.
 - Automobile or Home purchase agreement.
 - Building construction, home renovations.
 - Topic of future Lecture...

3. Common Law

- Tort law: a civil wrong – seeks compensation (usually monetary) for losses suffered by a party as a result of the wrongful conduct of others. Eg.
 - false imprisonment
 - defamation
 - Negligence
- Also a topic of a future Lecture...

3. Common Law

- Brief Example:
 - Engineer (Ms. Smith) enters into a contract to engineer a warehouse for Mr. Jones.
 - Mr. Jones pays Ms. Smith as required by the contract.
 - Before construction is complete, the warehouse collapses because it was not engineered in accordance with applicable building standards.

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4. Legislation

- Legislation = statutes = acts
- **Statutes** are passed by elected representatives in the legislature (i.e. it is a government-made law)
 - Federal: E.g., Copyright Act – applies across and throughout Canada.
 - Provincial: E.g., Engineers and Geoscientists Act – APEGBC, APEGA, PEO, etc.
 - APEGBC is a Topic of a Future Lecture...

4. Legislation

- Statutes are Binding.
- Courts must interpret and apply statutes.
- Courts must give statutes their full force and effect.
- Courts may only challenge a statute on the grounds of constitutional validity.
- A new statute takes precedence over older laws/statutes.

4. Legislation

- Both Federal and Provincial/Territorial Governments can modify/create laws by enacting legislation (Statutes).
- Engineers need to be very aware that there are different statutes in each province/territory which govern what and how they work and behave.
- Provincial Governments may enact statutes to empower local municipalities.

4. Legislation:

Regulations and Bylaws

- Local municipalities also be empowered to enact Regulations and Bylaws, and have whole departments to grant permits, monitor and enforce these “rules”.
- These local “rules” have great impact on the activities of professionals. Eg.
 - building departments, building inspectors, design panels, zoning bylaws, development permit applications, building permit applications, development cost charges, permit fees, business licenses, etc.

4. Legislation:

Regulations and Bylaws (contd).

- Legislation often specifically authorizes an individual or body (e.g., a municipality) to create regulations or bylaws in order to supplement statutes.
- Regulations and bylaws are dependent on their authorizing statute for validity.
- A properly created/adopted Regulation or Bylaw carries the same authority as the statute under which they were created.

4. Legislation

- Brief Example:
 - Mr. Jones complains about Ms. Smith's work to APEGBC
 - Municipality investigates whether Ms. Smith's work was done competently and in accordance with municipal development requirements.

4. Legislation:

Criminal Law

- Criminal law is based in legislation (mostly in the *Criminal Code of Canada*)
- It governs the interaction of individuals with the public
- Government initiates and prosecutes a private party
- (recall this is in contrast with civil law where a private party starts the litigation).

4. Legislation:

Criminal Law

- Intent: deterrence antisocial behavior.
- Criminal Code has a more stringent “standard of proof” (i.e. beyond a reasonable doubt – for Criminal Law vs. balance of probabilities – for Civil Law)
- Convictions: lasting consequences. Eg.
 - travel restrictions
 - Work restrictions (un-bonded).
 - Suspension or revocation of APEGBC license.

4. Legislation:

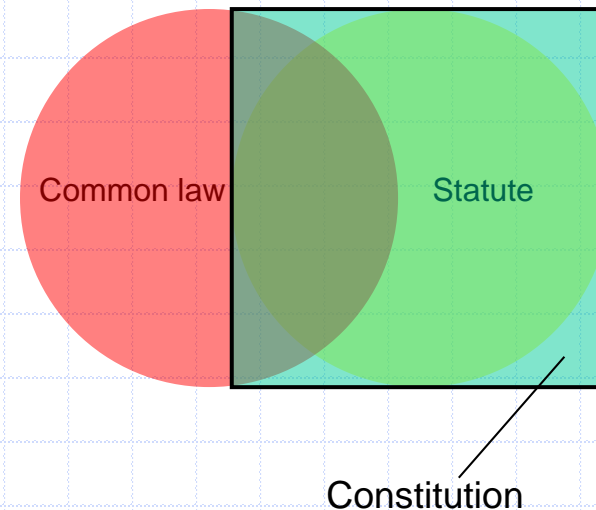
Criminal Law

- Example:
 - The partially built warehouse that was negligently engineered collapsed on a bystander
 - That person died

4. Legislation:

Interrelationship of the Constitution, Legislation and the Common Law

- All statutes must comply with the Constitution
- Judges must apply the common law in accordance with the Constitution
- Statutes and the common law affect one another
- Statutes can modify common law



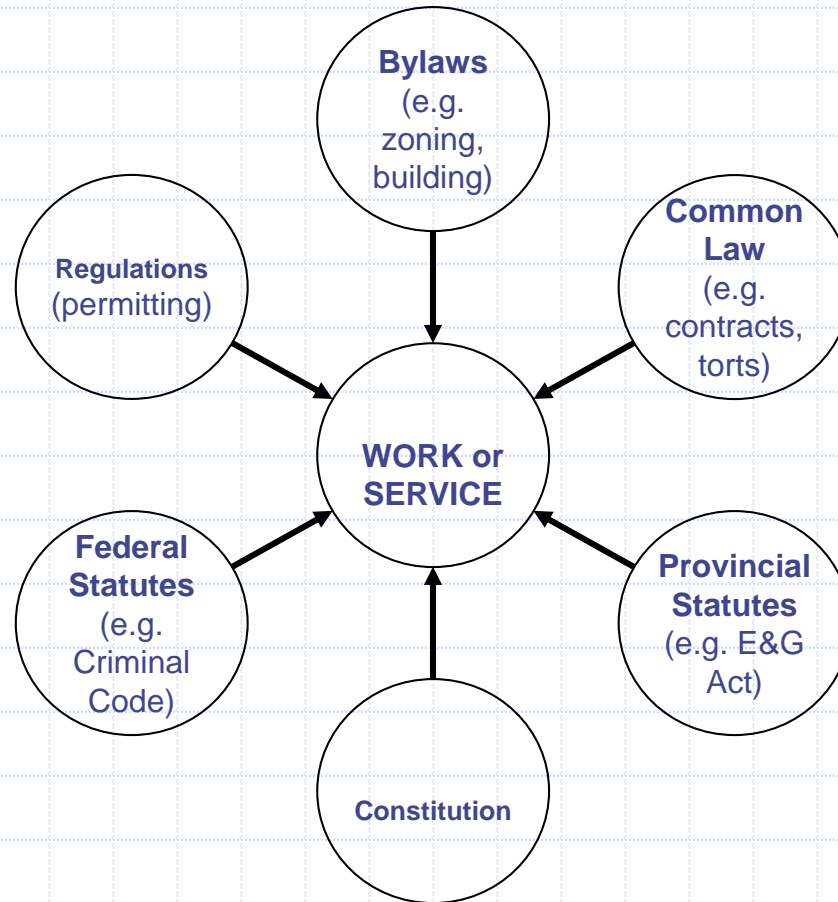
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5. Concurrency & Changes in Law

- Laws of Nature \neq Human Laws
- (Human) Laws are independently and equally applicable
- (Human) Law is dynamic, always subject to change
- Keep current (Continuous Professional Development = CPD), seek advice

5. Concurrency & Changes in Law

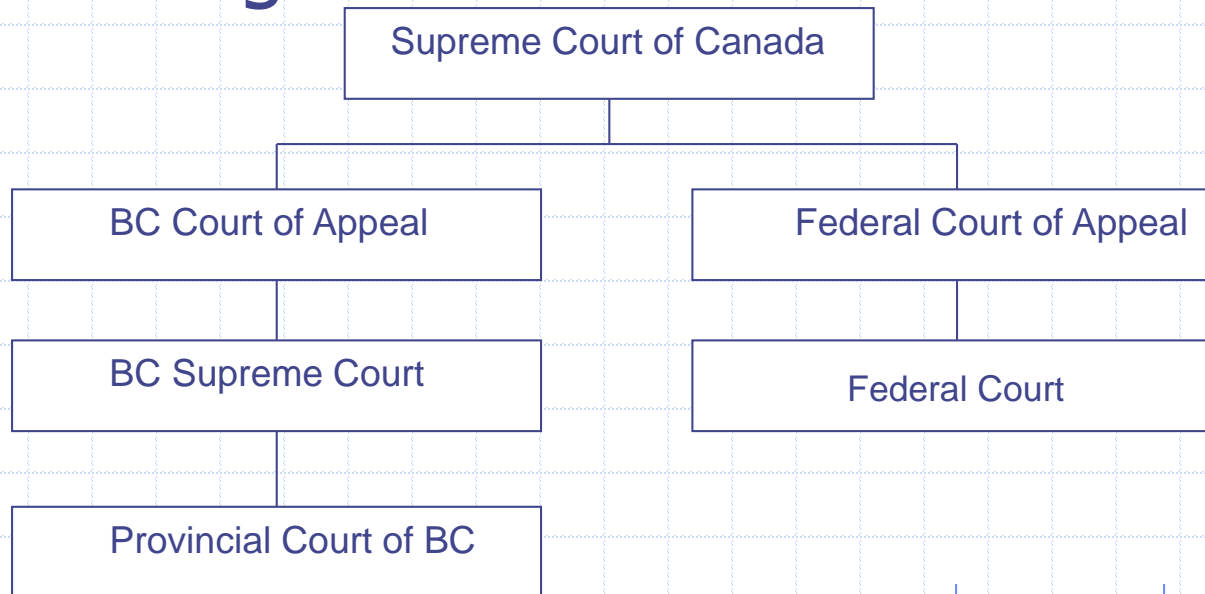


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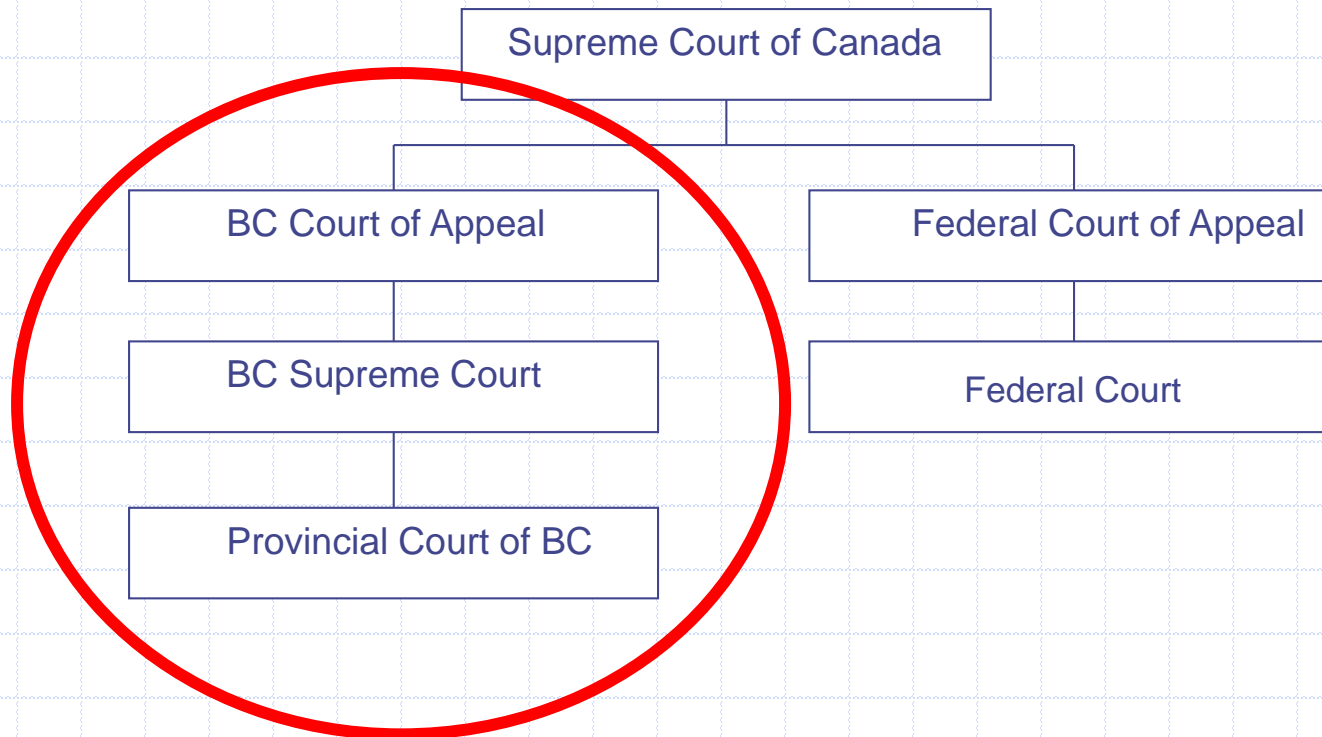
6. Structure of the Courts.

- Decisions of higher courts are binding in lower courts
- Decisions of the Supreme Court of Canada are binding on all other courts in Canada.



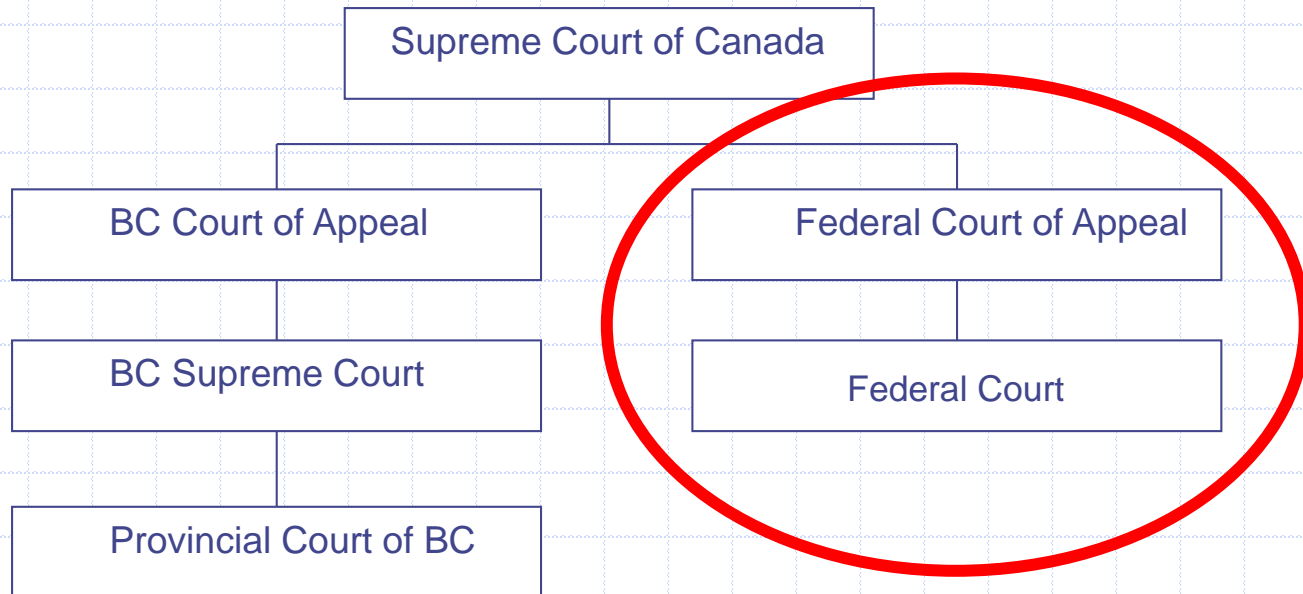
6. Structure of the Courts.

- Most legal matters in BC come within the court system on the left.



6. Structure of the Courts.

- National Matters are of Federal jurisdiction on the right.



6. Structure of the Courts.

- Precedent and Hierarchy of the courts applies only where a previous decision is directly applicable.
- If there are distinguishing features (current case vs. a precedent), the court may choose not to follow the precedent.
- This create some uncertainty within the system and new (untested) areas of law.

6. Structure of the Courts.

- Distinguishing precedents carve out new areas of law.
- This is the evolutionary process of the common law.

THE GOALS:

1. Know the Law.
2. Keep current and seek advice.
3. Stay out of court.