

## **SUPREME COURT OF CANADA**

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The modern Supreme Court of Canada plays a pivotal role in Canadian politics. As the highest court in the country, the decisions of the Supreme Court touch on a wide range of issues: criminal law, civil law, federalism, and individual rights and freedoms. The Supreme Court of Canada is the nation's highest court of appeal. To understand its role further, it is useful to discuss the Supreme Court within the context of Canada's judicial system.

The courts do not actually make law; that is, they do not have the power to pass legislation. The legislative branch of government (that is, the federal Parliament and provincial/territorial legislatures) performs this function. Nor do the courts have the power to enforce laws. The executive branch of government performs the role of enforcement. Rather, the courts' role is to interpret the laws passed by the legislature, arbitrate disputes between parties over the application of law, and direct the executive on the proper enforcement of the law.

The reach of the courts is particularly evident when one considers the vast array of laws which it must interpret and adjudicate. There is, for example, the field of criminal law, which governs conduct deemed "criminal" and subject to forms of state sanction. There is also civil law, which regulates relations between individuals, corporations and governments regarding such things as contracts, tort disputes and property law. The courts are also responsible for interpreting and adjudicating the Canadian Constitution, which touches on a number of key political issues, including federalism (the relationship between different levels of government), Aboriginal rights, and the Canadian Charter of Rights and Freedoms (the relationship between the state and individuals).

In fulfilling its role as interpreters and adjudicators of the law, the Canadian court system encompasses a number of different components.

First, there are the purely provincial courts, which include the provincial and municipal courts of each province. The provinces alone establish and maintain these courts, as well as appoint and pay their judges. These courts are usually divided into functional

divisions, which reflect the sort of cases they hear; for example, the criminal division, the civil or small claims division, and the youth and family division.

The second component of the Canadian court system is the provincial superior courts, which includes provincial superior trial courts and provincial courts of appeal. These courts are established and maintained by their respective provincial governments. However, unlike purely provincial courts, their judges are appointed and paid by the federal government.

Lastly, there are the purely federal courts, which include the Supreme Court of Canada and the federal courts. The latter is a special set of courts which deal exclusively with matters specified in federal (as opposed to provincial) statute. This includes the Federal Court of Appeal, the Federal Court Trial Division, the Tax Court of Canada and military courts. The federal government alone establishes and maintains the Supreme Court and federal courts, as well as appoints and pays their judges.

While there exist different components, the Canadian courts are nevertheless organized into a single system. Provincial courts may hear cases dealing with federal laws, and federal courts may hear cases dealing with provincial laws. As such, cases can begin with provincial level courts and cross over to federal level courts as they make their way through the Canadian court system.

This single system, moreover, is organized hierarchically, with lower and higher courts. This hierarchy allows the decisions of a lower court to be appealed to and reviewed by a higher court. At the top of this hierarchy is the Supreme Court of Canada, which is the nation's last court of appeal and which has the power to overturn the decisions of any other court in Canada.

The Supreme Court hears two sorts of appeals from lower courts: leaves to appeal and appeals as of right. The former refers to appeals which the Supreme Court has granted a party permission to appeal. In formal terms, this is referred to as "granting leave to appeal," hence the term "leaves to appeal." The Supreme Court has considerable discretionary power to grant or reject leaves of appeal, thus giving it control over the sorts of cases it hears. It usually grants leaves of appeal based on its assessment of the public importance of the legal issue raised in a given case and whether or not the issue warrants the consideration of the Court.

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