

The Constitution provides that almost all courts shall be provincial, that is, created by the provincial legislatures. But it also provides that the judges of all these courts from county courts up (except courts of probate in Nova Scotia and New Brunswick) shall be appointed by the federal government. What is more, it provides that judges of the provincial "superior courts" (the Superior Court of Quebec, the supreme courts of the other provinces, and all the provincial courts of appeal) shall be removable only on address to the governor general by both Houses of Parliament. The acts setting up the Supreme Court of Canada and the Federal Court have the same provision. No judge of any Canadian superior court has ever been so removed. All of them are perfectly safe in their positions, no matter how much the government may dislike any of their decisions. The independence of the judiciary is even more important in Canada than in Britain, because in Canada the Supreme Court interprets the written Constitution, and so defines the limits of federal and provincial powers.

With the inclusion of the Charter of Rights and Freedoms, the role of the courts will become even more important, since they will have the tasks of enforcing the rights and of making the freedoms effective.

Judges of the county courts can be removed only if one or more judges of the Supreme Court of Canada, or the Federal Court, or any provincial superior court, after inquiry, report that they have been guilty of misbehaviour, or have shown inability or incapacity to perform their duties.

The Supreme Court of Canada, established by an act of the national Parliament in 1875, consists of nine judges, three of whom must come from the Quebec Bar. The judges are appointed by the governor general on the advice of the national Cabinet, and hold office until age 75. The Supreme Court has the final decision not only on constitutional questions but also on defined classes of important cases of civil and criminal law. It deals also with appeals from decisions of the provincial courts of appeal.