



The Supreme Court Justices are from left to right, J. Chouinard, W. Estey, B. Dickson, R. Martland, Chief Justice Bora Laskin, R.A. Ritchie, J. Beetz, W.R. McIntyre and A. Lamer.

## Justice

Circumstances and stresses of life differ in Canada and the United States, and the systems of justice differ too. Justice is not measured in terms of crime, convictions or sentences alone. It also involves, among other things, civil matters, basic rights and the grievances of the law-abiding.

In this issue of CANADA TODAY/D'AUJOURD'HUI we offer some general information on crime, courts and imprisonment in Canada, and on Canada's laws and lawyers.

## Canada's Constitution

A constitution can be defined as the rules by which a state is governed.

The Constitution of the United States was written down by the founding fathers and has been amended as needed. Canada does not have a single, written document. The British North America Act, passed by the Parliament of Great Britain in 1867, is the framework of the Canadian constitution. The preamble of the B.N.A. Act calls for a constitution similar in principle to that of Great Britain. This means that its underpinnings include the Magna Carta, the Habeas Corpus Act and other fundamentals of British law, and that it relies on a body of legal customs and traditions. Each Canadian province also has its own constitutional documents and statutes.

The Supreme Court is composed of the Chief Justice and eight Puisne (associate) Judges. They are appointed by the Cabinet with the Governor General's approval.

Cover photo: Chief Justice of the Supreme Court, Bora Laskin.

## The Courts, the Judges and the Justices

The United States has two distinct court systems—federal and state. In Canada the provinces have responsibility for the administration of justice.

State courts in the U.S. are concerned exclusively with the breaking of state laws and with civil suits. The federal courts are concerned with interstate crimes and those civil suits involving interstate commerce. They also hear cases appealed from state courts on constitutional grounds.

The federal Parliament of Canada establishes the Criminal Code and criminal procedure, but both civil and criminal courts are organized on the provincial level, and the provinces determine civil procedure. Civil cases are heard in various provincial courts, with the amount of money involved usually determining which one. Although the names and organization of criminal courts vary from province to province, they are all basically part of a three-tiered system: 1) magistrate's or provincial courts, 2) county or district courts, and 3) superior or supreme courts of the province. Ninety per cent of all criminal cases are handled in the magistrate's court without a jury.

The Canadian federal court hears cases brought against the federal government. The Supreme Court of Canada is the final appeal court for both civil and criminal cases.

The federal government appoints and pays the judges of the provincial higher courts as well as judges of the federal court and Supreme Court of Canada. Lower court judges, magistrates, justices of the peace and other court officers are appointed and paid under provincial laws.

In both countries the judiciaries are independent, and judges and justices are free from influence by members of the executive branch of the government. The methods of maintaining independence, however, are different. In the U.S. the

federal judiciary is a separate and equal part of the government, on a par with the executive and legislative branches, and this arrangement is duplicated in the states. In Canada all governmental operations, including the administration of the courts, are controlled by parliaments, federal and provincial. The independence of the judiciary is embodied in the independence of the individual judge and protected through the practice of appointing judges for a secure term up to a fixed retirement age.

The judges in the higher courts remain on the bench until they reach the retirement age of seventy or seventy-five, unless they resign, become incapacitated, or are found guilty of severe misconduct. All judges are concerned only with adjudication.

In the United States judges control the hiring of courtroom personnel, and the courts are often served by a variety of non-judicial experts—psychiatrists, counselors, sociologists—while in Canada, where the judges cannot disburse funds or authorize salaries, the courts have resisted any great expansion of their auxiliary staffs.

Perhaps the most striking contrast may be found in the Supreme Courts of the two countries. The U.S. Supreme Court interprets the Constitution independently of the expressed or implied wishes of Congress. It may, in its wisdom, declare an Act of Congress unconstitutional and therefore void.

The Canadian Supreme Court, particularly in recent years, is more restrictive in the cases it hears and stricter in its interpretation of the established law. In the 1950s its area of interest underwent a considerable expansion; and cases involving the preservation of the environment, consumer protection, energy conservation and sex discrimination greatly added to its crowded docket. In 1960 Parliament passed an act specifying a Bill of Rights, and in 1974 it cancelled the automatic right of appeal that had been given to litigants in provincial cases involving \$10,000 or more. This later move

greatly reduced the crowded dockets, and observers assumed that the Court, like its American counterpart, would spend more time interpreting the constitution. This has not been the case.

In Canada only the federal and provincial governments have direct access to the Supreme Court, and private litigants may raise constitutional issues only with the permission of the lower courts. More importantly, most Canadian judges and justices believe that since they are part of a government in which Parliament is the "responsible" centre, it would be most improper for them to take activist roles. They believe, for example, that if Parliament had wanted a special emphasis on the Bill of Rights, it would have asked the provinces to adopt it as part of the constitution. (The Canadian Bill of Rights is an Act of Parliament and not entrenched in the constitution. Constitutional reform discussions currently taking place may eventually result in the inclusion of a Bill of Rights in a new constitution.)

The Canadian courts, including the Supreme Court, follow the practice of *stare decisis*—relying on precedents in reaching their decisions. While Canadian courts don't generally make law, they do have opportunities to interpret the law to cover the case at hand. The U.S. Supreme Court goes directly to the Constitution for inspiration.

## Let's Count All the Lawyers

In the United States there is one lawyer for every six hundred persons, in Canada, one for every twelve hundred.

In all provinces except Quebec, lawyers may practice in the British fashion, as either barristers or solicitors, though the divisions are not formal, and almost all practice as both. A relatively small number function most often as barristers, spend-