Canada

The legal system in Canada

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The law in Canada consists of statutes and judicial decisions. Statutes are enacted by Parliament and the provincial legislatures and are written statements of legal rules in fairly precise and detailed form.

There is also a large body of case law that comes mainly from English common law and consists of legal principles evolved by the decisions of the superior courts over a period of centuries. The English common law came to Canada with the early English settlers and is the basis of much of the federal, provincial and territorial law. The province of Quebec, however, was originally settled by French inhabitants who brought with them civil law derived from French sources. Thus civil law principles govern such matters as personal, family and property relations in Quebec; the province has developed its own Civil Code and Code of Civil Procedure governing these and other matters and has, in effect, adapted the French civil law to meet Quebec's needs.

In addition to the statutes of the federal Parliament and provincial legislatures, there is a vast body of law contained in regulations adopted by appropriate authorities and in by-laws made by municipalities. This subordinate legislation, as it is called, is issued under authority conferred by either Parliament or the provincial legislatures.

Statutes enacted by the federal Parliament apply throughout the country; those enacted by provincial legislatures apply only within the territorial limits of the provinces. Hence, variations may exist from province to province in the legal rules regulating an activity governed by provincial law.

The main body of Canadian criminal law, being federal, is uniform throughout the country. Although Parliament has exclusive authority under the British North America (BNA) Act* [which established Canada as a federal state], to enact criminal law, the provincial legislatures have the power to impose fines or punishments for breaches of provincial laws. This gives rise to provincial offences — for example, the infraction of a provincial statute regulating the speed of automobiles travelling on the highways.

Most Canadian criminal law is contained in the Criminal Code, which is derived almost exclusively from English sources. Criminal offences are classified under the code as indictable offences, which are subject to a severe sentence, or summary conviction offences, to which a less severe sentence applies. However, the totality of statutory federal criminal law is not contained in the Criminal Code of Canada.

* Since April 17, 1982 called the Constitution Acts 1867-1982

Other federal statutes provide for the punishment of offences committed thereunder by fine or imprisonment or both. In any event, whether an offence be serious or minor, it is a fundamental principle of Canadian criminal law that no person may be convicted unless it has been proved beyond all reasonable doubt to the satisfaction of either a judge or a jury that he is guilty of the offence.

Law reform

As society changes — as its needs and even its standards change — the law has to reflect these changes. Therefore, many of the provinces now have law reform commissions that inquire into matters relating to law reform and make recommendations for this purpose. At the federal level, the Law Reform Commission of Canada carries out this activity by studying and reviewing federal law with a view to making recommendations for its reform.

The courts and the judiciary

The legal system includes courts, which play a key role in the process of government. Acting through an independent judiciary, the courts declare what the law is and apply it to resolve conflicting claims between individuals, between individuals and the state and between the constitutent parts of the Canadian federation.

The judiciary

Because of the special function performed by judges in Canada the BNA Act* guarantees the independence of the judiciary of superior courts. This means that judges are not answerable to Parliament or to the executive branch of the government for decisions rendered. A federally appointed judge holds office during good behaviour but is removable from office by the Governor-in-Council on the address of the Senate and House of Commons; in any event, he or she ceases to hold office upon attaining the age of 75 years. The tenure of judges appointed by provinces to inferior courts is determined by the applicable provincial laws. No judge, whether federally or provincially appointed, may be subjected to legal proceedings for any acts done or words spoken in a judicial capacity in a court of justice.

The appointment and payment of judges reflect the interlocking of the divided powers found in the Canadian constitutional system. The federal government appoints and pays all judges of the federal, provincial superior and county courts, while judges of provincial inferior courts are appointed and paid by the provincial governments.

*See previous footnote

The courts

In Canada, the power to create courts is divided. Some courts are created by Parliament (for example, the Supreme Court of Canada) and others by provincial legislatures (for example, superior courts, county courts and many lesser provincial courts). However, the Supreme Court of Canada and the provincial courts are part of an integrated whole; thus, appeals may be made from the highest courts of the provinces to the Supreme Court. Generally speaking, federal and provincial courts are not necessarily given separate mandates as to the laws that they administer. For instance, although criminal law is made by the Parliament of Canada, it is administered mainly in provincial courts.

Federal courts: Federal courts in Canada include the Supreme Court of Canada, the Federal Court of Canada and various specialized tribunals such as the Tax Review Board, the Court Martial Appeal Court and the Immigration Appeal Board. These courts and tribunals are created by Parliament.

The Supreme Court, established in 1875, is the highest appeal court of Canada in civil and criminal matters. It consists of nine judges, of whom three at least must come from Quebec, a requirement added because of the special character of Quebec civil law. The conditions under which it hears appeals are determined by the statute law of Parliament. The Supreme Court entertains appeals from the provincial courts of appeal and from the Federal Court. It also gives advisory opinions to the federal government when asked under a special reference procedure. Five judges normally sit together to hear a case, although on important matters it is customary for all judges of the court to sit.

The Federal Court of Canada was created in its present form in 1970; its predecessor, the Exchequer Court of Canada, was originally created in 1875. This court deals with: taxation cases; claims involving the federal government (for instance, claims against the federal government for damage caused by its employees); cases involving trademarks, copyrights and patents; admiralty law cases; and aeronautics cases. It has two divisions, a Trial Division and an Appeal Division; the Appeal Division hears appeals from decisions rendered by the Trial Division and by many federal boards and agencies.

Provincial courts: Provincial courts are established by provincial legislation and thus their names vary from province to province; nevertheless, their structures are roughly the same.

Provincial courts exist at three levels. Each province has inferior courts, such as family courts, juven-

ile courts, magistrates' courts and small debts courts; these deal with minor civil and criminal matters and the great majority of cases originate and are decided in them. With the exception of the province of Quebec all provinces also have systems of county or district courts. These courts have intermediate jurisdiction and decide cases involving claims beyond the jurisdiction of the small debts courts, although they do not have unlimited monetary jurisdiction; they also hear criminal cases, except those of the most serious type. In addition to being trial courts, county and district courts have a limited jurisdiction to hear appeals from decisions of magistrates' courts. The highest courts in a province are its superior courts, which hear civil cases involving large sums of money and criminal cases involving serious offences. Superior courts have both trial and appeal levels; the appeal courts, with some exceptions, hear appeals from all the trial courts in the province and may also be called upon to give opinions on matters put to them under a special reference procedure by their respective provincial governments.

The legal profession

In common law jurisdictions in Canada, practising lawyers are both called as barristers and admitted as solicitors. In Quebec the legal profession is divided into the separate branches of advocate and notary. In all cases admission to practice is a provincial matter.

Legal aid

In recent years all provincial governments have established publicly funded legal aid programs to assist persons of limited means in obtaining legal assistance in a number of civil and criminal matters, either at no cost or at a modest cost, depending on the individual's financial circumstances. These programs vary from province to province. Some are set up by legislative enactment, while others exist and operate by way of informal agreements between the provincial government and the provincial law society. Some provide fairly comprehensive coverage in both civil and criminal matters, while others encompass only criminal offences. In some cases federal funds are made available for development or expansion of the programs. The purpose of all such programs is to ensure that everyone gets adequate legal representation regardless of his or her financial circumstances.

The police

The BNA Act* assigns to the provinces the responsibility for judicial administration within their

*See previous footnote

boundaries, but police forces have nevertheless been created by federal, provincial and municipal governments. Where municipal police forces exist it is their responsibility to provide general police services in that area. A municipality that has not created its own police force uses either federal or the provincial police force.

Ontario and Quebec have created provincial forces that police areas of the province not served by municipal forces. Provincial police duties include providing police and traffic control over provincial highways, assisting municipal police in the investigation of serious crimes and providing a central information service about such matters as stolen and recovered property, fingerprints and criminal records.

The federal government maintains the Royal Canadian Mounted Police (RCMP). This civil force was originally created in 1873 under the name North-West Mounted Police. One of its early duties was to maintain public order in the sparsely settled Northwest Territories, which had previously been known as Rupert's Land; today the RCMP is the sole police force in the Yukon and the Northwest Territories. Eight provinces also employ the RCMP to carry out provincial policing responsibilities within their borders.

The RCMP enforces many federal statutes, with the greatest emphasis on the Criminal Code and the Narcotics Control Act. Force members are responsible for Canada's internal security, including the protection of government property and the safekeeping of visiting dignitaries, and the force also represents Canada in the International Criminal Police Organization (Interpol), which Canada joined in 1949.

The RCMP maintains and operates the Canadian Police Services, which include: eight crime detection laboratories strategically located across Canada; an identification service ranging from a computerized fingerprint retrieval system in Ottawa to Canada-wide field identification sections: the Canadian Police Information Centre (CPIC), which responds instantaneously to nationwide police-oriented requests; and the Canadian Police College in Ottawa, which provides advanced training courses to members of Canadian police forces and to a limited number of foreign authorities.

The RCMP is under the direction of a commissioner and on February 29, 1980, had an establishment of 19 937.

The Ministry of the Solicitor General was established by Parliament in 1966 and given responsibility for the Royal Canadian Mounted Police, the Canadian Penitentiary Service and the National Parole Board, agencies that had formerly been under the Department of Justice. The Correctional Investigator, first appointed in 1973, also reports to the Solicitor General.

A prime aim of the reorganization was the co-ordination of national programs for policing, penitentiaries and parole within the Canadian criminal justice system. The ministry plays a vital role in the maintenance of law, order and the country's internal security and has responsibility for offenders sentenced to two years or more in federal penitentiaries and for all inmates released on national parole.

The development and co-ordination of ministry policy is the responsibility of a Secretariat that reports to the Deputy Solicitor General. The Secretariat has branches responsible for policy, police and security, and programs.

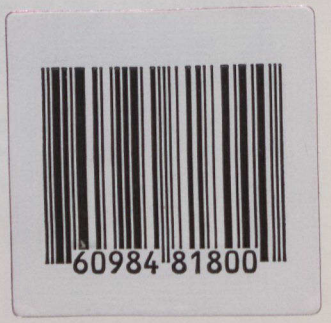
The Correctional Service of Canada
The Correctional Service of Canada operates under the Penitentiary Act and is under the jurisdiction of the Solicitor General of Canada, with headquarters in Ottawa. It is responsible for all federal penitentiaries and for the care and training of persons committed to those institutions. The Commissioner of Corrections, under the direction of the Solicitor General, is responsible for control and management of the service and for related matters.

As of March 31, 1980, the Correctional Service of Canada controlled 61 institutions: 15 maximum security, 15 medium security, 14 minimum security and 17 community correctional centres. Total inmate population was 9 477. New, smaller institutions are being designed to provide more rehabilitation facilities for inmates, with indoor and outdoor recreation, and plans to phase out old institutions are being worked out.

The National Parole Board
Parole granted by the National Parole Board is a conditional release of an inmate serving a sentence in a prison under federal law; the selection is made when the inmate is eligible by law and ready. The conditional release is designed to offer protection to the community and there are specific obligations placed on the parolee. At the same time the release provides an opportunity for the inmate to become reintegrated into society.

The board has 26 members, located at its Ottawa headquarters and in five regions across Canada; the re-

gional offices are located in Moncton, Montreal, Kingston, Saskatoon and Vancouver. Members are appointed by the Governor General in Council for a maximum of ten years. All may be reappointed. Community representatives may be appointed to participate in any decisions made about releases of inmates serving life for murder, or sentences for an indeterminate period as habitual criminals, dangerous sexual offenders, or dangerous offenders. The board has both the exclusive jurisdiction and the absolute discretion to grant, refuse or revoke parole.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