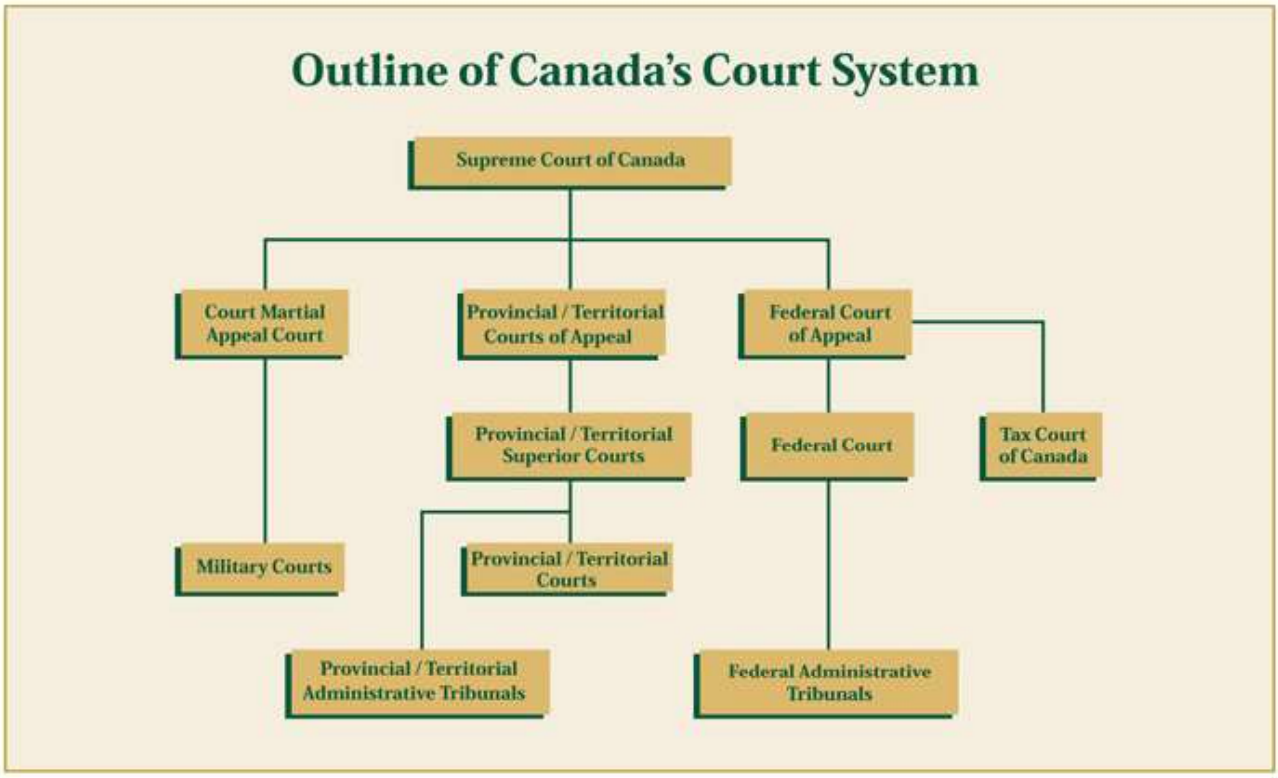
Chapter 7
Canadian Legal System



The law affects Canadians every day. There are, we know, laws against crimes such as robbery or murder. But there are also laws that apply to us when we pursue everyday activities, such as driving a car, renting an apartment, getting a job or getting married. In fact, there are laws concerning almost every aspect of our daily lives.

Many people believe that our laws are too difficult to be understood, except by lawyers. It is true that in a complex world the laws can be lengthy and technical. If a person needs help in understanding how the law applies to a specific problem, he or she can always consult a lawyer. But the fundamentals of Canadian law are based on common sense. These ideas and principals concern every Canadian and are something every Canadian should strive to understand. What is the "law"? Where does it come from? What is it for? How does it operate?

This section does not give exhaustive answers to these questions. Rather, it provides a brief outline of Canada's system of law and justice in an attempt to demystify it and stimulate through discussion. As members of society, we must decide what our laws will be. But, when creating new laws or changing old ones, it is important to understand the basic principles of our legal heritage.

A law is more than a command: it is an attempt to balance fairly the rights and obligations that people share as members of society. For example, when a law gives a person a legal right, it may also impose a legal duty upon that person, or upon another. It is the overall apportionment of rights, duties and privileges and powers, and how they are administered, that make up our legal system.

Our system of justice can function well only if people understand their legal rights. But people must also live up to their legal responsibilities, such as being willing to serve on a jury or coming forward to testify at a trial. Above all, citizens in our democratic society have a duty to learn as much as they can about the laws and about how the system of justice works. That is one of the purposes of this section.

Law

Law governs the relationship of society's individual member to each other and to society as a whole. Every human society has a legal system, because every society must attempt to resolve the basic conflict between the needs of the individual and those of the community. Law is not synonymous with justice, although it has been described as "part of Western man's dream of life governed by reason."

Canada has inherited 2 of the world's basic laws systems: common law and civil law (in Quebec). Common law, which, originated in England, is unenacted law, as opposed to statutes and ordinances. In theory it is traditional law – that which has always been and still is law, if it has not been overridden by legislation. Civil law, however, is based on ancient Roman law, which, together with laws derived from French custom and legislation, was codified by Napoleon. Most of continental Europe, Scotland, Central and South America, parts of Asia (Taiwan, for example), some of the West Indies and much of Africa now use the civil law system.

The phrase "common law" has different meanings in different contexts.

Sometimes it refers to a whole legal system (in contrast with "civil law, as opposed to statute). Sometimes it is contrasted with equity, discussed below, and sometimes with criminal law.

New France was the first region of Canada to adopt a system based on European law. In 1664 Louis XIV of France ordained that French law existing in the area surrounding Paris was to apply in the colony. This body of law was supplemented by portions of French law as it developed in France during the 18th century and by the laws and regulations developed by the colonial authorities
In 1763 the SOVEREIGNTY of the territory now identified as Canada was transferred from the civil French to English Crown, and in 1774 the QUEBEC ACT guaranteed the place of French civil law (le droit civil) in Canada alongside English or public or constitutional law and English parliamentary institutions. In 1857 the province of Canada legislated the drafting of a CIVIL CODE and a

CODE of CIVIL PROCEDURE, major compilations of Quebec private law on property and civil rights and the form and style of proceedings before Quebec courts. These works were brought into force just prior to Confederation. Today theorists describe the Quebec legal systems as mixed. The relationships between and transactions among persons subject to Quebec law are regulated by both the Civic Code and the Code of Civil Procedure. At the same time, and as a result of legislation passed in Quebec since 1763 and later incorporated into the codes, portions of English law have also found their way into Quebec private law.

The Civil Code governs the status of individual persons, the law of marriage and relationships between married persons, the relations of parents and children, the law of property and the law of contracts and responsibility for civil (non-criminal) wrongs. Today the decision of French courts and the writings of French legal commentators may be accorded respect when the provisions of French law remain similar to those in force in Quebec, but they have no binding authority in Quebec law. Law reform in Quebec draws its inspiration as much from legal developments in North America and elsewhere as it does from continental Europe.

The other 9 Provinces and the territories have adopted English common law. Each jurisdiction has a statute providing that from a certain date the law of England shall be the law of the jurisdiction unless changed by statute. Until 1949, the highest Canadian court was the JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, which sat in London and was composed largely of English judges. English common law developments were incorporated more or less automatically into Canadian common law. Since 1949, English court decisions, though not binding on Canadian courts, have been treated with great respect, though the SUPREME COURT OF CANADA has sometimes rejected English authority. Canadian decisions are quite often cited in English cases and have influenced English law. The American states (except Louisiana) also adopted English common law in the18th century and, although the links with modern English law are naturally weaker there than in Canada, American common law still retains the style of reasoning and argument found in all countries affected by English law. As Canada adopts more legislation based on American models the influence of American law will increase and is likely to be particularly strong in the interpretation of the CANADIAN CHARTER OF RIGHTS AND FREEDOMS incorporated into the Canadian CONSTITUTION, for part of the Charter's origins can be traced to the American Bill of Rights.

Courts of Law

The courts apply the laws of Canada. They resolve disputes between individuals, between individuals and the state, between organizations, and between governments. The courts apply and interpret all laws, whether passed by the federal Parliament, a provincial legislature, or a municipality.
Responsibility for establishing and operating the courts is divided.

The provinces set up and administer all courts in the provinces. The federal government appoints the judges of the superior and county or district courts. The Lower, or "inferior," provincial courts are staffed by provincial appointees. The exceptions to this division are the federal courts, which are both administered and staffed by the federal government.

Supreme Court of Canada

The Supreme Court of Canada has been the highest court for all legal issues of federal and provincial jurisdiction since 1949, when appeals to the JUDICIAL COMMITTEE OF THE PRIVY COUNCIL of the UK were abolished. In 1875, Parliament passed a statute of the CONSTITUTION ACT, 1870, (s101), establishing a General Court of Appeal for Canada and an Exchequer Court (now the FEDERAL COURT OF CANADA). The creation of the Supreme Court has caused sharp debate among the FATHERS OF CONFEDERATION.

In 1865, John A. MACDONALD argued that the Constitution did not anticipate the creation of such a court, and attempts by his Conservative government in 1867 and 1870 to set up a general court of appeal suffered overwhelming defeat. Many Liberal and Conservative MPs opposed the project, fearing the possible consequences for provincial rights. By establishing a supreme court, parliament would be providing itself with a constitutional interpreter, and some MPs questioned the impartiality of such an arbiter because the federal government of Alexander MACKENZIE finally persuaded Parliament to vote for a supreme court, arguing that it was needed to standardize Canadian law and provide constitutional interpretations on issues that affect the evolution of the new federation.

Testifying in Court

A person may be called to give evidence in a civil or criminal trial because he or she has information that either party in the case believes to be useful. For example, someone might have witnessed an offence, know something that is important to the case, or possess a key document. A person may also be called as an "expert witness". An expert witness is a person whose knowledge about a particular subject can help the court obtain answers to technical questions.

Usually, persons come forward voluntarily when they have information that they believe is related to the case. An individual may also be summoned by "subpoena" to give evidence in court. A subpoenaed must comply with the order or face a penalty.

Witnesses' testimony is taken under oath or by affirmation. Witnesses are required to answer all questions they are asked, unless the judge decides that a question need not be answered for some reason: For example, because it is irrelevant. Testifying in court is essential to making Canada's justice system work as it should.

Knowing the Law

Individuals do not have to be experts in the law: that is the responsibility of lawyers. However, in our system of law ignorance of the law is no defence. This means that persons charged with offences can not be excused simply by claiming that they did not know they were breaking the law, although the court will consider honest mistakes of fact. Further, because our laws are publicly debated before being passed in Parliament of a provincial legislature, the public is expected to know what is permitted and what is not.
Knowing the law means that citizens should take reasonable steps to be sure they are acting legally. Information is available from federal and provincial government offices, public libraries, and the police. If, after consulting these sources of information, a person is still uncertain about the law, then a lawyer should be consulted.

A Changing Society

Our legal system provides a unique and valuable framework for Canadian society. It is based on the rule of law, on freedom under the law, on democratic principles and respect for others. Our tradition of law and justice is an important heritage for every Canadian. As society changes, we must make sure that this tradition will meet the challenges of the future.

We live in a world where change is taken for granted. Every day, we hear about new social issues, new medical developments, and new types of technology. Twenty years ago, the moral and legal questions that concern us today could scarcely be imagined. For example, we are becoming more and more aware of the effects of modern society on our environment and of the immense threat of pollution and our wasteful habits. People are changing their attitudes towards many things and towards society itself.

Evidence Handling

As discussed in the last chapter, security guards preserve crime scenes. However, security guards will also collect evidence. This handling of evidence is not like that you would see on television. Remember that not all evidence is physical evidence, some can be in the form of written documents. Security guards protect evidence that may be used in court. There are 6 core steps for containing evidence:

Collect – this is the initial stage and perhaps the most important one of all. The security guard may have to collect or secure a piece of evidence. Should this happen the security guard must ensure that it is noted in your note book. Make sure that you follow the rule of wearing gloves when having to touch a piece of evidence.

Secure – this is the next step in the process and perhaps, if not done correctly puts the security guard at risk. The security guard must secure the piece of evidence until the authorities assume responsibility for it. Securing the item could include removing it from the scene completely or covering it up with a box. Think of a bloody knife: if people do not see it, they will not be inclined to disturb it.

Preserve – preserving a piece of evidence is not as easy as it sounds. A security guard needs to remember the golden rule of ACCESS CONTROL and limit the contact with said piece of evidence. Preserving the integrity of the scene is important so that the authorities can do their jobs effectively.

Identify – a security guard must be able to identify what is to be collected, secured, and preserved. Once identified the security guard must ensure that they perform the tasks previously discussed. The security guard must also make notes in their note book to help them identify what happened during this incident for reference at a later date.

Continuity – the definition of continuity is; the state of being continuous, uninterrupted succession. When it comes to collecting evidence it is important that the security guard maintain continuity, especially when it comes to the handling and transfer of evidence. There should not be a brake in custody from the security guard to the appropriate authorities.

Log – a good practice to get into, this is where a record is kept in relation to evidence collected at a scene. Although there is various ways to do this the most common ways are to note items in sequence in your note book or to actually have a specific form detailing important information. This would include items such as; time, date, item, and who collected it.

Collecting Evidence

Being able to identify evidence, document, collect and package evidence correctly from a crime scene is a difficult task. Remember it is always best to leave the collection of evidence to the professionals, if possible. The following steps cover the basics if in the event you have no choice but to collect the evidence:

- Identify what evidence is relevant to your investigation. Once it has been identified, record all the details before actually collecting. Location, temperature, preliminary identification, colours, etc. must be recorded in your note book.
- Photograph the evidence and use a scale (small ruler to assist with dimensions).

- Secure the evidence in a plastic bag and seal the bag with evidence tape and fill out an evidence tag. To be admissible in a court of law, physical evidence must be properly documented and be identified by every person that has handled it. This 'chain of custody' begins with the person who first collected the physical evidence.
- Preservation of Evidence is a must to ensure that the evidence is not cross contaminated. Ensure that each piece of evidence is sealed in its own evidence bag. Always sign across the evidence tape with initials and date of collection.
- Identify the item fully on the evidence tag and attach it to the bag. A property receipt is attached to the evidence package and must be signed over to the evidence custodian.
- Every time the evidence is handled, the property receipt needs to be amended and the property log needs to be updated.

Types of Evidence

1. REAL – a physical object, a gun, a piece of stolen property.
2. DOCUMETARY- a contract, a bad cheque.
3. TESTIMONY- the oral statement of a witness while under oath.

BEST EVIDENCE
The original document, the original object, etc. If the best evidence is not available due to its destruction, loss or death of a witness, then second best maybe accepted by the court.

SECOND BEST EVIDENCE
A sworn affidavit, a certified true copy, or a photocopy.

HEARSAY EVIDENCE
Evidence which has not come first hand to the witness and is generally NOT ADMISSIBLE. I.e., a conversation which was repeated to, but not over-heard by the witness.

DIRECT EVIDENCE
Evidence which proves the facts in issue directly.

CIRCUMSTANTIAL EVIDENCE
Evidence which proves the facts in the issue indirectly. I.e., a man found holding a knife over a body of a person who has been stabbed. This does not PROVE the man stabbed the victim, but it may be inferred, and CIRCUMSTANTIAL and admissible in court.

It is common misconception that circumstantial evidence alone cannot convict a person. If the evidence is admissible and the case is strong enough, then circumstantial evidence alone WILL be sufficient to convict a person.

Normally, circumstantial evidence is used to back up or support a factual piece of evidence. I.e. a person is the owner of, and was seen in possession of, a gun proved to have been used to kill the victim. The fact is that the gun was used to kill the victim. The circumstantial evidence is that it is owned and was seen in possession of the person.

CONFESSIONS

Confessions are the only exceptions to Hearsay Evidence. A police officer may introduce and read into evidence a voluntary confession given to him/her as long as he or she proves that the accused was made aware of:

1. His/her right NOT to make the statement.
2. That the statement might be used against him/her.
3. His/her right to have counsel present.

Exceptions are Dying Declaration and Spontaneous Utterance.

PRIVATE INDIVIDUALS DO NOT HAVE THESE CONSTRAINTS and as long as the confession was voluntary, may give it in evidence.

The Exclusionary Rule

The Canadian courts have consistently held that the Crown may introduce physical evidence of the commission of an offence even if such evidence has been obtained by illegal means.

In other words, police may conduct totally search and seize items which may subsequently be introduced as evidence at a person's trial.

The Supreme Court of Canada has in effect, expressed the view that, if such items tend to establish the defendant's guilt, then the interest of society require that they may be introduced in evidence despite their "polluted origin" in police misconduct: the infringement of a defendant's human rights bears no logical relationship to his/her innocence or guilt.

Court Material

All Security Guards who are requested to attend court to testify and give evidence must ensure they are prepared, with all the relevant materials pertaining to the case at hand.

Some of the Common Materials required are:

1. **Note Book**
2. **Any Reports**
3. **Barr Notices or Issuances**
4. **Any other relevant material (Photo's or Injury reports)**

Once you are aware that your attendance is requested, you are to initiate the collection process of all documents used relating to the case.

Check with the account where the incident occurred. Tell them of your request for the material to attend court and arrange a time to retrieve the material.

This should be done well in advance of the court date, in case any material is missing.

Use of Note Books, Reports, Statements, and Issuances

A security guard may use his/her note book, reports or any issuances to refresh his/her memory. However, he/she should be aware that once a document is used in this way, it will be subject to perusal by the Court, and by the Defense Counsel.

What normally happens is that the Crown will ask if you if you made notes at the time of the event and then will ask the court if you will be permitted to refer to them.

The court may give the go ahead, or may ask the guard such questions as “when were the notes made”, “are they verbatim or just for reference”, and “is it standard practice for them to be made”.

The court may also ask to see the book, and base its decision on the appearance, and the answers to the above questions.

Although the book will not be entered into evidence, it is subject to certain rules as they pertain to evidence, such as the rule of Hearsay.

Defense Counsel is generally not permitted to look at entries before or after the occurrence in question. However, many will try, and then use the information to discredit the notes made at the time of the occurrence. For example, if the information for the occurrence is very neat, and detailed, but other entries are sloppy and brief, Defense may infer that the guard was coached on what to put down. Also, if the information has been altered (except as explained in your basic training, crossed out with one line and initialed), written in different kinds of pen, mixed between printing and writing, or entered in such a way as to cast doubt on accuracy, timing or validity, then Defense can weaken the strength of evidence.

If kept properly, the note book can be a valuable tool, and can add weight to the evidence being given. Names made in the memo book are more likely to carry weight than the memory of the accused that probably did not make notes. **IT IS ESSENTIAL THAT IF A MEMO BOOK IS TO BE USED THAT THE INFORMATION BE NEAT, LEGIBLE, ACCURATE AND CONSISTENT.**

The same holds true for REPORTS and ISSUANCE notices.

Remember, DEFENCE COUNSEL'S JOB IS TO DISCREDIT WITNESSES.

Addressing the Court

In most jurisdictions the Judge is referred to as YOUR HONOUR. Whenever you are uncertain, ask the Crown, or listen to how court officials address him/her.

At all times when you asked a question directly by the judge, address him/her as YOUR HONOUR.

In the Supreme Court refer to the judge as 'My Lord' or 'My Lady'.
When replying to a question by the Crown or Defence, refer to them as SIR or MADAM.

- Do not use sarcasm
- Do not become abusive
- Do not use condescending tone.

At all times use a level even tone and stick to the facts. If you are confused, stop and think. If you do not understand the question ask for a repetition. THE COURT WILL RESPECT YOUR ATTEMPT TO BE CLEAR.

As an Accused Person

Occasionally the Security Guard may find them on the other end of the system, having been charged, or counter charged.

After the charge is read out you will be asked to plead guilty or not guilty.

The trial will then continue, and at some time you may be asked to take the stand. Remember, **THE SAME RULES APPLY**.

Preparing to Testify

Collect relevant information:

1. **Original Occurrence Report**
2. **Note Book**
3. **Statement given to Police**
4. **Barr Book-copy of T.P.I.**
5. **Supplementary or follow up reports**
6. **Photographs/sketches**
7. **Statements from witnesses taken by Security**
8. **Letter/memos relating to the incident.**

Personal Appearance

BUSINESS ATTIRE IS STRONGLY RECOMMENDED WHEN ATTENDING COURT. THE SUSPECT WILL NOT RECOGNIZE YOU IN BUSINESS ATTIRE. NEVER ATTEND COURT IN CASUAL CLOTHES OR JEANS.

Before Appearing in Court

- Review the documents so you are fully familiar with them.
- Segregate section of memo book dealing with the case.
- Arrive at least 20 minutes before trial time.
- Do not discuss case with anyone except Crown (or Defense lawyer if you are the accused). NO ONE ELSE, including fellow guards.
- Do not read notes in sight of the courtroom, or where the accused, defense lawyer or others connected with the case may see you.

Conduct inside the Courtroom

- REMEMBER, YOUR ROLE IS TO SUPPLY INFORMATION IN A PROFESSIONAL AND IMPERSONAL MANNER.
- Maintain a mature and serious manner.
- When being sworn, hold the bible firmly (if you are not a Christian inform the Crown beforehand) and remember which is your right hand. Nothing discredits a witness faster than being nervous on the stand and forgetting which is their right or left hand.
- Tell the story in your own words using simple words and phrases.
- Read from your memo book.
- Follow the logical and chronological order.
- Use the normal time *NOT THE* 24 hour clock time.
- Speak clearly and deliberately, the Judge may be writing down what you say and may ask you to repeat-if she or he does, turn to him/her and address them directly.
- Give only the facts you know to be true, remember hearsay is not admissible.
- Do not exaggerate, brag or use inflammatory language.
- Refer to the accused by their last name as *MR/MS SMITH*
- Answer all questions put to you unless stopped by the judge, or the Crown, even if they are favorable to the accused.
- If stopped, stay alert and interested, do not volunteer you opinion or information.

Responding to Questions

- Wait until entire question is asked.
- Consider the question carefully before answering.

- Do not answer a question you don't understand.
- Do not lose contact with the person asking the question.
- Do not volunteer information, just give the information requested.
- If you are in doubt as to whether to answer the question posed by the defence, pause and look at the Crown, for guidance.
- Do not appear to be evasive.
- The Defense may ask you if you have discussed the case with anyone, and will attempt to make it seem improper. **You have the right to discuss the case with, the Crown, your Client, your Employer, or the Police.**
- Don't get confused with "rapid fire" questions. Take your time.
- Do not answer multiple questions.
- Maintain eye contact with your questioner – if they look down continue to look at them.
- If the Judge asks you a question, look directly at him/her – turn your body so you are square on the judge.
- You are giving your evidence, refer to yourself as "I"
- When mentioning fellow guards, always use name in full i.e. *John, Douglas*, etc.
- When referring to witnesses or others in the case refer to them as Mr./Mrs./Miss/MS and last name. This also goes for the accused.

PERJURY

Section 131 - **Perjury**

'Everyone commits perjury who with intent to mislead, makes before a person who is authorized by law to permit it to be made before him, a false statement under oath of solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.'

Section 132 - **Punishment**

Everyone who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Municipal By-Laws

Security guards are required to work within the municipal by-law of their specific locations. They need to be familiar with common by-laws they will encounter in their position and where they can locate this information.

Definitions:

By-Law - a law of the municipality passed by the municipal council.

Municipality - refers to an urban municipality, including a town, village, and resort village, a rural municipality, a restructured municipality, a northern municipality or a city.

Under the Canadian Constitution, the provinces have the authority to create municipalities and to delegate to them certain law-making powers. Laws which municipalities are permitted to pass are called by-laws.

Municipalities may pass by-laws within the authority provided through legislation. This authority may be specific or general depending on whether the legislation is permissive or prescriptive. *The Municipalities Act* and *The Cities Act* provide municipalities with general powers to pass by-laws within the areas of jurisdiction.

Where provisions in a local by-law conflicts with a Provincial Act, the provincial statutory provision normally takes precedence.

Information on city by-laws can be obtained via the internet or at your jurisdictions city/town hall.

A good practice for a security guard would be to be familiar with the municipal by-laws in the area that they are working in. The security guard can also refer to the building post/standing orders to see what by-laws affect the building they protect.