

1. To identify the three components of the Quebec legal system:

-Structure

-Law

-Administration & Enforcement

2. STRUCTURE- To explain why “sovereignty” is the first step in establishing how laws come into existence:

- Firstly, every independent nation is sovereign; have supreme power/authority
- People inhabiting a country have within their hands the control of the SUPREME and ABSOLUTE power to govern themselves in any way that they chose (i.e. They can make laws, enforce them, go to war, stay at peace, impose/collect taxes, enter treaties with others, etc.)
 - *Every nation choses how to deal with sovereignty*

→ If citizens chose to keep the power in their own hands, then EACH has a voice. They would need to meet regularly to make decisions on how to govern. (i.e. Athens in 500 B.C period)

→ If structure becomes too large, then a representative is selected by each group of people. These representatives have meetings and voice out their people’s thoughts. This group of representatives makes the laws that would apply to everyone in the society.

Two possibilities:

1) If these chosen representatives FAIL their duty to properly represent their people’s needs or abuse their authority for personal gains, the inhabitants may replace them with accepted means like an ELECTION. Revolution and violence might also be used by the inhabitants to gain back their sovereign authority.

2) If these represent act properly and cater to their people’s needs, their fellow citizens may re-elect them. They will continue to govern for the benefit of everyone and this may lead to national growth, prosperity and for the representatives to continue leading them for an extended period.

There are limits to sovereignty such as physical limits (i.e. Borders of the nation).

Meaning Canada cannot make decisions for Switzerland, since this would interfere with the Swiss sovereignty.

1982: Constitution Act: Canada is a sovereign nation; it decides its gvt; Gvt structure is Fed. & Prov.

-Authority to Enact Law:

- Constitution Act (1982) – Canada has been a fully sovereign nation, right to govern and make it’s own laws
- The British North America (BNA) Act was the basis of the Constitution Act, and they decided to build upon that

The Constitution sets up the structure of our government: → Federal → Provincial

Each of these two levels are allowed the right to pass laws for the specific fields that are reserved for them.

→ Federal: The right to pass laws for the “Peace, Order, and Good Gov’t of Canada”. These laws apply to all Canadian Citizens everywhere in the country, even to residents and visitors who are not citizens.

* Federal legislatures are not allowed to pass laws for Provincial legislatures matters

→ Provincial: The right to pass laws for the specific fields reserved exclusively for them. In Canada, there are ten provincial lawmaking bodies.

- Remember that both levels are given the right BY OUR CONSTITUTION to pass laws on subjects within their authority

-Canadian Legislative Process:

- How do these governments pass a law?

Federal Laws – Made by Parliament.

Three elements to the federal Parliament:

1) House of Commons (elected members) 2) Senate (appointed members) 3) Queen

When federal government wants to pass a law on a particular subject:

→ The proposed law is introduced by a Minister of the government – FIRST READING

If members don’t reject it, it’s printed like a booklet and given to the members of the House of Commons. It’s called a Bill and has a number (i.e. Bill 96).

It is brought up for discussion in the House of Commons and the Minister explains why the gov’t wants it to become a law of Canada

→ Opposition members will give their response as they debate the BILL – SECOND READING

→ Then the Bill goes to a Committee to get looked at in more details. The Committee gives it back to the House of Commons with it's recommendations for any changes – THIRD READING

Members have one last chance to vote on it and make changes to the Bill

If the Bill passes it's THIRD READING → Goes to the Senate. Same procedure and another three readings.

→ Once the Bill passes three readings at House of Common and the Senate, it's ready for – ROYAL ASSENT

- This means it is ready to be signed by the Queen or, by custom, her personal representative. The Queen rarely signs them herself.

After this the Bill is no longer a Bill, but becomes A LAW with a proper name. (i.e. The Bank Act; The Income Tax Act; The Criminal Code, etc)

-The Quebec Legislative Process:

Provincial Laws – Made by the legislature (Province)

In Quebec (Province) there are two elements to the lawmaking mechanism:

1) National Assembly 2) Queen

→ When the Provincial government wants to pass a law, the process is similar to ^. A Bill gets introduced to the National Assembly, gets read three times, then signed by the Queen or, by custom, her personal representative in the PROVINCE.

After this the Bill is no longer a Bill, but becomes A LAW.

3. To understand the function of the Governor General and Lieutenant Governors:

-Representatives of the Crown & their Roles in Lawmaking:

The Queen: The Canadian Head of the State

The Lieutenant Governor: The Queen’s representative in each province of Canada, and exercises the powers of the Queen granted under the constitution, with respect to the province

The Governor General: Appointed by the Queen with the recommendation of the Canadian Government, is the representative of the Crown in Canada. He is authorized to “exercise, on the advice of the Canadian ministers, all her Majesty’s powers, and authorities in respect of Canada.” He is Canada’s host to visiting heads of state and other countries, and represents Canada abroad.

Responsibilities

→ He must ensure that there’s always a Prime Minister (if this seat is vacant bc of death or resignation, he must fill it) and a government (if it resigns due to a defeat in the House of Commons)

→ Can summon Parliament (call members to opening session), prorogues Parliament (adjourns sessions) and dissolves the existing Parliament (terminates pending new election)

→ The Governor General can give assent to those bills passed by both houses of parliament, which then become Acts of Parliament and have force of law

Branches of Law:

→ Parliament and Provincial legislatures use the lawmaking bodies we’ve talked about above to adopt various laws covering:

Labour, Marriage and Divorce, Packaging, Railway, Bankruptcy, Aviation, Environment, Communications, Copyrights, Highways, Patents, Food and Drugs, Customs and Duties, Contracts, Education, Companies, income Tax, Competition

[Other areas of Civil Law are property, ownership, prescription, civil responsibility, etc, all outlined under the Civil Code.]

4. LAW- To see how statutes, which are the statements of the law, are the logical outcome of a constitution & To identify and understand the sources of law in our legal system:

The law element of the Quebec legal system, which we defined before as the rules of behaviour imposed or accepted in the society, has **6 sources (a to f)**:

a. The Canadian Constitution Cornerstone of Confederation and Canadian Society:

- The Constitution Act (1982) tells us in section 52 that “the Constitution of Canada is the supreme law of Canada, and that is inconsistent with the provisions (rules) of the Constitution is, to the extent of inconsistency, of no force or effect.”

→ For info on who can pass a law in Canada, we look at the Constitution Act (1867), sections 91 and 92

- The only source of authority to make laws in Canada is the Constitution. The Citizens of Canada have adopted this constitution as the framework by which they wish to be governed.

b. Federal & Provincial Statute Law:

→ The first source of law in legal structure: The Constitution

→ The second source: contained in the laws made by the federal and provincial governments

- Every year, the government passes many acts or statutes (laws) and at the end of the year, these are all printed in one volume called “Statutes of Canada, 20XX” or “Statutes of Quebec, 20XX)
- From time to time, laws can be revised, changed, or even repealed (cancelled). Those working in a legal profession must read the original laws and update their copies to include the changes.
- To make the latest version of laws accessible, the governments consolidate the statutes every fifteen years or so – reprint them in a book called *The Revised Statutes of Canada* or *The Revised Statutes of Quebec* with the year of revision. Contains the laws currently in force modified to include the changes made during the years since the previous revision
- A “Code” (i.e. Civil Code of Quebec) is also a “Statute”, since it’s enacted (passed) in the same way. The distinction is based in the content and interpretation.
- **Statute**: Deals with one subject only (i.e. taxation, bankruptcy, insurance)
- **Code**: Deals with many subjects in a broad area (i.e. The Civil Code has provisions (rules) concerning marriage, domicile, contracts, minors, prescription, birth certificates, etc. – but all these are part of the same field that we consider “civil” or “private” law)

* Criminal Code deals with murder, treason, impaired driving, arson *

- A statute is interpreted more strictly than a code – unclear bit to be found by looking at the rest of the statute to see if same/similar words are applied in other paragraphs. The interpretation of the code can be made with the aid of outside sources such as previous laws or decisions.

Example of Quebec Statute: The Quebec Charter of Human Rights and Freedoms

c. Case Law – Jurisprudence:

→ The third source of law is found in the judgements of the courts rendered in past cases

- Jurisprudence: the judgements, collectively, form an ever-growing body of case law

- For a stable legal system, uniformity is important, and it's essential that the law always be applied in the same way.
- When a difference of opinion arises between two individual, they take the matter to court. There, a judge renders a decision and the parties accept and comply with it. Two years later, if the same issue arises between two other individuals, the judge renders the same solution in their case.

The judgement in the previous case would be referred to as an example of how the law is applied

- **To obtain uniformity in the application of the law, the courts will consider previous decisions quite carefully and follow through with them whenever it's necessary.**

HOWEVER, let's say that the legislators have passed a statute that's interrupting with the “case law”, then the statute is the one we accept – it has overriding authority over the old one.

* Remember courts in Quebec cannot make the law, they simply need to apply and interpret the laws made by the legislatures

Once a court makes a decision (in the common laws system), this decision stands and has the force of law unless it is changed by a new statute.

Doctrine of stare decisis: meaning “Let the decision stand” and courts are bound to follow previous decisions, wherever they apply.

* Remember courts in Quebec don't have to follow previous decisions/past judgements, although the judge definitely considers them carefully to maintain uniformity of law.

d. Doctrine:

Written material forms/commentary on the law made by highly respected lawyers and judges

- These writings can better help us understand the nature and underlying principles of law.
- Some lawyers refer to these doctrines (articles and books) when pleading a case in court, The more often these are accepted in court as being the proper explanation for something, the more respected the person who wrote it will be.

e. Custom or Tradition:

→ A fifth source to consider are the customs/traditions or usage commonly accepted in a particular community or industry

- As long as there no conflict of statute law with such custom, if something is being done for so long in a particular way, the court may declare that such a custom has hardened into a law.
 - This can be replaced any time by a new law which provides for a different rule to be followed

(i.e. The bull breeder example in the book. Judge declared the buyer should get his money back since the bull couldn't perform the service and sued the seller for damage. There was no law, but custom in the agricultural community that if bull doesn't perform, the purchase is to be refunded.)

f. Administrative Regulations:

The body of regulations brought into force under the authority of various statutes.

The government sets up a special committee, board, or commission to take charge of the application of that particular law. These administrative boards are given the authority to pass regulations which are the detailed rules setting out precisely how the law is to be respected, enforced, or applied.

Examples:

Federal: Canadian Wheat board, Immigration Appeal Board, Canada Labour Relations Board, Human Rights Commission

Provincial: Regie du lodgement, Commission des droits de la personne, Regie des alcools des courses et des jeux, CSST

5. ADMINISTRATION & ENFORCEMENT- To identify the role of the courts in the explanation, interpretation, and application of statute law:

- Once the laws have been passed, it's up to the courts to interpret and apply them.
- Confidence in judges, that they will apply the law with uniformity due to their experience and understanding
- A system of courts made up of several levels is there because judges are humans as well, and have different opinions about different matters

In this section we examine 1) The court system 2) The legal profession

COURT SYSTEM:

People have different opinions on how an agreement should be worked out and because of this, the legal system entitles these people to present their differences to court and have a judge render a decision to settle the matter

- Depending on the nature of the case (let's say money involved), the procedural rules may entitle people to seek a decision or the reversal of a court decision at various forums (levels)
- Constitution Act (1867) – Section 92(14) says that the province has exclusive rights with respect to, “The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and criminal jurisdiction...”
- In *the Courts of Justice Act*, various courts have authority in Quebec; The Courts of Quebec, in civil, criminal, and mixed matters are:
 - The Court of Appeal
 - The Superior Court
 - The Court of Quebec
 - The Municipal Courts

→ Different courts have different levels of competencies, each has a specific jurisdiction over the administration and enforcement of laws.

This means:

- 1) The nature, or type of cases brought before that court (i.e. civil, criminal, bankruptcy, divorce) or MAXIMUM AMOUNT OF MONEY (the financial jurisdiction)
- 2) The geographic area of the province where the court may hold its sittings

(Draw the Diagram)

The Municipal Court

→ Each city (municipality) has the right to set up a Municipal Court. (Over 80 courts in Quebec)

- Municipal court is usually part-time – one/two afternoons or evenings each week, because usually not enough cases to occupy the courtroom on a full-time basis – except for cities of Laval, Montreal and Quebec cities
- Judges are appointed by the Minister of Justice of Quebec to exercise the role of a municipal judge, they are people from the community
- Montreal, Laval, Quebec City – maintain full-time daily schedules with several courtrooms in session at the same time. Judges are appointed to permanent positions

Responsibility:

The Municipal Court has jurisdiction to hear matters related to violation of municipal by-laws (i.e. traffic, health, noise, municipal taxes) and minor criminal matters (under Part XXVII of the Criminal Code of Canada)

→ Appeals for criminal offences are heard by the Superior Court

MUNICIPAL COURT DOES NOT HEAR CIVIL CASES IN WHICH SOMEONE IS SUEING SOMEONE ELSE FOR MONEY OWED.

The Court of Quebec

→ The Court of Quebec is also known as the Court of First Instance, since some cases get heard the first time here

- Cases are heard by one judge – appointed by the provincial government for life
- Cases that fall under the jurisdiction of the Court of Quebec are brought to this Court
- The Court of Quebec has three divisions
 - The Civil Division – includes the Small Claims Court
 - The Youth Division
 - The Criminal and Penal Division

Types of cases heard:

1) Money owed between 15000 – 85000 (except for alimentary pension or alimony matters)

2) Cancel lease when money for rent/damages is less than 85000

3) Recovering unpaid municipal/school taxes

4) Adoption matters application

→ Judgement from the Court of Quebec can be appealed to the Court of Appeal ONLY if monetary value is more than 60000\$ or else decision from the Court of Quebec cannot be appealed and their decision is FINAL

However... the only way it can be appealed (if it's under 60000) is

→ The case involves a question of law, a question of principle or a new issue that contradicts the judicial precedence

→ For Youth Matters: Court has exclusive jurisdiction regarding adoption

→ It has exclusive jurisdiction to hear appeals from the Quebec Administrative Tribunal and any other administrative tribunals that allows appeals

The Small Claims Court – Division of the Court of Quebec

→ Created to relieve the pressure off higher courts in 1972

→ Inquisitive Method: One judge hears the parties and asks them about FACTS before making a decision

Objectif: to be able to move faster and less expensive settlements of minor court cases

Conditions:

The claim no more than 15000\$

2) The claim must come from an accident that resulted damage OR from a contract

3) The Debtor does not have to live in Quebec

4) The debt must be owned personally or directly to the creditor

5) The association suing cannot have more than 10 employees working for it in the previous year

6) Lawyers cannot represent people in this court, except if given permission based on how complex the case is

- Debtor/Creditor should come to the court in person. If not possible, send a MANDATE (authority to act for another person) without charge
- If a business (corporation) sues or is sued, it must be represented by a director or officer or by a person who is a full-time employee of the business, and in this case, the employee may be a lawyer.
- Creditor can reduce the amount of money they are owed to bring this case to court (15200 to 15000) but they lose the right to claim that additional amount if they win the case
- Judge tries for reconciliation between parties, if that doesn't work out then = DECISION is rendered
- NO APPEAL from the judgements of the Small Claims Court. Once judgement made, money must be paid within 10 days. If not Creditor can seize Debtor's salary, property (movables only) with the right from the Court

How to file a motion?

→ Petitioner must deposit a sum for costs. Costs to be indexed every year on January 1st. Verify the charges in effect at the time of when trying to make use of the Small Claims Court

Based on the nature of the case and the amount and if the Creditor/Debtor is a person (Natural Person) or corporation (Legal Person) they must deposit:

Creditor:

Claim Amount	Natural Person	Legal Person
- 5000\$	100\$	150\$
5000.1\$ - 10000\$	185\$	250\$
10000.1\$ - 15000\$	200\$	300\$

Debtor – who’s intends to contest an action:

Claim Amount	Natural Person	Legal Person
- 5000\$	100\$	150\$
5000.1\$ - 10000\$	185\$	250\$
10000.1\$ - 15000\$	200\$	300\$

The Superior Court

- Original Court of general jurisdiction, federal gov’t
- Court of first instances
- Cases heard by one judge alone. Hears every case brought to it for the first time, unless stated by law that such a case should be brought to another court before (i.e. money is under 85000\$, adoption matter, or a labour dispute)
- Possesses superintending and reforming powers over all other courts in the province (except for the Court of Appeal and corporations)
- If a court exceeds it’s jurisdiction (making a decision beyond it’s level of power) then a request can be made to the Superior Court to remedy the situation
- For corporations’ decisions, generally look at if the firm had the right to make the decision that is contested and check if management breached its duty of care. If firm didn’t have the right to make the decision, then the Court can modify/cancel it
- Most Superior Court decisions appealed automatically or with permission from the Court of Appeal
- * injunction: ordering someone to do something (you can force your neighbor to take down your fence if they built it on your land)

The Court of Appeal

- General Court of Appeal – an appeal is brought here from the Superior Court (or in some special cases from the Court of Quebec)

→ Appellate Jurisdiction: the right to hear appeals over all cases where an appeal is allowed by law (except those appeal where it’s stated that they must be heard from a different body)

→ More than one judge (usually seven judges, but always an odd number, and majority rules decision) and those who disagree with the majorities decision write a “dissenting opinion”

→ Whole case in this court is not reargued. Details from lower court are revised and reviewed by the judges before the hearing and lawyers can only argue the grounds for the appeal.

➤ **Ground for appeal can only be based on the ERROR OF LAW or ERROR OF FACT**

The Court of Appeal rules in 3 ways:

- 1) They approve lower court decision
- 2) They can overrule and substitute the decision with their own
- 3) They send it back to that court for new appeal so the case be heard once again

The Supreme Court

→ Highest court in Canada (and only Supreme one) and the final court that appeals (from all provinces) can go to in all matters – Civil and Criminal

→ Nine judges appointed by federal government. Chosen from all across Canada, but three always from Quebec.

→ Similar to Court of Appeal, rules in three ways, and the decision of majority of judges is accepted.

→ Some matters are appealed “of right”, but otherwise those wishing to bring their matter will have to get permission to bring their case to this court by the court itself. A panel of judges will look at the request and decide to “leave to appeal” or grant it

The Federal Court of Canada

→ Special Court dealing with matters of federal government: administrative, disagreements between citizens and federal government

→ First instances court as well and holds an appeal section (hears appeals from other federal courts like the Tax Court and citizenship matters)

Administrative Tribunals (Boards)

→ Federal and Government laws bring the existence of these bodies

→ Power to enact administrative regulations – these regulations have the force of law and allowed to impose rules as how to a particular law should be enforced

→ Basically, for citizens. These regulations tell citizens how to enter into contracts or arrange their finances or businesses accordingly

→ Citizens who disagree with these boards can appeal through a review board or the Quebec Administrative tribunals

→ Not all decisions can be challenged. Often times the final decision made by these boards is the FINAL decisions

Example: Canada Employment Insurance Commission or Commission de la santé et de la sécurité du travail (CSST)

6. To understand the legal profession:

THE LEGAL PROFESSION:

Judges

→ From superior court, supreme court Canada, court of appeal, federal court, these judges are appointed and paid from the federal gov't. Lower court judges are paid by provincial.

To be a judge, you must be a lawyer of minimum of 10 years.

- Once appointed, you must quit all private practice and terminate any business relationships

→ Adversarial system vs inquisitorial system

Inquisitorial: In France system, judges operate in inquisitorial system. The judges start the inquiry – the asking of questions. (who built the fence, who’s property is it on?) Lawyers simply frame their clients and answer the questions.

Adversarial: Our approach is this one. Parties (represented by lawyers) are opponents and adversaries. They must present facts and legal arguments. Judge decides which party shows the stronger case, based on the evidence.

→ Small Claims Court (a division of Court of Quebec) = NO LAWYERS PERMITTED

Lawyers

→ Give legal advice, assists with setting up new businesses, prepares contract, exclusive right to represent clients, plead cases in courts.

ONLY LAWYER: Make a claim for payment on behalf of another with the threat of legal proceedings as a consequence of non-payment

Notaries

→ Gives legal advice on personal and business matters, exclusive right to prepare certain contracts like real estate transactions (mortgage), marriage contracts, notarial wills, authentic documents,

CANNOT: Appear in court to argue a case on behalf of client

In England...legal profession is divided in two: Solicitor and barristers

Solicitor: Deals with public, provides legal advice on all matters.

Barrister: Argues cases in court. Specialities in court procedures and litigation

...A person cannot be both Solicitor and Barrister

In France...legal profession is more specialized

Avocat (English Barrister): Lawyer pleads cases before courts (civil and criminal)

Avoue (English Solicitor): Officer of court, deals directly with clients and who prepares all the written documents and pleadings.

Agrees: Lawyers who practice in commercial court

Notaire: Specialist and only member who can handle real estate transactions, marriage contracts and liquidate successions.

...Person cannot be both avocat and a notaire

In Canada...no legal division in legal profession. Only professions Attorney and Lawyer. All lawyers are trained to carry out any legal function, to handle matters related to all types of contract (can plead both civil, criminal cases).

In Quebec, Lawyers and Notaries get same legal trainings, before entering their chosen profession.

The Notarial System

→ Notaire: first legal profession practised in Canada or New France

→ Right to separate existence of the notarial system was assured in April 30, 1975

Notary: Expert on drafting legal documents, and has authority to make the *Authentic Acts* (actes authentiques). These documents are drawn up by Notary, and signed by parties in the presence of the Notary. Parties receive authentic copies of these documents, signed by notary. But Notary is the true owner of the original copy.

→ Value of authentic act is that it “makes proof of its own contents”, meaning does not have to be proven in court, as would other documents. Notary’s signature is sufficient for any Quebec Judge to accept docs as valid

→ Authentic Act is prepared on special paper given by the Board of Notaries, may last many years without deteriorating

Represent one party – Lawyer (now more lawyers are trying mediation to avoid court (arbitrage)

Represent more than one party – Notary

Documents prepared either **en minute** or **en brevet**

En minute: Kept separate and are numbered in the notary’s records. Obligated to preserve the original documents in fire-proof vaults

En Brevet: Executed with one or more originals

...Moreover, Notaries are legal practitioners/officers whose duty is to prepare and execute deeds and contracts. They are expert in examination of the title of real estate.

→ Board of Notaries can suspend, fine any notary who they think is violating the rules

Certain facts the notary has to follow when preparing authentic documents

1. Establish the identity of the parties
2. Ensure parties understand the nature of the docs they are about to sign
3. Verify the parties clearly consent to the obligations they are about to undertake
4. Ensure that the date/place of the signing is clearly written

Commissioner of oath

→ All lawyers and notaries are automatically commissioners of oath, BUT rule of evidence says you can't take an oath for your own client

→ Solemn declaration/affidavit may be received by a lawyer or notary

→ Commissioner of oath: do not need legal training. People of good character. Commissioner may receive solemn declarations when the person takes the oath and signs the document in the presence of the Commissioner. Docs have same validity as if made in open court under oath. Not responsible to verify the truth of the information in the affidavit, only ensure the person has signed the docs and declared the info is real in the doc.

→ They charge no more than 5\$ for their services and cannot sign affidavits for members of their own family

Legal Aid

Legal Technicians

→ Is someone who has a cegep degree in legal techniques. Tend to work in big law offices. They do things such as manage files (specific regulations), they can also produce documents (you want 3 people to be shareholders, you take their info and give it to the legal technicians, and they produce the paperwork). Does not act on behalf or represent a client. Cannot advise or make decisions for the clients.

Legal Aid System

→ System founded in 70's. Currently bc of budget cut back, not so efficient? Under 25000\$ free legal aid you get a lawyer, if you make more then 25000\$, contributory, you pay half the bill. Full time work and minimum wage

If you're being sued and eligible for ^ and no way to pay for what you're being sued for and have legit proof, then legal aid will pay a lawyer for you.

Once case is done, lawyer sends the bill to legal aid and no charge for client

Legal aid is available for:

- a) Criminal defence matters in the first instance
- b) certain family matters
- c) alimentary obligation
- d) cases under the Youth Protection Act

Certain legal proceedings are excluded from the legal aid. They are:

- a) taking action for defamation of libel (but available for defendant)
- b) to contest the results of an election
- c) taking action for breach of promise of marriage
- d) defending a parking violation

Legal Terms

Sovereignty:

Repealed:

Code:

Jurisprudence:

Stare Decisis:

Regulations:

Constitution:

Consolidate:

Interpretation:

Case Law:

Doctrine:

Administrative Boards:

Statute:

Assent:

Bill:

Custom:

Proroque: