

## The Supreme Court of Canada: An Intro

The Supreme Court of Canada is Canada's highest court, the final court of appeal for all cases of national or Charter importance. The Court is the world's only bilingual and bijural court (Supreme Court of Canada). meaning it deals in both English and French. This is so that everyone, regardless of social status, can request a hearing before the highest court of the land if they or an interpreter speaks English or French, fulfilling section 16(1) of the Canadian Charter of Rights & Freedoms (Canadian Charter, s 16).

The Court, being bijural, also deals with cases with both common and civil law bases. **Common law** is used in most of Canada (Block), especially in English-speaking provinces like Saskatchewan, Ontario, and British Columbia. The core of this system of justice is stare decisis, which is when judges rule by precedent, or what other judges have ruled. In principle, unless there has been a major update to the Constitution or Charter, courts should rule the same way on similar cases every time.

Modern **civil law**, unlike the English-based common law, has French/European roots and is governed mainly by codes, not by judicial precedent. Codes are comprehensive sets of rules that can deal with both private & public (criminal) law. This is not to say that the civil law tradition does not ever use precedent. According to the Department of Justice, courts in a civil-law system first look to a civil code, then refer to previous decisions to see if they're consistent. In Canada, Quebec is the only province with a civil code, based on the French Code Napoléon. The Criminal Code is also a code, but is federally enforced.

## **Creating the Highest Court in the Land**

Rome wasn't built in a day, and neither was Canada's court of final appeal. Multiple people, governments, and professionals had a hand in making the court, but here are the most notable ones:

### **Alexander Mackenzie**

Alexander Mackenzie was the second prime minister of Canada and the first Liberal PM in Canada (Britannica Editors). Born in Perthshire, Scotland, he dropped out of school after his father, who relocated his family repeatedly for his work, died in 1836. He was a stonemason by trade, and on March 28, 1845, he married Helen Neil. On November 7, 1873, Mackenzie was named PM after John A. Macdonald resigned (Dodson).

In relation to the Supreme Court, Mackenzie negotiated with the British government to grant the Dominion more autonomy and self-government, and helped create the Court, further advancing Canada's judicial independence from the UK.

## **Edward Blake**

Another Supreme Court trailblazer was Dominick Edward Blake. An Irishman born in October 1833 in Adelaide Township (present day Ontario), Edward lived in a strict Anglican household. During his time at Upper Canada College, he emerged as a strong intellectual, establishing a legacy that would make him highly valuable in his future in politics.

Blake was a lawyer, and his entry into politics only served to enhance his standing in the legal community. John A. Macdonald tried to recruit Blake as a judge. He, however, saw Macdonald's motivations as purely political and rejected the position (Forster and Swainger). He was made Queen's Counsel in 1864 and was responsible for nominating members of the SCC in November 1875. However, he declined becoming the new Court's Chief Justice.

## **Télesphore Fournier**

Arguably, the most important figure in Supreme Court history is Télesphore Fournier. He was born on August 5th, 1823, in Saint-François-de-Sales-de-la-Rivière-du-Sud, Lower Canada. Even as a child, he displayed real ability, gifted in languages, mathematics, and public speaking (Braassard et al.).

In relation to the Supreme Court, Fournier was the one who brought the bill to create the court on Feb. 23rd, 1875 (Journals of the House of Commons). Eventually, he was called up to the Court and became a well-respected figure in the legal world. Although he sometimes clashed with other judges, his decisions were often confirmed by the Privy Council, such as *Mercer v. AG Ontario*.

## **How the SCC Works**

Yes, the Supreme Court, arbiter and final say on all laws in Canada, is still governed by other laws. The main one of these is the law titled An Act respecting the Supreme Court of Canada. In French, it is the Loi concernant la Cour suprême du Canada. According to section 4(2), the Governor in Council (basically the Governor General acting on the advice of the Cabinet) picks the justices.

### **Composition**

According to the Supreme Court Act of 1985, the SCC is composed of one Chief Justice and eight puisne, or normal, justices (section 4(1)). Only judges who have judged in a lower court (ex. Saskatchewan Court of Appeal) or been a certified/recognized lawyer for 10 or more years in a province's bar are allowed to become Supreme Court judges (sections 5 and 5.1).

Because of the Court's pan-national bijural/bilingual focus, three justices, according to the Act, must be from the province of Quebec, meaning they must fulfill section 5.1, being a recognized lawyer for 10 or more years in Quebec's bar. Traditionally, the Governor in Council has also appointed 3 judges from Ontario, 2 from the Western provinces or Northern Canada and 1 from the Atlantic provinces (SCC).

## How Cases are Brought

Unlike other courts, the Supreme Court of Canada chooses the cases it hears. This means that the Court is very selective in the cases it chooses to hear. According to the Supreme Court, its criteria for hearing cases are that the case must be of public importance, like one that:

- I. involves the interpretation of the Constitution or constitutional rights
- II. requires the Court to resolve conflicting decisions from courts of appeal
- III. raises a new issue of law

## Landmark Cases of Public Importance

Some noteworthy examples of cases the Supreme Court has heard that have this element of public importance are:

Appellant		Respondent
Henrietta Muir Edwards	v.	A.G. of Canada

Also known as the Persons Case, this case was one of Canada's most famous for advancing women's rights in Canada. Back then, women weren't allowed to be in the Senate based on the British North America Act, which only allowed "qualified persons" to hold office. It was generally thought that the term "persons" meant men, but the Act never specified this (de Bruin).

A group now known as the Famous Five appealed to the Supreme Court, and the Court heard it as the Minister of Justice, Ernest Lapont, believed it to be an "act of justice to the women of Canada to obtain the opinion of the Supreme Court of Canada upon the point."

Appellant  
United States of  
America

v

Respondent  
Glen Sebastian  
Burns, et al.

The case United States v. Burns was quite a famous case. It dealt with the Canadian Charter of Rights and Freedoms. The accused, Burns and Rafay, were wanted in connection with a triple murder in the US. The US wanted to extradite them to the US, and the Minister of Justice decided to extradite the fugitives without obtaining assurances from U.S. authorities that the death penalty would not be imposed (CanLII).

The case was significant because the question was whether or not the Minister's failure to get an assurance of no death penalty was an infringement of Burns and Rafay's rights as Canadians to life, liberty, and the security of the person. The Court found that the unconditional extradition order was unconstitutional, dismissing the appeal & upholding the British Columbia Court of Appeal's judgment.

*Appellant*

Saskatchewan Federation of Labour  
et al.

*Respondant*

Saskatchewan

v.

This Saskatchewan-based case revolved around the right to freedom of association and the right to strike. In May 2008, the Government of Saskatchewan passed the Public Service Essential Services Act, which limited the right to strike for public service workers in “essential roles,” including health workers (PSESA).

The Saskatchewan Federation of Labour, in collaboration with other unions such as the University of Regina Faculty Association and the Canadian Union of Public Employees, challenged the constitutionality of the PSESA. The Supreme Court ruled with the Court of Queen’s Bench of Saskatchewan that the Act was unconstitutional