

# Activity Sheet: Canada's Judicial System

Name: \_\_\_\_\_ Block: \_\_\_\_\_ Date: \_\_\_\_\_

## The Federal Court of Canada

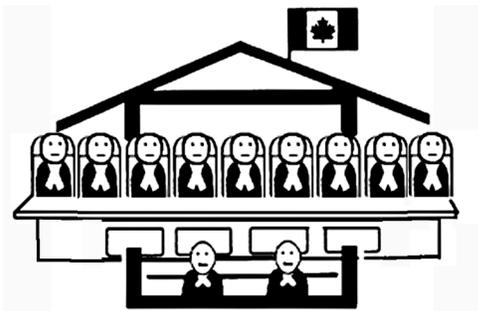
- The Federal Court, formerly called the Court of the Exchequer, contains two types of court - an appeal court and a trial court.
- The court has existed in some form since 1875 and came to its present form in 2003 when the two divisions of the Federal Court were split in two separate courts.
- In this it is distinct from the Supreme Court of Canada that sits for appeals and is not a trial court.
- The Federal Court hears disputes originating in judgments from federal tribunals and disagreements between departments of the federal government.
- The court does not use juries and at any given time 30 or more judges sit on its various bodies.

(<http://www.fct-cf.gc.ca>)

## The Supreme Court of Canada

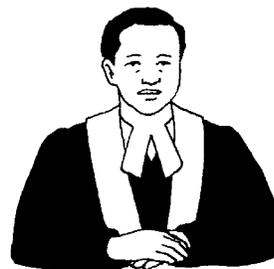
- The Supreme Court of Canada's origins date back to 1875; however, until 1949, it was not the 'court of last resort.'
- Criminal cases could be appealed to the Judicial Committee of the Privy Council of England until 1933 and civil cases until 1949.
- In 1949, the court also added two judges to reach the total of nine that sit on the court now.
- By law three of the nine judges must be from Quebec and traditionally three are from Ontario, two are from the West and one is from Atlantic Canada.
- It took some time for the first woman to sit on the court, but in 1982 Bertha Wilson broke the equality barrier.
- At present the Chief Justice of the Supreme Court is Beverly McLachlin who has resided over the court since her appointment in 2000.
- The court does not hold trials but can hear appeals from civil, criminal or federal court cases. It has the authority to grant 'leave to appeal,' meaning that it can choose to hear a case and is not mandated by any law to hear an appeal from a superior court of a province.
- In its role as the 'court of last resort' its judgments set precedent for all of Canada's lower courts and often impact the daily lives of Canadians.
- Since the inception of the *Canadian Charter of Rights and Freedoms*, the role of the Supreme Court has been more important as many of its judgments impact our legal, democratic and mobility rights in addition to our freedoms.
- Judgments need not be unanimous but a majority ruling is given in each case with dissenting judges also offering a judgment.

(<http://www.scc-csc.gc.ca>)



## Judicial Independence

- It is fundamental to our system of justice that our judges are independent, impartial and accountable as well as being free of interference from other governing bodies.
- *The Act of Settlement (1701)* written in England laid down the framework for the independence of the judiciary because it created a separation of powers between the Crown and the judiciary, though that was not its principle function. *The Constitution Act, 1987* includes this framework.
- **Basic Elements**
  - ~ Judges hold office on good behaviour and are (almost) *impossible* to remove, and then only for cause.
  - ~ Salaries are set by Parliament (for all judges on same bench, not for individual judges).
  - ~ Judges are not answerable to government or bureaucracy for judicial matters.
  - ~ Judges are drawn from and are part of an independent legal profession.
  - ~ Judicial discretion is limited by guiding principles such as jurisprudence and precedent.
- Other rules govern the impartiality of our judges with respect to the cases they hear - they must remove themselves (recuse is the term for judicial disqualification) if there is any connection with the lawyers or litigants in a case they would sit on.
- Our judges are appointed, unlike some judges in the United States that are elected, thus adding another layer of independence and absence of interference by political agendas.



- Judges are accountable because their decisions can be appealed and because they must follow the rules and procedures of the judicial system.
- Jurisprudence is the underlying philosophy of principles upon which legal rules are based and guide how new cases should be determined.
- Precedents or state decisions can be followed but courts are able to reverse themselves and provide new interpretations of the law.
- The importance of judicial independence and the rule of law cannot be underestimated. The rule of law creates an environment where all government bodies, even the law courts, are accountable to the laws of the nation.
- History is ripe with states that have not lived under the rule of law and where judicial independence has been compromised.
- The justice system of Nazi Germany witnessed the denial of fundamental rights to its citizens, particularly Jews, Gypsies and those with mental or physical handicaps.
- The courts were ruled by external bodies that could influence decisions and members of the Nazi Party were given rights denied to other German citizens. Judges were manipulated, intimidated, corrupted and punished if they failed to impose judgments consistent with Nazi party philosophy.