

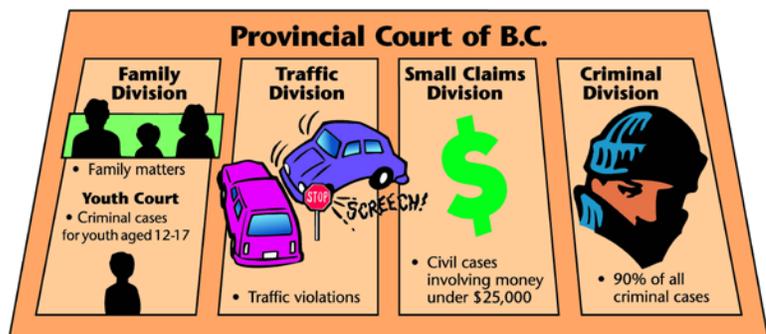
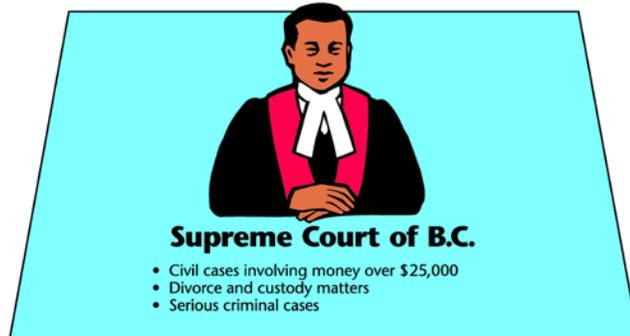
## Court of Appeal Backgrounder

1. Preview the Court of Appeal video segment on the Courts of BC website. (Go to [www.CourtsofBC.ca](http://www.CourtsofBC.ca) and select Court of Appeal. Watch the video (*about 7 minutes*).
2. Read the information below about the Court of Appeal, then review the Frequently Asked Questions About the Court of Appeal.

The Court of Appeal of British Columbia, established in 1910, is the highest court in the province. This court hears appeals from civil cases appealed from BC's Supreme Court, criminal cases appealed from the Provincial Court, as well as certain appeals from administrative tribunals.

In this court, at least three judges and in some cases five, hear appeals together. (This is different from the lower courts, where there is always just one judge.) In this courtroom, you will usually see only judges and lawyers, although individuals may argue their own case. When an appeal is heard, the judges review the written records of the original court and subsequent appeals and listen to the lawyers for each side, who make arguments based on these records. The court is composed of the Chief Justice of British Columbia and 21 Court of Appeal judges. All are federally appointed.

### Courts of British Columbia



The Court of Appeal of British Columbia is the final level of the court process in British Columbia. However, a convicted person or the prosecutor in a criminal case, or a party in a civil case, may still believe that justice has not been done. Another step remains — an appeal to the Supreme Court of Canada, which sits in Ottawa.

## Frequently Asked Questions about the Court of Appeal for BC

### 1. What is an appeal court?

As the name suggests, the Court of Appeal hears appeals from cases that have already been decided.

### 2. Where do the appeals come from?

Appeals come from cases heard in the Provincial Court of BC and the Supreme Court of BC and cases heard by administrative tribunals such as the Worker's Compensation Board. If the losing party is unhappy with the result in their case, they may appeal.

### 3. Why have an appeal court?

Judges, like anyone else, can make a mistake. To make sure that justice is done in our court system, the losing party has the right to file an appeal in an effort to have the decisions reversed or a new trial ordered.

### 4. Where does the Court of Appeal fit within the structure of our courts?

Appeals are always made from a lower court to a higher court. The Court of Appeal is the highest court in BC. Other BC courts are bound by the decisions of this court. These courts must follow the law set out by the Court of Appeal for BC.

Appeals do not have to end here in BC. If someone is unhappy with the Court of Appeal decision, they may be able to appeal to the Supreme Court of Canada. But in fact, the vast majority of cases that go to appeal in BC are settled at the Court of Appeal. Very few go on to the Supreme Court of Canada.

### 5. What does the Court of Appeal do?

The Court of Appeal is not like a trial court. Its job is to review the record from the trial court (the papers that were filed, the transcripts, and any exhibits), and to consider the legal arguments of the parties in the dispute. Lawyers may appear in court to add to their legal arguments. Only the lawyers representing each party speak to the court.

### 6. What are the Court of Appeal judges looking for?

The judges are usually looking for a legal error of some sort. They consider these questions:

- Is the evidence admissible?
- Have procedural rules been followed?
- How does a law or precedent apply to the issues before the court?
- Were someone's Charter rights breached?
- Was the jury properly instructed about how the law applied to the allegations before the court?

### 7. Does the court hear evidence?

Except in very rare cases, no witnesses appear in to give evidence in the Court of Appeal. It is the job of the trial courts to decide what happened and whether witnesses have told the truth. The Court of Appeal decides only whether or not the trial judge's decision (or jury's verdict, in a jury trial) was correct in law.

## **8. What decisions can the Court of Appeal make?**

If an error has been made, an appeal court has the power to overturn a criminal conviction or verdict in a civil case and to order a new trial. The court also may conclude that the error is not serious enough to affect the outcome, and allow the verdict or decision to stand.

In criminal cases, if the court finds there is not enough evidence to support a conviction, it has the power to acquit the defendant. But if the Crown appeals a verdict of not guilty, the appeal court must either uphold the acquittal or order a new trial; an appeal court does not have the power to convict a person who has been acquitted by a jury at trial.

## **9. What kind of cases will the court hear?**

The Court of Appeal hears both civil and criminal cases. Criminal cases deal with crimes found in the Criminal Code of Canada. In criminal cases, anyone convicted of a crime can appeal the conviction itself. However, to appeal sentencing, the court must grant leave to appeal.

Civil cases deal with disputes between private individuals or institutions. In civil cases, any final order of the BC Supreme Court can be appealed. However, if the civil case comes from the Small Claims division, it can only be appealed to the BC Supreme Court and cannot proceed to the Court of Appeal for BC.

## **10. How does the Court of Appeal work?**

In the Court of Appeal, there are typically three or five judges sitting together on the bench to hear appeals. Five judges are required if the court is being asked to overturn one of its own previous decisions. Otherwise, only three judges hear the appeal.

The BC Court of Appeal consists of 22 judges, ten of whom are currently women. The Court of Appeal judges sit regularly at the Law Courts in Vancouver and Victoria and, from time to time, in Kamloops, Kelowna, and Prince George.

- The judges of BC's Court of Appeal are also judges of the Yukon Court of Appeal which sits once a year in Whitehorse. Yukon appeals are heard in Vancouver.
- Vancouver is the central registry for the Court of Appeal. So, if you were going to file an appeal this is where you would start.
- The judges are addressed as Mister or Madam Justice outside the courtroom and as My Lord or My Lady inside the courtroom. As a formal court, judges and lawyers wear black robes.

## Terms to Know

**Charter rights:** The Canadian Charter of Rights and Freedoms, known as the Charter, is contained in the Constitution Act, 1982. The Constitution is the supreme law in Canada. You can go to court to seek a remedy if an agent of government (such as a police officer) violates your Charter rights. If any laws conflict with the rights guaranteed in the Charter, they are likely to be struck down by the courts. Where a judge has found that a law violates the rights guaranteed by the Charter, government is given time to demonstrate why they believe the breach is justifiable “in a free and democratic society.”

**Common law:** The common law is based on the decisions of judges in the courts. It is sometimes called “judge-made law.” When a judge makes a decision that is to be legally enforced, this decision becomes a rule (called “a precedent”) that will guide judges in making decisions in similar cases.

**Judicial independence:** When judges reach a decision, they must do so without regard to personal preferences and free from political or other outside influence. Their decisions must be based on evidence and their understanding of the law.

**Purpose of the court:** The purpose of the court is to be a place where people who have a dispute can come and know that they will get an impartial decision on whatever it is that is dividing them. It may be a civil dispute between individuals or organizations/institutions, or it may be a criminal offence against the state.

**Rule of law:** The laws are passed by our democratically elected representatives. If we have a dispute, we depend on having our rights determined according to the laws. When there is a disagreement about how a law should be interpreted, judges review the law and make a decision. In cases where there is no relevant law in the Constitution or other statute law, judges apply the common law.

**Statute law:** We have a Parliament in Ottawa to make laws for all of Canada, and a legislature in British Columbia to deal with provincial matters. Laws created by Parliament or the legislature are called “statutes,” “legislation” or “acts.”

### Find out more about our court system

Courts of BC: Your Guide to BC Court System: [www.CourtsofBC.ca/](http://www.CourtsofBC.ca/)

The Courts of British Columbia: [www.courts.gov.bc.ca/](http://www.courts.gov.bc.ca/)

Justice Education Society: [www.JusticeEducation.ca/](http://www.JusticeEducation.ca/)

Clicklaw: [www.clicklaw.bc.ca](http://www.clicklaw.bc.ca)