

PART 1



INTRODUCTION TO THE LAW Function and Structure

CHAPTER 1 Introduction

CHAPTER 2 Statute Law: Function, Jurisdiction, and Structure

CHAPTER 3 Common Law and the Concept of Legal Precedent



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INTRODUCTION

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Describe the various functions of law in society.
- List the stages in the life cycle of a law.
- Describe the origins of and differences between common law and statute law.
- Describe the relationship between common law and statute law.
- Distinguish between criminal law and civil law.
- Understand the distinction between substantive law and procedural law.

INTRODUCTION

This textbook is designed to provide an introductory overview of Canadian law. Although it will not make readers experts in any specific area of the law, it will provide an understanding of how the Canadian legal system is structured and how the law responds to changes in society.

INDIGENOUS PEOPLES: TERMINOLOGY AND USAGE GUIDE

Each term identified below appears in federal, provincial, and territorial legislation. Our intention in setting out the following usage guide is to be accurate, respectful, and in line with modern usage. However, we recognize that some may prefer other terms or otherwise disagree with this taxonomy.

Indigenous: The term is used throughout this text as the preferred collective term for the original inhabitants of Canada and their descendants: First Nations, Inuit, and Métis individuals. For example, the term is used in the *United Nations Declaration on the Rights of Indigenous Peoples*,¹ and the *United Nations Declaration on the Rights of Indigenous Peoples Act*² (both of which are examined later in this chapter). Indigenous is often used interchangeably with the term Aboriginal, below.

Aboriginal: The term collectively refers to the original inhabitants of Canada and their descendants. The term is found in the *Constitution Act, 1982*.³ Section 35(1) recognizes and affirms the existing aboriginal and treaty rights of the “aboriginal peoples of Canada,” while section 35(2) defines “aboriginal peoples of Canada” as including three distinct groups: the Indian, Inuit, and Métis peoples. The term Aboriginal is used throughout the *Criminal Code*.⁴

First Nations: This term refers to the original inhabitants of Canada who are not Inuit or Métis, and is the modern, and more respectful, replacement for the term Indian.

Indian: The word Indian is offensive to many because it is associated with a discriminatory legislative regime and has colonial and other negative connotations. However, readers will find that the term is used in section 91(24) of the *Constitution Act, 1867*⁵ (which assigns legislative power to the federal Parliament over “Indians, and Lands Reserved for the Indians”); the *Indian Act*⁶ (which regulates Indigenous affairs); and, section 35 of the *Constitution Act, 1982* (which recognizes and affirms the rights of Aboriginal peoples, including “Indian” peoples).

Inuit: The term, which means “the people,” refers to all Indigenous peoples living in the arctic regions of Canada, including those living in parts of the Northwest Territories, Northern Quebec, and Northern Labrador.

1 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007).

2 *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

3 *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

4 *Criminal Code*, RSC 1985, c C 46.

5 *Constitution Act, 1867*, (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 (formerly called the *British North America Act, 1867*).

6 *Indian Act*, RSC 1985, c I-5.

Métis: This term, when capitalized with an accent above the e, refers to those individuals (and their descendants) from the Métis Nation, a post-contact Indigenous community associated with the fur trade in the Red River area of Manitoba. The word metis, when used with a lowercase m and no accent, refers to individuals (and their descendants) of combined First Nation and European descent.

Source: Adapted from John Fairlie, *A Brief Introduction to Law in Canada*, 2nd ed (Toronto: Emond, 2025) at 69 and Government of Canada, “First Nations, Inuit and Métis historical terminology” (last modified 30 July 2025), online: <<https://www.canada.ca/en/library-archives/collection/research-help/indigenous-history/indigenous-terminology.html#indigenous>>.

WHY MAKE LAWS?

Throughout the world, societies govern themselves according to what can be described as codes of law. As societies began to develop, members observed and communicated certain norms of organized and predictable behaviour so they could live together peaceably and govern their affairs efficiently. As societies grew larger, the potential for conflict and the need for organization increased. In response, the group’s code of behavioural norms—or laws—increased in scope, complexity, and formality.

RELIGIOUS AND SECULAR LAWS

In some societies, the laws that emerged were based on religion. In Canada, **secular** laws govern behaviour. For example, consider marriage ceremonies. In all provinces and territories (except for Quebec), couples are required to obtain a marriage licence prior to their ceremony in order for the marriage to be legally recognized by the government. This requirement applies regardless of the couple’s faith or religious beliefs. Most nations have deliberately separated religious and secular laws.

secular
non-religious

Despite the secular nature of the legal system, Canada has prioritized the religious freedom of its citizens. Section 2 of the *Canadian Charter of Rights and Freedoms*⁷ recognizes and protects freedom of religion for all Canadians. (The Charter will be discussed in greater detail in Chapter 4 of this textbook.) However, this Charter protection has not meant the end of debate over religious issues in our society. In June 2019, the National Assembly of Quebec passed Bill 21, *An Act respecting the laicity of the State*.⁸ The law bans public sector employees in positions of authority, such as teachers, judges, police, and prison guards, from wearing religious symbols while at work. The same law also requires those providing or accessing public services, such as public transit or health care in public institutions, to have their face uncovered to allow their identity to be verified. Though the Act was intended to ensure religious neutrality in the public sector, in practice, this ban on religious symbols may conflict with freedom of religion under the Charter. The matter was argued before the Supreme Court of Canada in March 2026, and a final decision on the constitutionality of Bill 21 is expected in late 2026.

⁷ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the Charter].

⁸ Bill 21, *An Act respecting the laicity of the State*, SQ 2019, c 12.



Protesters gather to challenge Bill 21. In addition to its ban on public sector employees wearing religious symbols, including crosses, kippahs, turbans, and hijabs, the controversial law prohibits providing or receiving public services in public institutions while wearing a face covering, such as a niqab or burqa.

THE LIFE CYCLE OF A LAW

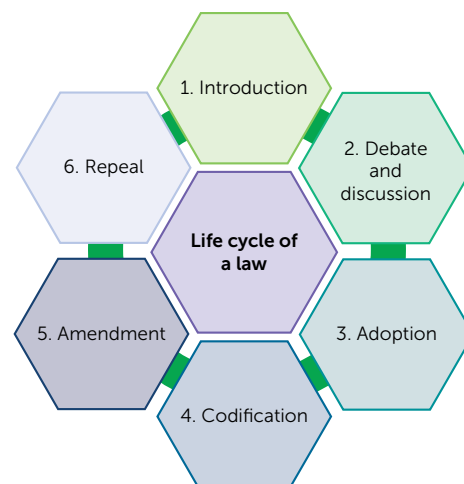
Groups of people, or societies, use codes, or rules, to govern their lives. Whether they are aware of it or not, most people are already familiar with the life cycle of rules. For example, they know that rules are created when they are proposed by a member and adopted by the group. Generally, rules evolve to accommodate changes in a group's membership or circumstances and become increasingly complex. As a group expands in size, rules that were once either unspoken or communicated orally may become formally recognized, or **codified**. Over time, rules go through the processes of amendment and reform; some rules are revised, and others are replaced because they no longer meet the needs of the society.

Civil or secular laws (simply “laws” from here on) follow a similar life cycle, which may include some or all of the stages shown in Figure 1.1. The introduction

codified

when a law or rule is formalized by incorporating it (usually in print form) into an existing or new code

FIGURE 1.1 The Life Cycle of Laws



stage involves developing a preliminary version of the proposed law so that it can be evaluated by the lawmakers responsible for creating it. The preliminary version of the law is then debated and discussed, and it may undergo revision before being formally adopted by lawmakers.

Laws are valuable to a society only if they meet its current needs and adequately deal with the variety of circumstances that its members may experience. When a law stops meeting the needs of the society or stops taking into account the circumstances of the society, it must evolve, or be **amended**. If, on the other hand, a law is no longer relevant or required, then it is removed through the process of **repeal**. If changes are required, then the existing law is repealed, followed by **re-enactment** of a new version of the law that reflects the necessary changes.

This need to be flexible and to respond to change is the reason that all of our laws cannot simply be written down in one comprehensive and final code. It is also the reason that we need lawyers to keep track of the laws, courts to settle disputes that arise over interpreting the laws, and a legislature to create new laws to handle emerging issues. Basically, the judicial and legislative systems are the mechanisms by which laws are drafted, evaluated, revised, and interpreted in a consistent and orderly way.

SOURCES OF LAW: COMMON LAW AND STATUTE LAW

Our legal system in Canada has two sources of law: common law and statute law. Statutes are made by the federal, provincial, and territorial levels of government. Laws passed by the next level of government—the municipal level—are called by-laws. Each of these levels passes laws through the life cycle described in the preceding section. The other source of law in Canada (in all provinces and territories except Quebec)⁹ is common law, or case law, where the courts make law by judicial decisions.



Iustitia, or Lady Justice, stands guard outside the entrance to the Supreme Court of Canada. The Peace Tower, part of the Parliament buildings, is seen in the background.

⁹ Quebec's legal system is somewhat different. Quebec has the *Civil Code of Québec*, CQLR c CCQ-1991—that is, a general code of provincial law that addresses a wide range of legal issues that, in other provinces, are covered primarily by common law.

amend

change a law or rule

repeal

terminate the application of a statute or statutory provision

re-enactment

bringing a statute or statutory provision into effect to replace a repealed law with an amended law

common law

a legal rule or a body of legal principles, established through judicial decisions, that deals with particular legal issues or subject areas

precedent

a court decision that influences or binds future decisions that are based on the same legal issues or similar facts

binding

when a lower court must follow the decision of a higher court in the same jurisdiction if faced with similar legal issues or facts

persuasive

when a lower court may be influenced by the decision of a higher court in another legal jurisdiction if faced with similar legal issues or facts

COMMON LAW

The role of the **common law** in our legal system is a direct result of our history as a British colony; we have inherited the common law as part of our law-making system. The common law is the body of judicial decisions made by courts in England and in Canada that establishes legal rules and principles dealing with specific issues. The common law has evolved over time to reflect the evolution and modernization of society.

The history of the law in Canada is discussed in Box 1.1. The use of the common law to guide judicial decision-making is based on the concept of **precedent**. Courts deciding subsequent cases may apply the precedent and make the same or a similar decision, thereby reinforcing the legal principle and validity of the precedent. The body of law—these cases—makes up part of the common law.

The advantage of the common law system is that it provides consistency and predictability across decisions. Parties to a case will consider the decisions made in previous cases (based on similar facts) and should be able to predict what the result in their particular court case may be. For example, a person charged with driving while impaired may want to challenge the way the breath test was conducted. This person, with the assistance of a lawyer, can review prior decisions that have already considered this issue to determine their potential to succeed in court. The same is also true in civil (non-criminal) court cases. This same predictability may promote out-of-court settlements in many cases, which saves money for the parties and time and resources for the legal system.

One advantage that the common law system has over statute law is its flexibility. For example, in April 1985, the Supreme Court of Canada struck down the *Lord's Day Act*.¹⁰ The Act, which prohibited most retail stores from being open on Sundays, was found to be unconstitutional by the Court.¹¹ Another example concerns the common law definition of marriage. Previously, the common law defined marriage as the union of a man and a woman. By definition, same-sex couples could not be legally married in Canada. This prohibition meant that same-sex couples were denied certain property rights, inheritance rights, and many income tax advantages simply because their marriage was not considered legal. This traditional definition of marriage was supported by the courts on many occasions. However, societal views changed over time. In 2003, the Ontario Court of Appeal, in *Halpern v Canada (AG)*,¹² held that it would be discriminatory not to change the definition of marriage to include same-sex couples. This decision became the law in Ontario and became **binding** in all other cases in lower courts involving this issue.

Courts of appeal in other provinces and territories heard cases regarding whether the common law definition of marriage should be changed. The Ontario Court of Appeal decision acted as a precedent, and it was **persuasive** to the other provincial and territorial courts of appeal outside of Ontario. They came to the same decision, although they were not required to because the Ontario decision was not binding on them. The combined force of these decisions across Canada (and a decision from the Supreme Court of Canada, the highest court in the land) helped persuade the

¹⁰ *Lord's Day Act*, RSC 1970, c L-13 [struck down by the SCC].

¹¹ *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295.

¹² *Halpern v Canada (AG)*, 2003 CanLII 26403 (ONCA).

federal government to enact legislation in Parliament to change the legal definition of marriage. In July 2005, Canada officially legalized same-sex marriages throughout the country when it enacted the *Civil Marriage Act*.¹³ Prior to its enactment, the statute was widely debated both within and outside Parliament, demonstrating that the courts and the legislature may not always agree on what the law should be.

BOX 1.1 THE HISTORY OF THE LAW IN CANADA

Canada has a pluralistic legal system. It is based upon English law and French law—which were introduced to Canada by colonists—and Indigenous law. While the history of Canadian law is lengthy and complex, this box is merely intended as a summary of the country's legal origins.

Indigenous communities existed across Canada for thousands of years. Through their own system of traditions and laws, they guided relationships and managed conflicts. Indigenous law was passed down through oral histories. Indigenous legal traditions were based on healing and reconciliation, as opposed to punishment and retribution. Through French and English settlement, described below, the colonists imposed their own law on Indigenous communities, in many cases suppressing Indigenous laws and traditions.

In order to understand when and how the English common law and the French civil code became part of Canada's legal landscape, it is important to understand European settlement and where it first occurred.

What is now known as Canada was “discovered,” or claimed, by both the English and French in the beginning of the 15th century. When English explorer John Cabot landed somewhere on the eastern coast of Canada in 1497, he claimed the land in the name of the then king. However, the English would not begin actively settling the land for another 100 years. French explorers arrived in the 16th century, with Jacques Cartier claiming the “New Founde Land” (now known as Newfoundland) for his own king in France in 1594. The French were the first to create permanent settlements, first in Port-Royal (Annapolis Royal, Nova Scotia) in 1605 and then in Quebec City in 1608. Samuel de Champlain proclaimed Quebec City to be the capital of New France.

The French brought to Canada their civil law system, which was based on the Custom of Paris. This code was a written system of standard rules and practices governing areas such as property law, family law, estate law, and debt law. The Custom of Paris formed the basis of the Napoleonic Code, which in turn became the foundation for the *Civil Code of Quebec*.

The English introduced the common law system to Canada in the 17th and 18th centuries. The common law system is based on precedent, as opposed to a codified set of rules. The common law is judge-made law, with the courts bound by previous legal decisions.

Over the next century, the English and the French fought for supremacy over both Canada and the fur trade. Settlement brought about countless military battles and naval conflicts between the English, the French, and

(Continued on next page.)

¹³ *Civil Marriage Act*, SC 2005, c 33.

the Indigenous peoples. In 1759, the English took control of Quebec City following a battle on the Plains of Abraham. Over the next few years, the French surrendered all of their territory to the English.

In 1763, England imposed its common law system, as well as its criminal law traditions, across Canada. This change from a civil law system to a common law system was met with resistance in Quebec. In 1774, the English reinstated the French civil law system (now the Quebec Civil Code). However, England continued to apply its criminal laws and traditions across the entire country, including Quebec.

Sources: Government of Canada, "A History of Treaty-Making in Canada" (last modified 2 September 2011), online: <www.rcaanc-cirnac.gc.ca/eng/1314977704533/1544620451420>; Government of Canada, "Discover Canada—Canada's History" (last modified 11 April 2025), online: <www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/discover-canada/read-online/canadas-history.html>.

STATUTE LAW

statute law

laws made by either Parliament (at the federal level) or by the legislatures (at the provincial or territorial level)

Governments make **statute law**, whether federal, provincial, territorial, or municipal (by-laws). Typically, the governing party in Parliament or the provincial or territorial legislature will introduce a bill—a proposed piece of legislation—designed to address an issue or a procedure. A new bill, if proclaimed, can become a new statute, can add new provisions to an existing statute, or can create or amend a regulation made under a statute. For example, in February 2023, the federal government introduced Bill C-40, the *Miscarriage of Justice Review Commission Act* (also known as David and Joyce Milgaard's Law).¹⁴ The Bill sought to create an independent commission to review cases of wrongful conviction. The Bill was named after David Milgaard—who was wrongfully convicted of sexual assault and murder and spent 23 years in jail for those crimes—and his mother, Joyce, who fought for his conviction to be overturned. This Bill was proclaimed as an amendment to the *Criminal Code*¹⁵ and came into force on March 6, 2025.

This method of creating and amending laws may be more time-consuming than having a court create a new precedent because of the democratic process of debate and review that is an important part of our parliamentary process. However, once a statute has been passed and becomes law, there is stability and consistency in that the letter of the law has been published and is available for all to read. For example, drivers of automobiles should know that there is legislation that prohibits speeding, careless driving, disobeying a stop sign, and using hand-held devices while behind the wheel. The requirements for safe driving are not up to any one individual and their belief of what it means to drive safely. The requirements are codified by statute and enforced accordingly.

Statutes may also reflect government policy objectives. For example, all provinces and territories in Canada have human rights statutes that mandate the fair treatment of all employees and prohibit discrimination on specified grounds. In Alberta, for

¹⁴ *Miscarriage of Justice Review Commission Act (David and Joyce Milgaard's Law)*, SC 2024, c 33.

¹⁵ *Supra* note 4.

example, employees have a right to equal treatment in the workplace regardless of age, physical disability, mental disability, race, colour, ancestry, place of origin, religious beliefs, gender, gender identity, gender expression, sexual orientation, marital status, family status, or source of income.¹⁶ A statute that prohibits discrimination in the workplace on the basis of a prohibited ground sends a message to all employers about the government's expectations and places employers at risk of being investigated and penalized for violations. A statute is a more effective and efficient way of regulating behaviour than leaving the issue to a judge to determine and monitor on a case-by-case basis.

Similarly, if a statute (or part of a statute) becomes outdated or is no longer in step with societal values, it may be repealed. For example, in 2017, the Canadian government repealed a number of outdated *Criminal Code* provisions, including section 71 (challenging someone to a duel), section 163(1)(b) (publishing crime comics), and section 365 (fraudulently pretending to practise witchcraft). Statutes may also be repealed if they no longer reflect government policy objectives. This often occurs when a government changes after an election. For example, in his first act as Prime Minister, Mark Carney removed the carbon tax charge on fossil fuels, including gasoline and natural gas, effective April 1, 2025. These charges form part of the *Greenhouse Gas Pollution Pricing Act*,¹⁷ which the government is in the process of formally repealing. Governments may also repeal a statute that has been struck down by the courts. In these situations, even though the statute has not yet been repealed, it is a so-called “zombie law” that is of no force and effect. (See the discussion regarding Sunday shopping and the definition of marriage under the section Common Law, above.) Lastly, statutes may be repealed by a government in order to gather related areas of regulation under a single new umbrella statute. This allows statutes that are related or that consider similar topics to be regulated in a consistent manner. See Box 1.2 for a discussion of statute gathering.

BOX 1.2 STATUTE GATHERING

Statute gathering can provide clarity, uniformity, and administrative efficiency in a particular area of legislative interest. It does so by bringing predictability and familiarity into the law. The following example shows how a number of individual statutes were repealed in favour of a harmonized umbrella scheme.

Alberta's Professional Governance Act

The Alberta government first introduced Bill 40, the *Professional Governance Act*,¹⁸ in March 2025. The purpose of the Act is to ensure consistency and oversight in the education, licensing, and regulation of professionals in the province. The Act will repeal the following nine statutes and consolidate them into one umbrella statute:

(Continued on next page.)

¹⁶ *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 7(1)(b).

¹⁷ *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186.

¹⁸ *Professional Governance Act*, SA 2025, c P-25.5.

- *Agrology Profession Act*¹⁹
- *Architects Act*²⁰
- *Chartered Professional Accountants Act*²¹
- *Consulting Engineers of Alberta Act*²²
- *Engineering and Geoscience Professions Act*²³
- *Land Surveyors Act*²⁴
- *Professional and Occupational Associations Registration Act*²⁵
- *Regulated Forest Management Profession Act*²⁶
- *Veterinary Profession Act*²⁷

In addition, the Act will regulate an expanded range of professionals in Alberta, including engineers, chartered accountants, veterinarians, electrical contractors, and architects. The *Professional Governance Act* received royal assent on May 15, 2025, and is expected to come into force in June 2026.

THE RELATIONSHIP BETWEEN COMMON LAW AND STATUTE LAW

As we have just discussed, common law and statute law come from different sources, and each has advantages and disadvantages in terms of advancing the state of the law. The two systems do not operate independently of each other: each influences the other, and both have the capacity to change the other. Referencing the same-sex marriage example discussed above, the courts redefined the common law definition of marriage, and then Parliament reacted by changing the legal definition of marriage. However, in future cases, the courts may well look to the *Civil Marriage Act* to further refine this area of the law.

The tension between common law and statute law comes from two competing concepts: rule of law and parliamentary supremacy. Rule of law means that no one is above the law, including governments, so if a government passes an illegal law or a statute that is beyond its authority, the courts can strike down that law, effectively cancelling or revoking it. On the other hand, parliamentary supremacy means that Parliament makes the laws, not the courts. Both concepts are fundamental to our legal system and are directly inherited from the British legal system.

A great deal of statute law has resulted from the government's decision to codify the case law on a particular legal issue. The government may make this decision because it believes that the common law rules are appropriate and wants them to become statute law. By contrast, the government may disagree with the common law

¹⁹ *Agrology Profession Act*, SA 2005, c A-13.5.

²⁰ *Architects Act*, RSA 2000, c A-44.

²¹ *Chartered Professional Accountants Act*, SA 2014, c C-10.2.

²² *Consulting Engineers of Alberta Act*, RSA 2000, c C-26.

²³ *Engineering and Geoscience Professions Act*, RSA 2000, c E-11.

²⁴ *Land Surveyors Act*, RSA 2000, c L-3.

²⁵ *Professional and Occupational Associations Registration Act*, RSA 2000, c P-26.

²⁶ *Regulated Forest Management Profession Act*, RSA 2000, c R-13.

²⁷ *Veterinary Profession Act*, RSA 2000, c V-2.

rules that have developed on a certain legal issue and may want to ensure that changes are made. Once the legislation is passed, the common law will evolve because the courts will be called upon to interpret and apply the new statute. For example, in October 2025, the federal government introduced Bill C-14, the *Bail and Sentencing Reform Act*.²⁸ The Bill proposes significant reforms to the bail process. If passed, the first time that an alleged offender challenges the legislation, the court will be required to interpret and to apply the new law. The decision by the court will have an impact on both the common law and the statute.

The *Criminal Code* provides an example of a statutory framework of rules that are **considered** by case law. Therefore, law enforcement students cannot simply carry around a pocket version of the *Criminal Code* and be confident that all the law they need to know is contained in its pages. Much of the detail they will need to know to do their job properly can only be found in the common law—that is, in the rules (and police practices) that develop out of the *Criminal Code* through daily judicial interpretation and reinterpretation of the words used in it. For example, a number of offences are based on possession, such as possession of a weapon, of proceeds of crime, or of a motor vehicle with a removed or destroyed vehicle identification number. To understand whether a person is guilty of an offence based on possession, law enforcement officers must be familiar with both the elements of the offence as well as how the law defines possession (possession is detailed in Chapter 5 of this textbook).

While criminal law has the *Criminal Code* as its statutory framework, many other areas of law, such as contracts and torts, are based almost completely in common law, with some specific subtopics being the subject of statutes. Contract and tort law are covered in Chapter 10. For example, landlord and tenant statutes and family law statutes, discussed in Chapters 11 and 12, demonstrate how societal values and government policy objectives influence the common law.

considered

applied or interpreted in a court case; refers to statutory provisions

CRIMINAL LAW VERSUS CIVIL LAW

When considering distinctions within the law, it is useful to examine the difference between criminal law and non-criminal law, which is sometimes called *civil law*.

The term “civil law” is a confusing one because it has at least three recognized usages. First, as mentioned earlier in this chapter, it can be used to describe the domestic laws governing a nation. Second, it can be used to distinguish the civil law system (a code-based system used in many countries around the world and in Quebec) from the common law system (a precedent-based system used in the other Canadian provinces and territories).

The third use of civil law is to distinguish non-criminal laws and the procedures used to enforce them from criminal laws and their procedures. This third usage is the one that is discussed in this textbook.

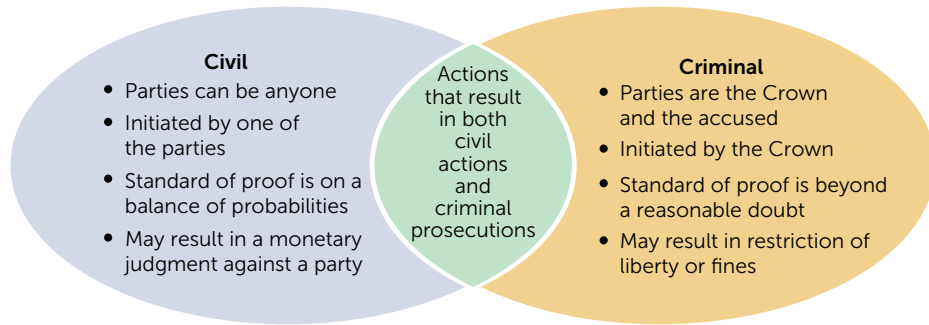
One of the most important differences between criminal and non-criminal (civil) cases is that while the parties to civil cases can be anyone (including private individuals, corporations, or government agencies), one of the parties in every criminal case is the government (Figure 1.2). In Canada, the government is represented by the **Crown**, or prosecution. Although there is such a thing as a private prosecution,

Crown

in Canadian criminal law, refers to the government, or the state, that is bringing charges against an accused

28 Bill C-14, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and the National Defence Act (bail and sentencing)*, 1st Sess, 45th Parl, 2025 (first reading 23 October 2025).

FIGURE 1.2 Criminal Law Versus Civil Law



the overwhelming majority of criminal prosecutions are brought by the government against a private party.

Also, because criminal charges can have a serious impact on a person's freedom and/or reputation, there are special procedures incorporated into criminal proceedings that are not used for civil proceedings. To support these separate procedures, criminal trials and civil trials are heard (decided) in separate courts, at least in the **first instance** (at the trial level).

At many places in this textbook, the differences between criminal laws and procedures and non-criminal (civil) laws and procedures are highlighted. For law enforcement officers and others who work with the law on a regular basis, understanding these distinctions can be challenging in practice. For example, when a commercial transaction goes wrong because one party intentionally substitutes the wrong product for the product ordered, is this a breach of contract (non-criminal law), is it the crime of fraud (criminal law), or is it both? Is sorting out the problem the job of the police, or must one party sue the other in the civil court system? We will revisit the boundaries between criminal and civil law whenever they are applicable to the topic being covered.

first instance

the first time a dispute appears before the court



SHARPEN YOUR SKILLS

Brainstorm three scenarios in which an individual may be charged under a criminal law and face penalties under civil law.

substantive law

law that addresses the substance or factual content of a legal issue

procedural law

law that establishes the process by which substantive issues will be addressed

SUBSTANTIVE LAW VERSUS PROCEDURAL LAW

Another distinction that law enforcement students should be aware of is the difference between substantive law and procedural law. **Substantive law** describes the type of conduct that is acceptable and unacceptable. **Procedural law** describes the process to be followed when there is a violation of substantive law.

For example, colleges have codes of student conduct that cover breaches of academic integrity. Academic integrity policies, as explained in a college's code of

conduct, represent the substantive law. If a student violates the academic integrity policies of the college, there is a defined investigative process during which members of the college faculty and/or administration may conduct an investigation, make a decision, and impose a penalty. This process represents the procedural law and includes such matters as what forms are used, what the student is expected to do, and whether the student can appeal the decision.

In criminal law, the *Criminal Code* contains both substantive law (“Every one commits robbery who ...” (s 343)) and procedural law (“A judge ... may ... release an appellant ...” (s 679(1))). The *Criminal Code* tells us what the offences are and what happens if an offence is committed. Both aspects of the *Criminal Code* are explored further in later chapters.

In civil law, there are statutes and cases that describe the substantive aspects of civil claims, such as liability for injuries suffered in a motor vehicle accident or in a slip-and-fall accident on an icy sidewalk. The procedures that govern requirements, such as the documents to be served and filed and the time limits that must be met, are contained in a separate instrument; the Ontario version is called the *Rules of Civil Procedure*.²⁹

For law enforcement personnel, it is as important to respect procedural law as it is substantive law. Procedural law provides the same rules for all participants in the process to follow. Failure to follow the procedural law can be very serious for law enforcement officers, law clerks, paralegals, and other participants in the enforcement process.

SPOTLIGHT ON INDIGENOUS ISSUES

A WORLDWIDE RECOGNITION OF INDIGENOUS RIGHTS

As a student of Canadian law, it is important to both acknowledge and understand the government’s commitment to recognizing the rights of Indigenous peoples within Canada.

The United Nations, an organization representing over 190 nations (including Canada and the United States), sought to establish minimum standards for the treatment of Indigenous peoples across the globe. After over two decades of negotiations, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) on September 13, 2007.³⁰ While UNDRIP is not legally binding, it is intended to provide guidance to, and foster a purposive approach by, member countries in the treatment of Indigenous populations.

UNDRIP begins with an acknowledgment by the United Nations, followed by 46 Articles. While it is beyond the scope of this section to review UNDRIP in its entirety, portions of the document are highlighted below.³¹

(Continued on next page.)

29 *Rules of Civil Procedure*, RRO 1990, Reg 194.

30 *Supra* note 1.

31 From *United Nations Declaration on the Rights of Indigenous Peoples*, © 2007 United Nations. The full text of UNDRIP may be accessed at <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

The General Assembly, ...

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs, ...

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect: ...

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions....

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the

community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs....

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning....

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them....

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned....

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources....

(Continued on next page.)

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right....

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Canada's Adoption of UNDRIP

Canada initially opposed UNDRIP when it was passed by the United Nations in 2007, citing concerns that the Declaration was incompatible with the Charter and that Article 26, specifically, was vague and capable of multiple interpretations. Further, the Canadian government felt that UNDRIP lacked clear and actionable directives.³² Canada did eventually endorse the Declaration in 2016 and, in 2021, adopted UNDRIP through the passage of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.³³ As a result, it is now a legal obligation to adhere to UNDRIP in Canada. Portions of the Act are highlighted below.³⁴

Purposes of Act

- 4 The purposes of this Act are to
- (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and
 - (b) provide a framework for the Government of Canada's implementation of the Declaration.

Measures for Consistency of Laws and Achieving the Objectives of the Declaration

- 5 The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.

³² CBC News, "Canada votes 'no' as UN native rights declaration passes" (13 September 2007), online: <<https://www.cbc.ca/news/canada/canada-votes-no-as-un-native-rights-declaration-passes-1.632160>>.

³³ *Supra* note 2.

³⁴ The full text of the Act may be accessed at <<https://laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html>>.

CHAPTER SUMMARY

Laws permit groups (societies) to live together harmoniously by defining, communicating, and enforcing accepted behavioural norms. These norms can be religious or secular; both kinds of norms can evolve into laws as we know them.

As societies grow and become more complex, laws follow suit. To permit flexibility and adaptability, laws follow a typical pattern and have a life cycle. In general, laws are proposed or introduced; they are debated; they evolve (before and/or after being adopted); they may be codified; they are sometimes amended; and, when no longer needed, they are repealed or replaced.

Canada has two systems of law that exist side by side: the common law evolves through judges’ precedent-based decisions in court cases, and statute law is passed

by governments. Each system has advantages and disadvantages, and the systems inform and complement each other. An important advantage of the common law is its ability to respond to changes in society and to particular fact situations. Statute law, on the other hand, provides stability and consistency because it is codified and available for all to read.

Within the law, there are various subdivisions and classifications. A well-known distinction is between criminal and non-criminal (civil) law, but laws can also be distinguished on the basis of whether they are substantive (they provide a description of regulated conduct or conditions) or procedural (they provide a description of how to deal with breaches of substantive law).

KEY TERMS

amend, 7	Crown, 13	re-enactment, 7
binding, 8	first instance, 14	repeal, 7
codified, 6	persuasive, 8	secular, 5
common law, 8	precedent, 8	statute law, 10
considered, 13	procedural law, 14	substantive law, 14

EXERCISES

MULTIPLE CHOICE

1. Statute law offers the following advantage(s) over case law:

a. it allows easier public access to the state of the law

b. it can provide policy directions for specific groups to follow

c. it addresses all possible fact situations

d. a and b

e. a, b, and c
2. Some laws are described as procedural because they:

a. regulate the performance of complex scientific procedures

b. are less important than substantive laws

c. prescribe the process by which justice is to be achieved

d. can be applied only by courts of superior jurisdiction

e. none of the above
3. The life cycle of a law includes the following stages:

a. introduction, amendment, citation, repeal

b. introduction, debate and discussion, codification, citation, statute, substantiation

c. adoption, termination, repeal, substantiation

d. introduction, debate and discussion, adoption, codification, amendment, reform/repeal

e. introduction, debate and discussion, adoption, repeal, codification, amendment

4. Common law is:

- a. the set of laws that are common, everyday occurrences
- b. a body of legal principles established through court decisions
- c. a set of statutes passed by Parliament
- d. a body of cases established through court decisions and codified as statutes
- e. the set of by-laws passed by a municipal government

5. Substantive law:

- a. describes an expectation of behaviour or responses
- b. is designed to govern the way the law is brought to bear on a dispute
- c. is a body of legal principles established through the judicial process
- d. is a body of statutes passed by Parliament
- e. is also called civil or secular law

TRUE OR FALSE?

- _____ 1. Converting a common law rule into statutory form ensures that it will no longer evolve in response to court decisions.
- _____ 2. All criminal law is statute law because it is contained in the *Criminal Code*.
- _____ 3. Religious laws no longer apply in the common law world.
- _____ 4. The first step in the life cycle of a law is codification.
- _____ 5. Procedural law governs the way substantive law is applied to a dispute.
- _____ 6. When it comes to non-criminal statute law, the substantive provisions and the procedures for applying those provisions are often contained in separate statutes.
- _____ 7. A statute can be repealed by Parliament only if it is first declared unconstitutional by the Supreme Court of Canada.
- _____ 8. There are three distinct meanings of civil law in Canada.
- _____ 9. A particular behaviour is illegal only if it is specifically referenced by a statute; for example, you can be charged with distracted driving for texting on a cellphone, but not for tying a fishhook onto fishing line.
- _____ 10. Because religious law is not recognized by Canadian courts, religious leaders cannot enforce customary religious laws within a religious community; for example, a religion can no longer enforce a rule that its leaders cannot marry or be female.

SHORT ANSWER

- 1. Based on your understanding of this chapter, draft a definition of the word “law.”
- 2. This chapter describes many of the practical advantages of statute law. What are the advantages of case law?
- 3. The *Canadian Charter of Rights and Freedoms*, part of Canada’s Constitution, was drafted broadly with the expectation that its provisions would be interpreted by case law. Why do you think the drafters chose to be vague about such important legal issues?
- 4. Why are statutes more effective than common law precedents as a way for governments to shape behaviour—for example, corporate behaviour?
- 5. Based on your understanding of this chapter, do you agree that religious laws are no longer interpreted or applied by Canadian courts?

RESEARCH QUESTIONS

- 1. What happens if the Supreme Court finds a law, or part of a law, to be unconstitutional? Using an example from the chapter, explain the government’s next steps.
- 2. Research the retail shopping laws in your province or territory. Provide a summary of those laws, noting whether Sunday shopping is permitted across all industries, whether there are any exceptions or exclusionary periods, and what level of government is responsible for enacting and enforcing the laws (if applicable).
- 3. Were new laws regulating sex work passed, and, if so, how was this achieved?