

Canada's Legal System

Legal System

- ▶ **Judicial Branch**
 - Interprets and administers the law
 - Courts and judges
- ▶ **Rule of Law**
 - fixed set of laws that applies to all people equally
- ▶ **Legal Tradition**
 - Based on British law, except Quebec civil law (French *Code Napoléon*)

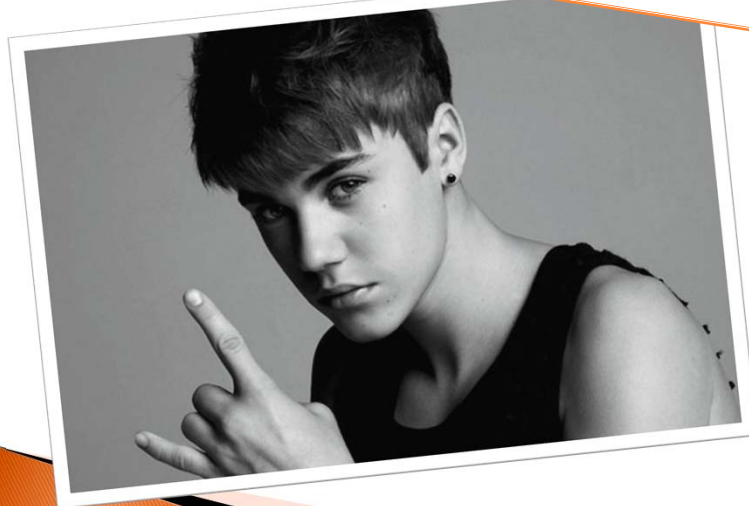


The Rule of Law

Canada is governed by a fixed set of laws that apply to all people equally.

Everyone, even...

Hardened Criminal!



Categories of Law

- ▶ Civil Law
 - Deals with relations between private parties, such as individuals and companies (contracts, property, etc.)

CIVIL LAW

Justin Timberlake sues Justin Bieber for stealing his personal style and name
JB is now affected by CIVIL LAW!



Categories of Law

- ▶ Criminal Law
 - Deals with matters that affect society (assault, theft, vandalism, etc.)
 - Crimes are considered to be committed against the state, not individual victims

CRIMINAL LAW

Justin Bieber gets revenge by breaking into Justin Timberlake's house and cutting holes in all of his shirts.

JB is now a CRIMINAL!



Well, not quite...

Three things must happen first:

1. Presumption of Innocence (Innocent until proven guilty)
2. The Criminal Act (He *actually* broke the law)
3. Mens Rea (The guilty mind/ intention)

Sorry, Justin.
SWAG is not a
factor.



Criminal vs. Civil Law

- | | |
|------------------|--------------------|
| ▶ Murder | ▶ Defamation |
| ▶ Theft | ▶ Contracts |
| ▶ Sexual Assault | ▶ Warranties |
| ▶ Drugs | ▶ Marriage/Divorce |

COMMON LAW

- After his crime spree, as he is led up the court steps, Justin cries out, “Who came up with these stupid laws, anyway?!”



- Well, Justin, COMMON LAW is based on decisions of judges in the British royal courts – the *precedents* they have set.

STATUTORY LAW

“I blew up a maple syrup factory! There’s no way some British judge has dealt with that before! I can make my own laws, Canada-style.”

Actually, Justin, you can’t. *Parliament* can, and that’s STATUTORY LAW. It is part of our Criminal Code.



THE COURT EXPERIENCE

Justin's crime spree has included...
Speeding tickets! Small offences like this
bring him to PROVINCIAL COURT (lower
court, in front of a judge)



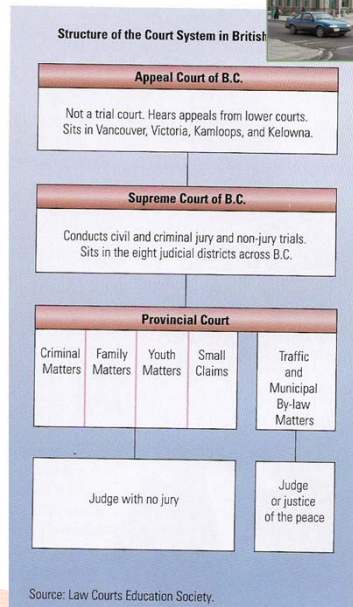
THE COURT EXPERIENCE

More serious offences (assault, blowing up things) are indictable offences. These take him to the SUPREME COURT OF BC, in front of judge and possibly jury.



Provincial Courts

- ▶ Provinces are responsible for the administration of justice
- ▶ BC Court System
 - Appeal Court of BC
 - Supreme Court of BC
 - Indictable offences
 - Provincial Court
 - Summary offences



THE COURT EXPERIENCE

The judge makes a decision, but JB's got too much attitude to accept it, and files an appeal. He appeals to the Supreme Court of Canada.



Supreme Court of Canada

- ▶ This is a high-profile case and important to the Canadian people – he's Canadian icon, after all!
- ▶ Federal Court
- ▶ Highest court in Canada
- ▶ Rules on constitutional issues and is the final court of appeal for select criminal cases



CHARTER OF RIGHTS AND FREEDOMS



- “You can’t do this to me! I have rights! I’m a *celebrity*!”
- You’re right...and you’re wrong.

Constitution Review

- ▶ Contains rules for government and law making
- ▶ Includes written and unwritten parts
 - Unwritten based on British traditions
 - Written – Constitution Act (1982) (evolved from BNA Act 1867)
- ▶ Three parts:
 - Description of Powers (Fed. And Prov. gov'ts)
 - **Charter of Rights and Freedoms,**
 - Amending Formula



The History of the Charter

- ▶ Prime Minister John Diefenbaker's Government passed the Canadian Bill Of Rights in 1960
- ▶ It offered specific rights but did not override provincial or federal laws
- ▶ Signed into law in 1982 by Queen Elizabeth II, along with the rest of the Constitution Act
- ▶ Strongly supported by PM Pierre Trudeau, but argued over by the provinces

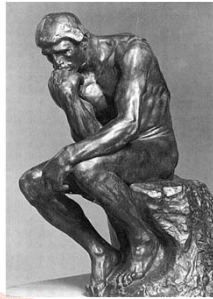


John Diefenbaker
holds the Bill of Rights



Freedoms

- ▶ Freedom of conscience and religion
- ▶ Freedom of thought
- ▶ Freedom of peaceful assembly
- ▶ Freedom to associate with whom you please



Democratic Rights

- ▶ Right to express your opinion
- ▶ Right to vote
- ▶ Right to run for election



Mobility Rights

- ▶ Right to enter, remain in, and leave Canada
- ▶ Right to move to, live in, and work in any Canadian province or territory



Legal Rights

- ▶ Right to life, liberty, and security of the person
- ▶ Right to a fair trial if you are accused of a crime



Equality Rights

- ▶ Right to equality before the law regardless of race, nationality, ethnic origin, colour, religion, sex, age, or mental or physical disability



Language Rights

- ▶ Equal status for the use of English and French in the government and courts of Canada
- ▶ Right to have your children educated in either English or French where numbers warrant



Rights in Conflict

- ▶ Limiting Clause
 - rights and freedoms are not absolute
 - may be limited if considered “justifiable in a free and democratic society” by the SC of Canada
- ▶ Notwithstanding Clause
 - ▶ Loophole that allows provincial governments to pass laws that violate the Charter
 - Eg. Quebecs Bill 101 Language Laws – to enforce French-language signage.
 - Trademarked signs exempt from Bill 101



Enforcement

- ▶ Right to take the matter to court if any of the rights and freedoms has been denied

