



The Canadian Legal System

ACCESSING JUSTICE SERIES

Legal Information for Frontline Service Providers

This guide was developed for frontline service providers in Alberta who work with vulnerable individuals. It provides general legal information on Alberta law only. This guide does not provide legal advice. Last updated January 2016.

Centre for
Public
cplea
Legal Education
Alberta

The contents of this booklet are provided as general information only. This booklet does not contain legal advice. If your client requires legal advice, he or she should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. Legal Resource Centre of Alberta will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

We would like to thank the Alberta Law Foundation for funding this project.

Alberta **LAW**
FOUNDATION



#800, 10050-112 Street
Edmonton, Alberta T5K 2J1

Phone 780.451.8764

Fax 780.451.2341

Email info@cplea.ca

Web www.cplea.ca

© January 2016, Legal Resource Centre of Alberta Ltd., Edmonton, Alberta

The Legal Resource Centre of Alberta, operating as the Centre for Public Legal Education Alberta, is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referral on many legal topics. For more information, please go to www.cplea.ca.

Contents

1. Laws in Canada	1
Legislation	1
Jurisdiction: Federal Law, Provincial Law, or Municipal Bylaw?	3
Common Law	6
2. The Court System in Alberta	9
Provincial Court of Alberta.....	9
Court of Queen’s Bench of Alberta	10
Alberta Court of Appeal	10
Supreme Court of Canada	10
Federal Courts & Tribunals	11
Provincial Administrative Tribunals	12

The Canadian Legal System

Developing a general understanding of how Canada's legal system functions will help you more effectively assist clients. It will enable you to better identify when a client has a legal issue and make referrals to helpful legal information sources or legal services before the issue reaches a crisis stage.

1. Laws in Canada

In Canada, our legal system is made up of **legislation** and **common law**.

Legislation

Legislation consists of written rules created by elected officials from all levels of government.

Statutes

Statutes (also referred to as Acts), are written laws created by the government. There is a rigorous review process that statutes go through before becoming law. Once a statute is passed, it is very difficult for it to be changed.

Regulations

Written rules that set out how a statute or act will function on a day-to-day basis. Regulations can be changed more easily than statutes, so they often address issues where changes are needed more often.

Relationship between acts and regulations

Statutes/Acts	Regulations
The Alberta <i>Residential Tenancies Act</i> states that a landlord can end a month-to-month tenancy for “one or more of the prescribed reasons” (section 6(1)).	The Residential Tenancies Ministerial Regulation sets out the prescribed reasons a landlord can end a month-to-month tenancy (section 2(2)). This allows the government to more easily change, remove, or add to the list of reasons a landlord can terminate a tenancy.
The <i>Residential Tenancies Act</i> states a landlord can end a month-to-month tenancy if a building is being converted to a condominium. The Act states a landlord must give the tenant 180 days’ notice to end the tenancy (section 12(2). However...	...The Residential Tenancies Ministerial Regulation states the notice period to end a tenancy for condo conversion is now 365 days not 180 days. This is the current state of law.

Why is this information important?

- The act or statute may not include all of the details your client needs to understand their legal rights and responsibilities. The related regulation should be consulted along with the statute or act.
- The act or statute may not have the most current information included in it. The related regulation also needs to be consulted to find the most accurate and current information.



Alberta’s courthouse libraries (www.lawlibrary.ab.ca) can help clients find acts and regulations online or in print. However, they cannot interpret legislation for clients or tell them how it applies to their situation. Clients should seek legal advice if they need help understanding how their legal rights and obligations apply to their specific circumstances.

Jurisdiction: Federal Law, Provincial Law, or Municipal Bylaw?

In Canada, our acts and regulations are created by all levels of government. Each government has specific responsibilities that are laid out in Canada's *Constitution Act, 1867*.

Federal government

All laws created by the federal government apply to all Canadians regardless of which province they live in. The *Constitution Act, 1867* states that the federal government has responsibility for criminal law, immigration, marriage and divorce, and all Aboriginal matters, among other things.

A complete list of all federal laws can be found online by visiting the Department of Justice Canada's Laws website: <http://laws.justice.gc.ca/eng>.

Provincial and territorial governments

Laws created by provincial or territorial governments only apply to individuals living in or visiting that specific province or territory. For example, someone visiting from Ontario must follow the rules under Alberta's *Traffic Safety Act*.

Provinces and territories are responsible for creating laws around renting, driving, employment, and wills and estates, among other things. For a complete list of Alberta legislation, visit the Queen's Printer website: <http://www.qp.alberta.ca>.

Municipal bylaws

Provincial and territorial governments have the power to give certain law-making responsibilities to cities, towns, and other municipalities. Laws created by municipal governments are called bylaws. In Alberta, municipal governments can make bylaws related to public behaviour, use of public space, panhandling, graffiti, land use, and public transit.

To find out what bylaws apply in your municipality, contact your local bylaw enforcement office or municipal administrator.

Jurisdictional chart: Who's responsible?

This chart lists some of the most common legal issues your clients may experience and which level of government is responsible for creating the laws around these issues.

Legal Issue	Jurisdiction	Related Legislation
Criminal Offences & Fines		
Criminal law	Federal	<i>Criminal Code, Controlled Drugs and Substances Act, Youth Criminal Justice Act</i>
Driving	Provincial	<i>Traffic Safety Act</i>
Fine Options & Alternative Measures Program	Provincial	<i>Corrections Act</i> – Fine Options Order Alternative Measures Program must comply with <i>Criminal Code</i> but is administered by the Government of Alberta
Panhandling	Municipal	Municipalities are responsible for creating rules around panhandling – check with your local bylaw office
Public intoxication	Provincial	<i>Gaming and Liquor Act</i>
Employment & Consumer Issues		
Collections agencies	Provincial	<i>Fair Trading Act</i> – Collection and Debt Repayment Practices Regulation
Employment	Provincial	<i>Employment Standards Code</i>
Payday loans	Provincial	<i>Fair Trading Act</i> – Payday Loans Regulation
Family Law		
Child custody and parenting		
• If a client is married	Federal	<i>Divorce Act</i> (married couples only)
• If a client is not married	Provincial	<i>Family Law Act</i> (married and unmarried couples)
Child and spousal support		
• If a client is married	Federal	<i>Divorce Act</i> (married couples only)
• If a client is not married	Provincial	<i>Family Law Act</i> (married and unmarried couples)
• If support is not being paid	Provincial	<i>Maintenance Enforcement Act</i>
Domestic violence		
• Criminal offences	Federal	<i>Criminal Code</i>
• Protection orders	Provincial	<i>Protection against Family Violence Act</i>
Property division after relationship breakdown	Provincial	<i>Matrimonial Property Act</i> (married couples only)
Child Welfare	Provincial	<i>Child, Youth and Family Enhancement Act</i>

Legal Issue	Jurisdiction	Related Legislation
Housing		
Renting problems	Provincial	<i>Residential Tenancies Act</i>
Maintenance of rental properties	Provincial	<i>Public Health Act – Minimum Housing & Health Standards</i>
Secondary suites	Municipal	Each municipality will have its own bylaw around land use that will include rules about secondary suites
Human Rights		
Fundamental freedoms, democratic rights, legal rights	Federal	<i>Canadian Charter of Rights and Freedoms</i>
Protection from discrimination in employment, rental housing, provision of goods and services	Provincial	<i>Alberta Human Rights Act</i>
Immigration		
Citizenship	Federal	<i>Citizenship Act, Immigration and Refugee Protection Act</i>
Detention review hearings	Federal	<i>Immigration and Refugee Protection Act</i>
Refugee applications and hearings	Federal	<i>Immigration and Refugee Protection Act</i>
Wills & Estates, Personal Directives, Powers of Attorney		
Wills and estates (for individuals with and without a will)	Provincial	<i>Wills and Succession Act</i>
Administering an estate (for personal representatives or executors)	Provincial	<i>Estate Administration Act</i>
Personal directive (for non-financial decisions)	Provincial	<i>Personal Directives Act</i>
Power of attorney (for financial decisions)	Provincial	<i>Powers of Attorney Act</i>
Supported decision-making agreement	Provincial	<i>Adult Guardianship and Trusteeship Act</i>

Why is this information important?

- Clients who have lived in other provinces may not realize different laws apply to matters such as renting, driving, and employment. Helping new Albertans find information about the laws in Alberta can prevent problems from occurring in the future.
- Legal information sources and services will differ depending on which government is responsible for the law. For example, clients can get renting information by calling the Government of Alberta's Service Alberta Consumer Contact Centre at 1-877-427-4088. The federal government would not be able to help clients because renting is a provincial responsibility.
- If you're helping a client find legal information, you'll want to make sure it's for the right jurisdiction. For example, if your client wants to know what minimum wage is in Alberta, it is important to make sure the information source is Alberta-based.

If you or your client are unsure of what law applies and which government is responsible for it, visit one of the following websites or consult the Resource Guide included in the Helping Clients booklet in this series:



- LawCentral Alberta: <http://www.lawcentralalberta.ca>
- Canadian Legal FAQs: <http://www.law-faqs.org>
- Alberta Law Libraries: <http://www.lawlibrary.ab.ca>
- Dial-a-Law: <http://clg.ab.ca/programs-services/dial-a-law>

Common law

Common law is judge-made law that addresses the following legal situations, among others:

- If the government has not created an act or regulation to deal with a certain legal issue, a judge can be asked to decide how the issue should be dealt with on the basis of evidence and arguments presented in court.
- If a law is unclear and requires interpretation, a judge can be asked to interpret the law.
- Judges can be asked to decide if an act or parts of certain act are constitutional.

In making their decisions, judges must review related decisions made by other judges (known as precedents). Judges must follow the decisions made by previous judges in higher courts. For example, judges in the Provincial Court of Alberta are required to follow any decisions made by the Supreme Court of Canada and Alberta Court of Appeal.

Charter challenges

Common law plays an important role in upholding our fundamental rights and freedoms under the *Canadian Charter of Rights and Freedoms*. If an individual or organization is concerned that a piece of legislation violates any of these rights and freedoms, a constitutional challenge can be brought before the courts to determine if the legislation infringes our rights and freedoms.



Recent examples of this include:

- *Carter v Canada (Attorney General)*: In 2015, the laws prohibiting physician-assisted death were declared unconstitutional and no longer valid by the Supreme Court. However, the Supreme Court gave the Government of Canada one year to decide whether to create new laws or to let the old laws lapse.
- *Canada (Attorney General) vs Bedford*: In 2013, the Supreme Court determined that prostitution laws in the *Criminal Code* violated the *Canadian Charter of Rights and Freedoms*. The laws were declared to be no longer valid but the Government of Canada eventually introduced new laws to replace the unconstitutional ones.
- *R v Nur*: In 2015, the Supreme Court determined the mandatory minimum sentence imposed for possessing loaded prohibited firearms was grossly disproportionate and violated the *Charter*. As such, the mandatory minimum sentence for this criminal offence is no longer in force.

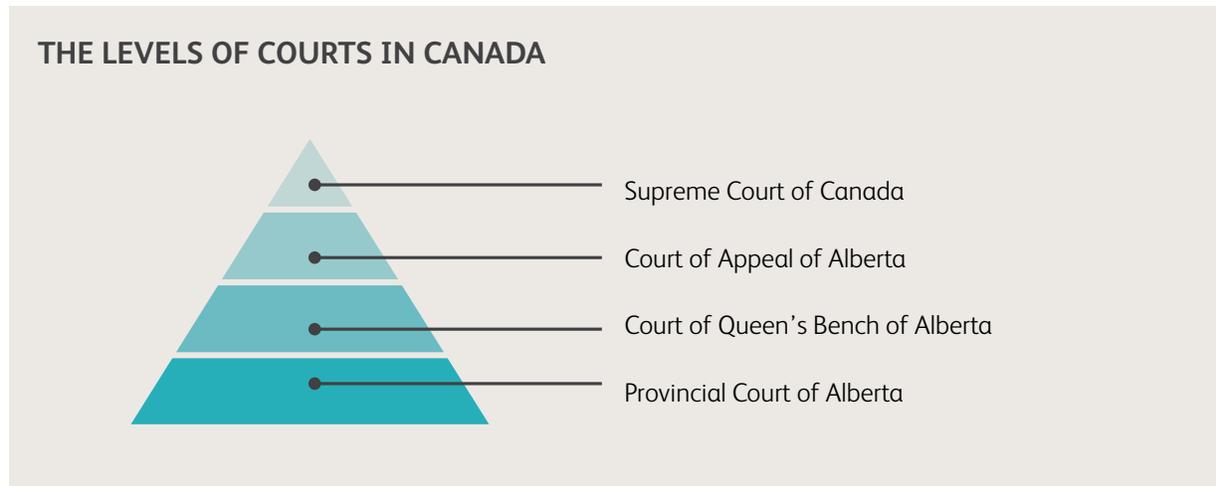
Why is this information important?

- Sometimes the current law on an issue is found in the decisions courts and not in legislation. It can be difficult for individuals without legal training to find, interpret, and apply common law to their situations – legal advice is highly recommended.

Examples of legislation and common law

Statute/Act	Regulation	Common Law
<i>Criminal Code</i> (federal legislation)	Court of Queen’s Bench for Alberta Summary Conviction Appeal Rules	<i>R v Bedford</i> : Supreme Court of Canada declared former prostitution laws to be unconstitutional. The Government of Canada was given one year to introduce new laws to replace the ones declared unconstitutional.
<i>Residential Tenancies Act</i> (provincial legislation, applies only in Alberta)	Residential Tenancies Ministerial Regulation	<i>581834 Alberta Ltd v Alberta (Gaming and Liquor Commission)</i> : Alberta Court of Appeal defined what constitutes “quiet enjoyment.” Any tenant who claims a landlord has interfered with the quiet enjoyment of the rental premises must meet the definition introduced by the Alberta Court of Appeal.
<i>Divorce Act</i> (federal legislation)	Federal Child Support Guidelines	<i>Gordon v Goertz</i> : Supreme Court defined test to vary child custody or access order. A parent or guardian seeking to relocate to a new city or town with their children will likely be required to vary the custody or access order and will need to meet the test defined by the Supreme Court.

2. The Court System in Alberta



Provincial Court of Alberta

The Provincial Court of Alberta is the lowest level of court in Alberta. There are over 70 locations across Alberta, making it the most accessible level of court for individuals living outside of large cities and town.

The following matters are dealt with or can be dealt with in the Provincial Court of Alberta:



- Criminal charges: all youth and adults charged with criminal offences begin their court appearances in provincial court
- Traffic and municipal bylaw tickets
- *Family Law Act*: certain applications under this legislation can be heard in provincial court including applications for parenting, contact, and support orders
- Child welfare matters
- Emergency Protection Order applications
- Small claims court: all matters where one party is suing another (up to \$50,000)
- Landlord and tenant disputes (can also be heard at the Residential Tenancy Dispute Resolution Service)

In certain circumstances, decisions made by judges of the Provincial Court of Alberta can be appealed to the Court of Queen's Bench of Alberta.

For more information on the Provincial Court of Alberta, including locations and contact information, visit: <https://albertacourts.ca/provincial-court>.

Court of Queen's Bench of Alberta

The Court of Queen's Bench of Alberta is the highest trial court in Alberta. There are 13 locations across Alberta. It is generally more expensive to proceed with applications at the Court of Queen's Bench.



The following matters are dealt with or can be dealt with in the Court of Queen's Bench of Alberta:

- Individuals charged with serious (indictable) criminal offences can choose to have their trials held in Court of Queen's Bench
- When one party is suing another for more than \$50,000
- All jury trials must be held in the Court of Queen's Bench
- *Divorce Act*: all applications under this legislation must be heard in Court of Queen's Bench including applications for custody, access, and support orders
- *Family Law Act*: all applications under this legislation can be heard in Court of Queen's Bench. Applications for exclusive possession of the home and Declarations of Parentage and Irreconcilability must be heard in Court of Queen's Bench.
- Emergency Protection Order reviews and Queen's Bench Protection Order applications
- Wills, estates, and probate matters
- *Adult Guardianship and Trusteeship Act* applications
- Foreclosures and bankruptcies
- Provincial Court and administrative tribunal appeals

In certain circumstances, decisions made by judges of the Court of Queen's Bench of Alberta can be appealed to the Alberta Court of Appeal.

For more information on the Court of Queen's Bench of Alberta, including locations and contact information, visit: <https://albertacourts.ca/court-of-queens-bench>.

Alberta Court of Appeal

The Alberta Court of Appeal's sole purpose is to hear appeals. There are two locations – one in Edmonton and one in Calgary. An appeal is when one party makes an application to have a lower court judge's decision reconsidered. There are strict rules about when parties can apply to the Court of Appeal and only select applications are heard by the judges of the Alberta Court of Appeal.

Filing an appeal is time consuming, expensive, and almost always requires help from an experienced lawyer. It is not recommended that individuals without legal training represent themselves at an appeal.

For more information about the Alberta Court of Appeal visit:
<https://albertacourts.ca/court-of-appeal>.

Supreme Court of Canada

The Supreme Court of Canada is the highest court in Canada and is located in Ottawa. Like the Alberta Court of Appeal, the Supreme Court only hears appeals. Cases must have been heard by a provincial court of appeal before going to the Supreme Court. Very few cases are heard by the Supreme Court – there are strict application requirements and it is prohibitively expensive for many parties to apply to the Supreme Court.



When the Supreme Court does hear an appeal, the decision it makes is final and binding and must be followed by the parties involved in the case as well as all lower courts, and the government.

For more information about the Supreme Court of Canada visit: **<http://www.scc-csc.gc.ca>**.

Federal Courts & Tribunals

Canada also has a federal court system that hears legal matters which are the responsibility of the federal government, including issues related to immigration, First Nations, elections, and national security. There is both a Federal Court of Canada and a Federal Court of Appeal.

Generally, federal court matters are initially heard by a federal administrative tribunal, board, or commission. These are less formal decision-making bodies that are tasked with specific matters. For example, the Immigration and Refugee Board or Specific Claims Tribunal for First Nations land claim matters. Parties can apply to the Federal Court of Canada to have the decision of a tribunal, board, or commission reviewed, subject to certain restrictions. It is recommended that people seek legal advice if they plan to apply to the Federal Court of Canada.

For more information about Canada's federal courts, visit:

http://cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index

Provincial Administrative Tribunals

In Alberta, administrative tribunals and boards deal with specific legal issues outside of the court system. Tribunals and boards are intended to deal with legal issues in a faster, less expensive, and less intimidating way.

Hearings are either held in-person or over the phone (particularly in rural areas). The individual who conducts the hearing is not a judge, but he or she will have extensive training in and knowledge of that specific legal area.

Examples of administrative tribunals and boards in Alberta include:

- Residential Tenancy Dispute Resolution Service: dealing with landlord and tenant issues under the *Residential Tenancies Act*.
- Human Rights Tribunal: dealing with complaints under the *Alberta Human Rights Act*.
- Workers' Compensation Board: dealing with claims from workers who have been injured on the job.

Why is this information important?

- Each court and tribunal deals with different legal issues and follows a specific set of rules and procedures for dealing with those matters. Clients should seek legal advice before going to court or a tribunal.
- Information about court or tribunal applications, forms, procedures, and costs, can be sought from specific courts or tribunal or by contacting your local legal clinic.

ACCESSING JUSTICE SERIES:

The Canadian Legal System

Other publications in the Accessing Justice series:

- Helping Clients with Legal Issues
- Renting Law in Alberta
- Family Law in Alberta
- Criminal Law in Alberta

Publications can be viewed and downloaded for free by visiting www.cplea.ca

Centre for Public Legal
Education Alberta
800, 10050 112 Street
Edmonton, Alberta T5K 2J1

Tel 780 451 8764
Fax 780 451 2341
info@cplea.ca

Centre for
Public
cplea
Legal Education
Alberta