Supreme Court of Canada

The ‘Supreme Court of Canada’ is the final court of appeal in constitutional (and other) cases. It also provides advice on constitutional questions when asked to do so by the federal or provincial governments as it did, for example, in 1981 on the question of the constitutionality of the patriation of the Constitution (see *Re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753). The Supreme Court was created in 1875 but until 1949 its decisions could be appealed to the Judicial Committee of the Privy Council in Britain. It was also possible until 1949 for litigants to go directly to the Privy Council from the provincial appeal courts. For the first century of its existence, the Court was very conservative and unassertive in its judgements. There was a marked change however in 1973, following the appointment of Bora Laskin as Chief Justice. In 1975 the Supreme Court gained substantial, although not complete, control over what cases it will hear. Since the entrenchment of the *Canadian Charter of Rights and Freedoms* within the Constitution in 1982, the Court has played the important role of interpreting the fundamental rights of Canadians. As a result, the Court has moved from relative obscurity to centre stage in Canada’s political system. The resignation of a chief justice is now headline news across the country.

The Court is composed of nine justices, appointed by the federal government, three of whom must be from Quebec. As a matter of longstanding practice, three justices are chosen from Ontario, one from Atlantic Canada and two from the western provinces. The Supreme Court tries to reach unanimous verdicts but that is not always possible. Dissenting judgements are published along with the majority opinion and are often scrutinized by lawyers for clues about the direction in which the Court may be moving. Supreme Court decisions are binding on all lower courts in Canada. The Court is not bound to follow precedents created by the Judicial Committee of the Privy Council or its own earlier decisions, but it departs from them reluctantly and only with careful explanation of its reasons for doing so.

Sources:

- I. Bushnell, *The Captive Court: A study of the Supreme Court of Canada* (Montreal: McGill-Queen’s University Press, 1992).
- P. McCormick, *Canada’s Courts* (Toronto: J. Lorimer, 1994).
- J.G. Snell & F. Vaughan, *The Supreme Court of Canada: History of the Institution* (Toronto: Osgoode Society, 1985).