




Law & Politics

The Interaction of Parliament and the Courts of Canada

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*The legal content of this presentation is
accurate as of August 13, 2014*





INTRODUCTION

WHO MAKES THE LAW?

INTRODUCTION

Is it...



Parliament??

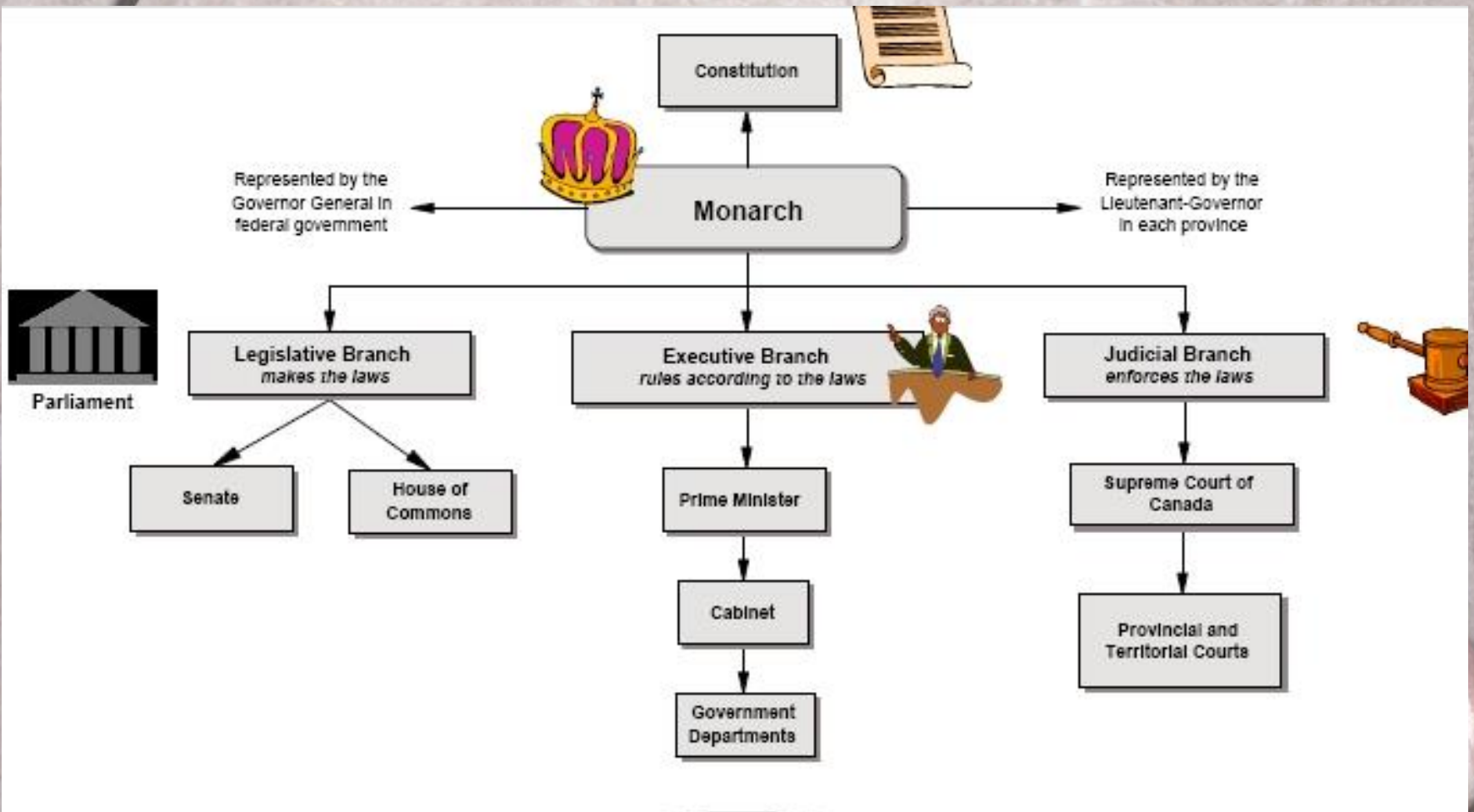
INTRODUCTION

Or...



The Courts??

STRUCTURE OF GOVERNMENT



STRUCTURE OF GOVERNMENT

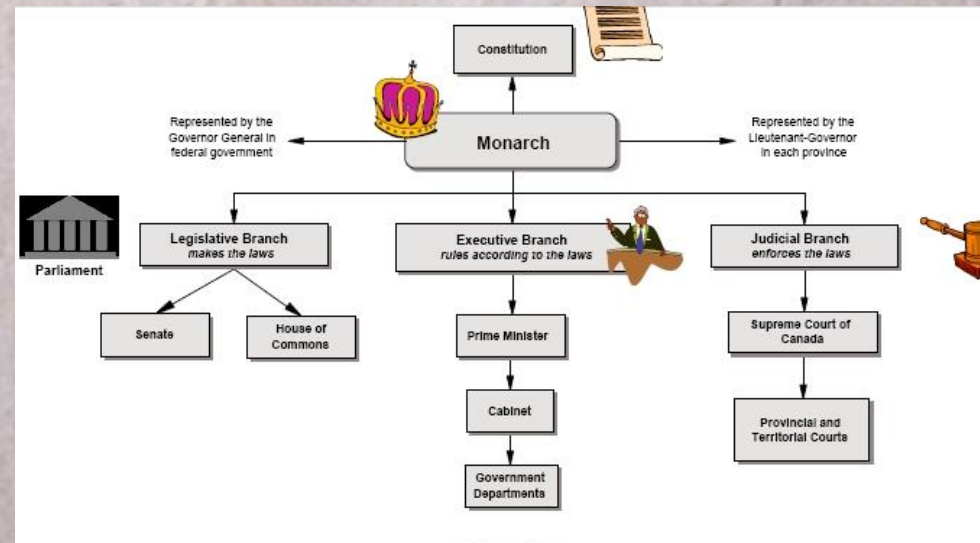
- For our purposes the Monarch is not relevant
- The Constitution, which includes the Charter of Rights and Freedoms, is at the top of the diagram

•The third level shows on equal footing the:

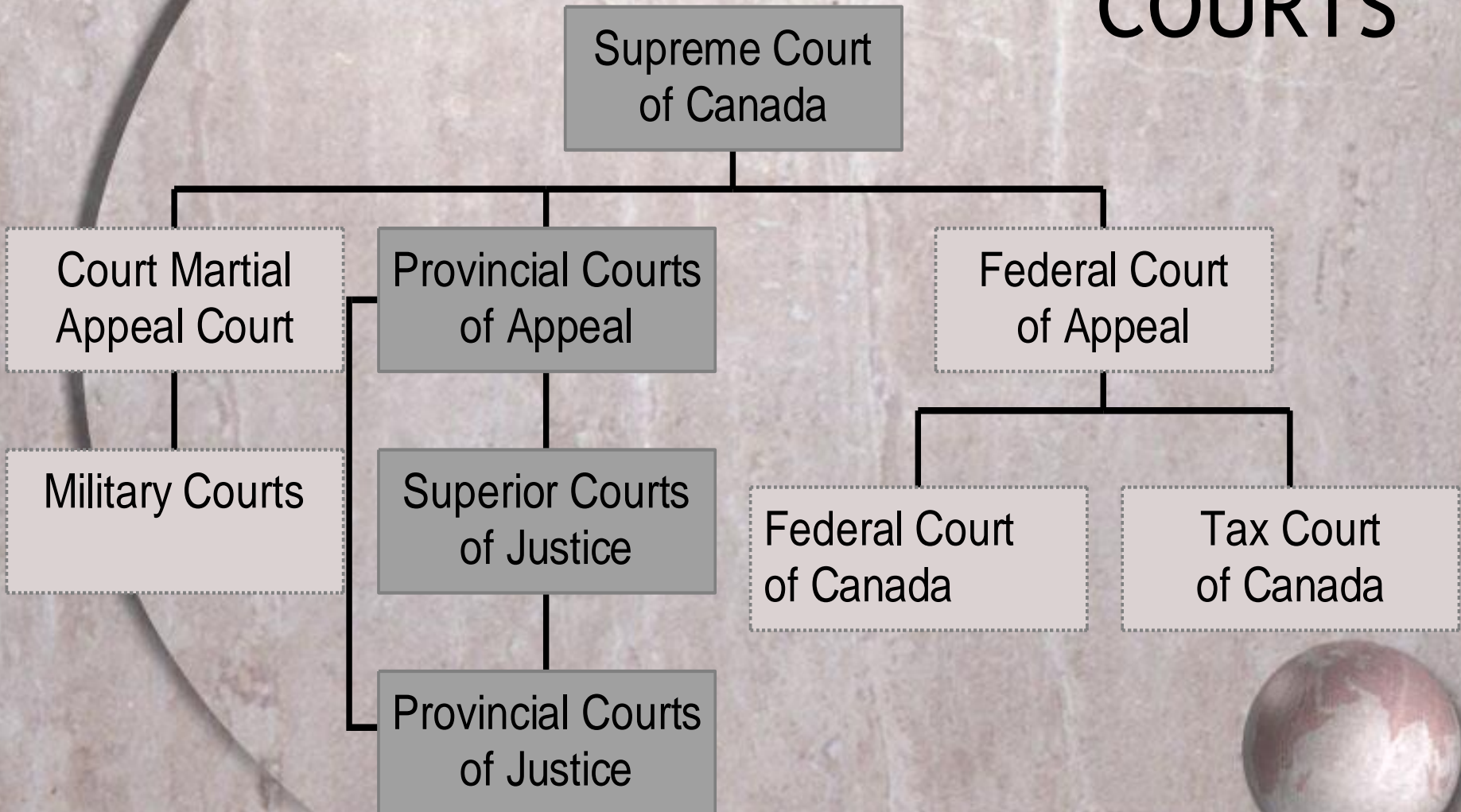
- Legislative Branch, which is made up by the House of Commons. MPs are the representatives of their ridings that sit in the House.

- In the middle you have the Executive Branch is made up of the Prime Minister, who is also an MP in the House of Commons, and his Cabinet Ministers.

- Next is the Judicial Branch, which is made up of the different levels of courts.



STRUCTURE OF THE COURTS




STRUCTURE OF THE COURTS

- Canadian judicial system is based on the principle of **precedents**. The Supreme Court of Canada, or SCC, is the highest court in Canada and generally all courts below must follow its decisions.
 - 9 judges sit for the majority of SCC cases
- In Ontario, the Court of Appeal is the highest court for the Province and generally all Superior Courts of Justice and Provincial Courts must follow its decisions.
 - 3 judges sit for the majority of CA cases
- Finally we have SCJ and OCJ courts. The hierarchy is less pronounced because in many instances they deal with different subject matter.
 - SCJ deals with some criminal matters and all civil matters, e.g. when one person sues another person for failing to carry out a contract.
 - OCJ courts deal primarily with criminal matters, including provincial offences, such as speeding under the Highway Traffic Act.




STRUCTURE OF THE COURTS

- As a general rule, lower courts *must* follow the decisions of higher courts when they are on point.
 - Courts of the same level are *informed* by the decision of another judge, but they are not bound by the decision - when different judges decide a similar matter entirely differently that is when the Court of Appeal is needed to step in and “break” the tie by making a decision the lower courts will then be bound by.
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STRUCTURE OF THE COURTS

- Between provinces, a Court of Appeal decision from BC does not bind a Superior Court Judge in Ontario, but it is persuasive, and assuming the law is the same (eg. A federal law such as the Criminal Code, as opposed to a law made by the Provincial Legislature, such as the Highway Traffic Act), the lower court should be inclined to follow the Appeal Court decision.
 - The Supreme Court of Canada only hears about 80 cases per year, but thousands of people appeal to the Supreme Court every year.
 - They limit Court time to important issues that have national implications.
 - This means that the provincial appeal courts are the final decision makers for 90%+ of cases.
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HOW THE LAW IS MADE

- Two types of legal systems
 - Civil Law (used in Provincial law in Quebec and Louisiana in the USA)
 - Common Law
 - Comes from the U.K. - described as “common law” since 1189
 - Used in all other provinces of Canada and US states, Australia, New Zealand

HOW THE LAW IS MADE

1. Parliament creates a law
2. The Courts interpret the law as written by Parliament
3. If the Courts consider the law to be unconstitutional, they may:
 - a. modify the law
 - b. strike down all or parts of the law
4. Parliament may redraft the law
5. Start back at 1

HOW THE LAW IS MADE

For example:

1. A law that makes driving with more than 80mg of alcohol per 100mg of blood illegal - drunk driving
2. The Courts interpret that law
3. The Courts modify the law, taking into consideration rules of statutory interpretation and the Charter
4. Parliament may redraft the law

HOW THE LAW IS MADE


- The process is very circular. Parliament may make a law. The Courts may either a) interpret it differently from what Parliament intended (which can be because of (i) poor drafting, or (ii) to avoid an undesirable effect), or b) declare it unconstitutional
- Once the courts interpret a law, specifically if the SCC makes a binding decision about a piece of legislation, it is binding on all lower courts - regardless of what Parliament intended, **UNLESS** Parliament takes the decision of the courts and redrafts the law
- This can be a matter of making it more clear, or closing what they may view as a “loophole”

CASE STUDY: EUTHANASIA & ASSISTED SUICIDE

- Section 14 of the *Criminal Code*,
 - No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.
 - i.e. you can't consent to have somebody kill you
- Theoretically, one would expect euthanasia to be prosecuted as first-degree murder, because there is an intent to cause death, which is the definition of murder, and the act is most often planned and deliberate, which is the definition of first-degree murder



CASE STUDY: EUTHANASIA & ASSISTED SUICIDE

- Section 241 of the *Criminal Code*,
 - Every one who,
 - counsels a person to commit suicide, or
 - aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
 - Commits an offence
- 

CASE STUDY: EUTHANASIA & ASSISTED SUICIDE

- This means that a person cannot consent to being killed, nor can they be helped by somebody, eg) a doctor
- There are good public policy reasons for these laws in most circumstances
 - Many people who wish to commit suicide are depressed and often in a state of despair
 - Allowing somebody to legally help them commit suicide, or counsel them into doing so, when the person is arguably not in their right mind and perhaps wouldn't want to die if they were happy, is inherently wrong



SUE RODRIGUEZ & THE RIGHT-TO-DIE DEBATE

- Diagnosed with Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig's Disease) in 1991
- Ms. Rodriguez would eventually lose control off all of her limbs and would wind up stuck inside a body that wouldn't move, but being 100% mentally alert
 - Often described as being trapped in a prison
- Argued she had a right to assisted suicide
- Took her case all the way to the Supreme Court of Canada
 - SCC decided 5-4 that she did not have a legal right to die
 - Parliament's laws were upheld by the Court and continued in force

THE RIGHT-TO-DIE DEBATE TODAY

- The issue wound up back in the courts
 - Gloria Taylor, 63, from B.C. also had ALS. A few years ago, she and the BC Civil Liberties Association re-litigated the issue.
 - The BC Supreme Court ruled in 2012 that the criminal-code provisions against physician assisted death are unconstitutional.

WHEN A LAW IS OVERTURNED BY SCC

- Immediately becomes inapplicable - it cannot be enforced
 - Although effects can be stayed by the court to give Parliament time to redraft the law
- Parliament can either,
 - 1. Redraft the law so that it no longer violates the Charter, or
 - 2. Do nothing, which creates a legal “vacuum” when the law simply disappears

WHO MAKES THE LAW??

- Neither Parliament, nor the courts of Canada make the law alone.

- The relationship between the two is often described as a “conversation”:

- Parliament makes laws, the courts apply and interpret the law so that no law violates the Charter.

- Parliament, from time to time, re-writes a law based on what the courts have to say about it so that it can be perfected to do exactly what Parliament intended



FINAL POINTS

- The Prime Minister appoints judges to the Supreme Court and Federal Courts
- The government of the province appoints judges to provincial courts
- The results of an election plays a **direct** role in the composition of Canada's courts -
VOTING IS IMPORTANT!

QUESTIONS?

