



RULE OF LAW IN CANADA

by Jane Scharf

Campbell Motors Limited v. Gordon, 1946 CanLII 242 (BC CA)

Court of Appeal for British Columbia — British Columbia

1946-06-26 | 23 pages | cited by 22 documents

injunction — ultra vires — war — sovereignty — inalienable

[...] The "rule of law" preserves to us, in my judgment, the same basic constitutional rights found in written form in the Declaration of Independence and the Constitution of the United States (and cf. [...] The Declaration of Independence proclaims: "We hold these truths to be self evident, that all men . . . are endowed by their Creator with certain unalienable Rights, [...] Self-evident truths require no proof. One of these truths is that each individual is endowed with certain inalienable rights. [...]

[...] That refers to rights which the state cannot give and cannot take away. [...] The main reason for the existence of the state is to secure and preserve these inalienable rights. [...] These inalienable rights so set forth in the Declaration of Independence repeat in written form the rights of life liberty and property which stemming from Magna Carta have become part of our unwritten constitution. [...]

LINK for Campbell Motors v. Gordon 1946:

<https://www.canlii.org/en/bc/bcca/doc/1946/1946canlii242/1946canlii242.html?resultIndex=1&resultId=b9a53bfed2e743ebbe4508a759b4d603&searchId=2024-03-06T15:25:53:631/507737be3269452fb70420dd7804da96&searchUrlHash=AAAAAQAnR29yZG9uLCBDYW1wYmVsbCBNb3RvcnMgTHR>

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1. What is Rule of Law

The Rule of Law represents the foundational principles upon which legitimate legal systems are based. Originally, people held all the power. Laws were created collectively to structure authority and governance. When officials abused this authority, the people reasserted their rights, as seen with the Magna Carta in 1215.

The Magna Carta required the King to submit to the law, including allowing trial by jury and forfeiture of officials' property for violating the law.

2. Justice Watson on Rule of Law

Justice Watson (Alberta Court of Appeal) emphasized that the Rule of Law reflects core constitutional principles: federalism, democracy, rights and freedoms, and equality. He stated:

"The rule of law is not a law of rules or rulers. It's a value system we believe in."

He highlights the importance of open courts, equality, and foundational moral tenets like the Golden Rule. He affirms that Canada's constitutional framework verifies and strengthens the Rule of Law.

3. Common Law Rights Protected by Constitution

Reference re Alberta Statutes (1938), [1938] SCR 100

The Supreme Court of Canada struck down Alberta's Accurate News and Information Act, recognizing an "implied bill of rights" protecting free speech. This confirmed that

common law rights, such as freedom of expression, are protected within our constitutional democracy.

Case: <https://www.canlii.org/en/ca/scc/doc/1938/1938canlii1/1938canlii1.html>

4. Recent Case Law Affirming Rule of Law

Alford v. Canada (Attorney General), 2022 ONSC 2911

Constitutional scholar Ryan Alford successfully argued in Ontario Superior Court that Parliament cannot legislate away common law rights like parliamentary privilege.

Decision:

<https://www.canlii.org/en/on/onsc/doc/2022/2022onsc2911/2022onsc2911.html>

Though overturned on appeal, the SCC has agreed to hear the case. This shows the evolving debate over supremacy of common law in Canadian constitutional interpretation.

Reference re Impact Assessment Act, 2023 SCC

The SCC struck down federal legislation restricting Alberta's resource management, affirming provincial jurisdiction and rejecting overreach, despite UN agreements.

Decision: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/8162/index.do>

5. Holding Officials Accountable

Magna Carta, Article 61

Barons were granted authority to seize the King's assets if he violated the charter. This principle underpins modern legal accountability of officials.

R. v. Eldorado Nuclear Ltd., [1983] 2 SCR 551

Crown agents lose immunity when acting outside their statutory purpose. Personal liability attaches to unlawful acts outside state authority.

Case: <https://www.canlii.org/en/ca/scc/doc/1983/1983canlii34/1983canlii34.html>

Roncarelli v. Duplessis, [1959] SCR 121

Premier Duplessis was held personally liable for unlawfully revoking a liquor license, reaffirming that no official is above the law.

Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.do>

Hudson v. Brantford Police Services, 2001 ONCA

Section 25(1) of the Criminal Code protects peace officers only for reasonable mistakes of fact—not law.

Case:

<https://www.canlii.org/en/on/onca/doc/2001/2001canlii8594/2001canlii8594.html>

The Supreme Court in *Attorney General v. Power* (2024)

Confirmed that Parliament is the supreme law-making authority in Canada, but its laws must comply with the Constitution; courts can award damages when legislation violates constitutional rights and freedoms, even without proof of bad faith.

Case:

<https://www.canlii.org/en/ca/scc/doc/2024/2024scc26/2024scc26.html>

English Bill of Rights (1689)

States that suspending or executing laws without consent of Parliament is illegal.

Reference: <https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>

6. The Jury System and Rule of Law

Magna Carta, Article 29

“No free man shall be... punished except by the lawful judgment of his peers...”

Jury as a Guardian of Liberty

Juries decide facts, assess fairness, and may nullify unjust laws. Canada inherited this safeguard via British common law (Constitution Act, 1867 preamble).

Case: *The King v. Conway*, 1902 CanLII 95 (NS SC)

Defendant imprisoned for summary theft charge was released via habeas corpus for not being offered a jury.

Case:

<https://www.canlii.org/en/ns/nssc/doc/1902/1902canlii95/1902canlii95.html?searchUrlHash=AAAAAQAPYm9vdHMganVyeSAxOTAyAAAAAAE&resultIndex=1>

Telford v. Secord, [1947] SCR 277

Affirms a jury trial is a “substantial right.”

Case:

<https://www.canlii.org/en/ca/scc/doc/1947/1947canlii4/1947canlii4.html>

Criminal Code

- *s. 471*: Indictable offenses tried by judge and jury.
 - *s. 473*: Consent of AG and accused required to waive jury.
 - *s. 568*: AG may override election for judge-alone trial.
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7. Illegitimate "Bastard Courts"

Provincial courts established under provincial authority and staffed by provincially appointed judges violate sections 91(27) and 96 of the Constitution Act, 1867.

- *s. 91(27)*: Federal jurisdiction over criminal law and procedure.
- *s. 96*: Federal appointment of judges for superior, district, and county courts.

Without federal authority or appointment, provincial courts lack lawful jurisdiction to adjudicate matters involving common law rights, codified rights, or jury trials.

8. Criminal Code and Jurisdictional Conflict

Section 553 of the Criminal Code gives provincial court judges jurisdiction over various indictable offenses. However, this appears to conflict with the Constitution’s requirement that criminal matters fall under federal authority and federally appointed judges.

This raises a serious constitutional question regarding the legality of provincial court proceedings for criminal matters.

9. Where We Go From Here

- Demand a constitutionally valid court with a jury for all claims made against you.
- Challenge jurisdiction of provincial (“bastard”) courts.

- Require proof of constitutional jurisdiction before allowing proceedings.
 - If jurisdiction is absent, demand nullification of ruling.
 - Personally sue public officials who act beyond lawful authority.
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