

THE CANADIAN COURTS

TRADITIONS OF THE COURTS

The Canadian judicial system has inherited many traditions from the English court system. All of the traditions that accompany the court process serve to lend dignity to the judicial proceedings, to distinguish the courts from other decision-making tribunals and to remind people that the administration of justice is central to the court system.

Coat of Arms

There are a variety of coats of arms on display in Ontario courtrooms. In many of the Superior Courts, the 'Royal Coat of Arms' is found. This coat of arms identifies the person who is the head of the state. The Superior Court judges sit under the Royal Arms to show that they represent the monarch,



ROYAL COAT OF ARMS

as appointees of the federal government.

Older Ontario courtrooms display the 'Royal Arms of the Monarchs of England', with the English 'Lion' and the Scottish 'Unicorn'

supporting a shield with a Royal Crown above it. The shield shows various Royal Emblems of the UK (the three Lions of England, the Lion of Scotland and the Harp of Ireland). The Shield is surrounded by a garter bearing the motto "evil to him who thinks evil" in Latin, which symbolizes the Order of the Garter, an ancient order of knighthood of which the Queen is sovereign. Below the garter and the

shield is a banner with the motto "God and My Law" (a statement of the rule of law). Some official plants of the United Kingdom – the rose, thistle, and shamrock – are displayed beneath the Shield. Courtrooms of the Court of Appeal for Ontario in Osgoode Hall, the historic courtroom at Old City Hall in Toronto, and some other pre-1931 Ontario courtrooms display this coat of arms.



ARMS OF CANADA

When Canada became sovereign from the UK in 1931, the "Arms of Canada" began to appear in courts. The banner surrounding the shield in this coat of arms reads "they desire a better country" in Latin (the motto of the Order of Canada). The design reflects the importance of the

four founding nations of Canada – the Royal Lions of England, the Royal Lion of Scotland, the Royal Fleur-de-lis of France, and the Irish Harp of Tara. These symbols are set above three maple leaves. The flags that appear in the Arms of Canada are a Royal Union flag and the flag of Royal France.

In many Superior Courts, the coat of arms on display features a black shield with gold scales of justice. Above the scales is a gold maple leaf and Royal Crown. This coat of arms also features a Shield of Arms of Ontario and



SUPERIOR COURT COAT OF ARMS

underneath the word “Justicia”. The Chief Herald of Canada assigned this coat of arms to the Superior Court on January 11, 1992.

Ontario Court of Justice judges are appointed by the provincial government. Ontario Court of Justice courtrooms might display the Royal Coat of Arms or the Arms of Canada, depending on the age of the courthouse. They also display the Ontario Provincial Coat of Arms. This coat of arms displays the Shield of Arms that was granted to Ontario by Queen Victoria in 1868. It consists of three maple leaves on a green background below the Cross of St. George. The crest is a black bear standing on a gold and green wreath, with a moose and a deer supporting the shield. The Latin motto reads “Ut incepit Fidelis sic permanent” which translates as “loyal she began, loyal she remains”.



Courtroom Attire

Judges wear grey and black striped pants or skirts, black waistcoats or jackets with heavy cuffs and buttons, and long black gowns (robes) that are open at the front. Supreme Court judges’ robes are red. Robes are worn for various reasons: they identify an individual as a judge; they are a historical symbol of a system that has endured over time; and they also remind the judge that when she is robed s/he is sitting as judge and must act in a certain way.

A sash hangs over the judge’s right or left shoulder (depending on the court the judge sits in) and is fastened on the other side. Judges wear white shirts with wing collars, and hanging down from the neck are “tabs” or “bands”, which are two little pieces of white fabric that hang down from a band attached around the collar. Some have suggested that they

represent the Old and New Testaments or the tablets of the Ten Commandments as a reminder of the responsibilities of judges and lawyers. Lawyers first began wearing them in the 17th century. Some say that the winged collar shirts and tabs became the standard in the 20th century so that it was certain that lawyers would look neat and presentable when appearing before the courts.

In most Superior Court hearings, lawyers wear grey or black pinstriped trousers or skirt, a white shirt with a winged collar, a black waistcoat, tabs, and a black robe. Lawyers appearing in other Ontario courts and administrative tribunals wear professional attire, such as a suit, and do not wear robes. Lawyers do not wear sashes.

Judicial Sash

All judges in Ontario courts wear red sashes over their robes. Judges of the Ontario Superior Court wear the sash over their right shoulder, with the ends attached on the left side. Judges of the Ontario Court of Justice wear their sash over their left shoulder with the ends attached on the right side. The Superior Court judges also wear a badge on their sash. The badge features a gold sun with a royal crown. On the sun is a maple leaf with a gold scales of justice.

Ontario’s justices of the peace also wear sashes, but they are dark green. They wear their sashes over the left shoulder, with the ends attached on the right side.

The sashes that Ontario’s judges wear are remnants of the English legal system, as are other parts of judges’ and lawyers’ dress. While judges’ black gowns only go back to 1685 (before that, counsel and judges wore coloured gowns), the red sash can be traced back to well before 1635. The sash was once known as the “Serjeant’s Tippet”, because senior English lawyers were known as Serjeants-at-Law. In

England, the sash has also been called the “Gun Case” because it has the size and shape of a gun case, a woollen container for storing a rifle or shotgun. One theory behind the sash is that the Serjeants-at-Law and judges added them so they could wear them around their necks for warmth when riding from one court town to the next.

Oath

Traditionally, the oath has served various functions within the justice system. Individual judges swear an oath upon their appointment to the bench as part of their promise to fulfil their judicial duties. The oath was also used by those asking the courts to accept their evidence as the truth. Before the use of contracts, individuals relied on oaths to get others to accept their word that they would fulfil their part of a bargain. Today, oaths are a regular part of the court process when entering evidence. The brief ceremony of asking a witness to take an oath is a way to convey the seriousness of giving evidence and to signal that lying under oath can result in a criminal charge of perjury. When affidavits are sworn under oath, the court is assured that special care was taken in the preparation of the affidavit and that the person swearing the affidavit, believes what is written inside it to be the truth. Witnesses can choose whether they would like to swear on a Bible, or a holy book of another religion, or to solemnly affirm they will tell the truth.

Bow

A counsel bows both when entering a courtroom, and upon the judge entering the courtroom, as a sign of respect for the judicial office. A judge represents the Queen and the embodiment of sovereignty, and for this reason is accorded such respect. A court bow resembles a dignified nod. Technically, it is called a “neck bow” during which the

individual makes a slight inclination at the waist and drops his/her eyes.

QUESTIONS

In many of the (a) _____, the ‘Royal Coat of Arms’ (also known as the ‘Royal Arms of the Monarchs of England’) is found behind the judge. It tells everyone that the judge represents the (b) _____ at the (c) _____ government level.

In (d) _____, when Canada gained independence from the UK, the (e) _____ began to appear in courts. Like the earlier ‘Royal Court of Arms,’ it reflects the four founding nations of Canada: (f) _____
_____. Unlike the Royal Coat of Arms, the nation of (g) _____ appears in the Arms of Canada.

On January 11, 1992, the Chief Herald of Canada assigned a different Coat of Arms to the Superior Court. It is primarily black and features a large, gold (h) _____. It features the word (i) “_____”, which is Latin for “justice”. Ontario Court of Justice courtrooms sometimes display the Ontario provincial Coat of

Arms, which displays the

(j) _____ that was granted to the province by Queen Victoria in 1868.

Judges wear robes to show their connection to the traditional court system and to remind themselves that (k) _____.

Most robes are black. However, judges of the (l) _____ wear red robes.

The red sash judges wear has a long history. There are many theories about why the sash was added, including (m): _____.

When appearing in (n) _____ hearings, lawyers dress like the judge, but don't wear a sash or badge.

When they are appointed to the bench, judges must take an (o) _____ to promise they will fulfill their judicial duties. This is a one-time event for them, but for the public oath-taking happens regularly. For example, when submitting any (p) _____, a person must take an oath to promise to tell the truth.

Written documents submitted to court, such as

(q) _____, are also considered more seriously if it was sworn under oath. Witnesses can choose to swear an oath in three ways:

(r) _____.

A counsel must (s) _____ when a judge enters the courtroom to show respect for the judicial office and the importance of the justice system.

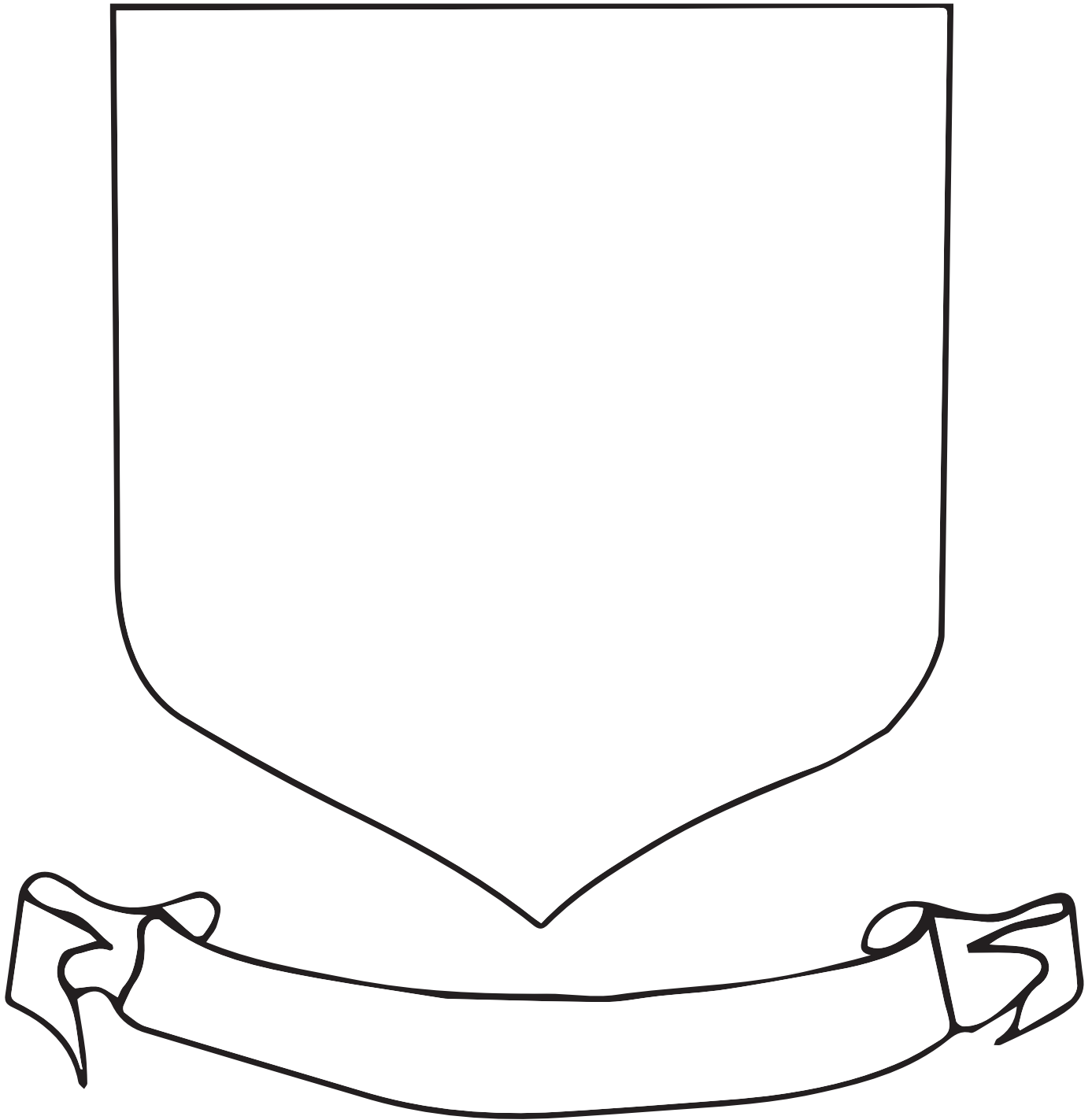
A COAT OF ARMS FOR THE NEW MILLENNIUM

You will be giving the Arms of Canada a makeover to suit the 21st Century! Your goal will be to represent the same spirit of justice with modern interpretation and symbolism. You will present your coat of arms to your classmates in a “Justicia Futuro” (“The Future of Justice”) class gallery.

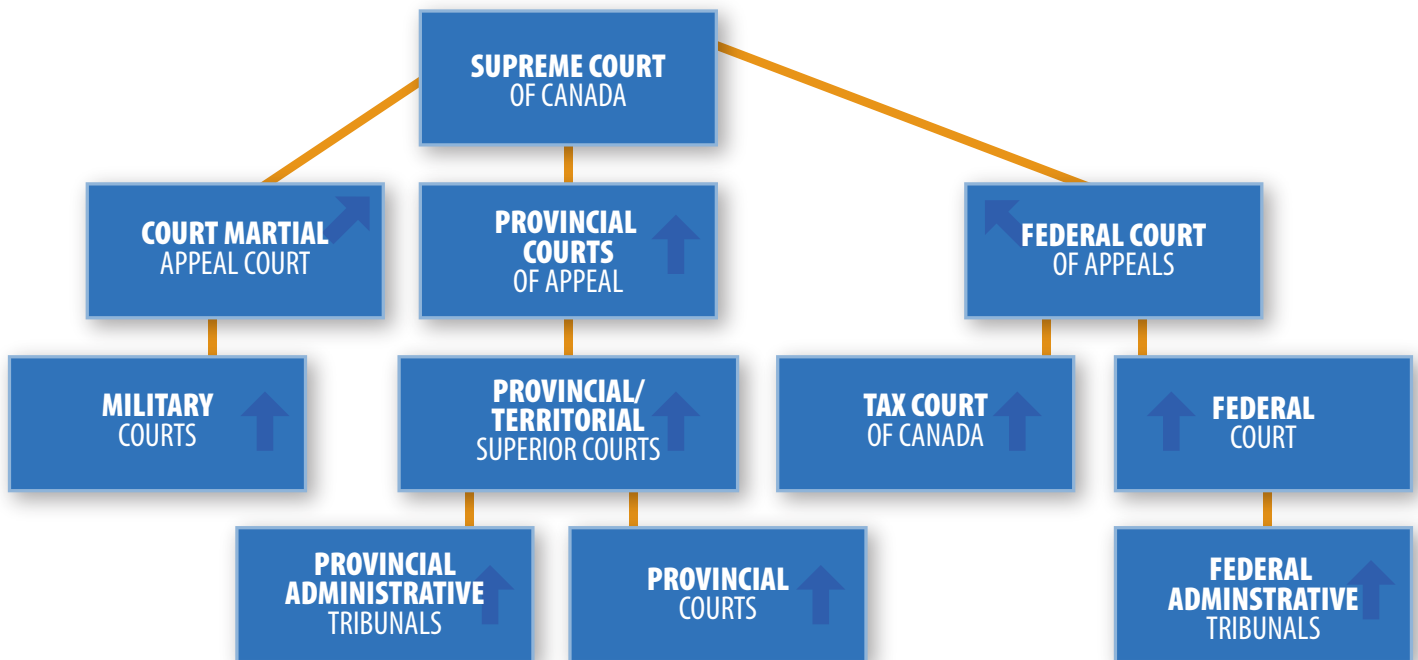
Since the first distinctly Canadian Coat of Arms appeared in 1921, things have changed. Today, Canada is much more diverse. The way we think of justice, the things that symbolize Canada for many people, and many of our common beliefs have also changed.

Instructions

- Use template provided to create your coat of arms for the 21st century.
- Give the coat of arms a motto. The motto should answer the question “What is justice?”, or capture the essence of what Canada is about. This is your expression of the spirit of the legal system.
- Fill the coat of arms with symbols and colours representing your vision of justice. Try to use contemporary images representing the ideals of the Canadian justice system.
- You are encouraged to draw images outside the template to replace the traditional unicorn and lion.
- Be creative. You may draw or use newspaper and magazine clippings. You can make your template 3D or even virtual. This is your coat of arms.
- Optional: Write an artist’s statement of no more than 250 words on the back of your template explaining the symbols, colours, and motto you used.



STRUCTURE OF THE COURTS IN CANADA



Supreme Court of Canada

The Supreme Court of Canada is Canada's highest court. It is the final court of appeal for all litigants, whether individuals, organizations or government. Its jurisdiction includes both the civil law of the province of Quebec and the common law of the other provinces (including Ontario) and the territories. The Supreme Court has jurisdiction over disputes in all areas of the law, including constitutional law, administrative law, criminal law and civil law.

Provincial and Territorial Courts

Each Canadian province and territory has its own court system, with trial courts, (provincial/territorial court and superior court) and a Court of Appeal or appellate division that hears appeals from the lower

courts (with the exception of Nunavut, which only has one level of trial court).

Federal Court System

Parallel to the Ontario court system and the court systems of other Canadian provinces and territories, is the Federal court system. The Federal Court of Canada hears certain matters of federal concern, including claims against the Government of Canada, and civil suits in federally-regulated areas such as immigration, national security, and intellectual property. The Federal Court of Appeal hears appeals from the Federal Court of Canada, the Tax Court of Canada, the Immigration and Refugee Board, and other Boards created by the Federal government.

Jurisdiction of Ontario Courts

Within the province of Ontario, there are three courts: the Court of Appeal (ONCA), the Superior Court of Justice (SCJ) and the Ontario Court of Justice (OCJ). Each court has a Chief Justice and an Associate Chief Justice.

Justices for the Court of Appeal and the Superior Court of Justice are appointed by the federal government. The provincial government appoints justices and justices of the peace of the Ontario Court of Justice. Justices of the Superior Court of Justice and the Ontario Court of Justice are normally addressed as "Your Honour." Justices of the Court of Appeal are normally addressed as "Justice." The more formal "My Lord" and "My Lady" are no longer used to address justices of any court in Ontario. Justices of the peace are addressed as "Your Worship."

Ontario Court Of Justice

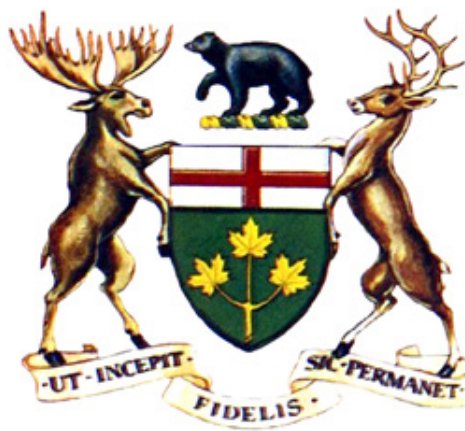
The Chief Justice, the two Associate Chief Justices, and more than 300 judges and 400 justices of the peace make up the Ontario Court of Justice. It is organized into seven geographic regions with a Senior Regional Justice and a Senior Justice of the Peace appointed for each region.

The OCJ exercises jurisdiction over trial matters involving family and criminal cases and matters under the *Youth Criminal Justice Act*. Currently the Ontario Court of Justice receives and disposes of approximately 95% of all criminal and youth criminal justice matters in Ontario.

Ontario Court of Justice judges hear:

Criminal Matters: The OCJ has jurisdiction to hear

all criminal cases not involving juries or serious cases where the accused can choose to have the case heard by a judge sitting alone or with a jury. This court is often referred to as a specialty court when it comes



to domestic violence. It hears cases involving domestic violence, spousal abuse, and assault on children. The Ontario Court of Justice hears all criminal trials involving young persons, including

applications to transfer serious charges to adult court.

Family Court: The OCJ deals with most aspects of family law, such as separation, custody and access and support issues. It also has the authority to grant adoption and has jurisdiction over all issues of child protection, such as the removal of children from dangerous family situations.

Justices of the Peace

Justices of the peace hear bail applications and prosecutions of provincial offences. Provincial offences include trespass, liquor licensing, traffic offences, dog owners' liability, parking and noise by-laws, and environmental protection.

Appeals: The OJC hears appeals from decisions of a justice of the peace involving trials under the *Provincial Offences Act*.

Other: The OCJ also presides over Bail Court and Youth Court. Some OCJ courthouses include specialist criminal courts such as Mental Health Court, Gladue Court, and Drug Treatment Court.

Superior Court of Justice

The Chief Justice, the Associate Chief Justice, and approximately 300 other federally-appointed judges make up the Superior Court of Justice. This Court also includes a number of “supernumerary”, or semi-retired, judges who can be called upon to hear court proceedings after they have retired. The SCJ is subdivided into eight geographic regions with a Senior Regional Justice appointed for each region.



The Superior Court includes masters, who are authorized to hear many pre-trial procedural questions and who deal with specialized matters such as construction liens and bankruptcy. Masters are appointed by the provincial government.

The Superior Court of Justice exercises jurisdiction over civil and serious criminal cases. It has a Motions Court, which considers many procedural matters such as injunctions, but does not conduct trials. A judge or a judge and jury hear trials in the Superior Court.

In addition, the Superior Court of Justice has jurisdiction in specific areas:

Divisional Court: Reviews of decisions of administrative tribunals such as school boards, police commissions, and municipal boards are conducted by the Divisional Court by either a single judge or a

panel of three judges. The Divisional Court also hears appeals from civil cases heard in the SCJ involving payments of \$50,000 or less and appeals from Small Claims Court.

Family Court: The SCJ deals with family matters including divorce, separation, custody of children, support payments, and family property issues.

Small Claims Court: This court deals with the resolution of civil disputes involving claims of \$25,000 or less.

Court Of Appeal for Ontario

The Chief Justice, the Associate Chief Justice and approximately 20 other judges plus a number of supernumerary judges make up the Court of Appeal for Ontario.

This court sits in Toronto, in the historic courtrooms within Osgoode Hall. Its function is to rule on the correctness of trial judgments, applications, and motions that have already taken place in lower courts. The court deals with a range of issues from

analysis of the law relating to contracts, negligence, bankruptcy, and criminal procedure to issues of child custody, human rights, and the application of the *Canadian Charter of Rights and Freedoms*. Normally, a panel of three judges listens to each appeal, although sometimes a panel is composed of five judges. There



are no juries at the Court of Appeal. New evidence is rarely introduced, and there are normally no witnesses. The only material that is presented in the court is the transcript of the previous trial, the lawyers' arguments concerning the correctness of the previous judgment, and a record of other similar cases and judgments that lawyers may wish to use in support of their arguments. The court also hears appeals by or on behalf of inmates who are appealing their convictions and/or sentences.

Decisions of the court may be further appealed to the Supreme Court of Canada. In some cases, the right to appeal is automatic, such as when one ONCA judge

on a panel hearing a criminal appeal dissents from (disagrees with) the judgement of the others on the panel. In most instances though, an appeal to the SCC requires leave (permission) of that court. Leave is rarely granted, and the Supreme Court of Canada hears only 25-30 Ontario appeals per year, compared to the more than 1000 decisions per year rendered by the Ontario Court of Appeal.

FLOWCHART: THE COURTS OF ONTARIO

Ontario Court of Justice

Provincially-Appointed Judges and Justices of the Peace

Criminal Law: Less serious indictable offences (s.553 of the *Criminal Code*) and summary offences are heard by one judge.

Family Law: Custody, access and support (not during divorce), enforcement of child support, child protection, and adoption matters are heard (where there is no Unified Family Court).

Bail Court: Determines whether a person charged with crime(s) should be held in jail until their trial is completed. Justices of the peace preside over bail hearings.

Youth Court: This specialist court, with Youth Court judges, deals with young people charged under the *Youth Criminal Justice Act*.

Mental Health Court: This specialist court deals with charges against people with mental health issues. Mental health workers, case managers and psychiatrists are involved in determining the appropriate treatment or sentence.

Gladue Court: Throughout Canada judges take into account the unique circumstances of Aboriginal accused and Aboriginal offenders (including status and non-status Indians, Métis, and Inuit), based on the *Gladue* decision. Some regions have these specialist courts for Aboriginal people facing criminal charges.

Drug Treatment Court: This specialist court provides court-supervised treatment for individuals addicted to drugs who have been charged with drug-related offences.

Superior Court of Justice

Federally-Appointed Judges

Criminal Law: Major offences (s.469 *Criminal Code*) and hybrid offences are heard, generally, by a judge and jury unless the parties consent to a judge alone.

Unified Family Court: Hears all family matters including divorce (federal) and separation (provincial), presided over by a single judge.

Family Law: Where there is no Unified Family Court, individual judges hear divorce and property issues, support, and custody and access matters

Small Claims Court: Civil cases for claims of less than \$25 000 are heard by a judge or in some cases a master.

Divisional Court: Hears appeals of interim and final orders; appeals and judicial reviews of administrative tribunals, government agencies and boards; and appeals of civil cases where the monetary value is less than \$50 000.

Appeals: Appeals of summary offences and family matters from the OCJ are also heard by the Superior Court of Justice.

Court of Appeal for Ontario

Federally-Appointed Judges hear appeals from the Superior Court of Justice. Appeals from the Court of Appeal are heard by the Supreme Court of Canada.

QUESTIONS

1. Rey was found guilty of first-degree murder at the Ontario Court of Justice. He appealed to the Court of Appeal for Ontario, without success. Is there a court to which he can go for justice?
2. Unlike most trial courts, matters before this court are heard by panels of three or five judges.
3. If someone wanted to challenge a decision from the Immigration and Refugee Board, which court would they go to?
4. Spiros has recently been accused of assaulting a fellow student at a party. Spiros is 16-years old. Where will he go to court?
5. These people hear bail applications.
6. Greg and Nadeen have been trying to patch up their marriage for years, and in the end decided to divorce and deal with the custody of their children. Which court will they go to?
7. Which court is organized into seven different regions?
8. If the Tax Court of Canada made a decision against an automobile manufacturer and the company wanted to appeal it, which court would it go to?
9. Which court hears all cases under the *Youth Criminal Justice Act*?
10. These people deal with pre-trial procedural questions.