

CHV2O Unit 2: Rights and Responsibilities

Activity 4: The Structure of Canada's Courts

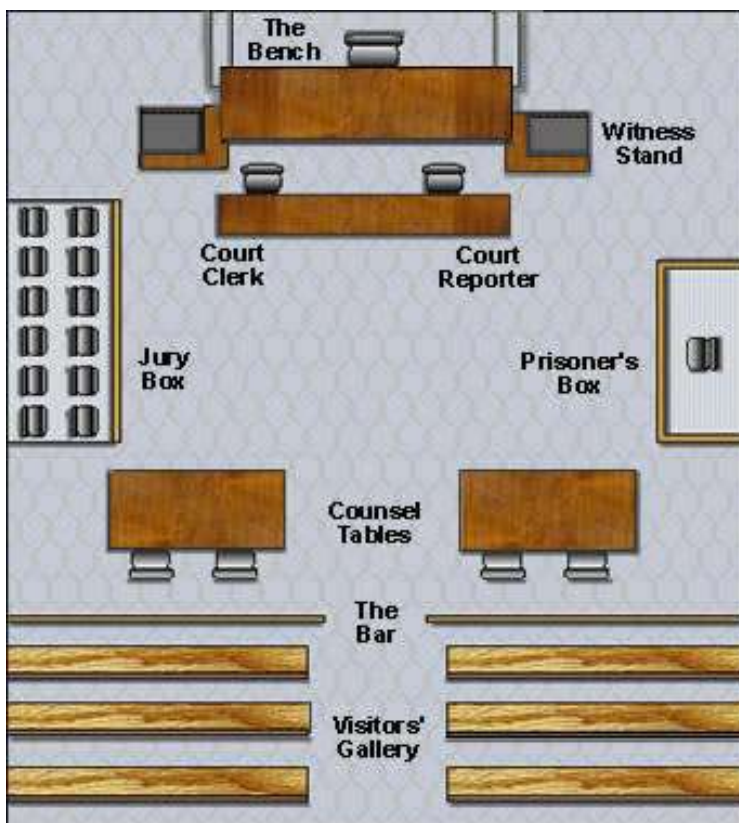
Overview

In this Activity, students become familiar with, first, the structure of Canada's Court System and then, with the inside of a courtroom. They also examine the role of juries in our judicial system. Students are asked to examine the advantages and disadvantages of the jury.

Lesson

Canadian Judicial System

If you or I were to find ourselves in a courtroom, it would probably be in a provincial courtroom. This is the courtroom we see most often portrayed on television. Look at the diagram below to see how the courtroom is organized.



The Bench

This is where the judge hearing a matter is seated. In most courtrooms this is a raised platform which allows the judge a clear view of the entire courtroom.

In Canada, a single judge hears a trial. In the case of appeals, there are 3 to 5 judges who hear the appeal. In the Supreme Court of Canada there are 9 judges, including the Chief Justice of Canada. In the Supreme Court, 5 to 9 judges hear appeals, depending on the importance of the case and the Court's

The Witness Stand

When a witness is called to testify he or she will take the stand as directed. Once in the stand, the witness is sworn in by the Court Clerk, i.e., they must swear an oath to tell the truth. There are alternate "swearing in" procedures for those witnesses who do not wish swear the traditional oath upon the Bible.

Children too young to understand the nature of an oath are not sworn in but are instead questioned to determine their ability to understand the duty to tell the truth.

The Jury Box

This is where the jury is seated during the course of a trial. The jury is the "trier of fact" when present in a court proceeding. That means they must hear the evidence presented and determine the "facts" of a case, e.g., "Was the accused the person who stabbed the victim?".

The *Jury Act* (Alberta), RSA 2000, Chapter J-3 governs the use of juries in Alberta. The statute sets out such things as who may be called as a juror, how a jury is selected and when a jury may be used. The majority of trials by jury are in criminal cases. Jury trials are rarely held in civil matters.

The Prisoner's Box

This is where an accused person sits during a criminal trial. Generally, only an accused person who is in custody pending trial is required to remain in the prisoner's box, hence the name. If the accused is not in custody pending trial, he may sit with his lawyer at the counsel table.

The exception to the foregoing is when there is an issue as to the identity of the accused, i.e., witnesses will be asked if they can identify the accused as the person they saw at the scene of the crime. In such a case, the accused will usually sit in the visitors' gallery.

Court Clerk

The Clerk (traditionally pronounced as "Clark") has a variety of tasks: he or she ensures the courthouse files on a matter are in the courtroom; records the names of the lawyers representing the parties; announces the entrance of the judge into the courtroom; swears in witnesses; and notes the directions and orders of the judge for the official record – to name a few of the Clerk's tasks.

As a matter of courtroom procedure, when a judge wishes to look at a document, the document is to be handed to the Clerk who then hands it up to the judge.

Counsels' Tables

This is where the lawyers representing the parties in a trial sit. Traditionally, only lawyers were permitted to sit at the tables and there was a order of seating: in civil matters, the plaintiff's lawyer sat at the left-hand table and the defendant's lawyer at the right. In criminal trials the defendant's lawyer sat to the left and Crown counsel to the right. This permitted the judge to know at a glance which party a lawyer was representing.

This tradition is not often observed anymore, particularly when people represent themselves in court. As a result, judges expect anyone seated at a counsel table to identify themselves and whom they represent at the outset of a trial.

The Visitors' Gallery

This is where the public may sit to watch a trial. Although you may not be involved in the trial, while you are in the courtroom you are subject to the judge's authority. People watching a trial are expected to not disrupt the proceedings in any way, e.g., talking, not turning off cellphones. A judge may order anyone, other than the lawyers, to leave the courtroom at any time during the course of a trial.

In Canada, no one may use a camera or any kind of recording device during a court proceeding. When a matter is ordered to be heard "in camera" this means that no one but the lawyers and those directly involved in the case are allowed in the courtroom.

The Court Reporter

The Court Reporter makes a transcript of the proceedings. This means every word spoken during the trial by the judge, lawyers, witnesses and parties to an action is recorded. The exception is when the judge permits going "off the record" for a specific reason, e.g., to discuss a matter of procedure, or "striking from the record", e.g., when inadmissible evidence is given.

In Alberta, court reporters have been replaced by digital tape recorders for most Provincial Court hearings and Court of Queen's Bench civil matters. Reporters and digital recorders are used in most criminal trials, some preliminary hearings and a few civil trials.

The Bar

This is the railing that physically separates the visitors' gallery from the front of the courtroom and symbolically separates the legal profession from non-lawyers. Once a law student, having graduated from law school, successfully completes his or her year long articles (an apprenticeship with a qualified lawyer) and Bar Admission courses, he or she is "admitted to the Bar" by swearing the oath of a lawyer before a superior court judge.

This is the "bar" in terms such as "barrister", "Bar Association" and "disbarment". It harkens back to the time when only lawyers were allowed to physically step past the bar and be heard by the court.

The Role of Juries

We have discussed how, as a citizen of Canada, you have certain rights. These rights also mean that you have certain responsibilities. One of these responsibilities is that you may be required to serve on a jury in a civil or criminal trial.

To serve on a jury in Ontario, you must be:

- 18 years of age
- a Canadian citizen
- on a voter's list

Certain occupations are excused from serving on juries. For example, lawyers, police, and doctors do not have to serve on a jury.

If your name is selected, you will receive a summons to appear at court. Usually about a hundred people are called. Names are drawn and the crown attorney and the defence lawyer decide on the members of the jury.

If you are selected to serve on the jury, you will listen to all of the evidence and will have to decide on the innocence or guilt of the accused. The decision must be unanimous - that means that all 12 jurors have to agree on the verdict. If the jury is unable to come to an agreement, they are called a hung jury and this trial is over. It will be up to the Crown Attorney if he or she wishes to try the accused again. Not all trials have juries. In fact, the great majority of criminal trials have only a judge. Juries are only used for serious crimes. Sometimes the accused has the right to choose whether to have a trial by judge alone or by a judge and jury.

Assignment

1. What are the 9 parts of the courthouse?
2. What are the requirements to serve on a jury?
3. Which occupations are excused from serving on a jury?
4. In a table below, list what you believe would be some advantages and disadvantages to having a jury trial.

Advantages of a Trial by Jury	Disadvantages of a Trial by Jury