

Section 4: The Justice System

Lesson Plan 7: Court of Appeal for BC

SNAPSHOT

Grade Level	11-12
Duration	2-3 periods

Introduction

The first sitting of the Court of Appeal for British Columbia took place in 1910. This Lesson will educate students about what the court is, what it does, and how it upholds values that are cornerstones of a free and democratic society. Students will also learn how the court has evolved for over a 100 years.

Objectives

Upon completion of this lesson, students will be able to:

- Explain the purpose and function of the Court of Appeal for BC, and how it fits within our justice system
- Explain what appeals are and why they are important
- Describe how the Court of Appeal for BC has been an important part of the legal processes in this province for over a 100 years
- Describe how the Court of Appeal for BC has reflected and helped define the evolution of social values and attitudes in British Columbia
- Understand some of the leading cases heard by the Court of Appeal for BC and describe the impact they have had on the lives of British Columbians

Focus Questions

1. What does the Court of Appeal do?
2. Why are appeals important?
3. How does the Court of Appeal reflect changing social values and attitudes? What are some examples of this?

Teaching Summary

Topics 1, 2, 3 & 4: Jurisdiction of the Court, Civil Appeals, Criminal Appeals & No New Evidence

Activity 1 covers Topics 1-4. This is a web-quest activity. Students will receive *Handout 1: Court of Appeal for BC* which has information on the Court of Appeal as well as 6 questions. The handout provides the link to www.CourtsofBC.ca, where they can find additional information required to answer the questions on this handout.

Topic 5: Though the Heavens Fall – Documentary Portrait of the Last 100 Years

This topic is covered in Activity 2 and 3. Activity 2 involves showing of a 48-minute video titled “*Though Heavens Fall.*” This video documents the history of the Court of Appeal.

Activity 3 is a group activity. Provide students with *Handout 2: Key Concepts in “Though the Heavens Fall.”* Then give them either *Handout 3: Time Warp at the Court of Appeal for BC*, which has 3 discussion questions or *Handout 4: The Role of Court and Appeal Judges*, which has six discussion questions. Afterwards, the questions will be discussed as a class.

CONTENT

Topic 1: Jurisdiction of the Court

As the name suggests, this court hears appeals from previously-decided cases held in Provincial Court, Supreme Court and administrative tribunals. These can be from civil or criminal cases. Appeals are made because someone is unhappy with the results of a judgment in his or her case. Usually three, but as many as five judges sit together and hear appeals on both criminal and civil issues. The Court of Appeal sits regularly at the law courts in Vancouver, Victoria and Kamloops. It also hears appeals in the Yukon Territory. The Chief Justice of BC heads the Court of Appeal.

In this court, at least three judges and in some cases five, hear appeals together. This is different from the lower courts, where there is always just one judge. In this courtroom, you will usually see only judges and lawyers, although individuals may argue their own case. When an appeal is heard, the judges review the written records of the original court and subsequent appeals and listen to the lawyers for each side, who make arguments based on these records. The court is composed of the Chief Justice of British Columbia and 21 Court of Appeal judges. All are federally appointed.

The Court of Appeal of British Columbia is the final level of the court process in British Columbia. However, a convicted person or the prosecutor in a criminal case, or a party in a civil case, may still believe that justice has not been done. Another step remains — an appeal to the Supreme Court of Canada, which sits in Ottawa.

Topic 2: Civil Appeals

The Court of Appeal hears both civil and criminal cases. Civil cases deal with disputes between private individuals or institutions. In civil cases, any final order of the BC Supreme Court can be appealed. However, if the civil case comes from the Small Claims division, it can only be appealed to the BC Supreme Court and cannot proceed to the Court of Appeal for BC.

Topic 3: Criminal Appeals

Criminal cases deal with crimes found in the Criminal Code of Canada. In criminal cases, anyone convicted of a crime can appeal the conviction itself. However, to appeal sentencing, the court must grant leave to appeal.

Topic 4: No New Evidence

There is no new evidence given as no witnesses are called to testify. A rare exception to this occurred in a murder case where one of the jurors had an affair with one of the accused. The accused were found not guilty. The affair did not come to the attention of the trial court so the evidence as to this had to be presented when the Crown appealed. A justice of the Court of Appeal heard the new evidence and it became part of the transcript that the full court was asked to examine.

Topic 5: *Though the Heavens Fall* - Documentary Portrait of Last 100 Years

The first sitting of the Court of Appeal for British Columbia took place in 1910. This topic aims to educate British Columbians about what the court is, what it does, and how it upholds values that are cornerstones of a free and democratic society.

Decisions made in the Court of Appeal for BC over the last 100 years have reflected and helped to define community values. From Aboriginal rights to women's rights to gay rights, the Court of Appeal for BC has found itself at the centre of the social movements of the century. The court has been asked to intervene in cases where families argued over property, spouses fought for custody of their children, and communities battled each other for access to shared resources.

The video, *Though the Heavens Fall*, introduces viewers to what the Court of Appeal does and how the court has evolved over the past 100 years. It highlights important changes, such as the introduction of the *Canadian Charter of Rights and Freedoms*, and illustrates how concepts such as the rule of law and judicial independence are critical to the health of our justice system.

The following are key concepts in the video:

Judicial independence: When judges reach a decision, they must do so without regard to personal preferences and free from political or other outside influence. Their decisions must be based on the evidence and their understanding of the law.

Purpose of the court: The purpose of the court is to be a place where people who have a dispute can come and know that they will get an impartial decision on whatever it is that is dividing them. It may be a civil dispute between individuals or organizations/institutions, or it may be a criminal offence against the state.

Rule of law: Laws are passed by our democratically-elected representatives. If we have a dispute, we depend on having our rights determined according to the laws. When there is a disagreement about how a law should be interpreted, judges review the law and make a decision. In cases where there is no relevant law in the Constitution or other statute law, judges apply the common law.

Evolution of the court: The court has changed over the past 100 years. The court reflects changes in social values and attitudes, and to some extent helps define those changes. We see this evolution in the court's decisions about major social issues such as Aboriginal rights, racial equality, and gender equality. We also see this evolution in the composition of the court. As recently as thirty years ago, all of the judges in the Court of Appeal were men. Now about half of the judges sitting in the Court of Appeal are women. The video looks at examples of decisions made by the Court of Appeal that illustrate how the court operates in the context of society at the time. These examples include:

- An appeal made in 1914 by an Indian man who was on the *Komagata Maru*. The boat arrived in the port of Vancouver with immigrants from India but was turned away. In this case the court was faced with a law made by Parliament that specifically authorized racial discrimination in immigration. The law reflected the dominant social attitudes of the time towards people from India.
- An appeal made in 1974 about an incident of rape. At that time in a rape case it was seen as being unsafe to convict on a woman's word alone. That's no longer the law, but the Court of Appeal decision reflected the law of the times and attitudes towards women.
- An appeal made in 1984 about logging on Meares Island. The Court of Appeal found that the issue of Aboriginal title had been postponed for too long and that it was time to resolve it.
- An appeal made in 2003 by the gay rights group, Egale. At stake was the very definition of marriage. The Court of Appeal found that the rights of gay people under the *Charter* included the right to marry.

Impact of the Charter: Whether seeking religious freedoms or natural resource rights, minority groups have always taken their struggles to the courts in search of impartiality, independence and greater equality in the future. The *Canadian Charter of Rights and Freedoms*, which became part of the Canadian Constitution in April 1982, empowered Canadians to challenge in court any law, regulation or action of government to ensure that the Charter rights of individuals are respected.

ACTIVITIES

Activity 1: Introduction to the Court of Appeal

Provide students with *Handout 1: Court of Appeal for BC*. This activity involves viewing an online video segment, Court of Appeal for BC, from the [Courts of BC website](#) and reading some of the information. Students will use this information to answer the questions on the handout.

To see the answer key for *Handout 1*, see the Assessment section.

Activity 2: Viewing the Video

To help the students focus on the content of the video, *Though the Heavens Fall*, you could write the following questions on the board:

- What does the Court of Appeal do?
- Why are appeals important?
- How does the Court of Appeal reflect changing social values and attitudes? What are some examples in the video?

Play the DVD for the students (48 minutes).

Activity 3: Exploring the Concepts from *Though the Heavens Fall*

Provide students with *Handout 2: Key Concepts in Though the Heavens Fall*. You can have your students do Activity 3A: Time Warp at the Court of Appeal for BC or Activity 3B: Role of Court of Appeal Judges.

Activity 3A: Time Warp at the Court of Appeal

Provide students with *Handout 3: Time Warp at the Court of Appeal for BC*, which has three discussion questions. Ask the students to divide into groups. Introduce the activity by going over the scenario and the task. Explain that each group will be making a presentation to the class at the conclusion of the activity.

Activity 3B: Role of Court of Appeal Judges

Provide students with *Handout 4: The Role of Court and Appeal Judges*, which has six discussion questions. Ask the students to divide into groups. You may want to introduce the activity by asking students what they see as being the proper relationship between the judiciary and the legislators.

Assign discussion questions 1 & 2 to all groups; and assign one additional question to each group (using discussion questions 3-5). Question 6 is an optional question. If students have learned about the Charter's override clause, you can assign this question to one or more groups.

To see the answer key for *Handout 4*, see the Assessment section.

RESOURCES

Topics 1, 2, 3 & 4: Jurisdiction of the Court, Civil Appeals, Criminal Appeals & No New Evidence

Handout 1: Court of Appeal for BC

The Courts of BC website www.CourtsofBC.ca

Topic 5: Though the Heavens Fall – Documentary Portrait of the Last 100 Years

Video: *Though the Heavens Fall* JusticeEducation.ca/resources/though-the-heavens-fall

Handout 2: Key Concepts in “Though the Heavens Fall”

Handout 3: Time Warp at the Court of Appeal for BC

Handout 4: The Role of Court and Appeal Judges

ASSESSMENT

Activity 1: Introduction to the Court of Appeal

Students can submit *Handout 1: Court of Appeal for BC* for marks once it is completed. The answer key can be found below.

Answer Key: *Handout 1: Court of Appeal for BC*

1. Jurisdiction refers to the type of case and the physical area over which the court has legal authority. What is the BC Court of Appeal's jurisdiction?
This court hears appeals from previously-decided cases held in Provincial Court, Supreme Court and administrative tribunals. Appeals are made because someone is unhappy with the results of a judgment in his or her case. The Court of Appeal sits regularly at the law courts in Vancouver, Victoria and Kamloops. It also hears appeals in the Yukon Territory.
2. How is filing for an appeal in a criminal case different from filing an appeal in a civil case?
The Court of Appeal hears both civil and criminal cases. Criminal cases deal with crimes found in the Criminal Code of Canada. In criminal cases, anyone convicted of a crime can appeal the conviction itself. However, to appeal sentencing, the court must grant leave to appeal. Civil cases deal with disputes between private individuals or institutions. In civil cases, any final order of the BC Supreme Court can be appealed. However, if the civil case comes from the Small Claims division, it can only be appealed to the BC Supreme Court and cannot proceed to the Court of Appeal for BC.
3. Why do we have an appeal court?
Judges, like anyone else, can make a mistake. To make sure that justice is done in our court system, the losing party has the right to file an appeal in an effort to have the decisions reversed or a new trial ordered.
4. What are the Court of Appeal judges looking for?
The judges are usually looking for a legal error of some sort.
5. Does the court hear new evidence?
Except in very rare cases, no witnesses appear in to give evidence in the Court of Appeal. It is the job of the trial courts to decide what happened and whether witnesses have told the truth. The Court of Appeal decides only whether or not

the trial judge's decision (or jury's verdict, in a jury trial) was correct in law.

6. Why do some appeals have three judges on the bench while other appeals have five judges on the bench?

In the Court of Appeal, there are typically three or five judges sitting together on the bench to hear appeals. Five judges are required if the court is being asked to overturn one of its own previous decisions. Otherwise, only three judges hear the appeal.

Activity 2: Viewing the Video

Since this activity only requires students to watch the video *Through the Heavens Fall*, no assessment is required unless you have the students take notes and hand them in for marking.

Activity 3: Exploring the Concepts from *Though the Heavens Fall*

Students can hand in their answers to *Handout 3: Time Warp at the Court of Appeal* for BC and *Handout 4: The Role of Court and Appeal Judges* for marks. Only one copy per team is required, so students must make sure all group members names are on the answers. If you would prefer, give participation marks to students when they discuss the questions as a class, instead of taking their answers in for marks.

Answers to *Handout 3: Time Warp at the Court of Appeal* of BC will vary. The answer key for *Handout 4: The Role of Court and Appeal Judges* is below.

Answer Key: *Handout 4: Role of Court of Appeal Judges*

1. If you had been a Court of Appeal judge in 1914, what would you have decided in the Munshi Singh case? On what would you have based your decision?

In 1914 Parliament was the supreme law of Canada and Parliament had passed a racially discriminatory law. In addition, the Immigration Act of the time expressly forbade judges to challenge decisions of immigration boards of inquiry.

Under the Constitution Act 1867, Canada had adopted the notion of Parliamentary supremacy from the United Kingdom. The federal and provincial legislatures made the law, the executive implemented and enforced the law, and the judiciary was responsible only for interpreting the law that the others had made and enforced.

Dealing with this question will likely prove controversial among students.

Students may suggest that if they had been one of the judges, they would have

gone back to the legislation to see if they could find any “wiggle room” to allow them to reach a fair decision.

2. How has the role of Court of Appeal judges changed since 1914?

The Constitution Act 1982, which incorporates the Charter, has made the Constitution the supreme law of the land. Section 52 of the Constitution Act, 1982 states that “The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. The Constitution thus modified the tradition of Parliamentary supremacy with the principle of constitutional supremacy. As such, Judges have an even stronger role to play in the Canadian justice system than they did before the Charter.

Judges can strike down a law passed by Parliament if it violates one of the freedoms protected by the Charter and the government cannot justify the violation as the only reasonable way to meet an important need. Parliament then must decide whether or not to redraft the law in such a way that the Charter is not breached. These leads to a “back-and-forth relationship” between judges and legislators that is often described as “dialogue.”

3. Should judges comment on the political policy that underlies legislation?

There is a well-established principle that it is improper for judges (who are unelected) to comment on the policy, or political aspects, of statutes passed by elected legislators.

4. Should judges be able to override constitutionally valid legislation with which they disagree?

Judges cannot strike down or choose not to apply legislation simply because they disagree with the legislation (or because some other province has different legislation on the matter). Subject to constitutional challenge on jurisdiction or for breach of the Charter, legislation is supreme law.

5. Should judges be elected, so that they like the legislators will represent majority views?

Student responses may focus on the issue of possible conflict between being accountability to an electoral majority and having to remain impartial. Other comments may focus on ways in which accountability exists in forms other than electoral majority support. For background information, see [Judicial Appointment: www.LawConnection.ca/index.php?q=content/judicial-appointment](http://www.LawConnection.ca/index.php?q=content/judicial-appointment).

ENRICHMENT

Educating the Public about the Court of Appeal for BC

This is an optional enrichment activity that can be done as in-class activity or assigned as homework.

Students can be asked to prepare an educational presentation for the public about the Court of Appeal for BC. Possibilities for format include: a multimedia website, a poster, an article for a local publication, a public service announcement, a comic book, or a PowerPoint presentation for a community group. Direct students to prepare a one or two-page proposal outlining the key points of their education campaign.

Working individually or in groups, students decide what format they want to use and identify the critical information that should be communicated. In their education campaign, students could make creative use of the phrase, “Though the heavens fall, let justice be done”.