



What does “common law” mean?

Feb. 16, 2021



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PUBLIC LEGAL EDUCATION

Warning

- This workshop is meant as an educational session, not legal advice.
- The information provided is **GENERALLY APPLICABLE**.
- All litigation is subject to risk. Consult a lawyer for legal advice.



Overview

1. Basics
2. Case law and Legislation
3. More on Legal Precedents
4. Detailed Examples
5. Tips for Self-Reps

1. Basics

“common law”

General litigation context

- “The Law Society defended by claiming the **common law defence** of absolute privilege...” (ref 1)
- “Instead of payment of salary to the end of the term of the contract, the appellant was awarded **common law damages** for wrongful dismissal.” (ref 2)

- Ref 1 D'Mello v. The Law Society of Upper Canada, 2014 ONCA 912 (CanLII), <<https://canlii.ca/t/gfr3t>>
- Ref 2 Howard v. Benson Group Inc. (The Benson Group Inc.), 2016 ONCA 256 (CanLII), <<https://canlii.ca/t/gp8v7>>



Google says...

keyword phrase: "what is common law"

"unwritten laws"?

"legal precedents"?

People also ask

What is a simple definition of common law? ^

Common law is a body of unwritten **laws** based on legal precedents established by the courts. **Common law** influences the decision-making process in unusual cases where the outcome cannot be determined based on existing statutes or written rules of **law**. Jul. 28, 2020

<https://www.investopedia.com> › ... › Laws & Regulations ▼



“stare decisis”, Precedent

- Translation: “Stand by what has been decided”
- General concept: Decide similar cases alike.



“ratio decidenti”

“ratio”

- Translation: “reason behind the decision”
- a judge makes a ruling based on legal principles.
- Ratio is the “legal precedent” (not the result or outcome)
- References: http://ojen.ca/wp-content/uploads/LRT_Case-Brief.pdf

Synonyms

“common law”

- “case law”
- “jurisprudence”
- “judge made law”



Legal Research Databases

- Lexis Nexis
- Westlaw (at Toronto Reference library)
- CanLII (free) www.canlii.org



Pros and cons of the “common law system”?



2. Legislation vs. Case law



Just like board games..

“Written laws”

Parliament (Legislature) passes laws (-Statutes)

Eg. Employment Standards Act, Divorce Act

Lower government bodies pass rules and regulations

Eg. Rules of Civil Procedure

Reference: Health Canada’s Guide to Legislation

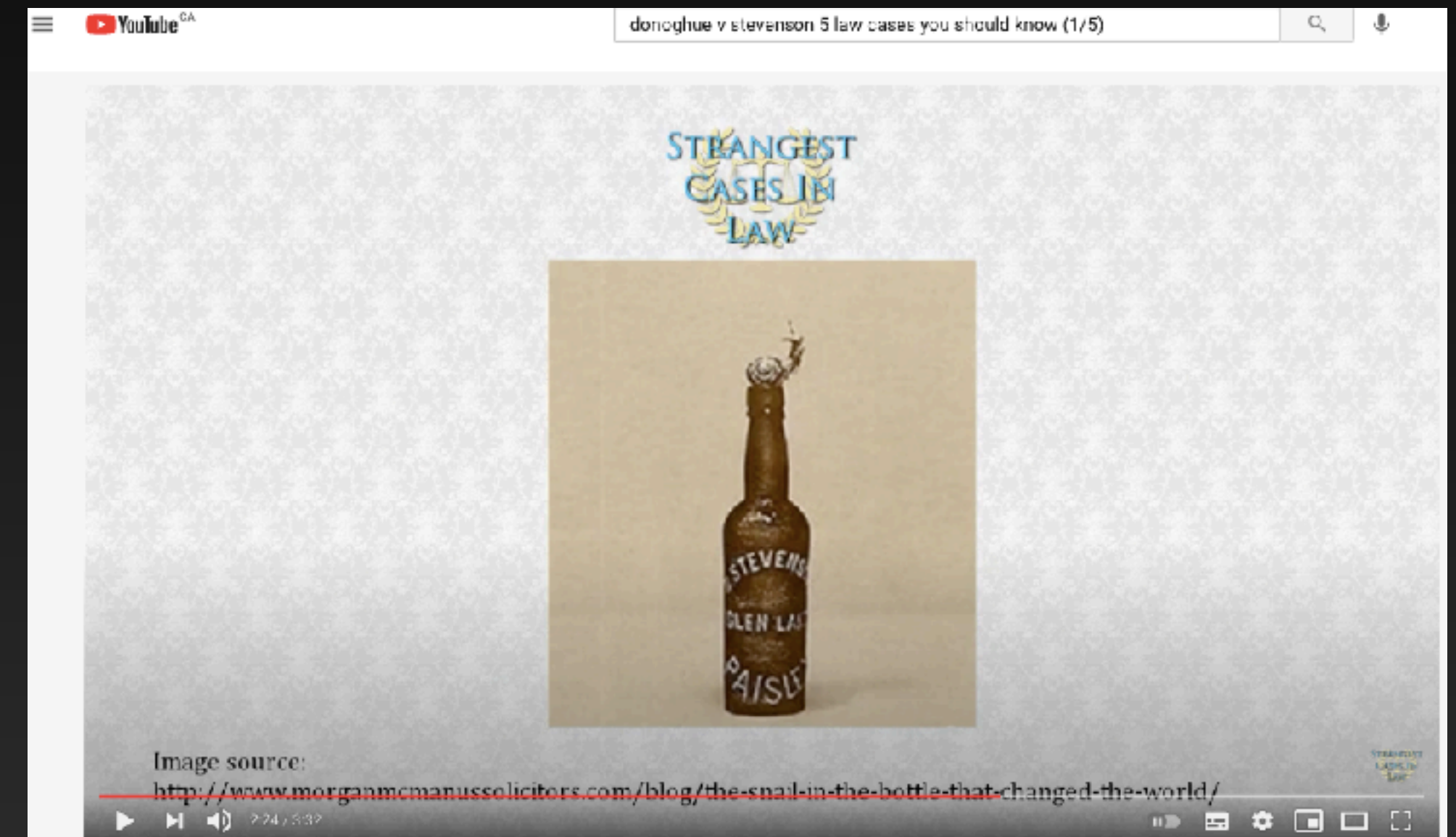
<https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislative-guidelines.html>



Unlike board games...

“Judge made law”

- What if there is no “written” statute?
- eg. negligence (tort), contract law etc.
 - Donoghue v Stevenson
 - <https://youtu.be/0GJZGoIKjFO>



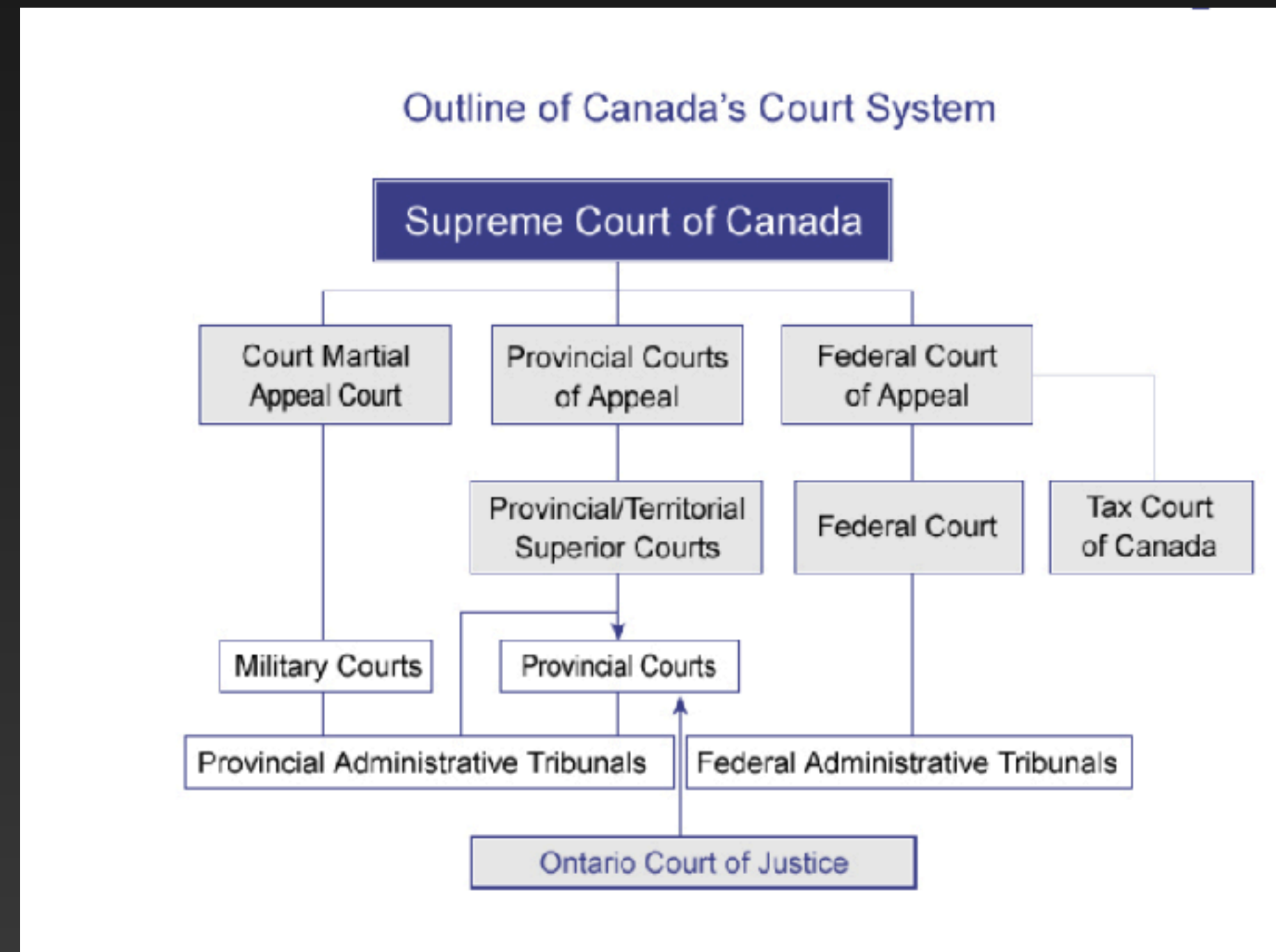
3. More on Precedents



Court hierarchy

<https://www.ontariocourts.ca/ocj/general-public/canada-court-system/>

- Also see https://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french_language_services/services/ontario_courts.php



4. Examples



Example 1

Defendant cuts down neighbour's trees without consent

Glashutter v. Bell, 2001 BCSC 1581 (CanLII), <<https://canlii.ca/t/4wmr>>

Plaintiff sues neighbour for trespassing into his yard to cut down his trees.

Legal Issues

1. Can you cross over to your neighbour's yard to cut their tree down?
2. How much money should the defendant pay the plaintiff for compensation?
3. Should there be punitive damages?



Example 2

Nobosoft v No Borders et al

Background

- Defendant did not deliver Defence by deadline
- Plaintiff “noted” Defendant in default.
- Defendant brought a motion to set it aside. They lost
- Defendant appeals this motion judge’s decision.



5. Tips for self-reps

