



WHAT IS THE LAW?

Laws are a way we give order to society. They can give us rights, prohibit us from doing some things, prevent conflict and keep us safe. Laws come from many different sources and there are different ways of making sure laws are followed and ways to make decisions about what happens when they are not.

Sources of Law

In the Yukon and most of Canada, our legal system is based both on written laws and the **common law**, which can be informed by Indigenous law. This means that we have **statutes**, or laws made by governments, and judge-made law, or case-law. Common law, also called equity, is law that existed before statutes. Because Canada was a colony of England prior to becoming a country, Canada's common law comes from England, and increasingly judges are also considering Indigenous law.

Indigenous Law

Indigenous people in the place that became Canada had complex systems of law before the settlers arrived. While European settlement of Canada has affected the operation of Indigenous legal orders, Indigenous law persists today. Not surprisingly, Indigenous law governs many of the same things that modern statutes do: governance, property, education, child welfare, environmental protection, etc. These laws may be transmitted through storytelling, song, art, ceremony or other means. Some Indigenous law has been translated into modern legislative equivalents. For example, the clan governance structure used by some Yukon First Nations. Indigenous law is different from self-government or treaty law because it existed prior to Canada and does not rely on an external source for its legitimacy.

Umbrella Final Agreement, Final and Self-Governing Agreements

The Umbrella Final Agreement ("UFA") was negotiated by the Governments of Canada, Yukon and Yukon First Nations to settle claims by First Nations who had not ceded land or rights under a Treaty. It created a number of boards, committees and decision-making processes that define the way the Yukon is governed today. It is the template for the eleven First Nations that negotiated their own Final and Self-Government Agreements, which became law in the Yukon and replaced the federal [Indian Act](#). The UFA and Final and Self-Government Agreements are unique in Canada and created a new way to govern in the Yukon. For example, the Yukon Environmental and Socio-Economic Assessment process came from the UFA.

Statute

What most people think of as "the law" is statutes, or legislation. These are written laws that are approved by a government. For example, criminal offenses in Canada are in the Criminal Code, which can only be changed by a bill passed by Parliament and the Senate in Ottawa. Other entities can be given power by statute to make laws. For example: the [Municipal Act](#) gives Yukon municipalities the power to make bylaws.

A statute is made up of an **act** and **regulation(s)**. The **act** will be a framework for the law, while the **regulation** contains many of the details. For example, a fee or a timeline will often be in a **regulation**. This means you need to look at both when trying to understand the law. Regulations can be changed without an act of an elected body.

Definitions (from Duhaime.org)

Common law - Judge-declared law. Law which exists and applies to a group on the basis of customs and legal precedents developed over hundreds of years in Britain.

Statute - written laws approved by elected or appointed houses of assembly.

Act - a bill that passed through the various legislative steps required and has become law.

Regulation - law on some point of detail, supported by an enabling statute, and issued by an executive branch of government.

Precedent - case that establishes legal principles and is to be followed from that point on when similar or identical facts are before a court.

Remedy- judicial action to right a wrong or to prevent infringement upon a legal right.

Constitution

The [Constitution Acts 1867 to 1982](#) (the “Constitution”) is the most important law in Canada as it creates the fundamental principles of how we are governed. In 1897 the Constitution created the Dominion of Canada, set up our governance system of a legislature and Senate, overseen by the Queen, and divided governing powers between the federal and provincial governments. The Constitution was changed in 1982. Two notable additions were: Treaty and Aboriginal rights and the Canadian Charter of Rights that guarantees rights such as democratic, legal, mobility and language rights.

Although the Yukon is a territory, the Federal government has granted the Yukon some powers similar to a province. This is referred to as [devolution](#).

Legal Information Resources

Yukon Legislation - gov.yk.ca/legislation

Federal Legislation - laws.justice.gc.ca/eng/

CanLii (case law database) - canlii.ca

Duhaime’s Law Dictionary duhaime.org

Yukon Public Law Library:

justice.gov.yk.ca/prog/cs/library.html

UFA/Self Government-mappingtheway.ca

Law Society of Yukon -

lawsocietyyukon.com

“Judge-Made” Law - Common and Case Law

Common Law

Some law we use is very old and it is not written in statute. For example, what we know as “squatter’s rights” is based on the common law doctrine of *adverse possession* that gave title in property to someone if it was not claimed by another person. Squatter’s rights come from Roman times and were passed through English Law. Common law can be changed by statute. In the Yukon, the [Land Titles Act](#) got rid of the doctrine of adverse possession.

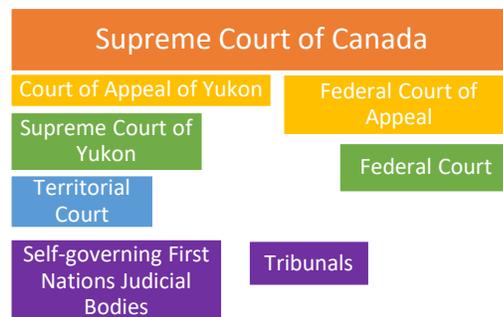
Case Law

Governments make laws and the courts apply and interpret them. When a judge makes a decision that changes how we apply or interpret the law, the case is called a **precedent**. When a case with similar facts to a **precedent** comes to court, a judge may look to how the other judge decided that case. It might be argued that the facts are too different from the case in court for the judge to use it when they make their decision. This is called *distinguishing* the case. One example where case law is really helpful is in figuring out what a judge might order for a **remedy** (i.e. punishment or compensation) in a case. Case law can also help you understand how a judge might interpret certain words or phrases in a law. Case law also provides legal test that a judge should use for deciding a case. For example, many civil cases ask what a *reasonable person* would do in the same situation.

In the Yukon, you might not be able to find a case interpreting a particular law, so you could look at a similar case from another province or territory that can help you to understand how judges might interpret the law. There are different levels of courts and not all judges are bound by another judge’s decision.

Yukon Courts

We have three levels of court in the Yukon. The Territorial and Supreme Court are our trial courts. The Supreme Court can hear appeals from some territorial court decisions, administrative tribunals and self-governing First Nations judicial bodies. The Court of Appeal of Yukon hears appeals from trial courts. The Federal Court and Federal Court of Appeal hear federal matters. The Supreme Court of Canada hears appeals from both courts of appeal, but only in some circumstances.



Lawyers and Advocates

Only lawyers are allowed to give legal advice and services in the Yukon. Lawyers are governed by the [Legal Profession Act](#) and must follow the [Code of Professional Conduct](#). Every lawyer that practices in the Yukon must be a member of the Law Society or hold a Certificate of Permission to Act. You can check with the [Law Society](#) to see if someone is allowed to practice law in the Yukon. If you think a lawyer has done something that they should not have, you can make a [complaint](#) to the Law Society. You can also report if someone is providing legal services who is not a lawyer in the Yukon.

Advocates are not lawyers, but can help support you through a legal process. [Victim Services](#), [Women’s Legal Advocate](#) and [Child and Youth Advocate](#) are examples.

Community
Development
Fund

Fonds de
développement
communautaire