

# Introduction

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## Learning Objectives

After you have read this chapter, you should:

- Have a basic understanding of the system you are now part of or about to be part of
- Have a basic understanding of the National Committee on Accreditation and your path to practice
- Know why *Decoding Canadian LRWC* exists and for whom
- Know how to use *Decoding Canadian LRWC*

### 1.1 Welcome to the Canadian Common Law Legal System

Internationally trained lawyers (ITLs) come from all over the world, from many different types of legal and educational systems and a wide variety of linguistic and cultural backgrounds. When they come to Canada, they come to an impressively diverse, culturally complex and rich, welcoming, and stunningly beautiful country with Aboriginal law, common law, and civil law. Statistics Canada recently reported that one in four Canadian citizens/permanent residents is an immigrant, meaning that immigrants now make up the highest share of the population in over 150 years.<sup>1</sup> As already mentioned in the Territorial Land Acknowledgment, the land known as Canada is made up of many different and culturally distinct traditional territories going back tens of thousands of years before the arrival of Europeans 400 or so years ago (see also Section 4.3).

*Decoding Canadian LRWC* is about the common law accreditation process. ITLs who embark on this process come from common law, civil law, and bijural/hybrid systems. In addition, some ITLs come from systems with Islamic and customary law. The journey to practice for ITLs is rigorous and long, and it can be daunting. Indeed, I do not know many ITLs who did not at some point think it was all too much. The overriding message of this book is one of hope. With knowledge, cultural perspective, appropriate context, and guidance, it will not be too much after all.

### 1.2 The Two Categories of ITLs in Canada

It is important to understand, if you do not already, that ITLs fall into two broad categories. First, there are newcomer or immigrant lawyers, who have chosen to move to Canada. Second, there are “born and bred” Canadians who were either

1 Statistics Canada, *Immigrants Make Up the Largest Share of the Population in Over 150 Years and Continue to Share Who We Are as Canadians*, The Daily (Ottawa: Statistics Canada, 16 October 2022), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/221026/dq221026a-eng.htm>>.

not able to get into a Canadian law school, or chose not to apply, and who instead chose to attend law school abroad (for example, in the United Kingdom). I use the term “born and bred” loosely to include Canadians born here and those who came here as children or youths. My students who fall into this category often describe themselves as “born and bred,” whether or not they were literally born and bred here. For ITLs in this second group, it is important to remember that there are 23 law schools in Canada for a population of around 38 million.<sup>2</sup> Compare this with the United Kingdom with 109 law schools for a population of 68 million,<sup>3</sup> and Australia with 38 law schools for a population of 25 million.<sup>4</sup> Those who wish to attend a Canadian law school are competing for a very limited number of places.

ITLs are either newcomer lawyers or Canadians “born and bred” who attended law school abroad.

Both groups of ITLs have to proceed along the same path to become accredited to practise common law in Canada. The reasoning behind this approach is that all ITLs must reach a prescribed standard of legal education that is the equivalent of, or similar to, the legal education of graduates of Canadian law schools. The journey to practice is a long one for ITLs. On average it takes two to three years from start to finish, and by finish I mean a call to the bar and the issuing of a licence to practise common law in Canada. Those two to three years include approximately one year of articles or hands-on/experiential learning (more on this in Sections 1.4.E, 1.4.F, and 14.8).

This time frame depends on the amount of time you have to give to the accreditation process. Some ITLs are newcomers or immigrants with families to support or other commitments. For these people, full-time study will likely not be a viable option. There will be many factors to weigh in your decision-making during this journey. Everyone is different, and everyone has their own particular circumstances to take into account. Every ITL I have ever met or taught has wanted to get the process “over and done with” as quickly as possible, especially

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2 Council of Canadian Law Deans, “Canadian Law Schools” (last visited 16 September 2023), online: <<https://cclcd-cdfdc.ca/law-schools>>.

3 Complete University Guide, “Law” (last visited 3 October 2023), online: <<https://www.thecompleteuniversityguide.co.uk/league-tables/rankings/law>> (an independent UK university league tables and rankings resource).

4 Australia has 39 universities, and all but 1 has a law school or law faculty. The Legal Profession Admission Board, which is not a university but a statutory authority responsible for the admission of legal practitioners in the state of New South Wales, also offers a diploma in law that covers 17 core law subjects and 3 electives, which is an affordable, flexible, and accessible pathway to the practice of law. See Universities Australia, the peak body of the universities sector, online at <<https://www.universitiesaustralia.edu.au>> and Course Seeker, a joint initiative of the Australian Government and Tertiary Admissions Centres, under “Law,” online at <<https://www.courseseker.edu.au/courses>>.

if they have already practised common law in another country and have a pretty solid understanding of what it involves. However, it is crucial to appreciate and accept that it is not the length of time that it takes to become accredited and licensed to practise law that matters. Rather, it is the quality of your Canadian legal education and skills training. These things will make your practice in Canada far more successful than a fast or short-cut approach. I often point out to ITL students that when they went through law school in the first place, it was not a quick journey. Learning law, under any system, takes time. There was no shortcut back then and there are none now. The journey to practising law can be a lonely one if you are studying for National Committee on Accreditation (NCA) exams on your own, as I did. There were no other viable options at the time for me. However, the important thing to remember is that you are not alone. There are thousands of ITLs in Canada going through this process at any one time. Obviously, if you enroll in an approved law school course of study or program, you will not be alone and you will, or should, get a lot of support.

It is not the length of time that this process takes that matters—it is the quality of your Canadian legal education and training that matters and that will set you apart in the job market.

If you are not enrolled in such a course of study, you can connect with other ITLs through social and professional groups. The Canadian Bar Association has a wealth of resources and information for lawyers and students, including ITLs, whether they are enrolled in a law school program or doing the NCA exams.<sup>5</sup> There are also networking groups just for ITLs, such as Global Lawyers of Canada,<sup>6</sup> ITLNCA NetworkS,<sup>7</sup> and NCA Network.<sup>8</sup> If you are a newcomer, you should inquire about newcomer supports near you; for example, in Calgary there is the Calgary Region Immigrant Employment Council, which assists ITLs with mentoring and other supports.<sup>9</sup> There is more information on this sort of thing in Part Three. The important thing to remember is that you are not alone, and you should seek out all the support you can.

5 See Canadian Bar Association (2023), online: <<https://www.cba.org/Home>>.

6 See Global Lawyers of Canada (2020), online: <<https://glcanada.org>>.

7 See ITLNCA NetworkS (2023), online: <<https://itln.ca>>.

8 See NCA Network (2018), online: <<https://ncanetwork.com>>.

9 See Calgary Region Immigrant Employment Council (last visited 3 October 2023), online: <<https://www.criec.ca>>.

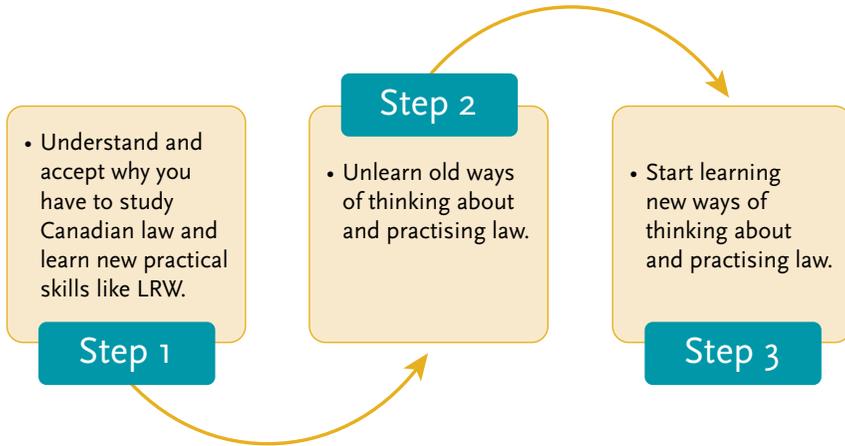
### 1.3 The Reason for Decoding Canadian LRWC and Who Will Benefit from It

As of January 1, 2022, Canadian legal research and writing (LRW) became a mandatory subject for all ITLs wishing to become accredited in Canadian common law. *Decoding Canadian LRWC* arose out of the classes I give in LRW and professional development in the Foreign-Trained Lawyers Program in the Faculty of Law at the University of Calgary. That program has ITL students from all over the world, representing common law, civil, bijural, hybrid, Islamic, and customary legal systems. ITLs from another common law system need to know that this shared legal tradition alone does not mean that the transition will be seamless. There is much to learn, and making assumptions is a dangerous habit. Not all legal systems are the same, and not all legal education is the same. There is no one approach that is superior to any other; different cultures take different approaches. The world of legal education and practice is wonderfully varied and diverse. *Decoding Canadian LRWC* is about providing the intellectual and cultural context that ITLs need to succeed in the process of becoming accredited and getting through their articles.

Canadian common law LRW is now mandatory for all ITLs who wish to become accredited in Canada.

For all ITLs, there are three essential steps to transitioning to the Canadian common law education and practice system, as set out in Figure 1.1. This is true even if you are from another common law country. Assume nothing. You may have been trained in the United Kingdom, the birthplace of common law, as many of my students are, but they all report that there is much to learn about the Canadian approach.

There is no one way of teaching and learning about common law that is superior to any other.

**FIGURE 1.1 Three Essential Steps to Transitioning to Canadian Common Law Education and Practice**

## 1.4 The Canadian NCA and Your Path to Practice

### A. Canadian Law Societies

Many of you will already know that Canada is made up of ten provinces (going from east to west: Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia) and three territories (Nunavut, Northwest Territories, and Yukon). Each province and territory has its own law society that governs admission to the legal profession and the conduct of its members, including practising lawyers, non-practising lawyers, and articling students. Each law society acts to protect the public interest by ensuring that only properly qualified people are issued with licences to practise law, regulating members' conduct, investigating complaints, taking disciplinary action, and providing educational and well-being guidance and resources. All of the law societies are members of a national organization called the Federation of Law Societies of Canada (FLSC). Through the FLSC, the provincial and territorial law societies collaborate and share information on issues affecting the legal profession.<sup>10</sup> There are 14 law societies, one for each province and territory (except Quebec, which has 2 societies), as shown in Figure 1.2.

Each Canadian province and territory has its own law society with its own rules for becoming a practitioner there.

10 A full list of law societies and their website links can be found on the FLSC website, online: <<https://flsc.ca/about-us/#modal-content-6>>.

With the exception of the province of Quebec, all of Canada is common law derived from the English common law system. Quebec has a bijuridical system, meaning that it is part civil law, based on the French *Code Napoléon*, and part common law, based on the English common law. In broad terms, in Quebec, the civil law applies to civil private law matters, such as property and obligations, while the common law applies to areas of law that fall under Canadian federal jurisdiction, such as criminal law. For more on this, see the *Comprehensive Guide*,<sup>11</sup> chapter 1, section VI.

**FIGURE 1.2 The 14 Law Societies of Canada**



11 Moira McCarney et al, *The Comprehensive Guide to Legal Research, Writing & Analysis*, 4th ed (Toronto: Emond, 2024) [*Comprehensive Guide*].

## B. The Uniform National Requirement for Legal Knowledge and Skills Competencies of Law Graduates

In 2015, the FLSC established the National Requirement, which states that holders of LLBs, JDs (Juris Doctors), and NCA Certificates of Qualification (CQs) who wish to apply for entry to a bar admission program must have *all* of the requirements prescribed by FLSC.<sup>12</sup> These requirements are shown in Figure 1.3.

**FIGURE 1.3 FLSC National Requirements**

1. Skills competencies:
  - a. legal problem-solving,
  - b. legal research, and
  - c. oral and written legal communication.
2. Ethics and professionalism (in the practice of law; this topic is sometimes called Ethics and Professionalism or Ethical Lawyering), including:
  - a. legislation, regulations, codes, and rules of conduct;
  - b. conflicts of interest;
  - c. fiduciary nature of lawyer–client relationship;
  - d. confidentiality and lawyer–client privilege;
  - e. the lawyer’s duty to clients, courts, other legal professionals, law societies, and the public; and
  - f. administration of justice.
3. Substantive legal knowledge:
  - a. foundations of law:
    - i. principles of common law and equity,
    - ii. principles of statutory interpretation, and
    - iii. administration of the law in Canada;
  - b. public law of Canada:
    - i. constitutional law of Canada, including the *Canadian Charter of Rights and Freedoms*,<sup>13</sup> human rights principles, and the rights of the Indigenous peoples of Canada;
    - ii. Canadian criminal law; and
    - iii. Canadian administrative law;
  - c. private law:
    - i. contracts,
    - ii. torts, and
    - iii. property.

12 See FLSC, “What We Do/Approving Canadian Law School Programs” (2023), online: <<https://flsc.ca/what-we-do/canadian-law-school-programs/>>; FLSC, “National Requirement” (1 January 2018), online (pdf): <<https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/National-Requirement-Jan-2018-FIN.pdf>>.

13 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Therefore, there are eight mandatory common law subjects plus skills competencies for JD students as shown in Figure 1.4.

**FIGURE 1.4 Eight Mandatory Common Law Subjects Plus Skills Competencies for JD Students**

Foundations of Law	Administrative Law	Constitutional Law
Criminal Law	Contracts	Torts
Property	Professional Responsibility	Skills Competencies

### C. The Equivalency Requirements for ITLs

The FLSC’s standing committee, the NCA,<sup>14</sup> was established to carry out the assessment of the legal education and professional experience of ITLs who want to become accredited and then get their licence to practise common law in Canada. ITLs must submit documentation of their internationally acquired legal education and experience to the NCA for assessment. The NCA will then issue an assessment report or letter explaining their decision and the next steps. The NCA requires all ITLs to show competence/knowledge in the same eight common law subjects listed above plus LRW. The mandatory subjects for ITL students are shown in Figure 1.5.

As you can see, the idea is to put “homegrown” lawyers and ITLs on as similar a footing as possible in terms of legal education. ITLs who can show competency in contracts, torts, and property law in their law school studies abroad may not have to do those subjects again. A low grade in one of these subjects (contracts, torts, or property) will likely result in the NCA stipulating that the ITL must take that subject again. The NCA takes into account various factors when carrying out their assessment, and it is best to read the NCA’s 2023 *Policy Manual* or contact the NCA directly.<sup>15</sup> Therefore, at a minimum, all ITLs are assigned Foundations of Canadian Law, Canadian Administrative Law, Canadian Constitutional Law, Canadian Criminal Law, Canadian Professional Responsibility (sometimes called Ethical Lawyering), and Canadian LRW.

14 See FLSC, “National Committee on Accreditation” (2023), online: <<https://nca.legal>>.

15 FLSC, *NCA Policy Manual: In Effect March 31, 2023* (Ottawa: FLSC, 2023), online (pdf): <<https://nca.legal/wp-content/uploads/2023/06/2023-Policies-V5.pdf>>.

**FIGURE 1.5 Eight Mandatory Common Law Subjects Plus Skills Competencies/LRW for ITL Students**

Foundations of Canadian Law	Canadian Administrative Law	Canadian Constitutional Law
Canadian Criminal Law	Contracts	Torts
Property	Canadian Professional Responsibility	Canadian Skills Competencies— Canadian Legal Research and Writing

Once the NCA has completed its assessment of your internationally acquired legal education and professional experience, it will tell you how to show that you have the required knowledge and skills competencies in the required subject areas. For example, you may be told that you can sit exams directly through the NCA or through an approved Canadian law school, that you have to attend in-person classes at law school, or that you need to do one or two years of in-class study in a law school. If you can do the exams directly through the NCA, the grading system is pass or fail with no actual grade given. If you attend law school courses or a program, there will likely be grades assigned. If you are officially enrolled in a law school, you will receive a transcript with your grades on it.

Once you have passed all required subjects, the NCA will decide whether it will issue a CQ. The CQ proves that your knowledge of Canadian common law is similar to that of someone who received their law degree from an approved Canadian common law law school. Once the NCA, which is Canada’s official common law accreditation body, deems this to be the case, there should be no need for anyone else to question the rigour of your legal education or your credentials. All graduates with a JD or an LLB from an approved Canadian common law law school and all ITLs with a CQ, therefore, are on similar footing in terms of having the required skills competencies and legal knowledge to apply for entry to a bar admission program in this country.

The CQ puts an ITL on a similar footing to a Canadian JD graduate.

## D. Bar Admission Courses

Once you have the NCA CQ, you can apply to enroll in a bar admission course in a province or territory. Each province and territory offers different bar admission courses, but they all prepare students for legal practice. For example, in Alberta, the bar admission course is called Practice Readiness Education Program (PREP), and it contains courses in practical training, such as drafting pleadings, interviewing clients, appearing in court, negotiation skills, and so on. In Ontario, they have licensing examinations on both practice-readiness-type subjects, such as client relations, alternative dispute resolution, practice management, and ethical lawyering, and on the subjects of Ontario and federal legislation and case law. Therefore, you will need to consider carefully where you wish to practise law and find out what the bar admission course and requirements are for that province or territory. As a rule of thumb, the idea is that a student studies in a bar admission course, learning about practice-readiness skills and knowledge, at the same time they are working as an articling clerk or a student-at-law. Again, you need to check the requirements for each province and territory.

## E. Articling

One of the most frequent questions I am asked by ITL students is this: “What is articling and why do I have to do it?” Not all commonwealth countries and former colonies have articling. For instance, there are no articles in the USA and most states in Australia abolished articles some 50 years ago. To understand the articling system, it is important to remember that it stems from the English common law system of legal education from around 1700 onward, in the days when trades and professions had apprenticeships or hands-on/experiential learning before the apprentice was fully qualified to carry out the particular trade or profession on their own without direct supervision. In law and certain other professional fields, this apprenticeship was called articling or articles of clerkship because the apprentice was under the articles of the agreement with their master.

Law articling stems from the British vocational apprenticeship system.

Law as an academic area of study—that is, law taught theoretically and philosophically—was taught at universities.<sup>16</sup> Those who studied law did so for any number of reasons, such as to become scholars, rather than to practise law.<sup>17</sup> If you wanted to practise law, you did not go to university. You paid for an articling

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16 See e.g. Faculty of Law, University of Oxford, “Jurisprudence in Oxford: Some History” (last visited 2 November 2023), online: <<https://www.law.ox.ac.uk/research-and-subject-groups/jurisprudence-oxford/some-history>>.

position and read law cases and statutes and whatever else your principal or supervising lawyer gave you to read, and you watched and learned from the day-to-day workings of law chambers and the courts. The British class system provides some general context for this system. Traditionally, gentlemen, particularly members of the aristocracy, did not work or have to make a living. In contrast, it was merchants and tradespeople who made a living. In the 1800s, there emerged the new professional class, including lawyers, who worked to make a living.<sup>18</sup> It was not until the late 1800s and early 1900s that being a practising lawyer, whether solicitor or barrister, as opposed to a scholar, became a mark of prestige and status.

In the past, in common law Canada, those wishing to become lawyers followed the British apprenticeship model. Dalhousie Law School, the first law school in Canada, was established in 1883 and, apart from that, until the 1940s, legal education in this country was not conducted through university studies or law schools, but through articling with supplemental classes given by practitioner.<sup>19</sup> Today, the articling tradition of on-the-job training still exists, but it is a post-law school requirement now instead of the whole of one's legal education.

In Canada today, all law school graduates who wish to practise law must do a period of articles or on-the-job training of around 12 months. Articling is paid employment. The job title is usually “articling student” or “student-at-law” or simply “student.” Articles vary according to the type of legal office where they are done. In law firms, the student will do a rotation of work experience in the different areas of practice that the particular firm carries out. So, the student might do a period of time in commercial law, a period in litigation, a period in real estate, and so on. In corporations with in-house counsel, government agencies, or non-profit societies and the like, the same applies—a rotation of experience in the various areas of law practised. During articles, students study part-time in some form of practice-readiness course or bar admission course. It is only upon successful completion of both articles and the bar admission course that students can apply for membership as a lawyer to the law society of the province or territory in which they wish to practise law. I return to the topic of articling with particular reference to ITLs in Section 14.8.

A period of articling or on-the-job training is mandatory for all law graduates who wish to practise common law in Canada.

17 See e.g. AV Dicey, “Can English Law Be Taught at the Universities?” An Inaugural Lecture delivered at the All Souls College (21 April 1883) (London, UK: Macmillan and Co, 1883) at 1.

18 See e.g. Magali Sarfatti Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (London, UK and New York: Routledge, 2013) at 3-4.

19 Stephen Waddams, *Introduction to the Study of Law*, 8th ed (Toronto: Carswell, 2016) at 21.

## F. Being Called to the Bar

At the end of the period of articles and bar admission course studies, if you successfully complete both your articles and your bar admission course, you will be eligible to be called to the bar, meaning that you will be formally enrolled as a barrister and solicitor and be able to receive a licence to practise law as both a barrister and a solicitor. In Canada, there is no formal distinction between a barrister and a solicitor and there is no additional post-law school education or training required to practise as a barrister. Canadian common law law schools include both barrister and solicitor education and training in a three-year program of study. This is in contrast to some other countries, such as the United Kingdom and Australia, both of which require two to three years of post-law school education and training for barristers. In addition, it is usually only the top law school graduates who get accepted into barrister programs of education and training. I discuss this in more detail in Section 3.2.

In Canada, there is no formal distinction between a barrister and a solicitor.

## 1.5 How to Use Decoding Canadian LRWC

*Decoding Canadian LRWC* is not a replacement for the *Comprehensive Guide*. As you read *Decoding Canadian LRWC*, you will find references to relevant sections of the *Comprehensive Guide*. You will need to use and rely on the *Comprehensive Guide* for learning and practising common law in this country, particularly in the early years, which is when junior lawyers tend to do a lot of LRW. *Decoding Canadian LRWC* is the “why” to the *Comprehensive Guide*’s “how.” In *Decoding Canadian LRWC*, I give you context for LRW, and I view LRW through an ITL lens. Once you have this context, it will be easier to learn the “how.” There will be times when I will also teach you the “how” as it particularly relates to ITLs.



