CHAPTER 1

The Law

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Identify and explain three main sources of law in Canada.
- Discuss, with reference to the Constitution, how legislative powers are allocated between the federal and provincial and territorial governments.
- Explain the importance of jurisdiction and how to determine jurisdictional boundaries.
- Identify different areas and categories of law that may apply to the sport or recreation practitioner.
- Identify three levels of the Canadian court system.
- List alternatives to litigation for the resolution of disputes.

CHAPTER OUTLINE

Introduction

The law can be a very useful tool for the sport or recreation practitioner: it sets out the rights and obligations of practitioners as well as those with whom they will be engaged, whether individuals, organizations, or businesses. As such, it can be a useful guide to decision making. However, determining what law or laws apply to the activities of sport and recreation organizations and the people operating within them can be a challenge.

The Canadian legal system is derived from two main sources of law: common law (also known as judge-made law) and statute law (that is, laws created by provincial, territorial, and federal legislatures).[1] In spite of these seemingly simple beginnings, the law can be complex and multi-faceted, and an issue can be influenced by several areas of law at the same time. Sport and recreation practitioners must be able to sort through this landscape in order to make appropriate decisions on behalf of their organizations.

Sources of Law

Common Law

The **common law** is that body of law that has evolved over centuries of judicial decision-making, comprising a set of legal standards or principles that have developed over time as judges decide different cases. The common law is not static but continues to slowly evolve, often in response to changes in societal attitudes and community standards. Canadian common law has its roots in the British tradition but has slowly been developing a flavour of its own.

common law
the set of legal standards or principles that develop over time as judges decide different cases

There are two key principles or doctrines that underlie the development and interpretation of the common law: precedent and *stare decisis*.

precedent
court decisions accumulated over a long period of time from which principles of law emerge and act as guides or authorities for cases with similar fact patterns

stare decisis
the policy of courts to abide by principles established in earlier cases by courts of higher jurisdiction

jurisdiction
the power or authority of a court or other decision-making body to make legal decisions; may relate to geographic area, subject matter, nature of the party bringing the case, or time limitations

statute law
a written law (or statute) passed by either a federal or a provincial or territorial legislature

Precedent is a way of achieving consistency, as the reasoning of a decision in one case may serve as a template, or authority, for future courts to follow when deciding cases with similar sets of facts. It ensures that courts are not free to decide the same issue differently the next time it comes up. In practice, however, not every court must follow the decision of every other court, which leads to the second principle.

Stare decisis holds that a lower court must follow the decisions of higher courts in its **jurisdiction**. Although lower courts are not obliged to follow the decisions of higher courts from *other* jurisdictions, such decisions do have varying degrees of influence on the lower courts depending on the jurisdiction of the higher court. For example, a decision from a higher court within Canada would have more influence on a lower court than a decision from a higher American court. As well, a decision from a British court may have greater influence than one from an American court, given that Canadian law has its roots in British law. However, Canada's political, economic, and social ties to the United States have altered this balance somewhat.

The doctrines of precedent and *stare decisis* have produced a body of case law, or common law, that can guide judges hearing cases. As new fact situations arise and new cases are decided, the existing principles are broadened, exceptions are developed, and the case law is expanded.

Statute Law

The second main source of Canadian law is **statute law**.[2] Statute law is the body of law made up of written laws (or statutes) passed by a federal, provincial, or territorial legislature. The *Constitution Act, 1867*[3] divides powers or domains of authority between the federal government and the provincial and territorial governments. Section 92 of the *Constitution Act, 1867* sets out the specific areas of authority of the provinces and territories, while section 91 defines specific areas of authority of the federal government. Section 91 also provides that all residual or unassigned areas of law come under the authority of the federal government. In Canada, a comparatively large share of legislative responsibility is delegated to the provinces and territories. This means that there are many more provincial and territorial statutes and accompanying regulations than federal ones.

Whether a statute is provincial, territorial, or federal depends on its subject matter. For example, education is within the domain of the provinces and territories, whereas criminal matters, as set out in the *Criminal Code*,[4] are within the federal domain. Table 1.1 gives examples of these divisions of powers.

TABLE 1.1 Distribution of Law-Making Powers

Examples of Federal Government Law-Making Powers by Subject Matter (Section 91)	Examples of Provincial Government Law-Making Powers by Subject Matter (Section 92)
Interprovincial/international trade Income tax National defence Shipping Currency Criminal law Postal service Residual powers (that is, unallocated powers)	Property laws Civil rights Contract law Tort law Hospitals Incorporation of companies operating only within a province/territory Matters of provincial concern Municipalities

Municipalities are a third level of government. Their power does not come directly from the *Constitution Act, 1867*, but rather from statutes passed by provincial and territorial governments,

such as Manitoba's *Municipal Act, 1996*[5] or Ontario's *Municipal Act, 2001*.[6] Municipalities may be cities, towns, or regions. They have the authority under the municipal statute of their province or territory to pass by-laws regulating local issues. Since municipalities often provide recreation services, these by-laws are relevant to many recreation practitioners. For example, City of Ottawa By-Law No 2004-276, *Parks and Facilities* (23 June 2004, updated February 2012) regulates the provision of recreational services in the City of Ottawa.

MANAGING RISK

City By-Law Prohibits Tobogganing

The City of Hamilton implemented a ban on tobogganing that could result in a fine up to $5,000 for anyone found breaching it. Notwithstanding the by-law, no one was ever stopped from or fined for tobogganing—until a tobogganing accident resulted in a serious injury.

The tobogganer had noticed a slight depression at the bottom of the slope but was not aware of the risk presented by the snow-covered ditch. The tobogganer sued the City[7] for injuries caused when the tobogganers hit the edge of the ditch and were thrown from the toboggan. An arbitrator found that the snow-covered ditch was a hidden danger and not a risk inherent to tobogganing. Further, the arbitrator found that the City knew about the danger the ditch presented to tobogganers but had not taken reasonable steps to warn tobogganers, notwithstanding a "No Tobogganing" sign placed at the hill. The City was found 100 percent liable for the injuries.

Risk Management Lesson

As cities and towns across Canada have become increasingly concerned with liability costs and catastrophic injuries, they have passed by-laws; posted signs; restricted access with fencing; beefed up the presence of by-law officers; set up specific tobogganing areas; and, in some cases, outright banned the activity.

An important lesson from Hamilton's experience is that where a prohibition or restriction is put in place, it must be known to the public and properly enforced.

From a practical perspective, there are times when the domains of authority are less clear or become blurred within various initiatives. There are times when the jurisdictional authority is clear but others where it can become quite complex. Sport and recreational activities within the educational system fall clearly within the provincial and territorial domain. Some sport and recreational activities are carried out by municipal governments and regional authorities without directly involving either provincial or federal governments. International sport initiatives are clearly a federal matter. Federal, provincial, and territorial levels of government all support sport and recreation initiatives and embrace sport, recreation, and physical activity generally as a governmental mandate through recognition within governmental structures as well as multiple funding initiatives.

All that said, most sport and recreation organizations are not a part of any federal, provincial, or territorial government structures.[8] Instead, they are private corporations, typically governed by not-for-profit legislation. Nonetheless, to the extent they are reliant on government funding and—in the case of sport—government recognition of their status as a governing body of their sport, they must also incorporate government policy initiatives. Clearly, the interplay of policies among the different bodies governing sport and recreation activities can be complex.

Within the federal domain, the *Physical Activity and Sport Act*[9] is the prevailing federal statute embracing the federal perspective on sport policy. Provinces and territories determine their own perspectives on sport policy and, in all cases, have some form of enabling legislation addressing issues such as funding for sport. Each level of government takes varying degrees of responsibility depending on where it sees opportunities to advance its own agenda.

Many aspects of the recreational domain are also regulated under municipal, provincial or territorial, and federal jurisdictions, although there aren't any specific legislative frameworks at the federal, provincial, or territorial levels such as exists for sport.[10] Consider the following examples that indirectly affect recreational activities:

- *National parks*: Recreation in a national park is governed by the federal laws that apply to these parks, even though these parks are located within provincial or territorial boundaries and the laws of those jurisdictions may apply to certain activities (for example, specific provincial or territorial highway traffic laws would apply, as would occupiers' liability legislation).
- *Gambling*: First Nations reserves are within federal jurisdiction, and federal law provides for the establishment of casinos on First Nations' reserves.
- *Fishing*: The *Species at Risk Act*[11] administered by the Ministry of Fisheries and Oceans sets out federal authority to support the protection of aquatic species at risk across Canada, including fish, reptiles, and marine mammals. Recreational fishing licenses are the responsibility of provincial and territorial authorities.
- *Hunting*: Firearms are governed by the federal government, which may affect hunting on provincial or territorial land.

Custom as Law

customary law
cultural practices that have become so common as to be not just expected but required, universally believed, and accepted as actual law

There are other sources of law that play a much less prominent role than the common law and statute law. For example, custom is recognized as a source of law known as **customary law**. When certain behaviours or practices become so common as to be not just expected but required, they become universally believed and accepted as actual law although they are unofficial and generally unwritten. International law, for example, has been and continues to be considered a major source of law based in custom. Over time, many customary laws become codified. To reach this point, the custom or rule must be generally accepted, consistently applied over a long period of time, applied so routinely as to acquire the power of law, and—perhaps most importantly—adhered to out of a perceived sense of legal obligation. In other words, the custom is seen and accepted as enforceable law.

There are few modern examples of custom as law in sport and recreation. Sportsmanship might be an example of accepted custom, although many if not most aspects of sportsmanship have been codified as part of the rules of sport or included in policies applicable to an activity. Folk games of the pre-industrial period were often governed by customary rules, part of an oral tradition handed down through the generations.[12] Indeed, such customs persist today in the form of customary or traditional games. The rules of modern sport are most often a codification of existing good practice. Although not a formal part of the law in the way statute law and the common law are, the modern codified rules of a particular sport or game are a form of regulation governing the playing of that sport or game. As well, organizations establish their own policies and rules to govern the activities associated with the sport or game that are undertaken by the organization and its members.[13]

Policies and Regulations

regulations
rules or details having the force of law that govern procedure or behaviour

Most legislation is accompanied by **regulations**. Regulations have the force of law and set out details of how the legislation is put into effect. In 2018, the Ontario government passed *Rowan's Law*,[14] named after Rowan Stringer, a youth rugby player who died of second impact syndrome as a result of suffering multiple concussions playing rugby. The legislation is designed to create a safer sports environment for athletes, children, and youth. (See Chapter 9 for a more detailed discussion on concussions.) Details concerning to whom the statute applies and what is required

of such sport and recreation organizations are set out in the regulations[15] to the statute and include the following measures:

- organizations must have a concussion code of conduct for players, parents, coaches, and trainers;
- players, coaches, match officials, and trainers must annually review and sign an acknowledgment of ministry-approved concussion awareness resources and the sport's concussion code of conduct; and
- organizations must have a concussion removal-from-sport and return-to-sport protocol.

Private organizations also create regulations to govern their activities; indeed, sport is largely self-governed through regulatory regimes. Policies are another important governing tool of both private organizations and governments. A **policy** is a statement of principle around a specific topic such as gender equity, hiring practices, or facility use. Good policies serve as guides to decision-making and are usually implemented as protocol or a series of procedures. The landscape of policies and regulations that apply within the sport and recreation domain can be complex and multidimensional, which is why navigating the jurisdictional landscape is often challenging for the sport and recreation practitioner.

policy
a statement of principle around a specific topic such as gender equity, hiring practices, or facility use

Jurisdiction

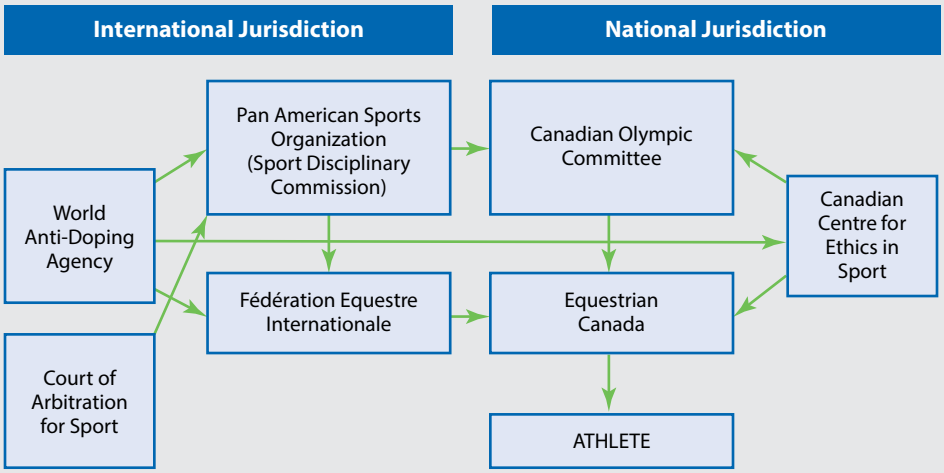
Jurisdiction refers to a body's legal authority over a particular matter—in other words, determining what rules apply, or do not apply, in a particular circumstance. Multiple sets of rules may apply simultaneously, and determining which rules will prevail can be tricky. For example, both sport and recreation are often organized in a hierarchical fashion, from local club to regional league to provincial organization to national organization and finally to international organization. Each level has its own rules and regulations but is also subject to many of the rules and regulations of the organizations above it in the hierarchy. Simultaneously, other rules may also apply, such as anti-doping rules and regulations, or the rules and regulations of a major multisport event such as the Olympic Games, Pan American Games, Commonwealth Games, Canada Games, Asian Games, North American Indigenous Games, Francophone Games, OutGames, or the World Police and Fire Games. Additionally, the rules and regulations of authorities outside of the sport and recreation domain may apply. For example, participants in shooting sports may have to abide by laws regulating guns; in snowmobiling activities, provincial snowmobile legislation may apply, such as Ontario's *Motorized Snow Vehicles Act*.[16]

To see how the intersection of multiple jurisdictions may come to bear on a single incident, consider the following doping case. In 2021, the Court of Arbitration for Sport dismissed an appeal by Canadian equestrian jumper Nicole Walker from a finding of an anti-doping rule violation by the Pan American Sports Disciplinary Commission.[17] Nicole was a member of Equestrian Canada, the national governing body for equestrian sports in Canada, and a member of its national team jumping group. She was selected by the Canadian Olympic Committee, Canada's member of the Pan Am Sport Organization, to participate in the 2019 Pan American Games in Peru. An in-competition urine sample she provided during the competition was found to contain benzoylecgonine, a metabolite of cocaine and a prohibited substance under the *World Anti-Doping Code*.[18] What rules and regulations applied in this situation? Figure 1.1 maps out the various organizations that may have some jurisdiction over Nicole Walker. They include:

- *Equestrian Canada*: Nicole signed an athlete agreement with the organization, so she is subject to its rules and regulations.
- *Canadian Centre for Ethics in Sport*: The anti-doping organization that Canadian national sport organizations agree will manage the Canadian anti-doping program.

- *Canadian Olympic Committee*: The national multisport organization that selects and sends the Canadian team, including the equestrian team, to the Pan American Games;
- *Pan American Sport Organization*: The international multisport organization responsible for the Pan American Games in Peru.
- *Fédération Equestre Internationale*: The international governing body for equestrian sports and the organization responsible for all equestrian activity at the Pan American Games in Peru.
- *World Anti-Doping Agency*: The international agency overseeing anti-doping activities at international games, including the Pan American Games.
- *Court of Arbitration for Sport (CAS)*: The international arbitral tribunal that hears doping appeals at the international level.

FIGURE 1.1 Jurisdiction Between Sport Organizations and Over Athlete



Through multiple levels of contractual obligations, starting with a contract between the athlete (Nicole Walker) and her national governing body (Equestrian Canada), these seven bodies all have some jurisdiction in this one simple matter,[19] although not all will necessarily have jurisdiction at the same time.

It is also important to keep in mind that the national laws of the jurisdiction within which the games or other sporting event take place create a backdrop for such situations. For example, although cocaine may be a prohibited substance in sport, its possession and use in Canada is also illegal under the *Criminal Code* and may also be illegal where the event occurs. Thus, if the possession or use took place within Canada, not only could an athlete be sanctioned under applicable anti-doping rules, but they might also be charged criminally in the jurisdiction where the infraction took place, whether Canada or another jurisdiction.

This jurisdictional interplay and complexity also comes into effect when dealing with human rights and discrimination matters. In Canada, federal, provincial, and territorial laws apply to human rights; at times, these laws conflict with the rules of sport organizations. This issue is discussed more fully in Chapter 6.

Not understanding how multiple jurisdictions may come into play can produce unfortunate consequences. For example, an athlete may bring a human rights complaint in Canada and be successful there, but this decision may not be recognized in a foreign jurisdiction. This has been

the case for several athletes, including Pardeep Singh Nagra,[20] who successfully settled a case before the Ontario Human Rights Tribunal, but the settlement likely would not be recognized by the International Boxing Federation outside Canada. (This case is discussed in Chapter 6.)

Nicole Walker riding for Team Canada at the Longines FEI Jumping Nations Cup event at Langley, BC in 2019.

CASE LAW HIGHLIGHT

Wrong Party Sued—Athlete Loses Out, Garrett v Canadian Weightlifting Federation

Facts

In *Garrett v Canadian Weightlifting Federation*,[21] Garrett was a national-level weightlifter who received notice of his selection to Canada's national team for the Commonwealth Games in Auckland, New Zealand. However, just prior to the team's departure to the Games, Garrett was told he was no longer on the team but could attempt to make the team by participating in a "lift-off" with a reserve athlete he had bettered throughout the year-long selection process. Garrett tied with the other athlete but was still not placed on the team by the national coach. He brought a legal action before the Canadian courts against the Canadian Weightlifting Federation.

Issue

Does Garrett qualify for membership on Canada's Commonwealth Games' weightlifting team?

Decision

Garrett was successful in his lawsuit against the Canadian Weightlifting Federation based on his past performance. What Garrett did not understand was that although the Canadian Weightlifting Federation was responsible for nominating athletes to the Commonwealth Games Team, it was not ultimately responsible for selecting members of the team. At a certain point in time, responsibility for the team passed from the national federation to Commonwealth Games Canada (as it was then called), but Garrett had failed to include this association as a named party in his lawsuit. Thus, although Garrett was successful in his lawsuit, the party that actually had jurisdiction over the makeup of the team was not named and so was not required to comply with the court's order. Since there was no time to seek further redress from the courts, Garret did not compete.

Areas of Law

There are many different areas of law, and there are also ways to categorize laws to make them more understandable. The first major division of law is that between public law and private law. **Public law** involves the interests of the state and is a branch of law concerned with regulating relations between the government and individuals or society at large.

public law
a branch of law concerned with regulating relations between the government and individuals or society at large

The criminal law is an obvious example of public law. The Crown represents the interests of the state against a private individual who may have breached the federal statute known as the *Criminal Code*. Criminal law is covered in Chapter 10, which discusses the topic of violence in sport and recreation. Tax and environmental legislation are two other examples of public law.

Private law refers to legal interests occurring between two or more private parties. The most well-known example of private law concerns personal injury matters, where the injured party seeks redress from the party causing the injury. This is also part of the broader category of law known as tort law, which is addressed in Chapter 2. Employment law is another example of private law in which the two private parties are the employer and the employee, although the state regulates some aspects of the employment relationship through employment standards legislation. Employment law is addressed further in Chapter 5 of this book.

private law
legal interests occurring between two or more private parties

Another major division of law is that between criminal law and civil law. **Criminal law** deals exclusively with offenses against the public or the state and the punishments for these crimes. **Civil law** deals with the disputes between individuals and/or corporations. Criminal law and civil law differ in a number of key ways, including how cases are initiated, the kinds of punishments or penalties that may be imposed, and the standard of proof that must be met.

criminal law
a division of law dealing exclusively with criminal offences and their punishment

In criminal law, only the government may initiate a case, which it does through a prosecutor, generally referred to as "the Crown." Penalties may consist of imprisonment, conditions imposed on one's liberties (for example, community service or parole), or a fine. To secure a conviction, the prosecution must establish the guilt of the accused party (the **defendant**) beyond a reasonable doubt.[22]

civil law
a division of law dealing with disputes between private individuals and/or corporations

In contrast, civil cases are typically initiated by a private party (the **plaintiff**), which could be an individual or a corporation or a combination of both. The responding party, or parties, is called the defendant. The plaintiff is typically seeking compensation, usually a monetary award, for a wrong done to them by the defendant. To succeed, the plaintiff must prove their case on a balance of probabilities, a much lower standard than required in criminal cases. This standard requires that the judge or jury be satisfied that it is more likely than not that the defendant did what was alleged; in other words, there is a minimum 51 percent chance that the defendant committed the acts in question.

defendant
the responding party in a civil suit; in criminal matters, may be referred to as the accused

A single wrongful act may be both a criminal offense and a civil matter, thereby giving rise to both criminal charges and a civil suit. For example, a single incident of assault may be dealt with by both civil and criminal courts.

plaintiff
the party bringing a claim in a civil suit

Some areas of law can be broken down into subcategories. Tort law is one particular area of law that can be further distinguished. There are intentional torts, where one person intends to cause injury to another person, and unintentional torts, where one party injures the other without intending to do so. There are different types of intentional and unintentional torts—for example, civil assault, recklessness, and defamation are intentional torts, while negligence is a well-known example of an unintentional tort. Intentional and unintentional torts are discussed further in Chapters 2 and 10.

Intellectual property law is another example of a broader category of law that can be broken down into subcategories. Intellectual property is one form of property and thus is part of property law. More specifically, intellectual property refers to particular types of intangible property, including copyright (copyright law), trademarks (trademark law), and patents (patent law), to name a few. This area of law is dealt with in Chapter 8.

There are many areas of law that can affect sport and recreation, some more than others. Box 1.1 provides a sampling of different areas of the law, each of which relates to some aspect of sport and/or recreation.

There are certainly some principles of law originating from and applying explicitly to sport, particularly in the area of anti-doping. In this regard, decisions being made by the Court of Arbitration for Sport (see Box 1.2) are creating a substantial body of decisions directly related to sport and, in some limited situations, to recreation.[23]

BOX 1.1 » Areas of Law That Apply to Sport and/or Recreation

tax law
tort law
criminal law
employment law
labour law
corporate law
administrative law
agency law
commercial and consumer law
debtor–creditor law
constitutional law
human rights law
workers' compensation law
environmental law
contracts
bankruptcy and insolvency law
trademark law
copyright law
communications law
entertainment law
patent law
trade secret law
computer law
real estate law
immigration law
landlord and tenant law
aviation law
maritime law
international law
education law
competition law

BOX 1.2 » The Court of Arbitration for Sport

The CAS is one of the most active international arbitral bodies. Situated in Lausanne, Switzerland, the CAS is composed of two main divisions. The Ordinary Arbitration Division essentially deals with one-off commercial disputes connected with sports where the parties have agreed to submit the resolution of their dispute to the CAS either through a clause in the relevant contract or by a special arbitration agreement. These cases make up about 13 percent of the CAS caseload and are thus relatively infrequent.

The Appeals Arbitration Division, which hears about 85 percent of the CAS cases, handles appeals from the decisions of federations, associations, or other sports-related bodies where their policies or regulations allow by way of a specific agreement between the parties.

Cases Before Ordinary and Appeal Divisions of CAS: 2016-2020[24]

Year	Ordinary Division	Appeal Division
2016	100	458
2017	111	461
2018	116	463
2019	107	493
2020	129	811
TOTAL (since 1986)	1,253	6,281

The CAS plays an important role within the sport legal system. It was created in 1983, initially through the impetus of the International Olympic Committee, for the purpose of creating a Supreme Court of Sports Law. Disputes, in general, can be of a commercial nature (sponsorship or managements contracts, players transfers, etc.), or of a disciplinary nature following a decision by a sports organization (doping cases, selection of athletes, etc.).

Court System

The Canadian legal system has several checks and balances in place to ensure that parties and issues are dealt with as fairly as possible. One way in which the system promotes fairness is by incorporating multiple levels of decision-making in a tiered court system.

When parties to a civil or criminal case first come into formal legal conflict, their cases are heard at the trial court level, which hears a broad range of matters. A trial court typically hosts a full hearing of a case, complete with witness testimony and the entering of exhibits (documents and other objects provided as evidence). At the end of the trial, the judge or jury makes a decision. In a criminal trial, the decision relates to whether the accused person is guilty or not guilty. In a civil trial, the court decides whether the plaintiff has proved their case against the defendant and whether the defendant must compensate the plaintiff.

In Canada, parties may be entitled to appeal trial decisions, typically to a court of appeal for the province or territory. Usually, an appeal court only reviews cases in which the appealing party (the appellant) maintains that the trial court made an *error in law*—that is, a mistake in applying the law to the evidence presented at trial or an error in the procedure of the trial. A court of appeal generally does not hear evidence first-hand, and witnesses are not commonly called in this court. Nor does the court of appeal generally agree to review any of the interpretations that the trial judge or jury made of the facts presented by witnesses. It simply is looking at whether the law has been misapplied.

If an appeal is allowed, the lower court's decision is reversed. If an appeal is denied, the lower court's decision is upheld.

In very limited circumstances, a decision may be appealed to the Supreme Court of Canada, the highest court in the country. However, this court decides a very small number of cases every year, and there is no automatic right to appeal a case to the Supreme Court, except in certain serious criminal matters. Otherwise, only parties with cases of national importance and general public interest are granted leave to appeal to the Supreme Court.

Tribunals and Administrative Law

tribunal
a person or persons vested with the authority to judge or determine claims or disputes

Courts are not the only decision-making bodies that resolve legal disputes. Many regulatory schemes allow for the resolution of disputes by an administrative **tribunal**, which is a person or persons vested with the authority to judge or determine claims or disputes. The area of law known as "administrative law" governs the procedures and processes of these decision-making bodies.

A well-known example of an administrative tribunal is the Human Rights Tribunal (federal, provincial, and territorial), which hears human rights matters. Other administrative tribunals with which sport and recreation providers may be familiar include the following:

- Sport Dispute Resolution Centre of Canada,
- labour relations boards,
- workplace safety tribunals,
- municipal boards, and
- conservation review boards.

In addition, most Canadian sports organizations function as private tribunals, with internal mechanisms for resolving member disputes on issues such as eligibility to compete, team selection, and disciplinary matters (see Chapter 7). At the national level, internal sport disputes that remain unresolved can be taken to the Sport Dispute Resolution Centre of Canada, a specialized sport tribunal.

The processes used by administrative tribunals vary widely. Some tribunals, such as the Canadian Human Rights Tribunal, follow more formal, complex procedures that are similar in many

ways to the procedures seen in traditional courts. Small private tribunals—for example, the dispute resolution bodies of small associations, such as individual golf clubs—are considerably less formal and may resolve disputes by means of written correspondence instead of hearings. Chapter 7 discusses principles of fairness in the hearing process.

The first step for someone appearing before a tribunal will be to learn about the procedures in use at the tribunal. In some cases, this information can be obtained from the tribunal in printed form or downloaded from a website. In other cases, such as those involving small private tribunals, the procedures are explained in the letter that initiates the dispute resolution process or in the policies of the organization. If the procedures are not clear, the sport or recreation practitioner may wish to call the tribunal office or the administrator in charge of the tribunal to clarify points of procedure.

CHAPTER SUMMARY

Law, generally described, sets out the rights and obligations of the sport and recreation practitioner, as well as those with whom the practitioner will be engaged, whether individuals, organizations, or businesses. There are a number of sources of law that affect both sport and recreation as fields of operation. Decisions of the courts (from which the common law is derived), statutes at the federal, provincial, and territorial levels (from which statute law is derived), municipal by-laws, as well as the policies and regulations of sport and recreation organizations all inform the legal boundaries of sport and recreation activities and the actions of those providing services or participating in them.

Jurisdiction refers to a body's legal authority over a particular subject matter. It deals with determining what rules apply—or do not apply—in a particular circumstance. Multiple sets of rules may apply simultaneously, and determining which rules will prevail can be complex. Sport and recreation as domains of activity are affected not only by multiple jurisdictions but also by multiple areas of law. It is important for the practitioner to be familiar with the range of laws affecting any particular activity.

Where legal disputes or disagreements occur, parties may seek recourse in the court system or, alternatively, through a system of private and specialized tribunals.

Each chapter of this book addresses a different area of law as it applies to sport and recreation management. It is clear that an understanding of the legal principles underlying programs, activities, events, and business operations within the sport and recreation domains is an essential element of the sport and recreation practitioner's knowledge base. The areas of law addressed in this book represent the core areas of practice for the sport or recreation practitioner but are by no means the only areas of law pertinent to sport and recreation.

This book is designed to help Canadian sport and recreation practitioners acquire the knowledge and tools they need to be informed and effective when dealing with the law.

APPLY YOUR KNOWLEDGE

1. Select five areas of law from the list in Box 1.1. Find at least one news story relating to each selected area. Identify and discuss the legal issue(s) each story raises.
2. Consider your role as a sport or recreation practitioner—you may be in the position of a program developer, a manager, a marketing person, a communications or social media person, or in any other position. Consider how the law affects your position. What steps might you take to ensure that you are adequately managing the legal aspects of your position? In considering your response, you may wish to think about potential risks, your legal obligations, the impact of your actions on others (including your employer), and where you might look for information and resources.

QUESTIONS FOR REVIEW AND DISCUSSION

1. What is a statute? Why are some statutes created and administered by the federal government and others by the provincial or territorial governments?
2. In Canada, is sport and/or recreation regulated by the federal government or by provinces and territories?
3. Why is it important for both the sport and recreational practitioner to be familiar with statute law?
4. What is the common law? How does it change?
5. Why are the principles of precedent and *stare decisis* important? How do they work together?
6. Why is it important to understand the concept of jurisdiction?
7. Identify two categories of law. Within each category, identify multiple areas of law.
8. The number of legal cases heard by each level of court diminishes as one progresses from the lower to the higher courts. Explain why this occurs. Do you agree that it is necessary to have a structure that limits the number of cases that each level of court will hear? Why or why not?
9. Identify the benefits of having a private specialized tribunal to hear specific disputes.

KEY TERMS

civil law, 10
common law, 3
criminal law, 10
customary law, 6
defendant, 10
jurisdiction, 4
plaintiff, 10
policy, 7
precedent, 4
private law, 10
public law, 10
regulations, 6
stare decisis, 4
statute law, 4
tribunal, 12

WEBSITES

CanLII: <https://www.canlii.org> (statutes and regulations from most Canadian jurisdictions, court decisions, and some tribunal decisions)

Justice Laws Website: <https://laws.justice.gc.ca> (federal legislation and regulations)

e-Laws: <https://www.ontario.ca/laws> (Ontario statutes and regulations)

NOTES AND REFERENCES

1 The Canadian legal system in all provinces and territories of Canada, except Quebec, operates within the common law tradition. Quebec follows the civil law system, derived originally from Europe, in which the courts look to a civil code to determine a given principle and then apply the facts of a particular case to that principle. Whereas the common law system extracts existing principles of law from decisions of previous cases, the civil law system draws guiding principles from an established code.

2 Statutory provisions are often derived from common law principles. In other words, a specific aspect of the common law is codified. For example, the *Occupiers' Liability Act*, a statute found in each province and territory (and discussed in Chapter 6), is derived in large part from the common law principles of negligence.

3 *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, reprinted in RSC 1985, Appendix II, No 5.

4 *Criminal Code*, RSC 1985, c C-46.

5 Manitoba *Municipal Code*, CCSM c M225.

6 Ontario *Municipal Act, 2001*, SO 2001, c 25.

7 *Uggenti v Hamilton (City)*, 2013 ONSC 6162.

8 Municipal recreation departments are clearly part of the municipal structure, although municipal engagement in sport and recreation very often goes well beyond such departments. Funding for a facility may come from another department or special fund, and events can be planned through other programs, for example, the library.

9 *Physical Activity and Sport Act*, SC 2003, c 2.

10 As the name of the federal Act implies, the legislation does incorporate physical activity as part of its mandate and objectives (see ss 3, 5 of the *Physical Activity and Sport Act*).

11 *Species at Risk Act*, SC 2002, c 29.

12 W Vamplew, "Playing with the Rules: Influences on the Development of Regulation in Sport" (2007) 24:7 International J of the History of Sport 843, online (pdf): <https://dspace.stir.ac.uk/bitstream/1893/1042/1/Playing with the Rules.pdf>.

13 Sport rules and regulations originate outside the formal sources of law described in this chapter. They find their source in the authority of private organizations that are responsible for their development and have the power to enforce them.

14 *Rowan's Law (Concussion Safety), 2018*, SO 2018, c 1.

15 *General*, O Reg 161/19.

16 *Motorized Snow Vehicles Act*, RSO 1990, c M44.

17 "The Court of Arbitration for Sport (CAS) Disqualifies Team Canada from the Jumping Competition at the 2019 Pan American Games" (12 January 2021), online (pdf): *Court of Arbitration for Sport* <https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_6695_6700_7386.pdf>.

18 *World Anti-Doping Code*, Montreal: World Anti-Doping Agency, 2021, online (pdf): <https://www.wada-ama.org/sites/default/files/resources/files/2021_code.pdf>

19 The repercussions of the CAS's decision were significant. The anti-doping violation of one athlete on the team disqualified the entire team from participating in the Pan American Games, a competition that was necessary to qualify the team to compete in the 2021 Tokyo Olympic Games. As a result Canada will not compete in the team jumping event in the Tokyo Olympics.

20 *Nagra v Canadian Amateur Boxing Association* (12 January 2002), Toronto No 99-CV-180990 (Ont Sup Ct J).

21 *Garrett v Canadian Weightlifting Federation* (18 January 1990), Edmonton Case No 9003-0122 (Alta QB).

22 According to the Supreme Court of Canada, the concept of reasonable doubt must be based on "reason and common sense" (*R v Lifchus,* [1997] 3 SCR 320, 1997 CanLII 319 at para 36). It must be logically connected to the evidence or lack of evidence presented by the Crown. A doubt will not be considered "reasonable" if it is based on sympathy or prejudice. The prosecution does not need to prove guilt beyond any doubt whatsoever; however, the reasonable doubt standard requires more than simply that the jury be convinced that the defendant *probably* or *likely* committed the crime. See *R v Lifchus*, cited above.

23 This mainly applies to the club system of sport in Europe and Australasia, for example, where recreational athletes may be subject to the WADA Code. (See the WADA Code, *supra* note 18, Appendix 1: Definitions, "recreational athlete.")

24 Tribunal Arbitral du Sport/Court of Arbitration for Sport, "Statistiques/Statistics" (2020), online (pdf): <https://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2020.pdf>. From 1986 to 2020, a total of 7,869 cases came before the CAS from all divisions.