

# **A COMPARATIVE LEGAL ANALYSIS OF THE COURT SYSTEMS AND CIVIL PROCEDURE IN PAKISTAN AND CANADA**

By:

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## **Abstract**

This paper presents a comparative analysis of the court structures and civil procedural rules in Pakistan and Canada. Despite a shared common law heritage as former British colonies, the two nations have developed distinct judicial architectures reflective of their unique constitutional and socio-political contexts. The analysis reveals that while both systems feature a multi-tiered judicial hierarchy culminating in a Supreme Court, they diverge fundamentally in their constitutional organization of judicial power and their approaches to civil litigation. By examining the historical foundations, court structures, and key procedural mechanisms such as the initiation of suits, pleadings, and evidence this study elucidates the core similarities and critical divergences between the two systems. The conclusion underscores how these differences are shaped by and reflective of each country's legal and political evolution. All citations adhere to the *Canadian Guide to Uniform Legal Citation* (the "McGill Guide").

## **1. Introduction**

The comparative study of legal systems provides critical insight into how different societies structure their institutions to administer justice. This is particularly salient for Pakistan and Canada, two nations that inherited a common law foundation from the British Empire but have since pursued divergent constitutional and socio-political trajectories. Canada, a federal commonwealth, and Pakistan, a federal Islamic republic, offer a compelling case study in legal evolution from a shared origin. This paper contends that while the judicial systems of Pakistan and Canada are structurally analogous in their hierarchical design and common law procedural ethos, they have diverged significantly in their constitutional architecture and the codification of civil procedure. These divergences are direct manifestations of their distinct federal structures, legal traditions, and historical paths. By examining the structure of their court systems and the mechanics of their civil procedural rules, this paper will illuminate the practical realities of litigation in these two Commonwealth nations.

## **2. The Court Systems: A Structural Overview**

### **2.1. The Pakistani Judicial System**

The judicial system of Pakistan is a unified hierarchy established under the **Constitution of the Islamic Republic of Pakistan**. Its apex is the Supreme Court of Pakistan, located in Islamabad, which functions as the final court of appeal and exercises original, appellate, and advisory jurisdictions. Beneath it are the provincial High Courts (in Lahore, Karachi, Peshawar, and Quetta) and the High Court for the Islamabad Capital Territory, each serving as the highest appellate court within its territory and exercising supervisory control over all subordinate courts and tribunals. The subordinate judiciary forms the backbone of the trial court system, comprising District Courts (for civil matters) and Sessions Courts (for criminal matters). Pakistan has also established specialized tribunals (e.g., for banking, service, and anti-terrorism matters) to adjudicate specific disputes. A unique feature of the Pakistani system is the Federal Shariat Court, which is empowered to examine and determine whether any law is repugnant to the Injunctions of Islam.

## **2.2. The Canadian Judicial System**

Canada's judiciary operates within a federal constitutional framework, resulting in a bifurcated system comprising both federal and provincial courts. The Supreme Court of Canada, in Ottawa, is the ultimate general court of appeal for all matters, both federal and provincial. The federal court system includes the Federal Court and the Federal Court of Appeal, which possess jurisdiction over matters assigned by federal statute, such as intellectual property, immigration, and interprovincial disputes. Each province and territory maintain its own court system, typically structured in three tiers: the Provincial Court (a lower court handling the majority of criminal, family, and small claims matters), the Superior Court (a court of inherent jurisdiction hearing serious civil and criminal cases and acting as an appellate court for the Provincial Court), and the provincial Court of Appeal. A key constitutional distinction lies in the appointment process: judges of the Supreme Court of Canada, the federal courts, and the superior courts of the provinces are appointed by the federal government, while judges of the provincial courts are appointed by their respective provincial governments.

## **3. Comparison of Civil Procedure**

### **3.1. The Civil Procedure Code of Pakistan**

Civil litigation in Pakistan is governed by a single, comprehensive statute: the **Code of Civil Procedure (CPC), 1908**. A legacy of the British Raj, this code provides a detailed framework for conducting civil suits. The CPC is bifurcated: the main body contains 158 sections outlining general principles of jurisdiction, *res judicata*, and appeals, while the First Schedule contains 51 Orders with accompanying Rules that dictate the specific, sequential procedure for litigation. A suit is formally initiated by the plaintiff filing a plaint. The defendant is subsequently summoned to file a written statement in response. The CPC meticulously outlines subsequent stages, including the framing of issues, discovery and production of documents, and the examination of witnesses at trial. The overarching objective of the CPC is to provide a uniform, structured, and fair process for adjudicating civil disputes across Pakistan.

### **3.2. The Rules of Civil Procedure in Canada**

In stark contrast to Pakistan's unified code, Canada's common law provinces operate under distinct provincial and territorial rules, typically titled "Rules of Civil Procedure" (e.g., Ontario's **Rules of Civil Procedure**). It is critical to note that Quebec, as a civil law jurisdiction, operates under its own wholly distinct **Code of Civil Procedure**. In the common law provinces, these rules govern all aspects of litigation, from the commencement of proceedings (often via a statement of claim or notice of application) and service of documents to the expansive discovery process (including examinations for discovery and documentary disclosure), motions, and the trial itself. A defining feature of modern Canadian civil procedure is its explicit philosophical commitment, often enshrined in the rules' foundational principles, to secure the "just, most expeditious and least expensive determination of every civil proceeding on its merits. This objective has fostered a strong emphasis on alternative dispute resolution (ADR), including mandatory mediation programs in provinces like Ontario.

#### **4. Comparative Analysis and Differences**

A direct comparison reveals fundamental differences emanating from constitutional and historical contexts. The most apparent difference is the source of procedural law. Pakistan relies on a single, historic, and comprehensive code (the CPC, 1908) applied uniformly nationwide. Canada's system is decentralized; its common law provinces utilize separate, jurisdiction-specific rules, while Quebec has a wholly different civil law system. This reflects Canada's federalist commitment to provincial autonomy over the administration of justice.

Pakistan's judiciary is a unified, centralized hierarchy. Canada's is a classic federal model, featuring a clear division between federal and provincial courts with distinct judicial appointment processes. This division dictates not only judicial appointments but also the subject-matter jurisdiction of each court level.

While both systems aim to deliver justice, Canadian rules explicitly and aggressively prioritize expedition, cost-effectiveness, and early resolution through ADR. Pakistan's CPC, while containing analogous procedural tools, is a century-old code whose application is frequently criticized for delays and procedural complexity. Canada's provincial systems allow for more agile and frequent updates to their rules to address modern litigation challenges.

Both systems are rooted in British colonial law. However, Pakistan retained and adapted the 1908 CPC post-independence, embedding it within an Islamic republican framework. Canada's provinces, having achieved Confederation much earlier, developed their own distinct legal identities and procedural rules over a longer period, tailoring them to their specific societal needs.

#### **5. Conclusion**

This comparative analysis demonstrates that while a shared common law heritage underpins the judicial systems of Pakistan and Canada evidenced by their multi-tiered court structures and adversarial procedures this common foundation has given way to significant divergence. Pakistan's system is characterized by a unified judiciary operating under a single, historic code of civil procedure. Canada, in contrast, exhibits a decentralized, federalized judiciary where

procedural law is primarily a provincial concern, resulting in a variety of modern rules that explicitly prioritize efficiency and alternative dispute resolution.

These differences are not merely technical but are profound reflections of each nation's constitutional identity, historical trajectory, and socio-political priorities. For the legal practitioner, this necessitates navigating a centralized, codified system in Pakistan versus a decentralized, evolving set of systems in Canada. For the citizen, it fundamentally shapes the experience of justice, influencing the speed, cost, and very nature of civil litigation. Understanding these parallels and divergences is vital for fostering cross-jurisdictional legal dialogue and appreciating the nuanced adaptation of common law traditions to unique national contexts.

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