

## Comparative Table of the Supreme Courts of the United States and Canada

	United States	Canada
<b><i>Foundations</i></b>		
Model	State judiciaries vs. independent and parallel federal judiciary	Unitary model (single hierarchy) where provinces appoint the lowest court in the province and the federal government appoints judges to all higher courts
Constitutional Authority	“The judicial Power of the United States, shall be vested in one supreme Court” <i>Constitution of the United States</i> , Art. III, s. 1	“Parliament of Canada may ... provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada” <i>Constitution Act, 1867</i> , ss. 101
Creation and Retention of the Supreme Court	<i>mandatory</i> : “the judicial Power of the United States, <b>shall</b> be vested in one supreme Court” Art III, s. 1 (inferior courts are discretionary)  constitutionally entrenched	<i>optional</i> : “Parliament of Canada <b>may</b> ... provide for ... a General Court of Appeal for Canada” (CA 1867, s. 101; first <i>Supreme Court Act</i> in 1875, after debate; not constitutionally entrenched by quasi-constitutional convention
Previous higher judicial authority		appeals to the Judicial Committee of the Privy Council were abolished in 1949
Enabling Legislation	<i>Judiciary Act</i>	<i>Supreme Court Act</i> , R.S.C. 1985, c. S-26
Jurisdiction of Supreme Court	“all Cases, in Law and Equity, arising under this Constitution” Art III, s. 2 “the Laws of the United States and Treaties made ... under their Authority” Art III, s. 2  “Ambassadors, other public Ministers and Consuls” (orig. jur.) Art III, s. 2  “all Cases of admiralty and maritime Jurisdiction” Art III, s. 2  “Controversies to which the United States shall be a Party” Art III, s. 2  Diversity jurisdiction (original jurisdiction where state is party) Art III, s. 2	“a General Court of Appeal for Canada” confers plenary and ultimate authority

Original vs. Appellate	Limited original jurisdiction	No original jurisdiction (see “references” below)
<b><i>Composition, Tenure and Compensation</i></b>		
Membership	Chief Justice of the United States and 8 “associate justices” (although Art. II, s. 2 and Art. III, s. 1 both refer to “Judges of the Supreme Court”)	Chief Justice of Canada and 8 <i>puisne</i> (inferior in rank) judges, SCA, s. 4(1)
Present Gender Composition	3 women (1 retiring)	4 women, including Chief Justice
Tenure	“during good Behaviour” (lifetime) (Art. III, s. 1); may be impeached	must retire by 75 <sup>th</sup> birthday (s. 99(2) CA, 1867), “during good behaviour” (s. 99(1)); repeated in SCA, s. 9
Salaries	“shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuation in Office” (Art. III, s. 1) Chief Justice: \$255,500 Associate Justices: \$244,400	“shall be fixed and provided by the Parliament of Canada” (s. 100) Chief Justice: \$396,700 Puisine Justices: \$367,300
Review of Salaries	political and legislative adjustments for cost of living increases	periodic independent compensation commissions; recommendations <i>prima facie</i> binding
<b><i>Appointment</i></b>		
Formal Qualifications of Judges	There are no age, experience, education or citizenship qualifications.	For judges from Quebec only: “Any person ... who is or has been a judge of a superior court of a province or a barrister or advocate of at least ten years standing at the bar of a province” SCA, s. 5
Geographical Qualifications	none	“At least three of the judges shall be appointed from ... Quebec” SCA, s. 6
<i>Informal</i> Geographical Qualifications (constitutional-level custom)	none	Quebec: 3 Ontario: 3 British Columbia: 1 Prairies: 1 Atlantic Canada: 1

Appointment of Chief Justice (tradition)	Frequently from outside existing Supreme Court bench	Tradition of rotating between senior anglophone and senior francophone on existing Supreme Court bench
Selection Authority	Inter-branch co-operation (President nominates, Senate confirms)	Cabinet on the advice of the Minister of Justice or Prime Minister
Nature of Process	Political	Executive
Supporting Executive Office	Office of Legal Services; Office of White House Counsel	Commissioner for Federal Judicial Affairs
Public Scrutiny	Senate Judiciary Committee Hearings and vote; full Senate vote	Several behind the scenes screening stages; recommendations to Minister; recent voluntary public hearings
Oath	<p>Two oaths must be taken.</p> <p>(1) Constitutional Oath [5 U. S. C. § 3331]:</p> <p>"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."</p> <p>(2) Judicial Oath [28 U. S. C. § 453]:</p> <p>"I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."</p>	<p>"I, ....., do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as Chief Justice (or as one of the judges) of the Supreme Court of Canada. So help me God." SCA, s. 10</p>
Administration of Oath	By the Chief Justice or a senior Associate Justice. The two oaths are often given separately on different days in different places and sometimes the same oath is given more than once.	"to the Chief Justice before the Governor General in Council, and to the <i>puisne</i> judges by the Chief Justice or, in the case of absence or illness of the Chief Justice, by any other judge present at Ottawa" SCA, s. 11

<i>Ad Hoc</i> Appointments	none	“[to ensure quorum] the Chief Justice of Canada, or in the absence of the Chief Justice, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an <i>ad hoc</i> judge, for such period as may be necessary ... [a Federal or tax Court judge, or another federal or provincial judge] SCA, s. 30
<b>Operations</b>		
Control of docket	Customary ‘rule of four’ justices to determine an appeal will be heard	Limited right of appeal in serious criminal cases; all others require leave on basis of public importance and national dimensions; minimum of 2 judges
Review Granting Process	Written briefs	Written application (no more oral hearings)
Government References	None	federal government may ask Court for a non-binding ‘advisory opinion’ on any constitutional or statutory law
Grant of Review Language	petition for certiorari	application for leave to appeal
Monetary jurisdiction	No minimum or maximum	No minimum or maximum
Judicial Product	Opinion	Judgment
Court languages	English	English and French
Caseload	About 75 opinions per term	About 75 judgments per year
“Term”	Oral arguments begin first Monday in October and end in late April; all opinions delivered by end of June	Scheduled periods of sittings but no schedule to render judgment
Quorum of Judges	Six justices [28 U. S. C. §1]	“Any five of the judges of the Court shall constitute a quorum and may lawfully hold the Court.” SCA, s. 25
Website	<a href="http://www.supremecourtus.gov/">http://www.supremecourtus.gov/</a>	<a href="http://www.scc-csc.gc.ca/">http://www.scc-csc.gc.ca/</a>
<b>Governance</b>		
Exclusive Office		“No judge shall hold any other office of emolument under the Government of Canada or the government of a province” SCA, s. 7

Residency Requirements	Justices can live anywhere, even outside of the country.	“shall reside in the National Capital Region ... or within forty kilometres thereof” SCA, s. 8
Judicial Independence	Clear ‘third branch’ delineation with inter-branch co-operation	Larger executive oversight in operations of SCC; ceremonial SCC role in parliamentary function
<b><i>Removal from Office</i></b>		
Code of Judicial Conduct	Supreme Court justices are exempt from the Code of Conduct binding on federal judiciary	<i>Ethical Principles for Judges</i> <a href="http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf">http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf</a>
General	“on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors,” Art. II, s. 4	“shall be removable by the Governor General on Address of the Senate and House of Commons,” CA 1867, s. 99(1)
Systematic Oversight	Self-regulating	Canadian Judicial Council, established by <i>Judges Act</i> , Pt II ( <a href="http://www.cjc-ccm.gc.ca">http://www.cjc-ccm.gc.ca</a> )