

11.1 Introduction

Civil law is also known as private law. It regulates disputes between individuals; between parties, such as business or government; and between individuals and parties.

Society does not have an interest in regulating civil disputes as it does crime. Civil disputes are really only important to the parties involved. While the main purpose of *criminal* law is to punish the offenders and to protect society from dangerous people, the main purpose of *civil* law is to compensate victims. When a crime occurs, anyone can help to bring the offender to justice. When a civil dispute arises, only the victim can take action. However, there is a significant public interest in ensuring that these disputes are settled fairly.

Civil actions include claims arising from accidents; injuries done by one person to another's body, property, or reputation; divorces, child custody, and support claims; adoptions; failure to pay for work done; nonpayment of rent; and unpaid debts. The victim may bring an action against the person who committed the civil wrong for **damages** (monetary compensation), or some other civil remedy. Review Chapter 1 for the various areas of civil law.

Tort law, the subject of this unit, is a major division of civil law. The word "tort" means "a wrong" that could be either intentional or unintentional (negligent). Civil procedure is also examined in this unit, while important aspects of family law, contract law, and labour law follow in later units.

11.2 Crimes and Torts

As you know, Canada's justice system involves both criminal and civil law, which both concern wrongs and, in some cases, the same wrong. Some actions may involve both a crime and a tort, as you can see in Figure 11-2.

Crimes and Torts

If a person ...	It may be a crime of ...	And also the tort of ...
hits another person	assault	battery
breaks into someone's property	break and enter	trespass to land
takes someone's belongings	theft	trespass to goods

Figure 11-2

Some actions involve a crime and a tort.

Assume that Andrea tries to drive home while under the influence of alcohol. She runs a red light, hits Pavel's car, and seriously injures him. Society, represented by the Crown, may begin criminal action against Andrea on the grounds of impaired or dangerous driving. If convicted, Andrea will find her punishment outlined in the *Criminal Code*. At the same time, Pavel can begin a civil action to sue Andrea for **compensation**. Tort law entitles Pavel to receive compensation (usually money) for the injuries he sustained and other losses suffered.

Should an Athlete Who Intentionally Injures Another Athlete Face Criminal or Civil Action?

Canadians have become increasingly vocal about violence in team sports such as hockey. Many Canadians, for example, were shocked when, on February 2, 2000, Marty McSorley of the Edmonton Oilers slashed Donald Brashear of the Vancouver Canucks in what seemed like a deliberate attack (see photos on pages 4 and 243). The NHL disciplinary committee suspended McSorley for 23 games—the longest suspension in league history. That move cost McSorley \$100 000 in lost wages.

The Crown also charged McSorley with the crime of assault with a weapon. On October 11, 2000, he was found guilty and given an 18-month conditional discharge. Brashear could have also launched a civil suit against McSorley for battery, but did not.

Violence in sports is not confined to players. Fans also have been guilty of outbursts of violence. In Europe, incidents of spectator violence have been a relatively common occurrence at soccer matches. Many fans expect violence, and players and coaches have tried not to disappoint them. Sometimes, outbreaks of violence between teams spark fights between their respective supporters in the audience.

Such incidents have provoked Canadians to consider how to deal with them and how to prevent them.

Figure 11-3

The Pittsburgh Penguins and Toronto Maple Leafs get into a scuffle. Is this “a natural part of the game”?



On One Side

Some fans and players maintain that a certain amount of violence is a natural part of the game. They say that risking injury during a hockey game is as much a part of the game as winning and losing. Those who criticize the bodychecking and occasional fights do not really understand the game. Aggression is a basic human condition and it is natural for athletes to let off steam. Players may be upset by questionable calls, heckling fans, pressures of the game, or all three. If violence were eliminated, fan support would decrease and the game would suffer. There are enough rules and penalties in games like hockey to punish those who use excessive force, and there is no need for criminal or civil action.

On the Other Side

People who oppose violence in sports say that violent behaviour is learned and can be unlearned. At an early age, children who play hockey are taught how to bodycheck to get control of the puck. They see their heroes and role models involved in violent acts and want to copy them. Phrases like “taking him out” and “playing the man” are commonplace. Players are expected to engage in fighting, to resist backing down, and to support team members who are involved in a fight. There is a fear that this learned violence will become part of their daily lives.

Fans who oppose violence in sports believe it overshadows the skills of the game. They want criminal and civil action taken against those who use intentional violence. They point out that, if this type of violence were to occur outside the game, it would be subject to criminal or civil action. They propose large fines and lengthy suspensions to deter athletes from engaging in violence.

The Bottom Line

Efforts are being made to understand the nature of violence and to deal with it effectively. Violence in sports is no exception. Sports clubs are being pressured to make and enforce tougher rules and penalties for violence in sports. The media are moving away from sensational coverage of violence in sports. Failure to address the problem at the grassroots level may lead to government action to deal with it.

Although some Canadians approve of violence in sports and consider it part of the game, others feel that violence takes away from the game. In hockey, some violence falls within the rules; the rest is penalized within the game. Society needs to consider which acts are outside the game rules and require legal action.

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Visit www.law.nelson.com and follow the links to learn more about the issue of violence in sports.

What Do You Think?

1. What is the relationship between tort law and violence in sports?
2. How has the traditional attitude toward violence in sports changed?
3. Assume you are a participant in a body-contact sport. Prepare an argument in favour of the use of violence in contact sports. Prepare a counterargument that supports criminal or civil action for acts of intentional violence.
4. In your opinion, is violence in sports a reflection of violence in society? Explain.
5. Under what circumstances should players be encouraged to press charges and sue for damages? Explain.

It is Pavel's personal responsibility to bring this action. A civil court will award him suitable damages for his injuries; that is, "suitable" in the court's view. Each action, criminal and civil, proceeds independently of the other. Each case is tried in a different court with a different judge, and there is no set order in which the cases must be tried.

People who can prove that they have suffered injury or loss through another person's fault deserve some remedy. Although compensation is the most important purpose of tort law from the victim's viewpoint, some tort actions also contain elements of punishment and deterrence. Interesting tort cases are often followed closely by the media. The resulting publicity may affect the future behaviour of many people, including the parties involved in the suit and the public.

For example, an action against a fast-food outlet by a customer who finds human hair or a fingernail in a hamburger might have a negative effect on the company's sales and public image. The company itself would probably try to avoid another similar lawsuit. Most likely, the negative publicity from this case would cause other manufacturers to review and improve their production facilities and quality-control inspections.

Likewise, if a court awarded Pavel a substantial amount of cash in the motor vehicle scenario, this could have a deterrent effect on other negligent drivers.

Review Your Understanding (Pages 311 to 314)

1. Define "tort" and give three examples of torts.
2. How can an offence be both a crime and a tort? Provide an example.
3. Identify the main purpose of tort law.
4. Explain how a tort action might also consider the element of deterrence.

11.3 Civil Courts

In Chapter 4, you learned about Canada's criminal courts. This section examines Canada's civil courts. Although it is a civil court, Family Court will be discussed separately in Unit 4: Family Law.

Small Claims Court

Sometimes called "The People's Court," **Small Claims Court** provides a simple and relatively inexpensive way to settle disputes concerning money or property. Cases are tried informally by a judge without a jury. Both parties are given the chance to tell their story and are not usually represented by lawyers. In fact, Quebec has barred lawyers from its Small Claims Courts.

All provinces issue free, easy-to-read booklets with step-by-step procedures for filing a claim. In addition, court staff are available to answer questions and explain how to fill out the proper forms, most of which follow a fill-in-the-blank format.

Typical small claims include failure to pay rent, consumer complaints, unpaid bills, unpaid wages, claims for minor accidents, and consumer debts.

Many businesses use this court to collect unpaid accounts from customers. The dollar limit for such claims varies from province to province and currently ranges from \$3000 to \$10 000. The maximum claim for each province is shown in Figure 11-4. Procedures for settling civil disputes are discussed in Section 11.4.

Provincial Supreme Court

All civil cases above the small claims limit go directly to the Supreme Court of the province or to the Court of Queen's Bench. Disputes that reach this level are usually argued by lawyers since the cases may be very complex and may require several years of preparation. Examples include serious motor vehicle accidents, medical malpractice or injury, breach of contract, division of property after a divorce, and so on. Cases at this level may be tried by a judge alone or by judge and jury. Unlike a criminal trial jury, a civil trial jury in most provinces has only six members, and they can reach a decision by majority vote. In recent years, jury trials in civil cases have become rare because of the cost and complexity of the cases.

Court of Appeal

All provinces have Courts of Appeal that hear appeals from their lower courts. Appeals are heard by three or more judges, depending on the case, and their decisions may be either unanimous or majority judgments. A split 2 to 1 judgment is not uncommon from these courts. The court will release its decision and provide explanations for the majority vote. Dissenting judges will also provide their reasons for disagreeing with the majority vote.

Federal Court of Canada

The Federal Court of Canada's Trial Division deals with civil cases involving the federal government and its employees; disputes over federal income tax; and patents, copyrights, and trademarks. The Appeals Division hears appeals from the court's Trial Division.

Supreme Court of Canada

The Supreme Court of Canada, the highest court in the country, is an appeal court that hears only those cases from the Federal Court of Canada and provincial Courts of Appeal that it believes are of national importance or in which an important issue or question of law must be decided or interpreted. There is also an automatic right of appeal when there is a split decision from a provincial Court of Appeal. Like the provincial Courts of Appeal, the Supreme Court of Canada may issue unanimous or split decisions.

Small Claims Court Maximums, January 2002

Province	Maximum Claim \$
Alberta	7 500
British Columbia	10 000
Manitoba	7 500
New Brunswick	6 000
Newfoundland & Labrador	3 000
Nova Scotia	10 000
Ontario	10 000
Prince Edward Island	8 000
Quebec	3 000
Saskatchewan	5 000

Figure 11-4

The provincial Small Claims Court maximums range from \$3 000 to \$10 000. Why do you think limits are set?

Review Your Understanding (Pages 314 to 315)

1. What dollar limit exists for cases tried in Small Claims Court?
2. Give four examples of cases that could be tried in your province's Small Claims Court.
3. Why are juries seldom used in civil suits?
4. What types of appeals will the Supreme Court of Canada hear?

11.4 Trial Procedures

Balance of Probabilities

A civil lawsuit involves two parties: the **plaintiff**, who is suing, and the **defendant**, who is being sued. If more than one person or party has suffered the harm, all injured parties should sue together as plaintiffs in one action. If more than one person is responsible for causing the loss, they all should be sued as defendants. The process of suing is called **litigation**, and the parties in the action are the **litigants**.

In Ontario, minors may sue on their own for up to \$500. A minor is a person under the age of 18 or 19, depending on the province. If a minor sues for more than \$500, a responsible adult or **litigation guardian** must act for the minor. Usually, the child's parent or guardian will act in this capacity, but any responsible adult can serve.

As in a criminal procedure, the litigants prepare and present the facts of the case. The burden of proof is on the plaintiff; he or she must prove the case. However, the plaintiff is not required to prove the case beyond a reasonable doubt, as is the case in a criminal trial. Instead, the plaintiff must prove the case on the **balance of probabilities**. This means that as the plaintiff, you must prove that the events took place in the way you claim. The defendant will then try to show that his or her version is what really happened. The judge will then determine which side is more credible or believable.

Case

Lewis v. Robinson

2001 BCSC 643
British Columbia Supreme Court

The plaintiff, Kenneth Lewis, was a delivery person. He knew that the defendants, Will Robinson and Marci Salach, were the new owners and occupants of the property, but Lewis didn't know that the defendants had a dog. Lewis entered the property

and was confronted by Salach and her dog. She was holding the dog's leash at the time.

Most times, the dog was chained to its doghouse on the defendants' property. However, on this particular day, Lewis arrived on the property, startling Salach and the dog. Salach asked Lewis to identify himself, received no response, and then warned him that the dog did not like strangers and to be careful. Lewis saw the defendant speaking, but claimed he

continued ▶

couldn't hear her as the dog was barking. He tried to pet the dog and then tried to move out of the dog's range when the dog bit his hand. Prior to this incident, the dog had never attacked, bitten, or lunged at strangers, and there was no evidence of complaints from neighbours or friends.

Lewis brought an action for damages, but his action was dismissed.

For Discussion

1. Why did Lewis bring an action against the defendants?
2. Summarize the conflicting evidence.
3. Based on the evidence presented, why do you think the plaintiff's action was dismissed?



Figure 11-5

Who is at fault when, despite warnings, someone approaches a dog and is injured?

Criminal and Civil Procedures Compared

Case Factors	Criminal/Public	Civil/Private
Parties involved	Crown prosecutor versus accused (defendant)	Plaintiff versus defendant
Grounds/reason	To determine innocence or guilt of accused	To resolve a dispute
Purpose of action	To punish offender	To compensate victims
Onus of proof	On Crown prosecutor	On plaintiff
Burden of proof	Beyond a reasonable doubt	Balance of probabilities
Result of action	Accused is guilty or not guilty	Defendant is liable or not liable
Action taken if defendant is guilty or liable	Defendant sentenced	Plaintiff awarded some compensation or remedy

Figure 11-6

What are the similarities and differences between criminal and civil law procedures?

Filing and Serving a Claim

What actually happens during a civil procedure? Assume that Bjorn runs a red light and hits Penny's car. As in the earlier example involving Andrea and Pavel, the Crown may lay criminal charges against Bjorn for the accident. Penny, too, must decide whether to take legal action against Bjorn. She must determine if she has a **cause of action**; that is, a valid reason for suing. If Penny finds she has a cause, she must then decide on the proper court in which to proceed. As you have learned, the court in which a civil action is tried depends on the amount of money involved. As you will learn later in this chapter, going to court is not the only option, but it is often the only way when the parties have very different versions of the same event.



Figure 11-7

The Crown may lay criminal charges against Bjorn for running a red light and hitting Penny's car. Penny can lay civil charges against Bjorn, too, if she can determine the cause of action.

Did You Know?

In early 2001, the Ontario government proposed a 15-year limitation on civil cases. For example, if the damage was discovered after 14.5 years, plaintiffs would have only 6 months to launch legal action.

Assume that Penny's action will begin in Small Claims Court. Her first step is to file a **claim** that must include

- her full name and address
- Bjorn's full name and address
- the amount of money she is claiming
- a brief, clear summary of the reasons for the claim

If more than one defendant is involved, each one must be named and identified correctly.

After completing the claim, Penny mails or hand-delivers it to the court clerk, along with the required filing fee. The fee is the cost of handling the claim, and the amount depends on the amount the plaintiff is claiming. The fee the plaintiff pays is added to the claim by the court.

At this time, Penny must choose a location to file her action. It may be a Small Claims Court near the accident

location, near Bjorn's residence, or near her residence. Penny receives a copy of the summons, and the court clerk keeps a copy. Bjorn must be served with a copy as well. The document may be delivered personally by Penny, by a friend or business associate, or by a private process serving agency so that the court is assured that the defendant, or a responsible adult, has received the claim.

Penny must also ensure that she files her claim within a certain period of time following the event. This is called the **limitation period**. Also, the claim must be served within six months from its date of issue. If it cannot be served within six months, it can be renewed by a judge.

When Bjorn receives the claim, he has several options. If he agrees that he owes Penny the full amount of the claim, he can pay the amount plus court costs to the Small Claims Court office. He must do so within 10 to 30 days, depending on the province. The court clerk will then pay Penny, ending the dispute.

Defence or Reply

If Bjorn feels that he does not owe Penny anything, he prepares a **defence (reply)**, a document that clearly outlines his reasons for disagreeing with her claim. Bjorn may have a number of reasons. He might argue that the light was not red when he went through it and hit Penny's car. Or he might say that the brakes on his car failed and he could not stop in time to prevent the accident. If Bjorn intends to dispute the claim, he must do so within 10 to 30 days of receiving the summons or claim. A copy of the defence will be sent to the plaintiff by the court office.

Payment into Court

If Bjorn feels that Penny is entitled to some part of the claim, he can pay that amount to the Small Claims Court office. Penny will then be notified and can either accept the amount and drop the balance of her claim, or pursue the case in the hope of obtaining the full amount.

Counterclaim

The defendant may also make a **counterclaim**, saying that it was actually the plaintiff who was at fault for the accident. Bjorn will attempt to claim damages from Penny for his own loss. A counterclaim must relate to the problem that caused the plaintiff's claim. When a civil action involves damage to vehicles, the defendant will often counterclaim.

In this scenario, Bjorn defends against Penny's claim and makes one of his own against her, arguing that she began to move before her traffic light had turned green and that she was driving too quickly to stop. The judge will examine the counterclaim and the plaintiff's claim at the same time if the case comes to trial and decide who is at fault and who will receive what from whom.

Third Party Claim

Another option available to the defendant is to involve a third party who the defendant feels is partly or completely responsible for the dispute. If Bjorn had his brakes repaired just before the accident, and if the failure of the brakes was responsible for the accident, Bjorn might involve the repair garage as a third party to share some of the blame and the cost. Taking this action saves time and money, because the case can proceed in the presence of all three parties. Otherwise, Svend would have to sue the repair garage separately.

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Default Judgment

If Bjorn does not reply to the claim within the required time period, a **default judgment** is automatically made against him. This means that Penny wins her action. She is awarded a judgment against Bjorn by default, since he has not responded to the claim. The court considers that the defendant agrees with the claim. Penny is entitled to recover the amount she claimed, plus any related costs.

Out-of-Court Settlement

At any point, either party can make a formal or informal offer to settle the dispute instead of proceeding to trial. The litigants should make every effort to negotiate an **out-of-court settlement**. The plaintiff must balance the proposed offer with the chance of winning the full claim at trial. Penny might prefer to settle for a portion of her claim rather than involve herself in a trial. Settling before a trial saves time and money.

Pre-Trial Conference

A **pre-trial conference** (settlement conference) is the last chance for the parties to resolve the dispute before trial. Both litigants will have an informal

meeting with a judge or a court-appointed referee who encourages the parties to settle the claim. The conference allows each party to hear a basic summary of the other's case so there are no surprises at trial. Based on discussions, the judge may give an opinion of the possible judgment if the case moves to trial. Many cases are settled on the basis of this opinion, without going to trial. The parties can discuss matters openly and honestly since the pre-trial conference judge is not the trial judge. If the parties cannot reach an agreement during the pre-trial conference, a trial date will be set.

Civil Procedure in Higher Courts

For actions in higher courts, there are additional procedures to help the parties settle their dispute without a trial. In higher courts, the claim is known as a "statement of claim" and the defence is known as a "statement of defence." The litigants send legal documents back and forth over several months, or even years, in an attempt to define and narrow the disputed issues and to assist the judge in understanding the details of the dispute. Because of this, many cases tried in provincial superior courts take four to six years before reaching trial. Then, the discovery process begins.

The **examination for discovery** is a question-and-answer session for the litigants and their lawyers. Its purpose is to limit the possibility of surprises at trial by providing information about each side's case and to reach agreement on certain issues. This reduces court time, saves money, and makes settlement easier. Both parties must disclose *all* relevant documents. Either party can question the other under oath; the questions and answers are transcribed by the court reporter and are available at trial. Either party can also ask the court to issue an order permitting inspection of physical objects in the case. In our scenario, Penny's and Bjorn's cars and photographs from the accident scene might be inspected. If Penny claimed for serious injuries from the accident, Bjorn could request X-rays and the medical report. Often, the parties settle the case after discovery.

The Trial

If no settlement can be reached, the parties go to court for a trial by judge alone or by a judge and a civil jury of six people, except in Small Claims Court. However, as mentioned earlier, juries for civil actions are no longer common.

Procedures in a civil trial are similar to those used in criminal trials. Each party has a chance to present his or her case by calling witnesses; parties can also testify themselves if they choose. The plaintiff goes first, followed by the defendant. When all the evidence has been presented, each party sums up his or her case and makes a final argument to the judge. The judge will make a decision and may allow none, part, or all of the claim.

In a trial by jury, the judge instructs the jury members on the law applicable to the facts of the case. The jury must consider the evidence, as well as questions such as these: Who was at fault? Is that person totally at fault, or are both parties somewhat to blame? How should damages be determined? How much should the damages be? All these factors must be considered in reaching a judgment. (If there is no jury, the judge does all of the above.)

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