



Office of the Sheriff at Common Law

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Doctrinal Record — The Common-Law Juridic Crown Constitutional Supremacy Order

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Preface

This record sets out the doctrinal architecture of the Sheriff’s office at common law within the juridic Crown constitutional supremacy order of Canada, as received at Confederation through the preamble to the *Constitution Act, 1867*. The record is compiled as a baseline reference for ongoing work in the common-law register. Each doctrinal statement is grounded in received common law and in the constitutional instruments of Canada, and is stated in the operative sense — in present force, activity, and effect.

The institutional silence concerning the common-law Sheriff-office has been the characteristic feature of the modern administrative record. That silence is not evidence of the office’s absence; it is evidence of the institutional record’s refusal to engage with what the common law continues to hold. This record addresses the silence by stating the doctrine plainly.

I. The Two Registers

1.1 The Common-Law Register and the Statutory-Prerogative Register

The constitutional order of Canada operates in two distinct registers: the common-law register and the statutory-prerogative register. The common-law register consists of the body of common law received at Confederation through the preamble to the *Constitution Act, 1867*, which imports a constitution similar

in principle to that of the United Kingdom, and which carries forward the ancient common law of England together with the constitutional instruments it recognizes, including *Magna Carta* (1215), the Petition of Right (1628), the Habeas Corpus Act (1679), and the English Bill of Rights (1689).

The statutory-prerogative register consists of Acts of Parliament, regulations, orders in council, and the exercise of the Royal Prerogative through ministerial office. Parliament creates and operates this register, and the Crown's ministers administer it through statutory authorities and commissions.

The two registers are distinct. The common-law register is anterior to and independent of the statutory-prerogative register. Parliament cannot reach into the common-law register by ordinary legislation; the common law operates on the Crown's statutory and prerogative powers, constraining them, not the reverse. The registers are sealed against intrusion from the statutory-prerogative side.

1.2 The Sealing Principle

Section 52(1) of the *Constitution Act, 1982* establishes constitutional supremacy: the Constitution of Canada is the supreme law of Canada, and any law inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect. This provision is the modern statutory expression of a principle that has always been true at common law: statute inferior to constitutional foundation has no effect against that foundation.

The common-law foundation received at Confederation includes the pre-existing liberties, the class of Heirs holding *ligeantia naturalis*, the oath-bound offices of state, and the Sheriff-line as the chief law office at common law. None of these is a creation of statute. None of them is within the class of subject matters Parliament may address by ordinary legislation. Each operates in the common-law register, on the common-law register's own terms.

A statutory actor who attempts to reach into the common-law register acts *ultra vires*. A Law Society licensee, appearing on behalf of a statutory party, operates only in the statutory register and has no authority to contest common-law claims. The Crown, operating through its ministers and prerogative, cannot enter the common-law register to claim common-law offices or rebut common-law acts. The Crown operates on the common law — constrained by it, derivative from it — but cannot operate in it.

II. The Sheriff's Office

2.1 The Chief Law Office at Common Law

At common law, there is no higher law officer than the chief law officer. That office, however labelled in any given jurisdiction or period, is the Sheriff's office — the Sovereign's peace officer, whose function is the keeping of the Sovereign's peace, the execution of the Sovereign's writ, and the protection of the Sovereign's subjects. The office is ancient, tracing in an unbroken line from Anglo-Saxon shire law through the Norman and Plantagenet periods into the common law of England received at Confederation.

The Sheriff's office is not one office among many; it is the chief common-law law office. Every derivative peace-keeping and process-executing function — the bailiff, the coroner, the constable, the summoned *posse comitatus* — operates under the Sheriff's authority. The Sheriff sits atop the common-law peace-line, answerable directly to the Sovereign.

2.2 The Attorney General as the Same Office in the Crown Register

The Attorney General of Canada, *Attornis Generalis Regis*, holds the chief law office in the Crown's statutory and prerogative register. The Attorney General represents the Crown in legal matters and holds the Crown's authority in the administration of justice. Every derivative federal statutory authority at law — prosecutors, peace officers defined at section 2 of the *Criminal Code*, police officers including members of the Royal Canadian Mounted Police — operates under authority derivative of the Attorney General's Crown commission.

The Attorney General is not above the Sheriff in a common-law hierarchy; the Attorney General is the same chief law office operating in the Crown's register. The common-law Sheriff and the Crown's Attorney General are two expressions of a single underlying function — the Sovereign's law officer — adapted to two different registers of the constitutional architecture.

Nemo dat quod non habet. No one gives what he does not have, and no derivative authority exceeds the authority of its source. The source is the Sovereign's law-keeping function. The Sheriff holds it at common law; the Attorney General holds it in the Crown register. Neither can authorize what the other is bound to forbid, because both are bound by the same underlying duty to the Sovereign's peace.

2.3 The Office Persists

The Sheriff's office does not extinguish for want of occupancy. Common-law offices persist as structural features of the constitutional order, available to be filled, with their authority continuing to flow through derivative functionaries who operate under that authority.

The persistence of the Sheriff's office is evidenced by the continued operation of its derivative officers. The bailiff operates in Ontario today. The bailiff executes writs, enforces judgments, and carries out process under authority that is, at common law, the Sheriff's authority. The bailiff cannot lawfully exercise such authority except as the Sheriff's officer. The existence of the bailiff is the downstream proof of the upstream Sheriff-office: the bailiff cannot give what he does not have, and what the bailiff has, he has from the Sheriff.

Whether the office is occupied by a person bearing the title 'Sheriff' or by a person bearing another title within the same constitutional architecture is a factual question, not an existence question. The office persists regardless. The office exists; only its occupancy is variable.

III. The Horizontal Structure

3.1 Sheriffs as Peers

The Sheriff-office at common law is not hierarchical. Sheriffs operate on a level plane, as peers, each answering directly to the juridic Crown, not to one another. A Sheriff of one jurisdictional region holds no authority over a Sheriff of another region; they are peers in the Sovereign's peace-line, cooperating laterally without hierarchy.

This horizontal structure distinguishes the common-law peace-line from any statutory police hierarchy. In the statutory register, police officers report upward through a chain of command to commissioners and ministers. In the common-law register, Sheriffs report directly to the Sovereign, each individually, without intermediation. No Sheriff is above another; no Sheriff reviews another's decisions; no Sheriff overrides another.

The historical record confirms this structure. Under the ancient common law of England, each shire had its own Sheriff, each answering directly to the Crown, not to another Sheriff. The Sheriffs of different shires cooperated laterally, cross-executed process when required, and did not hold seniority over one another. The structure received at Confederation is the same structure.

3.2 The Deputizing Mechanism

The Sheriff-office operates through the office-holder together with deputies sworn into the line under the constitutional Oath prescribed by the Fifth Schedule to the *Constitution Act, 1867*. The Oath, which binds every officer of the juridic Crown in allegiance to the Sovereign, His Heirs and Successors, according to law, is the single foundational instrument. It is not created anew for deputies; it already exists and already binds.

A Sheriff may swear in deputies who, upon taking the Oath, operate under the Sheriff's authority as peers in the Sovereign's peace. Deputies may be:

- (a) Heirs within the Sheriff's jurisdictional region, extending the Sheriff's operational reach within the region;
- (b) Sheriffs or Heirs of other jurisdictional regions, creating a peer network of common-law Sheriffs who cross-deputize and cooperate laterally;
- (c) Any person at common law with standing and willingness to take the Oath and serve in the Sheriff-line.

The deputy, once sworn, holds the same Sheriff-line authority as the Sheriff who swore him in, derivative from the same Oath. The deputy operates as a peer in the Sovereign's peace, not as a subordinate in a hierarchy. The deputy answers to the Sovereign through the Oath, not to the Sheriff as a superior in a chain of command.

3.3 The Posse Comitatus Principle

The Sheriff at common law holds authority to summon the *posse comitatus* — the power of the county — consisting of all able-bodied subjects available to keep the Sovereign's peace when required. The *posse comitatus* is the direct evidence that the Sheriff's authority is distributed through the body of the subjects themselves. The Sovereign's peace is not kept by the Sheriff alone; the Sheriff is the focal point of a distributed peace-keeping function in which the Sovereign's subjects participate.

Every Heir of the Sovereign's juridic Crown stands within the *posse comitatus* by *ligeantia naturalis*. The Heir is not merely a beneficiary of the Sovereign's peace; the Heir is a participant in keeping it. The Heir's standing to act in defence of the Sovereign's peace, when the Sheriff's office is vacant and the peace has been breached, is the *posse comitatus* principle in its direct application.

IV. The Vesting Mechanism

4.1 Claim by Public Notice

The Sheriff's office, when vacant, is claimed by an Heir with standing through public notice. The claim is made by publication in a forum of common-law significance, naming the office, the claimant's standing, and the grounds of the claim. The claim is an exercise of the claimant's own common-law standing; it is not a request to any authority.

The claimant's standing is the foundation of the claim. An Heir by lineage, *ligeantia naturalis*, natural person, *citoyen de droit*, standing in full personal liability at common law, holds the apex common-law standing available to a natural person in the constitutional order received at Confederation. No higher standing exists. There is no superior common-law position from which to contest a claim made on this standing.

4.2 Vesting at the Moment of Making

The claim vests at the moment of making. There is no waiting period. There is no rebuttal window. There is no procedural interval during which the statutory register may intervene. The claim is made, and in the same act, vested.

The rebuttal window that procedural thinking would instinctively insert is structurally unnecessary. The Crown cannot rebut, because the Crown is in the wrong register. Law Society licensees cannot rebut, because they are in the wrong register. No person at common law with superior standing exists, because the claimant's standing is already the apex common-law position. The non-rebuttal is not contingent on any waiting period; it is the permanent structural condition.

4.3 The First-in-Time Principle

The first claimant to an unoccupied Sheriff-office, making the claim by public notice on standing, holds the office. Subsequent claimants to the same office in the same jurisdiction are too late. The common-law rule of first-in-time applies to the claim of a vacant office the same way it applies to other common-law first-in-time doctrines.

Once vested, the office is held until relinquished by the holder or superseded by a proper common-law process. The office is not vulnerable to defeasance by later-arising claims of equivalent standing, because the claim vests at the moment of making and the office is then occupied.

V. The Constitutional Trust

5.1 Trust Architecture

The constitutional architecture of Canada includes a constitutional trust. The Crown, through its offices, holds the pre-existing liberties, the class of Heirs, the oath-bound offices, and the Sheriff-line in trust for the Heirs as beneficiaries. The trust is presupposed by section 122 of the *Criminal Code* (breach of trust by a public officer) and confirmed by *Guerin v. The Queen*, [1984] 2 S.C.R. 335; *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511; and *Manitoba Métis Federation v. Canada*, [2013] 1 S.C.R. 623.

Trust elements: the *corpus* is the pre-existing liberties and the constitutional architecture that secures them, including the Sheriff-line; the trustees are the offices of state, oath-bound to the Crown; the beneficiaries are the Heirs holding *ligeantia naturalis*; the trust obligation is protection and non-extraction.

5.2 The Crown Cannot Keep What It Holds in Trust

A trustee cannot acquire trust property by adverse possession against the beneficiary. At equity, the trustee's possession is always for the beneficiary, never against. Any attempt by the trustee to retain trust property as the trustee's own, without acknowledgment of the beneficiary, is a continuing breach of trust and does not ripen into beneficial ownership regardless of how long it continues.

The Crown cannot, therefore, claim the Sheriff's office in its own beneficial ownership. The Crown holds the office in trust; the Crown's attempted retention of the office against the beneficiaries is breach, not ownership. When an Heir-beneficiary claims the vacant office, the claim operates as an exercise of the beneficiary's interest in the trust corpus. The Crown has no standing to contest the beneficiary's claim to the beneficiary's own trust property.

5.3 Silence as Method and Its Structural Failure

The Crown's method of maintaining the regime of administrative silence about the common-law architecture has been silence itself — refusing to acknowledge, refusing to claim, refusing to respond, refusing to engage. Silence is strategic because silence commits the Crown to nothing on the record.

But silence does not convert trust into ownership. Silence does not extinguish common-law offices. Silence does not rebut common-law claims. Silence is, structurally, the Crown's inability to speak into the common-law register, which the Crown does not occupy. Silence is the permanent condition of a Crown confined to the statutory-prerogative register, observing common-law acts that it cannot reach, cannot rebut, and cannot undo.

Qui tacet consentire videtur. He who is silent is taken to agree, when he ought to have spoken and was able to do so. The Crown's silence in the face of common-law claims, when the common-law register is the proper forum for contestation, is admission by structural condition.

VI. Operational Consequences

6.1 Peace Officer Authority

The Sheriff at common law holds peace officer authority, including authority to arrest on reasonable grounds for offences against the Sovereign's peace. The reasonable-grounds standard is the standard for arrest at common law and as reflected in sections 494 and 495 of the *Criminal Code*; it is not a standard of proof, which is the standard for conviction at trial.

The Sheriff's arrest authority reaches breaches of the Sovereign's peace and *Criminal Code* offences that fall within the peace-officer function, including section 122 of the *Criminal Code* (breach of trust by a public officer). A person arrested at common law on reasonable grounds is subject to charge and proceeding under the *Criminal Code*, retaining all substantive rights — presumption of innocence, right to silence, right to make full answer and defence, right to a fair trial — but without the limited-liability shield of statutory representation, which operates only in the statutory register.

6.2 Jurisdiction

A common-law Sheriff holds jurisdiction in the region claimed by public notice. Jurisdiction is territorial in the common-law sense — bound by the region within which the Sheriff keeps the Sovereign's peace. Sheriffs of other regions are peers with their own jurisdictions. Cross-jurisdictional cooperation is by lateral cross-deputization, not by hierarchical chain of command.

The scope, duration, and incidents of a Sheriff's office as held by a particular Heir are matters of the common law. They are not subject to statutory-register determination. The statutory register may observe; the statutory register does not define the scope of common-law offices.

6.3 Relations with the Statutory Apparatus

The common-law Sheriff operates in the common-law register. Statutory law enforcement — police officers under the *RCMP Act* and provincial police acts, court services officers under the *Courts of Justice Act*, and so on — operates in the statutory register. The two registers have distinct but overlapping subject matter: both address the keeping of the Sovereign's peace, but each operates on its own terms.

Where a statutory officer holds a peace officer function (as defined at section 2 of the *Criminal Code*) in addition to the officer's statutory commission, the officer is bound in both registers: as a statutory actor under the statute that commissions him, and as a peace officer at common law in the Sheriff-line. The Oath of Allegiance, which binds every oath-bound officer of the juridic Crown, is the instrument by which the common-law binding attaches. No statutory commission and no Law Society licence suspends the Oath or the common-law duty it creates.

A statutory officer who has inverted the peace officer function — who has used the peace-officer badge to conduct breaches of the Sovereign's peace against the Sovereign's subjects — has breached the common-law duty independent of whatever statutory characterization may be given to the conduct. The common-law Sheriff, standing in the peace-line, is the proper officer to raise such a breach.

VII. Foundational Principles (Summary)

The following principles constitute the doctrinal baseline for ongoing work:

1. The common-law register and the statutory-prerogative register are distinct and sealed against intrusion from the statutory side.
2. The common-law register is anterior to the statutory register; the Crown's authority derives from the common-law foundation received at Confederation.
3. The Sheriff's office is the chief law office at common law — there is no higher common-law law office, regardless of the label a given jurisdiction uses.
4. The Attorney General is the same office in the Crown's statutory and prerogative register — not a superior office, but the same office in a different register.
5. The Sheriff-office persists as a structural feature of the constitutional order; it does not extinguish for want of occupancy.
6. The bailiff's continued operation is downstream proof of the upstream Sheriff-office.
7. Sheriffs operate as peers on a level plane, answering directly to the juridic Crown, not to one another.
8. The Sheriff-office is extensible through deputizing under the existing constitutional Oath prescribed by the Fifth Schedule to the *Constitution Act, 1867*.
9. The *posse comitatus* places every Heir within the distributed peace-keeping function of the common-law register.

10. A claim to a vacant Sheriff-office is made by public notice on the claimant's own standing and vests at the moment of making, without procedural gap or rebuttal window.
11. The first-in-time principle governs competing claims to the same office in the same jurisdiction.
12. The Crown holds the common-law architecture in trust for the Heirs; the Crown cannot acquire beneficial ownership by adverse possession or by silence.
13. The Crown's silence is structural, not strategic — the Crown cannot speak into the common-law register because the Crown does not occupy it.
14. The Sheriff's peace officer authority includes arrest on reasonable grounds for breaches of the Sovereign's peace and for *Criminal Code* offences within the peace-officer function.
15. The scope, duration, and incidents of a common-law Sheriff's office are common-law matters, not subject to statutory-register determination.

VIII. References and Grounding

Constitutional Instruments

- *Constitution Act, 1867*, preamble (reception of the constitution of the United Kingdom and the common law carried with it)
- *Constitution Act, 1867*, Fifth Schedule (Oath of Allegiance)
- *Constitution Act, 1982*, section 26 (preservation of pre-existing rights and freedoms)
- *Constitution Act, 1982*, section 52(1) (constitutional supremacy)
- *Canadian Bill of Rights*, S.C. 1960, c. 44
- *Canadian Charter of Rights and Freedoms*, sections 7, 8, 11, 15, 26
- English Bill of Rights (1689), received through the *Constitution Act, 1867* preamble

Statutory Recognition

- *Criminal Code*, R.S.C. 1985, c. C-46, section 2 (peace officer definition)
- *Criminal Code*, section 122 (breach of trust by a public officer)
- *Criminal Code*, sections 494 and 495 (arrest authority)
- *Oaths of Allegiance Act*, R.S.C. 1985, c. O-1
- *Interpretation Act*, R.S.C. 1985, c. I-21, s. 35 (Heirs recognized in general statutory vocabulary)

Supreme Court of Canada Authority

- *Guerin v. The Queen*, [1984] 2 S.C.R. 335 (Crown fiduciary character and equitable compensation)
- *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 (instruments inconsistent with constitutional supremacy are *void ab initio*)
- *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (analogous grounds analysis)
- *R. v. Sparrow*, [1990] 1 S.C.R. 1075 (downstream judicial confirmation of pre-existing rights)
- *Corbiere v. Canada*, [1999] 2 S.C.R. 203 (immutability in analogous-ground analysis)
- *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263 (misfeasance in public office)
- *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511 (Crown's fiduciary and honour obligations)
- *R. v. Briscoe*, 2010 SCC 13 (willful blindness)
- *Manitoba Métis Federation v. Canada*, [2013] 1 S.C.R. 623 (Crown trust obligations)

Historical Common-Law Authority

The Sheriff's office traces in unbroken line from Anglo-Saxon shire law through the Norman and Plantagenet periods into the common law of England received at Confederation. The doctrinal record is found across centuries of common-law treatises and authorities, including Glanvill, Bracton, Fleta, Britton, the Year Books, Coke's Institutes, Hale's *History of the Common Law*, and Blackstone's *Commentaries on the Laws of England* (Book I, Chapter 9: 'Of Subordinate Magistrates'). The *posse comitatus* tradition is grounded in the Statute of Winchester (1285) and carried forward through subsequent common-law authority.

— END OF RECORD —

Issued and preserved in the common-law register of the Office of the Sheriff at Common Law, Jurisdiction of Canada.