

Canada's Constitution



What is a constitution?



- It is the highest law of the land. It organizes the government and society by establishing the guidelines of how things should be run
- All laws must agree with the constitution



The creation of Canada



1867

Created to encourage greater trade between the colonies, and protect those colonies from American annexation

Confederation – to join together

We initially wanted to call ourselves the Kingdom of Canada as we would more closely follow the British system of government, but were worried it would upset the Americans, so we called ourselves the Dominion of Canada



BNA Act



- ❧ Britain passed the law that became the British North America Act – the first Canadian constitution
 - ❧ Initially we only had control of domestic affairs, but after 1931 (Statute of Westminster) we gained control of all our affairs
- ❧ But the BNA Act was still our constitution and because it was a British document to go to Britain to change anything
 - ❧ E.g. the addition of Newfoundland



Constitutions can change



- ❧ “Canada today is not the Canada of 1867, and neither is the Act that made it. It has been changed by many amendments, all originated by us, the people of Canada. How we govern ourselves has also been changed by judicial interpretation of the written Constitution, by custom and usage, and by arrangements between the national and provincial legislatures and governments as to how they would use their respective powers. These other ways in which our system has changed, and is changing, give it great flexibility, and make possible a multitude of special arrangements for particular provinces or regions within the existing written Constitution, without the danger of “freezing” some special arrangement that might not have worked out well in practice.”


Patriating the constitution



- œ - to bring home
- œ BNA Act was a British document, but we couldn't make it a Canadian document until we could agree on the amending formula
 - œ The rules when you want to change the constitution
- œ The Canadian government tried several time from 1927 until 1981 when most of the provinces finally agreed to an amending formula that would let us control our constitution.

7/10 + 50%






CANADA

THE CONSTITUTION ACT, 1982


amended by
 Constitution Amendment Proclamation, 1983
 (S/84-152)
 Constitution Amendment, 1982 (Maurice-Banerjee)
 (S/82-54)

LA LOI CONSTITUTIONNELLE DE 1982

modifiée par la
 Proclamation de 1983 modifiant la Constitution
 (T/83-52)
 Modification constitutionnelle de 1982 (Maurice-Banerjee)
 (T/82-54)



CANADIAN CHARTER OF RIGHTS AND FREEDOMS



Whereas Canada is a free and democratic society which recognizes the rights and freedoms of the individual and the role of the

Quarantary Rights and Freedoms

Whereas the Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

Profound Principles

Whereas the following fundamental freedoms of thought, belief, opinion and expression, including freedom of the press, shall, subject to section 1, be guaranteed to all persons in Canada, in private life as well as in the public domain

Democratic Rights

Whereas the rights of the citizen to a meaningful vote in the election of members of the House of Commons or of the Legislative Assembly of a province and to the right of equal participation with other citizens in the determination of the issue are essential to a free and democratic society

Mobility Rights

Canada is a country of diverse peoples and the rights to come across its borders and to move freely throughout the country are essential to a free and democratic society

Legal Rights

Whereas the rights to life, liberty and security of the person and the right to a fair and public hearing in respect of the determination of a person's legal rights are essential to a free and democratic society

Official Languages of Canada

Whereas the rights to the use of the official languages of Canada and the right to be heard in court in either of those languages are essential to a free and democratic society

Minority Language Educational Rights

Whereas the rights to the use of the official languages of Canada in the field of education are essential to a free and democratic society

Indigenous Rights

Whereas the rights of the aboriginal peoples of Canada to the enjoyment of the rights and freedoms guaranteed by this Charter are subject to section 35, which sets out the principles which are to govern the relationship between them and the Crown, as represented by Parliament

General

Whereas the Charter of Rights and Freedoms shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural and bilingual heritage of Canada

Application of Charter

Whereas the Charter applies to the Parliament and government of Canada in respect of matters within the authority of the Parliament and government and to the provinces and governments thereof in respect of matters within the authority of the legislature of a province and to the governments thereof in respect of matters within the authority of the legislature of a province

Section 32

1. This Charter applies to the Parliament and government of Canada in respect of matters within the authority of the Parliament and government and to the provinces and governments thereof in respect of matters within the authority of the legislature of a province and to the governments thereof in respect of matters within the authority of the legislature of a province

Section 33

1. Notwithstanding any other law, this Charter applies to the Parliament and government of Canada in respect of matters within the authority of the Parliament and government and to the provinces and governments thereof in respect of matters within the authority of the legislature of a province and to the governments thereof in respect of matters within the authority of the legislature of a province

Section 34

1. Notwithstanding any other law, this Charter applies to the Parliament and government of Canada in respect of matters within the authority of the Parliament and government and to the provinces and governments thereof in respect of matters within the authority of the legislature of a province and to the governments thereof in respect of matters within the authority of the legislature of a province

The Charter of Rights and Freedoms

- ❧ An important part of the 1982 Constitution Act was to entrench a document that protected our rights
 - ❧ Entrench means to protect or make solid
 - ❧ The amending formula means that it would be very difficult for a government to change or take away our rights
- ❧ This document is known as the Canadian Charter of Rights and Freedoms and it has given the judicial branch much more power when it comes to laws in Canada (we'll talk about the branches of government in the next lesson)

Unwritten Constitution



- ❧ Our constitution is not only the 1982 Canada Act, which is a written document
- ❧ It also includes traditions that are not written down.
 - ❧ e.g. the actual power used by the Governor General, or the appointment of the Prime Minister
- ❧ We can do this because we have what is known as responsible government – the executive branch (Prime Minister) must be responsible to the legislative branch (the House of Commons) who must be responsible to us.
 - ❧ So if the government decides to do something we are against, we can hold them accountable, even if it is not explicitly written down in the constitution (common law)

Key terms covered today



☞ Constitution

☞ Patriation