

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%

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