



## The Written and the Unwritten Constitution

The Canadian Constitution is not just made up of written documents: it is also shaped by many conventions that have evolved over the years. This page will explain the relationship between the written and unwritten aspects of the Canadian Constitution, and link you to major Canadian Constitutional documents.

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### What is a Constitution?

A constitution is generally defined as a set of rules that establish both the structure and the fundamental principles of the government in a nation or other territory. Constitutions serve several purposes.

1. They help establish what person or persons will exercise political authority.
2. They help provide an authoritative division of powers between national and regional governments in federal countries (like Canada).
3. They help delineate the limits of governmental power.

### Constitutions are not just Written Documents

While most people tend to think of “the Constitution” as a document, the truth is more complicated. In the words of the [Supreme Court of Canada](#): “constitutional conventions plus constitutional law equal the total constitution of the country.”

### Sources of Constitutional Authority in Canada

These can be written or unwritten. The Canadian Constitution is composed of:

- The [Constitution Act, 1982](#), including the *Canadian Charter of Rights and Freedoms*.
- The [Constitution Act, 1867](#) (previously the *British North America Act, 1867*), and its amendments.

- Acts of Canadian and British parliament.
- Court decisions in Canada and Britain.
- Customs and traditions.
- Other sources, such as:
  - Scholarly writings
  - The decisions of courts in different countries (especially the U.S., Britain and France)

### **Did you know...?**

Canadian law is based on two systems: common law (from Britain) and civil law (from France).

## **Constitutional Conventions**

Constitutional conventions are the customs and traditions that guide government. These rules are essential to the functioning of our government. As such, violations are rare.

- Constitutional conventions were developed over time and are not outlined in any document.
- Courts cannot enforce constitutional conventions.

Any government violating a constitutional convention without having very good reasons would probably be defeated in an election. The fact that these conventions remain unwritten allows for innovation and change over time.

Examples of constitutional conventions:

- There is no provision in the Constitution Act, 1867 or the Constitution Act, 1982, for a Cabinet.
- The prime minister needs the support of the House of Commons to stay in power. If he or she loses a vote of non-confidence, an election is usually held soon afterward.
- A literal reading of the *Constitution Act, 1867*, suggests that the main source of authority in Canadian government lies with the governor general. This is untrue, as in practice the governor general plays a mainly ceremonial role.
- A minister is sometimes selected from outside the House of Parliament. When this happens, however, the minister is expected by tradition to win a seat in Parliament as soon as possible.

## **Major Constitutional Documents**

Below you will find a list of major documents that have helped shape the Canadian Constitution since 1760.

**Articles of Capitulation, Montreal, Sept. 8, 1760** (bilingual)

**Royal Proclamation, Oct. 7<sup>th</sup>, 1763** (bilingual)

**The Quebec Act, 1774** (bilingual)

**The Constitutional Act, 1791**

**Act of Union, 1840**

**British North America Act, 1867** (bilingual version)

**Statute of Westminster, 1931**

**Canada Act, 1982**

(With this act, Britain surrendered the power to make laws affecting Canada, including the Constitution. It contains the *Constitution Act, 1982*, in Schedule B.)

**Constitution Act, 1982**

To learn more about the unwritten constitution:

- Visit the Canadian Encyclopedia and search using the terms “constitution” and “constitutional history.”

[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

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