

Sources of Canada's Constitution

Canada has both a written and an unwritten constitution. It is also a "*living*" document- meaning that it can change over time.

Three main sources of Canada's constitution.

1. the written constitution
2. the unwritten set of rules or conventions
3. court rulings

1. Written Constitution

- Sets out the basic structure for Canada's system of government, which divides power between the central and provincial governments.

Main examples are:

- **The Constitution Act, 1867** (originally called the *British North America Act*)
- **The Constitution Act, 1982**

Constitutional law includes other "written" documents:

- **Articles of Capitulation, Montreal, 1760**
- **Royal Proclamation, Oct. 7th, 1763**
- **The Quebec Act, 1774**
- **The Constitutional Act, 1791**
- **Act of Union, 1840**
- **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.)

2. Unwritten Constitution

- unwritten set of rules or conventions by which our system of government operates.
- Conventions are unwritten rules of political conduct.
{Britain has an unwritten constitution; its government principles are laid out in a series of customs and conventions, court decisions, and statutes}
- Over time, such conventions generally become binding (obligatory, not optional) on political representatives, and develop into important principles by which the government operates.

e.g. the *Constitution Act, 1867* made no mention of a prime minister, even though Canada has had a prime minister since Confederation.

e.g. a Cabinet minister must resign if she/he does not agree with a decision reached by the Cabinet.

3. Court Rulings

- interpret the written constitution. These rulings become precedents, guides to be used in settling further constitutional cases.
- When there is a dispute over the meaning or intent of certain sections, phrases, and even individual words in the constitution, the courts are called upon to resolve it.
 - Governments must comply with these judgments
- "Breathes life" into the constitution – allows for change
 - controversial- Judges are sometimes seen to have too much power in their interpretations