
CANADIAN CONSTITUTIONAL LAW – STUDY GUIDE

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1. THEORIES OF LAW → JURISPRUDENCE

Definition of Constitutional Law

- Constitutional law prescribes **the exercise of power by the different branches of the State and delineates the limits of each branch’s power**, as well as prescribes which powers belong to the federal state and which to the provincial authorities
- There are three branches of the State
 - **Legislative branch** – has the power to make new laws
 - **Executive branch** – implements the laws
 - **Judicial branch** – adjudicates disputes
- Civil liberties are tied to the constitution since it limits the exercise of state power over individuals
- Constitution = “a mirror reflecting the national soul” (*The Constitutional Process in Canada*)

- ‘Constitutionalism’ and ‘Rule of Law’ are used to convey the idea that even government officials must act in accordance with the laws
- There are remedies available to the public when government officials do not follow the laws, which are handed down by the courts

Constitution Act, 1867

- Canada does not have a single constitution
- The *British North America Act, 1867* (renamed the *Constitution Act, 1867*, in 1982) was passed by the Parliament of the United Kingdom and created the Dominion of Canada by combining three of its colonies.
- This document established the rules of federalism (ie. which powers belong to the federal state and which belong to the provinces)
- Under this document, Canada was still a British colony but had a certain degree of self-governance
- Since Canada was still considered a colony, the Constitution Act, 1867 did not outline a comprehensive set of rules as one would expect from a constitutional-type document – much of the evolution of constitutional law since 1867 was sourced from other documents
 - For example, there was no general amendment clause in the Constitution Act, 1867, which no doubt the framers would have been aware of. This leads one to believe that the framers of the document wanted the imperial power, the British, to play a part in any amendments that were to be made in the document
 - Other obvious missing clauses include those related to the appointment of the “Governor General”; those which outline the composition of the executive branch (the cabinet) and its relationship to the legislative branch; those which establish a supreme court; and even those which outline civil liberties.

Constitution Act, 1982

- Introduced in Schedule B of the Canada Act 1982, a short statute of the United Kingdom’s Parliament, which terminates its authority over the country, the *Constitution Act, 1982* added the many previously unwritten clauses to Canada’s constitution:
 1. Introduced a domestic mechanism for making amendments; and
 2. Introduced the *Charter of Rights* (which was previously the federal Canadian Bill of Rights).

Constitution of Canada

- The Constitution of Canada is made up of three different categories of instruments, as defined in s. 52(2) of the *Constitution Act, 1982*:
 1. The Canada Act, 1982, which includes the Constitution Act, 1982 as its Schedule B
 2. 30 other Acts and orders which are found in the schedule of the Constitution Act, 1982
 3. Any future amendments made to the Acts and orders referred above
- Since the defining clause of the Constitution prefaces this list with “includes”, the Supreme Court found this definition is not exhaustive (*New Brunswick Broadcasting Co. v. Nova Scotia*, (SCC 1993)) and can include doctrines alluded to in the listed instruments, but they did not specifically rule on whether another a new instrument itself can be incorporated as a constitutional text
- Other important statutes which predate the Canada Act, 1982 were omitted in the defining clause