

# The Constitution Act (1982), including the Canadian Charter of Rights and Freedoms

What is a Constitution?

A constitution provides the fundamental rules and principles that govern a country. It creates many of the institutions and branches of government, and defines their powers.<sup>1</sup>

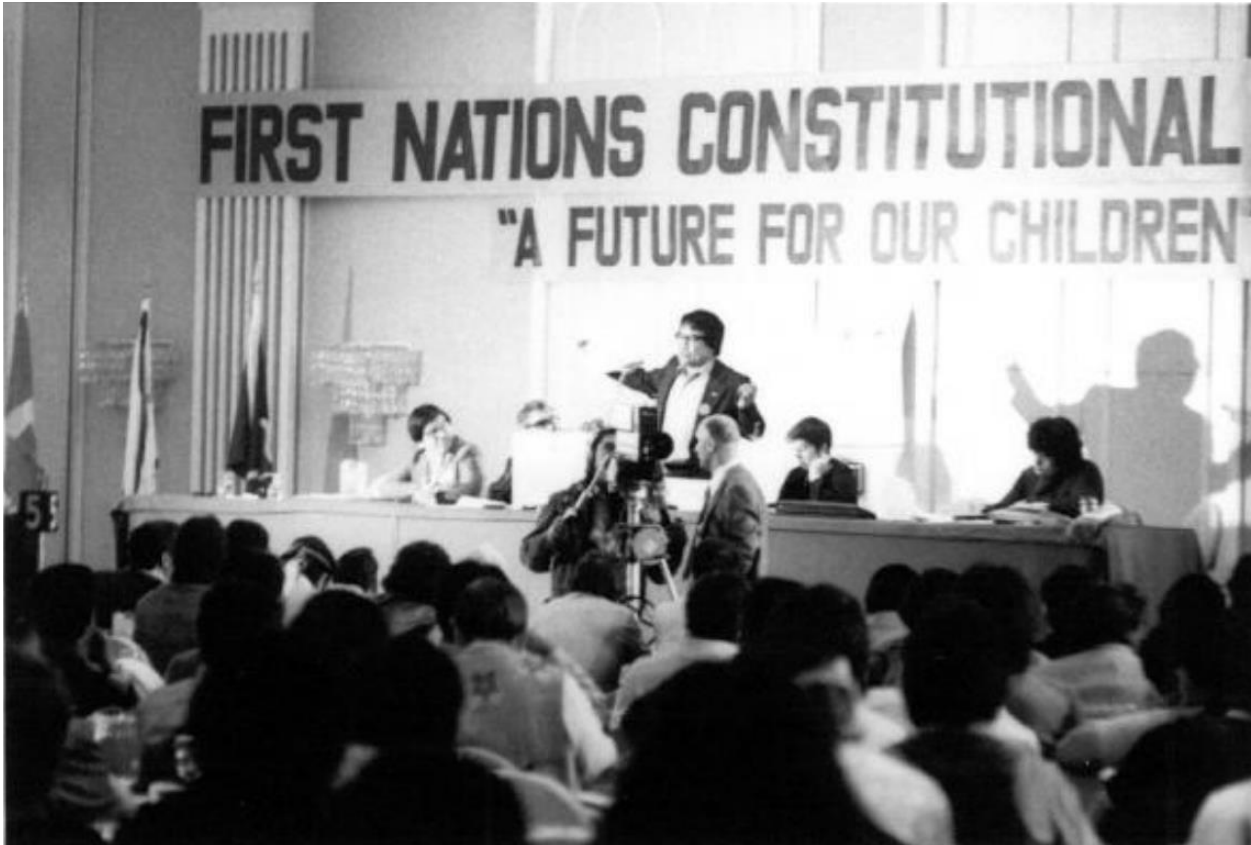
The Canadian Constitution exists as a series of written documents, as well as a number of unwritten conventions.

- While the **Statute of Westminster (1931)** granted Canada legislative independence, the Canadian Parliament was unable to make changes to its constitution (namely the British North America Act, 1867) - this power was still held by the British Parliament.
  - Remember, Canada was created by an act of the Parliament of the United Kingdom called the British North America Act, 1867 (now known as the Constitution Act, 1867) uniting the British colonies of the United Province of Canada, Nova Scotia, and New Brunswick.<sup>2</sup>
- Partly in response to questions of Canadian unity following the emergence of an independence movement in Quebec (including the **FLQ Crisis**) Prime Minister Pierre Trudeau organized a constitutional conference with all the provincial premiers to come to a consensus that would end the British Parliament's last constitutional link with Canada (called the "**patriation** of the Constitution"), as well as creating a *Charter of Rights and Freedoms*.
  - Important to know that Canada already had a Bill of Rights (enacted by the government of John Diefenbaker in 1960). However, the Bill of Rights was criticized as being too weak and only applied to the federal jurisdiction. The idea behind the a 1982 Charter of Rights and Freedoms would include it being embedded into the Canadian Constitution.
- "Indigenous groups across Canada became concerned that, with the transfer of constitutional powers from Britain to Canada, established agreements affirming Indigenous rights and title would no longer hold legal weight. Indigenous groups were also concerned that they would no longer be viewed as autonomous decision-makers on a federal level, and they saw the potential for the patriation to be yet another assimilationist policy, much like the 1969 White Paper (the government's attempt to unilaterally extinguish Treaty rights), also proposed by the Trudeau government.

<sup>1</sup> Government of Canada, D. of J. (2017, October 16). The Canadian Constitution. About Canada's System of Justice. <https://www.justice.gc.ca/eng/csj-sjc/just/05.html>.

<sup>2</sup> Ibid.

- In response to the proposed patriation, many Indigenous organizations and activists joined in demonstrations, fundraisers, and campaigns to have their title and rights explicitly recognized in the Constitution. One of these demonstrations was the Constitution Express, an action that contemporary activist Arthur Manuel describes as the most effective direct action in Canadian history, as it ultimately changed the constitution.”<sup>3</sup>
  - The Constitution Express was a 3,000 mile long protest by Indigenous people in direct response to the federal government trying to change the constitution in a way that did not recognize Treaty Rights. Secwépemc leader George Manuel led the action.



Secwépemc leader George Manuel speaking as part of the Constitution Express.

- The provincial leaders also had their own agendas concerning changes they wanted made to the constitution, and powers they wanted to hold, before the power to make changes was permanently severed from the British Parliament. Prime Minister Trudeau threatened that if the provinces could not agree the federal government would go it alone.
- In November 1981, one last effort was made to get a consensus from the provinces regarding the patriation of the constitution. In the end, all agreed . . . except Québec.

<sup>3</sup> The last two bullet points were copied directly from *First Nations and Indigenous Studies: University of British Columbia*. I substituted the identifier “Aboriginal” with “Indigenous.” Link: [https://indigenousfoundations.arts.ubc.ca/constitution\\_act\\_1982\\_section\\_35/](https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/)

- Québec premier Rene Lévesque declared that the agreement did not recognize his province's position as being a distinct society within Confederation. Angered that the other nine provinces had come to an agreement with his province, Lévesque declared "Québec is alone."
- Some of the main points to come out of the agreement between the federal and 9 provincial governments:
  1. The power to amend (change) the Canadian constitution would be permanently transferred from the British Parliament to the Canadian Parliament.
  2. Changes to the constitution would only be made using rules established by the Federal and Provincial leaders.
  3. Section 35 - recognizing Treaty Rights - was added to the 1982 Constitution Act.

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

4. The Canadian Charter of Rights and Freedoms was added to the written Constitution. Embedded in the charter was the controversial "*notwithstanding clause*":

Exception where express declaration	33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.
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- The House of Commons of the United Kingdom passed the *The Canada Act* in 1981 - interestingly 44 Members of the UK Parliament voted against the Act, citing concerns over Canada's mistreatment of Québec and Indigenous peoples.
  - Acting in her role as **Queen of the United Kingdom**, Queen Elizabeth II granted Royal Assent to the Canada Act on March 29<sup>th</sup>, 1982,<sup>4</sup> permanently ending the British Parliament's constitutional connection to Canada.

<sup>4</sup> The anniversary of the granting of Royal Assent by Queen Victoria to the British North America Act in 1867.

- The Queen then travelled to Canada to proclaim, as **Queen of Canada**, the new 1982 Constitution Act (including the Canadian Charter of Rights and Freedoms) as the law of the land.



Queen Elizabeth II and the Duke of Edinburgh arrive at Parliament Hill on April 17th, 1982. Queen Elizabeth signed and proclaimed the Constitution Act shortly after. Fun Fact: The tent covering the stage was constructed by Greenville's Ecom Ltd (owned by the Flosman Family). Mr. Flosman helped paint the poles!



Queen Elizabeth II signs the proclamation of the 1982 Constitution Act while Prime Minister Pierre Trudeau looks on.