# Canadian Constitutional Law:

### The Importance of a Constitution

* A constitution provides the basic framework for a nation’s form of government and its legal system
* A constitution also sets out the procedures for making laws and defines who will be involved in making them
* A constitution can be thought of as a nation’s rulebook, containing the rules that the political players must observe to adopt, amend, or revoke a law
  + These rules reflect the values and beliefs of a people

### Sources of Canada’s Constitution

* The *Constitution Act, 1867* (originally called the *British North America* Act) and the *Constitution Act, 1982*
* Unwritten set of rules or conventions by which our system of government operates
* Court rulings that interpret the written constitution

### The Division of Powers

* Original constitution divided powers between the two levels of government – most sweeping powers were given to the federal government

### The Importance of Education

* The importance of education in the Canadian constitution can be seen in the fact that it received a separate section (s. 93) in the Constitution Act, 1867

### The Municipal Level of Government

* When the *BNA Act* was drafted 3 out of 4 Canadians lived in rural areas – today 3 out of 4 Canadians live in cities and towns – yet Canadian cities have no constitutional power of their own
* *Constitution Act, 1867* made cities the responsibility of provincial governments – the provinces then enacted municipal acts, which gave cities the authority to pass by-laws

### The Role of the Courts

* The role of the courts is to interpret the constitution and to solve disputes between levels of government
  + When the *BNA Act* was written many social changes and scientific advances could not be foreseen and so were not covered by the *BNA Act*

### The Structure of the Courts

* The Canadian judicial system is based on the British model – the court structure follows a hierarchical pattern

Supreme Court of Canada

## Federal Court of Canada

## Ontario Court of Appeal

Trial Division

Appeal Division

Court of Ontario

**Unified Family Court** (federally appointed judges; jurisdiction over all family-law matters)

**Ontario Court of Justice** (provincially appointed judges; some criminal and non-divorce family-law matters)

**Superior Court of Justice** (federally appointed judges; major criminal and civil matters, including divorce)

**Small Claims Court** (provincially appointed judges; relatively minor civil disputes)

## Divisional Court

(some appeals from the Superior Court)

### The Historic Role of the JCPC

* Today our highest court of appeal is the Supreme Court of Canada
* Until 1949, Canada’s final court of appeal for constitutional matters was the Judicial Committee of the Privy Council (JCPC) in Britain
* The JCPC changed the course of Canadian history with its decision in the ‘persons’ case in 1929, overturning a ruling by the Supreme Court of Canada – women were declared persons under the law

### The Supreme Court of Canada

* Highest level of court in Canada
* It is an appeal court that hears cases from the provincial court system and from the Federal Court of Canada
* Must grant leave to appeal, which means that the Court agrees to hear a case
* The Court hears important cases that deal with civil, criminal, and constitutional law
* Once the SCC makes a decision, it becomes binding on all lower courts across Canada
* Decisions of the SCC are final and there is no way for the case to be further appealed

*The Evolution of Canada’s Constitution Act*

* The constitution of Canada was enacted by the British parliament rather than passed under Canadian legislative authority
* Any amendments made to the *British North America Act* had to be passed through British parliament
  + Two important consequences
    - Canada remained subject to British law and bound by the foreign policy of Britain
    - Canada’s final court of appeal was the Judicial Committee of the Privy Council in Britain

Statute of Westminster, 1931

* Under the provisions of this statute, Britain could no longer legislate for a dominion unless it was specifically asked to do so by that dominion
* Canada was no longer subject to British laws and could pass laws that contradicted those of Britain
* Canada was now independent of Britain in terms of foreign policy

Patriation of the Constitution

* Despite the *Westminster Statute*, the constitution remained a British statute
  + No agreement could be made on patriating the constitution with a Canadian amending formula (a method for making changes to a constitution; in Canada’s case, a method that would no longer involve the British parliament)
* Prime Minister Pierre Trudeau, first elected in 1968, was determined to reform the Canadian constitution
  + 1971 – Victoria Charter – a written guarantee of rights that was initially accepted by the provinces and the federal government – Quebec government withdrew its agreement after it faced harsh criticism in the province of Quebec
  + November 1981, the federal government and nine of the ten provinces agreed to the patriation of the constitution with an entrenched (protection of a portion of a constitution by ensuring that can be changed only through constitutional amendment) charter of rights and freedoms – Quebec refused to sign the agreement
  + April 17, 1982, over 115 years after it had been passed, the British North America Act was brought home to Canada – Canada’s constitution now also included the Constitution Act, 1982, containing an amending formula that would allow all future constitutional amendments to be made within Canada – the nation was now fully independent in all areas of the law

The Meech Lake Accord

* When Brian Mulroney became prime minister in 1984, one of his objectives was to return the province of Quebec to the constitutional fold
* In 1987, at Meech Lake near Ottawa, Prime Minister Mulroney managed to get all 10 provincial premiers to agree to a constitutional package based on proposals put forth by Quebec
  + The new deal would recognize Quebec as a “distinct society” and would give the provinces more power relative to the federal government
* The accord faced harsh criticism – dissatisfaction with the accord mounted after its passage
* By early June 1990, Prime Minister Mulroney called a special meeting of the premiers to ensure that the Meech Lake Accord would receive the consent necessary from each of the provincial legislatures - all the premiers agreed to ratify the accord – it was not ratified within the necessary time frame (it needed to be ratified by all provinces and federal government within three years)

The Charlottetown Accord

* In 1992, a new proposal, called the Charlottetown Accord, was put before the people of Canada in a national referendum
  + Abolished the federal power of disallowance (gave the federal government the right to declare provincial legislation void within one year of its passage; a type of veto power)
* It was defeated in six provinces and one territory

The 1995 Quebec Referendum

* This referendum would have resulted in an immediate declaration of sovereignty
* The “no” forces won by a razor-thin majority (50.56%)
* At the beginning of the 21st century, Canada remained intact, but Quebec still had not signed the constitution