

HANDOUT 12: Constitutional Framework

A Federal System of Government

Before Canada ever became “Canada”, it was inhabited by Aboriginal peoples and British and French settlers. Conflicts between the French and English resulted in the “Seven Years War”, in which General Wolfe defeated the French at the Plains of Abraham and the colonies came under British rule.

When Canada became a nation in 1867, joining the four colonies of British North America (Ontario, Quebec, Nova Scotia and New Brunswick), it needed to figure out a way to unify itself and bring all aspects of the country under one general government. Because of the different cultures, customs and settlement histories that existed in each region, each province needed to be able to address its unique issues.

The Fathers of Confederation decided on a federal system of government in order to provide for the different needs of the provinces as well as the common needs of the nation as a whole.



Federalism or a “federal state” is where the government is divided between a central authority and smaller units like provinces or states. In Canada’s case, political power is divided between three levels: the federal government, provincial governments and local governments.

Canada’s Constitution

The primary function of government is to ensure the well-being of its nation and citizens. The set of rules that a country uses to define government powers and the rights of citizens is a constitution.

Although Canada was a nation in 1867, our laws were still subject to review by Britain. From 1867 to 1982, the *British North America Act, 1867* (later renamed the *Constitution Act, 1867*) was the central document of Canada’s constitution. The *BNA Act* covered the structure of the three branches of government and the sharing of powers between the federal and provincial governments. You can think of the constitution like that document your parents wrote up in the imaginary scenario we just did with chores. Up until 1982, civil liberties or freedoms were not specifically set out in the constitution, but instead were unwritten and interpreted by the courts.

In 1982, Canada achieved the ability to govern itself when the *Canada Act, 1982* was passed (previously, Britain had the power to legislate for Canada). The *Canada Act, 1982* brought together the *BNA Act* and the *Constitution Act, 1982*. The *Constitution Act, 1982* is the part of our constitution that contains the *Canadian Charter of Rights and Freedoms*.

In summary, Canada’s constitution is the highest law of the country. It divides political and law-making power (this official power to govern and make laws is called jurisdiction) between the federal and provincial governments in regards to different subjects like fisheries and transportation. The constitution also includes the *Canadian Charter of Rights and Freedoms*.

The Canadian Charter of Rights and Freedoms

The *Charter* identifies Canadian's fundamental freedoms and most important rights. It creates standards for how government agencies must treat us as citizens. The *Charter* also creates limits on the power of government to interfere with citizens' most important rights and freedoms.

Everyone has the following fundamental freedoms:

- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- Freedom of peaceful assembly
- Freedom of association

Other important *Charter* freedoms and rights include "Democratic Rights," such as the right to vote; "Mobility Rights," such as the right to enter, leave, live and work in any part of Canada; "Legal Rights," such as the right to life, liberty and security of person, the right to be free from unreasonable search and seizure, the right not to be arbitrarily detained or imprisoned, right to legal counsel on arrest; and "Equality Rights," such as the right to equal benefit and protection of the law without discrimination.

It is important to remember though, that the *Charter* applies only to the laws, programs and actions of governments and not the actions of private sector/ non-government organizations or employers.

Division of Powers

The federal and provincial governments can make laws regarding a particular subject only if the government is authorized to do so by the Constitution. Both governments have equal status in the sense that the federal government cannot make laws dealing with subjects that the provincial government has jurisdiction over.

Conversely, the provincial governments cannot make laws dealing with subjects that the federal government has jurisdiction over.

This system is known as the division of powers. Neither government can make laws dealing with subjects the other government has power over.

Sometimes, provincial governments delegate some of their powers to local governments (both municipalities and regional districts). While each level of government has powers over certain issues, they also sometimes have overlapping jurisdiction and share powers over certain issues like the regulation of the environment and transportation.

If you think about the exercise on chores again, the idea of jurisdiction and each person having his or her own sphere of responsibility was something you tried to sort out. You may have come to the realization that certain chores might clearly belong to one person and not another, but sometimes both of you could be in charge of the same chore, depending on how you think about the chore. This is the same principle applied to the division of powers of government.

Nevertheless, all citizens are subject to the laws of the federal government. They must also obey the laws of the province or territory and local governments in which they live or visit.