

10 Fun Facts about the Canadian Constitution

A constitution 150 years in the making sure comes with some interesting stories. Here are 10 fun facts you might not know about Canada's Constitution.

1) Dude... where's my Constitution?

The original copy of the law that created Canada is not even *in* Canada! Any day of the week, Americans can visit their National Archives in Washington, D.C. to see original copies of their Constitution and Declaration of Independence, but Canadians cannot do the same here at home.[\[1\]](#) The law that formed the Dominion of Canada - the *British North America Act, 1867* (now called the *Constitution Act, 1867*) - was enacted by the British Parliament, and England is where that document remains.[\[2\]](#)

2) Home at last

The Constitution could have come home to Canada in 1931, but it did not arrive until 1982 - a whole 51 years later! In 1931, Britain passed the *Statute of Westminster*, which gave Canada the power to make its own laws, but left Britain in control of changes to the Constitution.[\[3\]](#) Canada asked Britain to keep this control because the provinces just could not agree on an amending formula (a way to change the document in years to come).[\[4\]](#)

3) Dude... also, where's my official Proclamation?

In 1982, Queen Elizabeth signed the document (the official Proclamation) that gave Canada its *Charter of Rights and Freedoms* and a Constitution that Canada could change on its own.[\[5\]](#) Canadians may be unable to view the original copy of their 1867 Constitution, but at least they can see a pristine, original draft of the official Proclamation at any time, right? Wrong! In 1983, an art student poured red paint on the original, signed document to protest U.S. missile testing in Canada.[\[6\]](#) The paint stain remains on the official Proclamation because specialists feared that any attempt to remove the paint would cause even more damage.[\[7\]](#) As such, the originals are now locked up in a vault and not on public display.

4) Wait, women are persons too?

For the first 60 years after Canada's Constitution was created in 1867, women were not even allowed to sit on the Senate. This was because initially women were not considered "qualified persons" who could become senators within the meaning of section 24 of the *Constitution Act, 1867*. That all changed in 1929, when Canada's highest court at the time, the UK's Judicial Committee of the Privy Council, said that "persons" in the Constitution included both men *and* women.[\[8\]](#) Within a year of that decision, Cairine Wilson was appointed as Canada's first female Senator.[\[9\]](#)

5) Getting drunk on the job

Back in 1864, it took 23 delegates and a \$200,000 champagne budget (in today's dollars) to make some headway on forming the Constitution. The 1864 Charlottetown Conference was the moment that a union between the original provinces of Canada (Ontario, Quebec, New Brunswick, and Nova Scotia) became feasible.[\[10\]](#) The Conference also created a broad outline for what eventually became the *British North America Act, 1867*.[\[11\]](#) Who knows if this outcome would have been possible if not for the roughly \$8,600 of champagne available to each delegate.[\[12\]](#)

6) Getting back at your boss, the Oliver Mowat story

Oliver Mowat was one of the 36 founding fathers of Canada - the group of men who brought the country together at Confederation. [\[13\]](#) Mowat was trained as a lawyer at the age of 15 by Canada's first Prime Minister, John A. MacDonald.[\[14\]](#) Flash forward to 1872, when Mowat was the third premier of Ontario and often in opposition to MacDonald.[\[15\]](#) Mowat was determined to ensure that provinces kept control over alcohol sales. His work is one of the major reasons why each province has its own liquor commission.[\[16\]](#) It looks like MacDonald trained him well...maybe a little too well for MacDonald's liking.

7) Prime Minister ain't no thang

The role of the Prime Minister is not well-defined anywhere in the written Constitution. A reference to the "Prime Minister" showed up for the first time in 1982 in sections 35.1 and 49 of the *Constitution Act, 1982*.[\[17\]](#) These sections relate to the planning of constitutional conferences. Based purely on the words in our Constitution, it may seem that the PM is simply a glorified event planner![\[18\]](#) [The Prime Minister gets his powers](#) from the many unwritten rules and conventions of the Constitution and not from the written text alone.

8) More than just a pretty face

Commonly known for its friendliness and maple syrup, Canada is also a constitutional trendsetter! Canada's *Charter of Rights and Freedoms* helped guide the drafting of a bill of rights for South Africa, Hong Kong, and New Zealand.[\[19\]](#) Even United States Supreme Court Justice Ruth Bader Ginsburg recommended the use of Canada's *Charter* as a guide for creating Egypt's Constitution over that of the United States.[\[20\]](#)

9) The Constitution Express: rallying together for Aboriginal rights

As crazy as it sounds, it was not until 1982 that Aboriginal rights became recognized in our Constitution.[\[21\]](#) One powerful force for this change was Aboriginal leader George Manuel who, in 1980, led two chartered trains full of Indigenous people - called the Constitution Express -- from Vancouver to Parliament Hill in Ottawa to peacefully protest the absence of Aboriginal rights in Canada's Constitution.[\[22\]](#) What started as a train eventually became a movement that gained traction outside of Canada from New York to Europe, and encouraged the federal government to make sure that the new Constitution was going down the right track.[\[23\]](#)

10) The Supreme what?

The Supreme Court of Canada, our highest Court, is not expressly mentioned in the written Constitution from 1867 – but we sure need it!^[24] The Court receives between 550 and 650 applications for appeals of cases every year and hears approximately 80 of them.^[25] Even though the Supreme Court is not specifically mentioned in the Constitution, it is Canada's highest court (as of 1949) and can strike down laws that violate the Constitution.^[26] A Constitution without a Supreme Court would be like a hockey game without a referee!

These are ten of the many fun facts about our Constitution. Stay tuned for the next 150 years of quirky stories that accompany our Constitution as it continues to adapt to the needs and values of this diverse, beautiful country we call Canada.

This article was written by the Centre's three summer law students.

^[1] The U.S. National Archives and Records Administration, "The National Archives in Washington, DC" (2017), online: <<https://www.archives.gov/dc-metro/washington>>.

^[2] Adam Dodek, *The Canadian Constitution*, 2nd ed (Toronto: Dundurn Press, 2016) at 166 [Dodek, *The Canadian Constitution*]; *Constitution Act, 1867* (UK), 30 & 31, c 3, reprinted in RSC 1985, Appendix II, No 5.

^[3] Dodek, *The Canadian Constitution*, *ibid* at 25.

^[4] *Ibid*.

^[5] *Ibid* at 167; *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 .

^[6] "1984: Missile protester sentenced for defacing Constitution", *CBC News* (9 October 1984), online: <www.cbc.ca/archives/entry/1984-missile-protester-sentenced-for-defacing-constitution>.

^[7] Dodek, *The Canadian Constitution*, *supra* note 2 at 167-168. Queen Elizabeth actually signed two copies of the Royal Proclamation, one of which was damaged by rain on the day that it was signed. The second copy is now permanently stained with paint and neither copy is on public display. See Joe O'Connor, "A blot on Canadian history: First the Queen signed our Constitution, then an activist threw paint on it" (19 July 2013), *National Post*, online: <nationalpost.com/news/canada/a-blot-on-canadian-history-first-the-queen-signed-our-constitution-then-an-activist-threw-paint-on-it/wcm/d9e26d93-386c-4119-b93b-6d701498f10a>.

^[8] *Edwards v Canada (AG)* (1929), [1930] AC 124 (UK PC).

^[9] Robert J Normey, "Taking it Personally: The Persons Case", *Law Now* 18:2 (October 1993) 11 at 13.

- [10] Rev Francis WP Bolger, "The Charlottetown Conference and its Significance in Canadian History" (1960) 27 CCHA 22.
- [11] *Ibid* at 12.
- [12] David Berry, "Drunk History: Canada's Booze-Soaked Beginnings" *CBC News* (9 September 2014), online: <hazlitt.net/blog/drunken-history-canadas-booze-soaked-beginnings>.
- [13] Tracey Lindeman, "Fun facts about Canada's founding fathers", *CBC News* (1 July 2016), online: <www.cbc.ca/news/canada/canada-150-founding-fathers-1.3654893>.
- [14] Kingston Historical Society, "MacDonald's Kingston" (2011), online: <kingstonhistoricalsociety.ca/jamkingston.html>.
- [15] Lindeman, *supra* note 13.
- [16] *Ibid*.
- [17] Dodek, *The Canadian Constitution*, *supra* note 2 at 166.
- [18] *Ibid*; Adam Dodek, "Canadians don't know much about the Constitution", *National Post* (17 April 2013), online: <news.nationalpost.com/opinion/adam-dodek-book-excerpt>.
- [19] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; David S Law & Mila Versteeg, "The Declining Influence of the United States Constitution" (2012) 87:3 NYUL Rev 762 at 810-811; Sujit Choudhry, "Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation" (1999) 74:3 Ind LJ 819 at 821-822.
- [20] Justice Ruth Bader Ginsburg, Gillian Metzger & Abbe Gluck, "A Conversation with Justice Ruth Bader Ginsburg" (2013) 25 Colum J Gender & L 6 at 22-23.
- [21] *Constitution Act, 1982*, *supra* note 5, s 35.
- [22] Erin Hanson, "Constitution Express", online: <indigenousfoundations.adm.arts.ubc.ca/constitution_express/>.
- [23] Bob Joseph, "The Constitution Express and its Role in Entrenching Aboriginal Rights" (17 October 2016), Working Effectively with Indigenous Peoples (blog), online: <www.ictinc.ca/blog/the-constitution-express-and-its-role-in-entrenching-aboriginal-rights>.
- [24] Dodek, *The Canadian Constitution*, *supra* note 2 at 138.
- [25] *Ibid*.
- [26] Note that the *Supreme Court Act* was found to be constitutional in *Reference re Supreme Court Act*, ss. 5 and 6, 2014 SCC 21.