

7 Reasons Why You Should Care About The BNA Act

The *British North America Act, 1867* (“*BNA Act*”) - now called the *Constitution Act, 1867*[\[1\]](#) - created Canada at Confederation, and has been around for a whole 150 years since being made into law by the British Parliament. Although much has changed since 1867, the *BNA Act* continues to have an impact on the daily lives of Canadians 150 years later.

Here are seven reasons why *you* should care about the *BNA Act*.

1) It affects drinking age, drivers’ licences, your money, and so much more.

The assignment of different responsibilities to the federal and provincial governments (what we call the “division of powers”) is one of the most important aspects of the *BNA Act* and affects your everyday life more than you would think.

The division of powers prescribes what each level of government has the authority to do. Federal powers are listed in section 91 and deal with national matters like criminal law and the military, while provincial powers listed in section 92 outline matters of local and regional interest, such as education and natural resources.

Currency is controlled by the federal government, so you never have to worry about doing a currency exchange when you travel between provinces. The minimum wage, the legal drinking age, and traffic safety laws vary between provinces because of the division of powers (the provinces are typically responsible for those issues).[\[2\]](#) So if you are standing in line at the registry wondering why you have to get a new license after moving to another province, you have the *BNA Act* to thank!

2) It preserves the love-hate relationship between Canadians and taxes

Taxes are probably best known for the dent that they leave in your wallet. But, we also know that our taxes pay for things that we don’t want to live without, including basic healthcare, roads, and public education (from kindergarten to grade 12). And like many other government powers, taxation has its roots in the *BNA Act*.

Sections 91(3) and 92(2) of the *Act* give the federal and provincial governments power to tax Canadians within their areas of jurisdiction. Those sections are why the provincial government can impose a carbon tax, the federal government can make you pay GST, and why your local city government (acting with powers delegated to it by the province) can demand property taxes from you.

Notably, the *BNA Act* also says that a tax may only originate from the House of Commons or a provincial legislature, which ensures that taxes are only created by people elected to office by you.[\[3\]](#)

3) It is the reason you have a voice in the House of Commons

Are you part of the conversation when the government makes decisions? Of course! The *BNA Act* ensures that your voice is heard by setting up the system of voting your representative to the House of Commons. The House of Commons drafts legislation such as the federal budget and changes to the *Criminal Code*. Members of Parliament (the representatives elected by you!) debate ongoing issues, legislation, and raise the concerns of their constituents.[\[4\]](#)

The *BNA Act* lays out the rules for the House in sections 37 to 52, including how the speaker is elected and how electoral districts were originally divided.[\[5\]](#) The *Act* specifies how many representatives each province gets. However, Canada's population is much different than it was in 1867. Because Canada follows the principle of population by representation, the *BNA Act* outlines the process to re-adjust the number of representatives per province as the population changes.[\[6\]](#)

4) It has your back! The Senate is there to take a second look at laws

Although the House of Commons can draft legislation, it cannot just pass whichever laws it wants. Proposed laws must first pass through the Senate – the house of sober second thought and the second part of Canada's two-house system. The *BNA Act* outlines the powers and duties of the Senate – namely to review legislation passed by the House of Commons.[\[7\]](#) Each province is entitled to a specific number of Senators,[\[8\]](#) who are appointed by the Governor General and must retire at the age of 75.[\[9\]](#)

Recently, the Senate appears to have 'woken up' and nearly refused to pass the federal government's budget bill for 2017.[\[10\]](#) It has also made strong recommendations regarding, for example, changes that need to be made to the *Indian Act* to bring it into compliance with the *Charter of Rights and Freedoms*.

As a result, some people have dubbed it the "FrankenSenate" – meaning that it is doing all sorts of things it was not meant to do.[\[12\]](#) Others argue that the Senate is finally doing its job of thoroughly reviewing legislation and rejecting or changing it when it doesn't make the cut! [\[13\]](#)

5) It led to creation of the courts - the guardians of the Constitution

Our courts are tasked with deciding how laws of the country are interpreted and whether they are constitutional or not. They not only apply the laws of the land and uphold the rule of law, but they ensure that the government does not overstep its power. For example, the Supreme Court struck down the *Criminal Code* provision prohibiting medically-assisted dying in *Carter v Canada (AG)* as unconstitutional.[\[14\]](#)

The *BNA Act* created Canada's court structure, setting up our system of provincial and federal courts. The *Act* outlines which courts are managed by the province and which are managed by the federal government.[\[15\]](#) The *Act* also gives the federal government the authority to create a "General Court of Appeal for Canada," which allowed them to create

the Supreme Court of Canada in 1875.[16] Prior to 1949, decisions of the Supreme Court could still be appealed to the UK's highest court – the Judicial Committee of the Privy Council. It was not until 1949 when the Court became “supreme” as the highest court in Canada. [17]

6) It's why Ottawa is our capital city

Why was Ottawa, of all the cities at the time of Confederation, made our nation's capital? In 1858, Queen Victoria chose Ottawa as the capital city because of its central location between Montreal and Toronto, its distance from the American border (making it safer from attack), and its convenient placement for travel to and from the western territories.[18] In 1867, Ottawa's official status as capital city was sealed with section 16 of the *BNA Act*, which states: “[u]ntil the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.” Neither Queen Victoria, nor the kings and queen who have succeeded her, have ever directed otherwise, so Ottawa remains our nation's capital 150 years later!

7) It's the reason you count - literally - in the national census

Did you know that the national census has its foundation in the *BNA Act*? Section 8 of the *Act* required that a census be completed in 1871 and repeated every ten years thereafter. Originally, the main purpose of the census was to determine the population of each province for representation in Parliament – a function it still serves today.[19] Eventually, Statistics Canada became responsible for conducting the census.[20]

Today, the federal *Statistics Act* requires that Statistics Canada conduct a census every five years.[21] The information collected is important for ensuring that effective policies and programs, such as daycare programs and special employment programs for visible minorities, are developed that reflect the make-up of Canadian society.[22] So being part of the census gives you the ability to shape government action.

These are seven of the many reasons why *you* should care about the *BNA Act* – the constitutional document that created Canada and that continually helps to define who we are as a country, even 150 years later.

Want to learn more?

- Read the [British North America Act, 1867 \(“Constitution Act, 1867”\)](#)
- Get a quick briefer on the [BNA Act](#) (Constitutional Keyword)

[1] *Constitution Act, 1867* (UK), 30 & 31, c 3, reprinted in RSC 1985, Appendix II, No 5

[2] Jason Tchir, “Why don’t we have the same driving laws all across Canada?”, *The Globe and Mail* (13 December 2016), online: <www.theglobeandmail.com/globe-drive/culture/commuting/why-dont-we-have-the-same-driving-laws-all-across-canada/article33303547/>; Kevin B Kerr, “Federal Minimum Wages and Low-Income Workers in Canada” (5 November 2008), Library of Parliament Research Publications, online: <lop.parl.ca/Content/LOP/ResearchPublications/prb0839-

e.htm?cat=business>.

[3] *Constitution Act, 1867*, *supra* note 1, ss 53, 90; *Re Eurig Estate*, [1998] 2 SCR 565 at para 30.

[4] *Constitution Act, 1867*, *ibid*, s 37.

[5] *Ibid*, ss 37-52.

[6] *Ibid*, ss 40, 51.

[7] *Ibid*, ss 21-36.

[8] *Ibid*, s 29(2).

[9] *Ibid*.

[10] John Paul Tasker, "Senate passes budget bill with no amendments as Parliament breaks for summer", *CBC News* (22 June 2017), online: <www.cbc.ca/news/politics/senate-backs-down-budget-bill-1.4173090>.

[11] Gloria Galloway, "Senators amend legislation aimed at removing sexism from Indian Act", *The Globe and Mail* (24 May 2017), online: <www.theglobeandmail.com/news/politics/senators-amend-legislation-aimed-at-removing-sexism-from-indian-act/article35110342/>.

[12] Tony Keller, "Mr. Trudeau's FrankenSenate: It's alive, and it's dangerous", Editorial, *The Globe and Mail* (14 June 2017), online: <www.theglobeandmail.com/opinion/mr-trudeaus-frankensenate-its-alive-and-its-dangerous/article35309120/>.

[13] Emmett Macfarlane, "Proposing amendments isn't Senate activism. It's the Senate's job", Editorial, *Macleans* (19 June 2017), online: <www.macleans.ca/opinion/proposing-amendments-isnt-senate-activism-its-the-senates-job/>.

[14] *Carter v Canada (Attorney General)*, 2015 SCC 5.

[15] *Constitution Act, 1867*, *supra* note 1, ss 92(14), 96.

[16] *Ibid*, s 101.

[17] Adam Dodek, "The Supreme Court at Canada's 150th", *Policy Magazine* (July-August 2017) 24, online: <www.policymagazine.ca/pdf/27/PolicyMagazineJulyAugust-2017-Dodek.pdf>.

[18] The Canadian Encyclopedia, "Capital Cities", *Historica Canada*, online: <www.thecanadianencyclopedia.ca/en/article/capital-cities/>; Parliament of Canada, "Why Ottawa?", *Our Country, Our Parliament*, online:

<lop.parl.ca/About/Parliament/Education/ourcountryourparliament/html_booklet/why-ottawa-e.html>.

[19] Statistics Canada, “History of the Census” (2011), online: <www12.statcan.gc.ca/census-recensement/2011/ref/about-apropos/history-histoire-eng.cfm>; Statistics Canada, “Overview of the Census of Population” (2011), online: <www12.statcan.gc.ca/census-recensement/2011/ref/overview-apercu/pop2-eng.cfm>.

[20] *Ibid.*

[21] *Statistics Act*, RSC 1985, c S-19, ss 19-20.

[22] Statistics Canada, “Census of Population” (2016), online: <www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=3901>. Statistics Canada, “How census data are used” (2006), online: <www12.statcan.gc.ca/census-recensement/2006/ref/dict/overview-apercu/pop9-eng.cfm>.