Constitution Acts

The 'Constitution Acts' are a set of statutes enacted by the Imperial Parliament, beginning with the *Constitution Act, 1867* ((U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, Appendix II, No. 5), and culminating in the *Constitution Act, 1982* (being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11), that lay down much of the framework of government in Canada. There are thirteen statutes in total. Of these, the 1867 and the 1982 Constitution Acts are the most important.

The first of these statutes brought the three original confederating colonies of British North America into the Dominion of Canada together, divided that Dominion into four provinces, and distributed jurisdiction between the federal and provincial governments, either exclusively or concurrently (see division of powers). Other provisions create and partially define the powers of the executive and legislative branches of both the federal and provincial governments and the superior courts. The second of these statutes, *inter alia*, contains the *Canadian Charter of Rights and Freedoms*, provisions regarding the rights of aboriginal peoples, and procedures for constitutional amendment.

The other eleven statutes alter the legal framework established by the *Constitution Act, 1867*, either by amending the text of that statute, or conferring new powers or imposing new obligations on the federal government and/or the provinces. For example, the *Constitution Act, 1940* (3-4 George VI, c. 36 (U.K.)) amended section 91 of the *Constitution Act, 1867* to add unemployment insurance to the list of areas over which the federal government has jurisdiction.

It would be a mistake to regard these statutes as exhaustive of the Constitution of Canada. First, according to section 52(2) of the *Constitution Act, 1982*, the Constitution of Canada consists of not only these statutes, but also a number of other imperial statutes and orders, as well as Canadian statutes. The most important of these admitted British colonies in existence at the time of Confederation to Canada (*e.g.* Newfoundland) and created the Prairie provinces (*e.g.* Alberta). Second, as Peter Hogg has argued, this list omits a number of statutes and imperial instruments which create and define the powers of important institutions, and hence which are of a constitutional nature, such as the *Supreme Court and Exchequer Courts Act, 1875*(S.C. 1875, c. 11; now called the *Supreme Court Act*, R.S.C. 1985, c. S-26), and the *Letters Patent Constituting the Office of Governor General of Canada, 1 October 1947*. Third, reflecting the largely unwritten nature of the British constitutional order out of which much (but certainly not all) of our Constitution emerged, the Canadian Constitution has a significant unwritten component, consisting of common law rules alterable by ordinary legislation (*e.g.* prerogative powers of the Crown), unwritten rules which prevail over inconsistent legislation (see *Reference Re Quebec Secession* and secession), and legally unenforceable rules of political morality (see convention).