

# Convention

A 'convention' is an uncodified rule of a constitution considered binding on political actors but not enforceable by the courts. The Constitution of Canada is comprised of both written or codified rules enforced by courts, and 'unwritten' rules or principles necessary for constitutional government. What separates a convention from constitutional law is that the former is not judicially enforceable. Courts may recognize the existence of a 'convention', and even help define its nature and scope, but they do not provide remedies for the breach of conventions.<sup>[1]</sup>

While Canada's Constitution is most often associated with its 'written' documents - chiefly, the *Constitution Act, 1867*,<sup>[2]</sup> and the *Constitution Act, 1982*<sup>[3]</sup> - in fact, Canada's full constitutional framework is unintelligible without reference to a prodigious set of constitutional conventions. Consider two examples. Nowhere in Canada's constitutional documents is it written that the government of the day must resign when it loses the confidence of the legislative assembly. Yet, this central tenet of responsible government is at the core of Canadian constitutionalism, and a political crisis would ensue were its principles ignored by political actors.<sup>[4]</sup> Similarly, while in a strictly legal sense the Governor General may refuse his or her assent to a bill duly passed by both houses of Parliament, a constitutional convention has developed whereby the withholding of assent would be unconstitutional (see [reservation and disallowance](#)).

Conventions arise when there are precedents for a particular principle or practice; when political actors consider themselves or ought to consider themselves bound to follow the principle or practice; and when there are good reasons for the existence of the principle or practice.<sup>[5]</sup> While the core meaning of a 'convention' may be clear, questions of application frequently arise, and political actors may heatedly dispute what precedents apply and what reasons are legitimate. While political actors, for example, are agreed on the confidence convention, what sort of measure exactly constitutes a withdrawal of confidence may be controversial.<sup>[6]</sup>

<sup>[1]</sup> Peter W Hogg & Wade Wright, *Constitutional Law of Canada*, 5th ed (date accessed 30 December 2021), (Toronto: Thomson Reuters Canada), ch. 1, § 1:10. Thomson Reuters ProView.

<sup>[2]</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

<sup>[3]</sup> *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

<sup>[4]</sup> Marc Bosc & Andre Gagnon, ed, *House of Commons Procedure and Practice*, 3rd ed (Ottawa: House of Commons, 2017) ch 2, <[https://www.ourcommons.ca/about/procedureandpractice3rdedition/ch\\_02\\_2-e.html](https://www.ourcommons.ca/about/procedureandpractice3rdedition/ch_02_2-e.html)>

<sup>[5]</sup> *Constitutional Law of Canada*, *supra* note 1 at ch. 1, § 1:10.

[6] For further reading, see: Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Toronto: Oxford University Press, 1991); R M Dawson, *The Government of Canada*, 5th ed by N Ward (Toronto: University of Toronto Press, 1970); B Reesor, *The Canadian Constitution in Historical Context* (Scarborough: Prentice-Hall, 1992).