



The Constitution: Written or Unwritten?

An activity for use with the *Canada in the Making* site

Teacher Guide

The Canadian Constitution is both written and unwritten, the combined product of acts and statutes, common law judgments and accepted political conventions. In this activity, students will form teams and debate whether the Canadian Constitution has evolved to be primarily written or unwritten.

Subject/Ages

Subject: Social Studies (History)
Ages 15 and up

Overview

This learning activity will give students the opportunity to examine the evolution of the Canadian Constitution and understand it as being composed of both written acts and statutes and unwritten elements. The debate will give each group the opportunity to present a case as to which element is stronger in Canadian governance.

This activity is best suited for a small class and can be completed in three to four hour-long sessions. *Note that the sources used in ECO can be printed from the browser and then photocopied.*

Outcomes (WCP, APEF) Expectations (ON) Objectives (QC)

See the [table and the summaries](#) for each province.

Materials/Resources Required

Computers with Internet access.
Student Work Sheet
Suggested Assessment Criteria
Student Extension Sheet

Links

Early Canadiana Online: *Canada in the Making*
<http://www.canadiana.org/>
Essay writing resources can be found in the *Writing An Essay* unit on ECO:
URL: http://www.canadiana.org/eco/lesson_plans/topicconc.htm
Other links can be found in the Student Work Sheet.

Previous Knowledge

Students will need

- An understanding of Web navigation symbols, tools and terminology, particularly the tools used in ECO.
- Familiarity with research skills.
- Some background understanding of Canada's Constitutional history.

Lesson Opener

Ask students how people decide the rules of government. Is it the same in all countries? Where do they think Canada gets its Constitutional traditions? What documents do they think are the most important?

Procedure

Step 1

Hand out Student Work Sheets and introduce students to the *ECO Canada In the Making* Web site. Read the assignment and discuss.

Step 2

Divide the class into three groups:

1. The unwritten Constitution
2. The written Constitution
3. Judges (3 to 5 students)

Step 3

Have students conduct research on the nature of the Canadian Constitution using the sources provided on the Student Work Sheet and any other sources they find. They must try to build the strongest case for their own view as possible, and anticipate arguments by the opposing side. The work is broken down on the work sheets and can be shared.

Step 4

Students choose spokespersons and conduct a debate. A debate is stated as an affirmative proposition and is generally broken down as follows:

- First speaker: in favour of the resolution (7 minutes)
- Second speaker: in opposition to the resolution (7 minutes)
- Short break
- Third speaker: in favour of the resolution (7 minutes)
- Fourth speaker: in opposition to the resolution (7 minutes)
- Short break
- Fifth speaker: opposition rebuttal (5 minutes)
- Sixth speaker: affirmative rebuttal (5 minutes)

Step 5

Judges rate and discuss their judgments. Winners do not necessarily have to be chosen, but strengths and weaknesses in arguments can be discussed with the class. A percent rating could also be given.

Summary

Discuss the balance of the arguments. Which aspect of the Constitution do they find most important in Canada today? Does this seem a good balance to them? Why or why not? What would they change?

Evaluation

See the Suggested Assessment Criteria.

Homework/Extension

Students can make a chart answering the following questions: What are the advantages and disadvantages of basing a constitution mainly on written rules? What are the advantages and disadvantages of basing a constitution mainly on unwritten conventions? See the Extension Work Sheet.



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Student Guide

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Groups:

In this Activity, you will be assigned to one of three groups:

Divide the class into three groups:

1. The group arguing that the Constitution is mainly unwritten.
2. The group arguing that the Constitution is mainly written.
3. Judges (3 to 5 students).

You will have to research your arguments, or, if you are a judge, gain background knowledge on both arguments. Read the sections below for guidance, and refer to the sources given for information.

Rules of Debate:

A debate is stated as an affirmative proposition. The proposition for your debate will be:

Resolved:

The Constitution of Canada is mainly shaped by unwritten conventions.

A debate is generally broken down as follows:

- **First speaker:** in favour of the resolution (7 minutes)
- **Second speaker:** in opposition to the resolution (7 minutes)
- **Short break**
- **Third speaker:** in favour of the resolution (7 minutes)
- **Fourth speaker:** in opposition to the resolution (7 minutes)
- **Short break**
- **Fifth speaker:** opposition rebuttal (5 minutes)
- **Sixth speaker:** affirmative rebuttal (5 minutes)

Note on Sources

Primary sources

Primary sources represent the most authentic resources that historians can draw upon. The documents that you will be using below may be digitized, but are still considered primary sources. Try to use the sources available on the “Canada’s Constitutional History” portion of the *Canada in the Making* Web site to strengthen your arguments.

For tips on how to use primary sources, go to the “Using Primary Sources in Your Work” page.
URL: http://www.canadiana.org/citm/guide/essay_e.html

Secondary sources

Secondary sources are works that interpret or analyze an historical event or phenomenon. Generally the author is at least one step removed from the event. Although not as authentic as primary sources, secondary sources are still valuable.

Possible Sources of Information Online

Note: It is important to choose sources that are produced by reputable institutions or individuals. Such information is more likely to give you a balanced, neutral view and be prepared or reviewed by experts.

The Written and Unwritten Constitution

Canada in the Making: The Written and Unwritten Constitution
URL: http://www.canadiana.org/citm/specifique/written/written_e.html

Common Law and Civil Law

Canada in the Making: Common Law and Civil Law
URL: http://www.canadiana.org/citm/specifique/lois/lois_e.html

Responsible Government

Canada in the Making: Responsible Government
URL: http://www.canadiana.org/citm/specifique/responsible/responsible_e.html

General

Canada in the Making: Canada’s Constitutional History
URL: http://www.canadiana.org/citm/themes/constitution1_e.html

The Canadian Encyclopedia
URL: <http://www.thecanadianencyclopedia.com>

National Archives of Canada: *Canada's Constitutional Evolution*

URL: http://www.archives.ca/05/051103_f.html (French)

URL: http://www.archives.ca/05/051103_e.html (English)

Solon Law Archives: *Canadian Constitutional Documents*

URL: <http://www.solon.org/Constitutions/Canada/>

Group 1:

The Constitution of Canada is mainly shaped by unwritten conventions.

You must find evidence to support your arguments that Canada's Constitution is mainly shaped by unwritten rules. Some significant unwritten rules, which shape the way we are governed, include:

- A government responsible to the elected members of the Parliament and not the governor general, first won in the 1840s.
- Cabinet ministers are almost always elected members of Parliament.

Research these rules and others. Also worth considering are the changes made in the way Canada was governed despite legislation to the contrary. For example, French language rights were preserved despite several attempts to eliminate them.

Other points to consider:

- What are the two historical models of government that Canada has inherited? Which is dominant?
- Read the preamble to the *Constitution Act, 1867*. What do think are the implications of this text?
- How have major historical events affected the way Canada is governed?
- Do the sections, which set out powers of different levels of government in the *Constitution Act, 1867*, increase or decrease the influence of unwritten conventions?
- Does the *Canadian Charter of Rights and Freedoms* increase or decrease the influence of unwritten conventions? Note the "notwithstanding" clause.

Helpful hint: Try to anticipate the arguments of your opponents in the debate, and prepare counter-arguments in advance.

Group 2: Written acts and statutes mainly shape The Constitution of Canada.

You must find evidence that support your argument that Canada's Constitution is mainly shaped by written rules. Important documents include:

- The *Royal Proclamation, 1763*
URL: <http://www.canadiana.org/cgi-bin/ECO/mtq?display=42695+0030>
- The *Quebec Act, 1774*
URL: <http://www.canadiana.org/cgi-bin/ECO/mtq?doc=48786>
- The *Constitutional Act, 1791*
URL: <http://www.canadiana.org/cgi-bin/ECO/mtq?doc=21241>
- The *Act of Union, 1840*
URL: http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9_01401
- The *Constitution Act, 1867* (previously named the *British North America Act, 1867*)
URL: <http://www.canadiana.org/cgi-bin/ECO/mtq?doc=92338>
- The *Statute of Westminster, 1931*
URL: <http://canada.justice.gc.ca/loireg/rapport/en/pl17-1.html>
- The *Constitution Act, 1982* (including the *Canadian Charter of Rights and Freedoms*)
URL: http://laws.justice.gc.ca/en/const/annex_e.html#VII

Some points to consider:

- What are the two historical models of government that Canada has inherited? Which is dominant?
- How has each major act listed above affected the way Canada is governed?
- What is the evolutionary trend of the Canadian Constitution?
- Do the sections, which set out powers of different levels of government in the *Constitution Act, 1867*, increase or decrease the influence of unwritten conventions?
- Does the *Canadian Charter of Rights and Freedoms* increase or decrease the influence of unwritten conventions?

Helpful hint: Try to anticipate the arguments of your opponents in the debate, and prepare counter-arguments in advance.

Group 3: Judges

You must review both sides of the issue, although not to same depth as the debaters. As you review the sources, consider the following questions:

- What are the two historical models of government that Canada has inherited? Which is dominant?
- Read the preamble to the *Constitution Act, 1867*. What do think are the implications of this text?
- How has each major act affected the way Canada is governed?
- How have major historical events affected the way Canada in governed?
- Do the sections, which set out powers of different levels of government in the *Constitution Act, 1867*, increase or decrease the influence of unwritten conventions?
- Does the *Canadian Charter of Rights and Freedoms* increase or decrease the influence of unwritten conventions? Note the “notwithstanding” clause.
- What is the evolutionary trend of the Canadian Constitution?

Be prepared to assess each group’s performance using the following criteria:

	Group 1 Rating	Group 2 Rating
Are their facts accurate?		
Are the arguments organized logically?		
Do they support their arguments with evidence?		
Did they stay on topic?		
Was their rebuttal on target?		
Do they follow the rules of the debate (finish in the time given, without finishing too early, not interrupting)?		
Do they speak clearly and appropriately (varying tone, pitch, etc., without distracting from the arguments)?		
Did they maintain good eye contact, posture, etc.?		

You may discuss and decide how to rate the debate (points, percent, win/lose, etc.) amongst yourselves, with your teacher, or with the class. You may also add criteria.



The Constitution: Written or Unwritten? Suggested Assessment Criteria

Program Area: Social Studies, History, Canadian Studies

Criterion: Understanding Concepts

Attainment Descriptors:

- Prepared information for debate demonstrates understanding of the written and unwritten nature of the Canadian Constitution.
- Prepared information for the debate demonstrates an understanding of the evolution and history of the Constitution.

Program Area: Social Studies, History, Canadian Studies

Criterion: Research Methods

Attainment Descriptor:

- Locates, gathers and organizes research materials from the *Canada in the Making* Web site and other sources.
- Personal opinions and arguments expressed in the debate are supported by clearly communicated evidence from the *Canada in the Making* Web site and other sources.

Program Area: Language

Criterion: Reading

Attainment Descriptor:

- Reads and demonstrates an understanding of texts from various time periods.
- Analyzes and assesses ideas, themes, concepts and arguments.

Program Area: Language

Criterion: Oral communication

Attainment Descriptor:

- Speaks clearly and uses appropriate variety in volume, rate, tone and pitch, pause, stress and emphasis, inflection, fluency.
- Follows format of debate properly (uses time appropriately, does not interrupt, refutes arguments in rebuttal).

Program Area: General

Criterion: Cooperative Group Work

Attainment Descriptor:

- Contributes to group work; works well with others.
- Listens attentively to organize and classify information and to clarify thinking.



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Extension Work Sheet

Constitution shaped mainly by written acts and statutes.

Advantages	Disadvantages

Constitution shaped mainly by unwritten conventions.

Advantages	Disadvantages