

Law and the constitution in canada

Law



**ASSIGN
BUSTER**

The Law and Canadian Constitution affiliation The Canadian democracy has been described as the hallmark of alizing democracy. Some argue that the court's definition of judicial independence as too generous and arguably led to legislation from the bench. However, the proponents argue that judicial activism is a necessary thing. In essence, judicial independence refers to exercising constitutional requirements of impartiality and creating authority that do not subdue to executive and legislative force. Notably, judicial independence is the ultimate goal of democracy and rule of law in an established democracy.

In Canada, AG v. Canada Temperance Federation [1946] AC193, 2 DLR, provided for an exemplary display of judicial independence. During the case, the conflict to be resolved was a court suit challenging the Canadian Federation Act (CFA) was valid. In the ruling, the court declined the validity of the CFA¹. The issue that brought conflict was the constitutionality of the Canadian Temperance Act. The concern of Peace, order, Good and Governance (POGG) became known. During the 4-2 majority ruling, the court further affirmed that the Act was within the legislative constitutionality competence of the parliament.

Secondly, Johannesson v West St. Paul 1952 (SCC) portrayed judicial independence as an important recipe in restoring order to Municipality Acts². During the case, the plaintiff argued that he wanted a designated place for his aerodromes. Under the Municipality Act had prohibited his aerodromes because of the noise they generate. However, the Supreme Court of Canada (SCC) by majority ruled that the issue was of a national importance and was within exclusive jurisdiction of the federal government under the POGG³.

In addition, Russell v The Queen had declared the Canadian Temperance Act

<https://assignbuster.com/law-and-the-constitution-in-canada/>

as constitutional when it was challenged at the SCC. Moreover, during the *R. v. Crown Zellerbach Canada Ltd* [1988] 1 S. C. R. 401, the SCC upheld the validity of the Ocean Dumping Act that today, form part of Canadian Environment Protection Act⁴.

Conclusion

Despite coming to sharp criticism, the SCC and judicial independence have transcended the Canadian judicial system as the answer to conflicting definition and jurisdiction of the federal and provincial Acts.

Bibliography

Canada. A consolidation of the Constitution Acts, 1867 to 1982. [Ottawa]: Dept. of Justice Canada, 2012.

Canada. Bill An Act to Confirm Decrees and Orders, and Other Proceedings of the Court of Chancery of Upper Canada, in Certain Cases. Toronto: Lovell and Gibson, 2004.

Hogg, Peter W. Constitutional Law of Canada. Toronto, Ont: Carswell, 2012.

Malloy, Jonathan. " The executive and parliament in Canada." *The Journal of Legislative Studies* (2004): 56-67. Doi: 10. 1080/1357233042000322319.