



PUBLIC LAW AND CONTINUITY

The Crown in Canadian law

How a permanent institution gives the state an identity, property, obligations - and continuity beyond governments.

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The Crown is neither a department nor the King's private property. In Canadian law, the term may denote the Sovereign, the institution carrying public authority, or the state itself acting at law. This is not decorative vocabulary. It allows Canada to own property, contract, litigate and remain accountable when ministers change.

Understanding this legal personality reveals a frequently unseen benefit of constitutional monarchy. The head of state embodies continuity; elected ministers decide and answer for those decisions; courts review legality. The enduring state is therefore not confused with a party, a Cabinet, or the individual who wears the Crown at a particular moment.



THE GREAT SEAL
LE GRAND SCEAU
CANADA
2025

The approved design of the Great Seal of Canada (2025). Affixed to proclamations and commissions, the Seal makes the Crown's legal authority visible. Source: Canadian Heritage.

01 · Identity

The King, the Crown and the government are not synonyms.

02 · Federalism

One institution acts in constitutionally distinct capacities.

03 · Action

Contracts, property and cases outlast political turnover.

04 · Limits

The state's legal personality also makes accountability possible.

“The Crown does not replace the state: it is the enduring legal form through which the Canadian state can act without belonging to the government of the day.”

THE ARGUMENT - CONTINUITY OF THE STATE, MINISTERIAL RESPONSIBILITY, RULE OF LAW

“continue”

S. 9 · 1867

The verb is deliberate. The Constitution does not confer a new power upon a federal government; it declares that executive authority *continues* in the Crown. Each Cabinet therefore receives authority already bounded by law, exercises it for a time and passes it intact to its successor.



I · ONE INSTITUTION, THREE REALITIES

The King is not the government - and the government is not the state

“The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.”

Constitution Act, 1867, s. 9. The decisive word is “continue.”

Confederation did not invent public authority in 1867. It distributed and organized, within a new federal state, authority the law already attached to the Crown. “Continue” expresses that permanence: the legal framework precedes every Cabinet and survives it.

I

THE SOVEREIGN

Charles III is a natural person and Canada’s head of state. He embodies the Crown, but public assets are not his private estate.

II

THE CROWN

A permanent institution and, depending on context, the legal personification of the state, bearing public rights, duties and powers.

III

THE GOVERNMENT

The prime minister, Cabinet and administration exercise authority under the Constitution and answer politically to the elected House.

A LEGAL PERSON, NOT A RULE-FREE FICTION

In *Sanis Health Inc. v. British Columbia*, the Supreme Court observed in 2024 that “Crown” can refer both to the Sovereign as a natural person and to the state personified. That personality makes it possible to hold property, enter contracts, spend money and bring proceedings. The Crown may enforce civil rights as a plaintiff unless legislation limits that capacity. This is no favour to the monarch: it is the legal mechanism by which the public community becomes a recognizable party before a court.

THE STATE ACTS THROUGH AUTHORIZED REPRESENTATIVES

Just as a corporation signs through its officers, the Crown acts through the governor general or lieutenant governors, ministers, attorneys general and delegated officials. A public contract may name “His Majesty in right of Canada, represented by the Minister” as the party. The representative gives the instruction or signs the instrument; the commitment does not become per-

sonal property. Following a reshuffle, it remains the state’s contract.

THE SOVEREIGN DOES NOT MANAGE FILES

Vesting executive authority in the Crown does not empower the King personally to select a vendor, administer a building or conduct a prosecution. Responsible government requires routine acts to be performed on ministerial advice and ministers to answer before Parliament. The words “in the King’s name” identify the legal source and continuity of authority; they do not shift everyday political responsibility to the Palace.

A SEPARATION THAT DISCIPLINES POWER

An election can replace office-holders without requiring Canada to remake land titles, collective agreements or pending cases. More importantly, the distinction reminds governments that they temporarily occupy offices they do not own. The Crown supplies the state with a non-partisan legal centre; Cabinet remains wholly responsible for deciding. Permanence does not shield a government from alternation - it makes alternation possible without dissolving the state.

VOCABULARY PROTECTING NEUTRALITY. Saying that a public servant serves the Crown does not mean serving the Sovereign’s personal views. It means serving the state under law and loyally implementing the decisions of responsible government. The formula separates institutional fidelity from partisan attachment.



One Crown, several constitutional capacities

There is no federal Crown sitting above ten subordinate provincial Crowns. The same monarchical institution acts legally “in right of Canada” or “in right of” a province. The stated capacity determines which ministers advise, which legislature makes law, which treasury pays and which public estate is engaged.

THE CROWN IN CANADA

In right of Canada

Federal jurisdiction, assets and liabilities; the governor general and federal ministers.

In right of a province

Provincial jurisdiction, assets and liabilities; the lieutenant governor and provincial ministers.

“IN RIGHT OF” IS AN ALLOCATING FORMULA

A military base in Ontario is not a provincial asset merely because it is physically located there; an Ontario-administered public forest is not property the federal government may sell. “In right of” identifies the constitutional capacity in which the Crown holds a right or bears an obligation. Prerogatives follow the same logic: those connected to a federal field belong to the federal Crown, and those connected to a provincial field to the provincial Crown.

IN 1867, FEDERALISM DIVIDED ASSETS AS WELL AS POWERS

Sections 107 to 109 of the Constitution Act, 1867 allocated stocks, cash, public works, lands, mines, minerals and royalties. Certain scheduled works passed to Canada; provincial lands, mines, minerals and royalties remained with the provinces. The division of powers was not abstract: it carried the assets and revenues needed to exercise them. A common Crown vocabulary therefore does not erase separate public estates.

“CROWN LAND” IS NOT ONE NATIONAL DOMAIN

Everyday speech can suggest a single pool of national Crown land. Legally, the first question is who holds administration and control. A department administering a building does not own it as a private firm would; it bears a management responsibility for a public purpose. A transfer between ministers may relocate that responsibility without a sale and without leaving the federal capacity. A transfer to a province must record movement between two capacities.

THE CURIOUS POWER TO GRANT PROPERTY TO ONESELF

The Federal Real Property and Federal Immovables Act allows His Majesty to grant federal real property to Himself. The wording becomes intelligible once the enduring legal person is distinguished from the capacities in which it acts: an instrument can shift administration and control from the federal Crown to a provincial Crown, or formalize a change in legal regime. What looks absurd in private law is a technique of constitutional accounting.

PROTECTION FOR THE PUBLIC, NOT THE MONARCH

Federal law also restricts acquisition of public real property by prescription. This is not a personal privilege of the King. It prevents an individual from acquiring, through prolonged possession unknown to the administration, an interest in an asset held for Canadians as a whole. “Crown” here names the legal holder of public property and makes the duty to account for it visible.

WHAT ABOUT THE TERRITORIES?

Territorial institutions do not simply reproduce the constitutional status of provinces. Their authority is largely delegated by Parliament, although devolution has greatly expanded territorial control of lands and administration. The nuance matters: the useful account of federal and provincial capacities of the Crown should not be converted into a uniform model where the legal architecture differs.

PRACTICAL CONSEQUENCE. In a contract, land question or claim, writing simply “the Crown” may be insufficient. The relevant capacity must be identified: it determines the competent authority, the treasury exposed and the body of law that applies.



III · A PERSONALITY WITH PRACTICAL EFFECTS

Signing, owning, prosecuting - and answering

The “legal personality of the Crown” becomes concrete in a lease, a purchase, copyright or criminal file. It attaches the act to permanent public authority, not to the personal office of the minister who authorizes it.

R. v. the accused

The prosecution proceeds in the public interest.

and, rarely

R. v. R.

The Crown prosecutes an administration of the Crown.

A CONTRACT CAN SPAN SEVERAL MANDATES

An infrastructure procurement, lease or indemnity may last longer than a government. Federal terms therefore identify Canada - legally His Majesty in right of Canada, represented by the appropriate authority - as contracting party. A minister can leave, a department be reorganized or a program renamed: the party remains and the obligations do not evaporate. That continuity protects the supplier, taxpayers and the integrity of public credit at once.

A DEPARTMENT IS NOT NECESSARILY A PERSON

A department is a component of the administration; it does not automatically possess a legal personality comparable to a corporation. A contract may therefore be made by “Canada” and a claim brought against the Attorney General even when the facts arise in a particular department. This convention does not hide administrative responsibility. It gives citizens and courts a stable legal party when the organization chart changes.

A CROWN CORPORATION IS NOT ALWAYS “THE CROWN”

Crown corporations generally have their own personality, statutory powers and boards. Some are agents of the Crown for all functions; some only for specified activities; others are not agents. The Canada Revenue Agency notes that agency depends on the incorporating statute or a specific legal conclusion. The label “Crown corporation” alone therefore does not transmit every privilege, immunity and obligation of the Crown.

THE ATTORNEY GENERAL AS IDENTIFIABLE DEFENDANT

The Crown Liability and Proceedings Act provides that proceedings against the federal Crown may be taken against the Attorney General of Canada or an agency authorized to be sued in its own name. The Attorney General is not personally the debtor. Naming that office gives a procedural face to an institution too abstract to receive legal documents at a front desk.

WHY CRIMINAL CASES BEGIN WITH “R.”

In a prosecution, “R.” means *Rex* when the Sovereign is a king and *Regina* when the Sovereign is a queen. The accusation belongs neither to the victim nor personally to the prosecutor; it is conducted in the name of the public peace. That position helps explain the prosecution’s duty of restraint - to present reliable evidence and uphold fairness, not win at any cost. Succession changes the symbolic style, never the offence or continuity of the trial.

THE REVEALING CASE OF “R. V. R.”

The Public Prosecution Service Deskbook describes a rare situation: a department without separate legal personality violates legislation binding the Crown. The style can become “R. v. R.,” with prosecuting Crown and defendant Crown represented by different ministers. The apparent contradiction shows the system’s precision: one public personality can sustain opposed functions while keeping their mandates, counsel and accountability separate.

THE USEFUL TEST. Before asking “which department is the party?”, read the enabling legislation: does the body have separate personality, act as an agent, or is the true party the Crown represented by a minister?



IV · CAPACITY AND THE RULE OF LAW

An identity for the state, not absolute immunity



The Supreme Court of Canada building in Ottawa. The state's permanent personality makes public action possible; judicial review makes it answerable in law. Photo: Supreme Court of Canada Collection.

LIABILITY IS ORGANIZED BY LEGISLATION

The old maxim that “the King can do no wrong” does not describe contemporary Canadian law. Section 3 of the Crown Liability and Proceedings Act makes the federal Crown liable in several circumstances for damage caused by the fault of servants and by property it owns, occupies or controls. The Act connects that liability to Quebec civil law and the common law elsewhere. The state is not identical to a private individual in every field, but neither is it beyond reach.

SPECIAL PROCEDURES DO NOT ELIMINATE A REMEDY

Proceedings against the Crown include rules about naming, service, jurisdiction and sometimes relief. In some circumstances a declaration of rights may stand in place of an injunction formally issued against the Crown. These adaptations protect the continuity of public services while allowing courts to state and enforce

the law. Their rationale must be read precisely; they are not a general exemption from legality.

PREROGATIVE YIELDS TO VALID STATUTE

The prerogative comprises historic executive powers that remain where the Constitution and statute have not replaced them. A National Defence legal study states the limit plainly: the Crown is subject to valid legislation, and incompatible legislation can displace prerogative. It may be necessary to ask whether an enactment binds the Crown and in which capacity, but executive authority does not inhabit a zone outside law.

EVEN THE CAPACITY TO ACT CAN BE CONFINED

Sanis Health confirms that the Crown can enforce civil rights and sue as plaintiff, while accepting that a legislature may limit that capacity. The state’s personality is therefore a public-law tool bounded by public law: it supplies a holder for rights and obligations without creating an actor sovereign over legislatures and courts.

Function	What the Crown makes possible	What constrains action
Act	Own, contract, spend and litigate.	Constitutional jurisdiction, appropriations, statutes and delegations.
Answer	Remain the party despite political turnover.	Statutory remedies, judicial review and civil liability.
Govern	Supply the executive’s permanent legal authority.	Ministerial advice, House confidence and political responsibility.

DEMOCRATIC CONSEQUENCE. Harm committed under one Cabinet may be adjudicated under the next: the claim does not disappear with ministers. The same continuity that gives the state capacity to act also preserves its debts and obligations.



V · CONTINUITY PUT TO THE TEST

The holder changes; the state, its offices and its cases continue

The succession of 8 September 2022 demonstrated the difference between the Sovereign’s person and the Crown’s permanence. Charles III became King of Canada immediately upon Elizabeth II’s death. The proclamation read two days later at Rideau Hall publicly announced a legal fact already accomplished; it neither recreated the state nor reinvested its officials.

8 SEPT. 2022 Charles III accedes automatically; there is no interregnum in the authority of the state.	10 SEPT. 2022 The Privy Council meets and Canada’s proclamation is publicly read at Rideau Hall.	AFTER ACCESSION Offices, cases, passports and currency continue; oaths need not be repeated for that reason alone.
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WHAT SECTION 46 PROTECTS

The federal Interpretation Act provides that a demise of the Crown does not vacate a federal office. An office-holder need not be reappointed or swear a new oath merely because of succession. Writs, actions, prosecutions and other civil or criminal proceedings continue as well. The rule converts an old maxim - the Sovereign dies, the Crown does not - into a thoroughly modern guarantee of administrative and judicial continuity.

CONTINUITY LIMITS GOVERNMENTS

Permanence does more than avoid paperwork. No prime minister can carry away the authority of the state upon leaving office or claim that public commitments bind only one party. Public servants legally serve the Crown while implementing the program of the government holding the House’s confidence. That double reality helps the administration prepare a loyal transition without becoming a partisan apparatus.

A HEAD OF STATE OUTSIDE THE CONTEST

Constitutional monarchy entrusts the state’s embodiment to a Sovereign who does not seek a partisan mandate, while political direction belongs to the prime minister and Cabinet. This separation eliminates neither democratic conflict nor accountability; it places both within a framework the winner does not own. Ministers receive the authority required to govern, but never become the state.

HISTORIC LANGUAGE FOR A PERMANENT NEED

Every democracy must make its institutions outlast its leaders. Canada’s answer combines a legally permanent Crown, a politically responsible Cabinet, a Parliament voting laws and supply, and independent courts. Its vocabulary carries history, but its function is contemporary: preserving the state’s identity, memory and obligations while the electorate changes those who decide.

THE ENDURING STATE The Crown bears identity, property, contracts and obligations.	POLITICAL DECISION Ministers govern while they retain the confidence of the House.
REVIEW Parliament authorizes and investigates; courts test legality.	TRANSITION Succession and alternation replace office-holders without interrupting law.

The Canadian benefit lies precisely in this separation. The Crown gives the state a non-partisan head and a legal personality crossing elections; responsible government leaves decisions to ministers produced by parliamentary democracy; the rule of law keeps both within bounds. Monarchy does not compete with Canadian democracy - it stabilizes the legal ground on which democracy can alternate peacefully.