

The Charter (except for the language provisions for New Brunswick, which can be amended by joint action of Parliament and the provincial legislature) can be amended only with the consent of seven provinces with at least half the total population of the ten.

The Charter is careful to say that the guarantees it gives to certain rights and freedoms are "not to be construed as denying the existence of any other rights or freedoms that exist in Canada." It declares also that nothing in it "abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools." These are, and remain, entrenched.

Before the Charter was added, the written Constitution entrenched certain rights of the English and French languages, the Quebec civil law, certain rights to denominational schools, and free trade among the provinces. Apart from these, Parliament and the provincial legislatures could pass any laws they saw fit, provided they did not jump the fence into each other's gardens. As long as Parliament did not try to legislate on subjects that belonged to provincial legislatures, and provincial legislatures did not try to legislate on subjects that belonged to Parliament, Parliament and the legislatures were "sovereign" within their respective fields. There were no legal limits on what they could do (though of course provincial laws could be disallowed by the federal Cabinet within one year). The only ground on which the courts could declare either a federal or a provincial law unconstitutional (that is, null and void) was that it intruded into the jurisdictional territory of the other order of government (or, of course, had violated one of the four entrenched rights).

The Charter has radically changed the situation. Parliament and the legislatures will, of course, still not be allowed to jump the fence into each other's gardens. But both federal and provincial laws can now be challenged, and thrown out by the courts, on the ground that they violate the Charter. This is something the Americans, with their Bill of Rights entrenched in their Constitution, have been familiar with for almost 200 years. For Canada, it is almost completely new, indeed revolutionary.

Plainly, this enormously widens the jurisdiction of the courts. Before the Charter, Parliament and the provincial legislatures, "within the limits of subject and area" prescribed by the *Constitution Act, 1867* enjoyed "authority as plenary and as ample as the Imperial Parliament in the plenitude of its power possessed and could bestow." In other words, within those limits, they could do anything. They were sovereign.

The Charter ends that. It imposes new limits. Just how restrictive they will turn out to be depends on the courts.