

CONSTITUTIONAL BACKGROUND

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government of Canada" except for subjects specifically assigned to the provinces. (The U.S. Constitution reserves all unspecified powers to the states.) Areas under exclusive provincial jurisdiction include education, natural resources, hospitals, property and civil rights, all considered in 1867 to be purely local and relatively unimportant. Some subjects, such as immigration, are areas of shared jurisdiction.

Interpretation by the courts (particularly the Judicial Committee of the British Privy Council, which was the court of last appeal for Canada until 1949) as well as circumstances (such as governments' responses to the Great Depression and the Second World War) have significantly altered the importance and reach of the powers exercised by each level of government.

The Constitution Act, 1867 contains specific provisions designed to protect the distinctiveness of Quebec. It recognizes Quebec's civil code as distinct from the English common law in effect in the other provinces, and provides for the use of English and French in the national and Quebec legislatures and courts and for publicly funded separate schools for Protestant and Catholic minorities in Quebec and Ontario (and later in Manitoba, Saskatchewan and Alberta).

After Confederation Canada gradually assumed more autonomy over its own affairs until its independent status (and that of the other dominions) was recognized in the Balfour Report of 1926. Beginning in 1927, discussions were held about patriating Canada's Constitution—transferring control from the British Parliament to Canada—but the provinces couldn't agree on a constitutional amending formula. Consequently, when Canada officially ceased to be a British colony with passage of the Statute of Westminster in 1931, authority to amend the Constitution remained in Britain. Despite many discussions and several formal conferences, agreement on an amending formula proved elusive for the next half century.

In 1980, following the defeat of the sovereignty-association option in the first referendum in Quebec, the federal

government launched a round of constitutional talks with the goal of patriation, fulfilling a promise of "renewed federalism" made to Quebecers by Prime Minister Pierre Trudeau. When a series of federal-provincial meetings failed to reach agreement, the federal government decided to proceed unilaterally. Most of the provinces protested, and the issue eventually reached the Supreme Court of Canada. It ruled that while unilateral action by Parliament was not illegal, it was contrary to constitutional convention which held that a "substantial degree" of provincial consent was required.

After intensive negotiations at a first ministers' conference in November 1981, the federal government and all the provinces except Quebec agreed on a constitutional package that included a comprehensive amending formula, a Charter of Rights and Freedoms, entrenchment of the principle of equalization payments to the poorer provinces and a strengthening of the provinces' control over natural resources. Despite support for the agreement by a large majority of Quebec representatives in the federal Parliament, the Quebec National Assembly rejected it on the grounds that it limited its legislative powers without its consent. The Constitution was patriated without Quebec's consent in 1982 (although the Supreme Court subsequently ruled that the province was bound by it).

Under the amending formula contained in the 1982 act, most constitutional changes must have the consent of Parliament and seven provinces representing 50 per cent of the population. Some amendments, including any that affect the office of the Queen or her representatives in Canada, the use of English and French at the national level or the amending formula itself, require the unanimous consent of Parliament and the provinces. The formula allows a provincial legislature to opt out of an amendment that takes away any of its powers, rights and privileges.

The Charter of Rights and Freedoms includes a clause that permits Parliament or a province to override some of the protected rights by passing legislation (which lapses if not renewed every five years) stipulating that the act will go forward "notwithstanding" the Charter. Quebec invoked this clause in 1988 to restrict the use of English on commercial signs but did not renew it.

The Constitution was amended in 1983 to add to the Aboriginal and treaty rights of Canada's Aboriginal peoples,

which were recognized in 1982.

There have been two major attempts since 1982 to satisfy Quebec's constitutional concerns. The Meech Lake Accord, signed in 1987 by Prime Minister Brian Mulroney and all 10 provincial premiers, would have entrenched recognition of Quebec as a distinct society in the Constitution. It also would have given provinces the right to opt out of shared-cost programs with compensation in areas of provincial jurisdiction, clarified provincial power over immigration, provided for the appointment of Supreme Court judges and senators from provincial lists, and changed the amending formula to require unanimous consent for certain institutional changes (including the creation of new provinces in the territories). Manitoba and Newfoundland failed to ratify the accord within the three-year deadline and it lapsed.

The package of constitutional reforms known as the Charlottetown Accord was negotiated in 1992. In addition to recognizing Quebec's distinct society in the preamble of the Constitution, it addressed a broad range of other issues, including redistribution of federal-provincial powers, Aboriginal self-government, Senate reform, and increased representation for the West in the House of Commons. This agreement was defeated in a national referendum.

Under the 1982 Constitution Act, a federal-provincial conference must be held by April 1997 to review the amending formula.

U.S. Customs Preclearance Coming to Ottawa

Following a recent new agreement, beginning in 1996, business travellers and tourists flying to the U.S. from Ottawa, and eventually Halifax, will be able to pass through U.S. customs and immigration before boarding.

In the past, travellers from Canada's capital had to pass through U.S. customs after landing in the U.S., sometimes necessitating detours to airports having customs facilities, or making it difficult to catch connecting flights. Airports in six other Canadian cities—Vancouver, Edmonton, Calgary, Winnipeg, Toronto and Montreal—already have pre-clearance facilities.

The two countries have also established a bilateral working group on the issue of "one-stop" preclearance for international travellers, which would allow them to pass through a Canadian airport on their way to the U.S. without having to clear Canadian customs and immigration inspection.