

Quebec Courts of Appeal ruled that while affecting provincial jurisdiction, the resolution was legal, but the Newfoundland Court of Appeal declared it illegal.

The Supreme Court of Canada was called on to settle the appeals on all three judgements. In an historical judgement on September 29, 1981, the Supreme Court ruled that while Parliament was within its legal rights to proceed alone, the constitutional resolution of the government of Canada was not in accordance with a "convention" which required a "substantial measure of provincial consent" for amendments to the BNA Act. The Court stated however that it was up to the political actors to define what was meant by "substantial provincial consent".

Following the ruling Prime Minister Trudeau convened a conference with the ten premiers in order to obtain provincial consent for the constitutional resolution. Eight of the ten premiers, who had signed an accord among themselves in April 1981, wanted a different amending formula and the dropping of the Charter of Rights from the resolution. On November 5, 1981 the government of Canada and nine provincial governments reached an agreement. The Charter of Rights was modified and a different amending formula, favoured by the provinces, was adopted.

The Quebec government was the only province that refused to sign the constitutional accord. It objected to two aspects of the Charter: one, it thought that minority language education rights would have a detrimental effect on its own linguistic policies and two, it stated that the mobility rights posed problems for the province's ability to adopt policies favouring employment of local workers in Quebec. Furthermore, Quebec Premier René Lévesque, who had signed the April accord with seven other premiers, did not support the new amending formula favoured by the other provinces. The formula only provided for the payment of compensation by the federal government in cases where a province "opted out" of (i.e. refused to accept for itself) amendments that transferred legislative powers in education and other cultural matters from the provinces to the national Parliament. The Quebec government insisted that in all instances where a province "opted out" of a transfer of legislative powers, compensation should be payable. Furthermore, the government of the province of Quebec argued that it should have a right of veto of constitutional amendments.

The historic accord between the



Left to right: former Ontario Lieutenant Governor Pauline McGibbon, Queen Elizabeth, Prince Philip and Prime Minister Trudeau attend gala at National Arts Centre.

federal and provincial governments as well as the addition of other amendments taking account of concerns raised by the Quebec government, aboriginal groups and women cleared the way for the presentation of a new resolution to Parliament. When the House of Commons and the Senate passed the resolution in December 1981, it formed the basis of a Joint Address to the Queen, asking that the British Parliament pass the Canada Act and patriate the constitution.

The resolution was first read in the British House of Commons on December 22, 1981 and received third and final reading March 8, 1982. It was then introduced into the House of Lords and was given final reading and passed March 25. The Queen's assent was signified at Westminster on March 29, exactly 115 years to the day that Queen Victoria gave her assent to the British North America Act, which created the Canadian federation.

Freedoms guaranteed

Of most importance to individual Canadians is probably the entrenchment of a Charter of Rights and Freedoms in the Canadian Constitution. Although Canadians have traditionally enjoyed extensive human rights, few of these rights were written into the Constitution. They were protected by Acts of Parliament and provincial legislatures, judicial decisions and some provisions of the BNA Act. There was however no guarantee that cer-

tain fundamental freedoms and rights could not be taken away or abused by governments. Writing the Charter into the Constitution makes it much more difficult for any government to tamper with basic human rights and freedoms. The entrenchment of a Charter of Rights also favours the rights of the citizen and limits the power of governments. It gives individuals the power to appeal to the courts if they feel their rights have been infringed or denied.

Many of the liberties spelled out in the Charter are those associated with a free society. These include fundamental freedoms (freedom of religion, thought and expression, freedom of the press, freedom to assemble and associate freely, and freedom of conscience) democratic rights (the right of every citizen to vote in an election and the rules for the duration and session of Parliament and the provincial legislatures) and legal rights (the right to be secure against unreasonable seizure or search, to be informed promptly of the reason for arrest or detention, and to be represented by a lawyer).

The Charter guarantees many rights and freedoms that will require a certain amount of adjustment and change in the laws of Canada. Equality rights, for example, ensure every citizen will be entitled to equal treatment in the law of the country and to protection against discrimination on the grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.