

denied rights and freedoms guaranteed under the Charter, it must exclude such evidence "if it is established that . . . the admission of it . . . would bring the administration of justice into disrepute."

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.

### Other rights

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, our 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 others' 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 others' 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 us, it is almost completely new, indeed revolutionary.

### Natural resources

The fourth big change made by the *Constitution Act, 1982*, gives the provinces wider powers over their natural resources. Each province will now be able to control the export, to any other part of Canada, of the primary production from its mines, oil wells, gas wells, forests and electric power plants, provided it does not discriminate against other parts of Canada in prices or supplies. But the national Parliament will still be able to legislate on these matters, and if provincial and federal laws conflict, the federal will prevail. The provinces will also be able to levy indirect taxes on their mines, oil wells, gas wells, forests and electric power plants and primary production from these sources. But such taxes must be the same for products exported to other parts of Canada and products not so exported.

All these changes, especially the amending formulas and the Charter, are immensely important. But they leave the main structure of government, and almost the whole of the division of powers between the national Parliament and the provincial legislatures, just what they were before.

### Native rights

The *Constitution Act, 1982*, makes other changes, and one of these looks very significant indeed, although how much it will really mean remains to be seen. The *BNA Act, 1867*, gave the national parliament exclusive authority over "Indians, and lands reserved for the Indians," and the courts have ruled that "Indians" includes the Inuit. Till 1982, that was all the Constitution said about the native peoples.

The Constitution now has three provisions on the subject.

First, it says that the Charter's guarantee of certain rights and freedoms "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada," including rights or freedoms recognized by the Royal Proclamation of 1763, and any rights or freedoms acquired by way of land-claims settlement.

Second: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed," and the aboriginal peoples are defined as including the Indian, Inuit and Métis peoples.

Third, the prime minister of Canada is to convene, within one year, a constitutional conference of first ministers of the provinces, which will have as one item on its agenda "constitutional matters directly affecting the aboriginal peoples . . . including the identification and definition" of their rights "to be included in the Constitution of Canada," and the prime minister is to "invite representatives of those peoples to participate in the discussions on that item."

### The principle of sharing

The *Constitution Act, 1982*, also contains a section on equalization and regional disparities. This proclaims: (1) that the national government and Parliament and the provincial governments and legislatures "are committed to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparities in opportunities, and providing essential public services of reasonable quality to all Canadians;" and (2) that the government and Parliament of Canada "are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

The 1982 act also provides that the guarantees for the English and French languages do not abrogate or derogate from any legal or customary right or privilege enjoyed by any other language, and that the Charter shall be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada."

Finally, the act provides for English and French versions of the whole written Constitution, from the act of 1867 to the act of 1982, and makes both versions equally authoritative.