

## The Canadian Charter

The Charter of Rights is now an essential fact of Canadian life. It spells out fundamental freedoms and democratic, legal, language, equality and mobility rights.

A Canadian Bill of Rights was passed by the House of Commons at the urging of Prime Minister John Diefenbaker in 1960, but it had serious limitations. It was only a law, passed by Parliament, and it could be amended, repealed or superseded by other laws. Moreover, it applied only in areas of federal jurisdiction. The Charter is entrenched. It can be amended only through the concerted action of the federal government and at least seven provinces which together have at least half the population.

It is a complex document, painfully arrived at. It was proposed by the government to the House of Commons in 1980 and then debated, amended and reshaped. The process took 267 hours.

Last November the Prime Minister and the Premiers of the provinces met to discuss the full constitutional resolution. They negotiated for three difficult days and reached accord on the fourth. The final document is not precisely what any one of the negotiators sought, but it has significant value for all.

A provincial legislature or parliament may pass laws overriding some Charter provisions. Such a law would apply only to that province and would die automatically in five years unless it was passed again.

The Charter has a short Preamble—"Whereas

Canada is founded upon principles that recognize the supremacy of God and the rule of law"—followed by thirty-four sections.

The first says that the guaranteed rights and freedoms are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free democratic society."

This means, for example, that although Canadians have an entrenched right to move in and out of Canada, a prisoner may not walk out of his prison.

The second section defines the fundamental freedoms—of conscience and religion, of thought, belief, opinion and expression, of peaceful assembly and association. The freedom of conscience means, for example, that doctors and nurses opposed to abortions need not perform them; that of association means that a government may not outlaw a political party no matter its ideology.

The third section gives every citizen the right to vote, and this will enfranchise federally appointed judges who, hitherto, could not.

The fourth section limits the maximum life of a House of Commons or a provincial assembly to five years except in time of real or apprehended war, invasion or insurrection. At those times they may be extended by two-thirds of the members plus one. The fifth section says the House of Commons and other legislatures must meet at least once every twelve months.

The sixth is of particular interest—it says that every citizen or permanent resident "has the right to enter, remain in or leave Canada." During World War II the Canadian government interned Japanese-Canadians. It could not now legally do so. This section also gives citizens and permanent



On December 2, 1981, the Prime Minister announced to a jubilant Parliament that a constitutional agreement had been reached.