

A three minute history of Canadian constitutional development

Perhaps the first written constitutional document for Canada was that promulgated when Sir Humfrye Gilbert established the first colony in Newfoundland in 1583. It was direct and to the point. 'Anyone who speaks disparagingly of the monarch,' it read, 'will have his ears cut off.'

By 1867 there were seven separate British colonies in Canada who had refused to join the American revolution. Fearing an invasion from the United States, representatives from three of these colonies asked the British Government that they be united into one nation, to be called Canada. Britain responded and in February 1867 the Earl of Caernarvon introduced the

British North America Act, the 'Act of Confederation' to an only mildly interested British parliament. History records that when the vote was taken the House was almost empty, though it filled rapidly when a debate began on a proposed dog tax.

Of the three provinces which united to become Canada, one was divided to make the two provinces of Quebec and Ontario. Canada is not strictly speaking a confederation of sovereign states but is a federal country with authority divided between the central and provincial governments. Historically, however, Canadians have referred to the creation of federal Canada as 'Confederation'.

British North America Act

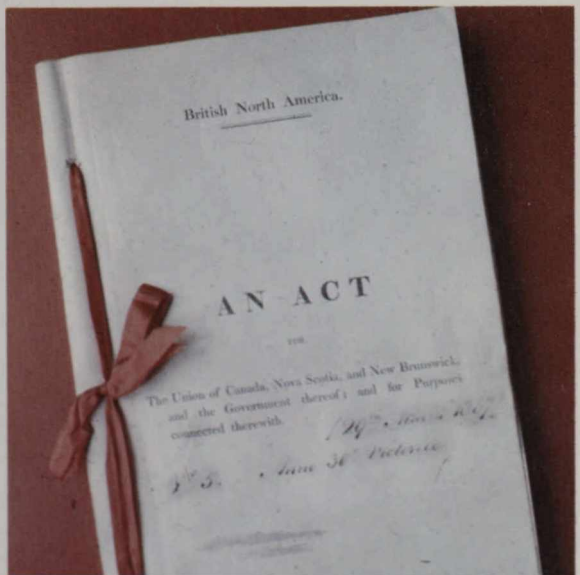
The Act which created the 'confederation' of Canada became law on July 1, 1867. It was concerned essentially with the division of powers between the central or federal government and the then four, now ten, provinces. The provinces were given few responsibilities – most notably over education and social programmes – 'small and absurd powers' one provincial leader complained. The Act made no mention of rights of individuals since these were assumed, as in Britain, to be already incorporated in common law precedents.

But the Act's most notable omission was in provision for having it altered, modernized or otherwise amended in Canada. Each time Canadians wished a change, both houses of the Canadian parliament had to send a joint request to the British parliament.

Even when the Statute of Westminster in 1931 made clear that the British parliament had no power to enact laws binding on the four dominions, ie that the dominions were completely independent countries, Canada had to request that an exception be made insofar as amending its own constitution, the British North America Act, was concerned. The reason was simple: the federal and provincial governments were unable to agree on how such amendments should be made if Canada were given the power. For example, would the agreement of none, some, or all, of the provinces be a prerequisite. 'We shall, however,' declared the Canadian prime minister of the day, 'have agreed on a formula within six months.'

In fact it was to take fifty years. Between 1931 and 1980 repeated meetings were held, which sometimes came close but never quite reached unanimous agreement. The provincial governments' share of national

economic power was increasing dramatically. Education and social programmes, the 'small and absurd powers' of 1867, consumed steadily increasing proportions of national expenditures. In 1959 the provincial governments were spending 41 percent of these expenditures but by 1979 the figure was 67 percent. Provincial barriers to the free movement of persons, goods and capital within the country were being erected. Finally in 1980 a major event convinced Prime Minister Pierre Trudeau that the time for strengthening the constitution and transferring (or 'patriating') the power to amend it to Canada had indisputably arrived.



'In the beginning...' the actual document enshrining the British North America Act. (CP photo)