

The second big change made by the *Constitution Act, 1982*, is that the first three amending formulas "entrench" certain parts of the written Constitution, that is, place them beyond the power of Parliament or any provincial legislature to touch.

For example, the monarchy cannot now be touched except with the unanimous consent of the provinces. Nor can the governor generalship, nor the lieutenant-governorships, nor the composition of the Supreme Court of Canada (nine justices, of whom three must be from Quebec; all of them appointed by the federal government and removable only by Address of the Senate and the House of Commons), nor the right of a province to at least as many members of the Commons as it has senators, nor the amending formulas themselves. On all of these, any single province can impose a veto. Matters coming under the second formula can be changed only with the consent of seven provinces with at least half the population of the ten.

The guarantees for the English and French languages in New Brunswick, Quebec and Manitoba cannot be changed except with the consent both of the provincial legislatures concerned and the Senate and House of Commons (or the Commons alone, under the 180-day provision). The guarantees for denominational schools in Newfoundland cannot be changed except with the consent of the legislature of Newfoundland; nor can the Labrador boundary.

The amending process under the first three formulas can be initiated by the Senate, or the House of Commons, or a provincial legislature. The ordinary act of Parliament required by the fourth formula can, of course, be initiated by either house.

Rights and freedoms protected

Third, the new *Constitution Act* sets out a Charter of Rights and Freedoms that neither Parliament nor any provincial legislature acting alone can change. Any such changes come under the second formula (or, where they apply only to one or more, but not all, provinces, the third formula).

The rights and freedoms guaranteed are as follows:

- (1) Democratic rights (for example, the right of every citizen to vote for the House of Commons and the provincial legislative assembly, and the right to elections at least every five years, though in time of real or apprehended war, invasion or insurrection the life of a federal or provincial house may be prolonged by a two-thirds vote of the Commons or legislative assembly).
- (2) Fundamental freedoms (conscience, thought, speech, peaceful assembly, association).
- (3) Mobility rights (to enter, remain in, or leave Canada, and to move into, and seek a living in, any province subject to certain limitations, notably to provide for "affirmative action" programs for the socially or economically disadvantaged).
- (4) Legal rights (a long list, including such things as the right to a fair, reasonably prompt, public trial by an impartial court).
- (5) Equality rights (no discrimination on grounds of race, national or ethnic origin, religion, sex, age or mental or physical disability; again, with provision for "affirmative action" programs).
- (6) Official language rights.

(7) Minority language education rights.

All these rights are "subject to such reasonable limits as can be demonstrably justified in a free and democratic society". What these limits might be, the courts will decide.

The equality rights come into force three years after the time of patriation. (This is to give time for revision of the multitude of laws, federal and provincial, which may require amendment or repeal.)

The fundamental, legal and equality rights in the Charter are subject to a "notwithstanding" clause. This allows Parliament, or a provincial legislature, to pass a law violating any of these rights (except the equality right that prohibits discrimination based on sex) simply by inserting in such law a declaration that it shall operate notwithstanding the fact that it is contrary to this or that provision of the Charter. Any such law can last only five years. But it can be re-enacted for further periods of five years. Any such legislation must apply equally to men and women.

Official languages

The official language rights make English and French the official languages of Canada for all the institutions of the government and Parliament of Canada and of the New Brunswick government and legislature. Everyone has the right to use either language in Parliament and the New Brunswick legislature. The acts of Parliament and the New Brunswick legislature, and the records and journals of both bodies must be in both languages. Either language may be used in any pleading or process in the federal and New Brunswick courts. Any member of the public has the right to communicate with the government and Parliament of Canada, and the government and legislature of New Brunswick, and to receive available services, in either language where there is "a sufficient demand" for the use of English or French or where the nature of the office makes it reasonable. The Charter confirms the existing constitutional guarantees for English and French in the legislatures and courts of Quebec and Manitoba.

The minority language education rights are twofold.

- (1) In every province, citizens of Canada with any child who has received or is receiving primary or secondary schooling in English or French have the right to have all their children receive their schooling in the same language, in minority language educational facilities provided out of public funds, where the number of children "so warrants." Also, citizens who have received their own primary schooling in Canada in English or French, and reside in a province where that language is the language of the English or French linguistic minority, have the right to have their children get their primary and secondary schooling in the language concerned, where numbers so warrant.
- (2) In every province except Quebec, citizens whose mother tongue is that of the English or French linguistic minority have the right to have their children get their primary and secondary schooling in the language concerned, where numbers so warrant. This right will be extended to Quebec only if the legislature or government of Quebec consents.

Anyone whose rights and freedoms under the Charter have been infringed or denied can apply to a court of competent jurisdiction "to obtain such remedy as the court considers appropriate and just." If the court decides that any evidence was obtained in a manner that infringed or