

# Canada has:

## □ A CONSTITUTION

*Canada is in the midst of a constitutional review which could mean great changes in government. What follows is a brief explanation of what's happening. Most of the information for this article comes from Mr. Andrew Quarry, of the political science faculty of the University of Winnipeg; and Mr. Barry Strayer, an expert on the subject in the Privy Council Office (the cabinet secretariat). As Mr. Strayer points out, "any explanation depends a lot on a political interpretation of events leading up to the review . . ."*

To say that the British Parliament has passed many laws in its years is to strain understatement. It has passed laws on railroads and laws on motorcars and laws on the sizes of bridges in London. And one of the many laws it has passed in its days is called the British North American Act of 1867.

That law created Canada as a nation, in legal terms, and gave her a constitution. Now that must be said with hasty qualification, for the BNA Act is about as close to what Americans think of as a constitution — the very motherlode of nationhood — as spaghetti is to steel cable.

Probably no country in the world can claim a constitution capable of providing its readers with a clear and complete picture of its government in static terms, much less in dynamic terms, but the BNA Act must surely rank as one of the most confounding. For example, the act attributes near dictatorial powers to the Queen's Governor General and the provincial lieutenant governors (which was far from the case even when the act was drafted), and the prime minister and cabinet are not even mentioned. It wasn't until 1947 that the Supreme Court of Canada became the land's final court in civil and criminal cases, and—perhaps the most troublesome shortcoming—there is no comprehensive provision in the act to allow Canadians themselves to amend it in such basic areas as the distribution of powers between federal government and provinces.

While it has long been felt, especially by the politically active, that this power should be in Canada, there never has been agreement on how to do it. For one thing, creating an amendment mechanism implies such a substantial change in the character of the constitution that it triggers

pressure for other changes involving money, culture, and civil rights (which has nowhere near as fundamental a place in the BNA Act as in the American constitution.) None of these issues is non-controversial.

For openers, any change made according to the book calls for one last act of the British Parliament, and many Canadians think it best not to ask the UK to do anything and to simply assert Canadian authority. This was one of the reasons why an attempt to get an amending procedure founded in 1964.

From the general public, however, these questions have traditionally drawn a yawn, because for most of the public the BNA Act has served well enough.

But 1967 was Canada's centennial year. There was a good deal of good will abroad in the country, a resurgence of national pride, and a growing feeling that time may be running out on the BNA Act arrangement. The province of Quebec, for example, had been discontented for some time and attributed some of its problems to the constitution.

In November, 1967, John Robarts, premier of Ontario, invited the premiers and prime ministers of the other provinces to discuss in a general way "the Confederation of Tomorrow." Shortly after this, a Constitutional Conference, convened by the Federal Government, decided that a constitutional review would be held. The conference became an entity in itself, a "continuing committee of officials on the constitution." It divided the constitution into eight categories and began holding conferences. There have been six so far—three public with live TV and three closed sessions.

Typical questions which have been raised are on now powers should be divided on such issues as taxes, social security, air and water pollution, and federal spending power. Its spending power, for example, gives the Federal Government the power to spend money on programs the provinces can't control. Some provinces, especially Quebec, have argued that by offering to spend money on a program like medicare, the government forces a province to go into it. In the constitutional conference, the Federal Government has suggested that there be concensus among the provinces on such spending, and a province that didn't want