

four documents: thirteen acts of the British Parliament, seven of the Canadian, and four British Orders-in-Council.

The core of the collection is still the act of 1867. This, with the amendments added to it down to the end of 1981, did twelve things.

First, it created the federation, the provinces, the territories, the national Parliament, the provincial legislatures and some provincial cabinets.

Second, it gave the national Parliament power to create new provinces out of the territories, and also the power to change provincial boundaries with the consent of the provinces concerned.

Third, it set out the power of Parliament and of the provincial legislatures.

Fourth, it vested the formal executive power in the Queen, and created the Queen's Privy Council for Canada (the legal basis for the federal cabinet).

Fifth, it gave Parliament power to set up a Supreme Court of Canada (which it did, in 1875).

Sixth, it guaranteed certain limited rights equally to the English and French languages in the federal Parliament and courts and in the legislatures and courts of Quebec and Manitoba.

Seventh, it guaranteed separate schools for the Protestant and Roman Catholic minorities in Quebec and Ontario. It also guaranteed separate schools in any other province where they existed by law in 1867, or were set up by any provincial law after 1867. There were special provisions for Manitoba (created in 1870), which proved ineffective; more limited guarantees for Alberta and Saskatchewan (created in 1905); and for Newfoundland (which came into Confederation in 1949) a guarantee of separate schools for a variety of Christian denominations.

Eighth, it guaranteed Quebec's distinctive civil law.

Ninth, it gave Parliament power to assume the jurisdiction over property and civil rights, or any part of such jurisdiction, in the other provinces, provided the provincial legislatures consented. This power has never been used.

Tenth, it prohibited provincial tariffs.

Eleventh, it gave the provincial legislatures the power to amend the provincial constitutions, except as regards the office of Lieutenant-Governor.

Twelfth, it gave the national government (the Governor General-in-Council, that is, the federal cabinet) certain controls over the provinces: appointment, instruction and dismissal of Lieutenant-Governors (two have been dismissed); disallowance of provincial acts within one year after their passing (112 have been disallowed — the last in 1943 — from every province except Prince Edward Island and Newfoundland); power of Lieutenant-Governors to send provincial bills to Ottawa, unassented to (in which case they do not go into effect unless the central executive assents within one year; of seventy such bills, the last in 1961, from every province but Newfoundland, only fourteen have gone into effect).

These are the main things the written Constitution did as it stood at the end of 1981.

The final British act of 1982, the *Canada Act*, as we have seen, provided for the termination of the British Parliament's power over Canada and for the "patriation" of our Constitution. Under the terms of the *Canada Act*, the *Constitution Act, 1982*, was proclaimed in Canada and "patriation" was achieved.

Under the *Constitution Act, 1982*, the *British North*

*America Act* and its various amendments (1871, 1886, 1907, 1915, 1930, 1940, 1960, 1964, 1965, 1974, 1975) became the *Constitution Act, 1867-1975*.

### The major changes

More important, it made four big changes in our Constitution.

First, it established four legal formulas or processes for amending the Constitution. Till 1982, there had never been any legal amending formula (except for a narrowly limited power given to the national Parliament in 1949, a power now superseded).

The first formula covers amendments dealing with the office of the Queen, the Governor General, the Lieutenant-Governors, the right of a province to at least as many seats in the House of Commons as it has in the Senate, the use of the English and French languages (except amendments applying only to a single province), the composition of the Supreme Court of Canada, and amendments to the amending formulas themselves.

Amendments of these kinds must be passed by the Senate and the House of Commons (or by the Commons alone, if the Senate has not approved the proposal within 180 days after the Commons has done so), and by the legislature of every province. This gives every single province a veto.

The second formula covers amendments taking away any rights, powers or privileges of provincial governments or legislatures; dealing with the proportionate representation of the provinces in the House of Commons; the powers of the Senate and the method of selecting Senators; the number of Senators for each province, and their residence qualifications; the constitutional position of the Supreme Court of Canada (except its composition, which comes under the first formula); the extension of existing provinces into the territories; the creation of new provinces; generally, the Canadian Charter of Rights and Freedoms (which is dealt with later).

Such amendments must be passed by the Senate and the House of Commons (or, again, the Commons alone if the Senate delays more than 180 days), and by the legislatures of two-thirds of the provinces with at least half the total population of all the provinces.

Any province can, by resolution of its legislature, opt out of any amendment passed under this formula that takes away any of its powers, rights or privileges; and if the amendment it opts out of transfers powers over education or other cultural matters to the national Parliament, Parliament must pay the province "reasonable compensation."

The third formula covers amendments dealing with matters that apply only to one province, or to several but not all provinces. Such amendments must be passed by the Senate and the House of Commons (or the Commons alone, if the Senate delays more than 180 days), and by the legislature or legislatures of the particular province or provinces concerned. Such amendments include any changes in provincial boundaries, or changes relating to the use of the English or French language in a particular province or provinces.

The fourth formula covers changes in the executive government of Canada or in the Senate and House of Commons (other than those covered by the first two formulas). These amendments can be made by an ordinary act of the Parliament of Canada.