

REFERENCE PAPERS



INFORMATION DIVISION

DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA - CANADA

No. 70

THE CONSTITUTION AND GOVERNMENT

(Revised
June 1964)

OF CANADA

I The Constitution of Canada

In 1867 the British North America Act united the British North American provinces of Canada, New Brunswick and Nova Scotia in one country known as Canada. The new state was originally composed of four provinces - Ontario, Quebec, New Brunswick and Nova Scotia. Manitoba was admitted to the union in 1870, British Columbia in 1871 and Prince Edward Island in 1873. The Provinces of Saskatchewan and Alberta were formed in 1905. In 1949 Newfoundland joined the Canadian federation. At present, therefore, Canada consists of ten provinces and several territories, known as the Yukon Territory and the Northwest Territories, which are not included in any of the provinces.

The British North America Act of 1867 established a complicated division of legislative and executive authority between Canada on the one hand and the several provinces on the other. Judicial authority was not similarly divided, provincial and federal courts having jurisdiction with respect to both federal and provincial laws.

While the British North America Act of 1867, together with its subsequent amendments, is popularly regarded as the Constitution of Canada, it is not an exhaustive statement of the laws and rules by which Canada is governed. The Constitution of Canada in its broadest sense includes other statutes of the British Parliament (e.g., the Statute of Westminster, 1931), statutes of the Parliament of Canada relating to such matters as the succession to the Throne, the demise of the Crown, the Governor General, the Senate, the House of Commons, electoral districts, elections, royal style of titles, and also statutes of provincial legislatures relating to provincial government and provincial legislative assemblies. Other written instruments, such as the Royal Proclamation of 1763, the offices of governors and governors general, and orders in council passed pursuant to the British North America Act, also form part of the Canadian constitutional system. In addition, the Constitution of Canada includes well-established usages and conventions. The preamble to the British North America Act states that it was the desire of the original provinces to be united "with a constitution similar in principle to that of the United Kingdom" and accordingly many of the usages and conventions of government that have been developed in Britain over the centuries are followed in Canada. For example, the Cabinet system of responsible government as developed in Britain obtains in Canada, although no mention thereof is made in the British North America Act.

No provision was made in the British North America Act, 1867, for amendment thereof by any legislative authority in Canada, but both the Parliament of Canada and the provincial legislatures were given legislative jurisdiction with respect to some matters relating to government. Thus, for example, the Parliament of Canada was given jurisdiction with respect to the establishment of electoral districts and election laws, and the privileges and immunities of members of the House of Commons and the Senate, and each