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THE CONSTITUTION AND GOVERNMENT OF CANADA

I The Constitution of Canada

In 1867 the British North American 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 out of the old Northwest Territories of Canada. In 1949 Newfoundland, a separate Dominion that had, since 1934, been under the control of a Commission appointed by the British Government, was admitted to the Canadian federation. At present, Canada consists of ten provinces and two territories. The latter are known as the Yukon Territory and the Northwest Territories, and do not form a part of any of the provinces.

The British North America Act of 1867 (30 & 31 Vict., c.3 (U.K.)) established a division of legislative and correlative executive authority between the Parliament of Canada, on the one hand, and the legislatures of the several provinces, on the other. The division of judicial authority between these entities is such that provincially and federally constituted courts frequently have jurisdiction with respect to both federal and provincial laws.

While the B.N.A. Act, with its amendments, is popularly regarded as the Constitution of Canada, it is not, in fact, an exhaustive statement of the laws and rules by which Canada is governed. The Constitution of Canada, in the broadest sense, includes, *inter alia*, other British statutes (such as the Statute of Westminster, 1931) and Orders-in-Council (notably those admitting various provinces and territories into the federation). Included as well are the succession to the Throne, the royal style and titles, the Governor General, the Senate, the House of Commons, the creation of courts, the establishment of government departments, the franchise and elections, as well as statutes of provincial legislatures of a fundamental constitutional nature similar to those mentioned above. Other written instruments, such as the Royal Proclamation of 1763, the letters patent of October 1, 1947, constituting the office of Governor General of Canada, the commissions of Governors General, and

federal and provincial Orders-in-Council authorized by their respective statutes, provide further constitutional material, as do the decisions of the courts that interpret the B.N.A. Acts and other statutes of a constitutional nature.

In addition, the Constitution of Canada includes substantial sections of the common law, unwritten constitutional usages and conventions and principles of representative and responsible government. The preamble to the B.N.A. 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"; accordingly, many of the usages and conventions of government that had been developed in Britain have thrived and are evolving in the Canadian context. For example, among such usages are the principles that govern the Canadian Cabinet system of responsible government, with its close identification and functioning of executive and legislative branches.

No provision was made in the B.N.A. Act, 1867, for its amendment by any legislative authority in Canada, though the Parliament of Canada and the provincial legislatures were given legislative jurisdiction to amend or affect certain of the forms, rights and structures of their respective governments. Thus, for example, the Parliament of Canada was given jurisdiction with respect to the establishment of electoral districts and federal election laws, and the privileges and immunities of members of the House of Commons and the Senate, and each provincial legislature was empowered to amend the constitution of its province except as regarded the office of lieutenant-governor. An amendment to the B.N.A. Act passed in 1949 considerably enlarged the authority of the Parliament of Canada to legislate with respect to constitutional matters; it may now amend the Constitution of Canada except as regards the legislative authority of the provinces, the rights and privileges of provincial legislatures or governments, the constitutional rights and privileges of any class of persons with respect to schools, the use of English or French, the requirement for a session of Parliament at least once a year, and, generally, the maximum five-year life of each Parliament. Though the search for a satisfactory procedure for amending the Constitution wholly within Canada has been the subject of repeated consideration in Canada, in the absence of full agreement by the federal and provincial governments the residual power to amend the B.N.A. Act continues to be exercised by the British Parliament at the request of the Government of Canada.

Canada's status in the Commonwealth

The several stages in the development of the international status of Canada have been authoritatively described in the reports of

successive Imperial Conferences from 1887 to 1930. The Imperial Conference held at London in 1926 defined the self-governing communities of the United Kingdom and the Dominions as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations". That Conference also recognized that, as a consequence of this equality of status, the Governor General of a Dominion "is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain", and that "it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs". Simultaneously with this change in the constitutional relation between the several parts of the British Commonwealth of Nations, there developed, as a complementary aspect of nationhood, the assumption by the several Dominions of the further responsibilities and rights of sovereign states in their relations with other members of the community of nations. Membership in the League of Nations and, more recently, in the United Nations, the exercise of treaty-making powers and the establishment of separate diplomatic representation in a number of foreign countries have characterized this phase in the growth of Canada. More explicit recognition of the implications of the principles of equality of status was accorded in the Statute of Westminster of 1931, which, with one exception, provided for the removal of the remaining limitations on the legislative autonomy of the Commonwealth nations. (That exception, discussed above, was a clause inserted at the request of Canada in order that the whole B.N.A. Act should not be amendable by an ordinary Act of the Parliament of Canada.)

Thus Canada, under the Crown, has equality of status with Britain and the other Commonwealth nations in both domestic and foreign affairs, and has long taken an independent place in international forums.

II The Government of Canada

1. The Federal Government

In Canada, there is a fusion of the executive and legislative powers as in Britain. Formal executive power in Canada is vested in the Queen, whose authority is delegated to her representative, the Governor General. Legislative power is vested in the Parliament of Canada, which consists of the Queen, an appointed upper house,

called the Senate, and a lower house, called the House of Commons, elected by universal adult suffrage. The independence of the judiciary is safeguarded through the constitutional provision that superior court judges cannot be removed from office unless both Houses of Parliament and the Governor General agree.

The Executive

The Crown

A Canadian scholar has described the Crown as "that institution which is possessed of the sum total of executive rights and powers, exercised by the sovereign, by the individual or collective action of his or her ministers, or by subordinate authorities....the supreme executive authority which may become manifest through a number of outlets". The British North America Act states that "the Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen". However, as we have seen, it was intended by the Fathers of Confederation that Canada should have "...a constitution similar in principle to that of the United Kingdom...", and thus that the vital unwritten portion of the constitution -- the practice of responsible cabinet government and the common-law definitions of the scope of executive authority -- should obtain in Canada. Thus the Government of Canada remains vested in the Queen but is in practice carried on, almost without exception, through the authorization of her constitutional advisers, the Cabinet -- who are, of course, always accountable to Parliament.

A few Canadian prerogative powers -- that is, certain of the remainders of discretionary authority legally left in the hands of the Crown -- are dealt with by the Queen personally, such as the granting of honours and awards and the formal appointment and recall of ambassadors and ministers plenipotentiary. Most such acts are, however, performed on her behalf by the Governor General and, in either case, the prerogative power is exercised on the advice of the Government of Canada, in accordance with established principles of responsible government.

Apart from her constitutional position as head of state of some of the Commonwealth countries, the Queen is also head of the Commonwealth and symbolizes the association of the member countries. Until 1953, the title of the Queen was the same throughout the Commonwealth. However, constitutional developments in some member countries meant that the title was somewhat out of accord with the facts, and in December 1952 it was decided by the prime ministers of the Commonwealth countries, meeting in London, to establish new forms of title

for each country. The title for Canada was approved by Parliament and established by a royal proclamation on May 29, 1953. The title of the Queen, so far as Canada is concerned, now is:

> "Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith."

The Governor General

The Governor General is the personal representative in Canada of the sovereign, by whom he is appointed on the recommendation of the Prime Minister of Canada. As of October 1, 1947, the Governor General, acting on the advice of Cabinet, may legally exercise all of the Sovereign's powers and authorities in respect of Canada, though certain functions continue, in practice, to be exercised by the Crown in Britain on Canadian advice. The Governor General is, by virtue of his office, vested through the Queen with command of the Canadian Armed Forces.

The Queen, the Senate and the House of Commons constitute the Parliament of Canada. The Queen, normally represented by the Governor General, must give assent to all enactments passed by the Senate and the House of Commons before they can become law. This and other statutory powers given to the Governor General must again be read in conjunction with the long-established doctrine of responsible government; these powers are, in practice, exercised only by and with the advice of the Cabinet or any of its members. In practice, royal assent to the enactments of the Houses of Parliament is always given.

Acting on the recommendations of the Prime Minister, the Governor General may summon, prorogue and dissolve Parliament, appoint the Speaker of the Senate, and perform other functions. There is also a group of functions that form a part of the prerogative powers but, unlike some other powers of the same origin, have continued to be closely identified with the Governor General as a person and have not been brought under Cabinet control. In particular, these duties include ensuring that there is always a Prime Minister and a responsible Cabinet in office, through the exercise of the power to appoint a Prime Minister, the right to refuse to grant a dissolution of Parliament and the right to dismiss a Government. The Governor General's discretion in exercising these powers is, however, closely regulated by previous usage and the counsel of constitutional doctrine, and rarely involves more than the formal recognition of an existing situation. A third group of functions of the Governor

General comprises the ceremonial duties of a head of state and the patronage of worthy endeavours and fields of Canadian activity.

In the event of the death or incapacity or, generally, the absence from Canada of the Governor General, the powers and authorities granted to him are vested in the Chief Justice of Canada as "Administrator". In the event of the latter's death, incapacity, removal or absence, the powers are vested in the Senior Judge for the time being of the Supreme Court of Canada.

The Governor in Council and the Privy Council

The B.N.A. Act, 1867, provided that the Queen's Privy Council for Canada should be constituted to aid and advise in the Government of Canada. This Council is composed of members who are appointed and sworn in by the Governor General on the advice of the Prime Minister, and who generally retain their membership for life. The Council consists chiefly of present and former ministers of the Crown. The Privy Council does not meet as a functioning body, and its constitutional responsibilities as adviser to the Crown are performed exclusively by those ministers who constitute the Cabinet of the day. In this fashion, Council and Cabinet are two aspects of the same constitutional organism. In practice most of the executive powers exercised by the Governor General in Council, such as the making of Orders-in-Council, are performed by Cabinet resolving itself into a Committee of Council. The resulting Orders-in-Council are then signed by the Governor General.

The Cabinet

The Cabinet consists of those Privy Councillors whom the Prime Minister invites to its meetings. In practice, this means the heads of all Federal Government departments and ministries, and also a few ministers of state without departments or ministries. By custom, all ministers must have a seat in one House or the other (essentially in the "Commons"), or get one within a reasonable time, so as to ensure accountability to Parliament.

The Cabinet forms a link between the Governor General and the Parliament. It is, for virtually all purposes, the real executive. The Cabinet's primary responsibility in the Canadian political system is to determine priorities among the demands expressed by the people (or discerned by the Government) and to define policies to meet those demands. The Cabinet is responsible for the administration of all Government departments, prepares by far the greater part of the legislative program of Parliament, and exercises substantial control over all matters of finance -- subject to Parliamentary approval of

the expenditure of public funds.

Each minister of a department is answerable to the House of Commons for that department, and the whole Cabinet is similarly answerable for Government policy and administration generally. When the Government loses the confidence of the House of Commons, it may either resign, in which case the Governor General may call upon the Leader of the Opposition to form a Government, or the Prime Minister may request the Governor General to dissolve Parliament and call a general election. If, in the subsequent election, the former Opposition is returned with sufficient support to secure the confidence of the new "House", the Governor General will in all probability ask its leader to form the new Government.

The Prime Minister

The Prime Minister is that leader of a political party who has been requested by the Governor General to form the Government, which invitation almost always means that he is the leader of the party with the strongest representation in the House of Commons. The Prime Minister chooses his Cabinet and recommends their appointment by the Governor General. When a Prime Minister vacates his office, this act normally carries with it the resignation of all those in the Cabinet, though when a member of Cabinet alone resigns the remainder of the Cabinet is undisturbed.

One source of the authority of the Prime Minister lies in his prerogative to recommend the dissolution of Parliament. This prerogative, which in most circumstances permits him to precipitate an election, is a source of considerable power both in his dealings with his colleagues and with the other parties in the House of Commons.

Another source of the Prime Minister's authority derives from the appointments he recommends, including Privy Councillors, Cabinet Ministers, Lieutenant-Governors of the provinces, Speakers of the Senate, Chief Justices of all federally-appointed courts, Senators, and certain senior executives of the Public Service. The Prime Minister also recommends the appointment of a new Governor General to the Sovereign, although this normally follows consultation with his Cabinet.

The Legislature

Parliament

The federal legislative authority is vested in the Parliament of

Canada, consisting of the Queen, an Upper House styled the Senate and a Lower House known as the House of Commons. Bills may originate in either the Senate or the Commons, subject to the provisions of Section 53 of the British North America Act, 1867, which provides that bills for the appropriation of any part of the public revenue or the imposition of any tax or impost shall originate in the House of Commons. Bills must pass both Houses and receive royal assent before becoming law. In practice, most public bills (whether introduced by the Government or a private member) originate in the House of Commons, although there has been a marked increase recently in the introduction of public bills in the Senate. Private bills -- that is, legislation having a private effect and purpose, such as the incorporation of corporations with Dominion objects -- usually originate in the Senate.

Under Section 91 of the British North America Act, as amended, the legislative authority of the Parliament of Canada extends to the making of laws for the "Peace, Order and good Government of Canada". It includes authority to legislate in respect to:

1) the amendment of the Constitution of Canada, subject to certain exceptions;
1a) the public debt and property;
2) the regulation of trade and commerce;
2a) unemployment insurance;
3) the raising of money by any mode or system of taxation;
4) the borrowing of money on the public credit;
5) postal service;
6) the census and statistics;
7) militia, military and naval service, and defence;
8) the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada;
9) beacons, buoys, lighthouses, and Sable Island;
10) navigation and shipping;
11) quarantine and the establishment and maintenance of marine hospitals;
12) seacoast and inland fisheries;
13) ferries between a province and any country or between two provinces;
14) currency and coinage;
15) banking, incorporation of banks, and the issue of paper money;
16) savings banks;
17) weights and measures;
18) bills of exchange and promissory notes;
19) interest;
20) legal tender;
21) bankruptcy and insolvency;

22) patents of invention and discovery;
23) copyrights;
24) Indians, and lands reserved for the Indians (Eskimos are included);
25) naturalization and aliens;
26) marriage and divorce;
27) the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters;
28) the establishment, maintenance and management of penitentiaries;
29) steamship lines, railways, ships, canals, telegraphs and other works and undertakings extending beyond the limits of a province, and other works declared by the Parliament of Canada to be for the general advantage of Canada.

In addition, under Section 95 of the B.N.A. Act, 1867, the Parliament of Canada may make laws relating to agriculture and immigration concurrently with provincial legislatures, although, in the event of conflict, federal legislation is paramount. By the B.N.A. Act, 1951 (14-15 Geo. VI, c.32 (U.K.)), as amended in 1964 (12-13 Eliz. II, c. 73 (U.K.)), it was declared that the Parliament of Canada might make laws in relation to old-age pensions and supplementary benefits in Canada, but that no such law should affect the operation of any provincial laws in relation to these matters.

The Senate

Much debate occurred in 1867 over the composition and the powers of the Senate because its establishment was at that time considered to be a very important balancing mechanism in the new federal system. It was intended to offset the influence of the newly-created central institutions by the creation at the national level of a legislative body composed of members appointed on a regional basis. In this way a legislative body was established to protect the interests of the provincials in matters under federal jurisdiction, with a distribution of members intended to assure Quebec and the smaller provinces that, in the exercise of that jurisdiction, their interests would have a minimum weight beyond that which the size of their population would otherwise give them.

Senators are appointed by the Governor General, who acts on the recommendation of the Prime Minister. In 1965, a mandatory retirement age of 75 was set. Bill C-3, which recently received royal assent, has increased Senate membership from 102 to 104. The previous allocation of seats had been 24 each to Ontario, Quebec, the four Western provinces as a group and the three Maritime Provinces as a group, with six seats allotted to Newfoundland. The two new Senators will

represent the Yukon and the Northwest Territories.

The B.N.A. Act gives the Senate exactly the same powers as the House of Commons, except that money bills must originate in the Commons.

The House of Commons

In 1867, pursuant to Section 37 of the B.N.A. Act, it was provided that the House of Commons should consist of 181 members. The Act provided in Section 51 that Quebec should have a fixed number of 65 members and that each of the other provinces should be assigned such a number of members as would bear the same proportion to its population as the number 65 bore to the population of Quebec. This Act also provided that, on completion of a census in 1871 and after each subsequent decennial census, the representation of the provinces should be readjusted, provided that the proportionate representation of the provinces fixed by the Act remained undisturbed. Membership in the House of Commons was accordingly increased from time to time, until it reached 255.

As a result of some dissatisfaction with the manner in which these provisions of the B.N.A. Act relating to representation had failed to maintain equitably the proportionate representation of the provinces, the original Section 51 was repealed in 1946, and new sections were substituted in 1946, 1952 and finally in 1974-75. In the interim, as a result of the union of Newfoundland with Canada in 1949, provision was made for the Province of Newfoundland to be represented by seven members in the House of Commons (B.N.A. Act, 1949, 12-13 Geo. VI, c.22 (U.K.)). Also, in the 1952 revision of Section 51, a provision was introduced in an effort to eliminate sharp reductions in provincial representation from one census to another.

These provision have been incorporated in the Representation Act, 1974 (23 Eliz. II, c.13), which substituted a new Subsection 51(1) of the British North America Act, to be cited as the B.N.A. Act (No. 2), 1974. The new Subsection 51(1) establishes a complicated set of rules and protective exceptions that centre largely round the idea of an assignment to Quebec of a fixed number of members (initially 75, but to be increased by four additional members in each subsequent decennial readjustment), and the fixing thereby of an electoral quotient for the purpose of fixing the representation of the other provinces. The provisions of the new Subsection 51(1) continue to take into account the effect of Section 51A, added by the B.N.A. Act, 1915 (5-6 Geo. V, c.45 (U.K.)). That section provides that, notwithstanding any of the representation rules, "a pro-

vince shall always be entitled to a number of members in the House of Commons not less than the number of Senators representing such province". This ensures a minimum representation for small provinces, and at present assists both Prince Edward Island and New Brunswick in maintaining a representation of four and ten members respectively.

A further change in representation was assented to on March 13, 1975, when the Northwest Territories Representation Act was approved. Pursuant to Part I of that Act, to be cited as the B.N.A. Act, 1975, Subsection 51(2) was revised to provide for representation of the Yukon Territory by one member and the Northwest Territories by two members.

Pursuant to the rules of Subsections 51(1) and 51(2), membership in the House of Commons is now to be 282. This number will be realized upon the completion of the work of electoral boundaries readjustment and a subsequent federal election. For the moment, there are 264 members of the House of Commons.

The Opposition

The Opposition occupies an essential place in constitutions based on the British Parliamentary system. In the same way as other institutions, such as a responsible Cabinet, the Opposition has seen its role shaped by unwritten customs that have been accepted and become firmly established in Canada.

The Canadian electorate not only determines who shall govern Canada but, by deciding which party receives the second-largest number of seats in the House of Commons, it designates which of the major parties becomes the Official Opposition, the leader of which is described as the Leader of the Opposition.

Although the position of Leader of the Opposition is not recognized in the British North America Act, it received statutory acknowledgment in Canada in 1927. The Senate and House of Commons Act of that year provided for an annual salary to be paid to the Leader of the Opposition in addition to his indemnity as a Member of the House. In 1963, the Senate and the House of Commons Act was further amended to provide for an annual allowance to each Member of the House of Commons (other than the Prime Minister or Leader of the Opposition) who is the leader of a political party that is represented by 12 or more Members in the House.

The function of parliamentary opposition is to offer constructive criticism of the Government of the day, to ensure that Government

proposals are carefully reviewed before they pass into law, to ensure the accountability of the Cabinet for executive policies and activities, and to suggest alternative policies for the governing of Canadians.

The final objective of the Opposition is a majority of seats in the House of Commons; and while this can rarely be obtained by the direct alienation of Government supporters, it could occur as the result of a following general election.

The Federal Government franchise

The present franchise laws are contained in the Canada Elections Act (RSC 1970, c.C-14 (1st Supp), as amended by S.C. 1973-74, c.51). the franchise is conferred upon every man and woman who has attained the age of 18 years, is a Canadian citizen, and is ordinarily resident in an electoral district on the enumeration date for the election. Formerly every British subject, other than a Canadian citizen, who was qualified as an elector on June 25, 1968, and had not, since that date, ceased to be ordinarily resident in Canada, also had a right to vote in federal elections. This special right terminated on June 26, 1975.

Persons who are not qualified to vote at a federal election are:

(a) the Chief Electoral Officer;
(b) the Assistant Chief Electoral Officer;
(c) the returning officer for each electoral district during his term of office, except when there is an equality of votes on a recount;
(d) every judge appointed by the Governor in Council;
(e) every person undergoing punishment as an inmate in any penal institution for the commission of any offence;
(f) every person who is restrained of his liberty of movement or deprived of the management of his property by reason of mental disease; and
(g) every person who is disqualified from voting under any law relating to the disqualification of electors for corrupt or illegal practices.

2. The provincial and territorial governments

A cabinet system of government responsible to the legislature exists in the provinces in the same manner as at the federal level.

The executives

By Section 58 of the B.N.A. Act, 1867, for each of the provinces a lieutenant-governor is appointed by the Governor General in Council. On appointment he is issued a commission, which authorizes him to perform and execute his several functions according to the provisions of the B.N.A. Act, 1867, and "of all other statutes in that behalf...according to such instructions as are herewith given to you and hereunto annexed or which may from time to time be given to you...under the Sign Manual of our Governor General of our Dominion of Canada, or by order of our Privy Council for Canada". A general form of instructions was prepared in 1892 to be given thereafter to lieutenant-governors of the several provinces at the time of their appointment.

Whatever obscurity may at one time have prevailed as to the position of a lieutenant-governor appointed on behalf of the Crown by the Governor General was dispelled by the judicial decision in the case entitled *Liquidators of the Maritime Bank of Canada v. The Receiver General of New Brunswick* /1892/ A.C. 437. That decision established the proposition that the lieutenant-governor of each province of Canada represented the Queen in the exercise of her prerogative as to all matters within the exclusive jurisdiction of the province. Thus the lieutenant-governor may exercise the prerogative powers of his office subject to the limitations contained in his commission or instructions or the terms of any relevant statute, and the exercise of executive authority in substance follows the distribution under the B.N.A. Acts of legislative powers.

The lieutenant-governor as the head of the executive government of a province and as a constituent branch of each provincial legislature acts in two capacities:

(a) as the representative of the Sovereign for all purposes of provincial government;
(b) as a federal officer in respect of the discharge of certain of his functions. (Originally this was particularly so with respect to the duty, whenever a bill passed by the provincial legislature is presented to him for the royal assent, to declare, according to his discretion, but subject to the provisions of the B.N.A. Act and to the Governor General's instructions, either that he assents thereto in the Governor General's name or that he withholds the Governor General's assent or that he reserves the bill for the signification of the Governor General's pleasure.)

While it was thought, at the time of Confederation, that thus,

particularly with respect to the latter capacity, the Dominion would have an agent and a spokesman in each province, the anticipated federal influence has, in fact, proved in the long run to be of little consequence. It is recognized, and has indeed been affirmed by the Governor General in Council, that, in the matter of assenting to or withholding assent to a bill passed by a provincial legislature, the authority of the Crown should be exercised and administered in conformity with the settled constitutional principles of responsible government.

Thus the machinery of government is substantially the same in each province as that of the Federal Government. The formal powers of the lieutenant-governor must again be read in conjunction with the long-established doctrine of responsible government; these powers are in practice exercised only by and with the advice of a provincial cabinet, which is responsible to the legislature and resigns office when it ceases to enjoy the confidence of that body.

In the same manner as has been described for the federal level, there is for each province a "first minister", or premier, who is the leader of a political party, who has been requested by the lieutenant-governor to form the government. The premier chooses his cabinet and, with them, forms the real executive of the province, determining priorities, defining policies, and initiating most public legislation within provincial competence.

The legislatures

The legislatures of all of the provinces are unicameral, consisting of the lieutenant-governor and an elected legislative assembly. Two provinces originally had bicameral legislatures. Prince Edward Island had a legislature consisting of two houses, known as the Executive Council and the Legislative Council, but in 1893 the province combined both in a single Legislative Assembly. The same consolidation occurred in 1968 in Quebec, where the appointed Legislative Council and the elected Legislative Assembly were replaced by the National Assembly, which is an elected body.

The maximum duration of an elected legislative assembly was originally fixed by the British North America Act, 1867, at four years, but Ontario and Quebec have enacted legislation permitting a five-year maximum term in those provinces. Of course, a legislature may be dissolved earlier by the lieutenant-governor of a province on the advice of the premier, in the same way as the House of Commons of Canada may be dissolved.

The source of legislative authority for the provincial legislatures is the British North America Act, 1867, as amended. Under Section

92 of the Act, the legislature of each province may make laws exclusively in relation to the following matters:

1) the amendment of the constitution of the province except as regards the office of the lieutenant-governor;

2) direct taxation within the province in order to raise revenue for provincial purposes;

3) the borrowing of money on the credit of the province;

4) the establishment and tenure of provincial offices and the appointment and payment of provincial officers;

5) the management and sale of the public lands belonging to the province and of the timber and wood thereon (and pursuant to Section 109 of the Act, all lands, mines, minerals and royalties belong to the provinces as well);

6) the establishment, maintenance and management of public and reformatory prisons in and for the province;

7) the establishment, maintenance and management of hospitals, asylums and charitable institutions in and for the province, other than marine hospitals;

8) municipal institutions in the province;

9) shop, tavern and other licences issued for the raising of provincial, local or municipal revenue;

10) local works and undertakings, other than those expressly within federal jurisdiction;

11) the incorporation of companies with provincial objects;

12) the solemnization of marriage in the province;

13) property and civil rights in the province;

14) the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts;

15) the imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any

matter coming within any of the classes of subject enumerated in this section; and

16) generally all matters of a merely local or private nature in the province and not enumerated in Section 91 as a matter coming under federal jurisdiction.

Furthermore, in and for each province the legislature may, under Section 93, make laws exclusively in relation to education, subject to certain restrictions relating to rights or privileges held by certain religious denominations with respect to schools.

As has been noted in the discussion of federal legislative jurisdiction, the provinces share powers of legislation respecting agriculture and immigration, and have an overriding legislative jurisdiction with respect to old-age pensions and supplementary benefits.

Provincial franchise

Any man or woman who fulfils age, residency or domiciliary requirements, is a Canadian citizen (or, in some provinces, any British subject), and is not otherwise disqualified is, generally speaking, qualified to vote in a provincial election. A majority of the provinces (Alberta, Manitoba, New Brunswick, Ontario, Prince Edward Island, Quebec and Saskatchewan) have fixed their ages of majority, and thus their voting age, at 18. The other three provinces (British Columbia, Newfoundland and Nova Scotia) have chosen the age of 19.

The territories

The lands at present encompassed by the Northwest Territories and the Yukon were lands -- either British possessions or British lands granted to the Hudson's Bay Company -- that were, by virtue of a series of Acts and Orders-in-Council from 1868 to 1880, admitted into the union and became part of the Dominion. In 1897, the judicial district of the Yukon was set apart from the Territories, and in 1898 by an Act of Parliament the Yukon was constituted and declared to be a separate territory. Other portions of the old Northwest Territories were formed into and/or added to the provinces of Quebec, Ontario, Manitoba, Saskatchewan and Alberta by virtue of legislation in the period 1870-1912.

The Northwest Territories

The Northwest Territories at present comprise:

(a) all that part of Canada north of the 60th Parallel of North

Latitude, except the portions that are within the Yukon Territory, the Province of Quebec or the Province of Newfoundland, and,

(b) the islands in Hudson Bay, James Bay and Ungava Bay, except those islands that are within the Provinces of Ontario, Manitoba or Quebec.

The Northwest Territories are constituted under an Act of Parliament, which provides for a chief executive officer known as the Commissioner of the Northwest Territories to be appointed by the Governor in Council. The Commission administers the territorial government under instructions given from time to time by the Governor in Council, or the Minister of Indian and Northern Affairs, whose Department is responsible for the administration of the Territories.

There has been in recent years a tendency to transfer, where possible, administrative authority to the government of the Territories and now, in practice, all major policy decisions within territorial competence are taken on advice of the Legislative Council. Formerly the Legislative Council of the Territories was composed of both elected and appointed members. In 1974, the Northwest Territories Act was amended (S.C. 1974, c.5) to provide for a fully-elective Legislative Council consisting of 15 members elected to represent electoral districts throughout the Territories. Subject to earlier dissolution, the Council has a life of four years.

The Commissioner in Council may make ordinances for the government of the Territories respecting such matters as: direct taxation within the Territories in order to raise a revenue for territorial, municipal or local purposes; the establishment and tenure of territorial offices and the appointment and payment of territorial officers; municipal institutions in the Territories; licences; incorporation of companies with territorial objects (generally); the administration of justice in the Territories, including the constitution, maintenance and organization of territorial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts; the establishment, maintenance and management of prisons, gaols or lock-ups; education; public health; the expenditure of money for territorial purposes; and, generally, all matters of a merely local or private nature in the Territories.

The seat of territorial government is Yellowknife.

The Yukon Territory

As has been noted, the Yukon was created as a separate territory in

1898. Under the Yukon Act of Parliament, provision is made for a local government composed of a chief executive officer styled a Commissioner and an elective Legislative Council of 12 members with a four-year tenure of office.

The constitutional practices noted with respect to the Northwest Territories have also taken root in the Yukon, so that an increasing responsibility for Yukon affairs has been transferred to the territory and its Council. The legislative authority conferred on the Council is essentially the same as that conferred on the NWT Council. The seat of territorial government is Whitehorse.

3. Municipal government

In addition to the federal, provincial and territorial governments, there are also various units of local government. These may take a number of forms, such as cities, towns, villages, counties and townships. Recently there have been established in some of the provinces regional governments with certain responsibilities over all the municipalities within their jurisdiction as well as region-wide responsibilities for such services as police.

The powers enjoyed by the various units of municipal government are derived from, and are limited to, the powers that may be exercised by a province, and are generally to be found in municipal acts or other general statutes applicable throughout a province or territory. In some cases, municipal powers are found in special charters or statutes creating a particular city, town or other unit of government. The qualifications of electors, as well as the qualifications for holding office, are similarly regulated either by special or general legislation of a province or territory.

4. The Judiciary

The Federal Judiciary

The Parliament of Canada is empowered by Section 101 of the British North America Act, 1867, to provide, from time to time, for the constitution, maintenance and organization of a general court of appeal for Canada and for the establishment of any additional courts for the better administration of the laws of Canada. Under this provision, Parliament has established the Supreme Court of Canada, the Federal Court of Canada and certain miscellaneous courts.

Supreme Court of Canada

This Court, first established in 1875 and now governed by the Supreme

criminal cases from all courts in 1933 (23-24 Sec. V, c.53, s.17 (Cda.)). In 1949, the Supreme Court Act was amended to prohibit appeals from any judgment of any court in Canada to the Judicial Committee (13 Sec. VI, c.37, s.3 (Cda.)), so that all appeals, both civil and criminal, to the Judicial Committee were ended.

Federal Court of Canada

As a result of a sweeping revision in 1970, the Exchequer Court of Canada, established in 1875, has been replaced by the Federal Court. This Court consists of two divisions, Trial and Appeal, with a total of 12 judges. Both divisions sit throughout Canada. There is a new retirement age of 70 for these judges. They hold office during good behaviour and are only removable by the Governor General on address of the Senate and House of Commons. The Federal Court of Appeal has as part of its jurisdiction the competence to review all decisions and orders of a judicial or quasi-judicial nature rendered by federal boards or other tribunals, on questions of error in law, excess of jurisdiction, or failure to apply the principles of natural justice. The intent of this reform is to speed up proceedings and to encourage the development of a coherent body of administrative law. The Trial Division's jurisdiction includes jurisdiction in respect of such matters as admiralty, patents, customs and excise, and income tax. It also has jurisdiction in claims involving industrial property and in suits involving the Crown in right of Canada. In effect, the Crown in right of Canada is now in the same position before the court as an ordinary litigant.

An appeal lies to the Supreme Court of Canada from any judgment of the Federal Court of Appeal with leave of that Court when, in the opinion of the Court of Appeal, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision. Further, an appeal to the Supreme Court lies from a final or other judgment or determination of the Federal Court of Appeal, whether or not leave to make such appeal has been refused by the latter Court, when, in the opinion of the Supreme Court, the question involves a matter of public or legal importance. As with civil appeals to the Supreme Court of Canada, the former automatic right to appeal from a judgment of the Federal Court of Appeal in cases in which the amount in controversy exceeds $10,000 has been repealed as of January 27, 1975. An appeal to the Supreme Court continues to lie from any decision of the Federal Court of Appeal in the case of a controversy between Canada and a province or between two or more provinces.

Provincial judiciaries

Under Section 92(14) of the British North America Act, 1867, the legislature of each province may exclusively make laws in relation to the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction. Pursuant to Sections 6 and 17 of an Act to amend the Yukon Act, the Northwest Territories Act and the Territorial Lands Act (c.48 (1st Supp.)), in 1970 Parliament extended the same legislative powers in respect of the administration of justice to the Legislative Councils of both the Yukon and Northwest Territories. These courts of provincial or territorial creation administer both provincial and federal laws to the extent that the administration of the latter is not confided exclusively to a tribunal established by Parliament under Section 101 of the B.N.A. Act, 1867.

Section 96 of the B.N.A. Act, 1867, provides that the Governor General in Council shall appoint the judges of the superior, district and county courts in each province (except those of the courts of probate in Nova Scotia and New Brunswick). The appointment of the judges of the superior, district or county courts in the Yukon and Northwest Territories is similarly made by the Governor in Council, pursuant to Sections 11 and 22 respectively of c.48, 1st Supplement RSC 1970 (in force from and after July 15, 1971, *per* SOR/71-369 and -371). Section 100 provides that the salaries, allowances and pensions of such federally-appointed judges are to be fixed and provided by Parliament, and these are set out in the Judges Act (R.S.C. 1970, c.J-1, as amended). Under Section 99(1) of the B.N.A. Act, 1867, the judges of superior courts hold office during good behaviour, and are only removable by the Governor General on address of the Senate and House of Commons. Under Section 99(2), added by the B.N.A. Act, 1960, judges of superior courts cease to hold office upon attaining 75 years of age. The tenure of office of county court judges is fixed by the Judges Act as being during good behaviour.

Magistrates, juvenile, family and similar courts and offices are staffed by officers appointed by the province in which their jurisdiction is found.

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Court Act (RSC 1970, c.S-19, as amended), consists of a chief justice, who is called the Chief Justice of Canada, and eight puisne judges. The chief justice and the puisne judges are appointed by the Governor in Council, and they hold office during good behaviour and are only removable by the Governor General on address of both the Senate and the House of Commons. They cease to hold office upon attaining the age of 75. The Court sits at Ottawa and exercises general appellate jurisdiction throughout Canada in civil and criminal cases. It should be noted that provincial courts and the Supreme Court of Canada apply both provincial and federal laws and that their division of authority is not coincident with the division of legislative authority between the federal and provincial governments. The Court is also required to consider and advise upon questions referred to it by the Governor in Council and it may also advise the Senate or House of Commons on private bills referred to the Court under any rules or orders of the Senate or the House of Commons.

Generally speaking, in civil cases appeals may now be brought from any judgment of the highest court of final resort in a province only when leave to appeal has been sought and secured either from the highest court of final resort in that province or from the Supreme Court of Canada itself. In the latter case leave may be granted even when such leave has been refused by any other court, when, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law involved in such question, one that ought to be decided by the Supreme Court. The former automatic right of appeal to the Supreme Court in civil cases where the sum claimed is in excess of $10,000 has been repealed as of January 27, 1975 (S.C. 1974-75, c.5).

In criminal cases the appellate jurisdiction of the Supreme Court is conferred by Sections 613-624 of the Criminal Code (RSC 1970, c.C-34, as amended). Aside from cases in which a person stands sentenced to death, or in jeopardy of such a sentence, persons convicted of an indictable offence may appeal to the Supreme Court only on a question of law on which a judge of the provincial court of appeal dissents or on a question of law with leave of the Supreme Court.

Appeals from the federal courts, primarily the Federal Court of Canada, are regulated by the statute establishing them. Such appeals may essentially be made only with leave of the court.

The judgment of the Supreme Court of Canada in all cases is final and conclusive. The right to appeal to the Judicial Committee of the Privy Council in Britain was removed with respect to appeal in all