ABHANDLUNGEN

"Patriation" of the Canadian Constitution and the Charter of Rights and Freedoms

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The Canadian constitutional "Patriation Project" designates a specific federal Governmental exercise[1] initiated immediately after the Quebec "sovereignty-association" referendum of May 20, 1980, and brought to a close, effectively, eighteen months later (with the passage by both Houses of the federal Parliament, in early December, 1981, of a Joint Resolution embodying three innovations to the existing Canadian constitution: first, "patriation" proper, meaning here the final cutting of any vestigial, symbolic, "colonial" links thought still to exist with the erstwhile Imperial power, Great Britain; second, the filling of a gap in the existing Canadian constitution created by the neglect, at the time of its original adoption more than a century earlier, to include any machinery for its amendment within Canada itself; and third, the adoption of a constitutional Bill of Rights, something, again, that had been overlooked at the time of the original adoption of the constitution a century earlier but that would, undoubtedly, have been deliberately omitted even if it had been adverted to at that time. Of these three elements of the Patriation Package it can be said that only the last one, the Canadian Charter of Rights and Freedoms as it came to be called, bore any particular relation to immediate political events in Canada, and even in its case a major political controversy soon arose, which was quickly taken up in main constitutional-governmental arenas, as to whether it was a correct legal response to those events.

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[1] Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada, October 2, 1980.

1. A Time for Constitution-Making

Students of comparative constitutional law not less than of the civil law are familiar with the great debate among German civilists of the early 19th century over the merits of the project for codification of the "Received" Roman Law, Thibaut[2] making the rationalists' case for immediate codification on the successful example of the then recently adopted *Code Napoléon,* and von Savigny[3], on behalf of the German historical school, arguing, on the basis of the distinctive national *Volksgeist,* that the times, at the opening of the 19th century in Germany, were simply not ripe for codification. The general proposition derived by comparative constitutionalists from the German civilists' debate is that, except in a time of substantial national consensus, such as exists immediately following on some great historical event – a major military victory or even defeat, a great political or social revolution, national reunification or federation – it is very difficult to mobilise, and after that to maintain, that degree of political support from the governing *élite* and not least the general public necessary to carry a project for a new constitution or even a substantial renewal of an old one, through to successful completion[4]. This proposition seems amply confirmed by the numerous affirmative examples – the American Articles of Confederation and the subsequent Constitution of the United States; the Constitutions of the Third, Fourth, and Fifth French Republics; the Imperial, Weimar, and Bonn Constitutions, in the case of Germany. The proposition also seems confirmed, however, by the negative examples of recent years – the Swiss constitutional initiatives of the 1960s and 1970s[5], the German of the 1970s[6], and this most recent Canadian experience.

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[2] Thibaut, Über die Notwendigkeit eines allgemein bürgerlichen Rechts für Deutschland, Civilistische Abhandlungen (1814).

[3] von Savigny, Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft (1814).

[4] Discussed, in a comparative law context, in the present author's Constitution-Making. Principles, Process, Practice (1981), at p.14 *et seq.;* in a more specifically Canadian context in Mécanismes pour une nouvelle Constitution (E. Orban, editor) (1981).

[5] F. T. Wahlen/M. Imboden, *et al.,* Vortragszyklus über die Anbahnung einer Totalrevision der Bundesverfassung (1969); L. Wildhaber, Das Projekt einer Totalrevision der Schweizerischen Bundesverfassung, 26 Jahrbuch des öffentlichen Rechts der Gegenwart 239 (1977); S. Bauhofer/P. Graf/E. Koenig, Totalrevision der Bundesverfassung (1977); Expertenkommission, Bericht (1977); *ibid.,* Verfassungsentwurf (1977); O. Reck, Brauchen wir eine neue Bundesverfassung? (1978); K. Eichenberger, Der Entwurf von 1977 für eine neue schweizerische Bundesverfassung, 40 ZaöRV 477 *et seq.* (1980).

[6] Beratungen und Empfehlungen zur Verfassungsreform. Schlußbericht der Enquête-

The first element of the Canadian constitutional package, as we have noted, involved a termination of any still surviving, historically anachronistic legal links between Canada and Great Britain – what Prime Minister Trudeau himself described as "cutting the Imperial Gordian Knot". But these, on many views, had already disappeared half a century or more before and, to the extent that any legal remnants still survived, it could only be with Canadian legal tolerance, either because of their intrinsic unimportance or else because Canadian political leaders hardly thought them worth all the trouble of changing. Just when the old British colonial Empire finally disappeared into legal history is not certain: there are some legal watershed dates like the successful revolt and breakaway of the original American colonies after 1776; the Irish (more accurately Southern Irish) political rebellion during World War I and the independence effectively recognised by Great Britain immediately after that War; and the last British acts of Decolonisation, after World War II, when self-government and independence was conceded, in successive waves, to the remainder of the great 19th century colonial Empire in Asia, Africa, and the Caribbean. The watershed events are easy enough to identify, since occurring usually through *force majeure*, with the actual grant of independence often no more than a belated adjustment by the parent Imperial power to the new political facts-of-life of national self-determination – *die normative Kraft des Faktischen*, in Jellinek's words. A rather more subtle process of accession to independence had, however, taken place in the case of what were known as the "older", European or European-dominated parts of the old British colonial Empire of the 19th century – Canada, Australia, New Zealand, and South Africa. Through developing constitutional custom and convention, itself emerging consensually in response to changing political, social, and economic facts, these "older" countries had probably become juridically independent by the time of the last great Imperial Conference of 1926[7]; and for all practical political and legal purposes their independence was recognised, in positive law form, by the last great Imperial (British) act, the Statute of Westminster, enacted by the British Parliament in 1931[8].

Kommission Verfassungsreform des Deutschen Bundestages (1976), Teil I (Parlament und Regierung); Teil II (Bund und Länder).

[7] Imperial Conference, 1926, Summary of Proceedings (1926).

[8] Sir Ivor Jennings, The Statute of Westminster and Appeals to the Privy Council, 52 Law Quarterly Review 173 (1936); and see, generally, the present author's "Sovereignty" in the United Kingdom and the Commonwealth Countries at the present day, 68 Political Science Quarterly 511 (1953).

Thereafter, the Imperial, "British connection" had not been a legal obstacle in the informal political association – legally too loose to be called an alliance – that succeeded to the old British Empire under the rubric, first, of British Commonwealth and, thereafter, in its twilight political phase, as plain, unprefixed Commonwealth. That the surviving legal ties, if any, were neither oppressive nor legally restraining was demonstrated, in 1949, when the Canadian federal Parliament legislated, of its own accord, to sweep away all links with the old Imperial, Judicial Committee of the Privy Council and the British court system as a whole. That they were not viewed as either politically or psychologically oppressive was demonstrated by the complete absence of any public protest, even in strongly nationalist French-speaking Quebec, as to the alleged British connection in the post-World War II era. It was simply irrelevant – a political and legal non-issue, and would have been allowed to remain so except for that legal anomaly already referred to – to which the second element in the Patriation Package was addressed – namely, the absence in the original Canadian constitution, as adopted more than a century ago, of any machinery for its amendment within Canada itself.

As the second element in the Patriation Package and part of the *raison d'être* for Prime Minister Trudeau's exercise in constitution-making, was provision for autonomous, self-operating, "made-in-Canada" machinery for the amendment of the constitution for the future. The original and still extant Canadian constitution, the British North America Act of 1867, was, in its juridical form, a statute of the Imperial, British Parliament in London[9]. In strict Imperial, British legal theory, what the British Parliament had made the British Parliament could always legally amend; but there would be certain obvious political risks in attempting to apply such an abstract theory of Imperial legal sovereignty in relation to the overseas Empire – at least, without the prior request and consent of the overseas colony concerned – after that earlier unfortunate exercise in Imperial sovereignty in relation to the original American colonies in 1776. It seems more correct to conclude that the absence of any autonomous constitutional amending machinery, in the British North America Act of 1867, was due to inexperience and oversight on the part of the British Parliamentary draughtsman of that time rather than any desire to meddle, in the future, in Canadian internal affairs: for every subsequent "made-in-Britain" constitutional charter for the overseas Empire, the British Parliamentary

[9] 30 and 31 Vict., c.3 (1867).

draughtsman was at pains to include express constitutional amending machinery, as, for example, in the Commonwealth of Australia Constitution Act of 1900 and the British South Africa Act of 1909. In relation to Canada, in the absence of express constitutional amending machinery in the constitution itself, the firm constitutional practice soon developed that the Imperial, British Government would amend that constitution at the request of the Canadian federal Government, by arranging for the enacting of a special statute of the British Parliament, in the terms requested by the Canadian federal Government[10]. Such a vestigial Imperial, British *rôle* in relation to the Canadian constitution, in spite of its patent absurdity from the International Law viewpoint after Canada's attainment of juridical independence from Great Britain with the Imperial Conference of 1926 and the (Imperial) Statute of Westminster of 1931, was allowed to continue for a number of reasons: first, political inertia, and the fact that the unbroken British Government practice of acting at the request of the Canadian federal Government and to the letter of that Canadian advice, rendered it politically inoffensive; second, the fact that the British North America Act, of 1867, being conceived and drafted in an age of *laissez-faire*, was ideologically neutral or open-ended and cast in fairly general terms, so that, unlike those other, old, English-language constitutional charters of the United States and of Australia, it presented no particular legal barriers to social and economic change. When Canadian society itself moved from *laissez-faire* to acceptance of planning and other social democratic ideas, there was no particular need to change the constitutional charter to effectuate those new ideas. Such other, legal changes as were felt to be needed were either made by ordinary (constitutionally valid) legislation accepted, as such, by the courts or else by executive-made glosses (practice) on the constitutional text itself[11]. After 1926, when it was considered, notionally at least, to be inelegant to have the Canadian constitution formally amended in what was now, legally, a foreign country, Great Britain, the search began for a new, autonomous amending machinery to be inserted in the constitution for the future – this to be done in what would be, by definition, the last "made-in-Britain" amendment to the constitution. But the discussions to this effect, which began in 1927 immediately after the Imperial Conference of 1926, never had any sense of urgency about them, and there was absolutely no public interest; and so the talks meandered on for

[10] Guy Favreau, The Amendment of the Constitution of Canada (Government of Canada, White Paper) (1965).

[11] See, generally, the author's Judicial Review (4th ed. 1969), at p. 61 *et seq.*

more than half a century, without any result or any apparent political or legal inconvenience, until Prime Minister Trudeau decided, in 1980, to try and close the files at long last by including such constitutional amending machinery as an incidental item in his Patriation Package.

The third element in the Patriation Package and in fact its political *raison d'être* was the project for a constitutionally entrenched Bill of Rights. For the whole Patriation exercise was built around and oriented to the Quebec, Provincial "sovereignty-association" referendum, promised by the political separatism-committed *Parti québécois* in its successful campaign for the Quebec Provincial general elections of November, 1976, but long postponed until politically more favourable times and then eventually held in the Spring of 1980 as the Quebec Government's normal four-year mandate began to draw to a close. The Quebec Provincial referendum of May 20, 1980, was actually held, not on "separatism" in terms and the political breakaway of Quebec from the rest of Canada, but on the vaguer and never fully defined concept of "sovereignty-association"[12] – a status, still to be defined (even after any successful referendum vote) in direct negotiation with the federal Government, of political sovereignty for a Quebec that would remain, nevertheless, in economic union or association with the rest of Canada[13]. Even with its built-in element of ambiguity which was supposed to reassure timid supporters of breakaway from Canada, the Quebec Government lost its referendum proposal by a clear margin – 59.5 per cent against, 40.5 per cent, only, in favour. During the Quebec referendum, however, Prime Minister Trudeau and four of the Premiers of the nine (English-speaking) Provinces other than Quebec, intervened in the referendum campaign and promised their support for a new or "renewed" Canadian federal system if only Quebec voters would vote NO to the "sovereignty-association" proposal. The actual content of the proposal for a new or "renewed" federation was never made clear and precise, but it was widely assumed that it meant some positive changes involving Quebec and French-speaking Canada's position. This was how Prime Minister Trudeau interpreted his own Quebec referendum campaign proposals, in any case;

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[12] La nouvelle entente Québec-Canada. Proposition du gouvernement du Québec pour une entente d'égal à égal: la souveraineté-association (Gouvernement de Québec. Conseil exécutif) (1979).

[13] For developments in Quebec generally, see Léon Dion, Le Québec et le Canada. Les voies de l'avenir (1980); Gérald Beaudoin, Essais sur la Constitution (1979); the present author's Quebec and the Constitution 1960–1978 (1979); The Task Force on Canadian Unity. Report, Vol.I, A Future Together, Observations and Recommendations (Government of Canada) (1979).

for constitutionally entrenched guarantees as to the French language[14] formed a key concern of his proposed new Canadian Charter of Rights and Freedoms which was itself the prime element of the whole Patriation Package. In effect, Prime Minister Trudeau interpreted the Quebec referendum NO vote on "sovereignty-association" as legally mandating his proposed French language guarantees and also the larger Charter of which they were an integral part, and as evidencing, in political terms, the existence of a sufficient and continuing popular consensus to carry them through to successful constitutional adoption. Patriation proper and the constitutional amending machinery simply rounded off the whole package and gave it a larger constitutional symmetry.

2. *The Process of Constitution-Making*[15]

Prime Minister Trudeau, immediately after the clear NO vote in the Quebec Provincial referendum, summoned a conference of the ten Provincial Governments (including Quebec), to meet with the federal Government to discuss constitutional change to the federal system. Such federal-Provincial intergovernmental meetings, though not provided for in the constitution of 1867, have been a regular feature of Canadian federalism in modern times, for even though they may lack any formal authority in law, they have proved a useful device for coordinating policy-making and policy-administration at the different levels of government. In fact, however, federal-Provincial intergovernmental diplomacy, through the direct negotiation involved in federal-Provincial First Ministers' meetings (meetings of the Prime Minister and the Provincial Premiers), had been the prime mechanism used in the abortive moves, from 1927 onwards, to devise autonomous, self-operating amending machinery for the constitution of 1867. It seemed logical in historical terms, therefore, after the promises of constitutional reform made by the Prime Minister and the non-Quebec Provincial Premiers during the Quebec Provincial "sovereignty-association" referendum campaign, for the Prime Minister to turn to revived federal-Provincial First Ministers' conferences, as the main arena for novation of the federal system for the future. In truth, the choice of

[14] See generally Gérald Beaudoin, Les droits linguistiques, Language and Society (1980), p.3; and the comments (McWhinney), Language Rights and the Constitution, *ibid.*, p.23.

[15] The discussion that follows draws upon the detailed research and documentation in the author's Canada and the Constitution. Patriation and the Charter of Rights (1982). And see also, as to process, Mécanismes pour une nouvelle Constitution (note 4).

that particular arena seems to have been made without very much prior thought or awareness that one was foreclosing, thereby, other arenas and instruments for constitutional change, including the most modern in terms of all the trends in democratic constitutionalism around the World – the mechanism of participatory democracy, as expressed through the exercise of constituent power by popular-elected constituent assemblies, followed by popular ratification in a nation-wide referendum on the new or renewed constitutional charter. There was another, and much more obvious limitation to the choice of the federal-Provincial First Ministers' conference as the prime arena for constitutional change. The Prime Minister of Canada could undoubtedly claim some form of general constitutional mandate as head of the national, federal executive, even though it was an indirect mandate since coming through a "received" British Parliamentary executive system and not that form of direct mandate deriving, as in the case of the President of the United States, from direct popular election. But the Provincial Premiers within the Canadian federal system, having also only the indirect mandate conferred by the "received" British Parliamentary executive system at the Provincial level, were invariably elected on local, Provincial issues in Provincial general elections in which – except in the case of Quebec which had historically been preoccupied with the constitutional consequences of French-Canadian national self-determination – constitutional issues were never discussed. The risk was that the ten Provincial Premiers, having (apart from Quebec) no claims to a mandate for constitutional change from their Provincial electors and elected, in any case, on local issues, would demonstrate themselves as narrowly parochial in outlook and lacking any sympathy for or ability to comprehend the larger national, pan-Canadian interest. These fears were quickly realised in practice. After three months of intensive federal-Provincial negotiation – from early June to early September, 1980 – in which angry recriminations flowed, Prime Minister Trudeau broke off the federal-Provincial First Ministers' conferences. As the Prime Minister complained, those conferences had degenerated into low-level political bargaining and horse-trading in which one or other Provincial Premier would, for example, only agree to the inclusion of Human Rights in a new or renewed federal system if he were given a few extra taxation points in the federal-Provincial tax revenue division or else exclusive jurisdiction over off-shore oil deposits. Whatever its merits for other federal purposes, recourse to the federal-Provincial First Ministers' conference was clearly not the best way in which to write a new constitution. The ten Provincial Premiers were simply the wrong people, at the wrong time, in the wrong place.

The Prime Minister, faced with the alternatives of either allowing the constitutional novation project to lapse altogether or else finding other, more promising arenas for its achievement, chose the latter course. One new danger, however, was the time factor, for three and a half months had already elapsed since the Quebec Provincial referendum, and the general public, never very interested in the subject of constitutional change anyway, was manifestly beginning to lose that feeling of euphoria after the NO vote on "sovereignty-association" for Quebec, and to lose, at the same time, the spirit of generosity and the disposition (among the English-speaking majority of Canada) to do something positive in regard to Quebec and French Canada generally. That public consensus and continuing political support that seems a precondition to successful ventures in democratic constitution-making in modern times, was beginning to ebb away and might soon be lost altogether. The Prime Minister who might, as one seemingly promising political option, have considered recourse to participatory democracy through the popularly elected constituent assembly and popular referendum route, chose, instead, the federal legislative arena, by way of a package of deliberately limited and selective constitutional change which would be presented to the federal Parliament for adoption, and then transmitted to the British Government for formal enactment as the last "made-in-Britain" amendment to the constitution of 1867. This was the political genesis of the "Patriation Package", and the selectiveness as to its contents flowed logically from the preceding political events. With the ten Provincial Premiers no longer participating in the process, there was absolutely no reason for discussing redistribution or reallocation of federal-Provincial law-making powers (including taxation and revenue powers) under the existing constitution with which, in any case, and particularly as interpreted by the Supreme Court of Canada in modern times, the federal Government was completely satisfied. Nor was there any reason to consider change in existing federal institutions, which the federal Government either considered as perfectly attuned to federal needs (as with the Supreme Court of Canada), or else largely irrelevant and of no particular nuisance value (as with the purely appointive, non-elected federal Senate). The quite limited span of the Patriation Package had the extra advantage of allowing concentration on conceivedly politically popular issues like ending the last vestigial colonial links with Great Britain and adopting a constitutional Bill of Rights, which the Opposition parties in the federal Parliament would hardly dare to oppose through fear of annoying the electorate. Even if the federal Opposition parties did oppose, however, they could not politically prevent the final adoption of the Patriation Package since the governing

federal Liberal Party had absolute majorities in both Houses of the federal Parliament. The Patriation Package, as it was unveiled by the Prime Minister Trudeau in a nation-wide television address on October 2, 1980, was, in sum, a limited group of "modernising" constitutional amendments, to be added to the existing constitution. The end product, after adoption, would be neither a "new" constitution, nor even a substantially "renewed" or different document. The one area in which Prime Minister Trudeau broke significant new ground, politically at least, was as to the contents of his constitutional Bill of Rights. Instead of being limited to "language" or "ethnic-cultural" issues, such as entrenchment of French-language rights for French-speaking citizens in Quebec and throughout Canada, for which the claims for a direct electoral mandate flowing from the Quebec Provincial referendum vote of May 20, 1980, would have been strongest in constitutional terms and also compelling politically, the Prime Minister opted for a generalised Bill of Rights, somewhat traditional in scope[16], but of which, in any case, language rights were only one element among very many. Although, from its publication at the beginning of October, 1980, to its final adoption by the federal Parliament, more than fourteen months later, in early December, 1981, the Patriation Project went through no less than four different complete versions, it did not change in its basic organisation and philosophical outlook, or even change substantially as to its details; and such changes as were made, as to the details, seem, in retrospect, for the most part, to be significant steps backwards, in terms of the original, October 2, 1980, draft and also having regard to the main trends in the democratic constitutionalism throughout the World. In the light of the lessons of comparative constitutional law, it can be said that if the federal-Provincial intergovernmental conference was probably the worst of all arenas for the drafting of a new constitution, the federal Parliamentary arena proved very little better. The combination of high policy and low-level technique inevitably present in any successful constitution-making project is only fleetingly present in a Parliamentary chamber, particularly when it seeks to act as a constitutional-legal drafting committee in itself. It can, of course, be argued that some part of the criticism for the constitutional end product which, from the strictly scientific-legal viewpoint, must be considered as a somewhat flawed exercise in constitution-making, must rest with the federal Government which alone authored the original draft

[16] Such a generalised Bill of Rights had, however, long been a political objective of the Prime Minister: see the White Paper, issued in his then capacity as federal Justice Minister, P.-E. Trudeau, A Canadian Charter of Human Rights (Government of Canada) (1968).

submitted to the nation by the Prime Minister on October 2, 1980. It is clearly not the personal work of Prime Minister Trudeau, but bears all the hall-marks of having been composed by a committee of intermediate-level federal civil servants. It is long and rambling, expressed in a rather heavy, civil service language and style of the sort usually associated with Municipal ordinances or administrative regulations. It is what English-language legal stylists called a "Germanic", bureaucratic draft, and it contrasts sharply and unfavourably with the limpid clarity of expression of the American Bill of Rights of 1787 which is still in force today, or the French Declaration of the Rights of Man and the Citizen of 1789 which is also annexed to the Constitution of the Fifth French Republic of today. The basic differences in terms of legal formulation and literary expression are best represented in the differences between the *Bürgerliches Gesetzbuch* of 1900 and the *Code Napoléon* of 1804. The absence of any constitutional poetry in the Patriation Package as a whole and in its Canadian Charter of Rights and Freedoms in particular, does not necessarily derogate from its constitutional-legal efficacy and undoubtedly gives it extra qualities of precision and definition in concrete cases. But it severely limits the public educational function of the new Charter of Rights and Freedoms – one of the prime values a constitution-making exercise is supposed to achieve today; and this, allied to the rather traditional, conservative aspect of the new Charter as to its actual, substantive legal contents, was one of the reasons why Prime Minister Trudeau experienced such considerable difficulty in rallying popular political support and enthusiasm behind the Patriation Project to a degree sufficient to compel recalcitrant Opposition politicians, at both the federal and the Provincial levels, to abandon obstructionist, delaying tactics and to permit adoption of the Patriation Project by the federal Parliament in timely fashion. What was undoubtedly intended as a "Motherhood" project whose objective constitutional merits should have been self-evident even to the legally unenlightened was allowed, because of its difficult and complicated, heavy technical presentation, to degenerate into a bitter and, for a time, seemingly interminable political struggle in which public opinion, except at the very end, never played any decisive *rôle*.

3. The Content of the Patriation Package and the Charter of Rights and Freedoms

As already indicated, the Patriation Package was a tripartite project, consisting of patriation proper – the symbolic "decolonising" or "Cana-

dianising" of the existing constitution by cutting the last vestiges of the Imperial British Gordian Knot; the adoption of a new, autonomous, Canadian constitutional amending machinery for the future, in place of the old "made-in-Britain" process of a formal amending statute enacted by the British Parliament at the request, and to the letter of the advice, of the Canadian Government to the British Government of the day; and the new, constitutionally entrenched Canadian Charter of Rights and Freedoms. As also mentioned, although the Patriation Project went through four different complete stages between introduction in October, 1980, and final adoption in Canada in December, 1981, it was not substantially changed (and then only, it is submitted, changed for the worse) during those four stages. As to patriation proper, it was not changed at all. As to the constitutional amending machinery, the only major change was the disappearance of participatory democracy and popular involvement in the constituent process – the early provisions for a popular, nation-wide referendum on constitutional change, in case of deadlock or impasse, were deleted altogether from the final version, as a federal Government political concession to the Provincial Premiers who (apart from Quebec) had shewn a marked hostility to, and even fear, of direct democracy and of a *rôle* for the people in the constituent process. The final amending formula, while complex, is not basically different from the main alternative drafts considered, in leisurely fashion, in the federal-Provincial conferences called to discuss constitutional amending machinery over the past half century. It will see future amendments effected, for the most part, by simple majorities in the federal Parliament and also in two thirds of the Provincial legislatures (that is, seven out of ten Provinces), provided those Provinces amount to at least fifty per cent of the population of all the Provinces[17]. This stipulation as to population ensures that, so long as the present demographic emphasis in Canadian population distribution remains, either one of the two largest Provinces, Ontario and Quebec (though not necessarily both) must approve of a proposed constitutional amendment for it to become validly adopted. A proposed constitutional amendment that "derogates from the legislative powers, the proprietary rights or any other rights or privileges of the Legislature or Government of a Province", is not to have effect in any Province whose legislature votes to express its dissent thereto[18]. The consequences of these detailed arrangements for future constitutional amendments seem clear: it will almost certainly prove difficult to mobilise, and

[17] Constitution Act, 1981, section 38.
[18] *Ibid.*, s.38 (3).

thereafter to maintain on any continuing basis, a political consensus at both the federal and the Provincial levels sufficient to carry through constitutional amendment projects on other than marginal or unimportant issues. For this reason, the constitution is likely to prove – in the future under the new, autonomous amending machinery, as it has been in the past under the politically and psychologically increasingly disagreeable "made-in-Britain" process – rigid and inflexible and incapable of change easily. Since constitutional change must, however, go on in the future in accompaniment to fundamental societal change, the main agencies for constitutional updating will tend to be, in the future as they have been in the past, the informal and indirect processes of judicial legislation (in the interstices of judicial interpretation of the constitution), and of executive glosses on the constitutional text (through executive practice, going beyond the letter of the text, that is tolerated or at least not effectively protested by other participants in the constitutional process).

As for the new Charter of Rights and Freedoms, it is, as already noted, and this apart from the questions of language and drafting style and length already adverted to, somewhat traditional and conservative, in comparison to other, similar ventures in the constitutional entrenchment of human rights, attempted in other contemporary societies in recent years. This traditional, conservative quality, present in the Prime Minister's original, October, 1980, draft seems due not merely to the federal Government's desire to forestall, in advance, potential political opposition, by watering down key substantive provisions, but also to the fact that, in strict constitutional-legal terms, the notion of a constitutionally entrenched Bill of Rights seemed dangerously heretical or radical – to the Anglo-Saxon Common Law legal establishment, at least, if not necessarily to French Civil Law-trained jurists. Thus, it was not surprising, during the abortive, three months-long round of federal-Provincial First Ministers' negotiations over the Summer of 1980, to hear Premiers of English-speaking Provinces, conservative and social democratic alike in their official Party ideology, argue that the Prime Minister's proposed new Charter of Rights should be condemned as "un-British", as "contrary to the English Common Law approach to constitutional law", and even as destructive of individual rights and freedoms (this latter, supposedly, on the experience with the Bill of Rights under the Constitution of the United States). Such arguments say a good deal for the state of constitutional thinking in Canada today, at least at the political levels, and explain, if not altogether justifying, the rather cautious or timid approach of the Prime Minister in the development of the actual substantive contents of his new Charter. Similar institutionalised

juridical conservatism had led the then Conservative Prime Minister of Canada, John Diefenbaker, a "Tory radical" and crusading civil libertarian in background and persuasion, to temper his own project, in 1960, for a constitutional Bill of Rights by reducing it to the politically innocuous level of a purely statutory Bill, which was not made part of the Constitution proper and which, as such, played no really significant *rôle*, thereafter, in constitutional development through judicial interpretation.

The key to the general character of the new Charter is conveyed in its opening section, which sets the standards or guide-lines for its application in concrete problem-situations in the future. In the original version of October 2, 1980, this had read:

> "1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government".

In answer to the objections from the academic community and the general public that this contained what the American Legal Realist leader, Judge Jerome Frank, had identified as "weasel words" exceptions that allowed the rights and freedoms to be taken away at the same time as they were purported to be conferred, the federal Government amended section 1 so that, in the final version, it now reads[19]:

> "1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

It may perhaps be suggested, in regard to the original and the final versions, that the changes made amount to distinctions without a difference. However that may be, the general plan of the Charter rests on certain enumerated categories of rights and freedoms: Fundamental Freedoms[20], (variously, conscience and religion, thought, belief, opinion and expression [including press and other communication media], peaceful assembly, association); Democratic Rights[21] (the right to vote in Parliamentary elections, the maximum duration of the Parliamentary term, and the obligation of Parliament to meet once a year – basically a codification of existing customary, conventional constitutional law); Mobility Rights[22] (a very much watered down version of similar pro-

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[19] *Ibid.*, s.1.
[20] *Ibid.*, s.2.
[21] *Ibid.*, ss.3–5.
[22] *Ibid.*, s.6.

visions in the Treaty of Rome); Legal Rights[23] (basically, procedural due process in criminal trials); Equality Rights[24] (equality "before and under the law" and "equal protection and equal benefit of the law without discrimination", followed by an enumeration of examples of prohibited discrimination ["race, national or ethnic origin, color, religion, sex, age or mental or physical disability"] and by a statement that this does "not preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of" the specific conditions already enumerated – this latter a weak rendition of that "affirmative action" in behalf of "equality before the law", now being written into American Supreme Court jurisprudence and present both in the positive law of the Indian Constitution and also Indian Supreme Court jurisprudence); and, finally, Official Language Rights (French and English)[25], and Minority Language Education Rights (English and French)[26]. There is included in the new Charter an express saving as to Aboriginal Rights (Native Indian, Inuit [Eskimo], and Métis [mixed blood][27]): these particular sections of the new Charter were much debated and also much amended, particularly in the few weeks immediately preceding final adoption of the Patriation Package by the federal Parliament in December, 1981, when the conservative Premiers of the four English-speaking, natural resources-rich, Western Provinces combined to insist upon these guarantees being watered down in the fear that they might, otherwise, give away too much in the way of rights to natural resources to the Indian and Native peoples. What is now left of the Aboriginal Rights guarantees in the Charter[28] may amount to no more than a legal pleonasm, or restatement of the legally trite and self-evident in terms of customary International Law and Treaty-based obligations imposed upon the Canadian Government in regard to the Indian and Native peoples, as International Law successor to the British Crown in Canada and also in its own right[29]. But the matter is

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[23] *Ibid.*, ss.7–14.
[24] *Ibid.*, s.15.
[25] *Ibid.*, ss.16–22.
[26] *Ibid.*, s.23.
[27] *Ibid.*, s.25 and s.34.
[28] *Ibid.*
[29] As to Indian and Native (Aboriginal) issues generally, in Canada, see Alexander Morris, The Treaties of Canada with the Indians of Manitoba and the North-West Territories (1880); The Spirit of the Alberta Indian Treaties (Richard Price, editor) (1979); Native rights in Canada (P. A. Cumming/N. H. Mickenberg, editors) (2nd ed. 1972).

not clear from legal doubt, the last-minute political compromises, as with so many other sections of the Charter, having further muddied a text that was often obscure in the first place and that will obviously only be settled, legally, by judicial interpretation, and politically, by direct negotiation and compromise between the federal Government and the Native peoples of Canada.

The other major last-minute political compromise – effected in early November, 1981 – which, in the opinion of both legal and political commentators, seriously weakens the new Charter in its potential application in the future is the so-called "Notwithstanding" clause[30]. This clause, inserted at the demand of the Premiers of the English-speaking Provinces as the price of their support for the final Patriation Package, allows any Province, through simple declaration of its Provincial legislature, to opt out, altogether, from the application to its Province of any one or all of the following sections of the new Charter: Fundamental Freedoms; Legal Rights; and Equality Rights. Only the Democratic Rights, Mobility Rights, and Official Languages and Minority Language Educational Rights are withheld from this Provincial absolute right of veto: the only limitation to the Provincial exercise of the veto right is that it must be renewed at the end of each five years if it is to continue in effect. Prime Minister Trudeau, immediately after he had made the political concession of this Provincial right of veto over application of the Fundamental Freedoms, Legal Rights, and Equality Rights, made the wry comment that he considered his new Charter to be "an abject failure". A respected constitutional authority and retired Liberal Party member of the federal Senate, Eugene Forsey, suggested that the effect of the changes forced by the Premiers of the English-speaking Provinces was to produce a "disembowelled" Charter of Rights. These early assessments may have gone too far, but they reflect a fairly general and widespread disappointment with the final result of the constitution-making exercise, after the high hopes for novation of the federal system engendered by the federal forces in the Quebec Provincial referendum campaign during the Spring of 1980. Only a last-minute massive political back-lash against the intransigent Provincial Premiers, by an aroused public opinion, prevented the Provincial Premiers from going still further in their emasculation of the Charter; and this particular development, the intrusion of the people, for the first time, into the constituent process raises the intriguing question of how much better and more effective it might all have been if the federal Government had

[30] Constitution Act, 1981, s.33.

seriously tried, at an early stage, to enlist public support for its plans by drafting a short and simple, poetic Bill of Rights on the American or French models, and by involving the public directly through at least a facultative (non-binding) plebiscite on the Patriation Package.

4. Reasons for Compromising the Charter of Rights and Freedoms

All this raises the question of why the federal Government chose to compromise and water down its Charter of Rights, after the first (albeit somewhat inelegantly drafted) version of the Charter had been published in October, 1980. The answer lies in considerable part in political considerations having to do with the still surviving Imperial, British legal connection, and the federal Government's original decision to opt for a traditional "made-in-Britain" statute of the British Parliament as its means of adopting the new Charter, rather than, for example, adopting a fresh, wholly Canadian *Grundnorm* through declaratory act of the federal Parliament followed by ratification in a Canada-wide popular referendum. Such a postulation of a new, Canadian *Grundnorm* or source of law for the future would have been a revolutionary step in legal terms; but no more so than the new English constitutional settlement of 1689 following on the "Glorious Revolution" of the preceding year, or the establishment of the American Articles of Confederation and also the present Constitution of the United States. It would certainly have accorded with the best trends in modern democratic constitutionalism which teach that legal sovereignty comes from the people, and, by definition, not from some foreign, erstwhile parent Imperial colonial power. It would have been popular, electorally, in Canada where the original Anglo-Saxon, British nation is a declining political force, and presently a minority even within the English-speaking majority of the country, this as a result of the massive migration from all parts of the World in recent years. It would also seem to have been acceptable, at all times, to Prime Minister Thatcher and her Conservative Government in Great Britain, who at all times indicated that they would act, in full accord with all the constitutional precedents, on the advice of the federal Government of Canada, and who may often privately have regretted the unwelcome extra political burden imposed on them by this anachronistic "Canadian" survival from an earlier British Imperial age now long since disappeared. The "Canadian connection" became, in many ways, a "poisoned gift" for Prime Minister Thatcher when representatives of the Canadian Provinces – who were, by the accidents of contemporary Canadian political life, mostly Conservative in their political affiliations – began

directly lobbying Conservative back-benchers from Prime Minister Thatcher's own Party in the British Parliament, to try to prevent or delay action on the eventual Canadian Government request for a formal, "made-in-Britain" statute amending the Canadian constitution for the last time with the enactment of the Patriation Package. Such direct Provincial representations to the British Government or to the British Parliament were legally non-receivable in Great Britain: according to the rules of Public International Law governing relations between Canada and Great Britain, for Great Britain to take any official notice of the internal political sub-divisions of Canada would constitute an illegal intervention in Canadian internal affairs. Prime Minister Thatcher, as already noted, always recognised this, and took a legally correct position from the outset in ignoring the Provinces and dealing only with the federal Government. This did not, however, prevent some of her own Party back-benchers, including some back-benchers disaffected with Mrs. Thatcher's internal, economic programme or personally disgruntled by having been omitted from her Cabinet, from operating mischievously and threatening to filibuster the Canadian constitutional amendment bill, if and when it should be received[31]. To clear the political air the federal Government of Canada finally decided, reluctantly and, it may be suggested, completely unnecessarily in strictly legal terms, to wait on a ruling from the Supreme Court of Canada on the constitutionality of its Patriation Package, before presenting it to the British Govern-

[31] The so-called Kershaw Committee (officially, the Foreign Affairs Committee of the British House of Commons, but neither appointed by Prime Minister Thatcher nor ever requested by her to intervene in Canadian questions), published a report in which it advanced the claim – legally rather strange in post-Statute of Westminster terms – that its committee members were, somehow or other, the "guardians" or "trustees" of the Canadian constitution and specially charged with protecting the political interests of the Provinces within Canada. House of Commons, London. First Report from the Foreign Affairs Committee, Session 1980–81. British North America Acts: The Rôle of Parliament, Vols.1 and 2 (January, 1981). Prime Minister Thatcher never accepted the Kershaw report, and, in fact, coolly distanced herself from the committee and its members, throughout; and the British Foreign Office, in direct legal testimony to the Kershaw committee, had, earlier, repudiated every one of the Kershaw group's legal arguments. The Canadian Government, for its part, categorically rejected the Kershaw report as a clumsy attempt by British Parliamentary back-benchers at an illegal intervention in Canadian affairs that was never sanctioned or supported by the British Government: the Canadian Government offered, at the same time, a scathing indictment of the Kershaw group's research methods (including its employment, as "expert witnesses" on the Canadian constitution, of British lawyers already under retainer to the pro-separatism Government of Quebec). The Rôle of the United Kingdom in the Amendment of the Canadian Constitution. Background Paper (Government of Canada, Hon. Jean Chrétien, Minister of Justice) (March, 1981).

ment for formal enactment. This Supreme Court ruling was rendered in late September, 1981[32], and indeed cleared the way for final adoption of the Package and its transmission to London in early December, 1981.

As a strict, technical exercise in judicial review of the constitution, it must be stated that the Supreme Court ruling on the Patriation Package is something less than satisfactory. It comes, of course, from a tribunal that still officially insists, in traditional British fashion, that its function, in constitutional cases, involves the exercise of a strict and complete legalism, and that denies the possibility of any legislative, policy-making *rôle* in the judicial review of the constitution. Yet, as a matter of law-in-action, the Canadian constitution, under judicial interpretation, has shewn itself as subject to wide swings and changes in dominant judicial themes, which can only be explained in scientific terms on the basis of judicial value choices more or less consciously operating on the judicial process. The judges of the Supreme Court of Canada are appointed by the federal Government and hold office until the age of 75 years. As it happened, of the nine-man bench ruling on the constitutionality of the Patriation Package, six judges had been appointed by Liberal Governments and three by Conservative Governments. Internal relations within the Court were complicated by the fact that the Chief Justice had been promoted by the present Liberal Government, some years earlier, from within the Court over the heads of other, more senior judges in terms of years of service, including the then senior (Conservative Party-appointed) judge who would normally, if the usual seniority rule had been followed, have been made Chief Justice. The judgment in the Patriation Package case is strangely disorganised in appearance. The Court decided, by a vote of 7 to 2 (and it could hardly have done otherwise on all the precedents), that it was perfectly l e g a l for the federal Government to proceed to adopt the Patriation Package by vote of the federal Parliament and then to present it to the British Government for formal enactment by the British Parliament, the Court rejecting the argument that the whole process was rendered illegal by the fact that eight of the ten Provincial Governments objected to the Package. The seven to two judgment that the Patriation Package and the process of its adoption was legal saw only the two senior, Conservative Party-appointed judges dissenting. On the other hand, the Court accompanied this 7-to-2 judgment by another, 6-to-3, opinion –, which in strict Common Law judicial terms

[32] In the Matter of an Act for expediting the decision of constitutional and other provincial questions, being R.S.M. 1970, c. C-180 (Supreme Court of Canada) (decision of September 28, 1981).

must be described as an *obiter dictum,* or extended comment accompanying, but not legally affecting, the 7-to-2 decision –, that the Patriation process, though legal, violated a constitutional custom or convention of federal Government consultation with and obtaining the consent of the Provincial Governments as a prior condition to any federal Government approach to the British Government. The six judges in the 6-to-3 *obiter dictum* opinion on "unconventionality" comprised the two Conservatives who had formed the 2-man dissent to the 7-to-2 judgment upholding the legality of the whole Patriation process, plus four other judges who had, of course, already been with the 7-man majority in the 7-to-2 judgment. To the 6-to-3 *obiter dictum* opinion, the Chief Justice and two of his colleagues from the 7-to-2 judgment, appended a vigorous dissent that sharply criticised – in the present writer's view, correctly – both the historical research and also the logical reasoning of the 6-to-3 *obiter dictum* opinion. In fact, in jurisprudential terms, two mutually incompatible majority opinions (the actual judgment, and the *obiter dictum* opinion) are filed in the one case, accompanied by sharp dissents to each one of them. The majority in each of those two majority opinions is constituted by four silent judges on roller skates who move from one wing of the Court to the other, but without, however, writing their own special opinion or offering any further public explanation as to how, if at all, they managed to reconcile their different intellectual positions in the two majority opinions that they officially voted for. The ruling on the Patriation Package bears all the hallmarks of a "political" decision by a professedly non-political tribunal. It is, in any case, what Common Law authorities would call a "no-clear-majority" decision, and thus fails in one of its basic obligations of enlightenment and official guidance to the general public, and even to the Court itself for purposes of future cases, of the official grounds of decision. If, however, it was designedly a political compromise, within the Court's ranks, in which the Court abandoned to the University Law Schools the obligation of explaining and defending the *ratio decidendi,* it achieved just such a result, also, in the political arenas. The Prime Minister, immediately after the Court judgment, summoned a fresh federal-Provincial First Ministers' conference – the first in twelve months – to make one last attempt to reach agreement on constitutional change. The times, suddenly and surprisingly, were favourable to such a move. The Prime Minister and the Premier of Alberta, the main oil-producing Province, had just concluded a major agreement on oil-pricing which, in effect, involved the amicable division of oil revenues between the federal Government and the Province of Alberta, thereby removing that Province's principal cause of anger against the fed-

eral Government and federalism generally. At the same time, the Provincial Governments were beginning to receive politically alarming reports, from the public opinion polls, that the Provincial voters whom they claimed to represent on constitutional issues, were overwhelmingly in favour of the proposed new Charter of Rights and of the Patriation Package generally. The common Provincial front which had seen eight of the ten Provinces, including Quebec, united in un-Holy Alliance against the federal Government, (with only the two Provinces of Ontario and New Brunswick supporting the federal cause) collapsed suddenly and completely. It had always been an unnatural, un-Holy Alliance, for the seven English-speaking Provinces that had united temporarily with Quebec had been noted, in the past, for their bitter and intransigent opposition to the French fact in Canadian federalism and to any extension of the French language or French-English bilingualism to their Provinces and Provincial Government services. In their rush to leave a by-now, apparently lost political cause, the seven Premiers, who, with the Premier of Quebec, had made up a Provincial "Gang of Eight" opposing the Patriation Package, now deserted the Quebec Premier without so much as an apology or even an advance notification to him. The federal Government, now having these seven Premiers, plus its two original supporters on its side, was able to complete adoption of the Patriation Package in the federal Parliament and to transmit the package to the British Government with nine of the ten Provincial Premiers now endorsing it. The price – the very, very heavy political and legal price that the federal Government felt compelled to pay in return for such overwhelming Provincial Government support – was the practical disembowelling of the Charter as originally drafted, already referred to.

5. Critique of the Patriation Package Constitution-Making Exercise

The Patriation Package, as finally adopted, represents only a limited, incremental change to the existing constitution, and is no genuine act of constitutional novation in itself.

Of the actual contents of the Patriation Package, patriation proper was historically long overdue but not of great intrinsic legal importance in itself. The new constitutional amending machinery will, predictably, operate very rarely, if at all, thereby casting the main burden for constitutional change, for the future, as before, on other, more informal agencies (judicial interpretation, executive glosses on the constitutional text, and the like).

The Charter of Rights itself is, for a document conceived and adopted towards the end of the 20th century, rather traditional and conservative

and breaks little new constitutional ground. In language and style it is rather heavy and bureaucratic and likely to miss out, therefore, on that public educational function that a constitutional charter and a constitutional Bill of Rights are supposed to fulfil today.

The actual constituent process employed for drafting and adoption of the Patriation Package and the Charter of Rights relied too heavily on official, governmental arenas at the expense of participatory democracy and direct involvement and consultation of the people, such as is customary today in modern democratic constitutionalism.

By virtue of the deficiencies in drafting of the Charter of Rights, a very heavy public burden for salvation will be cast upon a Supreme Court that, neither in its past history and traditions nor in the accidents of judicial personalities within its ranks, has shewn any great experience with or confidence in the more frankly legislative, policy-making *rôle* to which the Supreme Court of the United States and other specialised constitutional tribunals have become accustomed in recent years. It is possible to predict a very marked increase in the work-load of the Court and its political responsibilities, as the sort of great public controversies that have beset American society, and in its turn the U.S. Supreme Court, in recent years, end up increasingly before the Canadian Supreme Court.

The Patriation Package, as a limited, incremental change, only, to the existing Canadian constitution, leaves unfinished or substantially untouched several major issues of Canadian society on which fundamental political consensus or compromise cannot long be postponed: the constitutional status of the Aboriginal, Indian and Native Peoples, and their natural resources and general economic claims; the constitutional status of the Municipalities in the new, highly urbanised Canadian society now emerging, as the original regional sub-divisions or Provinces, become (apart from Quebec) increasingly anachronistic and irrelevant to present-day needs[33]; the future constitutional status of Quebec, as French-Canadian drives for national self-determination, and for cultural and also economic emancipation from English-Canada continue, and as those demands are concretised in claims for express constitutional recognition of a new, *deux nations* (French and English) conception of Canadian federalism for the future. Such a new Dualist premise or *Grundnorm* for Canadian federalism must certainly include a new pragmatic compromise between Quebec Pro-

[33] See, generally, Municipal Government in a New Canadian Federal System (Federation of Canadian Municipalities, Ottawa) (1980).

vincial (French as sole Official Language of Quebec) legal norms, and federal (French and English official bilingualism throughout Canada) legal norms.

Addendum

The Patriation Package was passed, in the form of British legislation, by the British House of Commons on March 9, 1982, and then by the British House of Lords on March 25; and it was immediately given formal effect, as British law, by the Queen-in-Council in Great Britain. The only change as between the version earlier adopted by the Canadian Parliament in December, 1981, and the text as voted by the British Parliament, was the technical one of up-dating the title from "Constitution Act 1981" to "Constitution Act 1982" so as to correspond to the change in calendar year. The Constitution Act was formally proclaimed, as Canadian law – as stipulated in its own section 58 – in Ottawa, on April 17, entering into effect as Canadian law by that action. The highest British Courts had, by that time, rejected a series of legal challenges mounted by various Canadian Indian and Native groups seeking declarations that the Patriation measure, as presented to or as adopted by the British Parliament, was invalid, *qua* British law, in Great Britain itself: the British Courts thus seemed to close the door finally to any legal attacks in Great Britain itself. The Quebec Cour d'Appel had also, by this time, unanimously rejected a further legal challenge by the Premier of Quebec to the constitutionality of the Patriation Resolution, as adopted by the Canadian Parliament, *qua* Canadian law. As to these developments, see generally the present author's Canada and the Constitution. Patriation and the Charter of Rights (Toronto 1982).

Appendix

Patriation Resolution, final version (December 8, 1981):

(as adopted by the Federal Parliament)

That, whereas in the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

and whereas it is in accord with the status of Canada as an independent state that Canadians be able to amend their Constitution in Canada in all respects;

and whereas it is also desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to that Constitution;

A respectful address be presented to Her Majesty the Queen in the following words:

To the Queen's Most Excellent Majesty:

Most Gracious Sovereign:

We, Your Majesty's loyal subjects, the House of Commons of Canada in Parliament assembled, respectfully approach Your Majesty, requesting that you may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth:

Schedule A

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Constitution Act, 1981, set out in Schedule B to this act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that act.

2. No act of the Parliament of the United Kingdom passed after the Constitution Act, 1981, comes into force shall extend to Canada as part of its law.

3. So far as it is not contained in Schedule B, the French version of this act is set out in Schedule A to this act and has the same authority in Canada as the English version thereof.

4. This act may be cited as the Canada Act.

Schedule B

Constitution Act, 1982

Part I

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only

to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Democratic Rights

3. Every Citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the Legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each Legislature at least once every 12 months.

Mobility Rights

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

(3) The rights specified in Subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention:

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

11. Any person charged with an offence has the right:

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or

ethnic origin, color, religion, sex, age or mental or physical disability.

Official Languages

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick.

(3) Nothing in this charter limits the authority of Parliament or a Legislature to advance the equality of status or use of English and French.

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

(2) Everyone has the right to use English or French in any debates and other proceedings of the Legislature of New Brunswick.

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

(2) The statutes, records and journals of the Legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or Government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of office, it is reasonable that communications with and services from that office be available in both English and French.

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the Legislature or Government of New Brunswick in English or French.

21. Nothing in Sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in Sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this charter with respect to any language that is not English or French.

Minority Language Educational Rights

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under Subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

24. (1) Anyone whose rights or freedoms, as guaranteed by this charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under Subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

25. The guarantee in this charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

26. The guarantee in this charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

27. This charter shall be interpreted in a manner consistent with the preser-

vation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

30. A reference in this charter to a province or to the legislative assembly or Legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this charter extends the legislative powers of any body or authority.

Application of Charter

32. (1) This charter applies

(a) to the Parliament and Government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the Legislature and Government of each province in respect of all matters within the authority of the Legislature of each province.

(2) Notwithstanding Subsection (1), Section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the Legislature of a province may expressly declare in an Act of Parliament or of the Legislature, as the case may be, that the act or a provision thereof shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of this charter.

(2) An act or a provision of an act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this charter referred to in the declaration.

(3) A declaration made under Subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a Legislature of a province may re-enact a declaration made under Subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under Subsection (4).

Citation

34. This part may be cited as the Canadian Charter of Rights and Freedoms.

Part II
Rights of the
Aboriginal Peoples of Canada

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Part III
Equalization and Regional Disparities

36. (1) Without altering the legisla-

tive authority of Parliament or of the provincial Legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the Legislatures, together with the Government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians;

(2) Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Part IV
Constitutional Conference

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this part comes into force.

(2) The conference convened under Subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

(3) The Prime Minister of Canada shall invite elected representatives of the Governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under Subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

Part V
Procedure for Amending Constitution of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) resolutions of the Senate and House of Commons; and

(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 per cent of the population of all the provinces.

(2) An amendment made under Subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the Legislature or Government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under Subsection (1).

(3) An amendment referred to in Subsection (2) shall not have effect in a

province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

(4) A resolution of dissent made for the purposes of Subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

(2) A proclamation shall not be issued under Subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

40. Where an amendment is made under Subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial Legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor-General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor-General and the Lieutenant-Governor of a province;

(b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this part comes into force;

(c) subject to Section 43, the use of the English or the French language;

(d) the composition of the Supreme Court of Canada; and

(e) an amendment to this part.

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with Subsection 38(1):

(a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(b) the powers of the Senate and the method of selecting Senators;

(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(d) subject to paragraph 41(d), the Supreme Court of Canada;

(e) the extension of existing provinces into the territories; and

(f) notwithstanding any other law or practice, the establishment of new provinces.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in Subsection (1).

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(a) any alteration to boundaries between provinces, and

(b) any amendment to any provision that relates to the use of the English or the French language within a province,

may be made by proclamation issued by the Governor-General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

44. Subject to Sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive Government of Canada or the Senate and House of Commons.

45. Subject to Section 41, the Legislature of each province may exclusively make laws amending the constitution of the province.

46. (1) The procedures for amendment under Sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

(2) A resolution of assent made for the purposes of this part may be revoked at any time before the issue of a proclamation authorized by it.

47. (1) An amendment to the Constitution of Canada made by proclamation under Section 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within 180 days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in Subsection (1).

48. The Queen's Privy Council for Canada shall advise the Governor-General to issue a proclamation under this part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this part.

49. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within 15 years after this part comes into force to review the provisions of this part.

Part VI
Amendment to the
Constitution Act, 1867

50. The Constitution Act, 1867 (formerly named the British North America Act, 1867) is amended by adding thereto, immediately after Section 92 thereof, the following heading and section:

"Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

92A. (1) In each province, the Legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

(2) In each province, the Legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

(3) Nothing in Subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that Subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

(4) In each province, the Legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

(5) The expression "primary production" has the meaning assigned by the Sixth Schedule.

(6) Nothing in Subsections (1) to (5) derogates from any powers or rights that a Legislature or Government of a province had immediately before the coming into force of this section".

51. The said Act is further amended by adding thereto the following schedule:

"The Sixth Schedule

Primary Production from Non-Renewable Natural Resources and Forestry Resources

1. For the purposes of Section 92 A of this Act,

(a) production from a non-renewable natural resource is primary production therefrom if

i) it is in the form in which it exists upon its recovery or severance from its natural state, or

ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood".

Part VII
General

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(2) The Constitution of Canada includes

(a) the Canada Act, including this Act;

(b) the Acts and orders referred to in Schedule I; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

53. (1) The enactments referred to in Column I of Schedule I [see below] are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

(2) Every enactment, except the Canada Act, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in Schedule I may be cited as the Constitution Act followed by the year and number, if any, of its enactment.

54. Part IV is repealed on the day that is one year after this Part comes into force and this section may be repealed and this Act renumbered, consequential upon the repeal of Part IV and this section, by proclamation issued by the Governor-General under the Great Seal of Canada.

55. A French version of the portions of the Constitution of Canada referred to in Schedule I shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor-General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

56. Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 55, the English and French versions of that portion of the Constitution are equally authoritative.

57. The English and French versions of this Act are equally authoritative.

58. Subject to section 59, this Act shall come into force on a day to be fixed by proclamation issued by the Queen or the Governor-General under the Great Seal of Canada.

59. (1) Paragraph 23(1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor-General under the Great Seal of Canada.

(2) A proclamation under Subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.

(3) This Section may be repealed on the day paragraph 23(1)(a) comes into force in respect of Quebec and this Act amended and renumbered, consequential upon the repeal of this section, by proclamation issued by the Queen or the Governor-General under the Great Seal of Canada.

60. This Act may be cited as the Constitution Act, 1982, and the Constitution Acts 1867 to 1975 (No.2) and this Act may be cited together as the Constitution Acts, 1867 to 1982.

SCHEDULE [I]

to the

CONSTITUTION ACT, 1982

MODERNIZATION OF THE CONSTITUTION

Item	Column I Act Affected	Column II Amendment	Column III New Name
1	British North America Act, 1867, 30-31 Vict., c.3 (U.K.)	(1) Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the *Constitution Act, 1867.*" (2) Section 20 is repealed. (3) Class 1 of section 91 is repealed. (4) Class 1 of section 92 is repealed.	Constitution Act, 1867
2	An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c.3 (Can.)	(1) The long title is repealed and the following substituted therefor: "*Manitoba Act, 1870.*" (2) Section 20 is repealed.	Manitoba Act, 1870
3	Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, dated the 23rd day of June, 1870		Rupert's Land and North-Western Territory Order

Item	ColumnI Act Affected	Column II Amendment	Column III New Name
4	Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May, 1871		British Columbia Terms of Union
5	British North America Act, 1871, 34-35 Vict., c.28 (U.K.)	Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the *Constitution Act, 1871.*"	Constitution Act, 1871
6	Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873		Prince Edward Island Terms of Union
7	Parliament of Canada Act, 1875, 38-39 Vict., c.38 (U.K.)		Parliament of Canada Act, 1875
8	Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880		Adjacent Territories Order
9	British North America Act, 1886, 49-50 Vict., c.35 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1886.*"	Constitution Act, 1886
10	Canada (Ontario Boundary) Act, 1889, 52-53 Vict., c.28 (U.K.)		Canada (Ontario Boundary) Act, 1889
11	Canadian Speaker (Appointment of Deputy) Act, 1895, 2nd Sess., 59 Vict., c.3 (U.K.)	The Act is repealed.	
12	The Alberta Act, 1905, 4-5 Edw. VII, c.3 (Can.)		Alberta Act
13	The Saskatchewan Act, 1905, 4-5 Edw. VII, c.42 (Can.)		Saskatchewan Act
14	British North America Act, 1907, 7 Edw. VII, c.11 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1907.*"	Constitution Act, 1907

Item	Column I Act Affected	Column II Amendment	Column III New Name
15	British North America Act, 1915, 5-6 Geo. V, c.45 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1915.*"	Constitution Act, 1915
16	British North America Act, 1930, 20-21 Geo. V, c.26 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1930.*"	Constitution Act, 1930
17	Statute of Westminster, 1931, 22 Geo. V, c.4 (U.K.)	In so far as they apply to Canada, (*a*) section 4 is repealed; and (*b*) subsection 7(1) is repealed.	Statute of Westminster, 1931
18	British North America Act, 1940, 3-4 Geo. VI, c.36 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1940.*"	Constitution Act, 1940
19	British North America Act, 1943, 6-7 Geo. VI, c.30 (U.K.)	The Act is repealed.	
20	British North America Act, 1946, 9-10 Geo. VI, c.63 (U.K.)	The Act is repealed.	
21	British North America Act, 1949, 12-13 Geo. VI, c.22 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Newfoundland Act.*"	Newfoundland Act
22	British North America (No.2) Act, 1949, 13 Geo. VI, c.81 (U.K.)	The Act is repealed.	
23	British North America Act, 1951, 14-15 Geo. VI, c.32 (U.K.)	The Act is repealed.	
24	British North America Act, 1952, 1 Eliz. II, c.15 (Can.)	The Act is repealed.	
25	British North America Act, 1960, 9 Eliz. II, c.2 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1960.*"	Constitution Act, 1960

Item	Column I Act Affected	Column II Amendment	Column III New Name
26	British North America Act, 1964, 12-13 Eliz. II, c.73 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1964.*"	Constitution Act, 1964
27	British North America Act, 1965, 14 Eliz. II, c.4, Part I (Can.)	Section 2 is repealed and the following substituted therefor: "2. This Part may be cited as the *Constitution Act, 1965.*"	Constitution Act, 1965
28	British North America Act, 1974, 23 Eliz. II, c.13, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c.28, s.38(1) (Can.), is repealed and the following substituted therefor: "3. This Part may be cited as the *Constitution Act, 1974.*"	Constitution Act, 1974
29	British North America Act, 1975, 23-24 Eliz. II, c.28, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c.28, s.31 (Can.), is repealed and the following substituted therefor: "3. This Part may be cited as the *Constitution Act (No.1), 1975.*"	Constitution Act (No.1), 1975
30	British North America Act (No.2), 1975, 23-24 Eliz. II, c.53 (Can.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act (No.2), 1975.*"	Constitution Act (No.2), 1975