

## Chapter 3

# The Constitution and the law

As the society of a country becomes more highly developed, the body of law governing its citizens becomes more complex. This chapter has been planned to explain, in a systematic manner, the law as it has evolved in Canada. The basis of written law, the Constitution, is dealt with in some detail, followed by a discussion of the distribution of powers between federal and provincial jurisdictions. Application of the law involves the Courts, the legal profession and the various agencies charged with enforcement. The ultimate concern of these agencies, the lawbreaker, and correctional institutions are studied in the concluding sections.

### 3.1 The Constitution

The Canadian federal state, which today comprises ten provinces and two northern territories, had its beginning over one hundred years ago in the enactment by the British Parliament on March 29, 1867 of the British North America Act, 1867. Fashioned largely out of the Seventy-two Resolutions drafted at Quebec (1864) by the Fathers of Confederation, the BNA Act, 1867 provided for the federal union of the three British North American provinces (Canada, New Brunswick and Nova Scotia) in one Dominion under the name of Canada.

Although the new nation that came into being on July 1, 1867 was a federation comprising four provinces (Ontario, Quebec, New Brunswick and Nova Scotia) Section 146 of the Act provided for admission into the Union of the Crown colonies of Prince Edward Island and Newfoundland on the Atlantic and the united (1866) island and mainland colony of British Columbia on the Pacific, and also of the vast expanse of Hudson's Bay Company territory in the northwest known as "Rupert's Land and the North-Western Territory". Following negotiation of an agreement on terms comprising the Company's surrender of its authority and territories to the Crown (which was to transfer them at once to Canada) and the retention of one twentieth of the land of the fertile belt (the southern territories) with designated blocks of land around its trading posts and a Canadian cash payment of £300,000, the new nation of Canada was ready to expand westward with considerable momentum across the continent to the Pacific.

The acquisition by Canada of Rupert's Land and the North-Western Territory permitted limited provincial establishment of the Red River settlement under the name of Manitoba in 1870; provided the federal government with public lands needed to help subsidize a transcontinental railway linking the Pacific with the Canadian east, thereby fulfilling the pledge to British Columbia to begin the Canadian Pacific Railway within two years and laid, through the provision of millions of acres of public lands, the land and economic bases for the federal government's adoption of a free-homestead policy for the Canadian prairies that, in conjunction with the completion of the Canadian Pacific Railway and the launching of other railway lines, brought wave after wave of settlers into the northwest in such numbers as to justify the creation of Saskatchewan and Alberta in 1905 out of the portion of the Northwest Territories south of the 60th parallel of north latitude. Although provision for their entry was included in the BNA Act, 1867, Prince Edward Island held back from the Union until 1873 and Newfoundland became Canada's tenth province on March 31, 1949 (see Table 3.1).

The Constitution of Canada, which had a corporate beginning in 1867, combines, in a set of rules determining the creation and operation of the machinery or institutions of government, the Cabinet system of responsible government (based on an inheritance from Britain) with a Canadian adaptation of federalism (as then practised in the United States for 80 years). A written document, the BNA Act of 1867, contains a substantial portion of Canada's Constitution and this Act, with its various amendments, is popularly held to be the Canadian Constitution. There is, however, another and perhaps more important part which appears, through the evolutionary processes of historical growth, in various guises including well-established usages and conventions found in the unwritten provisions of the Constitution.

Thus, the BNA Act is not a comprehensive constitutional document presenting an exhaustive statement of fundamental laws and rules by which Canada is governed. The Constitution of Canada in its broadest sense includes other British statutes (such as the Statute of Westminster, 1931) and Orders in Council (notably those admitting various provinces and