

territories to the federation), Statutes of the Parliament of Canada relating to such matters as the succession to the Throne, the Royal Style and Titles, the Governor General, the Senate, the House of Commons, the creation of courts, the establishment of government departments, the franchise, elections, and also statutes of provincial legislatures relating to provincial constitutional institutions and government matters. Federal and provincial Orders in Council, legally authorized by their respective statutes, provide further constitutional material as do the decisions of the courts which interpret the BNA Act and all ordinary statutes and indeed possess the power to set aside any laws which they hold to be *ultra vires* or beyond the jurisdiction of the enacting legislative bodies, whether federal or provincial. Moreover, the Canadian Constitution comprises, in addition to the statutory law and its judicial interpretation, substantial sections of the common law, unwritten constitutional usages and conventions and principles of democratic government which were transplanted from Britain over two hundred years ago and since then have been thriving and evolving in the Canadian environment. For example, the Cabinet system of responsible government and its functioning through close identification of the executive and the legislative powers (that is, of the Cabinet and the House of Commons) is not mentioned in the BNA Act but derives from an unwritten convention of the Constitution.

Although the essential principles of Cabinet government are based on custom or constitutional usage, the federal structure of Canadian government rests on the explicit written provisions of the BNA Act. Apart from the creation of the federal union, the dominant feature of the Act and indeed of the Canadian federation was the distribution of powers between the central or federal government on the one hand and the component provincial governments on the other. In brief, the primary purpose was to grant to the Parliament of Canada legislative jurisdiction over all subjects of general or common interest, while giving to the provincial legislatures jurisdiction over all matters of local or particular interest.

Unlike the written constitutions of many nations, the BNA Act lacks comprehensive "bill of rights" clauses, although it does accord specific constitutional protection to the use of the English and French languages (clause 133) and special safeguards with respect to sectarian or denominational schools. Freedom of speech, freedom of assembly, freedom of religion, freedom of the press, trial by jury and similar liberties enjoyed by the individual citizen are not recorded in the BNA Act but rather depended on the statute law and the common law inheritance until these rights were confirmed by the passage of a Canadian Bill of Rights — An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (SC 1960, c.44), assented to August 10, 1960.

The right to use either the English or the French language in the House of Commons, the Senate or the federal courts is constitutionally guaranteed by Section 133 of the BNA Act. The use of the English and French languages in the administration of the Government of Canada is dealt with in the Official Languages Act (RSC 1970, c.O-2). That Act provides that government notices to the public, certain orders and regulations, and final decisions of federal courts are to be made or issued in both languages and that, in the National Capital Region and in federal bilingual districts, government services are to be available in both languages. The Commissioner of Official Languages for Canada is responsible for ensuring that the Act is complied with.

**Amendment of the Constitution.** No provision was made in the BNA Act of 1867 for amendment thereof by any legislative authority in Canada but both the Parliament of Canada and the provincial legislatures were given legislative jurisdiction with respect to some matters relating to government. Thus, for example, the Parliament of Canada was given jurisdiction with respect to the establishment of electoral districts and election laws and the privileges and immunities of members of the House of Commons and the Senate, and each provincial legislature was empowered to amend the constitution of the province except as regards the office of Lieutenant-Governor. Amendments to the BNA Act have been made on 14 occasions since 1867 by the British Parliament. By an amendment to the BNA Act passed in 1949, the authority of the Parliament of Canada to legislate with respect to constitutional matters was considerably enlarged and it may now amend the Constitution of Canada except as regards the legislative authority of the provinces, the rights and privileges of provincial legislatures or governments, schools, the use of the English or the French language, and the duration of the House of Commons other than in time of real or apprehended war, invasion or insurrection.

The search for a satisfactory amending procedure within Canada which satisfies the need