

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 (Sect. 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, as far as federal law is concerned, 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 compliance with this Act.

Amendment of the Constitution. No provision was made in the BNA Act of 1867 for its amendment by any legislative body 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. Each provincial legislature was empowered to amend the Constitution of its province except as regards the office of Lieutenant Governor. Amendments to the BNA Act have been made by the British Parliament on 14 occasions since 1867. 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 provides that no House of Commons shall continue for more than five years other than in time of real or apprehended war, invasion or insurrection.

The search for a satisfactory procedure for amending the Constitution totally within Canada which satisfies the need to safeguard basic provincial and minority rights and yet possesses sufficient flexibility to ensure that the Constitution can be altered to meet changing circumstances has been the subject of repeated consideration in the Parliament of Canada as well as in a series of federal-provincial conferences and meetings held in 1927, 1935-36, 1950 and 1960-61. In October 1964 the text of a draft bill "to provide for the amendment in Canada of the Constitution of Canada", which embodied an amending procedure or formula, recommended by a Conference of Attorneys General, was unanimously accepted by a Conference of the Prime Minister and the Premiers. However, Quebec subsequently withdrew its approval of the formula and it was never adopted.

Between February 1968 and June 1971, eight federal-provincial conferences were held to study the drafting of a new Constitution. A committee of officials was established to provide assistance in the study of constitutional questions. The provincial governments, with one exception, and the federal government submitted proposals for a new Constitution. The discussions culminated in the drafting of the Canadian Constitutional Charter, 1971, which set out specific constitutional reforms, including a revised amendment procedure. The Charter