CHAPTER 19

GOVERNMENT

19.1 Organization of the federal government

The Canadian federal state of 10 provinces and two territories had its foundation in an act of the British Parliament, the British North America Act, 1867, renamed the Constitution Act, 1867 by the Constitution Act, 1982. The latter act contains the Canadian Charter of Rights and Freedoms and other new provisions, including the procedure for amending the constitution of Canada. The Constitution Act, 1867 not only established the institutions through which legislative, executive and judicial powers are exercised in Canada but also established a federal form of government. A central government — the federal government — has legislative jurisdiction primarily over matters of national concern and over those matters not assigned to the provinces. The 10 provincial governments are assigned specific areas of legislative jurisdiction, including municipal institutions.

In Canada there is a fusion of executive and legislative powers. Formal executive power is vested in the Queen, whose authority is delegated to the Governor General, her representative. Legislative power is vested in the Parliament of Canada which consists of the Queen, an appointed upper house (the Senate) and a lower house (the House of Commons) elected by universal adult suffrage. The independence of the judiciary is safeguarded through the constitutional provision that superior court judges are appointed by the Governor-in-Council, that is, by the Governor General on advice of the Cabinet, and that they hold office during good behaviour and cannot be removed unless both houses of Parliament, the Cabinet and the Governor General agree.

19.1.1 Responsible government

In the Canadian system, where the executive is part of Parliament, democratic principles could not be adhered to without the constitutional convention that the government is responsible to the House of Commons.

Federal elections are governed by the Canada Elections Act and are held following the dissolution of Parliament. A dissolution of Parliament is a prerogative of the Governor General of Canada, acting on the advice of the Prime Minister. Parliament may be dissolved at any time but it has never yet been dissolved prior to meeting at least once. The normal courses of Parliament range from three to four years while an election must be held at least five years from the date of the return of the writs of election. It is a fundamental convention of the Canadian system, in which the executive is part of Parliament, that if the government of the day loses the confidence of the House of Commons, it must resign or the Prime Minister must ask the Governor General to dissolve Parliament and call a general election.

Although there are conventions that help in deciding when the government has lost the confidence of the House, all doubt is removed when the government is defeated on a motion on which it had explicitly staked its life or when a motion of non-confidence in the government is passed. If the government resigns, the Governor General can call on the leader of the opposition (who is usually the leader of the political party that has the second largest number of seats in the House of Commons) to form a new government. If a government that has lost the confidence of the House of Commons and has been granted a dissolution is defeated in the ensuing general election and if no clear majority is elected, the government has two choices — it can remain in office and seek the confidence of the Commons when it meets or it can resign at once. If it resigns, the Governor General will normally ask the leader of another party, usually the one that has won the most seats, to form a new government. The primary responsibility of the Governor General in either circumstance is to provide the nation with a government capable of carrying on with the support of the House of Commons.

Once Parliament is dissolved the chief electoral officer issues writs of election to returning