

## Introduction

The story of the Canadian Constitution is far more than the history of the *Constitution Act, 1867*, which was once called the *British North America Act*, or even the *Canada Act, 1982* and the *Canadian Charter of Rights and Freedoms*. These documents, while important, tell only a portion of the story. It begins long before Canada was formed as a nation, in Britain, France and among the Aboriginal peoples of North America.

This section of the *Canada in the Making* site will link the events and trends in Canada’s past with the government documents that illustrate the story.

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To better understand the evolution of the Constitution, be sure to read the pages explaining:  
 The Written and the Unwritten Constitution  
 Representative and Responsible Government

To view the primary texts on this site, you may need a password. If your school does not have access to the Gov Docs collection, ask someone at your school to contact CIHM. It’s free for schools!

## Aboriginal Peoples

Long before Canada came into being as a nation, Aboriginal peoples had their own cultures and ways of making collective decisions. Many of their practices survive through to today, and some have had an influence on the Canadian Constitution.

### Many Peoples, Many Cultures

As today, there were many Aboriginal peoples in Canada before the arrival of the Europeans, each with its own culture and ways for making collective decisions. Nor did Aboriginal peoples stay in one place, or stay distinct and separate from their neighbours. They moved apart and merged with one another regularly. Warfare contributed to this state of flux.

### No Centralized Government

Despite their differences, however, Aboriginal peoples did have some things in common. For one thing, they did not have centralized, formal government in the European sense.

Aboriginal societies were largely governed by unwritten customs and codes of conduct. For collective decision-making, the family was the most basic unit. Other units could include:

- The Village
- The Clan
- The Tribe
- The Nation

Below are examples of decision making by some Aboriginal peoples.

### Decision Making Among the Iroquois

The Iroquois and Huron were settled, living in villages and towns and farming the land. The Iroquois and Huron Confederacies were a loose federation of nations:

- Iroquois: Seneca, Cayuga, Onandaga, Oneida, Mohawk and later Tuscarora.
- Huron: Arendaronon, Ataronchronon Attignawantan, Attigeeenongnahac and Tahontaenrat.

Decision-making was done by in two councils (one for civil matters, the other for war). Men over 30 were members, although lineage was determined by the mother's line. Most matters were decided by discussion and consensus, but old men and heads of large families were the most influential. The Grand Council met at least once a year. Its delegates were men, but were selected by women.

### **Decision Making Among the Plains Nations**

The Plains nations were nomadic, with village sizes being small in the winter and larger in the summer – sometimes holding up to a thousand people. They made decisions through a chief and a council of elders. The chief was usually chosen for skill as a hunter and warrior. Decisions were usually made by unanimous consensus.

When the smaller winter villages joined together in the summer for the buffalo hunt, the most respected of the winter chiefs became the voices with the most authority.

### **Decision Making Among the Pacific Coast Peoples**

The Pacific coast peoples were settled, and had a complex social structure including nobility, commoners and slaves. The leaders of each village would meet during potlatch ceremonies and discuss issues of common interest.

### **Decision Making Among the Inuit**

The Inuit were nomadic. Leaders were selected according to the situation, depending on skill as a hunter, generosity, oratory ability, or skill at reconciliation.

### **Treaty Making**

The lack of a central government did not mean that Aboriginal peoples could not make treaties. They frequently entered into alliances and treaties of neutrality, although such treaties were not recorded. These treaties were as well respected and as frequently broken as written European treaties.

When the Europeans arrived, they imposed European methods upon the Aboriginal peoples they met. These treaties were usually written, and form the basis of many land claims by Aboriginal nations today.

### **The Great Peace of 1701**

One example of early treaty making between Europeans and Aboriginal peoples, was the Great Peace of 1701. 1,300 delegates of more than 40 First Nations converged on Montreal. The treaty that followed the negotiations ended almost 100 years of war between the Iroquois Confederacy and New France and its allies.

The significance of the treaty lasts to this day, as it set a precedent for negotiation. It set the foundation for the expansion of the “empire” of New France to the south and west, and ensured the neutrality of the Iroquois Confederacy in case of war between the French and English in North America.

### **The Legacy**

The absence of government in the European sense confused Europeans and led to inaccurate judgments about the nature of the many Aboriginal cultures they encountered.

Despite this, they entered into many treaties with Aboriginal peoples, and made guarantees about Aboriginal lands in important documents, such as the *Royal Proclamation, 1763*. These documents continue to have an impact on the Constitution today, as well as land claims.

### **Other Interesting or Important Documents**

*•Fundamental principles of the laws of Canada as they existed under the natives, as they were changed under the French Kings, and as they were modified and altered under the domination of England: together with the general principles of the custom of Paris, as laid down by the most eminent authors, with the text, and a literal translation of the text : the Imperial, and other statutes, changing the jurisprudence in either of the provinces of Canada at large : prefaced by an historical sketch ... compiled with a view of assisting law students in their studies*

## 1608 – 1759: New France

The Constitution of Canada was shaped partly by the government of New France. Elements such as civil law continue to the present day. In addition, efforts of French Canadians to preserve the distinctness of the province today have their roots in the friction caused by the interaction of the British and French Canadian cultures.

### Early New France

Government in New France began with private companies formed to exploit the natural resources of the new colony. Samuel de Champlain was the first real governor.

Supporting documents in Early Canadiana Online:

*Commission de Commandant en la Nouvelle France, du 15<sup>e</sup> Octobre, 1612...en faveur du Sieur Champlain*

*Commission de Commandant en la Nouvelle France, du 15<sup>e</sup> Février, 1625... en faveur du Sieur Champlain*

(Documents appointing Champlain as governor.)

### Did you know...?

Samuel de Champlain, the father of New France, founded Québec in 1608. In his efforts to support his local allies, the Huron, in their war with the Iroquois, Samuel de Champlain made the Iroquois the enemy of New France for 90 years.

### Compagnie des Cent-Associés

In 1627 the Compagnie des Cent-Associés (Company of a Hundred Associates), was founded by Cardinal Richelieu to replace other companies and form a monopoly. It was his hope that the stability created by the monopoly of this chartered company would lead to the settlement of New France.

Supporting documents in Early Canadiana Online:

*Acte pour l'établissement de la Compagnie des cent Associés..., 29 Avril, 1629*

The Cent-Associés held administrative, judicial and lawmaking powers over New France, as well as broad trading privileges. This charter was granted with the provision that the company would promote settlement and create a colony. Conflicts with English freebooters proved too costly for the company, however.

In 1645 the company sublet its charter to the Communauté des habitants, another company concerned primarily with the fur trade. This also failed – this time because of war with the

Mohawk – and on September 24, 1663, the Louis XIV intervened and the colony of New France became a royal province.

Supporting documents in Early Canadiana Online:

*Arrêt par lequel sa Majesté approuve la délibération de la Compagnie de la Nouvelle France..., 6 Mars, 1645*

(Act approving takeover of charter by the Communauté des habitants.)

*Acceptation du Roi de la demission de la Compagnie de la Nouvelle France, 24 Mars, 1663*

(Act by which Louis XIV took control of New France.)

### **A Royal Province is Created**

Louis XIV and his leading minister, Jean-Baptiste Colbert, created the structure for the new province almost as an experiment.

All authority stemmed from the king and went through an appointed viceroy. The viceroys did not play an active role in government.

After New France became a province, government gradually evolved to one in which there were four main sources of authority, each with distinct areas of responsibility:

- A gouverneur (governor) controlled military and external affairs (including relations with Aboriginal groups) and reported to the Ministère de la Marine (Ministry of the Navy). The king appointed the gouverneur.
- The Bishop of Québec, responsible for the missionary efforts, as well as hospitals and schools in the colony. He was chosen by the king and confirmed by the Pope.
- An intendant. Although technically subordinate to the governor and bishop, the intendant had much wider and more influential powers. The product of the centralisation of power under the monarch, every French province had an intendant to ensure that the king's decisions were implemented. He controlled the three departments of the interior: justice, civil administration, and finance. This included areas such as fisheries, agriculture, settlement, public order, economic development taxes, the building of public works, and more. The king appointed this position.
- A Conseil Souverain (Sovereign Council, renamed Superior Council in 1703), which acted as a court of appeal for civil and criminal cases. The gouverneur and the bishop appointed council members until 1675. The king later made these appointments.

New France also had local governments in Louisiana, Acadia, Québec, Trois-Rivières and Montreal, each with a local governor and intendant's sub-delegate.

Supporting documents in Early Canadiana Online:

***Edict de Création du Conseil Supérieur de Québec, Avril, 1663***  
(Edict creating the Sovereign Council.)

***Commission pour Mr. Talon, 23<sup>me</sup> Mars, 1665***  
(Commission appointing Jean Talon as the first intendant.)

### **Relationships of Authority in New France**

New France was, like France, absolutist in nature. In practice, however, neither the king nor his appointed gouverneurs ruled arbitrarily or capriciously. Authority was shared and distributed down the social ladder. In practice, there was some competition between different officials, which resulted in a less authoritarian form of government than the hierarchy suggests.

### **Justice in New France**

Law in New France was the same civil law as used in France. The Coutume de Paris (customary law of Paris or Custom of Paris) formed the basis of laws in the province, as was decreed in section 3 of the act establishing the Compagnie des Indes Occidentales. It underwent changes in 1667, 1678 and 1685.

Supporting documents in Early Canadiana Online:

***Proces Verbal contenant les modifications faites par le Conseil Supérieur à l'Ordonnance ou Code Civile de 1667, avec dite Ordonnance, 7 Novembre, 1678***  
(The civil code of 1667, with notes for changes.)

Justice was administered using the traditional inquisitorial method of France. This gave a great deal of power to the judge, but was inexpensive and quick.

To learn more about the history of New France:

- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]
- Visit the Virtual Museum of New France.  
[link: <http://www.civilization.ca/vmnf/vmnfe.asp>]

### **Other Interesting or Important Documents in Early Canadiana Online**

- ***Etablissement de la Compagnie des Indes Occidentales, Mai, 1664***  
(Establishes the West Indies Company.)
- ***Treaty of Utrecht, 1713*** (bilingual)  
(France surrenders claims to Newfoundland and Acadia.)

- *An Abstract of the several royal edicts and declarations, and provincial regulations and ordinances, that were in force in the province of Quebec in the time of the French government: and of the commissions of the several governours-general and intendants of the said province, during the same period*
- *An abstract of the Loix de police; or, Public regulations for the establishment of peace and good order, that were of force in the province of Quebec, in the time of the French government*
- *An abstract of those parts of the custom of the viscounty and provostship of Paris, which were received and practised in the province of Quebec, in the time of the French government, 1772*
- *The sequel of the abstract of those parts of the custom of the viscounty and provostship of Paris, which were received and practised in the province of Quebec in the time of the French government: containing the thirteen latter titles of the said abstract, drawn up by a select committee of Canadian gentlemen well skilled in the laws of France and of that province, by the desire of the Honourable Guy Carleton, Esquire, Captain General and Governour in Chief of the said province, 1772*
- *Notes sur la coutume de Paris: indiquant les articles encore en force avec tout le texte de la coutume à l'exception des articles relatifs aux fiefs et censives, les titres du retraitsnagen et de la garde noble et bourgeoise*
- *Le droit civil canadien suivant l'ordre établi par les codes: précédé d'une histoire générale du droit canadien*
- *Fundamental principles of the laws of Canada as they existed under the natives, as they were changed under the French Kings, and as they were modified and altered under the domination of England: together with the general principles of the custom of Paris, as laid down by the most eminent authors, with the text, and a literal translation of the text : the Imperial, and other statutes, changing the jurisprudence in either of the provinces of Canada at large : prefaced by an historical sketch ... compiled with a view of assisting law students in their studies*

## 1749 – 1759: Nova Scotia

Nova Scotia was the first part of what is now Canada to win representative government. Settlers there set the stage for future struggles in other parts of British North America.

### **The Founding of Halifax and the Agitation of the Settlers**

Many of the settlers in the newly founded town of Halifax were from New England and expected representative government. They began agitating for an elected assembly.

The Colonial Office in Britain agreed, and instructed the governor, Colonel Edward Cornwallis, to take the necessary steps. He did not do so, however, as he believed the colony was still too endangered by the French in Louisbourg and Mi'kmaq attacks.

### **The First Representative Government**

The next governor, Charles Lawrence, was also reluctant to grant representative government. The settlers and the Colonial Office continued to press the issue however, and ultimately, the first assembly was formed in 1758.

The tug-of-war over the issue is reflected in the documents below.

Supporting documents in Early Canadiana Online:

***William Murray and Richard Lloyd to the Lords Commissioners for Trade and Plantations, April 29<sup>th</sup>, 1755***

(Authors seek an elected assembly.)

***Governor Lawrence to Lords of Trade and Plantations, 8<sup>th</sup> December, 1755***

(Governor indicates that he does not believe it practical to form an assembly.)

***Lords of Trade to Governor Lawrence, March 25<sup>th</sup>, 1756***

(Lords of Trade believe it a greater evil not to have an elected assembly.)

***Lords of Trade to Governor Lawrence, July ye 8<sup>th</sup>, 1756***

(Repeats importance of forming an assembly.)

***Governor Lawrence to Lords of Trade, 3<sup>rd</sup> November, 1756***

(Restates his objections to forming an assembly.)

***At a Council holden at the Governor's House in Halifax on Monday the 3<sup>rd</sup> Jany, 1757***

(Laying the groundwork for elective assembly.)

***Lords of Trade to Governor Lawrence, March 10<sup>th</sup>, 1757***

(The Lords leave the formation of the assembly at Lawrence's discretion.)

***Governor Lawrence to Lords of Trade, 9<sup>th</sup> November, 1757***

(Lawrence happy that the Lords agree that time not right to form an assembly.)

***Lords of Trade to Governor Lawrence, Feby 7, 1758***

(The Lords state that an assembly should be formed in as short a period of time as possible.)

**At a Council holden at the Governors House in Halifax on Saturday the 20<sup>th</sup> May 1758**

(More preparations for election.)

***Governor Lawrence to Lords of Trade, 26 September, 1758***

(Sanction needed for rules and laws of the assembly.)

***Governor Lawrence to Lords of trade, 26 December, 1758***

(Announces that an assembly has been formed.)

To learn more about the history of Nova Scotia:

- Visit the Canadian Encyclopedia.

[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**Other Interesting or Important Documents in Early Canadiana Online:**

- *The perpetual acts of the general assemblies of His Majesty's province of Nova Scotia*
- *The Perpetual acts of the general assemblies of His Majesty's province of Nova Scotia: as revised in the year 1783.*

## 1759 – 1763: Martial Law

The period from 1759 until 1763 was one of occupation by the British army and martial law for the inhabitants of New France. Important precedents were set with implications for the shaping of the Canadian Constitution.

### The Conquest

On September 13, 1759, a British army under Major-General James Wolfe defeated an army of French regular troops and Canadian militia outside the walls of Québec. Then on September 8, 1760, three British armies under General Jeffery Amherst took control of Montreal and New France.

### Martial Law

During the period after the surrenders at Québec and Montreal until the *Treaty of Paris, 1763*, martial law prevailed in conquered New France. General Murray was military governor and military courts administered justice. The articles of capitulation of Québec and especially of Montreal played a role in how the Canadians were ruled.

Supporting documents in Early Canadiana Online:

**Articles of Capitulation, Quebec, Sept. 18, 1759** (bilingual)

**Articles of Capitulation, Montreal, Sept. 8, 1760** (bilingual)

### Did you know...?

General James Murray was military governor of New France from 1760 to 1763. After the <i>Treaty of Paris, 1763</i> , he became the first civil governor of Quebec from 1763 to 1766.
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### Other Interesting or Important Documents in Early Canadian Online:

- **Placard from His Excellency, Gen. Amherst, Sept. 22, 1760**
- **Proclamation of Governor Murray, Establishing Military Courts, Oct. 31, 1760**

## 1763 – 1774: The Struggle for French Canadian Rights

In 1763, France gave up almost all of her North American colonies. The French Canadians and the British had to learn to live with one another. It was a period of friction and adjustment for the French Canadians, the authorities, and the newly arrived British merchants in what was now the British province of Quebec.

### **The *Treaty of Paris, 1763***

In the *Treaty of Paris, 1763*, France surrendered all claims to New France. In this period, Quebec was governed almost as a crown colony: there was no representative Assembly and the governor was the source of most authority. General Murray, the military governor, was made the first Governor of the province.

Supporting documents in Early Canadiana Online:

#### ***Treaty of Paris, Feb 10, 1763***

(France surrenders most of her North American possessions.)

#### **Instructions to Governor Murray, Aug. 13, 1763**

(Murray commissioned as Governor of Quebec and instructed on how to govern.)

### **The *Royal Proclamation, 1763***

The governor was guided by the *Royal Proclamation, 1763*, and various instructions from authorities in London. These formed the basis of civil administration in the new province of Quebec.

The proclamation withdrew the privileged status of the Catholic Church and ended French civil law. British soldiers were expected to settle in Quebec in large numbers, and ultimately assimilate the French Canadian population.

Supporting documents in Early Canadiana Online:

#### ***Royal Proclamation, Oct. 7<sup>th</sup>, 1763*** (bilingual)

#### ***Ordinance of Sept. 17, 1764 Establishing Civil Courts***

(Establishes a court of King's Bench; laws of England to prevail.)

### **Did you know...?**

The <i>Royal Proclamation, 1763</i> , was judged by Lord Mansfield to be the <i>de facto</i> constitution of Canada until the <i>Quebec Act, 1774</i> .
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## Early Demands by British Merchants

From the earliest days of the civil administration, there were difficulties. British settlers and merchants were used to representative government and were also frustrated by the policies which kept them from going into Aboriginal lands. They made several demands:

- That the existing civil code then in use in Quebec be replaced by English common law, as dictated by the *Royal Proclamation, 1763*. This was necessary, it was argued, to protect British rights and business interests.
- That a house of assembly be formed, but that French-speaking, Catholic Canadians be excluded.

Had their demands been met, 500 new inhabitants would have kept 50,000 French Canadians out of representative government. Efforts to replace the civil code also proved chaotic. The French system had been quick and inexpensive; the new system was anything but.

Supporting documents in Early Canadiana Online:

***Governor Murray to the Lords of Trade, October 29<sup>th</sup>, 1764***  
(Responds to merchants' demands.)

***Petition of Quebec Traders to the King, 1764***  
(Quebec traders complain about Murray's rule.)

### Did you know...?

The Coutume de Paris (customary law of Paris) formed the basis of laws in the province. Read more about the differences between civil and common law.

### Other Problems

The oath that the *Proclamation* required all office holders to formally accept articles of the Protestant faith – articles that no Catholic could, in good conscience, accept. This meant that no French Canadians were legally able to fill any positions of authority.

### Did you know...?

The Second Test Act required office holders to swear: "I... do solemnly and sincerely in the presence of God profess, testify, and declare that I do believe that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ at or after the consecration thereof by any person whatsoever, and that the invocation or adoration of the Virgin Mary or any other saint and the sacrifice of the mass, as they are now used in the Church of Rome, are superstitious and idolatrous..."

## **The Search for a Solution**

Due to accusations of the British merchants, Governor Murray was recalled to London. He cleared his name, but was replaced by Sir Guy Carleton. Carleton quickly realized that meeting the demands of the merchants would not only worsen the chaos already existing, but also provoke even greater hostility amongst the French Canadians. This caused more debate.

Supporting documents in Early Canadiana Online:

### **Instructions to Governor Carleton, 1768**

(Carleton is commissioned as governor and given instructed on how to govern.)

### ***Lieut.-Governor Carleton to Earl of Shelburne, Nov. 25, 1767***

(Describes the state of the province.)

### ***Lieut.-Governor Carleton to Earl of Shelburne, Dec. 24, 1767***

(Tells of the disputes between practice of civil law and English common law.)

### **Draught of Carleton's Report to the Earl of Hillsborough, March 6, 1768**

(Carleton recommends that French civil law be reestablished in Quebec.)

### **Attorney General Masère's Criticisms of Governor Carleton's Report**

(Masère disapproves of Carleton's plan to revive French civil law.)

### **Petition of French Subjects to the King, Dec. 1773**

(Request the restoration of French civil law.)

### **Case of the British Merchants Trading to Quebec, May, 1774**

(Object to the re-introduction of French civil law in Quebec as they believe it would hurt their business interests.)

## **Merchants Seek an Elected Assembly**

Another issue of disagreement between Carleton and the merchants was the call for an elected assembly.

Supporting documents in Early Canadiana Online:

### ***Lieut.-Governor Carleton to Earl of Shelburne, Jan 20, 1768***

(Expresses concerns about the formation of an Assembly.)

## **Stumbling Toward a Constitution**

As the debate over these issues continued, reports and opinions were commissioned. The French Canadian inhabitants and the British traders also both lobbied for their own positions. Ultimately, efforts were made to draft a constitution for the province.

Supporting documents in Early Canadiana Online:

**Report of Solicitor General Alex. Wedderburn, Dec. 6, 1772**

(This report by Wedderburn discusses the government of Quebec, religion, civil and criminal laws and the judiciary needed to enforce laws.)

**Plan of a Code of Laws for the Province of Quebec**

**Other Important or Interesting Documents in Early Canadiana Online:**

• **Lord Mansfield's Judgment in Campbell v. Hall, 1774**

(Lord Mansfield rules that the Royal Proclamation was the *de facto* constitution of Quebec.)

• *An Abstract of the several royal edicts and declarations, and provincial regulations and ordinances, that were in force in the province of Quebec in the time of the French government: and of the commissions of the several governours-general and intendants of the said province, during the same period*

• *An abstract of the Loix de police; or, Public regulations for the establishment of peace and good order, that were of force in the province of Quebec, in the time of the French government*

• *An abstract of those parts of the custom of the viscounty and provostship of Paris, which were received and practised in the province of Quebec, in the time of the French government 1772*

• *The sequel of the abstract of those parts of the custom of the viscounty and provostship of Paris, which were received and practised in the province of Quebec in the time of the French government: containing the thirteen latter titles of the said abstract, drawn up by a select committee of Canadian gentlemen well skilled in the laws of France and of that province, by the desire of the Honourable Guy Carleton, Esquire, Captain General and Governour in Chief of the said province 1772*

• *Notes sur la coutume de Paris: indiquant les articles encore en force avec tout le texte de la coutume à l'exception des articles relatifs aux fiefs et censives, les titres du retraitsnagen et de la garde noble et bourgeoise*

• *Le droit civil canadien suivant l'ordre établi par les codes: précédé d'une histoire générale du droit canadien*

## 1774 – 1791: Revolutionary Changes

The *Quebec Act, 1774*, brought some measure of peace to the province – although British merchants kept campaigning for English law and an elected assembly. These campaigns might have been ignored if it were not for the event that rocked the continent: the American Revolution. The United Empire Loyalists that poured into Quebec following this event changed the politics of the province forever.

### **The *Quebec Act, 1774***

The *Quebec Act*, along with the instructions given to Governor Carleton, marked a new beginning. Among other things, these documents:

- Expanded the boundaries of Quebec, particularly to the south.
- Allowed free practice of Catholic faith in Quebec.
- Replaced the oath to Elizabeth I and her heirs (with references to Protestant faith) with one to George III (and no reference to Protestant faith).
- Allowed the practice of civil law to continue.

It did not call for an assembly, allowing the governor to continue ruling with his council.

Supporting documents in Early Canadiana Online:

*The Quebec Act, 1774* (bilingual)

**Instructions to Governor Carleton, 1775**

### **Continued Protests**

The *Quebec Act* satisfied the Canadian inhabitants of Quebec, and some of the demands of the British merchants, but did not lead to representative government. In the Thirteen Colonies, however, the *Quebec Act* was quickly denounced as one of the “Intolerable Acts,” objecting to the limits it set on westward expansion. British merchants in Quebec continued to demand representative government through a House of Assembly.

### **The American Revolution**

The United States declared independence on July 4, 1776. The American Continental Congress attempted to convince Canadians to join them in a poorly-worded letter, but French Canadians chose to stay neutral. This was attributed in part to the *Quebec Act, 1774*, which protected the Catholic faith and the social hierarchy – something they doubted that Americans would do.

Supporting documents in Early Canadiana Online:

***Haldimand to Germain, 25<sup>th</sup> October, 1780***

(Governor believes that the *Quebec Act* kept French Canadians from joining Revolution.)

Nova Scotia and Île St-Jean (later Prince Edward Island) remained loyal for their own reasons: most of their population was newly arrived from Britain, and Halifax was a naval base. It was officially prohibited to settle on Newfoundland; those that stayed illegally were too far from the revolution or the sentiment of the Americans to consider joining.

To learn more about the effect of the American Revolution on British North America:

- Visit the Canadian Encyclopedia.

[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**The United Empire Loyalists**

When hostilities ended with the *Treaty of Paris* in 1783, both Nova Scotia and Quebec suddenly became refuges for thousands of citizens of the Thirteen Colonies that had remained loyal to the Crown.

Supporting documents in Early Canadiana Online:

***Treaty of Paris, 1783***

(Treaty ends American Revolution.)

These new settlers, the United Empire Loyalists, brought with them expectations for representative government that gave new strength to the demands made earlier by British merchants.

Supporting documents in Early Canadiana Online:

**Petition for a House of Assembly, 1784**

**Plan for a House of Assembly, 1784**

**Objections to a House of Assembly, 1784**

**Carleton's Challenge**

Carleton, now Lord Dorchester, returned as governor in 1786, with the knowledge that changes would have to be made to satisfy the Loyalists. However, he felt that Canadians were still too politically naïve for representative government.

## **The Move to Representative Government and a Divided Province**

It was soon realized that a new constitution would be needed to settle these problems, as well as other unstated ones:

- The British government hoped to reduce expenses by giving colonial assemblies the power of taxation.
- It was thought important to strengthen the ties between the provinces and Britain by correcting the weaknesses of earlier constitutions.

As the loyalists had settled mostly west of the French Canadian centres of population (in what is now Ontario) the British government decided – against Carleton’s wishes – to divide the province. This was seen as the best way to satisfy the interests of both the Loyalists and the Canadians.

Supporting documents in Early Canadiana Online:

***Sydney to Dorchester: 3d Sept., 1788***

(Sydney asks Dorchester for a full account of Canadian issues.)

***Dorchester to Sydney, November 8, 1788***

(Dorchester does not believe that an Assembly is practical.)

***Dorchester to Grenville, October 20, 1789***

(Include the first draft for a new constitution.)

## 1791 – 1837: A New Constitution

The passing of the *Constitutional Act, 1791*, ushered in the next chapter of Canadian Constitutional history. Almost as soon as it was passed, though, new problems emerged.

This first section covering 1791 to 1837 looks at the adjustments after the passing of the *Constitutional Act* and the roots of the discord later in the period.

### **The *Constitutional Act, 1791***

The *Constitutional Act* was passed in order to meet the demands of the Loyalists and give the inhabitants of Quebec the same rights as other British subjects in North America. These were reflected in its provisions, which (among other things):

- Repealed the parts of the *Quebec Act, 1774* dealing with the makeup and powers of government.
- Provided for an appointed legislative council and an elected legislative assembly.
- Gave power over taxation given to the assembly.
- Gave the Governor power to withhold assent to bills passed by the legislative council and assembly.
- Declared that the Catholic faith should continue to be respected, but made provisions for lands to be set aside to support the Protestant clergy in each province (i.e.: clergy reserves).
- Divided the province of Quebec into two new provinces: Upper Canada and Lower Canada.

Supporting documents in Early Canadiana Online:

#### ***The Constitutional Act, 1791***

### **Upper Canada Adopts English Law**

As soon as the province was divided, moves were made to bring an end to the civil code in Upper Canada. A series of acts were passed in the next few years.

Supporting documents in Early Canadiana Online:

#### ***An Act Introducing English Civil Law into Upper Canada, 1792***

#### ***An Act Establishing Trial by Jury in Upper Canada, 1792***

#### ***An Act Establishing a Court of King's Bench in Upper Canada, Jul 9<sup>th</sup>, 1794.***

#### ***An Act Establishing District Courts in Upper Canada, 1794***

***Simcoe to Dorchester, March 9<sup>th</sup>, 1795***  
(Discusses how to deal with Aboriginal peoples.)

***Act for the Further Introduction of English Criminal Law into Upper Canada, July 4<sup>th</sup>, 1800***

### **Lower Canada: Two Systems**

In Lower Canada, dual systems developed. British criminal law took a place beside French civil law; land was granted in freehold outside the seigneuries; an elected assembly was established while maintaining the power of the Catholic Church and seigneurial elite.

Supporting documents in Early Canadiana Online:

***The Judicature Act, Lower Canada, 1794***  
(Set the rules for courts in Lower Canada.)

***An Act for the Better Preservation of His Majesty's government, Lower Canada, May 2<sup>nd</sup>, 1797***  
(Sets the rules for *habeas corpus*.)

### **New Constitution, New Problems**

The new constitution created its own problems:

1. Control over revenues and expenses.
2. Overlapping spheres of authority between British and provincial parliaments.
3. An executive not responsible to the elected Assembly.

### **Control Over Revenue and Expenses**

From very early in this period, the Legislative Assemblies of both provinces began to agitate for control of all finances. While they could control taxation, the governors had access to certain Crown revenues and the military budget, which was well supplied from Britain. This allowed the governors to spend without having to consult the assemblies.

Supporting documents in Early Canadiana Online:

***Resolutions of the House of Assembly, Upper Canada, 23<sup>rd</sup> March, 1818***  
(House of Assembly should initiate all money bills.)

***Resolution of Legislative Council, Lower Canada, 6 March, 1821***  
(Legislative Council should have control of money bills.)

## **Overlapping Authority**

There was no line drawn between the spheres of authority of the British Parliament and the assemblies. This resulted in conflicts that created hostile relationships between the Assembly and colonial officials, as well as with the governors, who usually supported the British authorities.

## **Did you know...?**

The executive (i.e. the Governor and Legislative Council) was “irresponsible.” That is, it was financially and constitutionally independent of the Assembly, and had the power to dissolve the Assembly. This was no different than in Britain – however, in Britain the king would act on the advice of ministers that were responsible to parliament. This led to abuses by governors on one hand, and to more extreme attitudes and actions by the frustrated assemblies on the other.

## **The Family Compact and Château Clique**

Matters were made worse by the fact that the executive was controlled by a small group of friends and acquaintances of the governors, connected by family, patronage and similar conservative ideologies. The men who filled these positions of authority often acted in their own interest rather than the interests of the people of the province.

- In Lower Canada, the Château Clique blocked reform efforts and continued to work toward the assimilation of the French-speaking population.
- In Upper Canada, the arrogance of the Family Compact offended many, and many blamed them for several financial scandals.

Supporting documents in Early Canadiana Online:

**Opinion of Sir John Nicholl on the Powers of the Bishop of Quebec, April 23<sup>rd</sup>, 1808**  
(Thought the Bishop too powerful.)

***An Act to provide for the extinction of feudal and seigniorial rights...*, 22<sup>nd</sup> June, 1825**

## 1791 – 1837: Agitating for Change

French-Canadians in Lower Canada and Loyalists and immigrants from the United States in Upper Canada were not satisfied with the granting of elected assemblies: they wanted control as well. The conservative groups around the governors resisted. This started a cycle of hostility and frustration.

This second section covering 1791 to 1837 looks at the growing deadlock between various forces in the British North American colonies, and how they led to rebellion and change.

### Growing Hostility

This period is characterized by increasingly hostile relations between the Legislative Assembly and those in executive, which can be seen in the correspondence of the day. Legislatures were frequently dissolved and elections held again. These often returned the same men who had been in the Assembly before.

Supporting documents in Early Canadiana Online:

***Milnes to Portland, November 1<sup>st</sup>, 1800***

(Expresses concerns about “lower orders” of people in Lower Canada.)

***Craig to CastleReagh, June 5<sup>th</sup>, 1809***

(Craig discusses difficulties controlling the Legislative Assembly of Lower Canada.)

***Craig to Liverpool, March 30<sup>th</sup>, 1810***

(Craig considers dissolving the Assembly.)

***Craig to Liverpool, May 1<sup>st</sup>, 1810***

(Craig recommends suspending the constitution and reuniting Canada.)

***Murray to Kempt, September 29<sup>th</sup>, 1828***

(Instructions for the new Lieutenant-governor; may face problems.)

### The Call for Responsible Government

The executive in the provinces were able to prevent change and maintain control until the 1830s. At that time, their power began to erode. Pierre Bédard and Louis-Joseph Papineau of the Parti canadien (later called the Parti patriote) led those seeking change. The party split in the 1830s into moderate and radical factions. The demands of the radical faction were laid out in the Ninety-Two Resolutions in 1834.

Those seeking change in Upper Canada were led a group calling itself the Reform movement.

These men called for “responsible government,” a term which became popular in the 1830s. In responsible government, elected members of the Legislative Assembly controlled the executive and revenue.

Supporting documents in Early Canadiana Online:

**Observations on the Government of Canada by John Black, October 9, 1806**

(Recommends that province be reunited.)

***Proceedings... Relative to the Exercise of the Power of Imprisonment by the Executive Council, Lower Canada, May 11<sup>th</sup>, 1812***

(Objects to the power to arrest and detain without trial.)

**First report on the state of the representation of the people of Upper Canada ..., 16<sup>th</sup> March, 1831**

(Notes the negative effects of “an imperfect state of representation.”)

**The Ninety-two Resolutions, 21 February, 1834**

(Demands of Papineau and his colleagues in the Lower Canada House of Assembly.)

***Proceedings... on the affairs of the colony, 1836***

(Mackenzie outlines some of the concerns of the Upper Canada House of Assembly.)

***Baldwin to Glelelg, July 13, 1836***

(Argument for responsible government.)

**Lord John Russell’s Ten Resolutions, March 6, 1837**

(Gives reasons why the legislative council cannot be elective.)

**A Movement to Reunite the Canadas**

Ironically, soon after Upper and Lower Canada were created, some began calling to reunite the provinces. For some, the motive was to assimilate the French-speaking population. Naturally, this was opposed by the Legislative Assembly of Lower Canada, which was controlled by French-speaking majority by the end of the War of 1812.

Supporting documents in Early Canadiana Online:

**Observations of Chief Justice Sewell on the Union of the Provinces**

(Recommends changes to speed up assimilation of French Canadians.)

***A Bill for Uniting the Legislatures of the Provinces of Lower and Upper Canada, 1822***

***Papineau to Wilmot, December 16<sup>th</sup>, 1822***

(Objects to the proposed bill of union.)

***Bathurst to Dalhousie, January 13<sup>th</sup>, 1822***

(Bathurst informs Dalhousie that the proposed act of union has been refused.)

### **Did you know that...?**

One reason Quebec was divided into two provinces was because the English-speaking Loyalists did not want to be dominated by the more numerous French Canadians. The division of the province created two territories: one mainly English speaking, the other mainly French Canadian (now Ontario and Quebec). Due to substantial immigration from the British Isles, the population of Upper Canada grew much more quickly than Lower Canada, and soon the English speaking population outnumbered French Canadians.

### **The Search for Solutions**

British colonial officials did not ignore the problems developing in British North America. Changes were considered on the issues of revenue and land management. They did not understand, however, the importance of an elected Legislative Council to the people.

Supporting documents in Early Canadiana Online:

***Murray to Colborne, September 29<sup>th</sup>, 1828***

(Discusses the state of civil government in Upper Canada.)

***Report of Committee of House of Commons, 1828***

(Examines Lower Canada and makes recommendations for changes in law.)

***Earl Amherst: copy of a despatch, and its enclosures, addressed to Earl Amherst by the Earl of Aberdeen, on the 2d April 1835***

(Instructions to investigate the sources of grievances in Lower Canada.)

***Glenelg to Gosford, July 17, 1835***

(Calls for a “full platform of conciliation” towards French Canadian reformers.)

### **The Atlantic Provinces**

The old systems of authority were also being challenged in the Atlantic provinces. Prince Edward Island, Nova Scotia and New Brunswick were all dominated by oligarchies in the same way as Upper and Lower Canada. However, unlike the Canadas, New Brunswick and Nova Scotia made a relatively smooth transition to more responsible government in the 1830s.

In effect, a compromise was made: the Colonial Office in Britain granted the assemblies control over revenue for a civil list which set the salaries of judges and civil servants and could not be tampered with by the assemblies. New Brunswick was first to accept this in 1837, followed shortly by Nova Scotia. It was imposed on Prince Edward Island in 1839.

Supporting documents in Early Canadiana Online:

***Joseph Howe to Lord John Russell, September 1839***  
 (Howe responds to Russell's objections to responsible government.)

### **Newfoundland: The Exception**

Newfoundland was ruled by a lieutenant-governor from 1818 until 1832, when representative government was finally established. In 1842, due to violence between the Protestant elite and Catholic labourers and fishermen, the constitution was changed to make half the seats in the Assembly appointed.

### **Did you know...?**

The British discouraged settlement in Newfoundland for years: fishermen and whalers were only permitted to stay for the summer. Despite this, settlers came and stayed. By the early 1800s enough lived there for the British to appoint a permanent governor.

### **Other Important or Interesting Documents in Early Canadiana Online:**

- ***An Act Disqualifying Judges from Sitting in the House of Assembly of Lower Canada, March 21<sup>st</sup>, 1811***
- **Abstract of a bill for uniting the legislative councils and assemblies of the province of Lower Canada and Upper Canada..., 1824**  
 (Draft of an act to join the governments of Upper and Lower Canada.)
- ***Upper Canada, 4 George IV, cap. 3 Eligibility of Members Upper Canada, 1824***
- ***Memorial of Judges, Lower Canada, November 1824***  
 (Requests that judges be appointed, in order to give them greater independence from the Legislative Assembly).
- ***Traites de paix entre Sa Majesté britannique et les États-Unis d'Amérique: faits en 1783 et 1814***  
 (Peace treaties between Britain and United States from 1783 and 1814.)
- ***W.L. Mackenzie to John Neilson, Esq., M.P. Quebec,***  
 (Suggests that the Assemblies of Upper and Lower Canada send a representative to London.)

## 1837 – 1839: Rebellion

British colonial authorities and conservative groups in Canada underestimated the level of discontent in both Upper and Lower Canada. The violence that ensued forced them to act, and although conservatives in the Canadas did not realize it, spelled the beginning of the end of the old order.

### The 1837 and 1838 Rebellions

Efforts to produce change continued into the 1830s until 1837. At this time, ethnic tensions in Lower Canada between the French Canadian majority and the British minority (which was increasing rapidly through immigration) pushed opinions among French Canadians to greater extremes.

In Upper Canada, the situation was brought to a head when the governor, Sir Francis Bond Head, became actively involved in an election and helped the Tories (and by extension the Family Compact) to win.

Rebellions broke out in both Upper and Lower Canada in 1837, and again in Lower Canada in 1838. These rebellions were quickly suppressed, and the panic they created at first gave a great deal of power to the conservative groups in both provinces.

Read more about the rebellions of 1837 and 1838 in the Specific Events and Topics section.

Supporting documents in Early Canadiana Online:

*An Act to make temporary provision for the Government of Lower Canada, 10<sup>th</sup> February, 1838* (bilingual text)

*Instructions to Sir John Colborne from Lord Glenelg, 19 February 1838*

*Report from the select committee of the Legislative Council of Upper Canada, on the state of the province, 28<sup>th</sup> February, 1838*

(Summarizes the view of the Family Compact on rebellion.)

*The Indemnity Act, 1838*

(Indemnifies any persons who acted under an ordinance of the Governor or Council of Lower Canada during the rebellion.)

### Lord Durham Sent to Canada

The British government, however, was alarmed and dispatched Lord Durham as governor general and high commissioner. His mandate included the requirement to investigate and report on the 1837 rebellions. He landed on May 29, 1838, but stayed only a few months.

On September 29, 1838, he resigned and soon returned to England. The report which he produced early the next year and which advocated the assimilation of French Canadians made him a figure who was hated in French Canada, but helped to establish responsible government and for the shape of Canadian Confederation 28 years later.

Supporting documents in Early Canadiana Online:

**Instructions to Lord Durham from Lord Glenelg, 20 January, 1838**

**Letters Commissioning Lord Durham as Governor and Captain-general of all British North American provinces, 1838**

(Contains the letters for Lower Canada, Upper Canada, Nova Scotia, New Brunswick, and Prince Edward Island.)

***Durham to Glenelg, 16 October, 1838***

(Durham explains the reasons for his early resignation as Governor General.)

To learn more about the rebellions of 1837 and 1838:

- Visit the Canadian Encyclopedia.

[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**Other Important or Interesting Documents in Early Canadiana Online:**

- ***First Report of the Commission for Indemnification, December 1838***

(Summary of a number of claims by citizens in Lower Canada requesting indemnification.)

## 1839 – 1849: Union and Responsible Government

This section deals with the period after the rebellions in 1837 and 1838. In the decade that followed, responsible government gradually came closer into being, until, at last, it became a reality in 1848.

### **The Durham Report**

The Durham Report was controversial in all quarters, and reinforced Durham's reputation as a radical. It was strongly biased towards the English population of the Canadas, and made a number of recommendations. Essentially, these involved:

- A union of Upper and Lower Canada.
- Responsible government, dominated by the English inhabitants of the Canadas.
- Colonial control of internal affairs (but in a very limited sense).
- Assimilation of the French-speaking population.

The report also made recommendations on a range of issues such as settlement and land grants.

Supporting documents in Early Canadiana Online:

#### *Report on the affairs of British North America*

### **The Reaction: Britain**

The secretary for war and the colonies, Lord John Russell, was not ready to accept the proposal for responsible government. He felt that it surrendered to the interests of violent rebels and that a colonial council should not be in a position of advising the Crown.

Supporting documents in Early Canadiana Online:

#### *Lord John Russell to Right Hon. C. Poulet Thomson, 14<sup>th</sup> Oct., 1839* (Russell resists granting responsible government.)

### **The Reaction: Lower Canada**

Many French-speaking Canadians were outraged at the recommendations that they be assimilated and the suggestion that they had no culture or history. Others objected to Russell's reluctance to grant them responsible government.

In general, however, the population of Lower Canada had become apathetic after the failure of the rebellions. The support of the clergy for the status quo also had an effect.

Supporting documents in Early Canadiana Online:

***Right Hon. John C. Poulett Thompson to Lord John Russell, 31<sup>st</sup> October., 1839***  
(Describes the mood of people in Lower Canada after the rebellion.)

### **The Reaction: Upper Canada**

In Upper Canada, reformers were enthusiastic about the report's call for responsible government. The conservative ruling class was less impressed, although they supported union.

### **The Path Forward: Sydenham's Instructions**

In anticipation of the *Act of Union*, the British government sought to ensure that the new governor general, Baron Sydenham, would be acting along the principles recommended by Durham. Russell instructed Sydenham to try to gain the acceptance of the two provinces for the union.

His powers as Governor remained much as they were before the rebellions, but he was cautioned to act against the Legislative Assembly only with "the gravest deliberation."

Supporting documents in Early Canadiana Online:

#### **Instructions to Sydenham, 7<sup>th</sup> September, 1839**

### **The *Act of Union, 1840***

The two Canadas were joined in 1840. The terms were decidedly unfair to Lower Canada: it was expected to help pay Upper Canada's £1.2 million debt (it had very little), and held it to fifty percent of the seats in the new Assembly despite having a much larger population.

Supporting documents in Early Canadiana Online:

#### ***Act of Union, 1840***

### **Slipping Backward**

Sydenham did his best to act according to the spirit of his instructions. He effectively made himself his own first minister and formed a cabinet from able men. This worked well in the shaky years after the rebellions.

After Sydenham, Sir Charles Bagot tried to go further. The next governor, Sir Charles Metcalfe, negated his efforts, however. Metcalfe did not accept that responsible government was possible in Canada, and disputes again arose.

Added to this was resistance by Russell in Britain, who believed that it was impossible for a governor to be responsible to the sovereign and a local legislature at the same time

### **Lord Elgin Brings New Hope**

Lord Elgin replaced Metcalfe after a change in British government brought a more reform-minded government to power. Earl Grey, the new secretary of state for war and the colonies, made it clear that Britain had no interest in exercising any more influence in the colonies than was necessary to prevent one colony from injuring another or the empire as a whole.

Supporting documents in Early Canadiana Online:

***Earl Grey to Lieut.-Governor Sir John Harvey, November 3, 1846***

(Makes it clear that Earl Grey supports responsible government.)

### **The Emergence of Cabinet Government**

Nova Scotia was the first to take advantage of this new policy. In 1847, the government was defeated and a new one, led by Joseph Howe, formed in February 1848. In Canada, reformers Robert Baldwin and Louis Lafontaine formed a new council in March, 1848.

Supporting documents in Early Canadiana Online:

***Elgin to Earl Grey, July 13, 1847***

(Elgin gives his vision of the powers of the governor in responsible cabinet government.)

**Act repealing the requirement that government documentation be in English, 1848**

### **Responsible Cabinet Government Tested: Lord Elgin Passes the *Rebellion Losses Bill***

The first serious test of the new system came in 1849. The *Rebellion Losses Bill* sought to compensate those in what had been Lower Canada for damages that resulted from the rebellions. It was controversial because the Tories objected that many of the claimants were former rebels. It was well received by French Canadians, but British elements opposed it so strongly that they attacked Elgin and burned the parliament building down in Montreal.

Supporting documents in Early Canadiana Online:

***Rebellion Losses Bill, 1849***

***Elgin to Earl Grey, April 30, 1849***

(Elgin describes differences in opinion on *Rebellion Losses Bill*, and the violence following its passage.)

Responsible government was again tested, and proven, in 1859, when a proposed protectionist duty proposed by 'Canada's legislature threatened British commercial interests. They duty eventually came into being.

## **The Evolution of Cabinet Government**

Durham had intended the *Act of Union, 1840* to weaken the power of French Canadian parties. Its effect was the opposite: no government could be formed without the support of one of the French Canadian parties.

As a result, it was not long before the English-only requirement for the Assembly was revoked, and a system of dual-premiership evolved. As the alliances were sometimes unlikely, and issues often rose to break them, governments did not last long. Ultimately, this began to shake the confidence of people in the union of the provinces.

### **Did you know...?**

Louis Lafontaine insisted on speaking in French in the Assembly of the province of Canada, despite the fact that the official language was English alone. Eventually, the government gave in and changed the *Act of Union* to allow French in the Assembly.

### **Other Important or Interesting Documents in Early Canadiana Online**

- *Copy of the royal instructions to the Right Hon. C. Poulett Thomson when appointed Governor General of Canada*
  
- *First report of the Commissioners appointed to enquire into the losses occasioned by the troubles during the years 1837 and 1838, and into the damages arising therefrom, 1846*
  
- *An Act to empower the Legislature of Canada to Alter the Constitution of the Legislative Council for that Province..., 1854*  
(This act reflects the changing balance of power from the Governor and the Legislative Council to the Legislative Assembly.)

## 1850 – 1867: On the Road to Confederation

Once responsible government had been won, there were a number of issues still affecting politics in the British North American colonies. One of the most contradictory and ironic was the desire to split the union of the Canadas again. French Canadian politicians resisted this at first, but the political debate that followed led to the birth of the Dominion of Canada in 1867, and its modern Constitution.

### “Rep by Pop”

Due to heavy immigration, the population of English-speaking inhabitants of Canada West soon outstripped Canada East. Under the *Act of Union, 1840*, however, the seats in the house were evenly divided between Canada East and Canada West. This led to calls in Upper Canada for representation by population, or “rep by pop.”

### Barriers to Expansion

By the late 1850s, all the farmable land in Canada West had been sold. The next frontier lay west of Lake Superior, in the lands owned by the Hudson’s Bay Company. Most in Canada East resisted the annexation of this land, as it would have changed the balance of the seats in the legislature.

### Expensive Railways

The Grand Trunk Railway incurred enormous debts in the 1850s. By 1860, it was \$72 million in debt, at a time when the average annual income (per capita) was around \$200. Partly because of this experience, the province of Canada pulled out of the negotiations for the Intercolonial Railway linking Nova Scotia, New Brunswick and Canada.

### Calls for a Federation

Starting in the 1850s calls for a federal union of all the British colonies in North America began to get stronger. It was seen by many, including the British, as a way to strengthen the colonies and to deal with the many problems that had arisen since the *Act of Union* in 1840. One of the leaders was John A. Macdonald, who led several coalition governments.

Supporting documents in Early Canadiana Online:

#### **Galt’s Resolutions on Federation, 1858**

(Calls for a federal union including the Maritime provinces and territories in the west.)

#### ***Cartier, Ross and Galt to Lytton, 23<sup>rd</sup> October, 1858***

(Propose a federal union.)

## **Canadian Negotiations for Federation, 1864**

(The Great Coalition is formed.)

### **Papers relating to Confederation of British North American provinces**

(Britain states commitment to Confederation and discusses matters of defence and lands held by the Hudson's Bay Company.)

#### **Did you know...?**

George-Étienne Cartier was co-premier with John A. Macdonald from 1858 to 1862. Macdonald is the most famous Father of Confederation, and received much of the credit for forming the new nation. When Macdonald became the first prime minister in 1867 (and became Sir John A. Macdonald), Cartier was his most senior minister.

#### **The American Civil War**

This caused problems for a railway that was seen as necessary for defence. The American Civil War had caused tension between Britain and the Northern States. The victory of the North in the Civil War increased British concerns, as it was expected to lead to a more aggressive government in the United States.

A federation of British North American colonies became more attractive to Britain. It was believed that such a federation would be stronger and, most importantly, provide for the cost of its own defence. Until then, Canada had steadfastly refused to pay anything for its own defence – apart from the poorly trained militia.

#### **Did you know...?**

When Britain sent 14,000 troops as a precaution, they were forced to march 1100 kilometres in winter because the Intercolonial Railway was unfinished.

To learn more about the effect of the American Civil War on Confederation:

- Visit the National Library of Canada site.

[link: <http://www.nlc-bnc.ca/confederation/h18-2003-e.html>]

#### **Maritime Union and the Charlottetown and Québec Conferences**

Maritime Union was a popular idea with the New Brunswick governor, Arthur Gordon Hamilton, for the same reasons that Britain favoured a union of all the British North American colonies. In 1864, there were suggestions for a conference including New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. The idea interested Canadian politicians, and in September, 1864, they joined the Charlottetown Conference.

This conference was such a success that the Québec Conference followed it a month later. The Seventy-Two Resolutions drafted at the end of the conference formed the nucleus for the future Constitution of Canada. The resolutions:

- Proposed limited central government balanced by provincial power.
- Rejected the strict application of “rep by pop.”
- Called for a two-chamber parliament, including a senate and a house of commons.

Supporting documents in Early Canadiana Online:

### ***The Quebec Resolutions, 1864***

To learn more about the Charlottetown Conference:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2075-e.html>]

To learn more about the Québec Conference:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2080-e.html>]

### **The Fenian Invasions**

Despite the success of the conferences, the proposed union was widely unpopular in the Maritime provinces. In 1866, however, activists in the Fenian Order invaded Canada with 1,000 men. Although these attacks did not seriously threaten the British North American colonies, they pushed the Maritime provinces to seek federation.

### **Did you know...?**

The Fenians were Irish-American immigrants who formed an order to support the independence of Ireland, which was then occupied by Britain. Canada, as a British colony, was seen as a legitimate target.

### **The London Conference**

With the momentum in favour of a federation, the British invited delegates from each of the provinces to London to negotiate. Some opponents of federation also attended, but by early 1867, the *British North America Act* was ready.

Supporting documents in Early Canadiana Online:

#### **London Resolutions, 1866**

(Repeat the *Quebec Resolutions* of 1864, with small changes.)

#### ***Mr. Joseph Howe, Mr. William Annand, and Mr. Hugh McDonald to the Earl of Carnarvon, January 19, 1867***

(Lists objections to the proposed union of the British North American provinces.)

To learn more about the London Conference:

- Visit the National Library of Canada site.

[link: <http://www.nlc-bnc.ca/confederation/h18-2085-e.html>]

To learn more about Confederation:

- Visit the National Library of Canada site.

[link: <http://www.nlc-bnc.ca/confederation/index-e.html>]

- Visit the Canadian Encyclopedia.

[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

### **Other Important or Interesting Documents in Early Canadiana Online:**

- *The consolidated statutes of Canada: proclaimed and published under the authority of the Act 22 Vict. Cap. 29, A.D. 1859*

(Text, containing those acts and regulations of Canada in force in 1859.)

## 1867 – 1931: Becoming a Nation

With the passing of the *British North America Act* in 1867, Canada became a Dominion in the British Commonwealth and John A. Macdonald became Canada's first prime minister. This did not mean that it was a fully independent country, though. It remained a colony of Britain for many more years.

Growing independence from Britain and early struggles between the provinces and the federal government are hallmarks of this period.

### The British North America Act, 1867

Three provinces joined the new Confederation: the province of Canada (which later became Ontario and Quebec), Nova Scotia and New Brunswick. The *British North America Act* was intended to balance the forces that were pushing the old province of Canada apart with the forces that had pushed all the provinces together. Important elements included:

- The power of the Governor General in Council to disallow any provincial law within a year of getting a copy of the legislation.
- A division of powers between the federal parliament and the provinces.
- Parliament could assume any powers that were not specifically allocated, and had the power to act for “peace, order and good government.”

Thus, the provinces had secure power over some areas such as education. Quebec could keep its civil law and its distinctiveness was recognized. The federal government, however, was theoretically stronger than its counterparts in the United States or Switzerland, increased by the power of the Governor General in Council to appoint Senators.

Supporting documents in Early Canadiana Online:

***British North America Act, 1867*** (bilingual)

### Did you know...?

The *British North America Act, 1867* is now called the *Constitution Act, 1867*. This happened because the Schedule of the *Constitution Act, 1982*, changed the names of many Acts. (These acts will be called by their original names on this site, with a note referring to the new name.)

### Resistance to Confederation

Not everyone welcomed the *British North America Act*. Prince Edward Island and Newfoundland opted out and did not join until 1871 and 1949, respectively.

In 1868, a strong repeal movement gained force in Nova Scotia. A repeal government won 36 of 38 seats in the provincial legislature, and 18 out of 19 federal Members of Parliament were

separatists. They argued that the province could not join Confederation without a popular vote (say, a plebiscite).

The French-speaking population of Canada was also sharply divided, a fact that was reflected in the first election after Confederation in 1867.

Supporting documents in Early Canadiana Online:

***Debate on the union of the provinces in the House of Assembly of Nova Scotia, March 16th, 18th, and 19th, 1867***

The British government disagreed. Given the choice of rebellion against British authority and submission, most Nova Scotians chose submission.

### **The Provinces Flex their Muscles**

The division of powers between the provinces and the federal government was far from settled by the *British North America Act, 1867*. The provinces fought federal intervention on several occasions by turning to the Judicial Committee of the Privy Council (JCPC) in Britain. The JCPC ruled on several key occasions.

In 1889, Ontario won its battle with Manitoba over the western boundary of the province. Manitoba, supported by the federal government, had sought to keep the boundary at the eastern point of Lake Superior, giving it access to the Great Lakes.

In 1930, the federal government handed the western provinces control over the resources and land that had been withheld at the time of their entry into Confederation.

Supporting documents in Early Canadiana Online:

***Canada (Ontario Boundary) Act, 1889***

(Extends the boundaries of Ontario to meet Manitoba west of Lake Superior)

***British North America Act, 1930***

(Renamed *Constitution Act, 1930*. A collection of agreements made with the western provinces.)

### **Growing Independence from Britain**

As Canada was growing and maturing as a nation, its independence from Britain was also increasing. In 1865, Britain had passed the *Colonial Laws Validity Act*, which made it impossible for colonies to make laws that were “repugnant” to (i.e.: contradict or have the effect of acting against) British laws that extended to the colonies.

Supporting documents in Early Canadiana Online:

***Colonial Laws Validity Act, 1865***

In 1895, Britain was still arguing that the colonies could not make their own treaties. Just ten years later, though, things were changing quickly. British officials did not intervene when Canada negotiated a treaty with the United States in 1905. Then, in 1926, the Imperial Conference laid the groundwork for a new arrangement – one based on equal status between the Dominions and Great Britain.

Supporting documents in Early Canadiana Online:

***Marquis of Ripon to the Governor-General of Canada, etc., June 28, 1895***  
(Colonies must still make treaties through Britain.)

***Sir E. Grey to Chargé d’Affaires at Paris, July 4, 1907***  
(Canada does not have to negotiate treaty with United States through London.)

***The Imperial Conference, 1926***  
(Discusses issues relating to relations between Britain and the Dominions.)

### **The Crucible of War**

One of the key events in the development of Canada’s national identity and independence was the tragedy of World War I. The dependence of the British on the Dominions (including Newfoundland, Australia, New Zealand and South Africa) for men and raw materials gave greater leverage to those governments. The heroism and sacrifice of the men in the war also gave greater moral strength to arguments for greater independence from Britain.

### **Other Important or Interesting Documents in Early Canadiana Online**

- ***Parliament of Canada Act, 1875***  
(This act is to “remove certain doubts with respect to the powers of the Parliament of Canada” over the “privileges, immunities, and powers of,” its members.)
- ***British North America Act, 1916***  
(This act extends the term of the Twelfth Parliament during World War I to 1917. Repealed by the *Statute Law Revision Act, 1927*)

## 1867 – 1931: Territorial Expansion

The first four provinces formed the nucleus of the new nation. Within six years, Sir John A. Macdonald had negotiated the entry of three more provinces, using a combination of opportunism and promises. Then, around the turn of the century, Canada's population in the west exploded. Saskatchewan and Alberta were born shortly afterward.

### Annexing the West

Shortly after Confederation, Canada began dealing with one of the issues that had caused friction for many years: expansion to the west. The *Rupert's Land Act* ended the rule of Hudson's Bay Company over Rupert's Land and the North-western Territory. In compensation, HBC received £300,000 and one twentieth of all farmable land in the territories.

Supporting documents in Early Canadiana Online:

#### ***Rupert's Land Act, 1868***

(This act allows Canada to admit Rupert's land into Canada.)

#### **Temporary Government of Rupert's Land Act, 1869**

(Establishes a temporary government for Rupert's Land when it is admitted into Confederation.)

#### **Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union, June 23, 1870**

(Brings the territories into Confederation.)

To learn more about the Northwest Territory's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2245-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

### The Birth of Manitoba

After Canada took control of the Hudson's Bay Company territories, it began to encourage settlement in these lands. The government ignored the land claims of the more than 100,000 Aboriginals and Métis who lived in the region.

Alarmed by the possibility that they might be pushed off their land along the Red and Assiniboine rivers, the Métis (led by Louis Riel) prevented the appointed Canadian governor from entering the territory in 1869. Prime Minister Macdonald realized that a military response was impossible for several reasons:

- The distances to be covered by any military force were enormous, and there was as yet no rail service west.
- It was the middle of winter, making such an action even more improbable.
- The British had not yet ratified the transfer of the territories to Canada, so the Métis had not, in fact, broken any Canadian laws.

After negotiations, the province of Manitoba was created, with several controversial provisions:

- The land already occupied would not be taken from the Métis, and a large section of land was reserved for them.
- There was a provision for denominational schools.
- French was to be a language of debate.

Supporting documents in Early Canadiana Online:

***Manitoba Act, 1870***

(This act creates Manitoba as a province in Confederation.)

***Manitoba Boundaries Extension Act, 1881***

(Extends the boundaries of the province of Manitoba and replaces section 1 of the *Manitoba Act, 1870*.)

**Did you know...?**

There was another Métis rebellion in 1885. Many of the Métis had moved into what is now Saskatchewan and established farms. They were once again concerned that they would be pushed off their land and asked Riel to lead them. Violence erupted, but this time was quickly crushed by troops brought from Ontario by train.

To learn more about Manitoba's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2170-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**British Columbia**

British Columbia entered Confederation much more easily. The residents (and Canada) were worried that the Crown colony might be annexed by the United States. Since 1868, a group called the Confederation League had been agitating to join Confederation.

In 1870, their efforts were fruitful and a delegation was sent to Ottawa. Negotiations were successful and, in 1871, British Columbia became a province of Canada. The terms settled on included:

- Canada would assume British Columbia's debt.

- There would be subsidies for public works.
- A railway would be built from Ontario to British Columbia in ten years.

Supporting documents in Early Canadiana Online:

**Order of Her Majesty in Council Admitting British Columbia into the Union, 1871**  
(Renamed *British Columbia Terms of Union, 1871*)

To learn more about British Columbia's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2185-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

### Prince Edward Island

Prince Edward Island had rejected Confederation in 1867 on the basis that they had little to gain – and their independence to lose. By 1873, though, the would-be province had reasons to reconsider:

- Absentee landlords in Britain owned most of the land and would not sell at reasonable rates to settlers.
- A railway project on the island was threatening to collapse the finances of the colony.

Negotiators were sent to Ottawa. Ultimately they succeeded in obtaining excellent terms:

- Canada would assume Prince Edward Island's debt.
- Canada would buy the land from the absentee landlords for \$800,000.
- A connection to the mainland by ferry was guaranteed.
- The province was to have six members of Parliament instead of the five promised at the Québec Conference.

Supporting documents in Early Canadiana Online:

**Order of Her Majesty in Council admitting Prince Edward Island into the Union, 1873**  
(Renamed *Prince Edward Island Terms of Union, 1873*)

To learn more about Prince Edward Island's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2200-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

## **New Provinces Out of the Territories**

Canada had the authority to create provinces out of the Northwest Territories in 1871. This did not happen immediately, however, since it was still too difficult for settlers to reach the remote region. This began to change when the Canadian Pacific railroad was completed in 1885.

Yukon Territory was separated from the Northwest Territories in 1898, in response to the huge population increase in the area during the Klondike gold rush. However, much of this population left when the gold was exhausted.

Supporting documents through this Web site:

### ***British North America Act, 1871***

(Renamed *Constitution Act, 1871*. Allows the Parliament of Canada to create new provinces out of any territories within the Dominion.)

### **Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, 1880**

(Renamed *Adjacent Territories Order*. Newfoundland and its dependencies are excluded.)

### ***Yukon Territory Act, 1898***

(Creates Yukon Territory.)

To learn more about Yukon Territory's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2260-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

## **Alberta and Saskatchewan**

Between 1897 and 1911, two million people immigrated to Canada. Many went west: about 30,000 farms were started per year in this period. More railways were built to help carry the load.

In 1905, two new provinces were created out of the territories between Manitoba and British Columbia. The terms of entry for Alberta and Saskatchewan were almost identical. There were some controversial terms:

- Neither province was given control of the natural resources in the province.
- There was a provision for denominational schools.

Supporting documents in Early Canadiana Online:

### ***The Alberta Act, 1905***

(Renamed *Alberta Act, 1905*. Creates the province of Alberta)

***The Saskatchewan Act, 1905***

(Renamed *Saskatchewan Act, 1905*. Creates the province of Saskatchewan.)

To learn more about Alberta and Saskatchewan's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2215-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**Other Important or Interesting Documents Available Through this Site:**

• ***British North America Act, 1886***

(Renamed *Constitution Act, 1886*. Gives parliamentary representation for citizens residing in the territories.)

• ***British North America Act, 1907***

(Renamed *Constitution Act, 1907*. Makes changes to federal-provincial transfer payments. It reflects changes in population.)

• ***The Quebec Boundary Extension Act, 1912***

(Extends the boundaries of Quebec to the limits still held today.)

## 1931 – 1982: Toward Renewal and Patriation

With the passage of the *Statute of Westminster*, Canada ceased to be a colony of Britain: She was a proper country in her own right. In the next 50 years the balance of power between provinces and federal governments changed a little, but not much. By the end of the 1970s, a major movement in Canadian constitutional history was to patriate the Constitution home. There were also requests from Quebec after the Quiet Revolution for a renewal of Confederation.

### **The *Statute of Westminster, 1931***

The Statute of Westminster was the logical end of years of change and negotiation between Britain and her Dominions (Australia, Canada, New Zealand, South Africa and Newfoundland). It made several key provisions:

- British parliament could no longer nullify laws in the Dominions.
- Dominions could make their own extra-territorial laws
- British law no longer applied to the Dominions.

Although Canada had already acted on her own in the past, the *Statute of Westminster* formally put external affairs under the authority of the federal government. Thus, when World War II began in 1939, Canada did not automatically go to war with Britain. As an independent nation, Canada declared war six days after the British.

Supporting documents available through this site:

### ***Statute of Westminster, 1931***

### **Changes in Federal and Provincial Powers**

The division of powers between the provinces and the federal government was only formally changed three times before 1982. The Great Depression showed that the provinces could not cope with major economic and social crises alone or equally. In particular, weaker provinces fared worse during than larger provinces like Ontario, which had more resources.

Many called for unemployment insurance and other measures to protect individuals from economic extremes. In the middle of the Depression, this was impossible because governments had too little money. However, with the increasing prosperity and plummeting unemployment rate of World War II and after, these measures became possible.

The federal government negotiated the responsibility of administering unemployment and pension plans for most of the country.

Supporting documents available through this site:

***Constitution Act, 1940*** (Formerly *British North America Act, 1940*)  
(Gives Parliament the power to make laws on unemployment insurance.)

***British North America Act, 1951***  
(Gives Parliament power over old age pensions.)

***British North America Act, 1964***  
(Parliament's power over pensions extended to supplementary benefits.)

### **Ottawa's Political and Financial Clout**

Ottawa had other ways to influence the balance of power between itself and the provinces. The first opportunity happened during World War II, which required a strong centralized effort. Prime Minister Mackenzie King took advantage of strong public opinion in favour of his actions to strengthen the federal government's powers at the expense of the provinces. That the government managed the war and its aftermath well only increased his popularity and power.

The second method the federal government has used to influence the provinces was to use its financial resources to promote programs in the provinces.

The most significant example is in the provision of universal health insurance in Canada. The provinces control the health system within their provinces, but the federal government can use its spending powers to provide payments to provinces that follow the principles established by the 1964 *Royal Commission on Health Services* and embodied first in the *Medical Care Act* of 1966 and then in the *Canada Health Act, 1985*. In recent years, however, provinces have criticized the federal government for failing to pay its share of health costs. Federal payments in the mid-1970s were amounting for 50% of health care; by 2002 they had fallen near to around 15%.

Supporting documents available through this site:

### ***Canada Health Act, 1985***

To learn more about Alberta and Saskatchewan's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2215-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

### **Newfoundland Enters Confederation**

Newfoundland experienced a great deal of change between World War I and its entry into Confederation. The finances of the colony were in a shambles by the early 1930s and reached such a severe state that it gave up responsible government for direct rule by Britain in 1934.

In World War II, the colony prospered again. However, the United States built several large bases on the Island. The Canadian government was worried that the United States would annex Newfoundland.

After the war, Newfoundlanders debated their future. British officials did not support a return to responsible government, as it was worried about costs. They probably favoured Newfoundland's entry into Confederation.

In 1948, two referendums were held. Newfoundlanders narrowly chose entry into Confederation over self-government.

Supporting documents available through this site:

***British North America Act, 1949***

(Renamed *Newfoundland Act, 1949*. Admits Newfoundland into Confederation.)

To learn more about Newfoundland's entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2230-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

### **The Supreme Court is Finally Supreme**

The Supreme Court of Canada was established in 1875. Until 1949, however, it was still possible to appeal to the Judicial Committee of the Privy Council in Britain. This came to an end in 1949, when the Supreme Court of Canada finally became the last court of appeal.

### **Renewing the Constitution**

In 1968, a process started to renew the constitution and bring it into Canada's hands. The Victoria Conference in 1971 produced a set of proposals, but nothing was done. Other efforts were made in 1975 and 1976, but again there was no success. Meanwhile, many in Quebec were calling for a renewed federalism and the Canadian government's failure to achieve this helped the separatist Parti Québécois rise to power. The Quebec government called a referendum on "sovereignty-association" in 1980.

During the Quebec referendum campaign Prime Minister Pierre Trudeau promised Quebecers the renewed federalism they wanted. He called a First Ministers conference as soon as federalist forces won the referendum. After some political wrangling, the federal government indicated that it would patriate the Constitution unilaterally. This was upheld in the Supreme Court and led to a second First Minister's meeting in 1981. An agreement was reached, although without the approval of Quebec.

## Other Important or Interesting Documents Available Through this Site:

- ***British North America Act, 1943*** (Repealed by the *Constitution Act, 1982*)  
(Delays the scheduled revision of the seats in the House of Commons until World War II ends.)
- **Letters Patent Constituting the Office of Governor General of Canada, 1947**  
(Describes the office of Governor General of Canada.)
- ***British North America (No. 2) Act, 1949***  
(Repealed by the *Constitution Act, 1982*. Gives the Parliament of Canada powers to amend the Constitution of Canada “in time of real or apprehended war, invasion or insurrection.”)
- ***Statute Law Revision Act, 1950***  
(Repeals many laws enacted by in Britain. Some date from before 1800.)
- ***British North America Act, 1960***  
(Renamed *Constitution Act, 1960*. Sets the maximum age in office for superior court to 75 years of age. Previously, judges in superior courts could serve for life.)
- ***British North America Act, 1965***  
(Renamed *Constitution Act, 1965*. Sets the maximum age in office for senators to 75 years of age. Previously, senators could serve for life.)
- ***British North America Act, 1974***  
(Renamed *Constitution Act, 1974*. Sets new rules for calculating the number of MPs to sit in the Parliament.)
- ***British North America Act (No. 1), 1975***  
(Renamed *Constitution Act (No. 1), 1975*. Gives seats in the House of Commons to the Yukon and Northwest Territories.)
- ***Final Report of the French Constitutional Drafting Committee***  
(This Web site gives the text of many acts and orders from 1867 onward. All texts are available in French and English.)

## 1982 – 2002: The Modern Constitution

The passing of the *Constitution Act, 1982*, did not mean an end to the constitutional evolution of Canada. There have been numerous changes to the Act affecting different provinces. These changes, along with slow procedural changes and court judgments, will continue well into the future.

### **The *Constitution Act, 1982***

This marked the first time a charter of rights had been included in any Canadian constitutional document. Because of this, courts were given a much greater say in government and can now disallow legislation on the basis of violations against the *Charter of Rights*. It also:

- Made specific mention of Aboriginal rights.
- Included the “notwithstanding clause,” which allows a province to override the Charter of Rights.
- Set the rules for amending the Constitution.

Supporting documents available through this site:

#### ***Canada Act, 1982***

(With this act, Britain surrenders the power to make laws affecting Canada, including the Constitution. It contains the *Constitution Act, 1982*, in Schedule B.)

#### ***Constitution Act, 1982***

#### **Proclamation, bringing into force the *Constitution Act, 1982***

(This proclamation makes the *Constitution Act, 1982*, law.)

### **Newfoundland and Denominational Schools**

After scandals involving denominational schools in Newfoundland, public opinion in that province began to turn toward changing the Constitution, allowing the provincial government to take control of education. Previously, most schools were administered by religious denominations.

The amending formula of the *Constitution Act, 1982* allowed for changes to the Constitution based on a vote in a provincial legislature if the change would affect only the province itself. A referendum was held on the issue in 1995. The vote was in favour of a change in the constitution, and in 1997 the government of Newfoundland gained authority over all schools in the province.

Supporting documents available through this site:

***Constitution Amendment, 1987 (Newfoundland Act)***

(Amends the *Newfoundland Act*, previously the *Terms of Union of Newfoundland with Canada*, allowing Pentecostal schools.)

***Constitution Amendment Proclamation, 1997 (Newfoundland Act)***

(Gives the government of Newfoundland authority over all schools in the province.)

***Constitution Act, 1998 (Newfoundland Act)***

(Makes guarantees for courses in religious education that are not specific to a denomination and allow religious observances where requested by parents.)

### **Language Matters**

The *New Brunswick Act* amended section 16 of the *Charter of Rights and Freedoms* to include the equality of the French and English linguistic communities in New Brunswick. It also made the government of New Brunswick responsible to “preserve and promote the status, rights and privileges” of those communities.

Supporting documents available through this site:

***Constitution Amendment Proclamation, 1993 (New Brunswick Act)***

This act excluded Quebec from section 93 of the *Constitution Act, 1867*. This removed the requirement to provide denominational schools. The chief motive was to allow Quebec to reorganize school boards along linguistic lines as the lines were becoming muddled in the denominational system: English and French Catholic schools existed alongside English and French Protestant schools.

Supporting documents available through this site:

***Constitution Amendment, 1997 (Quebec)***

### **Nunavut**

In 1982, a movement began to separate the eastern Arctic area of the Northwest Territories into a new territory. This was based on the largely Inuit makeup of the population and the history of the region. These issues made deciding a boundary difficult, as the Dene-Métis in the Arctic also had land claims in the area.

After several contentious rounds of negotiation, a boundary was finally agreed upon in 1991. In 1993, both the *Nunavut Land Claims Agreement Act* and the *Nunavut Act* were passed. The Nunavut Act created the territory and provided it with representation in the House of Commons.

Supporting documents available through this site:

***Constitution Act, 1999 (Nunavut Act)***

To learn more about Nunavut’s entry to Confederation:

- Visit the National Library of Canada site.  
[link: <http://www.nlc-bnc.ca/confederation/h18-2275-e.html>]
- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**The Meech Lake and Charlottetown Accords**

In 1987, a conference was called to try to gain Quebec’s approval of the Constitution. Quebec, which protested the method of repatriating the of the *Constitution Act, 1982*, and wanted greater powers had systematically used the notwithstanding clause of the *Charter of Rights* when passing legislation for several years. The conference succeeded in reaching an agreement and amendments were proposed. However, these amendments were not ratified by all the provinces in the mandatory three-year limit.

After much public consultation, another conference was called in Charlottetown in 1992. This also led to an agreement. The amendments were rejected in a public national referendum later that year, however.

To learn more about the Meech Lake and Charlottetown Accords:

- Visit the Canadian Encyclopedia.  
[link: [http://www.thecanadianencyclopedia.com/index.cfm?TCE\\_Version=A](http://www.thecanadianencyclopedia.com/index.cfm?TCE_Version=A)]

**Other Important or Interesting Documents Available Through this Site:**

•***Representation Act, 1985***

(Revises the rules for determining the number of seats in parliament for each province.)

•***Constitution Amendment Proclamation, 1993 (Prince Edward Island)***

(Amends the *Prince Edward Island Terms of Union* to allow the province to levy tolls for the use of a “fixed crossing joining the Island to the mainland.” This refers to Confederation Bridge. The federal government no longer has to provide a ferry service to the mainland.)

## Where the Documents Come From

The documents that make up the Canadian Constitution stretch back hundreds of years and come from Britain, France and Canada. They have been researched from:

- The Early Canadiana Online collection.

- National Archives (1918). *Documents Relating to the Constitutional History of Canada, 1759-1791*. Vols I and II. Adam Shortt and Arthur G. Doughty, Eds. Ottawa: J. de L. Taché (King's Printer).

URL: [http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9\\_03424](http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9_03424)

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- National Archives (1914). *Documents relating to the Constitutional History of Canada, 1791-1818*. Arthur G. Doughty and Duncan A. McArthur, Eds. Ottawa: C.H. Parmelee (King's Printer).

URL: [http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9\\_03421](http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9_03421)

- National Archives (1935). *Documents Relating to the Constitutional History of Canada, 1819-1828*. Arthur G. Doughty and Norah Storey, Eds. Ottawa: J.O. Patenaude (King's Printer)

URL: [http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9\\_03427](http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9_03427)

- (1930). *Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929*. W.P.M. Kennedy, Ed. Toronto: Oxford University Press.

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