

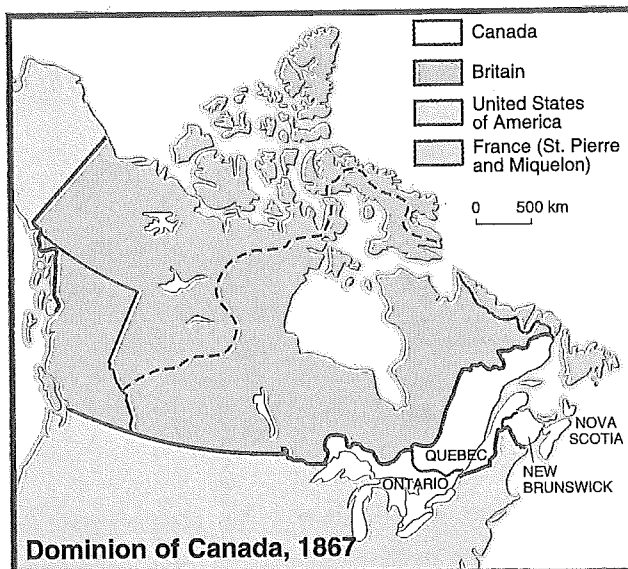
# The British North America Act, 1867

## Introduction

The British North America Act\* (BNA Act) created the Dominion of Canada in 1867, stated the powers of the provincial and federal governments, outlined the way in which the government would be structured, and guaranteed protection for minority groups.

## Constitution Act, 1867

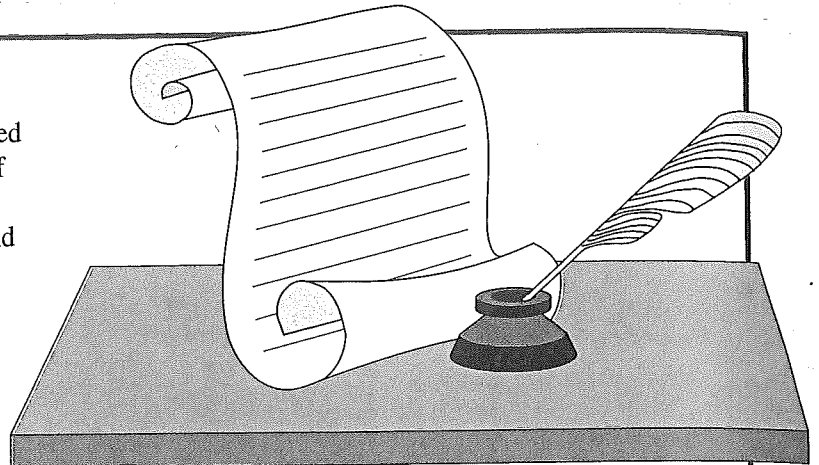
**Aim: to create a federal union (Confederation) of the colonies of British North America, associated with Great Britain.**



The proclamation of the Dominion of Canada was announced at Windsor Castle in Great Britain in May 1867. The Dominion of Canada was to consist of the provinces of New Brunswick, Nova Scotia, Ontario, and Quebec.

## Federalism

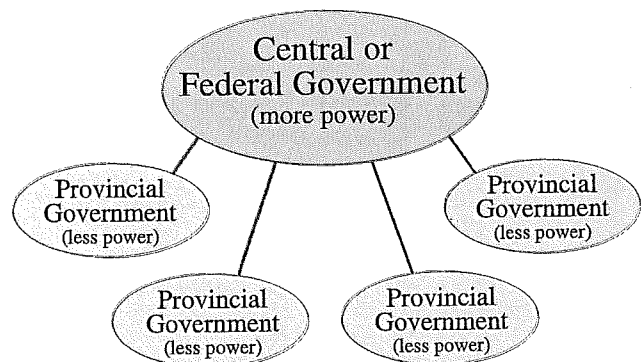
The most important question that the writers of the Constitution Act, 1867 had to decide was whether there should be both national and provincial levels of government, or just a national level. John A. Macdonald and others had not wanted provincial governments. However, Quebec felt that if it lost its provincial government, it would also lose its identity: its French language, its culture and traditions, as well as its civil laws. Many people in the provinces of New Brunswick and Nova Scotia were anxious to have their own provincial governments.



The result was a system of federalism. This meant that the Dominion of Canada would have two levels of government: national or federal (or central) and provincial. The federal government would handle matters affecting everyone. Each provincial government would handle matters affecting only the people it governs within its boundaries.

## Canada's System of Federalism

- It would be a system with a central government and provincial governments.
- The central government would have more power than the provincial governments. The provincial governments would have little power and few rights.\*\*



\*The BNA Act was renamed the Constitution Act, 1867 because of the changes made to the Constitution in 1982.

\*\*In 1982 some changes were made to the Canadian Constitution. For example, the provinces gained more power.

## Form of Central Government

It was decided that the central government of the Dominion of Canada would have three parts. (1) The head of the government of Canada is the monarch and is represented by a governor general. Parliament—the law-making body of the government—is composed of (2) the House of Commons and (3) the Senate.

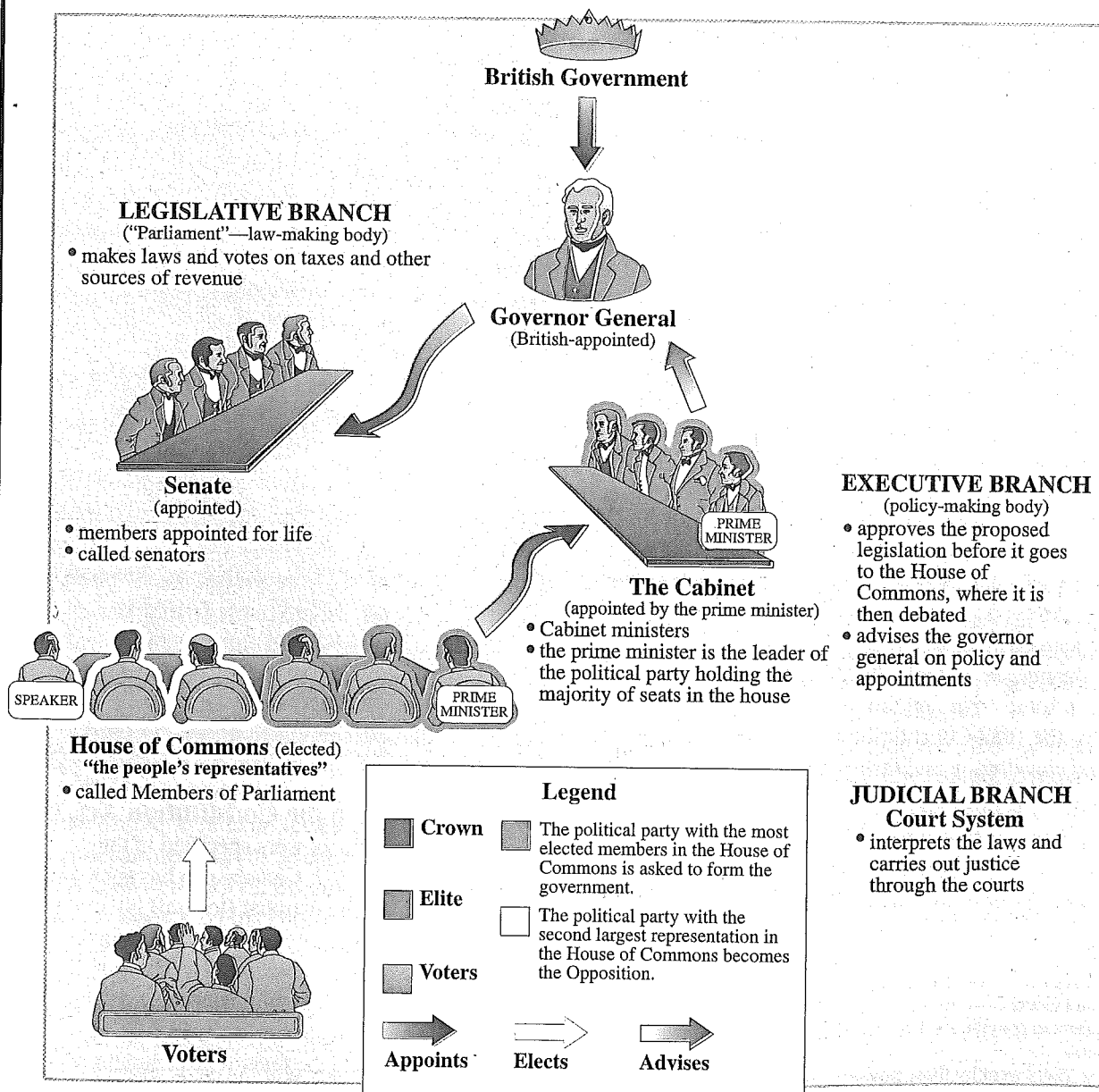
Representatives from each province are elected to the House of Commons. They are called Members of Parliament.

The number of Members of Parliament from each province depends on the size of the population in that province (representation by population). This means that the smaller provinces of Nova Scotia and New Brunswick have far fewer Members of Parliament to represent their interests.

The Senate is meant to represent regional interests. Ontario was given 24 representatives, Quebec 24, and Nova Scotia and New Brunswick 24 together. Senators are appointed.

## Canada's System of Federal Government

(as outlined in the BNA Act, 1867)



## A Strong Central Government

The central or national government was to be very strong. This was partly because the American Civil War, in which the states fought against each other, was still fresh in the minds of the Fathers of Confederation. They were afraid that if the provinces were too powerful, they might fight in the same way that the American states had.



Here is how the central government became strong:

1. The central government was given authority over matters of general concern. These powers were vague. They included everything that was not specifically covered by the provinces. Here is an example: "The federal government shall make laws for the peace, order, and good government of Canada in regard to all subjects not specifically given to the provinces . . . ."\*
2. It was given the power to veto or reject any provincial laws within one year of their passage.

## Division of Powers in the Constitution Act, 1867

Just as you cannot play hockey without rules, so you cannot govern a country without rules. The rules that govern a country are called a constitution. There are basically two types of constitutions: written and unwritten. The United States has a written constitution. If questions arise, one refers to the constitution for the answers. Britain has an unwritten constitution, where the courts make decisions based on customs and traditions and previous court rulings. Canada's constitutions (the 1867 Constitution and the 1982 Constitution) are written in some areas and unwritten in other areas. Actually, the 1982 Constitution moved Canada closer to a written constitution and farther from custom and tradition.

\*This is known as the POGG clause—a government for Peace, Order, and Good Government. The United States created a government to provide for life, liberty, and the pursuit of happiness.

\*\*As the years went by these powers often overlapped and blurred, so that the division of powers is no longer easy to explain. It is also a current issue.

## Powers Specified in the 1867 Constitution

Among the 29 items that were specifically stated as powers and thus the responsibility of the federal (central) government were:

- trade and commerce
- raising money by taxation
- postal service
- armed forces and defence
- fisheries
- money
- Native peoples and lands reserved for them
- divorce
- criminal law
- penitentiaries

While matters of national interest were to be legislated by the federal government, matters of a particular or local interest were the responsibility of the four provincial governments. These matters were:

- direct taxation within the province
- management and sale of public lands belonging to the province
- provincial prisons
- hospitals and asylums
- local works and projects
- education
- administration of justice and provincial courts
- issuing licences to shops, saloons, taverns, and other businesses

As you can see from the provincial list of responsibilities, the provinces were given authority over social and cultural areas such as education, and local matters such as provincial courts.\*\*

## Shared Powers in the Constitution Act, 1867

In addition to the powers specified in the Constitution Act, 1867, Canada also has some powers that are shared by the national (federal) government and the provincial governments. All other powers in the Constitution Act, 1867 are covered by the POGG clause. This clause gave the federal government all the powers necessary to carry out peace, order, and good government. It made the federal government very powerful.

# Issues Raised by Confederation

The Fathers of Confederation believed that the division of powers between the federal and provincial governments would not be a cause of tension. However, **provincial rights** almost immediately became an issue in the Maritimes. You will read about this later in the chapter.

The issue of biculturalism was not settled as a result of Confederation. Biculturalism refers to having two cultures. In Canada it was the French and English cultures that lived together in one nation.

French Canadian and Roman Catholic institutions that had been established in Quebec were protected by the Constitution Act, 1867. Both English and French were declared the official languages of the federal Parliament, the federal courts, and the government and courts of Quebec. This was an example of what we now call bilingualism. French civil laws were protected in Quebec. Whatever rights and privileges that separate schools in each province had at the time of Confederation were supposed to remain.

However, the question of whether bilingualism was just to be protected in Quebec or was to be extended throughout Canada was not clear. This issue was to be raised in the North-West. You will read about this later on in the textbook.

## First People and Other Minorities

The Constitution Act, 1867 only has one direct reference to the Aboriginal peoples: section 91 (24) gives the Parliament of Canada exclusive authority over "Indians and lands reserved for the Indians." The First People, as Canada's original people, did not have any input in the Confederation negotiations or in policies affecting them. The Province of Canada had already worked out its Aboriginal policy; thus when the new Canadian government had to make decisions regarding the First People, they adopted the policy already in effect in the Province of Canada: Aboriginal lands were to be acquired by treaty; the people were to be settled on reserves; and a government department was to be created in Ottawa to manage how they were to live. Because they surrendered their traditional lands, the First People received reserves and services such as education and health care. Some First People believe that this was too high a price to pay.

While the rights of the French Canadians were guaranteed in the Constitution Act, 1867, the rights of the other minorities in Canada were not guaranteed at this time.

The aim of the new government of Canada in regard to minority peoples was to force the minorities to live by the

will of the majority. This meant that there would be an attempt to assimilate the Aboriginal peoples into the dominant Canadian culture. They would have to give up their customs and traditions, their language, and their religion. They were to become like Canadians of English or French backgrounds. You will learn more about this in Chapters 10 and 11.

### For Your Notebook

1. Canada has a federal system of government. Explain how this works.
2. Which of these government responsibilities are provincial? Which are federal? (Hint: Check in the government pages of your telephone directory.)
  - vehicle licensing
  - making new coins
  - hospitals
  - Native land claims
  - pensions
  - highway maintenance
  - international boundary disputes
  - unemployment insurance
3. When was bilingualism introduced? Briefly explain why Canada is a bilingual country.
4. Who has the most power—the federal government or the provincial government? In what ways could you see this causing problems in Canada today?

### Exploring Further

1. The U.S. Civil War between the Northern and Southern states took place between 1861 and 1865. How do you think that the Canadian system of federalism, brought in by the Constitution Act, 1867, might prevent a war between the Canadian provinces?
2. Optional: The Constitution Act, 1867 gave the central or national government (the federal government) a great deal of power. If the Meech Lake Accord had passed in 1990, what effect would it have had on the powers of the federal government?
3. Optional: Monitor the media for a week. Record any constitutional issues.

**Provincial rights**—the powers maintained by the provincial governments, usually involving cultural, social, and local issues