Equality of Provinces

While all of the provinces of Canada operate under the same general constitutional provisions with respect to their powers, as set forth in Sections 92 and 92A of the *British North America Act, 1867* (renamed *Constitution Act, 1867* in 1982), there have been a few specific differences from the beginning. There is also no principle asserting or requiring the 'equality' of provinces.

The principal constitutional differences derive from the language, legal system, religion and history of Quebec.

The earliest specific constitutional measure was in the Quebec Act, 1774 14 George III, c. 83(U.K.), reprinted in R.S.C. 1985, App. II, No. 2), which made provision for "the state and circumstances" of the inhabitants of Quebec with regard to religion, the system of laws, the holding of property and "all their other Civil Rights."

The 'different' characteristics of Quebec continued to be recognized in the Constitution Act, 1791 31 Geo.III, c. 31 (U.K.), reprinted in R.S.C. 1985, App. II, No. 3), which established "two separate Provinces" of Upper and Lower Canada.

In our present Constitution, departures from provincial equality derive from this history: language (the use of French and English in the legislature of Quebec); the uniformity of laws (excepting Quebec); and education (rights to denominational schools, with a parallel provision for Ontario). There is also a departure from 'provincial equality' in the provisions for representation in the Senate (Ontario and Quebec each constitutes a 'division' while the other eight provinces constitute two divisions).

The concept of provincial equality has been raised recently in the proposal for a Triple E Senate – elected, effective and equal in provincial representation. However, there is no prospect that any government of Quebec will accept equality of provincial representation in a reformed Senate, for the following reasons. First, there is the continuing 'difference' of Quebec and two-hundred years of constitutional recognition of that fact. Second, there is the fact that the purpose of a 'second chamber' in a federal system is to provide protection for less populous regions in the federation (see federalism). These factors taken together make it unlikely that such a proposal will be successful in the near future.

Sources:

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