

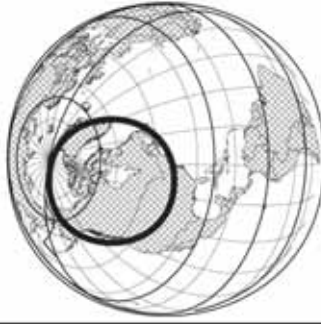
Canada

Capital: Ottawa

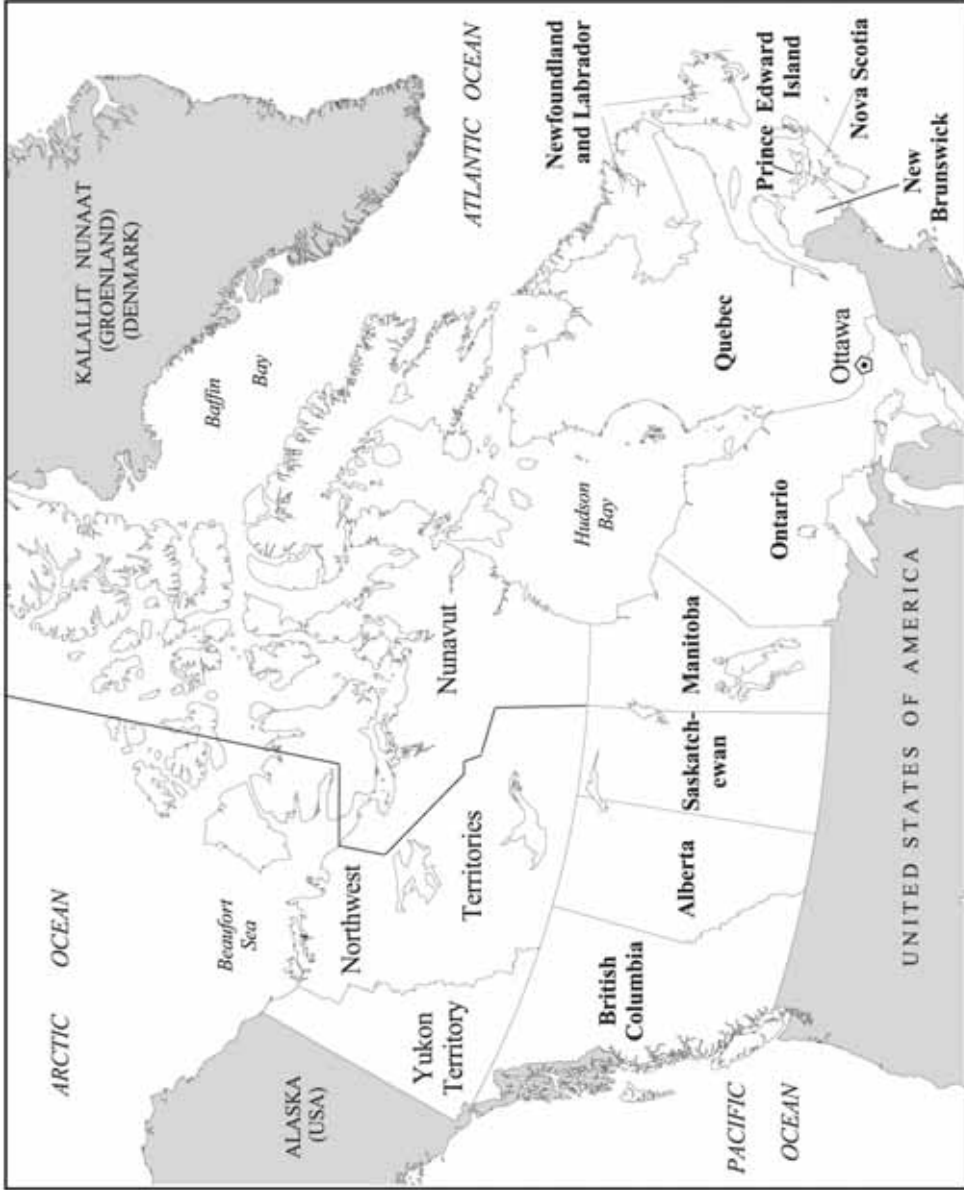
Population: 31.5 Million

Boundaries and place names are representative only and do not imply official endorsement.

The three northern territories, while administrative divisions, are not provinces.



Sources: ESRI Ltd., National Atlas of Canada, Time & Tide of the World



Canada

DAVID R. CAMERON

1 HISTORY AND DEVELOPMENT OF FEDERALISM

Canada is a parliamentary democracy. The head of state is Her Majesty Queen Elizabeth II, represented in Canada by the Governor-General at the federal level, and Lieutenant-Governors provincially. The country has a land mass of more than 9 million km², spanning five time zones. Its population is almost 31 million people, most of whom live in cities and towns stretched along a narrow band just north of the US border.

Canada is the product of the 1867 union of three British colonies in “British North America”: Nova Scotia, New Brunswick and the united Province of Canada. (The United Province of Canada was made up of Canada East and Canada West which, after 1867, became Quebec and Ontario respectively.) Six other provinces have joined Canada: Manitoba (1870); British Columbia (1871); Prince Edward Island (1873); Saskatchewan and Alberta (1905); and Newfoundland (1949). In addition, there are three northern territories: Yukon; the Northwest Territories; and Nunavut, which was carved out of the Northwest Territories in 1999.

Canadian federalism has been affected by the country’s linguistic diversity, centred on the French-English relationship, its regional diversity, and its ethno-cultural diversity. Reflecting the historical presence of two main language communities, Canada has two official languages, French and English. English is the mother tongue of more than 60% of Canadians and French of about 24%, mostly concentrated in Quebec. Since

Canada's settlement and growth have depended heavily on immigration, approximately 14% of Canadians have other mother tongues. In 1991, almost 1 million people in Canada reported having some aboriginal origins.

Canada's economy is the seventh largest among Western industrialized countries and Canada is a member of the Group of Eight industrial countries. Barriers to international trade between Canada and other countries have been steadily lowered since World War II. Exports represent about 40% of Gross Domestic Product (GDP) (one of the highest rates in the world), and approximately 80% of those exports go to the United States. The Canadian economy is tightly integrated into the US economy and, in fact, the two countries are each other's largest trading partners. The integration of the North American economy has been furthered with the Canada-US Free Trade Agreement (implemented in 1989), and the North America Free Trade Agreement (NAFTA), involving Canada, the United States and Mexico (December 1992).

Canada's wealth, historically, was generated largely from the exploitation of its abundant natural resources. Today, industrial and high technology sectors also play an important role in an economy which is highly regionalized. More than half of Canada's economic output is produced in the central provinces of Ontario and Quebec, which together house more than 80% of Canada's manufacturing capacity.

Economic development aside, four great forces have shaped Canadian federal experience since World War II. The first is the construction, consolidation and then constraining of the Canadian welfare state. The second is the emergence in the 1960s of a form of liberal nationalism in Quebec, the province in which a majority of the population is French-speaking. Parallel to that is the third factor, the 'province building' enterprises of several Canadian provinces. The fourth is the aspiration for self-determination of Canada's aboriginal peoples. Clearly, these are not the only forces one might identify, but they are the ones most relevant to this account of Canadian federalism.

2 CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

Canada was the first country to establish itself as a parliamentary federation – i.e., a federal system in which sovereignty is divided between central and regional governments, both orders of government constituted according to the principles of British parliamentary democracy. The Canadian system expresses a divided rather than a shared model of federalism, including: watertight compartments for the division of

powers; independent taxing authority for both orders of governments; and weak provincial representation at the centre. Canada's parliamentary federation has produced strong executive-led government in Ottawa and in the provincial capitals, which – combined with a weak Senate – has led to executive domination of relations between and among the federal partners.

Canada was founded in 1867 as a centralized federation, with the key powers of the day vested in Ottawa and a strong, paternalistic oversight role assigned to Ottawa vis-à-vis the provinces. Despite its origins, however, Canada has become highly decentralized. This has occurred due to a number of factors. First, judicial interpretation of the division of powers broadly favoured provincial governments over the federal government. Second, the country's central institutions have been unable to represent adequately Canada's regional diversity, and there has consequently been popular support for the assertion of provincial power, especially in the stronger provinces. Third, provincial areas of responsibility, such as health, welfare and education, which were of little governmental consequence in the nineteenth century, mushroomed in the twentieth, thus greatly enhancing the role of the provinces. Finally, post-World War II nationalism in Quebec has helped to force a process of decentralization from which other provinces have benefited.

The result is that Canada has powerful and sophisticated governments both in Ottawa and in the provinces, engaged in competitive processes of community building, and social and economic development at both levels. Managing this system requires elaborate forms of inter-governmental coordination, and at times dissolves into bitter inter-governmental conflict.

Canada's two principal constitutional documents are the *Constitution Act, 1867* and the *Constitution Act, 1982*. The *Constitution Act, 1867*, formerly known as the *British North America Act*, was an Act of the British Parliament that created Canada out of the three original colonies and provided the federal and parliamentary structure. It is in this document that one finds the general provisions for the distribution of powers, and the establishment of Parliament, the provincial legislatures and the courts. The *Constitution Act, 1982* patriated the constitution from the last vestiges of British authority by introducing a Canadian amending formula, affirmed aboriginal and treaty rights of the aboriginal peoples of Canada, and introduced an entrenched *Charter of Rights and Freedoms* which applies to all citizens and to which all governments and legislatures are subject.

Sections 91–95 of the *Constitution Act, 1867* allocate powers between the federal and provincial governments. The broader and

more comprehensive assignment of authority was to the Parliament of Canada, and any power not specifically allocated by the constitution was deemed to fall to the federal Parliament (the residual power). The powers exclusively assigned to the provinces were meant to be specific and limited. Broad judicial interpretation, however, has turned the “property and civil rights” power of the provinces (Section 92(13)) into a kind of residual power of its own.

Federal legislative powers are found chiefly in Section 91 of the *Constitution Act, 1867*, which opens with a sweeping grant of authority, stating that Parliament may “make laws for the peace, order and good government of Canada” in relation to all fields not explicitly assigned to provincial legislatures. The drafters of the constitution then listed 29 heads of power that form part of the general grant of authority to Parliament. In the years since 1867, however, the courts have declined to confirm this broad understanding of the Peace, Order and Good Government or POGG power. Instead, they have relied heavily on the 29 enumerated heads of power and have restricted POGG to three principal situations: where the distribution of authority leaves a legislative gap (eg., offshore mineral resources or federal language policies); where the matter is of ‘national concern,’ but not caught within any of the enumerated federal powers (eg., marine pollution or aeronautics); and where there is a national emergency (eg., apparent civil disorder or acute inflation in the economy).

Some of the important enumerated powers are:

- regulation of trade and commerce (Section 91(2)), which now covers inter-provincial and international trade and commerce, and the general regulation of trade affecting the whole country;
- unemployment insurance (Section 91(2a)), added by the *Constitution Act, 1940*;
- taxation (Section 91(3)) which allows the federal government to raise revenue “by any mode or system of taxation”;
- Indians and lands reserved for the Indians (Section 91(24));
- treaty power (Section 132), which gives the government of Canada the power to negotiate and sign binding international treaties – however, when a treaty involves matters within provincial jurisdiction, the treaty will not be operative until enacted by the provinces; and
- authority for money and banking, and for inter-provincial transportation.

Sixteen specific heads of power are assigned to the provinces in Section 92 of the *Constitution Act, 1867*. The most important of these are:

- direct taxation (Section 92(2)) which gives provinces the right to “direct taxation within the province in order to the raising of revenues for provincial purpose”;
- management and sale of public lands (Section 92(5)), which means that public or crown lands, including natural resources, within a province are the property of that province, thus providing provinces with a significant source of revenue and a substantial capacity to manage the provincial economy;
- health and welfare (Section 92(7)), a responsibility which has gained importance in the twentieth century, health care now being the largest single expenditure field for provincial governments;
- municipal institutions (Section 92(8)), which means that municipal governments can be made and un-made by the provincial government;
- local works and undertakings (Section 92(10));
- property and civil rights within the province (Section 92(13)), which is generally thought to be the most important provincial head of power because, through it, for example, the provinces gain the right to legislate within their territory in relation to real property, personal and intellectual property and proprietary civil rights; and
- matters of a local or private nature (Section 92(16)), which has been seen as another important source of provincial authority because it relates to matters not specifically falling under any other enumerated provincial powers which are of a local or private nature.

There are four specified concurrent powers. The first concurrent power relates to agriculture and immigration (Section 95). Section 95 authorizes both the federal Parliament and the provincial legislatures to legislate in relation to these matters with federal legislation being paramount in cases of conflict. The second concurrent power relates to natural resources (Section 92(a)). This section was added as a result of the constitutional discussions of 1980–82. It enables provinces to control the export of their non-renewable, forestry and electricity resources to other provinces (although not to another country), reversing the restrictions formerly imposed on them. In the case of conflict, federal legislation has paramountcy. The third area of concurrent jurisdiction is education (Section 93). Education is listed here although the federal entitlement to act is not general, but arises only out of specific situations. Education is the responsibility of the provinces, subject to a number of limitations designed to protect minority groups and denominational schools, and a federal power to pass ‘remedial’ legislation which in fact has never been used. Like the health and welfare

fields, education grew into a central responsibility of the modern democratic state in the twentieth century. Canada is unusual, even among federations, in vesting so little authority for this matter in the federal government. And the fourth area of concurrent jurisdiction relates to pensions (Section 94(a)). Originally added to the constitution in 1951 and amended in 1964, this section provides for concurrent legislative powers with respect to old age pensions and supplementary benefits. Atypically, it provides for *provincial* paramountcy in cases of conflict between provincial and federal legislation.

In addition to the relatively few concurrent powers, there are three areas in which federal and provincial authority overlap. The first area is criminal law. Section 91(27) gives Parliament the power to make laws in relation to criminal law, including procedure in criminal matters, but Section 92(14) gives the provinces responsibility for the administration of justice. Thus, the Criminal Code is a federal statute, but policing and prosecution under its provisions are executed by the provinces.

The second area is the courts. Canada has an integrated judicial system in which the federal government is responsible for the nomination, salaries, allowances and pensions of superior court judges, and the provinces are responsible for the establishment of courts and their administration, as well as having full responsibility for the junior courts in each province.

The third area of overlap is the federal spending power and shared cost programs. One of the most important and controversial areas of Canadian federalism is the field of shared cost programs in which the federal government transfers funds to provincial governments to assist them in fulfilling certain of their constitutional responsibilities. By far the largest programs relate to health care, social assistance and post-secondary education, which are now combined in the Canada Health and Social Transfer Program. This program involves cash and tax transfers in the order of \$25 (Cdn) billion annually. The federal government's authority to do this – its 'spending power' – derives not from an explicit head of power in Section 91, but is inferred from several provisions of the *Constitution Act, 1867* relating to the authority to tax and spend.

The second or upper house of the Canadian Parliament is the Senate. There are 105 members who are appointed by the Governor-General based on the recommendation of the Prime Minister according to a system of rough regional representation and political considerations (often reward for loyal service to the party in power). Legislation must be passed both by the House of Commons and the Senate, which in effect gives the Senate a veto. In practice it has rarely exercised its power, and

is unlikely to do so. As an appointed, rather than an elected chamber, it has become chiefly a house of prime ministerial patronage, and as such lacks democratic legitimacy. There have been numerous proposals to reform the Senate – in particular to elect it and to make it a more effective voice for the provinces in the federal government – but no reform has yet been accomplished.

Until 1949, the British Judicial Committee of the Privy Council (JCPC), a part of the British House of Lords, was the supreme authority interpreting Canadian constitutional law and practice and settling disputes between the two orders of government. Appeals to the JCPC were abolished in 1949. Since that time, the ultimate judicial authority has been the Supreme Court of Canada. Its existence, curiously enough, is based simply on federal legislation, not on a constitutional provision, and its judges are appointed solely by the government of Canada with no formal provincial role, although judges are generally appointed based on regional criteria.

In addition to patriating the constitution, the *Constitution Act, 1982* added the means of amending it. Thus, the amendment of the constitution became possible without resort to the British Parliament. There are five methods of amending the constitution, depending on the matter concerned, but the general amending formula requires the approval of the Parliament of Canada and the approval of seven of the 10 provincial legislatures together having at least 50% of the population.

3 RECENT POLITICAL DYNAMICS

The defining moment for the Canadian federation in the last decade was the referendum on sovereignty held by the province of Quebec in October 1995. The secessionists lost by a hair's breadth – those opposing the secession of the province from Canada won by 50.6% of the votes cast. The referendum detonated a series of political explosions, large and small, in Canada's political system. As an immediate consequence, Quebec Premier Jacques Parizeau resigned and was replaced by Lucien Bouchard. Bouchard had been until then the party leader of the Bloc Québécois, the sister party to the Parti Québécois (PQ) at the federal level. Another consequence was that Prime Minister Chrétien arranged for the passage of two parliamentary resolutions, one acknowledging Quebec as a distinct society and the other promising to recognize de facto a veto for Quebec over future, general constitutional amendments. As well, the federal government transferred responsibility for several policy fields to the provinces chiefly in recognition of these as longstanding concerns of successive Quebec governments.

To dissipate public confusion in Quebec about the consequences of any future positive referendum vote, the federal government asked the Supreme Court of Canada to clarify whether Quebec had the right to secede unilaterally under either domestic or international law. Unsurprisingly, the Court said in its opinion in August 1998 that Quebec had no such right, and that the secession of a province would have to be negotiated using the existing provisions for the amendment of the Canadian constitution. More surprisingly, however, it declared that a strong positive vote on a 'clear' question in a future Quebec referendum would oblige the federal government and the other provinces to negotiate this matter with Quebec. Building on the Court's emphasis on the need for there to be a clear vote and a clear question (which the judges declined to define), the federal government had the "Clarity Bill" passed through the Parliament of Canada. This bill sets out the processes by which Ottawa would judge whether a future referendum question and a possible majority vote were 'clear.' Quebec, for its part, responded with a piece of legislation contesting the federal position.

Strangely, while these post-referendum events were occurring, the people of Quebec were shifting their attention away from the question of secession and toward other matters. The positive federal gestures had very little impact on Quebec opinion, and the potential 'provocations' – the Supreme Court Reference and the Clarity Bill – seemed to awaken little reaction or interest. True, the Parti Québécois, under the leadership of Lucien Bouchard, won re-election provincially, but so did the federal Liberals under Jean Chrétien in 1997.

It was almost as if Quebecers, like other Canadians, decided that the last half of the 1990s would be devoted to getting federal and provincial finances under control. Both the federal and provincial governments undertook programs of severe fiscal restraint in the effort to eliminate their deficits, to reduce the accumulated debt, and to put the country and its regions into a more competitive position internationally. Inter-governmental relations during this period of financial reform were less fraught than one would have expected, given the cut-backs in federal transfers to the provinces, and the downloading of costly program responsibilities. The return to fiscal health has now been largely accomplished, with the federal government and many of the provincial governments now in a surplus position, but there is no indication of any resurgence of Quebec nationalism.

As evidence that nationalist fervour is definitively in abeyance, one need only look at three significant political events.

The first is the fall 2000 federal election, which brought Jean Chrétien and the Liberal Party back to power for a third time. Significantly, the Liberals gained seats in Quebec and took a higher proportion of

the popular vote than the secessionist Bloc Québécois, despite being led by Chrétien, a politician held in relatively low esteem by many francophone Quebecers. Partly in recognition of the ebbing of the sovereignist tide, Lucien Bouchard resigned as Premier of Quebec in early 2001, and was replaced by a more militant successor, Bernard Landry, who hoped to re-ignite the fires of sovereignist aspiration, or at least maintain the Parti Québécois in office.

Premier Landry called a provincial election for 14 April 2003, which led to the second significant political event. The Quebec election saw the defeat of the Parti Québécois after two terms in office, and the election of the Liberal Party under Jean Charest, an unabashed federalist. The Liberals took 76 of the 125 seats in the National Assembly, the PQ 45, and the moderate nationalist party, *Action démocratique du Québec*, the remaining 4. Quebec voters appear to have been ready to set the national question aside and to entrust their fortunes to a political formation and leadership that would concentrate their energies on 'normal' political and public policy matters, such as fiscal management, health care, education, municipal governance and the like.

The third event occurred on 12 December 2003, when Jean Chrétien resigned as Prime Minister of Canada, and was replaced by Paul Martin. The departure of Chrétien from the political stage marks the emergence of a new generation of political leadership for whom Quebec nationalism is no longer the single most important defining element of their worldview. Paul Martin, though a federal politician, is far more comfortable with Quebec nationalism than is his predecessor, just as Premier Jean Charest of Quebec is far more comfortable with Canada and Canadian federalism than Bernard Landry, the man who preceded him.

With the concomitant turnover of political leadership in many of the other provinces as well, there is reason to believe that inter-governmental relations in Canada will assume a different character. While the ascension to office of a new Prime Minister is likely to foster a degree of cooperative federalism not seen for some time, it is not to be expected that all will be sweetness and light. However, the issues in contention and the style in which they are addressed may very well alter.

It seems likely, however, that regional alienation in Western Canada will require the attention of the national government and central Canada over the coming years. Effectively locked out of national power since the Progressive Conservative Party collapsed in the 1993 federal election, people in the western Canadian provinces are showing signs of frustration and discontent with the operation of the federation, which appears to neglect their interests and aspirations. The historic focus on Quebec and its status in Canada has not helped matters, any

more than the fact that all notions of constitutional reform (for example, the reform of the Senate) have been held hostage to the constraints the country is facing vis-à-vis Quebec. Were the current efforts to construct a new national conservative political party in Canada out of the elements of the Alliance Party and the fading Progressive Conservatives to be successful, voters might be presented with the makings of a national political alternative to the Liberals, who have benefited mightily during the last decade from their singular claim to broad national appeal.

Finally, the place of aboriginal people within the Canadian community continues to be a painful and intractable issue with significant potential to shape the evolution of Canadian federalism in the future. Negotiations over land claims and treaty rights, together with significant court decisions relating to these matters, have already begun to affect the way in which Canadians conceive of their constitutional and political system, and the aspirations of aboriginal peoples for self-government have raised the possibility of the emergence of a third order of government in Canadian federalism.

While the nature of things to come for the Canadian federation is not yet entirely clear, it is apparent that politics and federalism in the new century will be markedly different from what Canadians have known in the recent past.

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Table I
Political and Geographic Indicators

Capital city	Ottawa
Number and type of constituent units	<i>10 Provinces:</i> Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan <i>3 Territories:</i> Northwest Territories, Nunavut, Yukon.
Official language(s)	English, French
Area	9 984 670 km ²
Area – largest constituent unit	Quebec – 1 542 056 km ²
Area – smallest constituent unit	Prince Edward Island – 5 660 km ²
Total population	31 559 186 (est. April 2003)
Population by constituent unit (% of total population)	Ontario 38.4%, Quebec 23.7%, British Columbia 13.2%, Alberta 9.9%, Manitoba 3.7%, Saskatchewan 3.2%, Nova Scotia 3.0%, New Brunswick 2.4%, Newfoundland and Labrador 1.7%, Prince Edward Island 0.4%, Northwest Territories 0.13%, Yukon 0.10%, Nunavut 0.09%
Political system – federal	Federation – Parliamentary System
Head of state – federal	Queen Elizabeth II. Queen's Representative in Canada is the Governor-General, currently Adrienne Clarkson. Appointed by Queen on the recommendation of the Prime Minister.
Head of government – federal	Prime Minister Paul Martin (12 December 2003), Liberal Party of Canada, leader of party with the most seats in House of Commons, elected through popular vote for maximum 5-year renewable term.
Government structure – federal	Bicameral: Parliament <i>Upper House</i> – Senate, 105 members, appointed on a regional basis by the Governor-General on the advice of the Prime Minister. They hold office until age 75. <i>Lower House</i> – House of Commons, 301 members, elected in single-member constituencies for maximum of 5-year renewable term.
Number of representatives in lower house of federal government of most populated constituent unit	Ontario – 103
Number of representatives in lower house of federal government for least populated constituent unit	Prince Edward Island – 4

Table I (continued)

Distribution of representation in upper house of federal government	The Senate is based on regional (rather than provincial) representation. 24 come from the Maritime provinces (New Brunswick, Nova Scotia, Prince Edward Island); 24 from Quebec; 24 from Ontario; 24 from the Western provinces (Alberta, British Columbia, Manitoba, Saskatchewan); six from Newfoundland and Labrador; and 1 from each of the territories.
Distribution of powers	The constitution enumerates 29 powers that are exclusive of the federal government including taxation, national defence, trade and commerce, criminal law, marriage and divorce, currency, coinage, copyrights, patents, and nationwide services. The provinces have exclusive powers over 16 matters such as direct taxation within the province, education, property and civil rights in the province, and the administration of justice in the province. The federal government and the provinces may legislate with respect to agriculture and immigration, as well as to pensions and supplementary benefits.
Residual powers	Residual powers belong to the federal government.
Constitutional court (highest court dealing with constitutional matters)	The Supreme Court of Canada. 9 Justices, led by a Chief Justice. Appointed by the Governor-General on the recommendation of the Prime Minister.
Political system of constituent units	Unicameral: Legislature/Legislative Assembly. Members are directly elected to serve for maximum 5-year renewable term.
Head of government – constituent units	<i>Head of state:</i> Queen's representative, referred to as Lieutenant-Governor. Appointed by Governor-General, based on recommendation of the Prime Minister. <i>Head of government:</i> Premier. Leader of party with the most seats in the legislature. Serves for a maximum 5-year renewable term.

Table II
Economic and Social Indicators

GDP	us\$940.1 billion at PPP (2002)
GDP per capita	us\$29 900 at PPP (2002)
National debt (external)	us\$1.9 billion
Sub-national debt	us\$158.9 billion (2002)
National unemployment rate	7.4% (December 2003)
Constituent unit with highest unemployment rate	Newfoundland and Labrador – 16.7%
Constituent unit with lowest unemployment rate	Manitoba – 5.0%
Adult literacy rate	99% ¹
National expenditures on education as % of GDP	5.5%
Life expectancy in years	79.2
Federal government revenues – from taxes and related sources	us\$138.2 billion (2003)
Constituent unit revenues – from taxes and related sources	us\$176.7 billion (2003)
Federal transfers to constituent units	us\$37 billion (2003)
Equalization mechanisms	There are 3 main mechanisms of horizontal equalization among provinces: Canada Health and Social Transfer program; equalization payments based on the ‘Five Province Standard’; and ‘Territorial Formula Financing.’

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Note

1 Age 15 and above.