

Canadian Women Challenge the Constitution: The Story Behind the Story

THE MOTHERS OF CONFEDERATION THINK IT'S TIME
TO HEAR WOMEN'S VIEWS ON THE CONSTITUTIONAL DEBATE



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Introduction

Women Challenging the Constitution: New Evidence

Cluster Editors

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Abstract

This article is more political than legal. Using the approaches identified by feminist institutionalism, it focuses on the interactions between the Canadian Advisory Council on the Status of Women (CACSW) and the Canadian government during the constitutional crisis of 1980-1981. How did the gendered institutions of the federal government facilitate a narrative that, finally, was harmful to the women's movement in Canada?

Résumé

Cet article est plus politique que juridique. En utilisant les approches identifiées par les institutions féministes, il se penche sur les interactions entre le Conseil consultatif canadien sur la situation de la femme (CCCSF) et le gouvernement du Canada durant la crise constitutionnelle de 1980-1981. Comment les institutions marquées par la différenciation des sexes du gouvernement fédéral ont-elles facilité un récit qui était, en fin de compte, nuisible au mouvement féministe au Canada?

Introduction

In 2012, we were among those at a small conference organized by the Dalhousie Association of Women and the Law for the thirtieth anniversary of the *Canadian Charter of Rights and Freedoms* (Charter). The film *Constitute!* was shown, followed by an impressive panel of women who had been involved in the events of 1980-1981.¹ Cake was served, a dance was scheduled for later, and the mood was celebratory. And we realized three things. First, for the young women present, the topic of the day was brand new. Second, a consistent myth or story had developed around the relevant events of 1980-1981. Third, the story was basically Doris Anderson's as initially told by her. These facts were faithfully reflected in the film and by the reactions of the audience. The same story was told by theatre students who produced an almost worshipful play based on Doris Anderson's autobiography (Aschaiek 2014).

Looked at more closely, the Anderson episode provides, we have come to believe, an exceptionally clear example of how gendered institutions can foster a narrative that is both gendered itself and productive of conformity to those institutions (Kenny 2014, 679; Lowndes 2014, 689). This is the more remarkable in that the accepted story of Canadian women's involvement in the adoption of the Constitution in 1980-1981 is commonly framed in terms of women's defiance of the political institutions of the day (Kenny 2014, 679, 689).

A great deal has been written on what happened in relation to the Canadian Advisory Council on the Status of Women (CACSW) in 1980-1981. The biographer of Yvette Rousseau, the second president of the CACSW, gives one of the most succinct statements of what we all came to believe occurred:

[Doris Anderson] was to resign dramatically [*avec fracas*] in 1981, members of the CACSW having approved, contrary to her recommendation, a ministerial intervention to cancel, for political reasons, a constitutional conference convoked by the Council. (O'Neil 2004, 312)²

Julyan Reid (2007), then CACSW research director, provides a more detailed account:

A conference was planned... To our frustration, it was cancelled by the Minister responsible for the Status of Women and the Advisory Council, with the support of the Council Vice-Presidents. However, this temporary setback led to the organization by women, with the support of Flora Macdonald, of an ad-hoc conference on Parliament Hill that was so successful that it made history for women across Canada. Doris was the mother of this history-making assertion of women's fundamental rights. (59)

Note the tropes: ministerial intervention for political reasons, cancelled conference, resignation, Ad Hoc conference with huge impact. In fact, there is reason to doubt all of these except the dramatic resignation and the Ad Hoc conference itself (as distinguished from its influence). Journalist Penney Kome's (1983) laudatory volume is the most accessible and influential account we have. In her 1983 book *The Taking of Twenty-Eight: Women Challenge the Constitution*, she described the episode as an "earthquake" that proved Canadian women to be "a formidable national political force, knocking a Cabinet Minister out of his status of women portfolio" (23). But even Kome provided small hints of a different narrative lurking in the background. For instance, she wrote that "Some members were unhappy about seeing Council run by press release" (20).

There is indeed a different story to tell. This is Joanne Linzey (1981) from Whitehorse, a member of the CACSW executive in 1981:

Doris Anderson resigned because she had lost the confidence of her executive and the majority of her Council. She lost our confidence not over any supposed ministerial interference but because she repeatedly failed to consult with Council and be responsive to its consensus. (17)

Another commentator, an admirer of the organizers of the February 1981 Ad Hoc conference, called them "kamikaze warriors whose admirable morality was worn on their sleeves plain for all to see." Kamikaze warriors, she noted, "achieve symbolic victories but do not win the war" (Collins 1981, 30).

A generation later, it is time to look again at what happened, the more so as there is new material on the CACSW now available. Katie Cooke (2001), the first president, wrote a detailed account of the first years of the CACSW. There is also the authoritative biography of Yvette Rousseau, the second president (O'Neil 2004). Furthermore, Berenice Sisler (1997), a Manitoban appointed to the CACSW in 1980, left a 50-page typescript entitled, "The Perpetuation of a Myth: The Anderson-Axworthy Affair."³ Her account began as follows: "Someone once said if you told a whopper and told it often enough, it would soon be accepted as fact." She continued: "In my opinion, that is exactly what has happened with respect to the infamous feud between Doris Anderson and [her minister] Lloyd Axworthy" (1).

This is why we feel compelled to reexamine what has been described as "a courageous act of dissent" (Landsberg 2011, 266) or the "biggest triumph" of the Canadian women's movement (Anderson 1991, 221). To begin with, we want to make this new material known. Then there is the question of what really happened. Truth does matter, however appealing, even enabling, our plausible beliefs may be. It makes a difference what story is told, and it matters even more that the story should be not just inspirational, but also accurate. The episode's role in the government's influence on the women's movement needs to be recognized.

This thematic cluster consists of articles that grew out of a 2012 conference held at Dalhousie University. The articles by Beverley Baines, Penney Kome, and Nancy Ruth are based on their presentations. Mary Eberts' article is an entirely new discussion of the development of section 15 of the *Canadian Charter of Rights and Freedoms*. It should be noted that the authors do not all agree on their interpretation of the 1980-1981 occurrences around the CACSW and the constitution. These disagreements are important. We conclude with Berenice Sisler's previously unpublished account completed in 1997.

In what follows in this introduction, we discuss the following: the story of CACSW President Doris Anderson; the Canadian women's movement and the constitutional crisis; the CACSW and its problems; a counterfactual account; implications for feminist practice; and insights for theories of feminist institutionalism.

The Story of CACSW President Doris Anderson

Doris Anderson, best known as the editor of the women's magazine *Chatelaine*, was appointed president of the national Canadian Advisory Council on the Status of Women in 1980. She was the third president, following Katie Cooke and Yvette Rousseau. When she had—very successfully—been in charge at *Chatelaine* (1956-1977), her editorials and general policy had been unabashedly and influentially feminist (Korinek 2000, 37). Then, at loose ends, after failing to become the editor of Maclean-Hunter's flagship *Maclean's* magazine, she accepted the invitation to run for the Liberals in a risky 1978 by-election (Bennett 2007, 46). Losing and unwilling to seek the nomination again,⁴ she then became one of the many defeated candidates to receive a "plum" patronage appointment (her description)—in her case, the presidency of the CACSW.⁵ She was already a member of the council and had ideas about how to make it more effective; she figured that it would take her three years. She did not, however, get along with her Minister, Lloyd Axworthy; she recorded disagreement with him prior to his appointment (Anderson 1996, 229, 231, 235-237, 239-241). It is important to remember that Anderson was a journalist who had no association with any second-wave women's group until *after* her CACSW presidency when she became president of the National Action Committee on the Status of Women (NAC). In 1980-1981, when she presided over the council, her relationship with the women's movement was significant, but distant.

The employees at the CACSW adored Anderson and columnist Michele Landsberg (2011), who had earlier worked for her on *Chatelaine* magazine, praised her as "a trailblazer for the Canadian feminist revolution to come" (263). However, Anderson was accustomed to the hierarchical mode of editor of a magazine, while her fellow appointees preferred the consensual practices of second-wave women's groups. At issue early in 1981 was the timing of the CACSW's conference on women and the constitution planned for February. When Minister Lloyd Axworthy suggested a postponement, Anderson insisted on holding it on the scheduled date, but the council disagreed. Complaining that she had lost control, Anderson refused to accept the majority decisions of the CACSW executive (five to one) and then the entire council (17 to 10) (Collins 1981, 15, 18; Gray 1981,

28; Linzey 1981). She then resigned extremely publicly as she had threatened to do.

In her autobiography, Anderson (1991) wrote that "This situation, my resignation, and the publicity⁶ around it, enraged Canadian women from coast to coast." She went on to recount how a massive constitutional conference of women was organized in Ottawa (on February 14-15, 1981) by a committee of volunteers (members of the Ad Hoc Committee of Canadian Women on the Constitution, usually referred to as Ad Hockers), and section 28 was added to the Charter. "It, along with Section 15...is the equivalent of the Equal Rights Amendment in the United States which U.S. women have been working to get into their constitution since 1923." Later, "premiers tried to put a restraining clause on Sec 28. Women from coast to coast rallied furiously, and the premiers caved in almost overnight, removing the clause" (222).

Most authors still accept Anderson's interpretation. The *fracas* of her resignation and the mobilization of women that followed are thus credited with producing, among other constitutional impacts, a unique and significant commitment to equality for women. Unfortunately, this interpretation is, to say the least, misleading.

The Canadian Women's Movement and the Constitutional Crisis

On the face of it, it is surprising that the arcane business of constitutional change produced such an iconic moment for women in Canada. The stories—constitutional history and feminist involvement with constitutional change—have both been told many times. However, they are usually not combined because constitutional accounts see no need to refer to feminist activism, while accounts of the women's movement usually give scant attention to contextual constitutional efforts. The chart included in Appendix 1 provides a basic chronology of relevant events; for 1980 and 1981, we have combined what occurred in and around the CACSW and the simultaneous and crucial constitutional developments. The successful campaign in 1981 to exempt the key equality provision (section 28) from the constitutional override (section 33) draws the two narratives together.⁷ Both stories really began in 1980.

In the fall of 1980, the CACSW planned a conference on women and the constitution to be held in Sep-

tember. It was rescheduled for February 1981 because of a translators' strike in September 1980. On October 18, Persons Day, NAC held a study day on women and the constitution in Toronto. In November 1980, NAC and the CACSW were among the women's groups that presented briefs to the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada. The session became notorious among feminists after Co-chair Harry Hays dismissed them with the condescending comment: "I'm just wondering why we don't have a section in here about babies and children. All you girls will be out working and we're not going to have anybody to look after them" (Riley 1981, 18). Nonetheless, in January 1981, the Minister of Justice announced that many of the feminist organizations' "excellent" suggestions of wording for the Charter had been accepted (Jean Chrétien cited in Canada Parliament 1981, 13). What then ensued has been discussed above: the over-ruling of Doris Anderson's preferences by the CACSW, her resignation, and the volunteer Ad Hoc group and its conference. In May 1981, the CACSW, now under the presidency of Lucie Pépin, held its own long-postponed conference.

The immediate context was Canada's constitutional crisis—so called because national unity was feared to hinge on the outcome of negotiations between Ottawa and the provinces. Updates to the constitutional order had been initiated off and on since the 1950s, principally to address the rise of Québec nationalism. Pressure intensified when the separatist Parti Québécois was elected in 1976 to a majority in Québec's National Assembly under the leadership of René Lévesque and when, four years later, the Québec government held a provincial referendum on proceeding with negotiations for "souveraineté-association." It was narrowly defeated, but Lévesque was still premier in Québec and national unity still looked precarious.

After the referendum, a newly elected Liberal government under the leadership of Prime Minister Pierre Elliot Trudeau undertook to "patriate" the constitution, that is, to bring the ability to amend it from Britain to Canada. In the aftermath of difficult, protracted, and ultimately unsuccessful negotiations with the provinces in September 1980, Trudeau announced that the Government of Canada intended—without the concurrence of the provinces—to ask the British Parliament to amend the constitutional order. The premiers

immediately launched a legal appeal in what became the "Constitutional Reference Case." In September 1981, the Supreme Court ruled that, although unilateral federal patriation was legal, it was contrary to constitutional convention.

It was in the midst of this stalemate before the Supreme Court released its decision that the Government of Canada introduced a *Charter of Rights and Freedoms* to be entrenched as Part I of what was to become the *Constitution Act, 1982*. In fact, patriation did not require that the constitutional package include a *Charter of Rights and Freedoms*; only an amending formula was needed. The proposed Charter was part of a "people's package" that the federal government hoped would build public support for patriation over the heads of the recalcitrant premiers (Stein 1989, 29).

The Charter's provisions for equality rights were central to feminist concerns, especially since the 1960 *Bill of Rights* was initially proposed as the model for the new one. That document had contained equality rights, but Canadian judges were reluctant to strike down (or declare invalid) legislation that violated those rights. As regards individuals, a series of notorious cases underlined the fact that, at most, the *Bill of Rights* required only equal administration of laws.⁸ The new Charter came to contain stronger provisions for equality rights, applying to all levels of government. It would also invite more frequent judicial review of legislation. In the meantime, the Ad Hoc conference had developed section 28. This is when, finally and most crucially, the two streams of activity (the women's movement and the constitutional crisis) came together. Kome's (1983) title "the taking of twenty-eight" refers to the last stage of the process when, over a period of several weeks, section 28 was rescued by the efforts of women and women's groups from a possible override by legislative action.

The CACSW and Its Problems

The Royal Commission on the Status of Women (RCSW) seems to have envisaged the CACSW as the institution that would realize and then oversee its 167 recommendations and produce those changes in attitudes and practices that would enable a transformation of Canadian society (RCSW 1970, 390). In the years following the RCSW Report in 1970, however, no such council was established in spite of continuing requests

by established women's groups. In the meantime, at the 1972 Strategy for Change conference at which NAC was established, those who considered themselves to represent the true women's movement as it had been revived and renewed since the 1960s actually opposed the formation of a governmental status of women council. Radical feminists (including New Feminists) as well as socialist and Marxist feminists were supported by old leftists, such as trade unionist Madeleine Parent. They formed a radical caucus whose demands foreshadowed fissures that were to reemerge during the constitutional crisis (personal communication, Johanna Stuckey 2013; Macpherson 1994, 153-154; Madeleine Parent in Rebick 2005, 29-30; Laurel Ritchie in Rebick 2005, 30-31, Young 2000, 66). The radicals succeeded in obtaining a vote in favour of rejecting any governmental advisory council. The coalition group that was emerging (NAC), which was comprised of radical feminists, older groups, and feminist-friendly organizations such as unions, nevertheless ultimately backed the concept of such a council. Kay Macpherson (1994), later president of NAC, put it tactfully: "opinions differed on whether these would act as a cushion between the government and the pressures from women or whether they could serve a useful role in providing research and support for women's needs." She added: "There have been occasions when both these predictions came true" (154).

The large traditional national women's groups, some dating back to the nineteenth century, saw a status of women council as a useful ongoing interface between the women's movement—as represented mainly by them—and the government. They were used to lobbying government and a forum dedicated to their concerns was an attractive notion. NAC picked up this lobbying mandate, though always with a certain ambivalence about how to relate to government (Vickers, Rankin, and Appelle 1993). Marjorie Griffin Cohen, speaking about NAC, said in an interview: "We didn't present briefs to parliament thinking we would convince them through lobbying; we did it to get press coverage and to raise public opinion to force changes" (Cohen in Rebick 2005, 185-186; Young 2000, 69-71, 76-77).

The debates at the Strategy for Change conference about a possible council probably did not register with anyone inside government. Council President Katie Cooke (2001) does not even mention the conference in her memoir. The initial distrust of a council ex-

pressed at the founding of NAC lay dormant until 1981 when the events around the constitutional negotiations opened the door to a serious challenge to the CACSW. In Council President Lucie Pépin's Annual Report for 1980-1981, she referred to the events of that period, discreetly, as "the widely publicized conflict of January 1981." The CACSW recognized that it had been attacked: the events of early 1981 had been "used by some to challenge the very existence of the Council," wrote Pépin, and the council was fighting to "continue to play a vital and necessary role in women's affairs..." (CACSW 1981, 1).⁹ Pépin's few words quoted here are the only available public statement about the whole drama of Anderson's resignation and the Ad Hoc conference. Senator Florence Bird (1981), who had chaired the Royal Commission on the Status of Women and also addressed the February 16, 1981 meeting of fourteen women's groups to discuss the CACSW, referred diplomatically to "what has happened recently," when spelling out new criteria for the council's president (6).

The establishment of a women's council was by no means unique. What the RCSW had recommended was the creation of an advisory council on the same lines as the Canada Council for the Arts, the Science Council of Canada, or the Economic Council of Canada, all of which were mandated to conduct research, be in contact with organizations, and report directly to Parliament (RCSW 1970, 390).¹⁰ Most of the provinces created status of women councils, which nearly all disappeared during the 1990s, although a variety of other councils, often very specialized and usually connected to a particular industry, continue to operate.¹¹ The status of women councils most resembled other 1970s-era vehicles for consultation with broad and diffuse social movements, such as those representing youth, Indigenous peoples, or ethnocultural groups; these councils have likewise been disbanded (Pal 1995).

The basic purpose of an advisory council is to provide expert, nonpartisan advice that is more disinterested than advice from a lobby or think tank. Issues of institutional autonomy are endemic for these councils. Jonathan Malloy's (2003) work on status of women councils in Canada and Australia vividly captured such contradictions in the metaphor of "colliding worlds," collisions that he perceived, more positively than most observers, as opportunities to bridge the gap between social movements and governments. A skilled and ex-

perienced public servant could maneuver their way through these collisions, but, with the exception of the first president, the CACSW rarely benefitted from that level of expertise. In addition, the horizontal breadth of the council's mandate—to address the “status of women” across the entirety of public policy—reduced its effectiveness because it did not fit into the compartmentalized silos of the federal bureaucracy (Burt 1998, 135-160).

Sandra Burt (1998) considered the CACSW in the context of public administration and identified a fundamental misunderstanding at the core of its specific mission. To begin with, the council was necessarily subordinate to the government of the day and the Minister responsible. However, was the council also the voice and vehicle of the women's movement inside government (135)? Katie Cooke (2001) reported a fateful, if understandable, mistake made at the very beginning: “The SWC coordinator decided that the Minister should ask women's groups and organizations (about 400) to submit names of women they believed would be effective council members” (72). Going to women's groups about appointments sent the wrong message from the outset. The groups were bound to be disappointed, even outraged, when subsequent appointments moved farther away from that initial corporatist form of representation. Cooke wrote about “the dangers of letting CACSW usurp the role of voluntary women's organisations.” She went on to stress that, in order to be effective, the CACSW depended on “pressure from women's groups.” The CACSW, for its part, could provide information and research, and act as “a watchdog at exposed federal heels” (86).

In 1973, when Cooke was put in charge of the newborn council, she was one of the most senior women working in the public service. However, the CACSW was a very junior and not very powerful part of the government. Cooke (2001) noted in her memoir that, “in hierarchical organizations, which the public service epitomizes, criticism cannot trickle upwards” (66). She herself could have more influence. However, as she warned, “trying to build strength on the basis of individuals occupying positions in the bureaucracy is like erecting sand castles whose foundations erode with the next tide” (67). Further, Status of Women was always a junior portfolio tacked onto a major portfolio and so could never be expected to occupy much of a minister's

attention. Inside the government, the Office of the Coordinator of Status of Women (as well as the Women's Program of the Department of the Secretary of State) competed for influence. In 1977, Marc Lalonde, then Minister Responsible for Status of Women, spelled out the respective roles of the council and the coordinator in a letter to Yvette Rousseau, then president of the council:

[They are] complementary ... you make recommendations, the government, through the Office of the Coordinator, sees to carrying them out. You both have a role in regards to public opinion, the Council to alert [the public] to the existence of problems, the Office to say what the government has done or plans to do. (O'Neil 2004, 278; our translation)

In the 1970s and 1980s, the CACSW's standard conflicts were aggravated by problems growing out of the policies of bilingualism. This was the case from the very beginning. The first executive committee found it necessary to use an interpreter at all meetings so that the two vice-presidents could communicate with each other: June Menzies spoke no French and Yvette Rousseau little English (Cooke 2001, 81; O'Neil 2004, 237). The timing of the women's constitutional conference was affected, first of all, by the requirement to have translators present. Not surprisingly, some commentators from outside Ottawa interpreted the delay as a government ploy (Kome 1983, 29).

A Counterfactual Account

We should start by thinking about how memory works. When Penney Kome wrote her book in 1983, the events of two years earlier were fresh in the minds of those who experienced them. In Kome's book, as in Michele Landsberg's columns, we can see those events beginning to be shaped into a coherent account, one of the stories used to organize our experience, whether collectively or individually (Lowndes 2014, 689). When Alexandra Dobrowolsky (2000) wrote her thesis in 1991, she produced the best account available of the events of 1980-1981. However, the stories had already solidified and the grand heroic narrative was in place. This is when Berenice Sisler (1997) wrote her account. Nowadays, in the second decade of the twenty-first century, it is a full generation since the events. Some of the

participants are no longer alive (most notably Doris Anderson), but, for the rest of them, the remembered events will have been patterned so as to make sense either in agreement with or in opposition to the master story. It is no use asking them about their motives then or even their acts. Diaries or journals would be helpful if we were engaged in deep research. At this point, however, we are merely seeking an adequately documented alternative to the standard Doris Anderson story.

Truth matters. Understanding the past also helps us to deal with the present. Otherwise, the story of a small, brave group of independent feminists who came out of nowhere to challenge the government might remain an inspiration regardless of its veracity.

The standard account of the “taking of twenty-eight” has, by now, settled into what looks like historical fact. However, in the course of returning to documents written at the time, we became aware of another perspective that has been neglected and shunted aside. We want to modify the accepted interpretation, without denigrating Doris Anderson’s willingness to sacrifice her job when she could not make the CACSW into the sort of institution she felt the women’s movement needed (Anderson in Rebeck 2005, 145).

In fact, another perspective, one that disrupts the standard narrative, emerged from these historical events. Let us begin by asking: was the “taking of twenty-eight” really the earthquake that it was believed it to be? There are certainly reasons to doubt this interpretation, beginning with Lloyd Axworthy’s long and successful career, hardly what one would expect of a politician who was “knocked...out of his portfolio” (Kome 1983, 23). Let us look at the ongoing activities of the feminist lawyers, which hint at a parallel process, partly submerged but influential. The lawyers’ tale begins earlier than the winter of 1981. Queen’s University law professor Beverley Baines and lawyer Mary Eberts had, independently, written to the CACSW in 1980 to express concerns about the wording of the proposed section 15. Weakly labelled “Non-Discrimination,” it was modelled closely on the *Bill of Rights* that women had found so disappointing (Dobrowolsky 2000, 45). The lawyers recognized the potential to insert women’s rights into the constitutional proposals and they wanted to use the CACSW as a vehicle for those ideas.

The offer of Baines and Eberts’ services was gratefully accepted. They prepared both background pa-

pers and the influential CACSW brief. In addition, they contributed to the numerous publications produced on the subject. After the February 1981 conference, the lawyers and some of the other Ad Hockers continued lobbying and working closely with the Department of Justice.

Events must be considered in the context of their time. Feminist activism often seems to be cut off from the rest of the world. For participants, what they are doing matters more than anything else. In fact, it was not just equality rights that were important, but also some premiers’ efforts, led by Alberta’s Peter Lougheed, to secure stronger provincial jurisdiction over natural resources (Peckford 2012, 174; Stein 1989, 29, 38-39). National unity was also at stake. Québec voters had only very narrowly defeated the 1980 referendum on proceeding towards sovereignty and the possibility of separation was still front and centre. By this time, western separatists were also stirring. It seemed possible to many, including the premiers, that the country was on the point of coming apart, starting with either Alberta or Québec (Peckford 2012).

Fair enough. Feminism rarely takes centre stage in national events. To explore the implications of the standard women’s movement narrative further, let us speculate about an alternative course of events that might have happened. That is, let us think about how women’s efforts to influence the new constitution might have happened in another, parallel universe. This alternate narrative presents what actually would—should—have happened in the regular course of events from 1980 forward, absent Doris Anderson’s CACSW presidency, her managerial style, and her animosity toward Minister Lloyd Axworthy.

The issues that emerged around the timing and location of the conference influenced the outcome only insofar as Anderson’s perception of pressure prompted her resignation. Minister Axworthy’s suggestion to delay the CACSW’s conference until after debate on the Charter was completed in the House of Commons seems sensible for a number of reasons. It was already clear that the normal parliamentary channels would produce a better version of section 15 (it was on January 12 that Justice Minister Chrétien produced new wording) and MPs sympathetic to its concerns were ready to follow up on them. This was *before* Anderson resigned. In addition, by that time, it was also obvious that other

aspects of the proposed constitution would affect women. The Ad Hoc conference produced a substantial list of recommendations that echoed NAC's brief of November 1980, and CASCW's conference in May 1981 was to produce more than a dozen (Dobrowolsky 2000, 236). Without the distraction of Anderson's resignation and the Ad Hoc conference, parliamentarians could have attended regional conferences looking at such concerns. More media coverage would have been available without the need to compete for attention with the action in Parliament.

So far as equality rights were concerned, there is evidence that the federal government was prepared to proceed with them even before 1981. Michael Stein (1989) interviewed a senior official in the Federal-Provincial Relations Office who told him that the process of drafting the Charter in 1980 was more political than legal. Negotiations occurred in cabinet, in response to the strong and expert lobbying by representatives of concerned groups—including women. It was reported as follows:

Somebody said 'Look, we have to protect the anglophone minority in Quebec'...Then somebody said, 'Look, we have to put in something on women's rights.' And suddenly you had politicians saying, 'Who are the special interest groups or segments of society in my area that I can put in, and therefore get their support for this?' And that is how the Charter was constructed, in a four-hour cabinet meeting in September [1980]. (64)

Going back farther, the Liberal Party was actively lobbied from the inside on the issue of women's rights. From 1972 onward, feminist MPs in the Liberal caucus raised awareness about the limitations of the *Bill of Rights* and pushed for the enactment of the RSCW's recommendations. These included Monique Bégin, who had been research director for the RSCW, former municipal councilors Ursula Appollonyi and Albanie Morin, and, beginning in 1974, Aideen Nicholson of the Ontario Committee on the Status of Women (OCSW). Also active in urging cabinet ministers and public servants to enact the RSCW's recommendation were Irma Melville, a member of the OCSW and chair of the Women's Liberal Commission, as well as future senator Lorna Marsden who was also a member of the OCSW, and Liberal Party Policy Chair (1975) and Vice

President (1980). CACSW Chair Katie Cooke (2001) reported that women in the extra-parliamentary wing of the Liberal Party dressed in black at a convention held at the Chateau Laurier to mourn the Party's lack of action on the Royal Commission's recommendations. Joan Wallace, who would shortly be appointed to the CACSW, was a leader in this demonstration (71; Young 2000, 153, 158).

In the context of the alternative story, the appearance of feminist lawyers and activists at the Special Joint Committee of the Senate and the House of Commons on the Constitution may have, in part, served as political theatre. The melodrama sparked by Senator Harry Hays' quip about taking care of babies dramatized the urgency of entrenching equality rights to protect women. Co-chair Serge Joyal, however, recalled that the Joint Committee immediately recognized Senator Hays' comment as a mistake. At the twentieth anniversary of the hearings, Joyal (2005) described the episode as follows:

...my co-chair Harry Hays realised that something had changed. He was not mastering all the language to express that, but he was of such a good heart...when the women's groups finished testifying [and] he thanked them... It created a furor among the women. I had to jump in to tell the women we had respect for their dignity. There was a feeling that the way we had treated women—in a patronizing, patriarchal way—was over. I tell you frankly, the mishap of Senator Hays helped us to understand that we could not go back.¹²

Something had already shifted in the distribution of power and respect.

On the other side of the partisan fences, the Progressive Conservatives (PC) and the New Democrats (NDP) were more engaged than is usually remembered. Both parties were opposed to an entrenched *Charter of Rights and Freedoms*, principally on the democratic grounds of preserving parliamentary supremacy. Their position was supported by provincial legislatures. The mobilization of the women's movement was one more item in the opposition parties' toolkit. Even if the feminist lawyers' briefs implied entrenchment, the government, and particularly Minister Axworthy, could conveniently be attacked for inappropriate interference with the CACSW.

There is no doubt that the Ad Hoc group was a spontaneous and multi-partisan organization of volunteers. However, those volunteers could not have succeeded without the assistance of NDPers and Progressive Conservatives in Parliament. PC MPs Flora MacDonald and Walter McLean took a lead role in facilitating the Ad Hoc conference, assisted by NDP MPs Pauline Jewett and Margaret Mitchell. All accounts refer to their support on the floor of the House of Commons for Anderson's resignation and her allegations of ministerial interference and partisan decisions in the council. Few realize, however, the extent of their support. In retrospect, aspects of the Ad Hoc conference are surprising. It was held in the West Block of the Parliament Buildings at the request of parliamentarians and with the approval of the Speaker. MPs turned over their franking privileges to the Ad Hocers so that they could send mail at the government's expense. More extraordinary yet, they allowed organizers to use their phone lines for long-distance calls, very expensive at that time, even after office hours and well into the night for the difficult west coast contacts. The second day of the conference was held in Ottawa's City Hall, provided by Mayor Marion Dewar, known to be an NDP partisan. None of these actions were routine or really legitimate. MPs and civil servants were, in effect, turning over government resources to civil society opposition groups (Anderson 1996, 244; Dobrowolsky 2000, 53, 119, 233). The regular, institutionalized route for such groups was to appear at the hearings of the Joint Committee, which the women's organizations also did.

In the alternative narrative that we are positing, the equality rights provisions in the Charter never became a partisan issue. Anderson never had a confrontation with her Minister, she did not resign, and she agreed to a series of regional conferences in the spring. The Ad Hoc conference did not happen. Without the Ad Hoc conference, there would almost certainly have been no section 28. Furthermore, even had there had been a section 28, possibly developed by feminist lawyers working with the Justice Department, there would have been no post-conference group of feminist activists, energized by Anderson's resignation and the Ad Hoc conference and ready to mobilize at the provincial level to defend section 28 from the override clause.

Here, we arrive at the important question for our counterfactual argument: would the absence of sec-

tion 28 have mattered? It seems not. According to legal scholars, we would be exactly where we are now because the courts have preferred to use section 15 equality rights in their decisions. Donna Greschner (2005) has argued that the courts have been averse to using section 28 precisely because it is potentially so powerful in positioning male / female equality above all other considerations. In her view, the courts prefer section 15 because it is more amenable to balancing the complicated ways that gender, religious, ethnic, and other forms of discrimination intersect. As a result, section 28 is well on its way to becoming obsolete like the federal powers of disallowance or paramountcy (Froc 2014).

Finally, according to this counterfactual account, the Women's Legal Education and Action Fund (LEAF) might well have developed much as it did. The CACSW had commissioned a study into the use of litigation to protect and expand rights. Though it was first presented at the council's May 1981 conference, the study was independent of plans for conferences. In 1985, the year when section 15 of the Charter was fully implemented and LEAF was founded, the government expanded the Court Challenges Program (initially restricted to official language minority rights) to include section 15 equality rights cases.¹³ As a result, LEAF became eligible to receive funding under that program when the equality provisions were extant.

Implications for Feminist Practice

So far, in this counterfactual account, we arrive at the same endpoint as in the real world. This is an important conclusion: that the women's constitutional crisis had no significant impact in terms of constitutional outcomes or jurisprudence. What we have is, in effect, a null finding. However, such a counterfactual argument needs a more compelling outcome; that is, we are looking for a reason—if a speculative one—to prefer one course of history over another. This is not an easy choice with high drama possibly yielding to everyday incrementalism. But it may well be that the counterfactual scenario does highlight what was lost when the conventional narrative became entrenched as the feminist account. There is no direct evidence here, but perhaps the following speculations may be useful—if only to provide suggestions for feminist research agendas.

To begin with, it seems likely that Anderson did do damage through her interactions with her Minis-

ter. She insulted Lloyd Axworthy, who had specifically asked for Status of Women to go with his first portfolio, Employment and Immigration. For example, Anderson went directly to Prime Minister Trudeau with her plans for the women's constitutional conference, notifying her Minister only through correspondence sent to all MPs; he was mortified (Kome 1983, 29). Senior Liberal MP Carolyn Bennett (2007) reported "considerable antipathy" inside the Liberal Party towards Anderson who was never forgiven for her confrontation with Axworthy (42-54). As we noted above, Axworthy went on to complete a long and successful career in the public service so Anderson had no noticeable impact on his professional life. However, the responsibility for Status of Women was handed over to increasingly junior ministers and ministers of state.

It also seems likely that Anderson's comments and overall recklessness injured the prospects for women to be appointed to the CACSW. Anderson repeatedly maligned the council as a group of patronage appointees who toadied to the Minister. In a 1997 interview, for example, she stated that "government [was] appointing political hacks to the council" (Anderson in Rebeck 2005, 144-145). Those so-called "political hacks" appointed during her presidency included labour heroine Huguette Plamondon who had been national vice-president of the NDP.¹⁴ Furthermore, Anderson was insensitive to the regional dimension of council appointments; she failed to appreciate that these women were local notables in their own cities even if they did not figure in a NAC-centred version of the women's movement. Many such local worthies were appointed while she was president. A good number were also involved in the women's movement, such as, for example, Irene Chabot (Fournier), leader of French-speaking women in Saskatchewan and other *françaises hors Québec*, and Elizabeth Batstone, director of Cultural Affairs in Newfoundland and prominent in the (volunteer) status of women councils there.¹⁵ Joanne Linzey, cited above, was a 30-year volunteer and co-founder and manager of the public transit that served primarily women in Whitehorse.¹⁶ Anderson's remarks had the effect of denigrating women's appointment to the CACSW and indeed to the government more generally, just when women were beginning to be appointed to government boards and commissions (Champagne 1980).

The narrative of the "taking of twenty-eight" also had consequences outside government. In retrospect, it becomes apparent how little some of the main players in the constitutional crisis actually cared for institutional politics. Claiming that women succeeded only through NAC and, in its absence, the Ad Hockers, the embedded narrative helped to set the women's movement, for the next thirty years, on a path characterized by outsider tactics of activism, protest, and criticism. Since the intervention in 1981 was believed to have been successful, the experience prompted other similar interventions. Those outsider tactics would not always prove to be productive in the long run. By the last years of the twentieth century, much of Canadian feminism was firmly on the anti-government, anti-party, and anti-institutionalist side of the fence. Ottawa public service insiders Maureen O'Neil and Sharon Sutherland (1997) lamented that the women's movement did not seek out insiders as allies in a project of "intelligent incrementalism." Looking from inside the machinery of government, they observed: "The instant psychic relief gained by the whistlers and shouters is not matched by projects in substantive policy to benefit all women. That open confrontation...sustained the attack by the Tory right wing" during the Mulroney years (217). At the federal level, only LEAF proved effective during the long drought of the next generation, making good use of the Court Challenges Program that was in place until 2007 (Manfredi 2004). As for NAC, soon after the turn of the century, it had pretty much ceased to exist (Cuthbert Brandt et al. 2011, 588).

Public activists have monopolized the story of the entrenchment of women's equality rights in the Canadian constitution for too long. We propose an alternative account in which politicians and lawyers get more credit. In our counterfactual argument, Anderson becomes less important. Instead, we want to highlight the role of Minister Axworthy in relation to the work of the CACSW. After a tactless speech at NAC's study day on the constitution on October 18, 1980, Axworthy became the object of scorn and hostility by the Ad Hockers and their supporters. The February conference ended with a call for his resignation and journalists covered him with opprobrium. But as far as we can tell, Axworthy seems to have initiated CACSW involvement in the constitutional project quite early, sometime in 1980, and then supported it (Kome 1983, 28). The charge of

interference to cancel a conference seems unjustified; as we have noted, the conference was, in fact, simply postponed and took place in May 1981. Nor, it seems, did Axworthy insist on regional conferences on women and the constitution (which was, it should be noted, a project of NAC's in 1980) (Young 2000, 156). According to executive member Joanne Linzey (1981), Axworthy's last comment after meeting with the CACSW executive, including its president, was the following: "It is your decision, it is your conference. I can live with it either way."¹⁷

In 1981, a dramatic resignation and successful ad hoc volunteerism "created a story to tell, a feminist fable about power: how 1,300 women went to Ottawa to slay a dragon, defend a heroine and influence the course of history" (Collins 1981, 30). Very inspiring, except that, as we have attempted to show, it was not quite what happened. The byzantine complexities of Ottawa's (gendered) bureaucracies defeated Anderson as they had her predecessor, trade unionist Yvette Rousseau (O'Neil 2004, 262, 278-279; Anderson 1996, 230, 235-236, 247).

Finally, we want to underline another dimension of Anderson's feminism that was, unfortunately, eclipsed by the drama of resignation and protest: her support of women's entry into electoral politics (Anderson, 1996, 221-225). Her obituary quoted former MP and Minister Flora MacDonald as saying: "She [Anderson] would keep an eye out for people whom she thought might be encouraged to get into the political arena" (Martin 2007). A famous issue of *Chatelaine* featured 104 women who would make good MPs (Frum 1971). MacDonald was one of them; she went from working in the Progressive Conservative Party's national office to being elected MP in 1972 and appointed Minister in 1979, holding her seat until 1988. In 1972, this article helped to produce the group Women for Political Action, which in turn was behind the Committee for '94 (1984) and, in 2001, Equal Voice—all dedicated to getting more women into decision-making positions (Young 2000, 59, 60-61, 68). In her old age, Anderson turned for a while to advocating proportional representation as a panacea. She apparently came to recognize that electoral reform would be inadequate. So when she died in 2007, her will left a substantial endowment to Equal Voice for its role in getting more women elected.

Insights for Theories of Feminist Institutionalism

This case study of Canadian constitutional history underscores and confirms the importance of institutional analysis—feminist institutionalism—to achieve an accurate understanding of the complex legislative and constitutional events that are all too easily overshadowed by the media controversies of the day.

The account presented here speaks to ongoing debates in feminist institutionalism. Vivien Lowndes (2014) provides three questions to structure an investigation. First, how do institutions formally regulate behaviour to produce gendered effects? In the case of the history of equality rights in the *Canadian Charter of Rights and Freedoms*, legal scholars have ably documented the impact of legal institutions on the practice of gender.

Second, analysts need to address how "the gendered logic of appropriateness" directs informal behaviour inside institutions (Chappell in Lowndes 2014, 689). In this *Atlantis* thematic cluster, Berenice Sisler's (1997) account of the conflicts around the boardroom tables in Ottawa brings to life the nuances of what was considered appropriate behaviour for women exercising power in the early 1980s. Certainly, there was little latitude for Doris Anderson's larger-than-life media personality in the hallways of power. But we also need to examine what is and is not gendered with respect to institutionalized deference to Ministers of the Crown.

Lowndes' third question is the one most germane to our purposes. She asks: how do institutions construct stories that direct political behaviour down one particular pathway or another? Canadians have constructed a deeply gendered narrative about how equality rights were achieved. In a bizarre mirror image of each other, both critical and sympathetic accounts collude in a single misleading interpretation. On the one hand, a critical account sees Anderson and the Ad Hockers acting out traditional female histrionics, giving evidence that women—as candidates, patronage appointees, or lobbyists—cannot be trusted to exercise power according to the conventions of parliamentary governance. On the other hand, a sympathetic account sees radical feminist activism challenging hegemonic masculinity. Neither account is accurate; both supply misleading lessons for praxis. Careful attention to the interplay between formal and informal institutional structures and their gendered effects casts doubt on both accounts.

In conclusion, this paper has presented new evidence about stories of how women's equality rights came to be included in the *Charter of Rights and Freedoms* during Canada's constitutional crisis of 1980 and 1981. For both feminists and their opponents, a consistent myth has become entrenched—that women activists, as political outsiders, compelled a hostile government to act. The dramatic climax is the story of how Doris Anderson, in her capacity as president of the Canadian Advisory Council on the Status of Women, confronted her Minister. From this episode, Canadian women's organizations drew the lesson that confrontation was the most appropriate tactic.

In order to assess the impact of insider and outsider strategies, we developed a counterfactual analysis of what would have happened without the dramatic standoff. In general, feminist institutionalism directed us to the role of institutional structures in the pursuit of gender equality. For both good and bad, such efforts in Canada are nested in the structures, norms, and cultures of a Westminster parliamentary system (Mackay 2014). As a result, as this article shows, senior women bureaucrats and party insiders were more influential than was previously thought.

To quote Ad Hocker Marilou McPhedran's reflection after the rescue of section 28 from the override: "To make any lasting change you have to participate in the workings of an institution, and that's what we didn't do" (Collins 1981, 30). Nor did they understand how to do it.

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Endnotes

¹ The film *Constitute!* was produced by the International Women's Rights Project, directed by Susan Brazilli and Robert Rooney. It is available at <http://constitute.ca/the-film/> and includes interviews with Ad Hockers Linda Ryan Nye and Pat Hacker as well as Doris Anderson.

² Our translation of "Elle démissionnera avec fracas en 1981, des membres du CSF ayant approuvé à l'encontre de son avis, une intervention ministérielle dans le but d'annuler, pour des raisons politiques, une conférence constitutionnelle convoquée par le Conseil."

³ We thank University of Manitoba archivist Dr. Shelley Sweeney as well as Lewis St George Stubbs for assistance in identifying and copying this manuscript housed in the Berenice Sisler Fonds, Box 8.

⁴ Roland de Corneille easily held the riding for the Liberals until 1998.

⁵ Doris Anderson (1991) said this repeatedly of CACSW appointees, exempting herself of the implied partisan subservience (21).

⁶ The following terms related to Canada's constitution appeared in the headlines and lead paragraphs of articles published in *The Globe & Mail / Canadian Press* from the beginning of 1980 until the end of 1982: Pierre Trudeau 2239; constitution or constitutional 2732; Charter of Rights 291; René Lévesque 548; Western separatism 32; Doris Anderson 31.

⁷ Section 28: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons." Section 33: "(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter."

⁸ For example, *Attorney General of Canada v. Lavell* (1974) on women's rights to Indian status under the *Indian Act*; *Murdoch v. Murdoch* (1975) on matrimonial property; and *Bliss v Attorney General of Canada* (1979) on pregnant women's (non) entitlement to unemployment insurance benefits during pregnancy. All these cases are available on-line at the Canadian Legal Information Institute operated by the Law Societies of Canada. <https://www.canlii.org/en/ca/>

⁹ Doris Anderson signed off as CACSW president in March 1978 and March 1979. Lucie Pépin signed off for 1980-1981 in March 1981. Anderson's presidency has vanished from the official records of the council as has her membership on the council in 1980-1981; they are traceable only in the *Canada Gazette*.

¹⁰ The Canada Council for the Arts has operated since 1957. The

Science Council operated from 1966 to 1993. As a crown corporation, the Economic Council of Canada had more autonomy and reported directly to the prime minister; it operated from 1963 to 1993.

¹¹ For example, the National Orphaned / Abandoned Mines Advisory Committee or the Commercial Salmon Advisory Board. Nova Scotia and Québec still have advisory councils on the status of women.

¹² Interview with Senator Serge Joyal on the 20th Anniversary of Section 15 of the *Canadian Charter of Rights and Freedoms*. February 2005. <http://sen.parl.gc.ca/sjoyal/June%202005/Section15CelebrationArticle.html>

¹³ Funding for the Court Challenges Program for section 15 equality rights operated from 1985 to 1992 and then again from 1994 to 2006. Language rights continue to be funded separately.

¹⁴ Huguette Plamondon. 1980. *Canada Gazette*, September 5: 542. <http://nupge.ca/content/3922/remembering-labour-pioneer-huguette-plamondon-labour>.

¹⁵ Irene Chabot-Fournier: http://esask.uregina.ca/entry/chabot_irene_1930.html; <http://www.thecanadianencyclopedia.com/en/article/newfoundland-division-of-cultural-affairs-emc/>; Elizabeth Batstone: <http://www.thecanadianencyclopedia.com/en/article/newfoundland-division-of-cultural-affairs-emc/>; http://www.teachaboutwomen.ca/view_html.php?docID=142&type=1

¹⁶ Joanne Linzey: <http://www.theharwoodinstitute.org/about/people/joanne-linzey/>; <http://www.horizonscda.ca/pdf/linzeyresume.pdf>

¹⁷ This meeting, held on January 8, 1981, is the focus of one of the key disagreements about the events around the CACSW in early 1981. Who arranged it? Who, in particular, was responsible for Minister Lloyd Axworthy's presence? What did he say? There is a partial, leaked transcript of the meeting of the executive committee, members of which sued for defamation (Landsberg cited in Rebick 2005, 266-267; Linzey 1981).

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Chronology of Events			
The Women's Movement		<i>Main Constitutional Process</i>	
Date	Action	Date	Action
26 August 1978	Doris Anderson appointed to Canadian Advisory Council on the Status of Women (CACSW).		
12 May 1979	Doris Anderson appointed president of CACSW.		
		22 May 1979	<i>Joe Clark's Progressive Conservative government elected.</i>
		13 December 1979	<i>Joe Clark's Progressive Conservative government defeated in the House.</i>
		18 February 1980	<i>Pierre Trudeau's Liberal government elected: Jean Chrétien, Justice Minister; Lloyd Axworthy, Minister responsible for Status of Women.</i>
		20 May 1980	<i>Québec referendum to begin negotiations for sovereignty-association defeated. Premier René Lévesque continues with Parti Québécois government.</i>
August 1980	CACSW announces a conference on women and the constitution to be held on September 5-6.	30 August 1980	<i>Leak of controversial "Kirby memorandum."</i>
2 September 1980	Conference postponed in solidarity with striking translators.	8-12 September 1980	<i>Prime Minister and premiers meet in negotiations; they fail to agree on a constitutional package.</i>
		2 October 1980	<i>Justice Minister Chrétien releases a proposed Charter of Rights and Freedoms, including a "Non-discrimination" clause that is essentially the 1960 Bill of Rights.</i>
		12 October 1980	<i>Prime Minister Trudeau announces that he intends to make a unilateral request to the British Parliament to amend the constitution, without the premiers' agreement.</i>
18 October 1980	National Action Committee on the Status of Women (NAC) Annual Meeting in Toronto; Lloyd Axworthy featured speaker.	23 October 1980	<i>Parliament establishes a Special Joint Committee to hold public hearings on the Constitution of Canada. Chairs: Senator Harry Hays and Liberal Member Serge Joyal.</i>

Date	Action	Date	Action
20 November 1980	CACSW and NAC present briefs to Hays-Joyal Joint Committee on the Constitution.		
December 1980	CACSW announces a conference to be held 13-14 February 1981.		
First week of January 1981	Minister Axworthy indicates a preference for a series of regional conferences on women and the constitution.		
9 January 1981	CACSW executive votes to postpone the national conference planned for February.		
12 January 1981	Doris Anderson issues a press release announcing a national conference over the objections of CACSW executive.	12 January 1981	<i>Justice Minister Jean Chrétien announces major revisions to equality rights and commends the work of women's organizations</i>
20 January 1981	Full CACSW meeting votes 17 to 10 in favour of postponing conference.		
20 January 1981	Doris Anderson resigns as president of CACSW.		
21 January 1981	CACSW announces conference for May 1981.		
27 January 1981	Ad Hoc Committee on Women and the Constitution formed in Toronto to plan a conference on women and the constitution.		
14-15 February 1981	Ad Hoc "Butterfly" conference on women and the constitution.	13 February 1981	<i>Report of the Joint Committee on the Constitution tabled in Parliament.</i>
17 February 1981	<i>PC MP Flora MacDonald brings the Ad Hoc resolutions to House of Commons.</i>		
1 March 1981	Lucie Pépin appointed president of CACSW.		
April 1981	Feminist lawyers meet with Department of Justice to formulate an overriding statement of equality, section 28.	13 April 1981	<i>Premier René Lévesque's Parti Québécois government re-elected in Québec.</i>

Date	Action	Date	Action
		23 April 1981	<i>Section 28 approved by House of Commons.</i>
29-30 May 1981	CACSW conference: “Women and the constitution: The next five years.”		
		5 June 1981	<i>Prime Minister and premiers meet to negotiate. No agreement reached.</i>
		28 September 1981	<i>Supreme Court rules that unilateral federal patriation is legal but contrary to constitutional convention.</i>
		4 November 1981	<i>Prime Minister and premiers reach a compromise with section 33, the “notwithstanding clause.”</i>
November 1981	Women’s groups denounce Section 33’s application to the equality provisions. A two-week campaign persuades the premiers to exempt section 28 from the notwithstanding clause.	25 November 1981	<i>Justice Minister Chrétien announces that section 28 will stand free of section 33 override.</i>
		5 November 1981	<i>Parliament tables a constitutional accord signed by the Government of Canada and all provincial governments except Québec.</i>
		17 April 1982	<i>Constitution Act, 1982 proclaimed in force by Queen Elizabeth in Ottawa.</i>