



---

# The Supreme Court of Canada as an Instrument of Political Change

IVAN BERNIER AND ANDRÉE LAJOIE  
*Research Coordinators*

*Published by the University of Toronto Press in cooperation  
with the Royal Commission on the Economic Union and  
Development Prospects for Canada and the Canadian  
Government Publishing Centre, Supply and Services Canada*

University of Toronto Press  
*Toronto Buffalo London*



FOREWORD *vii*  
INTRODUCTION *ix*  
PREFACE *xiii*  
ACKNOWLEDGMENTS *xv*

1. **Political Ideas in Quebec and the Evolution of Canadian Constitutional Law, 1945 to 1985** *1*  
*Andrée Lajoie, Pierrette Mulazzi and Michèle Gamache*  
Introduction *1*  
The First Period (1945–60): Unilateral Federalism *7*  
    Distribution of Powers *7*  
    Civil Liberties *18*  
    Institutions *21*  
The Second Period (1960–75): Bi-polar Federalism *23*  
    Distribution of Powers *24*  
    Civil Liberties *42*  
    Institutions *48*  
The Third Period (1976–85): Standardizing Federalism *51*  
    Distribution of Powers *53*  
    Civil Liberties and Human Rights *63*  
    Institutions *66*  
Conclusion *70*  
Notes *78*  
Bibliography *98*

2. **The Supreme Court and the Economy** 105  
*Patrick J. Monahan*  
Introduction 105  
Competition Policy 109  
    Ambiguity in the Market: The Problem of Coercion 113  
    Early Judicial Attempts to Define Unlawful Competition 116  
    The Birth of Canadian Combines Policy 120  
    The Contemporary Jurisprudence 129  
    The Jurisprudence in Perspective 137  
Federal Regulation of the Economy: The Trade and Commerce  
    Power 142  
    Federalism and the Judiciary: Principle and  
        Counterprinciple 144  
    The Evolution of Trade and Commerce 149  
    The Contemporary Doctrine 152  
    The Jurisprudence in Perspective 162  
Conclusion 164  
Notes 166
3. **The Supreme Court of Canada: Final Arbiter of Political  
Disputes** 179  
*Guy Tremblay*  
Introduction 179  
Continuity in the Basic Conception of the Canadian Form of  
    Government 181  
Preservation of an Equilibrium between Federal and Provincial  
    Powers 187  
Promotion of Federal-Provincial Cooperation 194  
Conclusion 200  
Notes 201
- ABOUT THE CONTRIBUTORS** 211