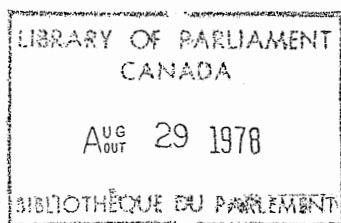


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THE AMENDMENT OF THE
CONSTITUTION OF CANADA





**THE AMENDMENT
OF
THE CONSTITUTION
OF CANADA**

HONOURABLE GUY FAVREAU
MINISTER OF JUSTICE
FEBRUARY 1965

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INTRODUCTION

The Canadian Constitution of 1867 was the first to provide "dominion status" within the British Empire. But in blazing that path, our Fathers of Confederation incurred some of the penalties of pioneering: no amending procedure was provided in the British North America Act. When the Commonwealth of Australia and the Union of South Africa were established more than a generation later, their constitutions were equipped with provisions to enable them to be changed without intervention by the British Parliament. In Canada's case, the omission was almost immediately a source of some uncertainty; after the great strides toward sovereignty during and after the first World War, it became a matter of growing embarrassment. It is now more than thirty-seven years since the Dominion-Provincial Conference of 1927 first turned the attention of the federal and provincial governments collectively to the problem of working out a method of amendment.

It is not surprising that agreement on an amending formula has been difficult to achieve. In any federation, the two most critical questions are the distribution of powers between the two levels of government and the manner in which the constitution can be changed. A federation is necessarily a delicate balance between conflicting considerations and interests. It is to be expected that the most delicate of all questions should be the way in which such a balance might be altered.

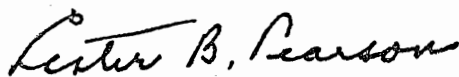
The Dominion-Provincial Conference of 1935 and the Continuing Committee of 1936 established many of the basic principles that are incorporated in the amending formula now proposed. But principles are not easily translated into practice, and the Conferences of 1950, of 1960-61 and of 1964 bear testimony to the difficulties of securing agreement.

It is a matter of profound satisfaction that the result of such prolonged effort by so many public men has been agreement at last on a formula that all the governments regard as an acceptable balance between the need to protect the essentials of our constitutional system from disruption and the necessity of making it adaptable to the changing conditions of our national life.

Great credit is due to all who have participated in this effort—Prime Ministers, Premiers, Ministers and officials. While there have properly been differences of view and differences in emphasis, all have worked together to achieve a result they thought would be in the interest of Canada as a whole. Since the formula now agreed upon is the result of Conferences in 1960-61 and 1964 it is perhaps appropriate that I should especially mention the work of the two men who chaired the Committees of Attorneys-General—the Hon. E. D. Fulton and the Hon. Guy Favreau. With their colleagues from the provinces they share particular credit for the success that has attended this effort.

No amending formula can ever be completely satisfactory to all. A federation exists precisely because there are differences that would make a unitary system of government unsatisfactory. The amending formula worked out in 1960-61, and accepted by all governments in 1964, is the best that can be achieved under the circumstances that have been and are reflected in the considered views of Premiers and Ministers who have joined in consultations stretching over more than a generation. The formula constitutes a reassuring demonstration that there is within Canada that degree of unity and that capacity for recognition of the views of others that are essential if this country is to continue as a great experiment in developing, on a continental scale, a nation based on dualism and on unity without uniformity.

The Government of Canada believes that, with the tolerance and political capacity of which the Canadian people have shown themselves capable, the proposed formula can work over the years to adapt the framework of our government to essential changes, while at the same time protecting the fundamentals on which our Confederation rests. I have no hesitation in recommending it to the favourable consideration of the parliament and people of Canada.


Lester B. Pearson
Prime Minister

CHAPTER I

THE CONSTITUTION OF CANADA

A Constitution may be defined as the body of fundamental principles, laws and conventions by which a country is governed. These may be formally expressed, as in the case of the United States where the word Constitution refers to a specific document; or they may include both written and unwritten laws as well as conventions, as is the case in the United Kingdom.

The Canadian Constitution is neither one type nor the other. It is a combination of both. There is a written document, the British North America Act of 1867 which resembles the American constitution in that it united separate British North American colonies and established for the new country a federal system of government. This document, however, did not set out in detail all the constitutional rules and conventions applicable to the new federal and provincial governments. It established executive and legislative institutions with the understanding, as stated in the preamble, that the Constitution of Canada was to be "similar in principle to that of the United Kingdom". The reasons for this course appear to have been that the system of responsible government as practised in the United Kingdom had been well established and accepted in the British North American colonies by 1867, and included many conventions and practices that were difficult to define in a statute.

Thus, in Canada the Constitution consists in part of written material and in part of conventions or customs. The written material includes both United Kingdom and Canadian statutes, the latter including such enactments as the Succession to the Throne Act, the Senate and House of Commons Act, the Canada Elections Act and the House of Commons Act. The more important of the applicable United Kingdom statutes form a series, known as the British North America Acts. In addition to these formal laws, there is a wide range

of constitutional usages and conventions that are inherent in the system of parliamentary government this country inherited from the United Kingdom.

The principal document in the Constitution of Canada, however, is the British North America Act of 1867. This Act and its amendments are collectively known as the British North America Acts, 1867 to 1964. A consolidation of these Acts is reproduced in *Appendix I*.

THE CANADIAN CONFEDERATION

Canada, as it is known today, was first established by the British North America Act of 1867, enacted by the Parliament of the United Kingdom on March 29th, 1867. That Act, which had its origin in the principles worked out at the Charlottetown Conference of 1864, substantially incorporated the 72 Resolutions drafted in Quebec City later that year by the Fathers of Confederation, as well as Resolutions subsequently drafted at a meeting in London in 1866. It united three of the separate British North American colonies into one federal country, divided into four provinces: Ontario (formerly Upper Canada); Quebec (formerly Lower Canada); Nova Scotia and New Brunswick. Two other Atlantic colonies, Prince Edward Island and Newfoundland, and the Pacific colony of British Columbia, did not enter the union at that time. The territory between British Columbia and Ontario, then known as Rupert's Land and the North-Western Territory, was at the time of Confederation under the administration of the Hudson's Bay Company, and was not part of the new Canada. Section 146 of the British North America Act, 1867, however, contemplated the addition of Newfoundland, Prince Edward Island, British Columbia, Rupert's Land and the North-Western Territory to the Canadian union, and provided for their admission to Canada by Order in Council.

The first territories added to the union after Confederation were Rupert's Land and the North-Western Territory, subsequently designated the Northwest Territories. They were admitted pursuant to section 146 of the British North America Act, 1867, and the Rupert's Land Act, 1868⁽¹⁾, by Order in Council of June 23rd, 1870, effective July 15th, 1870. Prior to the admission of these territories, the Parliament of Canada had enacted provisions for the temporary government of Rupert's Land and the North-Western Territory when united with

⁽¹⁾ 31-32 Vict., c. 105 (U.K.)

Canada⁽¹⁾, and the Manitoba Act⁽²⁾, which provided for the formation of the Province of Manitoba.

British Columbia was next admitted into the union pursuant to section 146 of the British North America Act, 1867, by Order in Council of May 16th, 1871, effective July 20th, 1871.

On June 29th, 1871, the United Kingdom Parliament enacted the British North America Act, 1871⁽³⁾, authorizing the creation of additional provinces out of territories between British Columbia and Manitoba. Pursuant to this statute, the Parliament of Canada enacted the Alberta Act⁽⁴⁾, and the Saskatchewan Act⁽⁵⁾, creating the provinces of Alberta and Saskatchewan. Both these Acts came into force on September 1st, 1905. Meanwhile, Prince Edward Island was admitted into Confederation pursuant to section 146 of the British North America Act, 1867, by Order in Council of June 26th, 1873, effective July 1st, 1873.

Remaining British possessions and territories in North America and the adjacent islands, except the colony of Newfoundland, were added to Canada by Order in Council dated July 31st, 1880.

The Canadian Parliament added portions of the Northwest Territories to the adjoining provinces in 1912, through The Ontario Boundaries Extension Act⁽⁶⁾, The Quebec Boundaries Extension Act⁽⁷⁾, and The Manitoba Boundaries Extension Act⁽⁸⁾. Further additions were made to Manitoba by The Manitoba Boundaries Extension Act of 1930⁽⁹⁾.

The Yukon Territory was created out of part of the Northwest Territories in 1898, by the Yukon Territory Act⁽¹⁰⁾.

Newfoundland became Canada's tenth province on March 31st, 1949, through the British North America Act, 1949⁽¹¹⁾, which ratified the Terms of Union between Canada and Newfoundland.

THE BRITISH NORTH AMERICA ACTS

The British North America Act of 1867 established a federal system of government by providing for a central government for all of

⁽¹⁾ 32-33 Vict., c. 3

⁽²⁾ 33 Vict., c. 3

⁽³⁾ 34-35 Vict., c. 28

⁽⁴⁾ July 20, 1905, 4-5 Edw. VII, c. 3

⁽⁵⁾ July 20, 1905, 4-5 Edw. VII, c. 42

⁽⁶⁾ 1912, 2 Geo. V, c. 40

⁽⁷⁾ 1912, 2 Geo. V, c. 45

⁽⁸⁾ 1912, 2 Geo. V, c. 32

⁽⁹⁾ 1930, 20-21, Geo. V, c. 28

⁽¹⁰⁾ 61 Vict., c. 6 (Canada)

⁽¹¹⁾ (U.K.) 12-13 Geo. VI, c. 22

Canada as well as a government for each province. It provided for the exercise of executive power federally by a Governor General, and provincially by Lieutenant Governors, acting, in each case, on the advice of their respective constitutional advisers, namely the federal or provincial cabinets or ministers. Federal legislative power was vested in the Parliament of Canada, consisting of the Queen (represented by the Governor General), the Upper House or Senate, and the House of Commons. In the case of the provinces, different provisions applied. In Ontario, legislative power was vested in a legislature consisting of the Lieutenant Governor and one House, the Legislative Assembly. In Quebec, provision was made for a Lieutenant Governor and two Houses, the Legislative Council and the Legislative Assembly. In the case of Nova Scotia and New Brunswick, the then existing Legislatures were continued.

As in all federations, the central problem in the Canadian system of government was the division of legislative powers between the Parliament of Canada, on the one hand, and the legislatures of the provinces on the other. Under the arrangements worked out in 1864, most of these powers are listed in two sections of the British North America Act, 1867, the powers of Parliament in section 91 and those of provincial legislatures in section 92.

The constitutions for the provinces of Ontario and Quebec were set out in detail in the Act, because prior to Confederation, the former colonies of Upper and Lower Canada had been merged into one. It was therefore necessary in the British North America Act to restore their individual legislative assemblies. The existing legislative assemblies of Nova Scotia and New Brunswick, on the other hand, were continued into Confederation. Under section 92(1), however, each province was given jurisdiction to amend its own constitution, except as regards the office of Lieutenant Governor.

AMENDMENTS TO THE BRITISH NORTH AMERICA ACT

In most respects, the British North America Act of 1867 did not provide for its amendment by any legislative authority in Canada. It therefore could be amended only by further Acts passed by the Parliament of the United Kingdom.

Since 1867, many amendments have, in fact, been made by the United Kingdom Parliament. The following is a brief account of these amendments:

- (1) *The Rupert's Land Act, 1868* authorized the acceptance by Canada of the rights of the Hudson's Bay Company over Rupert's Land and the North-Western Territory. It also provided that, on Address from the Houses of Parliament of Canada, the Crown could declare this territory part of Canada and the Parliament of Canada could make laws for its peace, order and good government.
- (2) *The British North America Act of 1871* ratified the Manitoba Act passed by the Parliament of Canada in 1870, creating the province of Manitoba and giving it a provincial constitution similar to those of the other provinces. The British North America Act of 1871 also empowered the Parliament of Canada to establish new provinces out of any Canadian territory not then included in a province; to alter the boundaries of any province (with the consent of its legislature), and to provide for the administration, peace, order and good government of any territory not included in a province.
- (3) *The Parliament of Canada Act of 1875* amended section 18 of the British North America Act, 1867, which set forth the privileges, immunities and powers of each of the Houses of Parliament.
- (4) *The British North America Act of 1886* authorized the Parliament of Canada to provide for the representation in the Senate and the House of Commons of any territories not included in any province.
- (5) *The Statute Law Revision Act, 1893* repealed some obsolete provisions of the British North America Act of 1867.
- (6) *The Canadian Speaker (Appointment of Deputy) Act, 1895* confirmed an Act of the Parliament of Canada which provided for the appointment of a Deputy-Speaker for the Senate.
- (7) *The British North America Act, 1907* established a new scale of financial subsidies to the provinces in lieu of those set forth in section 118 of the British North America Act of 1867. While not expressly repealing the original section, it made its provisions obsolete.
- (8) *The British North America Act, 1915* re-defined the Senatorial Divisions of Canada to take into account the provinces of Manitoba, British Columbia, Saskatchewan and Alberta. Although this statute did not expressly amend the text of the original section 22, it did alter its effect.

- (9) *The British North America Act, 1916* provided for the extension of the life of the current Parliament of Canada beyond the normal period of five years.
- (10) *The Statute Law Revision Act, 1927* repealed additional spent or obsolete provisions in the United Kingdom statutes, including two provisions of the British North America Acts.
- (11) *The British North America Act, 1930* confirmed the natural resources agreements between the Government of Canada and the Governments of Manitoba, British Columbia, Alberta and Saskatchewan, giving the agreements the force of law notwithstanding anything in the British North America Acts.
- (12) *The Statute of Westminster, 1931* while not directly amending the British North America Acts, did alter some of their provisions. Thus, the Parliament of Canada was given the power to make laws having extraterritorial effect. Also, Parliament and the provincial legislatures were given the authority, within their powers under the British North America Acts, to repeal any United Kingdom statute that formed part of the law of Canada. This authority, however, expressly excluded the British North America Act itself.
- (13) *The British North America Act, 1940* gave the Parliament of Canada the exclusive jurisdiction to make laws in relation to Unemployment Insurance.
- (14) *The British North America Act, 1943* provided for the postponement of redistribution of the seats in the House of Commons until the first session of Parliament after the cessation of hostilities.
- (15) *The British North America Act, 1946* replaced section 51 of the British North America Act, 1867, and altered the provisions for the readjustment of representation in the House of Commons.
- (16) *The British North America Act, 1949* confirmed the Terms of Union between Canada and Newfoundland.
- (17) *The British North America Act (No. 2), 1949* gave the Parliament of Canada authority to amend the Constitution of Canada with certain exceptions.
- (18) *The Statute Law Revision Act, 1950* repealed an obsolete section of the British North America Act, 1867.
- (19) *The British North America Act, 1951* gave the Parliament of Canada concurrent jurisdiction with the provinces to make laws in relation to Old Age Pensions.

- (20) *The British North America Act, 1960* amended section 99 and altered the tenure of office of superior court judges.
- (21) *The British North America Act, 1964* amended the authority conferred upon the Parliament of Canada by the British North America Act, 1951, in relation to benefits supplementary to Old Age Pensions.
- (22) *Amendment by Order in Council*

Section 146 of the British North America Act, 1867 provided for the admission of other British North American territories by Order in Council and stipulated that the provisions of any such Order in Council would have the same effect as if enacted by the Parliament of the United Kingdom. Under this section, Rupert's Land and the North-Western Territory were admitted by Order in Council on June 23rd, 1870; British Columbia by Order in Council on May 16th, 1871; Prince Edward Island by Order in Council on June 26th, 1873. Because all of these Orders in Council contained provisions of a constitutional character—adapting the provisions of the British North America Act to the new provinces, but with some modifications in each case—they may therefore be regarded as constitutional amendments.

CHAPTER II

HISTORY OF CONSTITUTIONAL AMENDMENT IN CANADA

Up to the present time, the British North America Act, as noted, has been amended in its most important aspects only by Acts of the Parliament of the United Kingdom. Canada's Parliament and provincial legislatures have, however, possessed limited authority to amend the Constitution from the very beginning of Confederation.

AMENDING POWER OF THE PARLIAMENT OF CANADA

When the federal government was first established in 1867, it was necessary to include in the British North America Act certain provisions respecting that government. Some of these were made subject to alteration by the Parliament of Canada. Included were the establishment of electoral districts for the new Parliament of Canada; representation in the House of Commons; qualifications and disqualification of members of Parliament. These provisions have been changed from time to time by Canadian statutes, and such changes, provided for by the British North America Act, may properly be regarded as constitutional amendments. Thus, for example, the number of members of the House of Commons has been changed from time to time by Acts of the Parliament of Canada. Section 31 of the British North America Act set the House of Commons membership at 181, but section 51 authorized the Canadian Parliament to make adjustments in representation of the provinces (1) after each decennial census and (2) in accordance with the principles of proportionate representation prescribed in that section.

Another field in which constitutional amendments have been made by the Parliament of Canada is represented by the Manitoba Act, enacted by Canada in 1870 and ratified by the United Kingdom Parliament. Thus, while Manitoba's constitution may be said to have derived from an Act of the United Kingdom Parliament, its provisions were set forth in a statute of the Parliament of Canada. The constitutions of Saskatchewan and Alberta were set out similarly, in statutes of the Parliament of Canada, which were enacted under the authority of the British North America Act of 1871.

Limited additional amending authority was conferred upon the Parliament of Canada by the British North America Act (No. 2) of 1949. The original British North America Act, in head (1) section 92, had given the provinces power to amend their constitutions except as regards the office of Lieutenant Governor, but no corresponding power had been given Parliament. The amendment of 1949 was designed to give this authority to the Parliament of Canada, enabling it to make amendments regarding purely federal matters. Specifically, the 1949 Act authorized Canada's Parliament to make amendments to the Constitution of Canada except as regards (1) classes of subjects assigned exclusively to the legislatures of the provinces; (2) the rights or privileges granted or secured to the legislature or the government of a province; (3) the rights or privileges granted or secured to any class of persons with respect to schools; (4) the use of the English or the French language; and (5) requirements that there shall be a session of the Parliament of Canada at least once each year and that no House of Commons shall continue for more than five years. Authority was provided, however, to extend the life of Parliament in time of real or apprehended war, invasion or insurrection if the extension is not opposed by more than one-third of the members of the House of Commons.

Thus, under authority of the 1949 amendment, the Parliament of Canada in 1952 enacted a new section 51 of the British North America Act, continuing the authority of Parliament to readjust representation in the House of Commons but prescribing new rules for application of the principle of proportionate representation.

AMENDING POWER OF THE PROVINCES

The British North America Act of 1867 included temporary provisions respecting the governments of Ontario and Quebec, but made them subject to amendment by their legislatures. Some of these original

provisions, such as sections 83 and 84, have been changed by the legislatures of Ontario and Quebec, while others respecting the constitutions of these provinces have been amended under the authority of head (1) of section 92. Legislatures of the other provinces have also amended their own constitutions under this authority, in some instances in quite important respects. Under this provision, for example, the provinces of Prince Edward Island, New Brunswick, Nova Scotia and Manitoba abolished the Legislative Councils that each originally had as a second legislative chamber.

RESIDUAL AMENDING POWER

Notwithstanding these various amending powers of Parliament and the provinces, there remains a wide area of constitutional law that is not subject to amendment by any legislative authority in Canada. Included are section 91 and 92 of the British North America Act, which deal with one of the most important aspects of Canadian federalism, namely the distribution of legislative power between Parliament and the legislatures of the provinces. The sole amending authority in respect to this area remains the Parliament of the United Kingdom. In practice, however, no Act of the Parliament of the United Kingdom affecting Canada is passed unless Canada has requested and consented to its enactment; conversely every amendment requested by Canada is enacted.

The purpose of the proposed amending formula agreed to at a Federal-Provincial Conference in Ottawa on October 14th, 1964, is to transfer to legislative authorities in Canada—acting either singly or in combination—complete and exclusive power of amendment over the whole of the Constitution of Canada. The formula would thus terminate all authority now vested in the Parliament of the United Kingdom to enact statutes forming part of Canadian law.

PROCEDURES FOLLOWED IN THE PAST IN SECURING AMENDMENTS TO THE BRITISH NORTH AMERICA ACT

The procedures for amending a constitution are normally a fundamental part of the laws and conventions by which a country is governed. This is particularly true if the constitution is embodied in a formal document, as is the case in such federal states as Australia,

the United States and Switzerland. In these countries, the amending process forms an important part of their constitutional law.

In this respect, Canada has been in a unique constitutional position. Not only did the British North America Act not provide for its amendment by Canadian legislative authority, except to the extent outlined at the beginning of this chapter, but it also left Canada without any clearly defined procedure for securing constitutional amendments from the British Parliament. As a result, procedures have varied from time to time, with recurring controversies and doubts over the conditions under which various provisions of the Constitution should be amended.

Certain rules and principles relating to amending procedures have nevertheless developed over the years. They have emerged from the practices and procedures employed in securing various amendments to the British North America Act since 1867. Though not constitutionally binding in any strict sense, they have come to be recognized and accepted in practice as part of the amendment process in Canada.

In order to trace and describe the manner in which these rules and principles have developed, the approaches used to secure amendments through the Parliament of the United Kingdom over the past 97 years are described in the following paragraphs. Not all the amendments are included in this review, but only those that have contributed to the development of accepted constitutional rules and principles.

(1) *The British North America Act of 1871—*

(Establishment of new provinces and administration of territories)

Because this was the first attempt by Canada to have the Constitution amended, there were no precedents for the government of the day to follow. It requested the amendment from the British Parliament without reference to the Parliament of Canada, and the latter took strong exception. The opposition in Parliament condemned the government for its failure to secure prior approval of Canada's legislative authority. The government agreed that such matters should be referred to Parliament, and the House of Commons unanimously adopted a resolution stating that "...no changes in the provisions of the British North America Act (would) be sought by the Executive Government without the previous assent of the Parliament of this Dominion". A few days later, the government brought down a joint Address, which was concurred in by both Houses of Parliament, and which formed the basis upon which the amendment was finally passed by the British Parliament.

(2) *The Parliament of Canada Act, 1875—*

(Privileges, immunities and powers of the House of Parliament)

Notwithstanding the principle it had pressed for, and had had unanimously adopted by Parliament four years earlier when it was in opposition, the Canadian government of the day requested this amendment without "previous assent" or formal Address by Parliament. Objections again were raised in the House of Commons and a resolution similar to that of 1871 was introduced. After debate, the government conceded the propriety of the principle it had originally espoused: of referring proposed constitutional amendments to Parliament. The new resolution was withdrawn when the government agreed that a joint Address by both Houses of Parliament was the only appropriate way of securing amendments to the Constitution.

(3) *The British North America Act of 1886—*

(Representation of territories in Parliament)

The Canadian government submitted its request for this amendment to Westminster on the basis of a formal Address by both Houses of Parliament. With one exception, this principle has been followed by every Canadian government since that time. The exception was the enactment in 1895 by the United Kingdom Parliament of the Canadian Speaker (Appointment of Deputy) Act, which was allowed without protest by the Canadian Parliament because of particular circumstances.

(4) *The British North America Act of 1907—*

(Subsidies to provinces)

This was the first occasion on which the federal government consulted with the provinces before seeking a constitutional amendment. In this case, all nine of the provinces in existence were directly concerned with the amendment. All were consulted and eight of the nine provincial governments agreed to the federal proposal. One province opposed the proposal, both in Canada and in Great Britain. The British government made minor changes in the text of the draft bill, and the amendment was enacted.

(5) *The British North America Act of 1915—*

(Redefinition of divisions of the Senate)

This amendment was passed without consultation with the provinces and without provincial government representations concerning

its enactment. This amendment is important to Canadian constitutional development in that it was put forward in the form of a Canadian draft bill, embodied in the Address to the Crown and enacted without modification by the British Parliament.

(6) *The British North America Act of 1930—*

(Jurisdiction of Western provinces over their natural resources)

This was the first application for a constitutional amendment relating to a provincial field that did not directly concern all provinces. It was obtained by the federal government after consultation with only those provinces directly affected except in one province where a resolution was adopted by the legislature after the Premier had already expressed the consent of his government to the amendment.

(7) *The British North America Act of 1940—*

(Unemployment Insurance)

This was the first amendment to change the distribution of legislative powers between Parliament and the provinces, as provided in the 1867 Constitution. It transferred the authority to legislate on unemployment insurance from provincial to federal jurisdiction. Before seeking this amendment, the federal government obtained the consent of all provincial governments. In this, as in previous cases of provincial concurrence, there was no reference of the question by any government to its legislature.

(8) *The British North America Act of 1943—*

(Postponement of redistribution of seats in the House of Commons)

The federal government did not consult the provinces prior to seeking this amendment, and notwithstanding the protests of one provincial government, the Parliament of the United Kingdom granted it. The position of the federal government was that this amendment concerned only the Government of Canada, since it did not affect provincial governments or legislatures.

(9) *The British North America Act of 1946—*

(Readjustment of representation in the House of Commons)

The federal government sought this amendment on the same basis as that of 1943—that is, without provincial consultations—and for the same reasons.

(10) *The British North America Act of 1949—*

(Entry of Newfoundland into Confederation)

A resolution was moved in the House of Commons urging that this amendment not be proceeded with until after consultation with the provincial governments. What the resolution meant by "consultation" was not clear. However, the amendment was enacted without such consultation and without any of the provincial governments formally objecting to its enactment, though one or two provincial governments stated publicly that consultation should have taken place.

(11) *The British North America Act of 1949(2)—*

(Authority of Parliament to amend certain aspects of the Constitution of Canada)

This amendment was obtained without consultation or formal consent of provincial governments, the federal government maintaining the position taken in connection with the 1943 and 1946 amendments. At a federal-provincial constitutional conference the following year, however, the federal government indicated that, in the event of agreement on an overall procedure for amending the Constitution in Canada, it would be prepared to reconsider the broad provisions of this amendment.

(12) *The British North America Act of 1951—*

(Old Age Pensions)

This amendment was enacted after the federal government secured the agreement of all provinces. In the case of the provinces of Quebec, Saskatchewan and Manitoba, the matter was referred to the legislatures, which authorized the governments of those provinces to agree to the amendment. Other provincial governments gave concurrence on their own authority.

(13) *The British North America Act of 1960—*

(Tenure of office of certain Judges)

The federal government sought this amendment only after obtaining the agreement of all provinces, since the amendment provided for the compulsory retirement at age 75 of judges of provincial courts. In this instance again Quebec placed the matter before its legislature before agreeing.

(14) *The British North America Act of 1964—*

(Supplementary benefits to Old Age Pensions)

This amendment was enacted after agreement of all provincial governments, with, in the case of Quebec, the concurrence of the Legislative Assembly. It involved a modification of section 94A created by the 1951 amendment on which prior agreement of all provinces had been obtained.

The first general principle that emerges in the foregoing resumé is that although an enactment by the United Kingdom is necessary to amend the British North America Act, such action is taken only upon formal request from Canada. No Act of the United Kingdom Parliament affecting Canada is therefore passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted.

The second general principle is that the sanction of Parliament is required for a request to the British Parliament for an amendment to the British North America Act. This principle was established early in the history of Canada's constitutional amendments, and has not been violated since 1895. The procedure invariably is to seek amendments by a joint Address of the Canadian House of Commons and Senate to the Crown.

The third general principle is that no amendment to Canada's Constitution will be made by the British Parliament merely upon the request of a Canadian province. A number of attempts to secure such amendments have been made, but none has been successful. The first such attempt was made as early as 1868, by a province which was at that time dissatisfied with the terms of Confederation. This was followed by other attempts in 1869, 1874 and 1887. The British Government refused in all cases to act on provincial government representations on the grounds that it should not intervene in the affairs of Canada except at the request of the federal government representing all of Canada.

The fourth general principle is that the Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces. This principle did not emerge as early as others but since 1907, and particularly since 1930, has gained increasing recognition and acceptance. The nature and the degree of provincial participation in the amending process, however, have not lent themselves to easy definition.

There have been five instances—in 1907, 1940, 1951, 1960 and 1964—of federal consultation with all provinces on matters of direct concern to all of them. There has been only one instance up to the present time in which an amendment was sought after consultation with only those provinces directly affected by it. This was the amendment of 1930, which transferred to the Western provinces natural resources that had been under the control of the federal government since their admission to Confederation. There have been ten instances [in 1871, 1875, 1886, 1895, 1915, 1916, 1943, 1946, 1949 and 1949(2)] of amendments to the Constitution without prior consultation with the provinces on matters that the federal government considered were of exclusive federal concern. In the last four of these, one or two provinces protested that federal-provincial consultations should have taken place prior to action by Parliament.

Under the 1964 amending formula, the requirements for provincial consultation and consent are for the first time clearly defined.

CHAPTER III

HISTORY OF EFFORTS TO FIND AMENDING FORMULA

By the end of the first World War, leading Canadian political thinkers and statesmen had begun to regard Canada's lack of the essential sovereign power to amend its own Constitution as a serious anomaly. Dependence on another country for amendments had come into focus in the light of the important contribution that Canada had made to the first World War and to the ensuing peace negotiations at Versailles. These critical views gained popularity in the wake of the Imperial Conferences of 1926 and 1930. They were widely supported by 1931, when the Statute of Westminster established the principle of the equality of the Commonwealth dominions with the United Kingdom as put forward in the declaration following the 1926 Imperial Conference.

That statute stipulated, in particular, that in the future no Act of the Parliament of the United Kingdom would be applicable to a dominion, unless the Act expressly declared that the dominion had requested and consented to its enactment. There was a clause, however—one which had been proposed by the Canadian government and concurred in by all the provinces—that specifically excluded from these provisions "the repeal, amendment or alteration" of the British North America Acts, 1867 to 1930.

The search for a satisfactory procedure for amending the Constitution in Canada has gone on intermittently since the Imperial Conference of 1926. It has been the subject of repeated consideration in Parliament and in the federal-provincial conferences and meetings of 1927, 1935-36, 1950, 1960-61 and 1964.

THE DOMINION-PROVINCIAL CONFERENCE OF 1927

The first significant discussion of the question took place at the Dominion-Provincial Conference of 1927. The summary of Conference discussion (Sessional Paper No. 69, 1928), states that the question "Procedure in amending the British North America Act" was examined on the basis of an opinion submitted by the then Minister of Justice, Hon. Ernest Lapointe. The opinion was to the effect that:

"...Canada in view of the quality of status which she now enjoys as declared at the last Imperial Conference and in view further of the cumbersome procedure now required, should have the power to amend her own constitution, and that legislation should be asked for from the United Kingdom for that purpose. In order that adequate safeguards should be provided it was proposed that in the event of ordinary amendments being contemplated the provincial legislatures should be consulted and a majority consent of the provinces obtained, while in the event of vital and fundamental amendments being sought involving such questions as provincial rights, the rights of minorities, or rights generally affecting race, language and creed, the unanimous consent of the provinces should be obtained."

All participants in the Conference did not agree that such provisions should be made for amendment of the British North America Act. While the proposal of the Minister of Justice had the support of some, others favoured the status quo. They argued that Canada's charter, having come from London, should be amended only in London; that a purely Canadian procedure might make amendments too easy to secure.

The report of the Conference recorded in conclusion that the Government of Canada "would carefully consider the opinions on the subject, both pro and con".

APPROVAL BY THE HOUSE OF COMMONS OF THE PROPOSED STATUTE OF WESTMINSTER—1931

On June 30th, 1931, the Right Honourable R. B. Bennett, Prime Minister of Canada, introduced in the House of Commons a resolution for an Address to His Majesty requesting the enactment of the Statute of Westminster. The preamble to the resolution said:

"And whereas consideration has been given by the proper authorities in Canada as to whether and to what extent the principles embodied in the proposed act of the parliament of the United Kingdom should be applied to provincial legislation; and, at a dominion-provincial conference, held at Ottawa on the seventh and eighth days of April, in the year of Our Lord one thousand nine hundred and thirty-one, a clause was approved by the delegates of His Majesty's government in Canada

and of the governments of all of the provinces of Canada, for insertion in the proposed act for the purpose of providing that the provisions of the proposed act relating to the Colonial Laws Validity Act should extend to laws made by the provinces of Canada and to the powers of the legislatures of the provinces; and also for the purpose of providing that nothing in the proposed act should be deemed to apply to the repeal, amendment or alteration of the British North America Acts of 1867 to 1930; or any order, rule or regulation made thereunder; and also for the purpose of providing that the powers conferred by the proposed act on the parliament of Canada and upon the legislatures of the provinces should be restricted to the enactment of laws in relation to matters within the competence of the parliament of Canada or any of the legislatures of the provinces respectively."

The Prime Minister explained that the Dominion-Provincial Conference referred to in the preamble had been convened in response to representations by Ontario, subsequently supported by the other provinces. He referred to the apprehension of some of the provinces that under provisions as broad as those to be inserted in the Statute of Westminster, a dominion parliament might encroach upon the jurisdiction of a provincial legislature and exercise powers beyond its competence. He pointed out that "...lest it be concluded by inference that the rights of the provinces as defined by the British North America Act had been by reason of this Statute curtailed, lessened, modified or repealed", a section of the Statute of special application to Canada declared, with the unanimous concurrence of the provinces, that such was not the case.

Several Members of Parliament in the 1931 debate emphasized that any amending procedure should be acceptable both to the federal government and the provinces. Some also inferred that the Dominion-Provincial Conference of April, 1931 had established a precedent requiring consultation with the provinces before any action affecting the Constitution could be taken.

SPECIAL COMMITTEE OF THE HOUSE OF COMMONS—1935 SESSION

On January 28th, 1935, the House of Commons adopted the following resolution:

"That in the opinion of this house, a special committee should be set up to study and report on the best method by which the British North America Act may be amended, so that while safeguarding the existing rights of racial and religious minorities, and legitimate provincial claims to autonomy, the Dominion Government may be given adequate power to deal effectively with urgent economic problems which are essentially national in scope."

The Special Committee held ten sessions between February 18th and June 19th, 1935. It heard the opinions of a number of witnesses, primarily on two questions: the need to amend the British North America Act and the procedure for amendment.

During the hearings, it was variously suggested that a review of the Constitution might be carried out by a Royal Commission, a dominion-provincial conference, a national convention, or a constituent assembly composed of delegates representing all classes of people in the various provinces and the dominion.

The Committee also communicated with the provinces to seek their views "with respect to methods of securing amendments" to the British North America Act. The provinces were not prepared to make either written or oral submissions to the Committee. In its final report, the Committee recognized "the urgent necessity for prompt consideration of amendments to the British North America Act with reference to a redistribution of legislative power and to clarify the field of taxation". In respect to the provinces, the Committee concluded that "the opinions of the provinces should be obtained..." and recommended that a dominion-provincial conference on the question be held as early as possible.

The Committee expressly refrained from recommending any form of procedure for amendment. It did so, it reported, "...so as to leave the proposed conference entirely free in its study of the question, except that the Committee is definitely of the opinion that minority rights agreed upon and recommended under the provisions of the British North America Acts should not be interfered with".

DOMINION-PROVINCIAL CONFERENCE—1935; CONTINUING COMMITTEE ON CONSTITUTIONAL QUESTIONS—1936

The Dominion-Provincial Conference of 1935 established a number of sub-conferences. One was the sub-conference on constitutional questions under the chairmanship of Hon. E. Lapointe, Minister of Justice, and including the Attorneys-General and certain other federal and provincial Ministers. Its deliberations included consideration of the proceedings of the Special Committee of the House of Commons of 1935.

This sub-conference agreed that Canada, like other self-governing dominions, should have the power to amend its own Constitution provided that a method of procedure satisfactory to the Dominion Parlia-

ment and the provincial legislatures could be devised. It also agreed to pass the following resolution:

"This Conference, in the interests of the Dominion and of the provinces, is of the opinion:

(a) That amendments to the British North America Act are now and subsequently may be necessary and imperative.

(b) That, as in the case of all the other self-governing Dominions, Canada should have the power to amend the Canadian Constitution provided a method of procedure therefor satisfactory to the Dominion Parliament and the provincial legislatures be devised.

(c) That the Minister of Justice convene at an early date a meeting of appropriate officials of the Dominion and of the provinces to prepare a draft of such method of procedure, to be submitted to a subsequent conference.

(d) That a conference be held at an early date after such draft has been prepared to consider such a method of procedure."

Pursuant to recommendation (c), a committee of provincial representatives and federal officials was convened on January 28th, 1936, as a Continuing Committee on Constitutional Questions. After meeting from January 30th to February 11th, 1936, this committee approved in principle a general procedure for amending the Constitution, along lines that had been submitted to it by the federal government. The Committee appointed a sub-committee to consider the procedure in detail.

It recommended further that the Statute of Westminster be amended so as to permit the Parliament of Canada to enact a federal Constitution in place of the British North America Acts, on the condition that the new Constitution should not "alter or change the constitutional relationships existing between the Dominion of Canada and the respective provinces of Canada at the time of enactment of such Constitution", and that it should contain an amending section.

The Committee also proposed a detailed procedure to be followed in amending the Constitution, suggesting it should become the new section 148 to be added to the British North America Act. This procedure was set forth as follows:

(a) In respect of matters concerning the federal government only; by an Act of Parliament. (This part referred to sections of the British North America Acts relating in particular to the Office of Governor General; the Offices of Lieutenant Governors; the constitution of the Privy Council; the constitution, membership and powers of the Senate, with the exception of the representation of provinces in the Senate; the constitution, membership and powers of the House of Commons, with the exception of the question of representation in the House of Commons; and the Consolidated Revenue Fund.)

(b) In respect of matters concerning the federal government and one or more but not all of the provinces, by an Act of Parliament and the assent by resolution of the legislative assembly of each province affected.

(c) In respect of most matters concerning the federal government and all of the provinces, by an Act of Parliament and the assent by resolution of the legislative assemblies in two-thirds of the provinces representing at least 55% of the population of Canada, "provided that if the enactment is in relation to matters coming within the classes of subjects enumerated in clauses (13) and (16) of section 92, or either of them, the legislature of any province, the legislative assembly of which has not approved or is not deemed to have approved such enactment in accordance with the provisions of this section and which has expressed its dissent thereto by resolution may continue exclusively to make laws in relation to the subject matters coming within such enactment".

(d) In respect of "entrenched clauses", by an Act of Parliament and the assent by resolution of the legislative assemblies of all the provinces. This part of the procedure specifically mentioned, as being entrenched, any matter coming within sections 9 (executive power vested in the Queen); 21 (number of Senators); 22 and British North America Act, 1915 (representation of provinces in Senate); 51 and 51A (representation in House of Commons); heads 4, 5, 8, 12, 14 and 15 of 92 (legislative powers of provinces); 93 and corresponding provisions in the Manitoba Act, 1870, the Saskatchewan Act, 1905, and the Alberta Act, 1905 (education); 133 and corresponding provision in the Manitoba Act, 1870 (use of English and French languages).

The sub-committee submitted its report to the Continuing Committee on March 2nd, 1936 but no further proceedings were taken.

The Dominion-Provincial Conference of 1935 and the Continuing Committee on Constitutional Questions of 1936 are of particular historical importance, because they established the essential procedures and principles which were to be followed by the 1950, 1960-61 and 1964 conferences with ultimate success.

—These meetings demonstrated, in particular, that a satisfactory amending formula could only be achieved by negotiation between the federal and provincial governments.

—They established a lasting distinction between amendments affecting the federal government only, the provinces only, and the federal government and some or all of the provinces.

—They established the concept of “entrenchment” in respect of matters directly affecting the fundamental historical and constitutional relationships between the federal government and the provinces, and in respect of the rights of minorities and the use of the English and French languages. Such matters were considered to be essential to Canadian federalism and Canadian unity.

To give practical flexibility to the 1935-36 formula, however, the Committee envisaged that any province so wishing could be exempted from the application of any amendment relating to section 92, heads 13 (property and civil rights) and 16 (matters of local or private nature in province). This same objective of flexibility was expressed in a more positive way in the 1960-61 formula and confirmed in the 1964 formula. It was embodied in the concept of delegation which would enable certain matters to be dealt with either federally or provincially, without requiring the identical arrangement for all provinces. This would be done by the action of Parliament together with a minimum number of interested provincial legislatures.

THE AMENDMENT TO SECTION 91 BY THE BRITISH NORTH AMERICA ACT OF 1949; THE CONSTITUTIONAL CONFERENCE OF 1950

From 1937 to 1949, pursuit of an amending formula gave way to the more pressing demands of defence, prosecution of the war, and post-war reconstruction. With the return of normal conditions, the Right Honourable Louis St-Laurent, Prime Minister of Canada, said in a national broadcast on May 9th, 1949:

“The record of Canadians in two World Wars demonstrated beyond any question our ability and our capacity to bear the responsibilities of full nationhood. But our adult nationhood is not yet fully recognized in our Constitution and our laws. . . . a method should be worked out to amend our Constitution in Canada. . . . we do not want the Canadian Constitution to be too rigid, but we do want to make sure it contains the fullest safeguards of provincial rights, of the use of the two official languages, and of those other historic rights which are the sacred trusts of our national partnership.”

To implement this declaration of policy, the federal government started from the premise—accepted in 1935-36—that in a federation like Canada, constitutional matters fall into three broad classes: those

that are of concern to the provinces only; those that are of concern to the federal government only; and those that are of concern to the federal government and to some or all of the provinces.

Section 92(1) of the British North America Act already gave the provincial legislatures exclusive power over the amendment of their respective provincial constitutions. But there was no parallel provision for the Parliament of Canada. Accordingly, the government decided to proceed with an amendment to section 91 which, as noted earlier, gave Parliament the power to amend the Constitution of Canada in respect of purely federal matters.

The government then called a federal-provincial conference to consider procedures of amendment in matters of concern to both the federal and provincial governments. This Constitutional Conference met in Ottawa in January 1950 and continued in Quebec City in September of that year. The purpose of the Conference, as stated by the Prime Minister, was "to seek together to devise a generally satisfactory method of transferring to authorities responsible to the people of Canada the jurisdiction which may have to be exercised from time to time to amend those fundamental parts of the Constitution which are of concern alike to the federal and provincial authorities".

At the January meetings, the Conference established a committee of Attorneys-General, which recommended that the provisions of the British North America Act and other constitutional Acts should be examined and grouped under six heads as follows:

- (i) provisions which concern Parliament only;
- (ii) provisions which concern the provincial legislatures only;
- (iii) provisions which concern Parliament and one or more but not all of the provincial legislatures;
- (iv) provisions which concern Parliament and all of the provincial legislatures;
- (v) provisions concerning fundamental rights as, for example, education, language; and
- (vi) provisions which should be repealed.

It was intended that a different amending formula would apply to each group. Thus in the case of group (i) amendments could be made by an Act of the Parliament of Canada alone; in group (ii) by an Act of the provincial legislature alone; in group (iii) by an Act of the Parliament of Canada and an Act of the legislature of each of the provinces affected; in group (iv) by an Act of the Parliament of

Canada and a majority of the provincial legislatures, based upon such conditions as might be agreed upon; in group (v) by an Act of the Parliament of Canada and Acts of the legislatures of all the provinces.

In August of 1950, a similar committee of Attorneys-General met in Ottawa and tried to sort the provisions of the British North America Act and other constitutional Acts, into the agreed categories. Each jurisdiction prepared its own breakdown of the sections that would fall within each of the six groups.

The resulting analyses were examined and discussed by the full Conference when it resumed in Quebec City in September of 1950. It was soon realized, however, that the sections could not be placed in the six different categories until the amending formula for each category was known.

Various proposals were put forward but no agreement was reached. It was generally understood that the Constitutional Conference would continue its work at the time of the federal-provincial Fiscal Conference to be held later that year. However, the Fiscal Conference, which met in Ottawa in December 1950 in the midst of the Korean crisis, concentrated its attention on fiscal arrangements and social security. It was decided to suspend the further deliberations of the Constitutional Conference, pending consideration of the tax agreements and related matters. In fact, it never reconvened.

During the 1950 Constitutional Conference, most of the provinces objected to the newly-enacted amendment, section 91(1). They felt that it went too far; that in the absence of rights of participation by the provincial legislatures, it could enable Parliament unilaterally to make changes that could be of great importance to the provinces. The Prime Minister, the Rt. Hon. Louis St-Laurent, indicated that if a comprehensive amending formula could be reached, the Government of Canada would be willing to integrate the provision of section 91(1) into it, and to consider then what adjustments might be necessary to meet the legitimate concerns and anxieties of the provinces.

With regard to possible integration of section 91(1) into a comprehensive amending formula, Mr. St-Laurent said:

"I understand the suggestion... would cover the whole field and would render subsection (1) of 91, enacted by the 1949 Statute, inoperative. What I stated was that we had no objection to the discussion of an overall procedure being overall; but... we were not suggesting we would be prepared, if nothing else was agreed upon, to ask for the repeal of the 1949 Statute. It would disappear in an overall procedure; but it was not intended to be an undertaking to cause it to disappear if there were to be no overall procedure."

With regard to the interpretation of section 91(1) and to its possible adjustment within the framework of a comprehensive amending formula, Mr. St-Laurent said:

"There are a certain number of provisions in the British North America Act which are part of the constitution of each province. They certainly are not included in 91(1) because under 92(1) the provinces respectively have exclusive jurisdiction in that regard. ... There are other provisions which are clearly rights that the legislatures enjoy. ... This is certainly something which could not be interfered with. ... The field really narrows down to these matters which affect the set-up of the central authority. Even there, there are some provisions which it had been suggested here should not be left to the unlimited control of parliament. I think they would be under the unlimited control of the central parliament. For instance, those which refer to the Senate and to the representation in the House of Commons are, I think, a part of the Canadian constitution. They are not matters which are excluded by the exceptions.

Now, it has always seemed to me that was something that was lacking in the constitution. No provision was made in that respect, probably because the overall legislative authority was being retained in the parliament of Westminster. It may very well be that when we come to the position where the legislative jurisdiction will not be retained in the parliament at Westminster, it would be conducive to greater confidence, a more satisfactory feeling throughout the Canadian nation, if there were some guarantees about them. I have in mind, for instance, the provision which states that the representation of a province in the Senate shall be such and such and that it shall always be entitled to no fewer members in the House of Commons. Probably that is something which should be surrounded with guarantees which do not exist at the moment."

The principle of the delegation of legislative authority, which was to emerge later, in the 1960-61 and 1964 formulas, was also discussed, both at the main 1950 Conference and in the Committee of Attorneys-General.

CONSTITUTIONAL CONFERENCE OF 1960-61

On January 18th, 1960, during the Throne Speech debate, the Right Honourable John G. Diefenbaker, Prime Minister of Canada, referred to the amendment to section 99 of the British North America Act, which was to be enacted later in the year, in respect to the tenure of office of judges. He said:

"Here at this session of parliament, in order to secure an amendment to our constitution on a matter that is of national importance affecting the jurisdiction of both the federal and provincial parliaments and legislatures of our country, it is still necessary for us to seek an amendment from the parliament of the United Kingdom. My hope is that the time will not be too long delayed when as a result of an agreement between the federal and provincial authorities we will arrive at a point where

this particular phase will be eliminated, to the end that we will be able within our own country to arrive at a basis for the amendment of our constitution agreeable to all and within the constitutional limitations of Sections 91 and 92."

On July 26th of that year, at the Dominion-Provincial Conference in Ottawa, the Prime Minister said:

"During the years, I have advocated that when an agreement could be arrived at between the dominion and the provincial governments, at the very earliest opportunity Canada should proceed to take those measures necessary to assure the amendment of our Constitution in Canada. In the 1950 conference, which was attended by several of those present on this occasion, or at least by their representatives, there was a considerable degree of agreement, and also a lesser degree of disagreement. It has been said that in the intervening years more and more Canadians are coming to realize that having the provisions inherent in the British North America Act which deny the amendment of the Canadian Constitution in Canada, that changes in that regard should inevitably and must take place if Canada is to assume her place as an independent nation within the Commonwealth. . . . I now say on behalf of the federal government that if the various representatives of the provinces are willing, we will convene a conference in Ottawa in September, or October, possibly first with the representatives of the Attorneys-General of the provinces, to the end that this step be taken at the earliest possible date consistent with the agreement that must be obtained as between the federal and provincial governments."

The Conference of Attorneys-General that followed this announcement met four times in the succeeding 14 months, in October 1960, in November 1960, in January 1961 and in September 1961. A meeting of Deputy Attorneys-General was also held in November 1961.

The Hon. E. D. Fulton, Minister of Justice, suggested to the first session that the Conference might first consider—without writing an amending formula—the question of transferring authority to Canada to amend the Constitution in all respects in which it is not now amendable by any legislative authority in Canada. It was suggested that a United Kingdom statute should be obtained to authorize the Parliament of Canada, with the consent of the legislatures of all the provinces, to make any amendments to the Constitution. It was thought that this would at least transfer to Canada final amending authority. It was admitted that this authority might be too rigid in some respects, but it was felt that once such complete amending authority had been transferred to Canada, a suitable amending formula could be agreed upon and enacted under the authority that had been conferred. However, it was generally believed that the Conference could find an acceptable amending formula at once, and discussion proceeded on that basis.

An amending formula eventually emerged from these discussions. Briefly it was as follows: the Parliament of Canada could make laws repealing, amending or re-enacting any provision of the Constitution of Canada subject to the following conditions, as set out in the draft:

1. No law relating to the legislative powers of the provinces, to the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province, to the assets or property of a province, to the use of the English or French language, to the minimum representation or "Senatorial floor" of a province in the House of Commons (section 51A), or to the amendment procedure itself, was to go into effect unless it was concurred in by the legislatures of all the provinces.
2. No law relating to one or more but not all the provinces should come into force unless it was concurred in by the legislature of every province to which the provision referred.
3. No law made in respect to education should come into force unless it was concurred in by the legislatures of all the provinces other than Newfoundland, and no law affecting education in Newfoundland was to go into force unless it was consented to by the legislature of Newfoundland.
4. No law affecting any other provision of the Constitution should come into force unless it was concurred in by the legislatures of at least two-thirds of the provinces representing at least 50% of the population.

To overcome the rigidity of the rule of unanimity set forth in condition (1) above, a "delegation" clause was included in the formula. It provided that under specified conditions, the provinces could delegate to Parliament authority to enact a particular law—in respect of a subject coming within the major categories of provincial matters—that would otherwise be within the exclusive jurisdiction of the provinces to enact; and that Parliament could similarly delegate to provincial legislatures authority to enact a particular law that would otherwise be within the exclusive jurisdiction of Parliament to enact. Such delegation would specifically require, in each case, an Act and the consent of both Parliament and at least four provincial legislatures.

In making the text of the proposed amending formula public, the Minister of Justice stated in a press communique, which he issued on December 1st, 1961, that the text "... has been approved by representatives from each provincial delegation and the federal delegation as being a satisfactory draft of the formula arrived at by the Conference". The communique also stated that "... the great majority also

indicated their approval of the formula on which the draft is based, as being the consensus of the Conference and as an acceptable basis for legislation. It is the responsibility now of each provincial government to consider and decide whether or not it finds the formula reported by the Conference to be acceptable for the purposes of enactment as an amendment to the British North America Act. ...The final step would be for the government of Canada to present the formula to Parliament in a resolution asking for adoption of the necessary Address to Her Majesty. ...This would be the final amendment to the Act to be made in the United Kingdom, as by it all future power of amendment would be transferred to Canada".

The text of "An Act to provide for the amendment in Canada of the Constitution of Canada", dated November 6th, 1961, as it emerged from the Constitutional Conferences of 1960-61, is reproduced in *Appendix 2*. As Mr. Fulton had indicated, the "great majority" of the participants in the Conferences regarded the formula as "an acceptable basis for legislation". However, some differences of view remained and the plan was not carried through to completion.

FEDERAL-PROVINCIAL CONFERENCES CONFERENCE OF ATTORNEYS-GENERAL—1964

In June 1964, the Prime Minister of Canada, the Right Honourable L. B. Pearson, indicated, in connection with the amendment of section 94A of the British North America Act to provide for benefits supplementary to Old Age Pensions, his intention of proposing to the provincial governments that the question of the procedure for amending the Constitution in Canada be placed on the agenda of the federal-provincial conference to be held in Charlottetown the following September. The provincial Premiers, at their fifth inter-provincial conference held in Jasper, Alberta, in August 1964, exchanged views on this matter and requested their Chairman, Premier E. Manning of Alberta, to convey to the Prime Minister their belief that general agreement on the repatriation of the Constitution could be achieved on the basis of the formula that had emerged from the Constitutional Conferences of 1960 and 1961.

Accordingly, the federal and provincial governments gave consideration to the procedure for amending the Constitution in Canada at the federal-provincial Conference held in Charlottetown on September 1st and 2nd, 1964 to commemorate the centennial of the Conference of the Fathers of Confederation which took place in that city in 1864.

At the conclusion of the Conference on September 2nd, the Prime Minister and Premiers announced in a press communique that they had "...affirmed their unanimous decision to conclude the repatriation of the B.N.A. Act without delay". To this end, the communique added, "they decided to complete a procedure for amending the Constitution in Canada based on the draft legislation proposed at the Constitutional Conference of 1961, which they accept in principle". It was also agreed that an early meeting of the Attorneys-General of Canada and the provinces would be called, to complete the amending formula devised by the 1961 Conference, and to report to the Prime Minister and Premiers.

The Attorneys-General met in Ottawa on October 5th, 6th, 13th and 14th. Their main problem—as had been forecast at the 1950 Conference and recognized in Charlottetown—was to integrate the exclusive power of amendment conferred on Parliament in 1949 (section 91(1)) into the procedure of amendment proposed in 1961. The Attorney-General agreed that the provision of section 91(1), suitably adjusted, should form part of a general and comprehensive amending procedure—just as the corresponding provision of section 92(1), relating to the exclusive power of amendment of the provinces, would be included in such a procedure.

The problem posed by section 91(1) was that it defined Parliament's powers in broad general terms—broader, for example, than those that had been contemplated in 1935-36. The intention in 1949 was to give Parliament power to amend the Constitution of Canada in its purely federal aspects only, but to leave it to the Courts to determine precisely what matters were included in or excluded from the powers conferred. It was the generality and uncertainty of this provision that had been objected to by the provinces in 1949-50 and in 1960-61.

The Conference therefore defined Parliament's exclusive power of amendment with greater accuracy and precision, so as to ensure that Parliament's authority would not conflict with fundamental provincial rights or with the other provisions of the amendment procedure. Specifically, this power was defined as applying to "the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons". Certain exceptions were added, notably those concerning the representation of the provinces in the Senate, and the principles of proportionate representation of the provinces in the House of Commons. Comparison of this definition of Parliament's exclusive power of amendment with the definition that was contemplated in 1935-36 illustrates a marked degree of consistency

in the thinking and the approach to this subject at both the federal and the provincial levels.

In addition to the substantial changes that resulted from inclusion of section 91(1) as revised, and section 92(1), the Attorneys-General recommended four other technical changes in the 1961 amending formula. They also added a new Part, providing for a schedule that would give the French version of the Act to be submitted to the United Kingdom Parliament, thus making both English and French texts official.

The Conference of Attorneys-General unanimously recommended this amending procedure to the Conference of the Prime Minister and Premiers, which, in turn, unanimously accepted it on October 14th, 1964. The communique issued by the Conference that day states that when the amending procedure becomes law, all future amendments to Canada's Constitution will be made in Canada instead of by the Parliament of the United Kingdom. "As a result," the communique added, "our Constitution will have become, for the first time in the history of Canada, truly and wholly Canadian".

The Conference further agreed that the Government of Canada and the governments of the provinces would "from time to time study, in the light of experience, the working of the Canadian Constitution and any revision proposals which may be submitted by any of the governments".

The text of the bill embodying the amending procedure, "An Act to provide for the amendment in Canada of the Constitution of Canada", approved by the Federal-Provincial Conference of the Prime Minister and Premiers on October 14th, 1964, is reproduced in *Appendix 3* in its final draft from under date of October 30th, 1964.

CHAPTER IV

THE AMENDING FORMULA EXPLAINED

GENERAL

As has been indicated, the amending formula that has now been agreed upon by the federal government and the governments of all the provinces embodies principles that were developed during the four major conferences of 1935-36, 1950, 1960-61 and 1964.

The 1935-36 Conference identified four categories of amendments: (1) those affecting Canada only; (2) those affecting Canada and one or more but not all of the provinces; (3) those affecting Canada and all the provinces and which should require majority consent; and (4) those affecting Canada and all the provinces, and which are of such nature as to require the unanimous consent of the provinces. The formula also stipulated which provisions of the British North America Acts would fall within each category.

The 1950 Conference recommended that for amendment purposes, the provisions of the British North America Act should be grouped in six categories: (1) those concerning Parliament only; (2) those concerning the provincial legislatures only; (3) those concerning Parliament and one or more but not all of the provincial legislatures; (4) those concerning Parliament and all of the provincial legislatures; (5) those concerning fundamental individual and provincial rights; and (6) those that should be repealed. It was also recommended that a different amending procedure should be applied to each of the first five of these categories.

The 1960-61 Conference accepted the 1950 categories in principle and proceeded to seek agreement on amending procedures applicable to each. The Conference agreed at the outset that language and education provisions (category 5) should be amendable by Parlia-

ment only with the consent of all the legislatures; that provisions relating to some but not all the provinces (category 3) should be amendable by Parliament with the consent of the provinces concerned.

In relation to category (4), it was agreed that some provisions applicable to all the provinces should be amendable with something less than unanimous consent, but that others might more appropriately be included in the same category as language and education, and be subject to amendment only with the concurrence of all the provinces. Discussions were concerned primarily with the question of which of the provisions should require such unanimous consent. The Conference also followed up the suggestion of the 1950 Conference regarding delegation, and agreed that such a provision should be included.

The amending formula that emerged from the 1960-61 Conference represented a reconciliation of most of the views put forward up to that time. It provided an amending procedure for all but two of the main categories recommended at the 1950 Conference, namely, provisions which concern Parliament only (category 1) and provisions which concern the provincial legislatures only (category 2). These were discussed by the 1960-61 Conference, but were put over for further consideration until final agreement on the other categories could be reached.

The 1964 Conference began by accepting the 1960-61 formula in principle. Discussion centered largely on the two categories not covered in 1960-61: whether and in what way the amending power of Parliament under 91(1) and the amending power of the provinces under 92(1) should be embodied in the amending formula, so as to make it complete. It was agreed that these powers should be included and accordingly provisions were incorporated in the amending formula to replace those contained in 91(1) and 92(1). In other respects, except for a few minor amendments not affecting substance, the 1960-61 amending formula was accepted as it stood.

The 1964 formula thus incorporates all of the five amending categories recommended at the 1950 Conference which in turn had been broadly defined by the 1935-36 Conference. It therefore represents a basic conception which prevailed or evolved through four series of conferences over a period of nearly thirty years.

To have effect, the amending formula must now be enacted into law. It comprises, in essence, a final amendment to the series of United Kingdom statutes known as the British North America Acts,

and it is therefore necessary that the formula itself be enacted by the United Kingdom Parliament. Like that of 1960-61, the 1964 formula includes a renunciation clause whereby the United Kingdom Parliament renounces any further right to pass statutes that will form part of the law of Canada.

Once the amending formula has been enacted, it will become part of the law of Canada. Thereafter the formula itself—as well as all of the British North America Acts—will be under the complete and exclusive jurisdiction of the Parliament of Canada acting either alone or in combination with the legislatures of the provinces, as prescribed by the amending formula.

EXPLANATION OF CLAUSES

AN ACT TO PROVIDE FOR THE AMENDMENT IN CANADA OF THE CONSTITUTION OF CANADA

(Preamble)

WHEREAS Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth, and the Senate and House of Commons of Canada in Parliament assembled have submitted Addresses to Her Majesty praying that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble recites the facts that Canada has requested and consented to the enactment of the amending formula, and that the Senate and House of Commons of Canada have submitted Addresses to the Crown. This recital of Canada's request and consent is in accordance with section 4 of the Statute of Westminster, 1931. That section provides that no Act of the Parliament of the United Kingdom shall form part of the law of Canada unless the statute expressly declares that Canada has requested and consented to it. (Section 7 of the Statute of Westminster exempts the British North America Acts from this requirement, but since the amending formula contains a renunciation clause applicable to the United Kingdom Parliament, it is considered appropriate to include the recital.) In the past, amendments to the British North America Acts have been requested by a

formal parliamentary Address, and it is proposed that this procedure be followed in requesting enactment of the amending formula.

(This preamble is different from the 1961 formula for purely technical reasons.)

PART I

POWER TO AMEND THE CONSTITUTION OF CANADA

1. Subject to this Part, the Parliament of Canada may make laws repealing or re-enacting any provision of the Constitution of Canada.

Under the proposed Act, future constitutional amendments will be enacted by the Parliament of Canada. Such amendments, however, may be made only in accordance with the particular provisions of the amending formula that may be applicable to each amendment, depending on its nature and subject matter.

The proposed Act confers not only authority to *amend*, but also to *repeal* or *re-enact*. Thus, any time Canada should so desire, the whole of our constitutional statutes may be transferred to the statutes of Canada. Meantime, they continue as part of the laws of Canada.

(This clause is unchanged from the 1961 formula.)

2. No law made under the authority of this Part affecting any provision of this Act or section 51A of the British North America Act, 1867, or affecting any provision of the Constitution of Canada relating to

- (a) the powers of the legislature of a province to make laws,
- (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
- (c) the assets or property of a province, or
- (d) the use of the English or French language,

shall come into force unless it is concurred in by the legislatures of all the provinces.

This clause specifies certain classes of amendments that may be made by Parliament only with the consent of the legislatures of all the provinces. It deals in part with categories 2 and 5 of the 1950 Conference. The subjects included under this provision are those that are believed to be of fundamental concern to all the provinces as well as to the federal government.

Paragraphs (a) to (d), and especially (a) and (d), could be said to represent essential conditions on which the original provinces united to form the Canadian Confederation, and on which other provinces subsequently joined the union. Changes in these basic conditions—such as in the powers allocated to provincial legislatures—could alter

their status in relation to Parliament, thus changing the conditions on which the provinces entered Confederation.

Accordingly, the constitutional conferences agreed that the matters set forth in this clause should be changed only with the consent of Parliament and all the legislatures.

(This clause is substantially the same as the one in the 1961 formula.)

3. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision refers.

(2) Section 2 of this Act does not extend to any provision of the Constitution of Canada referred to in subsection (1) of this section.

This clause provides for the amendment of constitutional provisions that relate to one or more but not all the provinces, as referred to in category 3 of the 1950 Conference.

(This clause is unchanged from the 1961 formula.)

4. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in any province other than Newfoundland shall come into force unless it is concurred in by the legislatures of all the provinces other than Newfoundland.

(2) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in the province of Newfoundland shall come into force unless it is concurred in by the legislature of the province of Newfoundland.

(3) Sections 2 and 3 of this Act do not extend to any provision of the Constitution of Canada referred to in subsections (1) and (2) of this section.

This clause refers to amendment of constitutional provisions with respect to education, included in category 5 of the 1950 Conference. Such provisions have always held a special significance in Canada's constitutional framework. They were developed by a long historical process and they establish, in particular, the essential rights of religious minorities within the educational system. All constitutional conferences have thus recognized that these provisions should be particularly and fully protected.

A special provision for Newfoundland is included because the Newfoundland Terms of Union contain a special education clause that is applicable to that province alone.

(This clause is unchanged from the 1961 formula.)

5. No law made under the authority of this Part affecting any provision of the Constitution of Canada not coming within section 2,

3 or 4 of this Act shall come into force unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada according to the latest general census.

This clause provides for the amendment of constitutional provisions not covered by any of the preceding clauses, and represents the formula for category 4 of the 1950 Conference. It would require at the present time, for example, concurrence of at least seven of the existing provinces' legislatures, representing at least half the Canadian people.

These requirements are considered sufficient to assure that proposed amendments in this category are generally acceptable—not only in the federal context as represented by Parliament, but also in the provincial context. At the same time, they permit more flexibility than that allowed by clauses (2) and (4), which require unanimity for the enactment of fundamental constitutional amendments.

(This clause is unchanged from the 1961 formula.)

6. Notwithstanding anything in the Constitution of Canada, the Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons, except as regards

- (a) the functions of the Queen and the Governor General in relation to the Parliament or Government of Canada;
- (b) the requirements of the Constitution of Canada respecting a yearly session of Parliament;
- (c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons, except that the Parliament of Canada may, in time of real or apprehended war, invasion or insurrection, continue a House of Commons beyond such maximum period, if such continuation is not opposed by the votes of more than one-third of the members of such House;
- (d) the number of members by which a province is entitled to be represented in the Senate;
- (e) the residence qualifications of Senators and the requirements of the Constitution of Canada for the summoning of persons to the Senate by the Governor General in the Queen's name;
- (f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing such province;
- (g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and
- (h) the use of the English or French language.

This clause was added in 1964, to complete the 1960-61 formula. It represents category 1 of the 1950 Conference and it replaces the

present head (1) of section 91 of the British North America Act, enacted in 1949. Its phrasing, however, differs from the provisions it replaces.

The first difference is a change in the general authority conferred by the opening words. Since 1949, the authority has been to amend the "Constitution of Canada", with the exceptions listed following these words and having regard to certain fundamental rights of the provinces, the minorities and Parliament itself. Under the 1964 formula, the authority is to amend "the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons", with the exceptions listed thereafter. This change was made in order to remove the possibility that the more general language of the 1949 provision could be interpreted as giving Parliament authority to act unilaterally in matters of provincial concern.

Another change is in the exceptions from Parliament's general power as set forth in paragraphs (a), (d), (e), (f) and (g) of clause 6. Some of these may be covered by the more generally-phrased exceptions contained in the present 91(1), but it was the consensus of the 1964 Conference that these were matters in which the provinces have a legitimate interest and that therefore they should be expressly excluded from Parliament's unilateral amending authority.

(It should be noted in this respect that although the 1960-61 formula did not embrace the amending power of Parliament, as set forth in 91(1), clause (2) of the 1960-61 formula was intended to remove the substance contained in paragraph (f) above from Parliament's unilateral power.)

By virtue of clause 8, constitutional provisions excepted from amendment under clause 6 would become subject to amendment under other clauses of the amending formula. The applicable clause would depend on the subject matter and nature of the proposed amendment. Paragraphs (f) and (h), for example, are expressly covered by clause 2, and amendments in respect of these questions would require the unanimous consent of all provincial legislatures. The other exceptions generally would come under clause 5, unless the nature of an amendment were such that it came within one of the areas for which a particular procedure is laid down.

(This clause was not included in the 1960-61 formula.)

7. Notwithstanding anything in the Constitution of Canada, in each province the legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the province, except as regards the office of Lieutenant-Governor.

This clause incorporates, without change, the provincial amending power as conferred by head (1) of section 92 of the British North America Act and represents category 2 of the 1950 Conference.

(This clause was not included in the 1960-61 formula.)

8. Any law to repeal, amend or re-enact any provision of the Constitution of Canada that is not authorized to be made either by the Parliament of Canada under the authority of section 6 of this Act or by the legislature of a province under the authority of section 7 of this Act is subject to the provisions of sections 1 to 5 of this Act.

This clause makes it clear that any amendments not coming within clauses 6 or 7 are to be dealt with under clauses 1 to 5 as may be appropriate. (See also final paragraph in discussion of clause 6.)

(This clause was not included in the 1960-61 formula.)

9. Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province existing at the coming into force of this Act, to make laws in relation to any matter.

This clause preserves to Parliament and the legislatures any amending power they might possess under specific provisions of the Constitution.

(This clause is similar to one included in the 1960-61 formula.)

10. No Act of the Parliament of the United Kingdom passed after the coming into force of this Act shall extend or be deemed to extend to Canada or to any province or territory of Canada as part of the law thereof.

This is the renunciation clause referred to in discussion of the preamble.

(This clause is unchanged from the 1960-61 formula except in a technical respect.)

11. Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1964;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;
- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

Clause 11 defines what is meant by the expression "Constitution of Canada".

(This clause is unchanged in substance from the 1960-61 formula.)

PART II

BRITISH NORTH AMERICA ACT, 1867, AMENDED

12. Class 1 of section 91 of the British North America Act, 1867, as enacted by the British North America (No. 2) Act, 1949, and class 1 of section 92 of the British North America Act, 1867, are repealed.

This clause expressly repeals sections 91(1) and 92(1) of the British North America Act, 1867, since their subject matter has been incorporated in the amending formula.

(This clause was not included in the 1960-61 formula.)

13. The British North America Act, 1867, is amended by renumbering section 94A thereof as 94B and by adding thereto, immediately after section 94 thereof, the following heading and section:

Delegation of Legislative Authority

"94A. (1) Notwithstanding anything in this or in any other Act, the Parliament of Canada may make laws in relation to any matters coming within the classes of subjects enumerated in classes (6), (10), (13) and (16) of section 92 of this Act, but no statute enacted under the authority of this subsection shall have effect in any province unless the legislature of that province has consented to the operation of such a statute in that province.

(2) The Parliament of Canada shall not have authority to enact a statute under subsection (1) of this section unless

- (a) prior to the enactment thereof the legislatures of at least four of the provinces have consented to the operation of such a statute as provided in that subsection, or
- (b) it is declared by the Parliament of Canada that the Government of Canada has consulted with the governments of all the provinces, and that the enactment of the statute is of concern to fewer than four of the provinces and the provinces so declared to be concerned have under the authority of their legislatures consented to the enactment of such a statute.

(3) Notwithstanding anything in this or in any other Act, the legislature of a province may make laws in the province in relation to any matter coming within the legislative jurisdiction of the Parliament of Canada.

(4) No statute enacted by a province under the authority of subsection (3) of this section shall have effect unless

- (a) prior to the enactment thereof the Parliament of Canada has consented to the enactment of such a statute by the legislature of that province, and
- (b) a similar statute has under the authority of subsection (3) of this section been enacted by the legislatures of at least three other provinces.

(5) The Parliament of Canada or the legislature of a province may make laws for the imposition of punishment by fine, penalty or imprisonment for enforcing any law made by it under the authority of this section.

(6) A consent given under this section may at any time be revoked, and

(a) if a consent given under subsection (1) or (2) of this section is revoked, any law made by the Parliament of Canada to which such consent relates that is operative in the province in which the consent is revoked shall thereupon cease to have effect in that province, but the revocation of the consent does not affect the operation of that law in any other province, and

(b) if a consent given under subsection (4) of this section is revoked, any law made by the legislature of a province to which the consent relates shall thereupon cease to have effect.

(7) The Parliament of Canada may repeal any law made by it under the authority of this section, in so far as it is part of the law of one or more provinces, but if any repeal under the authority of this subsection does not relate to all of the provinces in which that law is operative, the repeal does not affect the operation of that law in any province to which the repeal does not relate.

(8) The legislature of a province may repeal any law made by it under the authority of this section, but the repeal under the authority of this subsection of any law does not affect the operation in any other province of any law enacted by that province under the authority of this section."

This clause adds a new section to the British North America Act, 1867, providing for the delegation concept, which was first advanced in the 1950 Conference. It is the clause that was included in the 1960-61 formula, except for a few minor changes that in no way affect its substance.

The purpose of this clause is to permit four or more provinces to authorize Parliament to enact specific laws within what would otherwise be a provincial field of jurisdiction, and similarly to permit Parliament to authorize four or more provinces to enact specific laws within a field that would otherwise be under federal jurisdiction.

It should be noted that the delegation of any power under this clause does not in any way affect the jurisdiction of the delegating authority under the Constitution. Jurisdiction, whether federal or provincial, cannot be delegated; only the enactment of a specific law that has the approval of the delegating authority is provided for. The delegating authority may subsequently revoke this consent. If it does, the specific statute enacted by the other authority or authorities ceases to have effect.

A basic requirement in delegation is that a minimum of four provinces must participate, whether the delegation is granted to Parliament by the provincial legislatures, or to the provincial legislatures by Parliament. No exception to this minimum requirement is provided for in the case of delegation from Parliament to the provincial legislatures. This is because the powers of Parliament are by definition of

general interest and concern. On the other hand, delegation from provincial legislatures to Parliament by fewer than four provinces may take place provided Parliament declares, after consultation with the governments of all the provinces, that fewer than four provinces are in fact concerned with the proposed enactment. Provision has been made for such an exception because certain provincial powers are by their nature so local that in some cases they may be of concern to fewer than four provinces.

Clause (1) of the proposed new section 94A specifies only four classes of subjects within section 92 concerning which authority to enact a specific law may be delegated to Parliament. Examination of section 92 suggests, however, that these four subjects are the only ones on which the desirability of enactments by Parliament is likely to arise. The remaining subjects relate to resources belonging to a province, in respect of which delegation is not a serious possibility, to matters so local in character that they would not be appropriate for legislation by Parliament, or to matters over which Parliament has its own jurisdiction for federal purposes under section 91.

Clause (3) does not similarly restrict the subjects in section 91 concerning which authority to enact a specific law may be delegated to the provinces. Clause (4) requires, however, that before any province can pass a statute having to do with a matter coming within federal jurisdiction, Parliament itself must give consent.

Either Parliament or the provincial legislatures may repeal any law made under any authority they have delegated. Each jurisdiction thus retains complete control in the fields assigned to it by the British North America Act.

(This clause, as noted, is the same as the one that was included in the 1960-61 formula, except for a few minor changes which in no way affect its substance and a requirement under paragraph 2(b) to consult all provinces before a declaration that fewer than four are concerned with a matter that might come under that provision.)

PART III

FRENCH VERSION

14. The French version of this Act set forth in the Schedule shall form part of this Act.

This clause, added by the 1964 Conference, provides for an official French version. The United Kingdom authorities have indicated that, from the point of view of their parliamentary procedures, there is no objection to the proposed schedule.

(This clause was not included in the 1960-61 formula.)

PART IV

CITATION AND COMMENCEMENT

15. This Act may be cited as the Constitution of Canada Amendment Act.

16. This Act shall come into force onday of

These are formal clauses as to citation and commencement.

(They are similar to those included in the 1960-61 formula.)

CHAPTER V

THE AMENDING FORMULA: AN APPRAISAL

The federal government is satisfied that the procedure for constitutional amendment elaborated in 1960-61 and completed in 1964 is suited to the framework of Canada's federal constitution and political structure. It represents the best balance that could be achieved by agreement between the federal and provincial governments.

This procedure has, however, been criticized by some Canadians. Some have called it excessively rigid; others object that it is too flexible. Some argue that the delegation clause was designed to facilitate decentralization; others are apprehensive that it will encourage centralization. These contradictory views reflect the basic differences that made a federal system necessary in Canada. They are probably unavoidable in any proposal for constitutional amendment in a federal state. An additional criticism has been that the amending procedure does not really provide for the "repatriation" of the Constitution of Canada, but only for its future amendment in Canada. All these criticisms merit serious examination.

STABILITY VERSUS FLEXIBILITY

Most constitutions, whether written or unwritten and whether for federal or for unitary states, contain a substantial degree of resistance to change. This is a natural characteristic of constitutions, since they are intended to provide a continuing framework on which the government of a nation will operate through the years.

In a federal state, there are particular considerations that add to the importance of this built-in certainty and stability. A federal system is one in which the powers of all legislatures and governments are limited not only by definition but by their relationship to each other. The very nature of the federation requires that the rights and powers of its constituent units be protected.

The problem in framing federal constitutions and the procedures for amending them always has been to strike the proper balance between the requirements of stability and of adaptability. Excessive flexibility and excessive inflexibility are equally destructive to the federal structure.

In his work on "The Government of Canada", Dr. MacGregor Dawson states:

"...while change and growth are inevitable phenomena in constitutional life, these follow an uncertain and largely unpredictable course. Certain fundamental principles, however, are apt to remain stationary or to yield to pressures very reluctantly, and constitutions can therefore afford as a rule to be rigid in essentials provided they are so framed that in other respects they are free to conform to the changing needs of the contemporary world." (p. 137)

The procedures for amending the constitutions of some of the principal federal systems in the world are set out in *Appendix 4*.

Broadly speaking, in the case of the United States, changes to the constitution have been brought about through amendments initiated by a two-thirds vote of both houses of Congress, with approval required thereafter by three-quarters of the state legislatures. This procedure clearly indicates that while change should be possible, it was never intended to be easy. The history of the United States since 1789 has demonstrated the rigidity of this formula. Apart from the first ten amendments in 1791—designed to complete the original document—there have been only 14 amendments in the last 173 years. This does not mean, of course, that the U.S. Constitution has not been changed in the other ways through which development can take place. A principal method has been by judicial interpretation, in which the constitution is applied by the courts to situations that could not have been foreseen at the time it was devised.

The procedure in Australia was intended to be more flexible than that in the United States. It calls for a simple majority of both houses, and does not depend on action by the state legislatures. Final approval of amendments is by a direct vote of the electors and requires a straight majority of the voters in a majority of the states. This system, too,

has proved to be rigid in operation. In "Democracy in the Dominions", Dr. A. Brady says:

"In truth the Australian is no less rigid than the other federal systems of the English-speaking world. Within the first forty-eight years of the Commonwealth, some twenty-three bills amending the constitution were passed by Parliament, of which only four were accepted by the electors as amendments. Significant proposals have repeatedly been rejected by the people, including those designed to enlarge the powers of the Commonwealth to deal more effectively with commerce and industry. The popular referendum has been a conservative institution..." (pp. 173-4)

That the Australian referendum has proved to be a more rigid amending procedure than had been expected perhaps reflects a general public appreciation of the importance of maintaining stability, and certainty in constitutional provisions.

In Canada, we find all the usual considerations that favour constitutional stability in any federal system. Special considerations, working in the same direction, arise from our need to maintain the provisions developed in recognition of our dual culture.

Accordingly, all attempts to work out an amending formula over the past 30 years have led to the same conclusion: that a clear distinction must be made between the manner of changing provisions which are fundamental in our Constitution and the manner of changing those that are not. It has been clear that a general formula based solely on the requirement to protect these fundamentals would be much too rigid. On the other hand one which ignored such a requirement, in order to provide for amending less basic provisions, would be too flexible to apply to fundamentals.

In the 1964 proposal, six of these "fundamental" provisions have been singled out for special protection. Two relate to the rights, privileges and property of provincial legislatures and governments, one to the powers of provincial legislatures and one to the "Senatorial floor" on the representation of provinces in the House of Commons. These four protected items comprise the heart of the provincial position in our federation. The other two items relate to the use of the English and French language, and to education. These are the essential reflection of the dualism in Canada's origin. For these six fundamentals, the special protection of unanimous consent by the provincial legislatures is afforded.

It may be argued that a requirement of unanimity is too inflexible to be applied to the distribution of legislative powers, but this distribution is basic to the Canadian federation. In fact, in the 97 years that have elapsed since Confederation, no amendment has altered the

powers of provincial legislatures under section 92 of the British North America Act without the consent of all the provinces.

This clearly reflects a basic and historic fact in Canadian constitutional affairs. The Constitution cannot be changed in a way that might deprive provinces of their legislative powers unless they consent. The law has not said so, but the facts of national life have imposed the unanimity requirement, and experience since Confederation has established it as a convention that a government or Parliament would disregard at its peril. This experience is reflected in the formula worked out in 1960-61 and now proposed.

It could nevertheless be argued that, in theory, something more flexible than a rule of unanimity with regard to changing fundamentals would be desirable. It has to be recognized, however, that a constitution does not operate in the realm of theory. It is a framework of fundamental law for people, institutions and governments. The degree of protection that the present formula provides for the fundamentals is the only provision on which general agreement has been achieved in negotiations extending over a period of thirty years. Whatever the theoretical merits of other approaches may be, and whatever the theoretical deficiencies of the unanimity provision as it applies to these fundamentals, prolonged discussions have demonstrated that no other arrangement is capable of general acceptance.

CENTRALIZATION VERSUS DECENTRALIZATION

The proposal for delegation of legislative authority first emerged in the Conferences of 1950. It had become clear that agreement was not likely on any formula not providing for unanimous provincial consent to changes affecting their legislative powers. Such a provision, however, could make it possible for a single legislature to stand in the way of a change in the distribution of legislative powers, even though such a change might be wanted by the country generally and by most or all of the other provinces. Such a possibility may be remote, but it could occur. It was primarily for this reason that the concept of delegation was proposed. Its purpose was to overcome rigidity by a practical arrangement through which provinces wanting to effect a change could do so without amending the Constitution as such.

This provision, now that it has been developed and refined, has been criticized both as "centralizing" and "decentralizing". It was contained, however, in the amending formula of 1960-61. It has

been included without change in substance in the 1964 proposal, and the federal government does not believe that it embodies any bias or tendency towards either centralization or decentralization of legislative powers or functions.

While delegation from provincial legislatures to Parliament is restricted to four classes of subjects within section 92, these are the only classes in respect of which it might be desirable in practice for Parliament to pass an enactment. They are comprehensive, and they represent the generality of powers that provincial legislatures exercise. On the other hand, the provision governing delegation from Parliament to the provincial legislatures does not specify particular classes of subjects within section 91. This is because it is more difficult—in the absence of precedents and of clearly identifiable needs in this field—to anticipate the situations in which such delegation might take place in practice, and to specify therefore the subjects on which delegation from Parliament might be both desirable and agreeable. In any event, delegation from Parliament to provincial legislatures could not take place without the specific consent of Parliament in each case.

It should be emphasized that the delegation section does not permit Parliament or the provinces to delegate or confer any constitutional responsibility for, or jurisdiction over, a given area; only the power to enact a specific statute pursuant to such jurisdiction can be delegated. Finally, Parliament or the provinces, as the case may be, have the right to revoke any assent they may have given for a law whereupon it ceases to have effect, either generally or in the province concerned. In effect, therefore, each jurisdiction retains continuing and complete control over the classes of subjects for which it has legislative authority under the Canadian Constitution.

In one sense, the use of the term “delegation” is not entirely accurate. There is no provision to delegate “powers” as such. What the provision does, and all it does, is enable Parliament or provincial legislatures, subject to certain conditions, to pass specific enactments if consent has been accorded for each such enactment. The resulting statute continues to be valid only so long as the jurisdiction to which the power rightfully belongs permits it to continue.

Those who see in the delegation section a bias towards centralization point to the provision that makes it possible for a provincial power to be “delegated” to Parliament by agreement of less than four provinces, whereas in no case can a power of Parliament be delegated to less than four provinces. This difference does not, however, reflect any

intent to make delegation to the central government easier than delegation from it. It arises very simply from the difference in the powers that could be involved.

The basic requirement in both types of delegation—that a minimum of four provinces participate—was adopted as insurance against fragmentation of legislation of general interest in Canada. In respect to the powers of Parliament—which are by definition of general interest and concern—any delegation to one or two provinces would concern all provinces to some degree. On the other hand, because provincial powers are in varying degree local by nature, there could be legislation in a provincial field that would not concern all provinces. It might concern only the province involved; it might concern only that province and one or two others. It is in recognition of this fact that provision is made for delegation from the provinces to operate in respect of the powers of less than four of them.

In summary, the delegation provision would permit some flexibility with respect to the exercise of powers that the amending formula protects, in keeping with Canadian constitutional practices and discussions reaching over many years. Delegation is neither centralist nor decentralist. It is a practical means of adapting the exercise of legislative authority to changing conditions while maintaining ultimate control where the Constitution has placed it.

Finally, concern has been expressed that the delegation provision could make it possible for any province that so desired to change its own position within Confederation—to acquire a status completely different from that of the other provinces. Close examination of the delegation provision will show that it presents no such possibility.

If a province wished to pass an Act not within the provincial field, it could not acquire the right to do so alone; nor could it do so of its own volition in association with other provinces. The formula does not permit the granting of even a specific legislative authority by Parliament to one province; the authority cannot be given to fewer than four provinces. Moreover, each grant of specific authority requires in advance the express consent of Parliament, and each is subject to revocation by Parliament. Finally, as has been pointed out, there cannot be a delegation of powers as such; all there can be is consent for the enactment of a specific piece of legislation.

The other way—in theory at least—by which a province might emerge into a special position would be by declining to permit Parliament to legislate in a provincial field at a time when other provinces were permitting that to be done. Thus, if nine provinces were prepared

to authorize the exercise of certain legislative authority by Parliament, it could be given the right to act in respect of those provinces, and the tenth province could in theory emerge in a special position by declining to do so. This would not be because of any action on its part, but because of action by the other provinces, in which it declined to join. What would emerge, even in this improbable situation, would not be a special constitutional position for a single province. It would be a different administrative situation. A change in the constitutional position could be brought about only by appropriate amendments of substance to the Constitution itself.

"REPATRIATION" OF THE CONSTITUTION

The process of bringing the Constitution of Canada entirely under Canadian control—so that it is no longer necessary to seek action by the British Parliament when amendment is wanted—has been referred to frequently as the "repatriation" of our Constitution. Strictly speaking, it is incorrect to use the word "repatriation" in this sense. It implies the return to Canada of something that was here originally, and the full responsibility for our Constitution has never been vested in Canada.

The term, however inaccurate, has been found convenient and has been widely used. This has resulted in some confusion as to the precise nature of the procedure being sought. There has been misunderstanding as to whether the intention was to establish an amending formula entirely within Canadian control or whether it was to have a new Constitution established by new enactment within this country.

While there has been confusion in language, there has been no doubt in the various conferences as to the essential intention: to establish a means by which the Constitution could be dealt with in every respect by Canadian legislative bodies. For once such control has been established entirely within Canada, it would then be possible to take whatever further action might be desirable—to leave the Constitution substantially as it stands; to modify it in particular respects; or to repeal it and substitute something completely new in its stead. Full and final authority to amend must come first, and the problem was to secure agreement on a method of amendment acceptable to the provinces and to the federal government. With such agreement enacted into law, any further action could be taken through use of the new amending formula.

The difference between authority for amendment in Canada and "repatriation" has been recognized by previous conferences.

Following the Conference of 1935, which established a Continuing Committee on Constitutional Questions, a sub-committee was set up to study the problems both of amendment and "repatriation". It recommended that priority be given to finding an amending procedure for the British North America Act along lines that it set forth in detail. In addition, it recommended that a new Constitution should be established for Canada.

It recognized, however, that if such a Constitution were established by Canadian re-enactment, there would have to be prior provisions to ensure that the protections for the provinces incorporated in the recommended amending procedure could not be removed in the process of re-enactment. The device recommended by the sub-committee was to suggest that the Statute of Westminster be revised so as to include in it the precise limitations under which the Parliament of Canada could enact the new Constitution. The sub-committee said that the Statute should require the new Constitution of Canada to perpetuate the provisions of the British North America Act, together with its amendments and other constitutional legislation; to include as its amending procedure precisely the one proposed by the sub-committee for the British North America Act itself; to carry forward without change the constitutional relationships between the Dominion and the provinces as they existed at that time; and finally that the Constitution should not operate as a new law, but rather as a Canadian declaration of the British North America Act, its amendments and other constitutional provisions. In other words, there would be a new Constitution in form, but not in substance. It would be enacted by the Parliament of Canada, but under conditions and limitations laid down in British statutes.

The Constitutional Conferences in 1950 ended without agreement on an amending procedure, but they directed a Continuing Committee of Attorneys-General to carry on the study of "the proposals which it received, with a view to arriving at an amending procedure satisfactory to all governments concerned". In addition, this Committee was authorized "to study the methods and techniques whereby a Canadian Constitution can be domiciled in Canada as a purely Canadian instrument". The Continuing Committee did not succeed in either. It did not arrive at agreement on an amending procedure; it did not work out a way by which "a Canadian Constitution" might be "domiciled" in Canada.

The difficulties experienced in 1935 and 1950 were reflected in a proposal put forward by the federal government when the Constitutional Conferences of 1960 opened. It suggested that, since it appeared to be so difficult to work out an amending procedure acceptable to all concerned, a possible course might be to "repatriate" the Constitution first, and work out a final amending procedure later.

It was apparent, however, that such action would be impossible if it meant placing full control over the Constitution in the hands of Parliament alone. Thus it was proposed to have the amending procedure transferred to Canada on the basis that until a more detailed and flexible formula could be worked out no change would be made by Parliament except with the unanimous consent of all provincial legislatures.

This proposal had one obvious disadvantage: if a final formula were not achieved, Canada would be left with a Constitution that could be amended only by unanimous consent, except in those areas that came under the exclusive control of Parliament or the provincial legislatures. The 1960 Conference accordingly decided that the right course would be to continue seeking agreement on a suitable amending formula.

The Conference of 1964 was able to start with a formula fully worked out in 1960-61, except with regard to inclusion in it of the amending powers provided in sections 91(1) and 92(1). With agreement on these, a comprehensive amending formula that was satisfactory to all the governments concerned was at last established.

To translate the proposed amending formula into law, a new and final amendment of the British North America Act by the British Parliament is required. Once that enactment has been passed, it will be possible for the Parliament of Canada, or the legislatures of the provinces, or the two acting together, to make any change that is at any time in the future wanted in our Constitution. The British Parliament will have divested itself of all power to legislate with regard to this country and control will, for the first time, be completely and entirely in Canada. In the sense that legislative control is the critical question, "repatriation" will have been achieved.

The Conference of 1964, like the Conferences in 1960-61, did not go beyond this. Neither Conference formally considered the question of whether it would be desirable, as an exercise of the amending procedure, to re-enact the British North America Acts in Canada or to enact a new Constitution in some different form. It was felt the essential requirement was to secure enactment of an amending pro-

cedure. Subsequent action could then be considered at the time and to the extent desired by the governments involved.

It would, however, be feasible, if it were thought desirable, to prepare a consolidation in one document of the constitutional acts that now apply to Canada. It would not be sufficient to include only the original British North America Act and the specific amendments to it, since there are other statutes of a constitutional nature such as the Manitoba Act, the Alberta Act, the Saskatchewan Act, the Terms of Union of Prince Edward Island, British Columbia and Newfoundland with Canada, the Rupert's Land Act and others.

To re-enact these would be technically complex but not too difficult. Whether it would be worth doing—whether it would have any practical significance—is another question.

Another possible course would be to leave the Constitution as it now stands—but with the amending procedure entirely in Canadian hands—and delay any further action until there is agreement on constitutional changes in the future.

Whatever further steps may be agreed upon—whether to consolidate our existing Constitution, to revise it or to replace it—they are exercises of Canadian capacity dependent only on the agreement of the Canadian community. Any of them will be possible entirely within Canada for, once the amending procedure has been enacted into law, full power to act will rest in Canada and nowhere else.

APPENDIX 1

A CONSOLIDATION OF THE BRITISH NORTH AMERICA ACTS, 1867 to 1964

FOREWORD

The law embodied in the *British North America Act, 1867* has been altered many times otherwise than by direct amendment, not only by the Parliament of the United Kingdom, but also by the Parliament of Canada and the legislatures of the provinces in those cases where provisions of the British North America Act are expressed to be subject to alteration by Parliament or the legislatures, as the case may be. A consolidation of the British North America Acts with only such subsequent enactments as directly alter the text of the Act would therefore not produce a true statement of the law.

In preparing this consolidation an attempt has been made to reflect accurately the substance of the law contained in the series of enactments known as the British North America Acts and other enactments modifying the provisions of the original *British North America Act, 1867*.

The various classes of enactments modifying the original text of the *British North America Act, 1867*, have been dealt with as follows.

I. DIRECT AMENDMENTS

1. *Repeals*

Repealed provisions (e.g. section 2) have been deleted from the text and quoted in a footnote.

2. *Amendments*

Amended provisions (e.g. section 4) are reproduced in the text in their amended form and the original provisions are quoted in a footnote.

3. *Additions*

Added provisions (e.g. section 51A) are included in the text.

4. *Substitutions*

Substituted provisions (e.g. section 18) are included in the text, and the former provision is quoted in a footnote.

II. INDIRECT AMENDMENTS

1. *Alterations by United Kingdom Parliament*

Provisions altered by the United Kingdom Parliament otherwise than by direct amendment (e.g. section 21) are included in the text in their altered form, and the original provision is quoted in a footnote.

2. *Additions by United Kingdom Parliament*

Constitutional provisions added otherwise than by the insertion of additional provisions in the British North America Act (e.g. provisions of the *British North America Act, 1871* authorizing Parliament to legislate for any territory not included in a province) are not incorporated in the text, but the additional provisions are quoted in an appropriate footnote.

3. *Alterations by Parliament of Canada*

Provisions subject to alteration by the Parliament of Canada (e.g. section 37) have been included in the text in their altered form, wherever possible, but where this was not feasible (e.g. section 40) the original section has been retained in the text and a footnote reference made to the Act of the Parliament of Canada effecting the alteration.

4. *Alterations by the Legislatures*

Provisions subject to alteration by legislatures of the provinces (e.g. sections 70, 72, 83, 84) have been included in the text in their original form, but the footnotes refer to the provincial enactments effecting the alteration. Amendments to provincial enactments are not referred to; these may be readily found by consulting the indexes to provincial statutes. The enactments of the original provinces only are referred to; there are corresponding enactments by the provinces created at a later date.

III. SPENT PROVISIONS

Footnote references are made to those sections that are spent or are probably spent. For example, section 119 became spent by lapse of time and the footnote reference so indicates; on the other hand, section 140 is probably spent, but short of examining all statutes passed before Confederation there would be no way of ascertaining definitely whether or not the section is spent; the footnote reference therefore indicates the section as being probably spent.

THE BRITISH NORTH AMERICA ACT, 1867

30 & 31 Victoria, c. 3.

(Consolidated with amendments)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.
(29th March, 1867.)

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America: (1)

I.—PRELIMINARY.

Short title.

1. This Act may be cited as The British North America Act, 1867.
2. Repealed. (2)

II.—UNION.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by

(1) The enacting clause was repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). It read as follows:

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

(2) Section 2, repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.), read as follows:

Application of Provisions referring to the Queen.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly. (3)

4. Unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act. (4) Construction of subsequent Provisions of Act.

5. Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick. (5) Four Provinces.

6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form Two separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec. Provinces of Ontario and Quebec.

7. The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act. Provinces of Nova Scotia and New Brunswick.

8. In the general Census of the Population of Canada which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished. Decennial Census.

III.—EXECUTIVE POWER.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen. Declaration of Executive Power in the Queen.

(3) The first day of July, 1867, was fixed by proclamation dated May 22, 1867.

(4) Partially repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). As originally enacted the section read as follows:

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act.

(5) Canada now consists of ten provinces (Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan and Newfoundland) and two territories (the Yukon Territory and the Northwest Territories).

Application of
Provisions
referring to
Governor
General.

10. The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated.

Constitution of
Privy Council
for Canada.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.

All Powers
under Acts to
be exercised
by Governor
General with
Advice of
Privy Council,
or alone.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exerciseable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Member thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada. (6)

Application of
Provisions
referring to
Governor
General
in Council.

13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.

Power to Her
Majesty to
authorize
Governor
General
to appoint
Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise

during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority or Function.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Command of
armed Forces
to continue to
be vested in
the Queen.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

Seat of
Government
of Canada.

IV.—LEGISLATIVE POWER.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Constitution
of Parliament
of Canada.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof. (7)

Privileges, etc.,
of Houses.

19. The Parliament of Canada shall be called together not later than Six Months after the Union. (8)

First Session
of the
Parliament
of Canada.

(6) See the notes to section 129, *infra*.

(7) Repealed and re-enacted by the *Parliament of Canada Act*, 1875, 38-39 Vict., c. 38 (U.K.). The original section read as follows:

18. The Privileges Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

(8) Spent. The first session of the first Parliament began on November 6, 1867.

Yearly
Session of the
Parliament
of Canada.

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session. (9)

The Senate.

Number of
Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of One Hundred and Two Members who shall be styled Senators. (10)

Representation
of Provinces
in Senate.

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of Four Divisions:—

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick, and Prince Edward Island;
4. The Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta;

which Four Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta; Newfoundland shall be entitled to be represented in the Senate by six members.

(9) The term of the twelfth Parliament was extended by the *British North America Act, 1916*, 6-7 Geo. V. c. 19 (U.K.), which Act was repealed by the Statute Law Revision Act, 1927, 17-18 Geo. V. c. 42 (U.K.).

(10) As amended by the *British North America Act, 1916*, 5-6 Geo. V. c. 45 (U.K.), and modified by the *British North America Act, 1949*, 12-13 Geo. VI. c. 22 (U.K.).

The original section read as follows:

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

The *Manitoba Act* added two for Manitoba; the Order in Council admitting British Columbia added three; upon admission of Prince Edward Island four more were provided by section 147 of the *British North America Act, 1867*; The *Alberta Act* and The *Saskatchewan Act* each added four. The Senate was reconstituted at 96 by the *British North America Act, 1916*, and six more Senators were added upon union with Newfoundland.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated statutes of Canada. (11)

23. The Qualification of a Senator shall be as follows:

Qualifications
of Senator.

- (1) He shall be of the full age of Thirty Years:
- (2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada, after the Union:
- (3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same.
- (4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:
- (5) He shall be resident in the Province for which he is appointed:
- (6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

(11) As amended by the *British North America Act, 1915*, and the *British North America Act, 1949*, 12-13 Geo. VI, c. 22 (U.K.). The original section read as follows:

Representation
of Provinces
in Senate.

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions:

1. Ontario;
2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.

Summons of
Senator.

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

25. Repealed. (12)

Addition of
Senators in
certain cases.

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Four or Eight Members be added to the Senate, the Governor General may by Summons to Four or Eight qualified Persons (as the Case may be), representing equally the Four Divisions of Canada, add to the Senate accordingly. (13)

Reduction of
Senate to
normal
Number.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except upon a further like Direction by the Queen on the like Recommendation, to represent one of the Four Divisions until such Division is represented by Twenty-four Senators and no more. (14)

Maximum
Number of
Senators.

28. The Number of Senators shall not at any Time exceed One Hundred and ten. (15)

Tenure of Place
in Senate.

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

(12) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.).
The section read as follows:

Summons of
First Body
of Senators.

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

(13) As amended by the *British North America Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

Addition of
Senators in
certain cases.

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

(14) As amended by the *British North America Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

Reduction of
Senate to
normal
Number.

27. In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more.

(15) As amended by the *British North America Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

Maximum
Number of
Senators.

28. The Number of Senators shall not at any Time exceed Seventy-eight.

30. A Senator may be Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant. Resignation of Place in Senate.

31. The Place of a Senator shall become vacant in any of the following Cases: Disqualification of Senators.

- (1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:
- (2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:
- (3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:
- (4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:
- (5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy. Summons on Vacancy in Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate. Questions as to Qualifications and Vacancies in Senate.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. (16) Appointment of Speaker of Senate.

(16) Provision for exercising the functions of Speaker during his absence is made by the *Speaker of the Senate Act*, R.S.C. 1952, c. 255. Doubts as to the power of Parliament to enact such an Act were removed by the *Canadian Speaker (Appointment of Deputy) Act*, 1895, 59 Vict., c. 3, (U.K.).

Quorum of
Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

Voting in
Senate.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal to Decision shall be deemed to be in the Negative.

The House of Commons.

Constitution
of House of
Commons
in Canada.

37. The House of Commons shall, subject to the Provisions of this Act, consist of Two Hundred and sixty-five Members of whom Eighty-five shall be elected for Ontario, Seventy-five for Quebec, Twelve for Nova Scotia, Ten for New Brunswick, Fourteen for Manitoba, Twenty-two for British Columbia, Four for Prince Edward Island, Seventeen for Alberta, Seventeen for Saskatchewan, Seven for Newfoundland, One for the Yukon Territory and One for the Northwest Territories. (17)

Summoning of
House of
Commons.

38. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

Senators not
to sit in House
of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

Electoral
districts of
the Four
Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:

1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member.

(17) As altered by the *Representation Act, R.S.C. 1952, c. 334*, as amended by S.C. 1962, c. 17. The original section read as follows:

37. The House of Commons shall, subject to the Provisions of this Act, consist of the One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.

2.—QUEBEC.

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third Year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.

3.—NOVA SCOTIA

Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.

4.—NEW BRUNSWICK

Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member. (18)

41. Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Continuance of
existing
Election Laws
until Parliament
of Canada
otherwise
provides.

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of

(18) Spent. The electoral districts are now set out in the *Representation Act*, R.S.C. 1952, c. 334, as amended.

the Province of Canada to vote, every Male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote. (19)

42. Repealed. (20)

43. Repealed. (21)

As to Election
of Speaker of
House of
Commons.

44. The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed to elect One of its Members to be Speaker.

As to filling
up Vacancy
in Office of
Speaker.

45. In case of a Vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall with all practicable Speed proceed to elect another of its Members to be Speaker.

Speaker to
preside.

46. The Speaker shall preside at all Meetings of the House of Commons.

Provision in
case of Absence
of Speaker.

47. Until the Parliament of Canada otherwise provides, in case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a Period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and

(19) Spent. Elections are now provided for by the *Canada Elections Act*, S.C. 1960, c. 38; controverted elections by the *Dominion Controverted Elections Act*, R.S.C. 1952, c. 87; qualifications and disqualifications of members by the *House of Commons Act*, R.S.C. 1952, c. 143 and the *Senate and House of Commons Act*, R.S.C. 1952, c. 249.

(20) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

Writs for First
Election.

42. For the First Election of Members to serve in the House of Commons the Governor General shall cause Writs to be issued by such Person, in such Form, and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

(21) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

As to Casual
Vacancies.

43. In case a Vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

the Member so elected shall during the Continuance of such Absence of the Speaker have and execute all the Powers, Privileges, and Duties of Speaker. (22)

48. The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers, and for that Purpose the Speaker shall be reckoned as a Member. Quorum of House of Commons.

49. Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote. Voting in House of Commons.

50. Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer. Duration of House of Commons.

51. (1) Subject as hereinafter provided, the number of members of the House of Commons shall be two hundred and sixty-three and the representation of the provinces therein shall forthwith upon the coming into force of this section and thereafter on the completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules: Readjustment of representation in Commons.

1. There shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by two hundred and sixty-one and by dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division. Rules.

2. If the total number of members assigned to all the provinces pursuant to rule one is less than two hundred and sixty-one, additional members shall be assigned to the provinces (one to a province) having remainders in the computation under rule one commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is two hundred and sixty-one.

3. Notwithstanding anything in this section, if upon completion of a computation under rules one and two, the number of members to be assigned to a province is less than the number of senators

(22) Provision for exercising the functions of Speaker during his absence is now made by the *Speaker of the House of Commons Act*, R.S.C. 1952, c. 254.

representing the said province, rules one and two shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.

4. In the event that rules one and two cease to apply in respect of a province then, for the purposes of computing the number of members to be assigned to the provinces in respect of which rules one and two continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which rules one and two have ceased to apply and the number two hundred and sixty-one shall be reduced by the number of members assigned to such province pursuant to rule three.

5. On any such readjustment the number of members for any province shall not be reduced by more than fifteen per cent below the representation to which such province was entitled under rules one to four of this subsection at the last preceding readjustment of the representation of that province, and there shall be no reduction in the representation of any province as a result of which that province would have a smaller number of members than any other province that according to the results of the then last decennial census did not have a larger population; but for the purposes of any subsequent readjustment of representation under this section any increase in the number of members of the House of Commons resulting from the application of this rule shall not be included in the divisor mentioned in rules one to four of this subsection.

6. Such readjustment shall not take effect until the termination of the then existing Parliament.

Yukon
Territory
and other part
not comprised
within a
province.

(2) The Yukon Territory as constituted by chapter forty-one of the statutes of Canada, 1901, shall be entitled to one member, and such other part of Canada not comprised within a province as may from time to time be defined by the Parliament of Canada shall be entitled to one member. (23)

(23) As enacted by the *British North America Act, 1952*, R.S.C. 1952, c. 304, which came into force on June 18, 1952. The section, as originally enacted, read as follows:

Decennial
Re-adjustment
of Representa-
tion.

51. On the Completion of the Census in the Year One Thousand eight hundred and seventy-one, and of each subsequent decennial Census, the Representation of the Four Provinces shall be readjusted by such Authority, in such Manner, and from such Time, as the Parliament of Canada from Time to Time provides, subject and according to the following Rules:

- (1) Quebec shall have the fixed Number of Sixty-five Members:
- (2) There shall be assigned to each of the other Provinces such a Number of Members as will bear the same Proportion to the

Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of Quebec (so ascertained):

- (3) In the Computation of the Number of Members for a Province a fractional Part not exceeding One Half of the whole Number requisite for entitling the Province to a Member shall be disregarded; but a fractional Part exceeding One Half of that Number shall be equivalent to the whole Number:
- (4) On any such Re-adjustment the Number of Members for a Province shall not be reduced unless the Proportion which the Number of the Population of the Province bore to the Number of the aggregate Population of Canada at the then last preceding Re-adjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards:
- (5) Such Re-adjustment shall not take effect until the Termination of the then existing Parliament.

The section was amended by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.) by repealing the words from "of the census" to "seventy-one and" and the word "subsequent".

By the *British North America Act, 1943*, 6-7 Geo. VI, c. 30 (U.K.) redistribution of seats following the 1941 census was postponed until the first session of Parliament after the war. The section was re-enacted by the *British North America Act, 1946*, 9-10 Geo. VI, c. 63 (U.K.) to read as follows:

51. (1) The number of members of the House of Commons shall be two hundred and fifty-five and the representation of the provinces therein shall forthwith upon the coming into force of this section and thereafter on the completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:—

- (1) Subject as hereinafter provided, there shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by two hundred and fifty-four and by dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division.
- (2) If the total number of members assigned to all the provinces pursuant to rule one is less than two hundred and fifty-four, additional members shall be assigned to the provinces (one to a province) having remainders in the computation under rule one commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is two hundred and fifty-four.
- (3) Notwithstanding anything in this section, if upon completion of a computation under rules one and two, the number of members to be assigned to a province is less than the number of senators representing the said province, rules one and two shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.
- (4) In the event that rules one and two cease to apply in respect of a province then, for the purpose of computing the number of members to be assigned to the provinces in respect of which rules one and two continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which rules one and two have ceased to apply and the number two hundred and fifty-four shall be reduced by the number of members assigned to such province pursuant to rule three.
- (5) Such readjustment shall not take effect until the termination of the then existing Parliament.

(2) The Yukon Territory as constituted by Chapter forty-one of the Statutes of Canada, 1901, together with any Part of Canada not comprised within a province which may from time to time be included therein by the Parliament of Canada for the purposes of representation in Parliament, shall be entitled to one member.

Constitution
of House of
Commons.

51A. Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province. (24)

Increase of
Number of
House of
Commons.

52. The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

Money Votes; Royal Assent.

Appropriation
and Tax Bills.

53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation
of Money
Votes.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal Assent
to Bills, etc.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Disallowance
by Order in
Council of Act
assented to
by Governor
General.

56. Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification
of Queen's
Pleasure on
Bill reserved.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until, within Two Years from the Day on which it was presented to the Governor General for the Queen's

(24) As enacted by the *British North America Act, 1915*, 5-6 Geo. V, c. 45 (U.K.).

Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

V.—PROVINCIAL CONSTITUTIONS.

Executive Power.

58. For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada.

Appointment of
Lieutenant
Governors of
Provinces.

59. A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removeable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

Tenure of
Office of
Lieutenant
Governor.

60. The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada. (25)

Salaries of
Lieutenant
Governors.

61. Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him Oaths of Allegiance and Office similar to those taken by the Governor General.

Oaths, etc.,
of Lieutenant
Governor.

62. The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

Application of
provisions
referring to
Lieutenant
Governor.

(25) Provided for by the *Salaries Act*, R.S.C. 1952, c. 243 as amended by S.C. 1963, c. 41.

Appointment of
Executive
Officers for
Ontario and
Quebec.

63. The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor General. (26)

Executive
Government of
Nova Scotia
and New
Brunswick.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. (26A)

Powers to be
exercised by
Lieutenant
Governor of
Ontario or
Quebec with
Advice, or
alone.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec. (27)

(26) Now provided for in Ontario by the *Executive Council Act*, R.S.O. 1960, c. 127, and in Quebec by the *Executive Power Act*, R.S.Q. 1941, c. 7.

(26A) A similar provision was included in each of the instruments admitting British Columbia, Prince Edward Island, and Newfoundland. The Executive Authorities for Manitoba, Alberta and Saskatchewan were established by the statutes creating those provinces. See the footnotes to section 5, *supra*.

(27) See the notes to section 129, *infra*.

66. The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof.

Application of Provisions referring to Lieutenant Governor in Council.

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

Administration in Absence, etc. of Lieutenant Governor.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Seats of Provincial Governments.

Legislative Power.

1.—ONTARIO.

69. There shall be a Legislature for Ontario consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario.

Legislature for Ontario.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act. (28)

Electoral districts.

2.—QUEBEC.

71. There shall be a Legislature for Quebec consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Legislature for Quebec.

72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec; One being appointed to represent each of the Twenty-four Electoral

Constitution of Legislative Council.

(28) Spent. Now covered by the *Representation Act*, R.S.O. 1960, c. 353, as amended by S.O. 1962-63, c. 125, which provides that the Assembly shall consist of 108 members, representing the electoral districts set forth in the Schedule to that Act.

Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act. (29)

Qualification
of Legislative
Councillors.

73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec. (30)

Resignation,
Disqualifica-
tion, etc.

74. The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

Vacancies.

75. When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

Questions as
to Vacancies,
etc.

76. If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a Vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of
Legislative
Council.

77. The Lieutenant Governor may from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his Stead. (31)

Quorum of
Legislative
Council.

78. Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Voting in
Legislative
Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

(29) Spent. Now covered by the *Legislature Act*, R.S.Q. 1941, c. 4 as amended by S.Q. 1963, c. 12; the membership remains at twenty-four, representing the divisions set forth in the *Territorial Division Act*, R.S.Q. 1941, c. 3, as amended.

(30) Altered by the *Legislature Act*, R.S.Q. 1941, c. 4, s. 7, which provided that it shall be sufficient for any member to be domiciled, and to possess his property qualifications, within the Province of Quebec.

(31) Spent. Now covered by the *Legislature Act*, R.S.Q. 1941, c. 4, s. 9.

80. The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed. (32)

Constitution
of Legislative
Assembly of
Quebec.

3.—ONTARIO AND QUEBEC.

81. Repealed. (33)

82. The Lieutenant Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Summoning of
Legislative
Assemblies.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment, permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Com-

Restriction on
election of
Holders of
offices.

(32) Altered by the *Legislature Act*, R.S.Q. 1941, c. 4 as amended by S.Q. 1959-60, c. 28, s. 10, and the *Territorial Division Act*, R.S.Q. 1941, c. 3 as amended by S.Q. 1959-60, c. 28; there are now 95 members representing the districts set out in the *Territorial Division Act*.

(33) Repealed by the *Statute Law Revision Act*, 1893, 56-57 Vict., c. 14 (U.K.). The section read as follows:

First Session **81.** The Legislatures of Ontario and Quebec respectively shall be called of Legislatures. together not later than Six Months after the Union.

missioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office. (34)

Continuance of
existing
Election Laws.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that, until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a vote. (35)

Duration of
Legislative
Assemblies.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer. (36)

(34) Probably spent. The subject-matter of this section is now covered in Ontario by the *Legislative Assembly Act*, R.S.O. 1960, c. 208, and in Quebec by the *Legislature Act*, R.S.Q., 1941, c. 4.

(35) Probably spent. The subject-matter of this section is now covered in Ontario by the *Election Act*, R.S.O. 1960, c. 118, the *Controverted Elections Act*, R.S.O. 1960, c. 65 and the *Legislative Assembly Act*, R.S.O. 1960, c. 208, and in Quebec by the *Quebec Election Act*, 1945, c. 15, the *Quebec Controverted Elections Act*, R.S.Q. 1941, c. 6, and the *Legislature Act*, R.S.Q. 1941, c. 4.

(36) The maximum duration of the Legislative Assembly for Ontario and Quebec has been changed to five years by the *Legislative Assembly Act*, R.S.O. 1960, c. 208, and the *Legislature Act*, R.S.Q. 1941, c. 4, respectively.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session. Yearly Session of Legislature.

87. The following Provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly. Speaker, Quorum, etc.

4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. (37) Constitutions of Legislatures of Nova Scotia and New Brunswick.

89. Repealed. (38)

6.—THE FOUR PROVINCES.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Application to Legislatures of Provisions respecting Money Votes, etc.

(37) Partially repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.) which deleted the following concluding words of the original enactment:

and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected.

A similar provision was included in each of the instruments admitting British Columbia, Prince Edward Island, and Newfoundland. The Legislatures of Manitoba, Alberta and Saskatchewan were established by the statutes creating those provinces. See the footnotes to section 5, *supra*.

(38) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

5.—ONTARIO, QUEBEC, AND NOVA SCOTIA.

First Elections.

89. Each of the Lieutenant Governors of Ontario, Quebec and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

Legislative
Authority of
Parliament of
Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House. (39)

1A. The Public Debt and Property. (40)

(39) Added by the *British North America (No. 2) Act, 1949*, 13 Geo. VI, c. 81 (U.K.).

(40) Re-numbered by the *British North America (No. 2) Act, 1949*.

2. The Regulation of Trade and Commerce.
- 2A. Unemployment insurance. (41)
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal matters.

(41) Added by the *British North America Act, 1940*, 3-4 Geo. VI, c. 36 (U.K.).

28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. (42)

(42) Legislative authority has been conferred on Parliament by other Acts as follows:

1. The *British North America Act, 1871*, 34-35 Vict., c. 28 (U.K.).

Parliament of Canada may establish new Provinces and provide for the constitution etc., thereof.

Alteration of limits of Provinces.

Parliament of Canada may legislate for any territory not included in a Province.

Confirmation of Acts of Parliament of Canada, 32 & 33 Vict. (Canadian) cap. 3.
33 Vict., (Canadian) cap. 3.

Limitation of powers of Parliament of Canada to legislate for an established Province.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

5. The following Acts passed by the said Parliament of Canada, and intitled respectively,—“An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada”; and “An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of “the Province of Manitoba,” shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.”

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

The *Rupert's Land Act, 1868*, 31-32 Vict., c. 105 (U.K.) (repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.)) had previously conferred similar authority in relation to Rupert's Land and the North-Western Territory upon admission of those areas.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

Subjects of
exclusive
Provincial
Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;

2. The *British North America Act, 1886*, 49-50 Vict., c. 35 (U.K.).

Provision by Parliament of Canada for representation of territories.	1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.
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3. The *Statute of Westminster, 1931*, 22 Geo. V. c. 4, (U.K.).

Power of Parliament of a Dominion to legislate extra- territorially.	3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.
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- (b) Lines of Steam Ships between the Province and any British or Foreign Country;
- (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
- 11. The Incorporation of Companies with Provincial Objects.
- 12. The Solemnization of Marriage in the Province.
- 13. Property and Civil Rights in the Province.
- 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
- 16. Generally all Matters of a merely local or private Nature in the Province.

Education.

Legislation
respecting
Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
- (3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

- (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section. (43)

(43) Altered for Manitoba by section 22 of the *Manitoba Act*, 33 Vict., c. 3 (Canada), (confirmed by the *British North America Act*, 1871), which reads as follows:

Legislation touching schools subject to certain provisions.

22. In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:—

(1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege, of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:

Power reserved to Parliament.

(3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

Altered for Alberta by section 17 of *The Alberta Act*, 4-5 Edw. VII, c. 3 which reads as follows:

Education.

17. Section 93 of The British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:—

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.

*Uniformity of Laws in Ontario, Nova Scotia and
New Brunswick.*

Legislation for
Uniformity of
Laws in Three
Provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in Those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the

Altered for Saskatchewan by section 17 of *The Saskatchewan Act*, 4-5 Edw. VII, c. 42, which reads as follows:

Education

17. Section 93 of the British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:—

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

Altered by Term 17 of the Terms of Union of Newfoundland with Canada (confirmed by the *British North America Act*, 1949, 12-13 Geo. VI, c. 22 (U.K.)), which reads as follows:

17. In lieu of section ninety-three of the British North America Act, 1867, the following term shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,

(a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and

(b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Old Age Pensions.

94A. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter. (44)

Legislation respecting old age pensions and supplementary benefits.

Agriculture and Immigration.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Concurrent Powers of Legislation respecting Agriculture, etc.

VIII.—JUDICATURE.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Appointment of Judges.

97. Until the laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Ontario, etc.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Selection of Judges in Quebec.

(44) Added by the *British North America Act, 1964*, 12-13, Eliz. II, c. 73 (U.K.). Originally enacted by the *British North America Act, 1951*, 14-15, Geo. VI, c. 32 (U.K.), as follows:

"94A. It is hereby declared that the Parliament of Canada may from time to time make laws in relation to old age pensions in Canada, but no law made by the Parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a Provincial Legislature in relation to old age pensions."

Tenure of
office of
Judges.

99. (1) Subject to subsection two of this section, the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Termination
at age 75.

(2) A Judge of a Superior Court, whether appointed before or after the coming into force of this section, shall cease to hold office upon attaining the age of seventy-five years, or upon the coming into force of this section if at that time he has already attained that age. (44A)

Salaries etc.,
of Judges.

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada. (45)

General Court
of Appeal, etc.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. (46)

VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

Creation of
Consolidated
Revenue Fund.

102. All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have Power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided.

(44A) Repealed and re-enacted by the *British North America Act, 1960*, 9 Eliz. II, c. 2 (U.K.), which came into force on the 1st day of March, 1961. The original section read as follows:

<p>Tenure of office of Judges of Superior Courts.</p>	<p>99. The Judges of the Superior Courts shall hold Office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.</p>
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(45) Now provided for in the *Judges Act*, R.S.C. 1952, c. 159, as amended by S.C. 1963, c. 8.

(46) See the *Supreme Court Act*, R.S.C. 1952, c. 259, and the *Exchequer Court Act*, R.S.C. 1952, c. 98.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Expenses of
Collection, etc.

104. The annual Interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada.

Interest of
Provincial
Public Debts.

105. Unless altered by the Parliament of Canada, the Salary of the Governor General shall be Ten thousand Pounds Sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon. (47)

Salary of
Governor
General.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the Public Service.

Appropriation
from Time to
Time.

107. All Stocks, Cash, Banker's Balances, and Securities for Money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be the Property of Canada, and shall be taken in Reduction of the Amount of the respective Debts of the Provinces at the Union.

Transfer of
Stocks, etc.

108. The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada.

Transfer of
Property in
Schedule.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same. (48)

Property in
Lands, Mines,
etc.

(47) Now covered by the *Governor General's Act*, R.S.C. 1952, c. 139.

(48) The four western provinces were placed in the same position as the original provinces by the *British North America Act, 1930*, 21 Geo. V, c. 26 (U.K.).

Assets
connected with
Provincial
Debts.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be
liable for
Provincial
Debts.

111. Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of
Ontario and
Quebec.

112. Ontario and Quebec conjointly shall be liable to Canada for the Amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

Assets of
Ontario and
Quebec.

113. The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the Property of Ontario and Quebec conjointly.

Debt of
Nova Scotia.

114. Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon. (49)

Debt of New
Brunswick.

115. New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

Payment of
interest to
Nova Scotia
and New
Brunswick.

116. In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively, they shall respectively receive by half-yearly Payments in advance from the Government of Canada Interest at Five per Centum per Annum on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts.

Provincial
Public
Property.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

(49) The obligations imposed by this section, sections 115 and 116, and similar obligations under the instruments creating or admitting other provinces, have been carried into legislation of the Parliament of Canada and are now to be found in the *Provincial Subsidies Act*, R.C.S. 1952, c. 221.

118. Repealed. (50)

(50) Repealed by the *Statute Law Revision Act, 1950*, 14 Geo. VI, c. 6 (U.K.).
As originally enacted, the section read as follows:

Grants to Provinces.	118. The following Sums shall be paid yearly by Canada to the several Provinces for the Support of their Governments and Legislatures:
	Dollars
Ontario	Eighty thousand.
Quebec	Seventy thousand.
Nova Scotia	Sixty thousand.
New Brunswick	Fifty thousand.

Two hundred and sixty thousand;

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents per Head of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act.

The section was made obsolete by the *British North America Act, 1907*, 7 Edw. VII, c. 11 (U.K.) which provided:

Payments to be made by Canada to provinces. 1. (1) The following grants shall be made yearly by Canada to every province, which at the commencement of this Act is a province of the Dominion, for its local purposes and the support of its Government and Legislature:—

(a) A fixed grant—

where the population of the province is under one hundred and fifty thousand, of one hundred thousand dollars;
where the population of the province is one hundred and fifty thousand, but does not exceed two hundred thousand, of one hundred and fifty thousand dollars;
where the population of the province is two hundred thousand, but does not exceed four hundred thousand, of one hundred and eighty thousand dollars;
where the population of the province is four hundred thousand, but does not exceed eight hundred thousand, of one hundred and ninety thousand dollars;
where the population of the province is eight hundred thousand, but does not exceed one million five hundred thousand, of two hundred and twenty thousand dollars;
where the population of the province exceeds one million five hundred thousand, of two hundred and forty thousand dollars;
and

(b) Subject to the special provisions of this Act as to the provinces of British Columbia and Prince Edward Island, a grant at the rate of eighty cents per head of the population of the province up to the number of two million five hundred thousand, and at the rate of sixty cents per head of so much of the population as exceeds that number.

(2) An additional grant of one hundred thousand dollars shall be made yearly to the province of British Columbia for a period of ten years from the commencement of this Act.

(3) The population of a province shall be ascertained from time to time in the case of the provinces of Manitoba, Saskatchewan, and Alberta respectively by the last quinquennial census or statutory estimate of population made under the Acts establishing those provinces or any other

Further Grant
to New
Brunswick.

119. New Brunswick shall receive by half-yearly Payments in advance from Canada for the Period of Ten Years from the Union an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million Dollars, a Deduction equal to the Interest at Five per Centum per Annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars. (51)

Form of
Payments.

120. All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

Canadian
Manufactures,
etc.

121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Act of the Parliament of Canada making provision for the purpose, and in the case of any other province by the last decennial census for the time being.

(4) The grants payable under this Act shall be paid half-yearly in advance to each province.

(5) The grants payable under this Act shall be substituted for the grants or subsidies (in this Act referred to as existing grants) payable for the like purposes at the commencement of this Act to the several provinces of the Dominion under the provisions of section one hundred and eighteen of the British North America Act 1867, or of any Order in Council establishing a province, or of any Act of the Parliament of Canada containing directions for the payment of any such grant or subsidy, and those provisions shall cease to have effect.

30-31 Vict., c. 3

(6) The Government of Canada shall have the same power of deducting sums charged against a province on account of the interest on public debt in the case of the grant payable under this Act to the province as they have in the case of the existing grant.

(7) Nothing in this Act shall affect the obligation of the Government of Canada to pay to any province any grant which is payable to that province, other than the existing grant for which the grant under this Act is substituted.

(8) In the case of the provinces of British Columbia and Prince Edward Island, the amount paid on account of the grant payable per head of the population to the provinces under this Act shall not at any time be less than the amount of the corresponding grant payable at the commencement of this Act, and if it is found on any decennial census that the population of the province has decreased since the last decennial census, the amount paid on account of the grant shall not be decreased below the amount then payable, notwithstanding the decrease of the population.

See the *Provincial Subsidies Act*, R.S.C. 1952, c. 221, *The Maritime Provinces Additional Subsidies Act*, 1942-43, c. 14, and the Terms of Union of Newfoundland with Canada, appended to the *British North America Act*, 1949, and also to *An Act to approve the Terms of Union of Newfoundland with Canada*, chapter 1 of the statutes of Canada, 1949.

(51) Spent.

122. The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada. (52)

Continuance of Customs and Excise Laws.

123. Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandises in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation. (53)

Exportation and Importation as between Two Provinces.

124. Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues. (54)

Lumber Dues in New Brunswick.

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Exemption of Public Lands, etc.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

Provincial Consolidated Revenue Fund.

IX.—MISCELLANEOUS PROVISIONS.

General.

127. Repealed. (55)

(52) Spent. Now covered by the *Customs Act*, R.S.C. 1952, c. 58, the *Customs Tariff*, R.S.C. 1952, c. 60, the *Excise Act*, R.S.C. 1952, c. 99 and the *Excise Tax Act*, R.S.C. 1952, c. 100.

(53) Spent.

(54) These dues were repealed in 1873 by 36 Vict., c. 16 (N.B.). And see *An Act respecting the Export Duties imposed on Lumber, etc.*, (1873) 36 Vict., c. 41 (Canada), and section 2 of the *Provincial Subsidies Act*, R.S.C. 1952, c. 221.

Oath of
Allegiance, etc.

128. Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continuance of
existing Laws,
Courts,
Officers, etc.

129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act. (56)

Transfer of
Officers to
Canada.

130. Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this

(55) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.).
The section read as follows:

As to Legisla-
tive Councillors
of Provinces
becoming
senators.

127. If any Person being at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick to whom a Place in the Senate is offered, does not within Thirty Days thereafter, by Writing under his Hand addressed to the Governor General of the Province of Canada or to the Lieutenant Governor of Nova Scotia or New Brunswick (as the Case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate, shall thereby vacate his Seat in such Legislative Council.

(56) The restriction against altering or repealing laws enacted by or existing under statutes of the United Kingdom was removed by the *Statute of Westminster, 1931*, 22 Geo. V, c. 4 (UK.).

Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties as if the Union had not been made. (57)

131. Until the Parliament of Canada otherwise provides, the Governor General in Council may from Time to Time appoint such Officers as the Governor General in Council deems necessary or proper for the effectual Execution of this Act. Appointment of new Officers.

132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries. Treaty Obligations.

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec. Use of English and French Languages

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

Ontario and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of Quebec the Solicitor General, and may, by Order of the Lieutenant Governor in Council, from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Appointment of Executive Officers for Ontario and Quebec.

Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof. (58)

Powers, Duties,
etc, of
Executive
Officers.

135. Until the Legislature of Ontario or Quebec otherwise provides, all Right, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute, or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works. (59)

Great Seals.

136. Until altered by the Lieutenant Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construction of
temporary Acts.

137. The words "and from thence to the End of the then next ensuing Session of the Legislature," or Words to the same Effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada if the Subject Matter of the Act is within the Powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively if the Subject Matter of the Act is within the Powers of the same as defined by this Act.

As to Errors
in Names.

138. From and after the Union the Use of the Words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter, or Thing, shall not invalidate the same.

(58) Spent. Now covered in Ontario by the *Executive Council Act*, R.S.O. 1960, c. 127 and in Quebec by the *Executive Power Act*, R.S.Q. 1941, c. 7.

(59) Probably spent.

139. Any Proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a Time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several Matters and Things therein proclaimed, shall be and continue of like Force and Effect as if the Union had not been made. (60)

As to issue of Proclamations before Union, to commence after Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant Governor of Ontario or of Quebec, as its Subject Matter requires, under the Great Seal thereof; and from and after the Issue of such Proclamation the same and the several Matters and Things therein proclaimed shall be and continue of the like Force and Effect in Ontario or Quebec as if the Union had not been made. (61)

As to issue of Proclamations after Union.

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec. (62)

Penitentiary.

142. The Division and Adjustment of the Debts, Credits, Liabilities, Properties, and Assets of Upper Canada and Lower Canada shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a Resident either in Ontario or in Quebec. (63)

Arbitration respecting Debts, etc.

143. The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thence-

Division of Records.

(60) Probably spent.

(61) Probably spent.

(62) Spent. Penitentiaries are now provided for by the *Penitentiary Act*, S.C. 1960-61, c. 53.

(63) Spent. See pages (xi) and (xii) of the Public Accounts, 1902-03.

forth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence. (64)

Constitution of
Townships in
Quebec.

144. The Lieutenant Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a Day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

145. Repealed. (65)

XI.—ADMISSION OF OTHER COLONIES

Power to admit
Newfoundland,
etc., into
the Union.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland. (66)

(64) Probably spent. Two orders were made under this section on the 24th of January, 1868.

(65) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

X.—INTERCOLONIAL RAILWAY.

Duty of
Government
and Parliament
of Canada to
make Railway
herein
described.

145. Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that Provision should be made for its immediate Construction by the Government of Canada; Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement, within Six Months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed.

(66) All territories mentioned in this section are now part of Canada. See the notes to section 5, *supra*.

147. In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation in the Senate of Canada of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the Third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen. (67)

As to Representation of Newfoundland and Prince Edward Island in Senate.

(67) Spent. See the notes to sections 21, 22, 26, 27 and 28, *supra*.

SCHEDULES

THE FIRST SCHEDULE. (68)

Electoral Districts of Ontario.

A.

EXISTING ELECTORAL DIVISIONS.

COUNTIES.

- | | |
|---------------|-------------------|
| 1. Prescott. | 6. Carleton. |
| 2. Glengarry. | 7. Prince Edward. |
| 3. Stormont. | 8. Halton. |
| 4. Dundas. | 9. Essex. |
| 5. Russell. | |

RIDINGS OF COUNTIES.

10. North Riding of Lanark.
11. South Riding of Lanark.
12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan).
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.
20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.

(68) Spent. *Representation Act*, R.S.O. 1960, c. 353, as amended by S.O. 1962-63, c. 125.

23. North Riding of York.
24. North Riding of Wentworth.
25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34. East Riding of Middlesex.

CITIES, PARTS OF CITIES, AND TOWNS.

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42. Town of Niagara, with the Township of Niagara, thereto attached.
43. Town of Cornwall, with the Township of Cornwall thereto attached.

B.

NEW ELECTORAL DISTRICTS.

44. The Provisional Judicial District of ALGOMA.

The County of BRUCE, divided into Two Ridings, to be called respectively the North and South Ridings:—

45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albermarle, Amable, Arran, Bruce, Elderslie, and Saugeen, and the Village of Southampton.
46. The South Riding of Bruce to consist of the Townships of Kincardine (including the Village of Kincardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of HURON, divided into Two Ridings, to be called respectively the North and South Ridings:—

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett, including the Village of Clinton, and McKillop.
48. The South Riding to consist of the Town of Goderich and the Townships of Goderich, Tuckersmith, Stanley, Hay, Osborne, and Stephen.

The County of MIDDLESEX, divided into three Ridings, to be called respectively the North, West, and East Ridings:—

49. The North Riding to consist of the Townships of McGillivray and Biddulph (taken from the County of Huron), and Williams East, Williams West, Adelaide, and Lobo.
50. The West Riding to consist of the Townships of Delaware, Carradoc, Metcalfe, Mosa and Ekfrid, and the Village of Strathroy.

(The East Riding to consist of the Townships now embraced therein, and be bounded as it is at present.)

51. The County of LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen, and Brooke, and the Town of Sarnia.
52. The County of KENT to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh, and Harwich, and the Town of Chatham.
53. The County of BOTHWELL to consist of the Townships of Sombra, Dawn, and Euphemia (taken from the County of Lambton), and the Townships of Zone, Camden with the Gore thereof), Orford, and Howard (taken from the County of Kent).

The County of GREY, divided into Two Ridings, to be called respectively the South and North Ridings:—

54. The South Riding to consist of the Townships of Bentinck, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon.
55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, Saint-Vincent, Sydenham, Sullivan, Derby, and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of PERTH, divided into Two Ridings, to be called respectively the South and North Ridings:—

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington, and North Easthope, and the Town of Stratford.
57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and Ste. Mary's.

The County of WELLINGTON, divided into Three Ridings, to be called respectively North, South and Centre Ridings:—

58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.
59. The Centre Riding to consist of the Townships of Garafraxa, Erin, Eramosa, Nichol, and Pilkington, and the Villages of Fergus and Elora.
60. The South Riding to consist of the Town of Guelph, and the Townships of Guelph and Puslinch.

The County of NORFOLK, divided into Two Ridings, to be called respectively the South and North Ridings:—

61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham, and Woodhouse, and with the Gore thereof.
62. The North Riding to consist of the Townships of Middleton, Townsend, and Windham, and the Town of Simcoe.
63. The County of HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole, and Dunn.
64. The County of MONCK to consist of the Townships of Canborough and Moulton, and Sherbrooke, and the Village of Dunnville (taken from the County of Haldimand), the Townships of Caister and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the County of Welland).
65. The County of LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby, and Louth, and the Town of St. Catharines.
66. The County of WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold, and Willoughby,

and the Villages of Chippewa, Clifton, Fort Erie, Thorold, and Welland.

67. The County of PEEL to consist of the Townships of Chingua-cousy, Toronto, and the Gore of Toronto, and the Villages of Brampton and Streetsville.
68. The County of CARDWELL to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe).

The County of SIMCOE, divided into Two Ridings, to be called respectively the South and North Ridings:—

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseh, Innisfil, Essa, Tossorontio, Mulmur, and the Village of Bradford.
70. The North Riding to consist of the Townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia and Matchedash, Tiny and Tay, Balaklava and Robinson, and the Towns of Barrie and Collingwood.

The County of VICTORIA, divided into Two Ridings, to be called respectively the South and North Ridings:—

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.
72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Laxton, Lutterworth, Macaulay and Draper, Sommerville, and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any other surveyed Townships lying to the North of the said North Riding.

The County of PETERBOROUGH, divided into Two Ridings, to be called respectively the West and East Ridings:—

73. The West Riding to consist of the Townships of South Monaghan (taken from the County of Northumberland), North Monaghan, Smith, and Ennismore, and the Town of Peterborough.
74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope and Dysart, Otonabee, and Snowden, and the Village of Ashburnham, and any other surveyed Townships lying to the North of the said East Riding.

The County of **HASTINGS**, divided into Three Ridings, to be called respectively the West, East, and North Ridings:—

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.
76. The East Riding to consist of the Townships of Thurlow, Tyendinaga, and Hungerford.
77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora, and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.
78. The County of **LENNOX**, to consist of the Townships of Richmond, Adolphustown, North Fredericksburgh, South Fredericksburgh, Ernest Town, and Amherst Island, and the Village of Napanee.
79. The County of **ADDINGTON** to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough, and Bedford.
80. The County of **FRONTENAC** to consist of the Townships of Kingston, Wolfe Island, Pittsburgh and Howe Island, and Storrington.

The County of **RENFREW**, divided into Two Ridings, to be called respectively the South and North Ridings:—

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.
82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algoma, North Algoma, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Haggerty, Sherwood, Burns, and Richards, and any other surveyed Townships lying Northwesterly of the said North Riding.

Every Town and incorporated Village existing at the Union, not especially mentioned in this Schedule, is to be taken as Part of the County or Riding within which it is locally situate.

THE SECOND SCHEDULE.

Electoral Districts of Quebec specially fixed.

COUNTIES OF—

Pontiac.	Missisquoi.	Compton.
Ottawa.	Brome.	Wolfe and
Argenteuil.	Shefford.	Richmond.
Huntingdon.	Stanstead.	Megantic.
TOWN of Sherbrooke.		

THE THIRD SCHEDULE.

Provincial Public Works and Property to be the Property of Canada.

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislature and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.

THE FOURTH SCHEDULE

Assets to be the Property of Ontario and Quebec conjointly.

Upper Canada Building Fund.

Lunatic Asylums.

Normal School.

Court Houses,

in

Aylmer,

Montreal,

Kamouraska.

Lower Canada

Law Society, Upper Canada.
 Montreal Turnpike Trust.
 University Permanent Fund.
 Royal Institution.
 Consolidated Municipal Loan Fund, Upper Canada.
 Consolidated Municipal Loan Fund, Lower Canada.
 Agricultural Society, Upper Canada.
 Lower Canada Legislative Grant.
 Quebec Fire Loan.
 Temiscouata Advance Account.
 Quebec Turnpike Trust.
 Education—East.
 Building and Jury Fund, Lower Canada.
 Municipalities Fund.
 Lower Canada Superior Education Income Fund.

THE FIFTH SCHEDULE.

OATH OF ALLEGIANCE.

I, A.B. do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

Note.—The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with Proper Terms of Reference thereto.

DECLARATION OF QUALIFICATION

I, A. B., do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the Case may be*], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture (as the Case may be),] in the Province of Nova Scotia [or as the Case may be]* of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

APPENDIX 2

AN ACT TO PROVIDE FOR THE AMENDMENT IN CANADA OF THE CONSTITUTION OF CANADA

[November 6, 1961.]

WHEREAS the Senate and House of Commons of Canada in Parliament assembled have submitted Addresses to Her Majesty praying that Her Majesty may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

POWER TO AMEND THE CONSTITUTION OF CANADA

1. Subject to this Part, the Parliament of Canada may make laws repealing, amending or re-enacting any provision of the Constitution of Canada.

2. No law made under the authority of this Part affecting any provision of this Act or section 51A of the British North America Act, 1867, or affecting any provision of the Constitution of Canada relating to

- (a) the powers of the legislature of a province to make laws,
- (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
- (c) the assets or property of a province,
- (d) the use of the English or French language,

shall come into force unless it is concurred in by the legislatures of all the provinces.

3. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision refers.

(2) Section 2 of this Act does not extend to any provision of the Constitution of Canada referred to in subsection (1) of this section.

4. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in any province other than Newfoundland shall come into force unless it is concurred in by the legislatures of all the provinces other than Newfoundland.

(2) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in the province of Newfoundland shall come into force unless it is concurred in by the legislature of the province of Newfoundland.

(3) Sections 2 and 3 of this Act do not extend to any provision of the Constitution of Canada referred to in subsection (1) or (2) of this section.

5. No law made under the authority of this Part affecting any provision of the Constitution of Canada not coming within section 2, 3 or 4 of this Act shall come into force unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada according to the latest general census.

6. Nothing in this Part diminishes any power of the Parliament of Canada or the legislature of a province, existing immediately before this Act came into force, to make laws in relation to any matter.

7. No Act of the Parliament of the United Kingdom passed after the coming into force of this Act shall extend or be deemed to extend to Canada or to any province or territory thereof.

8. Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1960;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895;

- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

PART II

BRITISH NORTH AMERICA ACT, 1867, AMENDED

9. The British North America Act, 1867, is amended by re-numbering section 94A thereof as 94B and by adding thereto, immediately after section 94 thereof, the following heading and section:

Delegation of Legislative Authority

"94A. (1) Notwithstanding anything in this or in any other Act the Parliament of Canada may make laws in relation to any matters coming within the classes of subjects enumerated in heads (6), (10), (13) and (16) of section 92 of this Act, but no statute enacted under the authority of this subsection shall have effect in any province unless the legislature of that province has consented to the operation of such a statute in that province.

(2) The Parliament of Canada shall not have authority to enact a statute under subsection (1) of this section unless

- (a) prior to the enactment thereof the legislatures of at least four of the provinces have consented to the operation of such a statute as provided in that subsection, or
- (b) it is declared by the Parliament of Canada that the enactment of the statute is of concern to less than four of the provinces and the provinces so declared by the Parliament of Canada to be concerned have under the authority of their legislatures consented to the enactment of such a statute.

(3) Notwithstanding anything in this or in any other Act the legislature of a province may make laws in the province in relation to any matter that is otherwise within the legislative jurisdiction of the Parliament of Canada.

(4) No statute enacted by a province under the authority of subsection (3) of this section shall have effect unless

- (a) prior to the enactment thereof the Parliament of Canada has consented to the enactment of such a statute by the legislature of that province, and

- (b) a similar statute has under the authority of subsection (3) of this section been enacted by the legislatures of at least three other provinces.
- (5) The Parliament of Canada or the legislature of a province may make laws for the imposition of punishment by fine, penalty or imprisonment for enforcing any law made by it under the authority of this section.
- (6) A consent given under this section may at any time be revoked, and
 - (a) if a consent given under subsection (1) or (2) of this section is revoked, any law made by the Parliament of Canada to which such consent relates that is operative in the province in which the consent is revoked shall thereupon cease to have effect in that province, but the revocation of the consent does not affect the operation of that law in any other province, and
 - (b) if a consent given under subsection (4) of this section is revoked, any law made by the legislature of a province to which the consent relates shall thereupon cease to have effect.
- (7) The Parliament of Canada may repeal any law made by it under the authority of this section, in so far as it is part of the law of one or more provinces, but if any repeal under the authority of this subsection does not relate to all of the provinces in which that law is operative, the repeal does not affect the operation of that law in any province to which the repeal does not relate.
- (8) The legislature of a province may repeal any law made by it under the authority of this section, but the repeal under the authority of this subsection of any law does not affect the operation in any other province of any law enacted by that province under the authority of this section."

PART III

CITATION AND COMMENCEMENT

10. This Act may be cited as the *Constitution of Canada Amendment Act*.

11. This Act shall come into force on the day of 1962.

APPENDIX 3

AN ACT TO PROVIDE FOR THE AMENDMENT IN CANADA OF THE CONSTITUTION OF CANADA

[October 30, 1964.]

WHEREAS Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth, and the Senate and House of Commons of Canada in Parliament assembled have submitted Addresses to Her Majesty praying that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

POWER TO AMEND THE CONSTITUTION OF CANADA

1. Subject to this Part, the Parliament of Canada may make laws repealing, amending or re-enacting any provision of the Constitution of Canada.

2. No law made under the authority of this Part affecting any provision of this Act or section 51A of the British North America Act, 1867, or affecting any provision of the Constitution of Canada relating to

- (a) the powers of the legislature of a province to make laws,
- (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,

- (c) the assets or property of a province, or
- (d) the use of the English or French language,

shall come into force unless it is concurred in by the legislatures of all the provinces.

3. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision refers.

(2) Section 2 of this Act does not extend to any provision of the Constitution of Canada referred to in subsection (1) of this section.

4. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in any province other than Newfoundland shall come into force unless it is concurred in by the legislatures of all the provinces other than Newfoundland.

(2) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in the province of Newfoundland shall come into force unless it is concurred in by the legislature of the province of Newfoundland.

(3) Sections 2 and 3 of this Act do not extend to any provision of the Constitution of Canada referred to in subsection (1) or (2) of this section.

5. No law made under the authority of this Part affecting any provision of the Constitution of Canada not coming within section 2, 3 or 4 of this Act shall come into force unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada according to the latest general census.

6. Notwithstanding anything in the Constitution of Canada, the Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons, except as regards

- (a) the functions of the Queen and the Governor General in relation to the Parliament or Government of Canada;

- (b) the requirements of the Constitution of Canada respecting a yearly session of Parliament;
- (c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons, except that the Parliament of Canada may, in time of real or apprehended war, invasion or insurrection, continue a House of Commons beyond such maximum period, if such continuation is not opposed by the votes of more than one-third of the members of such House;
- (d) the number of members by which a province is entitled to be represented in the Senate;
- (e) the residence qualifications of Senators and the requirements of the Constitution of Canada for the summoning of persons to the Senate by the Governor General in the Queen's name;
- (f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing such province;
- (g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and
- (h) the use of the English or French language.

7. Notwithstanding anything in the Constitution of Canada, in each province the legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the province, except as regards the office of Lieutenant-Governor.

8. Any law to repeal, amend or re-enact any provision of the Constitution of Canada that is not authorized to be made either by the Parliament of Canada under the authority of section 6 of this Act or by the legislature of a province under the authority of section 7 of this Act is subject to the provisions of sections 1 to 5 of this Act.

9. Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province, existing at the coming into force of this Act, to make laws in relation to any matter.

10. No Act of the Parliament of the United Kingdom passed after the coming into force of this Act shall extend or be deemed to extend to Canada or to any province or territory of Canada as part of the law thereof.

11. Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1964;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;
- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

PART II

BRITISH NORTH AMERICA ACT, 1867, AMENDED

12. Class 1 of section 91 of the British North America Act, 1867, as enacted by the British North America (No. 2) Act, 1949, and class 1 of section 92 of the British North America Act, 1867, are repealed.

13. The British North America Act, 1867, is amended by renumbering section 94A thereof as 94B and by adding thereto, immediately after section 94 thereof, the following heading and section:

Delegation of Legislative Authority

"94A. (1) Notwithstanding anything in this or in any other Act, the Parliament of Canada may make laws in relation to any matters coming within the classes of subjects enumerated in classes (6), (10), (13) and (16) of section 92 of this Act, but no statute enacted under the authority of this subsection shall have effect in any province unless the legislature of that province has consented to the operation of such a statute in that province.

(2) The Parliament of Canada shall not have authority to enact a statute under subsection (1) of this section unless

- (a) prior to the enactment thereof the legislatures of at least four of the provinces have consented to the operation of such a statute as provided in that subsection, or

- (b) it is declared by the Parliament of Canada that the Government of Canada has consulted with the governments of all the provinces, and that the enactment of the statute is of concern to fewer than four of the provinces and the provinces so declared to be concerned have under the authority of their legislatures consented to the enactment of such a statute.

(3) Notwithstanding anything in this or in any other Act, the legislature of a province may make laws in the province in relation to any matter coming within the legislative jurisdiction of the Parliament of Canada.

(4) No statute enacted by a province under the authority of subsection (3) of this section shall have effect unless

- (a) prior to the enactment thereof the Parliament of Canada has consented to the enactment of such a statute by the legislature of that province, and
- (b) a similar statute has under the authority of subsection (3) of this section been enacted by the legislatures of at least three other provinces.

(5) The Parliament of Canada or the legislature of a province may make laws for the imposition of punishment by fine, penalty or imprisonment for enforcing any law made by it under the authority of this section.

(6) A consent given under this section may at any time be revoked, and

- (a) if a consent given under subsection (1) or (2) of this section is revoked, any law made by the Parliament of Canada to which such consent relates that is operative in the province in which the consent is revoked shall thereupon cease to have effect in that province, but the revocation of the consent does not affect the operation of that law in any other province, and
- (b) if a consent given under subsection (4) of this section is revoked, any law made by the legislature of a province to which the consent relates shall thereupon cease to have effect.

(7) The Parliament of Canada may repeal any law made by it under the authority of this section, in so far as it is part of the law of one or more provinces, but if any repeal under the authority of this subsection does not relate to all of the provinces in which that law is operative, the repeal does not affect the operation of that law in any province to which the repeal does not relate.

(8) The legislature of a province may repeal any law made by it under the authority of this section, but the repeal under the authority of this subsection of any law does not affect the operation in any other province of any law enacted by that province under the authority of this section."

PART III

FRENCH VERSION

14. The French version of this Act set forth in the Schedule shall form part of this Act.

PART IV

CITATION AND COMMENCEMENT

15. This Act may be cited as the *Constitution of Canada Amendment Act*.

16. This Act shall come into force on day of

SCHEDULE

LOI PRÉVOYANT LA MODIFICATION AU CANADA DE LA CONSTITUTION DU CANADA

CONSIDÉRANT que le Canada a demandé que soit établi une loi du Parlement du Royaume-Uni dans les termes ci-après énoncés, et a consenti à l'établissement d'une telle loi, et que le Sénat et la Chambre des Communes du Canada, assemblés en Parlement, ont présenté des adresses à Sa Majesté, lui demandant de daigner faire soumettre un projet de loi au Parlement du Royaume-Uni à cette fin;

A ces causes, Sa Très Excellente Majesté la Reine, sur l'avis et du consentement des Lords spirituels et temporels et des Communes, réunis en session du présent Parlement, et sur l'autorité de celui-ci décrète:

PREMIÈRE PARTIE

POUVOIR DE MODIFIER LA CONSTITUTION DU CANADA

1. Sous réserve de la présente partie, le Parlement du Canada peut édicter des lois abrogeant, modifiant ou rétablissant toute disposition de la constitution du Canada.

2. Nulle loi édictée en vertu de la présente partie et touchant une disposition de la présente loi ou l'article 51A de l'Acte de l'Amérique du Nord britannique, 1867, ou une disposition de la constitution du Canada relative

- a) au pouvoir de faire des lois que possède la législature d'une province,
- b) aux droits ou privilèges que la constitution du Canada accorde ou garantit à la législature ou au gouvernement d'une province,

- c) aux actifs ou aux biens d'une province, ou,
- d) à l'usage de l'anglais ou du français,

n'entrera en vigueur sans le concours des législatures de toutes les provinces.

3. (1) Nulle loi édictée en vertu de la présente partie et touchant une disposition de la constitution du Canada relative à une ou plusieurs provinces, mais non à toutes, n'entrera en vigueur sans le concours de la législature de chaque province à laquelle la disposition se rapporte.

(2) L'article 2 de la présente loi ne s'applique à aucune disposition de la constitution du Canada visée au paragraphe (1) du présent article.

4. (1) Nulle loi édictée en vertu de la présente partie et touchant une disposition de la constitution du Canada relative à l'éducation dans une province autre que Terre-Neuve n'entrera en vigueur sans le concours des législatures de toutes les provinces autres que Terre-Neuve.

(2) Nulle loi édictée en vertu de la présente partie et touchant une disposition de la constitution du Canada relative à l'éducation dans la province de Terre-Neuve n'entrera en vigueur sans le concours de la législature de la province de Terre-Neuve.

(3) Les articles 2 et 3 de la présente loi ne s'appliquent à aucune disposition de la constitution du Canada visée au paragraphe (1) ou (2) du présent article.

5. Nulle loi édictée en vertu de la présente partie et touchant une disposition de la constitution du Canada qui n'est pas visée aux articles 2, 3 ou 4 de la présente loi n'entrera en vigueur sans le concours des législatures d'au moins les deux tiers des provinces représentant au moins cinquante pour cent de la population du Canada selon le dernier recensement général.

6. Nonobstant ce que décrète la constitution du Canada, le Parlement du Canada a le droit exclusif d'édicter des lois modifiant à l'occasion la constitution du Canada en ce qui concerne le gouvernement exécutif du Canada, le Sénat et la Chambre des Communes, sauf,

- a) les fonctions de la Reine et du gouverneur général vis-à-vis du Parlement ou du gouvernement du Canada;
- b) les prescriptions de la constitution du Canada quant à une session annuelle du Parlement;

- c) la période ultime fixée par la constitution du Canada pour la durée de la Chambre des Communes; sous réserve toutefois, du droit pour le Parlement du Canada, en temps de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, de prolonger la durée d'une Chambre des Communes au delà de cette période ultime si cette prolongation n'est pas l'objet d'une opposition par les votes de plus du tiers des membres de ladite Chambre;
- d) le nombre de sénateurs auquel une province a droit comme représentants au Sénat;
- e) les qualités requises des sénateurs quant à la résidence ainsi que les prescriptions de la constitution du Canada concernant leur nomination par le gouverneur général au nom de la Reine;
- f) le droit d'une province à un nombre de députés à la Chambre des Communes, non inférieur au nombre de sénateurs la représentant;
- g) les principes de représentation proportionnelle des provinces à la Chambre des Communes que prescrit la constitution du Canada; et
- h) l'usage de l'anglais ou du français.

7. Nonobstant ce que décrète la constitution du Canada, dans chaque province la législature a le droit exclusif d'édicter des lois modifiant à l'occasion la constitution de la province, sauf en ce qui concerne la charge de lieutenant-gouverneur.

8. Est assujettie aux dispositions des articles 1 à 5 de la présente loi, toute loi abrogeant, modifiant ou rétablissant une disposition de la constitution du Canada, que le Parlement du Canada n'est pas autorisé à édicter en vertu de l'article 6 de la présente loi et que la législature d'une province n'est pas autorisée à édicter en vertu de l'article 7.

9. Rien dans la présente partie ne restreint un pouvoir législatif que possède le Parlement du Canada ou la législature d'une province lors de l'entrée en vigueur de la présente loi.

10. Nulle loi du Parlement du Royaume-Uni, adoptée après l'entrée en vigueur de la présente loi, ne doit ni n'est censée s'appliquer au Canada, à une de ses provinces ou à un de ses territoires, comme partie de la législation du Canada, de cette province ou de ce territoire.

11. Dans la présente partie, l'expression «constitution du Canada» comprend, sans que sa portée en soit restreinte, les dispositions législatives suivantes et tout arrêté en conseil, toute règle ou tout règlement établi sous leur régime, savoir:

- a) les Actes de l'Amérique du Nord britannique (1867 à 1964);
- b) l'Acte du Manitoba, 1870;
- c) l'Acte du Parlement du Canada, 1875;
- d) l'Acte concernant l'Orateur canadien (nomination d'un suppléant), 1895, 2e session;
- e) l'Acte de l'Alberta;
- f) l'Acte de la Saskatchewan;
- g) le Statut de Westminster, 1931, dans la mesure où il fait partie des lois du Canada; et
- h) la présente loi.

DEUXIÈME PARTIE

MODIFICATIONS DE L'ACTE DE L'AMÉRIQUE DU NORD BRITANNIQUE (1867)

12. La catégorie 1 de l'article 91 de l'Acte de l'Amérique du Nord britannique (1867), édictée par l'Acte de l'Amérique du Nord britannique (n° 2) (1949), et la catégorie 1 de l'article 92 de l'Acte de l'Amérique du Nord britannique (1867) sont abrogées.

13. L'Acte de l'Amérique du Nord britannique (1867) est modifié en attribuant à l'article 94A le numéro 94B et en insérant, immédiatement après l'article 94, la rubrique et l'article suivants:

DÉLÉGATION DU POUVOIR LÉGISLATIF

«**94A.** (1) Nonobstant toute disposition du présent Acte ou de toute autre loi, le Parlement du Canada peut édicter des lois relatives à toute matière comprise dans les sujets énumérés aux catégories (6), (10), (13) et (16) de l'article 92 du présent acte, mais nulle loi édictée en vertu du présent paragraphe n'aura d'effet dans une province à moins que la législature de cette dernière n'ait consenti à la mise en vigueur d'une telle loi dans cette province.

(2) Le paragraphe (1) du présent article n'autorise pas le Parlement du Canada à édicter une loi sauf

- a) si antérieurement à l'adoption de cette loi les législatures d'au moins quatre provinces ont consenti à la mise en vigueur d'une telle loi de la façon prévue à ce paragraphe, ou

- b) si le Parlement du Canada a déclaré que le gouvernement du Canada a consulté les gouvernements de toutes les provinces et que l'adoption de la loi intéresse moins de quatre provinces et les provinces ainsi déclarées intéressées ont, sous l'autorité de leur législature, consenti à l'adoption d'une telle loi.

(3) Nonobstant toute disposition du présent Acte ou de toute autre loi, la législature d'une province peut édicter des lois y applicables portant sur toute matière qui est du ressort législatif du Parlement du Canada.

(4) Nulle loi édictée par une province en vertu du paragraphe (3) du présent article n'aura d'effet à moins

- a) qu'antérieurement à son adoption le Parlement du Canada n'ait consenti à l'adoption d'une telle loi par la législature de cette province, et
- b) qu'une loi semblable n'ait été édictée en vertu du paragraphe (3) du présent article par les législatures d'au moins trois autres provinces.

(5) Le Parlement du Canada ou la législature d'une province peut édicter des lois prévoyant l'infliction de punitions sous forme d'amende, de peine ou d'emprisonnement en vue de faire respecter toute loi édictée en vertu du présent article par ce Parlement ou cette législature.

(6) Un consentement donné suivant le présent article peut être révoqué en tout temps, et

- a) si un consentement donné suivant le paragraphe (1) ou (2) du présent article est révoqué, toute loi édictée par le Parlement du Canada, à laquelle ce consentement se rattache et qui est en vigueur dans la province où le consentement est révoqué, cesse dès lors d'y avoir effet, mais la révocation n'empêche pas l'application de cette loi dans toute autre province, et
- b) si un consentement donné suivant le paragraphe (4) du présent article est révoqué, toute loi qui a été édictée par la législature d'une province et à laquelle ce consentement se rattache cesse dès lors d'avoir effet.

(7) Le Parlement du Canada peut abroger toute loi qu'il a édictée en vertu du présent article, dans la mesure où elle fait partie des lois d'une ou de plusieurs provinces, mais si une abrogation faite en vertu du présent paragraphe ne vise pas toutes les provinces où cette loi est en vigueur, l'abrogation ne porte pas atteinte à l'application de cette loi dans une province non visée par l'abrogation.

(8) La législature d'une province peut abroger toute loi qu'elle a édictée en vertu du présent article, mais l'abrogation d'une loi en vertu du présent paragraphe ne porte pas atteinte à l'application dans une autre province d'une loi que sa législature a édictée en vertu du présent article.»

TROISIÈME PARTIE

VERSION FRANÇAISE

14. La version française de la présente loi reproduite dans l'annexe, fait partie de la présente loi.

QUATRIÈME PARTIE

TITRE ET ENTRÉE EN VIGUEUR

15. La présente loi peut être citée sous le titre: *Loi sur la modification de la constitution du Canada.*

16. La présente loi entrera en vigueur le

APPENDIX 4

NOTES ON AMENDMENT PROCEDURE USED
IN SOME OTHER FEDERAL STATES

1. UNITED STATES

The amendment procedure is governed by Article V of the United States Constitution:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Convention in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One Thousand Eight Hundred and Eight shall in any Manner affect the first and fourth Clauses in the ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

In United States constitutional theory, all authority defined and distributed under the Constitution derives from the people. Thus it is the Congress acting on its own initiative, or a convention* called by Congress upon the application of the legislatures of two-thirds of the states, which propose amendments to the Constitution. In either case it is the prerogative and the duty of the legislative bodies to take action.

The Constitution can be amended on the basis of a favourable vote by at least two-thirds of the House of Representatives and of the Senate. There have been some two dozen applications by the state legislatures to the Congress on matters involving an amendment to the Constitution, but these have never been submitted by the required

*"The Dictionary of American Politics", (1961 reprint), by Smith and Zurcher, defines a *Constitutional Convention* as "A unicameral body which meets at irregular intervals to draft constitutional revisions for the approval of the electorate".

two-thirds of the states. In practice, therefore, no amendment to the Constitution has been pursued other than on the initiative of Congress.

Congress has the right to prescribe the manner in which proposed amendments to the Constitution shall be ratified. Ratification can be either by the legislatures of three-fourths of the states or by conventions in three-fourths of the states. Only once, in respect of the twenty-first amendment bringing prohibition to an end, has the Congress proposed that ratification be effected by conventions rather than by state legislatures. Congress may, in proposing an amendment, set a reasonable time limit for its ratification.

In theory, almost any amendment to the Constitution may be proposed. The one exception specified in Article V is that no State, without its consent, shall be deprived of its equal suffrage in the Senate, which is composed of two Senators from each state. Originally Senators were selected by the legislatures of the states they were to represent. However, by the seventeenth amendment to the Constitution this method of selection was altered to that of direct election.

Amendments to the Constitution have not been frequent. While there have been over five thousand proposals to amend the Constitution introduced in the Houses of Congress since 1789, only twenty-eight of these have received the required congressional support and been referred to the states for ratification. Of these, twenty-four have been ratified.

The Government of the United States possesses only those powers explicitly or implicitly assigned to it or expressly forbidden to the states by the Constitution. All residual powers are vested in the states or in the people. However, in practice there has been frequent explicit and implicit delegation of legislative authority between one jurisdiction and another as, for example, under the system of grants in aid, by the federal government to those of the states. States, on the other hand, have delegated to the federal government certain powers to act in matters which are beyond the resources of the states alone. Furthermore, it remains open to the Supreme Court to construe the Constitution in such a way as to countenance greater or less delegation than has so far been undertaken.

2. SWITZERLAND

The amendment procedure is governed by Articles 118 to 123 inclusive of the Swiss Constitution.

118. The federal Constitution may at any time be wholly or partially revised.

119. Total revision shall be effected in the forms laid down in respect of federal legislation.

120. When either division of the Federal Assembly decides in favour of a total revision of the federal Constitution, and the other division does not agree, or when fifty thousand Swiss voters demand a total revision, the question whether the federal Constitution ought to be revised is in either case submitted to the Swiss nation, which votes in the affirmative or negative.

If in either case a majority of the Swiss nation who vote pronounce in the affirmative, the two councils shall be renewed for the purpose of undertaking the revision.

121. A partial revision may be effected either by means of the popular initiative, or in the forms laid down in respect of federal legislation.

The popular initiative consists of a demand by fifty thousand Swiss voters for the adoption of a new constitutional article or for the repeal or modification of certain articles of the Constitution already in force.

If by means of the initiative several different provisions are submitted for revision of or for addition to the federal Constitution, each of them must form the subject of a separate initiative demand.

The initiative demand may take the form of a proposal couched in general terms, or of a bill complete in all details.

When the demand is couched in general terms, the federal chambers, if they approve thereof, will proceed to undertake the partial revision in the sense indicated, and will submit and draft acceptance or rejection by the people and the cantons. If, on the contrary, they do not approve the demand, the question of partial revision shall be submitted to the vote of the people; if a majority of the Swiss citizens taking part in the vote pronounce in the affirmative, the Federal Assembly will proceed to undertake the revision in conformity with the popular decision.

When a demand is presented in the form of a bill complete in all details, and the Federal Assembly approves thereof, the bill shall be submitted for acceptance or rejection by the people and the cantons. If the Federal Assembly is not in agreement, it may draw up a separate bill or recommend to the people the rejection of the bill proposed, and submit to the vote its counter-draft or its proposal for rejection at the same time as the bill presented by popular initiative.

122. Federal legislation shall determine the formalities to be observed in regard to popular initiative and to referenda concerning the revision of the federal Constitution.

123. The revised federal Constitution, or the revised part thereof, shall enter into force when it has been accepted by the majority of the Swiss citizens taking part in the vote thereon and by the majority of the states.

In reckoning a majority of the states, the vote of a half-canton shall be counted as half a vote.

The result of the popular vote in each canton shall be regarded as the vote of State."

The present Swiss Federal Constitution was adopted in 1874 and is a total revision of the Constitution of 1848. The amending procedure provides separate and detailed methods for dealing with a total revision

and with a partial revision of the Constitution. Whether the revision is a total or a partial one, the people and the cantons are called upon to pronounce themselves either on the principle of the revision, or on the revision itself. The Federal Houses act as the constituent authority and formulate the constitutional texts submitted to the popular vote.

Each canton has its own constitution which is guaranteed by the Confederation. A cantonal constitution cannot therefore contain any provision which is repugnant to the Federal Constitution. Cantonal constitutions may be revised in whole or in part under conditions of and in conformity with a procedure stipulated in each of these constitutions.

The supreme authority of the Swiss Confederation is exercised by a Federal Assembly which consists of a National Council and a Council of States. The National Council is composed of elected deputies representing the Swiss people. The Council of States is composed of 44 elected deputies, two representing each of the 22 cantons. Their election is governed by cantonal legislation and the payment of their indemnities is the responsibility of the cantons.

From 1891 to 1959, the people and the cantons approved 57 partial revisions; 50 of them had been proposed by the Federal Assembly and seven resulted from the popular initiative. During the same period, the people and the cantons rejected 54 proposals for partial revision; 17 of them had been advanced by the Federal Assembly and 37 by the popular initiative. The trend in respect of proposals initiated by the Federal Assembly has been increasingly to refrain from introducing a measure for constitutional amendment unless there appears to be a reasonable popular consensus in its favour.

There is no provision in the Swiss federal Constitution concerning the delegation of legislative authority. In practice, however, the federal authorities establish in certain cases the general principles and policies of a proposed legislative measure and call upon the cantonal authorities to enact the necessary provisions to give effect to it. On the other hand, delegation from the cantons to the Federal Assembly has never taken place.

3. AUSTRALIA

The amendment procedure is governed by Section 128 of the Australian Constitution:

"This Constitution shall not be altered except in the following manner:—

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses

the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law."

Any projected alteration of the Constitution must first take the form of a proposed law passed by an absolute majority of each House of the Commonwealth (federal) Parliament or, in exceptional cases, by one House of the Parliament. Proposals for constitutional changes cannot originate otherwise than in the Commonwealth Parliament. The proposed law is then submitted to a referendum and must be approved by a majority of the electors voting in a majority of states and also by a total majority of all the electors voting, before being submitted for Royal Assent.

The equal representation of the states in the Senate and their proportionate representation in the House of Representatives provided for in the Constitution, are guaranteed by the last paragraph of Section 128. It gives each state a veto in respect of modifications in its own

*The notes on this Section are based on the "Report from the Joint Committee on Constitutional Review, 1959" of the Parliament of the Commonwealth of Australia.

representation in the Commonwealth Parliament, in so far as such modifications would have the effect of changing its position in relation to that of the other states.

Each state has the exclusive right of amending its own constitution in accordance with the procedure provided in it.

The amendment procedure adopted by the Commonwealth of Australia was modelled on the methods followed by the United States and Switzerland and on the lessons to be gained from their experience.

Yet the Australian Constitution has proved far more difficult to amend in practice than has been the case in either of those two countries. Since 1900, there have been 24 proposed amending laws, some dealing with several subjects, submitted to the electors. Only in four instances have the requisite majorities been obtained. The first was in 1906, when a change was made in the date on which the terms of newly elected Senators should begin. The second in 1910 concerned the taking over of state debts by the Commonwealth. The third in 1928 gave effect to the Financial Agreement between the Commonwealth and the states. The fourth in 1946 vested the Commonwealth Parliament with concurrent legislative power to provide certain types of social services.

The Australian Parliament is confined, under Section 51, to making laws "for the peace, order and good government of the Commonwealth with respect to" a list of some 39 subject matters. On the other hand, there are few legislative powers which the states do not have. Section 107 of the Constitution declares that every power of the Parliament of a state shall, unless the Constitution exclusively vests it in the Parliament of the Commonwealth, or withdraws it from the state, continue to reside in the state. There are a few powers which only the Commonwealth Parliament has under the Constitution, as for example the power to impose duties of customs and excise, but most of the legislative powers are known as concurrent powers. They do not belong exclusively to the Commonwealth Parliament but are also retained by the states. Where the powers are concurrent, Section 109 accords paramountcy to Commonwealth laws over state laws.

The states of Australia have been very jealous of their autonomy. Section 51 (XXXVII) grants to the Commonwealth Parliament the power to make laws with respect to "matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any state or states, but so that the law shall extend only to those states by whose Parliament the matter is referred, or which afterwards adopt the law". This provision has hardly been used in practice.

Except for matters of purely local interest, the reference of any legislative power under Section 51 (XXXVII) would, in practice, require the agreement of all the states. The most important occasion on which a serious attempt was made to invoke this provision was during World War II when the governments of all six states agreed to refer a list of fourteen legislative subjects to enable the Commonwealth to make plans for post-war reconstruction. The scheme broke down, however, in the process of securing the necessary legislative action by the state legislatures. Owing to the lack of precision and use, the possibilities and limits of Section 51 (XXXVII) have never been clearly established.

4. FEDERAL REPUBLIC OF GERMANY

The amendment procedure is governed by Article 79 of the Basic Law:

"1) The Basic Law can be amended only by a law which expressly amends or supplements the text thereof.

With respect to international treaties the subject of which is a peace settlement, the preparation of a peace settlement or the abolition of an occupation regime, or which are designed to serve the defense of the Federal Republic, it shall be sufficient, for the purpose of a clarifying interpretation to the effect that the provisions of the Basic Law are not contrary to the conclusion and entry into force of such treaties, to effect a supplementation of the text of the Basic Law confined to this clarifying interpretation.

2) Such a law requires the affirmative vote of two-thirds of the members of the Bundestag and two-thirds of the votes of the Bundesrat.

3) An amendment of this Basic Law affecting the division of the Federation into Laender, the participation in principle of the Laender in legislation, or the basic principles laid down in Articles 1 and 20, is inadmissible."

The Basic Law came into effect on May 29th, 1949. It is not, legally speaking, a Constitution although it functions as such.

The Federal Parliament consists of the Bundesrat, or Upper House, and the Bundestag, or Lower House. The Bundesrat is composed of members of the State or Laender governments which appoint and recall them. Each Land has at least three votes; Laender with more than two million inhabitants have four votes; and Laender with more than six million inhabitants have five votes. Each Land may delegate as many members as it has votes. The Bundesrat consists at present of 41 members. The Bundestag is composed of 521 deputies, including 22 from Berlin. Of the remaining 499, 247 are selected through direct personal election and the remaining 252 are chosen from lists prepared for each Land by the parties contesting the election.

Amendments to the Basic Law require a two-thirds majority in both the Bundestag and the Bundesrat. The Laender are not consulted directly but nevertheless participate through their representatives in the Bundesrat who act on instruction from them. Amendments affecting the division of the Federation into Laender, the principle of participation of the Laender in legislation through the Bundesrat, or Articles 1 and 20 concerning the basic individual right of citizens and the origin and limitation of state authority respectively, are inadmissible. Otherwise, amendments may be initiated in the same way as normal legislation.

Since it came into force, the Basic Law has been amended twelve times. A large number of proposed amendments have been rejected.

The Basic Law lists separately those matters on which the Federation has exclusive powers to legislate and those matters on which it holds powers concurrently with the Laender. Residual powers are exercised by the Laender.

Provision is also made for the delegation of the exclusive federal legislative authority to the Laender, and for the principles that should guide the Federation and the Laender in legislating on matters of concurrent jurisdiction. Article 71 states that: "On matters within the exclusive legislative powers of the Federation, the Laender have authority to legislate only if, and to the extent that, a federal law explicitly so authorizes them". Article 72 states that: "On matters within the concurrent legislative powers, the Laender have authority to legislate as long as, and to the extent that, the Federation does not use its legislative power". It further stipulates that the Federation has the right to legislate on such concurrent matters to the extent that a need for a federal rule exists because a matter cannot be effectively dealt with by the legislation of individual Laender because dealing with a matter by Land Law might prejudice the interests of other Laender or of the entire community, or because the maintenance of legal or economic unity makes it necessary.

Furthermore, the Laender governments have the right of collective consultation in certain fields of interest. In the exercise of this right they have, for example, set up a central organization to prepare draft laws on certain cultural matters for adoption in identical form by the individual Land Parliaments on a nation-wide basis. In view of the relatively short history of the Federal Republic, only limited jurisprudence has been developed in respect of the provisions for the delegation and joint exercise of legislative authority.