

Parliament or the legislatures might amend or repeal any British statute forming part of the Constitution of Canada if it had been passed after July 10, 1930 (the date of assent to the last of the series 1867 to 1930) and if that statute was in relation to a matter within the legislative competence of Parliament or the legislatures, as the case might be.

Another interesting question is whether the power conferred to amend British statutes extends to the Statute of Westminster itself, since it is not included in the collective title B.N.A. Acts 1867 to 1930.

An amendment to the B.N.A. Act passed by the British Parliament in 1949 considerably enlarged the authority of the Parliament of Canada to legislate with respect to constitutional matters by adding a new Head (1) to Section 91 of the B.N.A. Act. The Parliament of Canada may now amend the Constitution of Canada except as regards the distribution of legislative authority between Parliament and the legislatures, the rights and privileges of any class of persons with respect to schools, the use of the English and French languages, the requirement of at least an annual session of Parliament and, except in cases of emergency, the maximum five-year life of each Parliament.

The British Parliament still retains a theoretical power to make constitutional laws for Canada, without limit. Theoretically (but subject to compliance with the requirements prescribed in the Statute of Westminster -- namely, request and consent by Canada), the British Parliament could make any laws of any character having application in Canada. In practice, however, this power is not exercised except with regard to that residue of the constitutional amending power that does not now fall within the competence of any legislative authority in Canada. Therefore, no act of the British Parliament affecting Canada is passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted, and there is no evidence to suggest that in future a British Parliament would reject or obstruct requested amendments to the B.N.A. Act.

At present, therefore, constitutional laws for Canada may be made by the Parliament of Canada, by the legislatures of the provinces or by the British Parliament. As we have seen, the Parliament of Canada may make constitutional laws under Head (1) of Section 91, under other provisions of the British North America Act, and also under Sub-section (2) of Section 2 of the Statute of Westminster. The legislatures of the provinces may make constitutional laws under Head (1) of Section 92, under other provisions of the British