

Parliament nor the legislatures in Canada could repeal or amend an Act of the Parliament of the United Kingdom that extended to Canada by virtue of its own terms, and any Act passed by a legislative body in Canada would be void or inoperative if it was repugnant to any Act of the United Kingdom.

The limitations imposed by the Colonial Laws Validity Act were removed by the Statute of Westminster of 1931. The limitation imposed by Section 129 of the British North America Act was also removed, except as to the British North America Acts 1867 to 1930. Today the Parliament of Canada or the legislatures of the provinces have the power to repeal or amend any Act of the United Kingdom Parliament, except the British North America Acts 1867 to 1930. It follows that if any Acts of the United Kingdom Parliament other than the British North America Act of 1867 to 1930 applicable to Canada are of a constitutional character they may be repealed or altered by the appropriate legislative body in Canada.

The terms of the Statute of Westminster raise an interesting question. The sole limitation on legislative power in Canada, according to that Act, is the inability to amend the British North America Acts, 1867 to 1930. This collective title includes the original Act of 1867 and all amendments to 1930. But there have been amendments since 1930. The collective title is now British North America Acts, 1867 to 1960. Does the title 1867 to 1930 include later amendments? Apparently not. In the interpretation Act of Canada there is a provision to the effect that a reference to an Act by its title includes amendments, but there seems to be no similar provision in the United Kingdom Interpretation Act. Another interesting question is whether the power conferred to amend United Kingdom statutes extends to the Statute of Westminster itself, since it is not included in the collective title British North America Acts 1867 to 1930.

The next statute that altered the authority to make constitutional amendments was the British North America Act Amendment Act No. 2 of 1949. That amendment added a new Head (1) to Section 91 of the British North America Act and conferred on the Parliament of Canada power to amend the "Constitution of Canada", subject to exceptions therein stated. One might ask what is meant by the expression "Constitution of Canada", as used in this amendment. Does it mean the whole of the British North America Act? Does it mean more than that? Or less than that? Does it mean the Constitution of Canada as distinguished from the constitution of the provinces, i.e., is it confined to matters relating to the Federal Government only rather than to the whole governmental system of Canada? These are questions that, of course, can be decided only by the courts. Whatever interpretation is given to this expression, it is clear that there are certain things that Parliament cannot do under this amendment.

The distribution of legislative authority between Parliament and the legislatures cannot be touched; no change can be made with respect to the use of the English and French languages; except in cases of emergency, the life of Parliament cannot be extended; the rights or privileges of the legislature or the government of a province cannot be affected.

The Parliament of the United Kingdom also has power to make constitutional laws for Canada. This power is, theoretically at least, still without limit. Theoretically (but subject to compliance with the formalities prescribed in the Statute of Westminster, namely, request and consent by Canada) the Parliament of the United Kingdom could make any laws of any character having application in Canada. In practice, however, this power is not exercised except with regard to those constitutional amendments that cannot now be made by any legislative authority in Canada.