

REFERENCE PAPERS



CANADA

INFORMATION DIVISION

DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA - CANADA

No. 113

CONSTITUTIONAL AMENDMENT IN CANADA*

By E.A. Dreidger, Q.C., Deputy Minister of
Justice and Deputy Attorney General of Canada.

CANADA is unique among the independent nations of the world in that it does not possess the complete legal power to amend its own Constitution. Canadians are well aware of this limitation on the sovereignty of their nation and many efforts have been made in the past to find a satisfactory method of amending the Constitution of Canada. So far, these efforts have not been successful. Constitutional amendment was discussed briefly by the Dominion-Provincial Conference of 1927. A special Committee of the House of Commons at the 1935 session of Parliament studied and reported upon the best method by which the British North America Act might be amended. Constitutional amendment was again discussed at a Dominion-Provincial Conference in 1935, a sub-committee was appointed to prepare a report on a method of procedure to amend the Constitution of Canada, a report was duly submitted but no further action was taken. In 1950, a Conference was convened to find a method of amending the Constitution in Canada and, while considerable progress was made in clarifying the issues, the Conference did not succeed in finding an amending formula that would be acceptable to all governments concerned.

A Conference of Attorneys General was convened in October 1960, with a view to arriving at a basis for the amendment of the Constitution of Canada. Further sessions were held in November 1960 and in January and September of 1961. This paper will discuss what it is that the Conference tried to accomplish and, from a legal point of view, what is meant by the "amendment of the Constitution in Canada".

The objective is to find a way to amend the Constitution of Canada. The first question that arises is, what do we mean by "Constitution of Canada"?

The "Constitution of Canada" is popularly thought to be the British North America Act of 1867 and its amendments, and a reference to constitutional amendment is usually intended to mean the amendment of the British North America Acts. What is the "Constitution" of a country? It may be defined as the system of laws and conventions by which a state is governed. These laws and conventions may be formally expressed, as in the case of the United States Constitution. In that country, the word Constitution means a particular document. In the United Kingdom, however, there is no document that is known as the Constitution. The Constitution there consists partly of written material, partly of conventions that have not given official expression, and partly of statutes relating to some aspect of government.

*Reprinted from The Canadian Bar Journal, February 1962; revised May 1964.