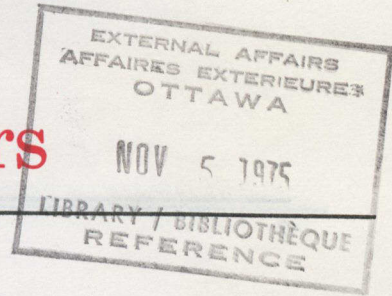




Reference Papers



doc
CA1
EA9
R113
ENG
1975
October

No. 113
(October 1975)

CONSTITUTIONAL AMENDMENT IN CANADA*

Speaking in the House of Commons on October 2, 1974, the Leader of the Opposition, Mr. Robert Stanfield, and Prime Minister Pierre Elliott Trudeau agreed on the anomalous position of Canada, a sovereign nation not yet possessed of the complete legal power to amend certain parts of its own Constitution. The Prime Minister added that he hoped it would be possible, with the co-operation of the Opposition and the provinces, to adopt a Canadian amending formula within four years. The current situation, which is at times hard to explain to an outsider, is historical in origin and has been perpetuated by the difficulty of reaching agreement on the nature of a Canadian amending mechanism.

Canadians are well aware of this limitation, and many efforts have been made in the past to find a satisfactory method of amending the Constitution of Canada exclusively in Canada. To that end, several federal-provincial conferences were convened. So far, however, these efforts have not been successful.

This paper will discuss what the conferences tried to accomplish and, from a legal point of view, what is meant by the "amendment of the Constitution in Canada". The first question that arises, therefore, 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 subsequent 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 written laws and unwritten conventions by which a state is governed.

* This paper was originally issued in May 1964, as a revised version of an article in the February 1962 edition of the *Canadian Bar Journal* prepared by E.A. Dreidger, Q.C., then Deputy-Minister of Justice and Deputy Attorney General of Canada. The paper has been revised and updated to September 1975 by the Department of External Affairs.

53988442