

External Affairs Supplementary Paper

No. 62/1

Amending the Constitution

Statement by Mr. E.D. Fulton, Minister of Justice and Attorney General of Canada, on the Formula for Transferring to Canada the Power to Amend the Constitution as Reported by the Conference of Attorneys General Under the Chairmanship of the Minister of Justice of Canada, December 1, 1961.

Mr. Fulton announced on December 1, 1961, that he had transmitted to the attorneys general of all the provinces the official text of a formula worked out during the previous 15 months by the Conference of Attorneys General of the Dominion and the Provinces to ensure that all future amendments to the Constitution would be made in Canada. The formula itself took the shape of an amendment to the British North America Act. The sessions of the Conference during which the formula had been worked out had been held on the following dates: October 6 and 7, 1960; November 2 and 3, 1960; January 12 and 13, 1961; September 11 and 12.

The text of this amendment, which is appended in English and French, received the approval of representatives from each provincial delegation to the Conference and from the federal delegation as a satisfactory draft of the formula arrived at by the Conference.

Mr. Fulton emphasized the fact that, at the final session, all attorneys general had agreed to report the draft, when received, to their respective governments. The great majority has also indicated their approval of the formula on which the draft was based, as the consensus of the Conference and an acceptable basis for legislation.

It is now the responsibility of each provincial government to consider and decide whether or not it finds the formula reported by the Conference acceptable for the purposes of enactment as an amendment to the B.N.A. Act. It is understood that some, if not all, provinces wish to place the proposal before their legislatures for consideration before final action is taken.

The final step would be for the Government of Canada to present the formula to Parliament in a resolution asking for the adoption of the necessary Address to the Queen. If Parliament approved, the Address would be transmitted to Her Majesty, requesting that she cause the proposed formula to be laid before the Parliament of the United Kingdom for enactment as an amendment to the British North America Act. This would be the final amendment to the Act made in the United Kingdom, since by its means all further power of amendment would be transferred to Canada.

(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 of 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 Act, 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

November 6, 1961.

An Act to provide for the amendment
in Canada of the Constitution of Canada.

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.

(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 of 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.

