

have been sought. A provincial government which sought to block an amendment on the ground that it had not been consulted would lack any effective procedure for doing so, since it would have no direct access to either the Government or Parliament of the United Kingdom. There is uncertainty as to the full extent of the parts of the British North America Act which must be amended in this way, but it is certain that this procedure extends to Sects. 92 (exclusive powers of provincial legislatures); 93 (provincial jurisdiction over education and educational rights of certain minorities); 94 (uniformity of provincial laws); 94A (old age pensions); 95 (concurrent jurisdiction in agriculture and immigration); 97-98-99 (selection and tenure of judges of provincial courts); and an uncertain number of other sections dealing with such matters as freedom of trade within the union (Sect. 121).

2. *Amendment of Provincial Constitutions by Provincial Legislatures.*—Part V of the British North America Act (Sects. 58-90) and a number of the Miscellaneous Provisions deal with provincial constitutions (mostly with respect to Ontario and Quebec which were created *de novo* in 1867 out of the United Province of Canada). Sect. 92 (1) gives to the provincial legislatures the exclusive power to amend their own constitutions “except as regards the office of Lieutenant-Governor”. The amending power is thus vested in the legislature of the province and changes have been made in provincial constitutions by ordinary statutory enactments. Thus, for example, Ontario and Quebec have altered the compositions of their legislatures and their Executive Councils, both of which were provided for in the British North America Act. New Brunswick and Nova Scotia have abolished the upper chamber in their legislatures. All provinces have made numerous changes in their machinery of government which might be classed as constitutional amendments.

3. *Amendment by the Parliament of Canada.*—The British North America Act provided in 1867 that certain of its provisions could be modified, repealed or extended by the Parliament of Canada. This power was considerably extended by the British North America (No. 2) Act, 1949, which added to the powers of the Parliament of Canada a general power to amend “the Constitution of Canada”, except as regards the exclusive legislative powers of the provinces, exclusive rights or privileges granted to the provinces, the rights of certain minorities with regard to schools, and rights to the use of the English or French languages. At the same time, the power to extend the life of parliament or to modify the provision for annual parliaments could be exercised only in emergencies and provided that it was not opposed by at least one-third of the members of the House of Commons. Since 1949, by virtue of this power, Parliament has made modifications in the provisions in the British North America Act for the decennial redistribution of seats in the House of Commons.

ATTEMPTS TO DEVISE AMENDING PROCEDURES

A number of proposals for a suitable amending procedure were laid before a Select Committee of the House of Commons which considered the matter in 1935, and in December 1935 a Dominion-Provincial Conference met at Ottawa to consider, *inter alia*, the procedure for amending the British North America Act. This matter was dealt with in a sub-conference of federal and provincial attorneys general, which group agreed that the power to amend the Canadian Constitution should be vested in Canada “provided that a method of procedure therefore satisfactory to the Dominion Parliament and to the provincial legislatures be devised”. Preparation of such a method was left to a sub-committee. After various discussions, the following proposal emerged in the sub-committee in 1936: (a) that an amendment be sought to the Statute of Westminster replacing Sect. 7 of that Act by a new one removing the exemption of the British North America Acts from the operation of the Statute; (b) a power to enact a consolidated constitution and a new amending clause be conferred on the Parliament of Canada. The Constitution was to be divided into four parts and amendment of each part could be initiated in the House of Commons on the recommendation of the Governor General. Should the Senate fail to concur in a proposed amendment, a joint sitting should be held during the same session to decide the issue. Where provincial concurrence was required, failure to take any action