

**REPORT OF THE SUB-COMMITTEE OF THE COMMITTEE CONVENED FOR  
JANUARY 28, 1936, PURSUANT TO A RESOLUTION APPROVED BY THE  
DOMINION-PROVINCIAL CONFERENCE, 1935, TO CONSIDER A METHOD OF  
PROCEDURE TO AMEND THE BNA ACT 1867**

The Sub-Committee appointed to consider and re-draft, if necessary, the GENERAL PROCEDURE TO AMEND THE CONSTITUTION and the proposed amending section 148 as set out in MEMORANDUM dated November 28, 1935, submitted by the Dominion to the Sub-Conference of the Dominion-Provincial Conference in December 1935, begs leave to present the following as its report:

1. The Sub-Committee met on the 30th and 31st days of January and the 1st, 5th, 6th, 7th, 8th, 10th and 11th days of February, 1936.
2. The general procedure to amend the Constitution, approved in principle by the Committee, is indicated in the schedule attached hereto marked "A". This general procedure was re-drafted by the Sub-Committee in the form and terms set out in the schedule attached hereto marked "B".
3. The draft of the proposed amending section to be added to the British North America Act, 1867, as section 148, as approved in principle by the Committee has been re-drafted by the Sub-Committee in the form and terms set out in the schedule attached hereto marked "C".

In connection with this re-draft the Sub-Committee desires to point out that clauses (13) and (16) of section 92 of the said Act have been placed in paragraph (c) of subsection (1) with a proviso in effect eliminating its application to a province which expressly dissents.

4. The Sub-Committee also considered the suggestion made by the Honourable Mr. Taschereau with respect to section 132 of the British North America Act, 1867, but as this suggestion involved the making of an actual amendment of that section at the present time the Sub-Committee was of the opinion that it did not have authority to take any action on such suggestion.

All of which is respectfully submitted.

Schedule "A"

CONFIDENTIAL

**GENERAL PROCEDURE TO AMEND THE CONSTITUTION**

1. An amending section be drafted along the lines of that contained in the Dominion memorandum, dated November 29th, 1935, submitted to the Dominion-Provincial Conference;
2. Submit draft amending section through Dominion-Provincial Conference, if necessary, to provinces for consideration by their legislatures and if approved

notification to that effect to be sent immediately to the Dominion. The Dominion to submit the draft to Parliament for consideration and the adoption of an address by the Senate and House of Commons requesting:

(a) An amendment to the British North America Act 1867, by adding thereto as section 148, a section in the terms of the draft amending section which will be attached as a schedule to such address;

(b) An amendment to the Statute of Westminster repealing section 7 thereof and substituting a provision to the following effect:-

7.(1) The Parliament of Canada is hereby empowered to enact a federal constitution for the Dominion of Canada, in place and continuity of the British North America Acts 1867-1936, containing the provisions of the said Acts in revised and consolidated form, but so that such form shall not alter or change the constitutional positions of the provinces of Canada as they exist at the time of the enactment of such Constitution, provided such Constitution contains an amending section in form and terms of section 148 of the British North America Act, 1867, except that the section numbers therein referred to may be altered to conform to the numbers of the sections containing similar subject matter in such Constitution;

(2) Nothing in this section shall be deemed to confer on the Parliament of Canada the power to repeal, amend or alter such Constitution otherwise than in accordance with the provisions of the said amending section;

Such address to be forwarded immediately for action by the Parliament of the United Kingdom;

3. On the passing of the above amendments by the Parliament of the United Kingdom, the Dominion Parliament to enact such a Constitution.

Schedule "B"

### **GENERAL PROCEDURE TO AMMEND THE CONSTITUTION**

The adoption of an address by the Senate and House of Commons requesting:

(a) An amendment to the British North America Act 1867, by adding thereto as section 148, a section in the terms of the draft amending section which will be attached as a schedule to such address;

(b) An amendment to the Statute of Westminster repealing section 7 thereof and substituting a provision to the following effect:

7. (1) The Parliament of Canada shall have power to enact a federal Constitution for the Dominion of Canada upon the following conditions:

(a) Such Constitution shall contain, in revised and consolidated form, the provisions of the British North America Acts 1867 to 1937, the Parliament of Canada Act, 1875, Canada (Ontario Boundary) Act, 1889, Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, and any Acts, Orders, Rules or Regulations passed or made thereunder or pursuant thereto establishing a province or admitting a colony or province into the Union or affecting the constitutional relationship between the Dominion of Canada and a province;

(b) Such Constitution shall contain procedure for amendment thereof which shall be in the same terms, mutatis mutandis, as section 148 of the British North America Act, 1867, as enacted by the British North America Act, 1937, copy of which section is annexed as a schedule hereto;

(c) Such Constitution shall not contain any provisions which will alter or change the constitutional relationships existing between the Dominion of Canada and the respective Provinces of Canada at the time of the enactment of such Constitution;

(d) Such Constitution shall not be held to operate as new law but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the British North America Acts, 1867 to 1937, the Parliament of Canada Act, 1875, Canada (Ontario Boundary) Act, 1889, Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, and any Acts, Orders, Rules or Regulations passed or made thereunder or pursuant thereto as aforesaid.

(2) The Parliament of Canada shall have power to repeal, amend and alter such Constitution from time to time but only in accordance with the procedure for amendment referred to in paragraph (b) of subsection (1) of this section.

(3) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(4) The powers conferred by sections two and three of this Act and subsection three of this section upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or any of the legislatures of the Provinces respectively,

(5) The British North America Acts 1867 to 1937, the Parliament of Canada Act, 1875, the Canada (Ontario Boundary) Act, 1889, and the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, shall stand repealed on the coming into force of such Constitution.

## SCHEDULE "C"

### **DRAFT OF PROPOSED AMENDING SECTION TO BE ADDED TO BRITISH NORTH AMERICA ACT, 1867**

148. (1) This Act together with all other Acts included in the British North America Acts, 1867 to 1937, and the Parliament of Canada Act, 1875, the Canada (Ontario Boundary) Act, 1889, the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, and any Acts, orders, rules and regulations passed or made thereunder or pursuant thereto establishing a province or admitting a colony or province into the Union or affecting the constitutional relationship between the Dominion of Canada and a province, may be repealed, amended or altered from time to time by enactment of the Parliament of Canada but only in accordance with the following procedure:

Any Bill providing for repeal, amendment or alteration shall originate in the House of Commons and shall be preceded by a resolution setting forth the purpose thereof, which purpose shall have been first recommended. to that House by message of the Governor General in the Session in which such resolution is proposed, and

(a) Such enactment shall come into force on a date to be proclaimed by the Governor in Council and published in the Canada Gazette, if the enactment is in relation to any matter which

(i) affects Canada only and is not otherwise in this section specifically provided for; or

(ii) comes within any of the following provisions, namely:- sections 10 to 16, both inclusive, 18, 20, 23 except clause (6), 24, 26 to 40 both inclusive, 44 to 50 both inclusive, 52 to 57 both inclusive, 59 to 62 both inclusive, 67, 101, 102, 103, 105, 106, 108, 120, 122, 146 or 147 of this Act; sections 2 and 4 of the British North America Act, 1871, sections 1 and 2 of the British North America Act, 1886, section 1 of the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, or paragraphs iii, iv, v, vi and vii of subsection (1) of Section 1 of the British North America Act, 1915;

(b) Such enactment shall come into force as provided in subsection (5) of this section if within eighteen months from the date of assent the Legislative Assembly of each province affected, by resolution approves of the enactment and if the enactment is in relation to any matter which:-

(i) affects one or more of the provinces only or Canada and one or more but not all of the provinces and is not otherwise in this section specifically provided for; or

(ii) comes within any of the following provisions, namely:- sections 6, 7, clause (6) of 23, 63, 64, 65, 66, 68 to 80 both inclusive, 82 to 88 both inclusive, clause (1) of 92, 94, 97, 98, 109 to 118 both inclusive, 124, 126, 129, 138, 143, 144 or 145 of this Act; sections 24, 25, item 7 of 26, 31, 32 and 34 of An Act to amend and continue the Act 32 and 33 Victoria, chapter 3; and to establish and provide for the Government of the Province of Manitoba, being chapter 3 of 33 Victoria, terms and conditions of Union numbered 2, 3, 4, 5H, 9 and 13 set out in the schedule to the Order of Her Majesty in Council admitting

British Columbia into the Union, dated the 16th day of May 1871; sections 3, 5, and 6 of the British North America Act, 1871, paragraphs 2 to 6 both inclusive, 8th item of 7, 8 and 9 of terms and conditions of Union as set out in the schedule to the Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873, section 2 of the Canada (Ontario Boundary) Act, 1889, section 1 of the British North America Act, 1907, sections 10, 16, 18, 19, 23, 24 of the Saskatchewan Act, sections 10, 16, 18, 19, 23 and 24 of the Alberta Act, or section 1 of the British North America Act, 1930;

(c) Such enactment shall come into force as provided in subsection (5) of this section, if within eighteen months from the date of the assent, the Legislative Assemblies in two-thirds of the provinces, representing at least 55% of the population of Canada as shown by the last census, by resolution approve the enactment and if it is in relation to any matter which

(i) affects Canada and all of the provinces and is not otherwise in this section specifically provided for; or

(ii) comes within any of the following provisions, namely:- sections 1 to 5 both inclusive, 8, 17, 58, 90, 91, 92 except clauses (1), (4), (5), (8), (12), (14) and (15), 95, 96, 99, 100, 121, 125, 128, or 132 of this Act. Provided that if the enactment is in relation to matters coming within the classes of subjects enumerated in clauses (13) and (16) of section 92, or either of them, the legislature of any province, the Legislative Assembly of which has not approved or is not deemed to have approved such enactment in accordance with the provisions of this section and which has expressed its dissent thereto by resolution may continue exclusively to make laws in relation to the subject matters coming within such enactment; and provided further that the legislature of any such province may by statute rescind such dissent and express its approval of the enactment whereupon the enactment shall thereafter apply to such province.

(d) Such enactment shall come into force as provided in subsection (5) of this section, if within eighteen months from the date of the assent the Legislative Assemblies of all the provinces by resolution approve the enactment and if it is in relation to any matter which comes within sections 9, 21, 22, 51, 51A, clauses (4), (5), (8), (12), (14) and (15) of 92, 93, or 133 of this Act, sections 22 and 23 of An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the Government of the Province of Manitoba, being chapter 3 of 33 Victoria, section 17 of the Saskatchewan Act, section 17 of the Alberta Act or paragraphs 1 and ii of subsection (1) of section 1 of the British North America Act, 1915.

(2) If the House of Commons passes any Bill in relation to a matter provided for in paragraphs (a), (b) and (c) of subsection (1) of this section and the Senate rejects or fails to pass it or passes it with amendments to which the House of Commons will not agree, then the Governor General may during the same Session convene a joint sitting of the members of the Senate and House of Commons. The members present at any such joint sitting may deliberate and shall vote together upon such Bill and upon

amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of the members of the Senate and House of Commons present at such sitting shall be taken to have been carried, and if such Bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Commons present at such sitting it shall be taken to have been duly passed by both Houses of Parliament.

(3) (a) Where a resolution, as first referred to in para. (c) of subsection (1) of this section approving of the enactment, has been introduced into a Legislative Assembly and passed within the time provided in the said paragraph the approval given thereby shall be irrevocable;

(b) Where such a resolution has been rejected it may, within the said time, be again introduced and if passed the approval given thereby shall be irrevocable;

(c) Where such a resolution is not introduced or is introduced and not passed or not rejected within the said time such Legislative Assembly shall be deemed to have approved the enactment.

(4) Upon the enactment of a repeal, amendment or alteration in relation to a matter provided for in paragraphs (b), (c) and (d) of subsection (1) of this section, the Secretary of State of Canada shall within the thirty days next following such enactment forward a certified copy thereof, with the date of ascent endorsed thereon, to the Government of each province concerned.

(5) Enactments requiring the approval of the Legislative Assemblies of the provinces or any of them shall not come into force until approval thereof, as hereinabove provided for, is obtained and then only on a date to be proclaimed by the Governor in Council and published in the Canada Gazette.

(6) In this section, unless the context otherwise requires, the expression, "Legislative Assembly" shall include, "House of Assembly" and "Legislative council".

(7) (a) This section, except the provisions with respect to procedure set out in the sentence next preceding paragraph (a) of subsection (1) and the said paragraph (a), may not be repealed, amended or altered in accordance with the procedure prescribed for the repeal, amendment or alteration of any matter which comes within paragraph (d) of subsection (1) of this section:

(b) The provisions with respect to procedure set out in the sentence next preceding paragraph (a) of sub-section (1) of this section and the said paragraph (a) may only be repealed, amended or altered in accordance with the procedure prescribed for the repeal, amendment or alteration of any matter which comes within the paragraph (a).