

# The Statute of Westminster, 1931

The Dominion of Canada was constituted following the ratification of the [British North America Act, 1867](#)<sup>2</sup> by the British Parliament. Other British colonies were constituted in their turn as Dominions, including Australia (1901), New Zealand (1907), the Union of South Africa (1910), Newfoundland (1919), and the Irish Free State (1922).

The Dominions were quasi-autonomous states of the British Empire. They exercised their autonomy over domestic affairs through their respective legislative assembly, but deferred to London with respect to external affairs and their constitution. In Canada's case, except for a few provisions<sup>3</sup>, only the British Parliament had the power to amend the British North America Act, 1867 – as it had done on several occasions at the request of the Canadian authorities<sup>4</sup>.

Over the years, the Dominions had exercised their sovereignty on numerous occasions with respect to foreign policy. It became necessary to clarify their status as quasi-autonomous states. An Imperial Conference was held in 1926 to discuss that issue. It produced, among other things, the [Balfour Declaration](#) which recognized that the Dominions were: “autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.” It remained for this de facto situation to be recognized through an act of the British Parliament. Discussions continued, notably at the Imperial Conference of 1930.

In 1931, the [Statute of Westminster](#) was ratified by the Parliament of the United Kingdom. It granted the Dominions full legal autonomy except in those areas where they chose not to take advantage of that autonomy. Some Dominions, including Canada, had in fact expressed reservations about obtaining their full legal autonomy.

## Canada's reservations relating to the Statute of Westminster<sup>5</sup>

In the case of Canada, full legal autonomy implied that the British North America Act, 1867 and the British acts amending it – as well as the power to amend these acts – would become Canadian laws. Such a prospect was a source of concern for Canada, a federation in which jurisdictions are shared.

- Who would henceforth have the power to amend Canada's constitutional acts?
- Only the Government of Canada?
- The Government of Canada and the provincial governments?

There was no provision to that effect in the British North America Act, 1867 or the acts amending it.

In November 1927, a Dominion-Provincial Conference<sup>6</sup> was held in Ottawa. The topics discussed by the Dominion and provincial first ministers included a procedure for amending the Constitution, but no agreement could be reached thereon.

Canada's preoccupations relating to obtaining its full legal autonomy remained. It was therefore proposed, during the discussions that took place in London, that the power to amend Canada's Constitution be excluded from the provisions of the Statute. Canada could thus acquire its autonomy at the same time as the other Dominions, and settle that question in due course.

The restrictive clause which applied to Canada reads as follows: “ Nothing in this Act [the Statute of Westminster] shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder ” ([s.7](#)). The power to amend the Canadian Constitution would thus remain that of the Parliament of the United Kingdom.

Restrictive clauses or conditions of application also pertained to Australia, New Zealand and Newfoundland ([ss. 8, 9, 10](#)).

In 1982, after federal-provincial negotiations and at the request of Canada, the power to amend the Canadian Constitution was “repatriated” in Canada.

<http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=hist&sub=westminster&doc=westminster-eng.htm>