

# Amending Formula

*This article was written by a law student for the general public.*

A constitution includes the most fundamental values of a nation. Those values should be protected. One of the ways that a constitution is protected is by making it hard to change. If it was easy to change, the government could change the constitution when it wanted to act unconstitutionally.

However, a constitution should not be too difficult to change. Values change over time. Some things may not be as important as they once were, and other things that were not important may have become fundamental. A constitution should be able to respond and incorporate changes in keeping with the times.

A good constitution needs to find the right balance. It should not be too easy or too hard to change. When Canada's Constitution was being updated in 1981-82, the people who were suggesting changes had to think about this balance. Before 1982, Canada could only change its Constitution by asking the British Parliament to do it for Canada. In order to "patriate" the Constitution, that is, to bring it home, Canada needed a way to change the Constitution on its own. It needed a formula or a way to make changes to its Constitution that would be acceptable to Britain and to the federal and provincial governments. By creating an acceptable amending formula, Canada would no longer need to rely on Britain.

The drafters of Canada's revised Constitution created the amending formulas. They are listed in sections 38 to 49 of the Constitution Act, 1982.[\[1\]](#) Creating the formulas was not easy because all of the provinces wanted to make sure they got a say if and when the Constitution was to be changed. The amending formulas are complicated. There are five different kinds of formulas. Each one is used for changing different aspects of the Constitution.

## The General Formula

The general formula is the standard way to change the Constitution. Unless the Constitution says that another formula can be used, the general formula is needed. The general formula is also needed for specific changes listed under section 42,[\[2\]](#) like changing what powers Senators have and how they are selected. This formula would also be used to establish new provinces.

To change the Constitution using the general formula, the change needs to be approved by 1) the federal Parliament, 2) the Senate, and 3) a minimum number of provincial legislatures. There must be at least seven provinces that approve the change, representing at least 50% of Canada's population. This is often called the 7 + 50 rule. This means that provinces with large populations will typically need to approve a change in order for the amendment to succeed. However, the change cannot happen without some support from

provinces with smaller populations.

## The Unanimous Formula

Some things were thought to be so important to Canada that they could only be changed by having all of the provincial governments and federal government agree. Section 41 describes the types of changes that need agreement from all governments.<sup>[3]</sup> This includes changing the role of the King or Queen, changing the use of English and French in Canada, or changing the amending formulas themselves. Because all governments need to agree on these issues to change them, it is very unlikely that these changes will ever be made.

## Other Amending Formulas

The other three amending formulas are used to make changes to the Constitution that do not affect all provinces. Typically, only the governments that are affected by the change need to agree. For example, if it is a change to a provincial constitution, only that province needs to agree to the change. If it is a change to how the federal government works, the federal government alone can make that change. If it is a change that affects two or more provinces, like changing provincial boundaries, only those provinces and the federal Parliament need to agree.

## Amendments since 1982

So far there has been very little use of the amending formulas in Canada. Most changes have been made by using the "province-only" formula. There was one successful use of the general formula in 1983 to make some additions to Aboriginal rights. There were two famous attempts to change the Constitution that failed: the Meech Lake Accord in 1987 and the Charlottetown Accord in 1990. Both attempts proposed a number of changes to the Constitution that were negotiated by the different leaders of Canada. However, when it came time to use the general amending formula, neither attempt could get all of the different agreements required using the general formula.

None of the amending formulas require direct approval by the people of Canada. Some governments think that it is not a good idea to change the Constitution without having a public vote or referendum on it. Alberta<sup>[4]</sup> and BC<sup>[5]</sup> have now passed laws that require that a referendum must be held before they approve a change to the Constitution. Additionally, the federal government has a law called *An Act respecting Constitutional Amendments*, that requires support from Ontario, Quebec, BC, at least two of the Atlantic provinces and at least two of the Prairie provinces before proposing an amendment.<sup>[6]</sup> These laws add an extra step needed before the Constitution is changed, which may make it even harder to change the Constitution. On the other hand, some think that this would make the change more democratic.

Although there is a lot of debate about changing Canada's Constitution, it is important to

understand how it can be completed. So far, changing the Constitution has been very difficult. Whether there will be more changes in the future remains to be seen. For now, Canada's amending formulas have made sure that the Constitution is well protected.

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[1] <http://www.canlii.org/en/ca/const/const1982.html#sec38>

[2] <http://www.canlii.org/en/ca/const/const1982.html#sec42>

[3] <http://www.canlii.org/en/ca/const/const1982.html#sec41>

[4] Constitutional Referendum Act, RSA 2000, c C-25, <http://canlii.ca/en/ab/laws/stat/rsa-2000-c-c-25>

[5] Constitutional Amendment Approval Act, RSBC 1996, c 67, <http://canlii.ca/en/bc/laws/stat/rsbc-1996-c-67>

[6] An Act respecting Constitutional Amendments, SC 1996, c 1, <http://canlii.ca/en/ca/laws/stat/sc-1996-c-1>.