

Constitutional Law – Practice Question and Answer

Session: Amending Procedure

Topic: Amending Procedure

Recommended time: 2 hours

Score: 100 Marks

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Question

Joachim, the Clerk of the House of Commons received a motion on January 23. The motion is on a bill proposed by a group of 5 legislators from the Saskatchewan Legislative Assembly. This bill proposed some changes to the Supreme Court Act that will allow the Supreme Court of Canada (SCC) have a registry in the Prairie Provinces. The proponents of this amendment argue that such a registry will ease the stress and attendant expenses of travelling to Ottawa each time any process needs to be filed at the Supreme Court.

Parliament considered this proposed bill on February 22; it enjoyed unanimous support in both the Commons and the Senate and a resolution effecting the amendment was adopted on the same date. Similarly, the Legislative Assemblies of Alberta, Saskatchewan, New Brunswick, Manitoba, Quebec, Nova Scotia, and Prince Edward Island passed resolutions adopting the amendment five days later. The Governor General then issued a proclamation on December 8, citing the need to enhance the work of the SCC to help in quicker dispensation of judgments beginning in the new year.

Brittany, a member of the Legislative Assembly of British Columbia is upset about this amendment. She contends that the appropriate amending procedure was not adopted in promulgating the law. To her, since the amendments relates to the SCC, then the unanimity procedure should have been employed.

The Clerk of the House of Commons had replied to the previous complaints of Brittany on this issue. The Clerk had responded that the Supreme Court Act is a federal legislation, and by virtue of that fact, the Parliament alone can amend the Act without recourse to provincial legislatures. Besides, the Clerk added that s. 101 of the Constitution Act, 1867 permits the Parliament acting alone to make laws for, among others, the maintenance and organization of the General Court of Appeal, which is widely accepted as the Supreme Court. All these notwithstanding, Parliament had decided to adopt the seven-fifty formula in the spirit of true federalism, to ensure that the majority of Canadians is carried along in this amendment process. And having met all constitutional requirements, the Act remains validly amended, concluded the Clerk.

Brittany has consulted you and wants to you to provide an independent legal advice on this matter, including on the position adopted by the Clerk as well as the validity of the amended process itself.

Prepare a draft of your opinion on what you deduce from the facts should be the appropriate amending procedure, taking into cognisance all the circumstances surrounding the validity of the amendment that has just been adopted.

Notes:

- *This is a fact-based question. To answer this type of question, you should employ the IRAC methodology. You must be able to distil the issue(s), identify which rule or law applies, apply the rule or law and then reach a conclusion.*
- *Please note that there could be more than one issue in a fact based question so it's your responsibility to identify all necessary issues.*
- *Finally, your answer must be based on currently applicable laws. Don't espouse your own opinion or that of a dissent judgement unless absolutely required or requested by the examiner or needed only for reference purposes. If you do so for reference purposes, remember to indicate clearly that this is a dissent judgement or your own opinion.*

HIGHLIGHTS OF ANSWER

The issues raised here as follows:

- (1) Was the proper amending procedure followed?
- (2) Was the bill validly passed into law?

Issue 1: On whether the proper amending procedure was followed.

1. S. 38 of the 1982 Constitution provides for the general amending procedure and covers all matters for which no specific amending procedure is stipulated.