



Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO / À

Mary MacDonall

*PM*

FROM / DE

Ralph Coleman

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE October 20, 1978

SUBJECT / OBJET

Re: Senate Committee on the Constitution

*Report of the Special Committee of the Senate on the Constitution*

Att: FPRO sent me the attached summary thinking there might be a press conference by the Prime Minister this week. Do you think he might still want to see this since there is no press conference?

*RJ*  
*[Signature]*  
R. J. Taylor  
RCC  
Federal-Provincial Relations Office

Enclosure

CONFIDENTIAL

October 19, 1978

MEMORANDUM TO MR. RALPH COLEMAN

Report of the Special Committee  
of the Senate on the Constitution

Attached for your information is a copy of the summary included with a preliminary draft, dated October 19, of the Senate Report of the Special Committee of the Senate on the Constitution expected to be tabled in the Senate today.

RT

R. J. Taylor  
Federal-Provincial  
Relations Office

SUMMARY OF PRINCIPAL OBSERVATIONS ON BILL C-60 BY THE SPECIAL COMMITTEE  
OF THE SENATE ON THE CONSTITUTION

In tabling its report today, the Special Committee of the Senate on the Constitution noted that there had been insufficient time to make final recommendations on all matters proposed by Bill C-60. However, in view of statements that revised legislation would be introduced, the Committee felt it important to record without delay its views based on its work so far.

The Committee approved of the proposed reference to the Supreme Court of Canada on the question of Parliament's right to unilaterally substitute a House of the Federation for the Senate and noted that this and other circumstances would result in both phases of proposed reform being considered in closer proximity.

The Committee urges<sup>d</sup> that priority be given to finding a suitable constitutional amending formula, pointing out the difficulty of advocating entrenchment of certain parts of the constitution before this fundamental question is settled.

The Committee welcomed the inclusion of a Statement of Aims in the Constitution, but urged that the drafting style of these, and other provisions that may be included in a new Bill, be improved.

The Committee agreed that a Bill of Rights should be inserted in the Constitution and, subject to an appropriate amending formula, that it be entrenched. The Committee reflected the concern of experts who appeared before it that certain provisions could be strengthened.

The Committee, noting that some interpretations of the proposals on the monarchy had been exaggerated, pointed to some of the paradoxes that attempt

to constitutionalize current practice and made some specific drafting recommendations in this regard. It also warned against attempting to write too many conventions into the Constitution.

The Committee recommended that consideration be given to a provision relating to the security of tenure of the Governor General.

It agreed with the removal of the power of reserving bills for the Queen's pleasure, but considered that a modern provision dealing with Assent to bills should be included.

The Committee questioned the necessity of a provision vesting the command-in-chief of the Canadian Forces in the Governor General.

The Committee disagreed with the proposed change of name of the Privy Council to the "Council of State".

The Committee considered that the Cabinet should be described as the principal instrument of policy and have the general management and directions of the government with collective responsibility to the House of Commons, subject to the obligation of individual ministers to answer for their respective departments:

The Committee disagreed with subclause 53(2) of the Bill to the extent that it would oblige or enable a defeated Prime Minister to advise the Governor General on who should be invited to form a new government.

The Committee was concerned that the proposals for a House of the Federation appeared to be addressed exclusively to the role of the Second Chamber as a regional forum. It doubted that the proposed House would satisfy the objective of improving this function. The Committee also referred

to the many other accepted functions of parliamentary second chambers and expressed concern that the proposed House of the Federation, because of its makeup, would be unable to discharge these functions in an effective manner.

The Committee recognized the need for reform of the Second Chamber and indicated its intention to study alternatives.

The Committee welcomed the proposed treatment of regional disparities in the Constitution, noting, however, that the provisions lacked enforceability. It acknowledged the difficulty of making such provisions enforceable but recommended that the question be given further study by an appropriate Committee of the Senate.

The Committee did not think that the number of judges on the Supreme Court of Canada should be increased nor did it agree with the proposal that appointments should require consent of the attorney general of the province from which a judge is to be appointed. It agreed that the Constitution should provide for appointment on a regional basis and that there should be consultation with the attorneys general of all the provinces in the region from which the judge is to be appointed.

The Committee did not agree with the proposal that appointments to the Court should be ratified by the Second Chamber.

The Committee did not agree that questions of civil law should be decided exclusively by the Quebec judges; but that the Constitution should provide at the most that a majority of the Quebec judges should sit on civil law cases.