

Saskatchewan officials have been told that the government does not have strong views on the first item; that item 2 was unacceptable, and that items 3 and 4 are probably unacceptable but we would consider them. A shortened time period for holding referenda, as suggested under point 4, does not allow enough flexibility for unexpected events. The present two-year time period does not mean the federal government would necessarily have to wait two years to hold a referendum; it is able to do so within the shorter period of time if practical.

None of these issues were mentioned in Blakeney's Halifax speech.

Resources - Amendment to Section 2

Premier Blakeney will undoubtedly raise with you his request for a change in the resources draft, as agreed to with Broadbent, to add certain words to clause (2) to refer to the export of production from the province. The text which has been agreed to with Mr. Broadbent is attached. What is referred to by Premier Blakeney, and in this memorandum as clause (2), appears in the Broadbent text as clause (1). Section (1) of the Broadbent text follows with the words which Blakeney wants added thereto underlined:

92A(1). In each province the legislature may exclusively make laws in relation to:

- (a) exploration for non-renewable natural resources in the province;
- (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
- (c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy,

whether or not such production is exported (removed) in whole or in part from the province.

The federal position, since a similar proposal was first made by Saskatchewan in the course of the C.C.M.C. discussions, has been to refuse to agree to such an addition. It has been the view that such wording might bring in by the back door extended provincial jurisdiction over international trade and commerce, which is what we have been continually rejecting in another form. In addition, the authority given to provincial legislatures in clause (2) is an exclusive power so that any addition to provincial authority thereby could be interpreted as a subtraction from federal authority. In particular, it should be noted that "management" and "rate of primary production" in clause (2) could be interpreted very broadly and we would not be able to override provincial regulation affecting exports by paramount federal legislation. We do not agree with Saskatchewan's position that these additional words are necessary to ensure that a province's resource management laws will not be characterized as laws relating to trade and commerce.

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APPENDIX A

Equalization

Replace subsection 31(2) with one of the following:

(A) "Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation." (Manitoba/Saskatchewan Proposal, FMC)

OR

(B) "Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments are able to provide essential public services of reasonable quality without imposing an undue burden of taxation." (Modified Quebec Proposal)

OR

(C) "Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services without imposing an undue burden of taxation." (Modified Manitoba/Saskatchewan Proposal).

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APPENDIX B

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Amending Formula: Section 41(1)(b)(ii)

Reversion to Victoria Formula

41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolution (2(1).)

(2) A referendum referred to in subsection (1) shall be held only where directed by proclamation issued by the Governor General under the Great Seal of Canada, and the following cases and in no others:

(a) where

(ii) at least two of the Atlantic provinces, and

(i) the requirements of paragraph 41(1)(a) have been satisfied for at least one year with respect to a proposal for amendment;

(ii) the requirements of paragraph 41(1)(b) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i);

(iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i); and

(iv) polling day at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i);

or

(b) where

(i) the requirements of paragraph 41(1)(b) have been satisfied for at least one year with respect to a proposal for amendment;

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APPENDIX C

Referendum Procedure Section 42

Proposed Draft

- (1) the requirements respecting resolutions in paragraph 41(1)(a) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in
42. (1) (Same as proposed federal resolution 42(1).)
- (2) A referendum referred to in subsection (1) shall be held only where directed by proclamation issued by the Governor General under the Great Seal of Canada, and such proclamation shall be issued and referendum held in the following cases and in no others:
- (a) where
- (i) the requirements respecting resolutions in paragraph 41(1)(a) have been satisfied for at least one year with respect to a proposal for amendment,
  - (ii) the requirements of paragraph 41(1)(b) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i),
  - (iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i), and
  - (iv) polling day at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i);
- or
- (b) where
- (i) the requirements of paragraph 41(1)(b) have been satisfied for at least one year with respect to a proposal for amendment,
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Appendix C (cont.)

- (ii) the requirements respecting resolutions in paragraph 41(1)(a) have not been satisfied with respect to the proposal for amendment at the expiration of the year mentioned in subparagraph (i),
- (iii) the issue of the proclamation is authorized by resolutions of the Senate and House of Commons after the expiration of the year mentioned in subparagraph (i) but within one year after the expiration of that year, and
- (iv) polling date at the referendum is not more than two years after the expiration of the year mentioned in subparagraph (i).
- (3) Where subparagraphs (2)(b)(i) and (ii) obtain, motions to resolve, under subparagraph (2)(b)(iii), to authorize the issue of a proclamation shall be proposed as soon as practicable in the Senate and House of Commons, and, within one year after the expiration of the year mentioned in subparagraph (2)(b)(i), every question necessary to dispose of the motions shall have been put.

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APPENDIX D

Referendum Rules Committee

New s. 40 and s. 46

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46. (1) Subject to subsection (2), the Governor in Council may, on the recommendation of a Referendum Rules Committee established under this section, make rules applicable to the holding of a referendum under sections 38 and 42.
- (2) (same as federal draft)
- (3) As soon as practicable after the authorization for the holding of a referendum under this Act, a Referendum Rules Committee shall be established to recommend the rules applicable to the holding of that referendum and the Referendum Rules Committee shall make its recommendation by majority, within two months of its establishment.
- (4) The Referendum Rules Committee referred to in subsection (3) shall consist of:
- (a) The Chief Electoral Officer of Canada, appointed by resolution of the House of Commons;
  - (b) a nominee of the Government of Canada;
  - (c) a nominee agreed to by a majority of the provinces.
- (5) Where a majority of the provinces fail to agree on the nominee mentioned in paragraph (4) (c), the Chief Justice of Canada shall select the nominee from among candidates named by the governments of the provinces, and each provincial government is entitled to name one candidate.

Robert F. Hoare,  
Saskatchewan Department of Intergovernmental Affairs,  
Regina, Saskatchewan.

October 24th, 1980.

Dear Mr. Hoare:

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APPENDIX E

Resources: Express Grant of Jurisdiction

92A(1)

In each province the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy,

whether or not such production is exported (removed) in whole or in part from the province.

I am replying to your letter of October 21st which I will deal with each of the issues raised in the same sequence as appears in your letter. I have difficulty responding to that in many places that in many places that in many places federal government and hence presumably to indicate either that it intends to introduce such changes or that it is not doing so. Changes in committee process are to give interested Canadians and parliamentarians an opportunity to try to improve on the wording of the draft Resolution. If the government were to agree with outside parties on all the amendments it will introduce or support at the committee stage, I am sure you would agree, it would be seriously undermining the parliamentary committee system. Therefore, agreement on the exact wording of amendments is not possible at this time.

Having said this, however, I am quite willing to give you reactions and comments on the proposals you are making and to indicate the areas where the federal government is in agreement with the intent and substance of your proposed amendments, even though for the reasons indicated above, I cannot agree or disagree with your exact words.

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Moved that (1)

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding thereto, immediately after section 51 of the proposed Constitution Act, 1980, the following headings and sections:

"PART VI  
AMENDMENT TO  
THE CONSTITUTION ACT, 1867

Amendment to  
Constitution  
Act, 1867

52. (1) The Constitution Act, 1867 (formerly known as the British North America Act, 1867) is amended by renumbering section 92 as subsection 92(1) and by adding to that section the following subsections:

"Non-Renewable Natural Resources, Forestry  
Resources and Electrical Energy" (2)

Laws respecting  
non-renewable  
natural resources,  
forestry resources  
and electrical  
energy

(2) In each province the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy. (3)

Export from  
provinces  
of resources

(3) In each province the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Authority of  
Parliament

(4) Nothing in subsection (3) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict (are inconsistent), the law of Parliament prevails to the extent of the conflict (inconsistency). (4)

Taxation of  
resources

(5) In each province the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

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(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

"Primary production"

Existing powers or rights

Idem

(6) The expression "primary production" has the meaning assigned by the Sixth Schedule.

(7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections (this section)." (1)

53. The said Act is further amended by adding thereto the following Schedule:

"THE SIXTH SCHEDULE

PRIMARY PRODUCTION FROM  
NON-RENEWABLE RESOURCES  
AND FORESTRY RESOURCES

1. For the purposes of subsections 92(2) to (5) of this Act,

(a) production from a non-renewable resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and (2)

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood." ; and

(b) by renumbering Part VI of the Constitution Act, 1980 as Part VII, by renumbering sections 52 to 59 thereof as sections 54 to 61, respectively, and by making such other changes in numbering as are consequential thereto.

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