

January 15, 1981

A Veto for the Senate
over Constitutional Amendments

The Senate will exercise an absolute veto over any amendment under section 42 (referendum procedure). However, the Senate would only have a delaying power over amendments under section 41 as modified by section 44.

Senators have expressed concern about amendments respecting the Upper House of Parliament that could be made under section 41 as modified by section 44 without Senate approval. This concern could be accommodated in part by amending sections 44 and 50 to provide for an absolute Senate veto over a number of amendments, including those respecting the powers of the Senate. However, any absolute veto exercised by the Senate should not make it impossible for Parliament and the requisite number of provincial assemblies to reform the Senate, notwithstanding the opposition of Senators. Hence, as a last resort, Parliament and at least six legislative assemblies distributed among four regions should have the power to alter the number by which a province is entitled to be represented in the Senate notwithstanding the opposition of incumbent Senators.

The amended sections 44 and 50 below would achieve the purpose of giving greater security to the Senate while, at the same time, giving ultimate authority to Parliament and the requisite number of legislative assemblies to proceed to reform the Senate should that be considered desirable course of action. A note explaining the operation of the amended sections 44 and 50 is attached.

Matters requiring amendment
Amendments without Senate resolution

50. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by the Constitution of Canada.

44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in subsection 50(1), may be made by proclamation under subsection 41(1) or section 43, as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those one hundred and eighty days, the House of Commons again passes the resolution.

Computation of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

(3) The principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

Idem

(2) An amendment to the Constitution of Canada in relation to the number of members by which a province is entitled to be represented in the Senate may be made only in accordance with the procedure prescribed by section 41, as modified by section 44, or by section 43.

Matters
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Computation
of period

Senators:
(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

(3) The principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

Idem

(2) An amendment to the Constitution of Canada in relation to the number of members by which a province is entitled to be represented in the Senate may be made only in accordance with the procedure prescribed by section 41, as modified by section 44, or by section 42.

January 15, 1961

Matters
requiring
amendment
under
general
amendment
procedure

50. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41 or 42:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- (b) the *Canadian Charter of Rights and Freedoms*;
- (c) the commitments relating to equalization and regional disparities set out in section 31;
- (d) the powers of the Senate;
- (e) the method of selecting Senators and the residence qualifications of Senators;
- (f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province; and
- (g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

Idem

(2) An amendment to the Constitution of Canada in relation to the number of members by which a province is entitled to be represented in the Senate may be made only in accordance with the procedure prescribed by section 41, as modified by section 44, or by section 42.

January 15, 1981

The proposal would:

1. Provide for an absolute Senate veto over an amendment in relation to the following matters:
 - a) the office of the Queen, the Governor General, and the Lieutenant Governor of a province,
 - b) the Canadian Charter of Rights and Freedoms set out in the proposed Resolution,
 - c) the commitments relating to equalization and regional disparities set out in the proposed Resolution,
 - d) the powers of the Senate,
 - e) the method of selecting Senators,
 - f) the resident qualifications of Senators,
 - g) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province, and
 - h) the principle of proportionate representation of provinces in the House of Commons;
2. Provide that the Senate would have a suspensive veto for 180 days in relation to all other amendments of the Constitution to which the general amending formula applies, including an amendment in relation to the number of members by which a province is entitled to be represented in the Senate.

Thus, the Senate would have an absolute veto over the vast majority of amendments relating to the Senate, and its powers.

The only exception would be in respect of an amendment in relation to the number of members of the Senate. Such an amendment could be adopted without the Senate's consent only subject to a 180 day veto by the Senate and if approved by the House of Commons and by the legislatures of Ontario, Quebec, two Atlantic provinces and two western provinces with the two western provinces having 50% of the population of the western region.