

CANADA ACT

CLAUSE 1 - COMING INTO FORCE OF CONSTITUTION ACT

Under the government Resolution, the Constitution Act (except for the permanent amending formula) would come into force upon proclamation of the Governor General at any date fixed by that proclamation made under clause 57 once the UK Parliament has adopted the Canada Act.

AMENDMENT PROPOSED BY CONSERVATIVES

This amendment would establish new conditions and time-frames within which Parts V and VI (the permanent amending formula and the general provisions) could be brought into force, and new procedures and a time-frame within which other parts of the Constitution Act (the Charter, aboriginal rights, First Ministers Conferences and equalization) could be brought into force.

1. COMING INTO FORCE OF PARTS V AND VI

These provisions could be brought into force only by one of the following procedures following adoption by the UK Parliament:

- (a) by proclamation at any time after Parliament and all provincial legislatures had adopted resolutions approving the proclamation, i.e., by unanimity.
- (b) by proclamation at any time after four months of adoption by the UK if such proclamation was approved by resolutions of Parliament and eight or more provincial legislatures representing 80% of the population.
- (c) by proclamation at any time after eight months of adoption by the UK if such proclamation was approved by resolutions of Parliament and seven or more provincial legislatures representing at least 50% of the population.
- (d) by proclamation at any time after twelve months of adoption by the UK., but with section 41 (the Victoria formula) amended to replace it with the unanimity amending formula, i.e., resolutions of Parliament and all provincial legislatures.

2. COMING INTO FORCE OF ALL OTHER PARTS OF CONSTITUTION ACT

The provisions of the Constitution Act other than the permanent amending formula and the general provisions (Parts V and VI), could only be brought into force by proclamation after Parts V and VI had been brought into force by one of the four methods described above, and then only by the amending procedure that had been approved by the method adopted under (a), (b), (c) or (d) outlined above.



COMMENTS

1. With respect to the proposed procedures for bringing Parts V and VI into force, obviously none of these is acceptable. The government proposal under section 33 enables all the governments to agree upon a new amending formula during the first two years, and section 38 enables seven of the provinces with 80% of the population to propose a new amending formula which might be accepted by all the provinces and Parliament or put to the people in a referendum.
2. The first three proposals of the Conservatives for approval of the amending formula would never be achievable since past discussions have made it evident that neither approach would result in agreement. The fourth proposal, for a unanimity amending formula, has proved totally unworkable in the past.
3. The net effect of the Conservative proposals on adopting an amending formula would be to drive the First Ministers back to further negotiations where the amending formula would become a bargaining tool for changes in the distribution of powers.
4. As for the Conservative proposal to leave all other parts of the Constitution Act for implementation according to a future amending formula -- which would inevitably be a unanimity formula -- this would be an assurance that Canadians would never have an entrenched Charter of Rights. One province alone, such as PEI, (.5% of population) could block the entrenchment of Rights for all Canadians.
5. The entire Conservative proposal for these amendments is designed to ensure that we would spend at least another 53 years of impasse on constitutional reform, and demonstrates that the Opposition wants no change despite the assurances of their leader.
6. The Conservative proposal demonstrates the difficulty of finding an amending formula: they do not propose one or two formulas, but three! (None of which is the "Vancouver consensus"!.) The first is "rigid": all attempts to find a formula over the past 10 years have aimed at a balance between "protection" ("rigidity") and "flexibility". The second is less rigid and would ensure the consent of Quebec, Ontario, at least two provinces in Atlantic Canada and at least two in Western Canada. The third would give no protection to Quebec or the Maritimes or Ontario or the Prairies or B.C. (only 7 provinces with 50% of the population). If none of the three formulas works, then unanimity will be imposed.
7. Talk about draconian deadlines: we propose two years for the search for a new formula. The Conservatives will impose a formula after one year!