

CONFIDENTIAL

November 12, 1981

MEMORANDUM TO MR. ROGER TASSE

Re: Draft changes to the constitutional
Resolution

I have the following comments on the drafts
which you gave me this morning.

1) Section 33(2)

Would a declaration made by a Legislative Assembly
be sufficient or would such a declaration be subject
to a test in a Court?

What would the effect be of this section on
New Brunswick?

2) Section 38.1

This section refers to the "next conference composed
of the Prime Minister of Canada and the first ministers
of the provinces convened by the Prime Minister of
Canada".

Is this supposed to mean any federal-provincial
conference of first ministers or should it be
restricted to a constitutional conference?

... 2

Five
year
limit-
ation

(9) Subsection (5) applies in
respect of a re-enactment made
under subsection (6), (7) or (8).

3) Section 36

The draft seems to suggest that section 36 is an alternative to section 38.1. Can it not be an addition so that section 38.1(2) would apply if no agreement is reached at the conference referred to in section 36?

4) Section 56(2)(3)

I have no difficulty with the drafting; however, I am concerned about the substance. It seems to me that the whole Act should be proclaimed on the same day otherwise there is an invitation to continuing controversy.

Eddie Goldenberg

Five
year
limit-
ation

| (9) Subsection (5) applies in
| respect of a re-enactment made
| under subsection (6), (7) or (8).

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Section 33

Exceptions
where express
declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2, sections 7 to 15 or section 28 of this Charter.

? - Can we make this?

Idem

Disguise

Federal
provincial
constitutional
rights

(2) The legislature of a province may expressly declare in an Act of the legislature that the Act or a provision thereof shall operate notwithstanding subsections 6(2) and (3) of the Charter where the exercise of any of the rights referred to in those subsections would (seriously threaten to) substantially alter the linguistic equilibrium of the population in that province.

who would decide - a court or a declaration of an Assembly
- What about New Brunswick?

Idem

(3) The legislature of Quebec may expressly declare in an Act of that legislature that the Act or a provision thereof shall operate notwithstanding paragraph 23(1)(a) of the Charter.

Will this not affect 1/5 year

Operation of
exception

(4) An Act or a provision of an Act in respect of which a declaration is made under subsection (1), (2) or (3) shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Mother tongue

Five year
limitation

(5) A declaration made under subsection (1), (2) or (3) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(6) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

Idem

(7) The legislature of a province may re-enact a declaration made under subsection (2).

Idem

(8) The legislature of Quebec may re-enact a declaration made under subsection (3).

Five
year
limit-
ation

(9) Subsection (5) applies in respect of a re-enactment made under subsection (6), (7) or (8).

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Compensation

Compensation

38.1 (1) Where an amendment is made under subsection 37(1) that transfers legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province the legislative assembly of which does not authorize the amendment, taking into account the per capita costs to Canada of exercising those powers in the provinces the legislative assemblies of which have authorized the amendment.

good

Federal provincial conference

(2) Where an amendment is made under subsection 37(1) that transfers legislative powers other than those referred to in subsection (1) from provincial legislatures to Parliament and the legislative assembly of any province does not authorize the amendment, the issue of whether or not Canada should provide compensation to the province shall be included in the agenda of the next conference composed of the Prime Minister of Canada and the first ministers of the provinces convened by the Prime Minister of Canada.

Is it the next Constitutional Conference or in
it any Fed-Prov Conference

OR

Section 36

Issue of compensation

(2.1) The conference convened under subsection (1) shall have included in its agenda an item relating to the issue of whether or not Canada should provide compensation to any province the legislative assembly of which does not authorize an amendment made under subsection 37(1) that transfers legislative powers other than those referred to in subsection 38.1(1) from provincial legislatures to Parliament.

Is this an either/or

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Section 39

(c.1) minority language
educational rights;

the Governor General
under the Great Seal of
Canada.

(1) Section 23 shall come
into force in respect of
Manitoba on a day to be fixed
by proclamation issued by
the Queen on the Governor
General under the Great
Seal of Canada.

(2) Section 23 shall
come into force in respect of
Vancouver (without amendment
or with such amendment as
may be agreed to by the
Government of Canada and
the Government of British
Columbia) on a day to be fixed by
proclamation issued by the
Governor General under
the Great Seal of Canada.

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commencement 56. (1) Subject to sub-sections (2) and (3), this Act shall come into force on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Idem (2) Section 23 shall come into force in respect of Manitoba on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Idem (3) Section 23 shall come into force in respect of Quebec (without amendment or with such amendment as may be agreed to by the government of Canada and the government of Quebec) on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Jeffrey

Note: If we have more than one commencement date, consequential amendments will have to be made to 32(2), 36(1), 47 and 52.