

STATEMENT BY
THE HONOURABLE JEAN CHRETIEN
CONTINUING COMMITTEE OF MINISTERS ON THE CONSTITUTION

PATRIATION OF THE CONSTITUTION

If there is one matter on which we must come to an agreement as soon as possible, it is without doubt the question of patriation of the Constitution.

Today, in 1980, it is humiliating for Canadians that this last vestige of colonialism still exists. It is true that Canada progressed slowly towards independence:

- Canada's independent status was recognized by the Imperial Conference in 1926 and confirmed by the Statute of Westminster in 1931;
- in 1949, the Supreme Court of Canada became the country's court of final appeal and the Canadian Parliament acquired the authority to amend any aspect of the Constitution of Canada, with the exception of six areas over which the Parliament at Westminster continues to have jurisdiction;
- in 1952, for the first time since the French regime, a Canadian became Governor General, and the Sovereign's titles were changed;
- in 1965, a national flag was adopted;
- and, finally, in 1980, Canada's Parliament adopted the national anthem.

Nevertheless, Canada is now the only independent country in the world that must turn to a Parliament in another country to amend certain important aspects of its Constitution. The problem is that the British North America Act, 1867, did not make any provision for a formula to amend the Constitution. In 1931, at Canada's request, the Parliament of the United Kingdom maintained its power to amend the Constitution until the federal and provincial governments could agree on a purely Canadian amending formula. Let us be clear about one thing: neither the Parliament of the United Kingdom nor the people of Canada are blocking the way to complete constitutional emancipation for this country. It is we, Canada's political leaders, who have not shown the necessary political determination to resolve this issue and to enable Canadians, among themselves to gain full control over their Constitution in Canada.

The main factor hindering resolution of the patriation question since the First Ministers Conference in 1927 has been the matter of a formula for amending the Constitution. I do not want to minimize the difficulties entailed: we are seeking to strike an appropriate balance between the need for flexibility and the need for stability.



- In 1964, all the governments agreed in principle to the Fulton-Pavreau formula, which was rather rigid but included provisions for delegation of legislative authority that would add an element of flexibility. However, the Government of Quebec decided not to submit the formula for approval by the Legislative Assembly.
- In 1971, all the governments agreed in principle to the formula set forth in the Victoria Charter calling for a regionally weighted national consensus. However, for other reasons, Quebec decided not to submit the Charter for approval by the National Assembly, and Saskatchewan subsequently indicated its decision not to take any action.
- In 1978, in Toronto, all the governments except Quebec agreed to study the formula referred to as the "Toronto consensus", which advocated that unanimous approval be required for changes regarding provincial jurisdiction over and ownership of natural resources and for the amending formula, and which proposed a weighted formula (no less than seven provinces representing at least eighty-five per cent of the Canadian population) for other important amendments. The formula included quite flexible provisions for delegation of legislative authority. Although the provisions regarding delegation were generally acceptable, the amending formula itself proved to be less so at the CCMC meeting in Vancouver in January 1979.

For its part, the federal government is ready to re-examine any of these formulas, to undertake the study of any other formula which might meet with general agreement or to envisage the possibility of a formula which would borrow elements from some of the others.

The eventual formula could contain provisions concerning the delegation of legislative authority. The preliminary draft on delegation submitted by the federal government to the CCMC in Vancouver in January 1979 could always be re-examined.

It is essential to take up the challenge and to end this debate which has dragged on since 1927. We must find a formula acceptable to Canadians and eliminate this last vestige of colonialism. For Canadians, it is a question of national pride.