

November 10th, 1975.

Form for a Proclamation
of the Governor General

Whereas it is fitting that it should be possible to amend the Constitution of Canada in all respects by action of the appropriate instrumentalities of government in Canada acting separately or in concert as may best suit the matter in question;

And whereas it is desirable to make more specific provision respecting the constitutional status of the English and French languages in Canada and to ensure that changes in the Constitution, interpretation of its provisions or action by the Parliament or Government of Canada should not endanger the continuation and full development of the French language and the culture based thereon;

And whereas it is desirable that the Parliament and Government of Canada and the Legislatures and Governments of the Provinces act effectively to promote equality of opportunity and an acceptable level of public services among the different regions of Canada;

Therefore it is desirable to establish among other things:

- (a) A method for the amendment in Canada of those parts of the Constitution of general interest and concern that cannot now be amended in Canada in which the consent will be required of the Legislatures of Provinces representative of both the official language groups of Canada as well as of the Legislatures of Provinces in all of the geographical regions of Canada;
- (b) means by which Provinces can participate in the selection of persons to be appointed to the Supreme Court of Canada; and
- (c) principles to guide the Parliament of Canada in the exercise of powers allotted to it under the Constitution of Canada and to guide the Government of Canada in the exercise of powers conferred upon it by the Constitution of Canada and by laws enacted by the Parliament of Canada;

Now therefore We do proclaim as follows:

Part I

Amendments to the Constitution

Art. 1 Amendments to the Constitution of Canada may from time to time be made by Proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes:

- (1) every Province that at any time before the issue of such Proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;

- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 2 Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by Proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 3 An amendment may be made by Proclamation under Articles 1 or 2 without a resolution of the Senate authorizing the issue of the Proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

Art. 4 The following rules apply to the procedures for amendment described in Articles 1 and 2:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a Proclamation authorized by it.

Art. 5 The procedures prescribed in Articles 1 and 2 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but the procedure in Article 1 may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 6 In this Part "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

Art. 7 The enactments set out in the Schedule shall continue as law in Canada and as such shall, together with this Proclamation and any Proclamation subsequently issued under this Part, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

Part II

Supreme Court of Canada

Art. 8 There shall be a general court of appeal for Canada to be known as the Supreme Court of Canada.

Art. 9 The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada, and eight other judges, who shall, subject to this Part, be appointed by the Governor General in Council by letters patent under the Great Seal of Canada.

Art. 10 Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the Bar of any Province, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the Bar of any Province.

Art. 11 At least three of the judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the Bar of the Province of Quebec, have, for a total period of at least ten years, been judges of any court of that Province or of a court established by the Parliament of Canada or barristers or advocates at that Bar.

Art. 12 Where a vacancy arises in the Supreme Court of Canada and the Attorney General of Canada is considering a person for appointment to fill the vacancy, he shall inform the Attorney General of the appropriate Province.

Art. 13 When an appointment is one falling within Article 11 or the Attorney General of Canada has determined that the appointment shall be made from among persons who have been admitted to the Bar of a specific Province, he shall make all reasonable efforts to reach agreement with the Attorney General of the appropriate Province, before a person is appointed to the Court.

Art. 14 No person shall be appointed to the Supreme Court of Canada unless the Attorney General of Canada and the Attorney General of the appropriate Province agree to the appointment, or such person has been recommended for appointment to the Court by a nominating council described in Article 16, or has been selected by the Attorney General of Canada under Article 16.

Art. 15 Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 16 Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

- (1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;
- (2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province, or if he is unable to act, the next senior Judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 17 When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada; a majority of the members of a council constitutes a quorum, and a recommendation of a majority of the members at a meeting constitutes a recommendation of the council.

Art. 18 For the purpose of Articles 12 to 17 "appropriate Province" means, in the case of a person being considered for appointment to the Supreme Court of Canada in compliance with Article 11, the Province of Quebec, and in the case of any other person being so considered, the Province to the Bar of which such a person was admitted, and if a person was admitted to the Bar of more than one Province, the Province with the Bar of which the person has, in the opinion of the Attorney General of Canada, the closest connection.

Art. 19 Articles 12 to 18 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Art. 20 The judges of the Supreme Court of Canada hold office during good behaviour until attaining the age of seventy years, but are removable by the Governor General on address of the Senate and House of Commons.

Art. 21 The Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any decision on any constitutional question by any such court in determining any question referred to it, but except as regards appeals from the highest court of final resort in a Province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

Art. 22 Subject to this Part, the Supreme Court of Canada shall have such further appellate jurisdiction as the Parliament of Canada may prescribe.

Art. 23 The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation of the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the court and requiring the court to hear and determine the questions.

Art. 24 Subject to this Part, the judgment of the Supreme Court of Canada in all cases is final and conclusive.

Art. 25 Where a case before the Supreme Court of Canada involves questions of law relating to the civil law of the Province of Quebec, and involves no other question of law, it shall be heard by a panel of five judges, or with the consent of the parties, four judges, at least three of whom have the qualifications described in Article 11, and if for any reason

three judges of the court who have such qualifications are not available, the court may name such ad hoc judges as may be necessary to hear the case from among the judges who have such qualifications serving on a superior court of record established by the law of Canada or of a superior court of appeal of the Province of Quebec.

Art. 26 Nothing in this Part shall be construed as restricting the power existing at the commencement of this Proclamation of a Provincial Legislature to provide for or limit appeals pursuant to its power to legislate in relation to the administration of justice in the Province.

Art. 27 The salaries, allowances and pension of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Art. 28 Subject to this Part, the Parliament of Canada may make laws to provide for the organization and maintenance of the Supreme Court of Canada, including the establishment of a quorum for particular purposes.

Art. 29 The court existing on the day of the coming into force of this Proclamation under the name of the Supreme Court of Canada shall continue as the Supreme Court of Canada, and the judges thereof shall continue in office as though appointed under this Part except that they shall hold office during good behaviour until attaining the age of seventy-five years, and until otherwise provided pursuant to the provisions of this Part, all laws pertaining to the court in force on that day shall continue, subject to the provisions of this Proclamation.

Part III

Language Rights

Art. 30 English and French are the official languages of Canada, but no provision in this Part shall derogate from any right, privilege, or obligation existing under any other provision of the Constitution.

Art. 31 A person has the right to use English and French in the debates of the Parliament of Canada.

Art. 32 The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French; and both versions of such statutes are authoritative.

Art. 33 A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada and any courts established by the Parliament of Canada, and to require that all documents and judgments issuing from such courts be in English or French.

Art. 34 An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada.

Art. 35 A provincial Legislative Assembly may, by resolution, declare that provisions similar to those of any part of Articles 32, 33 and 34 shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 2.

Art. 36 A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 37 In addition to the rights provided by this Part, the Parliament of Canada may, within its legislative jurisdiction, provide for more extensive use of English and French.

Part IV

Protection of the French Language and Culture

Art. 38 The Parliament of Canada, in the exercise of powers allotted to it under the Constitution of Canada, and the Government of Canada, in the exercise of powers conferred upon it by the Constitution of Canada and by laws enacted by the Parliament of Canada, shall be guided by, among other considerations for the welfare and advantage of the people of Canada, the knowledge that a fundamental purpose underlying the federation of Canada is to ensure the preservation and the full development of the French language and the culture based on it and neither the Parliament nor the Government of Canada, in the exercise of their respective powers, shall act in a manner that will adversely affect the preservation and development of the French language and the culture based on it.

Part V

Regional Disparities

Art. 39 Without altering the distribution of powers and without compelling the Parliament of Canada or the Legislatures of the Provinces to exercise their legislative powers, the Parliament of Canada and the Legislatures of the Provinces, together with the Government of Canada and the Governments of the Provinces, are committed to:

- (a) the promotion of equality of opportunity and well-being for all individuals in Canada;
- (b) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
- (c) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

Part VI

Federal-Provincial Agreements

Art. 40(1) In order to ensure a greater harmony of action by governments, and especially in order to reduce the possibility of action that could adversely affect the preservation and development in Canada of the French language and the culture based on it, the Government of Canada and the Governments of the Provinces or of any one or more of the Provinces may, within the limits of the powers otherwise accorded to each of them respectively by law, enter into agreements with one another concerning the manner of exercise of such powers, particularly in the fields of immigration, communications and social policy.

(2) Nothing in this Article shall be held to limit or restrict any authority conferred either before or after the coming into force of this Proclamation upon the Government of Canada or the Government of a Province to enter into agreements within the limits of the powers otherwise accorded to it by law.

S C H E D U L E

This Schedule is NOT final,
subject to confirmation.

Enactments

British North
America Act, 1867,
30-31 Vict., c. 3
(U.K.).

An Act to amend and
continue the Act 32
and 33 Victoria
chapter 3; and to
establish and provide
for the Government of
the Province of
Manitoba, 1870, 33
Vict., c. 3 (Can.).

Order of Her Majesty
in Council admitting
British Columbia
into the Union, dated
the 16th day of May
1871.

British North
America Act, 1871,
34-35 Vict., c. 28
(U.K.), and all acts
enacted under
section 3 thereof.

Order of Her Majesty
in Council admitting
Prince Edward Island
into the Union,
dated the 26th day
of June, 1873.

Parliament of
Canada Act, 1875,
38-39 Vict.,
c. 38 (U.K.).

Order of Her Majesty
in Council admitting
all British posses-
sions and
Territories in North
America and islands
adjacent thereto into
the Union, dated the
31st day of July,
1880.

Enactments

British North
America Act, 1886,
49-50 Vict., c. 35
(U.K.).

Canada (Ontario
Boundary) Act,
1889, 52-53
Vict., c. 28
(U.K.).

Canadian Speaker
(Appointment of
Deputy) Act, 1895,
Session 2, 59 Vict.,
c. 3 (U.K.).

Alberta Act, 1905,
4-5 Edw. VII, c. 3
(Can.).

Saskatchewan Act,
1905, 4-5 Edw. VII,
c. 42 (Can.).

British North
America Act, 1907,
7 Edw. VII, c. 11
(U.K.).

British North
America Act, 1915,
5-6 Geo. V, c. 45
(U.K.).

British North
America Act, 1930,
20-21 Geo. V, c. 26
(U.K.).

Statute of West-
minster, 1931, 22
Geo. V, c. 4 (U.K.)
in so far as it
applies to Canada.

British North
America Act, 1940,
3-4 Geo. VI, c. 36
(U.K.).

British North
America Act, 1943,
7 Geo. VI, c. 30
(U.K.).

British North
America Act, 1946,
10 Geo. VI, c. 63
(U.K.).

Enactments

British North
America Act, 1949,
12 and 13 Geo. VI,
c. 22 (U.K.).

British North
America (No. 2) Act,
1949, 13 Geo.
VI, c. 81 (U.K.)

British North
America Act, R.S.C.,
1952, c. 304 (Can.).

British North
America Act, 1960,
9 Eliz. II, c. 2
(U.K.).

British North
America Act, 1964,
12 and 13, Eliz. II,
c. 73 (U.K.).

British North
America Act, 1965,
14 Eliz. II, c. 4,
Part I, (Can.).