

CONFIDENTIAL

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CONSTITUTIONAL CONFERENCE

CONTINUING COMMITTEE OF OFFICIALS

PROPOSITIONS ON THE CONSTITUTION: BRITISH COLUMBIA

NOTE BY SECRETARIAT

The attached propositions on the Constitution have been submitted by the Province of British Columbia for distribution to members of the Continuing Committee. The two propositions which were filed earlier by British Columbia should be withdrawn since their substance is included in the new propositions. Since there has been no indication, as yet, that these propositions will be made public, this document has been classified as "Confidential".

CP/BC/WP/6  
(Revised)

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CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITIONS OF THE GOVERNMENT OF  
THE PROVINCE OF BRITISH COLUMBIA  
FILED WITH THE CONTINUING COMMITTEE  
OF OFFICIALS ON THE CONSTITUTION.

CP/BC/WP/6 (Revised)

The following is a set of nineteen propositions which have been filed with the Continuing Committee of Officials on the Constitution.

The Committee has decided that the process of Constitutional Review might be broken down into fifteen categories of subjects and each proposition has been placed under the appropriate category.

The explanations which accompany some of the propositions are taken from the Province of British Columbia's brief entitled, "Proposals of the Province of British Columbia on the Constitution of Canada," dated December, 1968.

As is the case of the propositions of all Governments filed with the Committee, these propositions are not binding upon the Government that files them nor are these propositions meant to contain the sum total of British Columbia's proposals on the Constitution. More may be added from time to time.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 1

Subject: Object of the Constitutional Review

THE BRITISH NORTH AMERICA ACT SHOULD CONTINUE  
TO BE THE CONSTITUTION FOR CANADA WITH SUCH  
ALTERATIONS AS MAY BE NECESSARY - PARTICULARLY  
IN THE AREA OF FISCAL CAPACITY AND THE POWER  
OF AMENDMENT.

Explanation:

"British Columbia takes the view that our Constitution has, by and large, served us well and has shown itself to be a viable and flexible document capable of adjusting and coping with the growing-pains of nationhood. British Columbia, however, does not hold sacred or sacrosanct the British North America Act, but as one of the senior surviving constitutions among the western democracies we say it has proved its worth. With alterations - perhaps major ones, particularly in the area of fiscal capacity - together with the patriation to Canada of the power of amendment, it can continue to be the Constitution for Canada's great future."

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 2

Subject: Object of the Constitutional Review

BRITISH COLUMBIA CONSIDERS IT INAPPROPRIATE FOR THE FEDERAL GOVERNMENT TO INTRODUCE LEGISLATION WHICH IS AKIN TO, IF NOT IN FACT, CONSTITUTIONAL AMENDMENT AT A TIME WHEN THE WHOLE EXERCISE OF A CONSTITUTIONAL REVIEW IS IN PROGRESS.

Explanation:

"On October 17, 1968, without consultation with the Provinces, the Federal Government introduced into the House of Commons Bill C-120, The Official Languages Act. Section 2 of the Bill declares that the "English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada." At first blush these words would seem to indicate that matters covered by the Bill have little to do with the Provinces, but are purely matters of exclusive concern to the Federal Government. A closer examination, however, indicates otherwise. The Bill would permit a person charged with a crime, or his counsel, to be heard in a Provincial Court in either French or English and, at the option of the Court, to have the entire proceedings conducted in either language.

There are very strong doubts as to the Bill's constitutional validity. It certainly represents an extension of section 133 of the British North America Act, and, if it is not unconstitutional on that account, it may well be unconstitutional in its attempt to make Provincial Courts bilingual, bearing in mind that the "constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction" is vested exclusively in the Provinces by head 14 of section 92 of the British North America Act.

It seems inappropriate for the Federal Government to introduce legislation of this kind on a matter which is viewed by British Columbia as being akin to, if not in fact, constitutional amendment at a time when the whole exercise of a thorough constitutional review is in progress."

Filed by Government of the Province of British Columbia

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 3

Subject: Objectives of Confederation

THE EQUAL AND FAIR TREATMENT OF ALL THE  
CITIZENS OF CANADA, WITHOUT REGARD TO  
RACIAL ORIGIN, CULTURE, RELIGION OR  
ECONOMIC STATUS.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 4

Subject: Objectives of Confederation

AS ONE MEANS TO BRING ABOUT GREATER ECONOMIC OPPORTUNITY FOR ALL CITIZENS IN ALL REGIONS OF CANADA, BRITISH COLUMBIA CALLS FOR THE ALTERATION OF THE BOUNDARIES OF SOME OF THE PROVINCES AND THE ABOLITION OF SOME OF THE OTHER PROVINCES SO AS TO PROVIDE FIVE VIABLE AND EFFECTIVE POLITICAL UNITS IN CANADA IN CONFORMITY WITH THE FIVE ECONOMIC REGIONS OF CANADA. IN ADDITION, THE BOUNDARIES OF THE PROVINCES APPLICABLE SHOULD BE EXTENDED NORTHWARD TO THE NORTHERN LIMITS OF CONTINENTAL CANADA.

Explanation:

"The stresses within the nation at the present time are primarily economic and financial in nature. Unless the problems of the glaring discrepancies in standards of living and economic opportunities for low-income citizens wherever they may be found in Canada are met, then the consideration of many of the matters which are being discussed during these days may prove to be little more than academic. I am not minimizing the importance of such matters as language, culture, and constitutional review generally. But I am saying, that if we are to have and develop the kind of Canada we all unquestionably desire, then the scope of our vision must embrace the economic facts of life in Canada, which call for a frank appraisal of what National policy should be adopted to improve the situation. British Columbia believes the solution lies in direct assistance to persons of low income rather than through large unconditional payments to certain Provincial Governments. Naturally, any policies to raise the standards of living of all low-income persons will benefit most those areas with the highest incidence of inadequate income. But no matter what government policies of special help to individuals are involved, no real solution will come until we have more uniform wage rates across Canada. Governments should start by introducing uniform minimum wage rates by comparable industry in all of Canada.

Further in this connection, I believe the time has come to recognize that in the interests of economic realities the boundaries of some of the Provinces will have to be altered and the separate existence of some other Provinces will have to be abolished so as to provide five viable and effective political units consonant and in conformity with the five economic regions of Canada. Imagine the increased efficiency and resultant substantial savings to the Canadian taxpayer that would result."



CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 5

Subject: General Principles of the Constitution

CANADA'S FUTURE CAN BEST BE REALIZED  
UNDER A FEDERAL SYSTEM OF GOVERNMENT.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 6

Subject: General Principles of the Constitution

CANADA SHOULD CONTINUE TO BE A  
PARLIAMENTARY DEMOCRACY WITH THE  
QUEEN AS HEAD OF STATE.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 7

Subject: General Principles of the Constitution

THE CONSTITUTION IS NOT THE MEANS TO  
DEVELOP CULTURAL AND LINGUISTIC DIVERSITY  
AND SHOULD NOT CONTAIN ANY LANGUAGE  
GUARANTEES BEYOND THOSE NOW CONTAINED IN  
SECTION 133 OF THE B.N.A. ACT.

Explanation:

"British Columbia recognizes that the English and French cultures and languages are the predominant ones in Canadian society today, and every effort should be made to encourage, cultivate, and foster them - not from the point of view that Confederation consisted of a union of two founding races or cultures, because British Columbia does not believe history supports that view, but rather because of their intrinsic worth and the benefits to nationhood to be gained by doing so. Having said that, we also recognize that there are six million Canadians whose ethnic origin is neither English nor French. We do not intend to see these people made second-class citizens by constitutional means.

The question, then, is: What are the best means to foster and develop those ethnic and cultural diversities with which Canada is blessed? The cold legal language of a constitution would not, in British Columbia's opinion, be the means at all. In point of fact, the constitution has little effect on how people live in so far as language and culture are concerned. Our linguistic and cultural attitudes are tempered not by legal considerations embodied in a constitution, but in the final analysis reflect the personal habits, attitudes, and practical necessities of the population of the nation. It is when individuals, encouraged by their governments, come to realize the worth of another language and culture on their own merits - it is in that climate that culture and language will flourish and Canada's heritage will be enriched.

"Canada is a large country with major centres of one language and culture or another. The sparsity of French-speaking Canadians in many parts of Canada makes it inappropriate for a constitution to require equality of language and culture rights in every corner of the nation. The Commission on Bilingualism and Biculturalism appreciated this fact, and the action the Commission recommended in the first report was not, for the most part, to take the form of constitutional amendment, but rather was to take the form of legislative action in those particular jurisdictions in which the number of French-speaking Canadians made action appropriate. In British Columbia there are fewer citizens per capita whose mother tongue is French now than there were when British Columbia entered Confederation in 1871."

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 8

Subject: Fundamental Rights

BRITISH COLUMBIA WOULD NOT SUPPORT A BILL OF RIGHTS WHICH WOULD ENTRENCH LINGUISTIC RIGHTS AND WISHES TO RESERVE ITS POSITION ON WHETHER IT WOULD SUPPORT ENTRENCHMENT OF POLITICAL, LEGAL, EGALITARIAN AND ECONOMIC RIGHTS UNTIL THE IMPLICATIONS OF SO DOING ARE FULLY CONSIDERED.

Explanation:

"For the reasons contained under Proposition #7, British Columbia would not support a Bill of Rights which would entrench linguistic rights. Moreover, linguistic rights are not the kind of natural rights which traditionally have been the subject of constitutional protection in those jurisdictions that have enacted Bills of Rights.

As far as fundamental rights are concerned, British Columbia is firmly committed to the proposition of the fair and impartial treatment under law of all its citizens and the citizens of Canada. In that sense we completely support the expression in law of a person's fundamental rights. The question is: Can these best be insured by an entrenched Bill of Rights as is suggested? Before that question can properly be answered, we must have the fullest discussion on the implications of entrenchment.

The first implication of an entrenched Bill of Rights is that it amounts to a restriction on the principle of legislative supremacy, which has been the underlying philosophy of our parliamentary system. Are we now in a position in Canada to depart from the principle of parliamentary supremacy which has guided us so well in our first one hundred years? Moreover, such a restriction on legislative supremacy would to a greater extent be at the expense of Provincial jurisdictions rather than the Federal jurisdiction, for it is the Provincial Legislatures that have legislative competence over property and civil rights within a province.

There are more significant ways to effectively ensure that our laws do not offend basic human rights and are kept up to date and in keeping with our ideals of justice and freedom."

Filed by Government of the Province of British Columbia

CONSTITUTIONAL CONFERENCE

Continuing Conference Of Officials

PROPOSITION NO. 9

Subject: The Constitution of the Central Government

(e) Senate

THE CONSTITUTION SHOULD PROVIDE FOR REPRESENTATION OF BRITISH COLUMBIA IN THE SENATE EQUAL TO EACH OF THE OTHER FOUR ECONOMIC REGIONS IN CANADA.

Explanation:

"An examination of those sections of the British North America Act to do with the constitution of the Senate of Canada indicates it was intended the Senate would represent the various regions of Canada and thereby bring to bear upon the Federal legislative-making process the legitimate needs of those regions.

The economic realities of today indicate there are five regions of Canada, the fifth being British Columbia. The Federal Government has recognized this fact, for the records of the Dominion Bureau of Statistics and other publications of the Federal Government show the economic regions to be as follows:

- (1) Atlantic,
- (2) Quebec,
- (3) Ontario,
- (4) The Prairies,
- (5) British Columbia.

With the population of British Columbia growing at twice the rate of the rest of Canada, the presence of British Columbia as an economic region of its own is more obvious as each day passes.

If the Senate of Canada is to continue to exist, then British Columbia calls for the redistribution of its seats based on today's realities so that British Columbia as one economic area would have equal representation with each of the other four."

Filed by Government of the Province of British Columbia

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 10

Subject: The Constitution of the Central Government

(e) Senate

THE CONSTITUTION SHOULD PROVIDE FOR THE  
APPOINTMENT OF SENATORS BY THE PROVINCIAL  
GOVERNMENTS, SUCH APPOINTMENTS TO BE FOR  
A NUMBER OF YEARS CERTAIN.

Explanation:

The adoption of the proposal would increase  
interregional co-operation and would ensure that the  
Senate would be more effective in reflecting the  
legitimate aspirations of the various regions.

Filed by Government of the Province of British Columbia

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 11

Subject: Constitution of the Judicial System

THE SUPREME COURT OF CANADA SHOULD CONTINUE  
TO BE THE FINAL COURT OF APPEAL FOR CANADA  
WITH CONSTITUTIONAL MATTERS INCLUDED IN ITS  
JURISDICTION.

Explanation:

"British Columbia is of the view that the Supreme Court of Canada should continue to exist as the final court of appeal for Canada. Because a separate constitutional court would result in a court dealing in theory rather than in the day-to-day realities and practicalities of life, British Columbia is opposed to a separate constitutional court and favours the present practice of the Supreme Court of Canada having jurisdiction in constitutional matters."

Filed by Government of the Province of British Columbia



CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 12

Subject: Constitution of the Judicial System

APPOINTMENTS TO THE SUPREME COURT OF CANADA  
SHOULD BE FROM THE FIVE REGIONS OF CANADA SO  
THAT AT ALL TIMES THE MEMBERSHIP OF THE COURT  
IS REPRESENTATIVE OF THE WHOLE OF CANADA.  
SUCH APPOINTMENTS SHOULD BE APPROVED BY THE  
SENATE, RECONSTITUTED AS PREVIOUSLY SUGGESTED.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 13

Subject: Constitution of the Judicial System

ON THE HEARING OF CONSTITUTIONAL MATTERS  
THE QUORUM OF THE COURT SHOULD CONTINUE  
TO BE SEVEN JUDGES AND WHEN THE CONSTITU-  
TIONAL VALIDITY OF A STATUTE OF A  
PARTICULAR PROVINCE IS IN ISSUE, IT IS  
DESIRABLE THAT THE JUDGES APPOINTED FROM  
THAT PROVINCE, OR FROM THE REGION OF WHICH  
THAT PROVINCE IS A PART, SHOULD SIT ON THE  
HEARING OF THE CASE.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 14

Subject: The Distribution of Legislative Powers

Taxing Powers

THE CAPACITY OF EACH GOVERNMENT TO TAX MUST BE SUFFICIENT FOR EACH GOVERNMENT TO EFFECTIVELY DISCHARGE ITS CONSTITUTIONAL OBLIGATIONS. ACCORDINGLY, THE FEDERAL GOVERNMENT SHOULD LEAVE EXCLUSIVELY TO THE PROVINCES THE DIRECT TAX FIELDS OF PERSONAL AND CORPORATE INCOME TAXES AND SUCCESSION OR ESTATE TAXES. HAVING DONE THAT, THE CONSTITUTION SHOULD RESTRICT THE SPENDING POWER OF THE FEDERAL GOVERNMENT TO THOSE MATTERS UNDER ITS JURISDICTION.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 15

Subject: The Distribution of Legislative Powers

(b) Powers of the Central Government

THE POWERS OF THE CENTRAL GOVERNMENT  
MUST BE SUFFICIENT FOR IT TO EFFECTIVELY  
FULFILL ITS ROLE OF REPRESENTING THE  
COLLECTIVE INTERESTS OF CANADA AS A WHOLE.  
THE ENUMERATED CLASSES OF SUBJECTS SET OUT  
IN SECTION 91 OF THE B.N.A. ACT ARE SUFFICIENT FOR THAT PURPOSE.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 16

Subject: The Distribution of Legislative Powers

(c) Provincial Powers

IN ADDITION TO THE POWERS CONTAINED IN THE ENUMERATED HEADS OF SECTION 92 OF THE B.N.A. ACT, THE PROVINCES SHOULD HAVE THE POWER TO LEGISLATE IN ALL RESIDUAL MATTERS, I.E., ALL CLASSES OF SUBJECTS NOT INCLUDED WITHIN THE ENUMERATED HEADS OF SECTION 91 AND "ALL MATTERS OF A MERELY LOCAL OR PRIVATE NATURE IN THE PROVINCE."

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 17

Subject: The Distribution of Legislative Powers

(d) Shared Powers

THE CONSTITUTION SHOULD PROVIDE FOR  
CONCURRENT CONSTITUTIONAL JURISDICTION  
AND SHARED RESPONSIBILITY IN RELATION  
TO CERTAIN MATTERS.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 18

Subject: The Distribution of Legislative Powers

(h) Delegation of Powers

SUPERIMPOSED UPON THE DISTRIBUTION OF  
POWERS THE CONSTITUTION SHOULD PERMIT  
THE DELEGATION OF JURISDICTION BETWEEN  
THE FEDERAL AND PROVINCIAL GOVERNMENTS.

CONSTITUTIONAL CONFERENCE

Continuing Committee Of Officials

PROPOSITION NO. 19

Subject: Amendment Procedures

IMMEDIATE ACTION SHOULD BE TAKEN TO  
BRING TO FRUITION PAST EFFORTS TO  
AGREE UPON A FORMULA FOR AMENDING THE  
CONSTITUTION IN CANADA.

Explanation:

"Throughout the course of the first one hundred years the British North America Act has, as the need arose, been subject to amendment by one means or another, at least a score of times. British Columbia, however, is not satisfied with the vagaries of the present method of amendment. I recall that over an extended period of years, culminating in an agreement in Charlottetown in 1964, all Governments participated in a series of meetings called for the purpose of agreeing upon a formula of how to amend the Constitution of Canada. British Columbia was one of the contributors to the solution then reached. And yet, in spite of unanimous agreement at the time, subsequent events prevented the formula being implemented.

We are now embarked upon what has been described as a "total review of the Constitution." The substance of constitutional review is infinitely more complicated and much less likely to be the subject of agreement than the relatively simple question of determining a method to amend the Constitution in Canada. And yet if we are unable to bring to fruition extensive efforts that were expended in that more simple exercise, then the question that comes to my mind is: Are we now embarked on a task utterly incapable of fulfilment, having regard to the differences of opinion that do exist between us on matters of substance?

As an indicator of our good intentions in respect of the total review now under way, I call upon all Governments to readdress themselves to the fundamental proposition of how to amend the Constitution in Canada, taking on from the point of earlier agreement and making such adaptations to the formula as would make possible its unanimous acceptance in 1969."

Filed by Government of the Province of British Columbia