AMENDING FORMULA
FOR THE
CONSTITUTION OF CANADA

Text and Explanatory Notes

Ottawa
April 16, 1981

PART A

AMENDING FORMULA FOR THE CONSTITUTION OF CANADA

EXPLANATORY NOTES

General Comment

The amending formula which is part of the Canadian patriation plan agreed to by eight governments in Ottawa on April 16, 1981, is the result of intensive discussions among the governments of Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan.

In developing the formula several important principles were recognized:

1. All amendments to the Constitution of Canada, except those related to the internal constitution of the provinces, require the agreement of the Parliament of Canada.
2. Any formula must recognize the constitutional equality of provinces as equal partners in Confederation.
3. Any amending formula must protect the diversity of Canada.
4. Any constitutional amendment taking away an existing provincial area of jurisdiction or proprietary right should not be imposed on any province not desiring it.
5. Any amending formula must strike a balance between stability and flexibility.
6. Some amendments are of such fundamental importance to the country that all eleven governments must agree.

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This amending formula is clearly preferable to the one proposed by the federal government for a number of reasons: 1) it recognizes the constitutional equality of each of Canada's provinces; 2) it gives the Senate only a suspensive rather than an absolute veto over constitutional amendment; 3) it omits the referendum provision opposed by many as being inappropriate to the Canadian federal system.

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(1) No proclamation shall issue under section 1 before the expiry of one year from the date of the passage of the resolution initiating the amendment procedure, unless the Legislative Assembly of every province has previously adopted a resolution of assent or dissent.

(2) No proclamation shall issue under section 1 after the expiry of three years from the date of the passage of the resolution initiating the amendment procedure.

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cont. of (2)

A province wishing to use this "opting-out" procedure must do so before the proclamation making the amendment is issued. Also the opti out provision applies only where th proposed amendment derogates from, or diminishes, the legislative powe proprietary rights or any other rig and privileges of the Legislature c government of a province. Propriet rights includes natural resources a assets. Broadly speaking, those powers, rights and privileges are assigned to the provinces by sectic 92, 93 and 109 of the British North America Act.

In summary, no single province sh be able to block an amendment desired by at least seven other provinces and the federal governm Conversely, that particular provi would not be required to have thi kind of amendment apply to it if found the amendment to be unaccep

2. (1) This provision ensures that a pro amendment cannot come into force before one year has expired from time of initiation unless all provinces have expressed their vi by resolution prior to that time, the necessary consents have been obtained. Thus, no amendment can made until all Legislatures have an opportunity to debate the proposed amendment.

(2) This provision ensures that a proposed amendment must gain the requisite level of support within a reasonable length of time from initiation or it will lapse.

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cont. of 4.

Alterations to boundaries between provinces would also be dealt with ur this section and could be made by the approval of the Legislatures of those provinces affected and the Parliament of Canada.

Any amendments to the Constitution ir relation to the use of the English or French language within a province cou be made by resolution of the Legislat of the province affected and the fede Parliament. This provision would app to those portions of section 133 of t B.N.A. Act which relate to the provir of Quebec and those language provisic of the Manitoba Act which apply to Manitoba. This provision could make s 133 applicable to a province where it not apply now but which wishes it to b applicable therein.

An amendment may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, after the expiration of those one hundred and eighty days, the House of Commons again passed the resolution, but any period when Parliament is dissolved shall not be counted in computing the one hundred and eighty days.

5. Under this provision, the Senate of C will have only a suspensive veto over constitutional amendments. If the Se refuses or fails to authorize the iss of a proclamation within one hundred eighty days of the House of Commons p a resolution authorizing its issue, t amendment may still proceed provided the matter is again submitted to and passed by the House of Commons.

(1) The procedures for amendment may be initiated by the Senate, by the House of Commons, or by the Legislative Assembly of a province.

6. (1) Self-explanatory.

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9. Amendments to the Constitution of Canada in relation to the following matters may be made only by proclamation issued by the Governor General under the Great Seal of Canada when authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of all of the provinces:

(a) the office of the Queen, of the Governor General or of the Lieutenant Governor;

(b) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province at the time this provision comes into force;

(c) the use of the English or French language except with respect to section 4;

(d) the composition of the Supreme Court of Canada;

(e) an amendment to any of the provisions of this Part.

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9. This section recognizes that some matt are of such fundamental importance tha amendments in relation to them should require the consent of all the provinc Legislatures and Parliament.

(a) Self-explanatory.

(b) This clause relates to the prote provided to provinces under sect 51 A of the B.N.A. Act.

(c) This clause would require any ch to the Constitution related to t use of the English or French lan either within the institutions o the federal government or nation to require the unanimous approva Parliament and all the Legislatu

(d) This clause would ensure that th Supreme Court of Canada is compr of judges a proportion of whom a drawn from the Bar or Bench of Q and are, therefore, trained in t civil law. Other aspects of the Supreme Court of Canada are dealt with in section 10.

(e) This clause provides that any amendment to the amending formu itself requires unanimous approv of Parliament and all of the provincial Legislatures.

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11. A constitutional conference composed of the Prime Minister of Canada and the First Ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years of the enactment of this Part to review the provisions for the amendment of the Constitution of Canada.

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11. This section provides that the First Ministers of Canada shall meet within fifteen years to review the amending f itself. This is a minimum requirement does not preclude other constitutional conferences.

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PART B

DELEGATION OF LEGISLATIVE AUTHORITY

1. Notwithstanding anything in the Constitution of Canada, Parliament may make laws in relation to a matter coming within the legislative jurisdiction of a province, if prior to the enactment, the Legislature of at least one province has consented to the operation of such a statute in that province.

2. A statute passed pursuant to section 1 shall not have effect in any province unless the Legislature of that province has consented to its operation.

3. The Legislature of a province may make laws in the province in relation to a matter coming within the legislative jurisdiction of Parliament, if, prior to the enactment, Parliament has consented to the enactment of such a statute by the Legislature of that province.

4. A consent given under this Part may relate to a specific statute or to all laws in relation to a particular matter.

5. A consent given under this Part may be revoked upon giving two years' notice, and

   (a) if the consent was given under section 1, any law made by Parliament to which the consent relates shall thereupon cease to have effect in the province revoking the consent, but the revocation of the consent does not affect the operation of that law in any other province;

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1. This section permits one or more provinces to consent to Parliament enacting a law in an area of provincial jurisdiction.

2. Statutes passed by the federal Parliament pursuant to section 1 only have effect in those provinces that have consented to their operation.

3. This is the converse of section 1. It per Parliament to consent to one or more provi enacting a law in an area of federal jurisdiction.

4. This section provides that the delegation may be in respect to either a whole matter of constitutional jurisdiction or merely a specific statute.

5. This section allows for the delegation of authority to be revoked provided two years' notice is given. After the two years, the law ceases to have force and effect within those jurisdictions that have revoked the consent. In the case of a delegation to the Parliament of Canada by several provinces, the federal law ceas to have effect only in those provinces whi have revoked the consent.

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