



Department
of Justice

Ministère
de la Justice

MEMORANDUM/NOTE DE SERVICE

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Date

November 17, 1980

TO/A: DEPUTY MINISTER

FROM/DE: MISS E. I. MACDONALD
Senior Counsel, Public Law

SUBJECT/OBJET: Amendments to Resolution

Comments/Remarques

Further to my memorandum of November 14, I attach draft amendments to the following provisions of the Resolution:

section 4 (French version), section 31(2), section 44, and section 50.

E. I. MacDonald

c.c. Messrs. Strayer, Jordan, Bertrand, Gibson,
Tait, Goldenberg and Mrs. Dawson and Mrs. Reed

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 4 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

Prolongations spéciales

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongée respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection ou dans l'appréhension de ces événements pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.»

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié en remplaçant l'article 4 du projet de Loi constitutionnelle de 1980 par ce qui suit:

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

Prolongations spéciales

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongée respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection ou dans l'appréhension de ces événements pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.»

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 31(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(2) Parliament and the government of Canada are committed to the principle of making equalization payments to provincial governments that are unable to provide [the] essential public services of reasonable quality [referred to in paragraph (1)(c)] without imposing an undue burden of [provincial] taxation.

NOTE: The words in square brackets are not in the Quebec proposal but reflect the drafting changes made in the version included in the resolution. I think the reference back to subsection (1) is unnecessary and makes the provision hard to read. I would delete it. However, I would leave in the word "provincial" before the word "taxation". The three proposals from the CCMC are attached hereto.

A
February 1979 Best
Efforts Draft

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities for social and economic well-being; and,
- (c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to provinces that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation, or to the principle of making arrangements equivalent to equalization payments to meet the commitment specified in Section 96(1) (c).

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

B
EQUALIZATION AND REGIONAL DEVELOPMENT

Government of
Quebec Proposal

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and,
- (c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

CONFIDENTIAL

Governments of Manitoba and
Saskatchewan Proposal
(including Quebec's Proposal)

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 44 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Amendments
without Senate
resolution

under general
formula

"44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in paragraph 50(d), (e) or (f), may be made by proclamation under subsection 41(1) or section 43, as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within ninety 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, at any time after the expiration of those ninety days, the House of Commons again passes the resolution.

Amendments
relating to
Senate

(2) An amendment to the Constitution of Canada in relation to a matter referred to in paragraph 50(d), (e) or (f) may be made by proclamation issued by the Governor General under the Great Seal of Canada without a resolution of the Senate authorizing the issue of the proclamation where

(a) within ninety 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, at any time after the expiration of those ninety days, the House of Commons again passes the resolution]; *

(b) resolutions of the legislative assemblies of the provinces that would be sufficient, together with resolutions of the Senate and House of Commons, to authorize the issue of a proclamation under subsection 41(1) have been passed authorizing the amendment; and

(c) the making of the amendment has been approved at a referendum by voters sufficient to authorize the making of an amendment under subsection 42(1).

Authorization
of referendum

(3) A referendum referred to in subsection (2) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada authorized by a resolution of the House of Commons made at any time after the requirements of paragraphs (2)(a) and (b) have been met.

Computation
of period

(4) Any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety day period referred to in subsection (1) and (2).

* NOTE: In view of subsection (3) the words in brackets are not necessary and could be deleted. Alternatively, they could be left in and the holding of the referendum could be authorized by the Privy Council. The question is as to when the second resolution of the House of Commons should take place.

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

(a) deleting the words immediately preceding paragraph 50(a) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Matters
requiring
amendment
under general
formula

"50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41, 42 or 44:"

(b) deleting paragraph 50(e) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(e) the number of members by which a province is entitled to be represented in the Senate, the method of selecting Senators and the residence qualifications of Senators;"

(c) adding immediately after paragraph 50(e) of the proposed Constitution Act, 1980, the following paragraph:

| "(f) the bicameral structure of Parliament ;"

; and

(d) relettering paragraphs 50(f) and (g) of the proposed Constitution Act, 1980 as paragraphs 50(g) and (h) respectively.