

November 10, 1980

Amendments to Proposed Resolution

I Substantive Amendments

1. Long Title to Canada Act: "An Act to amend the Constitution of Canada" -- possible change to be made in this as proposed by British draftsmen in order to limit changes that may be made by U.K. Parliament. (Mr. Strayer to seek advice from London.) OK
2. Section 1 of Charter: to modify wording from "subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government" to "subject only to such limits as are reasonably justifiable in a free and democratic society". (This will limit the possible scope of limitations that can be imposed on rights.) To discuss
3. Section 15 of Charter (Non-discrimination rights): May wish to modify draft to clarify separation between "equality before the law" and "equal protection and equal benefit of the law" and establish prima facie discrimination on listed grounds. Also tie grounds for non-discrimination to affirmative action programs. (See draft of November 5, 1980.) To discuss
4. Section 20 of Charter (Language of Services to Public): Modify latter part of clause to base determination of communications with and services to public at other federal offices on "where there is a substantial demand for communications and services in both official languages". This is designed to overcome possibility of establishing "bilingual districts". OK
5. Section 31 (Equalization): Modify wording of provision to bring into line with formula as proposed by Quebec. (Will this change be initiated by Government or by Saskatchewan?) OK
6. Section 38 (Provincial Amending Alternative): Reduce required number of provinces from 8 to 7. (Will this be left to someone other than Government to initiate?) OK
7. Sections 40 & 46 (Referendum Rules Committee): Amend to incorporate a procedure for establishing a federal-provincial committee to establish rules for holding of referenda. (To be put forward by Government.) OK
8. Section 41 (General Amending Formula): Amendment to delete reference to two Atlantic provinces with 50% of population of those provinces. (To be put forward by Liberal MP from PEI.) OK
9. Section 42 (Referendum): Amend to make clear that referendum may be used only where required provinces have not moved to adopt amendment within 12 months after Parliament has adopted the necessary resolutions. (To be put forward by Government.) OK

10. Section 43 (Amendments affecting not all provinces): Amend section 47 to make clear that sections 41 and 42 cannot be used to make amendments contemplated by section 43. Note: A similar amendment is not required for section 34 since the general amending formula (section 33) requires unanimous consent. (Amendment to be put forward by Government.) *OK*
11. New Section 52 (Natural Resources, Interprovincial Trade and Indirect Taxation): As agreed to by Prime Minister and Mr. Broadbent. (To be put forward by NDP members.) *OK*

II Other Possible Admendments

1. Section 6 (Mobility Rights): Add further possible qualification to mobility rights which would permit laws to limit mobility of persons "in cases of overriding socio-economic considerations" or "in the interests of public order, safety, health or morals"? *NO*
 Note: Either such limitation would give rise to possibility of a substantial limit being imposed on mobility rights. In addition, it is arguable that limitations for circumstances such as those prevailing in the Yukon can already be implied under section 1 of the Charter.
2. Section 11 (Rights when charged with offence):
- (1) 11(e): possibly modify ex post facto offences provision to encompass offences under international law such as "war crimes". Note: This would likely already be covered under present wording of section 11(e), and in any case it is not clear that the war crimes were in fact offences under international law when they were committed. *if possible*
- (2) 11(f) & (g): replace "he or she" with "that person" to ensure that corporations are encompassed. *OK*
3. Section 13 (Self-crimination): replace "to incriminate" with "against" to ensure that evidence is excluded in both subsequent criminal and civil proceedings.
4. Section 23 (Minority Language Education): consider amending section 23(1) to provide two alternative tests -- "mother tongue" or minority language (English or French) in which parent was educated in Canada. Also consider amending section 23(2) to cover any case where a child is being educated in the minority language (English or French) of the province. Finally, consider excluding from minority education rights children of immigrants who subsequently become citizens.
5. Section 24 (Undeclared Rights): Consider (a) whether rights and freedoms of native peoples has to be made more specific (eg. aboriginal and treaty rights) -- this would be most unwise, and (b) whether present wording of section 24 would mean that native rights under Indian Act would be guaranteed or in conflict with non-discrimination rights under section 15.

6. Section 44 (Senate override): Should time period for override of Senate veto be extended ~~to~~ 90 days? (Leave to Senate members to move amendment?) no
7. Section 50 (Matters subject to general amending formula): Should there be added to the list of matters in section 50 "the method of selecting Senators" in order that this matter cannot be dealt with by Parliament alone under section 48. Note that such a change would then enable this matter to be dealt with under the section 41 formula where a Senate veto could be overridden. (Leave this change to be proposed by Senate members of Committee.)
8. Institutional Language Rights for Provinces: Committee members on November 7 indicated that they would move amendments to include in Charter section 133 type institutional minority language rights for Ontario and New Brunswick. The Minister indicated that he would not personally object to this. What position will the Government wish to take on this matter? Would any such amendment apply only to language of legislatures, statutes and courts or be extended to language of services to the public.

There are also a number of technical amendments that Mary Dawson and Gérard Bertrand will be proposing.