

December 17, 1980

MEMORANDUM RESPECTING PROPOSED CHANGE RELATING TO THE SENATE

The annexed draft amendment to the Resolution respecting the Constitution of Canada would make the following changes in the Resolution:

1. (1) Section 44 would be amended to increase the period for Senate consideration of an amendment to the Constitution, prior to reconsideration by the House of Commons, from 90 days to 180 days. This should provide adequate time for the Senate to study and to vote on a proposed amendment.
- (2) A further consequential amendment to section 44 would be made to indicate that amendments referred to in section 50 cannot be passed without Senate approval.

(See Annex 1 for draft amendment.)

2. Section 50 would be divided into two sections as follows:
 - (1) The first section (section 50) would cover institutions; namely the offices of Queen, Governor General and Lieutenant Governor. It would also cover the bicameral structure of Parliament. Proposed constitutional amendments relating to these important state institutions could not be enacted without Senate approval.
 - (2) The second section (section 51) would cover the other subjects now in section 50 including the Charter, equalization and other aspects of the Senate. These matters would continue to be subject to a possible Senate by-pass. It would also include a new matter, "the method of selecting Senators" not now subject to the general amending procedure.

(See Annex 2 for draft amendment.)

This approach can be justified as not being just a response to Senate concerns but rather as being a considered division between amendments relating to the essential character of the important institutions of the state and other matters.

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

"44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in section 50, 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 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, at any time after the expiration of those one hundred and eighty days, the House of Commons again passes the resolution.

Computation of period

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

- (a) the Canadian Charter of Rights and Freedoms;
- (b) the commitments relating to equalization and regional disparities set out in section 34;
- (c) the powers of the Senate;
- (d) the number of members by which a province is entitled to be represented in the Senate, the method of selecting Senators and the qualifications of Senators;
- (e) 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; and
- (f) the principles of equitable representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

(b) renumbering the sections following thereafter accordingly.

December 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

- (a) deleting section 50 of the proposed Constitution Act, 1980 and substituting therefor the following:

Matters requiring amendment under general amending procedure

"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 or 42:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province; and
(b) the bicameral structure of Parliament.

Idem

51. 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, as modified by section 44, or by section 42:

- (a) the *Canadian Charter of Rights and Freedoms*;
(b) the commitments relating to equalization and regional disparities set out in section 31;
(c) the powers of the Senate;
(d) 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;
(e) 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; and
(f) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada."

; and

- (b) renumbering the sections following thereafter accordingly.