



CANADA

PRIME MINISTER · PREMIER MINISTRE

Ottawa, K1A 0A2,
August 28, 1978.

P.M

Dear Gordon,

Thank you for your letter of July 31,
and your thorough analysis of the Constitutional
proposals.

I was very pleased to receive your
analysis, and your remarks will also be given
careful consideration in the Federal Provincial
Relations Office.

With my best wishes.

Yours sincerely,

P.S. I cannot end this letter without adding that I spent part of
a long evening reading + reflecting on your extraordinarily well-
thought-out proposals and criticisms. They are all the more
Mr. Gordon Gibson, M.L.A., Province of British Columbia,
229, Parliament Buildings, Victoria, B.C. V8V 1X4
remarkable in that the Premiers
and most every one else seem to
have lost their senses in considering the
Federal proposals. I know we will benefit greatly from your contribution
I am looking forward to discussing tactics with you, soon I hope
P.

F. GIBSON, M.L.A.
PARLIAMENT BUILDINGS
VICTORIA, B.C.
VBV 1X4
TELEPHONE 387-3070



8216 066

cc
Hm - M. Labadie
R. G.R.
Hayes
filed
29.8.78
yt

1402

July 31st, 1978

The Right Honourable Pierre E. Trudeau,
Prime Minister,
House of Commons,
Ottawa, Ontario.

Dear Pierre:

As promised at our meeting in early July, here are my thoughts on the Constitutional Amendment Bill and associated matters. While my remarks and proposals are conceived as a whole, they are designed to be largely severable, except where otherwise indicated.

General and Procedural

I think the path and tactics as currently laid out are correct and will prevail. The underlying political reality is this: the country is ready for strong and immediate leadership from the federal government on constitutional matters. There is a general feeling that there has been enough talking on the subject and it is time to get moving. Indeed, there is a latent strong desire to get it over with, which well coincides with the real need of the country.

The provinces have naturally a right for important input into the shaping of the new constitutional Bill over the next few months. However, in political terms, there is no need for provincial unanimity, and even rather strong opposition is not important as long as the federal government is prepared to validate its moves by a referendum - subject, I would suggest, to

ORIGINAL TO M. MeLean....2
ORIGINAL ENVOYÉ A
C.C. P.M.O. FILE
C.C. DOSSIERS C.R.M.

J.D.

regional majorities as well as an overall majority.
The provinces and the opposition parties will be rather careful if they know the people will have a chance to pronounce directly on the question.

I think that this line of thought applies as well to Phase 2, and to the patriation and amending arrangements in whichever phase included. Popular validation is the political key - not only for legitimization, but for negotiating purposes as well. And certainly, the "appeal to the people" argument is the way to remove the heat from any "riding roughshod over the provinces" talk, no matter how many Premiers concur.

The necessity of an early resolution is the key to the restoration of our national will and economy, as you pointed out to the Canadian Club in Vancouver. I believe that this is an important argument, not sufficiently emphasized. In my own speeches, I use the analogy of marital difficulties, which the public understands. When the very continuation of a family is in question, talking about better pay - Ed Broadbent's economics, or whatever - is not the solution. The basics need to be sorted out first. That is where we are in Canada.

The Constitutional Document

The Bill has positioned the government to move - and rapidly - in a variety of ways, as long as those ways lie within the general direction of thrust articulated. The Parliamentary Committee, Pepin-Robarts, and the Provinces between them will give grounds for moving in almost any such direction.

The Bill, as written, has my strong general endorsement as to thrust. Indeed, on matters included in the Bill,

many of my comments, apart from the House of the Federation, are more tactical than affecting principle. I have other comments of greater importance with respect to omissions from the Bill.

I believe the analysis is most cogently done by following the three-part division of your Vancouver speech, viz. alienations and difficulties relating to the individual in the state, to linguistic concerns, and to regional concerns.

Needless to say, (but worth making explicit always) no constitutional reform can concern itself simply with difficulties. It must preserve the tremendous body of that which is good, and moreover tried and proven, in our present system. Constitutional reform - in countries that have functioned reasonably well - in my view is to be approached with great conservatism. With that obeisance to things which ought to be preserved, I will focus on those which ought to be changed, since I think the Bill does a good job of preservation.

The Individual

The Bill of Rights is the first area of discussion, and a layman such as myself can only applaud the evident careful work which has been done over many years. As a tactical matter, and to the extent the Rights and Freedoms might essentially continue Diefenbaker's work, some means might be found of associating his name with these sections.

The linguistic rights seem reasonable.

The entrenchment process for all of the above, as stipulated in the Bill, is scrupulously fair. I would personally suggest that entrenchment in these

areas not secured by the time of any Phase 2 referendum should be achieved thereby, by popular will if necessary, over the heads of the provinces.

This is, of course, really saying that the Constitution is an instrument of the people and not of governments, and that leads me to suggest the following:

Any amending formula, when set forth, should include as one of its routes, a popular method, either by referendum or initiative, and preferably a choice of either of the two. I believe this to be a principle of great importance in a democratic sense, and one that will operate to the maintenance of the integrity of the central authority over time as well.

You are aware of my support for various instruments of direct democracy, and I am aware of the reasonable reticence of many in a Parliamentary system to make provisions for such avenues. However, to me, one of the most consequential omissions from the powers of the individual vis a vis the state in the Bill is the lack of such provision. It could come at a later stage, but now is the logical time to make mention. It is my belief that instruments of direct democracy, carefully conditioned to be in harmony with a Parliamentary system, can over time constitute both the most powerful engine for reform and the most important ultimate safety valve for a vital democracy. I believe they assist politicians and better government as well.

Obviously I am not talking about "plebiscitary democracy", or anything like it. I would envisage sufficiently high trigger points, in terms of percentage of signatures, that only the most consequential and deeply felt matters could be

initiated - which in practice would mean they would probably have been handled voluntarily by referendum in advance of that point. But the safety valve should be there.

I believe that the Constitution should make provision for the three basic tools in this area: the referendum (activated either by the government or by popular demand), the initiative, and the recall. Exact parameters are matters for much debate, and probably subjects for organic rather than constitutional law, but the Bill itself might include something like the following:

The Parliament of Canada and the Legislatures of the Provinces may make provision within their respective jurisdictions for the instruments of direct democracy, including the various forms of referenda, the initiative and provision for the recall of elected members.

Without such provision the courts might find, as they have in the past, that at least some of these instruments conflict with the "similar in principle" requirement of S.2.

I feel as well that Freedom of Information legislation is critical to the role of the individual in a democracy, but am prepared to concede at this stage that one would do better to gain experience with actual law before entrenching the principle in specific words. (I believe the Fifth Report of the Joint Committee provides a good basis for such test law.)

Linguistic Concerns

As you are well aware, English Canada doesn't understand this whole question. Paradoxically, I think

fundamental reforms and guarantees in this area will be much better accepted if entrenched in the Constitution and enforced by the courts, than if done by Parliament. This will be the case particularly after a referendum adopting a new Constitution. People will see everything that flows therefrom as "part of the deal", even if not item-by-item palatable.

The linguistic part of the Constitution is crucial to francophones, and I cannot judge if the guarantees as written will be deemed sufficient. It is my own judgement that English Canada might accept even stronger guarantees if necessary, than those set out in the "Rights" section and elsewhere in the Bill.

I am uncomfortable with the Legislative aspects of linguistic rights. First of all, and as a special case of the powers of the Upper House which I will canvass more extensively later, I do not think that measures of special linguistic significance should be subject to over-ride by the Lower House under any circumstances, except those of national emergency. Less security than that is not a guarantee, and a guarantee is what is required.

More specifically, I am concerned with the "double majority" concept. I believe it to be an inherently divisive concept, to be avoided if at all possible. These things are best recognized in informal conventions, given strength in electoral arrangements (as, for example, we now have an Eskimo seat), and House rules, but should really not be called by name, if avoidable, at peril of accentuating differences

rather than stressing points in common.

To achieve the same end therefore, my preference is for that of a "required majority" (80%?) or "blocking minority" (20%?) for measures of special linguistic significance. This, it seems to me, would give the requisite protection, and at the same time avoid the rather undesirable requirement that members of the Upper House should designate themselves as members of one camp or the other. I appreciate that this would also allow only 20 percent composed of anglophones to block linguistic progress such as the Official Languages Act - but that Act passed virtually unanimously. I think over the long term the blocking minority would work better.

Regional Concerns

It is here that I have my major proposals for change in the Bill. The Upper House is conceived generally as a House of minorities. On the linguistic side, this is clearly recognized by trimming the powers of the Lower House otherwise available under S67, by the double majority, and so on.

On the regional side, this is not achieved.

Canada is a country of regional minorities as well as linguistic. That is the basis of western and maritime alienation from the central government process. Those minorities must have real powers over the central government process if this alienation is to be relieved.

Moreover, if the Upper House is to replace the

provincial governments in their role as spokesmen on national questions from a regional perspective, or regional questions at the national level, then it must be given the powers to do so. Failing this, the Premiers will continue in their national role (for which they have no mandate), and we will have grafted yet another piece of trouble onto the Ottawa apparatus to hinder the business of government, without a benefit in return.

To specifics:

1. Regions - the proposed membership balance for the Upper House is just not acceptable to British Columbia, in my opinion. B. C. requires a full fifth regional status.

I know the problem with Alberta, and it is a legitimate one. There is a way of finessing it, namely by making B. C. and the North the fifth region, with Alberta thus predominant in the prairie region, and we in ours, but with the northern seats coming out of the B. C. region allotment. The "fifth region" concept is the absolutely basic position of the B. C. government, and I agree with it. The Bill recognizes this in the court, but not in the balance of Upper House seats.

2. Powers - The powers of the proposed Upper House are not, in my view, sufficient for it to attain the objective of being taken truly seriously, either by the Lower House or by the public. Suspensive powers are not adequate. The House of Lords, for example, is not taken seriously, except in unusual times, (nor should it be, of course, given its make-up) and it has a one-year suspension power.

I see no reason why the Upper House should have

extensive powers in matters of general Canadian law, but suspensive review would not hurt.

In matters of important regional consequence, however - "special regional significance", to use the linguistic analogy - the Upper House should, in my view, have blocking power. (In the regional category, of course, blocking power would require a majority of the Upper House.) I do not pretend that the definition of what falls in this category is easy, and the most careful drafting would still keep the Speakers and eventually the courts busy for awhile, but the Germans have done it, and worked out to about a 50-50 balance on what is regional and what is not.

Certainly it must include the approval of major appointments, and S.70 of the Bill should be more specific on this point.

And in the case of deadlock? I am not too concerned. The country will somehow or other carry on, and the politicians will in due course work things out, as they do elsewhere. What we are really talking about is not almost complete frustration (as can happen in the U.S.) but rather a greater balance of power to regional representatives.

Of course, this assumes that regional representatives will be responsible. If they are selected under the terms of the present S.63, that is not likely, and in such case one would, I agree, have to provide for an over-ride. However, I propose terms of selection other than those of S.63.

Budgetary matters are a special problem. The Upper

House should only have the right to pronounce (in "blocking" terms) on regional division of expenditure and revenue, not on overall priorities.

In summary on this section, an Upper House must have important powers. If it does not, it will not do the desired job of easing regional alienation, and legitimizing the central legislative apparatus in regional terms.

3. Membership - The Upper House, as selected by Ss.63-65, would have several interesting characteristics:

- it would give roughly proportional representation in partisan terms on a base half federal, half provincial.

- it would be more or less^a permanent "minority" House in partisan terms, which might reflect back on arrangements made in the Lower House, in terms of alliances.

- its membership would be appointed, with no direct contact with the people, and without the legitimacy that flows therefrom.

- the "constituencies" of members would in effect be political parties who would nominate them. Such an Upper House would be fiercely partisan, exacerbate the partisan difficulties of the Lower House, and would be completely incapable* of exercising the regional viewpoints for which it would be nominally constituted.

- an Upper House selected in this way would create a strong tendency towards vertical integration of the federal and provincial wings of national political parties, who would naturally seek, via the provincial route, additional influence in the Upper House. On the other hand, it would give a continuing raison d'etre

....11

* in my opinion

for the avowed regional parties (the P.Q. perhaps, the U.N. and Social Credit certainly) as "your regional spokesman on the national scene". Premiers would work to undermine this kind of Upper House, as costing them more than it would be worth to them in political terms.

The public attitude towards any Upper House will be skeptical. The attitudes of the provincial governments are liable to be hostile, unless they see it reflecting their interests, which the current schema does not.

The attitude of the House of Commons will be hostile. MPs will not wish to see their status or work tampered with.

At the same time, the proposed Upper House would probably serve to even further tighten party discipline in the Lower, given the potential need to meet challenges from perpetually a minority (and therefore possibly hostile and dangerous) Upper House.

These attitudes of the public, the provinces and the Commons, coupled with a basic partisanship and lack of real power, are not likely to get the Upper House off to a good start. Indeed - and I say this in a whisper, in the middle of the night - I would prefer the present Senate!

The characteristics of the proposed Upper House do have many valuable features. Some of them (the proportional feature) might well be retained in some reformulation, and even extended in due course to the Lower House. (I have in mind a modified and partial proportional representation.) But the question is to find a mix that will do the required

regional job, without doing too much violence to the principle of basic control of the Lower House, and a responsible executive branch.

An Alternate Proposal

A solution to this, in my view, is as follows:

- membership with a regional constituency and responsibility. (And determinedly so to the virtual exclusion of Cabinet membership from the Upper House, save perhaps a handful for communications, and those chosen only from the ranks of federal appointees - a very small group, under my proposals).

- blocking powers restricted to regional and linguistic questions, plus vetting of senior appointments, which always have regional consequences, as well as approval of federal-provincial agreements.

- the widest powers of advice and investigation.

- an active conference committee system with the Lower House. It may be objected that any blocking power by an appointed Upper House is a violation of the democratic principle. The answer to this is to provide for the democratic selection of the Upper House. I have elsewhere elaborated a proposal for a mixed arrangement of half directly elected members, and half appointed by provincial governments from among their Ministers, the latter category to hold Upper House membership while in provincial office. One might add a very few federal government appointments (lapsing with the government of the day) for Ministerial purposes.

This provides for several things:

- (a) The Upper House would be composed almost entirely of elected persons.

(b) The directly elected persons would be elected for clearly regional reasons - at an election especially held for that purpose, either completely independently, or concurrently with provincial elections, but in no case concurrent with federal - and would be so motivated.

(c) The provincial Ministers would bring the policy, continuity and coherence and research of provincial governments to the Upper House process, and the provincial governments in turn would be morally as well as legally bound by the results of Upper House deliberation, giving a legitimacy to the central apparatus in regional terms never before achieved.

(d) All regional representatives would be forced to make trade-offs with other regions to get anything done - or blocked - and that is what the Upper House should be doing.

Some elaboration is required on the constituency base for the directly elected members. In my view, it should include an entire province in most cases, a half province in some, in what would in effect be multi-member ridings. The representatives to the Upper House from each province then would be selected by the usual rules of proportional representation, with provision for independent candidates.

Quite apart from provincial government designation, there is no reason why sitting MLAs should not be allowed to run for elective Upper House positions.

While as an opposition member in B. C., I am attracted by the idea that the Legislature, as distinct from

the government of the province, should select the Upper House members, I think the above package is a more stable and "legitimate" mix. I do believe that in the fullness of time we will have a fully directly elected Upper House, but there is no hurry on that score.

In summary, with respect to the Upper House, it must be regional in motivation, have consequential power in regional matters, and yet not make impossible or unnecessarily difficult the work of the Lower House. I fear the proposals of the Bill would fail all of these tests. I have offered at least the outlines of another proposal that has the merit of being pretested as to its major elements in other countries, and also being clearly more "democratic".

(The Australian difficulties referred to in your Commons speech would not apply* for several reasons, including the more restricted powers in the Canadian case, a distinctly different process of selection, a Chamber not even in theory being able to force directly or indirectly a test of "confidence", and a Chamber largely motivated by regional, as distinct from partisan, concerns.)

Some alternative must be devised, in my opinion, as the current proposal would work to the detriment of Canadian unity and government.

The Constitutional Document and the governmental process
Certain practical changes in relations between the executive and legislative branches, and between government and the party system, will inevitably flow from the legal changes contemplated by the Bill.

....15

* to this proposal

This section considers these and other reforms of such nature that might be advanced.

First, as to the changes implicit in the Bill, the putting in place of an Upper House, however constituted, that has the characteristics of not being a "confidence" chamber, that has real power and is expected to use it, and that is expected to make its decisions on a somewhat different set of criteria than the executive-dominated Lower House, amounts already to a semi-separation of powers, as between the executive branch and the Upper House.

This will clearly differ from the situation in the Lower House where Members of what is the more important Chamber will find themselves, as individuals, less "important" in meaningful ways than Members of the Upper House. They will be more seen as party servants than as individuals (at least vis a vis any genuinely regional Upper House, though not the one proposed in the Bill), and will be looked to less for assistance on regional questions.

It seems likely and natural that pressures will arise for an increase in the powers and freedoms of the Lower House Member, which inevitably means less executive branch control of the system. The quid pro quo will have to be greater executive branch security achieved in other ways. It seems to me that this trend is both natural, desirable, and in tune with most other democracies. If that is accepted, planning for the new system should be as much a part of the thinking with respect to the new constitution, as should reform of the Upper House.

The Bill, in S.53(3) seems to go some distance in this direction, by providing in effect that a government falls only on a matter specified to be a matter of confidence by the House. That provision alone, if not only read but practised in that way, would bring a great new freedom to the legislative branch in the amendment or even rejection of government Bills. If that is indeed the intention of the government, which would not only continue but also importantly expand the trends of recent years in this direction, then I think it might be worth making some statement in that regard. I would think it would assist MPs with their reservations with respect to the Upper House.

One of the effects, I would think, would be a very major expansion of the committee system, and hopefully a dramatic shrinkage of time spent in the House, per se. Rules to ensure that should be a part of any such package.

I would expect that the effect on the party system of such a relaxed relationship between the executive and the legislative would be salutary. Both the party in power and opposition parties - but particularly opposition parties - would be able to attract good people even though their main expectation might be to sit as private Members, were that office given greater stature. I would think as well that lay party members individually would feel a greater opportunity to have an impact on the system, once their local Member gained some relative freedom in policy and other terms. The total impact would be one of much greater talent devoted in one way or another to the political system.

I would mention one other reform that I think I can assure you, on the basis of my own soundings and mail, would be overwhelmingly popular, and in itself a very significant selling point for a new constitution, when the time comes to "sell" it in a referendum. I refer to fixed term elections - namely four years from the date of the previous election, barring only the case of defeat on a matter of confidence. (The four year stricture need not be absolute - there could be enough latitude to return always to a certain time of the year - say June, or October - in the event of an unscheduled election at some other time of the year due to defeat.)

Over the long run, I think this would work neither for nor against any party, but it would certainly work for the citizens and the economy in terms of predictability and stability. In the matter of obtaining a "mandate" for this or that, the opportunity is not lost. If no scheduled election is timely, a referendum is always in order, and provides an even more precise mandate in any case.

I am aware that in making this suggestion I am proposing that Prime Ministers should give up one of their important tools for both re-election and for party discipline. I make the recommendation nevertheless, because I think without it the balance between the executive and the legislative is tipped still too far the wrong way, and because unscheduled elections are an unnecessary perturbation in our economy. In addition, I repeat, it would be very popular.

The adoption of these reforms, in my view, would not erode the necessary leadership and control instruments of the executive branch. In particular, the enormous money Bill power (Ss.76-77) would still be there, plus control of most of the time of the House and initiation of most of the legislation.

Moreover, the executive branch should have the power to set in motion, on its own, a referendum process to appeal over the legislative branch to the people in extraordinary circumstances. (The legislative branch should have the same power, but not speaking with one voice, would use it far less successfully.) Thus, the instrumentalities of direct democracy can bring an important balance to the machinery of indirect democracy by which almost all of the decisions have to be made in the nature of things. (The referendum power was one of the interesting levers de Galle gave himself, though of course it led to his downfall when he overplayed it.)

The thrust of this section has been to advocate greater power for the legislative branch, and somewhat lesser power, but greater security, for the executive branch - without losing the essential element of accountability.

The major means of achieving these things relate to House practice, and S.53(3), but two additions to the Bill would be useful, namely:

1. Fixed term elections, and,
2. Power for the executive and legislative branches, individually, to initiate referenda.

Some Important Items Not Included

1. "A Time For Action" - in "The Principles of Renewal" makes mention of the legitimate rights of the native peoples. Unless I have missed it, I can find no mention of this in the Bill. Some native comment is already at hand, saying whatever new principles may be recognized, existing rights, proven or unproven, must not be affected. A statement as to how this is to be achieved, in general terms, might remove one source of controversy.
2. "A Time For Action" hints at a constitutional place for local government. Certainly the provinces will unanimously oppose such a thing; just as certainly I think there would be no difficulty whatsoever in getting public support for the concept at a Phase 2 referendum, and, incidentally, put every municipal and school board politician in the land on-side for adoption.
3. "A Time For Action" hints at an expansion of the area of concurrent powers as one of the solutions to the debate on the division of powers. I personally think that this is absolutely right, and that concurrent jurisdiction, plus the ability of the federal government to pass "skeletal law" in areas of concurrent jurisdiction, is a major solution to many of our federal-provincial difficulties.

I would predict, however, that the public would not take kindly to this if presented without guidelines and assurances against duplication of effort, since that is one of the main complaints about our federal system already.

There is, I believe, a way to turn this concern into a strong element of support, and that would be by committing the federal government to the general concept of a unified public service in the administration of concurrent jurisdiction and skeletal law. In most cases - at least as practised in Switzerland and Germany - the unified public service in a given area of jurisdiction would be supervised by the provincial level, with the federal staff primarily engaged in auditing and policy development. The provincial public service would still be duty bound to administer federal law as faithfully as provincial, but it would be all done by one group.

This would work well in environment, urban affairs, housing, small business, agriculture, and communications and cultural policy, to name but a few. And presumably, it would enable the federal authority to develop policy staffs in such areas as education, while of course retaining the administrative staff in certain other areas of concurrent jurisdiction such as immigration, because of its external nature.

The details will be complex, but the principle would be very clear to the public, if enunciated - namely an end to duplication, an end to visiting several offices, and remote administration.

I believe that with this addition, the concurrence and skeletal law concept would be very well received.

4. There has been a curious item of imbalance in terms of interaction between the two levels of government. The provinces have a well established position of

demanding more influence in Ottawa; the federal government has made no such demands with respect to provincial activities that have a consequential impact on federal responsibilities.

One need only think of the international bond market operations of the provinces, or their industrial development policies, or resource or manpower policies, to understand how important such interaction may be.

More generally, while the provinces have always had spokesmen in Ottawa, in terms of an Opposition anxious to embarrass the government if nowhere else, Ottawa - thinking of both the government and Parliament - has not had much of a voice in the provinces. From my own experience, the most outrageous things can be said by provincial governments, in debate and in the press, day after day, without any satisfactory rebuttal or putting of the federal side of the story. Provincial opposition parties do not see this as their role, (for very good electoral reasons), and federal Ministers are but fitful presences on the local scene, and are hampered in their comments in any case by their desire to stay on good terms with the provincial government in the interests of their province.

If the provinces are to have their own direct voices in the Upper House, is there not a case for the federal government having its own direct voice in each provincial legislature? Why not ask for it?

Such a representative would not have a vote, of course, but would have the right to speak on any matter that he deemed required the expression of a

federal view, or the placing on the record of federal facts. This would do a very great deal to keep provincial Ministers honest in their attacks on Ottawa. It would also provide a focal point for the press in seeking comment on the federal-provincial topic of the day.

Should the provinces reject the suggestion, they wouldn't seem very logical or fair in so doing, and the scene would be set for the establishment of such an officer in each provincial capital in any case, close to the press gallery, albeit without a voice in the Legislature. Workable federalism requires, among other things, balanced public information.

The management of such a representative staff would be a tricky internal organization problem for the federal government perhaps, but the rewards might be worth the effort.

More Specific Comment on the Bill

1. The explanatory note for S.21 seems a bit misleading, when it says the new right would be created "upon adoption by a province." I suppose a province could adopt the section as its own law, but in my reading it would come into constitutional force only by the operation of S.131?
2. S.25 is not, in my view, a sufficient constraint on the operation of emergency powers. It may be the view that sufficient safeguards will be placed in the laws themselves - such as the War Measures Act sections for review - but I think that is a dangerous assumption in a constitution.

In S.30, the word "law" presumably relates to British law, but this is not clear, nor, perhaps desirable?

4. S.42, which provides for the appointment of the Governor General, is of great political, as well as constitutional, importance. It is this section opponents of the Bill may use to argue a "dictatorship" will be set up.

I support entirely the patriation of our symbols as well as authority, but wonder if the political problems might not be removed from this section, plus its democratic credentials improved, by having the advice given to Her Majesty by the Parliament of Canada, acting on the recommendation of the Council of State? The practical effect is that it would be necessary to consult with the Opposition before nominating a Governor General in order that he be not a subject of partisan debate, but that seems to me a good thing.

5. S.62 - as already noted, I do not think British Columbia can approve of this distribution of seats.
6. S.62 - and subsequent sections: I hope that somewhere down the road, when this new Upper House has stabilized in the final form of the Bill, that it will be possible to return to the historic name of "Senate".
7. S.64 (1)a - I do not understand the prohibition against an M.L.A. sitting in the Upper House. If it is a genuine regional chamber, and if his constituents do not disagree with his division of effort, I don't see why the constitution should object.

3. Ss. 67-68 - I have already expressed my views on the over-ride powers of the Lower House as making an empty instrument of the Upper House, on regional matters in particular.
9. S.69 - A preference has already been expressed for a required majority or blocking minority, rather than a double majority.
10. S.70 - Without being exhaustive, the major appointments requiring Upper House approval should, in my view, be specified.
11. S.77 - An exception might be made to this section, with respect to the appropriation of funds necessary to operate the legislative branch. The government, in my view, should not control the budget of the House itself.
12. S.80 (2) - I note that the removal of a Lieutenant-Governor must be for "Cause Assigned" - conditions more stringent than for the removal of a Governor General.
13. Ss. 100 et seq. - I note that in the area of the courts, the position of B. C. as a full fifth region is recognized. This has now but to be extended to the Upper House!

I understand the concern of those who deplore the identification of judges with regions, but it doesn't bother me at all. The gain, in terms of the stature of the court, is far greater than the loss that could come from a badly unbalanced court in regional terms.

S.122 - There would appear to be no coverage of "non-tariff barriers" - for example, government procurement policies - and I wonder why this should be?

15. S.123 - I am puzzled by this section. It seems to me the protection should be taxation on the same basis as any other taxpayer, adjusted to take into account level of services provided. To do otherwise introduces an economic distortion for which I can see no good reason.
16. Ss. 130-131 - The term "accepted usage" is left undefined, and I understand that it is a matter of opinion as to just what "accepted usage" might be, but I wonder if at some stage it might be expedient, as a bargaining counter, for the federal government to give its opinion as to the meaning?

Conclusions

In the interests of (relative!) brevity I have focussed on the parts of the Bill which seem to me to be difficult, but that should not obscure the fact that in my opinion it is a remarkable achievement as a detailed policy statement. I think it forms a completely adequate basis for the Phase 1 process, with these additions:

1. Provision for validation by referendum, with required regional majorities.
2. An amending formula should be included, and this formula, inter alia, should provide for two popular amending routes, viz. initiative and referendum, in addition to the more usual intergovernmental route.
3. Instruments of direct democracy - the initiative, referendum, and recall - should be expressly provided

for. (They have, in the past, been ruled ultra vires.)

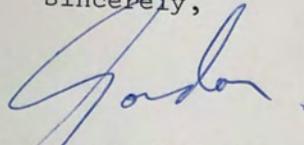
4. A required majority or blocking minority should replace the double majority concept.
5. Upper House powers should be increased with respect to matters of significant regional impact.
6. British Columbia (and the North) should have full fifth region status.
7. Upper House membership should be chosen so as to reflect regional rather than partisan motivations insofar as possible, and be composed of elected persons only, whether elected directly, or to a provincial House.
8. In the Lower House, the power of the legislative branch should be enhanced through a restrictive definition of "confidence" questions, fixed term elections, and management of internal budgets.

As a counterbalance, the executive and legislative branch should each have the power to initiate referenda without reference to the other.

9. Statements as to eventual action on native rights, a role for local government, concurrent jurisdictions and skeletal law, and a unified public service concept, could all add to public acceptance of the Bill.
10. The federal government should ask for a non-voting spokesman in provincial Legislatures.
11. There should be greater safeguards with respect to emergency powers.
12. The Governor General should be nominated by the government, and approved for advice to Her Majesty by Parliament.

These comments are the result of preliminary study and thought. I would be pleased to elaborate on any of them, and if on further reflection I have other or amended ideas, I will send them along.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gordon", with a stylized flourish at the end.

Gordon Gibson