

ALBERTA CHAMBER OF COMMERCE

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SUBMISSION



THE CANADA ACT, 1980

INTRODUCTION

In recognition of the importance of constitutional change to all Canadians, and in accordance with our mandate to develop informed public opinion and to promote effective action on issues of concern to Albertans, the Alberta Chamber of Commerce, a federation of 120 boards of trade and chambers of commerce, would like to present its position on the Canada Act, 1980. This position was prepared by the Alberta Chamber's Task Force on Constitutional Change and subsequently approved by the Chamber's Board of Directors.

1. PATRIATION TOGETHER WITH AN AMENDING FORMULA

The Alberta Chamber supports patriation of Canada's Constitution as a symbolic confirmation to Canadians of their governments' commitment to renew Canadian federalism. However, the Chamber cannot support unilateral federal government action that would at the same time introduce fundamental changes to the Constitution. Such unilateral action by the federal government is contrary to the long-standing Canadian tradition that constitutional changes to areas of provincial responsibility require provincial consent.

Although the Alberta Chamber recognizes the desirability of removing the "tyranny of unanimity", we consider it inappropriate that, in the Canada Act, 1980, the federal government has chosen to ignore the recent consensus reached amongst the provinces which could have freed us from this "tyranny".

Specifically, at the September 1980 First Ministers' Conference on the Constitution, there appeared to be unanimous agreement among the provinces that the "Vancouver Consensus Draft" contained an amending formula that would meet Canada's needs. In this formula, a constitutional amendment could be passed if approved by the House of Commons and the Senate together with two-thirds (seven) of the provinces representing at least fifty percent of the population of Canada. This general formula would be supplemented by a provision with respect to amendments affecting: provincial legislative powers; the constitutional rights or privileges of a provincial legislature or government; or the natural resources of a province. Under this provision, proposed changes in these areas would not apply to any province which expressed its dissent by a resolution of its legislative assembly. Thus, an amendment desired by a majority of provinces representing a majority of Canadians would pass, yet no province's constitutional status would be altered without its concurrence.

The Alberta Chamber hopes that this agreed upon amending formula will not be pushed aside by the federal government. We recognize that the Canada Act, 1980 would provide for a two year interim period during which proposals might be made to replace the modified "Victoria Charter" proposed by the federal government, but we feel the unnecessarily complicated procedure spelled out in the federal government's resolution, in effect, prohibits the development and acceptance of any amending formula other than the "Victoria Charter". We are particularly concerned about this possibility, because the modified "Victoria Charter" amending formula proposed by the federal government provides two provinces, Ontario and Quebec, with a veto power over constitutional amendments - a power not given to the remaining provinces. In contrast, as we have outlined above, the "Vancouver Consensus Draft" reflects the basic premise of Canadian federalism that all provinces have equal constitutional and legal status.

With regard to another aspect of the federal government's proposed amending process, the Alberta Chamber notes that the Canada Act, 1980 provides for constitutional amendment when authorized by national referendum. While the Alberta Chamber recognizes that this may seem to many Canadians to be a desirable alternative, we suggest that national referenda may be incompatible with fundamental aspects of parliamentary democracy in that it could be used to routinely bypass the authority Canadians have given their elected representatives. We strongly believe that amendments to the Constitution by referenda undertaken against the wishes of the provincial governments could have grave consequences for Canada.

However, in recognition that national referenda have been held previously in Canada, on prohibition and conscription, the Alberta Chamber acknowledges that under certain exceptional circumstances it might be acceptable to call a national referendum on constitutional amendment. We suggest that, if a national referendum on constitutional amendment is called, it must be carried by a majority of the population in each province if we are to uphold the basic intent and understanding of Confederation - that all provinces are equal.

Recommendation 1. The Alberta Chamber recommends that governments first proceed with patriation of the Constitution together with a unanimously agreed upon amending formula based on the principles of the "Vancouver Consensus Draft", and then continue as soon as possible to renew Canadian federalism.

2. EQUALIZATION AND REGIONAL DISPARITIES

The Alberta Chamber favours constitutional recognition of the commitment felt by Canadians to share with one another. However, we feel that some revisions would be necessary in this respect if this provision were to be included in the proposed Canada Act, 1980. For example, there is no clear stipulation that equalization payments, to provide for essential public services, be made to the governments of the provinces.

Recommendation 2. The Alberta Chamber recommends that the principle of "equalization" not be included in the Constitution at this time. We suggest that governments concentrate first on achieving agreement to patriate the Constitution with a unanimously agreed upon amending formula and then work towards including "equalization" in the Constitution as a subsequent amendment.

CONSTITUTIONAL CONFERENCES

The Alberta Chamber agrees that meetings of Canada's First Ministers should be recognized in the Constitution, providing the requirement for such meetings is not limited to constitutional issues but rather is expanded to include all issues of national concern.

Recommendation 3. The Alberta Chamber recommends that provision for annual meetings of the First Ministers to discuss issues of national concern be included in the Constitution after it has been patriated with a unanimously agreed upon amending formula.

4. PROTECTION OF CANADIAN RIGHTS AND FREEDOMS

The Alberta Chamber fears that inclusion of the proposed "Charter of Rights and Freedoms" in Canada's Constitution, without the agreement of all governments, would be divisive for Canada. Such action would also contradict the Canadian tradition of obtaining provincial concurrence to constitutional amendments which affect areas of provincial responsibility.

The Alberta Chamber notes that both points of view on constitutional inclusion of rights and freedoms have been well explained. The Chamber feels, however, that the opposition of seven of Canada's ten Premiers to such inclusion, as expressed at the September 1980 First Ministers' Conference, should not be ignored. Historically, many - perhaps most - knowledgeable persons from within governments, the higher courts and the universities, have also given excellent reasons, based on both British and American experience and practice, against such inclusion. Canadian parliamentary and legislative traditions have long provided Canadians with a system whereby elected representatives are responsible to the people for the ways in which their rights and freedoms are protected. "Entrenchment" of these rights and freedoms in the Constitution would give this power to the courts and could very possibly make the protection of rights and freedoms more rigid and less responsive to the changing needs of Canadians.

Recommendation 4. The Alberta Chamber recommends that, as Canadians' rights and freedoms are already protected through existing federal and provincial bills of rights and other comprehensive legislation, the proposed "Charter of Rights and Freedoms" not be included in the Constitution.

5. ADDITIONAL AMENDMENTS AFTER PATRIATION

After the Constitution is patriated together with an unanimously agreed upon amending formula, and governments resume discussions on possible amendments to the Constitution, the Alberta Chamber proposes that the following constitutional amendments be given priority:

Recommendation:

5.1 Resource Ownership - There should be a reaffirmation, strengthening and clarification of all aspects of the provinces' control over natural resources.

4.

Recommendation:

- 5.2 Resource Taxation - Provincial control over natural resources should be clarified so as to ensure the provinces' exclusive right to tax and collect royalties from the management and sale of these resources.
- 5.3 Economic Union - Governments should formally commit themselves to the principle of maintaining and enhancing Canadian economic union through the removal of barriers to the free movement of persons, goods, services and capital within Canada and through the establishment of an ongoing joint review to harmonize federal and provincial laws, practices and policies affecting Canadian economic union.
- 5.4 Transportation - Provincial jurisdiction over certain aspects of transportation should be expanded to make transportation a concurrent power.
- 5.5 Declaratory Power - The federal declaratory power, which allows the federal government to take control over a province's industries or natural resources as a work for the general advantage of Canada or one or more of the provinces, should be revised to require the concurrence of the province affected.
- 5.6 Emergency Power - A limit should be placed on the duration of the federal government's power to assume special responsibilities in times of emergency; and the federal government should be required to prove the legitimacy of its actions in such cases.
- 5.7 Reservation and Disallowance - The federal powers of reservation and disallowance of provincial legislation should be repealed as these powers have fallen into disuse.

CONCLUSION

The Alberta Chamber, together with most Canadians, wishes the Constitution "brought home". But we submit that few Canadians would wish patriation to occur in an atmosphere of adversity and suspicion.

The Alberta Chamber is extremely concerned that unilateral constitutional amendments, such as those proposed by the federal government in the Canada Act, 1980, ignore established Canadian constitutional tradition and could well divide Canada and Canadians. We recommend that all governments work together to achieve early agreement on patriation with a unanimously agreed upon amending formula as the first step towards the renewal of Canadian federalism.

November, 1980



Edmonton, November 6, 1980

ALBERTA CHAMBER CONCERNED ABOUT UNILATERAL CONSTITUTIONAL
AMENDMENTS

Unilateral constitutional amendments, such as those proposed by the federal government in the Canada Act, 1980, ignore established Canadian constitutional tradition and could well divide Canada and Canadians, according to a position released today by the Alberta Chamber of Commerce.

The Alberta Chamber stated its support for patriation of Canada's Constitution as a symbolic confirmation to Canadians of their governments' commitment to renew Canadian federalism. However, the Chamber placed a strong caveat on this position - against unilateral federal government action which would at the same time introduce fundamental changes to the Constitution. Such unilateral action by the federal government, the Chamber stated, would be contrary to the long standing Canadian tradition that constitutional changes to areas of provincial responsibility require provincial consent.

The Chamber maintained that most Canadians agreed the Constitution should be "brought home". But, it submitted that "few Canadians would wish patriation to occur in an atmosphere of adversity and suspicion".

The Alberta Chamber's submission reflected the view that the proposed Canada Act, 1980 did not meet Canada's needs and took a strong position on the desirability of refocussing the current constitutional debate. The Chamber recommended that all governments work together to achieve early agreement on patriation of the Constitution with a unanimously agreed upon amending formula as the first step towards the renewal of a cooperative Canadian federalism.

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