

BRIEF TO THE
SPECIAL JOINT COMMITTEE ON THE CONSTITUTION OF CANADA
BY THE
BRITISH COLUMBIA CHAMBER OF COMMERCE

JANUARY 9, 1981

BRIEF ON THE CANADIAN CONSTITUTION

INTRODUCTION

The British Columbia Chamber of Commerce is a voluntary federation of Chambers of Commerce and Boards of Trade throughout the province. A grass roots organization, it was established 29 years ago to "develop and present a true cross-section of private sector opinion to the Provincial and, in some cases, to the Federal Governments." Therefore, this brief is an amalgam of input received from our member Chambers of Commerce, our officers and Board of Directors.

PREAMBLE

The British Columbia Chamber of Commerce is dedicated to the unity of Canada. We therefore support the concept of "patriation" of the British North America Act as being essential if, as a nation, we are to have total responsibility for our own destiny.

THE CONSTITUTION OF CANADA

The present controversy surrounding the Canadian Constitution, in our view, involves three basic components. In order, they are:

(a) "patriation", (b) amending formula and (c) amendments to the constitution.

(a) "Patriation"

As we have already stated, the British Columbia Chamber of Commerce supports "patriation" of the British North America Act. However, it is the position of this organization that it must be "patriated"

in its present form, unaltered. Our membership is of the opinion that any amendments should be made only after "patriation".

(b) Amending Formula

There have been a number of amending formulas proposed over the years. It is the opinion of our membership that the concept of unanimity has been established by convention. Therefore, the determination of a new amending formula must meet this concept. Professor H.W.R. Wade, Q.C., of Gonville and Caius College, Cambridge, wrote in a memorandum dated November 24, 1980 and titled "Amendment of the Constitution of Canada: The Role of the United Kingdom of Parliament":

"It is sometimes said that it is an impossibly rigid situation if any one province has a power of veto over any amendment affecting distribution of powers. But that is merely the present situation with which Canada has had to live with for about a century. It is well-illustrated by the amendment of 1940, which Quebec successfully vetoed for a period of years after all the other Provinces had agreed. It has to be remembered that any federation requires an initial willingness to federate on the part of each and every member. Since Canada has never been supplied with a mechanism for constitutional amendment, the position in respect of that subject is that the federal compact has not yet been made. It is not unnatural, therefore, that it should require unanimity."

The British Columbia Chamber of Commerce supports the "Vancouver Formula" which was approved by all provinces. Our support is based essentially upon the fact that it does not provide for a right of veto in perpetuity.

(c) Amendments

As previously stated, it is the position of the British Columbia Chamber of Commerce that amendments to the Constitution of Canada should only be considered once the British North America Act has been "patriated" and an amending formula unanimously agreed upon. However, we submit that any amendments which will alter existing powers and jurisdictions must be considered very carefully. The proposal in the Canada Act 1980 relevant to a Charter of Rights and a recent federal government intrusion into the field of natural resource taxation at least indirectly impact upon historical provincial jurisdictions.

We concur with the intent of the Constitution Act, Part One (Canadian Charter of Rights and Freedoms). However, we feel that there is a legitimate question as to whether entrenchment will enhance or weaken the protection presently afforded Canadians. We favour the existing system which places the responsibility and obligation for our human rights upon elected, as opposed to appointed, officials as provided for under Section 92(13) of the British North America Act.

The Government of Canada was formed by the original federating provinces and was vested with certain powers. Other powers were vested in the provincial legislatures. Any measure which directly or indirectly impinges upon provincial authority is unacceptable.

CONCLUSION

The British Columbia Chamber of Commerce respectfully submits that there are three steps which must be taken consecutively with respect to the Constitution of Canada: (1) the "patriation" of the British North America Act; (2) the determination, by unanimous approval, of an amending formula; (3) the submission of amendments to the Constitution.

We are very much aware of the various elements of emotionalism surrounding the discussions on the Constitution. Like most Canadians, our membership wish to see this country assume total responsibility for its own destiny.

We urge all parties to commit themselves in 1981 to the resolution of these differences. Our country and its future deserve no less.