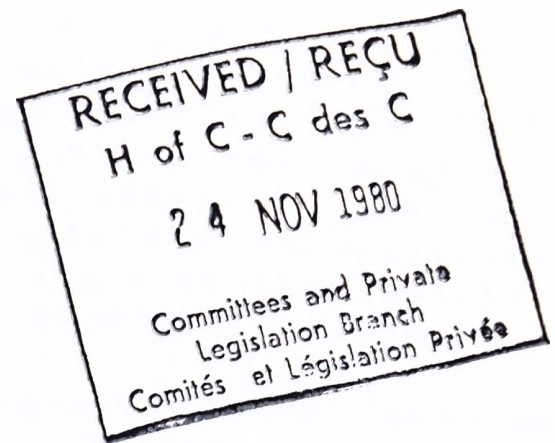


1200 Centennial Building,
10015 103 Avenue,
Edmonton, Alberta, T5J 0H1
Canada
(403) 423-4081

File No. 37 040 JMH

November 18th, 1980

Joint Clerks,
Special Joint Committee on the
Constitution of Canada
P.O. Box 1044,
South Block,
Parliament Buildings,
Ottawa, Ontario
K1A 0A7



Dear Sir:

re: Canadian Constitution

I note your advertisement inviting written submissions and requests to be heard by your Committee regarding the proposed change in the Constitution of Canada

I would like to make the following submissions to your Committee regarding the Constitutional proposals now before Parliament.

Canada has followed the path of constitutional development of many former colonies, progressing in a series of stages from direct rule to full self government. As declared by the Statute of Westminster in 1931, Canada is a fully self governing nation, with its legislative powers divided between sovereign Federal and Provincial Governments. Particularly, the Provincial Governments, successors to the colonial governments which initiated the process of Confederation in the 19th century, are judicially recognized to be sovereign within their constitutional powers (Hodge v R. 1884 9 Appeal Cases 117)

The one matter in Canada over which Canadian Governments do not have full jurisdiction, is the power to shift the dividing line of legislative jurisdiction between Federal and Provincial Governments. Because of this, Westminster has from time to time been asked as a matter of routine to pass

various measures at the request of the Canadian Government, affecting the jurisdiction of Federal or Provincial Governments, and has done so with little debate. In matters affecting the Constitutional position of Provinces (for instance, the admission of British Columbia, Prince Edward Island, and Newfoundland to Confederation) the United Kingdom Parliament has always acted upon the joint request of the affected Provincial Government as well as of the Canadian Parliament. In cases where such consent has not been obtained (in such matters as the institution of Federal pension and unemployment schemes), the power granted by Westminster to the Federal Parliament has always been to legislate concurrently with Provincial legislatures, never to diminish the legislative power of any Province without that Province's consent.

The present request is a unilateral request of the Canadian Federal Government to make fundamental changes in the Constitutional structure of Canada, and in particular proposes to "entrench" certain matters of civil rights beyond the amending power of either Provincial or Federal Governments. Manifestly, this action impinges on the subject of "property and civil rights in the Province" which by Section 92.13 of the British North America Act is within the exclusive jurisdiction of Provincial Governments. Such legislation has not been requested by any Provincial Government and several indeed have expressed their displeasure that such a request should have been made to the Parliament of the United Kingdom.

I wish to raise two questions which the United Kingdom Parliament should consider carefully before acceding to the Canadian Federal Government's request. The first is, whether Westminster has at this date the power to legislate variations of substance in the Constitution of Canada. I submit that the sovereignty given to Canada by the Statute of Westminster in 1931, with only minor and specific reservations, precludes Westminster now from legislating to make any variations of substance in the Canadian Constitution outside those limited areas. The United Kingdom Parliament should consider itself only to have power to legislate in Canadian constitutional matters, in the limited area of allocation of jurisdiction between Federal and Provincial Governments. It is suggested that the combined operation of Sections 7 (2) and 2 (2) of the Statute of Westminster would in fact, even after the proposed "Act to amend the Constitution of Canada" had been passed, enable Provincial Governments to validly ignore such changes and continue to legislate on the subject of civil rights within the Provinces as previously.

The second question is of the propriety of the United Kingdom Parliament passing legislation which would have the indirect effect of diminishing the sovereignty of Provincial Governments, without the consent of the Provincial Governments affected. The amending formula proposed could well lead to the self governing powers of individual Canadian Provinces, and particularly the smaller ones, being taken away from them without their consent. For the fact that this is contrary to Commonwealth Constitutional convention, I refer to Halsbury's Laws of England, Third Edition, Volume 5, Sections 1075 and 1076:

"Prior consultation with the Provinces has customarily taken place if its subject matter directly affects Provincial rights or privileges, and their unanimous consent is probably required by convention if the amendment alters the distribution of legislative powers".


What is so tragic about the present position is that it interferes with the slow growth of consensus beginning to emerge on the Canadian scene as to the form that the future Canadian Constitution should take. The process can be traced from the passing of the Canadian Bill of Rights in 1960, and continued in the labours of the Royal Commission on Bilingualism and Biculturalism. Recently there have been excellent proposals for schemes of constitutional reform, for example by the Canadian Bar Association, the Liberal Party of the Province of Quebec, and most recently the report of the Pepin-Robarts Task Force. All of these have indicated a future constitution for Canada with a more effective Upper House protecting Provincial rights, and greater rather than less autonomy for Provincial Governments. The constitutional reform package now being proposed is a reversion to centralism, and outside the consensus that Canadians have been quietly beginning to build for their Country. What is before the United Kingdom Parliament at this time is certainly not the same vision of a renewed Federalism that impelled many Quebecers to vote "no" to separation in the recent Constitutional Referendum.

A groundswell of separatism has existed for many years in the province of Quebec, and is now developing on a serious scale in Western Canada. The genius of the British North America Act was precisely to prevent this by providing a degree of self government on local matters to Provincial Governments,

which enables Canada to have an extreme diversity of culture, language and outlook within a single nation. It was a policy consciously adopted after the failure of an experiment in centralized government between Upper and Lower Canada in the years prior to 1867. The unwisdom on conscription imposed by a central government on Quebec in 1917 and 1944 has left scars that generations have not yet eradicated. The unwisdom of the conscription of the resources of Western Canada, which is the essence of the constitutional crisis of today, will leave scars on Western Canada of equal magnitude, unless Westminster in its wisdom declines to act on Canada's request.

My submission is therefore that the proposed changes in the Constitution are not only unwise, but beyond the authority of the Federal Parliament to request. I would be happy to appear before your Committee at some convenient time to express this opinion to you in person and answer questions.

Yours truly,



J. MARTIN HATTERSLEY,
Interim Leader,
Social Credit Party of Canada