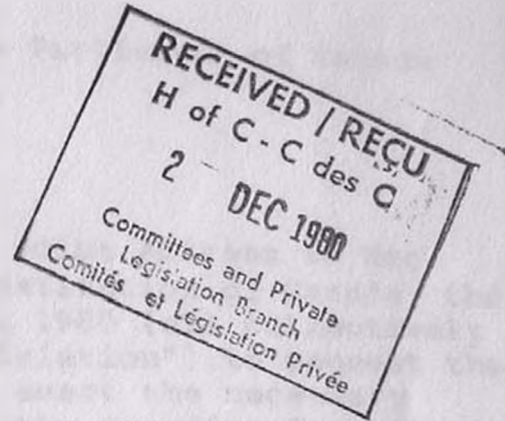




The Calgary Chamber of Commerce

Sub

28 November, 1980



Senator Harry Hays
The Senate
Ottawa

Dear Senator Hays:

The attached submission concerning patriation of the Constitution is forwarded for your consideration.

The Calgary Chamber of Commerce is deeply concerned about the patriation under the terms submitted by the Government of Canada.

Sincerely,

S.C. Waters
President

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GENERAL MANAGER: CLIFF M. BLACK TREASURER: W. FAY ANDERSON

Re: Proposed Resolution for a Joint Address to Her Majesty
The Queen Respecting the Constitution of Canada

IT IS HEREBY RESOLVED that the Parliament of Canada
be petitioned to:

Amend the Proposed Resolution for a Joint Address to Her Majesty The Queen respecting the Constitution of Canada, the Canada Act and the Constitution Act, 1980 (all collectively hereinafter referred to as "the legislation") to request the Parliament of the United Kingdom to enact the necessary legislation permitting amendment of the Canadian Constitution to be made by proclamation issued by the Governor-General under the Great Seal of Canada where so authorized by

- a) resolutions of the Senate and House of Commons; and
- b) resolutions of the legislative assemblies of all the provinces;

until such time as a more flexible amending procedure can be agreed upon at a federal-provincial conference.

for the following reasons:

1. The Canadian Constitution consists in part of written material and in part of conventions or customs and a clearly defined convention embodies the principle that the Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces. See "Amendment of the Constitution of Canada" published by the Honourable Guy Favreau then Minister of Justice 1965 p. 15 under the heading "The Fourth General Principle."

2. The proposed legislation clearly invades the provincial powers conferred by the B.N.A. Act and is therefore opposed by a majority of the provinces, particulars of such invasion being in the following general areas:

- a) Education (sec. 23);
- b) Property and Civil Rights (ss.16(2), 25);
- c) The Amending Power (ss. 41-42).

Moreover, the proposed legislation unilaterally changes the role and nature of parliament - a power which parliament does not have. See Reference re Legislative Authority of Parliament to Alter or Replace the Senate (1980) 102 D.L.R. (3d) 1.

3. It is improper for the Parliament of Canada to request the Parliament of Great Britain to pass the legislation in the form requested because:

- a) Since the Federal-Provincial Conference of April, 1931 and since the enactment of section 7 of the Statute of Westminster 1931 the Parliament of Great Britain has been the ultimate guardian and trustee of the rights of the Provinces such that amendments to the British North America Act affecting Provincial rights would not be passed without the consent of all provinces.

b) The Canadian Parliament can scarcely be said to have made a bona fide request to the United Kingdom Parliament for amendment of the Constitution when:

- i) debate in the House of Commons on the motion to refer the legislation to Committee has been curtailed by "closure" with the result that a large number of members were prevented from speaking on the issue;
- ii) the Joint Senate-House of Commons Committee to which the legislation was referred has been given an unreasonably short period for hearing of submissions.
- iii) Closure has been threatened for the debate in the House of Commons upon the tabling of the Committee's Report.

c) The prior consultation between representatives of the Federal Government and of the Provinces required before any request for amendment is made to the British Parliament pursuant to the fourth general principle referred to above has been vitiated by private, and in some cases, secret negotiations with some but not all of the provinces, E.G.

- i) Prince Edward Island has been promised special rights not embodied in the legislation;
- ii) Secret negotiations have been conducted with Premier Blakeney of Saskatchewan;
- iii) A concession has been made to Premier Davis of Ontario.

With the result that the request of the Parliament of Canada is premature, improper and illegal.

It is further submitted that it is improper for the British Parliament to be asked to do more than provide the necessary legislation to "patriate" the constitution with an amending formula based on the existing division of powers and the present rules for amendment by the British Parliament as set out at P. 15 of "The Amendment of the Constitution of Canada" unless, in the meantime, another formula can be agreed upon by all the provinces.

The Calgary Chamber supports the submission of the Alberta Chamber of Commerce already filed, and, in particular, we submit that the "Vancouver Consensus Draft" as set out on Page 1 of The Alberta Chamber's submission represents the fairest amending formula so far advanced. We would point out that Section 41 of the proposed Canada Act is unfair to the prairie provinces as no two prairie provinces have fifty percent of the population of all the Western Provinces.

It must be pointed out that every constitution that has been successful has proceeded from a general consensus.

The present proposals do not have that. On the other hand this Chamber recognises that it has an obligation to press for an amending formula that will achieve that consensus.