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NORTHWEST TERRITORIES
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TABLED ON

JUN 3 1987

MEETING OF FIRST MINISTERS
ON THE CONSTITUTION

1987 CONSTITUTIONAL ACCORD

June 3, 1987

1987 CONSTITUTIONAL ACCORD

WHEREAS first ministers, assembled in Ottawa, have arrived at a unanimous accord on constitutional amendments that would bring about the full and active participation of Quebec in Canada's constitutional evolution, would recognize the principle of equality of all the provinces, would provide new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and would require that annual first ministers' conferences on the state of the Canadian economy and such other matters as may be appropriate be convened and that annual constitutional conferences composed of first ministers be convened commencing not later than December 31, 1988;

AND WHEREAS first ministers have also reached unanimous agreement on certain additional commitments in relation to some of those amendments;

NOW THEREFORE the Prime Minister of Canada and the first ministers of the provinces commit themselves and the governments they represent to the following:

1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, as soon as possible, a resolution, in the form appended hereto, to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Constitution of Canada.

2. The Government of Canada will, as soon as possible, conclude an agreement with the Government of Quebec that would

(a) incorporate the principles of the Cullen-Couture agreement on the selection abroad and in Canada of independent immigrants, visitors for medical treatment, students and temporary workers, and on the selection of refugees abroad and economic criteria for family reunification and assisted relatives,

(b) guarantee that Quebec will receive a number of immigrants, including refugees, within the annual total established by the federal government for all of Canada proportionate to its share of the population of Canada, with the right to exceed that figure by five per cent for demographic reasons, and

(c) provide an undertaking by Canada to withdraw services (except citizenship services) for the reception and integration (including linguistic and cultural) of all foreign nationals wishing to settle in Quebec where services are to be provided by Quebec, with such withdrawal to be accompanied by reasonable compensation,

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and the Government of Canada and the Government of Quebec will take the necessary steps to give the agreement the force of law under the proposed amendment relating to such agreements.

3. Nothing in this Accord should be construed as preventing the negotiation of similar agreements with other provinces relating to immigration and the temporary admission of aliens.

4. Until the proposed amendment relating to appointments to the Senate comes into force, any person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada.

Motion for a Resolution to authorize
an amendment to the Constitution of Canada

WHEREAS the Constitution Act, 1982 came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five nonconstitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the Constitution Act, 1982;

AND WHEREAS section 41 of the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1987

1. The Constitution Act, 1987 is amended by adding thereto, immediately after section 1 thereof, the following section:

Interpretation

"2.(1) The Constitution of Canada shall be interpreted in a manner consistent with

(a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(b) the recognition that Quebec constitutes within Canada a distinct society.

Role of Parliament and legislatures

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.

Role of legislature and Government of Quebec

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

Rights of legislatures and governments preserved

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

Names to be submitted

"25.(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

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Choice of
Senators
from names
submitted

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the Constitution Act, 1982, the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

Commitment
to
negotiate

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

Agreements

95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

Limitation

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

Application
of
Charter

(3) The Canadian Charter of Rights and Freedoms applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

Proclamation
relating to
agreements

95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

Amendment
of
agreements

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the

(b) in such other manner as is set out in the agreement.

Application of sections 46 to 48 of Constitution Act, 1982

95D. Sections 46 to 48 of the Constitution Act, 1982 apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

Amendments to sections 95A to 95I or this section

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the Constitution Act, 1982, but only if the amendment is authorized by Resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada"

Supreme Court continued

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

Constitution of court

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

Who may be appointed judges

101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

Three judges from Quebec

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

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Names
may be
submitted

101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

Appointment
from
names
submitted

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

Appointment
from
Quebec

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

Appoint-
ment from
other
provinces

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

Tenure,
salaries,
etc. of
judges

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

Relation-
ship to
section 101

101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

References
to the
Supreme
Court
of Canada

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

Shared-cost
program

"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

Legislative
power not
extended

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

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8. The said Act is further amended by adding thereto the following heading and sections:

XII - Conferences On the Economy and Other Matters

Conferences on the economy and other matters

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII - References

Reference includes amendments

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the Constitution Act, 1982 are repealed and the following substituted therefor:

Compensation

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- (b) the powers of the Senate and the method of selecting Senators;
- (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
- (d) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;
- (e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
- (f) subject to section 43, the use of the English or the French language;
- (g) the Supreme Court of Canada;

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(h) the extension of existing provinces into the territories;

(i) notwithstanding any other law or practice, the establishment of new provinces; and

(j) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

Amendments
by
Parliament

"44. Subject to section 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

Initiation
of
amendment
procedures

"46.(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

Amendments
without
Senate
resolution

"47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"Part VI

Constitutional Conferences

Constitu-
tional
conference

50 (1). A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

Agenda

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(a) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

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(b) roles and responsibilities in relation to fisheries; and

(c) such other matters as are agreed upon."

14. Subsection 32(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(d) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

References

"61. A reference to the Constitution Act 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."

General

Multi-cultural heritage and aboriginal peoples

16. Nothing in section 2 of the Constitution Act, 1867 affects section 25 or 27 of the Canadian Charter of Rights and Freedoms, section 35 of the Constitution Act, 1982 or class 24 of section 91 of the Constitution Act, 1867.

CITATION

Citation

17. This amendment may be cited as the Constitution Amendment, 1987.

Signed at Ottawa,
June 3, 1987

Filed at Ottawa
Le 3 Juin 1987

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Canada

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