

The Constitution

Mr. Yurko: We have a very serious topic before us and I expected to speak seriously tonight. On May 9 of last year I moved a motion to effectively patriate the Canadian Constitution with or without the unanimous consent of the provinces because I felt it was legally possible, and was fully supported by precedents. In my opinion, patriation is the one great final step toward the evolution of a national cohesiveness.

I know the process being followed is producing division, but the nation can stomach considerable stress and strain, and it is constantly proving this. It proved it last May 20. This is a durable nation.

On the passage of that resolution I said:

Mr. Speaker, every member in this House has been humbled today by the passage of a motion stating that the Parliament of Canada submit an address to Her Majesty, Queen Elizabeth, that Her Majesty may graciously be pleased to cause a bill to be laid before the Parliament of the United Kingdom to provide for the amendment in Canada of the Constitution of Canada.

Then I said:

Parliament must pursue this objective with haste. This is the beginning of a dream that so many of us have cherished for so long; a dream to make this nation whole, to give this nation a distinctiveness, a wholeness, a Canadianism that is our own, and sovereignty as a nation and as a people.

● (2110)

Let us hope and let us pray that this process which has begun here today will not falter and fail. Let us all be determined that we shall succeed in patriating our Constitution with provincial unanimous agreements, but without, if necessary, for the Parliament of Canada can patriate the Constitution with a built-in formula of unanimity for the subsequent amendment of the Constitution in Canada. The question is, has Parliament got the will to do it?

Let us also be determined that we shall succeed in adopting a less rigid formula for amendment so that we can preserve what is good in our Constitution and yet change with some ease what needs changing to keep pace with the evolution of the Canadian identity and the Canadian reality.

That is what I said last May 9. While discussing that motion, the Prime Minister (Mr. Trudeau) and the two House leaders of the opposition said that we should first consult with the provinces and discuss patriation and the amending formula, and we have. We were all party to those deliberations on national television last September, each of us has his own version of the villains and heroes of the drama. I watched the drama on television and recorded it. Three dominant themes emerged from that conference. The first was that politics, rather than statesmanship, prevailed; the second was that massive growth of provincial governments and their extensive involvement in their economies and redistribution of wealth was pervasive, and all provinces wanted to protect, enhance and extend such involvement, and I was a member of a cabinet which, for seven years, extended this area of involvement dramatically.

The third theme was that honest differences existed over the concept of the Canadian federation. Some saw the nation as moving steadily towards increasing isolation and separation of Canada's two linguistic solitudes; whereas others saw the nation moving increasingly toward the intermingling of these two solitudes.

Mr. Speaker, the conference was doomed to failure and it has failed. The national government subsequently reacted and brought forth a package addressed to the Queen to patriate the Constitution and entrench a charter of rights and freedoms. It is a complex package and has been subjected to the intense public hearing process of the joint committee on the Constitution. Our party sponsored 22 amendments, of which seven were accepted. We have been constructive in committee, from my point of view, the hearings were a remarkable process of participatory democracy in Canada. Indeed, they were probably unique in that regard in length and involvement, and all who participated are to be congratulated.

The nature of our constitutional process today is that the federal Parliament can make any address it wishes to the British Parliament for amendment of the BNA Act. We are the only country in the world with such a process. Nothing in the Constitution or in law compels the federal Parliament to consult with or get agreement of any or all provinces, irrespective of some well-known principles. The British Parliament makes the final decision, and thus far has not refused any request by the Canadian Parliament. Indeed, as things now stand, the British Parliament could attempt to unilaterally change the BNA Act, but such a suggestion is preposterous.

What has been suggested is the possible refusal by the British parliament of a request from this Parliament for patriation and/or amendment, and such a proposition is also preposterous. It would also be tantamount to unilateral action by the British Parliament in dealing with the Canadian Constitution, and I think such action is unthinkable.

I am satisfied that the rights and powers of the Canadian Parliament to patriate are part of that umbrella of powers given to it by the very process of confederation itself. We, of course, all know that since 1907, and particularly since 1930, a principle or convention has gained increasing recognition and acceptance, the principle that the Canadian government will not request a constitutional amendment of the British parliament when such amendment directly affects federal-provincial relationships without prior consultation and agreement with the provinces. However, such a convention is not entrenched, is not a right, it is in doubt, and one court has now ruled against its existence. This we must change at the earliest opportunity.

The veto rights of provinces over constitutional amendments must be codified in the Constitution at the earliest opportunity, and I say now, before divisiveness in this country is allowed to increase. We have a dangerous amending formula which must be changed or regional fractiousness will reach new heights. So, in my view, we must patriate now and entrench the veto rights of the provinces alone or in combination.

Any amending formula is an improvement over the unilateral formula now in place. I have, therefore, taken a stand but it has been consistent. In a recent letter to the Leader of the Official Opposition (Mr. Clark) and all members of the Progressive Conservative caucus, I stated I am a Canadian before being a partisan politician. I have often been emotionally moved when speaking about human rights of minority