

## Appendix B

## BRITISH NORTH AMERICA ACT—PROCEDURE IN AMENDMENTS

## FURTHER CORRESPONDENCE WITH PREMIERS OF SASKATCHEWAN AND QUEBEC

Premier's Office  
Saskatchewan

Regina, October 15, 1949.

Right Hon. L. S. St. Laurent,  
Prime Minister of Canada,  
Ottawa, Ontario.

My dear Prime Minister:

You will recall that on September 20, I acknowledged your letter of September 14, and expressed appreciation of the fact that steps are about to be taken to remove the necessity of approaching the parliament of the United Kingdom whenever an amendment to the British North America Act is desired. In this connection I may say that we in Saskatchewan are still anxious to co-operate in order that this may be achieved.

Since the date of my letter, further attention has been given to the announcement contained in the fourth paragraph of your letter regarding the proposed request for an amendment which will be submitted to parliament at the present session. I must confess to considerable curiosity as to just what your government has in mind.

As the proposed amendment is described in your letter it would vest in the parliament of Canada authority to "amend the constitution of Canada." Then comes the limitation as follows:

"... but only in relation to matters not coming within the jurisdiction of the legislatures of the provinces, nor affecting the rights and privileges of the provinces, or existing constitutional rights and privileges with respect to education and to the use of the English and French languages."

May I make the general observation that the amendment as proposed in your letter would primarily vest in the dominion parliament authority to amend the constitution of Canada subject of course to the exceptions referred to. This would mean, as I understand the situation, that in the case of any amendment of the B.N.A. Act by the dominion being objected to by a province, the burden would be on the province to show that the amendment infringed the stated exceptions.

Coming to the exceptions, as stated in your letter, the first is clear enough, and probably also the last, dealing with education and the use of the English and French languages. It seems to us, however, that the phrase "affecting the rights and privileges of the provinces" is somewhat lacking in precision and might result in serious misunderstanding. The term "purely federal aspects," used in the fifth paragraph of your letter, does not entirely cure the situation even if "federal" is taken to be equivalent to "general" or "dominion." In our opinion the field that the dominion would occupy after the suggested amendment is indefinite at the moment, and we do not know what your government has in mind in the direction of constitutional development.

It may be presumed that the formula set out in your letter would cover the office of the Governor General of Canada, but a more interesting question arises as to section 9 of the British North America Act. This is interesting for the reason that section 9(1) denies to the provinces the capacity to alter the office of lieutenant governor and executive gov-

ernment in the provinces is performed in the name of His Majesty. Again would the formula cover the preamble to the B.N.A. Act?

Again it may be asked whether the formula would warrant the abolition of the Senate. Such an abolition would not "affect the rights and privileges of the provinces" as corporate entities; yet some of the provinces might take grave objection to the abolition of the upper chamber. Similar questions might be asked concerning the application of the formula to sections 53-57 and other sections.

You will understand that no complaint is being made regarding the action which your government proposes to take. We do think, however, that some further clarification might avoid disagreements in the future. May I request, therefore, clarification regarding (a) the exact scope of the proposed amendment; (b) whether your government has any developments in mind which can properly be disclosed. I may also add that some comment on the particular points raised in this letter would be greatly appreciated.

Yours sincerely,

T. C. Douglas

Office of the Prime Minister  
Canada

Ottawa, October 21, 1949

Honourable T. C. Douglas, M.L.A.,  
Premier of Saskatchewan,  
Regina, Saskatchewan.

My dear Premier:

Your letter of October 15, with further reference to the procedure for amendment of the British North America Act, reached me after the debate on the proposed amendment had begun. I think I can best answer your request for clarification on the government's proposal by referring you to the text of my motion and the speech which I made on Monday, October 17, which appear on pages 828ff. of the daily *Hansard* for that date, and which I have pleasure in enclosing.

I shall ask my office to send you copies of the *Hansard* for the succeeding days of the debate so that you may follow the discussion in the House of Commons.

I agree that the phrase "affecting the rights and privileges of the provinces" is lacking in precision; this general language was used because we did not wish to attempt to determine in an arbitrary fashion the extent of the rights and privileges of the provinces, preferring to leave that for determination by the courts, in the event of any dispute, unless some agreement with respect to it is reached at the forthcoming conference.

As to your question whether this government "has any developments in mind which can properly be disclosed," I can only say that no consideration has yet been given by the government to any constitutional development or change which might be recommended to parliament under the new procedure contemplated by the address.

Yours sincerely,

Louis S. St. Laurent