

*The Constitution*

through enshrining a charter of rights and freedoms. It then becomes possible to cast aspersion on avowed opponents of the proposed resolution by inferring they are opposed to giving a better protection to human rights and freedoms. We feel it is highly desirable that the basic freedoms listed in the United Nations Universal Declaration of Human Rights be constitutionally guaranteed all over the world. Yet let us not overrate the importance of the passing by the Canadian Parliament of a charter of rights and freedoms and make it at any cost an absolute prerequisite for the future happiness of our people, even if it means tampering with the basic principles of Canadian federation. The fact remains that in a federative system one level of government cannot compel the other to surrender part of its sovereignty even if it is to hand it over to the judiciary. Yet in many respects it is precisely what is being achieved by the Charter of Rights and Freedoms included in this proposed resolution. If the federal Parliament wants to hand over part of its own legislative powers to the courts, it certainly is its privilege but it is intolerable that it should try to force the provinces to cede part of their constitutional jurisdiction to the courts and more particularly to the Supreme Court of Canada whose judges are appointed exclusively by the federal government.

Does it mean, Mr. Speaker, that our country is condemned, because of its federal system, to never be able to entrench in its Constitution certain basic rights and freedoms which are in the Universal Declaration of Human Rights? I do not believe so, Mr. Speaker. And I should like to submit to the House some ideas how to go about patriating the Constitution, giving ourselves an amending formula and also a charter of rights and freedoms, while alleviating considerably the seriousness and the extent of the confrontations now taking place across Canada.

Mr. Speaker, the debate which has been raging since the introduction of this draft resolution in Parliament has seriously endangered Canadian unity, but it has also given rise to a show of solidarity among the provinces which was unheard of up to now in the history of federal-provincial relations. The solidarity of this interprovincial united front is particularly comforting for Quebec which, after being for so long the sole province to claim its rights from the federal government, may now view the future of the constitutional reform with optimism, a reform which is now in the nature of things and which will have to be started seriously under the pressure of the provinces. Therefore, I think that because of the new power struggle in federal-provincial relations, Quebec and its allies in other provinces can now consent to the patriation of the Constitution without jeopardizing the pursuit of the constitutional reform.

It is possible that for purely partisan reasons, the Parti Québécois government will maintain its traditional position on this matter, but there is good reason for supposing that the new Liberal government that Quebecers will give themselves in a few weeks might consent to such a patriation. In the

circumstances, Mr. Speaker, the constitutional crisis we are going through could be resolved if the proposed resolution contained only the following items:

1. The immediate patriation of the Constitution.
2. The maintenance of the unanimity rule for the amending formula for 12 months following patriation.
3. A national referendum to be held subsequently in order to allow Canadians to choose between the so-called Victoria formula and an eventual formula agreed to by seven provinces comprising at least 80 per cent of the total population of Canada. Failing an agreement on this matter among the provinces within 12 months following patriation, the Victoria formula would automatically become the amending formula.
4. In case of a constitutional deadlock, a national referendum to be called either by the federal government or by seven provinces comprising more than 50 per cent of the total population of Canada, regional vetos being granted in such a referendum, as specified in Clause 46 of the present proposed resolution.

And what about the charter of rights and freedoms? It would simply be the subject of a federal-provincial conference which would deal exclusively with this matter and would be called after the stumbling block of patriation of the Constitution had been removed and the sovereign people had chosen, if need be, an amending formula in a national referendum. And should this conference still fail to produce an agreement, then the federal government would be justified in calling on the Canadian people in a national referendum to be held under the rules specified in clause 46 of the proposed resolution, which grants regional vetos to the Atlantic provinces, Quebec, Ontario and the western provinces.

So here are, Mr. Speaker, the different stages of my proposal:

1. A federal-provincial conference in June, 1981, to deal only with the patriation of the Constitution.
2. The patriation of the Constitution in the fall of 1981, with the maintenance of the unanimity rule for the following 12 months.
3. A national referendum to choose an amending formula to be held in the fall of 1982.
4. A federal-provincial conference on the Charter of Rights and Freedoms, to be held early in 1983.
5. A national referendum, if need be, failing an agreement at federal-provincial conferences, to be held on the Charter of Rights and Freedoms in the fall of 1983.

Some will certainly say, Mr. Speaker, that since the past foreshadows the future, no agreement with the provinces will emerge from yet another federal-provincial conference on patriation of the Constitution. Yet, Mr. Speaker, one should