

*The Constitution*

live with it on the provincial level. The British parliamentarians would break faith with the people of Canada if they tampered with this parliamentary resolution from the Canadian Parliament.

Let me now deal more specifically with patriation and the process contained in the resolution for evolving a final amending formula in Canada.

Could you tell me how much time I have left, Mr. Speaker?

**An hon. Member:** Fifteen minutes.

**Mr. Yurko:** Let me state that our PC caucus has laboured under the partial illusion that the Vancouver amending formula was agreed to last September by all the premiers and by the Minister of Justice (Mr. Chrétien) speaking for the federal government. I wrote to all the premiers in Canada, since I was a member of a provincial government for so long. The Ontario minister of intergovernmental affairs wrote me a letter which has become quite famous. He ended with this statement:

In sum, our discussions held out the potential for consensus but it was not achieved in fact. The explanation lies not in the ill of any of the participants but in defects inherent in the formula itself.

One premier who does not support the patriation resolution also replied to my letter. He said:

There is no question in my mind that there was a considerable consensus in favour of the Vancouver formula by officials, ministers and first ministers. You will recall at the September first ministers' meeting seven premiers specifically stated they supported the Vancouver consensus, while two indicated a willingness to consider it seriously. Quebec, which has traditionally maintained the position that there should be no decision on an amending formula until discussion on the division of powers is completed was willing to consider this subject.

Perhaps the provinces could agree on the Vancouver formula and offer it as an alternative to the Victoria formula for the people to decide, as is possible in this resolution. Nevertheless, patriation now with the Vancouver formula is unilateral patriation, regardless of how one looks at the matter at this time. Furthermore, the Vancouver formula is, in my estimation, structurally unsound and would soon destroy this nation.

**Some hon. Members:** Hear, hear!

**Mr. Yurko:** Patriation must be done with the unanimity formula in place, as was stated in the resolution which was passed on May 9. Such a procedure is contained in the resolution for a term of two years.

Let us now briefly examine the referendum clause in the resolution and the legitimacy of the warnings of the dire consequences predicted as a result of this amending procedure. Our leader, Premier Blakeney, the four breakaway NDP members, other premiers and many caucus members see the referendum as an insidious destruction of federalism. In my estimation, this is exaggeration of the wildest sort, to predict such a result from the use of the referendum clause. But how much of a constitutional fixation is the referendum procedure? It is a way of bypassing the provinces, as some say, but then is that not what the procedure for constitutional amendment is today, according to the Manitoba Court of Appeal? If all the premiers see it as a threat, then they are surely in favour of

revising it; and would not revision take place just as soon as a national Progressive Conservative government is elected? If this resolution is so divisive and the people are massively against it, would not the national PC Party, my party, win the next election in a landslide and change this part of the Constitution with the unanimous consent of the provinces? Of course we would. We would change it before it was even used for the first time.

The lament that the use of a peoples' referenda on constitutional change may—and it is a vastly exaggerated may—change the very nature of our federation is a spurious argument. I believe that the use of a peoples' referenda, initiated by the people of Canada or by federal authority, to be appropriate and desirable as an instrument of constitutional change in the Canadian federation. Indeed, I believe that the peoples' referendum tool is not only a needed process for breaking federal-provincial log-jams, but it should be a fundamental right of the people of Canada. I believe that the umbrella, or sovereignty cap, over the Canadian federation, which has many parts similar to the declaratory powers, peace, order and good government provisions, and which is now being shared between the British parliament and the Canadian Parliament, with a common monarchy, should not be totally transferred to the Canadian Parliament and the provinces on patriation. It should be shared by the Canadian Parliament and the provinces with the Canadian people through a process other than the electoral process. That is why I believe it necessary for the Canadian people to have the means to initiate constitutional change directly rather than acting only as a referee to break log-jams. That is why I included a peoples' referendum clause in the resolutions I introduced in both the Thirty-first and Thirty-second Parliaments.

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But such referenda must be used with great caution and great wisdom—and not often—so the rules of implementation and acceptance of the results must of necessity be laid down in a non-partisan way by a non-partisan process. Reasonable amendments have been made to the resolution in this regard, but we could go even further.

The process in the resolution for patriation and evolving a Canadian amending formula is simple: first, the amended Constitution is patriated with the unanimous consent formula in place; second, a two-year period during which the unanimous consent formula will apply and a search for a less restrictive formula will go on; third, the provinces will establish their alternative to the federal formula if they can reach agreement; and fourth, a national referendum to choose between the federal option, which is the Victoria formula, and the provincial option.

In regard to this process for evolving a permanent amending formula in Canada, surely the provinces in two years can meet almost continuously to evolve a provincial alternative to the federal option which is the Victoria formula which, in 1971, did receive the unanimous approval of all ten provincial governments. Indeed, if I was a leader of any provincial govern-