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Canadian High Commission



Haut Commissariat du Canada

London,
September 29, 1981

25/10

The Rt Hon Margaret Thatcher MP
Prime Minister
House of Commons
London SW1A 0AA

My Dear Prime Minister,

I am pleased to send you herewith a summary of the judgement of the Supreme Court of Canada in the matter of the patriation of the Canadian Constitution.

Should you require any further information please contact Mr. Reeves Haggan of my office at 629-9492, extension 360.

Yours sincerely,

Jean Casselman Wadds
High Commissioner

The Canadian Constitution 1981

Summary of the Supreme Court of Canada
Decision on the Proposed Amendments to the
Canadian Constitution.

The Supreme Court of Canada has held
that the consent of the Canadian provinces is
not legally required for the enactment of the
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The Decision of the Supreme Court of Canada

The decision notes that in the
of provision in the British North
for amending the most significant parts
thereof, such as the United Kingdom
resolution of the two Houses of the
Parliament. While it notes that
when changes to provincial
have been made the political practice
followed has been to obtain the consent of
the provinces, there is no legal requirement
for such consent.

The decision agrees in that respect with
the decisions of the Manitoba Court of Appeal
and the Quebec Court of Appeal, both of which
held that provincial consent was not legally

required.

Canada



September 28, 1981

Summary of the Supreme Court of Canada
Decision on the Proposed Amendments to the
Canadian Constitution.

The Supreme Court of Canada has held that the consent of the Canadian provinces is not legally required for the enactment of the amendments to the Constitution of Canada, which have been the subject of extensive debate during the past nine months in the Senate and House of Commons of Canada.

The decision notes that in the absence of provision in the British North America Act for amending the most significant parts thereof, such amendment can only be made by the United Kingdom Parliament pursuant to a resolution of the two Houses of the Canadian Parliament. While it notes that in the past when changes to provincial legislative powers have been made the political practice followed has been to obtain the consent of the provinces, there is no legal requirement for such consent.

The decision agrees in that respect with the decisions of the Manitoba Court of Appeal and the Quebec Court of Appeal, both of which held that provincial consent was not legally required.

The second question asked by the provinces was whether there was a political convention that the consent of the provinces be sought before amendments are made which affect provincial legislative powers, or the status of provinces in the Constitution.

Although six of the nine judges found that there is a constitutional convention that amendments to the Constitution affecting provincial legislative powers required provincial consent, they made it clear that this is not a legal requirement. As with the disregard of any conventions, the political consequences are for the Canadian government to assess and are not legal issues for the Courts.

Thus the procedure for patriation of the Constitution initiated by the Government of Canada last October, and more formally initiated by the introduction of the resolution in January, 1981, can now be completed.

Equally, the Court's decision means there is no impediment to the United Kingdom Parliament proceeding to enact the Canada Act if requested by the two Houses of the Canadian Parliament.

The decision of the Supreme Court was in response to three reference cases initiated by the provinces in three different Courts of Appeal: Manitoba (October 24, 1980), Newfoundland (December 5, 1980), and Quebec (December 17, 1980). Identical questions were asked by Manitoba and Newfoundland, with Newfoundland adding an additional question specifically related to the interpretation of the Constitution Act, 1981, should it come into force, as it would apply to the Terms of Union with Newfoundland. Quebec's questions, while not identical to those of the other two provinces in substance, dealt with the same issues.

The first question in all three references essentially asked whether the proposed Canada Act, if enacted, would affect federal-provincial relationships or the rights and privileges of the provinces. The Court held that it would and, indeed, the position of the Attorney General of Canada before the Supreme Court was that this was so. Nevertheless, the Court held this was irrelevant to whether or not the consent of the provinces was legally required. As noted above, the answer to the third and only important question was that such consent is not required.