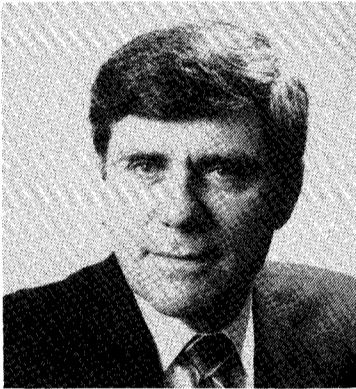


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# More Than a New Amending Formula Required

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by Ronald J. Duhamel, MP



On December 13, 1990, in the House of Commons, Brian Mulroney moved "That a Special Joint Committee of the Senate and the House of Commons be appointed to consult broadly with Canadians and inquire into and report upon the process for amending the Constitution of Canada,

including, where appropriate, proposals for amending one or more of the amending formulae, with particular reference to:

- the role of the Canadian public in the process;
- the effectiveness of the existing process and formulae for securing constitutional amendments; and
- alternatives to the current process and formulae, including those set out in the discussion paper prepared by the Government of Canada entitled "Amending the Constitution of Canada".

While the Prime Minister did refer to the role of the Canadian public in the process of Constitutional change, his focus was upon the amending formula itself. Hansard reads as follows with respect to Mr. Mulroney's statements on this point: "I wish to table a paper that examines the current amending formula, identifies some problems in their operation and sets out for consideration a number of options for substantial reform."

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*Ronald J. Duhamel represents St. Boniface in the House of Commons. He is a member of the Special Joint Committee on the Process for Amending the Constitution of Canada.*

While examination of the current amending formula is an important question, it is not nor should it be the only issue that is to be studied by this Committee. The most complex issue, and no doubt the most critical one may be "What kind of Canada can we as Canadians from different types of backgrounds and from all regions of Canada agree we should have?" One way of examining this basic, critical question is to examine the current distribution of powers as they apply to the various existing programs and the initiatives being administered by the federal and provincial or territorial governments.

The defence of this country and the maintenance of the Armed Forces and supplies to provide for the country's security is one power which belongs to the federal government and which is not currently being challenged by the provinces. The provision of currency and postal services are two other examples which fall within the national government's mandate and do not appear to be questioned with respect to overlap. These are what may be called "clear powers"; i.e. little debate occurs over who is responsible for their exercise.

Likewise, at the provincial level, there are these "clear powers", for example the laws governing property rights, municipal institutions, local works, regulating the issuance of local licences, and the creation of municipal infrastructures. While there are occasional "glitches", there is normally little conflict between the two levels of government in these areas regarding who has the responsibility for these types of programs/initiatives.

There is yet another category of powers, however, which is less clear. Health, education, culture and communications are good examples of where some type of "sharing of power" occurs and often leads to "conflict". Not only is conflict occurring with increasing frequency, but there is also confusion over which level of government is responsible for certain policies, programs and so on. The area of telecommunications is a case in point.

The federal-provincial relationship with regard to education is an interesting situation too. The provinces have the constitutional responsibility for providing education to their citizens. At the post-secondary level in particular, the federal government has, for several years,

contributed significant amounts of money to this sector, an amount though which has been decreasing rather dramatically since 1986. Because the federal government is a major contributor (recent figures indicate 56% of the total costs of post-secondary education), it believes that it ought to have something to say about what post-secondary education should be doing for the nation. But the provincial and territorial governments guard their jurisdiction zealously. They attempt to maximize what they receive financially, as well as maintain their authority over how and where it is spent. The federal government is continually attempting to reduce its transfers. Thus, there is conflict.

The transfer payments question also raises a series of other important issues. Since transfer payments for education contribute not only to education, but also to training and retraining as well as research and development including, to some extent at least, the areas of science and technology, what role, if any, should the national government exercise? Which level of government should be setting the priorities? Does it need to be one at the expense of the other? Can both cooperate? Should they? To what extent?

Similar tensions exist in several other policy and program areas. In the area of health, the debate centres around national standards. To what extent, if any, considering the federal government's sizable contribution to a national health care system and the history of those contributions, should the provincial/territorial governments be able to alter, if at all, the concept of universality as defined and prescribed at the national level? There are other equally important questions such as the "user-pay" issue.

The environment is also a critical area in need of clarification. For example, in one instance involving the continued pollution of a river in my constituency, three levels of government are involved. Yet, they cannot sort out their responsibilities. Which level assures the clean-up, if deemed necessary? And which government ensures that the flow of water is adequate if it becomes insufficient to maintain a sound eco-system? Which level prosecutes polluters? And the list of questions without clear answers is endless.

Communications and culture offer two interesting cases too. In these programs, the discussion and negotiating that is taking place between the two levels of government deals primarily with which level of government is better able to provide the policy framework and programs for the people each represents. At stake, quite apart from the economics involved, is the whole question of language(s) and culture(s). Which language(s) and which culture(s) will receive state (federal, provincial or territorial) support? The provinces

and territories argue that they can best decide "which" and "to what extent" support can be provided. The federal government, supposedly sensitive to all Canadians from all walks of life and all regions of Canada, will state that it can best represent this diversity. Who is right? To what extent? Can both, to some degree, have a correct position? The responsibilities of each level of government in other areas such as agriculture, fisheries and oceans, forestry, energy and mines, and social assistance also require discussion, debate and resolution with respect to which government has the various responsibility(ies) in each of these programs.

It is quite clear that the federal and provincial or territorial governments - which have interacted in a very similar way for some time now - need to redefine their areas of authority and responsibility in several spheres. Not to do so, will no doubt exacerbate the often tense relationships which exist between these two levels of government. To redefine their respective roles will not eliminate conflict entirely; however, it would go a long way towards lessening some dysfunctional and unnecessary tension. This redefinition will also necessitate a reform of certain institutions. What type of Senate would be required to respond more adequately to a new sharing of powers? Should the House of Commons' nature and operations be changed? How? Should other institutions, for example the Supreme Court of Canada, change? In what way(s)? The involvement of the public in these changes must be considered carefully. What is that role? How can it be exercised?

A redefinition of the sharing of power would also help define the kind of Canada that we want for ourselves as Canadians for the immediate and the not-so immediate future. Prime Minister Mulroney's efforts to find a more suitable amending formula is an important initiative, particularly if the Committee can find a solution to this conundrum. However, it would be of greater importance still if it tackled the most critical challenge: the division and sharing of powers among the various levels of government including the reform of various institutions to reflect that new division of powers. Until the issues of "power-sharing" and the concomitant reform that these changes would necessitate are resolved through discussions and negotiations, there will be instability in Canada. This lack of stability will contribute to disunity and limit the economic, social, cultural and linguistic development of our nation.

The study of the division of power, the necessary changes to our governing institutions and the meaningful involvement of the public are issues which I intend to keep in the forefront of the Special Joint Committee's deliberations over the next few months. ♦