

# McGILL LAW JOURNAL

*Montreal*

*Volume 12*

*1966-67*

*Number 4*

---

## Editor's Diary\*

### The Search for an Amending Process 1960-1967<sup>1</sup>

January 18, 1960.

Prime Minister Diefenbaker, during the Throne Speech Debate, speaking in connection with an amendment to s. 99 of the *B.N.A. Act*, expresses to the House of Commons the hope "that the time will not too long be delayed when as a result of an agreement between the federal and provincial authorities" a process will be secured for constitutional amendment in Canada without recourse to the United Kingdom Parliament. *Can. H. C. Deb.*, p. 65.

July 25, 1960.

Dominion-Provincial Conference at Ottawa, July 25th to 27th, 1960. The subject is raised on the first day by Premier Lesage of Quebec, and taken up by Premier Douglas of Saskatchewan. Prime Minister Diefenbaker responds favourably by offering an autumn conference on the subject. Premier Frost of Ontario agrees. *Proceedings of the Dominion-Provincial Conference, 1960* (Ottawa, 1960), p. 29, 87-8, 107-9.

September 19, 1960.

Hon. E. Davie Fulton, Minister of Justice and Attorney-General for Canada, invites the Attorneys-General to meet. The letter proposes that repatriation first take place on the basis of a unanimous consent amending procedure; which could then be used to substitute in the *B.N.A. Act* another amending formula to be made by unanimous consent. See *Can. H.C. Journals*, vol. 108 p. 307 and vol. 109 p. 392-3 for papers tabled.

---

\* By S. A. Scott, B.A., B.C.L. Editor-in-Chief, McGill Law Journal (1966), who apologizes for errors or omissions, this being drawn in haste and as surrogate.

<sup>1</sup> For the history prior to that time, reference may be made *inter alia* to the following: *White Paper* by Hon. Guy Favreau, Minister of Justice, *The Amendment of the Constitution of Canada* (Ottawa, February, 1965); Paul Gérin-Lajoie, *Constitutional Amendment in Canada* (Toronto, 1950); *Proceedings of the*

October 6, 7, 1960.

Conference of Attorneys-General of Canada and the Provinces. Resumed, November 2-3, 1960; January 12-13, 1961; September 11-12, 1961. Deputy Attorneys-General met in November, 1961. Proceedings were confidential.

November 2, 3, 1960.

Conference of Attorneys-General resumes. Saskatchewan's Attorney-General, Hon. R.A. Walker, Q.C., makes public on November 3 his opposition to a general unanimity rule entrenching provincial powers. From that time forward the C.C.F. government of Saskatchewan undertakes the burden of opposition to a unanimity rule, both within the Conference and outside. For a general account, see B. L. Strayer, below. The division is public knowledge, and is publicly known to be preventing agreement on a formula. Mr. Walker's press release declared, "Saskatchewan still takes the position that the power to amend the Canadian constitution should be brought to Canada. However, Saskatchewan is not prepared, as the price of this, to concede that each province should have a 'right of veto' over every future amendment affecting the provinces." See *A Review of Saskatchewan's Position Regarding a Basis for the Amendment of our Constitution in Canada* (Department of the Attorney General, Regina, Saskatchewan, January, 1962).

November 17, 1960.

Speech from the Throne reports to Parliament that progress has been made in the repatriation conferences, which will be resumed. *Can. H. C. Deb.*, p. 2. January 12, 13, 1961.

Constitutional Conference resumes. Delegates: — *Canada*: Hon. E. D. Fulton, Minister of Justice; Hon. W. J. Browne, Solicitor General; Hon. Noel Dorion, Secretary of State; Mr. E. A. Driedger, Deputy-Minister of Justice; Mr. H. Calof, Department of Justice; Mr. Claude Bruneau, Department of Justice; Mr. Jean Fournier, Assistant Secretary to the Cabinet; Mr. André Laframboise, Privy Council Office. *Ontario*: Hon. Kelso Roberts, Attorney-General; Mr. C. R. Magone, Department of the Attorney-General; Professor Alex Brady, Professor of Political Science, University of Toronto; Miss Alice Winfield, Private Secretary. *Quebec*: Hon. Paul Gérin-Lajoie, Minister of Youth; Mr. Louis-Philippe Pigeon, Special Adviser; Mr. René Montpetit, Public Relations; Professor Jean Beetz, Special Adviser. *Nova Scotia*: Hon. Richard Donahoe, Attorney-General; Mr. John A. Y. MacDonald, Deputy Attorney-General. *New Brunswick*: Hon. Louis J. Robichaud, Premier and Attorney-General; Mr. E. B. MacLachy, Deputy A.-G.; *Manitoba*: Hon. S. R. Lyon, Attorney-General; Mr. G. S. Rutherford, Legislative Counsel; Mr. A. A. Moffat, Barrister; Professor M. Donnelly, Special Adviser. *British Columbia*: Hon. R. W. Bonner, Attorney-General; Dr. Gilbert D. Kennedy, Deputy Attorney-General. *Prince Edward Island*: Mr. J. A. McGuigan, Deputy A.-G. *Saskatchewan*: Hon. Robert A. Walker, Attorney-General; Mr. B. L. Strayer, Department of Attorney-General; Dean F. C. Cronkite, Counsel. *Alberta*: Mr. H. J. Wilson, Deputy Attorney-General; Mr. J. J. Frawley, Counsel. *Newfoundland*: Hon. Leslie R. Curtis, Attorney-General; Mr. H. Carl Goldenberg, Counsel.

---

*Constitutional Conference of Federal and Provincial Governments, First Session: Ottawa, January 10-12, 1950; Second Session: Quebec, September 25-28, 1950. Two volumes (Ottawa, Queen's Printer, 1950). Laskin, Amendment of the Constitution: Applying the Fulton-Favreau Formula (1965) 11 McGill L. J. 1.*

June 6, 1961.

Communiqué: Association of Canadian Law Teachers asks for publication of proposals under consideration by the Attorneys-General, and public hearings to which submissions may be made and representations offered, so that there may be informed public discussion, and that a solution to this fundamental and ultimate constitutional question will not be the result either of private deliberation or haste. This resolution is communicated to the Conference, to the Prime Ministers, and to the public.

September 11, 12, 1961.

Final Session, Attorneys-General's Conference. Delegates: As previously, except: *Canada, absent* Messrs. Dorion and Calof; *present*, Mr. R. B. Bryce, Secretary to the Cabinet, in place of Mr. Fournier. *Ontario: Present*, Mr. Maurice Tremblay, Adviser. *Quebec: Absent*, Mr. René Montpetit. *Manitoba: Absent*, Messrs. Moffat and Donnelly. *P.E.I.: Present*: Hon. Melvin J. McQuaid, Attorney-General; *Saskatchewan: Present*, Professor F. R. Scott, Counsel; *Alberta, Present*, Hon. E. C. Manning, Premier and Attorney-General.

September 27, 1961.

Prime Minister Diefenbaker in the House of Commons: "Yet when we are in a position where most if not all of the provinces, I think, are willing to agree, it is the government of Saskatchewan that stands against the fair and reasonable right of amendment as agreed to generally by the other provinces." *H. C. Deb.*, p. 9003.

December 2, 1961.

Hon. E. Davie Fulton, P.C., Q.C., M.P. Minister of Justice and Attorney General for Canada, issues a statement to the press, with the text of the formula reported by the conference of Attorneys-General, appended to the statement. See *The Montreal Star*, December 2, 1961 for the statement; see Appendix I for the formula. The statement *inter alia* says:

"This text has been approved by representatives from each Provincial delegation and the Federal delegation as being a satisfactory draft of the formula arrived at by the conference."

"Mr. Fulton emphasized that at the last session all attorneys-general agreed to report the draft, when received, to their respective governments. The great majority also indicated their approval of the formula on which the draft is based, as being the consensus of the conference and as an acceptable basis for legislation."

"It is the responsibility now of each provincial government to consider and decide whether or not it finds the formula reported by the conference to be acceptable for the purposes of enactment as an amendment to the B.N.A. Act. It is understood that some if not all provinces wish to place the proposal before their legislatures for consideration before final action is taken."

"The final step would be for the Government of Canada to present the formula to Parliament in a resolution asking for adoption of the necessary address to Her Majesty. If Parliament approved, the address would be transmitted to the Queen, praying that she cause the proposed formula to be laid before the United Kingdom Parliament for enactment as an amendment to the British North America Act. This would be the final amendment to the act to be made in the United Kingdom, as by it all further power of amendment would be transferred to Canada."

[Text of Formula is Appendix I below.]

Not only the merits, but even the meaning of the formula, became a matter of great dispute, as will be seen below, as soon as the result of the conference was made known. It should therefore be said that *it had been understood to have been the meaning of the draftsman that the unanimity rule applied as well to reductions as to increases of federal authority. There was no one-way street to reduce federal authority by a simple two-thirds of the provinces having 50 per cent of the population.* As to subsequent differences, see articles below, especially on "Interpreting the Fulton-Favreau Formula", and Premier Lesage's Letter of January 20, 1966. Appendix III. See under Sept. 8, 1964, Nov. 20, 1964.

December 4, 1961.

Dean F. R. Scott of the McGill Law Faculty denounces the *Formula* to the *Montreal Star* in a statement characterized by *Star* Reporter Morris Fish as "scathing" and "scorching".

December 9, 1961.

Mr. Diefenbaker's comments on Hon. Paul Gérin-Lajoie's statement that the *Fulton Formula* draft does not satisfy Quebec's opposition to the unilateral Federal amending power, reported in *The Montreal Star*.

February 7, 1962.

La Société St-Jean Baptiste of Montreal rejects unequivocally the *Fulton Formula* as confirming Quebec's subordinate status, denying French minority rights in other provinces, and leaving a unilateral federal amending power. *Montreal Star*.

June 18, 1962.

Canadian general election. Mr. Diefenbaker's Conservative government is returned to power with a minority in the House of Commons. Party standings: P.C. 116; Lib. 100; S.C. 30; N.D.P. 19.

September 27, 1962.

Speech from the Throne in the Parliament of Canada: "My government will ask you, as a significant step in rounding out the concept of confederation, to consider a resolution to provide for the "repatriation" of the constitution of Canada and to invite the concurrence of the provinces to this end."

April 8, 1963.

Canadian general election. Party standings: P.C. 95; Lib. 129; N.D.P. 17; S.C. 24.

April 22, 1963.

A Liberal government under Mr. Lester B. Pearson takes office. Minister of Justice: Lionel Chevrier; Minister of Citizenship and Immigration: Guy Favreau. President of the Privy Council: Maurice Lamontagne.

May 20, 1963.

Mr. Diefenbaker, Leader of the Opposition, in the House of Commons: "If this Government is able to attain it, I will salute them for patriating our constitution. We tried it, and but for the action of only two provinces we would have achieved it." *H.C. Deb.*, p. 51.

February 3, 1964.

Hon. Guy Favreau, becomes Minister of Justice and Attorney-General of Canada.

April 22, 1964.

Saskatchewan general election. C.C.F. Government of Mr. Woodrow Lloyd, who had succeeded Mr. T.C. Douglas as Premier, narrowly defeated. Party standings: C.C.F. 25; Liberal 33; P.C. 1. On May 22nd, a Liberal government, under the premiership of Mr. W. Ross Thatcher, is formed. Attorney General: Mr. D. V. Heald.

June 1964.

Prime Minister Pearson, speaking in connection with an amendment to section 94A of the *B.N.A. Act*, expresses his intention to propose that the matter of a constitutional amendment procedure be put on the agenda of a federal-provincial Prime Ministers' Conference planned for Charlottetown the following September.

August 1964.

Fifth Inter-provincial Conference at Jasper, Alberta. The provincial premiers exchange views on the matter of a Canadian procedure for constitutional amendment, and the chairman, Premier Manning, conveys to the Prime Minister at their request their belief that general agreement on the repatriation of the Constitution could be achieved on the basis of the formula that had emerged from the Constitutional Conferences of 1960 and 1961.

September 1, 2, 1964.

Federal-Provincial Prime Ministers' Conference, Charlottetown, P.E.I., commemorating the centenary of that held there by the Fathers of Confederation. It is announced on September 2nd that "The Prime Minister and Premiers affirmed their unanimous decision to conclude the repatriation of The British North America Act without delay. To this end they decided to complete a procedure for amending the Constitution in Canada based on draft legislation proposed at the constitutional conference of 1961, which they accept in principle. An early meeting of the Attorneys-General of Canada and the provinces will be held to complete the amending formula devised by the 1961 conference, and to report to the Prime Minister and Premiers."

September 3, 1964.

In the House of Commons. "Mr. T. C. Douglas: Could I ask the Prime Minister if in view of the wide powers which the courts have injected into the property and civil rights clause he does not consider that entrenching that clause would put Canada in a constitutional strait-jacket for many years to come? Mr. Pearson: I can only say that in recent years, in respect to the amendment of the constitution, Canada has been in a kind of strait-jacket, a strait-jacket imposed from outside... I should have added that the imposition was of our own doing..." *H.C. Deb.* p. 7605 ff at 7606-7.

September 8, 1964.

The Editor prepared for circulation to the Prime Minister, premiers, and Attorneys-General, a *Memorandum on the Constitutional Amendment Formula*, with a view both to technical improvements and some additional flexibility even

within the framework of a unanimity rule. Response was generally polite, and, in the case of Quebec City, interested. The Memorandum, of which the greater part is reproduced below,\* was successful in securing the inclusion in s. 10 of

*\*Memorandum on the Constitutional Amendment Formula.*

1. *Scope of Memorandum.* As all the Governments appear committed in principle to the text of the proposed constitutional amendment formula published in Ottawa on December 2nd, 1961, by the Hon. E. D. Fulton, Minister of Justice and Attorney-General for Canada, this Memorandum, without in any way approving that Formula, will refrain from discussing its principle, and will be confined to certain observations of a somewhat more technical nature in order to achieve the best possible result within the framework of those proposals.

2. *The extinction of the authority of the U.K. Parliament.* It is desirable that section 7 of the Formula be adjusted by adding at its end the words "*as part of the law of Canada or of such province or territory*".

The section will then read:

"7. No act of the Parliament of the United Kingdom passed after the coming into force of this act shall extend or be deemed to extend to Canada or to any province or territory thereof as part of the law of Canada or of such province or territory."

This will make the section properly consistent with section four of the Statute of Westminster, which reads:

"4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend, to a Dominion *as part of the law of that Dominion.*" (Italics added).

Clearly, what is desired is that the United Kingdom Parliament cease to be a part of the *Canadian* lawmaking process, not that it should cease to be able (so far at least as the law of the United Kingdom is concerned) to legislate extraterritorially for its own purposes... for instance to regulate its armed forces when in Canada, in the same way that the Parliament of Canada has been able to do since 1931.

Indeed, the draftsmen of the Statute of Westminster had precisely this in mind when they corrected the draft reported from the Imperial Conference of 1930, which had read:

"No Act of the Parliament of the United Kingdom... shall extend or be deemed to extend to a Dominion as part of the law *in force* in that Dominion." (Italics added)

in order to read instead:

"extend to a Dominion as part of the law *of that Dominion*". (Italics added)

It appears that the draftsmen of the Formula have left the same inaccuracy here as in the first draft of the Statute of Westminster, and it is desirable to correct it in the same way and for the same reasons as in that case, especially as the defect is one to which objection might justly be taken in the United Kingdom by Parliamentary Counsel to the Treasury.

[3. *Identical Entrenchment of Federal and Provincial Powers.* This paragraph cannot be reproduced, as it was based on confidential materials. The author argued that the *Fulton Formula* was ambiguous in that it left unclear whether the powers of the provinces, which could only be restricted by unanimity, could

the final *Fulton-Favreau Formula* [Appendix II] of the additional words "as part of the law thereof". Moreover, the Editor was at pains to point out that since provincial consent could, under the *Fulton Formula*, be given only by the provincial legislatures, the latter could never be circumvented even where desirable. The example was given of the Quebec Legislative Council, which would now have a negative both on a provincial statute and on a federal constitutional amendment statute passed under the unanimity rule, the only two procedures which could after the end of Imperial authority reform the Council. The Editor hoped by this means to induce the insertion into the Formula of an alternative means of provincial consent, namely, referendum. Instead the result seems to have been to suggest to the Quebec Government the advisability of reforming the Legislative Council before implementing the *Formula*. But wherever the Government may have found the idea that Council reform must precede approval of the Formula, it seems likely that it was the complications [described below] arising from the struggle with the Legislative Council that produced the delay that, through the year 1965, allowed the swelling of opposition to the *Formula*, which, actively fostered by the Union Nationale opposition, ultimately forced Premier Lesage to abandon the *Formula* on January 20, 1966.

---

be increased by two-thirds. The author argued that this one-way street was not intended, and that no one who had acted in good faith could now object to a clarification in the language. The author argued that the language should now clearly show that unanimity, if applicable to either, was applicable to both.] (See above under Dec. 2, 1961, *in fine*.)

4. *Alternative means of provincial consent.* Provincial consent has heretofore been assumed to be the same thing as the consent of the legislatures of the provinces.

The effect of this, when combined with the unanimity rule, is to produce certain results not perhaps foreseen by the most ardent advocates of unanimity.

In Quebec, for instance, the Legislative Council (now controlled by the provincial Opposition) will be able to exact heavy concessions from the provincial government in connection with any provincial legislation, or to force an election at its pleasure. There will now be no means of circumventing it, even on a Bill to reform it, for a provincial statute to reform it will require as heretofore its consent; there will in future cease to be a recourse through Ottawa to the United Kingdom Parliament at Westminster; and if the consent of all the provinces to a constitutional amendment means the consent of all provincial Legislatures, will also require the consent of the Council.

Furthermore, there would be no means of stopping a legislature from indefinitely perpetuating itself, or from engaging in the worst abuses of power or violations of civil liberties... even by constitutional amendment, because the offending Legislature could never be circumvented to pass such an amendment.

What is more, a Legislature faced with the alternative of giving or refusing consent to constitutional amendments may well be excessively cautious lest their consent become an election issue, certain to be exploited by the Opposition.

For all these reasons, it is desirable that provincial consent should be capable of being given alternatively by the voters of the province or by its legislature; and to avoid all tampering with the electoral roll on such an

October 5, 6, 13, 14, 1964.

Attorneys-General meet at Ottawa, essentially to meet Quebec and possibly Ontario wishes for a restriction of the unilateral federal constitutional amendment power added in 1949 as s. 91(1) of the B.N.A. Act. A much more limited power is substituted therefor, and the remaining portions of the 1949 powers will fall to be exercised principally under the two-thirds rule.

October 14, 1964.

Prime Minister and Premiers agree on a final text of an amending formula, which becomes known as the *Fulton-Favreau Formula* and in the form of a text dated October 30, 1964, (reproduced as Appendix II) is circulated to the Premiers for verification of text and provincial approval: see the Prime Minister's letter of November 3, 1964 (reproduced in Appendix III), explaining certain variations made in the agreed text.

October 15, 1964.

Announcement to the House of Commons of federal-provincial agreement. General favourable reception, but Mr. Diefenbaker desires time to consider the changes from the Fulton Formula and suggests considerable apprehension at

---

occasion, it should suffice that a voter be qualified by having either the provincial or federal franchise.

It is strongly urged that the following be inserted:

"The consent of a province to the enactment of a law made under the authority of this part affecting the constitution of Canada may be given either by the legislature of the province, or alternatively and in lieu thereof, by a majority of the votes cast in a referendum held in that province at the direction of the Governor-General of Canada or of the Lieutenant-Governor of the Province; and in any such referendum all persons shall be eligible to vote who are by law qualified to vote in an election for members of the House of Commons of Canada, or who are by law qualified to vote in an election for members of one of the houses of the legislature of the province."

Objection to such a provision can surely be nothing more than insistence on protecting the people from themselves, and the proposed referendum procedure protects the unanimity rule while giving some flexibility.

5. *Patriation of the Treaty Power.* At Confederation, as is well known, Parliament was given full powers to implement treaties, by section 132 of the British North America Act, 1867. The patriation of the power to *Make* treaties has produced the result that they are no longer made for the *Empire*, so that the power of implementation given to the Parliament of Canada no longer serves its function. Patriation, therefore, would seem to require that the words "British Empire" in section 132 be deleted and replaced by the word "Canada".

It is difficult to see how opposition to this change can be reconciled with claims to seek the carrying out in good faith of the British North America Act. Surely, the persistence of the anomaly of the present section, which drives Canada to have Great Britain conclude its treaties if it is desired to take advantage of s. 132, stands in direct opposition to the national feeling in favour of patriation of the Constitution.

S. A. Scott.



the proposed loss by Parliament of s. 91(1) powers. Mr. Andrew Brewin, N.D.P. spokesman and constant critic of the Fulton Formula and its successor, attacks it, quoting Professor Bora Laskin (now Hon. Mr. Justice Laskin), as an "unmitigated constitutional disaster", a "formula for constitutional futility and absolute rigidity", which serves only to "exchange the easy yoke of a relic of colonialism for the self-imposed bondage of a constitutional strait-jacket." The communiqué is condemned as falsely insinuating that the basic rule is two-thirds of the provinces with fifty per cent of the population. *Can. H. C. Deb.*, p. 9067 ff.

The *Montreal Star* reports that Mr. Fulton in a telephone interview welcomed the agreement as a "major achievement" with which he was "extremely pleased", the short time needed to reach agreement being a "conclusive indication that the formula we worked out in 1960 and 1961 was a satisfactory basis for action".

The same newspaper reports Premier Lesage as declaring himself "well satisfied" with the repatriation agreement. The repeal of s. 91(1) of the B.N.A. Act, and restrictions imposed on the unilateral federal amending power "give to the provinces the inviolable guarantees which Quebec has always sought".

October 31, 1964.

The *Montreal Star*, a consistent editorial supporter of the Formula, criticises Mr. Diefenbaker's stand against it as thin — the Fulton Formula having been much the same in substance — and obstructive of needed legislation.

November 3, 1964.

Letter by Prime Minister Pearson to Premiers of the provinces asking for confirmation of accuracy of final draft text dated October 30, 1964, and asking for advice of concurrence of the province as soon as possible. As soon as all are received, the necessary addresses are to be put before Parliament, hopefully early in the new year, with expectation of an Imperial statute in the Spring. The British High Commissioner has conveyed British agreement to inclusion of s. 14 concerning the French version, and suggested in view of the Statute of Westminster a revision of the Bill to recite that Canada has requested and consented to its enactment. The preamble has been revised accordingly. [See Appendix III].

November 4, 1964.

The *Montreal Star* reports a "sharp challenge" by Mr. Fulton to Mr. Diefenbaker: a five-page memorandum sent by Mr. Fulton (for the time being, B. C. Conservative Leader) from Kamloops, B.C., to former federal colleagues, minimising the differences between the *Fulton Formula* and the *Fulton-Favreau Formula*.

November 13, 1964.

Letter by Premier Lesage to Prime Minister Pearson. The text is accepted; the change in the preamble is welcomed as suggesting that constitutional changes require the consent of the provinces as well as the Federal houses. A resolution of approval will be put before the Quebec Legislative Assembly to give the consent of the province, in January, and the Premier is confident of a favourable decision at the beginning of the new year. [See Appendix III.]

November 20, 1964.

Hon. Guy Favreau, Minister of Justice, addressed the closing banquet of a Conference on the *Supreme Court and Canadian Federalism* (University of Toronto Conferences on Law and World Affairs, for 1964). The text is reproduced below. The Minister, in a brief discussion with the Editor, advised him afterwards that in his (the Minister's) view of the Formula, the unanimity rule applied to protect the powers of the provinces only and not Canada; the powers of the provinces could be increased under the two-thirds rule though they could only be reduced under the unanimity rule. [Compare the views of the previous Minister of Justice, Mr. Fulton, indicated above under December 2, 1961, and under September 8, 1964, footnoted Memorandum, para. 3. Compare also articles below on the *Interpretation of the Fulton-Favreau Formula*, and the views of Hon. D.V. Heald, the (Liberal) Attorney-General for Saskatchewan, below under March 17, 1966.] The Minister did however suggest that a concurrency could be created in favour of the Parliament of Canada under the two-thirds rule, provided it was of the same type as s. 94 A of the *B.N.A. Act*, which, the Minister suggested, could have been enacted under the proposed two-thirds rule. [Compare Hon. A. A. Wishart, Attorney-General, *Legislature of Ontario Debates*, March 11, 1965, p. 1193 last para. and 1194 first para.] [Mr. Favreau suggested that the two-thirds rule protected the Federal parliament as effectively as unanimity could, since either way it had a veto. But on this reasoning, a Quebec veto would have sufficed exercisable only against amendments affecting Quebec: yet this proposal of the Saskatchewan C.C.F. government was held unacceptable to Quebec: see Professor Strayer, below. Furthermore, a unanimity rule if applied to protect federal powers would allow a province to protect Parliament against itself . . . an idea not so very far-fetched when it is recollected that Saskatchewan had undertaken that very function at the Conferences, and was using for that purpose the veto which custom if not law was thought to give.] See Mr. Hatfield in *N.B. Ass. Deb.*, 1965, I, p. 385, 2nd. col. last para. See also below remarks of Mr. Walker and Mr. Blakeney in the Saskatchewan Assembly under April 13, 1965. See the Pearson-Lesage correspondence in Appendix III, below, and debates in the Quebec Legislative Assembly indicated below.

November 27, 1964.

In the House of Commons. Mr. Diefenbaker: "It is all very well to try to build a smokescreen and say the Fulton formula is much the same." Mr. Favreau: "It is identical." Mr. Diefenbaker: "It is not, with section 91 removed." Mr. Macdonald: "Mr. Fulton says so." Mr. Diefenbaker: "And whether it is or not, back in 1961 the Lévesques, and those people, were not talking about associate states in Canada and dividing this nation." *H. C. Deb.*, p. 10652.

January 21, 1965.

Speech from the Throne at the opening of the 4th session of the 27th Legislature of Quebec includes the following:

"The two conferences of attorneys-general held last autumn made it possible to devise a formula for the repatriation of the Canadian constitution. This formula was accepted unanimously by the conference of prime ministers and the government will ask the Legislative Assembly to adopt a resolution ratifying this agreement."

"So that the repatriation of the constitution shall not have the effect of entrenching the powers of the Legislative Council over bills passed by the

Legislative Assembly, you will be asked to restrict those powers." *Débats de l'Ass. lég.*, vol. 2 No. 1 p. 1-2.

January 22, 1965.

Legislative Assembly of Quebec, Government Motions. By Mr. Lesage, Motion:—

"That an humble Address be presented to Her Majesty the Queen in the following words:—

*To the Queen's Most Excellent Majesty:  
Most Gracious Sovereign:*

"We, Your Majesty's most dutiful and loyal subjects, the Legislative Assembly of the Province of Quebec, in Parliament assembled, humbly approach Your Majesty praying that You may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom, to be expressed as follows: An Act to provide for the amendment in Canada of the Constitution of Canada [and the Fulton-Favreau Formula follows at length. See Appendix II]. In the Throne Speech Debate, Opposition Leader Daniel Johnson categorically opposes the Fulton-Favreau Formula.

January 22, 1965.

Bill 3, entitled "Loi du Parlement du Québec... Quebec Parliament Act" introduced into the Quebec Legislative Assembly by Premier Lesage, and given first reading. Text reproduced as Appendix IV. For amendments see February 16, 1965. In the Legislative Council, see under March 17 and 24, 1965 and Appendix V.

February, 1965.

*The Amendment of the Constitution of Canada*, a White Paper, published by Hon. Guy Favreau, Minister of Justice. (Queen's Printer, Ottawa, 1965). Cat. No. J2-1665. Price \$2.00.

In an introduction, Prime Minister Pearson states: "The Government of Canada believes that, with the tolerance and political capacity of which the Canadian people have shown themselves capable, the proposed formula can work over the years to adapt the framework of our government to essential changes, while at the same time protecting the fundamentals on which our Confederation rests. I have no hesitation in recommending it to the favourable consideration of the parliament and people of Canada."

February 1, 1965.

*Le Devoir* reports a resolution of a conference of 42 Union Nationale constituency associations meeting at Quebec City over the previous weekend congratulating Mr. Johnson on his categorical stand against the Formula, assuring him firm support, and giving U.N. members a mandate to wage a merciless fight against the Formula whose acceptance "would be treason against the Quebec nation". Mr. Johnson himself, addressing the meeting, accused Messrs. Lesage and Gérin-Lajoie of having "made themselves guilty of treason against the Quebec nation" by accepting "irons held out by Ottawa."

February 9, 1965.

Quebec Legislative Assembly. Bill 3 debated. *Déb. de l'Ass. lég.*, vol. 2, no. 11, p. 392.

February 11, 1965.

Quebec Legislative Assembly. Committee of the Whole. Bill 3 debated. *Déb. de l'Ass. lég.*, vol. 2 no. 13 p. 490.

February 11, 1965.

Nova Scotia Legislative Assembly. Notice of motion by Hon. Mr. Donahoe (Attorney-General), seconded by the Premier: "Be it resolved that this House approves of the request proposed to be made to the Parliament of the United Kingdom for the enactment of an Act to provide for the amendment in Canada of the Constitution of Canada, such Act being substantially in the form approved by the Conference of the Prime Minister of Canada and the premiers of all the provinces on the 14th day of October, A.D., 1964, and a copy of which is annexed hereto and forms part of this resolution." *Journals*, February 11, 1965.

February 12, 1965.

Quebec Legislative Assembly. Bill 3 debated on third reading. *Déb. de l'Ass. lég.*, vol. 2 no. 14 p. 549.

February 15, 1965.

Nova Scotia Legislative Assembly. Pursuant to notice, Mr. Donahoe moved the resolution relating to the B.N.A. Act Amendment Formula. A debate arose thereon, in which some time was spent and Hon. Mr. Donahoe, Mr. Nicholson, and Hon. Mr. Fergusson took part. The motion passed in the affirmative *nem. con.*

February 16, 1965.

Quebec Legislative Assembly. Bill 3 given third reading. *Déb. de l'Ass. lég.*, vol. 2 no. 15 p. 573. The bill as passed on that day differs from the version at first reading in that sections 2 and 3 now read as follows:

« 2. Sont des projets de loi d'ordre financier tous projets ayant pour seul objet d'affecter une partie du revenu public de la province à quelque service, d'établir, modifier ou supprimer un impôt affecté à ce revenu ou de statuer sur quelque sujet accessoire s'y rattachant. »

"2. All bills which contain only provisions for appropriating any part of the public revenue of the Province, or for imposing, altering or repealing any tax allocated to such revenue, or for legislating on any subordinate matter incidental thereto, are money bills."

« 3. Tout projet de loi visé à l'article 2 doit contenir une disposition déclarant qu'il est d'ordre financier et cette disposition fait preuve conclusive et ne peut être contestée devant aucun tribunal. »

"3. Every bill contemplated by section 2 shall contain a provision stating that it is a money bill and such provision shall be conclusive evidence and shall not be questioned in any court."

February 17, 1965.

Quebec Legislative Council. "A message was brought from the Legislative Assembly with a bill (No. 3), intituled: "Quebec Parliament Act", to which they request the concurrence of this House." Bill read a first time.

February 20, 1965.

M. Johnson, to an audience of secondary school students, vows against the Formula "a fight to the death, a suicide fight — suicide of the Liberal party, or of the Union Nationale and Daniel Johnson" *Le Devoir*, February 22.

February 28, 1965.

Quebec Opposition Leader Daniel Johnson declares in Sherbrooke, P.Q., to the "Jeune Société Nationale" that the proposed Formula would make stateless persons of Quebecers; that it was a "depatriation" formula which "gives nothing" to French Canadians and "takes away everything, even hope". A similar speech is delivered in Quebec City to a club dinner. *Montreal Star*, March 1. *Le Devoir*, March 1.

March 3, 1965.

Mr. Johnson at Three Rivers predicts that the Formula by denying Quebec a special status would lead directly to the separation of Quebec, which could be violent. Premier Lesage in the Legislature emphasizes Quebec's veto as a "power of persuasion."

March 8, 1965.

Powerful opposition to the Formula by Claude Ryan of *Le Devoir*, and support by *Le Soleil* of Quebec City, reported by *Montreal Star*.

March 10, 1965.

Premier Lesage as part of a campaign to gather support for his position on the Formula, defends it strongly before the Quebec Chamber of Commerce. *Le Devoir*, March 11, 1965. *La Presse*, same date.

March 11, 1965.

Alberta Legislative Assembly. Moved by the Honourable Mr. Manning: seconded by Mr. Maccagno:

"WHEREAS it is a matter of concern to this Assembly and to all Canadians that full authority to amend the constitution of Canada is not presently in this country; and

"WHEREAS the Government of Canada and the Government of all the Provinces have for many years endeavoured to establish mutually acceptable principles upon which such authority should be exercised in this country; and

"WHEREAS agreement on those principles has now been reached and it is proper that this Assembly give its approval to those principles and to the implementation thereof:

THEREFORE, BE IT RESOLVED, That this Assembly approve the request proposed to be made to the Parliament of the United Kingdom for the enactment of an Act to Provide for the amendment in Canada of the Constitution of Canada, such Act to be substantially in the form approved by the Conference of the Prime Minister of Canada and the Premiers of all the Provinces on the 14th day of October, A.D. 1964; as follows:..." See March 16.

March 11, 12, 1965.

Legislative Assembly of Ontario. Hon. A. A. Wishart, Attorney-General, seconded by Hon. A. K. Roberts, Minister of Lands and Forests, moves on March 11th, "That this House approves and supports the Addresses of the Senate and House of Commons of Canada to Her Majesty the Queen praying that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom in the following terms: [etc.]." During debate a N.D.P. amendment was moved by Mr. Renwick, seconded by Mr. D. C. MacDonald, leader of the N.D.P. in Ontario, "That the resolution be amended

by striking out the words "approves and supports" in the first line and substituting therefor the following: "believes that before it is asked to express approval, a Select Committee should be established to hear, consider and report on the views of constitutional and other experts and the public regarding"...".

A debate of some interest extended through Thursday afternoon and evening and Friday morning, March 11-12. New Democratic Party members were generally critical of the formula, and also of the lack of public participation in preparing the formula and approving it. Mr. Andrew Thompson, Leader of the Opposition (Liberal) criticized the (Conservative) government for presenting the Legislature with a *fait accompli*, and depriving the Legislature of its rights, and even expressed a wish that a committee had been established. (See *Debates*, p. 1250-51). He did not however support the N.D.P. amendment.

Mr. Wishart made it clear (p. 1251) that it could not be said that he "had given Ontario's word", but that "it is all subject to the approval of this Legislature". But the government were committed "the same as the government brings to this Legislature, any bill...".

The various arguments for and against the formula were canvassed, and the views of the academics and other constitutional authorities.

Mr. Bryden (N.D.P.) pressed the "vast difference... between what was merely convention, a procedure that the government of the day adopted, and a formal constitutional procedure which says that it may be done in this way and in no other way," (p. 1229), i.e., unanimity.

The amendment was defeated, on division, by a vote of 71-7. The address was then carried on a reversal of the same vote, 71-7. The seven seem to have been all N.D.P., and the majority consisted of the Conservative government and Liberal official Opposition.

*Legislature of Ontario Debates*, Nos. 43-45, 27th Leg., 3rd Sess. *Votes and Proc.*, Nos. 35-36. Federal Conservative strategists now abandon this as an election issue.

March 13, 1965.

Meeting in Montreal of the 300-member General Council of the Quebec Liberal Federation. Premier Lesage and M. Pierre Laporte explain the Formula at a three-hour closed session which ends with its unanimous endorsement (with abstentions) by the Council, which resolves that the Formula guarantees Quebec's vested rights and permits its constitutional evolution; approves the Formula as a great constitutional victory for Quebec, and endorses the positive attitude taken by the Quebec government towards the repatriation of the Canadian Constitution. *Le Devoir*, March 15, 1965. Premier Lesage claims, « A l'unanimité, j'ai eu l'appui de la Fédération libérale qui voit comme moi dans cette formule, un point de départ d'un statut particulier pour la province de Québec. » For an account of M. Lesage's arguments, see Claude Ryan in *Le Devoir*, March 17.

March 16, 1965.

On motion of Premier Robichaud, seconded by Mr. Riley, the Formula is approved by the Legislative Assembly of New Brunswick, and ordered that a certified copy of the resolution be transmitted to the Prime Minister of Canada. *Journals of the Legislative Assembly*. Debate is reported in *Synoptic Report of Proceedings of the Legislative Assembly of the Province of New Brunswick*, 1965, Vol. I, p. 372. The motion seems to have carried the House

(Liberal government and Conservative opposition) without division. A certain amount of unease seems however to have existed, and it appears to have been thought that the matter was before the House as a matter of courtesy only. Mr. Logan pointed out the technical gap as to withdrawal of provincial consent; Mr. Hatfield the problem of the date at which an amendment would become operative. The former was not favourable to the unanimity rule; the latter thought that it was the best that could be done. Several members complained that the province had been committed before they had been consulted. The leader of the Conservative Opposition, Mr. Sherwood, had reservations, but also thought it necessary to have faith. Premier Robichaud had no such reservations. "It is the best and the only one [i.e., formula]. It is the best because it is the only one..." After agreement of the Attorneys-General, the Prime Minister and Premiers, and all their staffs, experts, and law professors, "when all these people come to a unanimous agreement I doubt if any member of the New Brunswick Legislature should buck them." A willingness to go along was evident also on the opposition benches. The debate closed with the remarks of Mr. Bishop: "Well, if Davie Fulton says so, its alright. As long as Davie prepared it, we'll go along with it."

March 16, 1965.

Alberta Legislative Assembly. Debate on the motion to approve the amendment formula continued, and, the motion being proposed, Mr. Speaker declared it carried unanimously. *Journals* for that date, p. 83.

March 17, 1965.

Quebec Legislative Council. Bill 3 read a second time, on division. *Journals of the Leg. Coun.*, 27th Leg., 4th Sess., p. 50.

*Montreal Star* editorial urges implementation of the Formula as the price to be paid to get out of constitutional deadlock.

Laval University students vote 2485-482 against the Formula, and the Union Générale des Etudiants du Québec threaten to march on the Legislature in May if the Government seeks to ratify it. *Montreal Star*, March 18, 1965.

March 18, 1965.

Mr. Diefenbaker complains in the House of Commons of breach of privilege in the Ontario resolution (which approves and supports "the addresses of the Senate and House of Commons"), on the ground that there have been no such addresses. *H. C. Deb.*, p. 12505 ff.

March 18, 1965.

Debate at the University of Montreal, sponsored by the Union Générale des Etudiants de Québec, on the Fulton-Favreau Formula. Supporting the Formula were two of the strongest ministers of the provincial Liberal government, M. René Lévesque, Minister of Natural Resources, and M. Pierre Laporte, Minister of Municipal Affairs and of Cultural Affairs, both with a wide following amongst radical and nationalist opinion because of their demands for "associate statehood", "special status", and « Maitres chez nous » for Quebec, M. Lévesque being a particularly powerful leader of left wing opinion. They supported the government's position by arguing that the situation was essentially unchanged, as what had been custom was to become law. Whatever could have been obtained by negotiation before the Formula could be obtained under it. M. Lévesque thought that opposition to the Formula now in order to obtain associate statehood would be to fight the wrong battle in the wrong place at the wrong

time; that the legal text was like all legal texts, a reflection of the past; and was neither loss nor gain; that no great power, let alone Ottawa which was not one, could resist self-determination; that Quebec's status would be renegotiated in a massive step; but that a formula which would guarantee what Quebec did not already have would be unobtainable immediately and to insist on it would provoke total confrontation. M. Laporte suggested that the Formula would shelter Quebec from a coup, which, he said, Ottawa had shown in 1949 it could undertake, and might again. In any case agreement with one's neighbours was always necessary, otherwise, whatever the amendment procedure, the outcome would be the same. Professor Jacques-Yvan Morin, of the University of Montreal law Faculty, a leader of nationalist intellectual opinion, attacked the Formula as a yoke, and Messrs. Lévesque and Laporte as defenders of associate statehood who had become advocates of a formula designed to prevent it. Moreover, s. 132 of the B.N.A. Act, respecting treaty implementation, could be amended without Quebec's consent, under the formula. The Formula was like a woman with complicated undergarments — which he proceeded to expose [see Article below: *Les dessous de la Formule*]. The opinion of the student audience, which the press suggested had come into the hall in his favor, generally supported M. Morin, and even apparently showed some hostility to the generally-popular M. Lévesque. See reports in *Le Devoir*, March 20, 1965; *La Presse*, March 19, 1965; *Le Quartier Latin*, March 25, 1965.

March 19, 1965.

Thomas Sloan, Legislature Correspondent of the *Montreal Star*, analyses the politics of the Formula and finds, amidst growing support in Quebec for the stand taken by Opposition Leader Johnson, Premier Lesage "forced personally to solicit the rather unenthusiastic support of the Quebec Liberal Federation and has received little backing from other sources."

Three-day Union Nationale Convention of 3000 persons opens in Montreal. Party takes unequivocal position against the Formula and gives Mr. Johnson total support. The Formula is voted down unanimously. *Le Devoir* March 22.

March 24, 1965.

Quebec Legislative Council. Bill 3 considered in Committee of the Whole. Hon. George Marler, leader of the Government in the Legislative Council [where the opposition Union Nationale is in the majority] moves two amendments, to sections 3 and 7, and these are unanimously carried. [See Appendix V, where the Message from the Council includes the foregoing changes.]

Mr. Asselin, Leader of the Opposition in the Council, moves an amendment; and Mr. Marler a sub-amendment.

The sub-amendment, which is lost 13-5, reads as follows, in the French version:

'Que le bill soit modifié

(a) en y ajoutant à la fin de l'article 4 l'alinéa suivant:

« Ce présent article ne s'applique pas non plus à un projet qui renferme une disposition abolissant le Conseil législatif, restreignant ses pouvoirs ou modifiant le nombre de ses membres. »

(b) en ajoutant l'article suivant après l'article 4:

« 5. Si un projet de loi visé au dernier alinéa de l'article précédent est voté par l'Assemblée législative à deux sessions de deux législatures distinctes et, après avoir été transmis au Conseil législatif au moins



un mois avant la fin de chacune de ces deux sessions, y est rejeté chaque fois, il sera néanmoins présenté au lieutenant-gouverneur pour être sanctionné et devenir loi en conséquence, à moins que l'Assemblée législative n'ordonne le contraire.»'

[This sub-amendment was of course a government compromise designed to prevent Council reform without an intervening general election. It was lost and instead the Opposition amendment carried. See *La Presse*, March 4, 1965.]

Mr. Asselin's amendment is then carried, as well as amendments of agreement (concordance). [See Appendix V for the result.]

On report to the House, Mr. Marler's amendments to sections 3 and 7 are unanimously carried, and Mr. Asselin's amendments are agreed on division: Contents, 12; Non-Contents, 5; against the government.

The Bill is given third reading, as amended, and passed, and the Clerk is ordered to acquaint the Assembly accordingly. [Message, in Appendix V.]

The amendment was designed to protect the Council from later reform without its consent, by any provincial statute made by Crown and Assembly alone. The amendment proposed to Bill 3 by the Council also made Council's consent necessary to Bills to amend the Canadian Constitution; but it is not clear whether this was done wholly or partly to prevent Council reform from being achieved without Council's consent by later use of the Fulton-Favreau Formula [either s. 2 or perhaps s. 3 thereof]. The insistence by Council that its consent be necessary to Canadian constitutional amendments was represented in the Assembly by the Union Nationale opposition as being calculated to make it more difficult to surrender provincial rights even when an Assembly was willing. Though the Union Nationale of course opposed the approval of the Fulton-Favreau Formula, the Liberal government had apparently never intended to seek approval for it from anyone but the Assembly, so that probably the Liberals did not seek Council reform to facilitate acceptance of the Formula, nor could the Union Nationale demand changes in Bill 3 out of any expectation that this would help prevent implementation of the Formula. See for example "P.S." in *Le Devoir*, June 21, 1965. Compare C.A. Sheppard, *Le Devoir*, June 21, 1965. The reasons given by the Lesage government had from the first concerned only the impact which the Formula would have by way of entrenching Council powers. Mr. Lesage himself seems to have indicated in the Assembly that he had no intention of seeking Council approval of the Formula before advising Ottawa that Quebec concurred in the Formula, and as Ottawa would have been satisfied with the Assembly's concurrence, the existence or powers of the Council formed no obstacle as such to the implementation of the Formula, in a mechanical sense, but only to its desirability from the Quebec government's standpoint.

March 25, 1965.

Mr. Diefenbaker complains in the House of Commons that a draft Address to the Sovereign, approving the Fulton-Favreau Formula, appearing on the order paper of the Quebec Legislative Assembly, is constitutionally improper. Mr. Pearson, in promising to consider the matter, declares: "of course it is understood by us all, and I think by those concerned in Westminster, that no amendment to the British North America Act, which is within the constitutional jurisdiction of the United Kingdom parliament, can be entertained by that parliament except on a address of both houses of this parliament". *H. C. Deb.*, p. 12, 763. [See Appendix IX.]

On March 29, 1965, Mr. Pearson expresses the view that the Quebec authorities may petition the Crown, that this should be and is intended to

be sent through the Governor-General; that in these as in other matters the Governor-General acts on the advice of his federal ministers; and that "since this action requested in the address by the legislature of Quebec is the same as that which may be requested in an address by the parliament of Canada, it would be appropriate to advise the Crown, in forwarding it to London, in the event that it is sent forward to the Governor General through the lieutenant governor of Quebec and through the Governor General to London, that it should be acknowledged as the expression of the view of the legislature of Quebec about a matter on which action could be taken only on the basis of a decision by the parliament of Canada on the address to be placed before it." *H. C. Deb.*, p. 12867.

March 25, 1965.

P.E.I. Legislative Assembly resolves, on motion of Premier Shaw, seconded by Attorney-General Farmer, that it approve enactment of the Formula by the U.K. Parliament. *Journals of the Legislative Assembly of Prince Edward Island*, 1965, p. 46, 62, 119-125.

March 25, 1965.

Quebec Legislative Assembly. Message received from Legislative Council on Bill 3. *Déb. de l'Ass. lég.*, vol. 2 No. 35 p. 1555. Amendments read and further consideration postponed: *Votes and Proceedings*, p. 304.

March 26, 1965.

British Columbia Legislative Assembly. On motion of Premier W. A. C. Bennett, second by Attorney-General R. W. Bonner, it is resolved, on division, 35-13 "That this House record its approval of the proposed Act to Provide for the Amendment in Canada of the Constitution of Canada contained and described in the White Paper tabled in the House of Commons on March 2, 1965."

March 26, 1965.

Quebec Legislative Assembly. Possibility canvassed of summoning Mr. Diefenbaker for breach of privilege for questioning the Assembly's right to petition the Crown. Premier Lesage had, in a speech the night before, charged Mr. Diefenbaker with a "flagrant violation of Legislative Assembly privilege".

March 28, 1965.

House of Commons. Mr. Pearson considers the Quebec draft address to the Crown to implement the *Fulton-Favreau Formula* constitutionally proper. Provincial addresses were supported by precedent and quite proper. Mr. Diefenbaker *contra*. *H. C. Deb.*, p. 12867 ff. [*Quaere*, if proper for the Legislative Assembly, why not also for the Legislative Council?]

March 29, 1965.

*Montreal Star* reports that repatriation has become the most ticklish political question of the year for Premier Lesage's cabinet, which at a stormy meeting had decided to soft-pedal repatriation. But the heavy commitments of the Quebec and federal Liberal governments to the Formula were apparent.

April 1, 1965.

Mr. Daniel Johnson criticizes the Formula as so vague that even the experts cannot tell exactly what requires unanimity — and that the masters of the constitution will be a federally-appointed Supreme Court.

April 6, 1965.

Throne Speech Debate, Canadian Parliament. Mr. Diefenbaker: "...if this is accepted they will be placing Canadian federalism in a strait-jacket which will deny future amendments, however necessary they may be. They will place the Canadian constitution in a position in which each and every province will have a veto." He lists denunciations of the formula by Professors G.A. McAllister (U.N.B.), R.D. Gibson (Manitoba), B. L. Strayer (Saskatchewan), Alex Smith (Alberta), E. R. Alexander (Ottawa), Dean W. R. Lederman (Queens). *H. C. Deb.*, p. 24.

April 9, 1965.

Mr. Favreau reminds the House that on October 26th previous, Mr. Fulton had written to Mr. Diefenbaker to observe that the new Formula was, in all essentials, identical to the old one. *H. C. Deb.*, p. 178.

Premier Lesage hints to reporters after a Quebec cabinet meeting that the Government may petition the Crown for a reduction of the Legislative Council's powers, as his government would not accept Council amendments to Bill 3 and therefore "this is the only thing left for us to do". *Montreal Star*, April 10, 1965.

April 12, 1965.

"Information clinic" held by St. Jean Baptiste Society at Montreal, on the subject of the Formula. Opponents included Prof. J.-Yvan Morin, M. F.-A. Angers; Supporters: Prof. Jean-Charles Bonenfant, Dr. Eugene Forsey.

April 13, 1965.

Legislative Assembly of Saskatchewan. On motion of Hon. D. V. Heald, Attorney-General, seconded by Hon. Mr. Cuelenaere, it was resolved, on division 31-25, "That this Assembly:

"(1) Expresses its approval of the draft of an Act to provide for the amendment in Canada of the Constitution of Canada contained in a White Paper entitled "An Act to Provide for the Amendment in Canada of the Constitution of Canada" and tabled in this Assembly the 5th day of February, 1965;

"(2) Recommends to the Government of Canada that the proposed Act be submitted to a committee of the House of Commons for consideration and that such committee be directed to hold public hearings and report thereon to Parliament; or, alternatively, that the proposed Act be submitted by the Government of Canada to the Senate of Canada with a request that it be considered by a committee thereof appointed for such purposes and that the committee hold public hearings and report thereon to Parliament."

On a reversal of the same division an opposition amendment by Mr. Blakeney is defeated. It would have substituted in the place of the words of approval, an expression of opinion that the provisions of the white paper were unacceptable, and that none should be finally determined without the widest possible public consultation and debate by all interested persons and groups.

Debate was fairly extended, and took place on March 26th, April 6th, April 9th, April 10th and April 13th.

Mr. Heald, at p. 1323: "I must admit, that if Saskatchewan had been the only province involved, we would have been prepared to accept the formula that did not involve the degree of entrenchment proposed. At the conference

of Attorneys General last year, in my opening address to the delegates, I stated that this province would prefer to see less entrenchment than that contemplated by the Fulton formula of 1961. During the conference, I also stated that Saskatchewan would prefer to see delegation allowed to or by fewer than four provinces. These propositions were resisted by the majority of the provinces and it was apparent that the proposed act was as far as the majority was willing to go." Though unable to reveal the positions of others, "Saskatchewan stood very nearly alone on many of these issues."

"We were therefore, and are therefore, faced with the decision as to whether or not to resist the will of the majority of the provinces and thereby prevent the repatriation of the constitution." This was "only justified... if we are of the opinion that the repatriation of the constitution is to be done at the expense of the constitution." He thought that the "proposed formula does not impair the opportunity to maintain a strong central government, nor does it in fact commit the constitution to unnecessary rigidity." The position would be no worse than now, and he denied that the various parts of the nation lacked enough maturity to conduct its affairs properly.

At p. 1326 Mr. R. A. Walker doubted that the work of the conference was consistent with Mr. Heald's picture of growing nationhood. He pointed out (p. 1476) the problems of unanimity and that now the unanimity would be of legislatures rather than just provinces (p. 1477). But he cited authorities in the federal and U.K. parliaments in support of his view that a simple request of the federal parliament, without provincial concurrence, sufficed (p. 1476).

Mr. Walker (p. 1479) also made the following interesting remarks on the interpretation of the formula: "...I cannot think of any important matter of legislature jurisdiction or any important matter, in the British North America Act, which does not fall under one or other of the restrictive classifications, except in one area, the transfer of parliament's powers to the provinces. This appears to me, that it falls under the more flexible section. But to transfer them back from the province to Ottawa, falls under the more rigid section requiring unanimous consent. So you have there a built-in, a sort of one-way street, whereby parliament powers can be dismantled, and transferred to the provinces, but which can be restored back to parliament, or provincial powers can be given to parliament only with the utmost difficulty. So you have there, in my opinion, a sort of ratchet effect... a built-in balkanizing feature which builds in the decentralization of Canada's powers to the province."

Mr. A. E. Blakeney (p. 1611): "...I believe that this provision, section 2, is capable of a couple of interpretations. It undoubtedly means that the powers of a province cannot be reduced, the legislative powers of a province cannot be reduced without unanimous consent. It may mean that the legislative powers of a province cannot be increased without unanimous consent. It may mean, indeed, that powers which are now in the federal area cannot be transferred to the provinces without unanimous consent. In the remarks which I have... I have assumed this latter to be the case..."

[See later debates under March 10th and 17th, 1966, below. See also references under November 20th, 1964, above.]

April 27, 1965.

House of Commons. Mr. Heward Grafftey, a Conservative member from Quebec, speaks of "the strong possibility that everybody in Canada recognizes that the Fulton-Favreau proposition will not get through the Quebec House in the foreseeable future." *H. C. Deb.* 627.

April 30, 1965.

Hon. Guy Favreau delivers a strong speech to the Chamber of Commerce in Hull, Que. in favour of the Formula, reported by *The Montreal Star*.

May 4, 1965.

Manitoba Legislative Assembly. Formula approved 40-3, the opponents being N.D.P., the government Conservative. Liberals support the government. All provinces save Quebec have now assented.

May 8, 1965.

Caucus of the Federation of Young Liberals of Quebec, some 40 persons, at Quebec City, to study the Formula, which Premier Lesage defends at a three-hour morning session and for which he succeeds in securing if not positive support at least the acquiescence of the young Liberals. During the afternoon, at a thirty-minute session held in the absence of the Premier, it is decided to take no vote. *La Presse*, May 10, 1965. See comments of M. Johnson in Debates of the Assembly, Vol. 4, No. 22, p. 1135.

May 11, 1965.

Quebec Legislative Assembly debates and rejects amendments made by Legislative Council to Bill 3. No message is sent to the Council. Discussion takes place on a possible request to London for reform of Council's powers, and assurances received from the Prime Minister of Canada that it would be transmitted with favourable recommendation. *Déb. de l'Ass. lég.*, vol. 2, no. 52, p. 2441; p. 2443 ff.

May 12, 1965.

Quebec Legislative Assembly. Government motion by Premier Lesage for an Address to the Sovereign for the enactment of a measure to amend the British North America Acts, to be called the Quebec Parliament Act. With it is proposed an address to the Governor-General, praying transmittal of the same. *Order Paper*, No. 54, May 13, 1965, p. 6. See Appendix VI.

May 20, 1965.

Quebec Legislative Assembly. Bill 3 removed from Order Paper. *Déb. de l'Ass. lég.*, vol. 2, no. 58, p. 2735-7.

M. Edouard Asselin, leader of the National Union majority in the Quebec Legislative Council, announces that he will move in that Chamber for a petition to the Crown to reject the Assembly proposals for Council reform.

May 25, 26, 1965.

Quebec Legislative Assembly. Address to the Queen concerning Quebec Parliament Act, and ancillary address to the Governor-General, are debated and adopted by a vote of 44-15. See *Le Devoir*, May 26. *Déb. de l'Ass. lég.*, vol. 2, nos. 60-61.

May 27, 1965.

Quebec Legislative Assembly. Issues arising from the Addresses, especially procedure at the federal level, are debated. *Déb. de l'Ass. lég.*, vol. 2, no. 62, p. 2907.

June 1, 1965.

House of Commons. Statement by Prime Minister Pearson in answer to a question by Mr. Diefenbaker. "I advised the Premier of Quebec, informally,

that if and when the address was received from the Government of Quebec, it would be considered by the Government of Canada and advice would be tendered to the Governor General for transmission to the Queen, in the normal way; and that advice, if the addresses were received in the normal fashion from the Government of Quebec, would be favourable." *H. C. Deb.*, p. 1818.

June 2, 1965.

Quebec Legislative Council. Addresses adopted to counter-petition the Queen against the Legislative Assembly's address asking for reform of the Council's powers by the U.K. Parliament. Also passed are addresses to the Governor-General to transmit the Council's address to the Queen; to the Lieutenant-Governor to transmit to the Governor-General; and to the Government of Canada to lend no support to the Assembly's petition. *Journals of the Leg. Coun.*, p. 97. For the text of these addresses, carried against the government 12-6, see Appendix VII.

*Montreal Star*, June 3, reports that during debate in the Council, Government Leader Hon. George Marler characterized the Council petition as "illegal", that it was the prerogative of the people's elected governors to petition the Queen's representative; that an appointed Upper House does not enjoy the same privilege. Later, Premier Lesage stated that he agreed with Mr. Marler. Asked whether the Lieutenant-Governor would be advised not forward the Council's petition to Ottawa, Premier Lesage stated that the cabinet would study the matter, and give their findings to the Premier, who would advise the Lieutenant-Governor. See below July 7.

June 3, 1965.

Quebec Legislative Assembly. Discussion of the Council Addresses. *Déb. de l'Ass. lég.*, vol. 2, no. 66, p. 3105.

House of Commons. Prime Minister Pearson disclaims having received any communication from the Quebec government transmitting a Quebec Legislative Council address, or having received any communication from the Legislative Council. *H. C. Deb.*, p. 1932.

June 8, 1965.

House of Commons. Mr. Diefenbaker attacks the Quebec Legislative Assembly address on Council reform, and the federal advice favouring it, as (1) improperly involving the Crown; (2) treating the Assembly alone as speaking for the province. *H. C. Deb.*, p. 2107.

June 14, 1965.

Mr. Johnson calls the Assembly's address to the Queen to limit the Council's powers, nothing more than a request to the federal government to intervene in Quebec's affairs, since the Queen must act only on the advice of her federal ministers. *Montreal Star*.

Legislative Council Majority Leader, Hon. Edouard Asselin, requests by telegram to Prime Minister Harold Wilson that he refrain from implementing the Assembly petition until the Council's counterpetition has reached him. Refusal to transmit the Council's petition had been implied by Premier Lesage, and Hon. George Marler, government leader in the Council, had reportedly stated that the right to petition the Crown was confined to the elected representatives, and that the Council's address to the Lieutenant-Governor, asking for transmission, was illegal. *Montreal Star*, June 15. *Le Devoir*, June 15.

June 15, 1965.

House of Commons. Hon. Paul Martin believes communication has been received from the Legislative Council, and expresses an opinion as to proper channels of communication being through executives and not directly from a provincial legislative body to the federal executive. *H. C. Deb.*, p. 2412.

June 16, 1965.

House of Commons. Hon. Paul Martin, Acting Prime Minister makes a statement giving the government's position on the Quebec Legislative Assembly's request for Council reform. Its substance is (1) that federal action in support of the Assembly may or ought to be effected rather by action of the Executive Government of Canada than by joint resolution of the Senate and Commons; (2) that the rôle of the federal authorities in the matter should properly be the secondary one of favourably transmitting the address with advice to act on the advice of the provincial ministers, rather than the primary rôle of passing judgment and making a request emanating from the federal authorities. *H. C. Deb.*, p. 2479. Appendix VIII.

While the Government statement may be understood as merely declaring the way in which the government think federal rights ought to be exercised, rather than suggesting a limitation on the federal rights themselves, it is hard to escape the implication that the Government is in some measure compromising the exclusivity and absoluteness of the federal standing at Westminster — that the federal authorities may obtain everything, and no one else anything — as enunciated by Sir William Jowitt, later Lord Chancellor, who, when asked whether the provincial legislatures had agreed to the Unemployment Insurance amendment to the B.N.A. Act, disclaimed any information, and declared that the federal joint address was "sufficient justification". *U.K. H. C. Deb.*, 5th ser., vol. 362, col. 1181. Of course, the statement was made in the apparent expectation by Mr. Martin that the Fulton-Favreau Formula would shortly become law and that therefore federal rights at Westminster were largely academic. See below June 30.

Mr. Diefenbaker attacks the Government for circumventing Parliament and allowing the Quebec Legislative Assembly to speak for the Quebec Legislature. "The Premier of Quebec, with unusual frankness... said it would be impossible to bring about the end of the Legislative Council if the formula to amend the constitution were accepted. In other words he is saying that we have a formula and we want to bulldoze it through, but we will not be able to get it through the legislative council. Therefore let us remove the legislative council's powers by a recommendation through the Government of Canada. This is playing ducks and drakes with the constitution simply because of the promise that was made by the Prime Minister to the Premier in the month of February..." *H. C. Deb.*, 2482. "It means that Premier Lesage agrees with us as to the freezing effect of the formula for amending the constitution, because afterwards there cannot be any changes." *H. C. Deb.*, p. 2483.

Mr. T. C. Douglas, the N.D.P. leader, says: "Not since 1871 has the executive ever sought to exercise the authority to recommend amendments to the constitution without consulting the elected representatives of the people of Canada. Why are we being asked to act as rubber stamps for this Government?" (p. 2483) "It [the Quebec Legislature] has the power to amend the act now without reference to this Parliament or Her Majesty the Queen, but the reason it has not amended the Act is that the Legislative Assembly cannot get the

concurrence of the Legislative Council... So long as the matter can be dealt with by the Legislative Assembly of Quebec, then it is a Quebec matter; but the moment it is forwarded to the Government of Canada then it becomes a matter for Parliament." (p. 2484) He added that debating this question on a Supply motion would deprive the Senate of the opportunity to express its views; while favouring abolition of the Senate, he thought that this should be done properly and not by ignoring it; and hoped that it would not be too difficult to persuade the Government to use the same method to abolish the federal as the provincial upper house.

Mr. Thompson, the Social Credit leader, thought Parliamentary action proper for transmitting such a request, but felt that the elected representatives in Quebec had the "final responsibility".

For an interesting exchange, see p. 2479ff.

Quebec Legislative Assembly. Premier Lesage tells the House that the cabinet would probably take two weeks to advise the Lieutenant-Governor on action regarding the Council's address; and that the Lieutenant-Governor intended to vacation through the whole month of July. Exchange between M. Johnson and Premier Lesage.

June 30, 1965.

House of Commons. Discussion on Quebec Legislative Council reform proposals, p. 3110 ff., especially remarks of Mr. Andrew Brewin and Hon. Paul Martin. See also Mr. Martin at p. 3122; *inter alia* he says, "The Government, as the adviser to Her Majesty the Queen, has a responsibility which it will exercise as we have already indicated. This advice will be that the matter forwarded to us by the Lieutenant Governor, for the Government of the Province of Quebec is in respect of a matter which the Government of Canada believes to be a matter of a local character within the terms of the constitution..." Did then the Government of Canada tender no advice except that it was itself withdrawing from having anything further to do with what it considered a local matter, and that it left Her Majesty to act, by implication, on the direct advice of the Quebec Government? See Paul Sauriol in *Le Devoir*, June 18, objecting that Ottawa was merely concealing its rôle as arbiter at Westminster, and furthermore claiming to act at the request of a mere government of a province instead of its Legislature.

July 1, 1965.

Hon. Edouard Asselin in a statement says that for the Quebec government to prevent transmittal of the petition would be "an odious denial of justice and a sordid trick" and showed the government's "lack of confidence in its case". The Council would send the petition by other means with "appropriate explanations". *Montreal Star*, July 2, 1965.

July 7, 1965.

The Editor's letter to the Editor of the *Montreal Star* is published in the following terms:

"Sir, — It is disconcerting to find that with a Cabinet full of so-called constitutional experts, the Quebec Government should be so perplexed about its proper course of action on the Legislative Council's petition to the Queen.

"The difference between transmitting the petition to the Queen, and transmitting it with favourable advice, is, one may hope (notwithstanding his



reported comments) a distinction not too subtle for the Leader of the Government in the Council, Mr. Marler.

"The Lieutenant-Governor (or other officer administering the government in his absence) appears from such authorities as exist to be bound by law to effect [typographical error corrected] such transmittal to the Queen; this would properly be done through the Governor-General. In each instance, of course, the petition may be transmitted together with unfavourable observations and advice, but a refusal to transmit may very possibly render the officer concerned liable to legal proceedings including an action in damages.

"By way of example, Ministers of the Crown, while quite free to advise the Lieutenant-Governor not to fiat a petition of right to allow the Crown to be sued, cannot, on pain of an action in damages, refuse to lay the petition before him: *Norton v. Fulton* 39 S.C.R. 202; *Irwin v. Grey* 3 F. & F. 635, 176 E.R. 290.

"Mr. Marler's reported suggestion that only the elected representatives of the people are entitled to petition the Crown is very unconvincing fiction. All subjects, not least the Legislative Councillors, have the right to do so.

"If the Lieutenant-Governor and Governor-General refused to transmit the Petition, the Councillors would be quite entitled to circumvent them and approach the Queen directly. Doing so would in any event be at most a discourtesy to these officers and a breach of probably little more than Colonial Service practice.

"Of course, once the petition reaches the Queen, Her Majesty will merely ask the Federal Cabinet for advice in dealing with it.

"Accordingly, much the least of the Councillors' problem is ensuring that their petition reaches the Queen. The Federal Cabinet have agreed to advise that the U.K. Parliament accede to the Assembly's wishes and there can be little doubt that this advice will be acted upon however much the Council may protest. The Imperial Conferences of 1926 and 1930 together with subsequent practice are almost universally held to make federal requests both sufficient and necessary to accomplish any changes through Westminster, whether the provinces are affected or not. So it would, from the standpoint of the U.K. Parliament, make no difference what the Provincial Government or Assembly — or in this instance the Council — wanted, once appropriate Federal advice had been given."

July 7, 1965.

Hon. Guy Favreau becomes President of the Privy Council. M. Lucien Cardin becomes Minister of Justice and Attorney-General for Canada.

July 14, 1965.

*Montreal Star* reports that the Governor-General has over the preceding weekend sent to the Crown a formal instrument of advice from the Federal Government on the Legislative Assembly petition; asking the Queen to place a Bill before Parliament in accordance with the Quebec request.

July 20, 1965.

Gérard Pelletier in the *Montreal Star* predicts the death on the order paper of the Quebec resolution to approve the Formula, the first true defeat of the Lesage Government in five years of office.

July 27, 1965.

M. Asselin announces that the Council's petition will be sent directly to London, with apologies and explanations for so doing, to the Queen, the Governor-General and the Lieutenant-Governor. *Montreal Star*, July 28, 1965.

July 28, 1965.

Quebec Legislative Council votes 9-5 against the Government, to send to the Queen directly, copies of its petitions, together with an explanatory Memorandum quoting Legislative Assembly Debates and press reports indicating that the government sought to prevent the Council's petition from reaching the Crown. *Journals of the Legislative Council*, p. 149 and following.

August 6, 1965.

Quebec Legislature prorogued amidst threats outside the assembly of abolition of the Council unless the latter passed the Laval bill as passed by the Assembly. The Council did so. *Le Devoir*, August 7.

August 12, 1965.

Premier Lesage announces that, in accordance with a recommendation of M. Louis-Philippe Pigeon, counsel, the Government will not send on the Legislative Council's petition.

September 7, 1965.

In a speech to the Club Optimiste Maisonneuve, M. Daniel Johnson says that "Before acting, Ottawa is desperately seeking travelling salesmen with sufficient nerve and guile to sell this formula to the Quebec population.

"As for the Quebec Government, it awaits only the modification of the powers of the Legislative Council so it can agree to render intangible all the rest of this gelatin that some still dare to call the Canadian constitution..." "I tell you that the fight over the Fulton-Favreau Formula is far from over. It has just begun." *Montreal Star*, September 8, 1965.

October 12, 1965.

Prime Minister Pearson states in Quebec City of the Fulton-Favreau Formula that "Up to now it has not been shown that this method is not satisfactory. We are awaiting a word from Quebec." If Quebec expressed the desire that the formula be changed, "we will take it into consideration and discuss it." *Montreal Star*, October 13, 1965.

October 22, 1965.

In reports of a speech to South Shore Association of Chartered Life Underwriters, M. Johnson challenges Premier Lesage to step on his pride and call for a revision of the Fulton-Favreau Formula. He asks what Mr. Lesage is waiting for to send Ottawa "the word from Quebec." *Montreal Star* and *Le Devoir*.

Quebec Legislature. Emergency session, ostensibly to deal with the Levis ferry. In the Throne Speech debate on an opposition amendment to reject the Formula, Premier Lesage assumes a non-committal attitude about it. "I am not ready to say no. I am not ready to say yes." "I am not ready to ask Mr. Pearson to re-study the formula. I am not ready to do that because I ask myself if it isn't in another fashion that we should proceed and I am not

ready either to be negative." Of the considerable press comment which ensues, *Le Devoir* editor Claude Ryan "rejoices", and *Montréal Matin* editor Lucien Langlois hails Mr. Johnson's victory. Elsewhere it is predicted that the Premier's statement paves the way for a complete rejection next session, especially as the federal government appears to be losing hope, as indicated in a Toronto election rally speech by Hon. Mitchell Sharp, "I don't think the Fulton-Favreau Formula is really going to survive. We have to start again to find some way to bring the constitution home. We will have to find some plan for amending the constitution, but I don't think the Fulton-Favreau Formula is it."

October 27, 1965.

In a Renaissance Club speech demanding a new constitution, M. Daniel Johnson accuses Premier Lesage of treachery; the Fulton-Favreau Formula was "an impossibility" for Quebec, but the Premier had tried to thrust it on the province with "the tactics of the Ottawa establishment: try to cajole Quebec, especially French Canadians, while slipping the handcuffs on." *Montreal Star*, October 27. *Le Devoir*, October 28.

November 8, 1965.

Canadian General Election. Mr. Pearson's minority Liberal government returned with another minority in the House of Commons. Party standings: Liberals: 131; P.C. 97; N.D.P. 21; Ralliement des Créditistes 9; S.C. 5; Ind. 2.

January 17, 1966.

In various speeches to students at three Montreal universities, Premier Lesage refers to the Formula as a "dead duck", outstripped by events. *Star*, Jan. 18.

January 18, 1966.

Parliament of Canada. Speech from the Throne, opening 1st session of the 27th Parliament. "It remains the objective of my Ministers to provide that the Constitution of Canada may be amended in Canada."

January 20, 1966.

Premier Lesage writes to Prime Minister Pearson announcing his intention to postpone indefinitely consideration of the repatriation formula. See Correspondence in Appendix III.

January 24, 1966.

Hon. Guy Favreau declares to the closing banquet of the Founding Convention of the Quebec Association of Canadian Student Liberals that the time is not ripe for repatriation and sweeping reform of the B.N.A. Act. "I would hold up repatriation of the constitution — though I consider it essential — rather than place its revision in the hands of a Parliament dominated by the emotional colonialism which Tories get from their notion of 'national unity'". *Montreal Star*, January 24, 1966.

Exchange in the House of Commons. *Montreal Star*, January 24, 1966.

January 27, 1966.

House of Commons. Throne Speech Debate. Mr. Diefenbaker has an exchange with Mr. Favreau about the rejection of his Formula. *H. C. Deb.*, 360.

January 28, 1966.

Mr. Pearson declares in the House of Commons that it "would go without saying" that the Fulton-Favreau Formula will not be proceeded with in the absence of provincial unanimity: otherwise it would have been done in the previous session. He suggests the possibility of studying future steps in a parliamentary committee. Mr. Diefenbaker: that the changes in the Formula emasculate parliament. Mr. Pearson: that Mr. Fulton considers the Formula close to his own. Mr. Douglas — at p. 411 — is off to New Westminster to amend the B.N.A. Acts. *H. C. Deb.*, 373.

Mr. Pearson, in answer to a question by Mr. Diefenbaker, states that the Quebec Legislative Assembly address was before the U.K. Parliament, and would be considered before long. *H. C. Deb.*, p. 374, and compare Prime Minister Pearson's letter to Premier Lesage, of January 26.

January 31, 1966.

House of Commons. Discussion on the formula, p. 479 ff. Mr. Clement Vincent, M.P., quotes Mr. Favreau's remarks, before knowing of the rejection of his formula by Premier Lesage, that "As usual petty provincial chauvinists instinctively join with centralizing reactionaries to destroy a fair solution worked out by fair men."

February 3, 1966.

House of Commons. Prime Minister Pearson: "The formula was acceptable to all the provinces but one. That province has said it is acceptable but has postponed consideration of it." *H. C. Deb.*, p. 638.

February 4, 1966.

Premier Lesage in the Quebec Assembly, in response to a question by the leader of the Union Nationale opposition, M. Daniel Johnson, states that "indefinite" postponement means postponement "without limit". *Déb. de l'Ass. lég.*, vol. 4, no. 8, p. 336.

February 11, 1966.

Premier Lesage explains to the Quebec Assembly the interpretation he gave to the Formula which enabled him to accept it: unanimity to reduce provincial powers, two-thirds to increase them.

March 9, 1966.

Debate in Committee of Supply of the Quebec Legislative Assembly, on the vote for Federal-Provincial Affairs, upon the Formula. The government is criticised for ever having entertained the Formula, even if it allowed increase of provincial powers on a two-thirds basis.

The Premier denies having discussed reform of the Legislative Council at the Conference of October 14, 1964, (see p. 1131), and is taxed by M. Johnson at having broken his commitment if he made no reservation. (p. 1131 ff.)

Premier Lesage refuses to go beyond the reasons given in his letter of January 20, 1966, either to explain his change of heart or to say how dead he considers the Formula. But it is a "dead duck".

March 10, 17, 1966.

Saskatchewan Legislative Assembly. Mr. Blakeney, seconded by Mr. Walker, moves an opposition resolution similar to similar to Mr. Blakeney's unsuccessful

amendment of April 13, 1965, approving repatriation, repudiating the Formula, and seeking public consultation and debate before finally determining an amendment procedure.

A government amendment by Hon. D. V. Heald, seconded by Hon. Mr. Gardiner, carried 31-23, "Urges the Government of Canada to convene immediately a federal-provincial Conference on constitutional amendment to determine the precise nature of the objections that the Province of Quebec has to the proposed Act"; instructs the Saskatchewan representative to report to the Assembly the result of the conference to permit full discussion of the Quebec objections; and requests the Government of Canada "in view of the objections of the Province of Quebec" to establish a committee of the Senate or the Commons to hold public hearings and report to Parliament. *Votes and Proceedings*, 2nd. Sess., 15th Legislature, Nos. 23 and 28.

See the debate thereon.

Mr. Blakeney pointed out that the unemployment insurance amendment had had provincial unanimity only because two premiers had given consent by withdrawing refusals earlier expressed by their Assemblies. This "relatively informal procedure" was "now the most rigid formula... in the world. How much more rigid would it be" under the Fulton-Favreau Formula, where the consent of the legislature was required.

Hon. D. V. Heald criticised the federal Liberal and Conservative governments of Mr. Pearson and Mr. Diefenbaker for eroding federal authority, and turned the tables on the N.D.P. for having become more equivocal on the subject.

Mr. Heald made clear that his government was far from enthusiastic about the Formula.

He also said this: "You recall that Mr. Lesage stated that he was as early as the spring of 1965 under the impression that any increase in provincial powers, which of course could only be done at the expense of federal powers, would require that two-thirds of the provinces assent representing one-half of the population. You will recall that the unanimity provision applied to any law affecting any provision of the constitution relating to the power of the legislature of the province to make laws. Mr. Speaker, if the interpretation of that phrase was not apparent, it seems to me, I can't understand this because it was always represented and I think the member for Hanley (Mr. Walker) who had attended some of these earlier conferences would agree that it was always represented to the conference as providing for unanimous consent."

April 5, 1966.

House of Commons. Mr. Pearson, in reply to Mr. Diefenbaker, disclaims having any information about the progress of the Quebec Assembly address before the U.K. Parliament, but he will inquire of the U.K. government. *H. C. Deb.*, 3859.

May 5, 1966.

House of Commons. In reply to a question by Mr. Diefenbaker, Mr. Pearson states that he knows of no change in the presence of the Quebec Assembly proposals being on the U.K. parliamentary calendar, "though in the eyes of the United Kingdom government there may not be the same haste in bringing it before Parliament because of the existing electoral situation in Quebec." (Was the U.K. government then being left to deal as it thought proper with the Quebec government?) *H. C. Deb.*, 4724.

May 24, 1966.

*Montreal Star* reports an election speech by M. Daniel Johnson: "The day after June 5, I'll send a telegram to Prime Minister Wilson of England in which I will say politely: 'Sir, don't bother any more, we'll settle our problems ourselves.'"

June 5, 1966.

Quebec General Election. The Liberal government is defeated, and an Union Nationale government returned under M. Daniel Johnson. Party standings: Union Nationale 56. Liberals 50; Independent 2. Premier Johnson takes office June 16.

The new government is pledged to Council abolition, but refuses to allow it to take place until a new Upper House is constituted to replace it. The government's views lean towards representation on an occupational and interest-group basis, instead of the present life appointment by the Lieutenant-Governor-in-Council. The question is ultimately put before an Assembly committee on the constitution, and an abolition bill by M. Lesage is once refused first reading, and later introduced and struck.

June 8, 1966.

House of Commons. In reply to a question by Mr. Stanley Knowles, of the N.D.P., Mr. Pearson states of the Quebec Legislative Assembly address, "in my view its status is a little uncertain." *H. C. Deb.*, p. 6139.

June 10, 1966.

In reply to a question by Mr. Diefenbaker, Mr. Pearson declares that "there is no danger of the United Kingdom Government proceeding in this matter until there has been an opportunity to obtain the views of the incoming government in question." *H. C. Deb.*, 6248.

November 23, 1966.

House of Commons. In reply to a question by Mr. Bell, M.P., on the Quebec Legislative Council, Prime Minister Pearson indicates that: "The government did, however, communicate the addresses of the Legislative Assembly to the Crown with the indication that, in its view, the advice of the Executive Council of Quebec in relation to a matter solely affecting the constitution of Quebec should be followed... Consistent with the proposition indicated above, any further action will depend on the views of the ministers now in office in Quebec. This situation has been explained to the United Kingdom government." *H. C. Deb.*, p. 10233.

December 1, 1966.

Quebec Legislature. Throne Speech promises a referendum procedure, apparently of a consultative nature. *Déb. de l'Ass. lég.*, p. 5.

December 2, 1966.

Quebec Legislative Assembly. On a notice of motion to set up a Constitutional Committee of the Assembly to study constitutional problems, Premier Johnson proposes that it should "examine the possibility of establishing, in the place of the Legislative Council, an organization representing intermediary bodies, Quebec's minorities, representatives of the economy and the professions and having administrative structures and powers in keeping with the needs of our time."

December 6, 7, 1966.

Quebec Legislative Assembly. First reading refused to Opposition Leader Lesage's Bill to abolish the Legislative Council, Bill 99. *Déb. de l'Ass. lég.*, p. 35 ff., p. 91 ff.

February 21, 1967.

Premier Johnson, introducing his motion of December 2, tells the Assembly that the Legislative Council will not be abolished until a suitable replacement is found. *Déb.*, p. 1442 ff.

M. Lesage's bill to abolish the Legislative Council is given first reading, p. 1461 ff.

February 28, 1967.

Legislative Assembly of Quebec. On motion of Premier Johnson, M. Lesage's bill to abolish the Legislative Council is stricken from the Order paper, on the grounds *inter alia* that it affects the prerogatives of the Crown. See No. 33 of the *Votes and Proceedings of the Legislative Assembly*. The debate is violent and M. Lesage nearly expelled from the House. *Le Devoir*, March 1st. See also *Le Devoir*, March 2, March 4. *Déb. de l'Ass. lég.*, p. 1571 ff.

April 4, 1967.

Hon. Guy Favreau retires as President of the Privy Council and is replaced by Hon. Walter Gordon. Hon. Lucien Cardin retires as Minister of Justice and is replaced by Hon. Pierre-Elliott Trudeau.

April 21, 1967.

Hon. Guy Favreau is sworn as a judge of the Superior Court of the Province of Quebec.

July 11, 1967.

Death of Hon. Guy Favreau, in Montreal.





I. — Introduction:  
The Continuing Search  
For An Amendment Process

