

CABINET - SUBJECTS FOR CONSIDERATION, 17 JULY 1995

Not Relevant

5. ATTG 36/95CS Constitution Amendment Act, 1995
APPROVED AS AMENDED`

Not Relevant

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MINUTES forming ENCLOSURE to

AGCS 36/95
A-G 178\94

A-G 178\94

1. **TITLE:** *Constitution Amendment Act, 1995*
2. **MINISTER:** Attorney-General
3. **PURPOSE:** It is proposed that the *Constitution Amendment Act, 1995* be drafted
4. **RESOURCES REQUIRED FOR IMPLEMENTATION:** The amendments will not require any additional resources
5. **RELATIONSHIP TO GOVERNMENT POLICY:** Consistent
6. **CONSULTATION:** Electoral Districts Boundaries Commission
7. **URGENCY:** To be introduced into Spring session of Parliament
8. **RECOMMENDATION:** Cabinet approve the drafting of amendments to the *Constitution Act, 1934* to:

extend the "relevant date" provided in section 77 of the Act to a "date falling not early than six months before the date of the order"
and
authorise the Remuneration Tribunal to determine the remuneration payable to members of the Commission, and provide for the automatic reimbursement of the Courts Administration Authority for the costs of the Judge of the Supreme Court in performing the functions of Chairman of the Commission.

ATTORNEY-GENERAL

PORTFOLIO:

DATE: 5/7/95

Contact Officer
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207-1788

TO THE HONOURABLE THE PREMIER FOR CABINET

Re: Amendment of Constitution Act, 1934

1. PROPOSAL

That Cabinet approve the drafting of legislation to amend the *Constitution Act, 1995* to:

- (i) extend the "relevant date" provided in section 77 of the Act to a "*date falling not early than six months before the date of the order*" as opposed to two months; and
- (ii) authorise the Remuneration Tribunal to determine the remuneration payable (in the form of additional salary or entitlements) to members of the Electoral Districts Boundaries Commission and to provide for the automatic reimbursement of the Courts Administration Authority for the costs of the Judge of the Supreme Court in performing the functions of Chairman of the Commission.

2. BACKGROUND

Extension of time of "relevant date"

- 2.1 Section 77 of the Constitution Act, 1934 requires the Commission to draw the electoral boundaries in general conformity with an electoral quota determined at "*the relevant date*". "(T)he relevant date" is defined to mean:

"a date specified in an order as the relevant date, being a date falling not earlier than two months before the date of the order". The order being the making of an electoral redistribution.

- 2.2 The Commission recommends that the "*relevant date*" be extended to:
"a date falling not earlier than six months before the date of the order".

Remuneration

- 2.3 It has been the practice since 1955 or thereabouts, for additional remuneration to be paid to members of the Commission as the responsibilities of the Commissioners are onerous and the work involved falls outside their normal duties.

3. DISCUSSION

Extension of time of "relevant date"

- 3.1 The Commission recommends that the "relevant date" be extended for the following reasons:
- 3.1.1 The Commission has had difficulty meeting the two month time frame because of the need to adjust the provisional figures; provide accompanying reasons after the quota has been determined; make the necessary alterations and have the report and order printed and published.
 - 3.1.2 This difficulty has been compounded by the 1994 amendment to the Act which requires the Commission to issue a draft order, and then, after considering any public response, publish its final order.
 - 3.1.3 Extending the time would allow the Commission to specify a date prior to the issue of its draft order and obviate the need to change the date, and therefore the quota when the final order is made.
 - 3.1.4 The closer the relevant date is to the preceding election the more accurate the electoral roll figures, upon which the quota is based.
 - 3.1.5 Specifying an earlier relevant date will not disturb the principle that underlies section 77 of the Act.

Remuneration

- 3.2 The payment of remuneration has in the past been accomplished by ad hoc approaches to the Executive on the occasion of each distribution. Concerns have been raised both now and in the past that this method may place the integrity and independence of the Commission in jeopardy.
- 3.3 The legislative amendment proposed falls within the exception listed in placitum (iv) of section 88(2)(a) of the Act, namely:
- "A Bill providing for or effecting the repeal, suspension or amendment of a provision of section 32 or of this Part shall not be presented to Her Majesty or the Governor for assent unless -*
- (a) the Bill does not provide for, or effect, the repeal, suspension or amendment of a provision of this section and the Bill does not:-*
 - (iv) offend against the principle that an electoral distribution is to be made by a Commission that is independent of political influence or control;"*

Consultation


The Commission recommends the proposed amendments.

4. RECOMMENDATION

Cabinet approve the drafting of amendments to the *Constitution Act, 1934* to:

extend the "relevant date" provided in section 77 of the Act to a "date falling not early than six months before the date of the order"
and

authorise the Remuneration Tribunal to determine the remuneration payable to members of the Commission and provide for the automatic reimbursement of the Courts Administration Authority for the costs of the Judge of the Supreme Court in performing the functions of Chairman of the Commission.


K T Griffin
ATTORNEY-GENERAL

5 July 1995

except to the Chairperson ss.

In Cabinet

17 JUL 1995

