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SECRET

Serial Serie No 656-80MC(E)

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MEMORANDUM TO CABINET
MEMOIRE AU CABINET

November 25, 1980
le 25 novembre 1980

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POSSIBLE AMENDMENTS TO PROPOSED RESOLUTION ON CONSTITUTION OF CANADA

Minister of Justice
Ministre de la Justice

The Annexes are printed on plain paper because they do not conform with the format.

Les annexes sont imprimées sur du papier ordinaire car elles ne sont pas conformes au format.

The Annexes are bilingual.
Les annexes sont bilingues.

The attached Memorandum to Cabinet is circulated in English only. A bilingual version will follow in the near future.
Le mémoire au Cabinet ci-joint n'a pas encore été traduit en français; dès que ce sera fait, vous recevrez la version bilingue.

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MEMORANDUM TO MINISTERS FROM MINISTER OF JUSTICE

November 25, 1980

RE: POSSIBLE AMENDMENTS TO PROPOSED RESOLUTION ON CONSTITUTION OF CANADA

SUMMARY OF PRINCIPAL ISSUES AND PROPOSALS

A. CHARTER OF RIGHTS AND FREEDOMS

1. It is proposed that the "limitation clause" of section 1 be amended to read: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society." (pp. 1-3)

2. It is proposed that the government be prepared, if necessary, to amend the "Legal Rights" provisions in relation to the protection against search and seizure, detention or imprisonment and denial of reasonable bail, to delete the reference to "on grounds, and in accordance with procedures, established by law" and replace it with

   - protection against unreasonable search and seizure;
   - protection against arbitrary detention or imprisonment; and
   - not to be denied reasonable bail without just cause. (pp. 3-4)

3. It is proposed that the "Legal Rights" provisions respecting protection against retroactive penal laws and double jeopardy be amended so as to ensure that Canada may legislate to prosecute and impose punishment for recognized international criminal offences. (pp. 4-5)

4. It is proposed that "Legal Rights" be expanded to include a right to trial by jury for offences carrying a penalty of five years imprisonment or more, but excluding offences under military law. (pp. 5-6)

5. It is proposed that "Non-discrimination Rights" be renamed "Equality Rights"; that the wording of section 15(1) be changed to read "Everyone is equal under the law and has the right to the equal protection and equal benefit of the law without discrimination on the basis of race, national or ethnic origin, colour, religion or sex; that "age" be dropped as a ground of non-discrimination; and that affirmative action programs in section 15(2) specify the grounds identified in section 15(1), but not be limited only to those grounds. (pp.6-9)

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6. It is proposed that section 20 be modified to accord the right to bilingual services from federal offices, that are not head or central offices, where there is, as determined by federal law, a significant demand for communications with and services from any such office in both official languages. (p.9)

7. It is proposed that section 23 be amended to guarantee minority language education to (a) children of citizens who either have been educated at the primary level in Canada in the minority language or have as their "mother tongue" the minority language; and (b) to children of citizens where any child of a family has begun or completed his education in the minority language. In addition it is proposed that the qualification of section 23 ... "where numbers warrant" be dropped. (pp. 9-13)

8. It is proposed that no modification of section 24 be made with respect to elaborating the rights of native peoples. (p.13-14)

9. It is proposed that section 25 be transposed to section 52, in order to give any provision of the Constitution (rather than just the Charter), primacy over any other law. (pp.14-15)

10. It is proposed that a specific "remedies" section be added to the Charter to ensure that the courts can provide a suitable remedy for a violation of Charter rights. (p.15)

B. EQUALIZATION AND REGIONAL DISPARITIES

11. It is proposed that a suitable amendment to section 31, to be proposed by Premier Hatfield, be approved by the government. (p.16)

C. INTERIM AMENDING PROCEDURE

12. It is proposed that the government be prepared to support an amendment to reduce from 8 to 7 the number of provinces necessary to propose an alternative amending formula under section 33. (p.17)

13. It is proposed that the right of the federal government to propose an alternative amending formula under section 38 be deleted. If that is not acceptable, it is proposed that any federal alternative amending formula be made subject to approval by Parliament. (pp.17-18)

14. It is proposed that sections 40 and 46 be amended to authorize the establishment of a federal-provincial commission to develop rules for any referendum on an amending formula or on any amendment to the constitution. (pp.18-19 and 21)

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Minister of Justice

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SECRET

Serial No. 656-80 MC(F)

November 25, 1980

MEMORANDUM TO MINISTERS FROM MINISTER OF JUSTICE

RE: POSSIBLE AMENDMENTS TO PROPOSED RESOLUTION ON CONSTITUTION OF CANADA

I PURPOSE

A number of possible amendments to the Proposed Resolution on the Constitution of Canada have been suggested, some by the Government itself, some by provincial governments, some by Members of the Special Joint Committee and some by witnesses who have or will appear before the Committee or make written submissions to it.

Some of the proposed changes are substantive in nature, others are technical in nature. Those of a substantive nature are set out in part II, while those of a technical nature are found in part III. The purpose of this memorandum is to outline the possible amendments and to obtain Ministers' direction on which of the changes should be incorporated in the Resolution, whether moved by government members or other members of the Committee.

II SUBSTANTIVE AMENDMENTS

A. CHARTER OF RIGHTS AND FREEDOMS

1. Section 1 - Limits on Rights and Freedoms

The general limitation clause: "such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government" has been severely criticized as being too broad, enabling the courts to find any limit imposed on a right to be permissible if it is "generally accepted" (ie. if it is a limit enacted by several legislatures). It is also contended that limits should only be imposable in wartime (and even then not be applicable to non-discrimination and certain legal rights), that limits should be more specifically defined for each category of rights, or that there be no limitation clause included at all since the courts will themselves imply reasonable limits on the various rights recognizing that no right is absolute.

While the criticisms appear to overlook the fact that section 1 speaks of reasonable limits, there may be some merit in considering alternatives to the present provision of section 1 in order to defuse criticism of it.

Option 1: Drop the limitation provision entirely.

The U.S. Bill of Rights contains no general limitation clause and yet the courts in that country have implied reasonable limits on the various rights in many cases. On the other hand, it would seem of some importance

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that the public and the courts be aware that no right is absolute in an organized society, and the provinces feel strongly that any Charter must reflect this principle. Including a general limitative rule would give greater certainty to the law and would guide the courts as to the standard to be applied in testing the validity of limitations on rights.

In addition, since the Charter as drafted makes reference to certain limits in specific clauses (eg. the right to vote, the extension of the life of Parliament and legislatures, mobility rights, minority language education rights), the omission of any reference to limits on other rights could imply that they were to be guaranteed without any limits. Thus, it could be necessary to insert specific limits in a number of other sections to avoid this possible result.

Option 2: Modify the language of the limitation clause.

This might be done in one of several ways. (1) Specify that the rights and freedoms are subject only to such limits prescribed by law as are reasonably justifiable in a free and democratic society with a parliamentary system of government. (2) Specify that the rights and freedoms are subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society with a parliamentary system of government. (3) Specify that the rights and freedoms are subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society.

These alternatives would overcome the ambiguities caused by the words "generally accepted" and make it clear that any limits must be founded on a law, whether legislated or judge-made. The first alternative would place some onus on the government to show that a limit was justified in a particular case. The second alternative would create a heavier onus on the government to show the need for any limit. The third alternative would eliminate the concerns that "supremacy of parliament" would still govern in interpreting the Charter and remove doubts about the courts' ability to consider human rights jurisprudence of the U.S. courts. At the same time, elimination of the phrase "parliamentary system of government" would engender further opposition from the provinces who all wanted this qualification included, and could create suspicions that the government was embarking on the road to republicanism. Government members of the Committee do not feel this latter point is one of any real concern, and witnesses before the Committee have urged deletion of the phrase.

Option 3: Provide specific limits for each category of rights.

This approach, spelling out grounds such as national security, public order, safety, health, morals, etc. for limiting the rights in each category of rights, was attempted in earlier drafts including the one published by the government during the July negotiations. This was severely criticized by the press

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and the provinces as negating the rights and drawing arbitrary distinctions among limits on different rights. It also creates an unwieldly document, difficult for laymen to understand and difficult to defend publicly.

Recommendation: That the government agree to propose an amendment to section 1 that makes the rights and freedoms subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society. (This would meet the concerns of Gordon Fairweather and Walter Tarnopolsky who have been the most credible witnesses before the Committee on this point.)

(See Annex 1 for draft amendment.)

2. Sections 8, 9 and 11(d) - Legal Rights

As drafted, these rights (protection against search or seizure, detention or imprisonment and denial of bail) are guaranteed on the basis of lawful grounds and procedures.

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[redacted]

In the federal drafts of Charter rights that were tabled during the CCMC meetings last summer, more stringent language was used:

- protection against unreasonable search and seizure
- protection against arbitrary detention or imprisonment
- not to be denied reasonable bail without just cause.

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[redacted]

The present wording of these provisions will be difficult to defend before the Committee, both in light of the briefs that have been presented and in light of the language of the Canadian Bill of Rights which is the same as that contained in the earlier federal drafts. In addition, it is likely that Premier Hatfield will be arguing that the original wording of these provisions be restored when he appears before the Committee.

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On the other hand, it is understood that Ontario's Deputy Attorney General will be seeking to appear before the Committee this week to argue in support of the present wording of these legal rights. In the event that he does not succeed in convincing Committee members of the validity of the present wording, strong pressure will continue to have the wording of the earlier federal drafts reinstated.

Recommendation: That the government agree to propose amendments to sections 8, 9 and 11(d) which would restore the language used in the earlier federal drafts, unless the Ontario Deputy Attorney General convinces the Committee that the present wording provides adequate protection for these legal rights.

(See Annexes 2 and 3 for draft amendments.)

3. Section 11 - Legal Rights

(1) Coverage of "War Crimes" in Sections 11(e) and (f)

The Canadian Jewish Congress, the North American Jewish Students Network and Mr. Crombie on the Committee have proposed amendments to sections 11(e) and (f) (dealing with protection against retroactive penal laws and double jeopardy for the same offence) to ensure that prosecution and punishment of Nazi war criminals in Canada is not precluded.

The concern with section 11(e) is that unless "offence" is changed to read "offence under domestic or international law", the section could be construed as excluding "crimes against humanity" committed by Nazis during the Second World War.

The concern with section 11(f) is that unless it is amended, it could be construed to preclude the re-trial and punishment in Canada of war criminals who were tried and convicted in absentia in European countries but never punished.

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[redacted]

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[redacted]

Recommendation: That the government agree to propose the foregoing amendments to paragraphs 11(e) and (f).

(See Annex 4 for draft amendments.)

(2) Addition of Right to Trial by Jury

The NDP members of the Committee have proposed that the right to a trial by jury be included in the legal rights of a person charged with an offence. This proposition stems from the inclusion of such a right in the U.S. Constitution and the fact that Magna Carta provides that no man shall be imprisoned "except by lawful judgment of his equals".

The provision in the U.S. Bill of Rights granting a jury trial in "all criminal prosecutions" has caused many problems in the United States. The courts have interpreted this to mean a right to a jury trial only in "serious" cases, and this has generally meant cases where the penalty is imprisonment for six months or more. However, the courts continue to interpret what is a "serious" offence regardless of the penalty provided, thus leaving much uncertainty in particular cases as to whether a jury trial is required. This uncertainty plus the low threshold for "serious offence" have led to many delays in court proceedings in the United States.

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Recommendation: That the government agree to propose an amendment which would grant the right to a jury trial for offences with a penalty of five years imprisonment or a greater penalty, but exclude offences under military law.

(See Annex 5 for draft amendment.)

4. Section 15 - Non-Discrimination Rights

A number of strong representations are being made in Committee for changes to clarify and extend the provisions on non-discrimination rights. The Advisory Council on the Status of Women urges that the clauses be modified in a manner that will clearly ensure equal rights in law and equal protection and benefit of the law, and direct the courts to a "strict scrutiny" test for any distinction in law based on sex, race, colour, national or ethnic origin or religion (ie. these grounds could virtually never be a valid basis for distinction). In addition, the Council would spell out the specific grounds for affirmative action programs, and limit such programs to those authorized by a law.

The Canadian Human Rights Commission contends that there should be no specific enumeration of non-discrimination grounds, and has the support of the Canadian Civil Liberties Association and the Canadian Jewish Congress on this point. In the alternative, the Commission contends that the grounds should be expanded to include marital status, physical or mental handicap, political belief and sexual orientation. The Commission would permit distinctions to be made in laws only where "justifiably necessary for reasons of compelling state interest."

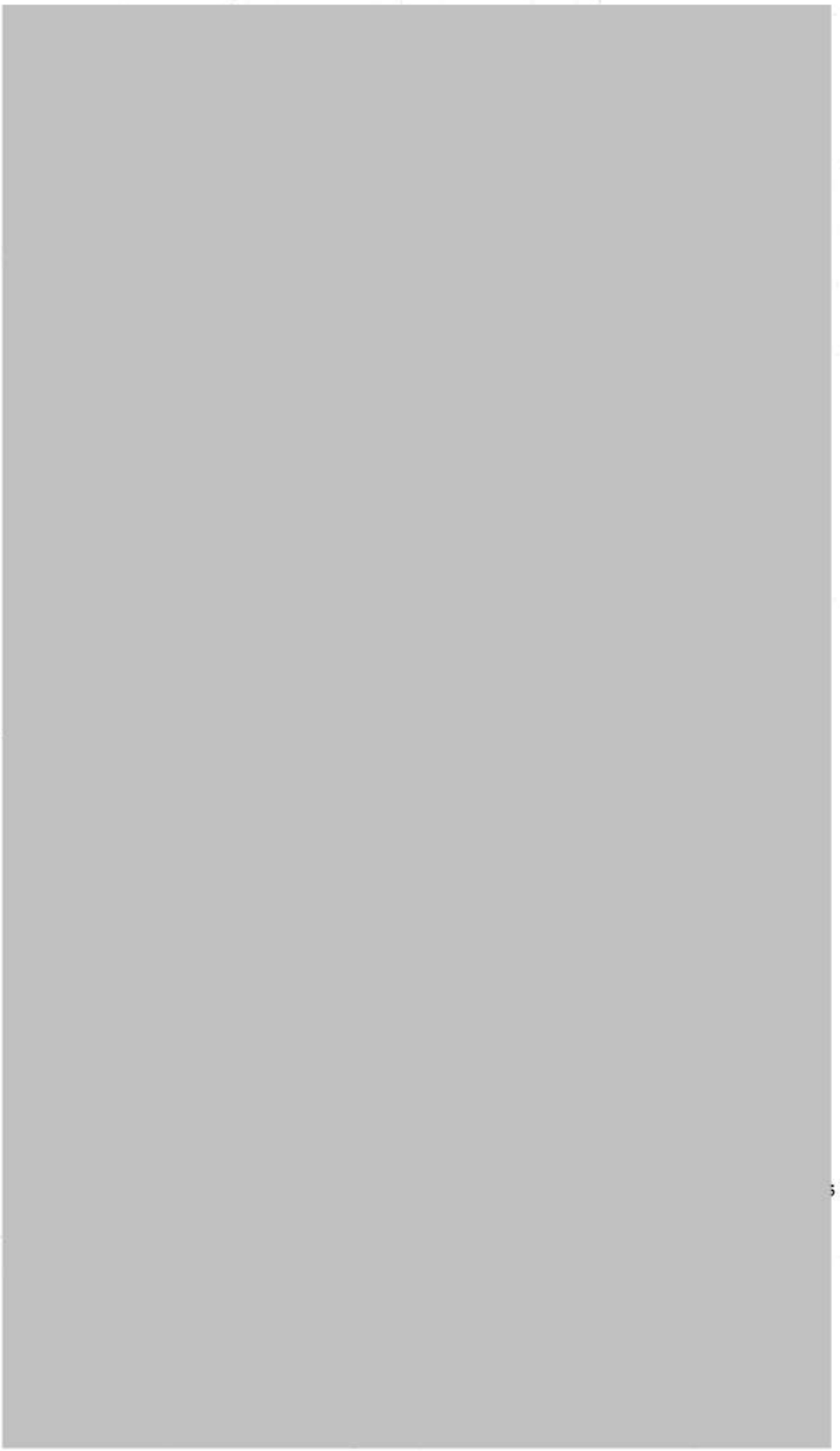
The Canadian Association for the Disabled is pressing for inclusion of "disability" (presumably broader than physical and mental handicap) as a ground of non-discrimination.

Finally, there is concern within the federal government and among the provincial governments about the financial and other implications of including "age" in the non-discrimination grounds. The Advisory Council on the Status of Women also urge deletion of "age", fearing that its inclusion might weaken the strictness of the test that the courts would apply when judging discrimination on other grounds.

It may be possible to meet some of the foregoing concerns, but responding to all of them would be very difficult.

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[redacted]

Recommendation: That certain amendments be made to the non-discrimination rights to meet some of the concerns raised by the Advisory Council on the Status of Women and that "age" be withdrawn as a ground of non-discrimination.

(See Annex 6 for draft amendments.)

5. Section 20 - Language of Service to the Public

The latter part of section 20 (dealing with the right to receive services in English or French from federal offices other than head or central offices) has been criticized by the Commissioner for Official Languages on two grounds. First, as worded, the section would not require a regional office to provide services in both languages to persons living outside the area defined as "bilingual". Second, the section reintroduces the concept of "bilingual districts" which has never been implemented under the Official Languages Act.

These are legitimate concerns, and it would be desirable to amend the latter part of the section so that the right to communicate with and receive services from any other federal office in either official language would be based, not on the number of persons in an area using the languages, but on their being a significant demand for communications with and services from any office in both official languages. This would be a much more useful test than one based simply on the number of residents in an area who speak the minority language.

Recommendation: That section 20 be amended in accordance with the principle suggested above.

(See Annex 7 for draft amendment.)

6. Section 23 - Minority Language Education Rights

Several issues have arisen in relation to this section both in the Committee proceedings [redacted]

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The principal issues relate to (1) the linguistic qualifications for entitlement to minority language education, (2) the national status of persons entitled to minority language education, (3) the continuity of education in the minority language, (4) the use of a "numbers warrant" test for minority language education and (5) the administration of minority language schools.

(1) Linguistic Qualifications for Minority Language Education

Section 23(1) now provides a single test for eligibility for minority language education: that one parent has as his "mother tongue" (first language learned and still understood) that of the English or French minority of the province where he resides.

While most witnesses before the Committee have not questioned this qualification (the Franco-manitoban Society favors a free choice for all), [redacted] This is an important problem in Quebec since Bill 101 permits a parent who has been educated at the primary school level in English in Quebec to have his children educated in English regardless of the parent's mother tongue.

It has thus been suggested that the "mother tongue" qualification be replaced with an objective test based upon the language in which the parent has been educated in Canada (ie. if one of the parents has received his primary education in Canada in the minority language of the province in which he resides, his children would be entitled to be educated in that language).

While this approach would be suitable for the English language minority in Quebec, it would not meet the needs of the francophone minorities in other provinces. In most other provinces the availability of French language education is a fairly recent development. Consequently, many parents whose mother tongue is French will (of necessity, not choice) have received their education in English, and would not have the right to send their children to French language schools.

In light of the foregoing, it is likely necessary to consider modifying section 23(1) to incorporate two alternate qualifications for the right to minority language education. The first qualification would be where a parent has received his primary education in Canada in the minority language of the province of residence. The second qualification would be where the mother tongue of the parent is that of the minority population of the province of residence.

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This approach would incorporate the test now used in Quebec (except it would apply to parents educated anywhere in Canada not just Quebec) while still permitting the test of mother tongue which is more appropriate in provinces other than Quebec.

(2) National Status for Minority Language Education

Section 23 now limits minority language education rights to parents who are Canadian citizens. This has been attacked as being either too restrictive or too broad.

The Commissioner for Official Languages, the Canadian Jewish Congress, the Positive Action Committee, the French Canadian Association of Ontario, the Council of Quebec Minorities and the Franco-manitoban Society have all contended that right should extend to all persons in Canada regardless of national status, pointing out that only Quebec (through its "educated in English in Quebec" clause) limits the right of minority education so as to effectively exclude not only immigrants but also citizens who do not meet that test.

On the other hand, there is considerable concern in Quebec and [redacted] that extension of the right to citizens will endanger the efforts to establish French as the principal language in that province by permitting English speaking immigrants, upon becoming citizens, to send their children to English schools. This, coupled with the fact that English speaking citizens moving to Quebec from other parts of Canada will be able to send their children to English schools, has generated a genuine concern about the impact of section 23 on the protection of the French language in Quebec. There is also a concern that the more section 23 deviates from the provisions of Bill 101, the more difficult it will be to gain acceptance for it in Quebec, since it will upset an educational regime now working well and generally accepted in that province.

While both arguments have some measure of validity, it is felt that on balance the best approach to this issue is to maintain the present qualification of citizenship. It provides some assurance to Quebec that immigrants and other non-citizens will have to send their children to French schools, and at the same time does not draw an invidious distinction between present and future citizens.

(3) Continuity of Minority Language Education

Under section 23(2) provision is made for children of the same family to be educated in the same language when a family moves from one province to another even though such children might not qualify for minority language education either under the "mother tongue" or "language of education" of the parents test.

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While this provision has not been criticized as such, it has been noted that it is not broad enough to encompass the same situation where there is no interprovincial movement of a family. In other words, it does not provide for a case where, for example, English mother tongue parents, educated in English and resident in Ontario have one of their children enrolled in a French language school. In order to ensure that these parents would have a right to have all their children educated in French in Ontario, section 23(2) should be drawn more broadly to cover any situation involving continuity of education within a family in the same language.

(4) Minority Language Education "Where Numbers Warrant"

Section 23 now assures the right to minority language education only where the number of minority language students in any area of the province is sufficient to warrant provision of educational facilities out of public funds.

Most of the witnesses before the Committee have argued against the desirability and necessity of this qualification. It is contended that the provision imposes a limit on the minority not imposed on the majority, regardless of how few majority language students there may be in a given area. (This, of course, ignores the point that section 23 guarantees no rights for the majority.) In addition, it is argued that with the ability to bus or board children, or to provide education by correspondence or closed-circuit television, there is really no situation in which any minority language student need be denied education in the minority language. This is perhaps a better argument.

In any case the qualification of "where numbers warrant" will cause problems of interpretation and will enable provinces to continue to limit access of minority language students to educational facilities. It has been demonstrated by Quebec and New Brunswick that the necessary means can be found for providing minority language education to all who qualify for it. Thus, it would likely be desirable to consider dropping the "numbers warrant" provision, closing off a loophole which could take many years for the courts to resolve.

Militating against this modification is the fact that the government has justified including minority language education rights in the Charter on the basis of the 1978 "Premiers Agreement" that such rights should be provided "where numbers warrant". To eliminate this qualification would undermine the legitimacy of the government's position, and would likely bring criticism from those provinces that do specify minimum numbers for allowing minority language instruction. On the other hand, it can be pointed out that section 1 of the Charter as modified would still enable provinces to impose reasonable limits on the right to minority language education where it could be demonstrated that to provide the right was unjustified in particular cases.

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Based on the arguments by witnesses before the Committee [redacted], it is felt that the government should consider dropping the qualification.

(5) Administration of Minority Language Schools

Section 23 as now drafted does not provide for minority language schools to be administered by school boards composed of members of the minority language community.

Many witnesses before the Committee have urged that such a provision must be included if the right to minority language education is to be made effective.

[redacted]

Recommendation: That the government agree to propose amendments to section 23 that would

(a) provide two alternative qualifications for minority language education rights: under the first qualification, a child could be educated in the minority language of a province if one of his citizen parents had received his primary instruction in that language in Canada. Under the second qualification, a child could be educated in the minority language if that language is the "mother tongue" of one of his citizen parents.

(b) provide for all children of a citizen to receive their education in the minority language in which any one of the children has commenced his education, even though the parents do not qualify under the tests set out in (a) above; and

(c) eliminate the qualification of "where numbers warrant" for minority language education.

That the government not propose any amendments enabling minority language school boards to administer minority language schools, or changing the qualification of citizenship.

(See Annex 8 for draft amendments.)

7. Section 24 - Undeclared Rights and Freedoms

The native peoples groups are pressing for expansion of section 24 so that it would become a guarantee of specific native rights such as aboriginal rights, treaty rights and control by native people over their cultural, economic and educational interests.

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Such modification would convert section 24 from a "non-prejudice" clause (ie. one which simply states that the rights enumerated in the Charter are not to be interpreted as depriving the native peoples of any particular rights they have) into a constitutional confirmation of certain native rights. This, as the government has indicated to the native peoples leaders recently, would be premature since discussions are now proceeding with a view to determining what native rights should be constitutionally guaranteed. There has been no agreement on these rights yet (even among the native groups themselves), and consequently it would be inappropriate and dangerous to attempt to specify them in the constitution now.

If section 24 were to make any reference to specific native rights, such as aboriginal rights or treaty rights, this would have the effect of entrenching them without knowing the import of what was being entrenched. It would thus be left to the courts to decide what aboriginal rights means -- does it mean, as some native groups contend, a right to self-government, to separate nations, to control over education? Equally, if reference to treaty rights were included, this would make them unalterable by Parliament in the future. In addition, mention of treaty rights would meet none of the concerns of those native people not covered by treaties.

In conclusion, any attempt to be specific with respect to native rights in the Charter would seriously prejudice the future ability of the federal government to negotiate with the native peoples the rights which might legitimately be placed in the constitution.

Recommendation: That no alterations be made to section 24 of the Charter.

8. Section 25 - Primacy of Charter

(1) Relationship of Charter rights to other Provisions of Constitution

A question has been raised as to whether the wording of section 25, making any law that is inconsistent with the Charter inoperative, might be construed so as to render inoperative a provision of the Constitution itself. For example, would the provisions respecting succession to the Throne (giving precedence to males and requiring the Monarch to be of the Protestant faith) be found to be in conflict with the non-discrimination rights?

It would seem evident that the Charter, as a part of the Constitution, would not operate to invalidate other provisions of the Constitution. The intended purpose of section 25 is to invalidate laws made pursuant to the Constitution, whether by legislation or common law, and this is likely to be the meaning that would be given to the section.

However, to remove any doubt on this matter, it would be desirable to reword section 25 to make it clear that the Constitution is the supreme law of Canada, and that any law inconsistent with its provisions is, to the extent of the inconsistency, of no force and effect.

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This section, which would become section 52, would thus give primacy to all provisions of the Constitution including those in the Charter, while at the same time removing any question as to conflict between Charter rights and other provisions of the Constitution.

Recommendation: That the government propose the amendment indicated above.

(See Annex 9 for draft amendment.)

(2) Remedies for Breach of Charter Rights

Doubts have been raised in Committee by the Canadian Jewish Congress and the Canadian Civil Liberties Association that, in the absence of an express provision, the courts would not be able to order any specific remedies for a breach of Charter rights. This is particularly relevant where the breach in question is not that occasioned by a conflicting law, but rather by the action of an official where such action is not pursuant to any law as, for example, a police officer who denies a detained suspect the right to obtain counsel.

While it is arguable that the courts would, in such instances, create the necessary remedy, this is not entirely certain. Therefore, it would be prudent to include in the Charter an express provision enabling the courts to grant an appropriate remedy in cases where no other legal recourse is available.

Such a provision was contained in the federal drafts of the Charter tabled during the course of the summer, but was deleted after arguments by the provinces that such a provision was unnecessary and might give the courts the power to invent new remedies. However, it is felt that ensuring effectiveness of the Charter rights is sufficient justification for including a "remedies" section.

Recommendation: That the government propose an amendment that would add a "remedies" section to the Charter, empowering the courts to grant certain remedies for breach of Charter rights where no other effective remedy is available. The new provision would be inserted as section 25.

(See Annex 10 for draft amendment.)

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B. EQUALIZATION AND REGIONAL DISPARITIES

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9. Section 31 - Equalization and Regional Disparities

[redacted]

Several alternatives for an equalization and regional disparities provision were considered at the various meetings of the continuing committee of Ministers on the Constitution (C.C.M.C.). Each alternative draft contained the provision set out in the Resolution as subsection 31(1). Subsection 31(2) differed in the various drafts as follows:

(a) February 1979 Best Efforts Draft:

"(2) Parliament and the government of Canada are further committed to the principle of making equalization payments to provinces that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation, or to the principle of making arrangements equivalent to equalization payments to meet the commitment specified in section 96(1)(c)." (i.e. 31(1)(c))

(b) [redacted]

(c) [redacted]

[redacted]

Recommendation: That an amendment to subsection 31(2) along the lines of [redacted] be approved for submission to the Committee if it appears that Premier Hatfield or others wish to press for such an amendment.

(See Annex 11 for draft amendment.)

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C. INTERIM AMENDING PROCEDURE AND RULES FOR ITS REPLACEMENT

10. Section 38 - Provincial Alternative Proposal for Amending Procedure

(1) Subsection 38(1): Suggestions have been made that a provincial proposal for the amending procedure should be submitted to the people by the referendum procedure if seven provinces having eighty per cent of the population approve the procedure. The proposed resolution requires approval by eight provinces having eighty per cent of the population, which would make it more difficult for the provinces to acquire the support necessary to trigger the referendum requirement.

Recommendation: That no amendment be submitted to the Committee as a change approved by the government, but that approval of an amendment be given to the effect that, if a member of the Committee moves an amendment along the lines indicated above, the government would not oppose the amendment.

s.23

(2) Subsection 38(3): Subsection 38(3) has been criticized for two reasons:

(a) It is seen as being anomalous that, after Parliament has approved one amending procedure in the Resolution, the government could put forward a different amending procedure for approval in the amending procedure referendum without reference to Parliament; and

(b) It is considered to be unfair that the government should be able to put forward changes at the last minute after the provinces have made their proposal.

[redacted]

The options for consideration are:

(a) to leave paragraph 38(3)(a) unchanged;

(b) to amend paragraph 38(3)(a) to substitute for the words "proposed by the government of Canada by depositing a copy thereof with" the words "proposed by resolution of the Senate and House of Commons and deposited with"; or

(c) to amend paragraph 38(3)(a) to delete all references to an alternative amendment to be proposed by the government or Parliament of Canada. (If this were done, however, the federal government would be precluded from putting forward the "Toronto consensus" formula as an alternative to any formula proposed by the provinces.)

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Recommendation: That an amendment be put forward to the Committee to amend paragraph 38(3)(a) to delete all references to an alternative amendment to be proposed by the government or Parliament of Canada. If this recommendation is not acceptable, then it is recommended that an amendment be proposed that would require any federal alternative put forward to be first approved by resolutions of Parliament.

(See Annex 12 for draft amendment.)

11. Section 40 - Rules for Holding Referendum on Amending Procedure

There has been some criticism by [redacted] and members of the opposition that rules respecting a referendum are to be made by Parliament. The suggestion has been made that the rules should be approved by an independent committee with both federal and provincial representation. The suggested change relates both to the possible referendum respecting the amending procedure that may be held under section 38 and to referenda to amend the Constitution that may be held under section 42.

It is recommended that the criticisms be met by amending sections 40 and 46. The proposed amendment to section 40 would create a commission to propose rules for the referendum respecting the amending procedure. The proposed amendment to section 46 would provide for the creation of a similar commission that would propose rules applicable to a referendum respecting amendments to the Constitution. It is recommended that the bodies be called "commissions" rather than committees because commissions are more formal bodies than committees and are usually regulatory in nature, which is the intended function of these committees. Further, the issuance of commissions establishing the bodies would provide evidence, in court proceedings to challenge the rules, that the prerequisites to the making of the rules had been met.

The amendment to section 40 would create an independent rules commission consisting of the Chief Electoral Officer of Canada as Chairman and a federal and provincial representative. If a majority of provinces do not agree on a representative, a person would be chosen by the Chief Justice of Canada from among the persons recommended by provincial governments. If no names are put forward by the provincial governments, the Chief Justice would choose a nominee from among such persons as he considers fit.

The commission would recommend rules to the Governor General and the rules would be made by proclamation issued by the Governor General. The rules would have the force of law and would have primacy over other laws of Parliament and the legislatures.

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Recommendation: That an amendment to section 40 be approved along the lines outlined above.

(See Annex 13 for draft amendment.)

D. PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

12. Section 41 - Provinces Sufficient to Approve Amendments to Constitution

Subparagraph 41(1)(b)(ii) relates to the number of Atlantic provinces sufficient to approve an amendment to the Constitution. There has been very confused criticism of this subparagraph from opposition members centering around the fact that Prince Edward Island could never join with one other province to approve a constitutional amendment. This is because Prince Edward Island cannot, together with any other Atlantic province, make up the fifty per cent of the population necessary to approve an amendment. The opposition notes that the Victoria Formula did not have such a population requirement for the Atlantic provinces and requests that the population requirement be dropped from subparagraph 41(1)(b)(ii).

A similar population requirement is contained in subparagraph 41(1)(b)(iii) in respect of the Western provinces. However, this requirement was contained in the Victoria Charter

To keep the population requirement gives a stronger veto power whereas to drop the population requirement makes it easier to secure amendments. The suggestion that the population requirement be dropped in respect of the Atlantic provinces has been paralleled by suggestions from Committee members (some western) that the population requirement be dropped in respect of the Western provinces because Manitoba and Saskatchewan lack the population to together approve an amendment on behalf of the Western provinces.

Recommendation: That

(a) The Victoria Charter be strictly adhered to and an amendment to subparagraph 41(1)(b)(ii) be introduced to delete the population requirement for the Atlantic provinces; and

(b) No amendment to subparagraph 41(1)(b)(iii) to delete the population requirement in respect of the Western provinces be put forward.

(See Annex 14 for draft amendment to subparagraph 41(1)(b)(ii).)

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13. Section 42 - Authorization of Referendum to Amend the Constitution

There has been considerable criticism, [redacted] of section 42. Section 42 is seen as an alternative to section 41 and there is fear that a referendum to approve an amendment to the Constitution might be authorized by the Senate and House of Commons without prior recourse to seek the views of provincial legislative assemblies. The argument is that section 42 should only be used as a deadlock-breaking mechanism and should not be called into play unless the provinces have failed to approve an amendment. [redacted]

This lack of reciprocity in the triggering of a referendum has been the subject of severe criticism [redacted] but also by opposition members in the Committee. While it is recognized that the provincial governments should not have the power to initiate a referendum on their own, it is not so evident that they should not have some ability to limit the power of Parliament to authorize a referendum on constitutional amendment.

It is suggested that consideration be given to making a further change in section 42 which would ensure that a referendum is clearly a deadlock-breaking mechanism that would come into play when an amendment under section 41 has failed. Such a provision would specify that Parliament might only initiate a referendum where three provincial legislatures have passed resolutions approving an amendment proposed under section 41. This would ensure that there is some provincial government support for the amendment in issue.

Recommendation: That the government propose amendments to section 42 that would

(a) make the referendum procedure a clear deadlock-breaking mechanism to be invoked only where an amendment cannot be achieved under the section 41 procedure;

(b) enable the referendum procedure to be invoked only when twelve months have elapsed after Parliament has approved an amendment under section 41 and the requisite number of provinces have not approved the amendment during that period;

(c) ensure that a referendum be held within three years after the amendment has initially been approved by Parliament; and

(d) preclude Parliament from initiating referendum unless any three provincial legislatures have concurred in an amendment proposed under section 41.

(See Annex 15 for draft amendment.)

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14. Section 44 - Amendments without Senate Approval

An amendment is proposed to section 44 consequential on the amendment proposed in respect of the proposed new section 51 relating to the powers of the Senate. Section 44 relates to the procedure for amending the Constitution where there is no Senate approval. By reason of the proposed amendment to section 44, amendments to the Constitution relating to the bicameral structure of Parliament that do not have Senate approval could not be amended under section 44. Instead they would be made pursuant to a special procedure provided for in the proposed new section 51. (See the comments on sections 50 and 51.)

Recommendation: Assuming that the proposed new section 51 is approved, that approval be given to make the necessary consequential amendment to section 44.

(See Annex 16 for draft amendment.)

15. Section 46 - Rules for Holding Referendum on Amendments to the Constitution

See the comments on section 40. A Referendum Rules Commission contemplated by the amendment to section 46 would be established, whenever a referendum is to be held on an amendment, to recommend rules for that referendum. It would operate on the same basis as a commission established under section 40.

Recommendation: That an amendment to authorize the establishment of a rules commission to recommend to the Governor General rules for a referendum to amend the Constitution be approved.

(See Annex 17 for draft amendment.)

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A0453952_25-000682

16. Section 47 - Limitation on Use of General Amending Procedure

[redacted] So far as the relationship between sections 41 and 43 is concerned, under the rules of statutory interpretation, it is highly unlikely that a court would find that an amendment relating to one or more but not all provinces could be made under section 41 or 42 without the consent of the provinces concerned. However, the matter can be put beyond doubt by a technical amendment to section 47 that sets out the limitations on the use of the general amending procedure.

[redacted]

While this concern would not seem justified, given the requirements for amendments under sections 41 and 42, it is nevertheless strongly felt by Newfoundland that other provinces and Parliament could "gang up" on one province to change the amending procedure under which the consent of that province is now required.

[redacted] it would likely be advisable to include an amendment to section 47 that would provide that amendments to amending procedures in the Constitution relating to any provision applying to one or more but not all provinces can be made only with unanimous consent of all the legislatures and Parliament.

Recommendation: That approval be given to two amendments to section 47 to put it beyond doubt that the procedures prescribed in section 41 or 42 do not apply in respect of an amendment referred to in section 43, and to require unanimity for amendments to amending procedures relating to any provision of the Constitution applying to one or more but not all provinces.

(See Annex 18 for draft amendment.)

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17. Sections 50 and 51 - Amendments subject to the General Amending Procedure - Amendments relating to the Senate

(1) Method of Selecting Senators

The Senate Reference to the Supreme Court indicated that certain amendments relating to the Senate would not come within the legislative authority of the Canadian Parliament but could only be made by the United Kingdom Parliament. This would include amendments relating to the method of choosing Senators. Under the Resolution, the method of choosing Senators would come within the powers of Parliament. Some of the concerns of the Senators in respect of the proposed Resolution might be overcome if the method of choosing Senators is made subject to the general amending procedure of section 41 by adding this subject to the list in section 50.

Recommendation: That an amendment to section 50 be approved adding the method of selecting Senators to the list in that section.

(See Annex 19 for draft amendment.)

(2) Protection of Bicameral Structure of Parliament

Concern has been expressed by some Senators that the Senate could easily be abolished by the House of Commons using the general amending procedure. If the House of Commons and provinces reach agreement on a new Upper House, the Senate could be abolished using the procedure now set out in sections 41 and 44. Also the Senators object to any procedure whereby they can be by-passed. It is thought that these objections might be overcome if amendments relating to the abolition of the Senate are subjected to the further test of a referendum to seek the views of the people. It would be difficult to argue that provincial interests are being by-passed if an amendment relating to the bicameral structure of Parliament must be approved not only twice by the House of Commons but also by the provincial legislative assemblies and by the people through a referendum.

Recommendation: That, if it is considered essential in order to meet the concerns of Senators to amend the proposed Resolution in respect of the power to by-pass the Senate, the matter be handled by the addition of a new section 51 as follows:

(a) in the case of amendments to the Constitution, other than amendments relating to the bicameral structure of Parliament, the Resolution continue to provide that the amendments may be made without reference to the Senate where they are approved by the House of Commons twice and by the provinces; and

(b) in the case of amendments relating to the bicameral structure of Parliament, the Resolution be amended to provide that the Senate can be by-passed if the Resolution is approved by the House of Commons twice and by the provinces, and, in addition, the amendment is approved at a referendum.

(See Annex 20 for draft amendment.)

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E. GENERAL

18. Sections 52 and 53 - Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

The support of [redacted] and that of the N.D.P. is conditional upon the inclusion in the Resolution of an amendment relating to natural resources. An amendment has been worked out with the N.D.P. based, in part, on the "best efforts draft" considered at the First Ministers' Conference in February 1979. The amendment would be inserted as an amendment (section 92A and the Sixth Schedule) to the Constitution Act, 1867 (the B.N.A. Act, 1867).

The amendment would

(a) give the provinces express and exclusive authority to make laws relating to various aspects of non-renewable natural resources, forestry resources and electrical energy; i.e. the exploration for, and the development, conservation and management, as applicable, of those resources;

(b) give the provinces a concurrent power to make laws respecting the export of the primary production of such resources from the province to another part of Canada, subject to a prohibition against discrimination in respect of prices for or supplies of production exported to other provinces;

(c) retain for Parliament unqualified paramount legislative authority in respect of inter-provincial (and international) trade in those resources; and

(d) permit provincial direct or indirect taxation of those resources, subject to a requirement that no differentiation in taxes be made between production retained in the province and production exported to other provinces.

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The resources provision also defines "primary production" in a Schedule and preserves pre-existing provincial powers.

[redacted] However, it has been agreed to by the N.D.P.

Recommendation: That approval be given to the amendment described above.

(See Annex 21 for draft amendment.)

III TECHNICAL AMENDMENTS

A. CANADA ACT

1. Section 2 - Non-Application of United Kingdom Laws to Canada

In the French version of this section, reference is made to "droit positif du Canada", whereas the English version simply refers to "law" of Canada.

Recommendation: That the French version should have the word "positif" dropped in the event that this section is opened for amendment in Committee.

B. CONSTITUTION ACT, 1980

1. Section 3 - Democratic Rights

The French version, in using the singular "ce droit ne peut", leaves the implication that only one right is involved rather than two: the right to vote and the right to be a candidate for elective office.

Recommendation: That an amendment be made to change "ce droit ne peut" to read "ces droits ne peuvent".

(See Annex 22 for draft amendment.)

2. Section 4 - Democratic Rights

The French version of subsection 4(1) speaks only of the "date of report of the writs" while the English version speaks of the "date fixed for the return of the writs". This is an important difference since under the French version there is no fixed date and in practice the writs are returned on dates different to the fixed date.

Recommendation: That the French version of subsection 4(1) be amended to refer to "la date fixée pour le retour des brefs".

(See Annex 23 for draft amendment.)

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3. Section 8 - Legal Rights

In error, the French text relating to searches and seizures included the term "abusives" which was dropped from the English text when the wording of the section was modified.

Recommendation: That the term "abusives" be dropped from the French text unless a substantive amendment, as discussed above, is made to section 8.

(See Annex 24 for draft amendment.)

4. Section 11 - Proceedings in Criminal and Penal Matters

The use of "he or she" in paragraphs 11(f) and (g) (protection against double jeopardy and benefit of lesser penalty), while grammatically proper, would exclude corporate entities from the benefit of these rights. Since this is not the intention, the "he or she" should be replaced by the expression "that person" which includes a corporation.

Recommendation: That an amendment be put forward to replace "he or she" with "that person" in paragraphs 11(f) and (g).

(See Annex 25 for draft amendments.)

5. Section 12 - Cruel and Unusual Punishment

The French text of the marginal note to this section now reads "punition". A more accurate description of what the section contains is "cruauté".

Recommendation: That the marginal note in French be changed to read "cruauté".

6. Section 13 - Protection Against Self-Crimination

This section as drafted is open to being interpreted as limiting the protection against the subsequent use of incriminating evidence against a person to criminal proceedings only. It should thus be amended to make it clear that the protection extends to subsequent criminal and civil proceedings.

Recommendation: That section 13 be amended to clarify the scope of the protection against self-crimination.

(See Annex 26 for draft amendment.)

7. Section 38 - Referendum on Amending Procedure

The English text of subsection 38(2) refers to a provincial alternative amending procedure being "deposited" with the Chief Electoral Officer of Canada. Subsection 38(3), which refers back to subsection 38(2), uses the word "filed". The same word should be used in both subsections.

Recommendation: That the word "deposited" be substituted for the word "filed" in subsection 38(3).

(See Annex 27 for draft amendment.)

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A0453952_30-000687

8. Section 41 - General Procedure for Amending Constitution

(1) It is suggested that the words "à la fois" be added in the opening words of subsection 41(1) of the French version after the word "autorisée". This amendment is not necessary but has been suggested to put it beyond doubt that the requirements of both paragraphs 41(1)(a) and (b) must be met before an amendment to the Constitution may be made.

(2) It has been suggested that in the opening words of paragraph 41(1)(b) of the French version, the words "cette majorité doit comprendre" be changed to the more ususal structure "cette majorité comprend".

Recommendation: That no amendment be drafted but that these changes be incorporated if an amendment is put forward for any other reason.

9. Section 50 - Office of the Queen, etc.

In the French version of paragraph 50(a), the expression "fonctions" is used as the equivalent of the English word "office". It is not a satisfactory equivalent and it is suggested that the word "charge" would express the idea more accurately.

Recommendation: That a technical amendment to paragraph 50(a) to correct the French version as indicated above be approved.

(See Annex 28 for draft amendment.)

10. Section 59 - Short Title

In the French version, the word "abrége" was inadvertently omitted after the word "titre".

Recommendation: That a technical amendment be made to modify the word "titre" in French by the word "abrége" and to add the expression "short title" in the English marginal note.

(See Annex 29 for draft amendment.)

11. Schedule I to Constitutional Amendment Act, 1980

In the Schedule to the Act, the titles of a number of Acts are modernized as in the changes from British North America Acts to Constitutional Amendment Acts. In item 9 of the French version of the Schedule, the name of the Canada (Ontario Boundary) Act, 1889 is changed from Acte du Canada (limites d'Ontario) 1889 to Loi de 1889 sur le Canada (frontières de l'Ontario). The word "frontières" is not appropriate for inter-provincial boundaries.

Recommendation: That the word "limites" be substituted for the word "frontières" in the French version of Item 9 of Schedule I.

(See Annex 30 for draft amendment.)

Minister of Justice

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A0453952_31-000688

SECRET

ANNEXES to

ANNEXES au

Serial No. 656-80 MC
Série

November 25, 1980

A N N E X E S

to

MEMORANDUM TO MINISTERS

from

MINISTER OF JUSTICE

dated November 25, 1980

respecting

Possible Amendments to Proposed Resolution on

Constitution of Canada

*

A N N E X E S

du

MÉMOIRE AUX MINISTRES

du

MINISTRE DE LA JUSTICE

daté du 25 novembre 1980

sur

d'éventuelles modifications

au Projet de résolution

concernant la

Constitution du Canada

A0453952_32-000689

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 1 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Rights and Freedoms in Canada

"1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society."

ANNEXE 1
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 1 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droits et libertés au Canada

«1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit et seulement dans des limites raisonnables et manifestement justifiables dans une société libre et démocratique.»

Section 1 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 1:

Rights and Freedoms in Canada

" 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

«1. La *Charte canadienne des droits et libertés* garantit les droits et libertés énoncés ci-après, sous les seules réserves normalement acceptées dans une société libre et démocratique de régime parlementaire.»

Droits et libertés au Canada

Serial No. / Série No. 656-80 MC

Moved that

The proposed Resolution respecting the Constitution of Canada be amended by deleting sections 8 and 9 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Search and seizure

"8. Everyone has the right to be secure against unreasonable search and seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned."

ANNEXE 2
L3 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, aux articles 8 et 9 du projet de Loi constitutionnelle de 1980, des articles suivant:

Fouilles, perquisitions et saisies

«8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies abusives.

Détention ou emprisonnement

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.»

Sections 8 and 9 of the proposed Constitution Act, 1980 at present read as follows:

Texte actuel des articles 8 et 9:

Search or seizure

" 8. Everyone has the right not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law.

« 8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies abusives dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectuées dans les conditions que celle-ci prévoit.

Fouilles, perquisitions et saisies

Detention or imprisonment

9. Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law."

9. Chacun a droit à la protection contre la détention ou l'emprisonnement dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit.»

Détention ou emprisonnement

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 11(d) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(d) not to be denied reasonable bail without just cause;"

ANNEXE 3
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'alinéa 11(d) du projet de Loi constitutionnelle de 1980, de l'alinéa suivant:

«(d) de ne pas être privé sans motif valable d'une mise en liberté assortie d'un cautionnement raisonnable;»

Paragraph 11(d) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'alinéa 11(d):

Proceedings in criminal and penal matters / Affaires criminelles et pénales

"11. Anyone charged with an offence has the right

(*d*) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law; "

« 11. Tout inculpé a le droit:

d) de ne pas être privé d'une mise en liberté assortie d'un cautionnement raisonnable, sauf pour des motifs fondés sur la loi et dans les conditions que celle-ci prévoit; »

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraphs 11(e) and (f) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence under domestic or international law;

(f) not to be tried or punished more than once for an offence of which the person has, in Canada, been finally convicted or acquitted;"

ANNEXE 4
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, aux alinéas 11 e) et f) du projet de Loi constitutionnelle de 1980, des alinéas suivants :

«e) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction prévue par le droit interne ou le droit international;

f) de n'être poursuivi ou puni qu'une fois pour une infraction dont il a déjà été, au Canada, définitivement acquitté ou déclaré coupable;»

Paragraphs 11(e) and (f) of the proposed Constitution Act, 1980 at present read as follows:

Texte actuel des alinéas 11(e) et (f):

Proceedings in criminal and penal matters

"11. Anyone charged with an offence has the right

(e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;

(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and"

Affaires criminelles et pénales

«11. Tout inculpé a le droit:

e) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction;

f) de n'être poursuivi ou puni qu'une fois pour une infraction dont il a déjà été définitivement acquitté ou déclaré coupable; »

ANNEX 5

November 21, 1980

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

(a) adding immediately after paragraph 11(d) of the proposed Constitution Act, 1980, the following paragraph:

> "(e) except in the case of an offence under military law, to the benefit of trial by jury where the maximum punishment for the offence of which the person has been charged is imprisonment for five years or a more severe punishment;"

; and

(b) relettering paragraphs 11(e), (f) and (g) of the proposed Constitution Act, 1980, as paragraphs 11(f), (g) and (h) respectively.

ANNEXE 5
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par:

a) insertion, après l'alinéa 11 d) du projet de Loi constitutionnelle de 1980, de l'alinéa suivant:

> «e) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;»;

b) substitution, aux désignations d'alinéa 11 e), f) et g) du projet de Loi constitutionnelle de 1980, des désignations d'alinéa 11 f), g) et h) respectivement.

A0453952_37-000694

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting the heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 and by substituting therefor the following:

"Equality Rights

Equality under the law and equal protection and benefit of the law

15. (1) Everyone is equal under the law and has the right to the equal protection and equal benefit of the law without discrimination on the basis of race, national or ethnic origin, colour, religion or sex.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion or sex."

ANNEXE 6
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié, par substitution à l'article 15 et à sa rubrique du projet de Loi constitutionnelle de 1980, de l'article et de la rubrique suivants :

«Droits à l'égalité

Egalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) Tous sont égaux devant la loi et ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion ou le sexe.

Programmes de promotion sociale

(2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des personnes et des groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion ou de leur sexe.»

The heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 at present read as follows:

Texte actuel de l'article 15 et de la rubrique:

"Non-discrimination Rights

Equality before the law and equal protection of the law

15. (1) Everyone has the right to equality before the law and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative action programs

(2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups. "

«Droits à la non-discrimination

Egalité devant la loi et protection égale de la loi

15. (1) Tous sont égaux devant la loi et ont droit à la même protection de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge ou le sexe.

Programmes d'action sociale

(2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des personnes et des groupes défavorisés.»

SECRET

ANNEX 7

November 21, 1980

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Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 20 of the proposed Constitution Act, 1980 and by substituting therefor the following section:

Communications by public with federal institutions

"20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where it is determined, in such manner as may be prescribed or authorized by Parliament, that there is a significant demand for communications with and services from that office in both English and French."

ANNEXE 7
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 20 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Communications entre les administrés et les institutions fédérales

"20. Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout bureau de ces institutions dans le cas où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement, que l'emploi tant du français que de l'anglais pour communiquer avec ce bureau ou pour en recevoir les services fait l'objet d'une demande importante."

Section 20 of the proposed Constitution Act, 1980 at present reads as follows:

Communications by public with federal institutions

"20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language."

Texte actuel de l'article 20:

<<20. Chacun a, au Canada, à titre privé, droit à l'emploi de la langue officielle de son choix pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions situé dans une région du Canada où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement, qu'une partie importante de la population emploie la langue qu'il a choisie.>>

Communications entre les administrés et les institutions fédérales

A0453952_39-000696

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 23 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Language of instruction

"23. (1) Citizens of Canada, who have received their primary school instruction in English or French in Canada and who reside in a province in which the language of that instruction is that of the English or French linguistic minority population of that province, have the right to have their children receive primary and secondary school instruction in that province in that language.

Idem

(2) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive primary and secondary school instruction in that province in that language.

Continuity of language of instruction

(3) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada have the right to have all their children receive primary and secondary school instruction in that language."

Section 23 of the proposed Constitution Act, 1980 at present reads as follows:

Language of instruction

"23. (1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

Continuity of language of instruction

(2) Where a citizen of Canada changes residence from one province to another and, prior to the change, any child of that citizen has been receiving his or her primary or secondary school instruction in either English or French, that citizen has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language if the number of children of citizens resident in the area of the province to which the citizen has moved, who have a right recognized by this section, is sufficient to warrant the provision out of public funds of minority language educational facilities in that area."

A0453952_40-000697

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 23 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Langue d'instruction	«23. (1) Les citoyens canadiens qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue d'instruction est, à ce niveau, celle de la minorité linguistique française ou anglaise de la province ont le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.
Idem	(2) Les citoyens canadiens dont la première langue apprise et encore comprise est celle de la minorité linguistique française ou anglaise de la province où ils résident ont le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.
Maintien de la langue d'instruction	(3) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.»

Texte actuel de l'article 23 du projet de Loi constitutionnelle de 1980 :

Langue d'instruction	«23. (1) Les citoyens canadiens dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de leur province de résidence ont le droit de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité dans toute région de la province où le nombre des enfants de ces citoyens justifie la mise sur pied, au moyen de fonds publics, d'installations d'enseignement dans cette langue.
Continuité d'emploi de la langue d'instruction	(2) Le citoyen canadien qui change de résidence d'une province à une autre a le droit de faire instruire ses enfants, aux niveaux primaire et secondaire, dans la langue, française ou anglaise, dans laquelle l'un de ses enfants recevait son instruction dans la province de son ancienne résidence, dans toute région de sa nouvelle province de résidence où le nombre d'enfants de citoyens jouissant d'un droit reconnu au présent article justifie la mise sur pied, au moyen de fonds publics, d'installations d'enseignement dans cette langue.»

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding to the proposed Constitution Act, 1980 as subsection 52(1) the following subsection:

Primacy of Constitution of Canada

"52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

; and

(b) by renumbering the present subsections 52(1) and (2) as subsections 52(2) and (3) respectively.

ANNEXE 9
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par :

a) adjonction au projet de Loi constitutionnelle de 1980 du paragraphe suivant :

Primauté de la Constitution du Canada

"52. (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit."

;

b) substitution, aux numéros de paragraphe 52(1) et (2), des numéros de paragraphe 52(2) et (3) respectivement.

This provision derives from section 25 of the proposed Constitution Act, 1980 which at present reads as follows:

Découle de l'article 25, dont le texte actuel est le suivant :

Primacy of Charter

25. Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

25. La présente charte rend inopérantes les dispositions incompatibles de toute autre règle de droit.

Primauté de la Charte

ANNEX 10

November 21, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 25 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Enforcement of declared rights and freedoms

"25. Where no other effective remedy is provided for by law, anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied has the right to apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

ANNEXE 10
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 25 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Recours exceptionnel

«25. Toute personne, victime de violation ou de négation des droits et libertés qui lui sont garantis par la présente Charte, peut, à défaut de pouvoir obtenir satisfaction par les voies de droit normales, s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.»

The present section 25 (with appropriate amendments) would be moved to become section 52.

L'actuel article 25 (avec les modifications voulues) devient l'article 52.

A0453952_43-000700

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 31(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(2) Parliament and the government of Canada are committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."

ANNEXE 11
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au paragraphe 31(2) du projet de Loi constitutionnelle de 1980, du paragraphe suivant :

"(2) Le Parlement et le gouvernement du Canada prennent l'engagement de principe d'assurer des paiements de péréquation aux gouvernements provinciaux non en mesure de fournir les services publics essentiels à un niveau de qualité acceptable sans avoir à imposer un fardeau fiscal excessif."

Subsection 31(2) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel du paragraphe 31(2):

Commitment respecting essential public services

"(2) Parliament and the government of Canada are committed to taking such measures as are appropriate to ensure that provinces are able to provide the essential public services referred to in paragraph (1)(c) without imposing an undue burden of provincial taxation."

«(2) Le Parlement et le gouvernement du Canada s'engagent à prendre les dispositions propres à mettre les provinces en mesure d'assurer les services publics essentiels visés à l'alinéa (1)c) sans qu'elles aient à imposer un fardeau fiscal excessif.»

Engagement relatif aux services publics essentiels

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 38(3)(a) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(a) paragraph 41(1)(b), or"

ANNEXE 12
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'alinéa 38(3)a) du projet de Loi constitutionnelle de 1980, de l'alinéa suivant :

«a) celle qui est prévue à l'alinéa 41(1)b);»

Paragraph 38(3)(a) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'alinéa 38(3) a):

Referendum

"(3) Where copies of an alternative have been filed as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain filed by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the government of Canada shall cause a referendum to be held within two years after that day to determine whether

(*a*) paragraph 41(1)(*b*) or any alternative thereto proposed by the government of Canada by depositing a copy thereof with the Chief Electoral Officer at least ninety days prior to the day on which the referendum is held, or "

Référendum

«(3) Dans les cas où, deux ans après l'entrée en vigueur, exception faite de la partie V, de la présente loi, au moins huit provinces remplissant les conditions démographiques visées au paragraphe (1) n'ont pas retiré leur texte, le gouvernement du Canada fait tenir, dans les deux années suivant l'échéance des deux ans, un référendum pour déterminer laquelle des procédures suivantes sera adoptée:

a) celle qui est prévue à l'alinéa 41(1)*b*) ou l'éventuelle procédure de remplacement proposée par le gouvernement du Canada après dépôt de son texte auprès du directeur général des élections au moins quatre-vingt-dix jours avant la date du référendum; »

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 40 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Right to vote

"40. (1) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

Establishment of Referendum Rules Commission

(2) If a referendum is required to be held under subsection 38(3), a Referendum Rules Commission shall forthwith be established consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;

(b) a person appointed by the Governor General in Council; and

(c) a person appointed by the Governor General in Council

(i) on the recommendation of the governments of a majority of provinces, or

(ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.

Rules for Referendum

(3) A Referendum Rules Commission shall, by majority decision, recommend to the Governor General rules for the holding of a referendum under subsection 38(3).

Proclamation

(4) Rules recommended by a Referendum Rules Commission under subsection (3) shall come into force on proclamation issued by the Governor General under the Great Seal of Canada.

Rules to have force of law

(5) Subject to subsection (1), rules made under this section have the force of law and prevail over other laws made under the Constitution of Canada to the extent of any inconsistency."

Section 40 of the proposed Constitution Act, 1980 at present reads as follows:

Rules for referendum

"40. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3)."

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 40 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droit de vote

«40. (1) Tout citoyen canadien a le droit de vote lors du référendum visé au paragraphe 38(3); ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.

Constitution du comité référendaire

(2) Dès que s'impose la tenue du référendum visé au paragraphe 38(3), il est constitué un comité référendaire, composé :

a) du directeur général des élections du Canada, président;

b) d'une personne nommée par le gouverneur général en conseil;

c) d'une personne nommée par le gouverneur général en conseil

(i) soit sur la recommandation des gouvernements de la majorité des provinces,

(ii) soit, si les gouvernements de la majorité des provinces ne présentent pas de candidat dans les soixante jours suivant la demande que leur en fait le directeur général des élections du Canada, sur la recommandation du juge en chef du Canada, le candidat ainsi présenté étant choisi parmi les personnes recommandées par les gouvernements des provinces dans les trente jours suivant l'expiration du délai de soixante jours ou, faute de recommandation, parmi les personnes compétentes en tenue d'élections.

Réglementation du référendum

(3) Le comité référendaire recommande au gouverneur général, par décision majoritaire, les règles applicables à la tenue du référendum visé au paragraphe 38(3).

Proclamation

(4) Les règles visées au paragraphe (3) entrent en vigueur par proclamation du gouverneur général sous le grand sceau du Canada.

Valeur de force de loi des règles

(5) Sous réserve du paragraphe (1), les règles arrêtées en vertu du présent article ont force de loi et l'emportent sur les dispositions incompatibles de toute autre loi adoptée en vertu de la Constitution du Canada.»

Texte actuel de l'article 40 :

«**40.** (1) Sous réserve du paragraphe (2), le Parlement peut légiférer pour réglementer la tenue du référendum visé au paragraphe 38(3). — Règles en matière de référendum

(2) Tout citoyen canadien a le droit de vote à l'occasion du référendum visé au paragraphe 38(3). Ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.» — Droit de vote

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subparagraph 41(1)(b)(ii) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(ii) at least two of the Atlantic provinces, and"

ANNEXE 14
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au sous-alinéa 41(1)b)(ii) du projet de Loi constitutionnelle de 1980, du sous-aliné suivant :

"(ii) au moins deux des provinces de l'Atlantique,"

Subparagraph 41(1)(b)(ii) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel du sous-alinéa 41(1) b)(ii):

General procedure for amending Constitution of Canada

"41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) . . . ;

(b) resolutions of the legislative assemblies of at least a majority of the provinces that includes

(i) . . . ,

(ii) at least two of the Atlantic provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Atlantic provinces, and "

Procédure normale de modification

« 41. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée:

a) . . . ;

b) par des résolutions des assemblées législatives d'une majorité des provinces; cette majorité doit comprendre:

(i) . . . ,

(ii) au moins deux des provinces de l'Atlantique dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces. »

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 42(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Authorization of referendum

"(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada, which proclamation may be issued where

(a) an amendment to the Constitution of Canada has been authorized under paragraph 41(1)(a) by resolutions of the Senate and House of Commons;

(b) the amendment has been authorized under paragraph 41(1)(b), within twelve months after the passage of the resolutions of the Senate and House of Commons, by resolutions of the legislative assemblies of at least three of the provinces; and

(c) the issue of the proclamation has been authorized by the Governor General in Council.

Time limit for referendum

(3) A proclamation issued under subsection (2) in respect of a referendum shall provide for the referendum to be held within two years after the expiration of the twelve month period referred to in paragraph (b) of that subsection."

ANNEXE 15
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au paragraphe 42(2) du projet de Loi constitutionnelle de 1980, du paragraphe suivant :

Autorisation de référendum

«(2) L'ordre de tenue du référendum visé au paragraphe (1) est donné par proclamation du gouverneur général sous le grand sceau du Canada, autorisée aux conditions suivantes :

a) le Sénat et la Chambre des communes ont, conformément à l'alinéa 41(1)a), adopté des résolutions autorisant la modification de la Constitution du Canada;

b) la modification a, conformément à l'alinéa 41(1)b), été autorisée, dans les douze mois suivant l'adoption des résolutions du Sénat et de la Chambre des communes, par des résolutions des assemblées législatives d'au moins trois provinces;

c) le gouverneur général en conseil a autorisé la proclamation.

Délai de tenue du référendum

(3) La proclamation visée au paragraphe (2) fixe la tenue du référendum à une date postérieure d'au plus deux ans à l'expiration du délai de douze mois mentionné à l'alinéa b) de ce paragraphe.»

Subsection 42(2) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel du paragraphe 42(2):

Authorization of referendum

"(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada authorized by resolutions of the Senate and House of Commons."

«(2) L'ordre de tenue d'un référendum mentionné au paragraphe (1) est donné par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par les résolutions du Sénat et de la Chambre des communes.»

Autorisation de référendum

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 44 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Amendments without Senate resolution

"44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in subsection 51(1), may, be made by proclamation under subsection 41(1) or section 43 as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution.

Computation of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety day period referred to in subsection (1).

ANNEXE 16
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 44 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Modification sans résolution du Sénat

«44. (1) Dans les cas visés au paragraphe 41(1) ou à l'article 43, mais à l'exclusion des cas visés au paragraphe 51(1), il peut être passé outre au défaut d'autorisation du Sénat si celui-ci n'a pas adopté de résolution dans un délai de quatre-vingt-dix jours suivant l'adoption de celle de la Chambre des communes et si cette dernière, après l'expiration du délai, adopte une nouvelle résolution dans le même sens.»

Calcul du délai

(2) Dans la computation du délai de quatre-vingt-dix jours visé au paragraphe (1) ne sont pas comptés les jours pendant lesquels le Parlement est prorogé ou dissous.

Section 44 of the proposed Constitution Act 1980 at present reads as follows:

Texte actuel de l'article 44 :

Amendments without Senate resolution

"**44.** An amendment to the Constitution of Canada may be made by proclamation under subsection 41(1) or section 43 without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing those ninety days. "

Modification sans résolution du Sénat

«**44.** La Constitution du Canada peut être modifiée par proclamation, dans le cadre du paragraphe 41(1) ou de l'article 43, sans une résolution du Sénat autorisant la proclamation, lorsque, dans un délai de quatre-vingt-dix jours suivant l'adoption par la Chambre des communes d'une résolution à cet effet, le Sénat n'a pas adopté une telle résolution et si, après l'expiration de ce délai, la Chambre des communes adopte de nouveau la résolution. Dans la computation du délai ne sont pas comptés les jours pendant lesquels le Parlement est prorogé ou dissous. »

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 46 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Right to vote

"46. (1) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under section 42.

Establishment of Referendum Rules Commission

(2) Where a referendum is to be held under section 42, a Referendum Rules Commission shall forthwith be established consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;

(b) a person appointed by the Governor General in Council; and

(c) a person appointed by the Governor General in Council

(i) on the recommendation of the governments of a majority of provinces, or

(ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.

Rules for referendum

(3) A Referendum Rules Commission shall by majority decision, recommend to the Governor General rules for the holding of a referendum under section 42.

Proclamation

(4) Rules recommended by a Referendum Rules Commission under subsection (3) shall come into force on proclamation issued by the Governor General under the Great Seal of Canada.

Rules to have force of law

(5) Subject to subsection (1), rules made under this section have the force of law and prevail over other laws made under the Constitution of Canada to the extent of any inconsistency."

Section 46 of the proposed Constitution Act, 1980 at present reads as follows:

Rules for referendum

"46. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under section 42.

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under section 42."

A0453952_51-000708

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 46 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droit de vote

«46. (1) Tout citoyen canadien a le droit de vote lors du référendum visé au paragraphe 42; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.

Constitution du comité référendaire

(2) Dès que s'impose la tenue du référendum visé au paragraphe 42, il est constitué un comité référendaire, composé :

a) du directeur général des élections du Canada, président;

b) d'une personne nommée par le gouverneur général en conseil;

c) d'une personne nommée par le gouverneur général en conseil

(i) soit sur la recommandation des gouvernements de la majorité des provinces,

(ii) soit, si les gouvernements de la majorité des provinces ne présentent pas de candidat dans les soixante jours suivant la demande que leur en fait le directeur général des élections du Canada, sur la recommandation du juge en chef du Canada, le candidat ainsi présenté étant choisi parmi les personnes recommandées par les gouvernements des provinces dans les trente jours suivant l'expiration du délai de soixante jours ou, faute de recommandation, parmi les personnes compétentes en tenue d'élections.

Réglementation du référendum

(3) Le comité référendaire recommande au gouverneur général, par décision majoritaire, les règles applicables à la tenue du référendum visé à l'article 42.

Proclamation

(4) Les règles visées au paragraphe (3) entrent en vigueur par proclamation du gouverneur général sous le grand sceau du Canada.

Valeur de force de loi des règles

(5) Sous réserve du paragraphe (1), les règles arrêtées en vertu du présent article ont force de loi et l'emportent sur les dispositions incompatibles de toute autre loi adoptée en vertu de la Constitution du Canada.»

Texte actuel de l'article 46 :

46. (1) Le Parlement peut, sous réserve du paragraphe (2), légiférer pour réglementer la tenue du référendum visé à l'article 42.

Réglementation des référendums

(2) Tout citoyen canadien a le droit de vote lors du référendum visé à l'article 42; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.»

Droit de vote

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 47 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Limitation on use of general amending procedure

"47. (1) The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless, subject to subsection (3), be used to amend any provision for amending the Constitution.

Limitation on use of general amending procedure

(2) The procedures prescribed by section 41 or 42 do not apply in respect of an amendment referred to in section 43.

Amendment of amending procedures

(3) An amendment to section 43, this section or section 3 of the Constitution Act, 1871 may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and the legislative assembly of each province."

ANNEXE 18
Le 24 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 47 de la Loi constitutionnelle de 1980, de l'article suivant :

Restriction du recours à la procédure normale

47. (1) Les articles 41, 42 ou 43 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée aux articles 41 ou 42 s'impose toutefois, sous réserve du paragraphe (3), pour modifier les dispositions relatives à la modification de la Constitution.

Restriction du recours à la procédure normale

(2) Les procédures prévues aux articles 41 et 42 ne s'appliquent pas à la modification visée à l'article 43.

Modification des procédures de modification

(3) L'article 43, le présent article et l'article 3 de la Loi constitutionnelle de 1871 ne peuvent être modifiés par proclamation du gouverneur général sous le grand sceau du Canada que si cette proclamation est autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de toutes les provinces.

Section 47 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 47:

Limitation on use of general amending formula

"47. The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless be used to amend any provision for amending the Constitution, including this section, and section 41 may be used in making a general consolidation or revision of the Constitution."

Restriction : recours à la procédure normale

« 47. Les articles 41, 42 ou 43 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée aux articles 41 ou 42 s'impose toutefois pour modifier les dispositions relatives à la modification de la Constitution, y compris le présent article; la procédure visée à l'article 41 peut également servir à toute codification ou révision générales de la Constitution. »

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

(a) deleting the words immediately preceding paragraph 50(a) of the proposed Constitution Act, 1980 and substituting therefor the following:

Matters requiring amendment under general amending procedure

"50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41, as modified by section 44, or by section 42:"

; and

(b) deleting paragraph 50(e) of the said Act and substituting therefor the following

"(e) the number of members by which a province is entitled to be represented in the Senate, the method of selecting Senators and the residence qualifications of Senators;"

Section 50 of the proposed Constitution Act, 1980 at present reads as follows:

Matters requiring amendment under general formula

50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41 or 42:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the *Canadian Charter of Rights and Freedoms*;

(*c*) the commitments relating to equalization and regional disparities set out in section 31;

(*d*) the powers of the Senate;

(*e*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*f*) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province; and

(*g*) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada."

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par :

a) substitution, au passage de l'article 50 du projet de Loi constitutionnelle de 1980 qui précède l'alinéa a), du passage suivant :

Procédure normale de modification

« 50. (1) Toute modification de la Constitution du Canada portant sur les questions suivantes se fait selon la procédure visée à l'article 41, compte tenu des dispositions de l'article 44, ou à l'article 42 : ;

b) substitution, à l'alinéa 50 e) du projet de loi, de l'alinéa suivant :

« e) le nombre de sénateurs représentant chaque province au Sénat, leur mode de sélection et les conditions de résidence qu'ils doivent remplir; »

Texte actuel de l'article 50:

Procédure normale de modification

« **50.** Toute modification de la Constitution du Canada portant sur les questions suivantes se fait selon la procédure visée aux articles 41 ou 42:

a) les fonctions de la Reine, celles du gouverneur général et celles des lieutenants-gouverneurs;

b) la *Charte canadienne des droits et libertés*;

c) les engagements énoncés, en matière de péréquation et d'inégalités régionales, à l'article 31;

d) les pouvoirs du Sénat;

e) le nombre de sénateurs représentant chaque province au Sénat et les conditions de résidence qu'ils doivent remplir;

f) le droit d'une province d'avoir à la Chambre des communes un nombre de députés au moins égal à celui de ses sénateurs;

g) les principes de la représentation proportionnelle des provinces à la Chambre des communes prévus par la Constitution du Canada. »

Serial No. / Série 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding thereto, immediately after section 50 of the proposed Constitution Act, 1980, the following section:

Amendments relating to bicameral structure of Parliament Procedure for amendment

"51. (1) An amendment to the Constitution of Canada in relation to the bicameral structure of Parliament may be made only in accordance with a procedure prescribed by section 41 or by subsection (2) of this section.

(2) An amendment to the Constitution of Canada in relation to the bicameral structure of Parliament may be made by proclamation issued by the Governor General under the Great Seal of Canada without a resolution of the Senate authorizing the issue of the proclamation where

(a) within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution;

(b) resolutions of the legislative assemblies of the provinces that would be sufficient, together with resolutions of the Senate and House of Commons, to authorize the issue of a proclamation under subsection 41(1) have been passed authorizing the amendment; and

(c) the making of the amendment has been approved at a referendum by voters sufficient to authorize the making of an amendment under subsection 42(1).

Authorization of referendum

(3) A referendum referred to in subsection (2) shall be held where directed by proclamation authorized by the Governor General in Council and issued by the Governor General under the Great Seal of Canada.

Time limit for referendum

(4) A proclamation issued under subsection (3) in respect of a referendum to approve an amendment to the Constitution of Canada shall provide for the referendum to be held within two years after the passage of the last resolution of a provincial legislative assembly authorizing the amendment that is necessary to meet the requirements of paragraph (2)(b).

Computation of period

(5) Any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety day period referred to in subsection (2)."

A0453952_56-000713

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par :

a) insertion, après l'article 50 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Bicaméralisme fédéral

«51.(1) Toute modification de la Constitution du Canada portant sur le bicaméralisme du Parlement se fait selon la procédure visée à l'article 41 ou au paragraphe (2) du présent article.

Procédure de modification

(2) Dans le cas visé au paragraphe (1), il peut être passé outre au défaut d'autorisation du Sénat si :

a) le Sénat n'a pas adopté de résolution dans un délai de quatre-vingt-dix jours suivant l'adoption de celle de la Chambre des communes et si cette dernière, après l'expiration du délai, adopte une nouvelle résolution dans le même sens;

b) les assemblées législatives des provinces ont adopté des résolutions, autorisant la modification en cause, qui suffiraient, avec les résolutions du Sénat et de la Chambre des communes, à autoriser la proclamation mentionnée au paragraphe 41(1);

c) la modification a été approuvée lors d'un référendum dans des conditions dont l'observation suffirait à autoriser la modification prévue au paragraphe 42(1).

Autorisation de référendum

(3) L'ordre de tenue du référendum visé au paragraphe (2) est donné par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par le gouverneur général en conseil.

Délai de tenue du référendum

(4) La proclamation visée au paragraphe (3) fixe la tenue du référendum à une date postérieure d'au plus deux ans à l'adoption de la dernière résolution d'une assemblée législative autorisant la modification et exigée pour l'observation des conditions de l'alinéa (2)b).

Calcul du délai

(5) Dans la computation du délai de quatre-vingt-dix jours visé aux paragraphes (1) et (2) ne sont pas comptés les jours pendant lesquels le Parlement est prorogé ou dissous.»

Moved that

Serial No. 656-80 MC
Série

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding thereto, immediately after section 51 of the proposed Constitution Act, 1980, the following headings and sections:

"PART VI
AMENDMENT TO
THE CONSTITUTION ACT, 1867

Amendment to Constitution Act, 1867

52. (1) The Constitution Act, 1867 (formerly named the British North America Act, 1867) is amended by adding thereto, immediately after section 92 thereof, the following heading and section:

"Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Export from provinces of resources

(2) In each province the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Taxation of resources

(4) In each province the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

"Primary production"

(5) The expression "primary production" has the meaning assigned by the Sixth Schedule.

Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section."

Idem

53. The said Act is further amended by adding thereto the following Schedule:

"THE SIXTH SCHEDULE

PRIMARY PRODUCTION FROM NON-RENEWABLE RESOURCES AND FORESTRY RESOURCES

1. For the purposes of section 92A of this Act,

(a) production from a non-renewable resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.""

; and

(b) by renumbering Part VI of the Constitution Act, 1980 as Part VII, by renumbering sections 52 to 59 thereof as sections 54 to 61, respectively, and by making such other changes in numbering as are consequential thereto.

Il est proposé que le projet de résolution concernant la Constitution du Canada soit modifié :

a) par l'insertion, après l'article 51 de la Loi constitutionnelle de 1980 qui y est proposée, des rubriques et des articles suivants :

«PARTIE VI

MODIFICATION DE LA
LOI CONSTITUTIONNELLE DE 1867

Modification de la Loi constitutionnelle de 1867

52. (1) La Loi constitutionnelle de 1867 (antérieurement désignée sous le titre : Acte de l'Amérique du Nord britannique, 1867) est modifiée par l'insertion après l'article 92 de la rubrique et de l'article suivants :

«Ressources naturelles non renouvelables, ressources forestières et énergie électrique

Compétence provinciale

92A. (1) La législature de chaque province a compétence exclusive pour légiférer dans les domaines suivants :

a) prospection des ressources naturelles non renouvelables de la province;

b) exploitation, conservation et gestion des ressources naturelles non renouvelables et des ressources forestières de la province, y compris leur rythme de production primaire;

c) aménagement, conservation et gestion des emplacements et des installations de la province destinés à la production d'énergie électrique.

Exportation hors des provinces

(2) La législature de chaque province a compétence pour légiférer en ce qui concerne l'exportation, hors de la province à destination d'une autre partie du Canada, de la production primaire tirée des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production d'énergie électrique de la province, sous réserve de ne pas adopter de lois autorisant ou prévoyant des disparités de prix ou des disparités dans les exportations destinées à une autre partie du Canada.

Pouvoir du Parlement

(3) Le paragraphe (2) ne porte pas atteinte au pouvoir du Parlement de légiférer dans les domaines visés à ce paragraphe, les dispositions d'une loi du Parlement adoptée dans ces domaines l'emportant sur les dispositions incompatibles d'une loi provinciale.

Taxation des ressources

(4) La législature de chaque province a compétence pour prélever des sommes d'argent par tout mode ou système de taxation :

a) des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production primaire qui en est tirée,

b) des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que cette production même.

Cette compétence peut s'exercer indépendamment du fait que la production en cause soit ou non, en totalité ou en partie, exportée hors de la province, mais les lois adoptées dans ces domaines ne peuvent autoriser ou prévoir une taxation qui établisse une distinction entre la production exportée à destination d'une autre partie du Canada et la production non exportée hors de la province.

«Production primaire»

(5) L'expression «production primaire» a le sens qui lui est donné dans la sixième annexe.

Pouvoirs ou droits existants

(6) Les paragraphes (1) à (5) ne portent pas atteinte aux pouvoirs ou droits détenus par la législature ou le gouvernement d'une province lors de l'entrée en vigueur du présent article.

Idem

53. La présente loi est en outre modifiée par l'adjonction de l'annexe suivante :

SIXIÈME ANNEXE

PRODUCTION PRIMAIRE TIRÉE DES RESSOURCES NATURELLES NON RENOUVELABLES ET DES RESSOURCES FORESTIÈRES

Pour l'application de l'article 92A :

a) on entend par production primaire tirée d'une ressource naturelle non renouvelable :

(i) soit le produit qui se présente sous la même forme que lors de son extraction du milieu naturel;

(ii) soit le produit non manufacturé de la transformation, du raffinage ou de l'affinage d'une ressource, à l'exception du produit du raffinage du pétrole brut, du raffinage du pétrole brut lourd amélioré, du raffinage des gaz ou des liquides dérivés du charbon ou du raffinage d'un équivalent synthétique du pétrole brut;

b) on entend par production primaire tirée d'une ressource forestière la production constituée de billots, de poteaux, de bois d'oeuvre, de copeaux, de sciure ou d'autre produit primaire du bois, ou de pâte de bois, à l'exception d'un produit manufacturé en bois.»»

b) par la substitution de «Partie VII» à «Partie VI» de la Loi constitutionnelle de 1980, des numéros d'article 54 à 61 aux numéros d'article 52 à 59 et par les autres changements de numéro qui en découlent.

Moved that Serial No. 656-80 MC

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 3 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Droits démocratiques des citoyens

"3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ces droits ne peuvent, sans motif valable, faire l'objet d'aucune distinction ou restriction."

ANNEXE 22
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 3 de la version française du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droits démocratiques des citoyens

"3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ces droits ne peuvent, sans motif valable, faire l'objet d'aucune distinction ou restriction."

The French version of section 3 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 3:

Droits démocratiques des citoyens

" 3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction. "

« 3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction. »

Droits démocratiques des citoyens

SECRET

ANNEX 23

November 21, 1980

Serial No. 656-80 MC

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 4 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.»

ANNEXE 23

Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 4 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.»

The French version of subsection 4(1) of the proposed Constitution Act, 1980 at present reads as follows:

Mandat

4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date du rapport des brefs relatifs aux élections générales correspondantes. //

Texte actuel du paragraphe 4(1):

« 4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date du rapport des brefs relatifs aux élections générales correspondantes. »

Mandat

A0453952_63-000720

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 8 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Fouilles, perquisitions et saisies

"8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectuées dans les conditions que celle-ci prévoit."

ANNEXE 24
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 8 de la version française du projet de Loi constitutionnelle de 1980, de l'article suivant :

Fouilles, perquisitions et saisies

"8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit."

The French version of section 8 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 8:

Fouilles, perquisitions et saisies

"8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies abusives dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectuées dans les conditions que celle-ci prévoit."

"8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies abusives dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectuées dans les conditions que celle-ci prévoit."

Fouilles, perquisitions et saisies

Moved that

Serial No. 656-80 MC
Série

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraphs 11(f) and (g) of the English version of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(f) not to be tried or punished more than once for an offence of which the person has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which the person has been convicted has been varied between the time of commission and the time of sentencing."

ANNEXE 25
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, aux alinéas 11(f) et (g) de la version anglaise du projet de Loi constitutionnelle de 1980, des alinéas suivants :

"(f) not to be tried or punished more than once for an offence of which the person has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which the person has been convicted has been varied between the time of commission and the time of sentencing."

The English version of paragraphs 11(f) and (g) of the proposed Constitution Act, 1980 at present read as follows:

"(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing."

Texte actuel des alinéa 11(f) et (g) :

«(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.»

A0453952_65-000722

Moved that

Serial No. 656-80 MC
Série

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 13 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Self-crimination

"13. A witness who is compelled to testify has the right not to have any incriminating evidence so given used againstthat witness in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence."

ANNEXE 26
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 13 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Témoignage incriminant

"13. Chacun a droit, s'il est contraint de témoigner, à ce qu'aucun témoignage incriminant qu'il aura rendu ne soit utilisé contre lui dans d'autres procédures, sauf lors de poursuites pour parjure ou pour témoignage contradictoire."

Section 13 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 13:

Self-crimination

"13. A witness has the right when compelled to testify not to have any incriminating evidence so given used to incriminate him or her in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence."

Déclaration incriminante

« 13. Chacun a droit, s'il est contraint de témoigner, à ce qu'aucun témoignage incriminant qu'il donne ne soit utilisé pour l'incriminer dans d'autres procédures, sauf lors de poursuites pour parjure ou pour témoignages contradictoires. »

ANNEX 27

November 24, 1980

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting all that portion of subsection 38(3) of the English version of the proposed Constitution Act, 1980 preceding paragraph (a) thereof and by substituting therefor the following:

Referendum

"(3) Where copies of an alternative have been deposited as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain deposited by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the government of Canada shall cause a referendum to be held within two years after that day to determine whether "

ANNEXE 27
Le 24 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au passage de la version anglaise du paragraphe 38(3) du projet de Loi constitutionnelle de 1980 qui précède l'alinéa a), du paragraphe suivant :

Referendum

"(3) Where copies of an alternative have been deposited as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain deposited by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the government of Canada shall cause a referendum to be held within two years after that day to determine whether"

A0453952_67-000724

SECRET ANNEX 28

November 21, 1980

Serial No. 656-80 MC
Série

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 50(a) of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

" a) la charge de Reine, celle de gouverneur général et celle de lieutenant gouverneur;"

ANNEXE 28
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'alinéa 50a) de la version française du projet de Loi constitutionnelle de 1980, de l'alinéa suivant :

"a) la charge de Reine, celle de gouverneur général et celle de lieutenant-gouverneur;"

The words immediately preceding paragraph 50(a) of the French version of the proposed Constitution Act, 1980 and paragraph 50(a) at present read as follows:

Procédure normale de modification

"50. Toute modification de la Constitution du Canada portant sur les questions suivantes se fait selon la procédure visée aux articles 41 ou 42:

a) les fonctions de la Reine, celles du gouverneur général et celles des lieutenants-gouverneurs; "

<< 50. Toute modification de la Constitution du Canada portant sur les questions suivantes se fait selon la procédure visée aux articles 41 ou 42:

a) les fonctions de la Reine, celles du gouverneur général et celles des lieutenants-gouverneurs; >>

Procedure normale de modification

A0453952_68-000725

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 59 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Short Title and citations

"59. This Schedule may be cited as the *Constitution Act, 1980* and the Constitution Acts 1867 to 1975 (No. 2) and this Act may be cited together as the *Constitution Acts, 1867 to 1980*."

ANNEXE 29

Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 59 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Titres

"59. Titre abrégé de la présente annexe : Loi constitutionnelle de 1980; titre commun des lois constitutionnelles de 1867 à 1975 (n° 2) et de la présente loi : Lois constitutionnelles de 1867 à 1980."

Section 59 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 59:

Citations

"59. This Schedule may be cited as the *Constitution Act, 1980* and the Constitution Acts, 1867 to 1975 (No. 2) and this Act may be cited together as the *Constitution Acts, 1867 to 1980.*"

« 59. Titre de la présente annexe: *Loi constitutionnelle de 1980*; titre commun des lois constitutionnelles de 1867 à 1975 (n° 2) et de la présente loi: *Lois constitutionnelles de 1867 à 1980.* » 30 Titres

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting Column III of item 9 of the French version of Schedule I to the proposed Constitution Act, 1980 and by substituting therefor the following:

"Loi de 1889 sur le Canada (limites de l'Ontario)"

ANNEXE 30
Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au titre français figurant à la colonne III du numéro 9 de la version française de l'annexe I, du titre suivant :

«Loi de 1889 sur le Canada (limites de l'Ontario)».