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REPORTS OF THE CONTINUING COMMITTEE OF MINISTERS ON THE CONSTITUTION TO FIRST MINISTERS

OTTAWA
FEBRUARY 5-6, 1979

Canadian Intergovernmental Conference Secretariat • Secrétariat des Conférences intergouvernementales canadiennes

COPY NO. 033

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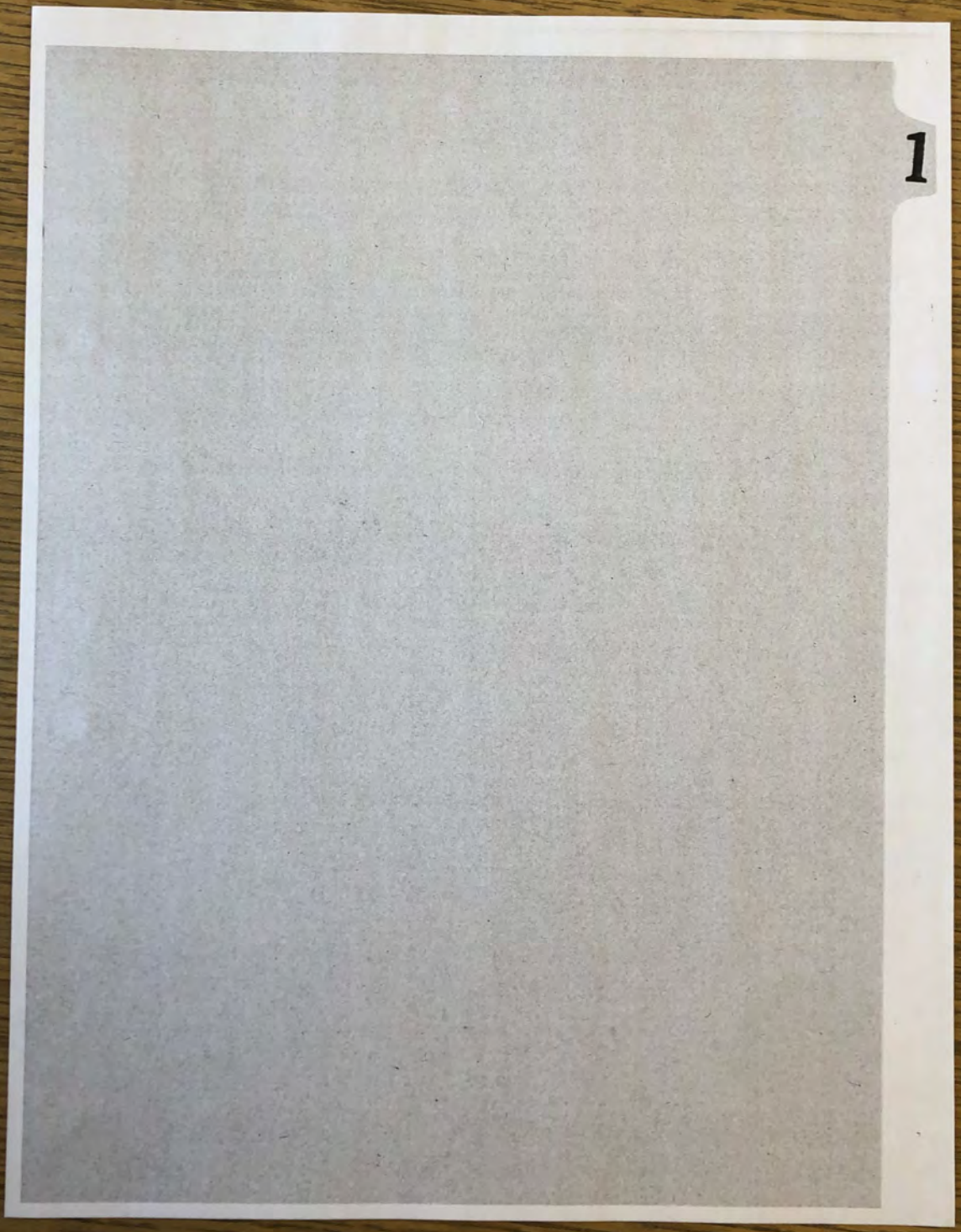
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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

Ottawa
February 5-6,1979

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

A. Attached are:

1. Draft for discussion purposes dated January 24, 1979 (Tab A). The right-hand column is an executive summary of and description of each subsection of the draft.

2. List of alternatives covering the disposition of Section 109 (Tab B).

3. Alberta draft (Tab C).

A majority of provinces are in agreement with the Committee draft (Tab A).

B. The issues examined by the Committee were:

1. The definition of resources —— whether all "natural resources" were to be included in this section or whether it would only apply to "non-renewable resources, forests and electric energy".

2. The relationship between exclusive provincial powers over resources, including provincial laws affecting export from the province, and the federal government's powers over trade and commerce.

   (a) within Canada, interprovincial trade and commerce.

      (i) What is to be the test for federal laws overriding provincial laws affecting exports? Views ranged from a "compelling national interest" test to a strictly defined "emergency" power.

      (ii) the importance of non-discriminatory pricing between the exporting province and other parts of Canada.

   (b) outside Canada, international trade and commerce. Whether concurrent jurisdiction (similar to that for agriculture) be established over export of resources from the country with federal paramountcy —— or whether provincial powers should be exclusive with a federal override power. In addition the question of whether the federal government could require the export of resources from the country over the objection of a producing province was discussed.

3. The definition of "primary and processed production". Given the differing nature of the resources covered by this section, there was considerable difficulty in finding a phrase covering the intent of the section. Where is the line to be drawn between the resource as it is taken from its natural state and a manufactured product?

4. An expansion of provincial taxing powers to include indirect taxation over resources covered by this section, whether these resources were exported in whole or in part from the province. The importance of ensuring that these taxes were non-discriminatory throughout the country was also discussed.

5. Limitations on other federal powers were discussed. Included were the relationship of other heads in Section 91 to this new section, the peace, order and good government clause, powers of expropriation, interconnecting works (as found in present Section 92(10)a), reservation and disallowance, and the declaratory power. Limits to the federal government's declaratory power are contained in another section of the report.

C. Reservations

1. At least one province believes the term natural resources should be used throughout.

2. One province believes that the term "compelling national interest" is too vague and provides inadequate protection to provincial jurisdiction over resources and export of resources in interprovincial trade.

3. One province expressed its concern over possible interpretations of the international trade and commerce clause believing that it could be used to require a province to export its resources from the country, particularly with respect to volumes and prices. The federal government did not believe it could do this now under its trade and commerce power and agreed to study the draft further to see if additional words could be added to give provinces this additional safeguard. Until seeing a rewording, that province reserved its position on this subsection.

4. One province believes that limits to other federal powers, including peace, order and good government, expropriation, interconnecting works, reservation and disallowance, should be included in this section.

5. One government wishes to review in particular the implications of the proposed definition of "production from a non-renewable resource" and the proposed limitation of the protection against discrimination to the areas of prices and taxes.

6. One province believes that the definition of "production from non-renewable resources and forests" is too extensive.

7. One province believes that a reconstituted Senate should have an absolute veto over whether or not a "compelling national interest" exists.

Draft Proposal for Discussion by First Ministers

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

(1) (present Section 92)	(1) Carries forward existing Section 92
Resources	
(2) In each province, the legislature may exclusively make laws in relation to a) exploration for non-renewable natural resources in the province; b) development, exploitation, extraction, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production therefrom; and c) development, exploitation, conservation and management of forestry resources in the province and of sites and facilities in the province for the generation of electrical energy, including laws in relation to the rate of primary production therefrom.	(2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g. crude oil, copper, iron and nickel), forests and electric energy. This section pertains to legislative jurisdiction and in no way impairs established proprietary rights of provinces over resources whether these resources are renewable or non-renewable.
Export from the province of resource	
(3) In each province, the legislature may make laws in relation to the export from the province of the primary production from non-renewable natural resources and forestry	(3) Provincial governments are given concurrent legislative authority to pass laws governing the export of the resources referred to above from the province. This legislative capacity is in

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 prices for production sold for export to another part of Canada that are different from prices authorized or provided for production not sold for export from the province.

the sphere of both interprovincial and international trade and commerce. Provincial governments are prohibited from price discrimination between resources consumed in the province and those destined for consumption in other provinces. This new provincial legislative capacity applies to these resources in their raw state and to them in their processed state but does not apply to materials manufactured from them.

Relationship to certain laws of Parliament

(4) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (3) prevails over a law enacted by Parliament in relation to the regulation of trade and commerce except to the extent that the law so enacted by Parliament,

a) in the case of a law in relation to the regulation of trade and commerce within Canada, is necessary to serve a compelling national interest that is not merely an aggregate of local interests; or

b) is a law in relation to the regulation of international trade and commerce.

(4) The effect of this new provincial legislative responsibility over trade and commerce diminishes the scope but does not eliminate the federal government's exclusive authority over trade and commerce. The exercise of the provincial power is subject to two limitations. First, the federal government may legislate for interprovincial trade if there is "compelling national interest". This trigger mechanism may apply to circumstances other than an emergency as established under the peace, order and good government power. Second, federal laws governing international trade prevail over provincial laws in international trade, in effect establishing a concurrent power similar to that for agriculture.

Taxation of resources

(5) 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

(5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.

b) sites and facilities in the province for the generation of electrical energy and the primary 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.

Production from resources

(6) For purposes of this section,

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 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.

(6) In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, the wording of this subsection is thought to place the appropriate limitations on provincial powers.

Existing Powers

(7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections.

(7) This clause ensures that any existing provincial legislative powers found in s.92 are not impaired by the new section.

Proposed Draft for Discussion by First Ministers

LIST OF ALTERNATIVES COVERING THE DISPOSITIONS OF SECTION 109

Option 1

Maintain the status quo, do not carry forward Section 109.

Option 2 (a)

Property in lands, mines, etc.

*"123.1 All lands, mines, minerals and royalties belonging to any province immediately before this section comes into effect, and all sums then due or payable in respect of any such lands, mines, minerals and royalties, belong immediately after this section comes into effect to the province or are then due and payable, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 2 (b)

Ownership of property

*"123.1 All property belonging to any province immediately before this section comes into effect, belongs immediately after this section comes into effect to the province, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 3

Ownership of property

"127.1 Nothing in this Act changes the ownership in any property owned by Canada or a province immediately before the coming into force of this Act."

*Note: Numbering is tied in to numbering found in Bill C-60.

Proposed Alberta Draft for Discussion by First Ministers

Distribution of Legislative Powers

Powers of the Parliament

91. Subject to section 92.1, it shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act except section 92.1) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.(49)

1A. The Public Debt and Property.

2. The Regulation of Trade and Commerce.

2A. Unemployment Insurance.(50)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weights and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. Indians and Lands reserved for the Indians.

25. Naturalization and Aliens.

26. Marriage and Divorce.

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.(51)

Exclusive Powers of Provincial Legislatures

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. *(Omitted*)*
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
    (a) Lines of Steam and other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
    (b) Lines of Steam Ships between the Province and any British or Foreign Country:
    (c) Works, except works in relation to natural resources or electric energy, that although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces;
    (d) Works in relation to natural resources or electric energy, that although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada, acting with the consent of the Province or Provinces in which the works are situated, expressed by a resolution of their respective legislative assemblies, to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. **The Incorporation of Companies with Provincial Objects.**
12. **The Solemnization of Marriage in the Province.**
13. **Property and Civil Rights in the Province.**
14. **The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.**
15. **The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.**
16. **Generally all Matters of a merely local or private Nature in the Province.**

*(*NOTE: Head 5 presently reads:*
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and wood thereon.)

92.1(1) In each province the legislature may exclusively make laws in relation to the following matters:

1. Exploration for, and the management, recovery, conservation and development of, natural resources within the province, and the processing, upgrading and use of commodities derived from those natural resources.
2. The management, conservation, development and use of electric energy produced within the province.
3. The regulation of intraprovincial and interprovincial trade and commerce in relation to commodities derived from natural resources within the province and to electric energy produced within the province.
4. The raising of money by any mode or system of taxation in respect of commodities derived from natural resources within the province and of electric energy produced within the province whether or not the commodities or the electric energy is exported in whole or in part from the province.

(2) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (1) is paramount over any law enacted by the Parliament of Canada, except a law for the peace, order and good government of Canada to the extent that a law so enacted by the Parliament of Canada is in relation to the export from the province of commodities derived from natural resources within the province or of electric energy produced within the province and has been enacted in the event of a national crisis or an international crisis affecting Canada caused by a shortage of the commodities or electric energy sufficient to be substantially injurious to the economic or social well-being of Canada, and the burden of establishing that the national or international crisis existed at the time the law was made and continues to exist rests with the person asserting that it did so exist and continues to exist.

(3) The Parliament of Canada may make laws in relation to the regulation of international trade and commerce with respect to commodities derived from natural resources and to electric energy; and in each province the legislature may make laws in relation to the regulation of international trade and commerce with respect to commodities derived from natural resources within the province and in the form in which those commodities exist upon their removal from the province and with respect to electric energy produced within the province; and any law so made by the legislature of a province shall have effect as long as and so far only as it is not repugnant to any Act of the Parliament of Canada.

(4) A work or undertaking situated within a province and related to the movement of commodities derived from natural resources within the province or the transmission of electric energy produced in the province (in this subsection called the "provincial work") shall not be held to be part of a work or undertaking connecting that province with any other or others of the provinces, or extending beyond the limits of the province, (in this subsection called the "extra-provincial work") by reason of the fact that the provincial work is connected to the extra-provincial work if the provincial work is owned and controlled by a person other than the person who owns or controls the extra-provincial work.

(5) The Parliament of Canada has no legislative authority to make laws authorizing the taking from a province of any property belonging to a province or any rights in respect of that property, without the consent of the government of the province.

(6) This section does not operate to prevent the Parliament of Canada from making laws authorizing the taking of property belonging to a province or to any person for the purpose of a public work of the government of Canada or for the purposes of works or undertakings referred to in paragraphs (a) and (b) of head 10 of Section 92.

(7) For the purposes of this section, a commodity shall be construed as being derived from natural resources if

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

(b) in the case of a commodity derived from a non-renewable natural resource, it consists of a product resulting from processing or refining of the resource;

(c) in the case of a commodity derived from forest resources, it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, but does not consist of any product manufactured from wood;

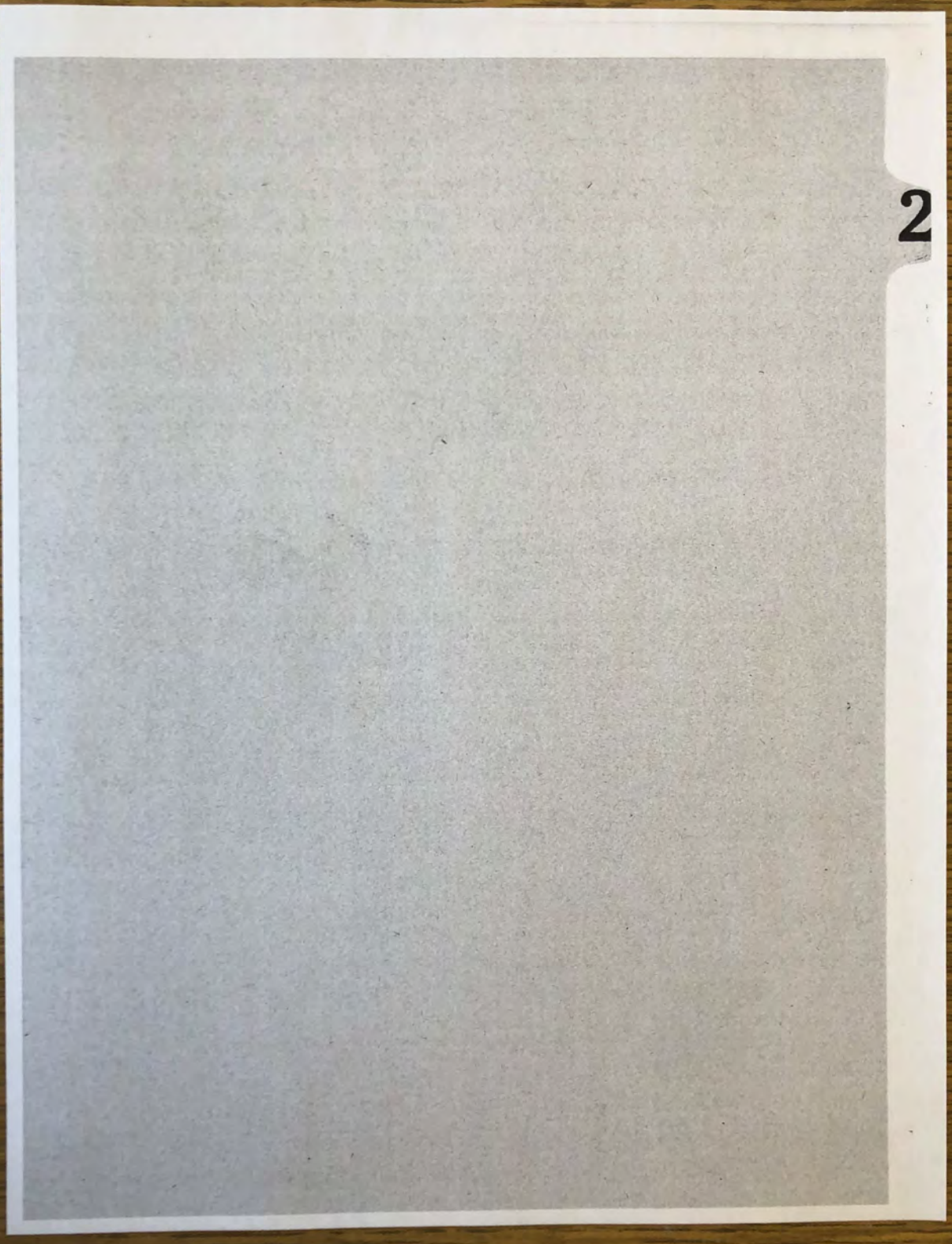
(d) in the case of a commodity derived from a renewable natural resource other than forestry resources, it consists of a product resulting from processing.

(8) Notwithstanding Sections 55, 56, 57 and 90,

(a) the Governor General in Council has no power to disallow an Act of the legislature of a province made under the authority of this section, and

(b) a Bill for an Act of the legislature of a province made under the authority of this section shall not be reserved for the signification of the Governor General's pleasure.

(9) Nothing in this section derogates from any of the powers or rights that a legislature or a government of a province has immediately before the coming into force of this section.



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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

INDIRECT TAXATION

Ottawa
February 5-6,1979

INDIRECT TAXATION

The Committee of Ministers discussed the report of the Committee of Officials on Indirect Taxation of January 11-12 and the draft constitutional text proposed by it.

It was decided to refer the draft constitutional text to the Conference of First Ministers with the following comments:

> Most governments expressed the view that giving a provincial right of indirect taxation with the limitations proposed in the text did not provide significant new revenue capacity and could raise additional problems; also, indirect taxation in relation to resources was considered separately. As a result they did not regard such a constitutional provision as a priority at this time.
>
> Quebec indicated that there should be no limitation on the provincial power of indirect taxation on the ground that existing jurisprudence provided sufficient safeguard against undue extra-provincial impact. This matter was to be further examined by Quebec.
>
> British Columbia and Manitoba expressed general acceptance of the proposed text with Manitoba, however, indicating a preference for some further technical discussion.

Draft Proposal for Discussion by First Ministers

INDIRECT TAXATION

Taxation within the province by any mode or system of taxation for provincial purposes, except indirect taxation that a) constitutes a tax on the entry into or export from the province or otherwise has effect as a barrier or impediment on interprovincial or international trade, or b) is so imposed that the burden of the tax is passed outside the province.

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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

COMMUNICATIONS

Ottawa
February 5-6,1979

COMMUNICATIONS

The Continuing Committee of Ministers considered reports from officials. These reports discussed four subject areas: radio spectrum management, telecommunications carriers, radio and television broadcasting and cable distribution.

1. Radio spectrum management

All delegations agreed that Parliament should retain jurisdiction over the allocation of bands of the radio spectrum. A majority of the provinces supported a provincial role in the assignment of specific frequencies. In that regard, some of the provinces preferred constitutional change; others considered administrative arrangements acceptable.

2. Telecommunications carriers

There were three general positions in this area:

(a) a majority of provinces held that carriers entirely within a province should be within exclusive provincial jurisdiction;

(b) other provinces, and the federal government, recognized provincial authority over the intra-provincial operations of such carriers, but acknowledged a national dimension to telecommunications carriage; and

(c) the federal government stated that any constitutional change in the area must involve federal authority over the interprovincial and international aspects of telecommunications, technical standards, interconnection of systems and the regulation of national carriers.

3. Radio and television broadcasting

All delegations agreed further attention should be given to accommodating provincial concerns respecting local elements in off-air broadcasting. Some provinces preferred constitutional change. The federal government and other provinces preferred administrative arrangements.

4. Cable distribution

A federal proposal was considered regarding cable distribution (see Tab E).

Most provinces commented that areas other than cable distribution were at least as important and emphasized the need to discuss these in the future. The federal officials agreed. Quebec and Alberta reserved their positions on both the federal draft and the provincial responses pending discussion of other major communications issues.

See Tab F which is a summary of alternative positions to the federal draft which would limit the field of concurrent jurisdiction to the reception and distribution of broadcast signals and which would exclude wholly closed circuit undertakings from the concurrent field.

Section 2 of the federal draft proposes that federal paramountcy include the areas of:

- technical standards;
- measures to ensure the availability of adequate levels of Canadian broadcast programs and services; and
- the support of Canadian program production.

A majority of the provinces proposed an alternative wording for section 2 of the federal draft which would limit and define more precisely the areas of federal paramountcy as follows:

- the reception and conditions of carriage of broadcast signals;
- technical standards for the reception and carriage of broadcast signals; and
- the national origin of broadcast program content.

The remaining sections of the federal draft appeared generally acceptable to most provinces subject to drafting concerns.

5. Consultation

It was agreed that it would be desirable to establish consultative arrangements in all subject areas, notwithstanding jurisdiction therein.

Proposed Federal Draft for Discussion by First Ministers

Cable Distribution

1. In each province the legislature may make laws in relation to cable distribution within the province, including the reception and redistribution of broadcast signals; Parliament may also make laws in relation thereto for each of the provinces.

Relationship between laws of the provinces and laws of Parliament

2. Any law enacted by the legislature of a province pursuant to section 1 shall prevail to the extent of the inconsistency over any law of Parliament enacted thereunder except in the following fields:

technical standards,

measures to ensure the availability of adequate levels of Canadian broadcast programs and services, and

the support of Canadian program production,

in which case any law of Parliament shall prevail to the extent of the inconsistency.

Consultations

3. The government of Canada shall consult the government of the province concerned before Parliament makes a law in relation to cable distribution within that province pursuant to section 1.

Telecommunications undertakings

4. Telecommunications undertakings coming under the jurisdiction of Parliament as well as those coming under the jurisdiction of the legislature of a province

and engaging in activities coming under section 1 other than as carriers shall be subject, in so far as such activities are concerned, to the laws enacted under section 1.

Powers continued

5. Except where otherwise expressly provided in section 1 to 4, nothing therein shall derogate from the legislative powers that Parliament and the legislatures of the provinces had immediately before the coming into force of these sections.

ALTERNATIVE DRAFT PROPOSAL SUGGESTED BY SEVERAL PROVINCES

Cable Distribution

1. In each province the legislature may make laws in relation to cable distribution within the province involving the reception and redistribution of broadcast signals; Parliament may also make laws in relation thereto for each of the provinces.

Relationship between laws of the provinces and laws of Parliament

2. Any law enacted by the legislature of a province pursuant to section 1 shall prevail to the extent of the inconsistency over any law of Parliament enacted thereunder except in the following fields:

the reception and conditions of carriage of broadcast signals,

technical standards relating to the reception and carriage of broadcast signals, and

the national origin of broadcast program content,

in which case any law of Parliament shall prevail to the extent of the inconsistency.

Consultations

3. The government of Canada shall consult the government of the province concerned before Parliament makes a law in relation to cable distribution within that province pursuant to section 1.

Telecommunications undertakings

4. Telecommunications undertakings coming under the jurisdiction of Parliament as well as those coming under the jurisdiction of the legislature of a province

and engaging in activities coming under section 1 other than as carriers shall be subject, in so far as such activities are concerned, to the laws enacted under section 1.

Powers continued

5. Except where otherwise expressly provided in section 1 to 4, nothing therein shall derogate from the legislative powers that Parliament and the legislatures of the provinces had immediately before the coming into force of these sections.

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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

SENATE

Ottawa
February 5-6,1979

SENATE

The Committee considered proposals which had been made public by the federal government and by the Government of British Columbia, and proposals, circulated for the information of the Committee only, by Ontario and Manitoba. Several other provinces made oral comments and suggestions. The Committee also discussed the proposals of the Task Force on Canadian Unity.

There was,subject to the caveats from some provincial governments noted below, general agreement that the present Senate should be simply abolished or, alternatively, replaced with a new kind of second chamber. Saskatchewan tentatively suggested that a "formalized" First Ministers Conference might be preferable to a new second chamber, but this idea did not receive general support.

On most questions relating to the design of a new second chamber, the Committee was unable to reach agreement or even a broad consensus. Exceptions were that members should serve for the life of the government which appoints them, and that appointment is the preferred method of choosing members.

The issues which remain to be resolved by First Ministers are:

1. To what extent should the interests of the provinces be represented or channelled through a new second chamber or, on the other hand, through changes in the division of powers?

2. If they are to be accommodated through a new second chamber, should the scope of matters to be voted on in that chamber be confined to legislation and other questions which impinge directly on provincial jurisdiction and, if so, how should those matters be defined?

3. How should members of the new chamber be chosen? If they are chosen by governments, would they vote on instructions from the governments which appoint them?

4. Would their vote be suspensive or absolute, and if suspensive, for how long?

5. How should seats be distributed among the provinces?

I - Representing the Interests of the Provinces: General Points Arising from the Committee's Discussion

The Committee recognized that there is a connection between the question of reconstituting the Senate and the question of the divison of powers. The Committee noted that it was not an "either-or" situation, inasmuch as progress could be made on both questions simultaneously. However, a "trade-off" could exist between the two questions, and some governments prefer that progress be made on one rather than

the other question, with British Columbia, for example, giving priority of importance to reconstituting the Senate, and Alberta, Saskatchewan and Newfoundland giving priority to the division of powers.

Alberta and Saskatchewan, among others, were also concerned that the creation of a new second chamber should not detract from the role of federal-provincial conferences as the primary mechanism for intergovernmental consultation and the resolution of differences. British Columbia, Ontario and Manitoba considered that a new second chamber could be designed to complement such conferences. Saskatchewan believed that an appointed body should not be given extensive powers.

In response to a question about the status of the proposals for a new House of the Federation contained in Bill C-60, federal Ministers noted that these proposals had received no support from the provinces. While no new federal proposals were made, Ministers said that the federal government was flexible with regard to its earlier proposals. However, they expressed a preference for the inclusion of federal representation in any new second chamber.

Ontario said that the proposals of the Task Force on Canadian Unity for a Council of the Federation interested it very much. British Columbia said that the proposals might do so.

II - The Scope of Matters to be Voted on in a New Second Chamber

The Committee noted that a new second chamber may be conceived primarily (a) as a body for giving provincial governments a voice in federal legislation which impinges on provincial jurisdiction, or (b) as a body which would vote on all federal legislation no matter what the effect of that legislation; and theoretically an argument could be made for a federal role in provincial legislation to parallel any provincial role in federal legislation.

It was apparent from the Committee's discussions that, if the purpose of the chamber is to deal only with matters which impinge on provincial jurisdiction, the scope of such matters could be narrowly defined, and possibly confined to a short list of federal powers, or it could be more broadly defined.

III - The Method of Choosing Members, and Voting on Instructions

Ministers recognized that the method of choosing members of a new second chamber should depend on the choice which is made between the alternatives noted above. There was a consensus that, under alternative (a), provincial governments should appoint at least some members of the new body, and possibly all, if the precise scope of the matters on which the new house could vote were carefully defined and quite limited. There was also a consensus that, under alternative (b), the federal government or (as under Bill C-60) Parliament should appoint at least some members.

There was no consensus about whether members should vote on instructions, and whether a province's vote should in some circumstances be cast as a bloc, in the event that members are appointed by governments.

IV - A suspensive or an absolute veto for a new second chamber

There was a consensus that in general a new second chamber should have only a suspensive veto over legislation that had been approved by the directly-elected House of Commons, and most governments consider that such a veto should be of short duration, say in the order of three months. However, a few provinces believe that an absolute veto may be appropriate in some circumstances where the legislation concerns matters which impinge directly on provincial jurisdiction, such as certain uses of the federal spending power. It was also suggested that if the new second chamber failed to approve such legislation, the question could be referred to the next meeting of federal and provincial First Ministers.

V - The distribution of seats among the provinces

Various proposals were made by different governments, including

(a) an equal number of seats for each province;

(b) an equal number of seats for each of five regions;

(c) a more nearly equal distribution of seats that would be weighted according to a province's population; and

(d) the exclusion of any seats for the Territories in the event that a second chamber is to deal only with matters impinging directly on provincial jurisdiction.

There was no consensus on a formula for the distribution of seats. However, there was a consensus that any new formula should provide for future population changes, and that a province should not lose any of its present seats in the House of Commons as the result of a redistribution of Senate seats.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

SUPREME COURT

Ottawa
February 5-6,1979

SUPREME COURT

1. The Continuing Committee submits this draft report for consideration by First Ministers subject to the reservations spelled out below.

The main elements of the draft provisions are:

- a nine-member court;
- a requirement that the Minister of Justice shall consult with the Attorney General of the appropriate province when making an appointment to the Supreme Court (instead of a requirement of agreement as proposed in Bill C-60);
- a requirement that three members of the Court be appointed from the bench or bar of Quebec (a civilian judge of the Federal Court would also qualify);
- a requirement that cases concerning the civil law of Quebec be heard by a special panel of the Court composed of a majority of Quebec judges;
- a provision providing for the special appointment of judges to facilitate the holding of trials in the official language of a person's choice, when the person has the right by law to be heard in the official language of his choice.

General Reservation

2. Quebec expressed a general reservation about the provisions respecting the Supreme Court and reiterated its wishes to see a constitutional court established.

Specific Reservations

3. Section 2

British Columbia expressed the specific reservation that it prefers an 11 man court. Section 2 provides for a 9 man court.

4. Section 3(2)

British Columbia expressed a specific reservation with respect to section 3(2), which provides that three members of the court shall be appointed from the bench or bar of Quebec. It is British Columbia's position that if there is to be regional representation for Quebec, there should also be representation from other regions on the five-region concept proposed by British Columbia.

5. Section 4

Saskatchewan noted that the requirement that the Minister of Justice consult with the Attorney General of the appropriate province before making an appointment to the Supreme Court (section 4) was a much less stringent requirement than that which was part of the Victoria Charter proposals.

6. Section 6

Quebec expressed a specific reservation with respect to section 6, which provides that a special panel of the Supreme Court will hear cases involving Quebec civil law issues. Quebec's position is that the Quebec Court of Appeal should be the final court of resort in all civil code cases.

7. Section 10

Some provinces suggested that provinces should have the same right as the federal government to refer questions to the Supreme Court of Canada (as does recommendation 61 of the Pépin-Robarts Report). This would include the referral of questions concerning both federal and provincial laws. Other provinces suggested that such right should extend only to refering questions concerning federal laws to the Court. Other provinces and the federal government are of the view that a provincial government should only be able to refer questions to its provincial Court of Appeal with a guaranteed right of appeal from that decision to the Supreme Court.

8. Sections 13 to 18

Some provinces expressed the view that superior, country and district court judges (section 96 judges) should be appointed by the provincial governments. Section 15 of the draft derives from section 96 of the B.N.A. Act, and would provide for appointment of such judges by the Governor General after consultation by the Minister of Justice with the Attorney General of the appropriate province.

Concern was expressed by almost all provinces that the existing section 101 of the B.N.A. Act which is carried forward in section 13 of the draft text is unacceptable because it allows Parliament to establish a parallel system of federal courts for the administration of federal laws.

It was accepted that these issues could not be adequately canvassed in the time available.

Differing views prevailed in relation to sections 14 to 18 with Ontario, Quebec, British Columbia and Saskatchewn stating that these sections warranted further discussion and therefore should be deleted from this draft and dealt with at a later date. Alberta, Nova Scotia, New Brunswick, Newfoundland, Manitoba and Prince Edward Island stated that they wished these sections to remain in the discussion draft. Such inclusion was, however, made on the understanding that both the above issues would be studied, at an early date, for purposes of further constitutional revision.

Draft Proposal for Discussion by First Ministers

SUPREME COURT

The Supreme Court of Canada

Supreme Court of Canada

1. There shall be a general court of appeal for Canada called the Supreme Court of Canada.

Constitution of Supreme Court

2. The Supreme Court of Canada shall consist of a chief justice, to be called the Chief Justice of Canada, and eight other judges, who shall be appointed by the Governor General.

Eligibility for appointment

3 (1) A person is eligible to be appointed as a judge of the Supreme Court if, after having been admitted to the bar of any province, the person has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the bar of any province.

Appointment of judges from Quebec

(2) At least three of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of that province or of a court established by Parliament or advocates at the bar of Quebec.

Procedure on vacancy

4. Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorney General of the province or Attorneys General of the provinces from which the persons being considered for appointment come.

Tenure of office of judges of Supreme Court

5. (1) The judges of the Supreme Court hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries, allowances and pensions of judges of Supreme Court

(2) The salaries, allowances and pensions of the judges of the Supreme Court shall be fixed and provided by Parliament.

Ultimate appellate jurisdiction of Supreme Court

6. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction within and for Canada.

Appeals with leave of Supreme Court

7. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, where, in the opinion of the Supreme Court, any question involved is one that ought to be decided by it.

Appeals from references by Lieutenant Governor

8. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any matter referred to it for hearing and consideration by the Lieutenant Governor in Council of that province.

Additional appeals

9. In addition to any appeal provided for by this division, an appeal to the Supreme Court lies as may be provided by any Act of Parliament.

Laws respecting jurisdiction of Supreme Court; references of questions of law or fact

10. Parliament may make laws authorizing the reference of questions of law or fact to the Court and requiring the Court to hear and determine such questions.

Questions relating to civil law of Quebec

11. Where any case before the Supreme Court involves a question of law relating to the civil law of Quebec and no other question of law, that case shall be heard by a panel of five judges at least three of whom have the qualifications described in section 3 or, with the consent of the parties, by a panel of four judges at least two of whom have those qualifications.

Organization, maintenance and operation of Supreme Court

12. Parliament may make laws providing for the organization, maintenance and operation of the Supreme Court, and the effectual execution and working of this division and the attainment of its intention and objects including laws providing for the appointment of such ad hoc judges as may be necessary to ensure quorums.

Courts for Better Administration of Laws of Canada

Constitution of courts for better administration of laws of Canada

13. Parliament may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, organization, maintenance and operation of courts for the better administration of the laws of Canada, but no law providing for the constitution, organization, maintenance or operation of any such court shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

Appointment and Tenure of Office of Judges of Superior, District and County Courts and their Salaries, Allowances and Pensions

Appointment of judges of superior, district and county courts

14. The Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

Procedure on vacancy

15. Where a vacancy occurs in the superior, district or county court of a province, the Minister of Justice of Canada shall consult with the Attorney General of the province as to persons being considered for appointment.

Selection of judges appointed by Governor General

16. The judges of the courts in each province appointed by the Governor General shall be selected from among members of the bar of the province or from among judges who were members of the bar of the province prior to their appointment as judges.

Tenure of office of judges of superior courts

17. The judges of the superior courts of the provinces hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries, allowances and pensions of judges generally

*18. The salaries, allowances and pensions of the judges of the superior, district and county courts in each province, except the courts of probate in Nova Scotia and New Brunswick, shall be fixed and provided by Parliament.

Deputy judges

19. (1) For the purpose of enabling persons being tried or giving evidence in any superior, district or county court in a province to exercise any right they may have by law to be tried or heard in English or French according to their choice, the Governor in Council may, notwithstanding sections 16 and 17, at the request of the Attorney General and appropriate chief justice of the superior court or chief or senior judge of the district or country courts of that province, appoint any persons who have been judges of a superior, district or country court, of any other province, or any persons who are judges of such a court of any other province with the consent of the Attorney General and appropriate chief justice or chief judge of such province, to be deputy judges of any superior, district or county court in the province on behalf of which the request is made.

Tenure of office of deputy judges

(2) A deputy judge may be appointed pursuant to this section for any period of time during which period, he or she shall perform such duties as are assigned by the appropriate chief justice or chief judge, and his or her appointment may be terminated at the pleasure of the Governor in Council.

Interpretation

20. For the purposes of this Division, the term "province" includes the Yukon Territory and the Northwest Territories.

DOCUMENT:800-010/006
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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

FAMILY LAW

Ottawa
February 5-6,1979

FAMILY LAW

Attached to this report is the draft text of the proposed redistribution of legislative competence upon which a consensus was reached by your Ministers (see Tab H).

The accompanying text is an attempt to reflect the consensus on proposed policy in the following particulars:

1. That the provincial legislatures and the federal Parliament have concurrent legislative jurisdiction in relation to grounds for divorce with the provincial legislatures having paramountcy. In result, the provinces need not legislate in divorce matters, relying on the federal law, but if they do legislate the provincial legislation prevails;

2. Parliament has legislative authority in relation to the rules governing recognition of divorces and in relation to the jurisdictional basis upon which courts grant divorces. This will ensure uniform rules of recognition of divorces granted in Canada and abroad and will tend to preclude forum shopping and the proliferation of limping marriages.

The establishment of exclusive jurisdiction in Parliament with respect to this matter is not unanimous. Quebec prefers either a provision whereby uniform rules of recognition adopted by all provincial jurisdictions could oust the federal rules or alternatively a power for that province to make paramount laws on the rules of recognition of divorces. The position of the federal administration is that the legislative competence to make rules could be concurrent with federal paramountcy in order to ensure uniformity, but has no problem with the prevailing provincial view favoring exclusive federal jurisdiction. It was agreed that the position of Quebec could be considered in the context of a delegation formula, whereby Parliament would be able to delegate to provinces the legislative authority to make rules respecting recognition of divorces.

3. Legislative competency with respect to relief which is ancillary or corollary to divorce such as alimony, maintenance, etc. is transferred to the provincial legislatures where it may be made consonant with provincial family law legislation;

4. the proposed new 96(2) is to remove any disability which provincially-appointed judges would otherwise have in dealing with the whole range of matters arising out of the law governing the family relations, including de facto unions. This is a particularly important provision for those provinces having, or seeking to have, unified family courts with integrated jurisdiction to deal with all family law matters.

Federal representatives preferred that the area of family law referred in the proposed section 96(2) be phrased in general terms to say "in any or all matters arising out of family relationships, rights or obligation among members of a family recognized as such in law". Most provincial jurisdictions favour an inclusionary definition by way of an enumerated list. While Quebec agreed with this approach it would prefer general language along the following lines "in any matters arising out of the domain of family law". The Ministers agreed that this question could be reviewed in a final drafting exercise after the First Ministers' Conference.

Federal representatives preferred that the area of family law referred in the proposed section 96(2) be phrased in general terms to say "in any or all matters arising out of family relationships, rights or obligation among members of a family recognized as such in law". Most provincial jurisdictions favour an inclusionary definition by way of an enumerated list. While Quebec agreed with this approach it would prefer general language along the following lines "in any matters arising out of the domain of family law". The Ministers agreed that this question could be reviewed in a final drafting exercise after the First Ministers' Conference.

Draft Proposal for Discussion by First Ministers

FAMILY LAW

1. Repeal head 26 of section 91 -- "Marriage and divorce".

2. Repeal head 12 of section 92 -- "The solemnization of marriage in the Province" and substitute therefore "Marriage, including the validity of marriage in the Province".

3. Add after section 95 the following section:

95A(1) The Legislature of each Province may make laws in relation to divorce in the Province, except that Parliament has exclusive authority to make laws in relation to the recognition of divorce decrees granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for divorce.

(2) The Parliament of Canada may make laws in relation to divorce, except that the Legislature of each Province has exclusive authority to make laws in relation to alimony, maintenance, custody and any other relief corollary to divorce.

(3) Where the Legislature of a Province enacts a law in respect of any of the matters in which it has concurrent authority with the Parliament of Canada under this section, the Parliament of Canada ceases to have authority [in

respect of that Province] in all concurrent matters under this section while any such law of the Legislature continues in force.

4. Add to section 96 of the B.N.A. Act the following sub-section:

"(2) Notwithstanding that the judges are not appointed under subsection 1, the legislature of a province may confer, or authorize the Lieutenant Governor of the province to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Lieutenant Governor of the province, the jurisdiction of a judge of a superior court of the province in any matters arising out of family relationships, including divorce, annulment of marriage, decrees of validity or nullity of marriage, separation, support, maintenance, adoption, custody, access, affiliation, family property, and rights and obligations among members of a family recognized as such in law".

5. Add in the transitional provisions of the Act a provision for the continuation of the application of the Divorce Act (Canada) in respect of corollary relief for a period sufficient to allow Provinces to put their legislation in place.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

FISHERIES

Ottawa
February 5-6,1979

FISHERIES

Summary

1. Newfoundland and Nova Scotia tabled a joint proposal calling for concurrent jurisdiction with specified areas for federal paramountcy and for provincial paramountcy (having reference to seacoast fisheries in particular). Diverse views were expressed in relation to this proposal which was supported by Ontario and Alberta; the federal government, New Brunswick and Prince Edward Island however, expressed serious reservations. It was established that although constitutional amendments in this area may be premature at this time, there is a reasonable possibility for the development of an improved administrative arrangement in the management of fisheries. Ministers agreed that the federal government would attempt to prepare a federal proposal taking into account provincial views to be available for the First Ministers' Conference if possible.

2. New Brunswick (on an ad referendum basis) had suggested a constitutional amendment whereby fisheries would be taken out of Section 91 of the B.N.A. Act and placed under Section 95, providing for concurrent jurisdiction with federal paramountcy -- along with agriculture and immigration. This was spoken of only in terms of the seacoast fisheries. Prince Edward Island had given outright support to the suggestion while Saskatchewan and British Columbia had found merit in it.

3. British Columbia had taken the position that there ought to be provision in the Constitution for compulsory consultation. Beyond that, the province had expressed the view that tidal fisheries should be a shared responsibility, but that the provinces should have exclusive jurisdiction over the fisheries in inland and non-tidal waters, over aquaculture, and over non-migratory species -- salmonids, then, would not be within exclusive provincial jurisdiction.

4. The constitutional treatment of inland fisheries had emerged as a discrete issue, with the possibility of a formal transfer of legislative jurisdiction being discussed. British Columbia (see above), Ontario, and Saskatchewan had been amenable. Federal representatives had indicated a willingness to move in this direction provided that Indian food fishing rights could be protected, and on the understanding that any transfer of jurisdiction over the inland fisheries would not pertain to anadromous species, notably salmonids.

During the meeting, Newfoundland tabled a document, 830-70/016, which was a written response to the questions raised in respect of the province's earlier proposal as related to the joint Nova Scotia-Newfoundland proposal presented in Ottawa, January 11, 1979. Federal Fisheries department officials discussed these answers and expressed other technical concerns bearing on the question of how jurisdiction could practically be divided and disputes resolved.

Newfoundland and Nova Scotia tabled, for discussion pruposes, a new draft of their proposed section 5, paragraphs a) and b), whereby disputes relating to the allocation of fish stocks would be settled by a provincially constituted Review Board (rather than, as earlier proposed, the Governor General-in-Council). This new mechanism was discussed in terms of its scope and nature; both federal and provincial concerns were expressed about the workability of an independent body given the issues it would be called upon to resolve.

At the federal initiative there was some discussion of the consultative arrangements that now exist; in illustration a listing of the various consultative committees was circulated by the federal Fisheries officials. British Columbia expressed the view that in the area of salmonid enhancement it was pleased with the present consultation.

New Brunswick, ad referendum, suggested for consideration a constitutional amendment whereby fisheries would be taken out of Section 91 and placed under Section 95 providing for concurrent jurisdiction with federal paramountcy (as is the case with agriculture and immigration). Prince Edward Island spoke in general support of the idea; Saskatchewan and British Columbia also saw merit in it. Federal officials agreed to bring this to the attention of their Ministers.

Newfoundland refused to comment on this suggestion for concurrent jurisdiction, feeling that before any modifications in its position could be contemplated, the federal government must indicate whether or not it would be prepared to move from its apparent position that federal powers should not be abrogated in any way. Several provinces supported the need for a federal response to the Newfoundland-Nova Scotia proposal.

As regards inland fisheries, Alberta noted that this might be dealt with in the section being drafted for natural resources, and invited other views on possible constitutional treatment of the inland fisheries. Federal Fisheries officials said that apart from salmonids they could see no technical problem with a transfer of jurisdiction (although they could not speak for the federal government on the policy issue). Nova Scotia raised the question of whether employees would be transferred with jurisdiction. Saskatchewan said it would acquiese in a formal transfer of jurisdiction; Manitoba indicated that a solution could be deferred until Phase 2 if this would help resolution on the seacoast fisheries;

Ontario had no problem with a transfer of inland fisheries. Federal officials raised the issue of protecting Indian food fishing rights which any transfer of jurisdiction would have to take into account; in addition it was thought that anadromous species (salmonid) must remain under federal jurisdiction throughout their migratory range.

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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

OFFSHORE RESOURCES

Ottawa
February 5-6,1979

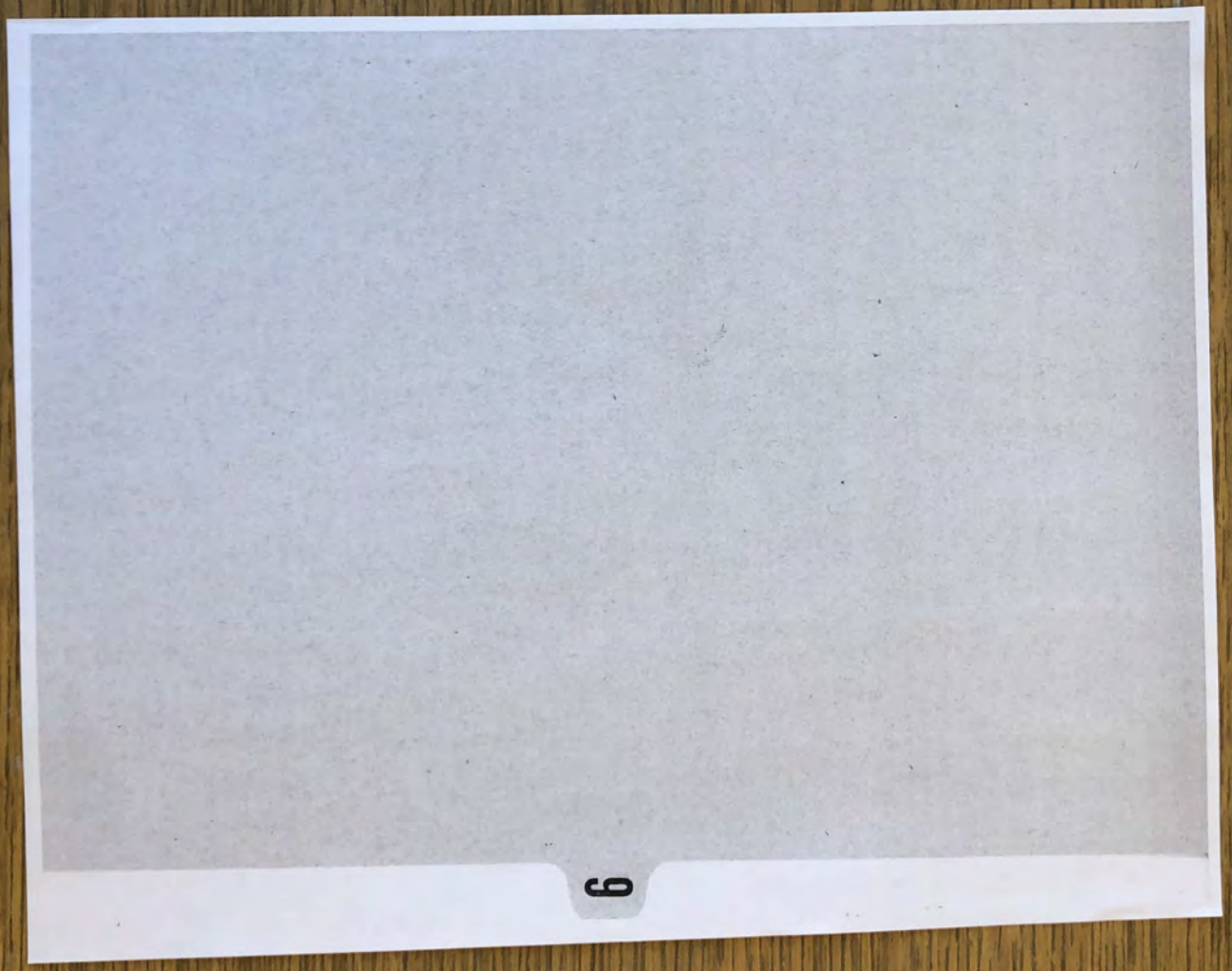
OFFSHORE RESOURCES

At the close of the Vancouver meeting of the Continuing Committee of Ministers on the Constitution the status of the offshore resources item was as follows:

1. Without prejudice to its stated position on ownership of offshore resources, Newfoundland had agreed to explore a possible distribution of legislative powers between the two orders of government which would ensure that in the course of resource development offshore, the social, cultural and economic interests of the province were preserved.

2. On an ad referendum basis, federal representatives had initiated discussion of the possibility of concurrent jurisdiction over offshore resources with paramountcy over certain specified aspects given to provincial legislatures and paramountcy over others to Parliament. Among officials there had been an initial examination of the various aspects that could be considered candidates for federal and provincial paramountcy respectively. Newfoundland and Nova Scotia had each shown an interest and agreed to take the suggestion under advisement.

3. It had become apparent that there would not be time before the First Ministers' Conference to specify -- on the basis of technical advice -- the different aspects for federal and for provincial paramountcy. Nonetheless Newfoundland and federal officials undertook to strive for an agreed statement of the principles involved which First Ministers might wish to endorse so that discussions would proceed following the Conference.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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

EQUALIZATION AND REGIONAL DEVELOPMENT

Ottawa
February 5-6,1979

EQUALIZATION AND REGIONAL DEVELOPMENT

Ministers agreed to the attached draft proposal (see Tab I).

It should be pointed out, however, that in relation to the method of application of equalization, Nova Scotia's position was that if British Columbia were not prepared to agree to the wording stated in the revised draft (see Tab I), then Nova Scotia would have to revert to the position expressed in the original draft agreed upon by all provinces with the exception of British Columbia (see Tab J).

[redacted]

Draft Proposal for discussion by First Ministers

EQUALIZATION AND REGIONAL DEVELOPMENT

"96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

(a) promoting equal opportunities for the well-being of Canadians;
(b) furthering economic development to reduce disparity in opportunities for social and economic well-being; and,
(c) providing essential public services of reasonable quality to all Canadians.

(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)."

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at lease once every five years at a meeting convened pursuant to section 97.

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Original Draft Proposal Agreed Upon by
all provinces except British Columbia

Equalization and Regional Development

96.(1) Without altering the legislative authority of Parliament or of the legislatures or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the governments of the provinces, are committed to

(a) promoting equal opportunities for the well-being of all Canadians;

(b) furthering economic development to reduce disparities in opportunity; and

(c) providing essential public services of reasonable quality to all Canadians.

(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.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

DOCUMENT:800-010/010
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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

CHARTER OF RIGHTS

Ottawa
February 5-6,1979

CHARTER OF RIGHTS

Summary

Ministers discussed the question of an entrenched Charter of Rights in a renewed Constitution.

Federal Ministers favoured an entrenched Charter along the lines proposed in Bill C-60. Most Provincial Ministers believed that basic rights and freedoms were more adequately protected through the normal legislative process and common law traditions than by formal entrenchment in the Constitution.

While this basic philosophical difference of viewpoint persisted, some progress was made in identifying possible means by which some if not all provinces could consider adhering to an entrenched Charter which included fundamental freedoms, democratic rights and language rights.

CHARTER OF RIGHTS

Introduction

Ministers meeting at Vancouver had before them the Report of the Committee of Officials which was prepared at the Ottawa meeting on January 11-12, 1979. They also had a comparative table of the rights and freedoms as set forth in Bill C-60 and those contained in a revised draft Charter circulated by federal officials as a basis for discussion at the Ottawa meeting.

Discussions

Ministers addressed the basic policy difference which existed between the federal government and the governments of most provinces on the wisdom of or need for having an entrenched Charter of Rights. It was the view of many provincial Ministers that there should be no entrenched Charter, particularly one as comprehensive as that proposed by the federal government. In their opinion, rights and freedoms are best protected by human rights laws enacted by each jurisdiction where flexibility in defining and clarifying rights can be maintained. Federal Ministers were of the view that entrenchment of all categories of rights and freedoms was essential for the protection of Canadians and an objective that was strongly supported by the public.

A number of provincial Ministers were prepared to consider the possibility of entrenching three major categories of rights (fundamental freedoms, democratic rights and language rights), although with some serious reservations on the nature and extent of the language rights, if the federal government would consider limiting a Charter to these categories by dropping the other categories (non-discrimination, legal, mobility and property rights). These rights, it was proposed, would be left to be dealt with by ordinary legislation at each level of government, despite the recommendations of the Pepin-Robarts Report that they be in an entrenched Declaration of Rights. New Brunswick, however, felt that all categories of rights should be entrenched, and Ontario was prepared to see some legal and mobility rights included if properly worded.

Federal Ministers took the position that the federal government would want all categories of rights included in a Charter and entrenched at least for the federal level. Their preferred position was that the categories additional to fundamental freedoms, democratic rights and language rights (which would be applicable to both levels of governments), would also be available for the provinces to opt into totally or by category and with or without an override clause. This could be done as and when each province decided, as long as there was initial adherence to the fundamental freedoms, democratic rights and language rights.

It was then proposed by a number of provincial Ministers that the Charter be broken into two phases. The first phase would deal with entrenchment of fundamental freedoms, democratic rights and language rights. The second

phase would then address the remaining categories of rights in the on-going process of constitutional review. Federal Ministers indicated that they were doubtful of the viability of this approach, but would take the matter under advisement with their federal colleagues. Some provincial Ministers also expressed reservations on this approach.

Attachments:

(1) Comparative Summary of Bill C-60 Provisions and New Proposals

(2) Ontario Proposed Constitutional Text, January 24, 1979

Comparative Summary of Bill C-60 Provisions and New Proposals

BILL C-60 PROVISIONS

A. Fundamental Freedoms

1. Freedom of thought, conscience and religion.
2. Freedom of opinion and expression.
3. Freedom of peaceful assembly and of association.
4. Freedom of press and other media.

Limitation Clause

Those reasonably justifiable in a free and democratic society in interests of

- public safety or health
- peace and security of public
- rights and freedoms of others.

Override Clause

None

B. Democratic Rights

1. Principles of universal suffrage and free and democratic elections.
2. Right of citizen to vote and to qualify for election in House of Commons or legislature without discrimination based on race, national or ethnic origin, language, color, religion or sex.
3. Limits on maximum duration of House of Commons and legislatures except in case of national emergency.
4. Requirement for annual sessions of Parliament and legislatures.

Limitation Clause

On first two only: same as under fundamental freedoms.

Override Clause

None

C. Legal Rights

1. Right against unreasonable searches and seizures.
2. Right against arbitrary detention, imprisonment or exile.
3. Rights on arrest or detention to be told promptly of reasons therefor, to retain and instruct counsel promptly and to remedy by habeas corpus.

NEW DRAFT PROPOSALS

A. Fundamental Freedoms

1. Freedom of conscience and religion.
2. Freedom of thought, opinion and expression, including freedom of press and other media.
3. Freedom of peaceful assembly and of association.

Limitation Clause

Those prescribed by law as are reasonably justifiable in a free and democratic society in the interests of

- national security
- public safety, order, health or morals
- any rights and freedoms of others.

Override Clause

None

B. Democratic Rights

1. Consistent with principles of universal suffrage and free and democratic elections, right of citizen to vote and qualify for election in House of Commons or legislature without unreasonable distinction or limitation.
2. Limit on maximum duration of House of Commons and legislatures except in case of national emergency.
3. Requirement for annual sittings of Parliament and legislatures.

Limitation Clause

None, except as built into first two.

Override Clause

None

C. Legal Rights

Right to life, liberty and security of person and right not to be deprived thereof except by due process of law, including

1. Right against unreasonable searches and seizures.
2. Right against unreasonable interference with privacy.

C. Legal Rights (Cont'd)

4. ight not to testify in any oceedings if denied counsel, otection against self-crimination or other constitutional safeguards.
5. Right to assistance of interpreter in any proceedings.
6. Right to fair hearing when rights of obligations being determined.
7. Right of accused to presumption of innocence.
8. Right of accused to fair and public hearing before impartial tribunal.
9. Right of accused not to be denied bail unfairly.
10. Protection against ex post facto offences and punishment.
11. Protection against cruel and unusual punishment or treatment.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

C. Legal Rights (Cont'd)

3. Right against detention or imprisonment except in accordance with prescribed laws and procedures.
4. Rights on arrest or detention to be told promptly of reasons therefor, to retain and consult counsel promptly and to remedy by habeas corpus.
5. Rights as a person charged with a criminal or penal offence
   - to be informed of specific charge,
   - to be tried in reasonable time,
   - to presumption of innocence,
   - to a fair and public hearing before impartial tribunal,
   - not to be denied bail unfairly,
   - to protection against ex post facto offences and punishment.
6. Protection against double jeopardy.
7. Benefit of a lesser penalty where law is changed.
8. Protection against cruel or inhuman treatment or punishment.
9. Right when compelled to give evidence to counsel, to protection against self-crimination and to other constitutional safeguards.
10. Right to assistance of interpreter in any proceedings.
11. Right to fair hearing when rights and obligations being determined.

Limitation Clause

Legal rights, except for right to life, right to counsel, protection against ex post facto laws, protection against self-crimination, protection against cruel or inhuman punishment or treatment and right to interpreter, may be overriden in times of serious public emergency. Limits on public proceedings may be placed in normal circumstances.

Override Clause

Provinces could opt in with general override power.

D. Non-Discrimination Rights

1. Right to equality before the law and to equal protection of the law.
2. Enjoyment of fundamental freedoms, legal rights and mobility rights without discrimination based on race, tional or ethnic origin, language, lor, religion, age or sex.

D. Non-Discrimination Rights

1. Right to equality before the law and to equal protection of the law without distinction or limitation other than one which is provided by law and fair and reasonable having regard to object of law.
2. Exemption of laws which are in furtherance of affirmative acti programs even though they may discriminate, as long as discrimination is justifiable.

D. Non-Discrimination Rights (Cont'd)

Limitation Clause

...e as under fundamental ...reedoms.

Override Clause

None

D. Non-Discrimination Rights (Cont'd)

Limitation Clause

None, except as built in to section.

Override Clause

Provinces could opt in with general override power.

E. Mobility Rights

1. Right of person not to be arbitrarily exiled from Canada.
2. Right of citizens to take up residence, acquire and hold property and pursue a livelihood, subject to laws of general application, but without discrimination based on ...rovince of residence or previous ...idence.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

E. Mobility Rights

1. Right of citizen to enter, remain in and leave Canada.
2. Right of citizen or "landed immigrant" to change province of residence or to pursue livelihood in another province, subject to laws of general application, but without discrimination based only on province of present or previous residence.

Limitation Clause

Those prescribed by law as are reasonably justifiable in a free and democratic society in the interests of

- national security
- public safety, order, health or morals
- overriding economic or social considerations.

Override Clause

None

...operty Rights

1. Right to use and enjoyment of property by individual, and right not to be deprived thereof except in accordance with law.
2. Right to acquire and hold property without discrimination based upon province of residence.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

F. Property Rights

1. Right to use and enjoyment of property by individuals or groups and right not to be deprived thereof except in accordance with law that is fair and just.

Limitation Clause

1. Laws which control or restrict use of property in public interest or for collection of taxes and penalties.
2. Laws which are justifiable in a free and democratic society in the interests of

- national security
- public safety, order, health or morals.

Override Clause

None

Language Rights

- er of Parliament and legislatures to declare English and French official languages of Canada for all purposes declared.
- Power of Parliament and legislatures to provide for more extensive rights to use English and French.
- Right to use English or French in all debates and other proceedings of Parliament or any legislature.
- Statutes, records and journals of Parliament and legislatures of Ontario, Quebec and New Brunswick to be printed and published in English and French, both versions equally authoritative. In other provinces, obligation optional with legislatures. In Ontario, date for French publication to be ed by legislature.
- ght to use French or English in all court proceedings at federal level and in Ontario, Quebec and New Brunswick.

6. Right of witness to be heard in French or English (without prejudice) in any court in Canada in any criminal proceeding or in any serious provincial penal proceeding.

- ght of a member of public to mmunicate in English or French with head or central office of any federal government institution, and with any principal offices thereof in areas designated by Parliament on basis of minority language numbers.

8. Right of member of public to communicate in English or French with principal offices of any provincial government institution in areas designated by provincial legislature on basis of minority language numbers.

9. Preservation of legal or customary rights or privileges re use of languages other than English or rench.

G. Language Rights

1. English and French declared official languages of Canada with status and protection set forth in Charter.
2. Power of Parliament and legislatures to extend the status, protection or use of English and French.
3. Right to use English or French in debates and other proceedings of Parliament; same right in debates of legislatures.
4. Statutes, records and journals of Parliament and legislatures of Ontario, Quebec and New Brunswick to be printed and published in English and French, both versions equally authoritative. In other provinces, obligation optional with legislatures with test of "to extent practicable." In Ontario, date for French publication to be fixed by legislature.
5. Right to use French or English in all court proceedings at federal level and in Ontario, Quebec and New Brunswick. But with respect to three provinces, right to be provided as soon as practicable and in any event not later than five years after adoption of Charter. For other provinces, a similar right to greatest extent possible as the legislatures may prescribe.
6. Right of witness to be heard in French or English, through an interpreter where necessary (without prejudice), in any court in Canada in a case involving an offence under federal law or a serious offence under provincial penal law.
7. Right of a member of public to communicate in English or French with head or central office of a federal government institution, and with any principal offices thereof in areas designated by Parliament on basis of minority language numbers.
8. Right of member of public to communicate in English or French with the head, central or principal offices of any provincial government institution, to the extent and in the areas as defined by the provincial legislature on the basis of practicability and necessity for such services.
9. Preservation of legal or customary rights or privileges re use of languages other than English or French.

. Language Rights (Cont'd)

. Right of minority language glish or French) parents who Canadian citizens to choose inority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.

. Preservation of rights in the future of identifiable English or French language communities to use of French or English.

2. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.

. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

itation Clause

Same as under fundamental freedoms.

Override Clause

None

G. Language Rights (Cont'd)

10. Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.

11. Preservation of rights in the future of identifiable English or French language communities to use of French or English.

12. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.

13. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

Limitation Clause

None

Override Clause

None

H. Undeclared Rights

1. Protection of any undeclared rights existing at time of adoption of Charter, including those of native peoples under Royal Proclamation of 1763.

H. Undeclared Rights

1. Protection of any undeclared rights existing at any time, including those that may pertain to native peoples.

I ENFORCEMENT PROVISIONS

1. Charter provisions to render inoperative any law which is in conflict with its provisions.

2. Where no other remedy exists, courts empowered to grant declaratory, injunctive or similar relief where anyone seeks to have Charter rights defined or enforced.

I ENFORCEMENT PROVISIONS

1. Charter provisions to render inoperative any law or administrative act which is in conflict with its provisions.

2. Where no other effective recourse or remedy exists, courts empowered to grant such relief or remedy for a violation of Charter rights as may be deemed appropriate and just in the circumstances.

5. The provisions of this division may be cited as the Canadian Charter of Rights and Freedoms.

Fundamental Freedoms

Fundamental freedoms

6.(1) Everyone has the right to the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, opinion and expression including freedom in the dissemination of news, opinion and belief; and

(c) freedom of peaceful assembly and of association.

Justifiable limitations

(2) The manifestation or exercise of the freedoms declared by this section may be made subject only to such limitations prescribed by law as are reasonably justifiable in a free and democratic society in the interests of national security, public safety, order, health or morals or any rights and freedoms of others.

Democratic Rights

Democratic rights of citizens

7. Consistent with the principles of free and democratic elections to the House of Commons and to the legislative assemblies, and of universal suffrage for that purpose, every citizen of Canada shall, without unreasonable distinction or limitation, have

the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Duration of elected legislative bodies

8.(1) No House of Commons and no legislative assembly of a province shall continue for longer than five years from the date of the return of the writs for the choosing of its members.

Continuation in special circumstances

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefore by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of elected legislative bodies

9. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Official Languages

10.(1) English and French are the official languages of Canada, having the status and protection set forth in this Charter.

(2) Nothing in this Charter limits the authority of Parliament or of the legislature of a province to extend the status protection or use of the English and French languages.

Language Rights

11.(1) Everyone has the right to use English or French, as he or she may choose, in any of the debates or other proceedings of Parliament.

(2) Everyone has the right to use English or French, as he or she may choose, in the debates of the legislative assembly of any province.

12. The statutes and the records and journals of Parliament shall be printed and published in English and French and both language versions shall be equally authoritative.

13.(1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court constituted by Parliament.

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province, to the greatest extent possible accordingly as the legislature of the province prescribes.

14.(1) Any member of the public in Canada has the right to communicate with and to receive services from any head or central office of an institution of government of Canada in English or French, as he or she may choose and he or she has the same right with respect to any other principal 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.

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or other principal office of an institution of government of the province in English or French, as he or she may choose, to the extent to which and in the areas of the province in which it is determined, in such manner as may be prescribed or authorized by the legislature of the province that the right should pertain having regard to the practicability and necessity of providing such services.

15.(1) Any person in a province who is a member of an English-speaking or French-speaking minority population of that province has a right to have his or her children receive their educational instruction in their minority language at the primary and secondary school level wherever the number of children of such persons resident in an area of the province is sufficient to warrant the provision of minority language education facilities in that area out of public funds.

(2) In each province, the legislature may enact provisions for the determination of whether or not the number of children of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision of minority language education facilities in that area.

16. Nothing in sections 10 to 15 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Act with respect to English or French, and any other language in Canada.

Undeclared Rights

17. Nothing in this Charter abrogates or derogates from any right or freedom not declared by it that may exist in Canada, including any right or freedom that may pertain to the native peoples of Canada.

DOCUMENT:800-010/011
CONFIDENTIAL

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

SPENDING POWER

Ottawa
February 5-6,1979

SPENDING POWER

The following draft amendments constitute an addition to the January 11-12 report of the Committee of Officials on the Spending Power.

To facilitate ministerial review of policy options, the draft includes certain alternative sections as well as brief explanatory notes or comments where appropriate.

Draft Proposal for Discussion by First Ministers

Spending Power

Legislative Text

Renumber section 91 of the B.N.A. Act as subsection 91(1) and add the following:

Alternative (2) A

(2) The Parliament of Canada may make laws for the expenditure of money, or for conferring a benefit equivalent to that which would result from the expenditure of money, in relation to any matter not coming within the legislative jurisdiction of Parliament, and not within the concurrent legislative jurisdiction of Parliament and the legislatures where a law of Parliament has paramountcy, subject to such of the following conditions and restrictions as are applicable in any particular case.

Alternative (2) B

(2) The Parliament of Canada may make laws for the expenditure of money, or for conferring a benefit equivalent to that which would result from the expenditure of money, subject to such of the following conditions and restrictions as are applicable in any particular case.

Comments

Quebec noted that it could agree to a federal spending power limited to areas of concurrent or exclusive federal jurisdiction. They indicated that their government would have no objection to the exercise of the federal spending power in areas of provincial jurisdiction outside Quebec provided that equivalent compensation payments were made to the Government of Quebec.

Alternative (2)A

This section provides that the exercise of the federal spending power in areas of exclusive provincial jurisdiction would be subject to the limits established in subsequent sections. The federal spending power in areas of federal jurisdiction or concurrent jurisdiction where federal paramountcy applies would be unfettered.

Federal officials and officials from Newfoundland, New Brunswick, Saskatchewan, Alberta and British Columbia expressed a preference for this alternative.

Alternative (2) B

This section provides that any relevant exercise of the federal spending power, including its exercise in areas of exclusive federal jurisdiction, would be subject to the limits established in subsequent sections.

Ontario and Manitoba officials expressed a preference for a somewhat broader application of limits than would be provided under Alternative (2) A and suggested that "Alternative (2) B" be presented for discussion purposes.

... 2

Legislative Text

(3) A law of Parliament referred to in subsection (2) that provides for payments to all provinces, or for conferring a benefit capable of providing an equivalent to that which would result from payments to them, and that is such that the payments are or the benefit is conditional on expenditures by the provinces or the foregoing of revenue by them, is of no force or effect unless authorized by the governments of a majority of the provinces that have, according to the then latest general census, at least 50% of the population of Canada.

Alternative (4)A

(4) A law of Parliament referred to in subsection (3), notwithstanding that it is authorized as provided in that subsection, is of no force or effect unless it provides for payments or benefits to individuals residing in a province that does not accept payments or benefits thereunder that are in amounts determined by or pursuant to a provision of such law.

Alternative (4)B

(4) A law of Parliament referred to in subsection (3), notwithstanding that it is authorized as provided in that subsection, is of no force or effect unless it provides for payments to a province

Comments

(3) This section provides for a possible consensus approval process for certain federal-provincial programs. Such programs encompass a wide variety of alternative financing arrangements. Generally, however, the approval process would only apply to programs that are available to all provinces and which require provinces to undertake expenditures or forego revenues.

It was noted that none of the proposed limits to the federal spending power is intended to prevent bilateral federal-provincial agreements.

An earlier proposal, under which the consensus process would be modelled along the lines of the amending formula, was felt by the committee to be potentially too rigid for this purpose.

All members of the committee recognized that approval by a reconstituted Senate which represented provincial interests could serve as an alternative to this process.

British Columbia and Ontario representatives on the committee noted in particular that their proposals for Senate reform included a number of specific recommendations along these lines.

(4) Alternative (4)A

This section could provide for compensation to individuals residing in a province in cases where the government of that province did not wish to participate in a program which received approval under Section 3. This alternative was supported by federal and New Brunswick representatives.

Alternative (4)B

This section would provide for compensation to provinces in cases where the governments of those provinces did not wish to participate in a program which received approval under Section 3. This alternative was supported by all other provinces represented on the committee.

British Columbia and Ontario representatives noted that since this alternative could provide a strong incentive to "opt out", consideration should be

Legislative Text

that does not accept payments or benefits in accordance with the general provisions of the law that are equivalent in amount to the payments or benefits that would otherwise have been provided to it under the law.

(5) Subsections (3) and (4) apply whether or not the payments provided or the benefits conferred are provided or conferred in terms or conditions that may vary as between provinces.

(6) A law of Parliament referred to in subsection (2) that provides for payments to individuals or bodies, other than provincial governments, in all provinces and that significantly affects the programs of a province is of no force or effect unless, prior to the enactment thereof, the government of Canada has consulted with the government of each province whose programs would be so affected.

(7) Where the government of Canada is of the opinion that a measure providing for payments as described in subsection (6) that it proposes to introduce for enactment by Parliament will affect the programs of a province, it shall consult with the government of that province before introducing the measure.

Comments

given to compensating provinces by an amount less than they would have received had they remained in the program.

While the committee recognizes that it will be difficult to determine equivalent compensation, it is assumed that this is an issue that would be settled through negotiation of individual programs.

(6) Clauses 6 through 9 provide for consultation and possible suspension of federal action in respect of federal payments under national programs to individuals and bodies other than provincial governments where such payments would have a significant effect on provincial programs.

Representatives supporting "Alternative (2) A" (that is, that the federal spending power be limited in areas of provincial jurisdicton only) indicated that they could support Sections 6-9 only if a provision similar to "Alternative (2) A" were accepted.

(7) This section provides for consultation prior to the introduction of federal legislation.

... 4

Legislative Text	Comments
(8) A law referred to in subsection (6) shall be deemed not to have the effect therein referred to unless, prior to the enactment of the law, the government of a province has, in writing, advised the government of Canada that, in its opinion, the law will have such an effect.	(8) This section is intended to ensure that the determination of "significantly affects" in Section 6 rests with provincial governments rather than the courts.
(9) Where the government of a province has advised the government of Canada as provided in subsection (8) in relation to a particular measure, a copy of the instrument reflecting such advice shall forthwith be laid before Parliament and thereupon no further consideration shall be given to the measure in Parliament for a period of ninety days or such lesser number of days as is agreed to by the government of the province, during which period the government of Canada shall consult with the government of the province in relation to the measure at a meeting convened for that purpose or in such other manner as is agreed upon.	(9) This section provides for a ninety-day suspension of legislative action where a province registers a formal objection, and for mandatory consultations during that period.

Equalization

The Committee discussed the need for a special section clearly giving the federal government the unfettered right to make unconditional payments to the provinces, including equalization payments. It was agreed that such a section was unnecessary, since it was covered by section (2) and since any limitations on federal payments to the provinces refer only to conditional programs.

DOCUMENT:800-010/012
CONFIDENTIAL

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

DECLARATORY POWER

Ottawa
February 5-6,1979

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DECLARATORY POWER

Attached is the draft proposal approved by Ministers (see Tab N).

1. The main elements of the draft provisions are:

   - Parliament to limit future declarations to those purposes for which it is necessary to regulate the work for the general advantage of Canada (instead of assuming jurisdiction over the whole work);
   - consultation with the province in which the work is situated would have to occur before a declaration;
   - if such consultation did not result in agreement between the provincial and federal governments, the declaration would be discussed at a First Ministers' meeting;
   - if agreement was not reached as a result of that meeting, the federal declaratory legislation could only remain operative for five years (the cycle could be repeated);
   - the declaratory power to no longer be applicable to works involved in the primary production of non-renewable, electric, and forestry resources unless the consent of the province in which the work is situated is given;

2. The federal government also indicated it would be prepared to review the possibility of turning back to provincial jurisdiction works or aspects thereof now subject to declarations.

Reservations

3. Quebec's position is that the declaratory power should be abolished completely, or at the very least qualified so that it could only be used with the consent of the province in which the work is situated.

4. British Columbia's position is that the declaratory power should be used only with the approval of a reformed Senate. Such body would make the determination whether a declaration was for "the general advantage of Canada".

5. Newfoundland's position is that the declaratory power should remain unchanged. Manitoba and Nova Scotia concur.

Draft Proposal for Discussion
by First Ministers

CONFIDENTIAL

DECLARATORY POWER

1. Amend head 92. 10(c) to read as follows:

"(c) Such works as, although wholly situate within the province, are before or after their execution declared by Parliament to be for the general advantage of Canada, or for the advantage of two or more provinces, for purposes indicated in the declaration."

2. Add new subsections to section 92 which for the purposes of this draft are numbered as follows:

Requirement to consult with respect to use of declaratory power of Parliament

"92. (2) Before Parliament declares any work to be for the general advantage of Canada or for the advantage of two or more provinces

(a) the government of Canada shall consult with the government of the province or the governments of each of the provinces in which the work is situate; and

(b) if the consultation under paragraph (a) does not result in an agreement that the work be so declared, the Prime Minister of Canada shall consult the first ministers of the provinces about the proposed declaration at a first ministers' conference.

Declaration on failure on consultation

(3) Where, after the consultation required by subsection (2), an agreement has not been reached that a work be declared to be for the general advantage of Canada or for the advantage of two or more provinces, a declaration under paragraph 92(1)10(c) shall have effect only for such period not exceeding five years from the effective date of the declaration as is stated in the declaration but nothing in this subsection prohibits Parliament from making a further declaration in respect of the work after the requirements of subsection (2) have again been fulfilled.

Limitation on Declaratory Power with respect to resources

(4) No declaration under paragraph 92(1)10(c) shall be made by Parliament without the prior consent of the government of the province in which the work to be so declared is situate if it is a work for

(a) the primary production or initial processing of any non renewable or forestry resource; or

(b) the generation of electrical energy.

Revocation or limitation of declaration

(5) Parliament may revoke any declaration of a work to be a work for the general advantage of Canada or for the advantage of two or more provinces made before or after the coming into force of this section and may limit or, subject to subsections (2) to (4), extend the purposes for which any such declaration had been made."

DOCUMENT:800-010/013
CONFIDENTIAL

FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

THE AMENDING FORMULA, "PATRIATION" OF THE CONSTITUTION AND DELEGATION OF LEGISLATIVE AUTHORITY

Ottawa
February 5-6,1979

1. Amending Formula
2. "Patriation" of the Constitution
3. Delegation of Legislative Authority

4. AMENDING FORMULA

The Continuing Committee of Ministers on the Constitution discussed the problem of amendment at their meeting at Ottawa and at the second meeting in Toronto they agreed that a formula should be developed on the following basis:

(a) there should be a short list of matters requiring unanimity, including amendments relating to provincial ownership of and jurisdiction over natural resources plus the amending formula itself;

(b) all other changes of general concern should require the consent of Parliament and of the legislatures of at least seven provinces comprising at least 50% of the population of Canada; and

(c) changes in the boundaries of provinces should require the consent of the provinces concerned.

In further discussion at the meeting of officials on January 11-12, 1978, several provinces noted that the question of delegation of legislative powers from Parliament to legislatures, or in the reverse direction, should also form a part of the amending procedure as has been the case in the 'Fulton-Favreau formula' of 1964. All provinces expressing a view, however, said that delegation should be possible on a "one-by-one" basis (that is from Parliament to one province, or the reverse) rather than being limited to cases where it would involve at least two provinces, as in the case of the Fulton-Favreau formula. These provinces also felt that there should be no constitutional restriction on the sorts of powers that could be delegated.

1. AMENDING FORMULA

The Continuing Committee of Ministers on the Constitution discussed the problem of amendment at their meeting at Mont Ste-Marie and at the second meeting in Toronto they agreed that a formula should be developed on the following basis:

(a) there should be a short list of matters requiring unanimity, including amendments relating to provincial ownership of and jurisdiction over natural resources plus the amending formula itself;

(b) all other changes of general concern should require the consent of Parliament and of the legislatures of at least seven provinces comprising at least 85% of the population of Canada; and

(c) changes in the boundaries of provinces should require the consent of the provinces concerned.

In further discussion at the meeting of officials on January 11-12, 1979, several provinces asked that the question of delegation of legislative powers from Parliament to legislatures, or in the reverse direction, should also form a part of the amending procedure as had been the case in the "Fulton-Favreau formula" of 1964. All provinces expressing a view, however, said that delegation should be possible on a "one-to-one" basis (that is from Parliament to one province, or the reverse) rather than being limited to cases where it would involve at least four provinces, as in the case of the Fulton-Favreau formula. These provinces also felt that there should be no constitutional restriction on the sorts of powers that could be delegated.

The meeting of the Continuing Committee of Ministers in Vancouver on January 22-24, 1979, considered a draft formula prepared by the federal government on the above basis. It also considered an alternative formula submitted by the government of Alberta.

2. Alternative Amending Formulae

The following amending formulae are submitted for consideration by the Conference of First Ministers:

(a) "The Toronto consensus" formula

The draft formula, prepared by the federal government pursuant to the Toronto consensus, was presented in Vancouver. The formula would require unanimity for amendments relating to the ownership of and legislative jurisdiction in respect of natural resources and also for any amendments of the clause requiring unanimity for those purposes. All other generally entrenched matters could only be amended with the consent of Parliament and the consent of 2/3 of the provinces having at least 85% of the population of Canada.

Although British Columbia preferred a modification of the Victoria formula with British Columbia recognized as a fifth region and using a reconstituted Senate nominated by provincial governments as the forum for the expression of provincial views on amendments, British Columbia indicated that it would find acceptable a modified version of the "Toronto consensus" which would add "language and culture" to the short list of items requiring unanimity for amendment and which would alter the mathematical formula to six or seven provincial legislatures representing 60% of the population of Canada for the amendment of generally entrenched matters. Ontario indicated that it found the "Toronto consensus" formula generally acceptable,

although it would like to examine the possibility of adding provisions respecting language, the Supreme Court and the creation of new provinces to the matters subject to the mathematical formula for generally entrenched matters. Furthermore, Ontario felt that 85% might be too high a figure, but that 60%, on the other hand, would be too low.

(b) The Alberta formula

This would require the consent of Parliament and of 2/3 of the provinces with at least 50% of the population of Canada for general amendments. However, if an enactment is one taking away

(i) the powers of a provincial legislature,

(ii) the rights or privileges of a provincial legislature or government,

(iii) the assets or property of a province, or

(iv) the natural resources of a province,

a legislature which has not approved such an enactment and which has expressed its dissent, would continue its exclusive power to make laws for any such subject matter. Newfoundland expressed support for the Alberta formula.

(c) The Victoria formula

New Brunswick prefers the "Victoria formula", based on the consent of Parliament and of at least six legislatures distributed among four regions.

(d) The Fulton-Favreau formula coupled with greater flexibility

Manitoba indicated that it would prefer a more flexible formula than either the "Toronto consensus" or the Alberta formula and suggested that the Fulton-Favreau formula be taken as a point of departure in elaborating a more flexible formula.

Provisions for the delegation of powers could supplement any of the amending formulae described above.

2. "PATRIATION" OF THE CONSTITUTION

"Patriation" of the Constitution has not been discussed by Ministers. If an amending formula can be agreed upon, "patriation" could be accomplished on the basis contemplated at Victoria in 1971: a formal request by the government of Canada, pursuant to a joint address of the Senate and the House of Commons, for legislation by the British Parliament terminating the power of the British Parliament to legislate with regard to the Constitution of Canada and providing for a proclamation by the Governor General declaring the Constitution to be subject to amendment by the formula agreed upon.

3. DELEGATION OF LEGISLATIVE AUTHORITY

(See Tab S).

There was a brief discussion in Vancouver on the delegation of legislative authority and general support was expressed for the draft provisions (see Tab S). Ontario and British Columbia raised points for further clarification and information. It was agreed that the delegation provisions, while not part of the amending formula as such, were closely related to it. Ontario asked whether the words "prior to the enactment thereof" should be added after the word "unless" in s. 2 of the delegation provisions dealing with the consent of a province to the operation in that province of a federal law coming within the legislative jurisdiction of a province. It was explained that the present wording would permit a federal law, agreed to prior to enactment by one province, to be cast in general terms that would allow other provinces to opt-in subsequently. It was agreed, however, that the wording of s.2 should make clear that one province at least would have to give prior consent before Parliament enacted a law coming within the legislative jurisdiction of a province. British Columbia expressed concern lest Parliament, under s. 3, might agree to allow one province to make laws in the province in relation to a matter coming within the legislative authority of Parliament and then might subsequently refuse to allow other provinces to make laws in respect to the same matter. It was agreed that this matter should be examined.

CONFIDENTIAL

Proposed Draft for Discussion by First Ministers

AMENDMENTS TO THE CONSTITUTION

General amendment formula

1. Amendments to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the legislative assemblies of at least two-thirds of the provinces that have, according to the then latest general census, at least eighty-five per cent of the population of Canada.

Amendments with unanimous consent

2. Amendments to the Constitution of Canada in relation to ownership of, and legislative jurisdiction in respect of, natural resources and in relation to this section may be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the legislative assemblies of all provinces.

Amendments with consent of provinces to which they apply

3. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the provinces, may be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which such an amendment applies.

Amendments without resolution of Senate

[4. An amendment may be made by proclamation under section 1, 2 or 3 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of

the 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 the ninety days.] (1)

Rules applicable

5. The following rules apply to the procedures for amendment described in sections 1 to 3:

(a) any of the procedures may be initiated by the Senate or the House of Commons or the legislative assembly of a province; and

(b) a resolution made for the purpose of such a procedure may be revoked at any time before the issue of a proclamation authorized by it.

Amendments within jurisdiction of Parliament

6. Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada and the Senate and House of Commons.

Amendments within jurisdiction of legislatures

7. In each province the legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the province.

Matters to be dealt with under general amendment formula

8. Notwithstanding sections 6 and 7, the following matters may be amended only in accordance with the procedure set out in section 1:

(a) the office of the Queen, of the Governor General and of the Lieutenant-Governors;

(b) the requirements of the Constitution of Canada respecting yearly sessions of Parliament and the legislatures;

(c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the legislative assemblies;

(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;

NOTE:

(1) This section derives from article 51 of the Victoria Charter. Whether the section remains in this form will depend on further discussions on the Senate.

(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;

(g) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and

[(h) the requirements of the Constitution of Canada respecting the use of the English or French language.](1)

Further application of general amendment formula

9. The procedure prescribed in section 1 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this section but excluding section 2, or in making a general consolidation and revision of the Constitution.

NOTE: In addition to the above provisions for amending the Constitution, the following provision would be added elsewhere in the Constitution. The provision set out below would be amendable under the rule set out in section 1 above.

ANCILLIARY PROVISIONS RESPECTING PROVINCES AND TERRITORIES

Alteration of limits of provinces

10. Parliament may, after consultation among the Prime Minister of Canada and the first ministers of the provinces, and with the consent of and upon terms agreed to by the legislature of any province, alter the territorial limits of that province and provide for the effect and operation of such alteration.

NOTE:

(1) This could depend on decisions taken as to provisions on language rights.

CONFIDENTIAL

Proposed Alberta Draft for Discussion by First Ministers

Under the general amending formula, in respect of matters concerning the federal government and all the provinces, amendments could be made by an act of Parliament and the assent by resolution of the Legislative Assembly in two-thirds of the provinces representing the majority of the population of Canada.

This would be supplemented by a provision that if the enactment is one affecting matters relating to

(a) the powers of the legislature of a province to make laws,

(b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,

(c) the assets or property of a province, or

(d) the natural resources of a province,

any Legislative Assembly which has not approved such enactment and which has expressed its dissent thereto by resolution may continue exclusively to make laws in relation to the subject matters coming within such enactment.

This proposed approach to an amending formula

(a) gives all provinces an equal say in amendments;

(b) overcomes the rigidity argument by allowing for change but not having change imposed on any province not desiring it;

(c) is not based on regional but provincial equality;

(d) protects the interest of each province;

(e) requires a high degree of consensus among the provinces before an amendment could be passed — but no one province has a veto;

(f) can be varied as to percentage of provinces and population — for example, one could have a majority of provinces (6 of 10), two-thirds (7 of 10) or three-quarters (8 of 10).

Note: It is also recognized that it will be necessary to supplement this general formula to permit amendments to the Constitution affecting Parliament alone or Parliament acting in concert with one or more provinces on amendments affecting those provinces only, i.e. provincial boundaries.

[redacted]

EXCERPT FROM THE VICTORIA CHARTER (1971)

PART IX

AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

(1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;

(2) at least two of the Atlantic Provinces;

(3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the 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 the ninety days.

Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

(1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;

(2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

(1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;

(2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;

(3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;

(4) the powers of the Senate;

(5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;

(6) 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;

(7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and

(8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

FULTON - FAVREAU AMENDMENT FORMULA (1964)

APPENDIX 3

AN ACT TO PROVIDE FOR THE AMENDMENT IN CANADA OF THE CONSTITUTION OF CANADA

[October 30, 1964.]

WHEREAS Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth, and the Senate and House of Commons of Canada in Parliament assembled have submitted Addresses to Her Majesty praying that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

POWER TO AMEND THE CONSTITUTION OF CANADA

1. Subject to this Part, the Parliament of Canada may make laws repealing, amending or re-enacting any provision of the Constitution of Canada.

2. No law made under the authority of this Part affecting any provision of this Act or section 51A of the British North America Act, 1867, or affecting any provision of the Constitution of Canada relating to

(a) the powers of the legislature of a province to make laws,

(b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,

(c) the assets or property of a province, or

(d) the use of the English or French language,

shall come into force unless it is concurred in by the legislatures of all the provinces.

3. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision refers.

(2) Section 2 of this Act does not extend to any provision of the Constitution of Canada referred to in subsection (1) of this section.

4. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in any province other than Newfoundland shall come into force unless it is concurred in by the legislatures of all the provinces other than Newfoundland.

(2) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in the province of Newfoundland shall come into force unless it is concurred in by the legislature of the province of Newfoundland.

(3) Sections 2 and 3 of this Act do not extend to any provision of the Constitution of Canada referred to in subsection (1) or (2) of this section

5. No law made under the authority of this Part affecting any provision of the Constitution of Canada not coming within section 2, 3 or 4 of this Act shall come into force unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada according to the latest general census.

6. Notwithstanding anything in the Constitution of Canada, the Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons, except as regards

(a) the functions of the Queen and the Governor General in relation to the Parliament or Government of Canada;

(b) the requirements of the Constitution of Canada respecting a yearly session of Parliament;

(c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons, except that the Parliament of Canada may, in time of real or apprehended war, invasion or insurrection, continue a House of Commons beyond such maximum period, if such continuation is not opposed by the votes of more than one-third of the members of such House;

(d) the number of members by which a province is entitled to be represented in the Senate;

(e) the residence qualifications of Senators and the requirements of the Constitution of Canada for the summoning of persons to the Senate by the Governor General in the Queen's name;

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

(g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and

(h) the use of the English or French language.

7. Notwithstanding anything in the Constitution of Canada, in each province the legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the province, except as regards the office of Lieutenant-Governor.

8. Any law to repeal, amend or re-enact any provision of the Constitution of Canada that is not authorized to be made either by the Parliament of Canada under the authority of section 6 of this Act or by the legislature of a province under the authority of section 7 of this Act is subject to the provisions of sections 1 to 5 of this Act.

9. Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province, existing at the coming into force of this Act, to make laws in relation to any matter.

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

11. Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

(a) the British North America Acts, 1867 to 1964;

(b) the Manitoba Act, 1870;

(c) the Parliament of Canada Act, 1875;

(d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;

(e) the Alberta Act;

(f) the Saskatchewan Act;

(g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and

(h) this Act.

Part II

British North America Act, 1867, amended

12. Class 1 of section 91 of the British North America Act, 1867, as enacted by the British North America (No. 2) Act, 1949, and class 1 of section 92 of the British North America Act, 1867, are repealed.

13. The British North America Act, 1867, is amended by renumbering section 94A thereof as 94B and by adding thereto, immediately after section 94 thereof, the following heading and section:

Delegation of Legislative Authority

"94A. (1) Notwithstanding anything in this or in any other Act, the Parliament of Canada may make laws in relation to any matters coming within the classes of subjects enumerated in classes (6), (10), (13) and (16) of section 92 of this Act, but no statute enacted under the authority of this subsection shall have effect in any province unless the legislature of that province has consented to the operation of such a statute in that province.

(2) The Parliament of Canada shall not have authority to enact a statute under subsection (1) of this section unless

(a) prior to the enactment thereof the legislatures of at least four of the provinces have consented to the operation of such a statute as provided in that subsection, or

(b) it is declared by the Parliament of Canada that the Government of Canada has consulted with the governments of all the provinces, and that the enactment of the statute is of concern to fewer than four of the provinces and the provinces so declared to be concerned have under the authority of their legislatures consented to the enactment of such a statute.

(3) Notwithstanding anything in this or in any other Act, the legislature of a province may make laws in the province in relation to any matter coming within the legislative jurisdiction of the Parliament of Canada.

(4) No statute enacted by a province under the authority of subsection (3) of this section shall have effect unless

(a) prior to the enactment thereof the Parliament of Canada has consented to the enactment of such a statute by the legislature of that province, and

(b) a similar statute has under the authority of subsection (3) of this section been enacted by the legislatures of at least three other provinces.

(5) The Parliament of Canada or the legislature of a province may make laws for the imposition of punishment by fine, penalty or imprisonment for enforcing any law made by it under the authority of this section.

(6) A consent given under this section may at any time be revoked, and

(a) if a consent given under subsection (1) or (2) of this section is revoked, any law made by the Parliament of Canada to which such consent relates that is operative in the province in which the consent is revoked shall thereupon cease to have effect in that province, but the revocation of the consent does not affect the operation of that law in any other province, and

(b) if a consent given under subsection (4) of this section is revoked, any law made by the legislature of a province to which the consent relates shall thereupon cease to have effect.

(7) The Parliament of Canada may repeal any law made by it under the authority of this section, in so far as it is part of the law of one or more provinces, but if any repeal under the authority of this subsection does not relate to all of the provinces in which that law is operative, the repeal does not affect the operation of that law in any province to which the repeal does not relate.

(8) The legislature of a province may repeal any law made by it under the authority of this section, but the repeal under the authority of this subsection of any law does not affect the operation in any other province of any law enacted by that province under the authority of this section."

Part III

French Version

14. The French version of this Act set forth in the Schedule shall form part of this Act.

Part IV

Citation and Commencement

15. This Act may be cited as the *Constitution of Canada Amendment Act*.

16. This Act shall come into force on ..... day of .....

CONFIDENTIAL

Proposed Draft for Discussion by First Ministers

DELEGATION OF LEGISLATIVE AUTHORITY

Delegation to Parliament

XX. (1) Notwithstanding anything in the Constitution of Canada, Parliament may make laws in relation to any matter coming within the legislative jurisdiction of a province.

Consent of provincial legislature

(2) No law enacted under subsection (1) has effect in any province unless the legislature of that province has consented to the operation of such a law in that province.

Delegation to legislature of a province

(3) Notwithstanding anything in the Constitution of Canada, the legislature of a province may make laws in the province in relation to any matter coming within the legislative jurisdiction of Parliament.

Consent of Parliament

(4) No law enacted by a province under subsection (3) has effect unless, prior to the enactment thereof, Parliament has consented to the enactment of such a law by the legislature of that province.

cement

(5) Parliament or the legislature of a province may make laws for enforcing any law made by it under this section.

Revocation of consent

(6) A consent given under this section may at any time be revoked, and

(a) if a consent given under subsection (2) is revoked, any law made by Parliament to which the consent relates that is operative in the province in which the consent is revoked thereupon ceases to have effect in that province; and

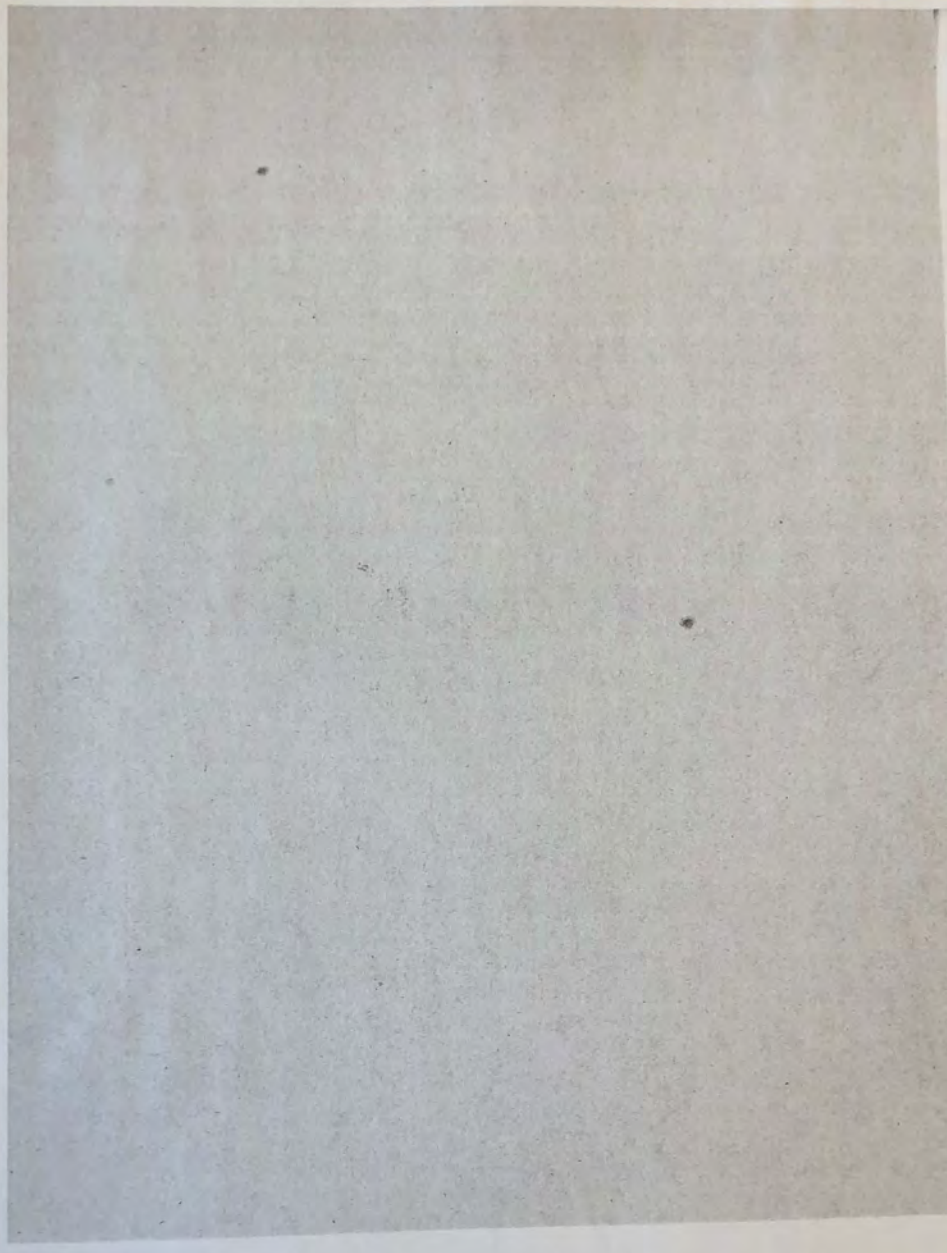
(b) if a consent given under subsection (4) is revoked, any law made by the legislature of a province to which the consent relates thereupon ceases to have effect.

Repeal of law by Parliament

(7) Parliament may repeal any law made by it under this section, in so far as it is part of the law of one or more provinces, but the repeal does not affect the operation of that law in any province to which the repeal does not relate.

Repeal of law by provincial legislature

(8) The legislature of a province may repeal any law made by it under this section.



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FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

Report of the Continuing Committee of Ministers on the Constitution to First Ministers

MONARCHY

Ottawa
February 5-6,1979

MONARCHY

Background

At the First Ministers meeting of October 30 - November 1, it was agreed that any restatement in a revised constitutional measure should not alter the role of the Monarchy in Canada. It was further agreed that the Continuing Committee of Ministers would review the provisions of Bill C-60 in this regard.

After further consideration of this issue there was no agreement on the appropriate way of formulating legislation on this matter and, therefore, it was agreed that the role of the Monarchy should remain the same as stated in existing provisions of the B.N.A. Act, the Letters Patent, 1947, etc., in this respect.

OTHER MATTERS

Papers and comments by the provinces raised questions about other matters in Bill C-60 which were not under review under any of the other items referred to the Continuing Committee by First Ministers.

Officials of the federal government and of most provinces discussed these matters and considered possible improvements to the Bill which the federal government now has under study. The Continuing Committee agreed, however, that these matters were not on its agenda and that it would be for any province that wished to do so to submit further suggestions or comments to the federal government on these aspects of Bill C-60.