

August 8, 1980

FORMALITIES TO BILL

Joint Resolution

Whereas (Whereas clauses to be provided August 14)

A respectful ⁽¹⁾ address be presented to Her Majesty the Queen in the following words:

"To the Queen's Most Excellent Majesty:

Most Gracious Sovereign:

We, Your Majesty's [most dutiful and ⁽²⁾ loyal subjects, the Senate and House of Commons of Canada in Parliament assembled, respectfully ⁽¹⁾ approach Your Majesty, requesting ⁽³⁾ that you may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth:

An Act to amend the Constitution of Canada and to transfer to Canada all authority of the Parliament of the United Kingdom to legislate in respect of Canada.

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting ⁽³⁾ 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:

- NOTE: (1) Previous addresses use the word "humble in place of "respectful" which seems inappropriate today.
(2) Consider deletion of these words
(3) Replaces "praying".

SCHEDULE

1. The British North America Act, 1867, as amended, is further amended by adding thereto, immediately after section 8 thereof, the following heading and section:

"I(A). SYMBOLS

The National
Flag of Canada

Anthems

Motto of
Canada
Canada Day

Amendment

- 8.1. (1) The National Flag of Canada is the red and white unifoliate, as heretofore established by law.
- (2) The national anthem of Canada is "O Canada", and the royal anthem of Canada is "God Save the Queen".
- (3) The motto of Canada is "*A mari usque ad mare*".
- (4) The national day of Canada, to be known as "Canada Day", is a legal holiday throughout Canada and shall be observed as such on the first day of July in each year. *
- (5) Parliament may amplify or modify this Act with respect to any matter provided for in this section.

*NOTE: The inclusion of this provision will require consequential amendments in Canadian statutes.

2. (1) Class 1 of section 91 of the said Act is repealed.

(2) Class 26 of section 91 of the said Act, being "Marriage and Divorce", is repealed.

3. (1) Class 1 of section 92 of the said Act is repealed.

(2) Class 12 of section 92 of the said Act, being "The Solemnization of Marriage in the Province", is repealed.

4. The said Act is further amended by adding thereto, immediately after section 95 thereof the following headings and sections:

"Family Law

Marriage and
divorce -
provincial
jurisdiction

95.1 (1) The legislature of a province may make laws in relation to marriage and divorce in the province and has exclusive authority to make laws in relation to relief corollary thereto.

Jurisdiction
of Parliament

(2) Parliament may make laws in relation to [marriage and ?] divorce and has exclusive authority to make laws in relation to the recognition of divorces and annulments granted outside Canada and in relation to the jurisdictional basis upon which a court may entertain an application for divorce or annulment.

Relationship
between laws
of provinces
and laws of
Parliament

(3) Where the legislature of a province enacts a law in relation to any matter over which it has concurrent authority with Parliament under this section, that law prevails in the province over any law of Parliament in relation to that matter to the extent of any inconsistency.

Declaration
assuming
authority

(4) The legislature of a province may declare that it is assuming authority in relation to all matters over which it has concurrent authority with Parliament under this section and, where the legislature so declares, all laws of Parliament in relation to those matters have no effect in that province while the declaration is in effect.

effect of
decree or
order

registration
and enforcement
of order

Consent of
Jurisdiction to
vary or
rescind order

Limitation
respecting
custody orders
legislature
of a province

Power of
legislature
to confer
jurisdiction
of superior
court judges

Extent of
consent

Enforcement

Termination of
consent

Effect of
revocation
of consent

95.2 A divorce or annulment or an order corollary thereto or corollary to marriage granted or made in Canada has legal effect throughout Canada.

95.3 (1) A corollary order referred to in section 95.2 made in any province may be registered in any other province in a court of competent jurisdiction and shall be enforced in like manner as an order of such court.

(2) A corollary order referred to in section 95.2 made in any province may be varied or rescinded in any other province upon application to a court of competent jurisdiction if the parties consent or either of them has a real and substantial connection with the province in which the application is made.

(3) Notwithstanding subsection (1), except with the consent of the parties, a custody order made in any province may be varied in another province only where the child has a real and substantial connection with the province in which the application is made.

95.4 Notwithstanding section 96, 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 Governor General or by the Lieutenant Governor of the province, as the legislature may determine, the jurisdiction of a judge of a superior court of the province in respect of any matters within the field of family law."

(2) A consent given under this section may at any time be revoked.

(3) Where a consent given under subsection (1) 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.

Delegation to
Parliament

Repeal of
law by
Parliament

Consent of
provincial
legislature

Repeal of law
by provincial
legislature

Idem

Delegation to
legislature
of a province

Consent of
Parliament

Extent of
consent

Enforcement

Revocation of
consent

Effect of
revocation
of consent

Delegation of Legislative Powers

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

(2) No law may be enacted by Parliament under subsection (1) unless, prior to the enactment thereof, the legislature of at least one province has consented to the enactment of such a law by Parliament.

(3) 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.

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

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

(6) A consent given under this section may relate to any matter, subject or class of subjects.

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

(8) A consent given under this section may at any time be revoked.

(9) Where a consent given under subsection (3) 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.

idem

(10) Where a consent given under subsection (5) 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

(11) Parliament may repeal any law made by it under this section, insofar 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

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

disparity in opportunities and

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

commitment
respecting
equalization
payments

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

review by
first ministers

(4) 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 or a shorter period pursuant to section 22.7.

*NOTE: This draft is the February 1977 draft of the Bill as amended by the proposals of Quebec and considered by Ministers at the July 1977 meeting in Vancouver.

VI(B). EQUALIZATION AND
REGIONAL DISPARITIES

Commitment to
promote equal
opportunities,
etc.

95.6. (1) Without altering the legislative authority of Parliament or of the provincial 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 provincial governments, are committed to

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

(b) furthering economic development to reduce disparity in opportunities; and

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

Commitment
respecting
equalization
payments

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

Review by
first ministers

(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 95.7. *

*NOTE: This draft is the February 1979 best efforts draft as changed by the proposals of Quebec and considered by Ministers at the July 1980 CCMC meeting in Vancouver.

SECRET

VI(C). FEDERAL PROVINCIAL
CONSULTATION

Conference of
first ministers
to be convened
at least
annually

95.7. (1) A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once in every year unless, in any year, a majority of those composing the conference decide that it shall not be held.

Constitutional
conferences

(2) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces, or such ministers as they may designate, shall be convened by the Prime Minister or minister designated by him at least once in every year if requested by the first ministers of four or more provinces.

Agenda of
conference

(3) The agenda of any conference convened pursuant to subsection (1) or (2) shall be decided by those composing the conference.

VI(D). CANADIAN CHARTER OF RIGHTS

AND FREEDOMS

Canadian Charter
of Rights and
Freedoms

95.8. The Canadian Charter of Rights and Freedoms recognizes the following fundamental rights and freedoms of everyone consistent with the principles of a free and democratic society under the rule of law.

Fundamental Freedoms

Fundamental
freedoms

95.9. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media; and
- (c) freedom of peaceful assembly and of association.

Democratic Rights

Democratic
rights of
citizens

95.10. Every citizen of Canada has, without unreasonable distinction or limitation, 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

95.11. (1) No House of Commons and no legislative assembly 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) In the time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond the period of five years, 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 legislative
bodies

95.12. 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.

Legal Rights

Life, liberty
and security
of person

95.13. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.

Search and
seizure

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

Detention or
imprisonment

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

Invasion of
privacy

95.16. Everyone has the right to be secure against arbitrary invasion of privacy.

Arrest or
detention

95.17. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons;
- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of *habeas corpus* for the determination of the validity of the detention and for release if the detention is not lawful.

Proceedings
against accused
in criminal
and penal
matters

95.18. Everyone accused of an offence has the right

- (a) to be informed promptly of the specific offence;
- (b) to be tried within a reasonable time;
- (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (d) not to be denied reasonable bail without just cause;
- (e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
- (f) not to be tried or punished more than once for an offence of which the person has been finally convicted or acquitted; and
- (g) to the benefit of the lesser punishment where the punishment for an offence of which the person has been convicted has been varied between the time of commission and the time of sentencing.

Treatment or
punishment

95.19. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-
crimination

95.20. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

Counsel

95.21. A witness has the right not to be compelled to testify if denied counsel.

Interpreter

95.22. A party or witness has the right to assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Rights of
citizen

Mobility Rights

95.23. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of
citizens and
permanent
residents

(2) Every citizen of Canada and every person who has the status of a permanent resident has the right

*Proceedings
of Parliament*

(a) to move to and take up residence in any province; and

*Debates of
legislatures*

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

*Limitation
of Parliament*

(3) The rights specified in subsection (2) are subject to any laws, rules or practices of general application in force in a province other than those that discriminate (unduly or unreasonably?) among persons primarily on the basis of province of present or previous residence or domicile.

*Statutes, etc.
of certain
legislatures*

Non-discrimination Rights

Equality
before the
law and equal
protection
of the law

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

Affirmative
action
programmes

(2) Nothing in this section precludes any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

Official
languages
of Canada

Official Languages

95.25. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (*)

(* New Brunswick may wish special provision added respecting status of English and French in that province.)

Status of
languages and
extension
thereof

(2) In addition, English and French have the status set forth in this Charter, and nothing therein limits the authority of Parliament or a legislature to extend the status or use of the two languages.

Proceedings
of Parliament

(3) *Language Rights* may be used by any person 95.26. (1) Everyone has the right to use English or French in any of the debates or other proceedings of Parliament.

Debates of
legislatures

(2) Everyone has the right to use English or French in the debates of the legislature of any province.

Statutes, etc.
of Parliament

95.27. (1) The statutes, and the records and journals of Parliament shall be printed and published in English and French.

Statutes, etc.
of certain
legislatures

(2) The statutes and records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

Idem

(3) The statutes and the records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

Both versions
of statutes
authoritative
province

(4) Where the statutes of any legislative body described in any of subsections (1) to (3) are printed and published in English and French, both language versions are equally authoritative.

Proceedings
in Supreme Court
and courts
constituted
by Parliament

95.28. (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.

privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

(*) New Brunswick may wish special provision added respecting language of services to the public.

proceedings in
courts of certain
provinces

(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 Ontario, Quebec, New Brunswick and Manitoba.

dem

(3) 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 not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.

rules for
orderly
implementation
and adaption

(4) Nothing in this section precludes the application of such rules as may be prescribed for the orderly implementation and operation of this section.

communications
by public with
government of
Canada

95.29. (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 the government of Canada in English or French, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

communications
by public with
government of
province

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or principal office of an institution of government of the province in English or French to the greatest extent practicable accordingly as the legislature prescribes. (*)

Rights and
privileges
preserved

95.30. Nothing in sections 95.25 to 95.29 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

(* New Brunswick may wish special provision added respecting language of services to the public.)

Language of
educational
instruction

95.31. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Provisions
for determining
where numbers
warrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Legislative
authority
not extended

Undeclared
rights and
freedoms

95.32. The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other fundamental rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

Application
of sections
95.27 and 95.28

Laws, etc.
not to apply
so as to
abrogate
declared
rights and
freedoms

95.33. Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

(2) See transitional for alternative to this section. Should it be in Charter or transitional?

Enforcement
of declared
rights and
freedoms

95.34. Where no other legal recourse or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty, as may be appropriate and just in the circumstances.

Application
to territories
and territorial
institutions

95.35. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the Council or Commissioner in Council thereof, as the case may be.

Legislative
authority
not extended

95.36. Nothing in this Charter confers any legislative authority on any body or authority except as expressly provided by this Charter.

Continuation
of existing
constitutional
provisions

95.37. Nothing in sections 95.26 to 95.28 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.(1)

Application
of sections
95.27 and 95.28

[95.38. A legislature of a province to which subsections 95.27(2) and 95.28(2) do not expressly apply may declare that one or both of these subsections shall have application, and thereupon any such provision shall apply to that province in the same terms as to any province expressly named therein.] (2)

- (1) Transitional provisions will be required for repeal of these provisions at an appropriate time.
- (2) See transitional for alternative to this section. Should it be in Charter or transitional?

5. The said Act is further amended by adding thereto, immediately after the heading "VII. JUDICATURE" preceding section 96 thereof the following headings and sections:

Supreme Court
of Canada

The Supreme Court of Canada

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

Constitution
of Court

95.40 The Supreme Court of Canada shall consist of eleven judges, who shall be appointed by the Governor General.

Eligibility for
appointment

95.41 (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 a member of the bar of any province.

Appointment of
judges from
Quebec

(2) Five 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 members of the bar of Quebec.

Designation of
Chief Justice
of Canada

95.42. (1) A chief justice, to be called the Chief Justice of Canada, shall be designated by the Governor General.

Alternate
designation

(2) The Chief Justice of Canada shall be designated for a single term, alternatively, from among the judges appointed under subsection 95.41(2) and from among the other judges of the Supreme Court.

Term of
office

(3) The term of office of a judge as Chief Justice of Canada expires seven years after the designation has effect or upon the judge attaining the age of retirement, whichever first occurs.

Procedure
on vacancy
in Court

95.43. (1) Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorneys General of all of the provinces and shall seek the consent of the Attorney General of each province from which a person being considered for appointment comes as to the appointment of that person.

Procedure
where no
consent

(2) Where consent is not forthcoming, the Minister of Justice of Canada and the appropriate provincial Attorney General shall, together with the Chief Justice of Canada, determine the person to be recommended for appointment.

Tenure of
office of
judges of
Court

95.44. (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.

Organization,
maintenance and
operation of
Court

Salaries,
allowances
and pensions
of judges

(2) Parliament shall provide for the salaries, allowances and pensions of the judges of the Supreme Court.

Ultimate
appellate
jurisdiction
of Court

95.45. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction.

Appeals with
leave of
Court

95.46. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court 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 any question involved raises a constitutional issue.

Appeals from
Governor in
Council
references

95.47. An appeal to the Supreme Court lies from an opinion pronounced by the highest court established by Parliament on any constitutional question referred to it by the Governor in Council.

Direct
references by
Governor in
Council

95.48. Parliament may make laws authorizing the Governor in Council to refer questions of law or fact directly to the Supreme Court.

Appeals from
provincial
references

95.49. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any constitutional question referred to it by the Lieutenant Governor in Council of the province.

Direct
provincial
references

95.50. The legislature of a province may make laws authorizing the Lieutenant Governor in Council to refer constitutional questions directly to the Supreme Court.

Additional
appeals

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

Organization,
maintenance and
operation of
Court

95.52. 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.

(4) Subsection *Judiciary* * renders invalid a law of Parliament enacted
(a) in accordance with the principles of equalization and regional development recognized in section 35.6; or
(b) in relation to a matter this is declared by Parliament in the enactment to be of an overriding national interest.

(5) Subsection (2) does not render invalid a law of a legislature enacted in relation to the reduction

*NOTE: It is presumed that it is not intended to touch section 96 at this time.

6. Section 101 of the said Act is repealed and the following headings and sections substituted therefor:

*"Courts for Better Administration
of Laws of Canada"*

Constitution
of additional
courts

101. The Parliament of Canada may, notwithstanding anything in the Constitution of Canada, provide for the establishment of courts for the better administration of the laws of Canada."

Canadian
economic
union

VII(A). ECONOMIC UNION

101.1. (1) Canada is constituted an economic union within which all persons may move without discrimination based on province or territory of residence or former residence and within which all goods, services and capital may move without discrimination based on province or territory of origin or entry into Canada or of destination or export from Canada.

Non-
discrimination

(2) Neither Canada nor a province shall by law or practice discriminate in a manner that contravenes the principle expressed in subsection (1).

Derogation

(3) Subsection (2) does not render invalid a law of Parliament or a legislature enacted in the interests of public safety, order, health or morals.

Idem

(4) Subsection (2) does not render invalid a law of Parliament enacted

(a) in accordance with the principles of equalization and regional development recognized in section 95.6; or

(b) in relation to a matter this is declared by Parliament in the enactment to be of an overriding national interest.

Idem

(5) Subsection (2) does not render invalid a law of a legislature enacted in relation to the reduction of substantial economic disparities between regions wholly within the province.

ALTERNATIVE

Customs
union
continued

Legislative
authority
not extended

Constitution
of Canada

Definitions

"Atlantic
provinces"

"Western
provinces"

(5) Subsection (2) does not render invalid a law of a legislature that, before it comes into force, is approved by the governments of six other provinces or by the governments of five other provinces and the government of Canada.

(6) Nothing in subsections (3), (4) or (5) renders valid a law of Parliament or a legislature that impedes the admission free into any province of goods, services or capital originating in or imported into any other province or territory.

(7) Nothing in this section confers any legislative authority on Parliament or a legislature.

7. Section 121 of the said Act is repealed.

8. The heading preceding section 146 and sections 146 and 147 of the said Act are repealed and the following headings and sections substituted therefor:

"XI. INTERPRETATION

145. The enactments and orders set out in Schedule A, together with this Act, shall continue as law in Canada as well as in the United Kingdom and shall collectively be known, (without limiting the generality of the expression) together with any amendments thereto made by any Proclamations issued under the authority of this Act, as the Constitution of Canada.

(Schedule A to be developed)

146. In the Constitution of Canada,
"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.

Application of
Interpretation
Act

147. (1) The *Interpretation Act* of Canada in force when this Act comes into force applies to the interpretation of the Constitution of Canada.

Restriction on
Interpretation
Act amendments

(2) No amendment to the *Interpretation Act* of Canada made after this Act comes into force applies to the interpretation of the Constitution of Canada unless the amendment is made in accordance with the procedures set out in Part XII of this Act.

XII. AMENDING FORMULA

General
Formula for
amending
Constitution
of Canada

148. (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 a majority of the provinces that includes

- (a) every province that at any time become the issue of such proclamation had, according to any previous general census, a population of at least 25 per cent of the population of Canada;
- (b) at least two of the Atlantic provinces; and
- (c) at least two of the Western provinces that have, according to the then latest general census, combined populations of at least 50 per cent of the population of all the Western provinces.

amendment of
paragraph 148(1)(c)

(2) Notwithstanding paragraph (1)(c), when the legislative assembly of each Western province has, either before or after the coming into force of this Part, by resolution so authorized, that paragraph shall read as follows:

"(c) at least two of the Western provinces." *

*NOTE: This section was in the 1976 draft resolution but not in the Victoria Charter.

SECRET

Amendment of
provisions
relating to
some but not
all provinces

149. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the provinces, including any such amendments relating to the ownership of resources, 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 the amendment applies.

Amendments
without
Senate
resolution

150. (1) An amendment may be made by proclamation under section 148 or 149 without a resolution of the Senate authorizing the issue of the proclamation if, within 90 days of the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and at any time after the expiration of those 90 days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing those 90 days.

Amendment
without
resolution
of legislative
assembly

(2) An amendment may be made by proclamation under section 148 or 149 without a resolution of the legislative assembly authorizing the issue of the proclamation if, within 90 days of the passage by the House of Commons of a resolution authorizing its issue, the legislature of the province has not passed such a resolution and if, at any time after the expiration of those 90 days, a referendum has been held in the province and a majority of electors voting thereat has approved the making of the amendment.

Rules for
referenda

(3) Parliament may make laws respecting the rules applicable to the holding of referenda under subsection (2).

151. The following rules apply to the procedures for amendment described in sections 148 and 149:

- (a) either procedure may be initiated by the Senate or House of Commons or by the legislative assembly of a province; and
- (b) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

152. The Parliament of Canada may exclusively make laws amending the Constitution of Canada, in relation to the executive government of Canada or the Senate or House of Commons.

153. In each province, the legislature may exclusively make laws in relation to the amendment from time to time of the constitution of the province.

154. Notwithstanding sections 152 and 153, amendments to the Constitution of Canada in relation to the following matters may be made only in accordance with the procedure described in section 148:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- (b) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the legislatures of the provinces;
- (c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the legislative assemblies of the provinces;
- (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;

SECRET

- (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 principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and
- (h) the requirements respecting the use of the English or French language.

imitation on
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155. The procedure prescribed in section 148 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 none the less be used to amend any provision for amending the Constitution, including this section, or in making a general consolidation and revision of the Constitution."

12. (1) A legislature of a province to which subsections 95.27(2) and 95.28(2) of the British North America Act, 1867, do not expressly apply may authorize the issuance of a proclamation declaring that one or both of these subsections shall have application in the province.

(2) A proclamation issued under subsection (1) by the legislature of a province amends subsections 95.27(2) and 95.28(2) of the British North America Act, 1867, as they may be, to include the province among the provinces listed in the subsection.

*NOTE: The wording of these general transitional sections will need to be finalized later.

SECRET

TRANSITIONAL AND REPEAL

9. Except as otherwise provided in the amendments to the British North America Act, 1867, as amended, contained in this Act, all laws relating to marriage and divorce that were in force in Canada or any province immediately before the coming into effect of this Act continue in force in Canada and that province, respectively, until such time as they are repealed, altered or replaced by Parliament or the legislature of the province according to the authority of Parliament or the legislature under the Constitution of Canada.*

Continuation
of existing
family laws

10. A legislature of a province to which subsections 95.27(2) and 95.28(2) of the British North America Act, 1867, do not expressly apply may declare that one or both of these subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named therein.

ALTERNATIVE

Application
of certain
language
rights

10. (1) A legislature of a province to which subsections 95.27(2) and 95.28(2) of the British North America Act, 1867, do not expressly apply may authorize the issuance of a proclamation declaring that one or both of these subsections shall have application in the province.

Proclamation
amend
t

(2) A proclamation issued under subsection (1) by the legislature of a province amends subsections 95.27(2) and 95.28(2) of the British North America Act, 1867, as the case may be, to include the province among the provinces listed in the subsection.

*NOTE: The wording of these general transitional sections will need to be finalized later.

Continuation
of Supreme
Court of
Canada

11. (1) The court existing immediately before the commencement of this Act under the name of the Supreme Court of Canada is continued as provided in this Act.

Continuation
in office of
judges

(2) The Chief Justice of Canada and other judges of the Supreme Court of Canada shall continue in office as though appointed and designated in the manner provided in this Act except that they shall hold office until attaining the age of seventy-five years.

Coming into
force of Act

Continuation of
laws

(3) Until otherwise provided pursuant to this Act, all laws respecting the Supreme Court of Canada and the judges thereof that were in force immediately before the commencement of this Act shall continue, subject to this Act.

Exception

Parliament of
United
Kingdom not
to legislate
for Canada

12. No Act of the Parliament of the United Kingdom passed after this Act comes into force shall extend, or be deemed to extend, to Canada or to any province or territory of Canada as part of its law.

Consequential
repeals

13. Upon the coming into force of this Act, the enactments mentioned in Schedule B to this Act shall, to the extent specified in Column II of the Schedule, cease to have effect and are hereby repealed as enactments of the Parliament of the United Kingdom, but without prejudice to any operation which any of those enactments and any law, order, rule or regulation made thereunder may continue to have in Canada.

Amendment not
precluded

Amendment
not precluded

14. (1) Amendments to the Constitution of Canada, including 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 assembly of each province but no such

SECRET

Coming into
force of Act

14. (1) Subject to subsections (2) and (3), this Act shall, as well in the United Kingdom as in Canada, come into force [and be recognized as having the force of law] on such day as may be fixed by proclamation authorized by the Governor General in Council of Canada.

ALTERNATIVE FROM 1971 BRITISH DRAFT

Coming into
force of Act

14. (1) Subject to subsections (2) and (3), this Act, when promulgated by proclamation of the Governor General of Canada, shall as well in the United Kingdom as in Canada, be recognized as having by virtue of the proclamation the force of law as from such date as may be specified in the proclamation.

Exception

(2) Subsections 2(1) and 3(1) of this Act shall come into force when Part XII of the British North America Act, 1867 comes into force.

Idem

(3) Part XII of the British North America Act, 1867, as enacted by this Act, shall come into force one year after the portions of this Act, other than those referred to in subsection (2) and this subsection, come into force.

Amendment not
precluded

(4) Nothing in subsection (3) shall be construed as precluding the amendment before it comes into force, of any provision of Part XII of the British North America Act, 1867, as enacted by this Act, pursuant to subsections 15(1) and (3).

Interim
amending
formula

15. (1) Amendments to the Constitution of Canada, including 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 assembly of each province but no such

amendments may be made under the authority of this section where there is another provision for making such amendment in the Constitution.

Interim
amendments
applicable
to some but
not all
provinces

(2) Notwithstanding subsection (1), 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 the legislative assembly of each province to which the amendment applies, but no such amendment may be made under the authority of this section where there is another provision for making such amendment in the Constitution.

Procedures

(3) The procedures set out in section 151 apply to amendments initiated under this section.

Repeal

(4) This section is repealed when Part XII of the British North America Act, 1867, comes into force.

Short title
and citation

16. This Act may be cited as the British North America Act, 1980, and the British North America Acts, 1867 to 1975 (No. 2), and this Act may be cited together as the British North America Acts, 1867 to 1980.

NOTE: Additional transitional sections will be needed. The following are under consideration:

1. Section respecting official French version of B.N.A. Act (and saying it does not operate as new law).
2. Further amendments to the B.N.A. Act including s. 133 and s. 23 of Manitoba Act.
3. Possible additional provision like 129 of B.N.A. Act to protect existing laws in areas other than family law.

SCHEDULE B

SECRET

Enactments Ceasing to have Effect as Acts of U.K. Parliament

COLUMN I <u>Act Affected</u>	COLUMN II <u>Extent of Repeal</u>
The Statute of Westminster, 1931, 22 & 23 Geo. 5, c. 4	Sections 2 to 5, in their application to Canada
	Section 7.
	In section 10(3) the words "and Newfoundland".
(Such other statutes as the British wish to repeal for their purposes.)	