Order Paper Questions

DVA—CLIENTS FOR HEALTH CARE TRIAL PERIODS

Question No. 3,058—**Mr. McKenzie:**

With reference to section 10.47 of the 1980 report of the Auditor General, has the Department of Veterans Affairs developed criteria for deciding which veteran clients should be selected for future health care trial periods?

Hon. W. Bennett Campbell (Minister of Veterans Affairs): The initial trial period of the proposed health care policy which took place between November, 1979 and the summer of 1980 was undertaken to enable the health care teams to gain experience in the process of the program while at the same time providing services to clients in need of support. During that period judgments as to who were in need were largely medical and were made on an individual basis. It is not envisaged at this time that further health care trial periods will be held.

HOME SUPPORT PROGRAMS

Question No. 3,059—**Mr. McKenzie:**

With reference to section 10.48 of the 1980 report of the Auditor General, was a federal-provincial agreement reached with respect to home support programs and (a) if so, what are the terms and on what date will it be implemented (b) if not, what attempts are currently being made to reach one?

Hon. W. Bennett Campbell (Minister of Veterans Affairs): The Auditor General's observations were based on a pilot project designed to test the operation of the aging veterans program. As a result of this testing, Veterans Affairs accepts the health care assessment of the province, and the doctor's report used by provincial authorities. There is, therefore, no requirement for federal-provincial agreements on this matter.

COST OF ORDER PAPER QUESTION

Question No. 3,255—**Mr. Cossitt:**

1. What is the cost to the taxpayer (a) if the government answers a question on the Order Paper within two weeks to a month (b) if questions remain on the Order Paper for periods of six months to five years?

2. For what reason does the government not answer all questions within approximately one month of their appearance on the Order Paper?

Mr. David Smith (Parliamentary Secretary to President of the Privy Council): 1. The only additional cost would be the printing of the question on the Order Paper for as long as it remains unanswered.

2. Often the information requested in questions requires considerable research. When compiled, it must be translated into the other official language. The government admits that it is often difficult to persuade officials to deal with these matters in an expeditious manner when some hon. members quite clearly overload the system with questions seeking information readily available by telephone or letter.

CANADIAN PENSION COMMISSION STAFF CUTS

Question No. 3,263—**Mr. Howie:**

Did the Canadian Pension Commission order staff cuts in their district offices across Canada and, if so (a) for what reason is this action being taken at this time (b) will this action impair attempts to speed up consideration of veterans' claims with respect to disability pensions?

Hon. W. Bennett Campbell (Minister of Veterans Affairs): No. (a) Not applicable. (b) Not applicable.

[*English*]

Mr. Smith: Madam Speaker, I would ask that the remaining questions be allowed to stand.

Madam Speaker: The questions enumerated by the parliamentary secretary have been answered.

Mr. Cook: Madam Speaker, I rise in reference to the questions being answered. Question No. 2,347 was asked on April 3 of this year. The parliamentary secretary may be interested in knowing why the question was asked. There is a distinct possibility that the waterlot leases in Burrard Inlet are so unfair and so totally different from one waterlot to another that I can only presume that is the reason the question has not been answered. Could the parliamentary secretary please investigate and perhaps give me the answer?

Mr. Smith: I will take note of the hon. member's representation, Madam Speaker.

Madam Speaker: Shall the remaining questions stand?

Some hon. Members: Agreed.

GOVERNMENT ORDERS

[*English*]

THE CONSTITUTION

RESOLUTION RESPECTING CONSTITUTION ACT, 1981

The House resumed from Friday, November 20, 1981, consideration of the motion of Mr. Chrétien:

THAT, WHEREAS in the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

AND WHEREAS it is in accord with the status of Canada as an independent state that Canadians be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is also desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to that Constitution;

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

CONSIDÉRANT :

que le Parlement du Royaume-Uni a modifié à plusieurs reprises la Constitution du Canada à la demande et avec le consentement de celui-ci;

que, de par le statut d'État indépendant du Canada, il est légitime que les Canadiens aient tout pouvoir pour modifier leur Constitution au Canada;

qu'il est souhaitable d'inscrire dans la Constitution du Canada la reconnaissance de certains droits et libertés fondamentaux et d'y apporter d'autres modifications,

il est proposé que soit présentée respectueusement à Sa Majesté la Reine l'adresse dont la teneur suit :

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

We, Your Majesty's loyal subjects, the House of Commons of Canada in Parliament assembled, respectfully approach Your Majesty, requesting 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:

A Sa Très Excellente Majesté la Reine,
Très Gracieuse Souveraine :

Nous, membres de la Chambre des communes du Canada réunis en Parlement, fidèles sujets de Votre Majesté, demandons respectueusement à Votre Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi ainsi conçu :

ANNEXE A—SCHEDULE A

An Act to give effect to a request by the Senate and House of Commons of Canada

Loi donnant suite à une demande du Sénat et de la Chambre des communes du 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 that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Sa Très Excellente Majesté la Reine, considérant :

qu'à la demande et avec le consentement du Canada, le Parlement du Royaume-Uni est invité à adopter une loi visant à donner effet aux dispositions énoncées ci-après et que le Sénat et la Chambre des communes du Canada réunis en Parlement ont présenté une adresse demandant à Sa Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi à cette fin,

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:

sur l'avis et du consentement des Lords spirituels et temporels et des Communes réunis en Parlement, et par l'autorité de celui-ci, édicte :

Constitution Act, 1981 enacted

1. The *Constitution Act, 1981* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

Adoption de la *Loi constitutionnelle de 1981*

1. La *Loi constitutionnelle de 1981*, énoncée à l'annexe B, est édictée pour le Canada et y a force de loi. Elle entre en vigueur conformément à ses dispositions.

Termination of power to legislate for Canada

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1981* comes into force shall extend to Canada as part of its law.

Cessation du pouvoir de légiférer pour le Canada

2. Les lois adoptées par le Parlement du Royaume-Uni après l'entrée en vigueur de la *Loi constitutionnelle de 1981* ne font pas partie du droit du Canada.

French version

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

Version française

3. La partie de la version française de la présente loi qui figure à l'annexe A a force de loi au Canada au même titre que la version anglaise correspondante.

Short title

4. This Act may be cited as the *Canada Act*.

Titre abrégé

4. Titre abrégé de la présente loi : *Loi sur le Canada*.

SCHEDULE B

CONSTITUTION ACT, 1981

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

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

Fundamental Freedoms

Fundamental freedoms

2. 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 of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has 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.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Continuation in special circumstances

(2) In 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 five years if such continuation is not opposed by the votes of more than one-third of the members of the House

ANNEXE B

LOI CONSTITUTIONNELLE DE 1981

PARTIE I

CHARTE CANADIENNE DES DROITS ET LIBERTÉS

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

Droits et libertés au Canada

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Libertés fondamentales

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes :

a) liberté de conscience et de religion;

b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;

c) liberté de réunion pacifique;

d) liberté d'association.

Droits démocratiques

Droits démocratiques des citoyens

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

Mandat maximal des assemblées

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

Prolongations spéciales

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongé respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, pourvu que cette prolongation ne fasse pas

of Commons or the legislative assembly, as the case may be.

l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Séance annuelle

5. Le Parlement et les législatures tiennent une séance au moins une fois tous les douze mois.

Mobility Rights

Liberté de circulation et d'établissement

Mobility of citizens

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

Liberté de circulation

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

Rights to move and gain livelihood

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

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

(*b*) to pursue the gaining of a livelihood in any province.

Liberté d'établissement

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

b) de gagner leur vie dans toute province.

Limitation

(3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

Legal Rights

Garanties juridiques

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Vie, liberté et sécurité

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Search or seizure

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

Fouilles, perquisitions ou saisies

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

Detention or imprisonment

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

Détention ou emprisonnement

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

Arrest or detention

10. Everyone has the right on arrest or detention

(*a*) to be informed promptly of the reasons therefor;

(*b*) to retain and instruct counsel without delay and to be informed of that right; and

(*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Arrestation ou détention

10. Chacun a le droit, en cas d'arrestation ou de détention :

a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;

b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;

c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

Affaires criminelles et pénales

11. Tout inculpé a le droit :

a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;

b) d'être jugé dans un délai raisonnable;

c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;

d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;

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

g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;

h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est

modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

Treatment or punishment

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

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

Cruauté

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

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

Témoignage incriminant

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

14. La partie ou le témoin qui ne peuvent suivre les procédures, soit parce qu'ils ne comprennent pas ou ne parlent pas la langue employée, soit parce qu'ils sont atteints de surdité, ont droit à l'assistance d'un interprète.

Interprète

Equality Rights

Droits à l'égalité

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

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

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

Affirmative action programs

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

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

Programmes de promotion sociale

Official Languages of Canada

Langues officielles du Canada

Official languages of Canada

16. (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.

16. (1) Le français et l'anglais sont les langues officielles du Canada; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions du Parlement et du gouvernement du Canada.

Langues officielles du Canada

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the

(2) Le français et l'anglais sont les langues officielles du Nouveau-Brunswick; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions de la Légis-

Langues officielles du Nouveau-Brunswick

legislature and government of New Brunswick.

lature et du gouvernement du Nouveau-Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

(3) La présente charte ne limite pas le pouvoir du Parlement et des législatures de favoriser la progression vers l'égalité de statut ou d'usage du français et de l'anglais.

Progression vers l'égalité

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

17. (1) Chacun a le droit d'employer le français ou l'anglais dans les débats et travaux du Parlement.

Travaux du Parlement

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

(2) Chacun a le droit d'employer le français ou l'anglais dans les débats et travaux de la Législature du Nouveau-Brunswick.

Travaux de la Législature du Nouveau-Brunswick

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

18. (1) Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Documents parlementaires

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

(2) Les lois, les archives, les comptes rendus et les procès-verbaux de la Législature du Nouveau-Brunswick sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Documents de la Législature du Nouveau-Brunswick

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

19. (1) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux établis par le Parlement et dans tous les actes de procédure qui en découlent.

Procédures devant les tribunaux établis par le Parlement

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

(2) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux du Nouveau-Brunswick et dans tous les actes de procédure qui en découlent.

Procédures devant les tribunaux du Nouveau-Brunswick

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(*a*) there is a significant demand for communications with and services from that office in such language; or

20. (1) Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions là où, selon le cas :

a) l'emploi du français ou de l'anglais fait l'objet d'une demande importante;

b) l'emploi du français et de l'anglais se justifie par la vocation du bureau.

Communications entre les administrés et les institutions fédérales

(*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

(2) Le public a, au Nouveau-Brunswick, droit à l'emploi du français ou de l'anglais pour communiquer avec tout bureau des institutions de la législature ou du gouvernement ou pour en recevoir les services.

Communications entre les administrés et les institutions du Nouveau-Brunswick

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 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.

21. Les articles 16 à 20 n'ont pas pour effet, en ce qui a trait à la langue française ou anglaise ou à ces deux langues, de porter atteinte aux droits, privilèges ou obligations qui existent ou sont maintenus aux termes d'une autre disposition de la Constitution du Canada.

Maintien en vigueur de certaines dispositions

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

22. Les articles 16 à 20 n'ont pas pour effet de porter atteinte aux droits et privilèges, antérieurs ou postérieurs à l'entrée en vigueur de la présente charte et découlant de la loi ou de la coutume, des langues autres que le français ou l'anglais.

Droits préservés

Minority Language Educational Rights

Droits à l'instruction dans la langue de la minorité

Language of instruction

23. (1) Citizens of Canada

(*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

23. (1) Les citoyens canadiens :

a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident,

b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province,

ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

Langue d'instruction

Continuity of language instruction

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

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

Continuité d'emploi de la langue d'instruction

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Justification par le nombre

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province :

a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

Enforcement

Recours

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Recours en cas d'atteinte aux droits et libertés

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.

General

Dispositions générales

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(*b*) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

Maintien des droits et libertés des autochtones

25. Le fait que la présente charte garantit certains droits et libertés ne porte pas atteinte aux droits ou libertés — ancestraux, issus de traités ou autres — des peuples autochtones du Canada, notamment :

a) aux droits ou libertés reconnus par la Proclamation royale du 7 octobre 1763;

b) aux droits ou libertés acquis par règlement de revendications territoriales.

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be con-

Maintien des autres droits et libertés

26. Le fait que la présente charte garantit certains droits et libertés ne constitue pas

strued as denying the existence of any other rights or freedoms that exist in Canada.

une négation des autres droits ou libertés qui existent au Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

Maintien du patrimoine culturel

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter except section 33, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

28. Indépendamment des autres dispositions de la présente charte, exception faite de l'article 33, les droits et libertés qui y sont mentionnés sont garantis également aux personnes des deux sexes.

Égalité de garantie des droits pour les deux sexes

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

29. Les dispositions de la présente charte ne portent pas atteinte aux droits ou privilèges garantis en vertu de la Constitution du Canada concernant les écoles séparées et autres écoles confessionnelles.

Maintien des droits relatifs à certaines écoles

Application to territories and territorial authorities

30. 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 and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

30. Dans la présente charte, les dispositions qui visent les provinces, leur législature ou leur assemblée législative visent également le territoire du Yukon, les territoires du Nord-Ouest ou leurs autorités législatives compétentes.

Application aux territoires

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

31. La présente charte n'élargit pas les compétences législatives de quelque organisme ou autorité que ce soit.

Non-élargissement des compétences législatives

Application of Charter

Application de la charte

Application of Charter

32. (1) This Charter applies

(*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

32. (1) La présente charte s'applique :

a) au Parlement et au gouvernement du Canada, pour tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest;

b) à la législature et au gouvernement de chaque province, pour tous les domaines relevant de cette législature.

Application de la charte

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

(2) Par dérogation au paragraphe (1), l'article 15 n'a d'effet que trois ans après l'entrée en vigueur du présent article.

Restriction

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of

33. (1) Le Parlement ou la législature d'une province peut adopter une loi où il est expressément déclaré que celle-ci ou une de ses dispositions a effet indépendamment d'une disposition donnée de l'article 2 ou des articles 7 à 15 de la présente charte, ou de

Dérogation par déclaration expresse

this Charter, or section 28 of this Charter in its application to discrimination based on sex referred to in section 15.

l'article 28 de cette charte dans son application à la discrimination fondée sur le sexe et mentionnée à l'article 15.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(2) La loi ou la disposition qui fait l'objet d'une déclaration conforme au présent article et en vigueur a l'effet qu'elle aurait sauf la disposition en cause de la charte.

Effet de la dérogation

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(3) La déclaration visée au paragraphe (1) cesse d'avoir effet à la date qui y est précisée ou, au plus tard, cinq ans après son entrée en vigueur.

Durée de validité

Re-enactment

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(4) Le Parlement ou une législature peut adopter de nouveau une déclaration visée au paragraphe (1).

Nouvelle adoption

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

(5) Le paragraphe (3) s'applique à toute déclaration adoptée sous le régime du paragraphe (4).

Durée de validité

Citation

Titre

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms.*

34. Titre de la présente partie : *Charte canadienne des droits et libertés.*

Titre

PART II

PARTIE II

EQUALIZATION AND REGIONAL DISPARITIES

PÉRÉQUATION ET INÉGALITÉS RÉGIONALES

Commitment to promote equal opportunities

35. (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.

35. (1) Sous réserve des compétences législatives du Parlement et des législatures et de leur droit de les exercer, le Parlement et les législatures, ainsi que les gouvernements fédéral et provinciaux, s'engagent à :

a) promouvoir l'égalité des chances de tous les Canadiens dans la recherche de leur bien-être;

b) favoriser le développement économique pour réduire l'inégalité des chances;

c) fournir à tous les Canadiens, à un niveau de qualité acceptable, les services publics essentiels.

Engagements relatifs à l'égalité des chances

Commitment respecting public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

(2) Le Parlement et le gouvernement du Canada prennent l'engagement de principe de faire des paiements de péréquation propres à donner aux gouvernements provinciaux des revenus suffisants pour les mettre en mesure d'assurer les services publics à un niveau de qualité et de fiscalité sensiblement comparables.

Engagement relatif aux services publics

PART III

CONSTITUTIONAL CONFERENCE

Constitutional conference

36. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

Participation of aboriginal peoples

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

Participation of territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

PARTIE III

CONFÉRENCE CONSTITUTIONNELLE

Conférence constitutionnelle

36. (1) Dans l'année suivant l'entrée en vigueur de la présente partie, le premier ministre du Canada convoque une conférence constitutionnelle réunissant les premiers ministres provinciaux et lui-même.

Participation des peuples autochtones

(2) Sont placées à l'ordre du jour de la conférence visée au paragraphe (1) les questions constitutionnelles qui intéressent directement les peuples autochtones du Canada, notamment la détermination et la définition des droits de ces peuples à inscrire dans la Constitution du Canada. Le premier ministre du Canada invite leurs représentants à participer aux travaux relatifs à ces questions.

Participation des territoires

(3) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest à participer aux travaux relatifs à toute question placée à l'ordre du jour de la conférence visée au paragraphe (1) et qui, selon lui, intéresse directement le territoire du Yukon et les territoires du Nord-Ouest.

PART IV

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

General procedure for amending Constitution of Canada

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

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or gov-

PARTIE IV

PROCÉDURE DE MODIFICATION DE LA CONSTITUTION DU CANADA

Procédure normale de modification

37. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée à la fois :

a) par des résolutions du Sénat et de la Chambre des communes;

b) par des résolutions des assemblées législatives d'au moins deux tiers des provinces dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de toutes les provinces.

Majorité simple

(2) Une modification faite conformément au paragraphe (1) mais dérogatoire à la compétence législative, aux droits de propriété ou à tous autres droits ou privilèges

ernment of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

d'une législature ou d'un gouvernement provincial exige une résolution adoptée à la majorité des sénateurs, des députés fédéraux et des députés de chacune des assemblées législatives du nombre requis de provinces.

Expression of dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Désaccord

(3) La modification visée au paragraphe (2) est sans effet dans une province dont l'assemblée législative a, avant la prise de la proclamation, exprimé son désaccord par une résolution adoptée à la majorité des députés, sauf si cette assemblée, par résolution également adoptée à la majorité, revient sur son désaccord et autorise la modification.

Revocation of dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Levée du désaccord

(4) La résolution de désaccord visée au paragraphe (3) peut être révoquée à tout moment, indépendamment de la date de la proclamation à laquelle elle se rapporte.

Restriction on proclamation

38. (1) A proclamation shall not be issued under subsection 37(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Restriction

38. (1) La proclamation visée au paragraphe 37(1) ne peut être prise dans l'année suivant l'adoption de la résolution à l'origine de la procédure de modification que si l'assemblée législative de chaque province a préalablement adopté une résolution d'agrément ou de désaccord.

Idem

(2) A proclamation shall not be issued under subsection 37(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Idem

(2) La proclamation visée au paragraphe 37(1) ne peut être prise que dans les trois ans suivant l'adoption de la résolution à l'origine de la procédure de modification.

Compensation

39. Where an amendment is made under subsection 37(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Compensation

39. Le Canada fournit une juste compensation aux provinces auxquelles ne s'applique pas une modification faite conformément au paragraphe 37(1) et relative, en matière d'éducation ou dans d'autres domaines culturels, à un transfert de compétences législatives provinciales au Parlement.

Amendment by unanimous consent

40. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

Consentement unanime

40. Toute modification de la Constitution du Canada portant sur les questions suivantes se fait par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de chaque province :

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

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

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

(*c*) subject to section 42, the use of the English or the French language;

(*d*) the composition of the Supreme Court of Canada; and

(*e*) an amendment to this Part.

b) le droit d'une province d'avoir à la Chambre des communes un nombre de députés au moins égal à celui des sénateurs par lesquels elle est habilitée à être représentée lors de l'entrée en vigueur de la présente partie;

c) sous réserve de l'article 42, l'usage du français ou de l'anglais;

d) la composition de la Cour suprême du Canada;

e) la modification de la présente partie.

Amendment by general procedure

41. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 37(1):

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

(*b*) the powers of the Senate and the method of selecting Senators;

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

(*d*) subject to paragraph 40(*d*), the Supreme Court of Canada;

(*e*) the extension of existing provinces into the territories; and

(*f*) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 37(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions relating to some but not all provinces

42. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(*a*) any alteration to boundaries between provinces, and

(*b*) any amendment to any provision that relates to the use of the English or the French language within a province,

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons

Procédure normale de modification

41. (1) Toute modification de la Constitution du Canada portant sur les questions suivantes se fait conformément au paragraphe 37(1) :

a) le principe de la représentation proportionnelle des provinces à la Chambre des communes prévu par la Constitution du Canada;

b) les pouvoirs du Sénat et le mode de sélection des sénateurs;

c) le nombre des sénateurs par lesquels une province est habilitée à être représentée et les conditions de résidence qu'ils doivent remplir;

d) sous réserve de l'alinéa 40*d*), la Cour suprême du Canada;

e) le rattachement aux provinces existantes de tout ou partie des territoires;

f) par dérogation à toute autre loi ou usage, la création de provinces.

Exception

(2) Les paragraphes 37(2) à (4) ne s'appliquent pas aux questions mentionnées au paragraphe (1).

Modification à l'égard de certaines provinces

42. Les dispositions de la Constitution du Canada applicables à certaines provinces seulement ne peuvent être modifiées que par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de chaque province concernée. Le présent article s'applique notamment :

a) aux changements du tracé des frontières interprovinciales;

b) aux modifications des dispositions relatives à l'usage du français ou de l'anglais dans une province.

and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

43. Subject to sections 40 and 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

43. Sous réserve des articles 40 et 41, le Parlement a compétence exclusive pour modifier les dispositions de la Constitution du Canada relatives au pouvoir exécutif fédéral, au Sénat ou à la Chambre des communes.

Modification par le Parlement

Amendments by provincial legislatures

44. Subject to section 40, the legislature of each province may exclusively make laws amending the constitution of the province.

44. Sous réserve de l'article 40, une législature a compétence exclusive pour modifier la constitution de sa province.

Modification par les législatures

Initiation of amendment procedures

45. (1) The procedures for amendment under sections 37, 40, 41 and 42 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

45. (1) L'initiative des procédures de modification visées aux articles 37, 40, 41 et 42 appartient au Sénat, à la Chambre des communes ou à une assemblée législative.

Initiative des procédures

Revocation of authorization

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

(2) Une résolution d'agrément adoptée dans le cadre de la présente partie peut être révoquée à tout moment avant la date de la proclamation qu'elle autorise.

Possibilité de révocation

Amendments without Senate resolution

46. (1) An amendment to the Constitution of Canada made by proclamation under section 37, 40, 41 or 42 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

46. (1) Dans les cas visés à l'article 37, 40, 41 ou 42, il peut être passé outre au défaut d'autorisation du Sénat si celui-ci n'a pas adopté de résolution dans un délai de cent quatre-vingts jours suivant l'adoption de celle de la Chambre des communes et si cette dernière, après l'expiration du délai, adopte une nouvelle résolution dans le même sens.

Modification sans résolution du Sénat

Computation of period

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

(2) Dans la computation du délai visé au paragraphe (1), ne sont pas comptées les périodes pendant lesquelles le Parlement est prorogé ou dissous.

Computation du délai

Advice to issue proclamation

47. The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this Part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this Part.

47. Le Conseil privé de la Reine pour le Canada demande au gouverneur général de prendre, conformément à la présente partie, une proclamation dès l'adoption des résolutions prévues par cette partie pour une modification par proclamation.

Demande de proclamation

Constitutional conference

48. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.

48. Dans les quinze ans suivant l'entrée en vigueur de la présente partie, le premier ministre du Canada convoque une conférence constitutionnelle réunissant les premiers ministres provinciaux et lui-même, en vue du réexamen des dispositions de cette partie.

Conférence constitutionnelle

PART V

AMENDMENT TO THE CONSTITUTION ACT, 1867

Amendment to *Constitution Act, 1867*

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

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

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

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

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

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

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

Export from provinces of resources

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

Authority of Parliament

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

PARTIE V

MODIFICATION DE LA LOI CONSTITUTIONNELLE DE 1867

Modification de la *Loi constitutionnelle de 1867*

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

«Ressources naturelles non renouvelables, ressources forestières et énergie électrique

Compétence provinciale

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

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

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

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

Exportation hors des provinces

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

Pouvoir du Parlement

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

Taxation of resources

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

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

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

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

Taxation des ressources

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

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

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

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

"Primary production"

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

«Production primaire»

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

Existing powers or rights

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

Pouvoirs ou droits existants

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

Idem

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

Idem

50. Ladite loi est en outre modifiée par adjonction de l'annexe suivante :

"THE SIXTH SCHEDULE

Primary Production from Non-Renewable Natural Resources and Forestry Resources

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

(*a*) production from a non-renewable natural 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

«SIXIÈME ANNEXE

Production primaire tirée des ressources naturelles non renouvelables et des ressources forestières

1. Pour l'application de l'article 92A :

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

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

(ii) soit le produit non manufacturé de la transformation, du raffinage ou de

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

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

l'affinage d'une ressource, à l'exception du produit du raffinage du pétrole brut, du raffinage du pétrole brut lourd amélioré, du raffinage des gaz ou des liquides dérivés du charbon ou du raffinage d'un équivalent synthétique du pétrole brut;

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

PART VI

GENERAL

Primacy of Constitution of Canada

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

Constitution of Canada

(2) The Constitution of Canada includes

(*a*) the *Canada Act*, including this Act;

(*b*) the Acts and orders referred to in Schedule I; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Repeals and new names

52. (1) The enactments referred to in Column I of Schedule I are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

Consequential amendments

(2) Every enactment, except the *Canada Act*, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in Schedule I may be cited as the *Constitution Act* fol-

PARTIE VI

DISPOSITIONS GÉNÉRALES

Primauté de la Constitution du Canada

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

Constitution du Canada

(2) La Constitution du Canada comprend :

a) la *Loi sur le Canada*, y compris la présente loi;

b) les textes législatifs et les décrets figurant à l'annexe I;

c) les modifications des textes législatifs et des décrets mentionnés aux alinéas *a*) ou *b*).

Modification

(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.

Abrogation et nouveaux titres

52. (1) Les textes législatifs et les décrets énumérés à la colonne I de l'annexe I sont abrogés ou modifiés dans la mesure indiquée à la colonne II. Sauf abrogation, ils restent en vigueur en tant que lois du Canada sous les titres mentionnés à la colonne III.

Modifications corrélatives

(2) Tout texte législatif ou réglementaire, sauf la *Loi sur le Canada*, qui fait mention d'un texte législatif ou décret figurant à l'annexe I par le titre indiqué à la colonne I est modifié par substitution à ce titre du titre correspondant mentionné à la colonne III; tout Acte de l'Amérique du Nord britannique non mentionné à l'annexe I peut être cité sous le titre de *Loi constitutionnelle* suivi de

lowed by the year and number, if any, of its enactment.

l'indication de l'année de son adoption et éventuellement de son numéro.

Repeal and consequential amendments

53. Part III is repealed on the day that is one year after this Part comes into force and this section may be repealed and this Act renumbered, consequential upon the repeal of Part III and this section, by proclamation issued by the Governor General under the Great Seal of Canada.

53. La partie III est abrogée un an après l'entrée en vigueur de la présente partie et le gouverneur général peut, par proclamation sous le grand sceau du Canada, abroger le présent article et apporter en conséquence de cette double abrogation les aménagements qui s'imposent à la présente loi.

Abrogation et modifications qui en découlent

French version of Constitution of Canada

54. A French version of the portions of the Constitution of Canada referred to in Schedule I shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

54. Le ministre de la Justice du Canada est chargé de rédiger, dans les meilleurs délais, la version française des parties de la Constitution du Canada qui figurent à l'annexe I; toute partie suffisamment importante est, dès qu'elle est prête, déposée pour adoption par proclamation du gouverneur général sous le grand sceau du Canada, conformément à la procédure applicable à l'époque à la modification des dispositions constitutionnelles qu'elle contient.

Version française de certains textes constitutionnels

English and French versions of certain constitutional texts

55. Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 54, the English and French versions of that portion of the Constitution are equally authoritative.

55. Les versions française et anglaise des parties de la Constitution du Canada adoptées dans ces deux langues ont également force de loi. En outre, ont également force de loi, dès l'adoption, dans le cadre de l'article 54, d'une partie de la version française de la Constitution, cette partie et la version anglaise correspondante.

Versions française et anglaise de certains textes constitutionnels

English and French versions of this Act

56. The English and French versions of this Act are equally authoritative.

56. Les versions française et anglaise de la présente loi ont également force de loi.

Versions française et anglaise de la présente loi

Commencement

57. Subject to section 58, this Act shall come into force on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

57. Sous réserve de l'article 58, la présente loi entre en vigueur à la date fixée par proclamation de la Reine ou du gouverneur général sous le grand sceau du Canada.

Entrée en vigueur

Commencement of paragraph 23(1)(*a*) in respect of Quebec

58. (1) Paragraph 23(1)(*a*) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

58. (1) L'alinéa 23(1)*a*) entre en vigueur pour le Québec à la date fixée par proclamation de la Reine ou du gouverneur général sous le grand sceau du Canada.

Entrée en vigueur de l'alinéa 23(1)*a*) pour le Québec

Authorization of Quebec

(2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.

(2) La proclamation visée au paragraphe (1) ne peut être prise qu'après autorisation de l'assemblée législative ou du gouvernement du Québec.

Autorisation du Québec

Repeal of this section

(3) This section may be repealed on the day paragraph 23(1)(*a*) comes into force in respect of Quebec and this Act amended and renumbered, consequential upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Abrogation du présent article

(3) Le présent article peut être abrogé à la date d'entrée en vigueur de l'alinéa 23(1)*a*) pour le Québec, et la présente loi faire l'objet, dès cette abrogation, des modifications et changements de numérotation qui en découlent, par proclamation de la Reine ou du gouverneur général sous le grand sceau du Canada.

Short title and citations

59. This Act may be cited as the *Constitution Act, 1981*, and the Constitution Acts 1867 to 1975 (No. 2) and this Act may be cited together as the *Constitution Acts, 1867 to 1981*.

Titres

59. Titre abrégé de la présente annexe : *Loi constitutionnelle de 1981*; titre commun des lois constitutionnelles de 1867 à 1975 (nº 2) et de la présente loi : *Lois constitutionnelles de 1867 à 1981*.

SCHEDULE I

to the

CONSTITUTION ACT, 1981

MODERNIZATION OF THE CONSTITUTION

Item	Column I Act Affected	Column II Amendment	Column III New Name
1.	British North America Act, 1867, 30-31 Vict., c. 3 (U.K.)	(1) Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the *Constitution Act, 1867*." (2) Section 20 is repealed. (3) Class 1 of section 91 is repealed. (4) Class 1 of section 92 is repealed.	Constitution Act, 1867
2.	An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c. 3 (Can.)	(1) The long title is repealed and the following substituted therefor: "*Manitoba Act, 1870*." (2) Section 20 is repealed.	Manitoba Act, 1870
3.	Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, dated the 23rd day of June, 1870		Rupert's Land and North-Western Territory Order
4.	Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May, 1871		British Columbia Terms of Union
5.	British North America Act, 1871, 34-35 Vict., c. 28 (U.K.)	Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the *Constitution Act, 1871*."	Constitution Act, 1871
6.	Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873		Prince Edward Island Terms of Union
7.	Parliament of Canada Act, 1875, 38-39 Vict., c. 38 (U.K.)		Parliament of Canada Act, 1875
8.	Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880		Adjacent Territories Order

ANNEXE I

LOI CONSTITUTIONNELLE DE 1981

ACTUALISATION DE LA CONSTITUTION

	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
1.	Acte de l'Amérique du Nord britannique, 1867, 30-31 Vict., c. 3 (R.-U.)	(1) L'article 1 est abrogé et remplacé par ce qui suit : «1. Titre abrégé : *Loi constitutionnelle de 1867*.» (2) L'article 20 est abrogé. (3) La catégorie 1 de l'article 91 est abrogée. (4) La catégorie 1 de l'article 92 est abrogée.	Loi constitutionnelle de 1867
2.	Acte pour amender et continuer l'acte trente-deux et trente-trois Victoria, chapitre trois, et pour établir et constituer le gouvernement de la province de Manitoba, 1870, 33 Vict., c. 3 (Canada)	(1) Le titre complet est abrogé et remplacé par ce qui suit : «*Loi de 1870 sur le Manitoba*.» (2) L'article 20 est abrogé.	Loi de 1870 sur le Manitoba
3.	Arrêté en conseil de Sa Majesté admettant la Terre de Rupert et le Territoire du Nord-Ouest, en date du 23 juin 1870		Décret en conseil sur la terre de Rupert et le territoire du Nord-Ouest
4.	Arrêté en conseil de Sa Majesté admettant la Colombie-Britannique, en date du 16 mai 1871		Conditions de l'adhésion de la Colombie-Britannique
5.	Acte de l'Amérique du Nord britannique, 1871, 34-35 Vict., c. 28 (R.-U.)	L'article 1 est abrogé et remplacé par ce qui suit : «1. Titre abrégé : *Loi constitutionnelle de 1871*.»	Loi constitutionnelle de 1871
6.	Arrêté en conseil de Sa Majesté admettant l'Île-du-Prince-Édouard, en date du 26 juin 1873		Conditions de l'adhésion de l'Île-du-Prince-Édouard
7.	Acte du Parlement du Canada, 1875, 38-39 Vict., c. 38 (R.-U.)		Loi de 1875 sur le Parlement du Canada
8.	Arrêté en conseil de Sa Majesté admettant dans l'Union tous les territoires et possessions britanniques dans l'Amérique du Nord, et les îles adjacentes à ces territoires et possessions, en date du 31 juillet 1880		Décret en conseil sur les territoires adjacents

SCHEDULE I

to the

CONSTITUTION ACT, 1981—*Continued*

Item	Column I Act Affected	Column II Amendment	Column III New Name
9.	British North America Act, 1886, 49-50 Vict., c. 35 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1886*."	Constitution Act, 1886
10.	Canada (Ontario Boundary) Act, 1889, 52-53 Vict., c. 28 (U.K.)		Canada (Ontario Boundary) Act, 1889
11.	Canadian Speaker (Appointment of Deputy) Act, 1895, 2nd Sess., 59 Vict., c. 3 (U.K.)	The Act is repealed.	
12.	The Alberta Act, 1905, 4-5 Edw. VII, c. 3 (Can.)		Alberta Act
13.	The Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.)		Saskatchewan Act
14.	British North America Act, 1907, 7 Edw. VII, c. 11 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1907*."	Constitution Act, 1907
15.	British North America Act, 1915, 5-6 Geo. V, c. 45 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1915*."	Constitution Act, 1915
16.	British North America Act, 1930, 20-21 Geo. V, c. 26 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act, 1930*."	Constitution Act, 1930
17.	Statute of Westminster, 1931, 22 Geo. V, c. 4 (U.K.)	In so far as they apply to Canada, (*a*) section 4 is repealed; and (*b*) subsection 7(1) is repealed.	Statute of Westminster, 1931
18.	British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1940*."	Constitution Act, 1940
19.	British North America Act, 1943, 6-7 Geo. VI, c. 30 (U.K.)	The Act is repealed.	

ANNEXE I (*suite*)

LOI CONSTITUTIONNELLE DE 1981

	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
9.	Acte de l'Amérique du Nord britannique, 1886, 49-50 Vict., c. 35 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit : «3. Titre abrégé : *Loi constitutionnelle de 1886.*»	Loi constitutionnelle de 1886
10.	Acte du Canada (limites d'Ontario) 1889, 52-53 Vict., c. 28 (R.-U.)		Loi de 1889 sur le Canada (frontières de l'Ontario)
11.	Acte concernant l'Orateur canadien (nomination d'un suppléant) 1895, 2e session, 59 Vict., c. 3 (R.-U.)	La loi est abrogée.	
12.	Acte de l'Alberta, 1905, 4-5 Ed. VII, c. 3 (Canada)		Loi sur l'Alberta
13.	Acte de la Saskatchewan, 1905, 4-5 Ed. VII, c. 42 (Canada)		Loi sur la Saskatchewan
14.	Acte de l'Amérique du Nord britannique, 1907, 7 Ed. VII, c. 11 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit : «2. Titre abrégé : *Loi constitutionnelle de 1907.*»	Loi constitutionnelle de 1907
15.	Acte de l'Amérique du Nord britannique, 1915, 5-6 Geo. V, c. 45 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit : «3. Titre abrégé : *Loi constitutionnelle de 1915.*»	Loi constitutionnelle de 1915
16.	Acte de l'Amérique du Nord britannique, 1930, 20-21 Geo. V, c. 26 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit : «3. Titre abrégé : *Loi constitutionnelle de 1930.*»	Loi constitutionnelle de 1930
17.	Statut de Westminster, 1931, 22 Geo. V, c. 4 (R.-U.)	Dans la mesure où ils s'appliquent au Canada : *a*) l'article 4 est abrogé; *b*) le paragraphe 7(1) est abrogé.	Statut de Westminster de 1931
18.	Acte de l'Amérique du Nord britannique, 1940, 3-4 Geo. VI, c. 36 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit : «2. Titre abrégé : *Loi constitutionnelle de 1940.*»	Loi constitutionnelle de 1940
19.	Acte de l'Amérique du Nord britannique, 1943, 6-7 Geo. VI, c. 30 (R.-U.)	La loi est abrogée.	

SCHEDULE I

to the

CONSTITUTION ACT, 1981—*Continued*

Item	Column I Act Affected	Column II Amendment	Column III New Name
20.	British North America Act, 1946, 9-10 Geo. VI, c. 63 (U.K.)	The Act is repealed.	
21.	British North America Act, 1949, 12-13 Geo. VI, c. 22 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Newfoundland Act*."	Newfoundland Act
22.	British North America (No. 2) Act, 1949, 13 Geo. VI, c. 81 (U.K.)	The Act is repealed.	
23.	British North America Act, 1951, 14-15 Geo. VI, c. 32 (U.K.)	The Act is repealed.	
24.	British North America Act, 1952, 1 Eliz. II, c. 15 (Can.)	The Act is repealed.	
25.	British North America Act, 1960, 9 Eliz. II, c. 2 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1960*."	Constitution Act, 1960
26.	British North America Act, 1964, 12-13 Eliz. II, c. 73 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the *Constitution Act, 1964*."	Constitution Act, 1964
27.	British North America Act, 1965, 14 Eliz. II, c. 4, Part I (Can.)	Section 2 is repealed and the following substituted therefor: "2. This Part may be cited as the *Constitution Act, 1965*."	Constitution Act, 1965
28.	British North America Act, 1974, 23 Eliz. II, c. 13, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c. 28, s. 38(1) (Can.) is repealed and the following substituted therefor: "3. This Part may be cited as the *Constitution Act, 1974*."	Constitution Act, 1974

ANNEXE I (*suite*)

LOI CONSTITUTIONNELLE DE 1981

	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
20.	Acte de l'Amérique du Nord britannique, 1946, 9-10 Geo. VI, c. 63 (R.-U.)	La loi est abrogée.	
21.	Acte de l'Amérique du Nord britannique, 1949, 12-13 Geo. VI, c. 22 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit : «3. Titre abrégé : *Loi sur Terre-Neuve.*»	Loi sur Terre-Neuve
22.	Acte de l'Amérique du Nord britannique (N° 2), 1949, 13 Geo. VI, c. 81 (R.-U.)	La loi est abrogée.	
23.	Acte de l'Amérique du Nord britannique, 1951, 14-15 Geo. VI, c. 32 (R.-U.)	La loi est abrogée.	
24.	Acte de l'Amérique du Nord britannique, 1952, 1 Eliz. II, c. 15 (Canada)	La loi est abrogée.	
25.	Acte de l'Amérique du Nord britannique, 1960, 9 Eliz. II, c. 2 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit : «2. Titre abrégé : *Loi constitutionnelle de 1960.*»	Loi constitutionnelle de 1960
26.	Acte de l'Amérique du Nord britannique, 1964, 12-13 Eliz. II, c. 73 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit : «2. Titre abrégé : *Loi constitutionnelle de 1964.*»	Loi constitutionnelle de 1964
27.	Acte de l'Amérique du Nord britannique, 1965, 14 Eliz. II, c. 4, Partie I (Canada)	L'article 2 est abrogé et remplacé par ce qui suit : «2. Titre abrégé de la présente partie : *Loi constitutionnelle de 1965.*»	Loi constitutionnelle de 1965
28.	Acte de l'Amérique du Nord britannique, 1974, 23 Eliz. II, c. 13, Partie I (Canada)	L'article 3, modifié par le paragraphe 38(1) de la loi 25-26 Elizabeth II, c. 28 (Canada), est abrogé et remplacé par ce qui suit : «3. Titre abrégé de la présente partie : *Loi constitutionnelle de 1974.*»	Loi constitutionnelle de 1974

SCHEDULE I

to the

CONSTITUTION ACT, 1981—*Concluded*

Item	Column I Act Affected	Column II Amendment	Column III New Name
29.	British North America Act, 1975, 23-24 Eliz. II, c. 28, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c. 28, s. 31 (Can.) is repealed and the following substituted therefor: "3. This Part may be cited as the *Constitution Act (No. 1), 1975*."	Constitution Act (No. 1), 1975
30.	British North America Act (No. 2), 1975, 23-24 Eliz. II, c. 53 (Can.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the *Constitution Act (No. 2), 1975*."	Constitution Act (No. 2), 1975

ANNEXE I (*fin*)

LOI CONSTITUTIONNELLE DE 1981

	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
29.	Acte de l'Amérique du Nord britannique, 1975, 23-24 Eliz. II, c. 28, Partie I (Canada)	L'article 3, modifié par l'article 31 de la loi 25-26 Elizabeth II, c. 28 (Canada), est abrogé et remplacé par ce qui suit : «3. Titre abrégé de la présente partie : *Loi constitutionnelle n° 1 de 1975.*»	Loi constitutionnelle n° 1 de 1975
30.	Acte de l'Amérique du Nord britannique n° 2, 1975, 23-24 Eliz. II, c. 53 (Canada)	L'article 3 est abrogé et remplacé par ce qui suit : «3. Titre abrégé : *Loi constitutionnelle n° 2 de 1975.*»	Loi constitutionnelle n° 2 de 1975

Madam Speaker: Just before we proceed, I want to tell the House that I have examined the amendment proposed by the right hon. member for Yellowhead (Mr. Clark), seconded by the hon. member for Kingston and the Islands (Miss MacDonald), and I find it to be in order. I am prepared to read it to the House.

An hon. Member: Dispense.

Madam Speaker: Shall I dispense?

Some hon. Members: No.

Madam Speaker: The right hon. member for Yellowhead, seconded by the hon. member for Kingston and the Islands, moves:

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

(*b*) by striking out subclause 33(1), and substituting the following:

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

• (1310)

Mr. John Bosley (Don Valley West): Mr. Speaker, when we broke off debate on Friday I had indicated that I was happy to read into the record a telex from the Premier of Ontario with regard to that province's view of Section 28 and the protection in the charter for the treaty rights of our native people. It is amazing, sometimes, what happens over a weekend. In a way, I am rather happy to have had the break in the middle of my speech since I am equally proud to put into the record today what the attorney general of Ontario had to say over the weekend about Section 28. It has now been admitted by the attorney general of Ontario and the Premier of New Brunswick that the resolution before this House to make Section 28 subject to the override provisions was never discussed prior to the creation of the resolution and its introduction in this House. It was not on the table, and now that it is public I hope it will allow us to discuss it at length, as we proceed in this debate on that issue, precisely because of the importance that has been attached by members opposite, including the Prime Minister (Mr. Trudeau) and Minister of Justice (Mr. Chrétien), to the need to preserve the accord without amendment.

Aside from the fact that there are a number of amendments in the resolution that are, in fact, outside of what was discussed leading up to the November 5 accord, it is now becoming more clear that the amendment to Section 28, which is being used as a block by members opposite to the amendment which my leader has moved, was in fact also brought in after the accord was drawn. As this becomes more clear, I hope we will recognize the simple justice that returning to Section 28 will bring.

Before I continue my remarks which I started last week, I might also indicate my sadness, after listening to my Prime Minister—and I say that advisedly and only as a citizen—returning to the shotgun diplomacy style. I think most members of this House realize that in the middle of some very complex behind-the-scenes negotiations to try to bring everybody onside concerning the amendment to Section 28, as well as amendments to the rest of the charter which my leader has proposed, including what will become clearer—if it is not now public—about conversations with several people in the province of Quebec, that it is frustrating, using that word advisedly, to come back to this house in Ottawa to hear the Prime Minister indicate that as long as the amendment is decided on by tomorrow night, it is all right. That is another guillotine, Mr. Speaker.

At this point in the debate, it is worth reminding ourselves that it was this same Prime Minister who wished to impose this same guillotine and tried to impose it last year. It is the same Prime Minister who tries to impose this guillotine on these clauses who did not include these rights in the original document presented to the House of Commons. It is the same Prime Minister who fought the committee which tried to put these rights in. The Prime Minister is now arguing that these rights are not there because of the premiers whom he did not want to meet with in the first place.

It surely should be clear by now that the reasons for the amendments in the resolution relating to aboriginal rights, treaty rights and to women's rights are that they were taken out, apparently, in the meetings. It takes two to agree. Therefore, all attempts to portray the Premiers as the villains I hope will be rejected by the general public, because it took the Prime Minister of Canada to agree to remove those rights in order for the accord to get to this House of Commons. Let us not forget that.

As we continue this debate, which as I indicated I hope will not be unnecessarily long, I would like to make some general comments and then return to the specific matter of our amendments. I should also point out in that respect that as a

Canadian, I believe that any discussions this week which will help improve this charter can only be regarded as helpful by all of us in this House. I would like it to be clear on the record that if it requires more time in the back room to sort these problems out, I do not believe there is one member on this side of the House who is not prepared to see the debate lifted out of this House so we can continue with the budget. I would like to make that very clear at this time.

There will be an attempt made by some to argue that, because some of us are trying to improve the charter, we regard the resolution and its improvement as the priority of the Conservative Party. The priority of Canadians today is to get people back to work. In this country, the right to a job is equally important as the right to equality. If it is necessary for us to break off this debate so we may conclude the budget debate, which was the position put forward by our House leader last week, and since we have had no finality yet as to when we would be able to conclude the budget which we would like to see concluded as soon as possible, I am sure members on this side would not only support that but would regard concluding our economic package as very important.

I would like to refute a current view about what we have been through in the last year to 15 months. I think that just as important as to note the issues that our party is moving amendments on—which I will come to later—in that now that we have all had the direct experience of the difficulties of constitution-writing in our diverse federal state, this experience should give us cause to marvel at and be grateful for the sagacity and capacity of the fathers of our nationhood who more than 100 years ago had the ability to craft what until now has been the backbone of our written Constitution, the BNA Act.

Now that we may be so close to a totally made-in-Canada Constitution, it seems fitting to note that those who hold to the view that for all those years we have been fundamentally flawed, that we have been somehow eunuched as a nation, are wrong. It is precisely because of the wisdom of our forefathers that the exact opposite is true. Because of that wisdom, we have had a package of laws, conventions and co-operation which has allowed us to live together as well as we have while we have sought a consensus on how to take the next step, a consensus which reflects our essence as a federation, a consensus which in itself contains the way to amend our constitutional package in future in line with the reality and spirit of our federalism.

Some have argued that federalism could not work, that more meetings last year would not help to resolve the impasse, and that we could not wait any longer and our nationhood demanded severe unilateral action. When our party undertook to fight such radical unilateralism, a fight initiated by a decision which took guts and courage and a commitment to principle by the leader of our party, a decision in keeping with the traditional Canadian way of doing things—and I hope more Canadians will come to see these qualities as the highest qualification for the highest office in this land—there were some, notably those who think the world can best be governed through a newspaper column rather than through the melee of politics, who thought we must either be kidding or that we were crazy, that we were suicidal or bent on self-destruction.

Time and the Supreme Court have shown the opposite. Time has shown that compromises can be found. Time has shown that consensus and agreement is possible if one wants it and is willing to work for it. Time, even since the first ministers' meeting and the accord which resulted from it, has shown that even further agreement is possible. I am referring to the ongoing attempts to protect the equality of women and men from the override provisions of Section 33 and of the hard work toward that end by so many women and some men in the last few days.

I mean no offence to others involved in those conversations if I mention in this House again the telegram that came from the Hon. John Buchanan of Nova Scotia as a direct result of the intense efforts of the hon. member for Kingston and the Islands (Miss MacDonald).

Some hon. Members: Hear, hear!

Mr. Bosley: When our party fought for more time last fall and last winter, it was because we believe our underlying constitutional law, conventions and practice are fundamentally sound enough that we could afford to take the time to make change properly and get it right the first time, rather than rush ahead with who knows what possibly disastrous consequences. We thought that was, at the very least, what had been promised Quebecers in the spring of 1980, particularly federalists in the province of Quebec.

• (1520)

[*Translation*]

Mr. Speaker, we still believe this, and that is why it is important to amend Clause 39 so that a province wishing to retain the right to provide services in any area now under provincial jurisdiction will receive financial assistance if in the future this field of jurisdiction is transferred from the provinces to the federal government by constitutional amendment. It is not only fair and equitable that a province which continues to provide services receive reasonable compensation from Ottawa if the federal government provides and pays for these services in other provinces, but the omission of such a reasonable clause was probably the first of the three reasons mentioned why the Quebec government did not sign the agreement.

[*English*]

The amendment has the support of at least the eight provinces which originally dissented, including Quebec, and appears to be opposed only by the government here. Not only is it just, therefore, but its adoption by this House is critical if we are serious about trying to bring at least the people of Quebec into this historic moment.

[*Translation*]

Whatever we might think about the sincerity of the commitment to federalism of the Premier of Quebec, I cannot overemphasize to those opposite the true fairness of the amendment which the Quebec premier as well as the other premiers consider so important. I cannot believe that anyone would seriously consider not offering an olive branch to the Quebec people when this is not only possible, but has the added advantage of strengthening the resolution without diminishing the support of the rest of the provinces.

[*English*]

Not only, therefore, is it just and reasonable, but it must be pointed out that, contrary to the views expressed last week by the Leader of the New Democratic Party (Mr. Broadbent), who argued that the amendment would somehow protect rich provinces which would be able to keep out socially beneficial programs, in fact it will do exactly the opposite. So that it is clear for those who listen or read *Hansard*, what the amendment says is that in the case of a constitutional amendment—in other words, an amendment which in future has the support of at least seven provinces, meaning that a majority of the provinces will already have decided that a program should be undertaken—contrary to the view of the Leader of the New Democratic Party, in the circumstance where a province stays out it should be entitled to the right to be paid. The reason for that is to protect provinces which will be put in the position, without such protection, of having to cast votes at a constitutional conference without protection from whose who are better off than they are. That surely is the spirit of federalism.

I mentioned earlier that it is critical that Section 28 apply without limitations—if hon. members will excuse my view of this thing—so that men will at long last be guaranteed equal treatment with women under the law. Without that change let us be absolutely clear that the resolution would be deeply and fundamentally flawed, and without that change at least some will argue that the resolution will not deserve our support. Some will say that in addition to that change the compromise allowing legislatures to override, at least temporarily, court decisions which appear in a legislature's view to be inappropriate also eliminates a flaw.

When I started on Friday I made reference to my earlier experience at the municipal level with the Toronto Centre plan and the view of one critic that it must be good because it equally displeased everybody. I think that might be exactly true regarding the override provisions, but this compromise is typically and indisputably Canadian. Those who favour parliamentary supremacy will be able to say that that has been preserved, and perhaps it has been. Those who prefer the coded or entrenched protection of our individual rights will be able to say that that has been achieved, or almost so, and that political pressure will prevent too frequent use of the override. Like the Toronto plan, in other words, the change will equally displease everybody.

This is a difficult issue because it is an attempt to marry two important federalist principles. One is that there should be no constitutional change without the consent of those affected; in other words, our provinces. The other is a desire to separate from government some of our freedoms for which there is in the law no final protection today because Parliaments may do what they wish.

I know my own view, and it is this. When we—and I—argued for the right of the provinces to consent, it never occurred to me that the answer the provinces would find would be the right to override basic freedoms. I would much have preferred, and would still prefer, a negotiated and, if necessary, an abbreviated list of individual freedoms agreed to by the provinces and by the federal government—thereby preserving the Canadian way—adopted by the governments as binding on themselves and therefore not subject to being overriden.

I believe government has now become so big that relying on political pressure to prevent a government from taking away our individual rights—and in this context I think particularly of the government opposite—is naive. Whether wiser negotiation by the federal government or a step by step approach moving simply to patriate with an agreed amending formula would have produced a happier result in this regard appears now to be a question for the historians, but one cannot help but wonder: what if?

If an important compromise has been reached on the charter, therefore, there nevertheless remain other flaws which should, and I hope will, be corrected. Here I think particularly of the refusal of too many governments and too many parties to include the right to property, a right which most Canadians regard as fundamental to their wellbeing. There is one other major flaw which can be corrected before this document is passed, since I am persuaded that the odds for getting property included are not very large. I am persuaded of that by those who are smiling at me; I sat and watched the neosocialists and the true socialists get together last year to prevent the inclusion of property, and I suspect they have not changed their view on that one bit.

One other major flaw that can and should be corrected before passage of this resolution is the resolution's failure to recognize native and aboriginal rights and treaty rights. Some will argue that too many provinces object to the inclusion of the old Section 34, although I am glad to see that that number shrinks every day. I repeat that it would be a shame if the personal timetable for this document of the Prime Minister were to prevent the movement, which appears to be growing, toward recognition of these rights from achieving its proper fruition.

Some will argue that too many provinces object to the inclusion of the old Section 34, which in fact only recognizes that treaties were signed and rights were created, as our common law has made so clear. To them and to those provinces I only say that the rights created by the Crown—which we now regard as our Queen—in treaties with our first peoples predate the provinces themselves and, while the provinces have legitimate concerns with regard to the interpretation of those treaties, the desire of some that our constitutional law not recognize that those rights exist is both impractical, given

existing court decisions, and, to put a kind face on it, less than noble. Just as this Parliament had a duty to protect the legitimate involvement of the provinces themselves in the development of a Canadian constitutional consensus, so this Parliament and other Parliaments have a duty to protect the treaty rights of those whose rights were created even before the rights of our Parliament were created.

• (1530)

I said I would not speak for very long today. It is not the wish of those on this side, as we will be indicating throughout, to delay unduly conclusion of the matter. It certainly is not mine. I indicated earlier I would prefer, if necessary, that we revert to the budget. However, I want in closing to deal with one or two matters.

I specifically refer to the argument being made by hon. members opposite, notably the Prime Minister and the Minister of Justice, who in their comments on Friday said that no amendments were possible because that would violate the spirit of the accord. Second, and this caused me the greatest problem, the phrase was used by the Minister of Justice on behalf of his government that "we must keep our word with the provinces". Suffice it to say that would be the first time in the entire history of the government that it kept its word on anything.

I am therefore loath to accept the argument from people who gave us wage and price controls, promised us no oil increases and said if there were they would quit if elected, that they are supposed to do what is asked of them because they wish to honour their word. On the other hand, it is possible that a lesson may be learned over there—that when they give their word, they should honour it. Maybe that lesson will be learned.

I now want to deal with the more important question.

Some hon. Members: Oh, oh!

Mr. Bosley: Sometimes the other side does react. I am more than happy to be part of a group that makes them respond to concerns about keeping their word. Let me repeat to the hon. member for Willowdale (Mr. Peterson) that I hope that is something his party learns.

In closing, let me return briefly to the more important issue, the issue of moving amendments. The resolution adds matters outside the accord, notably the section applying what is called the Canada clauses on minority language rights. That would imply to me, given the argument that one cannot introduce amendments not described in the accord, that the government may introduce amendments or modify the accord but no one else may.

I suggest, as members from this side will be continually suggesting, that to try and say to members of Her Majesty's Loyal Opposition that they have no role to play in trying to improve a process or resolution is ludicrous. This document, as we will continue to indicate until it is corrected, is fundamentally flawed.

To ask members of the House of Commons in 1981 to support a document which not only does not recognize treaty and aboriginal rights but attempts to deny the fundamental justice that every Canadian subscribes to, namely the equality of our people, be they men or women, are so far behind the times that I guess if it were not actually before us, I would have said there was not a hope in heck that we would see it.

As I said at the beginning, this is historic; this is constitutional renewal. If we are going to go this route and if we are to proceed, it is to me and many member of my party critical that we honour the promises we made in the referendum in 1980. It is critical that we honour the expectations of Canadians and honour the traditions of the original writers of our constitutional law. Now that we are making change, because of the strength they gave to this country all those years, let us honour their commitment to Canada and to the people of Canada today and make sure we do it right with justice and honour the first time.

Hon. Donald J. Johnston (President of the Treasury Board): Mr. Speaker, members of this House need not be reminded by me of the historical significance of this debate to which the hon. member for Don Valley West (Mr. Bosley) just made reference, nor of the remarkable consensus that has been forged between the diverse interests which are the very nature of Canada and, of course, of the importance of enshrining in our Constitution a Charter of Rights and Freedoms. Nor need I remind hon. members of the compromises and the disappointments that compromises necessarily entail in order to reach a consensus. I suggest those kinds of compromises are necessary for the greater good consensus can bring.

The hon. member for Don Valley West mentioned the issue of sexual equality and aboriginal rights. These issues are very much alive, alive to the point where some members seem to suggest that they may vote against this resolution on that account. I have received representations from members of my constituency of St. Henri-Westmount requesting me to vote against the resolution on those grounds.

Let us all hope that these matters will be resolved before the resolution leaves this House. In any event, to those in the House who have negative feelings about the resolution on that account and to those members of the community who are not directly present here but who are asking us to reject the resolution on that account, I ask them to reflect upon the following.

What would be accomplished by defeating this resolution? Would a defeat of the resolution in its present form be a victory for sexual equality? Would a defeat in any way enhance the aboriginal rights to which the hon. member for Don Valley West just made reference? Would it accomplish anything other than to rekindle the constitutional haggling and debate which has lingered on for so many years? I ask hon. members to bear in mind that this resolution before us prejudices no one. It gives rights. It takes nothing away, it only adds. Most importantly, it adds a means of accomplishing further constitutional change here in Canada. This resolution provides Canadians with the tools to finish the job, to ensure

that the charter is improved to meet the legitimate concerns and demands of those who may require further protection.

[*Translation*]

Mr. Speaker, by voting against the resolution just because of a few shortcomings, we may very well undo all that has been achieved up to now, and raise the same feelings of bitterness again, and we shall not be helping those individuals and groups who failed to obtain what they wanted and hoped to obtain through the Canadian Charter of Rights and Freedoms. They have not won yet, Mr. Speaker, but they have not lost. Perhaps such members who intend to vote against the resolution will indeed do so, safe in the knowledge that the resolution will be passed just the same, because enough fellow members will act responsibly to support a measure that is in the best interests of all Canadians, including those they claim to protect.

[*English*]

I suggest that to vote against this resolution because it does not contain enough would be an odd way indeed of advancing the cause of sexual equality or aboriginal rights. In my judgment it would be tantamount to a declaration that if some cannot have everything they want at this point in terms of this resolution, others should have nothing. I know that such is not the spirit or the motive of those who take issue with the resolution, but unfortunately that would be the result. That is what a vote against this resolution would be saying.

Surely it is a selfish gesture to deny the rights the charter contains to Canadians because the charter has certain defects, defects which I am the first to agree we should all strive to correct as soon as the Constitution is patriated from the United Kingdom. But the defects take nothing away. They are omissions. This is the very process of compromise, Mr. Speaker, that the Supreme Court of Canada has told us is an essential element of the constitutional convention. The convention has now been observed.

● (1540)

[*Translation*]

In this context, Mr. Speaker, I would like to address a subject of particular interest to English-speaking Quebecers. I have already quoted requests from constituents, asking me to vote against the resolution because of the shortcomings I have just mentioned and described. Many others have begged me not to support the motion because in their view, the language rights of English-speaking Quebec citizens are not adequately protected, compared with the protection given francophones outside Quebec.

[*English*]

For a moment I should like to discuss the issue of English education rights in the province of Quebec and, more precisely, why I have concluded that it is important, in fact essential, as an English-speaking Quebecer to support the resolution in its present form.

The basic and historic protection in Quebec for English language education derives from Section 93 of the British North America Act. The provision in question guaranteed the right of dissent by a Protestant or Catholic minority, as the case may be, and the concomitant right to establish a separate school board, to pay separate taxes, if you like to effectively establish a separate school system founded on religious distinction. All those rights, of course, continue to exist. There is some authority for the view that language may also have been protected through the provisions of Section 93. That point has never been decided by the Supreme Court of Canada.

I now turn to Section 23 of the resolution before us. What is the effect of that article? It provides that citizens whose mother tongue is French or English can send their children to a school in the language of their mother tongue. That is the provision which I will deal with in a moment in regard to its non-application in the province of Quebec. It also provides that they can send their children to a school of the language in which either parent received his or her education in Canada.

This latter provision of Section 23 has come to be known as the "Canada clause", because it permits complete mobility within Canada by Canadian citizens. All provinces, except the province where my riding is located, have agreed to accept Section 23 in its entirety namely that the maternal language criterion would apply and the parents' language of instruction criterion would also apply.

The acceptance by the other nine provinces is most significant. It ensures protection for the French-speaking minority outside of Quebec which, for the first time in our history, is a major accomplishment. The acceptance of the mother tongue criterion is particularly significant for provinces other than Quebec because in the past there were few French minority language schools. Hence, the maternal language criterion is fundamental to ensuring the ongoing protecting of the French linguistic minority outside of the province of Quebec.

Within Quebec the situation is different. Because of Section 93 which I referred to a moment ago, English-speaking Quebecers have always had their schools. The criterion of the Canada clause provides protection to English-speaking Quebecers and to all citizens of Canada coming to Quebec from other provinces whose father or mother, as the case may be, has taken primary education in English anywhere in Canada.

Clearly the maternal language provision, to which I made reference, would also be beneficial for Quebec. It would protect English speaking Canadians, naturalized citizens coming from other parts of the world, whose children might wish to attend English schools at the primary school level. That is where the maternal language provision would, in my view, be most significant. Unfortunately, for reasons which I will describe in a moment, it will apply in Quebec only when there is authorization either by the National Assembly or by the government of the province. The political reality is that such acceptance is unlikely under the present provincial government. That is the difference between the application of Section 23 in Quebec and its application in the rest of Canada.

Why would we agree to modify the application of Section 23 in the case of the province of Quebec? Why do I, as an English-speaking representative, representing a riding in

Quebec with a substantial English-speaking population, agree to support the resolution in its present form? My decision was taken only after weighing the long-term advantages and the disadvantages of the approach which I must say I instinctively and intellectually find most appealing; that is to say, that the clause should be imposed in its entirety. In the rational world of pure theory, Mr. Speaker, that would not only be the logical thing to do but I also suggest in today's world it would be the civilized thing to do.

However, in the real world with which we are confronted today in the province of Quebec, political prudence and wisdom dictate otherwise. We must not win a battle and lose the war. The war against separatism is still being waged. My colleagues from Quebec are convinced that the imposition of the mother tongue provision would be misunderstood, and it would provide substantial ammunition to the separatist movement.

The Canada clause is quite another matter. Mr. Lévesque in 1977, at the conference of first ministers in St. Andrews, offered such an arrangement to each of the other provinces. I understand he reconfirmed that offer the following year in Montreal. The Canada clause derives from an idea of Mr. Lévesque's own creation and the notion of reciprocity within the terms of the Canada clause contemplated by Article 86 of Bill 101. Therefore, the Canada clause is nothing new. This is not a provision to which Mr. Lévesque could take exception on grounds of principle and nor could his separatist followers. Moreover, it also seems to be a provision which enjoys wide acceptance among members of the provincial Liberal Party.

This brings me to my second area of concern. Make no mistake about it, Mr. Speaker, we shall have another showdown with Mr. Lévesque and his separatist government before the cloud of uncertainty that hangs over the province has finally dissipated. That showdown may take many forms; it may take the form of a referendum; it may take the form of a provincial election. Mr. Lévesque and his colleagues will undoubtedly choose their time and place. When that hour is upon us, we will need the coalition of support that so successfully carried us to victory in the referendum of 1980. We will need the support of all Quebecers. Though many may be Quebec nationalists in one sense, they are total federalists. Some of these federalists have taken the position that nothing should be imposed on the province which in any way diminishes the powers of the National Assembly. Those representations have been made to me. While I respect those views, I am unwilling to support a constitutional resolution which does not impose the Canada clause as a minimum.

At the other end of the spectrum are those members of the English-speaking community who insist upon the application of Section 23 in its entirety, notwithstanding the fact that such a gesture will give further ammunition to the Parti Québécois, for the reasons I have mentioned.

● (1550)

In addition, such an imposition might divide and irreparably damage the provincial Liberal Party itself. Our provincial colleagues are essential to the coalition which must be forged to defeat effectively and definitively the Parti Québécois and its separatist option. I would hope that the middle ground we have selected will provide a basis for that coalition and that Mr. Ryan, who frankly made a magnificent contribution to the referendum debate and for whom I have the greatest respect and admiration, will close ranks with us. Rather than fracture the ranks of Quebec federalists, I accept a compromise which invokes the Canada clause that adds to the rights of English-speaking Quebecers and will permit all federalists of whatever party stripe or affiliation to come together to fight separatism. Certainly I would prefer to have the mother tongue provisions of the first part of Section 23 apply, but I must also be sensitive to the political realities of the province of Quebec in the 1980s.

In the context of this linguistic issue, let me return to my opening comments. The resolution provides additional protection for the English-speaking minority in Quebec. It imposes the Canada clause, a clause which will guarantee that no further erosion can be made of the rights of the existing English-speaking community and that other English-speaking Canadians are able to come into Quebec and attend English-speaking schools by right. These protections do not now exist.

Further protections may be required, such as the mother tongue protection, but let us place such improvements in the same light as my earlier comments on aboriginal rights and the rights of sexual equality. When the Constitution has been patriated, let us make it a better Constitution than the one contained in the resolution before us. But let us not jeopardize the remarkable progress we have made and the additional rights we have acquired under the Canada clause which will apply in Quebec under this resolution. To vote against a resolution which provides greater protection than now exists for English-speaking Quebecers because there are further rights guaranteed to French-speaking Canadians outside Quebec would be at best a "dog in the manger" attitude. It would surely be the perfect example of the old adage—cutting off one's nose to spite one's face.

[Translation]

In this context, Mr. Speaker, I should also like to discuss the connection between the economy in the province of Quebec and this constitutional debate. It is common knowledge that reaching an agreement with the Quebec government on constitutional matters is practically impossible, if it continues to view the separatist option as its objective. With my colleagues, I feel very frustrated about the situation, not only because I would like to see the constitutional matter settled once and for all, but also because as long as this uncertainty exists, I feel there is very little hope of seeing any improvement in Quebec's economy. That is the connection between the economy and the Constitution which is sometimes forgotten. Quebec is in financial trouble. That was made quite clear by the Minister of Finance, Mr. Jacques Parizeau, last week. And of course, the Quebec government continues to blame all its problems on Canada, a strategy that will probably be used more often in

order to camouflage the province's deplorable financial administration. Can one trust a government that is willing to spend millions of dollars of its taxpayers' money to satisfy the nationalistic urges of its ministers and purchase the Asbestos Corporation, a government that at the same time makes cutbacks worth one-half billion dollars in its social services? It is appalling!

Until the Lévesque government stops sowing the seeds of discord in the business world at the provincial, Canadian and international level, Quebec is going to remain in its economic slump. One essential factor that could help us get out of the slump, Mr. Speaker, would be to see the end of this endless debate on the Constitution and have the assurance that Quebec will remain within a strong and united Canada.

In the interest of all Quebecers, Mr. Lévesque should agree to the compromise solutions offered by Mr. Trudeau, but he has refused outright. These compromise solutions, which are supported by the federal members who speak on behalf of the interests and aspirations of Quebecers, are very reasonable and very substantial. For instance, in addition to a lack of financial resources in the province of Quebec, sometimes we also lack human resources. It often happens, Mr. Speaker, that we need engineers, scientific researchers, professors, and high technology experts. We need these people like any country, any province and any region needs them, to better achieve our industrial goals. We cannot do without them. Modernization and high technology industries are absolutely indispensable to the industrial future of our province, if we are to revamp the soft sectors of the economy, such as textiles and footwear. As you know, Mr. Speaker, the federal government has just earmarked more than $250 million for that purpose. These people are not going to take the place of Quebecers but they are going to create jobs in new enterprises, more profitable jobs in areas where we can compete at the world level. One example is the aerospace industry, where thanks to federal programs, Quebec already has the infrastructure in Quebec on which we can build further.

That is why Section 23, the so-called Canada clause, is so important. It is important because it says that if a Canadian citizen who comes to the province of Quebec was educated in English, he will have the right to send his children to an English school in the province of Quebec. This minimum protection is indispensable if we are to attract Canadians to Quebec in order to meet the needs that I have just mentioned. As I indicated before in English, Mr. Speaker, because at the St. Andrews' Conference in 1977, Mr. Lévesque himself offered to enter into reciprocal agreements with the provinces that would guarantee schools for the francophone or anglophone minorities, as appropriate, the Canada clause in this resolution will, in fact, be entrenching Mr. Lévesque's own concepts. So, Mr. Speaker, with the Canada clause we have an element that is extremely important to the economy of the province of Quebec.

[*English*]

In conclusion, if ever there was an example of the whole being greater than the sum of its parts, surely it is this country of ours—Canada. Our Fathers of Confederation had the foresight to pursue that dream, and a record of 114 years bears eloquent testimony to their conviction. Sir John A. Macdonald said the following shortly before his death:

> If I had influence over the minds of the people of Canada, any power over their intellect, I would leave them with the legacy: Whatever you do adhere to the union—we are a great country, and shall become one of the greatest in the universe if we preserve it; we shall sink into insignificance and adversity if we suffer it to be broken. God and nature have made the two Canadas one—let no factious men be allowed to put them asunder.

I believe all hon. members of the House accept Sir John's challenge. We will not let factious men put Canada asunder. We will not permit factious men to rob generations of Canadians of this great legacy.

● (1600)

The adoption of the resolution before the House today, Mr. Speaker, is an important step in ensuring that Canada will remain greater than the sum of its parts for the benefit of all future generations of Canadians.

Some hon. Members: Hear, hear!

Hon. Jake Epp (Provencher): Mr. Speaker, once again it is an honour to participate in the development of our Canadian Constitution. Before I begin my comments, I want to thank the Minister of Justice (Mr. Chrétien) who, prior to leaving the House this afternoon, indicated to me that he would not be present for my remarks. I understand he is engaged in the activity of telephoning various premiers, an activity which some of us have also engaged in over the last days, weeks and months. I can appreciate the work that lies before him today.

One hundred and sixteen years ago, the provincial Parliament of Canada engaged in a debate on the confederation of the British North American colonies. While it was the practical men such as Macdonald, Cartier, Brown and Galt who outlined the immediate advantages of the confederation scheme, it was Thomas D'Arcy McGee who outlined the general principle which was to be the foundation of the new nation. He said:

> There is something in the frequent, fond recurrence of mankind to the federal principle, amongst the freest peoples, in their best times and worst dangers, which leads me to believe that it has a very deep hold in human nature itself—an excellent basis for a government to have.

In the one hundred and fourteenth year of the confederation which those men helped to create, Canadians have debated this same cornerstone of the Canadian nation—the federal principle.

On one side there have been those who have grown impatient with the federal process and who believed that federalism no longer worked. They felt that the merits of such measures as an entrenched charter of rights or a clarification of resource jurisdiction justified a departure from the Canadian tradition of seeking compromise and consensus on major constitutional issues.

On the other side there have been those who have fought for the maintenance of the federal principle. We believed that unilateral action was based on a false premise: that the federal system no longer worked and that progress could not be reached by compromise and consensus. We rejected that attitude completely.

On October 2, 1980 the Right Hon. Leader of the Opposition (Mr. Clark) recognized that the government's constitutional proposal offended the federal principle. Since that time, under his direction, the federal Progressive Conservative Party has fought the government at every step to ensure that the federal system would be protected. We were among those who believed that the federal system still could work if all our political leaders had the will to make it work.

On November 2 of this year, almost one year after the government's original deadline for debate on its unilateral action, an event occurred for which those of us who defended the federal principle had fought long and hard. Eleven political leaders of Canada who both represented and reflected the diversity of Canada met to discuss the constitutional resolution.

This meeting was made possible by the decision of the Supreme Court of Canada that the government's original plans were unconstitutional. It is the conclusion of that meeting that we are discussing today. That decision occurred before the government's proposals were rushed off to Great Britain only because our party, under our leader, fought a long parliamentary battle last spring. Many Canadians may have forgotten that at that time we were told by the Leader of the New Democratic Party (Mr. Broadbent) that we were wasting the taxpayers' money and that we should get on with the job, although it was a position that he had supported earlier.

In spite of it all, we remained determined to fight for the right of the Supreme Court of Canada to render its decision. We remained hopeful that Canada's first ministers would use the opportunity which we had provided them to meet once more.

On November 2 the first ministers did use that opportunity. And on November 5, Canada's political leaders restored our faith in the federal system. They proved that they could put aside their personal, political and sectional interests to reach a compromise for all Canadians. I suggest to hon. members that the same spirit must prevail in this House as well.

In defending the Canadian federal tradition of consensus, we were often accused of being naive or of failing to support such worthwhile measures as the Charter of Rights and Freedoms. But we retained our faith in the nation, in the principle of federalism and in Canada's political leaders. And in the end, I believe we and all Canadians who held that view have been rewarded for that faith.

What, then, is the resolution before us and how does it compare to the old resolution? I believe that Canadians have been rewarded by a new constitutional resolution which is dramatically different from the one which we debated last fall, winter and through the spring.

When speaking in those debates, I and other members of my party outlined four main objections to the government's proposal. Our primary objection was to the unilateral action of the federal government. The resolution before this Parliament today has the support of ten Canadian governments. It represents the result of compromises on all sides. As a result, Canadians will have a truly Canadian Constitution made in Canada through the Canadian tradition of consensus.

We also objected to the interim amending formula which would have subjected Canada to the tyranny of unanimity for several years. We believed such a complicated formula was unnecessary because agreement could be reached on a permanent way to amend the Constitution in the future if the federal and provincial governments met once more to discuss it.

The new resolution contains no interim amending formula. We must ask why that is so. It is because the agreement which we always believed was possible was reached.

The old resolution also had a permanent amending formula to which we objected. The outdated Victorian formula did not conform to the reality of the Canada of today nor, I suggest to hon. members, to the Canada of tomorrow. It did not treat the provinces equally and it provided central Canada with a permanent veto.

Since October 2 of last year, our party maintained that the so-called Vancouver consensus amending formula represented the reasonable basis for an agreement among all governments. The Vancouver formula had the advantages of treating provinces as equals and of being flexible while still protecting the diversity of Canada.

It is this formula, as adapted through intergovernmental co-operation, which is contained in the present resolution. I say to all hon. members that it was that amending formula, one which created different classes of provinces and therefore, by extension, different classes of citizens in Canada, that we fought so hard to have removed from the resolution. Those of us who do not come from central Canada felt it was time not only that we be given equal rights, but that we also be given the responsibility of contributing to the country on an equal basis.

Among the government's original proposals there was one feature which we regarded as highly dangerous and divisive. That was the referendum provision, controlled entirely by the federal government, which was open to potential abuse and would have created needless strife within the country. There are those who say it is the ultimate exercise of democracy, but if we look at the old resolution we will see that the manner in which it could be used would have led to division, strife and rancour rather than agreement. Canadians did not want a Constitution which might pit region against region and neighbour against neighbour. Canadians needed and wanted a Constitution which would unite them.

There is no provision for a permanent referendum anywhere in the present resolution. Canada's political leaders have indicated in their wisdom that such a dangerous and divisive

mechanism, a provision which like unilateral action reflected a distrust of the federal principle, was unnecessary.

Throughout the debate on the old resolution, our party offered a number of compromises which would have eliminated our major objections. But most of all, we asked that all our governments return to the bargaining table to discuss the constitutional proposals. When they finally did, Canada's governments removed the most objectionable sections from the old resolution and, I believe, crafted a completely new document of which Canadians should be proud.

The Constitution agreement reached by ten Canadian governments and opposition parties in this House produced a Charter of Rights and Freedoms in which all Canadians should take much pride.

The charter of Rights and Freedoms before the House today contains all the essential features which were developed by the Special Joint Committee on the Constitution, with exceptions that I will come to later, in response to the representations of thousands of Canadians. Today those representations are crafted in a document which will enable the courts, Parliament and the legislatures actively to protect the rights of all Canadians.

• (1610)

The premiers' particular contribution was to introduce the concept of a legislative override. This is an important innovation which will strengthen the effectiveness of the charter of Rights and Freedoms. I think it is important that Canadians understand this innovation, particularly because some people are suggesting that this innovation has produced a "watered down" Charter of Rights and Freedoms.

No country in the world, not even Canada, enjoys a system which could perfectly guarantee our rights. The Parliament and legislatures of Canada are not perfect. They have done injustices to individuals and minority groups. But the Supreme Court of Canada is not infallible either. It is equally capable of making mistakes and doing an injustice to Canadians. In an imperfect world Canadians must choose between frail human institutions and decide which should hold the final authority.

A legislative override leaves the final authority, and only the final authority, with the people's elected representatives. You might then ask how that would work. Suppose a future Supreme Court decided that provincial legislation allowing prayers in public schools violated the charter, and specifically the freedom of religion provisions? A provincial legislature would have to decide whether this legislation was so important and so popular that it should still be enacted. It might feel that the court had misinterpreted the intentions of those who drafted the Charter of Rights and Freedoms or the popular will of the people.

Having decided that the legislation was important enough, Parliament or the legislature would have to state publicly that it would pass the legislation knowing that it conflicted with the Charter of Rights and Freedoms. Not only that, it would have to introduce the legislation knowing it would have to be passed and scrutinized again every five years. Obviously, a government would do this only when it felt that the legislation was very important and was supported by most people. This probably explains why legislative overrides have never been used by any of the provinces which include them in their bill of rights in Canada at the present time.

It is important that Canadians understand that Parliament or a provincial legislature would not be opting out of the guarantee of, in this example, freedom of religion. It would only be stating that this single piece of legislation should still be effective even if it conflicts with the freedom of religion. All Canadian governments have affirmed their commitment to protecting our traditional rights, such as freedom of religion and speech. Ten Canadian governments are also committed to guaranteeing more modern rights, and here I am thinking specifically of the rights of the mentally and physically disabled. It is that section which I believe puts our charter in the vanguard of a modern charter, so to speak, and I am pleased to see those provisions included.

The importance of the commitment of Canadian federal and provincial governments to the rights contained in the charter should not be underestimated. This commitment will open the way to progress in including further guarantees in the Constitution over which our party has expressed some concern. More importantly, all the work which was done, all lofty phrases which were inscribed, and all the promises which were made by all parties in this Parliament during the hearings of the Constitution committee would have been worthless without the full commitment of the provincial governments to the Charter of Rights and Freedoms. It was unthinkable, in my view, that we would have a charter of rights and freedoms and then we would have provinces saying from time to time that the charter would not apply in their province. How, for example, would one be able to opt out of rights?

There are a number of members who insist that a charter of Rights and Freedoms is a hollow document, that it cannot protect the rights of citizens. While I am one who cherishes the rights handed down through the English common law, I remain convinced that redress for violations of rights by government is made possible through the inclusion of a charter of rights and freedoms—the example of Japanese Americans who, while not protected by the charter of rights of the United States either, were given compensation after the war. Japanese Canadians have not been compensated to this day. I have one such person in my riding at the present time. What we have to fear is not the violation of our rights by our fellow citizens, but by the government itself.

Additionally, there are those who point to the U.S.S.R. and other dictatorships as having an entrenched charter of rights, and yet, despite this provision, violations of human rights goes on daily. How do we answer this charge?

I said that our government institutions are fallible because we as people are fallible. The difference between the U.S.S.R. and democracies though is apparent. Dictatorships use charters for propaganda purposes. They have no intention, either at home or internationally, to observe the rights they so piously adopt.

I would now like to speak personally for a moment. My father and his family came to this country in the 1920s. They were given freedom. Yes, they were given that freedom without a charter. But many immigrants, because of the loss of country and status, see a charter as a symbol, as a written guarantee of the rights they so vigorously defend. charters can be empty of resolve. My uncle spent 22 years in a labour camp in the Soviet Gulag. My cousins to this day cannot return to the Ukraine where their family lived, but must remain in the so-called virgin lands. The rights in the U.S.S.R. are empty. Their charter is for propaganda purposes only. But let us not compare either the purpose or the action of the Soviet authorities with our country and the desire of its citizens to protect our basic rights.

On October 6, 1980 the Minister of Justice suggested that the government was completing the work of the Right Hon. John George Diefenbaker. Back then, nothing could have been further from the truth. Prime Minister Diefenbaker respected and loved Canada too much to have acted unilaterally in a way which would have affected the federal system. But I am also certain Prime Minister Diefenbaker dreamed of the day when all provincial governments would commit themselves to entrenching a bill of rights in the Constitution. Now Canada's first ministers have helped to fulfil that dream.

The Canadian Charter of Rights and Freedoms affirms and extends the freedoms of all Canadians. It should be a source of pride to all Canadians for all generations to come.

If the first ministers drafted a document of which all Canadians should be proud, some people must be wondering why our party has suggested some changes to the accord. Perhaps it is because, as Sir John A. Macdonald once said of the American constitution:

> To say that it has some defects is but to say that it is not the work of Omniscience, but of human intellect.

We must not forget that our first ministers met in a pressure packed period of four days and may not have had the opportunity to consider the full implications of some of the actions taken.

I am suggesting that Parliament has a role to play to ensure that the rights of all Canadians have been kept in mind and to provide, though it might be foreign to us in this chamber, "sober second thought" to their work. That there is room for change and "sober second thought" is obvious from the fact that the resolution which we are debating is not identical to the one which would have been produced by the constitutional accord.

A tremendous furor has been created over the application of the "notwithstanding clause" to the guarantee that rights should apply equally to men and women. A similar furor has surrounded the absence of the guarantee of aboriginal rights from the present resolution. Both of these outcries, on the part of women and on the part of the native peoples, have been perfectly justified. And it would now appear that both important segments of the Canadian federation will find a place in the final accord which this Parliament will approve. That is a hopeful sign.

It is a hopeful sign because it indicates that many Canadians want to play a part in the agreements which are often reached by first ministers behind closed doors. They want to make sure that those agreements truly reflect the diversity of the Canadian federation. Canadians have shown that they want to be part of the process of constitutional change.

I want to speak for a moment about native rights. People sometimes ask me why I am interested in going beyond the entrenchment of the rights that are now in Section 25. One of the practical examples I have been using is as follows. Suppose, Mr. Speaker, that you have bought a quarter section of land but when you receive title you find that you receive title for that quarter section with one small omission: the back 40 acres are not included. Suddenly you find that instead of 160 acres you have only 120 acres, although the deal was for 160 acres.

• (1620)

There are many Indian people in Canada today whose treaties still are unfulfilled. They still have treaty entitlement. They are still cut off from lands in British Columbia, and there are treaties still to be signed north of 60. I say to Canadians, all we are asking is for a fair deal. We are asking them to apply this to themselves to see whether or not it would be acceptable to them if the agreements they had made were in fact different from the agreements they received in the end.

Also in reference to Section 28, this party, as proposed by my leader on Friday last, insists that Section 28, as it appeared in the resolution which came out of the joint committee, be restored in its full power.

There is a hopeful sign during these days and these hours when these negotiations take place that these agreements can be made and included as amendments to our constitutional proposals.

On Friday also the Minister of Justice suggested that every Member of Parliament should use gentle persuasion wherever possible to pave the way for a solution in the areas of disagreement. It is in this spirit, and not in a partisan way, that our party has been seeking a reconciliation in the areas I have mentioned of women's and native rights. Now is not the time for any party or person to trumpet their role in bringing about a potential consensus in these areas. It is a time for all of us quietly to play whatever role we can in bringing about these changes.

It is in this same spirit that members of our party have been seeking to make the constitutional accord acceptable to the people of, and perhaps the government of, Quebec. As a Canadian from the west, I can remember the isolation and alienation which we felt when the constitutional proposals were going to be imposed on us, proposals we thought were detrimental to our region and our people. I do not think we should forget now that the same sense of isolation could be felt by another important region of the country.

Under the direction of our leader, we have been seeking to make the constitutional proposals acceptable to the people of Quebec. That is the spirit in which we will propose the

amendment on financial compensation. That is the spirit in which today our leader has contacted the Premier of Quebec concerning minority language education provisions. The Leader of the Opposition has asked the Premier of Quebec for a clear commitment that his government will recognize the right of all Canadian citizens to minority language education. We are asking the Premier to take the essential first step, in guaranteeing these rights, after which would commit the government of Quebec to accept the rights of all Canadians to minority language education voluntarily.

All Canadians would like to see all regions involved in the final constitutional accord, and all Canadians feeling at home in this country. What we are seeking is a compromise which would make the accord acceptable to the government of Quebec.

Some members of the House, the press and of the public might say that is impossible. If that is the case, let us be sure that the people of Quebec realize that their government will reject all reasonable proposals. If, regrettably, that is the case, let us make it clear to the people of Quebec that they only appear to be isolated, isolated by a Quebec government which is more interested in deliberately asserting its separatist views than in working within the framework of the Canadian federation to reach a genuine agreement.

I want to spend some time, Mr. Speaker, speaking in reference to how the accord affects the people living north of 60, in the Northwest Territories and the Yukon.

The accord provides an amending formula which, I believe, requires modifications to meet the requirements of Canadians living north of 60. Many of us dream of the day when Canadians living in the Northwest Territories and the Yukon achieve full responsible government. That should happen today. I just cannot understand why we cannot have full responsibility for those territories today, why we cannot accept the concept that those who are elected must be responsible to those who elect them, and why we cannot remove the federal bureaucratic shackles that have existed for so long north of 60; but I guess change comes very slowly.

Having said that, we look forward to the day when they will achieve full responsible government, and once having achieved that government they eventually will make the decision on the advisability of attaining provincial status. The amending formula allows these citizens to make that judgment, as we see it now, without further change to the amending formula; that is, we are not restricted to the number of provinces needed under the amending formula, but rather to a mathematical formula. There is a section in the accord which I seriously believe brings into question the future of the people living north of 60, and that is Section 41, specifically Section 41(e).

As this Parliament takes a sober second look at the resolution, we might also want to consider the part of the constitutional resolution which will involve the provinces in the creation of new provinces out of Canadian territories. The power to create new provinces out of territories presently rests with the federal government. That is in Schedule 2 of the amendments to the British North America Act, 1871. According to the resolution, this power will still rest with Parliament in part, but in another section, namely Section 41—the schedule is in conflict with Section 41—this power will rest with the federal and the provincial governments. This contradiction should be cleared up so that the intentions of the government in this matter are very clear to all concerned. I suggest to the Minister of Justice that he look at both the schedule and Section 41(e) to see if we cannot clarify that matter before the resolution has the final approval of this House.

Mr. Nielsen: And Section 41(f)

Mr. Epp: My colleague, the hon. member for Yukon (Mr. Nielsen), also refers to Section 41(f). I believe he will be speaking more specifically about the north later on in the debate.

As always when compromise is reached, one would like to see changes which cannot be achieved at the moment without jeopardizing the agreement itself. For example, the fact that property rights have been left out is of personal concern to me and I know to many colleagues on this side of the House at least. I urge the provinces to rethink their opposition to this provision. If rights relating to property can be included for other groups, such as natives, I would think that some way could also be found to guarantee property rights and yet allow provincial governments the administrative freedom to acquire property for the benefit of the general public.

I also want to issue a warning to this Parliament and future legislators regarding the absence of rights for the unborn. I am not speaking as a critic of my party but personally as a member of this House. The Minister of Justice and his officials argue that the charter is neutral on this issue. I pray that legislators and courts will not take away, because of this neutrality, the rights of the most defenseless in our society. If I have any disquiet today, Mr. Speaker, it is on that topic.

Some hon. Members: Hear, hear!

Mr. Epp: In conclusion, the debate in this Parliament on the resolution is beginning to settle in the minds of all members of this House the fact that constitutional compromise is possible. When we have concluded this debate Canada will have a Constitution which contains all of the good features of the British North America Act which have served us well in the past. Canada will also be able to change its Constitution in Canada, and we will have entrenched a commitment to equalization, a fuller definition of provincial resource ownership, as well as the charter of Rights and Freedoms to which I referred earlier.

I am relieved that a debate which began in anger and which has created deep divisions in the country is ending in good will. I hope there are others like myself who have had their faith in the federal principle, upon which this nation was founded, rewarded, and I hope there are others whose faith in the principle has been restored.

• (1630)

There are many challenges to be overcome in the coming decades which will require the same Canadian tradition of consensus and compromise. It is time that we left division. It is time that we left the bitter words of the last year far behind us and start to face the challenges of the future.

Someone has said, and John A. Macdonald used to paraphrase it, that Canada is more than a mere geographical expression. All of us who have taken a look at Canada's geography know its geographical grandeur. Whether one sweeps from east to west to north or the other way around, one has been filled with awe with our country. Canada is more than a geographical expression. It is a land of people, people who in their own way each want to build a better Canada.

During the confederation debates in 1865, the Hon. George Etienne Cartier said:

I view the diversity of races in British North America in this way: we were of different races, not for the purpose of warring against each other, but in order to compete and emulate for the general welfare. This diversity is our strength.

The question might be asked, how do we repay those who laid the foundation of this country? Lord Tweedsmuir probably said it best when he said, "We can only pay one debt to the past, by putting the future in debt to ourselves". That, Mr. Speaker, has been our work and that should be our legacy.

Hon. Judy Erola (Minister of State (Mines)): Mr. Speaker, I am very proud at this moment to be a Canadian woman. Equality for myself and all Canadian women has ceased to be an elusive dream. Instead, it is taking on the shape of reality, moulded by generations. It is equality not according to the old maxim "As persons in matters of pains and penalties", but as persons in the matter of rights and equality. You can bet that we want full equality.

What is this equality that we women have been fighting for? How many generations of men and women have asked the question: What do women want? Well, for our grandmothers who were not even considered persons and who fought for the vote, and for our mothers who supplied the labour force during the war and since, and for our sisters and daughters and granddaughters, I will tell you what we want. We want the rights in the Charter of Rights and Freedoms guaranteed equally to male and female persons. That means the original wording of Section 28:

Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

It is that simple. We want the reference to Section 28 in the override clause, Section 33, deleted. The charter will then carry a forceful statement of equality. This will give the courts a strong direction that sex discrimination cases require their strictest scrutiny.

For those who argue that affirmative action programs are jeopardized by the removal of Section 28 from Section 33, I remind them that the present constitutional proposals clearly state that affirmative action programs are not subject to the normal rules barring discrimination on the basis of sex.

To go back to some of the things which have happened to women in this country, I am sure there are many who are not aware of the fact that long before the era of the suffragists, women in Quebec, Nova Scotia and New Brunswick had been entitled to vote and hold office. Why? What happened? Simply because it had not occurred to anyone to make laws to prevent them from voting. Of course, you can guess what happened when this existed; legislation was enacted to remove that right.

It was not until April 25, 1940, with the capitulation of Quebec, which was the last province to give votes to women, that the injustice was overturned. It is curious to recall that in our so-called enlightened age it is almost impossible to believe that the late Senator Therese Casgrain as recently as 1970 became the only one of Canada's leading suffragists to hold federal office. I would like to think that Madame Casgrain, who died just three weeks ago, would be sitting in that gallery this afternoon, but I am sure that she is with us in spirit today.

Well, women got the vote and, as most women know, we who were busy building homes, feeding cattle, ploughing the fields and milking the cows—as my mother did—having babies and raising families, then had to fight for the right to be recognized as persons. Most of us in this House are familiar with the Persons' case, but I think it is worth while to go over it again. In 1928 five Alberta women, the "five persons" as they were later known, Henrietta Edwards, Irene Parlby, Louise McKinney, Nellie McClung and Emily Murphy, appealed to the Supreme Court of Canada to decide whether women were "qualified persons" who could be appointed to the Senate. Of course, the Supreme Court rejected this idea. The case was then appealed to the Judicial Committee of the Privy Council in England who accepted the idea that women were, indeed, persons. This now forms part of the constitutional law of this country.

However, this should serve to remind the men of this country that for decades, right up to the present time, women have participated and agonized in this constitutional exercise.

We look upon the events of the past year as events which have been controlled, to a large degree, by women themselves. They did not let the drafters of the Constitution forget. Back in February, 1981 many thousands of women told the federal government that equality must be guaranteed in any charter of Rights and Freedoms to be entrenched in the Constitution. The government agreed to this and a special guarantee, Section 28, was added to the charter in the general clause.

In April, 1981 this guarantee of equality for women and men was passed by all three parties in the House of Commons. Women thought that they had a guarantee that all laws in Canada would have to treat men and women in Canada equally. So there it was. We have the charter, standing the way we want it, clearly defined. The battle was won, we

thought. However, it was not. Why? Because the provinces, the Supreme Court and the opposition parties put this government in the position of bargaining for consensus. The provinces changed the charter without consulting the people within the provincial boundaries.

We will recall, but I think it proper to remind this House and the people of Canada that it was the federal government that held constitutional hearings and an all-party committee sat for months. There were 303 witnesses, including individuals and groups, along with almost 1,000 briefs, letters and telegrams which were heard and received. The committee listened, responded and so developed a charter that did respond to the hearts and minds and needs of the people of Canada.

When it was found that the charter had changed, bowing to the pressure of the provincial premiers, the women looked up and said "No". Women, united as never before, said no. It was time to tell the provinces no. Much credit is due to special groups and dynamic individuals who I will name later on this afternoon, but the credit for speaking out goes to the women of Canada, women working both in and out of their homes, mothers, grandmothers and daughters and particularly the women of this House. I refer to the member for Kingston and the Islands (Miss Macdonald), the hon. member for New Westminster-Coquitlam (Miss Jewett), the hon. member for Vancouver East (Mrs. Mitchell) and the hon. member for Vancouver Centre (Miss Carney)—in fact, all the women on the opposite side of the House.

• (1640)

It goes without saying—but I think I should mention it—that the women on this side of the House have given tremendous support, particularly my close friend and colleague, the Minister of National Health and Welfare (Miss Bégin), who is leading us into another major battle for pension reform, which is very much needed to ensure the economic security of the women of this nation.

I must also pay tribute to the Prime Minister (Mr. Trudeau), who displayed his total commitment and confidence when he appointed me as the minister responsible for the status of women.

We have also been supported all the way by those women members in the other place. I refer to Senators Bird, Rousseau and Neiman who have worked tirelessly in support of these efforts.

Who actually galvanized these women into action? Two groups provided the main thrust. The ad hoc committee, with women such as Pat Hacker, Lynda Ryan Nye, Rosemary Billings, Marylou McPhedran and countless others, and the Canadian Advisory Council on the Status of Women—capably led by its president, Lucie Pepin, I am pleased to say—have provided an extremely powerful force in the past few weeks. Fortuitously, the council was meeting in Vancouver at the time of the signing of the final resolution, and it moved very quickly and very effectively. If there was any doubt about the strength and integrity of the Canadian Advisory Council on the Status of Women, those doubts have surely been dispelled by the events of the past ten days.

I would like to remind this House that the president of the advisory council, Lucie Pepin, and many of her provincial chapter councils, met this last weekend in Saskatchewan. These groups have managed to reach almost every Canadian woman and, I must say, it is working. This network—and we call it a network because that is what it is—went into action and the premiers heard from the women. Pressure continued to mount on each premier until, one by one, they fell. But will we have Saskatchewan? In order to adhere to the spirit of the accord, we must have all the provinces onside. I say to Saskatchewan, to the Premier of Saskatchewan, to the people of Saskatchewan: join us. I am convinced that reason and justice will prevail.

I must also say that much credit must go to a group of women which has worked largely behind the scenes for the past week or two. I refer to my department, Status of Women Canada, and its co-ordinator, Maureen O'Neil, who with a small but highly skilled staff have kept me and my colleagues informed of the implications of the various decisions and options offered throughout these negotiations.

On Friday the Leader of the Opposition (Mr. Clark) spoke of his background of growing up on a farm where women were equal. I share that background. I grew up on a farm, and I had the added advantage of growing up next door to an Indian reservation. This has helped me to understand the even greater injustices which have been done to native women. These women—including Sandra Lovelace, Jeanette Lavell and Mary Two Axe Early—must share equality with men under and before the law, a law for all Canadians.

Again I return to the Leader of the Opposition who, on Friday and on previous occasions, indicated his sensitivity to and understanding of this issue. This has been healthy for this country and for this House because during the past week, as never before, the men of this House have opened the doors and let the views of women in. Lest we think this has been a battle fought for and with women only, just this afternoon I received a letter from a senior citizen, and I am compelled to quote part of it:

> I am a senior citizen war veteran who believes that I fought for a better world and society.
>
> It is hard to understand that a minister had to be appointed to see that a Canadian's rights have to be upheld. There should be no question in our country of any Canadian being slighted on their rights. As I write this I am sorry to hear the radio news that there is a question of whether or not rights will be included in the Constitution. All Canadians must enjoy equal rights without questions being involved. It is a shame that any Member of Parliament should voice anything contrary.
>
> Thank you for trying to make Canada equal for all citizens.

You will pardon us, Mr. Speaker, the women of Canada, if we are optimistic and hopeful and just a little bit cocky. We have come a long way, but there is one step to go.

I will close on that rather optimistic and perhaps light note because I think a little humour always helps us move along the way. I feel today very much as the quarterback of the Edmon-

ton Eskimos must have felt at about this same time yesterday. How can we lose? One final kick. We are still in the game.

Some hon. Members: Hear, hear!

PROCEEDINGS ON ADJOURNMENT MOTION

[*English*]

SUBJECT MATTER OF QUESTIONS TO BE DEBATED

The Acting Speaker (Mr. Ethier): Order, please. It is my duty, pursuant to Standing Order 40, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for Ottawa-Vanier (Mr. Gauthier)—The Constitution—proposal that representatives of minorities attend conference; the hon. member for Esquimalt-Saanich (Mr. Munro)—Canadian Broadcasting Corporation—appearance of Canadian pipers at Edinburgh International Tattoo. (b) Request that broadcast be shown in Canada; the hon. member for Lethbridge-Foothills (Mr. Thacker)—The Budget—minister's awareness of effect.

GOVERNMENT ORDERS

[*English*]

THE CONSTITUTION

RESOLUTION RESPECTING CONSTITUTION ACT, 1981

The House resumed consideration of the motion of Mr. Chrétien respecting the Constitution of Canada, and the amendment thereto of Mr. Clark (p. 13050).

Mr. John Kushner (Calgary East): Mr. Speaker, I am honoured and privileged to speak in this historic debate on our Constitution. I am indeed very proud but, on the other hand, I am a very disappointed Member of Parliament. I am one of the most disappointed members in this House of Commons because the priorities of this government are wrong.

When I went to my constituency this past summer I was embarrassed because I was asked what I was doing about interest rates, jobs and the energy crisis. I was asked when we would come to some agreement or arrangement to get this country working again. What do Canadians have to do to get us to put our priorities in the proper order and to get us to address ourselves to the problems facing Canadians? Canadians are losing their homes and their jobs. What are we doing? We are talking about the Constitution rather than addressing ourselves to our country's needs.

Who can a person turn to when he is losing his home because of high interest rates? The government says it cannot

do anything about high interest rates because our rates are married to the rates in the United States. Are we saying that Canadians should write to Mr. Reagan, the President of the United States, to ask that the matter of high interest rates be addressed so that the needs of Canadians could be met? Or should we be saying that the Liberal government has completely lost control, which in fact it has? The fact is that bureaucrats are governing this country. Perhaps Canadians should be talking to bureaucrats instead of Members of Parliament because Members of Parliament have certainly lost control.

That is sad because we are living in a country of plenty. It is indeed one of the richest countries in the world. That is one reason my family emigrated from Poland to this country. We came here during the depression because of the freedom of opportunity. However, we have less freedom now than ever before. Some countries with the best charter or bill of rights or best constitution have less democracy and freedom than a country like ours.

• (1650)

The constitutional debate has not ploughed one field or created one job. If anything, it has caused a loss of business, jobs and opportunity for Canadians as far as revenue is concerned. This is because the government has not been addressing the needs of the country. It has been talking about the Constitution rather than dealing with the needs of this country. The Prime Minister (Mr. Trudeau) is not staying home but rather leaving his toy, the Constitution, for members of Parliament to play with. The Constitution does not matter much to a Canadian who has lost his home or job. In fact, it does not matter at all.

This is not the end of the debate on the Constitution. It will be coming forward again, no question about it. The Prime Minister's intention with this toy, the Constitution, is to have his name inscribed in the history books because he brought the Constitution to Canada at all costs. Without question, it has been "at all costs" to those Canadians who have lost their businesses. That is the way I feel, as do those whom I represent.

The hon. member for Provencher (Mr. Epp), the chairman of our Constitution committee, gave a lot of time, made many sacrifices and put in endless hours of effort to help make this Constitution work. It is hard to appreciate or to visualize the sacrifices this hon. member has made towards resolving this constitutional debate successfully.

There is more to Canada than just the French and English. I am neither French nor English but I am very much a Canadian. I have travelled in Quebec. It is beautiful. I do not have the words to express how hospitable and honest the people of Quebec are. I have not often missed the *carnaval* in Quebec city. I attend almost every year; it is great.

It is not the French people or the Quebecers who cause the problems. One man wants to become a Messiah and the other a hero. Divide and conquer; that is what is now happening. It is unfortunate because the economy of Quebec is not good.

Indeed, it is very bad. I only hope that the Prime Minister, who is a good friend of the Premier of Quebec, will once and for all try to resolve the problems in Quebec, get that province rolling again and the people there working.

Thousands of Quebecers left Quebec to go to western Canada. In fact, my neighbour across the street is from Quebec. He is happy to be in Alberta. His English is not very good. My French is not good either. However, we get along very well as neighbours. We understand each other.

These people have come to western Canada for the same reasons my family came to Canada. It was not necessarily by choice but through necessity in the hope of being able to make a better living. When some of us came to this country, we did not have so much as even a good suitcase. However, those people who came here have worked very hard. They were the pioneers who built this country to what it is today.

The constitutional debate has divided this country more than it ever was before. There has been no need for it. We should have been addressing the economy of this country. I am not against bringing the Constitution to Canada. It is a part of growing up. There is nothing wrong with that. No Canadian is against having the Constitution brought to Canada. However, if it is as complex as some have expressed, why should we bring it here? But this is not so.

We talk about convention, entrenchment and accord. Most Canadians do not even understand what these terms mean. We talk about conventions, traditions and practices. Why not make it so people understand? I will give an example. If we had a non-confidence motion today and the government was defeated, even though it is not provided in the Constitution, the government would resign and an election would be called. This is not in the Constitution; it is a tradition, a practice that is accepted.

As a Member of Parliament, I am very disappointed. If I had known what I know today, it is very questionable whether I would want to be a Member of Parliament and sit in this House. This government is manipulative. We see how the Constitution has been handled and how the government addresses itself to the economy of this country and making the country work. No wonder people are losing confidence in governments and Members of Parliament.

I remember the Prime Minister saying "We will wrestle inflation to the ground" and "The land is strong". I remember when there was hardly any separatism in Quebec or western Canada. We have it today. I remember the day when it was said that we should vote for Pierre Trudeau because he was the only one who can keep this country together. He is the only one who has divided this country and brought separatism not only to Quebec but even to western Canada.

• (1700)

I did not want to say all these things, but I think they had to be said because the people, and speaking especially on behalf on my constituents, if I may express myself, are sick and tired of this Constitution debate and this manipulation. It certainly was not a priority and it certainly is not a priority today either. Without question I feel this is not the end but only the beginning, if Pierre Trudeau has his own way.

I will not take much more time but I would like to say a few words regarding my experience with governments. I was an alderman for about ten years in the city of Calgary. I held all the key positions there are. I have also been a school trustee and an educational bureaucrat at the same time. As well, I have served as an MLA in the Alberta legislature. I have seen people come and go in politics. I certainly do not have to read a book about politics and what makes it work. I have been involved with labour. At the age of 26 I was the president of the Calgary labour council. Speaking of labour, I do not know what the Canadian people have to do so that the Liberal government will get the message once and for all. When 50,000 people come to Parliament to demonstrate about the high interest rates, and they still cannot hear—

The Acting Speaker (Mr. Ethier): Order, please. I would invite the hon. member to address his remarks to the Constitution debate, namely the amendment before the House.

Mr. Kushner: Mr. Speaker, something has to be done about this. It is quite relevant to the Constitution. As I mentioned before, it is quite clear that we should be talking about the economy of the country, rather than debating the Constitution resolution. We should not be wasting our time. We have wasted the whole summer and all of the fall on this Constitution, rather than talking about the economy of this country.

People representing home owners from British Columbia, Manitoba, Alberta, Saskatchewan, Ontario and the Canadian Labour Congress made representations to me last Friday. I asked them, "What would you expect us to do? What should we be doing? I am losing my home. I will be laid off. I have already received notice. These are only some of the things I was told. What do we need to do to get the government moving or doing something about our interest rates, so we do not lose our homes and get the construction industry moving again so people can afford to build and borrow money, which was the situation not that many years ago? The government is saying that it is more concerned with the Constitution and it cannot do anything about high interest rates. To whom should we refer?"

As I mentioned before, this government has completely lost control of governing. It no longer governs. The bureaucrats are governing this country. Should we be writing to the mortgage companies about the high interest rates? Should we be writing to the banks? Should we be writing to foreign countries? To whom do we refer? The government cannot do anything. One begins to wonder who is governing this country.

I cannot over-emphasize the fact that it is the bureaucrats governing this country. The Liberals have completely lost control and it is time they were booted out. Instead of talking about the Constitution, we should be talking about creating jobs and getting the economy moving again.

We have a majority government. We also have majority unemployment, majority interest rates and majority inflation. We have a dangerous situation in the way the government is functioning and practising. I do not know what is the next

move Canadians will be forced to make in order that the government can address itself to the needs of this country.

On Friday thousands of native people found it necessary to demonstrate on Parliament Hill in order to be recognized. They asked that their rights be entrenched in the Constitution, which rightfully should be done.

In conclusion, on one hand I am proud to have had the experience of serving as a Member of Parliament, and of doing my best to see that the interests of my constituents are heard. On the other hand, as I mentioned before, I am most embarrassed and most disappointed to be a Member of Parliament. The way the government has been treating Canadians is disgraceful in that it is not and has not been addressing itself to the needs of this country, but has been fiddling around with the Constitution. Not only has it not created one single job but it has actually cut jobs and it has not given any incentive to this country. Many Canadians have lost millions of dollars in revenue because the government has not faced its responsibility in governing this country.

The Prime Minister did not even have a mandate to deal with the Constitution. I have not received very many letters saying that the Constitution should be a priority, nor did Canadians ask for a change in the Constitution until the government started fiddling with it. The Constitution has served us very well for the last 100 years. I am not saying that we should not bring it back to Canada. I am not saying that at all. However, we should not be doing it in the form we are doing it now.

I shall not take too much more time because I know other members of the House of Commons will be speaking. But I should like to make it quite clear and go on record on this historical day as saying that for one thing I do support the Constitution coming to this country. However, I certainly do not support the way that the Prime Minister has been playing around with it, using it as a toy and as a smoke screen, rather than addressing himself to the economy of the country and finding solutions for the problems we face.

• (1710)

Mr. Jack Masters (Parliamentary Secretary to Minister of Communications): Mr. Speaker, I feel a great sense of pride and history as I stand in the House today to participate in the debate on the Constitution. I have not prepared a formal address, but I should like to pass on some of my over-all feelings about the necessity of addressing the Constitution at this point in time. I only had an opportunity to hear the closing remarks of the previous speaker, but perhaps I will use them as the launching point for some of the things I should like to say for the record today.

We have heard a great deal over the past year as to why we are bothering with constitutional matters when in reality we should be dealing with economic ones. I respectfully suggest that now is a most appropriate time to talk about the Constitution and to talk about it in an economic sense. We are going through a great evolution in Canada. We have come far in such a relatively short period of time as history goes, but I think we can go much farther as we resolve to be one Canada, to be Canadians all, building an even stronger country which we can all enjoy.

To say that to deal with the Constitution now does not really relate to economic problems is inaccurate. We must determine what kind of a Canada we are and what kind of a Canada we want to be. I think Canadians through the constitutional dialogue—and that is exactly what it has turned out to be—have really asked themselves and each other some very difficult questions. They have come up with some very satisfactory answers through the period of discourse and dialogue. As we are about to send the Constitution to Westminster, to be returned to us, we now have a greater strength of purpose and a greater recognition that indeed we are Canadians from coast to coast, from sea to northern sea. It will make it much easier to govern the country. It will make it easier for the provinces to understand their part in building the country. Certainly it will help us as a federal Parliament to understand what we can and cannot do. But the prime consideration is that it reaffirms something we already knew, that we are one country.

The entire process of determining the Constitution has been remarkable. It started off in the eyes of some people as being the dream of the Prime Minister (Mr. Trudeau), his swan song. This is not so. The Prime Minister indicated to the country that it was time to resolve some of our fundamental problems and thoughts about ourselves. He mobilized the country on this subject. He did what he has done so well on many occasions—he exhibited leadership. He had a great deal of support, not only from the Liberal caucus which has made what happened so far a reality, but the support of Canadian people as well.

As we entered into this discussion, we heard a great deal of rumbling from the provinces because it was an uncomfortable subject. The people in some quarters really did not want to talk about it. After all, we would like to deal with matters that are easy to discuss and to resolve; thus we went into the constitutional discussion with mixed feelings. Some people were very enthusiastic because they felt a real need to resolve the Constitution, to patriate it and to produce an amending formula. Some people felt that at this point in time we needed to establish a charter of rights and freedoms. Some other people said, "I think I will have to give up something; I know it is important, I know it will be a long and hard pull, but I do not know if I am prepared for it".

Initially, for whatever reason, not everyone entered into the constitutional debate with a great deal of enthusiasm. But as it moved along, it moved along in the most remarkable manner. I do not know of any other constitutional experience in the world which has had so much public input, public scrutiny and legal scrutiny before the fact, as has the present resolution before the House. While there are things yet to be done, which hon. members on all sides would like to see reconciled, I have confidence in the people of Canada that they will be done. At least we have moved it to the point where we can say that very soon we will have the Constitution, the amending formula and the Charter of Rights and Freedoms—a beginning to do even more with the Constitution.

I should like to return to the area of leadership. As I mentioned earlier, despite the fact that this issue has been a trying experience for some to put it all together, it took the determination, vision and leadership qualities of my leader to bring it to the point where we all take pride in it. There was one game plan which did not quite work out. It went a different route, the committee became involved and so on, but all of us can feel that we have participated in one way or another at a particularly significant point in Canada's history. There was an extremely hardworking joint committee comprised of hon. members from both Houses, from all sides. We listened to 97 groups of witnesses. There were some 1,280 written submissions. There were over 267 hours of debate in committee alone. The earlier resolution had 67 amendments. This indicated that people were now taking the matter seriously. Then it went through the legal process, finally it came to the eleventh hour meeting of the premiers of the provinces, and the accord was reached—nine out of ten provinces agreed to Constitution. We regret that there was not a tenth signature on the accord, but we must remember that in essence Quebec agreed with what was going on. The fact that there were three unresolved items does not take away from the fact that in round figures a 99 per cent agreement was already there.

It became a partisan, political type of subject as opposed to one dealing with the concerns of Quebec. Quebecers have always been good Quebecers; time and again they have proved that they are good Canadians first. I honestly believe that the people of Quebec, if asked the question—and they have been in a poll—want this to happen. We are negotiating some very important and fundamental items which should be included in the Charter of Rights and Freedoms. Before the resolution leaves the country, I sincerely hope that those items will be included.

• (1720)

As I remarked earlier, this is a beginning, not an end. Even if those fundamental items that concern women's rights, that concern aboriginal and treaty rights, are not entrenched in the present charter as all members of the House have indicated they would like, we will at least have the mechanism to enter very quickly into further negotiations. In that way we can continue to build and improve upon this process. I am proud of a system that has allowed the Parliaments of this land, despite the fact that we had to take a hard look at what we were doing and how we were doing it, to come this far.

There have been many sincerely emotional moments in the debates that have taken place. There have been some frightening moments too, such as when the Right Hon. Leader of the Opposition (Mr. Clark) said, after the Supreme Court judgment was delivered, in effect, "Let's put this whole matter on the back burner because now we have time to think about it". I think he has recognized, judging from his subsequent actions and from the way he has behaved in the House, that there comes a moment when you either proceed with a matter of this sort or forget about it.

It would have been a terrible crime to have gone through that year of agony, that year of soul searching, in order to come up with a constitution—to have come that close and then have to say, "Let's forget that and repeat the process somewhere, some time—whenever." That is not happening, Mr. Speaker, I think there is a resolve on the part of members of the House to see that the work begun over a year ago is completed.

I said that I experienced a sense of history in being able to participate in this debate in my own small way. When one has a few grey hairs, one can remember an earlier time. I recall in what was then the city of Port Arthur, in the high schools, public schools and separate school, when we were asked to give our citizenship, that what was meant was our land of origin. We did not put down "Canadian citizen". We had to put down Italian, Scottish, English or whatever, but not "Canadian citizen". I remember very well my pride as a high school student in 1947 when the Citizenship Act was passed—by a Liberal government, I might add.

That was another part of the evolution, Mr. Speaker, saying "Let's define ourselves. Let's recognize that we are a people, that we are not a colony, that we are Canadians. We have fought wars and we have more than proved that we are building a country."

We finally adopted our own flag, not without a debate similar to the constitutional debate; but we now have a flag which we fly proudly and which identifies us to the world as a sovereign nation and as Canadians.

We went on to something else, which is not such a small thing, when we adopted the national anthem, "O Canada". Some day I hope that we will have a Canada Day.

Now we come to the nuts and bolts, Mr. Speaker, a Canadian Constitution. I think the Canadian Constitution that is proposed is an excellent one. It is hailed by other people around the world as the best there is. The Charter of Rights and Freedoms will do much to ensure our freedoms. I know that the opposition to this charter has been to the effect that to put something in writing does not necessarily enshrine it forever because people can do whatever they want with such things, but I think more highly of the Canadian people than that, Mr. Speaker. I think there is a resolve to honour the rights that are stated within the Charter of Rights and Freedoms and I think that we will continue to improve upon it.

We will have patriation of the Constitution so that never again will we have to go to another Parliament to ask permission to change it. We will have an amending formula, which means that the work can continue without the frustration of wondering whether what we want will ever come about. We will have those things and, above all, there will be included in the package the Charter of Rights and Freedoms.

This is a great country, Mr. Speaker, but we take so much for granted. If someone writing a novel described a country like Canada with its narrow fringe population along the border which is comfortable to live in, with its many regions, its many diversities, its people of two main cultures and the multicultur-

alism aspect, the reader would say that it could not work, that it is impossible to do all the things we want. Not only can it work, Mr. Speaker, it does work.

It is going to work much better because we have taken the time now to clear the way for the magnificent future that is just around the corner. I believe that we have been living better than anyone else in the world but there are greater things in store for us. Things will work much better because we have taken the time to look at ourselves, to define ourselves. We have come to the conclusion that we are one Canada, that we can work together. We will have our Constitution and our Charter of Rights and Freedoms to back that up.

Some hon. Members: Hear, hear!

Miss Pauline Jewett (New Westminster-Coquitlam): Mr. Speaker, I too am grateful to have the opportunity to participate in this debate. I believe this is the third occasion on which I have addressed myself to the question of the role of women in Canadian society and to the future equality of women with men in Canadian society. Therefore, like others, I am distressed to discover that what is called an "override clause" has been put in the equality of rights clause, Section 28.

With a lot of my colleagues, I was very glad that many features in the accord that was reached between the first ministers of the provinces and the Prime Minister (Mr. Trudeau) the other day are good ones, are progressive ones, are strong ones and are desirable ones. In that connection I was very happy to read that the new Premier of Manitoba had said that he will certainly not renege on francophone rights in that province or subject them to legislative approval.

Some hon. Members: Hear, hear!

Miss Jewett: There are good things in this resolution, but it is almost heartbreaking to see the legislative override of some of the most fundamental and most important parts of the Charter of Rights and Freedoms. When the proposal was put before the House of Commons I think we all felt that section 15, the equality of rights section outlawing discrimination on grounds of race, colour, religion, sex and so on, and its second component, the affirmative action provision encouraging legislatures to take affirmative action for disadvantaged groups, was one of the strongest parts of that charter. Perhaps it was because there were no women present, or perhaps it was because there were no black people present that the first ministers of this country crippled that section of the charter.

It is all very well to say that a specific act can discriminate only for five years, but to me that almost destroys the intent, the purpose, the symbolism and the substance of that section. To then go on and apparently subject Section 28—which the women of Canada strove so hard to get in the Constitution and which the House unanimously passed in April—to an overriding provision that a legislature or the Parliament of Canada could deny the very rights and freedoms referred to in this charter guaranteed equally to male and female persons and that the government would do this apparently as an oversight, that it had not really thought about Section 28, the section to which Parliament gave a great deal of thought, adds insult to injury.

• (1730)

Hon. members will remember that the very day after the accord was signed I asked the Prime Minister (Mr. Trudeau) whether Section 28, the section guaranteeing women's equal rights with men, was included. I remind you, Mr. Speaker, that the Prime Minister said:

> I can only answer that my impression is that the clause would continue. I have not been involved in the drafting which went on between provincial and federal officials yesterday afternoon and, I believe, during the night as well.

He went on to say:

> There were some deletions, and aboriginal rights was one of them. Maybe the other clause was another. I am not sure. I will have to check that, and that is why I say I will see what was done on the drafting over night.

A few days later a writer for *La Presse* said:

[Translation]

> Questioned in that connection on the day following the constitutional conference by a NDP member, Miss Pauline Jewett, Mr. Trudeau admitted his lack of concern.
>
> Mr. Trudeau remembered that he had sold off native rights. However, he only had a vague idea about women's rights. We know that women are rather unimportant. A mere bunch, I tell you—

[English]

It was, of course, tragic that Section 34 affirming the rights of the native peoples, the aboriginal peoples of Canada, was dropped. At least they were remembered long enough to be dropped. Women were not even remembered.

Let us take a look at what the provincial premiers have said in the few weeks since while struggling to get back on side. Their comments vary from that of the Premier of New Brunswick saying there had been no discussion at all of Section 28, that their intention in the accord was to have Section 28 remain intact, with no override, as a statement of the equal rights of women with men, to that of the Premier of Alberta saying, first, that he was not sure whether or not Section 28 had been discussed, and then saying later that he had not intended that it be subject to the limitation that we have been calling the override, which would take the guts right out of it. We find Premiers Bennett and Davis saying that it certainly was not their intention to take out that section, and we find the officials saying that "it had been a drafting error".

I think we might all come to the conclusion that no one seems to know whether they discussed this section, although the balance of the evidence seems to be that the first ministers did not discuss it. However, if they did discuss it, the impression most of them give is that they wanted Section 28 to remain intact, symbolically and substantively. No one has come forth publicly and said that this section was to be overriden as Section 15 was overriden.

I would suggest to you, Mr. Speaker, and to fellow members that we could appropriately, given this incredible confusion, pass the section in its original form in which we saw it in April. As I understand it, it is not part of the accord that it should be overriden, given what all of the premiers have said.

But what does this tell us about the position of Canadian women in society? Are we simply a detail, a drafting error? I noticed that we were recently blessed with the neanderthal wisdom on the editorial page of *The Citizen* of Ottawa. The editorial was headed "Fix the details later". The editorial reads:

The complaints by various women's and native organizations about the constitutional resolution now before Parliament are not sufficiently persuasive—

Let me emphasize the words "the complaints". We are talking about our very rights as human beings, in the case of women, the women's human right to equality, and in the case of the native peoples of Canada, their rights as the original peoples of this country. This editorial is talking about these as complaints. That is why a great many of us are distressed by the possibility that eviscerated Clause 28 will remain. Not a single member of this House, barring the Prime Minister and the Minister of Justice (Mr. Chrétien) who were the negotiators, should support Section 28 if this override remains in it.

Some hon. Members: Hear, hear!

Miss Jewett: Not a single member of this House should support it. But if any members do support it, do you know what they would be doing, Mr. Speaker? It would mean that we would be taking an enormous backward step, we would be denying the principle of equality of men and women. We would not have even the status quo. We would be going farther and farther backward.

I hope the minister responsible for the status of women agrees. I believe she does. I hope she does. She was not part of the negotiations. I do not know whether she asked, but she certainly did not know what had happened to Section 28. I hope that neither the minister responsible for the status of women, nor any woman nor indeed any member, would support this section unless the amended version that we are discussing today is brought in by the government itself on the ground that the cheapening of Section 28 was not intended in the accord.

For those who would argue that they can only accept the quality of women conditionally, I believe that they too are saying that they do not believe in the fundamental principle of equality of women with men. They are denying, as I said a moment ago, women's human right to equality. It is a goal to be achieved because we do not have it yet; it is a goal to be achieved in and of itself. That is how a lot of us see the original Section 28. We see this, as I say, symbolically as an expression of the equality in our society of men and women, their entitlement equally to the rights and freedoms in the charter. We see it that way, as I say, symbolically. We also see it as a section in its original form of enormously important substance, because we do not in fact have equality, and when I say "we" I mean women. We do not in fact have equality today. Therefore, Section 28 becomes a goal to achieve.

● (1740)

For those who worry that affirmative action programs would somehow be ruled out by Section 28, I can only say that as long as an affirmative action program is a program that will help to achieve what is in Section 28 there is no conflict whatsoever, and Section 15(2) and Section 28 would be in harmony.

Similarly, if there is a discriminatory act under Section 15(1), and it is a positive act which is helping to achieve greater equality for those who do not have it now, then it too would fall within the ambit of the broad statement of equality in Section 28.

The fears then, it seems to me, although legitimately raised, are not legitimately founded. As a previous speaker said, there should be no taking of credit; every woman's group in Canada had a great deal to do with getting the paramountcy clause, as I call it, Clause 28, included in April. I personally think the former minister responsible for the status of women had a great deal to do with getting the clause in.

Miss MacDonald: Right on.

An hon. Member: He sure did.

Miss Jewett: Every time he spoke, he turned another million Canadian women into feminists.

An hon. Member: The Lloyd works in strange ways.

Miss Jewett: While I am not going to single out, with that exception, who made such enormous contributions to the whole concept and principle of equality of the sexes, I must with sorrow express my regret that, with the exception of the present minister responsible for the status of women, and I am sure, although I do not know, the present Minister of National Health and Welfare (Miss Bégin), no other woman on the Liberal side has engaged in this battle. They were not present at the famous February convention. They were not present at rallies in the past two weeks through which we have been trying to get the clause restored in its purity, and they were not even present today, with one exception, when the minister responsible for the status of women spoke. Have the women of the party been speaking outside the House, holding rallies and organizing? I am very distressed to say they have not. It seems that they have become gagged. Even in Quebec—

[*Translation*]

Three days ago, an article appeared in the newspaper *La Presse:*

A gentle Yvette. The organizer of the Yvettes' movement, Mrs. Louise Robic, slightly worried the Liberals by insisting that the government account for its failing to entrench women's rights. Canadian women want to know what happened to their rights and freedoms . . . "A lot of women will be suffering from ulcers", she said.

What could have become a real dispute did not last long however because Mrs. Robic, as befits a good liberal, readily accepted, Mr. Chrétien's arguments. And she added: Well, we must fight the provinces, not the women of Quebec or Canada.

[*English*]

What can we do? I said a moment ago that the constitutional accord, or much of it, was worked out in the kitchen between the Attorneys General of Saskatchewan and Ontario

and the federal Minister of Justice—if ever there was a time when a woman should have been in the kitchen!

Some hon. Members: Hear, hear!

Miss Jewett: Much of it was drawn up, as indeed the whole accord was, without giving that kind of thought to the needs and the rights of the native peoples, the disabled and certainly of women, and I guess that proves once again that much as others may sympathize—goodness knows, many men do—when they get down to their negotiating and dealing, they do not think of the other half of the population not represented, and they do not think of the disadvantaged. Those thoughts are not paramount.

Therefore, as far as women are concerned, we must once again have our own party develop affirmative action programs, and develop them now, with the party leaders at all levels and the committees in every constituency saying: We must have 50 per cent of our candidates women.

Some hon. Members: Hear, hear!

Miss Jewett: That kind of action must be taken, and not just in the weak ridings. Since the kitchen-created Constitution was influenced enormously by officials, federal and provincial, only two of whom to my knowledge were women, clearly we must have an affirmative action program now in the federal public service of Canada to ensure that women are pulled up—and there are lots of bright women there—and put in positions of responsibility and authority. The federal government did it once, and rightly so, when it discovered that francophones constituted only 7 per cent or 8 per cent of the senior public service. The federal government did it just by saying: That will not do. I do not believe there was even a written edict; it was just the Prime Minister saying: That will not do. That is the kind of leadership women have not had from the men of Canada in the Liberal Party and government. There has to be affirmative action there. Clearly, it is in the senior ranks of politics and the bureaucracy that power resides.

• (1750)

Despite the evisceration of this document, the Supreme Court of Canada will still have a role to play, and it must also be changed. There must be women on the Supreme Court of Canada as well, and this has been argued before. That should be the next fight.

The lawyers who will be working to interpret this Constitution in various cases will, I am confident, be increasingly more balanced as more women graduate from law school. As I have said, the fact that there are more women graduating from law school is one of the most exciting things which has happened in recent years.

I read an article today by Michèle Landsberg of the *Toronto Star* entitled "Help wage war for women's equality". It is an excellent article and I recommend it to all Members of Parliament. In that article she suggests that there be a women's watchdog in Ottawa to protect our equality rights. Right now the best watchdog in Ottawa is the ad hoc committee. I would also approve of that suggestion. I believe that until we have a strong if not equal, or perhaps for a period more than equal, representation in this House of Commons and in provincial legislatures, such as in Manitoba where women members constitute 12 per cent, and in the bureaucracies both federally and provincially, I do not believe we will be able to ensure that the indifference and neglect to the fundamental principle of equality of women will be seriously addressed. As I have said, I hope that the government will realize that since the dismantling of Clause 28, according to most of the premiers, was not part of the accord, it can proceed and we can proceed in Parliament.

It is true that it was neglect and indifference that made this so, but it provides us with a chance to benefit from it. We must remember, as the hon. member for Provencher (Mr. Epp) said a moment ago, that as important as the two orders of government are in this country, because it is a federal system, it can be said there is a third order. That is the people of Canada who are represented by various groups and many organizations. During the last year, we have certainly seen that third order in operation, as far as the women of Canada are concerned. I wonder if the provincial premiers have ever read the marvellous briefs that were prepared for the Joint Committee on the Constitution by women's groups and other groups all across this country. I wonder if they know that there is a third order, which is the people of Canada represented by these diverse groups.

Finally, I submit that if we do not restore Section 28—and all of what I have said applies to Section 34 concerning the rights of the aboriginal people—it will go down not as an important day in Canadian history but as a day of infamy. I do not believe that is too strong a word to describe this.

I hope that when the women of Canada have 95 per cent of the representation in the House instead of the 5 per cent they now have, and when we hold 100 per cent of the premiers' places instead of none, and if, as may well be, we are pioneering a new constitutional accord, I hope and I am indeed confident that we will not treat the other half of the population with the indifference, injustice and complacency which so many of their number have inflicted upon us. That is a promise.

[*Translation*]

Mr. Marcel Dionne (Chicoutimi): Mr. Speaker, as I would like to deliver my speech at one go, could I call it six o'clock. Consequently, I would be able to speak again when the House resumes at eight p.m.

The Acting Speaker (Mr. Ethier): Does the House agree?

Some hon. Members: Agreed.

The Acting Speaker (Mr. Ethier): As it is six o'clock, I will leave the chair until eight o'clock.

At 5.56 p.m. the House took recess.

AFTER RECESS

The House resumed at 8 p.m.

Mr. Deputy Speaker: When the House recessed at six o'clock, the hon. member for Chicoutimi (Mr. Dionne) had the floor.

Mr. Dionne (Chicoutimi): Mr. Speaker, the least we can say about this debate on the patriation of the Canadian Constitution is that it has taken on a major dimension. First, I wish to pay tribute to the Prime Minister (Mr. Trudeau), who has shown great determination as well as great flexibility in obtaining the agreement of nine provincial premiers for his plan to patriate our Constitution. It is with pride that I remind this House that it was a Liberal Prime Minister, Mr. Pearson, who with courage and tenacity defended the proposal that gave our country a distinctive flag. His successor, again a Liberal leader, is helping to make the dream of so many Canadians, to patriate our own Constitution, come true at last.

I am convinced that history will keep this event alive in the memory of all Canadians for generations. However, I realize that at this stage, there is still a feeling of dissatisfaction. I am a Quebecer, and the government of my province has refused to agree to the plan to patriate our Constitution. I am disappointed, because during the three days when the Prime Minister of Canada and the ten provincial Premiers were meeting, there were a few moments when it seemed that this fifty-four year-old struggle, this quarrel that in a year had taken on gigantic proportions, would finally be resolved.

Like all observers, and especially as a Quebec Member of the Parliament of Canada, I was glad to hear the news given out Wednesday noon at the conference that there was finally agreement between Quebec and the Government of Canada, something we had spent ten years waiting for. And like everyone who was following the conference proceedings, I was disappointed to hear a few hours later that the agreement has failed. Later, we heard that there had been a flood of telephone calls at Premier Lévesque's office in Quebec City. It seems these were from anti-Canadian elements who could not imagine Quebec otherwise than separated from the rest of Canada. What can you expect, Mr. Speaker, when people are subject for six months to deceitful propaganda, under the slogan: "Don't be had"? Of course people were going to think that if there was an agreement between Quebec and the Canadian Government, Quebec was going to get the short end of the stick. In any case, the people who were had were the people who believed this deceptive propaganda.

One must not forget that Quebecers have sent seventy-four Liberal members to Ottawa to defend their interests. Quebecers are represented by thirteen ministers in cabinet. Quebec's influence on the affairs of Canada is greater than ever before. That is why we, the seventy-four Quebec members of the caucus, asked the Prime Minister (Mr. Trudeau) to consider the objections expressed by the delegation of the Province of Quebec. As a Quebecer and as a Canadian, I could appreciate the position taken by the Quebec Liberal Party in the National Assembly. In fact, it shows that in the National Assembly in Quebec City, there are elected representatives who will point out to the Péquistes that contrary to what they would have Quebecers believe, the Canadian Government is trying to get Quebec out of its isolation.

In a speech the Prime Minister delivered held in Quebec City on November 14, he showed that he was willing to take into consideration each of the objections expressed by Premier Lévesque. He was asked to reconsider the matter again by us, the members of his caucus. In fact, with hindsight, it is hard to understand how the Quebec representatives at the conference in Ottawa managed to isolate themselves. It was supposedly to defend Quebec's interests that Premier Lévesque joined the Premiers of seven other provinces, and so, if the eight provinces were agreed to oppose the federal government on a number of points, it would be normal for all eight provinces to agree to the patriation plan if those points ceased to exist. I was present at the Conference Centre in Ottawa on Thursday, when Prime Minister Trudeau and the Premiers of the nine provinces stated that they had reached an agreement. Witnessing this historical moment, I could hardly conceal my disappointment when Premier Lévesque announced that he refused to sign the agreement, explaining that three major objections prevented him from giving his approval to the accord.

Mr. Speaker, perhaps I may be allowed to review each of the objections formulated by Mr. Lévesque. The first one concerned the withdrawal of the compensation clause. Well, the next day, Quebecers were assured that Quebec would be able to benefit from the compensation clause in certain cases. The Quebec members asked the Prime Minister to be flexible, and he was. In fact, the Right Hon. Prime Minister clearly indicated on November 14 that he would agree to Quebec receiving fiscal compensation if they refused to participate in a federal program on grounds that it affected the French language or the French culture in Quebec. The Prime Minister of Canada agreed that if the nine English-speaking provinces were to decide to waive their jurisdiction with respect to post-secondary education, it would be normal for Quebec to refuse to agree to this measure and that it would receive fiscal compensation. Can Mr. Lévesque be against that? On the other hand, if the federal government decides to set up a program which would benefit all Canadians and which would be financed by the richer provinces, the latter would have no right to refuse. At the present time, Quebec is certainly not a rich province, and if we were to develop a pension transfer program applicable throughout Canada, for instance, I believe that it would be in the interest of Quebecers for the rich provinces not to be able to opt out of this program. Since Quebecers would benefit from this program, how could they be against it?

• (2010)

Mr. Lévesque's second objection concerns the mobility clause. The Charter of Rights and Freedoms will assert the principle of the free movement of goods and individuals all across Canada. This is the basis of what could be called a Canadian common market. This principle is essential to the economic development of Quebec and the other provinces. Some have pointed out that workers from the other provinces could come and work in Quebec, but is it not a fact that thousands of workers from Quebec, Ontario and the Maritimes travel to Alberta to look for work? Experience has shown that whenever a province puts up barriers to protect its workers, its trade and its industry, the other provinces reciprocate.

We will recall the dispute between Ontario and Quebec in connection with the building industry. Yet, the Prime Minister has told the Quebec government that he was willing to seek for other formulas to accommodate the legitimate concerns of a province. He has recognized that Newfoundland may take special steps in this regard as long as the unemployment rate remains higher in that province than in the rest of the country. The Prime Minister of Canada has thrown the ball into Mr. Lévesque's court by saying that Quebec could take special action if it were literally invaded by English-speaking workers from other provinces. Can the Quebec premier reject this proposal? In case there remains a doubt in his mind, I am putting this question to the Quebec premier. He wants to replace Canadian federalism by some type of common market. Yet, Mr. Lévesque should know that measures to restrict the free movement of goods and individuals are forbidden in the European market. There is neither relaxation nor special regime for anyone. All Canadians are equal. Our Canadian charter to which Mr. Lévesque has so many objections is therefore finally more flexible in its application than the Treaty of Rome on which it is based. You will note that he does not refer to this example now as much as he used to.

I would like to know what he would reply to those Quebec workers who could get a job in Alberta but would not be able to do so because of provincial barriers. A worker of Ville de la Baie said to me that the Quebec government was holding Quebecers as hostages, but I told him that if the proposed charter is adopted, he can invoke the clause guaranteeing the mobility rights of workers.

Mr. Speaker, once the principle of the free movement of goods and individuals is no longer accepted in a country, then it no longer is a country. Finally, the last objection raised by Premier Lévesque concerns the clause on education in the language of the minority. Mr. Speaker, the charter will put an end to the iniquities of which French-speaking Canadians in other provinces are victims. Because of the economic slowdown in Quebec, which is actually the responsibility of the Quebec government, thousands of Quebecers have had to leave Quebec to find work in Alberta, for instance, as well as in other richer and more prosperous provinces.

That Quebecer will have the entrenched right to send his children to a French school. French-speaking citizens in New Brunswick, Nova Scotia, Prince Edward Island, Ontario, Manitoba, Saskatchewan and Alberta will finally have the right to send their children to French schools. Is the Quebec Premier opposed to that? Would it be that we, Quebecers, did not fight long enough to obtain that for francophones in English-speaking provinces? Admittedly, Quebec has no lessons to learn on how to treat language minorities. However, the Prime Minister feels that Quebec could implement the Canada clause to ensure that schools do not become an anglicizing factor in Quebec. Mr. Speaker, I take this opportunity, mainly for the benefit of the people in my area, to quote the Canada clause, which entitles to education in the minority language. I shall give a textual quote, so that people realize what actually is in that clause.

Section 23 deals with the language of instruction and is often said to be unfair to the people in Quebec:

> 23. (1) Citizens of Canada
>
> (*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
>
> (*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province.
>
> have the right to have their children receive primary and secondary school instruction in that language in that province.
>
> (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
>
> (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
>
> (*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
>
> (*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

This, Mr. Speaker, is the contents of Section 23 that is so controversial in areas such as mine. Mr. Speaker, how can Mr. René Lévesque oppose such a proposal? As may be seen, Mr. Speaker, we were successful in the representations we, as members from Quebec, made to Prime Minister Trudeau that Quebec's goals be taken into account. The Prime Minister accommodated the PQ government and he yielded on every point. And we finally told ourselves that the PQ government could no more withhold their consent, since every obstacle had been put aside. But Premier Lévesque answered with new demands in the form of an ultimatum. I think the leader of the Parti Québécois finally will be seen by the people as he really is. He said he supported sovereignty-association, we learned this week he would drop the hyphenated association. In other

words, he is a separatist. The only surprising thing is that he took so long to admit it himself.

Mr. Speaker, there are other questions I would like to raise. I would like to stress that Quebec isolated itself at the Quebec conference, when it proposed the Vancouver formula as opposed to the Victoria formula. I also suggest, Mr. Speaker, that Mr. Morin himself proposed that formula in the names of the eight Canadian Premiers, and, of course, that formula today deprived Quebec of the right of veto that had always been recognized. As a member from Quebec, I am deeply disappointed at such an attitude because Quebec has been pursuing a course that isolates it more and more from the other provinces, and deliberately refuses to negotiate with the Canadian government. On the other hand, the people of Quebec cannot but realize that the Right Hon. Prime Minister has been very openminded and quite accommodating. Unfortunately we cannot say the same thing about the Premier of Quebec. What happened, in my opinion, is that the Parti Québécois was taken over by the separatists who want Quebec to separate from Canada. That is why they will try to say that the others manœuvred and plotted against them whereas they are the ones who isolated Quebec because that is what they want in the first place.

This is where we find the first tactical error of the PQ government. It was sure that the Ottawa conference would end in failure, it so grossly underestimated the pressure of public opinion on the seven premiers to reach an agreement with the government of Canada that from the outset it joined forces with anybody who was against the resolution. Watching them from Ottawa it was almost funny to see Premier Lévesque plotting with Mr. Lyon, the former Manitoba premier who has never had much use for French Canadians. Had they been given the chance, I think that the PQ supporters would have enlisted Leonard Jones, the former mayor of Moncton. And yet, French culture and language had meant so much to PQ supporters they should have sided with Mr. Trudeau, Mr. De Bané, Mr. Joyal, Mr. Chrétien and the 74 Quebec members. The position of our party on the question of upholding the rights of francophones in all provinces is clear. The electors of Quebec know where we stand and that is why they have given us their massive support since 1968.

No, the PQ strategists preferred to make a common front with people who had been very lukewarm about the rights of francophones in their own provinces. Indeed, perhaps this was right up their alley since Premier Lévesque never did propose anything to improve the Charter of Rights and Freedoms. Did the premier of Quebec try to better the lot of francophones outside Quebec, at least those who reside in the provinces of his seven former allies? It seems to me that Premier Lévesque should have insisted that Mr. Lyon, Mr. Peckford and Mr. Lougheed, the Premier of Alberta where so many Quebecers are going, agree to grant more rights to the francophones in their provinces. Did Premier Lévesque insist that Ontario recognize Section 133 so that province would acknowledge the rights of francophones? No, he was not even interested. For the first time in our history the government of Quebec, which prides itself for being the most nationalist, utterly disregarded French-speaking minorities outside Quebec. The Arabs, the Moslems and the Jews fight for their minorities, but not the PQ government. Well, the government of Canada will do just that.

In addition to that, we are going to fight for the interests of Quebecers. Of course there are nationalists who ask how and by what right the 74 Quebec members can fight for the interests of Quebecers. They are not asking by what right is the PQ government sulking by its lonesome self. They are not asking by what right does the culture minister refuse to attend a conference with his provincial counterparts. The PQ government has decided that it will boycott everything other than finance ministers' conferences. Up until now, the PQ has refused to take part in negotiations to improve upon the patriation proposal or the proposed Charter of Rights and Freedoms. Well, Mr. Speaker, the 74 members from Quebec, under our leader, the Right Hon. Pierre Elliott Trudeau have decided to defend the interests of Quebecers and give them a better deal. The PQ refuses to stand up for the rights of Quebec. But, the opposition leader and his party in the National Assembly are prepared to do so. Editorials in *Le Devoir* and *La Presse* have urged Premier Levesque to defend the rights of his province and have even indicated that he has no other choice. Finally, we the 74 members from Quebec, have played our part in our party caucus. We continue to defend the interests of Quebec by formulating Canada's position with regard to the ten other provinces and by taking part in this phase of the debate.

I take exception to the PQ and its claim that it has the sole God-given right to defend the interests of Quebecers. Following a few scandals, people now realize that what comes from the Parti Québécois does not necessarily come from heaven. The electorate is becoming aware that its interests with respect to constitutional matters were not well defended by the PQ and that they only have themselves to blame. We must remember that it was Premier Lévesque, the leader of the Parti Québécois, who gave up, on behalf of Quebecers, Quebec's traditional right to veto. It is not Prime Minister Trudeau nor the 74 Quebec Liberal MPs who deprived Quebec of its right to veto. No, it is the PQ who was quite happy to relinquish that right in order to please Messrs. Lyon, Bennett and Lougheed. They gave up Quebec's right of veto in order to join the gang.

Quebec's image as an important province and one of the oldest provinces has become a thing of the past, no thanks to the Péquistes.

Looking at these facts, one wonders whether the Péquistes are sulking. I think they are so ashamed of their stupid mistakes that they are afraid to come out into the open.

And meanwhile, the people in Quebec are starting to feel the adverse effects of the Parti Québécois' poor administration. Taxes are too high in Quebec, and the provincial government is to blame. The separatist government has caused companies and their staff, which means big taxpayers, to leave the province. There are increasingly fewer businesses that are interested in settling in Quebec, and it might well be said, if it were not for the presence of Quebec members and Quebec ministers in the Parliament of Canada, things would be even worse than they already are.

Finally, Mr. Speaker, I feel that Quebecers are going to realize that the separatist government has no valid reason for refusing to agree to the plan to patriate the Constitution. If the separatists feel that the accord is unacceptable, they will have to prove it. They will find out that the people in Quebec are not willing to be separated from Canada. They will also find out that Canada is more important than the separatist party.

• (2020)

[*English*]

Mr. Bill Wright (Calgary North): I am proud to be able to participate in this historic debate not only because our Constitution is the embodiment of our laws but because each one of us should be on record as to our true feelings related to this resolution. First, I should like to congratulate all members of the joint constitutional committee not only for their contributions but for the personal sacrifices they made. The committee sat for over 300 hours, held 106 meetings and heard 314 witnesses, and to add to this, spent countless hours of reading to which every member of the committee was committed. I would also like to pay special thanks to our committee members, headed by the hon. member for Provencher (Mr. Epp) who worked diligently to present our case.

I would like to review some of the things which led up to the present dilemma we are facing. In Canada, the Canadian Constitution consists of the British North America Act, the Statute of Westminster 1931, numerous other acts, conventions, customs and traditions and rulings from the Supreme Court of Canada. The British North America Act, 1867, among other things set out the division of powers between the provinces and the federal government. Previous meetings which drafted this act set out the alternatives with which the Fathers of Confederation were confronted when they attempted to draft an act that would create a new nation. They had a choice of creating a nation which was legislative in form or a nation which was federal in form. By "legislative in form", I mean a nation which is run from one central government, with all other elected bodies subservient to the federal government. The other form is the federal system where the power is divided between the provinces and the federal government. The Fathers of Confederation chose the federal system. This federal union recognized equality of all provinces irrespective of population and size. At the meetings drafting the report which would be presented to the British Parliament, each founding province—Ontario, Quebec, Nova Scotia and New Brunswick—all had one vote. Also it is significant that the British North America Act, as enacted by the British Parliament, upon the direction of Canadian provinces did not confer upon the federal government any power to amend the Constitution of Canada, even though each province was given power to amend its own constitution within its own sphere, except as regards the office of lieutenant-governor.

• (2030)

Down through the years many changes have been made to the British North America Act. At no time has the British Government ever refused a request by the Canadian Parliament to change the Constitution, although from time to time the British Parliament has made small changes in the presentation. The federal government indicated that the British Parliament has never passed an act submitted by one or more of the provinces, but on the other hand never have any provinces submitted changes to the British North America Act to the British Government. Also the Canadian government argued that it does not have to consult the provinces in order to present a resolution to the British Parliament, but in fact the Canadian government has never presented a resolution to the British government without the agreement of the provinces which would be affected, and history tells us that on numerous occasions the provinces have intervened to change or withhold proposed resolutions.

The obligation of the British Parliament is not only to deal with the resolution but to determine whether it is a proper resolution. It is not its intention to interfere with the meaning or thrust of what the resolution would do to Canadian people. However, its obligation is to consider whether it can properly accept the resolution. Also it is within the sphere of the British Parliament to vote against this resolution because in effect the resolution asks the British Parliament to enact an act of its own, within its own Parliament, on which only it can make a decision. We must understand clearly that only the British Parliament can decide whether it will pass a bill which affects its relationship with another sovereign nation.

Let me deal briefly with the events leading up to the dilemma we are in today. In other words, can we amend our Constitution and, if not, why not? It should be clearly understood that Canada is a sovereign nation, able to pass laws and to deal both internally and globally with other nations and other people. However, the British North America Act did not make any provision for amendment to the BNA Act other than that all amendments would be presented to the British Parliament and all amendments would, in turn, be considered by the British Parliament and voted upon in both House of Commons and the House of Lords. The Statute of Westminster, 1931, was a bill passed by the United Kingdom government to remove the last vestiges of colonialism. The Statute of Westminster, 1931, was an act of the Parliament of the United Kingdom which formally acknowledged the sovereign and co-equal constitutional status of the United Kingdom, Canada, Union of South Africa, Irish Free State, Newfoundland, Australia and New Zealand. The statute indicated in Section 2 that no future legislation introduced by the United Kingdom government would be enacted without the express request and

consent of one of the previously mentioned nations. But in reality the prime purpose of the Statute of Westminster was to nullify the Colonial Laws Validity Act of 1865, which in itself prevented any of the dominions from enacting any changes to the constitutions which would be redundant to the Parliament of the United Kingdom.

It is interesting to look at events leading up to this statute. The first step toward the enactment of the Statute of Westminster dates from the imperial conference of 1926 when special consideration was given to various legislation of the dominions. A number of general principles were laid down, and it was agreed that a Commonwealth committee should be set up to inquire fully into these matters and to make recommendations to a subsequent conference of Commonwealth nations. In the autumn of 1929, the proposed committee met at a conference to discuss the Colonial Laws Validity Act, Dominion legislation, merchant shipping legislation and other minor items. It drafted a report which would in future contain many of the sections of the Statute of Westminster. The conference recalled that Canada alone among the Dominions had no power to amend its Constitution Act without legislation being passed by the Parliament of the United Kingdom. Following the conference, the report was considered fully in many parts of the Commonwealth. In Ottawa a debate took place in May 1930, when the federal government asked the House of Commons for approval of the report. The document was subjected to careful scrutiny, and the Conservative opposition objected to it on the grounds that formal consent should be obtained from the provinces.

There were a number of items which were wrong with the report, such as its suggestion that provincial legislation should continue to be subject to the Colonial Laws Validity Act and to the legislative supremacy of the Parliament of the United Kingdom, while federal legislation was to be freed from the act. In the following September, shortly before the opening of the imperial conference called to consider the report of 1929, Howard Ferguson, the Premier of Ontario, forwarded to the then prime minister of Canada a letter accompanied by an elaborate memorandum. I should like to read the record of that letter and refer interested readers to the memorandum which dealt with the powers of the provinces vis-à-vis the federal government. By this time, however, a new federal Conservative government had been elected, so the letter and the memorandum were addressed to Prime Minister R. B. Bennett. It read:

My dear Mr. Prime Minister:

You will recall that in some discussions we have had with reference to the report of the imperial conference, and, in particular, the recommendations made in the report of 1929, I have endeavoured to make clear to you the attitude of the Province of Ontario.

The conference appears to have ignored the fact that the confederation of the provinces of Canada was brought about by the action of the provinces. Our Constitution is really the crystallization into law by an imperial statute of an agreement made by the provinces after full consultation and discussion. The province of Ontario holds strongly to the view that this agreement should not be altered without the consent of the parties to it.

On behalf of this province I desire to protest most vigorously against any steps being taken by the dominion government, or the imperial conference, to deal with the provincial treaty until the matter has been submitted to the provinces and they have had ample time to give this subject proper consideration.

To pursue the course indicated by the report of 1929 will not only greatly disturb the present harmonious operation of our Constitution but I fear may seriously disrupt the whole structure of our confederation. Ontario is genuinely alarmed by the situation and I urgently urge upon you, representing the Dominion, and through you upon the imperial conference, that this whole matter be left in abeyance until it can be dealt with in a proper manner, and to the satisfaction of the parties to the original compact.

I am enclosing to you, herewith, a memorandum which embodies a brief from the story of Confederation, together with the views of a number of public men who are leaders in the movement; interpretation of the courts upon the status of the province; and the recent trend of the Dominion authorities upon the question.

● (2040)

With the story as a background I am sure that a perusal of the reports of the last two conferences will convince you that the provinces have ample ground for serious alarm.

Yours very truly

G. H. Ferguson,
Premier of Ontario

I submit that all school children should read that letter, Mr. Speaker, so that they may understand what the Prime Minister (Mr. Trudeau) has been trying to do for the last eight or ten months—in fact, for the last year.

Soon after the Premier of Ontario had written that letter, Quebec and a number of other provinces requested the federal government to refrain from any constitutional changes without consultation. A federal-provincial conference was held in April 1931 and it agreed unanimously to a draft report of a Statute of Westminster and agreed to a special Canadian clause which became Section 7 of that document. It reads as follows, in three parts:

1. Nothing in this act shall be deemed to apply to the repeal, amendment or alteration of the BNA Acts, 1867 to 1930 or any order, rule or regulation made thereunder.

2. The provisions of Section 2 of this act shall extend to laws made by any of the provinces of Canada and to the powers of the legislatures of such provinces.

3. The powers conferred by this act upon the Parliament of Canada or upon the legislatures of the provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or any of the legislatures of the provinces respectively.

Later, Prime Minister Bennett explained to the House of Commons why this conference was held. He said:

It is not necessary at this time to relate fully the attitude of the provinces, but they agreed that inasmuch as their constitutional rights as defined by the original act might be amended, in the opinion of the governments of those provinces, by this Parliament by a majority vote, they should have an opportunity before any such action was taken to present their views and make known their decisions.

In other words, the opinion of the provincial governments that their rights might be affected was therefore considered by the federal government of the day as sufficient grounds for provincial-federal consultations.

In June 1931 Prime Minister Bennett introduced a joint address to the U.K. government. It is interesting to note that at that time the Liberal opposition asked to make an amendment to have paragraph 2 and paragraph 3 of Section 7 reversed, but the Prime Minister stated that since the repre-

sentatives of the provinces had initialled the various sections, the federal government was honour-bound not to change a single letter.

In considering my case further, I refer to the Employment and Social Insurance Act of 1935. The first change in the Constitution, which affected the division of powers, took place in 1935 when the Conservative government passed the Employment and Social Insurance Act. The Liberal opposition opposed the bill because it thought the bill should have been made by an amendment to the Constitution and after consultation with the provinces.

Shortly after the new legislation was enacted, a general election was held and the Liberal Party came to power. One of its first actions in the fall of 1935 was to refer the bill to the Supreme Court of Canada for an advisory opinion. By a judgment on June 17, 1936 the act was declared to be ultra vires of the federal Parliament. At the opening of the session in 1938 the Speech from the Throne announced that the provinces were being consulted to make the Employment and Social Insurance Act an amendment to the British North America Act.

On June 25, 1940, Prime Minister Mackenzie King announced in the House that all nine provinces had assented to the proposed constitutional amendment. In speaking to the resolution, Prime Minister Mackenzie King, as reported at pages 1117 and 1118 of *Hansard*, 1940, said:

> The difficult but most necessary part of the whole business was to get the consent of the several provinces. That has not been an easy matter.

He said further:

> —we have avoided the raising of a very constitutional question, namely whether or not in amending the British North America Act it is absolutely necessary to secure the consent of all the provinces, or whether the consent of a certain number of the provinces would of itself be sufficient.

There have been other changes to the BNA Act, namely, changes to the Canadian Pension Plan, which the federal government was able to achieve with the consent of the provinces. Quebec was given the opportunity to opt out. This brings me up to the present time, Mr. Speaker. This resolution was originally brought forward on October 2, 1980. Since then the role of the opposition has been clearly identified.

What has been the role of the official opposition? First, it has been to ensure that there would be a full and objective debate in the House of Commons. We attempted to have that full debate, until the government brought in closure.

Second, we ensured that all Canadians would be aware of this event by having it televised. Hon. members will remember how the Liberals tried to prevent that.

Third, we ensured that interested citizens were allowed to appear before the Joint Committee on the Constitution. The committee hearing lasted for three months, and hon. members are well aware of the number of groups that were turned away by the Liberal members of the committee who were afraid of some of the things that were coming out. They wanted to close off debate so they stopped these groups from appearing before the joint committee.

Fourth, we attempted to ensure that the provinces would be consulted on the resolution. Everyone in the House remembers how the Prime Minister attempted to get the resolution through Parliament by December 1980, because he did not want the provinces to be consulted.

Fifth, it was the Conservative Party that ensured that the Supreme Court of Canada was allowed to pass judgment. It was not the Liberal Party nor the Liberal experts on the Constitution who sit on the other side who knew better but were prepared to sit quietly by. They did not do anything to bring this about. They did not care.

Sixth, the official opposition ensured that the federal government would reach agreement again with the provinces before bringing the revised resolution back to Parliament. We all remember how the Liberals squirmed and tried to get out of that. It is disgraceful how the Liberal members behaved during this significant event.

We on this side are prepared to vote for the resolution Mr. Speaker but I just want to mention a couple of problems with it.

An hon. Member: Shame.

Mrs. Mitchell: What about women?

Mr. Wright: I hear the NDP rattling away down there. Will Canadians forget about the budget that the NDP are at least indirectly responsible for bringing about?

At present, if the government wishes to restrict our rights, it must enact legislation. Section 24 of the new resolution reads as follows:

> Anyone whose rights or freedoms, as guaranteed by this charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

I always thought our rights were guaranteed, Mr. Speaker, but now it seems they are to be turned over to a court. The government is giving us those rights, and the courts can only interpret them. In other words, if the government takes those rights away, the courts are bound to interpret that, not to guarantee our rights.

● (2050)

My second point relates to property rights. All of us in the House know that the Liberal Party in order to get the New Democratic Party on its side voted against property rights. I would like to see how the NDP members will answer to their constituents at the next election, because that point will be brought before every New Democratic Party member across Canada. We can go back to 1933 when the NDP, then the CCF Party, through the Regina manifesto left out property rights. The Liberals also will have to pay for that in the next election.

I am concerned about Section 46. We know how people in the other place have waffled around. How they can go along with this provision when the Senate was set up to protect provincial rights puzzles me. Individuals in the Senate are supposed to represent the provinces. Once again this is an

illustration of how members from the other place are nothing but lackeys for the Liberal government. It is a place where the Liberal government puts political hacks. In reality, people in the other place should be representing their regions. The Liberal government has failed once again.

The majority of Canadians must be relieved that the Prime Minister has stopped beating them over the head with his concept of a revised Constitution. We in the official opposition agree with patriation. We have been consistent about that. We have not changed. We have not been all over the place, as have the New Democratic Party and the Liberal Party. We have consistently said that the Vancouver formula, which was proposed by representatives of the Alberta government, was the proper formula. We did not say that it was cast in stone. But compared to the Victoria formula, the Vancouver formula was the best that had come forward, and we supported it.

We support the Charter of Rights and Freedoms. However, I question some of the provisions of the charter of Rights and Freedoms in which a government is left with words such as "promptness" and "reasonableness" to indicate whether or n we can be put in jail and at what time we can be freed from jail. These words will decide whether a government is prompt and whether it is reasonable. We no longer have the rights; the government has those rights.

We are committed, all of us, to equalization in Canada no matter from which province we come. We are committed to sharing. No one had to tell us that before.

We are committed to the provincial ownership of resources. Heaven knows what this Liberal government would do if it could get hold of this country's resources. We need go look no further than the Post Office to see what the government does.

The timing of this resolution was not to our party's liking. We, along with most Canadians, would have preferred to have dealt with unemployment, inflation, high interest rates, better housing and other economic problems that are facing the country today. However, since we have had to deal with this resolution, it has been our party's determination to protect the Canadian federal system. We knew our responsibilities to the Canadian people, and they have been realized.

Mr. Robert Daudlin (Essex-Kent): Mr. Speaker, I rise to participate in this debate, humbled by the importance and magnitude of the project that we are undertaking but filled with joy at participating in the final act of the attainment of majority for Canada and the law permitting the amendment of our constitutional document at home.

I wish that the official opposition had earlier been more concerned with substance than with the process which, in my view, might well have strengthened the negotiating stance taken by the federal government on behalf of all Canadians and might, in the end, have produced an even more positive result with regard to those concerns which are now being universally expressed as they pertain to certain absences from the resolution.

Even this evening, my friend, the hon. member for Calgary North (Mr. Wright), has once again returned to the old sop of concerning himself with the process. He spoke of the Prime Minister (Mr. Trudeau) having banged heads in Canada to achieve his concept of the nation while, at the same time, he seemed somehow able to escape the inevitable logic of the fact that the Leader of the Opposition (Mr. Clark) in his term must obviously have been attempting to do the same thing with respect to his concept of what this nation is all about.

I think that rather than pointing fingers at each other this evening, we would be taking this debate a step further by suggesting that positions were very strongly held on both sides of this House which, I hope as this debate draws to a close, will produce a resolution that does nothing but win a victory for Canada and for Canadians.

Notwithstanding the past, however, I wish to express my pleasure at the support now being shown for the substance of the resolution agreed upon by the Prime Minister and the Premiers which, with some reservations, is enjoying almost universal support.

Like many others, had I had my preference, I would have preferred a charter of rights and freedoms without the override, without the safety valve as it has been called. Nevertheless, I can accept the position of the Hon. Minister of Justice (Mr. Chrétien) that the override is a safety valve, that it is required to prevent absurdities and, indeed, will undoubtedly rarely be used. But I must at least remind hon. members that the effect of the override is once again to entrust the rights of our minorities to the benevolence and good will of parliaments and legislatures elected by the majorities which have, unfortunately, in the past been found wanting in the measure of compassion and caring necessary to treat our minorities with justice and equity.

The fact is, however, that the Canadian compromise which we now have before us and upon which the loyal opposition insisted, has resulted in the negotiation of a safety valve. I trust that we can count on ourselves and on future parliamentarians to be guardians of minority rights and to ensure that those clauses are so infrequently used that future amendments—and I am sure there will be some—will include the removal of *non obstante* clauses, or safety valves as they have been characterized.

But lest my comments be regarded by some as being too negative, let me say again that I am jubilant, personally and on behalf of my constituents that the Thirty-second Parliament is coming to grips with this last vestige of colonialism, and is bringing Canada of age.

Let me say as well that if I am jubilant at the event, I am ecstatic at the content and the substance. I suppose it would be correct to say that I am high on Canada this evening. I can stand here proudly and say that as a Canadian I have come of age, that I am a citizen of a country that has had enough faith in itself, its political system and its institutions to require that it have the right and obligation to amend its own basic governing legislation at home. In addition to that, the bringing home process has been accompanied by the creation of the Charter of Rights and Freedoms envisaged by my colleagues and by the government, perfected and forged by the parlia-

mentary committee to which we all owe a debt of gratitude, and kept through much trial and heat, thanks to the perseverence, vision and shared conviction that what was right should and must remain, all of which was shown by my colleagues on this side of the House. History will show, I am convinced, that when others would have abandoned principle for process, this party stood steadfast, resolute in its determination to provide a charter of rights and freedoms from which every Canadian present and future can benefit.

• (2100)

An hon. Member: And they changed it.

Mr. Daudlin: History will show that while some preached division, discord and failure, this party and those who support it held faithfully to the principle that the people themselves had expressed throughout, that is that patriation with an amending formula go together with a charter of rights and freedoms.

You will remember that there were many in this House who were prepared to throw that charter of rights and freedoms out with the bath water, who were prepared, as the debate continued, to deal only with patriation and, if necessary, to put in an amending formula but, if that was impossible, to deal only with patriation even without the amending formula. Throughout that debate we continued to say no, we must have the amending formula together with patriation; we must have the Charter of Rights and Freedoms. I agree with my hon. friend who says we changed it, but I ask him very sincerely, who required the change?

Mr. Gamble: Everybody.

Mr. Daudlin: He says that he speaks on behalf of everyone.

Mr. Gamble: I didn't say that.

Mr. Daudlin: I presume to speak on behalf of those people who sent me here, and I tell you that he does not speak for the people in Essex-Kent.

I need not enumerate the content and provisions of the Charter of Rights and Freedoms as others have done that already, but suffice it to say that bold new steps have been taken, new frontiers have been envisaged, and the course toward a new Canadian future has been set.

Speaking parochially for a moment, let me say that Essex-Kent, if any place in Canada, can claim to be as truly multicultural as the concept itself implies. A mixture of English, Scottish and Irish, later added to by French, and still more recently by German, Russian, Ukrainian, Portuguese, Lebanese, Japanese, Dutch, and even more recently by the Vietnamese and Laotian migration has created a mix that cried for recognition beyond the original concept of the founding races. I take great joy on behalf of my constituents who have for many years lived the principle now embodied in the words expressing the multicultural nature of our society, and I thank the drafters for those words.

May I say that I share the disappointment of all members of this House, and I trust it is all members, that as yet we have not settled the issue of sexual equality which I, as others, had hoped would also have been entrenched. It cannot be too often said that it is not this government that has stood in the past or that now stands in the way of an accord on this issue, and I join my voice with all others in this country in calling upon the remaining premier to recognize the necessity of joining his brother premiers in rectifying this unfortunate deletion to the charter.

An hon. Member: How are you going to vote on it?

Mr. Daudlin: Mr. Speaker, the member asks how I am going to vote on it. I suggest to him that there is too much good in this resolution to be thrown out just because the agreement unfortunately leaves out certain portions that should be there. I agree with him, it should be there, but I am not one of those who feel that because something is absent the rest should be thrown out. I do not believe the rest of Canada feels that way either.

It is my hope and desire that a settlement will be achieved on the issue of native rights and on the question of Quebec's absence from the accord as well. Surely all members wish that. But again the same reasoning, in my view, applies. The difficulty we have is, having achieved so much, can we legitimately say that, because we have not achieved in these areas, all else must fail, all else be thrown out? I find it difficult to understand how someone can stand and suggest that because there is a certain portion missing we must lose everything else.

This puts me in mind of the child who goes out to play football, does not like the rules and says he is going to take his football home and the game must end. All should not be lost. We have gained so much and there is more to be gained, unquestionably. Surely we have provided the mechanism whereby more can be gained in the immediate, the short-term and the long-term future. Certainly it would be good to have perfection, but I suspect that even what we perceive as perfection, were we able to achieve it tonight, might not be perceived as that perfection a year, five years or ten years from now.

So to argue that I and others should not vote for the resolution as it stands or as it may be modified over the next few days, or even the next few hours as the discussion goes on, would be ridiculous in the extreme, and could surely be likened to the ostrich putting its head in the sand. I do not think that is what we are here for. I think we are here as practical politicians to achieve what can be achieved now and for the future, and to ensure that in fact the mechanisms we put in place are sufficiently flexible to allow more to be achieved if and when we can.

I think that my constituents can accept the offers that have been made to Quebec in an effort to induce that government to surmount its avowed separatist aims and to help forge a new Canada. As an aside I must say that I am proud to see the entrenchment of minority education rights across Canada since, as a member of a linguistic minority in my province, I know what pressures have been present that, but for this step,

must ultimately result in the eradication of the French language outside of Quebec.

This momentous accord is a giant step toward equality of our two founding races, and I urge upon my fellow Canadians in Quebec to support our actions to entrench what they have so willingly given without legislation for the past 100 years. I hope that even at this late hour that accord can be reached on the final obstacles and that the whole of the country will march to the sound of a new Canadian drummer; a new accord as we are trying to forge it this evening and in the next few days.

Finally, Mr. Speaker, let me say, without partisanship intended but with a great deal of pride in my party, that I as a Liberal have always held my head high in the recognition of the fact that I am a member of the party that brought to this nation such great social legislation as the Canada Pension Plan, family allowances, universal medicare, and I have been prouder still to see across this land a flag made Canada's by a great Liberal Prime Minister.

You will pardon me, Mr. Speaker, if I confess that with the resolution now before us I and those who support me will stand just a little taller, not only as Liberals, but as Canadians proud of our heritage, confident in our future and thankful today for the men and women of this government who have, on behalf of all Canadians, provided the tools for present and future Canadians to get on with and complete the job begun so well in 1867.

As I have said, there are those who have suggested that in fact the document is incomplete. In terms of a personal view, I would indicate that I wish we had been able to do something in respect of the unborn. I recognize the undertakings which have been given and I recognize the neutrality of the resolution so far as the unborn are concerned. I share the concern expressed by the hon. member for Provencher (Mr. Epp) in relation to what this and other legislatures will do regarding the unborn, those least able to protect themselves in our society. I would hope that that solid support for the unborn which comes from all sides of this House will emerge in a resolution dealing with another piece of legislation.

• (2110)

An hon. Member: We had a resolution. You rejected it.

Mr. Daudlin: I hope that there will be continuing support for what the member across the way says he had, and I hope it will come from all parties, particularly the members of the New Democratic Party who will see the wisdom of coming forward with recommendations to the Minister of Justice to amend the Criminal Code to allow us, in fact, to protect the unborn.

An hon. Member: It's a deal!

Mr. Daudlin: I will hold him to that. I believe it is one of the most fundamental and important things we have to do in this Parliament. It is not something we can do with this resolution but, in my view, it is something which has to be done. I believe that this was the wrong document with which to do it. I believe that if the good will that, in fact, is beginning to show through in this debate can be continued with respect to this issue, we can resolve that as well. I am particularly pleased that we are able to achieve what we have done this evening. What we are working toward this evening—

An hon. Member: Talk about the resolution and the unborn.

An hon. Member: Keep going. You have five minutes.

Mr. Daudlin: When you find that members have such tremendous interest in hearing what you have to say, it is particularly gratifying, Mr. Speaker.

I have travelled through my constituency and across Canada, as I hope many of my colleagues have done, to find out what it is that Canadians want. I believe that what we are achieving is what was being sought. I am satisfied that the resolution, and particularly the charter of Rights and Freedoms, gives us the guarantees that Canadians were looking for.

An hon. Member: You were unhappy a moment ago.

Mr. Daudlin: The hon. member does not seem to understand how one can be unhappy but at the same time pleased with what is achieved. It is very difficult to explain, but I will try again.

An hon. Member: Tell us about the resolution and the unborn.

Mr. Daudlin: Perhaps it would be easier, Mr. Speaker, if the member were in his own seat so we could have a question and answer period. Perhaps he would prefer to remain anonymous.

I suggest that notwithstanding his attempt to make light of this issue, a thinking member of this House could not accept this resolution as the be-all and end-all, could accept it as a finality of what we embarked upon a year ago, and knows that we as imperfect persons could not not have come up with perfection. We have come close, Mr. Speaker. I suspect that over the years, dealing with the foundation we have been able to achieve, historians will say that this Parliament has achieved something spectacular and that this was a moment in history of which Canadians can be very proud.

Some hon. Members: Hear, hear!

Mr. Chrétien: On a point of order, Mr. Speaker. I am pleased to be able to inform the House that I have obtained from all provinces which are parties to the accord their agreement that Section 28 on the equality of men and women should apply without the override clause. In addition, I am happy to report to the House that all provinces have agreed to enshrine aboriginal rights in the Constitution.

Some hon. Members: Hear, hear!

The Acting Speaker (Mr. Blaker): As the hon. member for Edmonton West (Mr. Lambert) just said, what has just occurred does not constitute a point of order. Therefore, I

would suggest, that the courtesy be extended to the spokesmen for the opposition parties of allowing them to make a comment, and I will seek the unanimous consent of the House to permit representatives from each party who may wish to do so to make a comment. Is there unanimous consent?

Some hon. Members: Agreed.

Mr. Epp: Mr. Speaker, I want to thank the Minister of Justice (Mr. Chrétien) for that announcement. I want to say on behalf of our party that we are pleased that the amendment before us, namely, to restore Section 28 as we had developed that section in the constitutional committee has now received agreement from the nine provinces which signed the accord. I take it that it was the nine provinces that had signed the accord to which the minister if referring. With regard to aboriginal rights, I take it from the minister as well that it is a restoration of what we have come to know as Section 34. That is how I have understood the minister's comments.

On behalf of the Progressive Conservative Party, we are pleased that that is now fact. We always thought these provisions should have been restored. Obviously some changes will be needed in terms of technical changes in the resolution. Those can be worked out, Mr. Speaker, and I believe these two amendments should help to speed up passage of the resolution.

Some hon. Members: Hear, hear!

Mr. Deans: Mr. Speaker, as are most members in the House, I am always happy to hear good news. We trust that the news we have heard is, indeed, good news. I hope that the minor amendment which the minister has indicated to me might be included in one of the two sections is an amendment we can find acceptable.

For the moment, I would like to reserve a definite position until such time as I have read the actual wording of the amendment.

The Acting Speaker (Mr. Blaker): The Chair would normally expect to recognize those members who stand for the purpose of continuing the debate.

Mr. Ittinuar: Mr. Speaker, like my colleague, the hon. member for Hamilton Mountain (Mr. Deans), I also would like to reserve my position on this amendment. I must congratulate, however, the hon. Minister of Justice (Mr. Chrétien) for all the effort he has made on our behalf, the people of the north. I am also grateful to the Minister of Indian Affairs and Northern Development (Mr. Munro), the leader of my party, and certainly the hon. Leader of the official opposition (Mr. Clark) for his kind words the other day.

I hope the wording that the Minister of Justice has arrived at will do justice to the efforts made by all the parties in the House as well as the efforts of many people in the country. This applies to the women's equality section as well as to the rights of the aboriginal people. I understand that the wording is very new but that, for the most part, the meaning of the original section is there, and I congratulate the hon. Minister of Justice.

Some hon. Members: Hear, hear!

Mr. John McDermid (Brampton-Georgetown): Mr. Speaker, when I saw the Minister of Justice (Mr. Chrétien) come into the House tonight, I thought he was coming to hear my speech, which might be a little anti-climactic after the welcome announcement he made tonight. I would like to congratulate him and my good friend from Nunatsiaq (Mr. Ittinuar) for the work which I know he spent on this program, as well as members of my party who are very concerned and involved in the discussions. It is certainly most welcome news. Tonight, I welcome the opportunity to speak during this important historical debate.

• (2120)

It is an exciting and challenging time in which we are Members of Parliament, and I consider it a privilege to be here at this time. As the Member of Parliament for an Ontario riding, Brampton-Georgetown, I must admit that the subject of the Constitution has been a difficult one for me to deal with. I represent federally the riding represented provincially by the Premier of Ontario. It was of great concern to me and many of my constituents that the Premier gave such absolute and unconditional support to the constitutional package initially set forth by the federal government, not so much because of the content of the resolution but because of the procedure which was proposed by the federal government, a procedure which was considered un-Canadian by the Progressive Conservative Party of Canada, a position upheld by the Supreme Court of Canada. I am very proud, however, that the premier initiated the compromise process by relinquishing the Ontario right of veto. I wish to thank him personally for starting the process that allowed consensus to be achieved.

I would also like to thank and congratulate all the first ministers for upholding the Canadian way. Although the consensus achieved left out one of the most vital partners of our confederation, the province of Quebec, I believe many Canadians are relieved that the consensus was achieved.

The dialogue on a new Constitution has, as we are often reminded by the Right Hon. Prime Minister (Mr. Trudeau), been going on for many years. He would have us believe that in the last 54 years Canadians have done nothing but argue about constitutional matters. Any intelligent, thinking person knows that is just not the case. Sporadic attempts have been made during that period to arrive at an acceptable amending formula to permit patriation. I would, however, congratulate the Prime Minister for, it seems, having achieved his dream, albeit an amended version of that dream.

Let us look for a moment at the procedures used to achieve that dream. The Prime Minister was willing to do anything, including alienating the provinces and suffering the possibility of separation, in order, reportedly, to end his political career with Canada's formal declaration of independence. The possi-

bility of his unilateral move was intolerable in a co-operative federalism.

When the original resolution was tabled, the Leader of the Official Opposition (Mr. Clark) saw immediately the dangers of unilateral action and that there was more to the resolution than met the eye. It was a knowing and a courageous stand to admit that changes in constitutions change the relationships between people and their governments, and that unless these changes are agreed to, the very basis of our economic, social and cultural stability is jeopardized.

During discussions with many of my constituents it became very clear that they, like most Canadians, did not feel that the Prime Minister should restructure our Constitution and our federal system without the approval of the provinces. In the riding of Brampton-Georgetown, 83 per cent of constituents who were polled felt that provincial consent must be obtained—the consent of a significant majority of the provinces—and this feeling was very evident across the country. This feeling legitimized all attempts of the official opposition to block unilateral action. The fight to ensure Canadians were heard, the formation of a constitutional committee, the televising of proceedings, and the delaying of House proceedings on the question were due to the efforts of the official opposition. We fought long and hard to arouse public opinion, and I am proud of what we accomplished.

Our leader and our party fought for the Canadian way under a great deal of criticism and ridicule from the Liberals, but not for a minute do I apologize for our actions. I am reminded of something the Right Hon. John Diefenbaker once said: "God forbid that in this country we should apologize for standing for those things which made this nation great". If any of my colleagues across the floor feel that these measures were a waste of time, they had better, as some of the Liberals have done, reconsider why they were elected—to represent their constituents or to be unthinking sheep led by a master into whatever pasture he decides to take them, with no consideration for the effects on the people who put their trust in them?

The all-party agreement reached on April 8 in this House to defer final debate on the resolution until after a decision had been rendered by the Supreme Court of Canada on the appeals before it from the lower courts was, I think, welcomed by all. In its wisdom, the court affirmed what we as a party had been saying all along, and that is that the conventions, the customs and the practices making up part of our existing Constitution should not be overlooked.

I am sure that during the past year many Canadians have regarded the constitutional debate with a good deal of indifference, and I can appreciate that reaction. Unemployment, inflation, high interest rates and other bread and butter issues have had a more immediate impact on people's daily lives. Just last Saturday I marched with a group of concerned Bramptonians headed by two very courageous women, Kathy Dinley and Marlene Grant. Here on Parliament Hill they urged that the present constitutional matters be completed as quickly as possible and that work on economic matters take precedence. Two bus loads carrying a group of people independent of any organization came to Ottawa. They also expressed how pleased they were that a consensus had been achieved and that the Canadian way prevailed.

The agreement to wait for the Supreme Court decision was reached because of an ever increasing awareness on the part of the Liberal Party that Canadians across the country were beginning to see through the attempts to change the fundamental nature of our country, and they were not in favour. For Canada's sake I am very happy that the Prime Minister saw fit to take another long, hard look at the precedent he was setting by forging ahead with a plan not condoned by the majority of provinces and not agreed to by a large majority of the people of Canada.

Confederation was arrived at by great statesmen setting aside their individual views and arriving at a consensus. Frustration and separatist sentiments have been widespread throughout our history, but no attempt at division has ever had the potential for breaking up this entire country in the same way that forging ahead without significant consensus would have had. In the words of Lord Acton, "The co-existence of several nations under the same state is the test, as well as the best security, of its freedoms." When Canada adopted its federal system of government, it did so with good reason. It was seen then, as it continues to be now, as the best way of reflecting our national duality and the need for regional local autonomy.

I would like to consider the position of Quebec for a moment. I said earlier that a very vital province has not seen fit to consent to the constitutional accord. The Quebec situation has been an overriding constitutional question for many years. It has, to my mind, been the chief factor in constitutional discussions which have occurred since 1963. Quebec's constitutional position has been deferred many times and, once again, the question has been left unanswered. This may be because of the unwillingness of the federal government or other provincial Premiers to negotiate further, or it may be due to the fact that the Quebec government involved in these constitutional negotiations is committed solely to separation. I do not really know, but it saddens me that Quebec is not a part of the consensus reached. It is a tragedy which I hope can be averted.

● (2130)

The Prime Minister has for years argued that there was an urgent need for constitutional change. The general feeling of the provinces other than Quebec was that there really was not an urgency; important but not urgent. Only after the Quebec referendum last year did most Canadians realize the frustration and the seriousness of Quebec's outlook on its role in Confederation. In May 1971, Claude Ryan urged that:

English Canada would be much wiser to look to the government of Quebec as the real interpreter of the French Canadian will,—

Keep in mind this was at the time of a Liberal government in Quebec.

—a government seen not through some temporary vacillation of Robert Bourassa but through a constant threat expressed in the major constitutional documents

since 1966. There will be found the essential elements, not necessarily of a solution, but for real negotiation. Until these are examined and accepted, no solution will be possible.

The official opposition party has put forward a proposition giving Quebec another opportunity to reconsider its position. If the availability of compensation to provinces which opt out is not accepted by the present Quebec government, it will be clear that the present representation of the province of Quebec is committed solely to separation. Whether or not the provincial government of Quebec actually represents the political will of Quebecers remains to be seen.

In April the Quebec government signed an accord with seven other premiers which included this provision. Did the Premier of Quebec sign the accord at that time because he believed this is what Quebecers want, or did he sign it just to embarrass the federal government, assuming that the accord would not be accepted? I can only hope that all sides of the negotiations bargain in good faith and continue to act in the best interests of Canadian unity. I ask all Quebecers to examine our position, and if they approve, if they want to take their rightful place in the federation, then let Premier Lévesque and the Prime Minister of Canada know, act together to remain partners. I cannot envision a Canada without Quebec.

One major disappointment for me is to see a Canadian Constitution before us that does not contain property rights. To my way of thinking, the cornerstone of democracy is the right to own property. An investment in a piece of property gives one a feeling of security, "a piece of the rock" as one famous advertisement says, at owning a small part of this great country. Why not protect that right, a basic right of any democracy? The late President of the United States of America, General Dwight D. Eisenhower, said:

When some people declare that we care more for property rights than human rights I say that a property right is one of the human rights and if it is not sustained then all others will disappear.

I say amen to that and ask that this be on the top priority list when next the matter of constitutional amendments are discussed by the first ministers.

I would like for a moment to discuss a section of the charter which is of great concern to many of our legal and enforcement bodies. That section is 24(2), known as the exclusionary rule. The government has been accused of trying to Americanize Canadian rules of evidence and placing Canada in a constitutional straitjacket in terms of the evolution of our criminal law and procedures by entrenching a form of the American exclusionary rule of evidence.

The government, after a compromise was reached with the provinces in the summer of 1980, reversed its position, as it has been known to do sometimes, and in January, 1981, decided to adopt the exclusionary rule. Because of this decision and the concern expressed by many, the official opposition offered a compromise wording which was adopted by the joint committee.

However, this section continues to represent a concern, and I feel these concerns must be expressed and put on the record. The possible problems with entrenchment of this rule were brought to my attention by many, including Chief Ackroyd of the Metropolitan Toronto Police Force and by Chief Doug Burrows of the Peel Regional Police.

Section 24(2) sets a subjective standard for our courts. There is no jurisprudence in this area to guide our judiciary. It is interesting to note that although it is an American rule of evidence, it is not entrenched in the American Constitution. This rule can be changed by United States courts or Congress at any time. Why then is Canada heading in a direction which will involve a constitutional amendment if a change in this area becomes necessary?

Law reform commissions, both federal and provincial, have recommended that an exclusionary rule, or the type of clause that is present in the charter, be included in provincial and federal evidence acts. I know that some Crown attorneys and attorneys general, including the Ontario attorney general, feel that section 24(2) should not be entrenched but should possibly be adopted as an amendment to our evidence acts. In a letter dated March 20, 1981, the attorney general of Ontario wrote this to all Members of Parliament:

I would urge you to avoid the introduction into our criminal justice system of American concepts which have substantially undermined effective law enforcement in the United States while failing to enhance the rights of individual citizens.

When the government reversed its position in January and decided to adopt the exclusionary rule, there were no consultations by the federal government with the provinces. It is an area that civil libertarians feel must be included in the charter, but as put forth by the Canadian Police Association and many others, serious consideration must be given to the changes which this rule will cause in our criminal law system. They have asked each of us to consider a series of questions. I quote a few:

Do I want to change to a United States rule consistently rejected by the courts of Canada and England for 300 years and which has recently come under serious question in the United States and has been firmly rejected as unsound by three distinguished English Royal Commissions, the last as recent as December 1980? . . .

Does the exclusionary rule really control police and thereby protect civil liberties? Or, is it inferior to strong before-the-fact accountability coupled with prosecution and discipline of police after-the-fact, when deserved? . . .

Do the women of Canada want to protect sexual attackers to the extent that even the slightest mistake by police in following the proper investigatory and arrest procedures will exclude relevant evidence and lead to an acquittal, even if the evidence of guilt is overwhelming?

A gory, not pleasant but true story of an incident which took place in California vividly demonstrates what could happen. A highway patrol in California pulled a car over and started to question the driver. He became very suspicious and asked the driver to open his trunk. The driver refused, the police patrol insisted, and the driver finally opened his trunk. In the trunk the policeman found a dismembered body, a member of the driver's family. The driver pleaded guilty to the charge of murder and was convicted in a lower court. In an appeal court he was declared innocent and let go because the patrol officer did not have a proper search warrant to look in the trunk. That was because of the exclusionary rules of evidence that they

have in the United States. We do not want that here in this country.

● (2140)

I feel the public should be aware of these concerns being expressed by some Canadians. These concerns should be carefully examined once the Constitution returns to Canada, its final resting place.

I would like to comment briefly and commend the first ministers on the formal recognition of Canada's multicultural heritage, a heritage that has been a continuing and undisputed fibre of our history.

Canada has benefited from the diversity of its people. Because of this diversity, we are a richer nation, committed to living together in understanding and mutual appreciation.

In the early 1960s the Right Hon. John Diefenbaker from Prince Albert likened Canada to a garden. He said:

> A garden ... into which has been transplanted the hardiest and brightest flowers from many lands, each retaining in its new environment the best of the qualities for which it was loved and prized in its native land.

In my new responsibility as immigration spokesman, I have become in the past few months very aware of the fact that our attitudes towards immigrants and immigration are an important part of our multicultural ideology. Mr. Speaker, I hope my education in this area broadens my horizons even further. In this regard the charter does reflect the reality that is Canada.

In the past year and a half I have travelled extensively in Canada. The employment opportunities contained in the Committee of Employment Opportunities for the 80s gave me the chance to see in depth the Canada I did not know. I was very familiar with Ontario; but the rest of Canada was not well known to me. I had travelled to some extent in Canada but I never took the time to see it, and to really look at it.

I have walked on the stone beach at Stephenville, Newfoundland; amazed at the sight of the harbour of St. John's; driven and walked along the most beautiful Cabot Trail; slipped on the rocks at Peggy's Cove just trying to get that perfect picture; stood in the famous legislature in New Brunswick; visited with city council in Chicoutimi, Quebec; sang, ate and drank shoulder to shoulder with my fellow French-speaking Canadians in a wine cellar in old Montreal. Mr. Speaker smiles because he knows what I am talking about. I travelled Ontario from Fort Francis to Pelee Island; watched a flock of geese heading south with trees a brilliant yellow, the black storm ahead and the sun glistening off the frost somewhere between Brandon and Winnipeg; visited the little towns in Saskatchewan, such as Biggar, Perdue and even Lennie where my mother came from; travelled through breathtakingly beautiful Alberta to the tar sands in the north. I heard a native Canadian couple tell their story, the most articulate presentation I think I have ever had the pleasure of hearing. I watched the world junior softball championships in Edmonton. I flew a twin Otter from Fort McMurray to Yellowknife, walked the streets at midnight in broad daylight, skied the Rockies, got wet in Vancouver, and marvelled at the diversity of British Columbia. From coast to coast and to the north it is Canada. Its beauty, its people, its resources make it the greatest nation in the world, and I, along with millions of Canadians, want to maintain its greatness. God help those who would attempt to destroy this greatness.

In closing, Mr. Speaker, I should like to say that there were many who said that a Constitutional accord would not be possible. God willing, Canada will have its Constitution. My prayer as a proud Canadian is that we will all be guided in the next few weeks and in future constitutional change to uphold the human and political freedoms that we tend to take for granted. I love this country. My dedication is to keep it strong economically and socially, and united from coast to coast.

Mr. Hal Herbert (Vaudreuil): I rise tonight near the end of this great constitutional debate that has been causing so much difficulty in this country. With the news that has been given to us of the agreement reached on the two outstanding and most controversial subjects, there is very little that one could say. However, I feel I should take a few minutes to put on the record some thoughts with regard to a couple of matters on which I have personally been questioned on the effect of the constitutional resolution when it is passed.

First I should say, Mr. Speaker, as someone who came to this country some 40 years ago now, I liked what I saw. I spent some 15 months training in this country during the war. I liked it so much that when the war was over I wanted to come back. I did come back with my family. Although I travelled fairly extensively in Canada, I liked what I saw in Quebec. I settled in Quebec, and I have lived there ever since. I did not choose Quebec because I thought that I would be able to continue to speak the English language; in fact, quite the contrary. I assumed that I would probably be obliged to brush up on my French. However, that was not so. If I can interject here, somewhat to my disappointment that was not so. I continued to operate for some 10 or 15 years in the English language, even though I was in the construction industry, building from Trois-Rivières, what we used to call Three Rivers, to Chicoutimi and throughout the province, and even in the capital city of Quebec. That was to change.

I think the big change came with Bill 22. Mr. Speaker, because you were a part of that action at that time, you will know that I as an individual did not speak against Bill 22, even though I felt there were some parts of that bill that I did not particularly like. However, over all I felt it was necessary that some action be taken to redress what was certainly an unacceptable situation in the province of Quebec.

I was somewhat unhappy when Bill 22 was replaced with Bill 101. However, even today we have learned to live with Bill 101. Life for the Anglos in the province of Quebec is not really all that bad.

● (2150)

However, as I said at the outset, I want to make a couple of comments on parts of the resolution on which I have been questioned. First I should like to comment upon the *non*

obstante override clause as it applies to the charter of Rights and Freedoms. The entire charter of Rights and Freedoms will be entrenched in the Constitution and no province will be able to opt out of any provision of the charter. The agreement signed by the Prime Minister and the nine Premiers does not emasculate the charter. Democratic rights, fundamental freedoms, mobility rights, legal rights, equality rights and language rights are enshrined in the Constitution and apply across the country. What the premiers and the Prime Minister agreed to is a safety valve which is unlikely ever to be used except in non-controversial circumstances by Parliament or legislatures to override certain sections of the charter.

The Quebec charter of rights and freedoms adopted in 1975 contained an override clause which has been used several times. However, its use has been non-controversial and is instructive in looking at how the override may be applied in terms of the new constitutional charter. For example, despite the provision in the Quebec charter guaranteeing that everyone is equal before the law, the juries act indicates that a lawyer cannot be a member of a jury. Despite the guarantee of open trials in the Quebec charter, the youth protection act provides for circumstances where juvenile court may hold closed sessions. Despite the protection in the Quebec charter for the privileged doctor-patient relationship, the highway safety act requires a doctor to inform the license bureau of the name of the patient who is medically incapable of driving a motor vehicle. It is because of the history of the use of the override clause and because of the need for a safety valve to correct absurd situations without going through the difficulty of obtaining constitutional amendments that leading civil libertarians have welcomed its inclusion in the Charter of Rights and Freedoms.

I should like to make a few comments on the subject of indirect taxation. The British North America Act gives the federal government the power to raise taxes by any means, including indirect taxation, but does not give the same power to the provinces. The provincial authority is contained in Section 92(2) of the BNA Act which indicates direct taxation within the provinces. Thus, under our present Constitution, provincial taxation powers are limited to the raising of a direct tax within the province for provincial purposes. In order to decide whether a tax was direct or indirect, the courts have adopted the John Stuart Mill definition of direct and indirect taxes. This means that a tax is held to be a direct tax when it is demanded from the very person who is intended to pay it. On the other hand, a tax is held to be an indirect tax when it is demanded from one person in the expectation and with the intention that he shall indemnify himself at the expense of another. Whenever a court has had to decide whether a tax was direct or indirect, it examined the tax in order to find out whether it met that definition. The purpose of the proposal is to free the provinces from the obligation to meet the direct tax test when they levy a tax on non-renewable resources.

In giving provinces the power to levy indirect taxes on non-renewable resources, we are giving provinces the power to levy a tax whose burden does not fall on the very person on whom the tax is levied. This could mean that a tax levied on a non-renewable resource in a province might be paid by residents of another province, if the resource subject to tax were exported to the other province. However, an indirect tax in non-renewable resources should not discriminate between the province and other parts of Canada. Federal taxing powers would not be affected by the proposal. The federal government would retain the power to raise money by any mode or system of taxation on resources, as well as on any other goods or activities.

During all the constitutional discussions of the past several years, there was full agreement that, apart from resources, provinces should not be permitted to apply indirect taxes, the effects of which would be felt by persons outside the province imposing the tax. For example, it would not be fair for a province in which automobiles are manufactured to impose an indirect tax on such automobiles which would then have to be paid, not only by the residents of that province but by the residents of all provinces to which the automobiles were shipped. On the other hand, it was also agreed that non-renewable natural resources presented a special case. It was generally accepted by the provinces and by the federal government that provincial governments through any mode of taxation should be able to ensure that a fair return was received by the residents of the province which was disposing of the resource. It was agreed that provinces should be given indirect taxing powers, with the proviso that their tax laws could not discriminate between resources used in the province and those exported. In other words, an indirect tax by Saskatchewan on, say, potash would have to be the same, whether the potash was used by residents of Saskatchewan or shipped outside.

Another subject of considerable interest in the province of Quebec at the present time is the subject of denominational schools. I should like to make a few comments on the subject. Concerning religious guarantees in the Constitution, Section 93 of the British North America Act, 1867, is the only provision in the act which refers to such guarantees. Section 93(1) provides that no province may prejudicially affect rights or privileges with respect to denominational schools which existed at law in the provinces at the time of Confederation. However, the section does not make any reference to freedom of choice respecting language of education. Jurisprudence indicates that the rights and privileges guaranteed by Section 93(1) are those relating to the establishment of denominational schools and religious teaching therein. But the section does not prevent provinces from regulating the curriculum generally of such schools or prescribing the language of instruction to be used. A decision of the judicial committee of the Privy Council in 1916, in the case of *Trustees of the Roman Catholic Separate Schools for the City of Ottawa v. MacKell*, held that Ontario legislation which restricted the use of French as a language of instruction in the schools of that province was valid provincial legislation relating to education and not contrary to the provisions of Section 93. However, this does not mean that the provinces are free to prevent the establishment and operation of denominational schools and the teaching of

denominational tenets, doctrines and practices in those schools. Quebec's charter of the French language, Bill 101, regulates the language of instruction in the schools of the province, but it does not address itself to the broader issue and, indeed, it could not constitutionally abrogate Section 93 guarantees.

Obviously I would have liked to have seen a lot more freedom in the language provisions in the constitutional resolution. I also fully agree that it is much better to arrive at a consensus, to arrive at a compromise. In that respect, perhaps unwillingly, but nevertheless I accept that the inclusion of the Canada clause is the best we can expect in the circumstances.

May I call it ten o'clock?

The Acting Speaker (Mr. Blaker): I thank the hon. member for calling it ten o'clock.

• (2200)

PROCEEDINGS ON ADJOURNMENT MOTION

[*Translation*]

A motion to adjourn the House under Standing Order 40 deemed to have been moved.

THE CONSTITUTION—PROPOSAL THAT REPRESENTATIVES OF MINORITIES ATTEND CONFERENCE

Mr. Jean-Robert Gauthier (Ottawa-Vanier): Mr. Speaker, on November 9, I asked a question of the Prime Minister (Mr. Trudeau) concerning the Constitution. Since the beginning of the constitutional debate in this House, and certainly since the historical agreement between the federal government and the nine consenting provinces was signed, the contents of the charter of rights has continued to be the focus of political debate. If I am not mistaken, Mr. Speaker, I heard this evening that the issues of equal rights for women and native rights had been settled, at least from what we heard in this House earlier.

One very important issue, however, remains to be settled, that of the francophone minority outside Quebec. During this brief debate this evening, I should like to deal with the situation where we, francophones, living in provinces with an English majority, find ourselves in this federation, which is becoming for us a real maze of interpretations. Of course, I refer to the charter of rights, a charter which should be universally applied, but which, in this case, relinquishes the universality principle to the provincial legislatures by letting them determine how it will be implemented. Because of all these optional or "nothwithstanding" clauses, especially as concerns the provisions on basic freedom, legal guarantees and equal rights, this charter is probably the only federal document which will take its meaning from provincial jurisdictions and legislation. In other words, the federal government proposed but the provinces dispose.

This means that the Canadian who wishes to travel in his own country will have to check carefully and practically every day how the various provinces interpret the Constitution before leaving his province for another. The legal guarantees of this Canadian, if arrested, for instance, could vary when he steps across a provincial border. At the limit, in view of this potential multitude of rights which apply or do not apply, we may wonder if we are still in the same country or in a federation of many countries.

A more detailed examination of the contents of this charter reveals that the clauses concerning linguistic rights and the right to education in the language of the minority are firm and universal clauses which are not subject to the opting-out principle. This means that the members of a linguistic minority of either official language may have their children educated in their own language at the elementary and secondary levels only where numbers warrant. As concerns the principles involved, while several premiers, such as Mr. Bennett and Mr. Davis, do not agree and say that Clause 23 will not change anything, I believe that this clause still provides guarantees which seem adequate at first glance. However, as one looks a bit further, one finds that in actual practice the reality is somewhat strange. Let us take an example. A group of French-language parents residing in one of the seven provinces not subject to Section 133, which gives access to legal and legislative institutions, file an application for a French school in their community. The school authorities, the school board answer that the application is turned down because the number of children does not warrant a French school in the area. The parents will then have to find the money, energy and support to go to court and pursue their rights at their own expense. The case will be heard in the provincial Supreme Court. And there lies the irony. Since the charter of rights does not recognize in that Canadian province the access to legal and legislative institutions in the minority language, these parents will have to fight in English for the recognition of the minimum constitutional rights granted them as French-speaking citizens.

So this is in the charter of rights, a serious flaw that makes it in my view both unacceptable and utterly incomplete. Minorities are granted certain rights but not the tools needed to have them enforced. Even the Ontario Premier has no hesitation in recognizing that the charter of rights gives nothing more to French speaking residents in his province, and I refer you to a report published no later than today in the Montreal Paper *la Presse*, where Mr. Davis is quoted as making the statement utterly shocking to us Franco-Ontarians that there was nothing new there, the charter did not change much in the Ontario situation.

• (2205)

When he replied to a question I directed to him in the House on November 9, the Prime Minister recognized that the linguistic rights applied only to elementary and secondary schools. He stated that he was prepared to convene a federal-provincial conference of the type I had suggested to review the whole question following patriation. This is indeed a commendable and significant response. Yet, because I know a number of premiers, I am very much concerned about the outcome of such a meeting, but I remain optimistic about the possibility of it being held.

According to the information I have checked today, Mr. Speaker, of the nine provincial premiers—I should perhaps exclude Mr. Hatfield who is the only one who recognized fully the linguistic rights of both anglophones and francophones—two have replied: Mr. Hatfield, of course, and Mr. Blakeney, of Saskatchewan, who said: "If the others go, I will certainly go too". Naturally, there was no reply from Bill Davis, and I must say that I am very disappointed with the Ontario Premier's refusal. In Ontario, the province with the greatest minority of francophones—some 500,000 of them—I do not understand his refusal to take part in a federal-provincial conference which could be the perfect forum to consider and discuss in depth the last problem which remains to be settled in this country, that is, the treatment of francophone minorities outside Quebec. Thank you, Mr. Speaker.

Mr. Jim Peterson (Parliamentary Secretary to Minister of Justice and Minister of State for Social Development): Mr. Speaker, all members of this House congratulate the hon. member for Ottawa-Vanier for his unremitting efforts to protect the rights of francophones outside of Quebec, for his tenacity and his eagerness to standup for the rights of francophones throughout Canada.

The hon. member has suggested a federal-provincial conference to enable francophone groups outside Quebec to state their grievances. He worked hard to get the provinces to agree to that meeting but in spite of his efforts, only two are in favour of such a meeting. Such a conference could only bring results if the provinces would agree to attend. Once again our efforts should be channelled towards that end. This being said, we have to recognize at the same time that the new constitution will do much for francophones outside Quebec. First bilingualism is made official at the federal level. Second both language groups are considered equal in every area: executive, legislative and legal. Third the right of linguistic minorities to education is recognized. I know well that in spite of all that, the hon. member as well as many others would rather see the rights of francophones outside Quebec given greater recognition. It must be recognized as well, however, that we have proved that with good will and co-operation between the federal and provincial governments, much can be accomplished. To wit, Mr. Speaker, the historial agreement the Minister of Justice (Mr. Chrétien) announced to the House 45 minutes ago, the agreement on women's rights and aboriginal rights. We all congratulate him. We are very proud to be Canadians.

• (2210)

[*English*]

CANADIAN BROADCASTING CORPORATION—APPEARANCE OF CANADIAN PIPERS AT EDINBURGH INTERNATIONAL TATTOO. (B) REQUEST THAT BROADCAST BE SHOWN IN CANADA

Mr. Donald W. Munro (Esquimalt-Saanich): Mr. Speaker, on November 2, I asked the Minister of Communications (Mr. Fox), as minister responsible for reporting to this House for the CBC, if he would inquire why the CBC had refused to carry the TV program which had been made by the British Broadcasting Corporation of this year's Edinburgh Tattoo. The reason I asked that was that I wanted Canadians to see this year's tattoo because Canadians on that occasion were doubly honoured; first of all, by including a separate section dedicated to Canada entitled "Canadiana", a section which featured a team of about 100 Canadians drawn from across the country including pipers, drummers, Scottish and habitant dancers from all parts of Canada, and second, honoured by inviting a Canadian service officer, General Lewis, Commanding Officer Air Command, to take the salute in Edinburgh. This year's Tattoo, therefore, was a great event in Canadian terms. It was broadcast broadly in Britain and across Europe. Canada got a great boost in this particular event.

I was subsequently told by the minister that the CBC had not been offered the BBC videotape. I can now assure him, or the parliamentary secretary who will be replying, that this oversight has been remedied and a 75-minute version of the 90-minute Tattoo has been offered to the Canadian Broadcasting Corporation, and I and many more Canadians hope the deal will be closed and Canadians will have a chance to see this outstanding event; the way Canadians did their country proud by their performances.

I am told that the CBC is looking at a five-minute version of the Tattoo, but my view is that even to put on such an abbreviated version of a more than ten-minute participation in the tattoo would be an insult to those Canadians from all parts of Canada who were seen by about 250,000 who attended the Tattoo in Edinburgh, about six million British television viewers, and 50 million to 60 million viewers in Europe and Australia.

Canada's participation this year in this international festival has been in the works for about five years. It was treated by the BBC as a feature item. The show was designed to portray Canadian unity by featuring dancers from all across this land—Scottish pipers, Scottish dancers as well as folk dancers from Quebec. It was, I am told, a moving experience. Having paid for much of the Canadian group's expenses to go to Edinburgh, I contend that Canadians should now have the opportunity to see how well this team which they sponsored performed on their behalf.