

FEDERAL-PROVINCIAL CONFERENCE  
OF FIRST MINISTERS ON THE CONSTITUTION

Federal Draft Proposals Discussed by First Ministers

1. Communications
2. Offshore Resources
3. Charter of Rights

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COMMUNICATIONS

Federal Draft Proposal Discussed by First Ministers

Cable  
Distribution

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

Relationships  
between laws  
of the  
provinces  
and laws of  
Parliament

2. Any law enacted by the legislature of a province pursuant to section 1 shall prevail to the extent of the inconsistency over any law of Parliament enacted thereunder except in relation to Canadian content, Canadian broadcast programs and services, and technical standards, in which case any law of Parliament shall prevail to the extent of the inconsistency.

Consulta-  
tions

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

Telecommuni-  
cations  
undertakings

4. Telecommunications undertakings coming under the jurisdiction of Parliament as well as those coming under the jurisdiction of the legislature of a province and engaging in activities coming under section 1 other than as carriers shall be subject, in so far as such activities are concerned, to the laws enacted under section 1.

Powers  
continued

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

## OFFSHORE RESOURCES

### Federal Draft Proposal Discussed by First Ministers

"On the question of Offshore Resources, the revised Constitution should provide concurrent legislative authority for Parliament and the legislatures of coastal provinces concerning the management of the offshore resources, lying adjacent to those provinces, which are within national jurisdiction, but which do not fall within the Provinces or Territories of Canada. This provision would be made without prejudice to the ownership of the resources in question.

Federal powers concerning navigation, international affairs, national defence and so on, would continue to apply as appropriate to the offshore areas. Provision would also be made, however, for the application of various provincial powers, for example, concerning labour relations, to the offshore areas.

In describing the concurrent powers, provision should be made for federal paramountcy concerning international trade, environmental control, and other matters to be determined. Provincial paramountcy should apply to various aspects of associated onshore developments, and to other matters to be determined.

On the important question of the rate of exploration and of production, or more generally the pace of development, there should be federal paramountcy. However, in cases where the provincial government affected disagrees with federal proposals dealing with the rate of production, on the basis of anticipated adverse socio-economic effects, or adverse effects on the future availability of resources to meet the province's needs, such federal paramountcy would only be exercised in matters of great concern to Canada.

As a necessary complement to such provisions in a revised Constitution, suitable administrative arrangements should be worked out and confirmed in due course by statute, to assure continuing federal and provincial consultation and co-operation in the management and development of the offshore resources."

Comparative Summary of Bill C-60  
Provisions and New Proposals

BILL C-60 PROVISIONS

NEW DRAFT PROPOSALS

A. Fundamental Freedoms

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

Limitation Clause

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

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

Override Clause

None

A. Fundamental Freedoms

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

Limitation Clause

Those proscribed by laws are reasonably justifiable in a free and democratic society in the interests of

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

Override Clause

None

B. Democratic Rights

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

Limitation Clause

On first two only: same as under fundamental freedoms.

Override Clause

None

B. Democratic Rights

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

Limitation Clause

None, except as built into first two.

Override Clause

None

C. Legal Rights

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

C. Legal Rights

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

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

B. Legal Rights (Cont'd)

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

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

C. Legal Rights (Cont'd)

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

Limitation Clause

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

Override Clause

Provinces could opt in with general override power.

D. Non-Discrimination Rights

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

D. Non-Discrimination Rights

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

1. Non-Discrimination Rights (Cont'd)

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

D. Non-Discrimination Rights (Cont'd)

Limitation Clause

None, except as built in to section.

Override Clause

Provinces could opt in with general override power.

2. Mobility Rights

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

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

E. Mobility Rights

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

Limitation Clause

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

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

Override Clause

None

3. Property Rights

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

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

F. Property Rights

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

Limitation Clause

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

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

Override Clause

None

## Language Rights

( Power of Parliament and legislatures to declare English and French official languages of Canada for all purposes declared. Power of Parliament and legislatures to provide for more extensive rights to use English and French.

Right to use English or French in all debates and other proceedings of Parliament or any legislature.

Statutes, records and journals of Parliament and legislatures of Ontario, Quebec and New Brunswick to be printed and published in English and French, both versions equally authoritative. In other provinces, obligation optional with legislatures. In Ontario, date for French publication to be fixed by legislature.

( Right to use French or English in all court proceedings at federal level and in Ontario, Quebec and New Brunswick.

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

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

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

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

## G. Language Rights

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

Language Rights (Cont'd)

- 1. Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.
- 2. Preservation of rights in the future of identifiable English or French language communities to use of French or English.
- 3. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.
- 4. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

G. Language Rights (Cont'd)

- 10. Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.
- 11. Preservation of rights in the future of identifiable English or French language communities to use of French or English.
- 12. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.
- 13. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

Limitation Clause

None

Override Clause

None

Undeclared Rights

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

H. Undeclared Rights

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

ENFORCEMENT PROVISIONS

- 1. Charter provisions to render inoperative any law which is in conflict with its provisions.
- 2. Where no other remedy exists, courts empowered to grant declaratory, injunctive or similar relief where anyone seeks to have Charter rights defined or enforced.

I ENFORCEMENT PROVISIONS

- 1. Charter provisions to render inoperative any law or administrative act which is in conflict with its provisions.
- 2. Where no other effective recourse or remedy exists, courts empowered to grant such relief or remedy for a violation of Charter rights as may be deemed appropriate and just in the circumstances.