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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT
(unverified and unofficial)
Morning Session of
November 2nd, 1981

COMPTE RENDU TEXTUEL
(non révisé et non officiel)
Séance du matin
du 2 novembre 1981

OTTAWA
November 2-5, 1981

OTTAWA
le 2 au 5 novembre 1981
--- Upon commencing at 10:15 a.m.

THE CHAIRMAN: Could we have order, please?

Mr. Secretary, could you ask the media to take their places because there are observers there who have a right watch the proceedings.

Je voudrais d'abord souhaiter la bienvenue à tous les premiers ministres réunis autour de la table, à leurs ministres, aux délégations qui les accompagnent.

Je note aussi la présence parmi les observateurs du chef de l'opposition monsieur Clark, du chef du Nouveau Parti Démocratique monsieur Broadbent et de nombreux parlementaires; nous avons également invité les délégations du Yukon dirigées, les représentants élus dirigés par monsieur Chris Pearson et ceux des Territoires du Nord-Ouest, dirigés par monsieur George Braden. Nous avons invité, comme il est notre coutume également les chefs des associations indiennes et Inuit, je signale en particulier:
Representatives from the National Indian Brotherhood and Mr. Charlie Watt, Mr. Peter Ittinuar of the Inuit Committee on National Issues and Miss Audrine Horey, vice-president of the Native Council of Canada.

We also greet the observers from the Federation of Canadian Municipalities; Mayor Daniel Brownlow, president of the Federation is here with, I believe, other members of that delegation.

There are, at this stage, I believe, no procedural issues to settle; I just want to draw to your attention that Mr. Ed Watson is the Acting Secretary of the Canadian Intergovernmental Conference Secretariat, sitting in the place of the well known and liked Henry Davis who had been with us for so many years.

I would also like to say at this point that there is an invitation to the Premiers and to myself for a private luncheon in the Rideau Lounge on the 5th Floor of the Conference Centre immediately following this morning's session. I am not sure all of you have been notified of that, but if we find it convenient, as soon as we break, to go up there to have a quick lunch amongst ourselves in order to set up any further administrative arrangements, such as how many will be meeting in the afternoon meetings, we could do that over lunch.

These being the opening remarks, I think we are ready now for the round of statements. I believe our officials have talked or expressed the hope that we would limit ourselves to ten or fifteen minutes at the
most. If we all take no more than fifteen minutes, we could still be out of here around one o'clock and if this is agreed, I will begin the round and we will have the opening statements in the usual order, beginning on my right, left and so on.

Je voudrais donc commencer en disant que nous sommes ici pour chercher un accord et que cet accord sera possible dans la mesure où toutes les parties en cause sont prêtes à faire des compromis. Quant à nous, nous sommes prêts à faire des compromis sur notre position, celle qui est connue, celle qui est devant la Chambre des communes, nous souhaitons qu'au cours des heures et des jours s'il le faut qui suivent, nous rencontrions une disposition semblable de la part des dix premiers ministres provinciaux.

En somme nous avons à donner une réponse à trois questions. La première: devons-nous rapatrier la constitution canadienne, devons-nous mettre fin à ce statut de colonie juridique de la Grande-Bretagne que nous sommes encore, que nous sommes depuis 1867, depuis le début de la Confédération, pouvons-nous trouver la solution de ce problème et rapatrier la Constitution?

La deuxième question: devons-nous trouver une formule d'amendement ou voulons-nous d'une constitution rigide qui nous force à rester dans un statu quo dont la plupart des canadiens voudraient nous voir sortir.
On the third question, and the third question is should we have a Charter of Rights for all Canadians binding on all governments of Canada? or do we want to remain in a country where the federal government has its Bill of Rights, each of the provincial governments have a Charter of Rights or a Bill of Human Rights, but there is no Charter of Rights for all Canadians, no common values that we can say we all hold in common and which are written into our constitution?

Those then are the three questions. The first one on patriation, I think we should by now, and I believe we will by now, be able to agree to very quickly. We have all expressed the view that we should have our own constitution in Canada and I think it would be a great thing if we could show the two million Canadians watching us on television or listening to us by radio that we could -- I don't know if it is two, but I know it is more than a million -- if we could show them this morning or certainly before leaving this city that, yes, we have reached an agreement to have our own constitution in Canada. We can, to that extent, be nation-builders and settle the problem that has been plaguing us for many, many years.

The second question, the amending formula. Well, obviously we all agree that we need one. The question is which one. If we don't have an amending formula, we will be left in the same uncertainty that we have been in the past fifty-four years, asking ourselves how do we
amend our constitution? So we want one. The question is which one? We know that there are two formulae presently on the table, the so-called Victoria one and the so-called Vancouver one. I will say outright, on behalf of the federal government, that we are not wedded to the Victoria formula. We are prepared to look at any other number of formulas and hopefully agree to one over the next two years of discussion. There is no desire on our part, and I state it unequivocally, to impose an amending formula on Canadians.
We think we should discuss a formula for two years. If, at the end of two years, we are still in a deadlock, as we have been for 54 years on this question, we propose that we ask the Canadian people in a referendum to decide what amending formula they want.

I repeat, we are not wedded to the Victoria formula and the reason we have it now in our resolution before the House of Commons is very simple; it is the only formula which in the last decade brought all 11 governments to agreement on. It is the only formula which has permitted every province and the federal government to say yes, this is what we want. You recall, if after '71 that formula did not come into effect, it was not because the provinces then assembled rejected the formula; it was because disagreement prevailed on other issues. That is why it is in. I know there has been a question, or rather an objection to that formula saying it does not treat all provinces equally; it gives a veto to Quebec and Ontario, it does not give a veto to the other provinces. If that is an insuperable objection we are prepared to find ways of getting around it.

I would just like to point out that the argument is not often made that if it treats provinces unequally, and gives more weight to the central provinces, it treats people unequally and gives much more weight to the people of the Maritimes and to the people of the Western provinces. Just look at the way the formula operates. It would take a government representing eight and one-half million people in Ontario to block an amendment. It would only take governments representing one million four hundred thousand people in the Maritimes to block an amendment. So, it takes six Ontarians to do what one Maritimer can do, what one Atlantic Canadian can do in blocking the constitution. I am not talking of their prowess in other areas, I am just talking --

HON. WILLIAM G. DAVIS: There are some who would say, Mr. Prime Minister, that this is an appropriate relationship.
THE CHAIRMAN: I am just saying, in so far as the Victoria formula gives anybody a right of veto, it gives it to one Maritimer for every six Ontarians. So, the people are unequally treated but, in the other sense, in the other direction than is usually pointed out.

It is the same for the west. It would take the provinces representing four million Westerners to block an amendment to the Canadian constitution, and it takes the government representing eight million and a half in Ontario to block it. So, when we talk of inequality, it depends upon what we think is more important, the people or the provincial governments. That is why, once again—and I believe, not only I believe, but I know in 1971 we all agreed to the Victoria formula which is before Parliament now.

The Vancouver formula proposed by eight provinces; our objection to it is that it solves the problem of consensus by saying that there cannot be one. It really denies the existence of a national will. It says in reality that if 95 per cent of the Canadians from nine provinces and the federal government agree to something, one province can still say that that is still not the national will, one province can pick up its marbles and opt out, and that is on a basic objection to the Vancouver formula. It permits, if I can use the word without offence, it permits incremental separatism. All of Canada can go in one direction and one province can say, "Well, that is not my Canada and I will opt out of it."

So, that is our position on amending formulae but I repeat we are not wedded to any particular one. I have indicated many times publicly that even the Victoria formula was not my favourite formula. So, we are prepared to negotiate over the next hours and days,
but also we are prepared to negotiate over the next two years to see if we can finally reach a formula. I state unequivocally that if at the end of two years we cannot agree, then whatever a majority of the provinces want to put to the people will be put to the people. I know there may be some technicalities in the resolution before the House that offends or distresses some of the Premiers, and if that is the case we can change them. We want the people to have a choice between two formulae, one put forward by a majority of the provinces and one put forward by the federal government, assuming we cannot agree after two years' discussion.
Et finalement, j'en arrive à la charte des droits à la déclaration des droits fondamentaux, eh bien là aussi, je commence par noter que toutes les provinces ont une charte des droits, que toutes les provinces ont une déclaration des droits fondamentaux, un bill des droits qui s'applique dans la juridiction de leur province. Le gouvernement fédéral a également une telle déclaration qui s'applique dans la juridiction fédérale. Il s'agit de savoir si nous pouvons en arriver à un certain nombre de valeurs communes, qui permettrait à tous les canadiens de dire: eh bien, nous avons ici les mêmes droits fondamentaux que dans le reste du pays.

Il s'agit de savoir, en somme, s'il y a un certain nombre de valeurs qui font que nous sommes canadiens et de les définir.

Je sais qu'on a utilisé parfois l'expression au niveau des gouvernements provinciaux que "on nous arrache des droits." Et bien il s'agit de savoir qui est ce "on" et à qui les arrache-t-on? C'est vrai qu'on arrache des droits. La constitution arrache des droits tant au gouvernement fédéral qu'à des gouvernements provinciaux. Mais pour les donner à qui? Pour les donner à la population pour dire: vous êtes canadiens, vous avez le droit dans ce pays de vivre et de travailler où vous voudrez; vous avez le droit d'envoyer vos enfants à l'école française ou à l'école anglaise partout dans ce pays. Alors, il s'agit d'arracher aux gouvernements fédéral et provinciaux le droit de brimer en quelque sorte la liberté des citoyens, et c'est pourquoi nous croyons qu'il doit y avoir une charte commune pour tous les canadiens comme il y a une charte commune pour chacune des provinces.
I know that one of the objections on the charter is that it is not made in Canada; let us make it in Canada. Well, I point out to that that this charter that is now before the House is really built on all the experience of the charters or Human Rights Commissions that you have in your provinces. It is built on the Canadian Bill of Rights, it is built on the experience of the Bill of Rights in the 1971 Victoria formula and, particularly, it is built on the work which took place during the summer of 1980; more than a hundred federal and provincial officials spent twenty days of meeting on these constitutional matters. I am told that there were several days, three days of meetings just of ministers, two sub-committees of officials on the charter alone and some dozen amendments were made at the demand of the provinces to the charter which we have now. So it truly has been made in Canada, particularly if you add to that the fact that the Special Joint Committee of the House of Commons and Senate of Canada held some hundred and six meetings, over fifty-six days for a total of two hundred and sixty-seven sitting hours, and heard from a hundred and four individuals and groups, to say nothing of the very numerous written briefs. So if this isn't made in Canada enough, I have told Premier Bennett on his behalf as chairman of the conference when we met a few weeks ago, that we would be willing to negotiate on the substance of the charter and on the timing of its implementation. We want Canadians to really believe that it is made in Canada. We think it has been, but if Premiers want to spend some more time making it, I have told Premier Bennett on behalf of all of you that we would be prepared to be flexible on timing and on substance, but we cannot be flexible on the
principle of a charter itself, no more than you have been in your various provinces.

Well, that is about all I have time to say if I want to stay within my fifteen minutes and I am happy now to hand the floor to Premier Davis of Ontario.

HON. WILLIAM DAVIS: Mr. Prime Minister, Premier Buchanan said, referring back to the six to one ratio, that three to one would be a more representative point of view in terms of the Maritimes' individual talents. I will accept that.

Mr. Prime Minister, I don't have any prepared text or opening statement and I don't want to relive the history of these meetings. We are all familiar with them, except to suggest that I have come here with a desire to find legitimate areas of compromise or consensus.

I don't quarrel, Mr. Prime Minister, with the historical record of what you have stated. As I listened to the discussions a year ago, I really don't think the debate was about rights in terms of the need to protect them or the need to have them as part of our way of life in this country. The debate really has been about how it is achieved and the process to get there.
I have to confess to you, Mr. Prime Minister, that I have not been totally comfortable in the past year. I look around this table, and while I disagree philosophically with some of my fellow Premiers--there is one Premier where the two of us have made it quite public we share a rather different perspective as to the future of Canada--but at the same time, Mr. Prime Minister, in a personal sense I have not been comfortable with what I sense have
been sort of one group and another group and the sort of divisive nature of this kind of discussion; and I want to make it clear that I have, in my understanding of the matters before us, never questioned the motivation or the sincerity of the points of view that have been held by others, but at the same time, Mr. Prime Minister, I have been involved in this process now for ten years plus. I listened to some of my provincial colleagues who suggest that further lengths of time, et cetera, might be beneficial. Mr. Prime Minister, I really wonder whether we will have any greater wisdom as First Ministers six months from now or a year from now than we presently bring to this discussion. I would never presume to speak for people outside our own Province, but I think Ontarians are not tired of the debate; -- That is an unfair way of describing it--but I think a lot of Ontarians would like to see us come to a conclusion. I think they feel that this has been discussed by First Ministers now for a substantial length of time and it is occupying a good part of our public agenda and that there is a genuine feeling for patriation. There is some measure of confusion, Mr. Prime Minister, that has developed in the last year and I say this very advisedly. I ran into people in our own province who became confused on the constitutional discussion because it related to the energy discussion and I do congratulate the Prime Minister of Alberta and yourself for bringing that rather non-controversial sensitive area to a conclusion. I might have suggested somewhat different figures, but from Ontario's perspective again it removed one of the areas of difficulty and confusion and I think that the country is better for the accomplishment of that agreement.
Mr. Prime Minister, I have also been faced as an individual as to just where one might analyze the various issues. You have said, sir, that there is now apparent agreement on patriation. I think that is evident. I think it is encouraging, something that the Premier of Ontario suggested a while ago, and that is a significant step forward.

With respect to the charter, Mr. Prime Minister, we have debated this in our own province for years as to the position of entrenchment or non-entrenchment, and I don't quarrel once again with the sincerity of the point of view of those who would like to go some other route. I support the principle of the charter. I believe there are a lot of Ontarians who have not been brought up in perhaps the traditions of this country, people who have come to our Province from a lot of countries of the world where charters not only didn't exist, but, if anything, the opposite was the case. I happen to believe in the principle of it but, Mr. Prime Minister, as I hope was evident a year ago, as I said repeatedly in the past two or three weeks, Ontario is not married to the precise wording of the existing charter. I don't say every 't' that has been crossed or 'i' dotted, is necessarily part of what must be there. We have some room to refine that charter. We are quite prepared to go along with any constructive suggestions as to how this might be done.

Mr. Prime Minister, I bring myself to what I think has been a concern to some of the other Premiers, and once again I think we are dealing to a certain extent with perceptions, not that I am minimizing the reality. I too have supported the Victoria formula primarily because it was a formula upon which we had agreed ten years ago. We agreed, as I recall it, with unanimity, and to me it was a logical base from which to begin our discussions.
Since that time, as you say, sir, there are really two formulae on the table. I would like to think before these discussions are over there may be variations or alterations or perhaps two or three that might have some sufficient logic to them or validity to them, that they would be worthy of consideration.

I want to make it clear, Mr. Prime Minister, that while I can follow the logic of the Victoria formula -- it makes, I think, sense--but if it is a problem in the minds of some of my fellow Premiers, or the people they represent, I want to make it clear, sir, that I am not married to the Victoria formula either. I am concerned about a formula that could lead to some degree of fragmentation. I think we have to be careful as we analyze it that we don't really provide a very different sort of base for this country five, ten years down the road. But I think Ontarians, really, if I can use the word fair, Mr. Prime Minister, I think what they are looking for is fairness, if that is a good word to describe their point of view; and I think they do not want to feel that people in Western Canada or in the Atlantic provinces and Newfoundland are necessarily being sort of prejudiced, because there are eight and a half million people in the Province of Ontario. That is not their desire.

I really believe that Ontarians would accept some approach that really related to The fact that we have regions, there are differences and that Ontario is not wedded to. --- In fact, sir, I was cautioned by people who like to present their points of view to me, that I shouldn't
offer anything in a public way here this morning because sometimes that sort of becomes the bottom line from where you then make other progress. But, Mr. Prime Minister, I will say it for the province of Ontario: we are quite prepared in any agreement that could be reached to have a formula that does not in fact give the Province of Ontario the right of veto. We would be prepared to accept some number of provinces, some percentage of population, would even be prepared to include in that sort of approach recognition of the Western Region. I am not saying an individual province, but the Western Region and the Atlantic provinces because I think the reality is, Mr. Prime Minister, I think Canadians really want to be fair-minded. I really think that if the perception isn't there that there is a formula that gives a particular power to the province of Ontario, it could be more acceptable in other parts of the country, and certainly from my standpoint, sir, I put it before you and my provincial colleagues that we will join in a different amending formula that does not give to the province of Ontario the right of veto. It has to make sense, there has to be some logic to it and we are prepared to accede in that some recognition of the regional differences or the geography of this country in the process.

Mr. Prime Minister, I have taken up most of the ten minutes. I don't want to become emotional on this occasion, because it is not my nature, but I can't help but think as we sit here, as we were here a year ago, as some of us have been here for a number of years, that really there is an opportunity, I sincerely believe it,
for the people around this table, perhaps not to achieve unanimity, but a measure of compromise or consensus that would make the people of our province at least feel that there is this concern about Canada, there is this desire to patriate, there is this desire to see the rights in a general sense and that we as political leaders have, shall I say, the political will to bring this process to some conclusion.
You know, Mr. Prime Minister, I am not the greatest scholar of history of this country but I know a bit of it. I notice we are wearing all large poppies this morning in recognition of a week next Wednesday. If you think of the sacrifices some people have made for the preservation of this nation, you think of the compromises some of our predecessors made, and I don't think it was any tougher for them 114 years ago than it is today, but I would like to think, speaking for our own province only sir, we are prepared to see if there isn't some greater measure of agreement. We are prepared to not have a veto in any amending formula, and I speak very personally, sir, we are anxious to see, if possible, a greater measure of consensus because we think... would be the route the people of this country would like us to go.

THE CHAIRMAN: Thank you Premier Davis.
Je donne maintenant la parole au premier ministre Lévesque.

HON. RENE LEVESQUE: Alors, monsieur le président, mes chers collègues. Si nous sommes ici aujourd'hui devant ce possible million de canadiens que vous avez évoqué, c'est pour chercher un accord -- comme vous l'avez dit bien sûr -- mais aussi je pense principalement, c'est parce que les provinces ont réussi à faire établir par la Cour suprême du Canada que le projet constitutionnel que vous véhiculez affectait, de façon substantielle, leurs pouvoirs et leurs droits et que ce projet était inconstitutionnel, contraire à la convention bien établie à l'effet qu'on ne peut pas affecter ainsi les pouvoirs des provinces sans leur consentement.

Ce jugement est venu enlever aux yeux de ceux qui ont des yeux pour voir, toute légitimité au projet fédéral et a augmenté l'opposition qu'il suscite, non seulement ici même au Canada mais également à Londres, comme tout le monde est à même de le constater par les temps qui courent. En bref, c'est simple et c'est normal, personne ne veut d'une constitution ni d'une charte qui seraient nées dans la division et l'inconstitutionnalité,

et par l'opération d'un pouvoir étranger. Au Québec en tout cas, l'opposition de nos concitoyens est telle que les deux partis qui sont présentés à notre assemblée nationale ont réussi à faire l'unanimité autour d'une résolution et cette résolution réclame d'Ottawa qu'il renonce à cette démarche, cette démarche qui est unilatérale, même si rien dans les textes de Loi ne l'empêche. C'est une résolution qui s'oppose aussi à tous gestes qui pourraient porter atteinte et aux droits et aux pou-
voirs de l'assemblée nationale sans son consentement. Et enfin c'est une résolution qui demande la reprise des négociations, c'est ce que nous espérons, en ce moment mais les négociations dans le respect des principes et des conventions qui doivent régir les modifications du régime.

J'ai donc mandat du Parlement québécois de demander au premier ministre fédéral s'il entend se rendre à cette demande officielle du Parlement du Québec, adoptée à l'unanimité des partis, s'il est prêt à renoncer à agir de façon unilatérale et à poursuivre les négociations dans le respect des conventions constitutionnelles clairement définies par la Cour suprême? A mon sens il ne saurait y avoir de négociations valables ni de chances raisonnables de succès sans un tel changement d'attitude de la part de nos vis-à-vis. Et je le dis avec d'autant plus d'assurance que de notre côté, nous, les huit provinces, nous avons fait un sacré bout de chemin depuis un an.

Le premier ministre fédéral parlait tout à l'heure de compromis, et bien depuis notre dernière rencontre en septembre '80 il y a plus d'un an, les provinces ont pas uniquement passé leur temps à combattre le plan d'Ottawa, elles ont également travaillé à mettre au point une formule qui est parfaitement susceptible de briser l'impasse actuelle; le 16 avril dernier, huit premiers ministres réunis ici même dans cette salle ont apposé publiquement leur signature sur le texte d'un accord constitutionnel qui permet de rapatrier immédia-
tement la constitution canadienne et qui prévoit aussi la façon dont on pourrait la modifier à l'avenir et par-dessus le marché cet accord engage aussi les signataires à poursuivre intensément les discussions constitutionnelles, si on veut les faire de bonne foi, durant les trois prochaines années. Cet accord comporte une formule d'amendement qui est différente de celle prévue au projet fédéral. Nous croyons, quant à nous, que cette nouvelle formule est meilleure que l'ancienne, parce qu'elle est plus dynamique, plus flexible et qu'elle permettrait au régime fédéral de mieux s'adapter aux circonstances futures.

Nous espérons toujours qu'Ottawa de même que l'Ontario et le Nouveau-Brunswick pourront accepter le coeur ou le fond de cet accord ou accepter du moins d'en discuter et de bonne foi.

Donc, ça répond aux deux premières questions que posait monsieur Trudeau tout à l'heure, il n'y a pas de problème pour le rapatriement et il y a un accord qui est sur la table où se trouve à la portée de la main une formule d'amendement convenable pour des gens de bonne foi. Alors, qu'est-ce qui bloque? C'est le projet non pas du rapatriement, mais du chambardement unilatéral qui est contenu dans ce qu'on appelle la charte des droits.

Bien sûr c'est pas que le Québec et son gouvernement, pas plus qu'aucun gouvernement autour de la table -- ça a été mentionné tout à l'heure -- soit opposé à ce que les droits et les libertés des personnes soient reconnus et protégés, en fait, nous sommes présentement
engagés à l'assemblée nationale du Québec dans une revision en profondeur de notre propre charte des droits et libertés de la personne. Nous venons tout juste de tenir plusieurs séances de la Commission parlementaire de la Justice pour entendre une cinquantaine de mémoires sur le sujet et une loi va être présentée au cours de la session qui va s'ouvrir jeudi, afin de compléter notre charte, autant qu'on peut le faire en ce moment, et afin de l'ajuster aux réalités changeantes de la société.

Donc, pas question d'aucune façon de prétendre qu'on ne doit pas protéger les droits et libertés des citoyens, seulement nous avons sur le fond des hésitations à l'égard d'une charte qui serait figée, enchassée dans une constitution, plus on réfléchit à cette possibilité plus on l'a fait étudier par des experts aussi, plus nous sommes devenus convaincus qu'une charte constitutionnelle pourrait être nuisible en fait non seulement à la bonne administration des affaires publiques, mais finalement aux droits des citoyens eux-mêmes; le caractère constitutionnel d'une telle charte aurait pour effet de transférer aux tribunaux, définitivement, à des personnes nommées et non pas élues, et qui proviennent d'un segment plutôt limité de la société en général, de transférer à ces gens l'arbitrage final de plusieurs questions qui derrière les droits sont, en fait, des questions politiques.

Le premier ministre fédéral peut avoir une opinion différente quant au mérite d'une charte qui serait
figée comme ça et devrait accepter le fait en tout cas qu'un grand nombre de défendeurs des droits et des libertés ne pensent pas comme lui et préfèrent des chartes qui suivent le modèle actuel, des chartes qu'il est beaucoup plus facile de faire évoluer dans le temps et d'adapter aux changements des moeurs et des mentalités. Mais, quoi qu'il en soit, le Gros pensez-y bien c'est qu'une charte constitutionnelle qui serait imposée aux gens de manière inconstitutionnelle perdrait du coup toute légitimité et en fait toute valeur exemplaire. Ce serait non seulement une contradiction dans les termes, mais une absurdité aussi bien juridique que politique.

Et ça nous amène au fond du problème, j'ai entendu à plusieurs reprises le premier ministre fédéral dire que s'il devait absolument agir ainsi et même de façon unilatérale pour rapatrier la constitution, c'est que ça fait cinquante-quatre ans, paraît-il, qu'on en discute et qu'on ne parvient pas à s'entendre et pourquoi, dit-il, n'est-on pas parvenu à sortir de ce cul-de-sac, c'est qu'à chaque fois ça n'a pas été répété ce matin mais enfin, il ne faut pas perdre la mémoire, c'est ce qui a été dit sans arrêt à chaque fois qu'on veut rapatrier la constitution, les provinces exigent qu'on leur confère en même temps plus de pouvoirs. C'est ce chantage comme il a dit, qui aurait empêché le rapatriement.

Je ne discuterai pas ce matin, j'aurai pas le temps, de cette fameuse période de cinquante-quatre ans, ni de l'attitude présumée des provinces, même si je devrais normalement le faire pour établir simplement la vérité. Mais je dirai à monsieur
Trudeau ceci -- sauf tout son respect -- depuis la signature de l'accord du 16 avril de cette année, il ne peut plus prétendre, personne ne peut plus prétendre que les provinces empêchent le rapatriement en demandant en échange plus de pouvoirs pour elles-mêmes. Il n'y a rien dans cet accord des huit provinces qui accroisse les pouvoirs des provinces d'aucune façon. Le rapatriement, il peut donc se faire sans toucher à la répartition des pouvoirs, et si on veut, avec l'accord de tous les gouvernements.

Alors, pourquoi cette entente n'est-elle pas déjà réalisée, c'est que le gouvernement d'Ottawa ne se contente plus de refuser d'augmenter les pouvoirs provinciaux, il veut maintenant profiter du rapatriement pour les diminuer ces pouvoirs derrière la charte, la façade de la charte des droits, si Ottawa laissait tomber cette intention, l'entente serait facile à faire et serait faite tout de suite.

Mais je pose la question suivante: comment peut-on reprocher aux provinces d'avoir bloqué le rapatriement en le liant à une augmentation de leurs pouvoirs et en même temps comment peut-on, vis-à-vis de nous, empêcher toute entente sur le rapatriement en le liant à une diminution des pouvoirs provinciaux. Si ce n'était pas correct pour les provinces d'exiger plus de pouvoirs à l'occasion du rapatriement, comment peut-il être correct ou légitime pour le gouvernement fédéral d'exiger que ce même rapatriement soit l'occasion d'une diminution de ces pouvoirs. Autrement dit, si on doit séparer le rapatriement de la répartition des pouvoirs, bien il faut le faire
dans les deux sens. Si on veut que les provinces renoncent à se servir du rapatriement pour augmenter leur marge de manoeuvres, il faut au moins que le gouvernement fédéral renonce de son côté à se servir de ce rapatriement pour diminuer cette marge de manoeuvre. Et à propos de compromis, nous avons, nous les huit provinces, fait la grosse moitié du chemin, à notre avis, en acceptant de dissocier ainsi le rapatriement de l'accroissement des pouvoirs du Québec et dans le cas du Québec, en particulier, ça avait pourtant été promis cet accroissement des pouvoirs lors du référendum; en tout cas, c'est ce que tout le monde au Québec avait compris et peut-être partout ailleurs au Canada, ceux qui suivaient les choses. C'est ce que tout le monde avait compris à commencer par ceux qui se trouvaient, au moment de notre référendum québécois, sur les mêmes tribunes que nos collègues du fédéral, le premier ministre et le ministre de la Justice qui sont là près de nous.

Bien, il nous semble que c'est maintenant au tour d'Ottawa de faire l'autre moitié du chemin en acceptant de dissocier le rapatriement de l'imposition d'une charte qui diminuerait nos pouvoirs québécois comme l'a clairement affirmé la Cour suprême. Le compromis qu'on cherche autrement dit, il est déjà sur la table, et si on est de bonne foi, on peut tous s'y rallier; mais si jamais le gouvernement fédéral n'acceptait pas de faire son bout de chemin, en renonçant à imposer un projet de charte par la force, alors ses intentions deviendraient terriblement limpides; ce n'est pas le rapatriement de la constitution qui est le véritable
objectif dans ce cas-là, mais plutôt l'affaiblissement des provinces et cela jamais, jamais le Québec ne pourra l'accepter. Notre Assemblée nationale -- je le répète -- vient d'affirmer solennellement, à l'unanimité des partis qu'elle s'y opposerait et on peut être assuré que nous prendrions tous les moyens légitimes et il y en a encore à notre disposition pour empêcher que ça se produise, parce qu'il ne faut pas oublier par-dessus le marché que le gouvernement fédéral actuel n'a reçu de l'électorat aucun mandat pour procéder ainsi de façon unilatérale au rapatriement et à la modification constitutionnelle. Sauf erreur, ce sujet n'a pas été débattu un seul instant lors de la dernière élection fédérale et je me permets de rappeler à monsieur Trudeau que lors de l'élection générale où il a déjà fait mention de la possibilité d'une pareille action, celle, l'élection de 1979, son gouvernement a connu la défaite. Et justement, dans sa dernière conférence de presse, le premier ministre fédéral a déclaré et je cite à partir du Devoir de samedi dernier: "Je dis que je suis prêt à briser une convention politique et à en payer le prix politiquement. Comme politicien, je suis prêt à prendre ce risque." (Fin de la citation.)

Eh bien, ça, ça revient à dire qu'on s'en remet à posteriori, après coup, à l'électorat canadien pour décider de la justesse de ce projet.

Bien, s'il en est ainsi, il me semble qu'on n'a pas le droit de mettre ainsi le peuple canadien tout entier devant un fait accompli, en tout décence, avant d'aller à Londres, il faudrait aller devant le peuple. Autrement le gouvernement fédéral agirait non
seulement à l'encontre du principe même du régime où nous sommes comme le dit la Cour suprême, mais également à l'encontre du principe démocratique, et ça, c'est également et peut-être beaucoup plus grave, car la défaite éventuelle du gouvernement fédéral après une intervention de Londres ne pourrait pas rétablir les choses comme avant, la situation, autrement dit, comme elle est actuellement, on aurait dangereusement affaibli notre assemblée nationale, qui est un parlement souverain dans les domaines de sa compétence. Les droits que possède ce parlement, ce sont en fait les droits collectifs de tous les québécois, ils sont comme les droits de tous les peuples, inaliénables et ne peuvent pas être limités sans consentement.

Or, jamais les québécois n'accepteront, je crois, qu'un pouvoir extérieur vienne de force ou par quelqu'astuce que ce soit lui enlever ses droits ou les limiter de quelque manière, parce que ces droits, ce sont des droits dont il a un besoin absolu le Québec, pour assurer son développement économique et sa sécurité culturelle.

Et je ferai remarquer, avant de terminer, à monsieur Trudeau que dans ce dernier cas, contrairement à ce qu'il a dit -- je m'excuse de le souligner -- c'est pas à tous les gouvernements qu'on viendrait enlever des droits, mais au seul parlement provincial, qui est le seul à avoir juridiction en matière d'éducation et d'accès aux écoles.

J'ai encore l'espoir -- c'est pour ça qu'on est ici d'ailleurs -- que nous n'aboutirons pas à cette
absurdité ou à ces extrêmes, il est possible d'en arriver rapidement à une entente complète sur un rapatriement immédiat de la constitution canadienne. Si c'est vraiment là l'objectif, il est à la portée de la main. Tout ce qu'il y a à faire, c'est qu'Ottawa renonce à vouloir limiter nos pouvoirs au Québec comme ailleurs au Canada dans toutes les provinces, comme nous avons dû nous-mêmes renoncer — c'était pas de gaieté de coeur — à essayer de les augmenter à l'occasion de ce rapatriement, ce test de bonne foi, il est là; est-ce que c'est le rapatriement qui est le véritable objectif ou est-ce qu'il ne s'agit que d'un prétexte, d'une couverture pour encarcner les provinces davantage et diminuer leurs pouvoirs.

Si on veut le rapatriement, on l'a tellement dit, on nous l'a tellement répété à satiété, c'était ça le point de départ, c'était ça la vraie raison soi-disant, si on veut ce rapatriement, il est facile de s'entendre. Mais si on veut nous dépouiller de force, nous ne l'accepterons jamais.

Merci, monsieur le président.

LE PRESIDENT: Merci, monsieur Lévesque.
I now call on Premier Buchanan.

HON. JOHN M. BUCHANAN: Mr. Prime Minister

and my fellow colleague Premiers. We are here today to
deal in what I call a Canadian way with this most difficult
question of the constitution. I sincerely believe that we
all wish to resolve this issue or question in the Canadian
way. Our duty here is to come to a political and
constitutional accommodation that is not only mutually
satisfactory to each of us as the elected First Ministers
of Canada, but will be of direct and continuing utility to
the people of Canada.

Since September of last year, I have been
calling for a return to the conference table so that we
might resume continuing discussions of a constructive nature.
I am very pleased that this opportunity is now before us.

Nova Scotia of course is anxious to see this
matter resolved so that we can get on with some of the
pressing economic issues such as interest rates and inflation
with which our people are so justifiably concerned.

Last year, in 1978, around this table I said
that the constitution of Canada must be patriated quickly
and we must have an amending formula agreeable to a majority
of the provinces. That is a statement of principle, which
I believe is certainly agreed to by most if not all of the
First Ministers around this table.

Last April 16th, Nova Scotia along with seven
other provinces signed an Accord containing an amending
formula, which in our view, is the most acceptable formula
to this date.

We have an opportunity today, for the first
time, Mr. Prime Minister, to discuss that accord with you. It
is important to note that eight governments in this country
have agreed to patriation and an amending formula.
If, however, there is some other formula, some variation of that formula, or a new formula agreeable to the majority of the eleven governments represented here, then Nova Scotia will be disposed, in the spirit of goodwill and in the interest of moving forward, to discuss and negotiate such a formula.

What is important is to get the constitution home with an amending formula. When that has been achieved the other fundamental questions surrounding the constitution can be settled where they should be, in Canada.

Therefore let us bring the constitution with an amending formula to Canada, and let us then get on with the job of dealing with those other matters related to it, in Canada. I have several times urged, and do so now, that upon patriation with an amending formula, we immediately return to the conference table and move forward with those matters that are priorities to you, Mr. Prime Minister, and also priorities to the provinces.

The Supreme Court of Canada has said that it would be unconstitutional to forward an address to Her Majesty the Queen if it did not enjoy substantial provincial support.

Nova Scotia at present believes the Accord of last April meets those requirements since eight of the eleven governments subscribe to the accord. It is logical therefore, that the concept of that Accord and the process suggested by it be the basis to begin our present negotiations.

The point I want to make is that we now have an opportunity, here and now, to agree to bring the constitution to Canada with an amending formula.

We certainly should not allow that opportunity
to pass.

We have a long common history, in which we have clearly shown to the world and to ourselves our particular genius in the field of politics and constitutionalism. The relationship of the Crown to Parliament, the existence of the Cabinet system and the offices of First Minister are the product of our genius for improvisation and our practical commonsense acceptance of constructive conventions that are firmly part of the fabric of our constitution. Indeed, Mr. Prime Minister and my colleagues, you will recall that the learned justices of the Supreme Court, in their recent decision said, and I quote:

"... while they are not laws, some conventions may be more important than some laws ... to violate a convention is to do something which is unconstitutional ..." unquote

Therefore, Mr. Prime Minister, federalism as the Supreme Court has so recently reminded us, is the heart of our nation and solutions to our problems that are arrived at in a federal way are solutions arrived at in a Canadian way.

If each of us accepts the fact of the importance of federalism, and if we recognize and accept the differences in this country that federalism serves, then we can move together to build this nation with the strength and integrity that Canadian people deserve.

Nova Scotians have contributed richly, as we still do, to the fabric and the reality of a united Canada. We hold firmly to a knowledge and an understanding of our Nova Scotian and Canadian origins. Nova Scotians are
dedicated Canadians and they are willing to moderate their wishes in accordance with the views expressed by a majority of governments of Canada in deciding upon the future form and substance of our renewed and revised Canadian federal constitutional process.

The present government of Nova Scotia and predecessor governments, regardless of political affiliation, have time and again indicated, on behalf of the people of our province, a willingness to achieve through compromise the best form of constitutional arrangement agreed to by a majority of the governments in this country. This has been our position since confederation, it remains our position today and was most recently exemplified by a resolution approved by the House of Assembly of Nova Scotia in the spring of 1981.

"Be it resolved that the legislative assembly of Nova Scotia affirms the following:
(1) That the Canadian constitution be patriated to Canada with an amending formula on which a majority of the eleven governments of Canada have agreed; and
(2) That any further amendments to the Canadian constitution should be made by Canadians in Canada."

It is interesting to note that this resolution was approved by our legislature approximately four months before the Supreme Court of Canada decision, and maybe we were of great assistance to their lordships in their decision.

We in Nova Scotia, Mr. Prime Minister, have not been wanting in efforts to achieve an amending formula that will be satisfactory and fair to all Canadians. And
I would remind you that this same spirit of willingness and goodwill has been expressed by Nova Scotia in the current round of discussions among the provinces and between the government of Canada and the provinces. We believe that at the heart of the present situation is the necessity for a clear and unequivocal understanding that any constitutional arrangements made by way of change must possess the unqualified and whole-hearted support of a majority of governments in this country. There must be that kind of agreement, as stated by the Supreme Court, or there will be a legacy of rancour and bitterness that may mar the history of this great land and prejudice the future expectations of all Canadians.

Mr. Prime Minister and my colleagues, at this season of remembrance, it is appropriate to recall that Nova Scotians in two world wars, in the Korean conflict and in United Nations peacekeeping missions in many lands have fought and died as Canadians. This commitment and sacrifice they shared with all other Canadians in the trauma that has given so much to our national identity. We are proud of our country's past, concerned about its present and hopeful for its future.

We have struggled to preserve the virtues of civilization, which surely are the virtues of Canada: compassion, concern, toleration, honesty, equity and respect for justice.

Are we to stand accused by future generations of Canadians of being less concerned for the spirit of our law than we are for its letter? Should we not be moving positively towards a solution, a solution that should be arrived at in the same spirit as was the Canadian Confederation itself, by agreement amongst Canadians, a Canadian solution achieved in a Canadian way?
The country looks to us to resolve this matter so that we can go to the United Kingdom Parliament with a package that is supported by a majority of the governments of this country. There is a great opportunity for us to conclude this matter and we as Nova Scotians and Canadians are prepared to seize on that opportunity in the spirit of co-operation and goodwill. Thank you.

THE CHAIRMAN: Thank you. I now call on Richard Hatfield.

HON. RICHARD HATFIELD: Merci M. le Président. First of all, I want to make it clear that the unconditional support which I gave as Premier of New Brunswick to the resolution now before Parliament back in October, 1980, still stands. It still stands because there are elements in that resolution which are of urgent importance to Canadians living in New Brunswick. First there is the element of equalization. I want to emphasize that what this Canadian concept of equalization does is legitimize and strengthen and give substance to the provinces having power, especially those provinces which do not have large populations which they can raise large amounts of tax revenue from.

Furthermore, it is a commitment of Canada to equality of life, regardless of where Canadians live in Canada. It gives the government of the province dignity because it allows the province to decide how the monies that come from the resources of this country, how those monies are to be spent.

So, I think this is an extremely important matter and one which cannot be delayed.

Mr. Prime Minister, I have listened to the comments made by the Premier of Ontario, and I tell you that I support exactly what he said as far as a proposed amendment formula. I think that in the context of how he put it, it
is significant that he has made the pronouncement here that Ontario is prepared to give up its veto. Like Premier Davis, having been involved in the design of the formula at our Constitutional Conference in Victoria in 1971, having supported it then and having the knowledge that in fact nine -- I am sorry, ten governments did in fact endorse that formula before we left Victoria, and after we left Victoria.

I put this in the context of the proposition or the request that has been made by the Premier of Quebec in that once again the legislature of Quebec is asking all of Canada to put aside its priority, its design of the constitution as the government of Quebec asked us to do in 1971 and, which we respected then. We respected it and we said, or I said, we will continue to try and find something that is acceptable.
Mr. Prime Minister, we worked a long time
and here we are again being asked now by the National
Assembly of Québec to start again. I said there are
other matters in this resolution which I think are urgent,
and one of the most important is the Charter of Rights.

It has been said that we must design the
Charter of Rights in Canada. I find that comment almost
historically offensive. When I consider the time and effort
that I personally, as Premier, and, as minister, put into
discussing and debating and worrying and fretting and
reacting and responding to the many, many proposals that
came to us from our ministers, from our officials, from
people from outside, when I consider, when I remember,
as I remember so well, and I remember being so impressed
by the hundreds of people who appeared on television
asking the Special Committee of Parliament and the Senate
to make changes in the Charter of Rights and when I
consider the number of compromises that were made by the
promoter of the original resolution, the Government of
Canada, when I consider the number of changes that were
made, one was equalization, one was the entrenchment of
the language rights of the people of New Brunswick, and
when I consider all of that, I have to say all of it was
done to the best of my knowledge by Canadians -- I did
not check anyone's passport, I did not ask for proof
of citizenship -- I believed that they were Canadians
and they were making their Charter of Rights because it
is their Charter of Rights.

I want to say too, Mr. Prime Minister, that
as I consider the evolution of this country, Canada, that
it seems to me that our citizenship as Canadians came from the Parliament of Westminster, and I want Canadians in the future to know that the rights which are theirs, rights that can be given to them, the rights that are theirs, I want them to know that those rights came from the same source that their independence came from, the same source that their citizenship came from. I want them to come from the Parliament of Westminster. That is not important as a legal fact; that is not important as a political fact. I think it is important as a symbolic reality. And when I hear the view expressed that the provinces' rights are being interfered with by the Charter of Rights, again it gives me the impression that somehow or other the legislatures or heads of government believe that they have something which they can give.

I don't believe they do have it. I agree and recognise that every legislature has taken steps within the legislature to protect the rights of citizens living -- Canadians living in their province, but what is my duty as Premier of New Brunswick? Is it just to protect the rights of Canadians living in New Brunswick as long as they live in New Brunswick and have no sense of obligation or responsibility to them should they decide to move to some other part of Canada? We have a long history in New Brunswick of people growing up there, being educated there, getting used to certain things there and moving to other parts of Canada, even other parts of the world. We have a long history of remembering what happens when we left. We have people
who left and went to the Boston states. What happened to them? They lost the ability to speak their language. That is what happened to them. I don't want to see that happen in Canada. I don't want to see that and I cannot -- I do not have the right to say to Canadians living in New Brunswick, "You have rights in New Brunswick. I will protect those rights. Don't you worry, but if you leave New Brunswick, you are on your own." Yes, every provincial government has extended rights to people, but the only way we are going to protect the rights of Canadians is by having it written into a Canadian constitution. I clearly understand, I clearly understand and fully appreciate the significance of the Premier of Québec saying he will protect the rights of Québécois. My question to him is: who will protect the rights of Canadiens au Québec. The constitution of Canada has to -- the constitution of Canada is the only document that I know that will do that.

I have, as I said, a proposal to make with regard to the Charter of Rights. I will refer to it now. New Brunswick proposes that the resolution be altered in the following respects: only certain provisions of the charter would come into force immediately. These include: Guarantee of Rights and Freedoms, Fundamental Freedoms, Democratic Rights, Mobility Rights, Official Languages of Canada and New Brunswick, Minority Language Educational Rights and General Rights that are included in Sections 25, 26, 29, 30 and 31 of the proposed resolution. The remaining provisions of the Charter of Rights would be enacted, but would not come into force
for three years. These include: rights which a fair number of Premiers and ministers and people in Canada have suggested more time is needed to consider them and to improve on them. These include: Legal Rights, Equality Rights, Enforcement and General matters that are included in Sections 27 and 28 of the proposed resolution.

This concept of deferred application for three years presently exists in the Charter, but applies only to Section 15.

During this three-year period these deferred provisions would be placed on the agenda of the proposed Constitutional Conferences as to be provided for in the resolution. At the end of the three-year period, six provinces acting together could prevent the coming into force in Canada as a whole, any provision by depositing resolutions of their legislative assemblies with the Clerk of the Privy Council, opposing the coming into force of the provision. Such a resolution could be adopted at any time after two years had elapsed from the coming into force of the other provisions of the Act. The two-year restriction is designed to ensure at least two years of open discussion prior to a commitment being made by a legislative assembly, during which a consensus on the scope of the Charter might be reached and an amendment secured, if necessary.

As I said, I support the amending formula outlined by the Premier of Ontario and am prepared to work with my colleagues and you, Mr. Prime Minister, to build on this to reach a consensus so that we can have finally in our own country our constitution with something in that constitution for the people, something important for the people of Canada that is a protection of their rights.
THE CHAIRMAN: Thank you, Premier Hatfield.
I now call upon Premier Lyon of Manitoba.

HON. STERLING LYON: Thank you, Prime Minister. I welcome this meeting of the heads of Canada's eleven governments. I hope and believe that at this meeting we can agree on actions to improve the constitutional arrangements under which we live as a federal nation.

The majority of us around this table have not had the opportunity to meet you, sir, to discuss this important matter since September of 1980 but, as you know, eight of the provinces have met regularly. We have worked and negotiated to achieve a consensus, a foundation upon which the ongoing process of constitutional reform and amendment can go forward and I believe we have achieved such a consensus.

Just as we have not met with you, sir, to discuss our constitution in this last year and more, our governments have not met to discuss the other urgent and important matters that must concern us all. I think particularly of the state of our Canadian economy and the cooperative actions governments at the federal and provincial level should be taking to address our economic problems and our opportunities, And this has been true, Prime Minister, despite the fact that the provinces, all ten of the provinces of Canada, have been asking for such a meeting for more than a year.

The constitution, sir, is an important matter, but I believe the majority of Canadians would
agree that our economy is at least equally important, particularly from the standpoint of those across our land who are suffering from inflation and high interest rates. But it is one of the ironies of this process that we have all become involved in, this process of constitution-making by confrontation, that it has not only failed to produce a constitutional agreement but has weakened and undermined our efforts to work together in other areas which are as important to Canadians. Even you, Prime Minister, must now acknowledge that rather than making us stronger and more unified this process which you have initiated has left us less unified and less able to work together to meet our responsibilities as governments in Canada.
We cannot afford that weakening, Prime Minister, so it is essential we put this atmosphere of confrontation behind us so that we can deal effectively not only with the constitution, but with all of the other matters that legitimately concern Canadians and that must concern us as heads of government within our federal system.

We cannot any longer permit the habit of co-operation and civility that has existed throughout our history as a nation to be reduced and eroded further through continuing constitutional disagreements.

How do we end it? How do we make our constitution and our constitutional deliberations a source of unity for Canadians? How do we begin to work effectively together once more? How do we end the bickering that is weakening and dividing us, and that now surely is beginning to tire Canadians?

Well, to begin with, I believe we must enter these particular negotiations determined, not for one side or the other to win, but to agree. I believe that it will require that we be realistic enough to recognize what things can be agreed upon now and which things will require more work and more negotiations before we can achieve a consensus. In those areas where agreement is not now possible, we must be prepared to work towards some future agreement within the laws and the conventions that govern our constitutional life.

I believe that is what the eight provinces have done throughout the negotiations that led to the signing of our Constitutional Accord in April of this year. With those successful negotiations we can now say, as we could not have
said one year ago, that all 11 governments of Canada favour
the patriation of our constitution. We can say that eight
of those eleven governments have reached an agreement on a means
of amending our constitution in the future. Those are very
significant agreements indeed, Mr. Prime Minister. Once our
eleven governments agree on patriation, on bringing our
constitution home to Canada with an appropriate amending
formula, we will have completed the work of building a fully
independent nation. We will be, in fact, and in law, totally
independent and we will have the means entirely at our disposal
to make of our constitution what we will, what we Canadians
will, not some other legislature abroad.

There will be no more need for your government
or for ours to go to London. We will instead have to rely
upon and trust Canadians themselves to decide the future shape
of our constitution. As you know, Mr. Prime Minister, in the
past some provinces have been reluctant to make changes to the
constitution without first clarifying jurisdictional questions
relating to resources or fisheries or communications or family
law or whatever, but in the negotiations that led to the signing
of our Accord, we agreed that these things could and should be
deferred and decided in the future, here in Canada and by
Canadians, and we are prepared to have these matters and all
others decided by the laws, the conventions and the traditions
of this country rather than by having them resolved in another
country, however much we value and respect the Crown and our
connection with Great Britain.

So, it would seem appropriate for us to begin
these negotiations with the things upon which we can agree,
patriation about which we do now agree unless your position has
changed; an amending formula and eight provinces including
the province of Quebec have agreed on a formula within which there are no first and second class provinces and no first or second class regions of Canada, and that should be the basis of our negotiations. If we can agree on patriation and an amending formula, we shall have achieved something that has eluded the eleven governments of Canada in the past. We shall have demonstrated an ability to compromise, to negotiate reasonably and in good faith and to reach a greater consensus than has been reached or achieved in the past. In short, sir, we shall have achieved a very great deal indeed, and not the least of the things we shall have achieved will be the preservation of our federal system. We are not here, Prime Minister, to argue again the decision of the Supreme Court of Canada with respect to your constitutional resolution, the remarks of your Minister of Justice notwithstanding, the import of that decision is not arguable. Any attempt to change our constitution in a way that affects the legislative authority of the provinces without the consent of the provincial governments is clearly unconstitutional. It is unconstitutional for the federal government acting unilaterally to diminish the right of Canadians to use their provincial governments to achieve their objectives within areas of provincial jurisdiction and the provincial governments under our system are the guardians of that right, and have been since 1867.

As you know sir, the Supreme Court of Canada found that your constitutional proposals would, and I quote: "... abridge provincial legislative authority on a scale exceeding the effect of any previous constitutional amendment for which provincial consent was sought and obtained."
The court found in its majority decision that:

"... there is a requirement for provincial agreement to amendments which change provincial legislative powers ..."

and referred to the White Paper published by the late Right Honourable Lester Pearson who was then Prime Minister of Canada as, and I quote:

"... a recognition by all actors including the federal government that the requirement of provincial consent is a constitutional rule."

They described the reason for that rule as "the federal principle". The federal principle cannot be reconciled with a state of affairs where the constitution can be changed unilaterally by any single level of government, federal or provincial.

It would indeed offend the federal principle that "a radical change to (the) constitution (be) taken at the request of a bare majority of the members of the Canadian House of Commons and Senate".

Quoting from the judgment still:

"The purpose of this ... rule is to protect the federal character of the Canadian constitution and prevent the anomaly that the House of Commons and the Senate could obtain by simple resolution what they could not validly accomplish by statute."

How much better, Prime Minister, would it be for us to reach what agreement we can, and then trust Canadians themselves to form our future constitution.

So, let us strive for agreement in these
negotiations so we can approach the Parliament of Great Britain for one final time and tell that Parliament that we wish to bring our constitution home and that we have agreed on an amending formula as eight of the governments here have already proven possible. If we agree on more, fine, but we have had months of confrontation, months in which the only significant compromises and movements, Prime Minister, have come from the governments of the provinces and we have other urgent matters that require our attention and our joint actions. If in this climate we agree solely on patriation and an amending formula, that will still be a significant and an historic agreement.

And it will be an agreement whose significance will go far beyond the immediate question of our constitution, as fundamental and as important as that question is. It will go to the entire effectiveness of government within our federal system.

The principle of federalism of which the Supreme Court spoke is not only a constitutional principle, Prime Minister, it is also a practical and operational principle that touches virtually every aspect of the lives of Canadians. When our governments fail to consult and to agree and to co-operate, we do not fail only in the constitutional area, we also fail economically. We fail in terms of the social needs of Canadians and we fail that sense of confidence and unity which Canadians are entitled to have from their governments. Each of us around this table could recite a list of the problems and challenges that a provincial government working alone cannot respond to in an effective manner and which even the federal government working alone cannot overcome. I refer of course to such matters as the impact of high interest rates,
housing, grain handling, energy, post-secondary education, the provision of French language education outside of Quebec, providing real opportunities for native people and on and on the list might go. We could recite a list of past successes, successes that were achieved because we worked together under the federal principle, unemployment insurance, income security for the aged, equalization and all the rest.

But as the list of problems that require our co-operation under the federal principle grows, Prime Minister, the list of recent successes I must say regrettably is shrinking and it is shrinking at least in part because our constitutional differences have eroded and undermined the habit of co-operation between the two levels of government that has marked our total history up to this point.

So, we are not here, we cannot be here, just to talk about a constitution. We must also be here to talk about a country, to talk about a country that needs its governments to be effective and capable of working together to address the problems that assail Canadians and to support Canadians in their efforts to grasp the vast and exciting opportunities that are before us.

So, why are we here, Prime Minister? We are here to agree and we are here to take up that agreement and treat it as a first step in living up to the federal principle. It will call for compromise and as my colleagues who took part in the negotiations among the eight provinces will attest, compromises are sometimes painful.

It will call for us to agree that we will not argue our differences in another country, but that we will manage our affairs here in Canada where all judgments and all determinations will be made by Canadians.
But the benefits of achieving an agreement, sir, are vast and fundamental. With agreement, we shall have brought our constitution home. We will have established rules under which Canadians themselves can change it at need and it should not be forgotten that among the things Canadians can change in the future, should we wish to, is the amending formula itself. We will finally have completed the job of building an independent nation and from there Canadians can go on with the rest of the job of nation-building without asking leave or permission from any other country.

More than that we will have started to work together again and my guess would be that whether Canadians agree with you or with me or with the Premier of New Brunswick, or the Premier of Quebec or the Premier of British Columbia or particular constitutional matters, Canadians are all agreed that it is high time we started doing just that.

So, Prime Minister, the provinces are not here asking for any powers or any jurisdiction that we do not now have. We are here to reach an agreement, an agreement which forever after will be within the power of Canadians themselves to change because we finally control our own constitution and we are here to help to restore and to revitalize the federal principle which has been pretty badly battered about in the last eighteen months; that habit of co-operation which has marked our history heretofore, and should we fail to reach agreement at these or subsequent negotiations, it will not be because the provinces are not prepared to agree. The cost of a failure here would not simply be a constitutional cost, it would be reflected in a further weakening and erosion of that federal principle of our ability to work together, of the effectiveness of each
of the governments we lead and of our unity as a nation but we need not fail, Prime Minister.

We are eleven governments all in agreement that we must bring our constitution home. Eight of us have already agreed on an amending formula. Let our negotiations begin there and let them lead to a stronger and a more united federal Canada. Thank you.

THE CHAIRMAN: Thank you. Thank you Premier Lyon. Premier Bennett of British Columbia now has the floor.

HON. WILLIAM R. BENNETT: Mr. Chairman, and colleagues. I guess if there is one message I picked up these last few weeks as I have travelled across our country, it is that Canadians from coast to coast, no matter what province they live in, would like to see us resolve our problems and they would like to see us strike agreements and end the division and the unhealthy climate that have marked the Canadian scene this past year. I think our people in all parts of the country are looking for a renewal of confidence and a sense that their governments are capable of resolving problems. I think we had a good example of how we can resolve those problems by the recently concluded energy agreements with a number of provincial governments. It may come as a surprise to some, although not to many, that most Canadians aren't concerned about the constitution but about the economy, and most of them would like to see the constitutional discussion positively concluded. They would like to see our constitution brought home, they would like to see additional constitutional reform in Canada, but quite frankly, they are more concerned today about the potential loss of their homes, the potential loss of their jobs, and the potential loss of their businesses.
I think they are quite aware that the BNA Act or any successor we might achieve is not responsible for the double-digit inflation that plagues us, then. It is not responsible for the punitive interest rates that are hurting our people and it is not responsible for growing unemployment and a resolution of the constitutional issue will not resolve any of these ills. Most of the Canadians I talked to across the country would like to see the constitutional issue off the table so that the federal government, and other governments invited to join in, can get on with the responsibilities of dealing with our economy and their economy, their individual economy.

I find Canadians to be decent, reasonable, fair-minded people and they want to see their governments reaching agreement. They don't like to see us quarrelling. They want to see compromise, not conflict, and they wish to see their problems, the Canadian agenda, addressed in a serious way.

Now for the past fourteen months and since our last meeting there have been initiatives in the Parliament of Canada and eight provinces have urged the federal government to abandon its unilateral course of action. For fourteen months, my colleagues and I have been calling for a return to dialogue and compromise and for an end to division and unilateral action. Unfortunately it has only been since the Supreme Court decision that agreement was reached to return to the table. I believe the Supreme Court decision is important to this meeting as an assist to coming to the type of agreement
we wish to achieve. The Supreme Court, in an historic
decision that defined the basic nature of this country,
has endorsed the view that I have held, the provinces have
held, that it is unconstitutional to change our constitution
in the absence of provincial agreement.

I would just like to quote from that judgment,
if I might. I have all of it here, but in their conclusion
they say:

"We have reached the conclusion that the
agreement of the provinces of Canada, no
views being expressed as to its
quantification, is constitutionally required
for the passing of the proposed resolution
for a joint address to Her Majesty respecting
the constitution of Canada, but that the
passing of this resolution without such
agreement would be unconstitutional in the
conventional sense."

Now I support and commend the decision of
the Supreme Court and I want to make it very clear I support
the entire decision, including that part which states that
Ottawa's proposed course of action is not illegal. Having
said this, I must point out that it would be inappropriate
for any government to pick and choose those elements of the
decision with which it agrees. That part of the Supreme
Court decision which ruled the federal government's course
of action unconstitutional must also be respected. No
government should put itself above our Supreme Court,
federal or provincial, and no government should put itself above our constitution. Those who have opposed unilateral action by the federal government have had then an additional responsibility thrust upon them. That is to protect the integrity of the decision of the Supreme Court of Canada.

There is considerable irony in the present situation. The constitution is above all a statement of the rules of the game and defines the restraints on the power of government. Yet, if the federal government were to choose to proceed in an unconstitutional way, it would be breaking the conventional restraints on its powers. In imposing say a Charter of Rights to limit the power of governments, the federal government would be defying those limits that exist today.

Well, I say, and the Supreme Court has ruled, that this attitude will not pass muster in Canada, and I would like to quote once again from the Supreme Court decision, if I might. That is:

"We have reached the conclusion the agreement of the provinces of Canada, no views being expressed as to its quantification, is constitutionally required for the passing of the proposed resolution for joint address to Her Majesty respecting the constitution of Canada and that the passing of this resolution without such agreement would be unconstitutional in the conventional sense."

Then it goes on to say:
"The federal principle cannot be reconciled with the state of affairs where the modification of provincial legislative powers could be obtained by the unilateral action of the federal authorities. It would offend the federal principle that a radical change to (the) constitution (be) taken at the request of a bare majority of the members of the Canadian House of Commons and the Senate."

Clearly then a constitution is not just a piece of paper, nor is it graven in stone. The most successful constitutions are living documents that are written from the hearts of the people. The consent of the people to their constitution is essential if it is to be of value. It is for this reason, above all, that the renewal of our constitution must be done with hope and with honour and not with mistrust and division.

There are those who would look upon this conference as our last chance, as a final attempt to seek agreement. This is not my view. I regard this meeting as our first chance in fourteen months to seek agreement and as the initial attempt to find consensus within the new ground rules for patriating the constitution as established by the Supreme Court of Canada.

The Supreme Court of Canada has not asked us simply to meet once again, nor has it directed us to make one final attempt at agreement. The Court has said, and it has said this very clearly, that substantial provincial consent
is necessary to change Canada's constitution. Now that is not to say I favour delay. I too wish to see our constitution brought home and I too wish to dispose of the issue so that we can get on to other more pressing priorities of the Canadian people.

Now saying that, my intent today is not to refer to past events, to point fingers and assess blame. My intent is to avoid a replay of the division of the past fourteen months. This country does not need a new Battle of Britain to solve its constitutional problems.

Now is not the time to speak of winners or of losers. Rather it is a time for national, in the broadest sense of the term, national leadership and for a new accommodation.

The Supreme Court of Canada decision has provided us with both a challenge and an opportunity. A challenge, in that it is incumbent upon all governments to find substantial consensus on the patriation of our constitution. An opportunity, in that by breaking the straitjacket of unanimous consent, the Supreme Court has pointed the way to achieving our long-held shared objective, the return of the constitution to Canada.

Now is the time to look to the future, a time for statesmanship on behalf of all Canadians. The task before us is not an easy one. It is one that has defied several generations of First Ministers before us. But surely we all agree that the time has come to bring home our constitution in a manner that strengthens rather than weakens the fabric of this country, and in a way that promotes national unity rather than disunity.
To succeed, we will require considerable flexibility and compromise on behalf of all eleven governments around this table and the same level of good faith and reasonableness that are the essence of what it means to be Canadian.

Prime Minister, you have a resolution before the House, a resolution supported by two provinces that has been ruled unconstitutional by the Supreme Court of Canada. The eight other provinces have agreed to a plan to patriate the constitution with a flexible amending formula. Now I support that plan as one way to realize our common goal of bringing home the constitution. Clearly, however, it is not the only way and I am prepared to explore new proposals that the Prime Minister has suggested might more easily achieve agreement. Based on the flexibility stated, I am hopeful that an agreement can be concluded, and as Premier of British Columbia, I approach this conference with the same flexibility and in search of a compromise.

Now the task before us then is apparent: to find within the realm of practical politics a way to bring home our constitution. I say let's keep it simple, agree on what we can do now without ruling out future action, and get on with the job.

As Premier of British Columbia, I will be asking only one question of each of the proposals we will be considering: is it in the interests of the people of British Columbia and of Canada and can a consensus be
formed around it?

Fifty years from now, when historians look back upon our activities this week, I would hope they would conclude that through national leadership and in the Canadian way of compromise, conciliation and consensus, we succeeded in forging a constitution to serve as a beacon of hope to generations of Canadians and in the process we overcame a temporary period of national dissension. Our country is above all a bargain, a bargain between the people and a bargain between the regions and a bargain between the provinces. Can we meet the challenge of striking a new bargain that will further strengthen and renew our federation? Through experience joined with common sense, I am hopeful that we will succeed in our efforts.

Thank you.

THE CHAIRMAN: Thank you, Premier Bennett.

Premier MacLean of Prince Edward Island.

HON. ANGUS MacLEAN: Thank you, Mr. Chairman.

Mr. Chairman and fellow First Ministers, at the outset of my remarks, I suggest that it is important that we agree on certain ground rules or parameters for our discussions. You will not be surprised, Mr. Chairman, to hear that I was singularly impressed by the following quotation from the Supreme Court's decision, and I quote:

"It should be borne in mind that while they (referring to conventions) are not laws, some conventions may be more important than some laws. Their importance depends on that of the value or principle which they are meant to safeguard."
We must be concerned not only with constitutional legalities, but also with our time-honoured, Canadian conventions. My position, simply stated, is that the principles which our conventions safeguard must not be bargained away. But with that limitation, Mr. Chairman, I can assure you that Prince Edward Island is prepared to weigh and consider any alterations or modifications in our individual or collective positions which may be advanced.
In this same vein, Mr. Chairman, I must observe that Prince Edward Island's opposition to what I would call the "Ottawa process" is based on our contention that the unilateral actions of your government is contrary to any reasonable exercise or process in a federal state. Therefore, we quite naturally applaud the Supreme Court's concern for what it calls the "federal character of the Canadian constitution ..." and I reiterate my earlier position that if our goals are realistic, the necessary consensus is achievable.

Much has happened, Mr. Chairman, since our last meeting. Political upheavals and assassinations have been all too common in some parts of the world. And yet, in the course of this constitutional exercise we have been bombarded with models for constitutional reform drawn from other countries and other traditions. Need we look beyond our own boundaries, Mr. Chairman? Despite increasing unrest, I remain convinced that our federation -- that equation of law, plus convention -- has stood the test of time; it has adapted and can continue to adapt unless we fetter its flexibility.

Perhaps it is appropriate for me, as Premier of Prince Edward Island, the "birthplace of Confederation" to state the obvious: Prince Edward Island does not seek to increase its power or position in this nation at the expense of either our sister provinces or the federal government. We continue to acknowledge the need for a strong federal government as an essential link in the chain of Canada ... but not at the expense of diminishing the powers and conventions of the provincial links in that same chain. Nor are we interested in the dimunition of the
powers of the federal government; we have not supported proposals such as the transfer of family law jurisdiction to the provinces. Much has been made, Mr. Chairman, of the distribution of powers in this constitutional exercise but I remain impressed by the sentiment of the wording on the commemorative plaque in our Confederation Memorial Chamber in Charlottetown, referring to the Fathers of Confederation, that says:

"... THEY BUILDED BETTER THAN THEY KNEW ..."

Speaking more personally for a moment, as a First Minister soon to become a backbencher, voluntarily, I remain convinced that our democratic way must be more than a mere exercise in arithmetic. Our constitution should not be imposed on Canadians by a group which has only a simple majority. In our constitution-making we are proposing "the rules by which future generations will govern themselves". We are not dealing with "ordinary" law -- amendable as it is at the whim of a new Parliament -- but we are dealing with principles and procedures which will determine the governance of Canada. Whatever the end result of our deliberations, our actions and conclusions must be generally acceptable to our governments and to our people.

Mr. Chairman, to suggest -- as has been suggested on occasion -- that any government represented around this table has not entered willingly into the constitutional review exercise is a considerable misrepresentation. Many of us have offered substantial changes or accommodations to our historic positions within the Canadian union. And again, Mr. Chairman, Prince Edward Island will entertain further alterations to effect a "Canadian" compromise.

A little over one year ago, watching our
deliberations in this same hall, Canadians were urged to believe that we had failed in our discussions. At that time, I was prompted to say:

"It is clear to me that Canada is strong enough to survive our failure to meet a self-imposed deadline."

Despite our agonizing of the past months, Canada remains strong ... but that is no reason to abuse her strength. We must assure, Mr. Chairman, that we do not inflict permanent scars on our continued growth as a nation. Thank you.

THE CHAIRMAN: Thank you, Premier MacLean.

Premier Blakeney of Saskatchewan now has the floor.

HON. ALLAN BLAKEY: Mr. Prime Minister and fellow Premiers. I have been encouraged by the words which I have heard around here suggesting a compromise is possible and I hope to add to some of those words. I would like to make a comment or two on some of the previous submissions. I don't take the view of the First Minister from New Brunswick that our freedoms really came to us from Britain unsullied, certainly there are areas with great traditions of constitutional freedom which come to us from Britain but just as certainly those freedoms did not come to colonists in Canada without a good deal of sacrifice and a good deal of effort by Canadians.

We gained our freedom and our representative government and our freedom from arbitrary acts by representatives of the Crown due to the work of such great Canadians as Joseph Howe or Baldwin or Lafontaine, or others who won for us responsible government. My point is that Canadian freedom was created by Canadians and it is up to us as Canadians to defend that freedom.

I am tempted to take issue with those who advocate an entrenched Charter of Rights. The argument that to take
power from the voters and their elected representatives and to give that power all but irrevocably to appointed judges, the argument that that somehow enlarges rights and freedoms has always been a difficult argument for me and I am unconvinced by it. I favour, as people know, the idea that we have charters, federally and provincially which override other ordinary laws, and this will allow judges to make the first judgments on personal and individual freedoms, but on issues that deal with the basic structure of our society I continue to believe that in a democratic society they ought to be decided by the political process and not by the judicial process.

Speaking of process, I think it is important that we reach agreement, as much agreement as we can today, and it is important how we reach that agreement. Whether we reach it by overturning the traditions of 114 years or by building on the proud traditions of 114 years, this conference allows us to make our process fruitful and successful.

Saskatchewan said fourteen months ago in this room, speaking of process, and we say again today, that any constitutional change affecting federal and provincial legislative power, if it is to be done in accordance with law and precedent, requires a double majority, a majority of Canadians as represented by approval of the House of Commons and a majority of the regions of Canada as represented by acconsensus of the provinces.

A double majority is necessary because Canada is a federal state. To proceed without it endangers the very
foundations of federalism.

So, if our actions are to be constitutionally correct, the approval of both the central government and the regional government, the provinces, is necessary.

On this point, the Supreme Court in its recent decision on the proposed federal resolution has left no doubt, and Premier Bennett has already quoted a number of passages and I will just touch on a few words of one of them:

"We have reached the conclusion that the agreement of the provinces of Canada, ...
... is constitutionally required for the passing of the 'Proposed Resolution'..."

Again, quoting the Supreme Court:
"It is true that Canada would remain a federation if the proposed amendments became law. But it would be a different federation made different at the instance of a majority in the Houses of the federal Parliament acting alone. It is this process itself which offends the federal principle."

Mr. Chairman, it would be impossible to state more clearly that the process proposed by the federal government is unconstitutional and offends the federal principle. Let me make one important point clear; while we believe and the Supreme Court agrees that a consensus of the provinces is necessary, we do not contend and have not ever contended that the consent of all provinces is necessary. The Supreme Court made that clear and I quote again:

"The convention relating to provincial consents is that less than unanimous consent is required".

That is an important point because it means that no longer do we need unanimity as we believe we have
needed it for fifty years. All the arguments based upon fifty-four years of failure are no longer valid because as the Supreme Court says, the rules have changed and changed drastically. This change gives us all a totally new opportunity.

It may be argued that the Supreme Court said it was legal for the House of Commons and the Senate to pass the resolution now before them. To that I say it could be equally legal for the legislature of Saskatchewan or British Columbia or Prince Edward Island to pass a resolution to send to the Imperial Parliament at London calling for a totally different patriation package, and equally legal. You will say, "Ah, but the Imperial Parliament would not have to legally pay any attention to a resolution from a provincial legislature", and that is correct, but it is equally correct that the Imperial Parliament would not legally have to pay any attention to a resolution passed by the Canadian House of Commons. We are all in the same position legally.

The Supreme Court has made that clear. They make clear that nothing, to use their words, "casts doubt in law as to the undiminished authority of the Parliament of the United Kingdom over the British North America Act". At law we are a colony and by convention, and by convention only, we are an independent federal state. I say it is a pretty important convention, the total basis of Canadian political life today, but nonetheless a convention not a law.

Leaving aside the law it may be argued that there is a constitutional convention that the Imperial Parliament always acts on resolutions of the Canadian Parliament and never acts on resolutions from provincial governments.
The simple answer to that is the one given by the Supreme Court. No resolution of the kind before Parliament has ever been forwarded to the Imperial Parliament without the approval of a consensus of the provinces. There are no exceptions and I quote the Supreme Court, there are no exceptions. For this type of action there is no precedent and accordingly no constitutional convention.

If the resolution goes from the House of Commons and the Senate to the Imperial Parliament at London, Canadians will be relying in a legal sense on the old colonial power of the Imperial Parliament, and that is the fact and that is the law. I suggest that the Imperial Parliament does not want to use the old colonial powers to impose a constitution on Canada, and I don't want them to and I don't think the great majority of Canadians want them to. I believe that Canadians want to amend our constitution according to Canada's rules not the old colonial rules. The Supreme Court did a superb job of articulating the basic rule of constitutional change in Canada. After explaining the importance of constitutional conventions, and we have seen those quotes in the press, the judges went on to say:

"The foregoing may perhaps be summarized in an equation; constitutional conventions plus constitutional law equals the total constitution of the country".

To break the convention is therefore to break the constitution.

Shortly put, the Supreme Court decision leads to two conclusions on process; constitutional convention requires that any constitutional change meet the test of the double majority; and number 2, conventions are an integral
part of our constitution and must be respected, Saskatchewan fully supports each of those statements dealing with process.

Now, turning to other issues before the conference and as they might relate to Saskatchewan, let me try and summarize our position; issue 1, will Saskatchewan support a patriation package, whatever its merits, that is not supported by a consensus of the provinces? The answer is no and for the reasons I have given. Not only will we not support it, but we will feel free to oppose unconstitutional action by whatever means may be available to us.
Issue No. 2 - will Saskatchewan participate in negotiations designed to arrive at a patriation package that is acceptable to the House of Commons and a consensus of the provinces?

The answer is yes. We favour patriation. We favour a flexible amending formula. We support the eight province Accord because we prefer it to the amending provisions before Parliament, with their elaborate and one-sided referendum arrangement, and their perpetual veto for the Senate.

The perpetual veto for the appointed Senate has been rejected by every major study of our constitution: by the Favreau white paper, as I recall it, and certainly by the Victoria Charter in 1971, by the Canadian Bar Association Study, by the Pepin-Robarts Study, Mr. Ryan's beige paper, the Ontario Advisory Committee Report, the federal government's own Bill C-60 in 1978. All of these have rejected the idea of a perpetual Senate veto and we reject it as well.

I noted the comments of the Prime Minister to the effect that he did not wish to impose an amending formula upon anybody and we could have a vote at the end of two years to see whether or not the public wished to have an amending formula proposed by provinces or by the Prime Minister.

As I read the current resolution, and I hope it means the resolution that will therefore be amended, such a vote would not allow us to affect the perpetual veto of the Senate and such a vote would not allow us to remove the referendum process.

I may misunderstand the position of the federal government, but certainly that is how I read the resolution and since those are the aspects of the amending formula now before Parliament to which we take the
strongest objection, a referendum two years hence which allows these to be untouched, is not as helpful as it might sound.

We have -- what can one call it -- anomaly is too polite a word -- to have the Senate given a perpetual veto by action of the Imperial Parliament and that unable to be removed by any parliamentary action without their consent, by any referendum without their consent, by any system of elections without their consent; they will be the only people in Canada who will be given permanent status by colonial action, so obviously we oppose that.

However, we are prepared to consider other proposals for amending the constitution. We are certainly willing to look at numbers of formulae. Our preferred amending formula is the one we set out before the parliamentary committee last December. We support the eight-province Accord in preference to the resolution before parliament. We are prepared to consider many options.

As to other items, it is probably not too useful to review them all here: equalization, resources, language rights, democratic rights. On these issues our views are well known. On these issues too we come prepared to be flexible.

Item No. 3 - what should this conference be aiming for? Saskatchewan believes we should be aiming, as a minimum, for patriation and an amending formula, an amending formula rigid enough to protect the regions, to protect the essence of Canada as a federal state, flexible enough to allow Canadians to address the need for changes in the immediate future and over the next century. That is the minimum which we should achieve.
If we can achieve more, achieve more in a constitutionally-correct way, fine, it will certainly be satisfactory to us.

Clearly Saskatchewan has a particular interest in the resources provisions. Others have a special interest in equalization as we have already heard, or language rights or legal rights as the case may be. We are prepared to discuss all of these.

We think that the Supreme Court's ruling gives us an unparalleled opportunity to succeed, an opportunity we haven't had before. The "tyranny of unanimity" is but a ghost of conferences past. I say again we come to this table with a whole new set of rules. In this new atmosphere, Saskatchewan believes that Canadians expect us to agree on a patriation package, to have a constitution which is Canada's and Canada's alone, shed of its colonial ties. We believe that they expect us to do this in a way which respects the constitution in all its parts and what's more, we believe that with good will this can be done and we are here to play our full part in achieving this objective.

THE CHAIRMAN: Thank you, Premier Blakeney. Premier Lougheed has the floor.

HON. PETER LOUGHEED: Mr. Chairman, I believe the Canadian people have benefited as I have, to have this opportunity to hear the views expressed by the First Ministers on this important subject in this particular setting. And I believe as well, whether or not our conference is successful, it will be appropriate, as we have agreed, to return here at the closing of this conference to express our views with regard to the final conclusions. I don't think it is overly dramatic to say that this is
a very important crossroads for our confederation. The federal government can try and press on and change our constitution without the agreement of the provinces, with all the division and the antagonism that will result, not for a short period of time but for many years; or, it can sincerely sit down and try and work out our differences without threats but in an atmosphere of negotiation. I share the hope of most Canadians that this issue can be resolved by negotiation in a manner consistent with our nation's traditions and principles. Many Canadians feel that we have far more pressing issues facing us than the constitution and particularly in the economic area.

The past year has been a critical and very controversial one in federal-provincial relations. Two main subjects have been at the centre of the controversy -- energy resources and the constitution. On both matters the federal government acted unilaterally. In the case of energy, despite federal unilateral action, a negotiated settlement was eventually achieved. It was not easy. It took time, but it was accomplished. The agreement will benefit all Canadians. Differences of the past can now be put aside and governments can now work together to achieve the common goal of energy self-sufficiency.

So I have asked myself: why can't we accomplish the same level of agreement on the constitution? The only answer I can come up with is that on the energy question, the federal government ultimately realized that unilateral action would not work and that an agreement must be worked out with the producing provinces.

I refer to the energy negotiations because, despite our initial strong differences, an accord was
eventually achieved, as noted by the Premier of Ontario. Albertans feel that a similar agreement should be possible in the area of the constitution, but frankly it will not be achieved if the course of unilateral federal action is continued, arbitrary deadlines are imposed and an atmosphere of, yes, threat sustained to the effect of "either agree with us or else."

Canadians have a number of issues confronting them: unnecessarily high interest rates and inflation, to mention two of the more urgent and pressing matters. Despite these recurring economic problems, the First Ministers, here, in the conferences lately have been concentrating on the constitution, despite the repeated requests of the provinces for discussions, here, where we can work together cooperatively, on the economic questions that are the concern of our citizens. As has been mentioned by others, a little over a year ago we convened in this very room to discuss the Canadian constitution. Our objective at the outset was to renew the Canadian constitution to better serve the needs and the aspirations of all Canadians.

We attended that conference in September of 1980 with the hope and expectation that all of us could agree on substantive constitutional change. As we all know, that conference failed. Indeed, sadly some would suggest, that from the very beginning the
conference was designed to fail.

At that time, Mr. Chairman, you recall that the provinces called for a continuation of discussions. For almost a year Alberta has been ready to resume those discussions. It is noteworthy to me that the shift in the federal government thinking with regard to discussion occurred following the decision of the Supreme Court of Canada.

Despite the tensions that were evident at the September, 1980 conference, I personally thought that through the earnest continuation of these discussions we could have resolved it, we could have worked it out then. Unfortunately the process of constitutional renewal was abruptly ended on September 12th, 1980 by the federal government.

Despite the very real progress that had been made -- for example all provincial governments had agreed in principle in September, 1980 to support the "Vancouver Consensus" amending formula -- some not because they were particularly happy with it, but in the interest of reaching an agreement. The federal government unilaterally chose to embark on a course of action designed to amend the constitution of our federation without the agreement of the provinces.

Mr. Chairman, that process is offensive, but more than being offensive, I am saddened that the federal government chose such a reckless course against the express opposition of the majority of the provinces
and in my view the majority of the people of Canada. Never before in our country's history -- and there are no exceptions -- has any federal government embarked upon such a divisive course of action. Never before has a federal government attempted to amend the constitution in areas directly affecting the constitutional rights and responsibilities of the provinces without their consent. Never before has a federal government established arbitrary deadlines for constitutional negotiation. The actions of the federal government violate the spirit and the intent of confederation and they are a negation of the partnership upon which this country was founded. All previous federal governments -- liberal or conservative -- have respected the federal nature of Canada and the conventions which govern its operations.
The Canadian federal system is a reflection of the inherent diversity of this country. Canada simply cannot be governed under a unitary system where all the basic questions are left to a central government to resolve.

What did the Fathers of Confederation seek in 1867? They desired and crafted a federal state which balanced national interests with provincial interests. They recognized that provincial governments, by being closer to the people, were essential in this vast land. The federal principle was enshrined in the extensive list of responsibilities, not powers but responsibilities enumerated in the British North America Act. This federal principle has been reaffirmed time and time again by the courts, by governments, by scholars and, most importantly, by the people. It has never been seriously challenged or threatened until right now.

What does this federal principle mean? It means that one order of government, federal or provincial, cannot unilaterally change the rights of the other order of government without that government's consent.

What is at stake is the very nature of our federal system and its future. We are at the crossroads of either continuing to support the federal principle or of ignoring it. Once the decision is made there is going to be no turning back.

One or two words on the Supreme Court of Canada decision are necessary. In effect, what the Supreme Court said was that the proposed course of action by the federal government was wrong ... wrong. The Supreme Court
stated, and I quote:

"The federal principle cannot be reconciled with a state of affairs where the modification of provincial legislative powers could be obtained by the unilateral action of the federal authorities. It would indeed offend the federal principle that 'a radical change to (the) constitution (be) taken at the request of a bare majority of the members of the Canadian House of Commons and Senate'."

Let there be no mistake, Mr. Chairman, the Supreme Court did not say what the federal government is proposing is legal, but rather that there is nothing in law to prevent the passage of the federal resolution which is an entirely different matter.

As has been stated by other First Ministers, the Supreme Court concluded:

"The agreement of the provinces of Canada, no views being expressed as to its quantification, is constitutionally required for the passing of the proposed resolution for a joint address to Her Majesty respecting the constitution of Canada and that the passing of this resolution without such agreement would be unconstitutional in the conventional sense".

The Supreme Court determined, and by doing so supported the provincial contention, that not only is there an established constitutional convention requiring provincial agreement to amendments to the British North America Act affecting provincial rights, but also that it would be unconstitutional for Parliament to proceed
unilaterally without the agreement of the provincial governments.

Mr. Chairman, Canada's constitution, or I use the words "rule book", is a mix of written and unwritten rules. The Supreme Court stated in unmistakable language that some of the unwritten rules are more important than the written ones, even if the court cannot prevent their breach. One example: it is not a written but an unwritten rule that the Prime Minister must resign or call an election if he is defeated on a major matter in Parliament. To ignore a crucial unwritten rule, one that was expressly recognized by the Supreme Court of Canada, will have grave, and I would use the word "tragic" consequences for our nation and for our continued unity. It would not be a mere political risk, but it would be a flagrant disregard of our nation's history, traditions, principles, and institutions.

If the federal government succeeds in having its package passed in Britain and that is by no means assured, the Supreme Court recognized that we would be a different federation, made different at the instance of a bare majority of the House of Commons and the Senate. Many Canadians instinctively know that unilateral action is wrong. Alberta, as do all the provinces, fully supports the objective of patriation of the Canadian constitution. Mr. Chairman, your question no. 1 is no issue at all.

But, the resolution of Canada's constitutional question must be accomplished through federal-provincial discussion and agreement and not by unilateral federal action. Such fundamental changes should be in accordance with the spirit in which our present constitution was formed, with the participation of all governments. I have travelled this country and through my province and one thing comes to me loud
and clear, Canadians want a made-in-Canada and not a made-in-Britain constitution.

Mr. Chairman, eight provinces, and I have heard most of them, with vastly different historical backgrounds, economic interests and different political persuasions were able to agree on an appropriate method to patriate and amend the Canadian constitution. I refer of course to the April 16th constitutional accord which clearly and positively demonstrates that constitutional progress is possible when all parties approach the issue with goodwill and sincerity, not through threats but through constructive and meaningful discussions.

What is the task before us? It has been said by most we should strive to achieve patriation with an amending formula acceptable to the governments. We are all agreed on the need for patriation and an amending formula. Patriation should be our immediate goal.

Mr. Chairman, from the perspective of Alberta, any amending formula that is devised must incorporate the principle of provincial equality and reflect the need to protect existing provincial legislative powers, rights and privileges. Mr. Chairman, I detect, as you and I have debated on a number of occasions, a lack of comprehension of the people of our province with regard to this concern. The people of our province have felt, and one can argue validly or otherwise, that the nature of government and the history of Canadian development to this point has favoured those parts of the country where there are large populations, favoured the parts of the country which are essentially controlled on a representation by population basis, the central provinces, in fact. That is what they feel. They feel they have been
hindered in their progress to being a full member in Confederation as a result of it.

They feel that to this point in time the only effective check and balance has been a provincial government that is prepared on their behalf to represent them and to balance that situation of population.

Mr. Chairman, to have an amending formula that gives the federal government not only the veto but control over proposed amendments in the way that has been suggested, and then to have an amending formula where provinces are looked on and their position on the basis of population, provides a situation that is unacceptable to Albertans because it gives us a double penalty. We pay twice for our smaller population: once on our lack of influence except on a limited basis through the House of Commons; and secondly, now through a proposal which you have in your resolution that takes into consideration that there are provinces, or our total population and the population again would be overriding of an amending formula. So, if you want to speak about fairness, I think that aspect of fairness must be considered. It is very strongly felt by the people of the province I represent.

Once agreement on an amending formula has been reached the conference can then decide on whether we wish to add other matters or complete, as has been suggested, the task of constitutional revision after patriation has been achieved.

Finally, Mr. Chairman, the end cannot justify the means when the method contradicts the very
principle of federalism which has been respected throughout our nation's history. I have always thought that the purpose of these discussions was to unite Canadians. Rather than unite Canadians behind a common goal, the debate, at least to this point, has divided us as we have never been divided before. It is not a flag debate issue. To avoid further divisions, Alberta's overriding objective is to preserve and protect the federal principle of Canada which is the very foundation of our constitution. Thank you.

THE CHAIRMAN: Thank you, Premier Lougheed. Premier Peckford of Newfoundland.

HON. BRIAN PECKFORD: Mr. Chairman, during the summer of 1980 the government of Newfoundland participated with enthusiasm in the constitutional discussions and negotiations. As part of this process the government of Newfoundland developed a white paper on constitutional change entitled "Towards the Twenty-First Century - Together". That is the way that Newfoundlanders and Labradorians want the twenty-first century to be, together with all other Canadians, with our neighbours in the Maritimes, our neighbours in Ontario, the Fairies and British Columbia.

Newfoundland's constitutional position is based on four principles. First we are committed to the process of parliamentary democracy and the constitutional monarchy. Our constitutional evolution from a colony to self-governing dominion in the Commonwealth and finally, as a province of Canada, illustrates the flexibility of our system of parliamentary democracy.

Secondly, Newfoundland is dedicated to a balanced federalism, one in which both federal and
provincial governments are strong. We reject any view which sees Canada as developing into a unitary state. We also reject a vision of Canada as a loose association of provinces.

Thirdly, we endorse the principle of equality, equality of provinces and equality of people. Each province must have an equal right to maintain and develop its cultural roots and traditional values, not merely as an object of folkloric interest, but as the life blood of its peoples' identity. Similarly, the federal government must have the right to maintain and develop the national identity and traditions common to all Canadians.

Fourth, and the most important principle is our conviction that a new constitution, suitable for contemporary Canada, will only evolve from the process of consensus. I believe most colleagues around this table, Mr. Prime Minister, will agree with me when I say that unilateral action creates divisions within Canada and runs counter to the Canadian tradition. Moreover, it frustrates the hopes of Canadians who look to the process of constitutional reform as a means of strengthening our country. Therefore, Mr. Prime Minister, we are more convinced than ever that it is only through consensus that the best interests of the Canadian people will be realized.

You will recall, Mr. Chairman, that this most recent process in developing our constitution began with a meeting which you called at your residence in June of 1980, and an agenda of 12 topics was agreed upon, a series of meetings of our ministers responsible for constitutional matters was held throughout the summer of
1980. There was substantial agreement among the provinces on many of the subjects and the process culminated at a meeting you called in September of 1980. Unfortunately, it was not possible at that time to reach an agreement.
Subsequently the federal government decided to act unilaterally. With a certain sadness, six of the provinces initiated references in three Courts of Appeal and after the Appeal Courts' judgments were filed, final judgment was given by the Supreme Court of Canada and in this the six provinces were joined by two others.

Speaking for Newfoundland, I did not welcome the prospect of seeking a court reference. The traditional way of resolving our differences in Canada is through consensus, but faced with the alternative of unilateral action, Newfoundland had no choice. Such unilateral action is diametrically opposed to the basic principles of our constitutional position. In particular this unilateral action would have made possible the alteration of the Terms of Union between Canada and Newfoundland without the agreement of the government, legislature or people of Newfoundland. This is the unanimous decision of the Supreme Court of Canada.

The government of Newfoundland has a moral obligation to ensure that the Terms of Union between Canada and what was then the Dominion of Newfoundland as signed in 1949 are not abrogated. Newfoundland cannot accept a constitutional provision whereby those Terms of Union may be altered without the consent of both contracting parties. Just as it would be abhorrent to you, Mr. Prime Minister, and to the people of Canada if Newfoundland were to attempt unilaterally to change one of these Terms of Union, so it is unacceptable to Newfoundland for the other signator to have it within its power to so do. The Supreme Court decision makes it absolutely clear that under
the present federal proposal it would be possible for the Terms of Union to be altered without Newfoundland's consent.

Prime Minister, this is a very important issue for the people of Newfoundland and Labrador, and I wish to read into the record a letter dated October 9th, which I received from Hon. Gordon A. Winter, former Lieutenant Governor of Newfoundland. The Hon. Mr. Winter was one of the Newfoundland signators to the Terms of Union and participated in the negotiations leading up to the signing of those terms. He is a highly respected and distinguished Newfoundland and Canadian. I shall read his letter in full:

"My dear Premier, I write to acknowledge receipt of your letter of October 5th which I have read with care and concern. When the terms of union were being negotiated in the autumn of 1948, it was at one point suggested by officials of the Canadian government that Newfoundland might enter confederation through provisions which already existed in the BNA Act, which make it possible for Newfoundland to join the Canadian union by means of addresses to the Sovereign from Newfoundland and Canada. This method was rejected by the Newfoundland delegation and our chairman explained that we could only agree to terms of union that were to become a part of the BNA Act and thereby part of the constitution
of Canada. We were given the fullest assurances at the time that this would make it impossible to change all or any of the terms without Newfoundland's consent."

Still reading the letter:

"Thirty odd years later it is easy to speculate on what one might have done had a different set of circumstances applied, but given the atmosphere in this province at that time with forty-nine per cent of the people having expressed opposition, and in some cases adamant opposition to Newfoundland's entry into the Canadian union, I think it is unlikely that I would have felt able to be a party to what I regard as a contractual arrangement, had there been thought in my mind that at some later date it would become possible to change without the consent of both parties, the terms of what was a treaty between two independent dominions.

The problems which face those who are now trying to deal with the constitution are complex and patience and goodwill are required to find the right solution, but this should not involve the possibility of breaking unilaterally treaties or contracts that were made in good faith."

End of letter.

Prime Minister, we are here today as a result
of the recent decision of the Supreme Court of Canada, the highest tribunal in our land, held that the constitutional conventions of Canada require substantial agreement among all partners in our federation as a prerequisite for constitutional change. Those conventions which have served our country and our people so well cannot, without impunity, be disregarded. Those conventions which the Supreme Court of Canada recognised as more important than some laws, must be respected. If we disregard the lessons of history and our own constitutional evolution, if we turn our back on constitutional convention, we are left with an unacceptable alternative.

We are left with a constitution imposed on Canada by only one order of government. The result would be a constitution which would be divisive rather than unifying, a constitution, the very legitimacy of which would be open to question.

Newfoundland realizes that it will not be possible to reach substantial agreement on the various subjects discussed during the summer of 1980. We have therefore agreed to defer matters of vital importance to our people in order to accomplish that substantial agreement which is possible with respect to patriation and the amending formula.

All are agreed on the principle of patriation. With respect to the amending formula, there are certain tests which Newfoundland requires for the protection of its fundamental interests. The formula should reflect the equal constitutional status of all provinces. Newfoundland insists on the protection of its Terms of Union and its territorial integrity. No change affecting the province's resources, property or legislative jurisdiction should be made without the
consent of the province concerned. There should be agreement that the amending formula itself cannot be changed without the unanimous consent of all the governments of Canada.

In Ottawa on April 16th, eight of the eleven Canadian governments signed a Constitutional Accord. The Accord provides for patriation with an amending formula which meets these requirements. I would suggest, Prime Minister, that in a country as diverse as ours, it is essential that the amending formula be such as to protect the fundamental interests of its constituent parts.

Over a period of a few years in the late 1940s, a battle was waged in our small part of North America, the battle for confederation was fought, not with guns, but with words. The culmination of the confederation debate was a radical change in the constitution of Newfoundland. I used the word "battle" deliberately because it helps evoke some of the depth of emotion which characterized that phase of Newfoundland's history.

Much time has passed since 1949, but the people of Newfoundland and Labrador still feel deeply about fundamental constitutional questions. In the late 1940s, the decision was framed as a choice between confederation and responsible government, but if you step back a little, you can see that the choice was between two forms of responsible government: a federal form or a unitary form. Newfoundland chose federalism. Now thirty-two years later, it seems that we are facing another fundamental constitutional question. Just as Newfoundlanders
chose federalism in 1949, so we choose federalism in 1981. We call upon the federal government, Prime Minister, to respect the decision of the Supreme Court of Canada and to join with us in order to effect constitutional change in a manner consistent with that judgment. We are at a critical time in the history of Canada. We cannot afford the luxury of a winner-take-all attitude. The stakes are more important than anyone's personal vision or ideology. At stake is the future of the country. Canada is more important than any of us or all of us. Newfoundland approaches these negotiations and talks today and tonight or tomorrow with an openness of mind. We have the right to expect and require a similar openness of mind from all other participants. Thank you very much.

THE CHAIRMAN: Thank you, Premier Peckford.

Well, we certainly have succeeded in one thing, speaking on an average of less than fifteen minutes and we have concluded this part of the meeting on time. I won't abuse my position as chairman by attempting to deal with any of the questions raised or indeed directed at me unless the conference insists. I will not answer the questions that were put to me, although I would be prepared to do that in a private meeting, once again unless you want me to take the floor again, but I think it would be within my mandate as chairman to point out that we had come to reach agreement and indeed we did reach agreement at least on one of the three subjects before us. I believe I am right in saying that every First Minister at this table has agreed that we should patriate the Canadian constitution and get that done. It is significant that this is the first time since 1971 that every Premier agrees we should get on with patriation without any pre-
conditions, without any increase in the power of the provinces.

On the second matter, that of the amending formula, we have Premier Davis making a suggestion that he would be prepared to move away from the Victoria formula and give up his veto. I believe two or three other premiers said that they would be flexible on the amending formula. Premier Hatfield, I believe Premier Blakeney and Premier Bennett. The others, for the time being, seem to be sticking with the April consensus of eight provinces, but it is possible that when we meet in camera we would be able to look at the concession made by the Premier of Ontario on his position and see if it can lead to further flexibility, taking us away from both of our preferred formulae to some formula that we would all be able to agree on, failing which, as I said, I hoped we would be able to put our formulae to the Canadian people and I want to point out to Premier Blakeney that he understood me correctly when I said that I would be prepared to see the referendum on any formula put forward by the Premiers regardless of the text of the resolution now.

On the third point, the Charter of Rights, here we have a compromise position put forward by Premier Hatfield, suggesting that on the essentials, we should entrench them. I believe I heard Premier Blakeney indicate that democratic rights, for instance, seemed essential enough to him that he had no great difficulty with entrenching, but that on those other rights that give rise to a great deal of debate and difficulty, and indeed in terms of the Supreme Court decision, do curtail provincial jurisdiction
in several areas, in those areas I understood Premier Hatfield to say that he would be prepared to suggest that these aspects of the Charter of Rights could be delayed in their implementation for a couple of years and that indeed if a majority of provinces representing a majority of Canadians did not want that aspect of the charter to be implemented, then it would be implemented for no one.

I think that is a significant concession. I think we should ask ourselves this afternoon if it is something that can bring us closer together or, if indeed on this matter of rights we are irreconcilable.

However, we do have good cause to adjourn this meeting with some hope of progress being possible. I understand a canvass has been made and the Premiers would prefer to lunch separately with their delegations. Therefore, the idea of a joint luncheon in camera is not going forward, but in return the Premiers, if I understand correctly, have suggested that the eleven of us, First Ministers, meet together without ministers or officials at 2:30 and that will be on the fifth floor, will it not, Mr. Secretary? We could adjourn to 2:30 with just ourselves and then we could at that stage decide if we want to have ourselves joined by others.

La conférence est adjournée à 2 heures 30.

--- Luncheon Adjournment (12:55)
FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

CONFERENCE FEDERALE-PROVINCIALE
DES
PREMIERS MINISTRES SUR LA CONSTITUTION

VERBATIM TRANSCRIPT
(unverified and unofficial)
Afternoon Session of
November 5th, 1981

COMPTE RENDU TEXTUEL
(non révisé et non officiel)
Séance de l'après-midi
du 5 novembre 1981

OTTAWA
November 2-5, 1981
--- Upon commencing at 12:47 p.m.

THE CHAIRMAN: Well, when we met Monday morning I suggested that we had a short but a difficult agenda and that we had to ask ourselves if we wanted patriation, if we wanted an amending formula and if we wanted a charter.

I am happy to report on behalf of the conference that a consensus has been reached on those three areas and I will deal very briefly with them, each in turn, because I realize that we are all anxious to attend to other business.
Sur le rapatriement, je suis content de dire que nous avons résolu ce problème, que nous nous sommes mis d'accord non seulement sur le fait qu'il devait y avoir une constitution canadienne, mais que nous nous sommes mis d'accord sur une formule pour amender cette constitution. C'est dire qu'après cent quatorze ans d'existence le Canada devient, au sens technique, au sens légal, enfin un pays indépendant. Il reste bien sûr au Parlement canadien et au Parlement britannique d'entériner ces accords, mais le fait que nous ayons formé un consensus, je pense, nous permettrait de franchir ces étapes avec la coopération des partis d'opposition ici, la coopération du gouvernement et des partis d'opposition britanniques.
On the amending formula, we have also reached a consensus. It is, roughly stated, the accord formula reached last April by the Premiers, the eight Premiers meeting on April 16th, I believe. It is essentially that accord formula with one subtraction, important, I know, for Québec, which I will return to later, but in essence I think the main part of that accord formula is the one that Canadians will have as their amending formula to the constitution.

On the charter, we have a charter. It is not the charter, exactly the one that was processed through the House of Commons and Senate during several months, but we have a charter of which Canadians can be proud and which I hope we will still be able to say, it is probably the best charter in the world.

So I think we can be satisfied that in these three days of arduous work and very substantial compromise, that we have come out with an amending formula and a charter.

I want to say that I am very grateful to my fellow Premiers, to our ministers, to our officials who worked very hard to make this possible. I have to give the credit to others, because I must concede that on the final compromises, they were not of my making. They were the making of the ministers and Premiers around this table.

I think as Chairman I was entitled to sum up very briefly what we had done. I think now as head of the Canadian delegation I would like to say three things; maybe two will be enough.

I have one regret. I put it on the record. I will not return to it. I have the regret that we have not kept in the amending formula a reference to the ultimate
sovereignty of the people as could be tested in a referendum. The Premiers know my thoughts on that. I respect theirs. I just want to express that regret and, of course, it is not an indication in any sense that I will not support and fight for this agreement with all my heart.
L'autre remarque que je voulais faire, s'adresse essentiellement au gouvernement de la province de Québec et au peuple québécois.

Si je comprends bien, et bien sûr le premier ministre Lévesque aura l'occasion d'exprimer ses vues là-dessus, si je comprends bien la province de Québec ne peut par son gouvernement provincial, ne peut malheureusement pas être signataire de cet accord où les dix autres participants sont signataires, parce que nous a-t-on dit ce matin, c'était inacceptable de soustraire la clause compensatoire de la formule d'amendement. Autrement dit une province qui choisit de ne pas accepter un amendement n'aurait pas la garantie constitutionnelle de recevoir une compensation pour ce retrait.

J'ai expliqué que c'était la compensation constitutionnelle qui avait causé des difficultés et il est facile de voir pourquoi. Si une province par exemple très riche refusait un amendement constitutionnel nous permettant par exemple d'avoir une législation s'adressant aux personnes âgées en leur permettant d'avoir des pensions mobiles, d'une province à l'autre, si une province riche décidait de ne pas être partie de cet accord et demandait en plus qu'on lui paie de l'argent, il est sûr que nous ne pourrions jamais effectivement avoir une telle législation.

Mais je m'empresse d'ajouter qu'en toute justice, je pense qu'en dehors de la constitution cette question devra être examinée et je le dis, une fois pour toutes, nous sommes prêts dans les heures, dans les jours qui suivent, à regarder encore cette question qui pose des problèmes au gouvernement de la province de Québec.
Deuxièmement, la raison qu'on nous a donnée pour ne pas signer cet accord c'est sur la clause de mobilité permettant à des canadiens de diverses provinces d'aller habiter et de se chercher du travail dans d'autres provinces. Nous pensons que ce concept est essentiel à nos notions d'un Canada où les canadiens peuvent aller travailler où ils veulent, mais nous avons reconnu dans le texte, surtout sur la pression de monsieur Peckford, une formule qui permet aux provinces qui souffrent de chômage au-dessus de la moyenne, de se protéger par des législations spéciales.

Là encore je dis au gouvernement québécois que notre porte n'est pas fermée. Si nous pouvons trouver d'autres formules pour accommoder les inquiétudes justifiées d'une province, que ce soit le Québec ou une autre province, nous sommes prêts à accepter d'étudier des textes, comme nous l'avons fait avec les réserves de monsieur Peckford et qui ont finalement obtenu son consentement.

Troisièmement, une des raisons pour lesquelles le gouvernement québécois ne peut pas signer cet accord, à ce qu'on nous a dit, c'est que nous ne disons pas expressément que la clause qui désormais obligera les neuf provinces anglophones à donner de l'éducation à leur minorité francophone, et je le dis en passant, je crois que c'est un jour noble pour le Canada où enfin nous avons reconnu que les minorités scolaires francophones par tout le Canada auront maintenant une garantie constitutionnelle d'être protégées.

Nous avons entendu de la bouche du premier ministre québécois qu'il ne pouvait pas accepter l'équivalent pour la province de Québec, mais je le comprends
dans une façon qu'il ne voulait pas que ça lui soit imposé, parce que d'une façon générale l'éducation relève de la jurisdiction provinciale, donc il ne voulait pas que ça lui soit imposé. Je réplique, évidemment, qu'en vertu de la constitution actuelle le gouvernement fédéral doit protéger les minorités scolaires, cela est écrit expressément dans l'article 93, paragraphes 3 et 4 de la constitution actuelle.

Cependant, je veux encore dire au gouvernement québécois que là-dessus dans les heures qui suivent, nous sommes prêts à continuer la discussion et j'ai offert à monsieur Lévesque, notamment, que si -- et là j'entre dans des expressions techniques qui sont connues surtout au Québec -- s'il préférerait par exemple la clause Canada, nous serions prêts à en discuter et je l'espère, à rédiger le texte autrement pour que cela satisfasse ses objections. Mais, il est clair que comme gouvernement canadien, nous ne pouvions pas prendre une position dans la constitution où nous aurions obtenu que les minorités francophones soient constitutionnellement protégées, mais que les minorités anglophones du Québec ne le seraient pas, je parle toujours du domaine scolaire.
So those are the three points on which we have reached the fundamental and, I think, extraordinarily opportune agreement among nine provinces and the federal government, and those are my views on what can still be done in the future.

The constitution is entrenched, it is not written in stone for all time, and I hope that in the weeks and, if necessary, months to come, we will still be able to convince our colleagues from Québec to do in the constitution what, in fact, historically has always been done in Québec since the beginning of confederation, to treat their Anglophone minorities in the school system equitably. I am convinced it can be done and therefore, although there is one sad note in this conclusion, I am hopeful that with goodwill and in the interests of Canada and of its peoples, we will very soon be able to make this accord unanimous.

Voilà ce que je voulais dire. I call on Premier Davis.

HON. WILLIAM DAVIS: Mr. Prime Minister and fellow Premiers, to say that this is something of an emotional moment for all of us, certainly speaking for myself, is something of an understatement. I think it is fair to state, Mr. Prime Minister, that there were some around this table, perhaps myself included, who wondered on Monday morning whether in fact this would ever happen. I don't want to get emotional, but I was talking to some of the media on the way in and as is their custom and is their responsibility, they started to sort of ask about winners and losers. I would only make this observation, Mr. Prime Minister: that from my standpoint, there is only one winner on this occasion, and that is our country.

The compromise, the agreement that has been signed, I think indicates clearly that we can, as Canadian
political leaders, show that flexibility, that ingenuity on occasion, that stubbornness that brings about a document that has eluded us for a lot of years. I was there, Mr. Prime Minister, with you and the Premier of New Brunswick, who brings his passionate beliefs to these occasions as we well know, when we felt we had achieved it in 1971. We have met on many occasions since that time and I think we have gotten to know one another and the diversity of this country as a result of those meetings and those discussions.

I think, Mr. Prime Minister, the agreement that we have signed demonstrates that we do have that diversity, but that we do have some things in common that we can put above the interests that we individually represent.

I guess, Mr. Prime Minister, that there would be those in the academic world and the legal community and the critics who will analyze this agreement. They will note its shortcomings, its deficiencies, and that I am prepared to accept. I guess all of us try to achieve perfection. I never have. I am sure the rest of you may have, but I have never been able to do it, but I say to you, sir, that while this does not represent perfection, it doesn't represent exactly everything that our own province or that I would like to have achieved, it does represent something that not only in terms of the symbolism, in terms of what is actually going to be written, it represents a feeling amongst the people around this table that there is something to this nation, there is something to being a Canadian that is fundamental to the future well-being of this country.
Mr. Prime Minister, I am a partisan politician and I expect that tomorrow morning I will find some reason, sir, to remind you of other issues. I may even be so provocative as to challenge your Minister of Finance, but I have to say to you, sir, as chairman of this meeting and Prime Minister of this country, that you have in the past three days demonstrated a measure of flexibility which some of your critics would not have expected, a willingness to compromise where some said it could not be done and, Mr. Prime Minister, as I say, tomorrow is another day. There will be other issues, but I could not in conscience say to the people of this country anything other than that while we have argued with you, while sometimes we disagree with you that, in fact, sir, you have demonstrated what is essential in this country, the ability to compromise and to accept diversity and the views of so many others.
I look around this table, Mr. Prime Minister, and I see men who have the same passionate feelings about this country. We may not express them as well as Premier Hatfield and some others but we have those feelings. I think of how far some of them have come, Mr. Prime Minister, in the last three days. I think of the Premier of Alberta, and he may not want to acknowledge it, but he has moved a little bit ...

--- Laughter

... he has moved a little bit. I look at the Premier of Newfoundland and, you know, it is interesting a lot will be written about this conference but I mentioned it in the closed session where the public was not there and where the media weren't there to portray all of this, that the consensus that has now appeared was presented by the Premier of the province that last entered confederation. I think that has some interesting historical perspectives, and of course the Premier of Saskatchewan who philosophically disagrees with the Premier of Ontario on some issues, but a gentleman for whom I have respect, and who too demonstrated the ability to move in the compromise to find something that would be acceptable and something that we as Canadians can accept with great pride.

I look at the Premier of British Columbia and I can't think of any Premier around this table, Mr. Prime Minister, who has had a more difficult year than the Premier of that great province. I don't know any man who can wear three hats as readily as he can; Chairman of the committee of 10 Premiers, Chairman of what I call the Group of Eight, and also as Premier of the great province of British Columbia. He too has dealt with this in a way that
I think is Canadian.

I regret the absence of the Premier of Manitoba because I know he would want to share in this event and those who don't. I guess include my own political philosophy will understand if I say to Premier Lyon that he is missed on this occasion and I am not putting in, it is not a free-time political promotion, but Sterling, wherever you are, good luck in the next few days!

--- Laughter

All of us regret, Mr. Prime Minister, the absence of our colleague from Nova Scotia so ably represented of course here at the table, but I know that Premier Buchanan I am sure would wish he were part of this occasion and last but not least the philosopher of the group, I think, the Premier of what is I guess our smallest province but one that is vital to this country and who I guess is participating unless somebody calls a conference for tomorrow morning, in his last federal-provincial meeting and I can't think, Mr. MacLean, of a gentleman who has served this country in terms of international conflict, in terms of political leadership, what more appropriate occasion it would be than for your last involvement with respect to this particular accomplishment.

I would say to my colleague, the Premier of Quebec, that I regret that we were not able to find the words perhaps on flexibility, the concern that he feels with respect to the fiscal equivalents in the amending formula, and I guess I can only say to the Premier of that province that I hope over a period of time we can find ways and means that your great province, sir, can be included in the spirit and the intent of what we are doing today.

Mr. Prime Minister, I have really very little
else to say. I look at the gentleman on my geographic left and probably philosophical right, the Minister of Justice of Canada ...

--- Laughter

... and I know sir, what he has gone through and the innumerable speeches he has made with which we all totally agree or disagree, but I could not miss the opportunity to express my respect for him.

Mr. Prime Minister, it is a day that Canadians will remember; it is a day on which I think we can all rejoice. It is not the product of any one person. It is not the product of any group of people. It is the product of men who have a feeling about this nation, who recognize the sensitivities, the delicacies, the diversities, but who in the final analysis have done something that others have not been able to do, to agree at long last that this country will patriate its constitution. We will have a charter, and we know now how to amend that constitution. Mr. Prime Minister, I thank you.

THE CHAIRMAN: Thank you Premier Davis.
Je donne maintenant la parole au premier ministre Lévesque.

HON. RENE LEVESQUE: Alors, messieurs, après cet hymne à l'harmonie de monsieur Davis, je dois dire que je regrette profondément que le Québec se retrouve aujourd'hui dans une position qui est devenue, en quelque sorte, une des traditions fondamentales du régime fédéral canadien, tel qu'il fonctionne, le Québec se retrouve tout seul.

Ca sera au peuple québécois, et à lui seul, d'en tirer la conclusion.

Je suis arrivé ici lundi, avec un mandat voté à l'unanimité des partis, un mandat de l'Assemblée nationale du Québec, qui demandait au gouvernement fédéral, et qui demandait évidemment aussi à nos collègues autour de la table, mais d'abord au gouvernement qui a été l'auteur du projet qui est devant la Chambre des communes, ça lui demandait cette résolution de renoncer au caractère unilatéral de la démarche et surtout à renoncer à imposer de cette façon quelqu'atteinte que ce soit aux droits et aux pouvoirs de l'assemblée nationale du Québec sans son consentement, parce que derrière l'assemblée nationale du Québec, la source du pouvoir sont les citoyens du Québec. Je m'étais permis d'insister aussi sur le fait que le premier ministre fédéral et son gouvernement agissaient ainsi sans aucun mandat explicite, sans aucun mandat d'aucune sorte des citoyens, non seulement du Québec, mais du reste du Canada.

Et, à ce point de vue d'ailleurs, l'apparente offre de compromis spectaculaire d'hier matin, c'est-à-dire
l'offre référendaire nous a paru intéressante, parce que sur le fond justement, c'était possiblement une façon démocratique de sortir de l'impasse, de donner à tous les citoyens qui sont la seule source du pouvoir et personne autour de cette table n'a de pouvoirs équivalents, de donner à la population l'occasion de se prononcer et c'était en même temps la seule proposition fédérale qui puisse respecter le mandat que nous avions reçu de l'assemblée nationale du Québec. Dès hier après-midi, le premier ministre fédéral s'est en quelque sorte employé à détruire lui-même cette offre à mesure qu'il la précisait. Pourtant, si monsieur Trudeau était sérieux, s'il était sincère et sans détour à ce moment-là, il pourrait renoncer à nous imposer ce projet à nous du Québec d'une façon qui, pour nous du Québec, demeure toujours unilatérale. Il pourrait dans cette perspective tenir son fameux référendum, rien ne l'empêche de le faire, il n'a besoin de l'accord d'aucun d'entre nous autour de cette table. En tout cas, sans ça, pour notre part, nous devrons constater que monsieur Trudeau a choisi délibérément, pour obtenir l'adhésion du Canada anglais, une démarche qui a pour effet d'imposer de force au Québec, une diminution de ses pouvoirs et de ses droits sans son consentement alors que tous les partis représentés à l'Assemblée nationale ont déjà, à l'unanimité, rejeté cette formule.

A propos de la formule d'amendement qui est là devant nous, signée par les dix autres gouvernements, il n'y a plus, à toutes fins utiles, ce qui depuis cent
quatorze ans, depuis le début de la confédération, a représenté la garantie essentielle de la protection des droits et des pouvoirs du Québec, c'est-à-dire une forme valable et non pas une forme punitive de droit de veto. En ce qui concerne la mobilité -- qui est la traduction constitutionnelle de l'effort que faisait le gouvernement fédéral l'an dernier pendant toutes les négociations pour imposer des pouvoirs centralisateurs sur l'économie--en ce qui concerne la mobilité, la formule qui est là devant nous, risque toujours d'écorcher nos compétences législatives dans ce domaine dont le peuple québécois autant que quiconque a besoin.

Et finalement, en ce qui concerne notre compétence exclusive en éducation, on nous a laissé le droit de ne pas nous le faire imposer, mais en enlevant quatre lignes dans le projet qui a été proposé ce matin dans la conférence à huis clos, on introduit un élément de chantage permanent sur le Québec en ce qui concerne la renonciation éventuelle de sa compétence exclusive et de son droit exclusif de décider ce qu'il fait dans le domaine de sa culture, de son identité et à la source de tout ça dans le domaine de l'accès à ses écoles. J'ai bien entendu tout à l'heure, les intentions de bonne volonté à ce point de vue, du premier ministre fédéral; on pourrait prendre le temps de trouver de meilleures formules, on pourrait peut-être ajuster ceci ou cela; je vous donne ma parole ou quelque chose du genre que je vais m'y employer; mais seulement au cas où on ne le saurait pas, à moins que ça ait changé,
l'avis a été donné ce matin vers onze heures, que la Chambre des communes ouvre le débat soi-disant final sur cette résolution, dès demain matin; et je ne vois pas très bien, après les quatre jours que nous venons de passer ici, comment concrètement, pourrait se réaliser -- je m'excuse, monsieur le premier ministre fédéral, je ne vous ai pas interrompu un seul instant --

LE PRESIDENT: Pas demain.

HON. RENE LEVESQUE: Pas demain, quand?

Mais enfin c'est ce que vous avez dit hier.

LE PRESIDENT: Non non, pas hier, il n'y avait pas d'entente.

HON. RENE LEVESQUE: Ah! hier c'était ça, aujourd'hui c'est autre chose.

LE PRESIDENT: Il n'y avait pas d'entente hier.

HON. RENE LEVESQUE: D'accord.

LE PRESIDENT: Il y en a une ce matin.

HON. RENE LEVESQUE: D'accord, d'accord, on verra. De toute façon, vu que ça va changer profondément la résolution, le projet fédéral qui est devant la Chambre des communes, il n'y a plus aucune raison pour que ce débat soit artificiellement limité à deux jours, et je fais appel, en particulier aux québécois, je fais appel aux québécois dans les deux chambres fédérales, de quelque parti qu'ils soient, de ne pas expédier manu militari en deux jours, un projet qui a été chambardé comme ça et qui continue de brimer profondément les droits du Québec. Pourtant, nous sommes venus ici pour négocier de bonne foi, on n'a pas hésité à participer à des
offres de compromis à partir desquelles il nous paraissait possible jusqu'à la dernière, non, jusqu'à la dernière minute de la journée d'hier, d'arriver à des consensus qui pourraient satisfaire tout le monde y compris nous du Québec. J'ai d'abord, voici jusqu'où nous sommes allés très rapidement dans les grandes lignes. J'ai d'abord posé la question évidente qui découlait de la motion de l'assemblée nationale au premier ministre: Est-ce que vous êtes prêts à renoncer à l'unilatéralisme, et de toute façon à renoncer à enlever quelque pouvoir que ce soit et quelque droit que ce soit au Québec sans son consentement?

La réponse est devant nous dans un accord des dix autres gouvernements, cette réponse c'est: non.

J'ai demandé ensuite si l'accord qui avait été conclu entre huit provinces depuis le mois d'avril 81 ne serait pas une façon honorable d'en sortir, c'est-à-dire ce fameux rapatriement qui est devenu une obsession symbolique et aussi une formule d'amendement qui respecterait en pratique le droit de veto du Québec, sans rien changer à ses droits et à ses pouvoirs reconnus depuis 114 ans et tout le reste attendant une nouvelle négociation, la réponse est devant nous, c'est: non. Nous avons ensuite participé avec les mêmes sept autres provinces, à huit, à la mise au point d'un nouveau compromis incluant cette fois une partie substantielle du projet de charte, mais une partie de cette charte qui ne pouvait brimer d'aucune façon, à notre avis, nos droits et nos pouvoirs québécois. Ça a été présenté au premier ministre fédéral comme on le sait, ce compromis, la réponse on la connaît, ça a été non.
Puis le premier ministre fédéral lui-même -- je l'ai évoqué dans une démarche surprenante et qui paraissait prometteuse au départ -- a prétendu ouvrir sur une solution référendaire, mais il y a attaché lui-même de telles conditions, que c'est devenu en réalité un pur ballon fabriqué pour être dégonflé, et finalement, ce matin, avant de quitter la séance, j'ai posé deux questions finales, quant à nous, au premier ministre fédéral, et à tous nos collègues ici et ces questions étaient celles-ci: premièrement, vous avez proposé hier qu'à défaut de consensus, ce projet fédéral n'entre pas en vigueur ni quant à la formule d'amendement ni quant à la charte des droits, puisque sans l'appui de la majorité du peuple québécois parce que dans votre formule référendaire que vous proposez hier, il s'agissait d'un référendum dans le cadre qui a toujours été la tradition au Canada, c'est-à-dire sur la base des quatre grandes régions dont le Québec en constitue une à lui seul. Aujourd'hui c'est bien sûr vous avez l'accord, monsieur le premier ministre fédéral, des autres provinces, sur un projet d'entente, mais vous n'avez pas l'accord du Québec, vous n'avez pas dans le consensus du tout, au sens où ça vous paraissait nécessaire dans la perspective référendaire que vous avez vous-même définie, est-ce que vous seriez prêt à vous engager à ne pas imposer ce projet avant qu'il ait été soumis au peuple du Québec et que ce peuple ait accepté majoritairement? La réponse a été: non, bien sûr, on garde, nous, le droit de consulter le peuple du Québec, finalement pour arriver à un dernier point, c'est ma dernière question et la dernière contribution qu'on a faite
À cette négociation, j'ai demandé ceci: vous-même, monsieur le premier ministre fédéral, et plusieurs de nos collègues, d'une façon bien sentie, éloquente même, et qui nous a paru sincère en cours de route, vous avez reconnu que depuis 114 ans, pour des raisons qui constituent toute la dualité canadienne, vous avez reconnu que le Québec devait avoir cette garantie fondamentale que représentait son droit de véto en ce qui concerne ses droits et ses pouvoirs qui sont déjà dans la constitution actuelle. Il était entendu entre huit provinces dans un accord signé, que ce droit de véto pouvait raisonnablement être maintenu--nous l’avons accepté, même si nous avons été critiqué comme gouvernement--pouvait raisonnablement être maintenu à condition que si on décidait de l'exercer ce droit, il y aurait une compensation financière, qu'on ne soit pas pénalisé pour avoir exercé un droit de véto.

Maintenant, cet accord est émasculé complètement, neuf, dix gouvernements viennent de signer une entente qui comporte pour le Québec un droit d'opting out -- comme on dit en anglais -- un droit d'option en ce qui concerne tout changement à ces droits et ces pouvoirs, mais nous serons pénalisés financièrement à chaque fois si c'est la volonté du gouvernement fédéral.

On a même -- heureusement ou malheureusement -- eu la pudeur d'enlever trois lignes dans le texte initial du projet qui a été signé, trois lignes qui soulignaient les conséquences de cette émasculation de l'accord des
huit provinces: "This change would mean that a province opting out would have to bear the financial consequences of its act."

Ce changement, c'est-à-dire l'abolition de toute compensation financière en cas d'exercice du droit de véto, ce changement signifierait qu'une province qui exerçait ce droit devrait en porter les conséquences financières. Il est évident qu'à partir de là que même si elles ont été enlevées, ces trois lignes représentaient bien, définissaient bien clairement l'esprit et les conséquences de votre projet commun maintenant.

En terminant, je voudrais remercier pour le temps où nous avons été ensemble et où j'ai l'impression, j'ai eu l'impression que c'était une collaboration qui pouvait même acquérir un certain caractère permanent, pour ce temps où nous avons été ensemble, je voudrais remercier mes collègues des sept autres provinces de la collaboration que nous avons réussi à maintenir pendant au-delà d'un an, mais les bonnes choses -- semble-t-il -- ont toujours une fin, aujourd'hui le Québec revient à sa position traditionnelle, hélas: puis c'est pas nous qui l'avons cherchée, ça finit avec nous qui sommes seuls dans notre coin. Tout ça c'est plutôt triste, je ne pense pas que ça soit triste seulement pour le Québec, peut-être plus encore pour le Canada, ça signifie encore un autre durcissement du régime en ce qui nous concerne, le carcan qu'il représente -- parce qu'il ne faut pas oublier les positions traditionnelles non seulement du Québec mais depuis quelques années des autres provinces
aussi -- le carcan que représente, tel qu'il est devenu, le régime fédéral actuel, on prétend à notre endroit le resserrer encore en réduisant des pouvoirs et des garanties qui étaient déjà terriblement insuffisantes.

Il n'est absolument pas question pour un gouvernement québécois qui se respecte, d'accepter une pareille évolution. Jamais le gouvernement actuel du Québec ni votre serviteur ne capituleront là-dessus. Jamais nous n'accepterons qu'on nous enlève quelque pouvoir que ce soit et surtout des pouvoirs à la fois traditionnels et fondamentaux, sans notre consentement, et je répète que nous prendrons tous les moyens qui nous restent pour empêcher que ça se produise.

LE PRESIDENT: Merci, monsieur Lévesque.
I now call on the Attorney-General of Nova Scotia, Mr. Harry How.

HON. HARRY HOW: Thank you, Prime Minister, perhaps the Nova Scotia delegation might be permitted at this time a measure of special pride because approximately 114 years ago, Nova Scotia was one of the four original partners in Confederation. We greatly regret, Mr. Prime Minister, that our distinguished Premier, John Buchanan, cannot be here now to share in this historic moment of national achievement by our First Ministers. He was called away at the last moment by the sad death of his father-in-law.

The accommodation reached, Mr. Prime Minister, by the First Ministers at this conference, although spearheaded by the Premier of Newfoundland, is very reflective of the views of Premier Buchanan, as expressed by him from time to time in the past, in past constitutional meetings, and particularly so at this historic meeting. It is also reflective, we should add, of his repeated assertions that the way to achieve constitutional amendment was by the process of negotiation here in Canada and an endeavour to reach a consensus in this most difficult of national objectives. His faith that Canadians could reach agreement at home rather than have one imposed by one level of government here at home, or perhaps legislated by a government outside our nation has, I suggest, been clearly vindicated by the consensus reached at this historic conference.

My colleague Mr. Edmund Morris will conclude on behalf of the province of Nova Scotia.

HON. EDMUND MORRIS: I may be permitted to say that there has been for some time a perception in Nova Scotia, which we will now earnestly hope will be diminished by today's agreement, that whatever the universe has recently been doing, the country has not been unfolding as it should. With
today's agreement we believe that Canada, and Nova Scotians in it as Canadians, can move forward to deal in greater hope and confidence with pressing matters needing our resolution.

There are few greater truths than the great line from King Lear "All hands leave go, when the great wheel runs down the hill". By what has been achieved today, we Nova Scotians will believe that the great wheel has been arrested in its turning and can now begin to be trundled back uphill again.

As it was at the beginning of Canada, Nova Scotia, one of its founders, is gratified to have played a full and steady part, a calm and even role, in all of the converse and deliberations leading up to today's agreement. It will be our purpose and meaning to do so in fullest measure in the future. Thank you, Prime Minister.
THE CHAIRMAN: Thank you, Mr. Shakespeare --

Mr. Morris. Premier Hatfield, you have the floor.

HON. RICHARD HATFIELD: Mr. Prime Minister, I want to say at the outset that what we are celebrating here makes me very excited. I believe, as you said at the outset, that we have achieved something very substantial and very significant. As this country was born in compromise, it is now or very soon will reach its full maturity because of compromise. Canada is compromise and a lot of compromising has been done and I say that with pride.

Mr. Prime Minister, reference has been made that I have been involved in this process for a very, very long time and over the course of that period I have had a lot to say and some of it was not very nice, especially remarks I made about those who didn't necessarily agree with me.

I want to say, Mr. Prime Minister, that reference was made this morning that we had to swallow a lot. Well, when I signed that agreement I swallowed all those unkind words, but there is one thing I won't take back, one statement I made that I won't take back. I have been saying it for a long time and that is that the political leadership of this country has the competence and the maturity to bring about what we have brought about today and I am very proud of my colleagues and I feel very grateful to have been involved with them in this process.
There has been a lot of time and a lot of effort, there has been an awful lot of paper, there have been an awful lot of proposals, there have been an awful lot of things considered. When I think of the numbers of times that we would reach a decision and say, "Let's give it to our officials and let them work it out," well, I want to say to those officials, they did work it out and they should share in the pride that we have today.

The Premier of Québec has made the statement that Québec is now alone again. Mr. Prime Minister, the people of Québec have been a very important part of Canada and they still are. Québec is not alone. Québec is still in Canada and Canada is still working with, and it will continue to work with Québec, with the people of Québec. I said at the outset that I am excited. I am excited today by the challenge that the impossibility of unanimity presents to us now, a challenge to make sure that people in this country understand that while we are proud of what we have accomplished, we are not satisfied. We are not satisfied. There is still a lot more to be done, and I am confident, based on the example that we have set, I am confident that the political leadership of this country will continue to make that kind of progress that will give to everyone in this country a sense of security.

There is one particular thing I want to say because it is important to us here, or important to my province.

Monsieur le premier ministre, je suis très heureux car cette entente nous permet des progrès dans les possibilités d'éducation pour les francophones et les anglophones au Canada.
But that is an area where we have made very important and very historic progress, but there is still a lot to be done. I am concerned about the fact that there are provisions for opting out in important areas. I want to give an undertaking that I will do everything possible to urge the Legislature of New Brunswick not to use that opportunity, consistent with my firm view that if we are going to have rights, they must be shared by all Canadians, regardless of where they live.

We couldn't get all that we wanted. We have got a great deal but there is still a lot to do. I want to make a special appeal to every member of Parliament that they do consider this agreement and that they do make every effort to understand how broad and good it is and that they give it their support. I would like to hope that they would support it unanimously. I would like to hope that they would support it as soon as possible.

Mr. Prime Minister, I want to say again that compromise is Canada and the reason I think the compromise came about is because during this whole process we heard the voices of Canadians. The pressure was felt, let me tell the people of Canada, that what they had to say was heeded and it was considered and, Mr. Prime Minister, that is our Canadian parliamentary system, that is our Canadian way of doing things and it still works and it works for all Canadians in every part of Canada.

Merci.

Le président: Merci, monsieur Hatfield. The Attorney-General of Manitoba, Mr. Mercier, has the floor.
HON. G.W.J. MERCIER: Thank you, Mr. Chairman.

I signed this agreement, of course, on behalf of Premier Lyon. We have accepted a constitutional accord as an amending formula. We believe that this formula is better for Canada than provincial vetos. The solution will give a veto only to the federal government to protect the national interest and a limited right of withdrawal to the operation of an amendment within a province.

This right of withdrawal would apply only when existing provincial rights, powers and privileges are being taken away. When we consider that such amendments have only occurred on five occasions since 1867 and only when unanimous provincial consent was sought and obtained, I submit that the use of the opt-out provision will be a rare occurrence.

We deeply regret the non-participation of Québec in our agreement. We had supported their stand on fiscal equivalency if the opt-out provision was exercised and would have preferred to retain that provision, but, Mr. Chairman, under our agreement, the rights of Canadians will be protected, not only by the constitution but more importantly by a continuation of the basic political right our people have always enjoyed, -- the right to use the authority of Parliament and the elected Legislatures to identify, define, protect, enhance and extend the rights and freedoms Canadians enjoy. We have achieved this within the four corners of what the Supreme Court has called the federal principle.

Now, Mr. Chairman, let me suggest to you on behalf of the province of Manitoba that all of us move on to the truly urgent and important matters that concern us and that concern Canadians about the current state of our
economy: interest rates, mortgage payments and inflation.

Mr. Chairman, you will be bringing down your budget next week. You will be dealing with the impact of high interest rates. You can be assured that we in Manitoba will cooperate with the resources that we have available to make your measures work, to give real and significant help to the Canadians that live in our province. We know that we cannot do it alone, Mr. Chairman. We know that we need the federal nature of Canada to achieve the things our people want us to achieve. So, Mr. Chairman, just as we have tried to work with you on the constitution, we will try to work with you and your government on the economy.

We, the provincial governments of Canada and the people of Canada, need the partnership of the government you lead to overcome our current economic problems and to make the most of our economic and social opportunities. There is an important job to be done with respect to our economy, Mr. Chairman, and neither level of government can do it alone. Perhaps the best way for Canada and for us to end this conference is for you and your government to accept the partnership of the provinces in meeting the real and urgent economic problems of Canadians and in building on the real and exciting economic opportunities that lie before the people of Manitoba and of every part of this country.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Mercier.
The Premier of British Columbia, Mr. Bennett.

HON. WILLIAM BENNETT: Mr. Prime Minister, Premiers, I guess when we started we all started out to develop a "made in Canada" constitution. We did not want to have our constitution developed by any sort of discussion
taking place in Great Britain, other than in their Parliament and today we have achieved that. I think every representative, be he a premier or a minister or part of the delegation, some of whom have laboured for many years on constitutional reform, should take some pride that we have been able to achieve it in the Canadian way. We have done it in our own country. We have done it with compromise and we have done it with a great deal of give and take that I think is essential if the country is to work. It is not, as some have asked, a game of winners or losers. It is a game in which many people showed their great ability to put the country, put the interests of all parts of Canada first, ahead of either provincial or regional interests, which in turn I believe all premiers here have respected and preserved, which are as important to Canadians.
I have one regret, I regret the province of Quebec cannot sign this document today, but I assure the people of Quebec, as I do the people of the other provinces, that I would not sign this document if I did not think it was good for Canadians in all 10 provinces of this country. I would not sign this document if I did not think it met equally the needs of the people of British Columbia, or the needs of those in all the other provinces including Quebec.

I can say this to the Premier of Quebec, that if I still was the Premier of British Columbia in a number of years and found that our constitution did not fairly represent all of the people in this country, and all of the parts of the country including my own province, I would move for additional constitutional reform for a constitution should be a living document. Those things we have put in are not cast or graven in stone, they are merely a guide for today and hopefully governments in the future will be able to continue to make more workable and make more noble, perhaps, our Canadian constitution.

What we have done is be able to bring this constitution to our country and never again will we live under the threat of having to hold that discussion or constitutional talks in any other country in any other part of the world. While I don't think we will eliminate the debates of the future, and the stresses and strains of Confederation, at least we will be doing it in Canada and at least we will be doing it with our made-in-Canada constitution.

Perhaps if I could, as well as talking to the Canadian people I could mention something to the people of
British Columbia; for when we came to these conferences we came to achieve three things. The first thing we wanted to do was preserve and strengthen the federal system and to defend the integrity of the Supreme Court of Canada decisions, and I believe we have done that. Secondly, it has long been our position in British Columbia that if this country is to not only have equity and be equitable, that no province, no matter how populous or how historically important, should have a veto over any other part of the country. That doesn't mean that any province would become a second-class citizen, but the veto process we have had in the past has created an implication that some provinces were less equal than others, and that is why I could not support the original Victoria Charter amendment, or amending formula, even though I know a distinguished member of my family was there in 1971 with Premier Davis, the Prime Minister, and Premier Hatfield, and agreed to that formula. I am sort of pleased that we have been able to complete the job this year.

THE CHAIRMAN: He's watching.

HON. WILLIAM R. BENNETT: He is watching and I want to reassure it is not going to happen, but I would hate to think that the people of British Columbia or you might consider another Bennett was going to have to deal with you in 10 or 20 years when I am long gone.

--- Laughter

HON. WILLIAM G. DAVIS: I can give you the assurance that will not be the case, from my standpoint.

HON. WILLIAM R. BENNETT: That will be reassuring to my children.

--- Laughter

HON. WILLIAM G. DAVIS: On second thought, I've got two boys.

--- Laughter

HON. WILLIAM R. BENNETT: Anyhow, Mr. Prime Minister and Premiers, I think we can take a lot of pride in this day. I do. I take a lot of satisfaction from the
hard work starting many years ago for us but when we first became government and then in September of 1980, the development of the accord. January and I can think of significant events, I can think of Supreme Court decisions, I can think of the work-up to get this meeting and it has all been worth it for all of us and I congratulate each and every member, Mr. Prime Minister yourself, and each Premier and I am proud to have had the opportunity to negotiate with you and to receive some of your sometimes very strong advice in reaching this conclusion.

Let me say that I think we are embarked on hopefully a new spirit in this country, and the bitterness that has enveloped Canada for the last two or three years will be gone. Recently a number of provinces were able to achieve significant energy agreements with the government of Canada. Today we have achieved agreement on constitutional measures that will patriate our constitution. Prime Minister and Premiers, there are many outstanding issues on the agenda of the Canadian people that still need to be resolved, and I hope that rather than seeing this meeting as a sort of conclusion that we see it as another in the building blocks of providing the climate and the opportunity for agreements between Newfoundland and other provinces, that will help to build the Canadian fabric, the economy and a sense of belonging together.

In my opening statement to this conference, I said the following; fifty years from now when historians look back upon our activities here this week, I would hope they would conclude that through national leadership and in the Canadian way of compromise, conciliation and consensus,
we succeeded in forging a constitution to serve as a beacon of hope to generations of Canadians and that in the process we overcame a temporary period of national dissenion. Mr. Prime Minister and Premiers, I know all Canadians share that hope and share that prayer but today I know they also share the satisfaction and joy and pride we take in this moment.

THE CHAIRMAN: Thank you, Premier Bennett.

Premier MacLean.

HON. J. ANGUS MACLEAN: Thank you, Mr. Prime Minister and colleagues. It is well-known that the objectives we have been trying to achieve have been divided into three categories, the question of patriation of our constitution and striving to find an amending formula and then the re-stating and addition to the so-called Canadian Charter of Rights and freedoms to be included in the constitution. My personal feeling was that this should have been done in two stages, that the result would have been better if we had the first two things accomplished and then went on in a different atmosphere to achieve the third. But, I am like all of my colleagues, I have been ready to make concessions for the general good.

I regret, of course, that some of our colleagues, Mr. Lyon of Manitoba and Mr. Buchanan of Nova Scotia are unable to be here for reasons that have already been stated, but I want to congratulate the Premier of our newest province, Newfoundland, the Honourable Mr. Peckford for his major contribution to achieving this consensus. I would like to express my personal appreciation to Premier Davis for the kind words he said about myself, and I consider that one of the key things, one of the most important things, and perhaps the greatest achievement is that we as a group have at long
last achieved an amending formula that all provinces, I think, can feel is reasonably fair.

Now, I understand the reservations of Quebec and I will speak about that later, but as the Premier of the smallest province, I want to say that I am greatly strengthened in my belief in Canadianism by the fact that now provinces, before the law as it were, will be treated like human beings, like people, as individuals and not according to their weight.

The recognition that the voice of a province, no matter how small, is important with regard to its own obligations and with regard to its rights and privileges in Confederation, I think is very important. The recognition that constitutions should be amended by consensus, and by discussion between the units that make up the two levels of government, rather than by any attempt at unilateral action by either level of government I think is very important.

I should remind Canadians however, I think, that the agreement that we have achieved has little bearing on many problems facing Canadians and is indeed irrelevant to many of them.

All governments should, I think, now give their full attention to the problems which are the first concern of most Canadians.

I think that as a result of the long deliberations that have gone on for more than a year now, the concept of Confederation is better understood by many people and my view of a constitution is that it is a code, a framework. It is very important that it be observed not only to the letter, but in the spirit. My expectations are that the conventions which we have created over the years will be observed in the future and strengthened in the years ahead.

In a way, I think that Confederation is
something like a marriage, it's success or failure depends more upon how the participants treat each other, and how they live up to the spirit of the arrangement, I think that is much more important than the wording of the vows.

I might add that as a Canadian I am proud to have been one of the so-called Gang of Eight, who have, through their hard work over a long period, I think have made a major contribution to us achieving an amending formula. I want to pay tribute to Premier Levesque in those deliberations for his objective reasonableness and for his flexibility and for the very major concession he was willing to make on behalf of his province in giving up the right of veto which they held and accepting in its place, merely the opportunity to opt out, and I don't know how this can be achieved but I think we should strive towards a situation where a province would neither benefit nor be penalized if it chose to opt out of any particular situation.
On a personal note, Mr. Prime Minister,
I am very pleased indeed that we have reached this milestone
before the few days remaining to me as Premier of Prince
Edward Island, the cradle of confederation, have run out,
and I want to express my appreciation not only to my
colleagues, the First Ministers, but also to other ministers
and to officials who have contributed so much in this
achievement for Canada.

Thank you.

THE CHAIRMAN: Thank you, Premier
MacLean. Premier Blakeney of Saskatchewan.

HON. ALLAN BLAKENEY: Mr. Prime
Minister, I am happy to join in this occasion. I welcome
the tone set by you, by Premier Davis and by the other
speakers. I particularly welcomed Premier Davis' submission
to the meeting. I don't know when I have heard his words
more gracious or seen his mood more ebullient.
I regretted that there wasn't anything I needed very badly
from Ontario right at the moment, because I think this is
the day I might have got it.

HON. WILLIAM DAVIS: I am glad to hear
you didn't need anything.

HON. ALLAN BLAKENEY: Speaking of the
agreement, I would say that it doesn't include everything
that Saskatchewan would have wished and probably every
government would say the same, but it is a reasonable
compromise, a bargain and an honourable bargain for Canada.
It contains an amending formula which protects the vital
interests of individual provinces, but still allows Canadians
to amend their constitution without unanimity. It doesn't provide a veto. It removes the perpetual veto from the Senate which is something that we were interested in. It contains a Charter of Rights which protects the interests of individual Canadians, yet in several vital areas allows Parliament and Legislatures to override a court decision which might affect the basic social institutions of a province or region and this is fully consistent with the sort of argument we have put forward that we need to balance the protection of rights with the existence of our institutions which have served us so well for so many centuries.

It spells out clearly the protection of resources and I need not tell you the importance which our province has put upon that. It is acceptable to the federal government and nine provinces, and I believe that meets the test of being constitutionally done by the Supreme Court.

Saskatchewan has taken the position that we should not move with constitutional amendment unless we met that test which I had phrased as the double majority, a majority in the House of Commons, which will be yours to secure, Mr. Prime Minister, and a consensus of the provinces which, as it seems to me, we have here today.

As I say, I believe the agreement meets that test.

The pleasure which I feel today is tempered by the fact that the package is not supported by the Government of Québec. I wish that they had decided otherwise, because the participation of Québec in building
our country has been enormous and will continue to be of the greatest importance in the years ahead. Some of us did address this problem with all the care we could. As we saw it, in the past Québec had had a de facto veto which didn't carry with it fiscal compensation applicable in some areas, but at any rate that wasn't part of the arrangement.

Then the Supreme Court came along and said no province has a veto, all that is needed is consensus.

Meanwhile the Group of Eight had been working on a basis which involved the principle that all provinces would be treated alike. This clearly -- this combination of events clearly presented some hazards for the province of Québec and we were persuaded and strongly persuaded that under those circumstances the vital interests of the province of Québec should be protected by an opt-out arrangement. I am sorry that it is perceived that the current arrangements are not adequate for that. I had believed and still believe that it gives a high measure of protection and allows Canadians in this very diverse country to develop their own particular destinies within the overall united Canada, all those it seemed to me were pretty important objectives which by and large had been achieved. So I look on our accomplishment as no small feat.

I think it is a great day for Canada. We will patriate our constitution, we will have a way to amend it here in Canada, we will have a Charter of Rights which is consistent with the tradition of British parliamentary democracy and we undertake to deal with the rights of native Canadians. We have strengthened the confederation bargain by making it easier for people to
move across Canada and take jobs. We have strengthened the Canadian confederation bargain by improving the protections of French-speaking and English-speaking minorities. We are happy to participate in that. We will have a "made in Canada" constitution. Canadians indeed will have completed a major act of nation-building that we began a hundred and fourteen years ago and I, for my part, Mr. Prime Minister, am proud to have had the opportunity to participate in this exercise with you and with my fellow premiers on behalf of the people of Saskatchewan.


HON. PETER LOUGHEED: Thank you, Mr. Prime Minister.

It is certainly an occasion that has very great significance because it really represents, in my judgment, what this country is about and its federal system.

As I said in my opening remarks, it had to be done by consensus and not by unilateral action. I have struggled through with you, Mr. Prime Minister, over the course of this summer, the very complex and difficult negotiations in the area of energy and again in that case, as well as in this, there had to be adjustments and modifications made by all who were involved, and that is the Canadian way we do things. It is not easy, but it bears a second example of where it can be done.

Albertans had objectives coming into this conference that were important objectives. We wanted patriation and a "made in Canada" constitution and, Mr. Prime Minister, I want to assure you that I didn't really
want to go to London. I really wanted to go to Eglinton, but not to London. In any event, I am glad I can go to London perhaps at another occasion for a different purpose.

The amending formula was a fundamental objective for our province. Back in 1976 when we were to degree alone then, we took a position on behalf of the people of Alberta that in a confederation there should be no provinces that were second-class provinces and we shouldn't be in a position where rights could be taken away from our province, rights that we had and have today, without our concurrence. It was a fundamentally important point for us and we struggled through, I guess it is five years now, to come to this point and we are extremely pleased that this amending formula reflects that equality of provinces. We never sought a veto for Alberta and that is what brought us to the opting-out situation. We have never been anything other than a proponent of a Charter of Rights, but it had to be done, in our judgment, in a way that did not affect the supremacy of the elected people and they had to be in a position in a parliamentary system that they could respond through their elected legislature to the interpretation of what might come over the years ahead to decisions of the courts in interpreting a Charter of Rights.

The very first bill our legislature introduced was an Alberta Bill of Rights, and I am proud of that. Certainly we and others made some movement in the Charter of Rights and that is part of being here and I am pleased to be a part of it. Yes, my friend, Bill, we did budge and your persuasion was helpful in our budging.
The other thing that was important in our objective was that we respected the decision of the Supreme Court of Canada with regard to what is the constitutional convention of this country and that is what has happened here today.

Finally, and I know others disagree with me, but as a parliamentarian I believe very strongly that decisions should be made by political leadership, not made by way of referendum and that referendum is a divisive approach. I appreciate others disagree with me, but I feel very, very strongly about that. We had a group of eight that came about after the unilateral federal action. We worked together on an amending formula and I regret today with the others that Quèbec is not part of this consensus.

Quèbec pressed, and I understand it, they pressed that if they were going to exchange their veto for an opting-out position, that they should have in exchange a position that gave them the financial compensation for their opting-out. That was the position they took. It was not our original view, it wasn't our view in what was known as the Vancouver consensus, but it was pressed and pressed eloquently as a position to be taken by the province of Quèbec.

I regret that they have taken the view that it was fundamental, if I understand it, to their acceptance of this accord today. I join with Premier MacLean, Prime Minister, in what he said, and I think I saw you nod with regard to it, that what has to happen here is one of two things on this matter: either we find a situation of resolving this matter in terms of fairness,
resolving it perhaps constitutionally, perhaps in some other way, that is the question of a province opting out and being placed in a position by doing so of unfairness.

As you said, Mr. Prime Minister, in your opening remarks, and I understand the objection, a province opting out for reasons of jurisdiction and the reason being -- the result therefore being that they be in a position of benefiting as well in a financial way was, I think, at the heart of yours and other concerns on that amending formula, but Mr. MacLean's comment has to be, "Where do we go from here?" and there have to be assurances given that there be that fairness there, that if the opting out creates a jeopardy or a situation that is just simply not fair, then we are assured political realities will respond to it.
Finally, I just want to congratulate not any one particular Premier, but all of the 10 Premiers and the 10 delegations. Everybody was involved in this process. There were no bystanders. Some took initiatives in a public way, some took initiatives in a private way, but everybody has been involved, and I think that it proves to me, and I think to Canadians, and I am sure to Albertans, that Canada works and Canada as a Confederation will continue to work and work well in the spirit we have here. Recognizing that some difficulties exist can be a good foundation to move forward in the recognition that within those other areas where we need the co-operation, economically in other areas, we can use this as a launching pad together with the spirit of the energy agreement to work together for the benefit of citizens wherever they live in this country.

THE CHAIRMAN: Thank you, Premier Lougheed.

Premier Peckford of Newfoundland.

HON. BRIAN PECKFORD: Mr. Prime Minister, I listened with great interest to what Nova Scotia had to say and what Mr. Morris had to say and it brought back to my mind my days as an English teacher, and Shakespeare came very quickly to mind, and surely the last three days haven't been "Much Ado About Nothing". I am reminded of Wadsworth's comments in one of his poems:

"We see into the life of things"

and I am reminded of Tennyson:

"To seek to strive, to find and not to yield"

and I am reminded most particularly of Frost when he said in the title of one of his poems, "The Road Not Taken".

Mr. Prime Minister, I think this is a great day as most other Premiers have said, for Canada. I think it is a great day for four principles which we have articulated right from the beginning of this process. It is a great day for balanced federalism; for parliamentary democracy, for the equality
of the provinces and for consensus. I think it is also, if I may say so, Mr. Prime Minister, a great day for you personally and for some of the people, the First Ministers who have supported to you as I have said in closed session, on the principles of a Charter. I think that is very, very significant. Whilst we mightn't have what I wanted, or other Premiers wanted, or what you youself, Mr. Prime Minister, wanted, I think it is once again, a good balance and a good consensus and the principle has been established which I think is extremely important and does provide a lot of evidence to your notion of a national will or a national consensus, as you sometimes phrase it. So, I think it is a big day for you and for those people who have expounded eloquently over the years on the question of nationhood and on the question of Canadianism, and I don't want to diminish it, even though I can say a whole bunch of things about provincialism.

I think it is also important to note the role of the federal government in this whole process, the role of the Supreme Court of Canada, and the role of the provinces and that is the way it has to be and continue to be. From Newfoundland and Labrador's point of view it is a big day for us in the sense that as some of the Premiers have indicated, for us it is our terms of union, a recognition of particular circumstances that exist in our province as it relates to us trying to become not only constitutionally but in real terms, economically, socially, equal Canadians. Given those recognitions, it won't be long now before we will be able to exclaim in effect and in economic terms the equality which we so much desire and wish to seek. The spirit of co-operation, the consensus that we have here today must extend on into the future and we must grapple with many
of the issues that others have mentioned, and I am sure we can do that.

Mr. Prime Minister, I guess as still a relatively young Canadian and young Newfoundlander, let me say this, as sincerely as I can, that I feel more fully a Canadian today than I have ever felt since I have been old enough to think, to know and to try to understand. It is a proud day for us all. Let us move forward from here to continue to build in the spirit of consensus, in the spirit of federalism so that surely some of the words that we have heard years back about somehow this century being so much Canada's can be fully realized before the century is out. Given our energy agreements and given the agreement today, who knows? We still have 17 or 18 years left to truly make it what Laurier said it could and should be. Thank you.

THE CHAIRMAN: Thank you Premier Peckford and thank you particularly for your kind words addressed to me. I am inclined to reciprocate by saying that the draft that finally brought us to an agreement was presented by you this morning, but we all have what is called in French l'esprit d'escalier, badly translated, afterthought, and I don't think I will open the meeting for any afterthoughts because we had better grab the signatures, this piece of paper, and run before anyone changes his mind. La séance est adjournée.

--- Adjournment (2:15 p.m.)
First Ministers' Agreement on the Constitution
November 5, 1981

Entente des Premiers ministres sur la Constitution
le 5 novembre 1981

Ottawa
November 2-5, 1981
In an effort to reach an acceptable consensus on the constitutional issue which meets the concerns of the federal government and a substantial number of provincial governments, the undersigned governments have agreed to the following:

(1) Patriation

(2) Amending Formula:
- Acceptance of the April Accord Amending Formula with the deletion of Section 3 which provides for fiscal compensation to a province which opts out of a constitutional amendment.
- The Delegation of Legislative Authority from the April Accord is deleted.

(3) Charter of Rights and Freedoms:
- The entrenchment of the full Charter of Rights and Freedoms now before Parliament with the following changes:
  (a) With respect to Mobility Rights the inclusion of the right of a province to undertake affirmative action programs for socially and economically disadvantaged individuals as long as a province's employment rate was below the National average.
  (b) A "notwithstanding" clause covering sections dealing with Fundamental Freedoms, Legal Rights and Equality Rights. Each "notwithstanding" provision would require reenactment not less frequently than once every five years.
  (c) We have agreed that the provisions of Section 23 in respect of Minority Language Education Rights will apply to our provinces.

November 5, 1981

Dans un effort pour en arriver à un consensus acceptable sur la question constitutionnelle qui satisfasse les préoccupations du gouvernement fédéral et d'un nombre important de gouvernements provinciaux, les signataires se sont entendus sur les points suivants:

(1) Le rapatriement de la Constitution

(2) La formule d'amendement
- La formule d'amendement proposée dans l'Accord d'avril a été acceptée en supprimant l'article 3, qui prévoit une compensation fiscale à une province qui se retire d'un amendement constitutionnel.
- La délégation de pouvoirs législatifs prévue dans l'Accord d'avril est supprimée.

(3) La Charte des droits et libertés
- La Charte complète des droits et libertés soumise au Parlement sera inscrite dans la Constitution avec les modifications suivantes:
  (a) En ce qui concerne la liberté de circulation et d'établissement, il y aura inclusion du droit d'une province à mettre en œuvre des programmes d'action en faveur des personnes socialement et économiquement désavantagées tant que le taux d'emploi de cette province demeure inférieur à la moyenne nationale.
  (b) Une clause "nonobstant" s'appliquera aux articles qui traitent des libertés fondamentales, des garanties juridiques et des droits à l'égalité. Toute disposition "nonobstant" devrait être adoptée de nouveau au moins tous les cinq ans.
  (c) Nous sommes convenus que l'article 23, qui a trait au droit à l'instruction dans la langue de la minorité, s'appliquera dans nos provinces.

... 2
(4) The provisions of the Act now before Parliament relating to Equalization and Regional Disparities, and Non Renewable Natural Resources, Forestry Resources and Electrical Energy would be included.

(5) A constitutional conference as provided for in clause 36 of the Resolution, including 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, shall be provided for in the Resolution. The Prime Minister of Canada shall invite representatives of the Aboriginal peoples of Canada to participate in the discussion of that item.

(4) Les dispositions du projet actuellement à l'étude au Parlement qui ont trait à la péréquation et aux inégalités régionales ainsi qu'aux ressources non renouvelables, aux ressources forestières et à l'énergie électrique seraient incluses.

(5) Sera prévue dans la Résolution la conférence constitutionnelle mentionnée à l'article 36 de la Résolution et son ordre du jour inclura 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 invitera leurs représentants à participer aux travaux relatifs à ces questions.
Dated at Ottawa this 5th day of November, 1981.

CANA\DJ\ Pour le Canada

Pierre Elliott Trudeau
Prime Minister of Canada/
Premier ministre du Canada

ONTARIO/Pour l'ONTARIO

William G. Davis, Premier/
Premier ministre

NOVA SCOTIA/Pour la NOUVELLE-ECOSSE

John M. Buchanan, Premier/
Premier ministre

NEW BRUNSWICK/Pour le NOUVEAU-BRUNSWICK

Richard B. Hatfield, Premier/
Premier ministre

MANITOBA/Pour le MANITOBA

Sterling R. Lyon, Premier/
Premier ministre

BRITISH COLUMBIA/Pour la COLOMBIE-BRITANNIQUE

William R. Bennett, Premier/
Premier ministre

PRINCE EDWARD ISLAND/Pour l'ÎLE-DU-PRINCE-ÉDOUARD

J. Angus MacLean, Premier/
Premier ministre
SASKATCHEWAN/POUR LA SASKATCHEWAN

Allan E. Blakeney, Premier/
Premier ministre

ALBERTA/POUR L'ALBERTA

Peter Lougheed, Premier/
Premier ministre

NEWFOUNDLAND/POUR TERRE-NEUVE

Brian A. Peckford, Premier/
Premier ministre
FACT SHEET

The notwithstanding or override clause
as applied to the Charter of Rights & Freedoms

A notwithstanding clause is one which enables a legislative body (federal and provincial) to enact expressly that a particular provision of an Act will be valid, notwithstanding the fact that it conflicts with a specific provision of the Charter of Rights and Freedoms. The notwithstanding principle has been recognized and is contained in a number of bills of rights, including the Canadian Bill of Rights (1960), the Alberta Bill of Rights (1972), The Quebec Charter of Rights and Freedoms (1975), the Saskatchewan Human Rights Code (1979), and Ontario's Bill 7 to Amend its Human Rights Code (1981).

How it would be applied

Any enactment overriding any specific provisions of the Charter would contain a clause expressly declaring that a specific provision of the proposed enactment shall operate, notwithstanding a specific provision of the Charter of Rights and Freedoms.

Any notwithstanding enactment would have to be reviewed and renewed every five years by the enacting legislature if it were to remain in force.
NOTE EXPLICATIVE

Application à la Charte des droits et libertés de la clause "nonobstant" ou clause dérogatoire

On entend par clause "nonobstant" une disposition qui permet à un corps législatif de prévoir expressément qu'une loi particulière sera valide nonobstant le fait qu'elle entre en conflit avec une disposition précise de la Charte des droits et libertés. Le principe qui sous-tend cette clause est reconnu et retenu dans un certain nombre de déclarations des droits, dont la Déclaration canadienne des droits (1960), l'Alberta Bill of Rights (1972), la Charte québécoise des droits et libertés de la personne (1975) et le Saskatchewan Human Rights Code (1979), et le projet de loi 7 de l'Ontario ayant pour but d'amender le Human Rights Code (1981).

Comment cette clause s'appliquerait

Tout texte législatif contrevenant à toute disposition précise de la Charte renfermerait une clause déclarant expressément qu'une disposition précise dudit texte législatif s'appliquera nonobstant une disposition précise de la Charte des droits et libertés.

Tout texte législatif "nonobstant" devrait, pour demeurer en vigueur, être passé en revue et renouvelé tous les cinq ans par le corps législatif l'ayant adopté.
FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Ottawa
November 2 - 5, 1981

ATTENDANCE

CANADA

The Right Hon. Pierre Elliott Trudeau
Prime Minister

The Hon. Allan MacEachen
Deputy Prime Minister and Minister of Finance

The Hon. Jean Chrétien
Minister of Justice and Attorney General of Canada and Minister of State for Social Development

The Hon. John Munro
Minister of Indian Affairs and Northern Development

The Hon. Eugene Whelan
Minister of Agriculture

The Hon. Raymond Joseph Perrault
Leader of the Government in the Senate

The Hon. John Roberts
Minister of the Environment and Minister of State for Science and Technology

The Hon. Francis Fox
Minister of Communications

The Hon. Gerald Regan
Secretary of State of Canada

The Hon. Mark MacGuigan
Secretary of State for External Affairs

The Hon. Lloyd Axworthy
Minister of Employment and Immigration

The Hon. Serge Joyal
Minister of State

The Hon. W. Bennett Campbell
Minister of Veterans Affairs
ONTARIO

The Hon. William G. Davis
Premier

The Hon. Thomas L. Wells
Minister of Intergovernmental Affairs

The Hon. R. Roy McMurtry
Attorney General

QUEBEC

Mr. René Lévesque
Premier

Mr. Claude Morin
Minister of Intergovernmental Affairs

Mr. Jacques Parizeau
Minister of Finance and Minister for Financial and Co-operative Institutions

Mr. Claude Charron
Minister responsible for Parliamentary Affairs and House Leader

Mr. Marc-André Bédard
Minister of Justice and Minister of State for Electoral Reform

NOVA SCOTIA

The Hon. John M. Buchanan
Premier

The Hon. Edmund Morris
Minister of Intergovernmental Affairs

The Hon. Harry How
Attorney General
NEW BRUNSWICK

The Hon. Richard Hatfield
Premier

The Hon. Rodman Logan
Attorney General and Minister of Justice

The Hon. Jean-Maurice Simard
Chairman of the Treasury Board

The Hon. Brenda Robertson
Minister of Health

MANITOBA

The Hon. Sterling Lyon
Premier

The Hon. G.W.J. Mercier
Attorney General

BRITISH COLUMBIA

The Hon. William R. Bennett
Premier

The Hon. Garde B. Gardom
Minister of Intergovernmental Relations

The Hon. Brian D. Smith
Minister of Education

PRINCE EDWARD ISLAND

The Hon. J. Angus MacLean
Premier

The Hon. F.L. Driscoll
Minister of Education

The Hon. H.B. Carver
Minister of Justice
SASKATCHEWAN

The Hon. Allan Blakeney
Premier

The Hon. Roy Romanow
Minister of Intergovernmental Affairs

ALBERTA

The Hon. Peter Lougheed
Premier

The Hon. Dick Johnston
Minister of Federal and Intergovernmental Affairs

The Hon. James Horsman
Minister of Advanced Education and Manpower

NEWFOUNDLAND

The Hon. Brian Peckford
Premier

The Hon. G.R. Ottenheimer
Minister of Justice

CANADIAN INTERGOVERNMENTAL CONFERENCE SECRETARIAT

Edward J. Watson
Conference Secretary
CONFERENCE FEDERALE-PROVINCIALE DES PREMIERS MINISTRES SUR LA CONSTITUTION

Ottawa

1er 2 au 5 novembre 1981

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Vice-premier ministre et ministre des Finances

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SECRETARIAT DES CONFERENCES INTERGOUVERNEMENTALES CANADIENNES

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