

SECRET

December 12, 1980

A N N E X E S
to
MEMORANDUM TO MINISTERS
from
MINISTER OF JUSTICE
dated December 12, 1980
respecting
Possible Amendments to Proposed Resolution on
Constitution of Canada

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A N N E X E S
du
MÉMOIRE AUX MINISTRES
du
MINISTRE DE LA JUSTICE
daté du 12 décembre 1980
sur
d'éventuelles modifications
au Projet de résolution
concernant la
Constitution du Canada

ANNEX 1

November 21, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 1 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Rights and
Freedoms in
Canada

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

ANNEXE 1

Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 1 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droits et
libertés
au Canada

«1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit et seulement dans des limites raisonnables et manifestement justifiables dans une société libre et démocratique.»

Section 1 of the proposed
Constitution Act, 1980
at present reads as follows:

Texte actuel de l'article 1:

Rights and
Freedoms in
Canada

"1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

«1. La *Charte canadienne des droits et libertés* garantit les droits et libertés énoncés ci-après, sous les seules réserves normalement acceptées dans une société libre et démocratique de régime parlementaire»

Droits et
libertés au
Canada

ANNEX 2

December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting the word "and" at the end of paragraph 2(b) of the proposed Constitution Act, 1980, by deleting paragraph 2(c) thereof and by substituting therefor the following:

- "(c) freedom of peaceful assembly; and
- (d) freedom of association."

Paragraph 2(c) of the proposed Constitution Act, 1980 at present reads as follows:

Fundamental
freedoms

"2. Everyone has the following fundamental freedoms:

(a) . . .

(b) . . . and

(c) freedom of peaceful assembly and of association."

2. Chacun a les libertés fondamentales suivantes:

(a) . . .

(b) . . .

(c) liberté de réunion pacifique et d'association."

Libertés
fondamentales

SECRET

ANNEX 3

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 10(b) of the proposed *Constitution Act, 1980* and by substituting therefor the following:

"(b) to retain and instruct counsel without delay and to be informed promptly of this right; and"

ANNEXE 3

Le 8 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'alinéa 10b) du projet de Loi constitutionnelle de 1980, de l'alinéa suivant:

«b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit dans les meilleurs délais;»

SECRET

ANNEX 4

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada
be amended

- (a) by adding thereto immediately after paragraph 11(b) of the proposed *Constitution Act, 1980* the following:

"(c) not to be compelled to testify against oneself in proceedings in respect of the charge;"

; and

- (b) by relettering the present paragraphs 11(c) to (g) accordingly.

ANNEXE 4

Le 8 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié

- a) par insertion, après l'alinéa 11b) du projet de Loi constitutionnelle de 1980, de ce qui suit:

«c) de ne pas être contraint de témoigner contre lui-même dans toute procédure concernant son inculpation;»

;

- b) par changement de la désignation littérale des alinéas 11c) à g) qui découle de cette modification.

ANNEX 5

REVISÉ November 21, 1980
December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 13 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Self-
crimination

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

ANNEXE 5

MODIFIÉ Le 21 novembre 1980
Le 5 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 13 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Témoignage
incriminant

"13. Chacun a droit, s'il est contraint de témoigner, à ce qu'aucun témoignage incriminant qu'il aura rendu ne soit utilisé contre lui dans d'autres procédures, sauf lors de poursuites pour parjure ou pour témoignage contradictoire."

Section 13 of the proposed
Constitution Act, 1980 at
present reads as follows:

Texte actuel de l'article 13:

Self-crimina-
tion

"13. A witness has the right when compelled to testify not to have any incriminating evidence so given used to incriminate him or her in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence."

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

Declarat-
ion

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting the heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 and by substituting therefor the following:

"Equality Rights

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

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without unreasonable distinction.

DISCRIMINATION

(2) Every distinction based on sex, race, national or ethnic origin, colour or religion is presumed to be unreasonable unless the contrary is shown or the distinction is necessary to the achievement of a compelling state interest.

Affirmative
action programs

(3) Nothing in this section limits the authority of Parliament or the legislature of a province to authorize any program or activity designed to prevent, eliminate or reduce disadvantages likely to be suffered by or suffered by any group of individuals where those disadvantages would be or are related to any unreasonable basis of distinction among individuals."

The heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 at present read as follows:

"Non-discrimination Rights

Equality before
the law and
equal protection
of the law

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

Affirmative
action
programs

(2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

"Droits à la non-discrimination

15. (1) Tous sont égaux devant la loi et ont droit à la même protection de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge ou le sexe.

(2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des personnes et des groupes défavorisés >>>

ALTERNATIVE II

ANNEX 6

November 21, 1980
REVISED December 5, 1980
December 10, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting the heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 and by substituting therefor the following:

"Equality Rights"

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

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

Affirmative action programs

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

ANNEXE 6

Le 21 novembre 1980
MODIFIE Le 5 décembre 1980
Le 10 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié, par substitution à l'article 15 et à sa rubrique du projet de Loi constitutionnelle de 1980, de l'article et de la rubrique suivants :

«Droits à l'égalité

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

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

Programmes de promotion sociale

(2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des individus et des groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe ou de leur âge.»

The heading preceding section 15 and section 15 of the proposed Constitution Act, 1980 at present read as follows:

Texte actuel de l'article 15 et de la rubrique qui le précède:

"Non-discrimination Rights"

Equality before the law and equal protection of the law

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

Affirmative action programs

(2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups."

«Droits à la non-discrimination

15. (1) Tous sont égaux devant la loi et ont droit à la même protection de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge ou le sexe.

(2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des personnes et des groupes défavorisés.»

Egalité devant la loi et protection égale de la loi

Programmes d'action sociale

ANNEX 7

REVISÉ November 21, 1980
December 10, 1980
December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 20 of the proposed Constitution Act, 1980 and by substituting therefor the following section:

Communications by public with federal institutions "20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office or facility of any such institution where there is a reasonable requirement for communications with and services from that office or facility in both English and French or the office or facility serves members of the travelling public."

ANNEXE 7

MODIFIÉ Le 21 novembre 1980
le 11 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 20 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Communications entre les administrés et les institutions fédérales "20. Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions là où l'emploi tant du français que de l'anglais pour communiquer avec ce bureau ou pour en recevoir les services fait l'objet d'une demande importante."

Section 20 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 20:

Communications by public with federal institutions

"20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

<<20. Chacun a, au Canada, à titre privé, droit à l'emploi de la langue officielle de son choix pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions situé dans une région du Canada où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement, qu'une partie importante de la population emploie la langue qu'il a choisie.>>

Communications entre les administrés et les institutions fédérales

December 10, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 23 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Language of instruction	"23. (1) Citizens of Canada, who have received their primary school instruction in English or French in Canada, and who reside in a province in which the language of that instruction is that of the English or French linguistic minority population of that province, have the right to have their children receive primary and secondary school instruction in that province in that language.
Idem	(2) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, have the right to have their children receive primary and secondary school instruction in that province in that language.
Continuity of language of instruction	(3) Citizens of Canada of whom one child has received primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
Limitation on right	(4) The right of citizens of Canada under this section to have their children receive primary and secondary school instruction in the language of the English or French minority population of a province applies only where the citizens reside in an area of the province in which the number of children of citizens who have such a right is sufficient to warrant the provision out of public funds of minority language instruction in that area."

Section 23 of the proposed Constitution Act, 1980 at present reads as follows:

Language of instruction

23. (1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

Continuity of language of instruction

(2) Where a citizen of Canada changes residence from one province to another and, prior to the change, any child of that citizen has been receiving his or her primary or secondary school instruction in either English or French, that citizen has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language if the number of children of citizens resident in the area of the province to which the citizen has moved, who have a right recognized by this section, is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 26 of the Constitution Act, 1980.

Section 26 of the proposed Constitution Act, 1980 at present reads as follows:

Laws respecting
evidence

"26. No provision of this Charter, other than section 13, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto."

26. A l'exception de l'article 13, les dispositions de la présente charte ne portent pas atteinte aux lois sur l'admissibilité de la preuve en justice, ni aux pouvoirs du Parlement et des législatures de légiférer en cette matière. >>

Dis-
posed

ANNEX 10

December 12, 1980

ALTERNATIVE I

Moved that

The Proposed Resolution respecting the Constitution of
Canada be amended by

(a) adding immediately after section 25 of the proposed
Constitution Act, 1980, the following section:

Interpretation
of Charter

"26. This Charter shall be interpreted
in a manner consistent with the object of
promoting the preservation and enhancement
of the diverse cultural heritages of Canada."

; and

(b) renumbering the sections following thereafter accordingly.

December 12, 1980

ALTERNATIVE II

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 22 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Rights and
privileges
preserved

"22. To ensure the continued preservation and enhancement of the diverse cultural heritages of Canada, nothing in sections 16 to 20 shall be construed as abrogating or derogating from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language."

Section 22 of the proposed
Constitution Act, 1980
at present reads as follows:

Rights and
privileges
preserved

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

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

ANNEX //

December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of
Canada be amended by

(a) adding immediately after section 14 of the proposed
Constitution Act, 1980 the following heading and section:

"Property Rights

Property
rights

"15. Everyone has the right to the
enjoyment of property and the right not to be
deprived thereof except in accordance with law."

; and

(b) renumbering the sections following thereafter
accordingly.

* Consider whether, if this is added, it might be better to change
the heading prior to section 6 to "Mobility and Property
Rights" and add this section as section 7.

November 21, 1980
REVISED December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 38(3)(a) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(a) paragraph 41(1)(b) or any alternative thereto approved by the Parliament or government of Canada and deposited with the Chief Electoral Officer at least ninety days prior to the day on which the referendum is held, or"

ANNEXE 5
Le 21 novembre 1980
MODIFIÉ le 11 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'alinéa 38(3)a) du projet de Loi constitutionnelle de 1980, de l'alinéa suivant :

«a) celle qui est prévue à l'alinéa 41(1)b) ou l'éventuelle procédure de remplacement approuvée par le Parlement du Canada après dépôt de son texte auprès du directeur général des élections au moins quatre-vingt-dix jours avant la date du référendum;»

Paragraph 38(3)(a) of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'alinéa 38(3) a):

Referendum

"(3) Where copies of an alternative have been filed as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain filed by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the government of Canada shall cause a referendum to be held within two years after that day to determine whether

(a) paragraph 41(1)(b) or any alternative thereto proposed by the government of Canada by depositing a copy thereof with the Chief Electoral Officer at least ninety days prior to the day on which the referendum is held, or "

«(3) Dans les cas où, deux ans après l'entrée en vigueur, exception faite de la partie V, de la présente loi, au moins huit provinces remplissant les conditions démographiques visées au paragraphe (1) n'ont pas retiré leur texte, le gouvernement du Canada fait tenir, dans les deux années suivant l'échéance des deux ans, un référendum pour déterminer laquelle des procédures suivantes sera adoptée:

a) celle qui est prévue à l'alinéa 41(1)b) ou l'éventuelle procédure de remplacement proposée par le gouvernement du Canada après dépôt de son texte auprès du directeur général des élections au moins quatre-vingt-dix jours avant la date du référendum;»

Referendum

December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

- (a) deleting subsection 38(1) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Provincial alternative procedure "38. (1) The (governments or) (legislative assemblies) of eight or more provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces may make a single proposal to substitute for paragraphs 41(1)(b) such alternative as they consider appropriate."

- (b) deleting subsection 38(3) of the proposed said Act and by substituting therefor the following:

Referendum "(3) Where copies of an alternative have been filed as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain filed by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the (Parliament) (or government) of Canada shall cause a referendum to be held within two years after that day to determine whether

- (a) paragraph 41(1)(b) or any alternative thereto approved by the (Parliament) (or government) of Canada and deposited with the Chief Electoral Officer at least ninety days prior to the day on which the referendum is held, or
(b) the alternative proposed by the provinces, shall be adopted."

December 10, 1980

ALTERNATIVE I

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by adding to section 40 of the proposed Constitution Act, 1980 the following subsections:

Establishment
of Referendum
Rules
Commission

"(3) If a referendum is required to be held under subsection 38(3), an advisory commission, to be known as a Referendum Rules Commission, shall forthwith be established consisting of

- (a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;
- (b) a person appointed by the Governor General in Council; and
- (c) a person appointed by the Governor General in Council
 - (i) on the recommendation of the governments of a majority of provinces, or
 - (ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.

Rules for
Referendum

(4) A Referendum Rules Commission shall, by majority decision through the Chairman of the Commission, (provide advice in respect of) (recommend) rules for the holding of a referendum under subsection 38(3)."

Possibilities for Requirement for Consultation

() Before Parliament makes any rules under this section, (a Committee of Parliament) (the Governor in Council) (such minister of the Crown as the Governor in Council may designate) shall (consider the Rules proposed by the Referendum Rules Commission) (consult with such prerepresentatives as may be designated by the provinces).

Section 40 of the proposed Constitution Act, 1980 at present reads as follows:

Rules for
referendum

40. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

REVISÉ November 21, 1980
December 10, 1980

ALTERNATIVE II

Moved that

The proposed Resolution respecting the Constitution of Canada be amended by deleting section 40 of the proposed Constitution Act, 1980 and by substituting therefor the following:

"40. (1) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

Establishment
of Referendum
Rules
Commission

(2) If a referendum is required to be held under subsection 38(3), an advisory commission to be known as a Referendum Rules Commission, shall forthwith be established consisting of

- (a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;
- (b) a person appointed by the Governor General in Council; and
- (c) a person appointed by the Governor General in Council

- (i) on the recommendation of the governments of a majority of provinces, or
- (ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.

Rules for
Referendum

(3) A Referendum Rules Commission shall, by majority decision, through the Chairman of the Commission, (provide advice in respect of) (recommend) rules for the holding of a referendum under subsection 38(3).

Idem

(4) Subject to subsection (1), Parliament may make laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

Possibilities for Requirement for Consultation

() Before Parliament makes any rules under this section, (a Committee of Parliament) (the Governor in Council) (such minister of the Crown as the Governor in Council may designate) shall (consider the Rules proposed by the Referendum Rules Commission) (consult with such representatives as may be designated by the provinces).

Section 40 of the proposed Constitution Act, 1980 at present reads as follows:

Rules for
referendum

40. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 40 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droit de vote	«40. (1) Tout citoyen canadien a le droit de vote <u>lors</u> du référendum visé au paragraphe 38(3); ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.
Constitution du comité référendaire	(2) Dès que s'impose la tenue du référendum visé au paragraphe 38(3), il est constitué un comité référendaire, composé : a) du directeur général des élections du Canada, président; b) d'une personne nommée par le gouverneur général en conseil; c) d'une personne nommée par le gouverneur général en conseil: (i) soit sur la recommandation des gouvernements de la majorité des provinces, (ii) soit, si les gouvernements de la majorité des provinces ne présentent pas de candidat dans les soixante jours suivant la demande que leur en fait le directeur général des élections du Canada, sur la recommandation du juge en chef du Canada, le candidat ainsi présenté étant choisi parmi les personnes recommandées par les gouvernements des provinces dans les trente jours suivant l'expiration du délai de soixante jours ou, faute de recommandation, parmi les personnes compétentes en tenue d'élections.
Réglementation du référendum	(3) Le comité référendaire recommande au gouverneur général, par décision majoritaire, les règles applicables à la tenue du référendum visé au paragraphe 38(3).
Proclamation	(4) Les règles visées au paragraphe (3) entrent en vigueur par proclamation du gouverneur général sous le grand sceau du Canada.
Valeur de force de loi des règles	(5) Sous réserve du paragraphe (1), les règles arrêtées en vertu du présent article ont force de loi et l'emportent sur les dispositions incompatibles de toute autre loi adoptée en vertu de la Constitution du Canada.»

Texte actuel de l'article 40 :

«40. (1) Sous réserve du paragraphe (2), le Parlement peut légiférer pour réglementer la tenue du référendum visé au paragraphe 38(3).

Règles en matière de référendum

(2) Tout citoyen canadien a le droit de vote à l'occasion du référendum visé au paragraphe 38(3). Ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.»

Droit de vote

ALTERNATIVE I

December 10, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by adding to section 46 of the proposed Constitution Act, 1980 the following subsections:

Establishment
of Referendum
Rules
Commission

"(3) Where a referendum is to be held under section 42, an advisory commission, to be known as a Referendum Rules Commission, shall forthwith be established consisting of

- (a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;
- (b) a person appointed by the Governor General in Council; and
- (c) a person appointed by the Governor General in Council
 - (i) on the recommendation of the governments of a majority of provinces, or
 - (ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.

Rules for
referendum

(4) A Referendum Rules Commission shall, by majority decision through the Chairman of the Commission, (provide advice in respect of) (recommend) rules for the holding of a referendum under section .

Possibilities for Requirement for Consultation

() Before Parliament makes any rules under this section, (a Committee of Parliament) (the Governor in Council) (such minister of the Crown as the Governor in Council may designate) shall (consider the Rules proposed by the Referendum Rules Commission) (consult with such representatives as may be designated by the provinces).

Section 46 of the proposed Constitution Act, 1980 at present reads as follows:

Rules for
referendum

46. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under section 42.

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under section 42.

December 10, 1980

ALTERNATIVE II

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 46 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Right to Vote	"46. (1) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under section 42.
Establishment of Referendum Rules Commission	(2) Where a referendum is to be held under section 42, an advisory commission, to be known as a Referendum Rules Commission, shall forthwith be established consisting of (a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission; (b) a person appointed by the Governor General in Council; and (c) a person appointed by the Governor General in Council (i) on the recommendation of the governments of a majority of provinces, or (ii) if the governments of a majority of provinces do not recommend a candidate within sixty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of that sixty day period or, if none are so recommended, from among such persons as the Chief Justice considers fit.
Rules for Referendum	(3) A Referendum Rules Commission shall, by majority decision through the Chairman of the Commission, (provide advice in respect of rules) (recommend rules or amendments to rules) for the holding of a referendum under section 42.
Idem	(4) Subject to subsection (1), Parliament may make laws respecting the rules applicable to the holding of a referendum under section 42.

Possibilities for Requirement for Consultation

() Before Parliament makes any rules under this section, (a Committee of Parliament) (the Governor in Council) (such minister of the Crown as the Governor in Council may designate) shall (consider the Rules proposed by the Referendum Rules Commission) (consult with such prerepresentatives as may be designated by the provinces).

Section 46 of the proposed Constitution Act, 1980
at present reads as follows:

Rules for
referendum

"46. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under section 42.

Right to vote

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under section 42."

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 46 du projet de Loi constitutionnelle de 1980, de l'article suivant :

Droit de vote	«46. (1) Tout citoyen canadien a le droit de vote lors du référendum visé au paragraphe 42; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.
Constitution du comité référendaire	(2) Dès que s'impose la tenue du référendum visé au paragraphe 42, il est constitué un comité référendaire, composé : a) du directeur général des élections du Canada, président; b) d'une personne nommée par le gouverneur général en conseil; c) d'une personne nommée par le gouverneur général en conseil: (i) soit sur la recommandation des gouvernements de la majorité des provinces, (ii) soit, si les gouvernements de la majorité des provinces ne présentent pas de candidat dans les soixante jours suivant la demande que leur en fait le directeur général des élections du Canada, sur la recommandation du juge en chef du Canada, le candidat ainsi présenté étant choisi parmi les personnes recommandées par les gouvernements des provinces dans les trente jours suivant l'expiration du délai de soixante jours ou, faute de recommandation, parmi les personnes compétentes en tenue d'élections.
Réglementation du référendum	(3) Le comité référendaire recommande au gouverneur général, par décision majoritaire, les règles applicables à la tenue du référendum visé à l'article 42.
Proclamation	(4) Les règles visées au paragraphe (3) entrent en vigueur par proclamation du gouverneur général sous le grand sceau du Canada.
Valeur de force de loi des règles	(5) Sous réserve du paragraphe (1), les règles arrêtées en vertu du présent article ont force de loi et l'emportent sur les dispositions incompatibles de toute autre loi adoptée en vertu de la Constitution du Canada.»

Texte actuel de l'article 46 :

«46. (1) Le Parlement peut, sous réserve du paragraphe (2), légiférer pour réglementer la tenue du référendum visé à l'article 42.

Réglementation
des référen-
dums

(2) Tout citoyen canadien a le droit de vote lors du référendum visé à l'article 42; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction. »

Droit de vote

November 21, 1980

Revised December 8, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subparagraphs 41(1)(b)(ii) and (iii) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(ii) two or more Atlantic provinces, and

(iii) two or more Western provinces that have in the aggregate, according to the then latest general census, a combined population of at least fifty per cent of the population of all the Western provinces."

Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au sous-alinéa 41(1)b)(ii) du projet de Loi constitutionnelle de 1980, du sous-alinéa suivant :

"(ii) au moins deux des provinces de l'Atlantique,"

(iii) au moins deux des provinces de l'Ouest dont la population confondue représente, selon le recensement général le plus récent de l'époque, au moins cinquante pour cent de la population de l'ensemble des provinces de l'Ouest."

Subparagraphs 41(1)(b)(ii) and (iii) of the proposed Constitution Act, 1980 at present reads as follows: Texte actuel du sous-alinéa 41(1) b) (ii):

General
procedure for
amending
Constitution of
Canada

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

(a) . . .
(b) resolutions of the legislative assemblies of at least a majority of the provinces that includes

(i) . . .
(ii) at least two of the Atlantic provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Atlantic provinces, and

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

« 41. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée:

a) . . .
b) par des résolutions des assemblées législatives d'une majorité des provinces: cette majorité doit comprendre:

(i) . . .
(ii) au moins deux des provinces de l'Atlantique dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces.

(iii) au moins deux des provinces de l'Ouest dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces. »

Procédure
normale de
modification

November 21, 1980

REVISED

December 10, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 42(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Authorization
of referendum

"(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada, which proclamation may be issued where

(a) an amendment to the Constitution of Canada has been authorized under paragraph 41(1)(a) by resolutions of the Senate and House of Commons;

(b) the requirements of paragraph 41(1)(b) in respect of the proposed amendment have not been satisfied within twelve months after the passage of the resolutions of the Senate and House of Commons; and

(c) the issue of the proclamation has been authorized by the Governor General in Council.

Time limit
for
referendum

(3) A proclamation issued under subsection (2) in respect of a referendum shall provide for the referendum to be held within two years after the expiration of the twelve month period referred to in paragraph (b) of that subsection."

ANNEXE

Le 21 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, au paragraphe 42(2) du projet de Loi constitutionnelle de 1980, du paragraphe suivant :

Autorisation
de référendum

«(2) L'ordre de tenue du référendum visé au paragraphe (1) est donné par proclamation du gouverneur général sous le grand sceau du Canada, autorisée aux conditions suivantes :

a) le Sénat et la Chambre des communes ont, conformément à l'alinéa 41(1)a), adopté des résolutions autorisant la modification de la Constitution du Canada;

b) la modification a, conformément à l'alinéa 41(1)b), été autorisée, dans les douze mois suivant l'adoption des résolutions du Sénat et de la Chambre des communes, par des résolutions des assemblées législatives d'au moins trois provinces;

c) le gouverneur général en conseil a autorisé la proclamation.

Délai de
tenue du
référendum

(3) La proclamation visée au paragraphe (2) fixe la tenue du référendum à une date postérieure d'au plus deux ans à l'expiration du délai de douze mois mentionné à l'alinéa b) de ce paragraphe.»

Subsection 42(2) of the
proposed Constitution Act,
1980 at present reads
as follows:

Texte actuel du paragraphe 42(2) :

Authorization
of referendum

"(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada authorized by resolutions of the Senate and House of Commons."

«(2) L'ordre de tenue d'un référendum mentionné au paragraphe (1) est donné par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par les résolutions du Sénat et de la Chambre des communes.»

Autorisation de
référendum

ALTERNATIVE II

ANNEX 16

December 12, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 41(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Definitions

"(2) In this Part,

"Atlantic provinces"

"Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;

"region"

"region" means every province that at any time before the issue of the proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada, the Atlantic provinces and the Western provinces, respectively;

"Western provinces"

"Western provinces" means the provinces of Manitoba, British Columbia, Saskatchewan and Alberta."

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 42(1) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Amendment
authorized
by
referendum

"42. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by a referendum held throughout Canada under subsection (2) at which the making of the amendment has been approved by

(a) a majority of persons voting thereat, and
(b) a majority of persons voting thereat in each region including a majority of persons voting thereat in

(i) two or more of the Atlantic provinces, and
(ii) two or more Western provinces that have in the aggregate, according to the then latest general census, a combined population of at least fifty per cent of the population of all the Western provinces."

December 12, 1980

ALTERNATIVE III

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 42(1) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Amendment authorized by referendum "42. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by a referendum held throughout Canada under subsection (2) at which the making of the amendment has been approved by

- (a) a majority of persons voting thereat, and
- (b) a majority of persons voting thereat in each region."

Subsection 42(1) of the proposed Constitution Act, 1980 at present reads as follows:

ANNEX 17

November 24, 1980

REVISED December 5, 1980

December 10, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 47 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Limitation on use of general amending procedure "47. (1) The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless, be used to amend any provision for amending the Constitution.

Idem (2) The procedures prescribed by section 41 or 42 do not apply in respect of an amendment referred to in section 43.

ANNEXE 18

Le 24 novembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'article 47 de la Loi constitutionnelle de 1980, de l'article suivant :

Restriction du recours à la procédure normale 47. (1) Les articles 41, 42 ou 43 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée aux articles 41 ou 42 s'impose toutefois, sous réserve du paragraphe (3), pour modifier les dispositions relatives à la modification de la Constitution.

Idem (2) Les procédures prévues aux articles 41 et 42 ne s'appliquent pas à la modification visée à l'article 43.

Modification des procédures de modification (3) L'article 43, le présent article et l'article 3 de la Loi constitutionnelle de 1871 ne peuvent être modifiés par proclamation du gouverneur général sous le grand sceau du Canada que si cette proclamation est autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de toutes les provinces.

Section 47 of the proposed Constitution Act, 1980 at present reads as follows:

Texte actuel de l'article 47:

Limitation on use of general amending formula

"47. The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless be used to amend any provision for amending the Constitution, including this section, and section 41 may be used in making a general consolidation or revision of the Constitution.

"47. Les articles 41, 42 ou 43 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée aux articles 41 ou 42 s'impose toutefois pour modifier les dispositions relatives à la modification de la Constitution, y compris le présent article; la procédure visée à l'article 41 peut également servir à toute codification ou révision générales de la Constitution >>

Restriction relative à la procédure normale