



Department  
of Justice

Ministère  
de la Justice

MEMORANDUM/NOTE DE SERVICE

Security Classification - Cote de sécurité

File number - numéro de dossier

Date

November 12, 1980

TO/A: Mr. F.J.E. Jordan

FROM/DE: Mary Dawson

SUBJECT/OBJET:

Comments/Remarques

Attached are lists of amendments to the proposed resolution to amend the Constitution that Mr. Bertrand and I are recommending. I have not presumed to list for you the changes that Edythe is working on that result solely from policy changes agreed to at the Remembrance Day meeting.

List A contains changes to the English version only and List B contains changes to the French version only that were agreed to at the Remembrance Day meeting.

List C contains those changes that were agreed to that require changes to both versions. The French version will be prepared when the sections are finalized and may include additional technical changes.

List D contains changes that we recommend that either have not been discussed or have been left in abeyance.

List E, to be forwarded by Gérard, will contain purely technical changes and will be discussed by us with the co-clerks of the Joint Committee with a view to having them made separately from other changes.

*Mary*

M.D.

Atts.

c.c. E. MacDonald.

Mary Dawson

List A - Changes Agreed to (English only)

Section	Recommended Change	Comment
11(f) ✓	(f) not to be tried or punished more than once for an offence of which <u>that person</u> has been finally convicted or acquitted ✓	The best drafting approach would be to change as well "anyone" in the first line of section 11 to "any person" since "that person" has no true antecedent.
11(g) ✓	(g) to the benefit of the lesser punishment where the punishment for an offence of which <u>that person</u> has been convicted has been varied between the time of commission and the time of sentencing ✓	The change to "that person" extends the provision to corporations.  This change is to the English version only.

Mary Dawson

List B - Changes Agreed to (French only)

Section	Recommended Change	Comment
3 ✓	"ce droit ne peut" on line 17 becomes "ces droits ne peuvent ..."	To make it clear that the rights are separate.
8 ✓	drop "abusives" on line 31	
50(a)	a) <u>la charge de Souverain, celle de gouverneur général et celle de lieutenant-gouverneur</u> before the law and has the right to the equal protection and equal benefit (Edythe is drafting)	Change relating to Governor General agreed to. It was decided that 50(a) should retain the reference to Queen in the English version. It does not sound good in French.
20 ✓	Drop "as he or she may choose" on line 15. Other policy change to be drafted by Edythe. In the French version 20. Le public a, au Canada, droit à l'emploi .....	Policy change. Drafting change to eliminate "he or she". Drafting change in French.

List C - Changes Agreed to (Both Versions Affected)

Section	Recommended Change	Comment
13 ✓	13. A witness who is compelled to testify in any proceedings has the right not to have any incriminating evidence so given used against the witness in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence.	Section opened to change "to incriminate" to "against". Other drafting changes introduced as indicated.
15 ✓	15. (1) Everyone is equal before the law and has the right to the equal protection and equal benefit .....  (Edythe is redrafting)	Policy changes. Drafting change from "everyone has the right to equality" incorporated.
20 ✓	Drop "as he or she may choose" on line 35. Other policy change to be drafted by Edythe.  In the French version  20. Le public a, au Canada, droit à l'emploi .....	Policy change. Drafting change to eliminate "he or she".  Drafting change in French.

List D - Recommended Changes

Section	Recommended Change	Comment
2	Drop "positif" from the French version.	Only as a reaction to an objection. Not an essential change.
4(1)	Change "rapport des breffs" to "renvoi des breffs" in line 23 of the French version.	Subject to confirmation by Mr. Bertrand following discussions with Mr. Hamel.
11(a)	(a) to be informed promptly of the offence with which that person is charged;	Parallel construction to (f) and (g). Completes the thought.
23(2)	-Eliminate "his or her" on line 31. -Change line 34 to "any or all of the children of that citizen receive their"	These changes should be kept in mind if the provision is opened to eliminate the use of "his or her".
25	25. Any law that is inconsistent with the provisions of the Constitution of Canada is, to the extent of such inconsistency, inoperative and of no force or effect.  or  Any law, other than the Constitution of Canada, that is inconsistent with the provisions of this Charter .....	I raise the problem of interrelation between the Charter and the Constitution.  I appreciate changes would create problems, but I think there may be a true problem.  On the question of amending the Charter, I assume reason would dictate that this is possible.
29(2)	(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after	The question is one of having effect, not of application.  If the provision is opened the change should be made.
36	The reference to the Charter could be deleted.	This reference is a hold-over from when the Charter did not apply to all provinces. Its inclusion does no real harm but is anomolous.

Section	Recommended Change	Comment
38(3)	"filed" should be "deposited" in lines 15 and 18.  Is "government of Canada" the best term in line 22? Should there be a reference to the Governor General?	"filed" is inconsistent with 38(2).
41(1)	French version:  Change line 9 to read "autorisée à la fois"	Only if the section is opened for other reasons.
41(1)(b)	French version, line 14 "cette majorité comprend:"	
42(1)	Add just before (a) "the amendment is approved by" and drop the words following (b).	This is form only. To be done only if the section is opened for other reasons.