DRAFT

SECRET
December 11, 1980

MEMORANDUM RE POSSIBLE AMENDMENTS TO
PROPOSED RESOLUTION ON CONSTITUTION OF CANADA

This memorandum addresses a number of issues respecting possible amendments to the Proposed Resolution on the Constitution of Canada that were raised by Ministers at the Cabinet Committee on Priorities and Planning meeting of December 9, 1980 when the Memorandum to Ministers dated November 25, 1980 was considered. Revised draft amendments are annexed hereto where indicated.

I CHARTER OF RIGHTS AND FREEDOMS

1. Section 1 - Limits on Rights and Freedoms

(a) While it was agreed that section 1 of the Charter should be amended, it was suggested that a new "limitations clause" might better read: "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society", rather than "subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society".

An analysis of this change suggests that it would not modify the substance of the test involved, namely that the limits imposed must be both reasonable and demonstrated, by those asserting them, to be justified in the circumstances. Thus, the wording change would not alter the import of the test, and it is recommended that the new wording remain as proposed in the Memorandum to Ministers.

(b) It was also suggested that a new "limitations clause" might refer to "a free and democratic pluralistic society", thus recognizing that Canadian society is a mosaic of many cultures and values.

.../2

While this is no doubt a correct perception of our society, injection of the concept of "pluralism" into the key interpretive provision of the Charter might tend to limit rather than broaden the scope of certain rights, such as freedom of speech and minority language rights. Equally, it could raise questions as to the manner in which limits on rights in a free and democratic society were different from those in one which was also "pluralistic".

This having been said, if the addition of "pluralistic" were to be seen as giving some assurance to cultural minorities that the Charter was not ignoring them, it could probably be included without doing serious violence to the section, but the addition is not recommended.

2. Section 11 - Addition of Jury Trials - Military Law Exemption

While it was agreed that a right to jury trials for offences carrying a penalty of five years imprisonment or more should be included under "Legal Rights", questions have been raised as to why offences under military law should be excluded.

Here it is to be remembered that the Armed Forces operate in a unique environment, where discipline is an essential element of the operational effectiveness of the Forces, and where often the offences occur outside Canada. Not only is speedy justice essential, but it would be difficult to assemble a jury in foreign countries. One could hardly expect to select a jury from within the Forces itself since the jurors and the accused must work together everyday. Equally, what may be a serious offence in the military context (eg. drunk while on duty) may not appear very important to a civilian jury.

As noted in the November 25 Memorandum to Ministers, trials under military law in the United States are exempt from the jury trial requirement, and this would appear to be the case in other countries, although it is difficult to draw comparisons with countries not of the common law tradition since they often do not have a jury system for any criminal cases.

It is recommended that the exemption be made for offences under military law, in keeping with present practice. The effective means to ensure that in most serious cases the accused gets the benefit of a jury trial, is to consider amendments to the National Defence Act (which is now under review) that would provide for such proceedings to take place in the civil courts rather than the military courts wherever this is feasible. This now appears to be the practice followed by the Armed Forces for serious offences committed within Canada.

3. Section 15 - Non-Discrimination Rights

It was agreed that certain changes, proposed in the Memorandum to Ministers, be made in the "equality rights", but that "age" should not be dropped as a prohibited ground of non-discrimination.

Since the Memorandum to Ministers was prepared on November 25, the Joint Committee has received numerous briefs and heard a number of additional witnesses on the non-discrimination rights. An analysis of these submissions suggests that further consideration be given to an appropriate wording for section 15.

Basically, three criticisms have been directed at the present wording. First, the "closed category" of non-discrimination grounds does not allow for evolution over time in an area where social values are changing, eg. "handicap" may not be an accepted ground of non-discrimination in all cases today, but it is increasingly gaining acceptance. Second, as drafted, the clause does not allow for more stringent tests to be applied in cases where discrimination is virtually never acceptable (eg. race, colour, religion, national or ethnic origin) and cases where there are legitimate grounds for distinctions (eg. age, marital status, handicap, political belief, sexual orientation, etc.). Third, the "affirmative action" exception is unduly vague in using the term "disadvantaged" -- does it mean disadvantaged socially, economically, physically, mentally, etc?

Each of these is a legitimate criticism, and it is recommended that consideration be given to a rewording that would meet the concerns. Doing so would in one respect give the courts a broader scope for "judicial activism" in developing "new" grounds of non-discrimination over time. In another respect, greater guidance would be given to the courts in determining the test to be applied in evaluating a discriminatory law and in assessing an affirmative action program.

A rewording that could meet these concerns would be as follows:

"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) discrimination.

.../5

(2) A law that discriminates on the basis of race, national or ethnic origin, colour, religion or sex is prima facie unreasonable unless it is necessary to the achievement of a compelling state interest.

[(3) A law that discriminates on other bases (such as age, marital status, physical or mental handicap or political belief) is prima facie unreasonable unless it bears a national relationship to a legitimate state interest.]

(4) This section does not preclude any distinction, prescribed or authorized by law, based on a proscribed ground of discrimination which is directed to a bona fide amelioration of the conditions of certain specified groups of individuals."

The foregoing approach would create a general principle of equality before and under the law, followed by an open-ended protection against unreasonable discrimination. Next, it would specify the "core" group of grounds on which a discriminatory law would be found unreasonable unless a compelling state interest could be shown. Finally, it would define more clearly the scope of affirmative action programs.

(See Annex 1 for revised draft amendment.)

4. Section 20 - Language of Services to the Public

It was agreed that this section should be amended as proposed in the Memorandum to Ministers, but that the qualification for Parliament to determine where there exists a significant demand should be deleted.

(See Annex 2 for revised draft amendment.)

5. Section 23 - Minority Language Education Rights

It was agreed that certain changes should be made in this section respecting the qualifications for minority language education, but that the requirements of "where numbers warrant" should be retained to maintain consistency with the 1978 Montreal Agreement of Provincial Premiers.

It is recommended that, to maintain further consistency with the Premiers' agreement, the revised clause not make reference to provision of "educational facilities", but only to "the provision out of public funds of minority language instruction". Such wording will also have the additional benefit of not implying that the obligation is limited to physical facilities, but extends more generally to whatever services are appropriate including the possibility of minority language school boards. (See Annex 3 for revised draft amendment.)

6. Section 24 - Undeclared Rights: Native Rights

It was agreed that the Minister of Justice would propose an amendment in Committee designed to provide some greater assurance of what was intended to fall within the ambit of undeclared rights of native peoples. In particular, reference would be made to historic and treaty rights. (See Annex 4 for draft amendment.)

II INTERIM AMENDING PROCEDURE

7. Section 38 - Alternative Federal Amending Formula

It was agreed that if a federal alternative to any provincial proposal for an amending formula was to be put forward in a referendum under section 38, the federal alternative should be one approved by resolution of Parliament.

.../7

A question of timing was raised if this approach were followed. Under section 38(3) the federal government would have 21 months, following the two years in which the provinces must file an agreed alternative to the Victoria formula, in which to obtain the necessary approval of Parliament. This should be sufficient time for debate and adoption of a resolution.

(See Annex 5 for draft amendment.)

8. Sections 40/46 - Referenda Rules Commissions

It was agreed that provision should be made, where referenda are to be held either on a permanent amending formula under section 38 or on a constitutional amendment under section 42, for a joint federal-provincial rules commission to be established to recommend to Parliament rules to be enacted for such referenda.

This may work satisfactorily for the one-time referendum under section 38, but could cause problems under section 42 where there may be a series of referenda over the years.

Since the Act adopted by Parliament for a first referendum under section 42 may, at least in provincial eyes, require changes for a subsequent referendum, it is necessary to consider whether there should be an on-going rules commission under section 46 or an ad hoc body to be convened prior to each referendum.

The ad hoc body is no doubt preferable (to minimize the impression that referenda were to be the normal route), and a technique might be adopted whereby Parliament would be obliged not to make any changes in the referendum law without first

resorting to the advice of the joint commission. (A similar approach was proposed by the CCMC during the summer with respect to any amendments made by Parliament to the Supreme Court Act -- it would only be done after consultation with the provinces.)

(See Annexes 6 and 7 for draft amendments.)

III PROCEDURES FOR AMENDING CONSTITUTION

9. Sections 41/42 - Amendments by Referendum

It was agreed to amend section 41 to drop the population requirement for the Atlantic provinces (thus returning to the Victoria formula), and to introduce the "deadlock breaking" mechanism in section 42 by allowing the provinces one year in which to act on an amendment under section 41 before a referendum could be called. In addition, a referendum would have to be held within three years of adoption of the initial resolution by Parliament.

However, restoring the Victoria formula under section 41 brings into focus two possible problems for the intended parallelism between an amendment by provincial legislative consent under section 41 and by referendum under section 42.

First, while an amendment under section 41 would require the consent of any two Atlantic provincial legislatures (on the premise that all provinces are equal), a referendum under section 42 could carry on a bare majority vote in PEI and New Brunswick which came nowhere near representing a majority of voters in the four Atlantic provinces and, indeed, had been overwhelmingly rejected by voters in Newfoundland and Nova Scotia.

If this is seen as an anomoly, it could be corrected by providing that in a referendum, there must be both a majority vote in at least two provinces and an overall majority in the Atlantic provinces as well. (The same rule would apply in the Western provinces.) This, however, would introduce an added element of rigidity into the referendum amending procedure, and distort the parallelism between sections 41 and 42.

Beyond this, there is the problem that section 42 is basically premised on the Victoria formula being the final amending formula. This could be radically changed by the adoption of a new formula under section 38, as for example, the Toronto "consensus" of six provinces with 85% of the population or the Vancouver "consensus" with provincial opting out.

In such circumstances, it is by no means evident that section 42 is a suitable referendum formula for all occasions. Yet, there is no clear authority to modify it under section 39 in the event that a formula other than Victoria is adopted as the permanent amending formula.

Thus, there would appear to be two options for consideration:

(1) Change section 42 as suggested above, abandoning the principle of parallelism between it and section 41, and maintaining the modified referendum formula regardless of the ultimate section 41 formula; or

(2) Keep section 42 as it is, parallel to section 41, and providing for its modification to parallel a new section 41 in the event that a different permanent amending formula is ultimately adopted.

Of the two options, the latter would appear to be the preferred course since the whole rationale for the referendum formula is that it operates as a parallel alternative to section 41.
(See Annex 8 for draft amendment.)

10. Section 47 - Amendments Affecting One or More but not All Provinces

It was agreed that an amendment would be made to section 47 to ensure that amendments to the constitution affecting one or more but not all provinces may be made only under the procedure in section 43 requiring the consent of any affected province.

At the same time, it was agreed that section 47 should not be amended to require unanimous consent of the provinces for a change in any amending procedure relating to a provision of the constitution applying to one or more but not all provinces.
(See Annex 9 for revised draft amendment.)

IV NATURAL RESOURCES JURISDICTION

11. Section 52 - Provincial Jurisdiction over Resources

Three questions have been raised with respect to the NDP draft proposal relating to provincial jurisdiction over certain natural resources.

(1) Provincial Indirect Taxation Power

Section 92A(4) empowers a province to levy indirect taxes (including export taxes) on the specified resources whether or not the production is exported from the province in whole or in part, but prohibits the levying of such taxes in a discriminatory manner as between production sold in the province and that sold in other parts of Canada.

In other words, Quebec would be empowered to impose indirect taxes on asbestos production whether sold in Quebec, Ontario or United States. However, while it could levy a higher (or lower) tax on production sold to the U.S., it could not impose a different rate on production sold in Quebec and Ontario.

The whole purpose of this provision is to grant provinces access to indirect taxation on resources (a power they now do not have), but to preclude them from applying such taxes in a discriminatory manner within Canada.

The proposal to change the wording to preclude differential taxation on "production exported from the province and production not exported from the province" would have the result of denying them the ability to levy higher or lower taxes on production exported out of Canada.

(2) Provincial Jurisdiction over "Rate of Primary Production"

Section 92A(1)(b) would give the provinces exclusive legislative jurisdiction over "development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom".

The question has been raised whether provincial jurisdiction over rate of primary production might have the effect of enabling a province to effectively regulate the export of resources from the province, thus impinging on existing federal jurisdiction under the "Trade and Commerce" power to regulate the marketing of resources in interprovincial trade.

.../12

This matter has been examined both within the Department of Justice and by outside counsel. Outside counsel has expressed some concern that granting the provinces express power over rate of production could be interpreted in a manner that would make it more difficult to attack such provincial laws as a colourable device designed to regulate interprovincial or international trade. At the same time, this opinion acknowledged that the provinces already have the jurisdiction over rate of production respecting resources, as long as such jurisdiction is not employed indirectly to regulate extra-provincial trade.

While it is, of course, impossible to say with absolute certainty how the courts may construe this provision, it is the view of the Department of Justice that confirmation of the provincial jurisdiction will not impair the scope of the federal power over Trade and Commerce. The provinces will, as now, have the power to regulate rate of production, but where the purpose of a law is not to serve a valid provincial objective (eg. development, management and conservation) but rather a colourable attempt to regulate extra-provincial trade in the resource, the courts will still, as they have in the past, conclude that the provincial law is not one primarily directed to matters within provincial jurisdiction.

Such an interpretation would be bolstered by the fact that section 92A(2) would grant to the provinces concurrent jurisdiction over export of resources from the provinces. In light of this, it would be difficult to contend that the exclusive jurisdiction over rate of production could properly be construed to include the regulation of export of resources from the provinces. Otherwise, the concurrent jurisdiction under 92A(2) would not have meaning.

.../13

Thus, while including "rate of primary production" as an exclusive provincial power may provide some scope for argument that it gives the provinces a lever over extra-provincial marketing of resources, the better view is that such an argument would not succeed before the courts.

(3) Federal Jurisdiction over Forestry Management

The question has been raised whether the confirmation of provincial jurisdiction over the development, conservation and management of forestry resources would in any way impinge on existing federal powers respecting research and development of forest resources.

Since federal jurisdiction in this area derives exclusively from the "spending power" (except on federal lands), the proposed provisions would have no impact on existing federal jurisdiction.

SECRET

ANNEX A1

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 A1

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 A 2

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 A2

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.

SECRET

ANNEX A3

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding immediately after subsection 16(1) of the proposed *Constitution Act, 1980*, the following:

Official languages

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

; and

(b) by renumbering subsection 16(2) thereof as subsection 16(3).

ANNEXE A3

Le 8 décembre 1980

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

a) par insertion, après le paragraphe 16(1) du projet de Loi constitutionnelle de 1980, de ce qui suit:

Langues officielles

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

b) par substitution, à l'actuel numéro de paragraphe 16(2), du numéro 16(3).

SECRET

ANNEX A4

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by renumbering section 17 of the proposed Constitution Act, 1980 as subsection 17(1) and by adding thereto the following:

Proceedings of legislature

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

ANNEXE A4

Le 8 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'actuel numéro d'article 17 du projet de Loi constitutionnelle de 1980, du numéro 17(1) et par adjonction de ce qui suit:

Travaux de la Législature

«(2) Chacun a le droit d'employer la langue officielle de son choix dans les débats et travaux de la Législature du Nouveau-Brunswick.»

SECRET

ANNEX A 5

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by renumbering section 18 of the proposed Constitution Act, 1980 as subsection 18(1) and by adding thereto the following:

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

ANNEXE A5

Le 8 décembre

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'actuel numéro d'article 18 du projet de Loi constitutionnelle de 1980, du numéro 18(1) et par adjonction de ce qui suit:

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

SECRET

ANNEX A6

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by renumbering section 19 of the proposed Constitution Act, 1980 as subsection 19(1) and by adding thereto the following:

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

ANNEXE A6

Le 8 décembre 1980

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'actuel numéro d'article 19 du projet de Loi constitutionnelle de 1980, du numéro 19(1) et par adjonction de ce qui suit:

Procédures devant les tribunaux	«(2) Chacun a le droit d'employer la langue officielle de son choix dans toutes les affaires dont sont saisis les tribunaux établis par la Législature du Nouveau-Brunswick et dans tous les actes de procédure qui en découlent.»

SECRET

ANNEX A7

December 5, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by renumbering section 20 of the proposed Constitution Act, 1980 as subsection 20(1) and by adding thereto the following:

Communications by public with provincial institutions

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

ANNEXE A7

Le 8 décembre

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié par substitution, à l'actuel numéro d'article 20 du projet de Loi constitutionnelle de 1980, du numéro 20(1) et par adjonction de ce qui suit:

Communications entre les administrés et les institutions provinciales

«(2) Chacun a droit au Nouveau-Brunswick à l'emploi du français ou de l'anglais pour communiquer avec l'administration des institutions de la Législature ou du gouvernement du Nouveau-Brunswick ou pour en recevoir les services.»

ANNEX 6

November 21, 1980
REVISED December 5, 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 or sex.

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 or sex."

ANNEXE 6
Le 21 novembre 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 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.

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 ou de leur sexe.»

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:

"*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*

Egalité devant la loi et protection égale de la loi

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.

Programmes d'action sociale

(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.»

ANNEX 14

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."

ANNEXE 14

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."

Procédure normale de modification

«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.»

ANNEX 26

November 21, 1980

REVISED 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 26

Le 21 novembre 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-crimination

"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."

Déclaration incriminante

« 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. »