SECRET
November 17, 1980

DRAFT

MEMORANDUM TO MINISTERS

RE: POSSIBLE AMENDMENTS TO PROPOSED RESOLUTION ON CONSTITUTION OF CANADA

I PURPOSE

A number of possible amendments to the Proposed Resolution on the Constitution of Canada have been suggested, some by the Government itself, some by provincial governments, some by Members of the Special Joint Committee and some by witnesses who have or will appear before the Committee or make written submissions to it.

Some of the proposed changes are substantive in nature, others are technical in nature. The purpose of this memorandum is to outline the possible amendments and to obtain Ministers' direction on which of the changes should be incorporated in the Resolution, whether moved by government members or other members of the Committee.

II SUBSTANTIVE AMENDMENTS

A. Canada Act

1. Long Title to Canada Act

(See page 1A)

1. Long Title to Canada Act

At present the long title to the Canada Act reads: "An Act to amend the Constitution of Canada". When the Canada Act is submitted to the United Kingdom Parliament, it will appear without the Resolution and Address that precede it in the present document. When it is so submitted, the most important matter to be brought to the attention of the United Kingdom Parliament is the fact that the Bill is intended to give effect to a request of the Senate and House of Commons of Canada for not only amendment but patriation of the Canadian Constitution. It is thought that this idea can best be brought to the attention of the United Kingdom Parliament if the long title is changed to reflect that idea rather than the idea of it being simply a constitutional amendment. It is therefore suggested that the long title be amended to read: "An Act to Give Effect to a Resolution of the Senate and House of Commons of Canada".

Recommendation: That the proposed change to the long title to the Canada Act be approved.
(See Annex 1 for draft amendment.)

B. Charter of Rights and Freedoms

1. Section 1 - Limits on Rights and Freedoms

The general limitation clause: "such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government" has been severely criticized as being too broad, enabling the courts to find any limit imposed on a right to be permissible if it is "generally accepted" (ie. if it is a limit enacted by several legislatures). It is also contended that limits should only be imposable in wartime (and even then not applicable to non-discrimination and certain legal rights), that limits should be more specifically defined for each category of rights, or that there be no limitation clause included at all since the courts will themselves imply reasonable limits on the various rights recognizing that no right is absolute.

While the criticisms appear to overlook the fact that section 1 speaks of reasonable limits, there may be some merit in considering alternatives to the present provision of section 1 in order to defuse criticism of it.

Option 1: Drop the limitation provision entirely. The U.S. Bill of Rights contains no general limitation clause and yet the courts in that country have implied reasonable limits on the various rights in many cases. On the other hand, it would seem of some importance that the public and the courts be aware that no right is absolute in an organized society, and the provinces feel strongly that any Charter must reflect this principle.

~~In addition~~, However, since the Charter as drafted makes reference to certain limits in specific clauses (eg. the right to vote, the extension of the life of Parliament and legislatures, mobility rights, minority

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language education rights), the omission of any reference to limits on other rights could imply that they were to be guaranteed without any limits. Thus, it would be necessary to insert specific limits in a number of other sections to avoid this possible result.

Option 2: Modify the language of the limitation clause. This might be done in one of several ways. (1) Specify that the rights and freedoms are subject only to such limits prescribed by law as are reasonably justifiable in a free and democratic society with a parliamentary system of government. (2) Specify that the rights and freedoms are subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society with a parliamentary system of government. (3) Specify that the rights and freedoms are subject only to such limits prescribed by law as are reasonably justifiable (demonstrably justifiable) in a free and democratic society.

This is about as we made clause

These alternatives would overcome the ambiguities caused by the words "generally accepted" and make it clear that any limits must be founded on a law. The first alternative would place some onus on the government to show that a limit was justified in a particular case. The second alternative would create a heavier onus on the government to show the need for any limit. The third alternative would eliminate the concerns that "supremacy of parliament" would still govern in interpreting the Charter and remove doubts about the courts' ability to consider human rights jurisprudence of the U.S. courts. At the same time, elimination of the phrase "parliamentary system of government" ~~would~~ could engender further opposition from the provinces and could create suspicions that the government was embarking on the road to republicanism. (Government members of the Committee do not feel this latter point is one of any real concern.)

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Option 3: Provide specific limits for each category of rights. This approach, spelling out grounds such as national security, public order, safety, health, morals, etc. for limiting the rights in each category of rights, was attempted in earlier drafts including the one published by the government during the July negotiations. This was severely criticized by the press and the provinces as negating the rights and drawing arbitrary distinctions among limits on different rights. It also creates an unwieldly document, difficult for laymen to understand and difficult to defend publicly.

Recommendation: That if pressure continues to build for modification of section 1 that the government agree to adoption of language that makes the rights and freedoms subject only to such reasonable limits as are demonstrably justifiable in a free and democratic society.

(See Annex 2 for draft amendment.)

2. Section 11(e), (f) and (g) - Legal Rights

(1) Coverage of "War Crimes" in Sections 11(e) and (f).

At the behest of the North American Jewish Students Network, Mr. Crombie has raised in Committee the need to amend sections 11(e) and (f) (dealing with protection against retroactive penal laws and double jeopardy for the same offence) to ensure that prosecution of Nazi war criminals in Canada is not precluded.

The concern with section 11(e) is that unless "offence" is changed to "offence under domestic or international law", the section could be construed as not covering the "crimes against humanity" committed by the Nazis during the Second World War. The concern

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with section 11(f) is that unless amended it could be construed as precluding the re-trial and punishment in Canada of war criminals who were tried in absentia in European countries but never punished.

There are several problems with accepting these changes. With respect to section 11(e), there is considerable doubt in the international legal community that the "crimes against humanity" were, at the time of their commission, recognized as offences under international law. Thus adding "offence under international law" would give no assurance that these crimes could be made punishable. Second, under our Criminal Code, punishment for "common law" offences is forbidden. Only statutorily defined offences may be prosecuted. Consequently, adding "offence under international law" in the Charter would not assist in achieving the goal sought unless such offences were incorporated into our statute law. In that case, the addition of the words in the Charter would be unnecessary. Beyond this, adding "offence under international law" could give rise to the implication that the proscription in the Criminal Code against non-statutory offences was being abrogated.

What about # 15(2) of the Covenant re Civil Rights

With respect to section 11(f), adding an exception for trials in absentia would engraft a rather novel principle on the rule against double jeopardy -- a rule that is well established in Canadian law. The much more appropriate solution to this problem is to deal with it through the extradition processes, namely returning the person to the country where he was tried in order that his sentence may be imposed and served.

Recommendation: That the foregoing proposed modifications in sections 11(e) and (f) not be accepted.

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(2) Replacement of "he or she" with "that person" in Sections 11(f) and (g).

The use of "he or she" in sections 11(f) and (g) (protection against double jeopardy and benefit of lesser penalty), while grammatically proper, would exclude corporate entities from the benefit of these rights. Since this is not the intention, the "he or she" should be replaced by the expression "that person" which includes a corporation.

Recommendation: That amendments be put forward to replace "he or she" with "that person" in sections 11(f) and (g).
(See Annex 3 for draft amendments.)

3. Section 13 - Protection Against Self-Crimination

This section as drafted is open to being interpreted as limiting the protection against subsequent use of incriminating evidence against a person to criminal proceedings only. It should thus be amended to make it clear that the protection extends to subsequent criminal and civil proceedings.

Recommendation: That section 13 be amended to clarify the scope of the protection against self-crimination.
(See Annex 4 for draft amendment.)

4. Section 15 - Non-Discrimination Rights

A number of strong representations are being made in Committee for changes to clarify and extend the provisions on non-discrimination rights. The Advisory Council on the Status of Women urges that the clauses be modified in a manner that will clearly ensure equal rights in law and equal protection and benefit of the law, and direct the courts to a "strict scrutiny"

test for any distinction in law based on sex, race, colour, national or ethnic origin or religion (ie. these grounds could virtually never be a valid basis for distinction). In addition, the Council would spell out the specific grounds for affirmative action programs, and limit such programs to those authorized by a law.

The Canadian Human Rights Commission contends that there should be no specific enumeration of non-discrimination grounds or, in the alternative, that the grounds should be expanded to include marital status, physical or mental handicap, political belief and sexual orientation. The Commission would permit distinctions to be made in laws only where "justifiably necessary for reasons of compelling state interest."

(1) What about their pet on wall on Part of the Civil Liberties Provisions

The Canadian Association for the Disabled is pressing for inclusion of "disability" (presumably broader than physical and mental handicap) as a ground of non-discrimination.

Finally, there is concern within the federal government and among the provincial governments about the financial and other implications of including "age" in the non-discrimination grounds. The Advisory Council on the Status of Women also urge deletion of "age", fearing that its inclusion might weaken the strictness of the test that the courts would apply when judging discrimination on other grounds.

It may be possible to meet some of the foregoing concerns, but responding to all of them would be very difficult.

With respect to the proposals of the Advisory Council, some of these could be accommodated in part by rewording section 15. First, section 15(1) could be modified to state clearly that everyone is equal before the law, followed by the right to the equal protection and equal benefit of the law. This would demonstrate that there is a positive principle of equality in the general sense, and in addition, a right to laws which assure equal protection and benefits without discrimination on specified grounds. Second, section 15(2) could be modified to indicate that affirmative action programs are specifically related to the grounds of non-discrimination.

What about putting this only in the commentary?

In this memo?

These modifications would not, however, meet the Council's argument for a specific direction to the courts that any distinction based on the specified grounds is never to be considered reasonable. This, of course, would be too rigid a test in any case, but it may be necessary to consider adding a clause (even with a modified limitation provision in section 1) which would state that any distinction in law based on a prohibited ground of discrimination was to be presumed unjustifiable unless the contrary was demonstrated. Thus, if a law distinguished between men and women (eg. the law permitting only women to deduct child care benefits from income or the law denying Indian status to women who marry non-Indians) it would be presumed by the courts to be prohibited discrimination unless the government could demonstrate that it was a distinction drawn for justifiable community interests.

As for the Human Rights Commission's argument that there be either no specified grounds of non-discrimination or an expansion of the listed grounds, the following factors militate against these approaches.

If no grounds are listed, then it is left entirely to the courts to decide what they are to be. In an area which involves a gradual evolution of social and economic values, it would not be appropriate to leave such major decisions to the courts. As for expanding the specific grounds, consideration has to be given to how best different claims to protection against discrimination can be effected. Certain grounds have long been recognized as prohibited (race, national or ethnic origin, colour, religion and sex are all found in the Canadian Bill of Rights). They are "core" grounds which are capable of ready definition, do not require many, if any, qualifications on their protection and do not entail financial burdens to ensure their effectiveness.

Other grounds do not readily meet all of these conditions. Handicap (or disability) encompasses many things and thus requires a definition of some detail. It also requires certain qualifications, such as meeting bona fide requirements for employment. Equally, guaranteeing equality for handicapped persons often entails expenditure of money to provide such persons with equal access to services and accommodation. Marital status requires definition (does it include common law relationships, homosexual relationships, etc?) and carries financial implications under tax and pension laws. Sexual orientation may be capable of ready definition but it is a controversial ground of non-discrimination which has not yet gained significant public acceptance. Only political belief, perhaps, fits properly into the "core" group of non-discrimination grounds and might be considered for inclusion in the Charter. The others are much better left, at the present time, to be protected by ordinary human rights legislation where they can be defined, the qualifications spelled out and the measures for protective action specified,

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where necessary, in a manner that does not impose undue financial burden on those providing services and accommodation.

Turning to the question of age, this ground was included in the Charter in the belief that it was sufficiently clear that the courts would view most distinctions based on age as reasonable limits generally accepted. However, on further reflection, it would appear that this ground could cause serious problems of interpretation, particularly if the limitation clause is to be restricted as proposed and any presumption of discrimination is introduced in section 15.

Age is, of course, a common ground of distinction in much legislation, both federal and provincial. It ranges from the age of majority to the age of retirement, dealing with marriage laws, juvenile delinquency, eligibility for social welfare, pension benefits, tax credits, etc. In many instances the courts would likely find that such distinctions were valid, but there are certain important areas where this is not so clear. Recent cases under provincial human rights have held a mandatory retirement age to be discriminatory. If this were to be the conclusion under the Charter, it could cause serious problems for employers and employees alike in relation to pension contributions and retirement benefits. If a mandatory retirement age is to be abolished, it would be much better done under a legislative scheme which provides for an orderly transition period than by an instant court-ordered fiat. Similarly, it is possible that the courts might hold that differential pension and insurance premiums based on age are discriminatory.

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Premier Blakeney, through his officials, has indicated that he is very concerned about the inclusion of age in the non-discrimination rights. He feels that it could have serious negative implications for many provincial age-based laws.

Given the foregoing concerns, it would seem prudent to withdraw age from the grounds of non-discrimination, leaving it to be dealt with in a more predictable manner by human rights laws. Anticipating objections to withdrawal of this ground by the elderly, it could be pointed out that some of the social benefits which they enjoy by virtue of age could be brought into question by including age as a ground of non-discrimination.

Recommendation: That certain amendments be made to the non-discrimination rights to meet some of the concerns raised by the Advisory Council on the Status of Women and that "age" be withdrawn as a ground of non-discrimination.
(See Annex 5 for draft amendments.)

5. Section 20 - Language of Service to the Public

The latter part of section 20 (dealing with the right to receive services in English or French from federal offices other than head or central offices) has been criticized by the Commissioner for Official Languages on two grounds. First, as worded, the section would not require a regional office to provide services in both languages to persons living outside the area defined as "bilingual". Second, the section reintroduces the concept of "bilingual districts" which has never been implemented under the Official Languages Act.

These are legitimate concerns, and it would be desirable to amend the latter part of the section

so that the right to communicate with and receive services from any other federal office in either official language would be based, not on the number of persons in an area using the languages, but on their being a significant demand for communications with and services from any office in both official languages. This would be a much more useful test than one based simply on the number of residents in an area who speak the minority language.

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Recommendation: That section 20 be amended in accordance with the principle suggested above. (See Annex 6 for draft amendment.)

6. Section 23 - Minority Language Education Rights

(To be completed)

7. Section 24 - Undeclared Rights and Freedoms

Two matters arise for consideration in relation to this provision as it relates to native peoples.

(1) The native peoples groups are pressing for expansion of section 24 so that it would become a guarantee of specific native rights such as aboriginal rights, treaty rights and control by native people over their cultural, economic and educational interests.

Such modification would convert section 24 from a "non-prejudice" clause (ie. one which simply states that the rights enumerated in the Charter are not to be interpreted as depriving the native peoples of any particular rights they have) into a constitutional confirmation of certain native rights. This, as the government has indicated to the native peoples leaders recently, would be premature since discussions are now proceeding with a view to determining what native rights should be constitutionally guaranteed. There has been no agreement on these rights yet (even among the native groups themselves), and consequently it would be inappropriate and dangerous to attempt to specify them in the constitution now.

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If section 24 were to make any reference to specific native rights, such as aboriginal rights or treaty rights, this would have the effect of entrenching them without knowing the import of what was being entrenched. It would thus be left to the courts to decide what aboriginal rights means -- does it mean, as some native groups contend, a right to self-government, to separate nations, to control over education? Equally, if reference to treaty rights were included, this would make them unalterable by Parliament in the future. In addition, mention of treaty rights would meet none of the concerns of those native people not covered by treaties.

In sum, any attempt to be specific with respect to native rights in the Charter would seriously prejudice the future ability of the federal government to negotiate with the native peoples the rights which might legitimately be placed in the constitution.

(2) Questions have been raised as to whether the wording of section 24 would mean that native peoples rights under the Indian Act would be continued or be found to be in conflict with non-discrimination rights under the Charter. In particular, would section 24 mean that the provision in the Indian Act which deprives an Indian woman who marries a non-Indian of her Indian status would continue to apply despite the prohibition of discrimination on the basis of sex?

The answer to this in general terms is that Parliament retains its explicit power under section 91(24) of the BNA Act to make laws for Indians and lands reserved for Indians. It is thus evident that laws may be made which distinguish between Indians and non-Indians in the interest of benefiting Indians. Consequently, Parliament may continue to make laws for native peoples and the Indian Act will continue to apply.

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However, it does not mean that laws which make a distinction among Indians themselves in a discriminatory manner will continue to be valid. Thus, the provision of the Indian Act which deprives an Indian woman of her status on the basis of sex will likely be found to be invalid in face of the non-discrimination rights.

Recommendation: That no alterations be made to section 24 of the Charter.

8. Section 25 - Primacy of Charter

A question has been raised as to whether the wording of section 25, making any law that is inconsistent with the Charter inoperative, might be construed so as to render inoperative a provision of the Constitution itself. For example, would the provisions respecting succession to the Throne (giving precedence to males and requiring the Monarch to be of the Protestant faith) be found to be in conflict with the non-discrimination rights?

It would seem evident that the Charter, as a part of the Constitution, would not operate to invalidate other provisions of the Constitution. The intended purpose of section 25 is to invalidate laws made pursuant to the Constitution, whether by legislation or common law, and this is no doubt the meaning that would be given to the section.

However, to remove any doubt, it may be desirable to reword section 25 to read: "Any law under the Constitution of Canada that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect."

(This is not recommended.)

9. Section 26: Admissibility of Evidence

This section is intended to preclude the courts from holding evidence in a trial inadmissible solely because it was obtained in contravention of one of the legal rights, eg. obtained by an unlawful search or by denying a suspect the right to counsel. This would preserve the existing Canadian law and avoid adoption in the American jurisprudence. Thus, the section provides that no provision in the Charter other than the one providing protection against self-crimination (section 13) shall affect the laws respecting admissibility of evidence.

The Advisory Council on the Status of Women has submitted that this wording could raise questions about evidence laws that distinguish among persons on the basis of sex. While this is unlikely to cause problems, the matter could be placed beyond doubt by amending section 26 to read: "Nothing in sections 7 to 12 and section 14 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."

(This is not recommended.)

10. Section 29 - Application of Charter

The Advisory Council on the Status of Women opposes the three year delay period for the coming into force of the non-discrimination rights. Their argument is that it will not require that much time to review and revise the relevant federal and provincial laws, and that in the meantime people will continue to suffer unwarranted discrimination.

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The response to this contention is two-fold. First, bringing laws into line with the non-discrimination rights is not that simple a task. It requires detailed examination of laws and regulations and a considered evaluation of what changes are likely to be necessary. Some changes will involve financial implications that will not be easy to assess.

Second, it is much preferable to make the necessary changes in advance rather than to engender much unnecessary litigation over statutory provisions that would be changed if a reasonable time were permitted.

OK

Recommendation: That no change be made in the delay period.

11. Section 31 - Equalization and Regional Disparities

A number of representations have been made respecting section 31, particularly by Saskatchewan and New Brunswick. Premier Hatfield plans to appear before the Committee to propose *inter alia* an amendment to this section.

Several alternatives for an equalization and regional disparities provision were considered at the various meetings of the continuing committee of Ministers on the Constitution (C.C.M.C.). Each alternative draft contained the provision set out in the Resolution as subsection 31(1). Subsection 31(2) differed in the various drafts as follows:

(a) February 1979 Best Efforts Draft:

> "(2) Parliament and the government of Canada are further committed to the principle of making equalization payments to provinces that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation, or to the principle of making arrangements equivalent to equalization payments to meet the commitment specified in section 96(1)(c)." (i.e. 31(1)(c))

(b) Government of Quebec Proposal:

> "(2) Parliament and the government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."

(c) Governments of Manitoba and Saskatchewan Proposal (including Quebec's Proposal):

> "(2) Parliament and the government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

Subsection 31(2) of the Resolution is a combination of the Quebec proposal and the Manitoba and Saskatchewan proposal. Premier Hatfield plans to put forward the Quebec proposal to the Committee when he appears before it.

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It has been indicated to New Brunswick that the federal government would have no difficulty with a proposal to change the formula set out in subsection 31(2) so as to adopt the Quebec proposal.

Recommendation: That an amendment to subsection 31(2) along the lines of the Quebec proposal be approved for submission to Committee if it appears that Premier Hatfield or others wish to press for such an amendment.

(See Annex 7 for draft amendment.)

12. Section 38 - Provincial Alternative Proposal for Amending Formula

(1) Subsection 38(1): Suggestions have been made that that a provincial proposal for the amending formula should be submitted to the people by the referendum procedure if seven provinces having seventy per cent of the population approve the procedure. The draft resolution requires approval by eight provinces having eighty per cent of the population. which would make it more difficult for the provinces to acquire the support necessary to trigger the referendum requirement.

Recommendation: That no amendment be submitted to the Committee as a change approved by the government, but that approval ofof an amendment be given to the effect that, if a member of the Committee moves an amendment along the lines indicated above, the government would not oppose the amendment.

(2) Subsection 38(3): Subsection 38(3) has been criticized for two reasons:

(a) It is seen as being anomalous that, after Parliament has approved one amending formula in the Resolution, the government could put forward a different amending formula for approval in the amending formula referendum without reference to Parliament; and

(b) It is considered to be unfair that the government should be able to put forward changes at the last minute after the provinces have made their proposal.

The options for consideration are:

(a) to leave paragraph 38(3)(a) unchanged;

(b) to amend paragraph 38(3)(a) to substitute for the words "proposed by the government of Canada by depositing a copy thereof with" the words "proposed by resolution of the Senate and House of Commons and filed with"; or

(c) to amend paragraph 38(3)(a) to delete all references to an alternative amendment to be proposed by the government or Parliament of Canada.

Why not keep alternative (c) as a demonstration of good faith

Recommendation: That no amendment be put forward to the Committee but that approval of an amendment be given to the effect that, if an amendment to change paragraph 38(3)(a) along the lines set out in paragraph (b) above is made in Committee, the government would not oppose the amendment.

13. Section 40 - Rules for Holding Referendum on Amending Formula

There has been some criticism by Saskatchewan and members of the opposition that Rules respecting a referendum are to be made by Parliament. The suggestion has been made that the rules should be approved by an independent committee with both federal and provincial representation. The suggested change relates both to the possible referendum respecting the amending formula that may be held under section 38 and to referenda to amend the Constitution that may be held under section 42.

It is recommended that the criticisms be met by amending sections 40 and 46. The proposed amendment to section 40 would create a commission to approve rules for the referendum respecting the amending formula.

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The proposed amendment to section 46 would provide for the creation of a continuing commission that would approve continuing rules applicable to referenda respecting amendments to the Constitution. It is recommended that the bodies be called "commissions" rather than committees because commissions are more formal bodies than committees and are usually regulatory in nature, which is the intended function of these committees. Further, the issuance of commissions establishing the bodies would provide evidence, in court proceedings to challenge the rules, that the prerequisites to the making of the rules had been met.

The amendment to section 40 would create an independent rules commission consisting of the Chief Electoral Officer of Canada as Chairman and a federal and provincial representative. If a majority of provinces do not agree on a representative, a person would be chosen by the Chief Justice of Canada from among the persons recommended by provincial governments. If no names are put forward by the provincial governments, the Chief Justice would choose a person "knowledgeable in the holding of elections".

Is this acceptable to Blakeney?

The commission would recommend rules to the Governor General and the rules would be made by proclamation issued by the Governor General. The rules would have the force of law and would have primacy over other laws and could include penalties.

Recommendation: That amendment to section 40 be approved along the lines outlined above.

(See Annex 8 for draft amendment.)

14. Section 41 - Provinces Sufficient to Approve Amendment to Constitution

Subparagraph 41(1)(b)(ii) relates to the number of Atlantic provinces sufficient to approve an amendment to the Constitution. There has been very confused criticism of this subparagraph from opposition members centering around the fact the Prince Edward Island could never join with one other province to approve a constitutional amendment. This is because Prince Edward Island cannot, together with any other Atlantic province, make up the fifty per cent of the population necessary to approve an amendment. The opposition notes that the Victoria Formula did not have such a population requirement for the Atlantic provinces and requests that the population requirement be dropped from subparagraph 41(1)(b)(ii).

A similar population requirement is contained in subparagraph 41(1)(b)(iii) in respect of the Western provinces. However, this requirement was contained in the Victoria Charter and represents a western desire for a stronger veto power. To keep the population requirement gives a stronger veto power whereas to drop the population requirement makes it easier to secure amendments. The suggestion that the population requirement be dropped in respect of the Atlantic provinces has been paralleled by suggestions from Committee members (some western) that the population requirement be dropped in respect of the Western provinces because Manitoba and Saskatchewan lack the population to together approve an amendment on behalf of the Western provinces. There is no indication that the Western provinces themselves would welcome such a change.

Recommendation: That

(a) the Victoria Charter be strictly adhered to and an amendment to subparagraph 41(1)(b)(ii) be introduced

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to delete the population requirement for the Atlantic provinces; and

(b) No amendment to subparagraph 41(1)(b)(iii) to delete the population requirement in respect of the Western provinces be put forward but that approval of an amendment to be given to the effect that, if such an amendment is made in Committee, the government would not oppose it.

(See Annex 9 for draft amendment.)

15. Section 42 - Authorization of Referendum to Amend the Constitution

There has been considerable criticism, particularly by Saskatchewan and Newfoundland, of subsection 42(2). Section 42 is seen as an alternative to section 41 and there is fear that a referendum to approve an amendment to the Constitution might be authorized by the Senate and House of Commons without prior recourse to seek the views of provincial legislative assemblies. The argument is that section 42 should only be used as a deadlock breaking mechanism and should not be called into play unless the provinces have failed to approve an amendment. Ontario suggested a twelve month waiting period after the Senate and House of Commons have approved an amendment before the deadlock breaking mechanism could be utilized. Saskatchewan would also like it to be possible for the provinces, as well as the federal government, to be able to trigger the referendum mechanism. However, Saskatchewan appears willing to settle for a deadlock breaking mechanism with the twelve month waiting period but without the provincial trigger.

Recommendation: That subsection 41(2) be amended to make the referendum a tie breaking mechanism that could be triggered at the federal level any time between

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- This should be after demonstrable deadlock at a 1st Minister conference - In practical terms this would happen.

twelve months after approval of the amendment by the Senate and House of Commons and three years after that approval.

(See Annex 10 for draft amendment.)

16. Section 44 - Amendments without Senate Approval

Concern has been expressed by some Senators that, under the amending formula, the Senate could easily be abolished by the House of Commons using the amending procedure. If the House of Commons and provinces reach agreement on a new Upper House, the Senate could be abolished using the procedure now set out in sections 41 and 44. Also the Senators object to any procedure whereby they can be by-passed. It is thought that these objections might be overcome if amendments relating to the Senate (or possibly only amendments relating to the bicameral structure of Parliament) are subjected to the further test of a referendum to seek the views of the people. It would be difficult for the Senators to argue that their opposition constitutes protection of provincial interests if an amendment relating to the Senate must be approved not only by the House of Commons but also by the provincial legislative assemblies and by the people through the referendum.

Recommendation: That

(a) in the case of amendments to the Constitution, other than amendments relating to matters referred to in the paragraphs of section 50 which relate to the Senate, the Resolution continue to provide that the amendments may be made without reference to the Senate where they are approved by the provinces and approved twice by the House of Commons; and

(b) in the case of amendments relating to matters referred to in the paragraphs of section 50 relating

to the Senate, the Resolution be amended to provide that the Senate can be by-passed if the Resolution is approved by the House of Commons and the provinces, the House of Commons approves the amendment a second time by directing that a referendum be held to seek approval of the amendment, and the amendment is approved at the referendum.

(See Annex 11 for draft amendment.)

17. Section 46 - Rules for Holding Referendum on Amendments to the Constitution

See the comments on section 40. The Referendum Rules Commission contemplated by the amendment to section 46 would differ from the Commission proposed by the amendment to section 40 in that it is proposed that it be a continuing commission. It would be established to recommend, from time to time, rules for any referendum that might in future be held. The members would be appointed for terms and could be reappointed. A term of office not exceeding three years is suggested but a longer term could be an option for consideration.

Recommendation: That an amendment to authorize the establishment of a continuing rules recommend to the Governor General rules for referenda to amend the Constitution, as outlined above, be approved.

(See Annex 12 for draft amendment.)

18. Section 47 - Limitation on Use of General Amending Formula

Premier Peckford of Newfoundland has alleged that sections 41 and 42 could be used to make amendments contemplated in section 43 (i.e. amendments to provisions of the Constitution that apply to one or more, but not all, provinces) without the consent of the provinces to which the amendment applies. On this hypothesis, he argues that the Newfoundland school system and the boundaries between Labrador and Quebec could be changed without the consent of Newfoundland. He has made a

similar criticism in respect of the interim amending formula. So far as the interim amending formula is concerned, his alleged eventuality is impossible as the general formula requires unanimous consent. So far as the relationship between sections 41 and 43 is concerned, under the rules of statutory interpretation it is highly unlikely that a court would find that an amendment relating to one or more but not all provinces could be made under section 41 or 42 without the consent of the provinces concerned. However, the matter can be put beyond doubt by a technical amendment to section 47 which sets out the limitations on the use of the general amending formula.

Premier Peckford also thinks there should be a provision in the Constitution making it impossible to amend the provisions of the Constitution that require the approval of a province to an amendment that applies particularly to that province (i.e. section 43 and the B.N.A. Act, 1871). It would not be practical to try to include such a provision in the Constitution. In any case, an amendment to the Constitution to remove the requirement that a province agree to an amendment that applies particularly to it, could only be made under the general amending formula and it is inconceivable that it would be approved by a sufficient number of provinces to enable the amendment to be made.

Recommendation: That approval be given to a technical amendment to section 47 to put it beyond doubt that the procedures prescribed in section 41 or 42 do not apply in respect of an amendment referred to in section 43.

(See Annex 13 for draft amendment.)

What about an amendment altering that amendment to the BNA Act 1871 can only be made with the consent of the province?

... 26

19. Section 50 - Amendments subject to the General Amending Formula

(1) Office of the Queen, etc.: In the French version of the Resolution, the expression "fonctions" is used as the equivalent of the English word "office". It is not a satisfactory equivalent and it is suggested that the word "charge" would express the idea more accurately.

OK

Recommendation: That a technical amendment to paragraph 50(a) to correct the French version as indicated above be approved.

(See Annex 14 for draft amendment.)

(2) Amendments relating to the Senate: The Senate Reference to the Supreme Court indicated that certain amendments relating to the Senate would not come within the legislative authority of the Canadian Parliament but could only be made by the United Kingdom Parliament. This would include amendments relating to the method of choosing Senators and the bicameral structure of Parliament. Under the Resolution, the method of choosing Senators would come within the powers of Parliament. The bicameral structure of Parliament would probably relate to the powers of the Senate and would therefore probably be a matter subject to the general amending formula set out in section 41. Some of the concerns of the Senators referred to in connection with the proposed amendment to section 44 might be overcome if the method of choosing Senators is made subject to the general amending formula or to the special amending formula discussed in connection with section 44 and if it is put beyond doubt that the bicameral structure of Parliament is a matter that can only be changed pursuant to the general (or special) amending formula.

OK

Recommendation: That amendments to section 50 in respect of matters relating to the Senate along the lines indicated above be approved.

(See Annex 15 for draft amendment.)

... 27

20. Sections 52 and 53 - Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

The support of the government of Saskatchewan and that of the N.D.P. is conditional upon the inclusion in the Resolution of an amendment relating to natural resources. The amendment would be inserted as an amendment (section 92A and the Sixth Schedule) to the Constitution Act, 1867 (the B.N.A. Act, 1867). It is an amendment worked out at the various meetings of the C.C.M.C. and derives from the "best efforts draft" considered at the First Ministers' Conference in February 1979.

The amendment would

(a) give the provinces express and exclusive authority to make laws relating to various aspects of non-renewable natural resources, forestry resources and electrical energy; i.e. the exploration for, and the development, conservation and management, as applicable, of those resources; (Note: the "best efforts draft" also gave the provinces exclusive legislative authority in respect of the exploitation and extraction of these resources.)

(b) permit the provinces to make laws respecting the export of the primary production from such resources from the province to another part of Canada, subject to a prohibition against discrimination in respect of prices for or supplies of production exported to other provinces; (Note: This is similar in substance to the "best efforts draft" except that, in the present draft, the provincial power is limited to making laws in respect of exports to other provinces whereas in the "best efforts draft" the power to legislate included a power in respect of exports abroad.)

... 28

(c) retain for Parliament unqualified paramount legislative authority in respect of inter-provincial (and international) trade in those resources; (Note: The "best efforts draft" contained a confusing clause whereby some provincial laws would prevail over laws of Parliament and some federal laws would prevail over provincial laws.) ; and

(d) permit provincial direct or indirect taxation of those resources subject to a requirement that no differentiation in taxes be made between production retained in the province and production exported to other provinces. (Note: This provision is the same as the provision in the "best efforts draft". It is broader than the authority respecting exports in that it authorizes provincial taxes in respect of resources within the province and those exported both inter-provincially and internationally. There could be a tax distinction relating to exports abroad.)

The resources provision also defines "primary production" in a Schedule and preserves pre-existing provincial powers. As indicated above, this provision would transfer less powers to the provinces than the February 1979 draft which was supported by most provinces. It would hence be less satisfactory to most provinces, particularly Alberta. However, it has been agreed to by Saskatchewan and the N.D.P..

Recommendation: That approval be given to the amendment described above.

(See Annex 16 for draft amendment.)

III TECHNICAL AMENDMENTS

A. Canada Act

1. Section 2 - Non-Application of United Kingdom Laws to Canada

In the French language version of this section reference is made to "droit positif du Canada", whereas the English version simply refers to "law" of Canada.

Recommendation: That the French version should have the word "positif" dropped in the event that this section is opened for amendment in Committee.

B. Charter of Rights

1. Section 3 - Democratic Rights

The French language version in using the singular "ce droit ne peut" leaves the implication that only one right is involved rather than two: the right to vote and the right to be a candidate for elective office.

Recommendation: That an amendment be made to change "ce droit ne peut" to read "ces droits ne peuvent". (See Annex 17 for draft amendment.)

2. Section 4 - Democratic Rights

The French language version of section 4(1) speaks only of the "date of report of the writs" while the English language version speaks of the "date fixed for return of the writs". This is an important difference since under the French version there is no fixed date and in practice the writs are returned on dates different to the fixed date.

The French language version of subsection 4(2) expresses the reference to apprehended war, etc. with the words "réelles ou appréhendées". It would be better expressed by the words "ou dans l'appréhension de ces événements".

Recommendation:

(1) That the French version of subsection 4(1) be amended to refer to "la date fixée pour le retour des brefs".

(2) That the French version of subsection 4(2) be amended to refer to apprehended war in the terms set out above.

(See Annex 18 for draft amendment.)

3. Section 8 - Legal Rights

In error the French language text relating to searches and seizures includes the term "abusives" which was dropped from the English text when the wording of the section was modified.

Recommendation: That the term "abusives" be dropped from the French language text.

(See Annex 19 for draft amendment.)

4. Section 12 - Cruel and Unusual Punishment

The French text of the marginal note to this section now reads "punition". A more accurate description of what the section contains is "cruauté".

Recommendation: That the marginal note in French be changed to read "cruauté".

5. Section 15 - Non-Discrimination Rights

The French text of the marginal note to section 15(2) now reads "Programmes d'action sociale". A more accurate description of what the section deals with is "programmes de promotion sociale".

Recommendation: That the marginal note in French be changed to read "programmes de promotion sociale".

6. Section 26 - Admissibility of Evidence

The French text of the marginal note to this section now reads "droit sur la preuve" which is grammatically incorrect. It should read "droit de la preuve".

Recommendation: That the marginal note in French be changed to read "droit de la preuve".

ANNEX 1

November 14, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting the long title to the Canada Act and by substituting therefor the following:

> "An Act to Give Effect to a Joint Resolution of the Senate and House of Commons of Canada"

ANNEX 2
November 14, 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 as are reasonably justifiable in a free and democratic society with a parliamentary system of government."

ANNEX 3

November 14, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraphs 11(f) and (g) of the English version of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(f) not to be tried or punished more than once for an offence of which the person has been finally convicted or acquitted; and

(g) to the benefit of the lesser punishment where the punishment for an offence of which the person has been convicted has been varied between the time of commission and the time of sentencing."

ANNEX 4
November 14, 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 is compelled to testify in any proceedings has a 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."

ANNEX 5

November 14, 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 the law and equal protection and benefit of the law

15. (1) Everyone is equal before 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, 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 persons or groups that are disadvantaged because of race, national or ethnic origin, colour, religion, age or sex."

ANNEX 6

November 14, 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 of any such institution where it is determined, in such manner as may be prescribed or authorized by Parliament, that there is a significant demand for communications with and services from that office in both English and French."

Qui est ainsi déterminé ?

ANNEX 7

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting subsection 31(2) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(2) Parliament and the government of Canada are committed to the principle of making equalization payments to provincial governments that are unable to provide [the] essential public services of reasonable quality [referred to in paragraph (1)(c)] without imposing an undue burden of [provincial] taxation.

NOTE: The words in square brackets are not in the Quebec proposal but reflect the drafting changes made in the version included in the resolution. I think the reference back to subsection (1) is unnecessary and makes the provision hard to read. I would delete it. However, I would leave in the word "provincial" before the word "taxation". The three proposals from the CCMC are attached hereto.

CONFIDENTIAL

EQUALIZATION AND REGIONAL DEVELOPMENT

4

February 1979 Best Efforts Draft

1) Without altering the legislative author-
of Parliament or of the legislatures or of
rights of any of them with respect to the
rcise of their legislative authority,
liament and the legislatures, together
the Government of Canada and the Govern-
ts of the Provinces, are committed to

promoting equal opportunities for the well-being of Canadians;
furthering economic development to reduce disparity in opportunities for social and economic well-being; and,
providing essential public services of reasonable quality to all Canadians.

2) Parliament and the Government of
ada are further committed to the
nciple of making equalization payments
provinces that are unable to provide
ential public services of reasonable
lity without imposing an undue burden
axation, or to the principle of making
angements equivalent to equalization
ments to meet the commitment specified
ection 96(1)(c).

3) The Prime Minister of Canada and the
t Ministers of the Provinces shall review
ther the questions of equalization and
onal development at least once every
years at a meeting convened pursuant to
n 97.

Government of Quebec Proposal

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

(a) promoting equal opportunities for the well-being of Canadians;
(b) furthering economic development to reduce disparity in opportunities; and,
(c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

Governments of Manitoba and Saskatchewan Proposal (including Quebec's Proposal)

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

(a) promoting equal opportunities for the well-being of Canadians;
(b) furthering economic development to reduce disparity in opportunities; and
(c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

social and economic well-being; and,
providing essential public services of
reasonable quality to all Canadians.

2) Parliament and the Government of
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3) The Prime Minister of Canada and the
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reasonable quality without im
of taxation.

(3) The Prime Minister of Ca
Ministers of the Provinces shal
the questions of equalization a
development at least once every
meeting convened pursuant to se

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:

Right to vote

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

Rules for referendum

(2) Subject to subsection (1), rules applicable to the holding of a referendum under subsection 38(3) may be made by proclamation issued by the Governor General under the Great Seal of Canada where so recommended by the Referendum Rules Commission established under this section.

Establishment of Rules Commission

(3) If a referendum is required to be held under subsection 38(3), 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 persons knowledgeable in the holding of elections.

Duty of Commission

(4) The Referendum Rules Commission shall, by majority decision, recommend to the Governor General rules for the holding of the referendum under subsection 38(3) and may include in any such rules penalties for the contravention thereof.

Rules to have force of law

(5) Rules made under this section have the force of law and prevail over other laws to the extent of any inconsistency."

ANNEX 9
November 14 , 1980

Moved that

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

"(ii) at least two of the Atlantic provinces, and"

ANNEX 10

November 14, 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 within two years after the expiration of the twelve month period referred to in paragraph (b).

This should go back to Parliament and should be after a deadlock in a First Ministers Conference

ANNEX 11

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 44 of the proposed Constitution Act, 1980 and by substituting therefor the following:

Amendments without Senate resolution

"44. (1) An amendment to the Constitution of Canada, other than an amendment in relation to a matter referred to in paragraph 50(d), (e) or (f), may, be made by proclamation under subsection 41(1) or section 43 as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution.

Amendments relating to Senate

(2) An amendment to the Constitution of Canada in relation to a matter referred to in paragraph 50(d), (e) or (f) may be made by proclamation issued by the Governor General under the Great Seal of Canada without a resolution of the Senate authorizing the issue of the proclamation where

(a) within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution [and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution]; *

(b) resolutions of the legislative assemblies of the provinces that would be sufficient, together with resolutions of the Senate and House of Commons, to authorize the issue of a proclamation under subsection 41(1) have been passed authorizing the amendment; and

(c) the making of the amendment has been approved at a referendum by voters sufficient to authorize the making of an amendment under subsection 42(1).

Authorization of referendum

(3) A referendum referred to in subsection (2) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada authorized by a resolution of the House of Commons made at any time after the requirements of paragraphs (2)(a) and (b) have been met.

Computation of period

(4) Any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety day period referred to in subsection (1) and (2).

* NOTE: In view of subsection (3) the words in brackets are not necessary and could be deleted. Alternatively, they could be left in and the holding of the referendum could be authorized by the Privy Council. The question is as to when the second resolution of the House of Commons should take place.

ANNEX 12
November 14, 1980

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.

Rules for referenda

(2) Subject to subsection (1), rules applicable to the holding of referenda under section 42 may be made by proclamation issued by the Governor General under the Great Seal of Canada where so recommended by the Referendum Rules Commission established under this section.

Establishment of Rules Commission

(3) On the coming into force of this Part, a Referendum Rules Commission shall 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 agree on 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 persons knowledgeable in the holding of elections.

Duration of appointment

(4) A person appointed to the Referendum Rules Commission under paragraph 3(b) or (c) shall be appointed for a period not exceeding three years and may be reappointed pursuant to such paragraph.

Duty of Commission

(5) The Referendum Rules Commission may from time to time, by majority decision, recommend to the Governor General rules for the holding of referenda under section 42 and, may include in any such rules penalties for the contravention thereof.

Rules to have force of law

(6) Rules made under this section have the force of law and prevail over other laws to the extent of any inconsistency."

ANNEX 13
November 14, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

(a) adding thereto immediately after section 46 of the proposed Constitution Act, 1980 the following subsection:

Limitation on use of general amending formula

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

; and

(b) renumbering section 47 of the proposed Constitution Act, 1980 as subsection 47(2).

ANNEX 14

November 14, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting paragraph 50(a) of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

> " a) la charge de Souverain, celle de gouverneur général et celle de lieutenant gouverneur;"

ANNEX 15

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by

(a) deleting the words immediately preceding paragraph 50(a) of the proposed Constitution Act, 1980 and by substituting therefor the following:

Matters requiring amendment under general formula

"50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41, 42 or 44:"

(b) deleting paragraph 50(e) of the proposed Constitution Act, 1980 and by substituting therefor the following:

"(e) the number of members by which a province is entitled to be represented in the Senate, the method of selecting Senators and the residence qualifications of Senators;"

(c) adding immediately after paragraph 50(e) of the proposed Constitution Act, 1980, the following paragraph:

"(f) the bicameral structure of Parliament ;"

; and

(d) relettering paragraphs 50(f) and (g) of the proposed Constitution Act, 1980 as paragraphs 50(g) and (h) respectively.

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended

(a) by adding thereto, immediately after section 51 of the proposed Constitution Act, 1980, the following headings and sections:

"PART VI
AMENDMENT TO
THE CONSTITUTION ACT, 1867

Amendment to Constitution Act, 1867

52. (1) The Constitution Act, 1867 (formerly named the British North America Act, 1867) is amended by adding thereto, immediately after section 92 thereof, the following heading and section:

"Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) 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; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Export from provinces of resources

(2) In each province the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Taxation of resources

(4) In each province the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

"Primary production"

(5) The expression "primary production" has the meaning assigned by the Sixth Schedule.

Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section."

Idem

53. The said Act is further amended by adding thereto the following Schedule:

"THE SIXTH SCHEDULE

PRIMARY PRODUCTION FROM NON-RENEWABLE RESOURCES AND FORESTRY RESOURCES

1. For the purposes of section 92A of this Act,

(a) production from a non-renewable resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.""

; and

(b) by renumbering Part VI of the Constitution Act, 1980 as Part VII, by renumbering sections 52 to 59 thereof as sections 54 to 61, respectively, and by making such other changes in numbering as are consequential thereto.

ANNEX 17
November 14, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 3 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Droits démocratiques des citoyens

"3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ces droits ne peuvent, sans motif valable, faire l'objet d'aucune distinction ou restriction."

ANNEX 18

November 17, 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 4 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

Prolongations spéciales

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongée respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection ou dans l'appréhension de ces événements pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.»

Il est proposé que le Projet de résolution concernant la Constitution du Canada soit modifié en remplaçant l'article 4 du projet de Loi constitutionnelle de 1980 par ce qui suit:

Mandat maximal

«4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

Prolongations spéciales

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongée respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection ou dans l'appréhension de ces événements pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.»

ANNEX 19

November 14 , 1980

Moved that

The Proposed Resolution respecting the Constitution of Canada be amended by deleting section 8 of the French version of the proposed Constitution Act, 1980 and by substituting therefor the following:

Fouilles, perquisitions et saisies

"8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectuées dans les conditions que celle-ci prévoit."

7. Section 41 - General Procedure for Amending Constitution

(1) It is suggested that the words "à la fois" be added in line 9 of subsection 41(1) after the word "autorisée". This amendment is not necessary but has been suggested for inclusion in the draft if subsection 41(1) is opened for amendment.

(2) It has been suggested that line 14 in paragraph 41(1)(b) be changed from "cette majorité doit comprendre" to the more usual structure "cette majorité comprendre" if the section is opened for amendment.