Department of Justice | Ministère de la Justice

MEMORANDUM/NOTE DE SERVICE

Security Classification – Cote de sécurité	
File number – numéro de dossier	
Date	November 14, 1980

TO/A: DEPUTY MINISTER

FROM/DE: MISS E. I. MACDONALD
Senior Counsel, Public Law

SUBJECT/OBJET:

Comments/Remarques

Further to our meeting November 11 I have prepared and attach for your consideration a set of amendments to the following sections:

Long Title, s. 1, s. 3, s. 8, p. 11(f) and (g), s. 13, s. 15, s. 20, s. 40, sp. 41(1)(b)(ii), s. 42(2), s. 46, s. 47, p. 50(a), p. 50(e), s. 52.

Amendments respecting Senate will follow.

E. I. MacDonald

E. I. MacDonald

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"

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."]

no

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."

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."

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."

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:

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rimination

"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."

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*

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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.

ffirmative ction rograms

(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."

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 either official language, 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 official languages."

November 14 , 1980

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:

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

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(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 Committee established under this section.

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(3) If a referendum is required to be held under subsection 38(3), a Referendum Rules Committee shall forthwith be established consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Committee;

(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.

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(4) The Referendum Rules Committee 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.

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

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"

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:

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"(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).

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:

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

ules for eferenda

(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 Committee established under this section.

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(3) On the coming into force of this Part, a Referendum Rules Committee shall be established consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Committee;

(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.

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

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(5) The Referendum Rules Committee 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.

ules to have orce of law

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

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).

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;"

November 14, 1980

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.