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FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS ON THE CONSTITUTION

Rm

Proposal for a common stand
of the Provinces
QUÉBEC

Ottawa
September 8-12, 1980

The attached text has been prepared by Québec for the purpose of specifying the common stand of the provinces on the series of subjects discussed by the Conference.

It was distributed to the provincial delegations and discussed by the ministers on Thursday, September 11, and served as a basis for the discussion by the First Ministers of the Provinces on Friday morning, September 12.

The appendices have been added to assist in understanding the text.

Québec Delegation
Ottawa, September 13, 1980.

DISCUSSION DRAFT

[The Provinces of Canada unanimously] agree in principle to the following changes to be made to the Constitution of Canada. It is understood that these changes are to be considered as a global package and that this agreement is a common effort to come to a significant first step towards a thorough renewal of the Canadian federation.

1. Natural resources

1979 Best effort draft (APPENDIX A)

2. Communications

Provincial consensus draft, August 26, 1980 (APPENDIX B)

3. Upper Chamber

Best effort draft for a Council of the Provinces, as an interim solution. (weight of vote and implementation to be set after consensus reached on horizontal federal powers) (APPENDIX C)

4. Supreme court of Canada

Entrenchment

6-5 at least on constitutional matters

Alternate chief-justice

Appointment procedure, consultation & consent, (no dead-lock mechanism) (APPENDIX D)

4a. Judicature

Repeal of S.96

Constitutional guarantees (APPENDIX E)

5. Family law

Sub-committee draft (APPENDIX F)

6. Fisheries

Provincial draft, July 21, 1980 (APPENDIX G)

7. Off-shore resources

Principle of equal treatment for on-shore and off-shore resources

8. Equalization

Manitoba - Saskatchewan draft less paragraph 3. (APPENDIX H)

9. Charter of rights

Fundamental freedoms

Democratic rights

Judicial rights

Discrimination rights

- all existing laws deemed valid

- non-obstante clause

Official languages of Canada

Use of official languages in federal institutions & services

S.133 applicable to Ont., Qué., N.B., Man.

Multilateral reciprocity agreement to be concluded without delay (Bill 101: Canada clause).

10. Patriation

Alberta Amending Formula (APPENDIX I) for matter subject to opting-out, with provision for financial arrangements between governments.

Victoria formula for other matters (APPENDIX J)

Implementation of patriation delayed until unanimous approval (APPENDIX 1)

11. Powers over the economy

No new S.121 (or Saskatchewan draft) (APPENDIX K)

Part of new S.91(2)

12. Preamble

Quebec proposal (APPENDIX L)

If a satisfactory interprovincial consensus is reached in this way, it must be accompanied when tabled by an announcement of the following measures:

- (1) As soon as the federal government has given its assent to this consensus, the matters will be returned to the ministers' committee for final drafting of the texts in their legal form.
- (2) Another list of subjects must be established to be covered by constitutional discussions at the ministerial level in the following months:
 - the horizontal powers of the federal government; (spending power, declaratory power, power to act for "peace, order and good government", etc.);
 - culture;
 - social affairs;
 - urban and regional affairs;
 - regional development;
 - transportation policy;
 - international affairs;
 - the administration of justice.

- (3) Another conference of First Ministers must be called for December to approve the texts drafted on the twelve subjects (initial list) and to discuss the results of the work done on the new subjects (second list).
- (4) If the results of this work are satisfactory, then the Canadian Parliament could adopt its address to the Queen at the beginning of 1981.
- (5) Another Conference of First Ministers to be held in February 1981 to approve the texts drafted on the second list.
- (6) From February 1981: adoption of the resolutions of the ten Legislatures and Parliament to bring patriation into effect and to implement the second list according to the amending formula.
- (7) Final Act of the British Parliament to be adopted hopefully in June 1981 implementing the amendments of the first list.

SUSPENSIVE PATRIATION

A patriation formula with delayed or suspensive effect could enable the federal government to go to London only once and yet at the same time respect the principle of provincial consent.

This formula would enable the British Parliament to enact a final amendment to the B.N.A. Act with the following effects:

- a) the law would decree that the Parliament of Westminster no longer legislates with respect to the B.N.A. Act which is henceforth to be amended in accordance with the amendment formula enacted. This provision would come into force only by proclamation of the Government of Canada issued once it has been ascertained that each of the Provinces of Canada, as well as the Federal Government, has approved it;
- b) the same law would give immediate effect to the amendments agreed upon with respect to

the matters discussed during the current constitutional negotiations. These amendments would come into force immediately and, obviously, would not be subject to the suspensive effect of the provision respecting patriation.

DRAFT

1. The B.N.A. Acts 1867 to 1975 shall be amended as follows: (Insert the amendments to take immediate effect.)
2. Section 7 of the Statute of Westminster is repealed.
3. The B.N.A. Acts 1867 to 1975 shall henceforth be amended as follows: (Insert the agreed-upon amendment formula.)
4. This Act shall come into force the day of its sanction. Nevertheless, Sections 2 and 3 shall take effect by proclamation issued by the Governor General of Canada; such proclamation shall not be issued unless it is declared that it is issued in accordance with the resolutions adopted by each of the ten Legislatures and by the Parliament of Canada.

Draft Proposal Discussed by First MinistersRESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

(1) (present Section 92)

(1) Carries forward existing Section 92

Resources

(2) In each province, the legislature may exclusively make laws in relation to

- a) exploration for non-renewable natural resources in the province;
- b) development, exploitation, extraction, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production therefrom; and
- c) development, exploitation, conservation and management of forestry resources in the province and of sites and facilities in the province for the generation of electrical energy, including laws in relation to the rate of primary production therefrom.

(2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g. crude oil, copper, iron and nickel), forests and electric energy. This section pertains to legislative jurisdiction and in no way impairs established proprietary rights of provinces over resources whether these resources are renewable or non-renewable.Export from the province of resource

(3) In each province, the legislature may make laws in relation to the export from the province of the primary production from non-renewable natural resources and forestry

(3) Provincial governments are given concurrent legislative authority to pass laws governing the export of the resources referred to above from the province. This legislative capacity is in

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 prices for production sold for export to another part of Canada that are different from prices authorized or provided for production not sold for export from the province.

the sphere of both inter-provincial and international trade and commerce. Provincial governments are prohibited from price discrimination between resources consumed in the province and those destined for consumption in other provinces. This new provincial legislative capacity applies to these resources in their raw state and to them in their processed state but does not apply to materials manufactured from them.

Relationship to certain laws of Parliament

- (4) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (3) prevails over a law enacted by Parliament in relation to the regulation of trade and commerce except to the extent that the law so enacted by Parliament,
- a) in the case of a law in relation to the regulation of trade and commerce within Canada, is necessary to serve a compelling national interest that is not merely an aggregate of local interests; or
 - b) is a law in relation to the regulation of international trade and commerce.

- (4) The effect of this new provincial legislative responsibility over trade and commerce diminishes the scope but does not eliminate the federal government's exclusive authority over trade and commerce. The exercise of the provincial power is subject to two limitations. First, the federal government may legislate for interprovincial trade if there is "compelling national interest". This trigger mechanism may apply to circumstances other than an emergency as established under the peace, order and good government power. Second, federal laws governing international trade prevail over provincial laws in international trade, in effect establishing a concurrent power similar to that for agriculture.

Taxation of resources

- (5) 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

- (5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.

- b) sites and facilities in the province for the generation of electrical energy and the primary 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.

Production from resources

- (6) For purposes of this section, (6) In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, the wording of this subsection is thought to place the appropriate limitations on provincial powers.
- 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 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.

Existing Powers

- (7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections. (7) This clause ensures that any existing provincial legislative powers found in s.92 are not impaired by the new section.

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Draft Proposal Discussed by First Ministers

LIST OF ALTERNATIVES COVERING THE
DISPOSITIONS OF SECTION 109

Option 1

Maintain the status quo, do not carry forward Section 109.

Option 2 (a)

Property in
lands,
mines, etc.

*"123.1 All lands, mines, minerals and royalties belonging to any province immediately before this section comes into effect, and all sums then due or payable in respect of any such lands, mines, minerals and royalties, belong immediately after this section comes into effect to the province or are then due and payable, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 2 (b)

Ownership
of property

*"123.1 All property belonging to any province immediately before this section comes into effect, belongs immediately after this section comes into effect to the province, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 3

Ownership
of property

"127.1 Nothing in this Act changes the ownership in any property owned by Canada or a province immediately before the coming into force of this Act."

*Note: Numbering is tied in to numbering found in Bill C-60.

COMMUNICATIONS

BEST EFFORTS DRAFT (PROVINCES)COMMUNICATIONS

- (1) In each province the Legislature may make laws in relation to telecommunication works and undertakings in the province notwithstanding that such works and undertakings connect the province with any other or others of the provinces, extend beyond the limits of the province, or emit signals originating in the province beyond the province, or receive or distribute in the province signals originating outside the province.
- (2) The Parliament of Canada may make laws in relation to telecommunication works and undertakings mentioned in sub-section (1) other than works and undertakings wholly situate within a province.
- (3) No law enacted by the Legislature of a province or the Parliament of Canada under this section shall in its pith and substance be directed to the disruption of the free flow of information.
- (4) Any law enacted by the Legislature of a province under sub-section (1) prevails over a law enacted by Parliament under sub-section (2) except a law of Parliament in relation to:
 - (a) matters of a technical nature respecting management of the radio frequency spectrum;
 - (b) the space segment of communication satellites;
 - (c) regulation of Canadian broadcasting transmitting network undertakings that extend to four or more provinces, including the re-distribution of their signals by other telecommunications undertakings;
 - (d) foreign broadcast signals, including the re-distribution of these signals by other telecommunications undertakings;
 - (e) the use of telecommunication works and undertakings for aeronautics, radio-navigation, defence, or in national emergencies.
- (5) In the event that the laws of two or more provinces conflict so as to disrupt the free flow of information, one of the provinces may petition the Parliament of Canada to enact a law to resolve the specific conflict and such law shall prevail.

BEST EFFORTS DRAFT
Council of the Provinces

APPENDIX C

- Council established** 1. There shall be a body to be called the Council of the Provinces.
- Membership** 2. The Council shall have thirty (30) members.
- Appointment** 3. The Lieutenant Governor in Council of each province shall appoint three members to the Council.
- Head of delegation.** 4. The Lieutenant Governor in Council of each province shall designate one member to be the head of that province's delegation.
- Tenure of members** 5. Each member holds office at the pleasure of the Lieutenant-Governor in Council of his respective province.
- Qualifications** 6. (a) A member of a provincial legislative assembly may also be a member of the Council.
(b) Subject to (a) the legislative assembly of a province may prescribe the qualifications for its members to the Council.
- Federal government spokesmen** 7. The federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in and speak to any matter coming before the Council.
- Votes** 8. (a) Each province shall have one vote on every matter before the Council.

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- (b) The vote of each province shall be cast by the head of that province's delegation or his designate.

Ratification 9. (a) Unless otherwise specified herein, the ratification of any matter coming before the Council requires a two-thirds majority of the votes cast.

- (b) Unless otherwise specified herein the failure of legislation or an appointment to receive the required majority means that the legislation or appointment shall not take effect.

- (c) Legislation on which the Council has made no decision within ninety days from the time of referral shall be deemed to be ratified unless an extension of the time is made by the federal government. Appointments on which the Council has made no decision within thirty days from the time of referral shall be deemed to be ratified.

Powers

10. Matters coming within the following classes shall be referred to the Council for its consideration, debate and disposition according to section 9, namely

- (a) The exercise by the Parliament of Canada of the declaratory power pursuant to section 92 (10) (c).

Powers

10. (b)

(i) Laws of the Parliament of Canada initiating general conditional grants to the provinces in relation to matters within exclusive¹ provincial jurisdiction²

(ii) ³

(c)

(i) Laws of the Parliament of Canada made pursuant to the opening words of Section 91 or actions of the Government of Canada pursuant thereto, which have the effect of suspending in whole in part the normal distribution of legislative powers between the Parliament of Canada and the legislatures of one or more of the provinces, except in cases where there is a state of real or apprehended war, invasion or insurrection.

(ii) Any measure taken to deal with real or apprehended insurrection will become inoperative fifteen days after having been proclaimed unless it is ratified by the Council.

-
1. Ministers were unable to conclude whether this provision should be limited to areas of exclusive provincial jurisdiction or made broader.
 2. Ministers recognize the necessity, at some stage, of further ministerial or First Ministerial determination of what if any fiscal equivalent should be available to non-participating provincial governments.
 3. At the request of Quebec the following clause was also considered, but Ministers did not reach a conclusion:

"Laws of the Parliament of Canada initiating payments to classes of individuals or institutions in relation to matters within exclusive provincial jurisdiction."

- (d) Laws of the Parliament of Canada, or sections thereof, which are to be administered by provincial governments.
- (e) Approval of appointments to the managing bodies of such federal boards, commissions or agencies, as are determined from time to time by the Conference of First Ministers, to have significant interest to all or some of the provinces.⁴
- (f) Other matters which have emerged or might emerge in the overall process of constitutional review which Ministers or First Ministers deem appropriate.

Dualism

- 11. In the case of any matter coming before the Council which is in relation to the French language or French culture the ratification of the Council would require that the two-thirds majority prescribed by section 9 (a) include the affirmative vote of Quebec.⁵
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- 4. There was some discussion as to whether, as an alternative, a list of specific subject areas such as energy, communications, tariffs, monetary policy and transportation should be specified.
- 5. Ministers also examined the alternative of a weighted vote on this aspect but did not reach a conclusion. Ministers also recognized the fundamental definitional problem attached to the word "culture".

(b) A simple majority only shall be necessary for the establishing of any rules of procedure.

Eligibility for appointment

Appointment of judges from Quebec

Appointment of Chief Justice of Canada

Attorney General designation

Term of office

Procedure on vacancy in Court

Qualifications of judges

Term of office of judges of court

Residence of judges

20. The list of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of law created or of a court established by Parliament or otherwise, the bar of Quebec.

4. (1) A chief justice, to be called the Chief Justice of Canada, shall be designated by the Governor General.

(2) The Chief Justice of Canada shall be designated, in single term, alternately, first among the judges appointed subsequent 1971 and first among the other judges of the Supreme Court.

(3) The term of office of a judge as Chief Justice of Canada expires a two years after the designation, with effect as upon the judge attaining the age of retirement, whichever first occurs.

5. (1) Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorneys General of all of the provinces and shall see the consent of the Attorney General of the province of the person being considered for appointment as to the appointment of that person.

(2) Where consent is not forthcoming, the Ministers of Justice of Canada and the appropriate provincial Attorney General shall, together with a person chosen by them or if they do not agree a person chosen by the Chief Justice of Canada, determine the person to be recommended for appointment.

(3) The judges of the Supreme Court hold office during good behavior until they attain the age of seventy-five, but are removable by the Governor General on the advice of the Prime Minister and the Senate of Canada.

(4) The Governor General may, on the advice of the Prime Minister, remove any judge of the Supreme Court.

August 12, 1980

The Supreme Court of Canada

Supreme Court
of Canada

1. There shall be a general court of appeal for Canada called the Supreme Court of Canada.

Constitution
of Court

2. The Supreme Court of Canada shall consist of eleven judges, who shall be appointed by the Governor General.

Eligibility
for
appointment

3. (1) A person is eligible to be appointed as a judge of the Supreme Court if, after having been admitted to the bar of any province, the person has, for a total period of at least ten years, been a judge of any court in Canada or a member of the bar of any province.

Appointment of
judges from
Quebec

(2) Five of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of that province or of a court established by Parliament or members of the bar of Quebec.

Designation of
Chief Justice
of Canada

4. (1) A chief justice, to be called the Chief Justice of Canada, shall be designated by the Governor General.

Alternate
designation

(2) The Chief Justice of Canada shall be designated for single term, alternatively, from among the judges appointed under subsection 3(2) and from among the other judges of the Supreme Court.

Term of office

(3) The term of office of a judge as Chief Justice of Canada expires seven years after the designation has effect or upon the judge attaining the age of retirement, whichever first occurs.

Procedure on
vacancy in
Court

5. (1) Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorneys General of all of the provinces and shall seek the consent of the Attorney General of the province of the person being considered for appointment as to the appointment of that person.

Procedure
where no
consent

(2) Where consent is not forthcoming, the Minister of Justice of Canada and the appropriate provincial Attorney General shall, together with [a person chosen by them or if they do not agree a person chosen by] the Chief Justice of Canada, determine the person to be recommended for appointment.

Tenure of
office of
judges of
court

6. (1) The judges of the Supreme Court hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries,
allowances and
pensions of
judges

(2) Parliament shall provide for the salaries, allowances and pensions of the judges of the Supreme Court.

ultimate appellate jurisdiction of Court appeals with leave of Court

7. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction.

8. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, where any question involved raises a constitutional issue.

appeals from Governor General in Council references

9. An appeal to the Supreme Court lies from an opinion pronounced by the highest court established by Parliament on any constitutional question referred to it by the Governor General in Council

Direct references by Governor General in Council

10. Parliament may make laws authorizing the Governor General in Council to refer questions of law or fact directly to the Supreme Court.

Appeals from provincial references

11. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any constitutional question referred to it by the Lieutenant Governor in Council of the province.

Direct provincial references

12. The legislature of a province may make laws authorizing the Lieutenant Governor in Council to refer questions of law or fact directly to the Supreme Court.

Additional appeals

13. In addition to any appeal provided for by this Act, an appeal to the Supreme Court lies as may be provided by Parliament.

organization, maintenance and operation of Court

14. Parliament may make laws providing for the organization, maintenance and operation of the Supreme Court, and the effective execution and working of this division and the attainment of its intention and objects.

Consultation

15. The Minister of Justice of Canada shall consult with the Attorneys General of the provinces in respect of proposals for laws referred to in sections 13 and 14.

TRANSITIONAL

Continuation of Supreme Court of Canada

XX. (1) The court existing immediately before the commencement of this Act under the name of the Supreme Court of Canada is continued as provided in this Act.

Continuation in office of judges

(2) The Chief Justice of Canada and other judges of the Supreme Court of Canada shall continue in office as though appointed and designated in the manner provided in this Act except that they shall hold office as judges or Chief Justice until attaining the age of seventy-five years

Continuation of laws

(3) Until otherwise provided pursuant to this Act, all laws respecting the Supreme Court of Canada and the judges thereof that were in force immediately before the commencement of this Act shall continue, subject to this Act.

Appointment of Superior, District and County Court
Judges (section 96)

At the Ottawa CCMC meeting nine provinces supported the following proposition:

- 1) that a province may appoint the judges of its Superior, District, and County Courts and where it exercises that power, the provisions of s.96 of the B.N.A. Act would not be applicable to the province; and
- 2) that the constitution:
 - a) guarantee the existence of a superior court of general jurisdiction in each province;
 - b) guarantee the independence of the members of such courts;
 - c) enable a province to establish bodies to administer the application of its laws;
 - d) enshrine the power of judicial review in the superior court of general jurisdiction; and
 - e) provide that there shall not be a dual system of courts.

The representative of Manitoba while in favour of the principles in para (2) favoured the retention of the federal appointing power.

The federal Minister of Justice stated that, while he recognized the difficulties caused by the judicial interpretation of s.96 for provinces attempting to create administrative bodies, he did not believe that it was necessary to change the whole judicial system in Canada in order to solve that problem. In his view, the matter required further consideration.

BEST EFFORTS DRAFT

FAMILY LAW

1. Repeal head 26 of section 91 -- "Marriage and divorce".
2. Repeal head 12 of section 92 -- "The Solemnization of Marriage in the Province".
3. Add as new legislative authority provisions, the following sections:

Marriage jurisdiction

"1. The legislature of each province may make laws in relation to marriage in the province, including the validity of marriage in the province, except that Parliament has exclusive authority to make laws in relation to the recognition of a declaration that a marriage is void, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a declaration that a marriage is void.

Divorce - provincial jurisdiction

2. (1) The legislature of each province may make laws in relation to divorce in the province and has exclusive authority to make laws in relation to relief ancillary thereto.

Divorce jurisdiction of Parliament

(2) Parliament may make laws in relation to divorce and has exclusive authority to make laws in relation to the recognition of divorces, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a divorce.

Relationship between laws of provinces and laws of Parliament

(3) Where the legislature of a province enacts a law in relation to any matter over which it has concurrent authority with Parliament under this section, that law prevails in the province over any law of Parliament in relation to that matter to the extent of any inconsistency.

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Declaration
assuming
authority

(4) The legislature of each province may declare that it is assuming authority in relation to all matters over which it has concurrent authority with Parliament under this section and, where the legislature so declares, notwithstanding subsection 3, all laws of Parliament in relation to those matters have no effect in that province while the declaration is in effect.

Effect of
Order

3. An order for maintenance or custody made in Canada has legal effect throughout Canada.

Registration
and enforcement
of order

4. An order referred to in section 3 made in any province or territory may be registered in any other province or territory in a court of competent jurisdiction and shall be enforced in like manner as an order of that court.

Authority to
make laws

5. The legislatures of the provinces may make laws to give effect to the provisions of sections 3 and 4 and may make laws providing for the variation and non-enforcement of orders by reason of a change in circumstances and, in addition, for the non-enforcement of orders on grounds of public policy or lack of due process of law.

Power of
legislature
to confer
jurisdiction
of superior
court judges

6. Notwithstanding section [96], the legislature of each province may confer, or authorize the Lieutenant Governor of the province to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Governor General or by the Lieutenant Governor of the province, as the legislature may determine, the jurisdiction of a judge of a superior court of the province in respect of any matters within the field of family law."

4. Add as one of the transitional provisions, the following section:

Continuation
of existing
laws

"XX. Except as otherwise provided in this Act, all laws relating to marriage and divorce that are in force in Canada or any province immediately before the coming into effect of this Act continue in force in Canada and that province, respectively, until such time as they are repealed, altered or replaced by Parliament or the legislature of the province according to the authority of Parliament or the legislature under this Act." *

*NOTE: The wording of this general transitional section will need to be finalized later.

BEST EFFORTS DRAFT

APPENDIX G

Amendment
Alternative Formulations
Regarding Inland Fisheries, Marine Plants
and Sedentary Species

Supported by
Nine Provinces

- 92.1(1) The Legislature of each province may exclusively make laws in relation to:
- a) inland fisheries in the non tidal waters of the province;
 - b) marine and aquatic plants¹ in the non tidal waters of the province and in tidal waters in or adjacent to the province¹;
 - c) sedentary species in tidal waters in or adjacent to the province;
 - d) aquaculture within the province and in tidal waters or adjacent to the province that is not included in either a), b) or c);
- (2) Notwithstanding paragraph 1(a) the Parliament of Canada may make laws in relation to the determination of total allowable catches for andromous species in non tidal waters and their allocation between provinces and any such law shall be paramount.

Amendment Regarding Sea Coast Fisheries

- (a) Section 91(12) of the British North America Act would be repealed.
- (b) A separate section in the British North America Act, in the following terms, would be enacted.

95A (1) With respect to fish stocks adjacent to each province (as defined in subsection (5) below), the Legislature may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (3) shall have effect in and for the province so long as they are not repugnant to any Act of the Parliament of Canada made under subsection (2).

(2) The Parliament of Canada may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (4) shall have effect in and for any or all of the provinces so long as they are not repugnant to any Act of the Legislature of a province made under subsection (1).

(3) The matters referred to in subsection (1) are:

- (a) fixing parameters for the total allowable catch for stocks;
- (b) the allocation of quotas to foreign countries and the licensing of foreign vessels;
- (c) conservation of fish stocks.

(4) The matters referred to in subsection (2) are:

- (a) fixing the level of catch within the parameters referred to in subsection (3) (a) and the issuance of quotas up to the level so fixed;
- (b) licensing of fishing vessels other than foreign vessels taking fish from the residual quota;
- (c) all matters not referred to in this subsection and subsection (3).

-- continued --

5. (a) The allocation of the fish stocks adjacent to each Province shall be determined by agreement between the Provinces in accordance with equitable principles taking account of all relevant information including traditional fishing patterns.
- (b) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall refer the particular matter in dispute for expeditious arbitration.

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 equity, equal taxing powers to ensure that provincial governments have sufficient resources to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

BEST EFFORTS DRAFTEQUALIZATION AND REGIONAL DEVELOPMENTGovernments 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.

shall have no effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution prior to the issue of the proclamation, until such time as that Assembly may withdraw its dissent and approve such amendment by resolution.

2. A proclamation shall not be issued under Section 1 before the expiry of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly in each province has previously adopted a resolution of assent or dissent.

BEST EFFORTS DRAFTAMENDMENTS TO THE CONSTITUTION OF CANADA

1. (1) Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly in two-thirds of the provinces representing at least fifty percent of the population of Canada according to the latest general census.

(2) Any amendment made under sub-section (1) affecting:

 - (a) the powers of the legislature of a province to make laws,
 - (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
 - (c) the assets or property of a province, or
 - (d) the natural resources of a province,

shall have no effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution prior to the issue of the proclamation, until such time as that Assembly may withdraw its dissent and approve such amendment by resolution.
2. A proclamation shall not be issued under Section 1 before the expiry of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly in each province has previously adopted a resolution of assent or dissent.

3. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces including any such amendment made to provincial boundaries may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly of each Province to which an amendment applies.
4. An amendment may be made by proclamation under section 1, 3 or 9 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.
5. The following rules apply to the procedures for amendment described in sections 1, 3 and 9
 - 1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province,
 - 2) a resolution of authorization or assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized or assented to by it,
 - 3) a resolution of dissent made for the purposes of this Part may be revoked at any time before or after the issue of a proclamation.
6. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

7. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

8. Notwithstanding sections 6 and 7, the following matters may be amended only in accordance with the procedure in section 1(1):

- 1) the office of the Queen, of the Governor General and of the Lieutenant-Governor,
- 2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures,
- 3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies,
- 4) the powers of the Senate,
- 5) the number of members by which a Province is entitled to be represented in the Senate and the residence qualifications of Senators.
- 6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province,
- 7) the principles of Proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada, and
- 8) the use of the English or French language.

9. 1) No amendment to section 1 of this Part, this section, or to any provision in the Constitution with respect to the procedure for altering provincial boundaries shall come into force unless it is authorized in by resolutions of the Senate and House of Commons and assented to by resolution of the Legislative Assemblies of all the provinces.
- 2) The procedure prescribed in section 0 of this Part may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada but, subject to the limitations contained in subsection (1) of this section that procedure may nonetheless be used to amend any provision for amending the Constitution.
10. The enactments set out in the Schedule shall continue as law in Canada and as such shall, together with this Act, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

PART IV

AMENDMENTS TO THE CONSTITUTION

Art. 41. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that include:

(1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least 10% of the population of

CANADIAN CONSTITUTIONAL

(2) at least two Atlantic Provinces;

CHARTER

(3) at least two of the Western Provinces that have, according to the then latest general census, a population of at least 10% of the population of all the Western Provinces.

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Art. 42. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the legislative Assembly of each Province to which an amendment applies.

Art. 43. An amendment may be made by proclamation under Article 41 or 42 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament or a provincial assembly is dissolved shall not be counted in computing the ninety days.

PART IX
AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

- (1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) 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.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;

- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

ECONOMIC UNION

(SASKATCHEWAN PROPOSAL)

121. (1) Without altering the legislative or other authority of Parliament or the legislatures or of the Government of Canada or the governments of the Provinces or the rights of any of them with respect to the exercise of their respective legislative or other authority:
- (a) Parliament and the legislatures, together with the Government of Canada and the governments of the Provinces, are committed to
 - (i) the maintenance and enhancement of the Canadian economic union,
 - (ii) the movement throughout Canada of persons, goods, services and capital without discrimination by Canada or any Province, by law or practice, in a manner that unjustifiably impedes the operation of the Canadian economic union, and
 - (iii) the harmonization of federal and provincial laws, policies, and practices that affect the Canadian economic union; and
 - (b) pursuant to the commitments specified in clause (a), the Government of Canada and the governments of the Provinces are committed to the ongoing, systematic and co-operative review by them of the operation of the Canadian economic union.

QUEBEC PROPOSAL

PREAMBLE AND STATEMENT OF PURPOSE OF THE CONSTITUTION

In accordance with the will of Canadians, it is the will of the provinces of Canada, in consort with the federal government, to remain freely united in a federation, as a sovereign and independent country, under the Crown of Canada, with a constitution similar in principle to that which has been in effect in Canada;

THE FUNDAMENTAL PURPOSE of the Federation is to preserve and promote freedom, justice and well-being for all Canadians, by:

PROTECTING individual and collective rights, including those of the native people; *

ENSURING that laws and political institutions are founded on the will and consent of the people;

FOSTERING economic opportunity, and the security and fulfillment of Canada's diverse cultures;

RECOGNIZING the distinctive character of the people of Quebec which, with its French-speaking majority, constitutes one of the foundations of the Canadian duality;

CONTRIBUTING to the freedom and well-being of all mankind.

This phrase is subject to acceptance by the native leadership.