

29/9/80

# THE CANADIAN CONSTITUTION

1980



EXPLANATION of a  
Resolution respecting  
the Constitution of Canada

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Canada

95421

16 (10-80)

## Introduction

The Government of Canada has placed before Parliament a Resolution containing constitutional proposals of historic importance. When these proposals come into effect, they will signify the passing of the last vestige of Canada's former colonial status. The fundamental nature of our political system will not be changed: Canada will remain a parliamentary democracy with a federal system of government and the Queen as Head of State. However, now, after 113 years, we will finally have a Constitution that is completely our own and that can be amended entirely within this country. The changes are also momentous in that, for the first time, Canadians will have basic rights and freedoms enshrined in and protected by the Constitution.

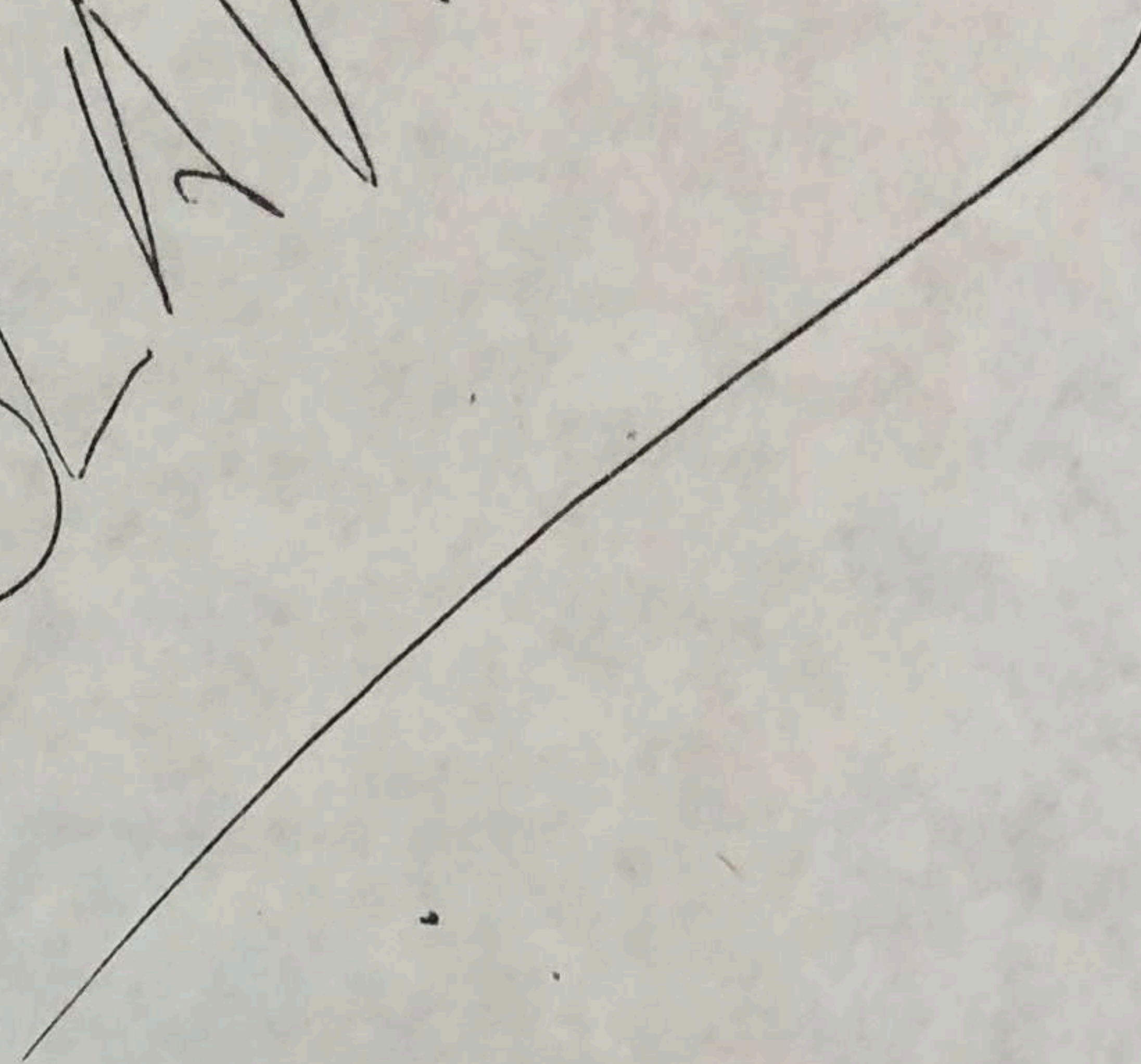
This booklet is published to help Canadians understand the nature and significance of the Resolution before Parliament. The reader interested in more detailed information should refer to the Resolution itself, which has been published with clause-by-clause explanatory notes.\*

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\*Requests for copies should be addressed to:

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### **The Resolution**

The three main objectives of the Resolution are discussed in detail below, but in brief they are as follows:

- to "patriate" the Constitution and provide for an amending formula
- to entrench a Canadian Charter of Rights and Freedoms, including mobility rights and minority language educational rights
- to entrench the principle of equalization.

In addition the Resolution provides for the expeditious preparation of an official French version of the Constitution.

### **Patriation with an Amending Formula**

When the Fathers of Confederation sat down in Charlottetown in 1864 to begin to draft the resolutions that would become the *British North America (BNA) Act*, they did not include an amending procedure, since it was to be an act of the British Parliament and therefore subject to the normal provisions for altering legislation in Britain. Today, 116 years later, every time Canada wants to amend any part of the Canadian Constitution that relates to the division of powers between the Parliament of Canada and the legislatures of the provinces and to certain other provisions, it still has to ask the Parliament of the United Kingdom to pass an amendment to the *BNA Act*. Canada is the only sovereign country in the world that still has to turn to the Parliament of another country to amend its own Constitution.

This unusual situation has caused concern in Canada for more than 50 years. It has not been corrected, however, because federal and provincial governments have been unable to agree on an amending formula.

The search for a formula began in 1927. This first attempt was unsuccessful as was a subsequent attempt in 1931. As a result, Canada requested that the *BNA Act* be excepted from the terms of the *Statute of Westminster*, which recognized the independence of the self-governing countries of the Commonwealth and provided that the jurisdiction of the British Parliament no longer apply to them.

Again, at federal-provincial conferences in 1935-36 and in 1950, attempts were made to find an acceptable formula—without success.

During the 1960s a concerted effort was made to find a formula that would satisfy the federal and provincial governments. In 1961 an amending procedure known as the "Fulton formula," named after the then Minister of Justice, E. Davie Fulton, was developed. It did not receive unanimous support, but in 1964, at a federal-provincial conference, a modified version of this formula, advanced by the Minister of Justice of the time, the Honourable Guy Favreau, and known as the "Fulton-Favreau formula", was approved in principle. Subsequently, it too failed to win unanimous provincial support and was set aside.

Between 1968 and 1971, a continuing Constitutional Conference discussed patriation and an amending procedure. All governments represented at the Victoria Conference in June 1971 agreed to what became known as the "Victoria" amending formula. It seemed that, at last, a satisfactory formula had been found. However, when the Government of Quebec decided after the Victoria Conference that it was not prepared to proceed with the full constitutional package, of which the amending formula was a part, this attempt failed as well.

The search was again taken up in 1975-76 and in 1978-79 and finally during the constitutional negotiations of the summer of 1980. While various formulas were discussed, no agreement was reached.

Fifty-three years after the search began, we still have not agreed on a formula. It is widely recognized that it is not only inconvenient to have to ask the British Parliament to amend the *BNA Act*, it is also inconsistent with our status as a sovereign state. Not only that, but the absence of a Canadian amending formula has made step-by-step constitutional reform more difficult. In 1980, no government can easily accept the affront to national pride of having to perpetuate the system of asking the British Parliament to amend our Constitution item by item, a procedure equally burdensome to the British and to Canadians.

The desirability of patriation has been acknowledged for years by both federal and provincial governments. As recently as May of 1980, Mr. William Yurko, a Progressive Conservative Member of Parliament from the riding of Edmonton East, introduced a resolution in the House of Commons calling for patriation of the Constitution. His resolution was given unanimous approval by the House. Moreover, Canadians across the country have expressed the opinion that patriation is desirable and should be achieved soon.

Thus, in view of the fact that there is now a widespread belief that patriation has become essential for reasons of both national pride and practicality, the Government of Canada has laid before Parliament a Resolution designed to bring about the patriation of the Constitution. Since no amending formula has yet been agreed upon by the provinces and the federal government, the Resolution provides for both the time and means to establish a formula.

In general, the Resolution provides that any amendments to those parts of the *BNA Act*, which now must be made in London, will for a period of time after patriation require the unanimous approval of Parliament and the provinces. This will ensure that the Constitution will be patriated with, if anything, more legal protection for the provinces than they currently have.

Printer copy with all 9/80  
entrenched

# THE CANADIAN CONSTITUTION

1980



EXPLANATION of a *Proposed*  
Resolution respecting  
the Constitution of Canada

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Canada

95421

Introduction

proposals

The Government of Canada has placed before Parliament proposals containing constitutional proposals of historic importance. When these proposals come into effect, they will signify the passing of the last vestige of Canada's former colonial status. The fundamental nature of our political system will not be changed. Canada will remain a parliamentary democracy with a federal system of government, and will continue to have a Queen, Her Majesty, as Head of State. However, her Majesty will finally have a Constitution that is completely our own and that can be amended entirely within this country. The changes are also momentous in that, for the first time, Canadians will have basic rights and freedoms guaranteed in and protected by the Constitution.

proposals

The purpose of this booklet is to help Canadians understand the nature and significance of the proposals before Parliament. The subject proposed in more detailed explanations should refer to the Report itself, which has been published with clause-by-clause explanatory notes.

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proposed

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### The Resolutions

The three main objectives of the Resolutions are discussed in detail below, but in brief they are as follows:

- to "patriate" the Constitution and provide for an amending formula
- to insert in the Canadian Charter of Rights and Freedoms, including mobility rights and language educational rights
- to entrench the principle of federalism

In addition, the Resolutions provide for the expeditious preparation of a new version of the Constitution.

### Patriation and Amending Formula

When the Fathers of Confederation met in Charlottetown and then in Quebec to draft the resolutions that would become the *British North America (BNA) Act*, they did not include an amending procedure, since it was to be an act of the British Parliament and therefore subject to the normal provision for passing legislation in Britain. Today, 146 years later, every time Canada wants to amend any part of the Canadian Constitution that relates to the division of powers between the Parliament of Canada and the legislatures of the provinces and to certain other provisions, it still has to ask the Parliament of the United Kingdom to pass an amendment to the *BNA Act*. Canada is the only sovereign country in the world that still has to ask the Parliament of another country to amend its own Constitution.

This unusual situation has caused concern in Canada for over 50 years. It has not been corrected, however, because federal and provincial governments have been unable to agree on an amending formula.

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- to "patriate" the Constitution and provide for an amending formula
- to entrench a Canadian Charter of Rights and Freedoms, including mobility rights and minority language educational rights
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The search for a formula began in 1927. This first attempt was unsuccessful as was a subsequent attempt in 1931. As a result, Canada requested that the *BNA Act* be excepted from the terms of the *Statute of Westminster*, which recognized the independence of the self-governing countries of the Commonwealth and provided that the jurisdiction of the British Parliament no longer apply to them.

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Between 1968 and 1971, a continuing Constitutional Conference discussed patriation and an amending procedure. All governments represented at the Victoria Conference in June 1971 agreed to what became known as the "Victoria" amending formula. It seemed that, at last, a satisfactory formula had been found. However, when the Government of Quebec decided after the Victoria Conference that it was not prepared to proceed with the full constitutional package, of which the amending formula was a part, this attempt failed as well.

The search was again taken up in 1975-76 and in 1978-79 and finally during the constitutional negotiations of the summer of 1980. While various formulas were discussed, no agreement was reached.

Fifty-three years after the search began, we still have not agreed on a formula. It is widely recognized that it is not only inconvenient to have to ask the British Parliament to amend the *BNA Act*, it is also inconsistent with our status as a sovereign state. Not only that, but the absence of a Canadian amending formula has made step-by-step constitutional reform more difficult. In 1980, no government can easily accept the affront to national pride of having to perpetuate the system of asking the British Parliament to amend our Constitution item by item, a procedure equally burdensome to the British and to Canadians.

The desirability of patriation has been acknowledged for years by both federal and provincial governments. As recently as May of 1980, Mr. William Yurko, a Progressive Conservative Member of Parliament from the riding of Edmonton East, introduced a resolution in the House of Commons calling for patriation of the Constitution. His resolution was given unanimous approval by the House. Moreover, Canadians across the country have expressed the opinion that patriation is desirable and should be achieved soon.

Thus, in view of the fact that there is now a widespread belief that patriation has become essential for reasons of both national pride and practicality, the Government of Canada has laid before Parliament a Resolution designed to bring about the patriation of the Constitution. Since no amending formula has yet been agreed upon by the provinces and the federal government, the Resolution provides for both the time and means to establish a formula.

In general, the Resolution provides that any amendments to those parts of the *BNA Act*, which now must be made in London, will for a period of time after patriation require the unanimous approval of Parliament and the provinces. This will ensure that the Constitution will be patriated with, if anything, more legal protection for the provinces than they currently have.

An amending formula requiring "unanimity," however, is undesirable in the long term, since it could lead to constitutional stagnation. For while an amending formula must be sufficiently rigid to prevent the Constitution from being changed at whim or altered against the will of a significant proportion of the population, it must not be so rigid that constitutional change becomes almost impossible. It is not an easy task to strike this delicate balance—but it is possible.

To ensure that Canada will not be faced forever with the requirement of getting unanimity on constitutional changes, the Resolution provides three means for bringing the process to a conclusion:

1) *Unanimous federal-provincial agreement on a formula*

Following patriation, the federal and provincial governments will have two years to find and agree unanimously on an amending formula. If they succeed, the Constitution will be amended to bring this formula into effect. To facilitate agreement, a First Ministers' Conference will be held each year until a formula is implemented.

Constitutional

2) *A referendum*

If the provinces and federal government fail, yet again, to agree unanimously on a formula, but ~~seven~~ eight or more provinces, representing at least 80 per cent of the total population of all the provinces, agree within two years after patriation on an amending procedure that meets the requirements set out in the Resolution, this formula and a formula similar in principle to the Victoria formula will be put to the people in a referendum. The federal government will also have the opportunity, at that time, to put forward a formula of its own choice, instead of the modified Victoria formula.

eight

3) *A formula set out in the Resolution will come into effect*

If ~~there is no consensus among~~ the provinces ~~for a~~ formula, an amending procedure, similar in principle

do not present an alternative formula

to the Victoria formula, will automatically come into effect two years after patriation. The formula is based on the principle that amendments to certain parts of the Constitution should require a consensus in each region of the country as well as a general consensus across Canada. The Victoria formula required this consensus to be expressed through provincial legislative assemblies and the House of Commons and Senate in Ottawa. The formula in the Resolution will, in addition, allow the consensus to be expressed through a national referendum. In general, the formula would require that amendments to the Constitution be approved by ~~either~~ Parliament ~~or a majority of voters in a national referendum~~ and by ~~either~~ the legislative assemblies ~~or~~ a majority of voters in a majority of the provinces, including:

*in a national referendum*

*The decision to call a referendum would rest with the Canadian Parliament.*

- every province that has or has had a population of at least 25 per cent of the population of Canada
- at least two Atlantic provinces with combined populations of at least 50 per cent of the population of all the Atlantic provinces
- at least two Western provinces with combined populations of at least 50 per cent of the population of all the Western provinces.

The decision to call a national referendum on a constitutional amendment would rest with the Canadian Parliament. However, there is also a provision in the formula whereby seven per cent of the Canadian electorate may initiate a referendum to override an attempt by a federal government or Parliament to block a constitutional change desired by the provinces and the people.

Thus, probably within two years, but certainly within four years after patriation, the Constitution will have an amending formula, which will replace the interim formula of unanimity. Whether this formula is achieved by inter-

governmental agreement, by referendum or by the automatic acceptance of the formula proposed in the Resolution, Canadians will soon have a formula that will allow them to amend the Constitution in Canada. An obstacle to constitutional change will have been removed.

### The Canadian Charter of Rights and Freedoms

It has long been acknowledged that in a free and democratic society an individual must be assured certain basic rights and freedoms. At one time it was believed that these rights and freedoms could be adequately protected simply by the ordinary processes of parliamentary democracy, but increasingly it has been recognized that more protection is required. The international community has expressed this need through such instruments as the *Universal Declaration of Human Rights* (1948), and the *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* (1966). The Canadian government, after consultation with the provinces, joined many other nations in subscribing to these international commitments to foster and protect the basic rights of people.

In Canada, there also has been a growing recognition that legislatures should provide more positive protection for basic human rights. In 1960, Parliament adopted the *Canadian Bill of Rights*. Saskatchewan, Alberta and Quebec have provincial bills of rights. In addition, there are federal and provincial laws that prohibit discriminatory practices in a broad range of social and economic activities.

While these various statutes afford some measure of protection for basic rights and freedoms, this protection, by its very nature, is limited.

The legislature or Parliament that passed the law yesterday could decide to repeal or restrict it tomorrow. The individual's only immediate redress would be to try to convince the same government that restricted the rights to reinstate them.

In a country as diverse as Canada, with two official languages and many cultural groups, basic rights and freedoms require more protection than this. Rights by their very nature pertain to individuals and minorities, and their protection should not be left simply to the goodwill of the majority or the government of the day. They must be guaranteed in the Constitution, so as to protect them from change by any single government, Parliament or legislature.

Most contemporary Western societies have recognized that the best way to protect minority rights is to entrench them in the Constitution. In fact, virtually all federal states in the world have constitutionally-enshrined rights and freedoms. ~~Even in Britain, where it has always been accepted that rights could be adequately protected by the ordinary law, consideration is being given to entrenching a Bill of Rights.~~ Canadians are thus by no means alone in recognizing the need to guarantee rights in the Constitution.

The Charter of Rights and Freedoms, proposed in the Resolution, will entrench fundamental freedoms and democratic rights, mobility rights, and language of education rights in the Constitution, so that they cannot be changed by Parliament or by any provincial legislature acting alone. ~~In addition, legal rights and non-discrimination rights will be entrenched at the federal level with the provision that each province may determine, at any future date, to accept these entrenched rights as binding upon the province.~~

Finally, ~~the~~ current constitutional status of rights respecting the use of the French and English languages in Parliament, ~~provincial legislatures~~ in ~~the~~ statutes and in ~~the~~ courts will be maintained. French and English will be declared the official languages of Canada, ensuring their equality in all ~~institutions of the federal government.~~

federally-established

legal rights, non-discrimination rights

federal

federal

## Entrenched Rights

The rights and freedoms to be entrenched for all Canadians in all matters of federal, provincial and territorial responsibility are as follows:

### Fundamental Freedoms

- *Freedom of conscience and religion*

This provides that an individual is free to follow his or her religious beliefs and the dictates of his or her conscience.

- *Freedom of thought, belief, opinion and expression, including freedom of the press and other media*

*guarantees* This conveys not only the right to express one's views but equally the right to hold those views, even though others may not share them. It explicitly mentions the press and other ~~communications media~~ *of information* to leave no question about their existing right to disseminate news and opinion.

- *Freedom of peaceful assembly and of association*

This ensures that there is no question about the right to demonstrate or associate for peaceful purposes and in a peaceable manner in Canada, ~~and that the onus is on the authorities to prove that an assembly is for other than peaceful purposes.~~

### Democratic Rights

- *The right to vote and to stand for office*

This ensures that Canadian citizens will have the right to vote in an election of members of the House of Commons or of a provincial legislative assembly and the right to qualify for membership in either of those institutions.

- *The right to periodic elections*

~~The Charter restates the current constitutional provisions that limit the time a government may remain in power without holding a general election to five years, and that require Parliament and provincial legislatures to meet at least once a year.~~ This provision would *period of* ~~the~~

### Mobility Rights

- The Charter establishes, for the first time, the right of citizens and permanent residents of Canada to move freely throughout the country. This confirms the fact that Canadians, regardless of province of residence, should be able to establish themselves and seek employment anywhere in the country. It also entrenches the well-established right that every Canadian citizen is entitled to enter, remain in, or leave Canada.

### Language Of Education Rights

- Citizens of Canada, whose ~~mother-tongue~~ <sup>first language</sup> is that of the English-speaking or French-speaking minority population of a province, will have the right to educate their children in that minority language at the primary and secondary school levels, wherever the number of children warrants the provision of such educational facilities.

first language learned and still understood

### "Opting In" For Provinces

Two other categories of rights in the Charter, that will initially only be binding in matters of federal or territorial responsibility, are "legal rights" and "non-discrimination rights." Each province, however, may choose at any time to "opt in" to one or both of these categories of rights. At such time, these rights would become binding in matters of provincial responsibility in that province. The specific rights in these two categories are

### Legal Rights

- *Right to life, liberty and security of the person*  
This ensures that there will be no interference by the state with these vital rights of individuals, except by duly specified legal procedures that are inherently fair in their application.

- Right to security against ~~unreasonable~~ searches and seizures <sup>Or</sup>

↳ This protects an individual against actions by law enforcement authorities, ~~which may unduly infringe the security of an individual or his or her property.~~

and his property against searches or seizures by ~~law enforcement authorities~~ unless they are conducted in accordance with the specified laws and procedures.

- Protection against ~~arbitrary~~ detention or imprisonment

This ensures that no individual in Canada may be held by police or placed in prison without lawful ~~and~~ reasonable justification.

- Right to know reasons for arrest, right to counsel and to test validity of detention

This protects individuals arrested or detained by law enforcement authorities against actions that may infringe upon a person's liberty. It ensures that the individual will know why he or she is being held, and that he or she will be able to seek advice from ~~his or her~~ lawyer on the matter. A court will determine expeditiously whether the detention is lawful.

- Rights, when charged with an offence, to certain fundamental protections

These protections include the right to be informed promptly of the charge; to be tried within reasonable time; to be presumed innocent until proven guilty in a fair and public trial, and to be granted bail ~~where appropriate~~. They also include protection against being found guilty if an act wasn't an offence when it occurred and against being tried twice for the same offence. In addition, if ~~punishment~~ is changed between the time the act occurs and sentencing, only the lesser punishment may be imposed.

according to law

- Protection against cruel and unusual punishment or treatment

This is designed to protect individuals against ~~inhuman~~ forms of treatment or punishment.

inhumane

- Right of a witness, when compelled to testify, not to have any evidence so given used to ~~incriminate that witness~~

principle

incriminating against him in other proceedings

This right reflects the ~~Canadian law~~ that no one should be required to incriminate himself or herself. While a witness may be compelled to testify in a particular case, he or she is protected from having ~~such evidence used to prove his or her guilt in subsequent proceedings.~~

any incriminating evidence given in that case used against him in other cases.

- Right to assistance of an interpreter  
This provision guarantees to a party or witness involved in proceedings the right to an interpreter if he or she doesn't speak or understand the language of the proceedings.

**Non-Discrimination Rights**

- This establishes the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex. This section of the Charter does ~~not~~, however, ~~prohibit~~ "affirmative action" programs that are aimed specifically at improving the conditions of disadvantaged persons or groups.

permit

To allow the federal and provincial governments time to make any necessary changes to their existing laws, this section will not come into effect until three years after patriation.

**Existing Rights Entrenched**

second

A ~~third~~ set of rights, which at the present time are guaranteed either constitutionally or by federal legislation, will now be codified in the Charter. They apply only to Parliament and the Government of Canada.

**Language Rights In Parliament**

- Any individual has the right to use either English or French in any debates or other proceedings of Parliament. The statutes, records and journals of Parliament must be printed and published in both languages.

**Language Rights In Courts**

- Any individual has the right to use English or French before the Supreme Court or any other federal court.

### *Language Rights In Federal Institutions*

- This entrenches English and French as the official languages of Canada and those provisions of the federal *Official Languages Act*, which give the right to the public to communicate with and receive services from any head or central office of an institution of the Parliament or Government of Canada in either English or French, and, in areas where numbers warrant, from any other office of such institutions.

The use of either English or French in the legislatures, the courts and in the statutes and records of the provinces of Quebec and Manitoba will continue to be protected by existing constitutional provisions.

It should be noted that a section of the Charter entrenching "Undeclared Rights," ensures that if individuals or groups of Canadians have rights, which are not explicitly mentioned in the Charter, they will still be able to enjoy them fully. The provision makes specific reference to the rights and freedoms of the native peoples of Canada.

No right or freedom of an individual or minority exists in absolute terms. For example "freedom of expression" does not mean that an individual can defame his neighbour. Equally, the "right to vote" does not mean that a person under the age of majority has the vote. That such limits exist is recognized by the opening sections in the Charter, which indicate that the rights are subject to such reasonable limits as are consistent with a "free and democratic society." These limits will, as in the past, be spelled out in our laws. However, their reasonableness in any particular case will be determined by the courts and where the limits are found to be unreasonable they will be struck down.

### **Questions and Answers**

**Why do we need a Charter of Rights and Freedoms in the Constitution?**

The argument usually made against an "entrenched" Charter of Rights and Freedoms is that, since our rights

and freedoms are already well protected by tradition and, in some cases, even legislation, it is unnecessary to write them into the Canadian Constitution. Yet, we are all aware of instances, within the last 50 years, where some Canadians have been deprived of their rights on the grounds of racial origin or their religious or political beliefs. An entrenched Charter, by proclaiming specified rights to be beyond the normal power of legislative majorities, provides a sense of security and, moreover, a practical means of redress, through the courts, to individuals and minorities who feel aggrieved. It also reminds governments at all levels that their powers are limited and must be exercised with care and respect for the inherent rights of the people. In addition, the Charter ensures that a person not only can move freely from one place to another in the country, but also that each individual will enjoy the same basic rights and freedoms wherever he or she lives.

**What are the "new" rights and freedoms in the Charter?**

Several important new rights are included in the Charter. The right of Canadians to move from province to province and to seek employment in one province while residing in another would be guaranteed for the first time. Minority language education rights and the right to receive services from the federal government in English or French are guaranteed. Freedom of conscience has been added to the traditional freedom of religion. Protection against ~~unreasonable~~ searches and seizures and against the retroactive application of ~~criminal~~ sanctions has been added, as well as the right of a person charged with an offence to be informed promptly of the charge and to be tried within reasonable time. The right to vote and to stand for elective office would be expressly assured as well.

unlawful  
penal

~~Why are some rights entrenched for the provinces while others are not?~~

~~Ideally, all the rights in the Charter could have been applied universally to both orders of government. This was the federal government's original hope. However, many of~~

~~The provinces felt that this was either premature or would pose some problems for a provincial administration, particularly if certain "legal rights" and "non-discrimination rights" were made binding on provincial governments. Therefore, the federal government has proposed that these rights be entrenched in its own sphere of jurisdiction, but it has left it open to each individual province to "opt in" to either or both of these categories of rights, whenever it chooses to do so.~~

**By "entrenching" a Charter of Rights and Freedoms are we restricting the power of the elected legislatures and giving too much power to the courts?**

An entrenched Charter of Rights and Freedoms will limit the power of Parliament and provincial legislatures to pass laws or take actions that contravene or restrict unduly these guaranteed rights of Canadians. In this sense, therefore, the power of the legislatures including the Parliament in Ottawa will be restricted. Nothing in the Charter, however, prevents any legislature or Parliament from *adding* to our rights or *increasing* their protection. Moreover, in an age when activities of government affect almost every aspect of our social and economic life, legislative majorities should not have complete freedom to act, inadvertently or deliberately, against the rights of an individual or a minority. If they do so, it is appropriate for aggrieved individuals to seek redress through the courts. Traditionally the courts have settled disputes between citizens and the state, and, in the future, they will have the guidance of a Charter to assist them in this. The basic question is not whether an entrenched Charter gives more power to the courts or less power to the legislatures. The important point is that, in future, governments, legislatures and courts alike will be obliged to respect and defend the rights of all Canadians.

**Why do we need to include mobility rights in the Charter?**

Most Canadians assume that they have always had the right to live and work anywhere in Canada and to enter, remain in or leave the country whenever they choose to do

so. These are normally considered the basic rights of citizenship in any country. However, Canadians have begun to learn that what they thought was a "right" was merely a practice. Provinces are increasingly establishing barriers to mobility—for example, a number of them have preferential hiring policies in some fields. When one province erects a barrier for Canadians outside the province this may easily incite another province to retaliate. If this were to continue, the concept of a single Canadian citizenship could become meaningless. For, if being a Canadian means anything, it must mean the liberty to move anywhere in the country. By entrenching "mobility rights" in the Charter, this fundamental right of citizenship will be guaranteed.

#### How does the Charter deal with language rights?

The Charter recognizes that English and French are the official languages of Canada. It ensures that all current constitutional and legislative language rights, with respect to the institutions of the Parliament and Government of Canada, are maintained. Where language minorities have had historic rights, such as the English-speaking community in Quebec and the French-speaking community in Manitoba, these rights will continue to be protected in the Constitution. The Charter does not make any specific provision for the extension of these rights to other provinces. However, if any province wants any of these language rights to be entrenched, there is a general provision in both the interim formula and in the proposed procedure based in principle on the "Victoria formula" for the Constitution to be amended with the agreement of Parliament and that provincial legislature. Finally, the Charter does not interfere with any future or existing rights or privileges to use any other language, such as Cree, Inuktitut or Ukrainian and specifically guarantees the right to an interpreter in judicial proceedings.

#### How does the Charter treat the right to minority language education?

In Quebec, Canadian citizens, whose ~~mother tongue~~ <sup>first language learned</sup> is English, could choose to educate their children in English <sup>and still understood</sup>

where numbers warrant. In the other nine provinces and the Yukon and Northwest Territories, a similar right to educate their children in French would be conferred on Canadian citizens whose ~~mother tongue~~ is French. This constitutional right to choose would not apply to non-citizens, or to citizens who belong to the official language majority population of the province. Thus a province would remain free to place the children of immigrants in the majority language school system of the province and to require children who are members of the language majority of that province to receive their education in their mother tongue. A provision in the Charter also ensures that citizens, who move between provinces, will be able to continue to educate their families in the language in which the children started their education, either English or French, wherever facilities are available. The Charter would, of course, in no way restrict the right of citizens to have their children educated in the majority language of a province. Neither would it in any way prohibit the teaching or use of the majority and minority languages, or indeed, of other languages. Nor would it restrict a province from extending to all its residents a choice of either official language in the field of education.

first language learned  
and still understood

**Why is it necessary to include the question of language of education in the Charter? Would it not be best to have it dealt with by the provinces among themselves, through reciprocal arrangements?**

It is the government's strongly held view that only through an amendment of the Constitution can Canadians be definitely assured that certain common basic language rights will be observed throughout the country. Reciprocal arrangements cannot guarantee protection against alterations as a result of short-term political or social changes, or against withdrawal at any time by any province that may consider that its commitment is no longer desirable. In addition, although reciprocal arrangements have been discussed since 1977, none currently exist. The Charter, in fact, gives effect to the principle of minority language educational rights agreed to by all provinces in 1978.

minority

Are the rights of the native peoples protected by the Charter?

The provision specifies that nothing in the Charter can deny any other rights or freedoms that exist in Canada, including specifically those that may pertain to the native peoples. This will ensure that the native peoples, while gaining the added protection that all Canadians will enjoy through the entrenchment of the Charter, will not, at the same time, lose any other rights they may now have. The federal government will be continuing discussions with the native peoples' groups to determine whether other rights, more specific to the native peoples, should be added to the Charter.

#### *Equalization and Regional Disparities.*

The practice of using federal revenues to redistribute wealth to the poorer provinces of this country is well-accepted. Since 1957, unconditional transfers known as equalization payments, have been made by the federal government to enable every province to provide a reasonable level of public services, without having to impose an ~~unreasonable~~ <sup>undue</sup> tax burden on its residents. This practice has become so well established that it has now emerged as a fundamental "principle" of Canadian federalism.

The *Constitution Act, 1980* entrenches the principle of equalization and commits both orders of government to:

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

### How The Changes Will Be Brought Into Effect

It is not always recognized that the *British North America Act*, a British statute enacted in 1867, is only a part of our Constitution. In addition, there are subsequent acts that amend the 1867 Act and that have been passed by the United Kingdom Parliament, or in some cases, by the Parliament of Canada or the legislature of a province. Certain notable British statutes, such as the *Statute of Westminster, 1931*, and certain fundamental Canadian acts, such as those creating the provinces of Manitoba, Alberta and Saskatchewan also form part of Canada's Constitution.

"Patriation of the Constitution" does not mean that a pile of papers will be physically brought home to Canada. Rather, it implies two things:

- severing the last link between the Canadian and British Parliaments by bringing to an end any power of the British Parliament to make laws respecting the Constitution of Canada
- confirming the Constitution as part of the law of Canada and establishing an amending formula to permit the amendment in Canada of those parts of the Constitution that could previously only be amended by the British Parliament.

Patriation of the Constitution will be brought about by a request made by the Senate and the House of Commons (called a Joint Address) to the Queen, asking that the British Parliament pass legislation entitled *The Canada Act*. This act will transfer to Canada the full power of amendment of the Canadian Constitution and will provide that no future British law should have application to Canada. The symbolic recognition of this change appears in the new titles given to the old acts: the *British North America Act* and its subsequent amending statutes, will in future be known as the *Constitution Acts, 1867 to 1975*. In addition, the *Constitution Act, 1980* containing the Chart-

er of Rights and Freedoms, the proposed amending formula and the principle of equalization will be added to the Constitution. The procedure for effecting these changes is as follows:

- A motion to establish a Special Joint Committee consisting of members of the House of Commons and Senators will be debated in both Houses of Parliament. The Committee will provide a forum for detailed study of the proposed resolution described above. The Committee will be requested to complete its work and to report the results to the House of Commons and the Senate by December 9 1980. If the Committee recommends adoption of resolutions in the form of the proposed resolution, with or without changes, and both the House of Commons and Senate concur in that recommendation, those concurrences will constitute a request or Joint Address. The Government will then transmit the Joint Address to the Queen. The British government will ask the Parliament at Westminster to adopt the Canada Act as requested, to come into effect in Canada at a time fixed by a proclamation issued by the Governor General.

This procedure will ensure the orderly transfer to Canada of complete authority over the Constitution. For the first time, Canada will have a Constitution entirely its own.