

November 25, 1980

MEMORANDUM TO MINISTERS FROM MINISTER OF JUSTICE

RE: POSSIBLE AMENDMENTS TO PROPOSED
RESOLUTION ON CONSTITUTION OF CANADA

SUMMARY OF PRINCIPAL ISSUES AND PROPOSALSA. CHARTER OF RIGHTS AND FREEDOMS

1. It is proposed that the "limitation clause" of section 1 be amended to read: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society." (pp. 1-3)
2. It is proposed that the government be prepared, if necessary, to amend the "Legal Rights" provisions in relation to the protection against search and seizure, detention or imprisonment and denial of reasonable bail, to delete the reference to "on grounds, and in accordance with procedures, established by law" and replace it with
 - protection against unreasonable search and seizure;
 - protection against arbitrary detention or imprisonment; and
 - not to be denied reasonable bail without just cause. (pp. 3-4)
3. It is proposed that the "Legal Rights" provisions respecting protection against retroactive penal laws and double jeopardy be amended so as to ensure that Canada may legislate to prosecute and impose punishment for recognized international criminal offences. (pp. 4-5)
4. It is proposed that "Legal Rights" be expanded to include a right to trial by jury for offences carrying a penalty of five years imprisonment or more, but excluding offences under military law. (pp. 5-6)
5. It is proposed that "Non-discrimination Rights" be renamed "Equality Rights"; that the wording of section 15(1) be changed to read "Everyone is equal under the law and has the right to the equal protection and equal benefit of the law without discrimination on the basis of race, national or ethnic origin, colour, religion or sex; that "age" be dropped as a ground of non-discrimination; and that affirmative action programs in section 15(2) specify the grounds identified in section 15(1), but not be limited only to those grounds. (pp.6-9)

6. It is proposed that section 20 be modified to accord the right to bilingual services from federal offices, that are not head or central offices, where there is, as determined by federal law, a significant demand for communications with and services from any such office in both official languages. (p.9)
 7. It is proposed that section 23 be amended to guarantee minority language education to (a) children of citizens who either have been educated at the primary level in Canada in the minority language or have as their "mother tongue" the minority language; and (b) to children of citizens where any child of a family has begun or completed his education in the minority language. In addition it is proposed that the qualification of section 23 ... "where numbers warrant" be dropped. (pp. 9-13)
 8. It is proposed that no modification of section 24 be made with respect to elaborating the rights of native peoples. (p.13-14)
 9. It is proposed that section 25 be transposed to section 52, in order to give any provision of the Constitution (rather than just the Charter), primacy over any other law. (pp.14-15)
 10. It is proposed that a specific "remedies" section be added to the Charter to ensure that the courts can provide a suitable remedy for a violation of Charter rights. (p.15)
- B. EQUALIZATION AND REGIONAL DISPARITIES
11. It is proposed that a suitable amendment to section 31, to be proposed by Premier Hatfield, be approved by the government. (p.16)
- C. INTERIM AMENDING PROCEDURE
12. It is proposed that the government be prepared to support an amendment to reduce from 8 to 7 the number of provinces necessary to propose an alternative amending formula under section 33. (p.17)
 13. It is proposed that the right of the federal government to propose an alternative amending formula under section 38 be deleted. If that is not acceptable, it is proposed that any federal alternative amending formula be made subject to approval by Parliament. (pp.17-18)
 14. It is proposed that sections 40 and 46 be amended to authorize the establishment of a federal-provincial commission to develop rules for any referendum on an amending formula or on any amendment to the constitution. (pp.18-19 and 21)

D. PROCEDURE FOR AMENDING CONSTITUTION

15. It is proposed that the "permanent" amending formula set out in section 41 be amended to delete the reference to any population requirement for the consent of any two of the Atlantic provinces. (p.19)
16. It is proposed that the referendum procedure under section 42 be made a deadlock breaking mechanism whereby the holding of a referendum can be authorized by the Governor General in Council not earlier than 12 months after Parliament has approved an amendment to the constitution, and then only if a minimum of three provinces have approved the proposed amendment. In addition, any referendum would have to be held within three years of the adoption of the initial resolution by Parliament.
17. It is proposed that an amendment be made to section 47 to make clear that amendments to the constitution affecting one or more but not all provinces may be made only under the procedure in section 43 requiring consent of the affected province or provinces. (p.22)
18. It is proposed that a further amendment be made to section 47 to require unanimous consent of the provinces for a change in any amending procedure relating to a provision of the constitution applying to one or more but not all provinces. (p.22)
19. It is proposed that section 50 be amended by adding to the list of matters that may be amended only by the general amending formula or by referendum "the method of selecting Senators". (p.23)
20. It is proposed that a new section 51 be considered that would prevent the making of an amendment to abolish the Senate without its consent except by a referendum procedure following a negative resolution by the Senate, a second positive resolution by the House and positive resolutions by the requisite number of provinces. (p.23)

E. GENERAL

21. It is proposed that an amendment respecting provincial jurisdiction over certain aspects of natural resources, to be moved by the NDP, be approved. (pp.24-25)

It is further proposed that a number of technical amendments to the Proposed Resolution, as set out on pp.25-27 be approved, and that the Minister of Justice be authorized to make such other technical amendments as may be necessary to ensure the accuracy of the text of the Resolution, as amended.