

MEMORANDUM TO MINISTERS FROM MINISTER OF JUSTICE

RE: POSSIBLE AMENDMENTS TO PROPOSED
RESOLUTION ON CONSTITUTION OF CANADA

SUMMARY OF PRINCIPAL ISSUES AND PROPOSALS

A. CHARTER OF RIGHTS AND FREEDOMS

1. Ministers are requested to determine whether the general limitation clause should be retained in section 1. If it is retained, it is recommended that the wording remain as follows: "subject only to such reasonable limits prescribed by law as are demonstrably justifiable in a free and democratic society". (pp. 1-3) *from Cabinet* *Driffhille*
2. It is proposed that the government not advance an amendment to section 2 to separate freedom of peaceful assembly from freedom of association, but be prepared to accept such an amendment if moved in Committee. (p.3) *New CBR* ✓
3. It is proposed that the government not advance an amendment to section 10 to add the right to be informed of the right to retain and instruct counsel, but be prepared to accept such an amendment if moved in Committee. (p.3) *from addendum* ✓
4. It is proposed that the government move an amendment to section 11 to add the right of an accused not to be compelled to testify against himself. (p.4) *from addendum* ✓
5. It is proposed that the government move an amendment to section 13 to broaden the scope of protection against self-crimination to encompass witnesses who testify voluntarily. (p.4) *from addendum* ?
6. It is proposed that Ministers consider alternatives to the present wording of non-discrimination rights, and approve an amendment to section 15 that would broaden the protected grounds of non-discrimination through a so-called "open list" approach. (pp.4-7) *same text* *page?*
7. It is proposed that Ministers examine the question of extending institutional language rights to Ontario and that they agree not to support imposition of such rights on Ontario. (pp.7-8) *Requested by Cabinet* *Cabinet* *16-20 ok* *N.S.*
8. It is proposed that latter part of section 20 be further amended to require federal offices to provide services in both official languages either where there is a significant demand or where it is reasonable that such services be provided. (p.8) *Result of Cabinet* ✓

Result of Cabinet
 9. It is proposed that the minority language education rights provisions in section 23 be further amended by dropping the reference to "educational facilities" and simply referring to "the provision out of public funds of minority language instruction". (pp.8-9) *OK*

NEW
 10. It is proposed that the government move an amendment that would delete section 26 dealing with the admissibility of evidence rules. (pp. 9-10) *OK*

Result of Cabinet
 11. It is proposed that Ministers consider including in the Charter an interpretive clause respecting the preservation and enhancement of the diverse cultural heritages of Canadians. (pp.10-11) *Come back*

NEW as a result of Canadian Bar Association recommendation
 12. It is proposed that the government not advance any amendment respecting the right of an accused to be tried in his official language. (p.11) *✓*

13. It is proposed that the government oppose any amendment to include property rights in the Charter, but be prepared, if strongly pressed, to accept an amendment to provide for procedural fairness in the deprivation of property rights. (pp.11-12) *✓*

14. It is proposed that the government oppose any amendment to include a right to privacy or access to government documents in the Charter. (p.12) *✓*

15. It is proposed that the government oppose any amendment to include a right to legal aid in criminal cases in the Charter. (pp.12-13) *✓*

15. A
 B. INTERIM AMENDING PROCEDURE

Result of Cabinet
 16. Draft amendments to section 38, respecting the alternate means of proposing alternatives to the Victoria amending formula (either by governments at both levels or legislatures at both levels) are set forth. (p.13) *Legislatures + Parl.*

Result of Cabinet
 17. Draft amendments to sections 40 and 46, providing for recommendatory federal-provincial referendum rules commissions and for time limits on their establishment and reporting are set forth for consideration. (pp.13-14) *Negative Resolution within a limited period*

C. PROCEDURES FOR AMENDING CONSTITUTION

From address
 18. It is proposed that sections 41(1)(b)(ii) and (iii) be amended to clarify the description of the population requirements in the Western provinces for approval of a constitutional amendment. (p.14) *OK*

Result of Cabinet
 19. It is proposed that section 42 be amended to add a requirement of regional majority votes to the other requirements necessary for approval of a constitution amendment by way of referendum. (pp. 14-15) *NO*

From Cabinet

20. Consideration is given to the difficulties that would likely arise if the provinces were granted the power to require a national referendum under section 42, or if the First Ministers Conference were to be made a part of the "deadlock" breaking process. (p.16)

NO

New Dev't

21. A draft amendment is included to reflect the decision by Cabinet not to provide that amending procedures involving amendments affecting one or more but not all provinces could only be changed by unanimous consent. (p.16)

21.A #47 *back to Cabinet*

D. NATURAL RESOURCES JURISDICTION

From Cabinet

22. Advice is provided with respect to the provincial indirect taxation power, the rate of primary production and the federal jurisdiction over forestry management as these relate to the proposed amendment on natural resources. (pp.17-18)