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SUMMARY OF PROVINCIAL CONSTITUTIONAL POSITIONS AND REACTIONS TO THE PROPOSED RESOLUTION FOR A JOINT ADDRESS TO HER MAJESTY RESPECTING THE CONSTITUTION OF CANADA

Prepared for the
Special Joint Committee
on the Constitution of Canada

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Note: This summary will be updated after each appearance by a provincial premier and as other information becomes available. The summary is intended to be of assistance to committee members

(a) when questioning provincial witnesses
(b) when the committee moves to clause by clause review of the resolution

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PATRIATION

Opposed to unilateral action: British Columbia, Alberta, Manitoba, Québec, Nova Scotia, Prince Edward Island, Newfoundland

- challenges to the constitutionality of federal action in courts of Manitoba, Québec and Newfoundland; PEI, BC and Alberta are supporting this legal action; Nova Scotia originally supported it but later withdrew, believing that the 'political course' is the better course of action
- British Columbia government indicated in the Throne Speech of 4 December 1980 that they would be placing a motion before the legislature condemning federal action and supporting simple patriation with no amendments that would infringe on or diminish provincial powers; a second motion would ask Ottawa to confirm provincial ownership and control of natural resources
- Alberta legislature passed a motion by a vote of 70-1 supporting patriation only with appropriate safeguards for the protection of provincial rights, proprietary interests and jurisdiction and opposing proposed unilateral action
- Saskatchewan premier told the committee that unilateral action is inappropriate and counterproductive but that court action is premature at this time; strongly objects to patriation that changes powers of provinces without their consent; wante improvements in amending formula, resource provisions, equalization and charter to make resolution more broadly acceptable and responsive to regional concerns before supporting patriation; without these changes, they will oppose both the contents and the process
- Manitoba favours patriation only with an amending formula agreed to by the provinces

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PATRIATION (CONT'D)

Opposed to unilateral action:

- Québec sees unilateral action as centralization; does not respond to Québec's need for fundamental change; National Assembly sending motions to Canadian and British Parliaments opposing federal constitutional proposals (PQ and Union Nationale supported, Liberals did not)
- Nova Scotia premier told the committee that they do not object to patriation with the entrenchment of anything strictly within federal jurisdiction but that disagreements about the amending formula and other matters must be settled before patriation; proposed that further unilateral action be held in abeyance until a further First Ministers conference could take place or that simple patriation with an agreeable amending formula (implied that this should be the Vancouver consensus formula) would be acceptable as an interim measure
- PEI favours simple patriation with unanimity as interim amending formula; will make written representation to British Foreign Affairs Committee and would appear there if requested
- Newfoundland would favour patriation with a package that included provincial ownership of off-shore resources, control of hydro-electricity and fisheries, and an amending formula that reflects the equal status of all provinces; motion before House of Assembly asking Great Britain not to patriate until provincial agreement reached

Support federal action:

Ontario, New Brunswick

- Ontario called on all MPs and Senators to support constitutional reform package; made suggestions for

...cont'd

PATRIATION (CONT'D)

Support:
(cont'd)

improvement (see notes under amending formula) but made clear that these were not conditions for support of federal action

- New Brunswick premier told the committee that patriation is a first priority for his province; consensus would be the ideal way of proceeding but he has lost faith that consensus will ever be achieved; noted that there are 2 years after patriation for making improvements and that he will work to do this; see recommendations for amendments under sections of the resolution that follow
- Yukon and Northwest Territories support desirability of patriation but suggested certain amendments

CHARTER OF RIGHTS
AND FREEDOMS

Principle of Entrenchment

Support: Ontario, New Brunswick, Newfoundland

Reservations:
- Newfoundland favours entrenchment of fundamental freedoms and democratic rights only, but has an open mind on entrenching other rights

Oppose: Québec, Nova Scotia, Manitoba, B.C. P.E.I., Saskatchewan, Alberta

Reasons:
- Provinces agree with the importance of protecting rights and freedoms but argue that they can be adequately protected in other ways, eg. provincial bills of rights
- Manitoba argues this would threaten parliamentary supremacy, that judges, unelected and unaccountable to the electorate, would decide social conflicts; constitutes a move toward a republican system
- Alberta and Saskatchewan supported similar arguments; feared creation of an adversarial system as opposed to one based on tolerance and compromise; but both provinces now appear more flexible and may be willing to consider entrenchment provided their other concerns about resource ownership and the amending formula are met

(cont'd)

Principle of Entrenchment
(cont'd)

- British Columbia submission maintains that entrenchment represents a substantial alteration to existing constitutional arrangements and a sweeping limitation on existing provincial legislative authority and threatens parliamentary supremacy
- Québec believes it is premature to entrench such a wide scope of rights
- P.E.I. told the committee that this charter would weaken parliamentary democracy and traditions and our rights; judges would be making decisions that would shape "our basic social values"; this should be the role of elected representatives
- Nova Scotia told the committee that they are flexible on entrenchment; they neither favour nor oppose the principle so long as it takes place in Canada and is the result of federal/provincial agreement; what they strongly oppose is the unilateral nature of the action and the fact that such a sweeping constitutional change is to be made by the Parliament of Great Britain

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Guarantee of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government.

Insofar as provinces are willing to consider entrenchment at all, they prefer the narrower wording of this section and the inclusion of the phrase 'with a parliamentary system of government' to ensure that judges will look to parliamentary precedents and not to legal precedents in jurisdictions without the notion of parliamentary supremacy.
Speaking on behalf of the Canadian Association of Crown Counsel, the assistant deputy attorney general of the province of Ontario recommended that this wording be further defined by adding the phrase 'including such limits as are or may be prescribed by statutes that clarify or define such rights or freedoms'; believes that legislatures could then at least share with courts in defining rights

New Brunswick recommended to the committee that section 1 be amended by adding the following:

"...parliamentary system of government, where those limits do not involve discrimination solely on the grounds of race, colour, sex, language, religion, political opinion, national or social origin, physical disability, property or birth."

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of information; and

(*c*) freedom of peaceful assembly and of association.

Support: Ontario, New Brunswick, Newfoundland

Reservations: - Newfoundland concerned that 'freedom of religion' could be interpreted to undermine their right to publicly-supported denominational schools

Oppose: B.C., Alberta, Saskatchewan, Manitoba Québec, Nova Scotia, P.E.I.

Reasons:

- see provincial positions on Principle of Entrenchment for elaboration
- provinces also questioned the implications of some of the rights, eg. would 'freedom of expression' affect their ability to regulate some kinds of advertising

Democratic Rights

3. Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Sections 3 to 5

Support: All provinces (except Manitoba)

- rights are already protected in the BNA Act and provincial constitutions
- Manitoba did not want to compromise its position on the entrenchment principle by discussing any of these rights

Mobility Rights

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(*a*) to move to and take up residence in any province; and

(*b*) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Support: Ontario, New Brunswick

Reservations:
- both provinces were concerned about the effect of 6(3)(a) on the self-governing professions; suggested that section be redrafted to ensure that provincial legislation relating to professional qualifications still valid

Oppose: B.C., Alberta, Saskatchewan, Manitoba, Nova Scotia, P.E.I., Newfoundland

Reasons:
- Alberta has laws about absentee land-owners and concerned that 2(a) could imply property rights; prefer to see these rights treated under 'powers over the economy'
- Saskatchewan also has restrictive laws on ownership of farmland, on marketing boards, on job hiring preferences for northern residents and other laws they fear would be invalidated
- Québec wants to continue preferential hiring; fears uniformity in regulation and standards of professions
- P.E.I. wants non-obstante clause that would allow them to control land ownership
- Newfoundland favours entrenchment if they were allowed to have affirmative employment programs, hiring their own workers first

...cont'd

Mobility Rights (cont'd)

- Northwest Territories want to be exempt from section 6 so as to be able to continue hiring preferences for northern residents
- Yukon recommended to the committee that section 6 include the following: "That in regions of Canada where significant economic development is taking place, various preferential hiring and purchasing policies may be implemented provided that the Government of Canada and the provincial government agree that it is in the public interest."
- Nova Scotia told the committee that they are flexible on these rights but that they believe that provinces should continue to have the right to control preferences in contractual relations and hiring of fully qualified local workers

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Sections 7 to 14

Support: Ontario, New Brunswick

Reservations:
- Ontario likes present wording because it ensures that rights are subject to procedures established by law
- New Brunswick recommends wording changes (see below)

Oppose: B.C., Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, P.E.I., Newfoundland

Qualifications:
- Newfoundland would consider entrenchment of these and other rights; say they have an open mind
- If they are to be included, Saskatchewan would like these rights covered by a non-obstante clause similar to the present section 26; concerned that judges be able to decide on admissibility of evidence; see comment at section 26; concerned that inclusion of "fundamental justice" phrase will give rise to a "substantive due process" right - would prefer a phrase like "in accordance with fair procedures"

...cont'd

Legal rights (cont'd)

8. Everyone has the right not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law.

Section 8
New Brunswick recommends that this section be amended to read:
"Everyone has the right to be secure against unreasonable search and seizure."

9. Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law.

Section 9
New Brunswick recommends that this section be amended to read:
"Everyone has the right not to be arbitrarily detained or imprisoned."

10. Everyone has the right on arrest or detention

(*a*) to be informed promptly of the reasons therefor;

(*b*) to retain and instruct counsel without delay; and

(*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Section 10(a)
Assistant deputy attorney general of Ontario, on behalf of the Canadian Association of Crown Counsel, recommended wording changes:
Replace 'promptly' with 'as soon as practicable' to conform with existing provisions of Criminal Code

11. Anyone charged with an offence has the right

(*a*) to be informed promptly of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*d*) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;

Section 11(a)
Canadian Association of Crown Counsel recommended wording changes:
Replace 'promptly' with 'as soon as is practicable' and replace 'specific offence' with 'offence with which he is charged'.

Section 11(d)
New Brunswick recommends that this be changed to read:
"(d) not to be denied reasonable bail without just cause;"

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Legal rights (cont'd)

(*e*) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;

(*f*) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and

(*g*) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness has the right when compelled to testify not to have any incriminating evidence so given used to incriminate him or her in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted has the right to the assistance of an interpreter.

See comments on previous page on sections 7 to 14

Non-discrimination Rights

15. (1) Everyone has the right to equality before the law and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

(2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

Support: Ontario, New Brunswick

Reservations:
- both provinces wanted wording modified to ensure that this provision applied only to government versus citizen situations; feared increase in cost of running courts if number of citizens sueing each other increased substantially
- New Brunswick recommends that section 15(1) be amended to read: "Everyone has the right to equality before the law and to the equal protection of the law without discrimination on any ground such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth, physical disability or other status."

Oppose: All other provinces

Reasons:
- believe these rights better protected by legislatures because it is an evolving area where flexibility is needed to respond to changing social mores, eg. rights of handicapped
- again, Newfoundland prepared to consider entrenchment of these and other rights
- P.E.I. concerned that this could invalidate existing legislation or programs eg. limits and exceptions in human rights legislation and age-based schemes

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Non-discrimination Rights
(cont'd)

- Nova Scotia told the committee that they were flexible on these as on other rights; recommended that section 15(1) be amended to include discrimination on the grounds of physical disability or that the section simply end at "without discrimination"; noted that their provincial human rights act includes prohibitions on discrimination on the grounds of physical or mental disability
- Saskatchewan premier told the committee that this clause should not be proceeded with until more time is taken to draft a better clause that takes account of all the views the committee has heard; if it goes ahead as is, a separate section is needed to protect the separate schools systems funded by provinces

Official Languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

(2) Nothing in this Charter limits the authority of Parliament or a legislature to extend the status or use of English and French or either of those languages.

17. Everyone has the right to use English or French in any debates and other proceedings of Parliament.

18. The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

19. Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Sections 16 to 22

Support: All provinces, except possibly Québec

Section 16(2)
New Brunswick recommends it be renumbered 16(3) and that the following new section 16(2) be added:
"English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick."

Section 17
New Brunswick recommends this be renumbered 17(1) and that a new section 17(2) be added:
"Everyone has the right to use English or French in any debates and other proceedings of the Legislature of New Brunswick."

Section 18
New Brunswick recommends that this be renumbered 18(1) and that a new section 18(2) be added:
"The statutes, records and journals of the Legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative."

Section 19
New Brunswick recommends that this be renumbered 19(1) and that a new section 19(2) be added:
"Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the legislature of New Brunswick."

Section 20
New Brunswick recommends that this be renumbered 20(1) and that a new section 20(2) be added:
"Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the Legislature or Government of New Brunswick in English or French."

Official Languages of Canada (cont'd)

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Sections 16 to 22

See comments on previous page

New Brunswick premier's general comments to the committee on sections 16 to 22 were strongly worded; they do not provide real equity with respect to language; language rights are not diminished but neither are they enhanced; not extending these provisions to provinces with significant French-speaking minorities (specifically New Brunswick and Ontario) leaves an obvious inequity exposed in the Constitution; if we do not find a way of protecting French-speaking minorities in these provinces, Parliament will have to consider removing provisions with respect to the English-speaking minority in the province of Québec; the Constitution should go at least as far as the Official Languages Act in providing language equality

Use of Official Languages at the Provincial Level

Note: There are no provisions relating to this in the current charter, but it has been a topic at First Ministers conferences and the subject of recent controversy in the context of constitutional reform.

Support: New Brunswick

Qualifications:
- New Brunswick believes that use of both languages should be extended to provincial legislatures, statutes and courts in New Brunswick and Ontario (see their proposed amendments on sections 16 to 22)
- Ontario favours the concept (eg. has bilingual courts in some areas) but strongly opposes its constitutional entrenchment, especially in relation to the courts; fears operational problems and expense in implementation

Oppose: Alberta, Manitoba, Québec, Nova Scotia, P.E.I.

Comment:
- both Manitoba and Québec are already bound by section 23 of the Manitoba Act and section 133 of the BNA Act respectively
- P.E.I. believes that each provincial legislature should decide on this question as it is in their area of jurisdiction
- Alberta favours Pepin-Robarts approach of improving position of French-speaking minorities through social consensus and provincial legislation
- B.C. believes numbers of French-speaking people in B.C. make it inappropriate for them to be constitutionally bound
- Saskatchewan may be open to incorporating some language guarantees; sees it as part of the bargain of Confederation; their Multiculturalism Act provides some guarantees for minority cultures

Minority Language Educational Rights

23. (1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

(2) Where a citizen of Canada changes residence from one province to another and, prior to the change, any child of that citizen has been receiving his or her primary or secondary school instruction in either English or French, that citizen has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language if the number of children of citizens resident in the area of the province to which the citizen has moved, who have a right recognized by this section, is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

Support: Ontario, New Brunswick

Reservations:
- New Brunswick insists that the 'where numbers warrant' clause be deleted (see also comments on previous pages)
- Saskatchewan is flexible on these rights, agree with "where numbers warrant" criterion, point to need to respect rights of other ethnic groups and native people
- Northwest Territories believe charter should recognize the right of native people to preserve and promote use of native languages

Oppose: B.C., Alberta, Manitoba, Québec
Nova Scotia, P.E.I., Newfoundland

Reasons:
- Québec believes this represents an intrusion into provincial jurisdiction over education
- see other comments under 'Use of Official Languages at the Provincial Level' on previous page
- Alberta points out that they are committed to improving and expanding French language instruction
- B.C. points out that they have made French language instruction available where demanded

Undeclared Rights and Freedoms

24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.

Oppose: Most provinces

Reasons:

- believe this section should be left out; offhand reference to native peoples could be insulting to them and doesn't give them anything new
- provinces want to be part of any consultations that will effect relations between governments and native people
- Northwest Territories feel wording too vague; native rights should be clearly and categorically set out in the constitution; must recognize special status of native people and need to protect their way of life and right to use native languages
- Yukon believes rights of original peoples should be explicitly recognized
- Nova Scotia told the committee that the question of native rights should be dealt with in Canada and not in a package to be passed by the British Parliament
- New Brunswick premier told the committee that the Constitution should recognize and protect legally valid land claims where they have not been distinguished as well as treaties between the Crown and native peoples; federal government should continue to be responsible for native peoples
- Saskatchewan premier recommended that new section be added to give explicit recognition and protection to native rights

General

25. Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

26. No provision of this Charter, other than section 13, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.

27. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

28. Nothing in this Charter extends the legislative powers of any body or authority.

Section 26

Support: Most provinces

Reasons: - Canadian Association of Crown Counsel points out that this section does not enshrine the admissibility of illegally obtained evidence any more than it enshrines the inadmissibility of such evidence; they support wording of this section because it leaves the continued evolution of the law of evidence to Parliament and the legislatures and judicial interpretation of such laws as they may pass.

Reservations: - Saskatchewan believes that this clause is too sweeping to apply to the whole charter and should be deleted; but they would like something similar to apply only to the section on legal rights (see comments at sections 7 to 14)

Application of Charter

29. (1) This Charter applies

(*a*) to the Parliament and government of Canada and to all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province and to all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (1), section 15 shall not have application until three years after this Act, except Part V, comes into force.

Northwest Territories protest that although they are bound by the application of the Charter, they have no means of participating in future negotiations or constitutional amendments. Residents of the Territories are effectively disenfranchised.

PART II

EQUALIZATION AND REGIONAL DISPARITIES

31. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or 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 provincial governments, 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 committed to taking such measures as are appropriate to ensure that provinces are able to provide the essential public services referred to in paragraph (1)(*c*) without imposing an undue burden of provincial taxation.

Section 31(1)

Support: All provinces support entrenchment of the principles set out in this section.

New Brunswick premier told the committee that 31(1)(a) and (b) should constitute a separate section because they are not the same thing as equalization payments and should not be confused.

Section 31(2)

Support: British Columbia

Reason: - B.C. believes that this wording provides flexibility for future governments and will not restrict them to too narrow a course of action

Oppose: Most provinces preferred different wording

- New Brunswick recommended to the committee and Alberta also preferred the following: "Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."
- Most other provinces preferred the following: "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."
- Ontario expressed no preference for either wording.

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Equalization
Section 31(2)
(cont'd)

- Saskatchewan premier recommended the following: "Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments are able to provide essential public services of reasonable quality without imposing an undue burden of taxation."
- Alberta wanted to ensure that payments would not be calculated on a basis that included revenues from depleting resources
- Saskatchewan, P.E.I. and Nova Scotia all expressed concern that section 31(2) adopts the wording least favoured by provinces at 1980 First Ministers conference
- P.E.I. told the committee that the section is too weak as it stands because it does not refer to equalization payments nor to the fact that they are to be made to provincial governments; clauses such as 'undue burden of taxation' are not defined
- Nova Scotia told the committee that this section should be included after patriation, not before; they favour the principles set out in section 31 but believe that the section does not state a strong enough committment to equalization; this is a watered-down version of what was discussed at the First Ministers conference
- New Brunswick premier told the committee that this section constitutes a bare minimum as it stands and should be strengthened

PART III

CONSTITUTIONAL CONFERENCES

32. Until Part V comes into force, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once in every year unless, in any year, a majority of those composing the conference decide that it shall not be held.

Northwest Territories and Yukon want elected leaders of territories to participate in these conferences.

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least a majority of the provinces that includes

(i) every province that at any time before the issue of the proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada,

(ii) at least two of the Atlantic provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Atlantic provinces, and

(iii) 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.

(2) In this section,

"Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;

"Western provinces" means the provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

Support: Ontario, New Brunswick

Reservations:
- New Brunswick recommended to the committee that the population qualification for the Atlantic provinces be deleted

Flexible: Saskatchewan, Nova Scotia, B.C.

Explanation:
- Saskatchewan preferred the Victoria formula but recognized that it needed widespread support among the provinces; therefore recommended to the committee that amendment under section 41 require the agreement of a majority of the provinces representing 80% of the population of Canada and including 2 Atlantic provinces and 2 Western provinces with 50% of the population of the West
- Nova Scotia would have accepted the Victoria formula had more provinces agreed to it; object to it being imposed unilaterally; recommended to the committee that the population qualification for the Atlantic provinces be removed; would agree with this formula as a means of breaking a deadlock, provided P.E.I. were protected
- B.C. would have supported Victoria formula if B.C. had constituted a separate region (ie. if Québec Ontario were to have a veto, B.C. wanted one also) B.C. support for the Victoria formula was also linked to their concerns about reforming the Senate as an Upper House where provincial or regional consensus could be aggregated and expressed

Amending Formula
Section 41 (cont'd)

Oppose: Alberta, Manitoba, Québec
P.E.I., Newfoundland

Explanation:
- All provinces opposing this section preferred Vancouver consensus as amending formula
- Alberta and Newfoundland strongly support concept of equality of provinces so oppose any proposal containing veto for any one or more provinces
- Nova Scotia supported the Vancouver consensus only on the condition that it received the unanimous consent of the provinces
- P.E.I. recommended to the committee that the provision for "combined populations of at least fifty per cent of the population of all the Atlantic provinces" be deleted
- Manitoba and Québec wanted further refinements in the Vancouver consensus to define what could and could not be subject to provincial opting out. Even under the Vancouver consensus, Québec wanted veto for matters of interest only to Québec, eg. Supreme Court, protection of civil law. This was one element not settled in the Vancouver consensus.

Amending Formula (cont'd)

42. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by a referendum held throughout Canada under subsection (2) at which

(*a*) a majority of persons voting thereat, and

(*b*) a majority of persons voting thereat in each of the provinces, resolutions of the legislative assemblies of which would be sufficient, together with resolutions of the Senate and House of Commons, to authorize the issue of a proclamation under subsection 41(1),

have approved the making of the amendment.

(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada authorized by resolutions of the Senate and House of Commons.

All provinces are leery of use of referendum. Because this was not a topic for discussion at previous constitutional negotiations, provinces have not developed positions. What follows are reactions to federal proposals.

Saskatchewan would prefer to see this section dropped, but told the committee that the following are the minimum requirements for acceptability: there should be provisions that referendum requires prior referral to provinces and can be used only in case of clear deadlock; provinces should also be able to initiate a referendum; need for referendum rules committee (one nominee each by federal government and provinces and third by mutual agreement)

Ontario proposes that referendum involve prior consultation and approval of at least 4 provinces; that mechanism be available to the provinces as well to break deadlock; and that deadlock-breaking mechanism only be used after amendment failed to achieve consent under section 41 procedure. (These were advanced as suggestions to the Prime Minister in response to the proposed resolution, not as conditions of support of the federal proposals.)

P.E.I. would like section 42 deleted; process can be used to bypass provincial legislatures; provinces have no recourse to referendum if federal government does not agree to constitutional change passed by all provincial legislatures; referendum rules are completely within federal control; substitutes concept of majorities in regions rather than will of the provinces; simple majority required to pass constitutional change by referendum is not enough

...cont'd

Amending Formula
Referendum Section 42
(cont'd)

Nova Scotia strongly objects to the use of the referendum in this formula because it has not been discussed with the provinces and agreed to in advance; if it is to be included at all, and they are flexible on whether this should be the case, it should only be on the basis of prior discussion and consensus; particularly concerned that referendum should not be used to change the amending formula; also object to federal government's sole control over referendum timing, rules etc.

New Brunswick strongly objects to use of referendum and recommends that section 42 be deleted; patriation should proceed, however, even if this section is left in; premier would then work to persuade Canadians that the section should be removed in the 2-year period following patriation

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

44. An amendment to the Constitution of Canada may be made by proclamation under subsection 41(1) or section 43 without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those 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 those ninety days.

45. (1) The procedures for amendment described in subsection 41(1) and section 43 may be initiated either by the Senate or House of Commons or by 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.

46. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under section 42.

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

Newfoundland wants further specifics in section 43 about amendments that could not be made without the consent of the province(s) affected: provincial boundaries, natural resources, property of the province, legislative jurisdiction.

47. The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless be used to amend any provision for amending the Constitution, including this section, and section 41 may be used in making a general consolidation or revision of the Constitution.

48. Subject to section 50, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate or House of Commons.

49. Subject to section 50, the legislature of each province may exclusively make laws amending the constitution of the province.

50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41 or 42:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the *Canadian Charter of Rights and Freedoms*;

(*c*) the commitments relating to equalization and regional disparities set out in section 31;

(*d*) the powers of the Senate;

(*e*) the number of members by which a province is entitled to be represented in the

Newfoundland: amendments to amending formula should have the unanimous consent of the provinces.

Nova Scotia premier expressed concern to the committee that the protections in section 50 could be swept away by section 38 of the interim amending formula (ie. the referendum on the permanent amending formula)

Senate and the residence qualifications of Senators;

(*f*) 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; and

(*g*) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

51. Class 1 of section 91 and class 1 of section 92 of the *Constitution Act, 1867* (formerly named the *British North America Act, 1867*), the *British North America (No. 2) Act, 1949*, referred to in item 21 of Schedule I to this Act and Parts III and IV of this Act are repealed.

PART VI

GENERAL

52. (1) The Constitution of Canada includes

(*a*) the *Canada Act*;

(*b*) the Acts and orders referred to in Schedule I; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

(2) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

53. (1) The enactments referred to in Column I of Schedule I are hereby repealed, or amended to the extent indicated in Column II thereof, and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

Yukon: Concerned that no mechanism for entry of new provinces is set out in this section or elsewhere.
- want time-frame or mechanism for Yukon entering Confederation at appropriate time
- want right of Yukon to self-government enshrined
- if majority of electors in Yukon agree after a referendum to provincial status, Yukon wants all powers and jurisdiction that other provinces have (eg. ownership of its resources)

(2) Every enactment, except the *Canada Act*, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in Schedule I may be cited as the *Constitution Act* followed by the year and number, if any, of its enactment.

54. A French version of the portions of the Constitution of Canada referred to in Schedule I shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

55. Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 54, the English and French versions of that portion of the Constitution are equally authoritative.

56. The English and French versions of this Act are equally authoritative.

57. Subject to section 58, this Act shall come into force on a day to be fixed by proclamation issued by the Governor General under the Great Seal of Canada.

58. Part V shall come into force as provided in Part IV.

59. This Schedule may be cited as the *Constitution Act, 1980* and the Constitution Acts, 1867 to 1975 (No. 2) and this Act may be cited together as the *Constitution Acts, 1867 to 1980*.

RESOURCE OWNERSHIP

Federal proposal as per correspondence between the Prime Minister and Mr. Broadbent	
1) Confirm jurisdiction of of the provinces with respect to exploration, development, conservation and management of non-renewable resources and forestry resources, including the making of laws in relation to the primary production from such resources	B.C. supports moves confirming and strengthening provincial ownership but wanted hydro-electric, water resources and off-shore minerals included Alberta says that this is a key area for them but that proposals don't go far enough to meet their concerns; this could result in fewer rights than provincial government already has in the ownership of land based resources, they say. Saskatchewan supports principle, but rest of the package does not go far enough so that by itself this proposal is not sufficient; concerned about possibility of court decisions affecting these provisions in future; recommended wording changes Manitoba) support the essence of the federal proposal Ontario) Québec supports the principle but appears to have reservations that proposal does not meet all their concerns in this area New Brunswick supports the principle but is not convinced the proposal is sufficient protection of ownership rights. Nova Scotia) accept essence of federal proposal P.E.I.) Newfoundland supports the principle but insists that off-shore resources be treated the same as onshore resources so this could undermine their support for the proposal
2) Give provinces concurrent jurisdiction in interprovincial trade in non-renewable resources subject to full federal paramountcy and subject to a clause prohibiting price or supply discrimination between provinces	B.C. supports the proposal Alberta's support is not certain; critical area for them; they want limits on federal paramountcy; concern over declaratory power Saskatchewan wants same powers extended to provinces for international trade; federal paramountcy should be limited to cases of "compelling national interest" Ontario is sympathetic to Saskatchewan position as long as this does not interfere with international trade or cause interprovincial discrimination Other provinces support proposal, but some want declaratory power to be defined and negotiated further

RESOURCE OWNERSHIP
(cont'd)

3) Give provinces indirect taxation in non-renewable resources as long as taxation does not discriminate between province(s) and other parts of Canada

B.C. supports the proposal though it doesn't really apply to their situation; believes this should also include provisions about off-shore resources

Alberta says this is not significant to them because they are involved mostly in Crown production where tax would not apply

Saskatchewan strongly supports the proposal but concerned about previous court decisions in this area and possibility of future challenges

Manitoba, Ontario, Québec and New Brunswick support the essence of the proposal

Nova Scotia and P.E.I. object on the grounds that it exaggerates the differences between resource-rich and resource-poor provinces but are prepared to withdraw objections in the interests of all-province agreement

Newfoundland accepts essence but insists on off-shore resources being included