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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (S1)
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
OCTOBER 1980

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FEDERAL-PROVINCIAL ATTEMPTS AT REACHING AGREEMENT ON
PATRIATION AND AN AMENDING FORMULA, 1927 TO THE PRESENT

Dominion-Provincial Conference, 1927

The first attempt to achieve an amending formula was at the Dominion-Provincial Conference November 3-10, 1927 called in response to the Balfour Report of 1926 in which it was recognized that Canada, and the other Dominions, were independent countries and not subordinate to the United Kingdom. To achieve such a status legally, it was necessary that the United Kingdom Parliament relinquish in all respects its authority to legislate for the Dominions, including its power to make constitutional amendments for Canada. Before full power over the constitution could be transferred to Canada, however, an amending formula would have to be evolved and discussions were held with the provinces to this end. The federal government proposed that amendment of fundamentals (e.g. (s. 93) education, (s. 133) language, and certain provincial powers (ss. 92(12), (13), (14)) should require unanimous consent of the provinces, while other amendments should require approval of only a majority. The amendments would be enacted by the federal Parliament. This proposal was rejected by a number of provincial representatives because it was felt that there was no widespread demand for such a change, that if Canada could make changes itself there would be too many demands for change, that the existing mechanism was satisfactory, that to submit such proposals to provincial legislatures would stir up local party strife and arouse sentiment and feeling, and that under this scheme amendments might become too easy to secure.

Dominion-Provincial Conference, 1931

As work continued at the Imperial Conferences towards what was to emerge as the Statute of Westminster, 1931 in which the British Parliament was to recognize in legal form the autonomy and independence of the Dominions, fears arose among the provinces that, as a result of such legislation, the federal Parliament would have sole legislative power over the constitution. In response to a call from Ontario, a Dominion-Provincial Conference was convened April 7 and 8, 1931. Agreement was not reached on an amending formula. In view of this failure, Canada sought a modification to the full sovereignty being embodied in the Statute of Westminster. The Conference approved a text, ultimately s. 7 of the Statute, which preserved British legislative supremacy in Canadian constitutional matters.

Special Committee of the House of Commons 1935 Session

A second attempt at patriation and at finding an amending formula commenced in 1935. January 28, 1935, the House of Commons established a Special Committee to study the best method by which the B.N.A. Act could be amended. This Special Committee held eleven sessions between February 18 and June 19, 1935. Although it did not propose a procedure for amendment in its report, it did recommend that a Dominion-Provincial Conference be held as early as possible to get provincial views.

Dominion-Provincial Conference - 1935: Continuing Committee on
Constitutional Questions - 1936

The third attempt to resolve the problem commenced with the Dominion Provincial Conference of December, 1935 which established several sub-conferences, one of which was on constitutional questions. This sub-conference was chaired by the federal Minister

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of Justice and included the provincial attorneys-general and certain other federal and provincial ministers. It recommended the establishment of a Continuing Committee on Constitutional Questions to be comprised of provincial representatives and federal officials to draft an amending procedure that would be considered at a subsequent dominion-provincial conference. The sub-conference also recommended that patriation take place. The Continuing Committee on Constitutional Questions convened January 28, 1936 and met from January 30 to February 11 to draft a detailed amending procedure whereby the requirements for constitutional amendment would differ depending upon the category into which the amendment fell. The categories were:

- (1) matters concerning the federal government only where Parliament alone could make amendments;
- (2) matters concerning the federal government and one or more but not all provinces where Parliament plus the provincial legislatures concerned could make amendments;
- (3) most matters concerning the federal government and all of the provinces where amendments could be made by Parliament plus the legislatures of two-thirds of the provinces having at least 55% of the population of Canada; and
- (4) "entrenched clauses" (eg. powers of the Queen, number of Senators, representation in the House of Commons, denominational education, use of English and French, and certain provisions of section 92) where amendments could be made only by Parliament and all provincial legislatures.

A sub-committee of the Continuing Committee which was set up to refine the formula articulated by the Continuing Committee submitted its report to the Continuing Committee on March 2, 1936, but no further proceedings were taken.

Constitutional Conference, 1950

In 1949, on the initiative of the federal government alone, the B.N.A. Act was amended by the British Parliament (B.N.A. Act, 1949 (No. 2)) to give the central government the power to amend the Constitution of Canada in matters of interest only to the federal government. This initiative was followed by a fourth attempt to achieve agreement on an overall amending procedure and patriation at the Constitutional Conference convened at Ottawa by the federal government, January of 1950. Essentially, the 1936 categorization scheme was adopted and a committee of attorneys general, which met in August of 1950 at Ottawa, was established to sort out the items to go into each category. The committee could not reach agreement, nor could the Conference when it reconvened at Quebec City in September. The principle of delegation of legislative authority was also discussed.

Constitutional Conference of 1960-61

At the Federal-Provincial Conference of July 26, 1960, the then Prime Minister announced his intention to recommence discussions with the provinces on an amending formula and patriation. This launched the fifth effort in that regard. A conference of Attorneys-General was initiated which met four times, October 1960, November 1960, January 1961, and September 1961. A meeting of deputy attorneys-general was also held in November, 1961. These ministerial conferences drafted an amending formula (The Fulton Formula) that received the support of nearly all participants at the Conference. The formula provided that the Parliament of Canada could amend the B.N.A. Act. But, laws relating to the legislative powers of the provinces, to the privileges of the

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legislature or government of a province, to the assets or property of a province, to the use of English and French, to minimal senatorial representation of a province, and to the amending procedure, itself, were not to be amended unless concurred in by all provincial legislatures. No amendment to a provision relating to one or more, but not all, provinces could be effective until approved by the legislatures of the provinces involved. No such law in respect of education could come into force unless approved by the legislatures of all the provinces. (In this respect Newfoundland was treated separately and there was a similar requirement of legislature approval.) Generally, no amendment of any other provision of the B.N.A. Act could come into force unless approved by the legislatures of at least two-thirds of the provinces, representing 50% of the population. There was also a provision for delegation of legislative powers between the federal level of government and the provinces. A draft bill embodying this formula, "An Act to provide for the amendment in Canada of the Constitution of Canada", dated November 6, 1961 was prepared. The draft bill did not receive unanimous approval, and by 1962 this initiative was spent.

At this Conference the possibility of patriating the B.N.A. Act without an agreement as to an amending formula was raised, but was not pursued since delegates had felt that agreement could be reached on the whole package.

Federal-Provincial Conferences - Conference of Attorneys-General of 1964

June of 1964, the Government of Canada announced its desire to discuss with the provinces the question of an amending procedure at the Federal-Provincial Conference to be held at Charlottetown September 1 and 2 of that year. Thus commenced the sixth effort at achieving patriation and an amending formula. The premiers, at their meeting in August, discussed the matter and indicated their belief that patriation of the B.N.A. Act could be achieved on the basis of the amending formula devised during the 1960-61 conference (The Fulton Formula). At the Charlottetown conference, first ministers agreed that patriation take place at an early date on the basis of the Fulton Formula and that the attorneys-general of Canada should meet to put the final touches to the amending formula. The attorneys-general met at Ottawa, October 5, 6, 13 and 14. Their task was to integrate the already existing exclusive federal power to partially amend the Constitution of Canada found in s. 91(1) of the B.N.A. Act and the exclusive provincial power to amend provincial constitutions found in s. 92(1) of that Act into the general amending formula. In essence, the exclusive federal amending power was more precisely defined so as to give the federal Parliament the power to amend "the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons". There were exceptions: the representation of the provinces in the Senate and the principles of proportionate representation of the provinces in the House of Commons. This new draft (The Fulton-Favreau Formula) was unanimously recommended by the attorneys-general for acceptance by first ministers at their next conference when, on October 14, 1964, it was unanimously accepted. The formula was later approved by the legislature of nine provinces, but in January 1966, the Quebec government stated that it would not press for approval by its legislature.

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Conference of First Ministers, February 1968

In 1966, both the governments of Quebec and Ontario raised the question of the need for constitutional review, the former at the Tax Structure Committee meeting of September 1966 and the latter at the Federal-Provincial Conference of October 24-28. July 5, 1967 there was a meeting of the Prime Minister and provincial premiers at Ottawa after which it was announced that Ontario would convene an interprovincial conference November 27 of that year, which would involve itself in wide-ranging discussions of the constitution. It was also announced that in 1968 the Prime Minister intended to call a federal-provincial conference to examine the possibility of adopting a common constitutional bill of rights. The premiers' conference,* the Confederation of Tomorrow Conference, met for 3 days and resolved that the process of constitutional discussion should be continued.

As bilateral discussion took place in preparation for the federal-provincial conference, it became clear that some of the premiers wanted its mandate enlarged so that it would lead to wide-ranging constitutional examination. When the Conference met February 5-7, 1968 it initiated a Continuing Conference of First Ministers on the Constitution with a secretariat and a Continuing Committee of Officials. For the first time, agreement on a complete revision to the constitution, not merely an amending formula, was sought. This launching of Canada into its seventh attempt at constitutional reform was to culminate in the Victoria Charter, 1971. From 1968 to 1971, the Conference and its committees and sub-committees of ministers were to meet frequently. The full Conference met six times after the initial February 1968 meeting: the committees and sub-committees of ministers met 26 times: and the Continuing Committee of Officials met 14 times, two of the meetings of the latter, November 1970 and January 1971, dealt with an amending formula and patriation. (The major discussion of these matters by officials took place at the January meeting where the Fulton-Favreau Formula and its inadequacies was discussed as was delegation of powers, and the possibility of patriation without the whole constitutional review process being completed.) At the Second Working Session of the Constitutional Conference, September 14-15, 1970, among other matters, the constitutional review process, the relationship of the amending formula to patriation and the possibility of identifying a number of subjects upon which sufficient agreement had been reached so that they might be incorporated into the B.N.A. Act using a new amending formula were discussed. This discussion resulted in the identification of a limited "package" (patriation, an amending formula, fundamental rights including language rights, the Supreme Court, external relations, regional disparities, mechanisms of inter-governmental relations, a new title for the constitution, a new preamble and general modernization). Following this meeting, the Minister of Justice met with the heads of provincial governments to see if agreement could be achieved on the "package". The Third Working Session of the Constitutional Conference met February 8 and 9 to discuss the "package" as well as environmental management and pollution. Consensus was reached on patriation and on an amending formula. It was agreed to continue bilateral negotiations on the "package" with draft constitutional texts being prepared by the federal Department of Justice and forwarded to each province before discussions were held. The result was a draft "Canadian Constitutional Charter" which was the basis

* Ontario had intended that the federal government be invited as a delegate, but because of federal objection to a federal-provincial conference being called by a province it was decided that Ontario would call an inter-provincial conference at which the federal government would send observers.

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of discussion of the final Constitutional Conference of this round which took place at Victoria, June 14, 15 and 16. That Conference produced the "Canadian Constitutional Charter, 1971" (The Victoria Charter) for constitutional change which all first ministers agreed should be reported back to their governments for acceptance. The Government of Canada and eight provincial governments later accepted the Charter, but Quebec indicated it would not. In Saskatchewan, a new government was elected which did not express an opinion on the matter.

The Draft Proclamation Exercise 1975-76

The eighth attempt at patriation and an amending formula started on the initiative of the federal government. It suggested a more limited approach than had been taken during the 1967-71 process; namely, patriation with an amending formula along the lines of that agreed to in the Victoria Charter. The subject was broached by the Prime Minister at the April 9, 1975 Federal-Provincial Conference and was pursued by means of bilateral discussions between federal officials and provincial heads of government. As discussion progressed, more of the provisions of the Victoria Charter were revived by the provinces. A "Draft Proclamation" was prepared by the federal government which included an amending formula based upon the Victoria Charter and provisions respecting the Supreme Court, entrenchment of English and French federally, guarantees for the French language and culture, regional disparities and a provision designed to promote harmony of action by governments through agreements concerning immigration, communications and social policy, particularly as these could adversely affect the survival of the French language and culture. The "Draft Proclamation" was discussed by first ministers in May of 1976 and the premiers reserved approval of it. The premiers held two meetings that year to see if they could reach a consensus on proceeding with the "Draft Proclamation". They informed the federal government October 14 of that year that they could not agree to the patriation exercise, but wished wider ranging constitutional reform.

Federal-Provincial Conference of First Ministers, 1978-79

The ninth attempt at patriation and an amending formula followed the introduction in the Parliament of Canada of a draft "Constitutional Amendment Bill" (Bill C-60), published to encourage public discussion of proposed changes to the constitution. First ministers met October 30-31, November 1, 1978 to discuss constitutional change. At this meeting, they agreed to the need for change and to the setting up of a constitutional committee composed of designated federal and provincial ministers including ministers of intergovernmental affairs, ministers of justice and attorneys-general, as appropriate, to study the matter. This Continuing Committee of Ministers on the Constitution met at Mont Ste.-Marie, Quebec, November 23-25, 1978; at Toronto, December 14-16, 1978; and at Vancouver, January 22-25, 1979. At the first two meetings, the question of an amending formula was discussed and delegation of legislative authority was discussed briefly at the third meeting. The amending formula was also discussed at a meeting of officials January 11-12, 1979. The first ministers reconvened February 5-6, 1979 and discussed, among other matters, an amending formula, patriation and delegation of legislative authority. Little was resolved.

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Meeting of the Continuing Committee of Ministers on the Constitution, October, 1979

A federal election took place in the spring of 1979, as a result of which the government changed from Liberal to Conservative. However, the constitutional review process continued and the Continuing Committee of Ministers on the Constitution met October 22-23, 1979 at Halifax at which meeting patriation and an amending formula were discussed.

June-September 1980

February of 1980 saw another election and the return of a Liberal government. First ministers met June 19 of this year initiating the tenth attempt at resolving the patriation and amending formula question and, as a consequence of this meeting, the Continuing Committee of Ministers on the Constitution was instructed to attempt to reach consensus on twelve items, among them patriation and an amending formula. That Committee met at Montreal July 8-11, Toronto July 15-18, Vancouver July 22-24 and Ottawa August 26-29 leading up to the recent First Ministers Conference of September 8-12, 1980 at which patriation and an amending formula were again discussed. However, again no consensus was reached.

Note

Since 1927 there have been ten attempts to achieve patriation and an amending formula, two of them on provincial initiative (1931 and 1968). There have been 21 meetings of first ministers on the Constitution and 43 meetings of ministers. As well there have been a minimum of 17 meetings of officials alone to discuss patriation and an amending formula. Many officials meetings to discuss these matters also have occurred in conjunction with the first ministers and ministerial meetings mentioned above.

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THE
CANADIAN
CONSTITUTION



1980

LA
CONSTITUTION
CANADIENNE

PROPOSED RESOLUTION
FOR JOINT ADDRESS
RESPECTING THE
CONSTITUTION OF CANADA -
BRIEFING BOOK USE IN THE
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OCTOBER 1980

PROJET DE RÉSOLUTION
POUR L'ADRESSE
JOINTE EN
RAPPORT DE LA
CONSTITUTION DU
CANADA -
LIVRE D'INFORMATION
À L'USAGE DU
PARLEMENT,
OCTOBRE 1980

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THE CANADIAN CONSTITUTION



LA CONSTITUTION CANADIENNE

PROPOSED RESOLUTION
respecting the
Constitution of Canada

PROJET DE RÉSOLUTION
concernant la
Constitution du Canada

Canada 

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THE CANADIAN CONSTITUTION



1980

LA CONSTITUTION CANADIENNE

PROPOSED RESOLUTION
respecting the
Constitution of Canada

PROJET DE RÉOLUTION
concernant la
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PROPOSED RESOLUTION FOR JOINT ADDRESS TO HER MAJESTY THE
ATTORNEY GENERAL RESPECTING THE CONSTITUTION OF CANADA

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Preface

This is the full text, with explanatory notes, of a proposed Resolution tabled in the Senate and the House of Commons respecting the Constitution of Canada. It is published by the Government of Canada in the interest of contributing to public discussion.

Additional copies may be obtained by writing to:

Publications Canada
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K1P 6G6

Avertissement

Afin de favoriser le débat, le gouvernement du Canada publie le texte intégral, accompagné de notes explicatives, du projet de résolution concernant la Constitution du Canada, lequel a été déposé devant le Sénat et la Chambre des communes.

Des exemplaires supplémentaires sont disponibles à l'adresse suivante:

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OTTAWA (CANADA)
K1P 6G6

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CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
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**PROPOSED RESOLUTION FOR JOINT ADDRESS TO HER MAJESTY THE
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PROJET DE RÉSOLUTION PORTANT ADRESSE COMMUNE À SA MAJESTÉ LA REINE CONCERNANT LA CONSTITUTION DU CANADA

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**PROPOSED RESOLUTION FOR A JOINT
ADDRESS TO HER MAJESTY THE QUEEN
RESPECTING THE CONSTITUTION OF
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INTRODUCTION

This document has been prepared to assist in understanding the constitutional proposals now being made. It sets out the various formal measures necessary to bring about the amendment and "patriation" of the Constitution of Canada. In addition to transferring all authority to legislate for Canada from the United Kingdom to Canada and providing for future amendments to the Constitution to be made in Canada, the measures contain new constitutional provisions, such as the *Canadian Charter of Rights and Freedoms*, and provisions relating to the implementation of the constitutional changes.

At present, while some amendments to the Constitution may be made by Parliament or a provincial legislature acting alone, others require more complex action. They require the approval, by both Houses of the Parliament of Canada, of a resolution to amend the Constitution of Canada. Such Resolutions provide for a Joint Address of the Senate and House of Commons to be presented to the Queen asking her to forward the proposals to the Parliament of the United Kingdom for enactment.

In future, this procedure would not be necessary. The Constitution could be amended in Canada. For an interim period, it is proposed that the procedure for amending the Constitution would involve the consent of both Houses of Parliament and of all provinces. Thereafter, a permanent amending formula would come into effect by agreement, lapse of time or after a referendum. Under the proposed permanent procedure, most constitutional amendments could be made upon authorization by both Houses of Parliament and the legislative assemblies of at least six provinces representing all regions of Canada. However, a number of special rules would cover particular circumstances. Specifically, amendments that apply to some but not all provinces could be approved by Parliament and those provinces. Also, as is now the case, Parliament or a provincial legislature acting alone could, in some circumstances, amend certain provisions of the Constitution.

**PROJET DE RÉSOLUTION PORTANT
ADRESSE COMMUNE À SA MAJESTÉ LA
REINE CONCERNANT LA CONSTITUTION
DU CANADA**

INTRODUCTION

Le présent document, destiné à favoriser l'intelligence des actuelles propositions constitutionnelles, porte sur les diverses modalités applicables à la modification de la Constitution du Canada et à sa «canadianisation». Outre le transfert, du Royaume-Uni au Canada, du pouvoir de légiférer pour notre pays et des procédures à observer pour toute modification ultérieure de la Constitution, le texte comporte de nouvelles dispositions constitutionnelles, comme la *Charte canadienne des droits et libertés*, ainsi que les dispositions relatives à la mise en œuvre des aménagements apportés à la Constitution.

Aujourd'hui encore, si certaines modifications ne relèvent que du Parlement ou d'une législature provinciale, d'autres exigent des formalités plus complexes : approbation, par les deux chambres du Parlement du Canada, d'une résolution portant adresse commune du Sénat et de la Chambre des communes à la Reine, où il lui est demandé de transmettre le projet au Parlement du Royaume-Uni pour adoption.

A l'avenir, ces formalités ne s'imposeront plus, la Constitution étant modifiée au Canada. Pendant une période transitoire, la procédure de modification sera subordonnée au consentement des deux chambres du Parlement et à celui de toutes les provinces. Par la suite, entrera en vigueur la procédure permanente, soit sur accord, soit à l'expiration d'un délai, soit après référendum. Selon cette dernière procédure, la plupart des modifications constitutionnelles se feront sur autorisation des deux chambres du Parlement et des assemblées législatives d'au moins six provinces représentant toutes les régions du Canada. Certains cas particuliers ressortiront cependant à des règles spéciales. Ainsi, les modifications applicables à certaines provinces seulement pourront être approuvées par le Parlement et ces provinces. D'autres modifications relèveront, tout comme actuellement, de la seule compétence du Parlement ou d'une législature.

The major elements of this document are:

THE PROPOSED RESOLUTION

The preamble to the proposed Resolution describes the historical position of Canada in respect of amendments to the Constitution, the present status of Canada as an independent state and the desire for change that has led the Senate and House of Commons to put forward the Resolution. The Address to the Queen, which is set out in the Resolution, is similar to previous Addresses to the Monarch and asks the Queen to lay the *Canada Act* before the Parliament of the United Kingdom for enactment.

THE CANADA ACT

The *Canada Act* commences with the recitals of the action taken in Canada that makes it appropriate for the United Kingdom Parliament to enact the proposed statute. The Act is technical in nature. It provides for the enactment of Schedule A, which sets out the French version of the *Canada Act*, so far as it is not contained in Schedule B. The enactment of the French version in this manner is necessary because the laws of the United Kingdom are enacted only in English. As provided in the *Canada Act*, the French and English versions would have equal authority in Canada. This would be the first time that a United Kingdom Act, enacted for Canada, would have an official French version. The *Canada Act* also provides for the enactment of the *Constitution Act, 1980*, which is set out in Schedule B and contains the new constitutional provisions. Finally, the *Canada Act* provides that no future United Kingdom laws shall apply to Canada.

THE CONSTITUTION ACT, 1980

The *Constitution Act, 1980* is in the same bilingual format as Acts of the Parliament of Canada and the English and French versions would be equally authoritative. It contains important new provisions that, for the most part, are not closely linked to matters now provided for in the Constitution of Canada. It includes the *Canadian Charter of Rights and Freedoms* and provisions relating to equalization and regional disparities and constitu-

Le document comprend pour l'essentiel :

LE PROJET DE RÉSOLUTION

En son préambule, le projet rappelle la situation historique du Canada en matière de modification de la Constitution, fait mention du statut d'État indépendant du Canada et exprime le vœu de changement qui a motivé la demande des deux chambres. Dans l'adresse proprement dite, comparable aux adresses déjà présentées au monarque, il lui est demandé de déposer pour adoption la *Loi sur le Canada* devant le Parlement du Royaume-Uni.

LA LOI SUR LE CANADA

Ce texte expose les mesures prises au Canada en vue de permettre au Parlement du Royaume-Uni d'adopter le projet. Son objet est essentiellement procédural. Il prévoit, d'une part, l'adoption de l'annexe A (il s'agit de la version française de la partie purement britannique de la *Loi sur le Canada*). Ces formalités s'expliquent par la nécessité de concilier le fait que le Royaume-Uni n'adopte ses lois qu'en anglais et le fait qu'au Canada, les deux versions doivent avoir également force de loi. Ce sera ainsi la première fois qu'une loi britannique visant le Canada aura une version française officielle. Il prévoit, d'autre part, l'adoption de la *Loi constitutionnelle de 1980* qui figure à l'annexe B et qui contient les nouvelles dispositions constitutionnelles. La *Loi sur le Canada* prévoit par ailleurs l'inapplicabilité des futures lois britanniques à notre pays.

LA LOI CONSTITUTIONNELLE DE 1980

Ce texte est bilingue tout comme les autres lois du Parlement, les versions française et anglaise ayant également force de loi. Il contient d'importantes dispositions nouvelles qui, pour la plupart, ne touchent pas de près aux questions visées par l'actuelle Constitution. On peut citer la *Charte canadienne des droits et libertés*, ainsi que les dispositions relatives à la péréquation et aux inégalités régionales, aux conférences constitutionnelles des

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OCTOBER 1980

CONSTITUTION OF CANADA

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Upon the adoption of the *Canada Act* by the United Kingdom Parliament, Canada would have a revised Constitution that forms part of the body of laws of Canada. It would be exclusively Canadian because, in future, it could be amended only in Canada.

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 - (1) In some cases, a "new" provision is substantially already law as an unwritten constitutional or legal principle (e.g. some aspects of the rights and freedoms contained in the Charter).
 - (2) In other cases, a "new" measure is derived from a non-constitutional statute, such as the *Canadian Bill of Rights*, referred to herein as the Bill of Rights.

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A l'adoption de la *Loi sur le Canada* par le Parlement du Royaume-Uni, le Canada aura une Constitution révisée qui fera partie de son droit positif et qui sera exclusivement canadienne, vu que lui seul pourra désormais la modifier.

Les abréviations qui suivent s'emploient dans les notes explicatives.

1. Le sigle «AANB» désigne l'*Acte de l'Amérique du Nord britannique, 1867*, modifié.
2. «annexe B» : *Loi constitutionnelle de 1980* ou annexe B de la *Loi sur le Canada*.
3. «Charte» : *Charte canadienne des droits et libertés* ou partie I de la *Loi constitutionnelle de 1980*.
4. Articles signalés par «nouveau» : ceux qui ne figurent pas dans la Constitution écrite (c'est-à-dire l'AANB 1867 et ses modifications ou tout autre texte constitutionnel postérieur).
 - (1) Dans certains cas, une «nouvelle» disposition a déjà pour une bonne part force de loi à titre de principe constitutionnel ou juridique non écrit (par exemple, des éléments des droits et libertés inscrits dans la Charte).
 - (2) Dans d'autres cas, une disposition «nouvelle» découle d'un texte non constitutionnel, tel que la *Déclaration canadienne des droits et libertés*, ci-après dénommée la *Déclaration des droits*. Lorsqu'une «nouvelle» disposition remplace une autre disposition législative, la source en est indiquée dans les notes explicatives.

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5. Articles signalés par «modifié» : ceux dont le changement ne justifie pas le terme «nouveau» (incorporation d'une idée nouvelle ou simple modification de forme).

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EXPLANATORY NOTES
The following sections of the Constitution of Canada are indicated as being present sections "modified". The term "modified" is used where a change from a present section is not so extensive as to warrant the description "new" but where a new idea is introduced into the present provision or where the modification is made for technical rather than substantive reasons.

EXPLANATORY NOTES
Les sections suivantes de la Constitution du Canada sont indiquées comme étant des sections «modifiées». Le terme «modifié» est utilisé lorsqu'un changement par rapport à une section présente n'est pas si étendu qu'il nécessite la description «nouveau», mais qu'une nouvelle idée est introduite dans la présente disposition ou que la modification est faite à des fins techniques plutôt que substantives.

EXPLANATORY NOTES

Resolution: The proposed Resolution describes the historical position of Canada which has made it necessary for certain amendments to the Canadian Constitution to be enacted by the United Kingdom Parliament, the present status of Canada as an independent state and the desire for change that has led the Senate and House of Commons to put forward the resolution.

The Address to the Queen: The Address is similar to previous Addresses to the Monarch and asks Her Majesty to lay the *Canada Act* before the Parliament of the United Kingdom for enactment.

Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

WHEREAS in the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

AND WHEREAS it is in accord with the status of Canada as an independent state that Canadians be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is also desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to that Constitution.

NOW THEREFORE the Senate and the House of Commons, in Parliament assembled, resolve that a respectful address be presented to Her Majesty the Queen in the following words:

To the Queen's Most Excellent Majesty:
Most Gracious Sovereign:

We, Your Majesty's loyal subjects, the Senate and the House of Commons of Canada in Parliament assembled, respectfully approach Your Majesty, requesting that you may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth:

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Projet de résolution portant adresse commune à Sa Majesté la Reine concernant la Constitution du Canada

Le Sénat et la Chambre des communes du Canada réunis en Parlement, considérant:

que le Parlement du Royaume-Uni a modifié à plusieurs reprises la Constitution du Canada à la demande et avec le consentement de celui-ci;

10 que, de par le statut d'État indépendant du Canada, il est légitime que les Canadiens aient tout pouvoir pour modifier leur Constitution au Canada;

15 qu'il est souhaitable d'inscrire dans la Constitution du Canada la reconnaissance de certains droits et libertés fondamentaux et d'y apporter d'autres modifications,

ont résolu de présenter respectueusement à Sa Majesté la Reine l'adresse dont la teneur 20 suit.

A Sa Très Excellente Majesté la Reine,
Très Gracieuse Souveraine:

25 Nous, membres du Sénat et de la Chambre des communes du Canada réunis en Parlement, fidèles sujets de Votre Majesté, demandons respectueusement à Votre Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi ainsi conçu:

NOTES EXPLICATIVES

Projet de résolution. — Rappel de la situation historique du Canada, d'où la nécessité de faire adopter par le Parlement du Royaume-Uni certaines modifications de la Constitution canadienne.

Mention du statut d'État indépendant du Canada.

Vœu de changement motivant la demande des deux chambres.

Adresse. — Comparable aux adresses déjà présentées au monarque, elle demande à la Reine de déposer pour adoption la *Loi sur le Canada* devant le Parlement du Royaume-Uni.

CANADA ACT

Preamble: The preamble to the *Canada Act* recites the action taken in Canada that makes it appropriate for the United Kingdom Parliament to enact the proposed Act.

Enacting Clause: This is the form used in enacting United Kingdom laws.

1. Section 1 would enact the *Constitution Act, 1980* set out in Schedule B. The Act, except the general amending procedure, would come into force on proclamation by the Governor General. (See sections 29, 57 and 58 of Schedule B.)

2. Section 2 would re-enact, in modified form, section 4 of the *Statute of Westminster, 1931*. By reason of this section and the repeal, in so far as they relate to Canada, of section 4 and subsection 7(1) of that statute in item 16 of Schedule I to Schedule B, the United Kingdom Parliament would no longer be deemed to have authority to make laws for Canada.

3. This section would, for the first time in respect of a United Kingdom Act applicable to Canada, give equal authority to the English and French versions of the Act. The French version of the Act, so far as it is not contained in Schedule B, is set out in Schedule A because laws of the United Kingdom are only enacted in English.

4. The short title of the Act would be the *Canada Act*.

An Act to amend the Constitution of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The *Constitution Act, 1980* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1980* comes into force shall extend to Canada as part of its law.

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

4. This Act may be cited as the *Canada Act*.

Constitution Act, 1980 enacted

Parliament of United Kingdom not to legislate for Canada

French version

Short title

Adoption de la Loi constitutionnelle de 1980

Cessation du pouvoir de légiférer pour le Canada

Version française

Titre abrégé

ANNEXE A

Loi modifiant la Constitution du Canada

Sa Très Excellente Majesté la Reine, considérant:

5 qu'à la demande et avec le consentement du Canada, le Parlement du Royaume-Uni est invité à adopter une loi visant à donner effet aux dispositions énoncées ci-après et que le Sénat et la Chambre des communes du Canada réunis en Parlement ont présenté une adresse demandant à Sa Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi à cette fin,

15 sur l'avis et du consentement des Lords spirituels et temporels et des Communes réunis en Parlement, et par l'autorité de celui-ci, édicte:

20 1. La Loi constitutionnelle de 1980, énoncée à l'annexe B, est édictée pour le Canada et y a force de loi. Elle entre en vigueur conformément à ses dispositions.

25 2. Les lois adoptées par le Parlement du Royaume-Uni après l'entrée en vigueur de la Loi constitutionnelle de 1980 ne font pas partie du droit positif du Canada.

3. La partie de la version française de la présente loi qui figure à l'annexe A a force de loi au Canada au même titre que la version anglaise correspondante.

30 4. Titre abrégé de la présente loi: *Loi sur le Canada.*

Adoption de la Loi constitutionnelle de 1980

Cessation du pouvoir de légiférer pour le Canada

Version française

Titre abrégé

Constitution Act, 1980 enacted

Parliament of United Kingdom not to legislate for Canada

French version

Short title

LOI SUR LE CANADA

Préambule. — Indication des mesures prises au Canada en vue de permettre au Parlement du Royaume-Uni d'adopter le projet.

Formule introductrice. — Reprise de la formule employée en l'occurrence pour les lois du Royaume-Uni.

Art. 1. — Édicte au Canada la *Loi constitutionnelle de 1980* énoncée à l'annexe B et qui, exception faite de la procédure normale de modification, entre en vigueur par proclamation du gouverneur général (voir art. 29, 57 et 58 de l'annexe B).

Art. 2. — Nouvelle adoption, sous une forme modifiée, de l'article 4 du *Statut de Westminster, 1931*. Par suite de cet article et de l'abrogation, dans la mesure où ils visent le Canada, de l'art. 4 et du par. 7(1) du *Statut* (n° 16, annexe I de l'annexe B), le Royaume-Uni ne sera plus habilité à légiférer pour le Canada.

Art. 3. — Pour la première fois en ce qui concerne une loi du Royaume-Uni applicable au Canada, il est donné également force de loi aux versions française et anglaise de ce texte. Sa version française, dans la mesure où elle ne figure pas à l'annexe B, est énoncée à l'annexe A parce que les lois du Royaume-Uni ne sont adoptées qu'en anglais.

Art. 4. — Indication du titre abrégé : *Loi sur le Canada.*

CONSTITUTION ACT, 1980

PART I

Sections 1-30. The Charter. At present, a number of rights and freedoms are provided for by law. At the federal level, they are found in such statutes as the Canadian Bill of Rights, the Canadian Human Rights Act, the Official Languages Act and the Criminal Code. At the provincial level, laws have been enacted relating to such matters as non-discrimination, political and legal rights and, in a few instances, language rights. However, with few and limited exceptions, the rights and freedoms are not constitutionally guaranteed. What protection has been legislated yesterday can be removed or limited by another enactment tomorrow. The entrenchment of the rights contained in this Charter would place those rights beyond the ordinary reach of Parliament or a single provincial legislature.

The Charter would assure basic protection with respect to several categories of rights and freedoms, some of which are drawn from existing federal and provincial laws and some of which are new. The Charter provides for the following categories of rights: fundamental freedoms, democratic rights, mobility rights, legal rights, non-discrimination rights and language rights. The language rights relate to the use of English and French at the federal level in legislative proceedings, statutes and courts and in the provision by federal institutions of services to the public. In addition, certain rights to minority language educational instruction in each province and territory would be recognized.

1. New. Section 1 expresses a constitutional guarantee of the rights and freedoms set out in the Charter while at the same time acknowledging that such rights may be subject to reasonable limits traditionally recognized by the courts in a democratic society with a parliamentary system of government.

2. Section 2 declares the fundamental freedoms of all people in Canada. They are, with some modifications, essentially the freedoms now found in section 1 of the Bill of Rights. In section 2

(a) freedom of "religion" is expanded to include "conscience".

(b) freedom of "thought", etc., enlarges the prior freedom of "speech" to encompass not only the right to express one's views but also the right to hold those views. It includes freedom of the press and modernizes that concept by expressly including other media of information.

(c) freedom of "peaceful assembly", etc., adds the qualification "peaceful" to the prior freedom.

Sections 3-5. These sections declare certain rights that are fundamental to the continued existence of a free and democratic parliamentary system.

SCHEDULE B
CONSTITUTION ACT, 1980

PART I

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.

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.

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.

Rights and Freedoms of Canada

Fundamental freedoms

Democratic rights of citizens

Duration of elected legislative bodies

Continuation special circumstances

Droits et libertés au Canada

Libertés fondamentales

Droits démocratiques des citoyens

Mandat

Prolongations spéciales

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ANNEXE B

LOI CONSTITUTIONNELLE DE 1980

PARTIE I

CHARTRE CANADIENNE DES DROITS ET LIBERTÉS

Garantie des droits et libertés

1. La Charte canadienne des droits et libertés garantit les droits et libertés énoncés ci-après, sous les seules réserves normalement acceptées dans une société libre et démocratique de régime parlementaire.

Droits et libertés au Canada

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes:

- a) liberté de conscience et de religion;
b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres grands moyens d'information;
c) liberté de réunion pacifique et d'association.

Libertés fondamentales

Droits démocratiques

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.

Droits démocratiques des citoyens

4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date du rapport des brefs relatifs aux élections générales correspondantes.

Mandat

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongé respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.

Prolongations spéciales

LOI CONSTITUTIONNELLE DE 1980

PARTIE I

Art. 1-30. — La Charte. Actuellement, un certain nombre de droits et libertés sont inscrits dans divers textes. On peut citer, au niveau fédéral, la Déclaration canadienne des droits, la Loi canadienne sur les droits de la personne, la Loi sur les langues officielles et le Code criminel. Au niveau provincial, il existe des textes en matière de non-discrimination, de droits politiques et de garanties juridiques, ainsi que, dans quelques cas, de droits linguistiques. Toutefois, à de rares exceptions près, les droits et libertés ne sont pas garantis par la Constitution. La protection qu'une loi a accordée hier peut être restreinte ou retirée demain par une autre loi. L'inscription dans la Constitution des droits garantis par la Charte les placera hors de portée, dans les conditions ordinaires, du Parlement ou d'une législature provinciale.

La Charte assure la protection fondamentale de plusieurs catégories de droits et libertés, qu'elles proviennent de lois fédérales ou provinciales actuelles ou qu'elles soient nouvelles. Voici ces catégories : libertés fondamentales, droits démocratiques, liberté de circulation et d'établissement, garanties juridiques, droits à la non-discrimination, droits linguistiques. Ces derniers comportent l'emploi du français et de l'anglais, au niveau fédéral, dans les travaux parlementaires, devant les tribunaux et à l'occasion de la prestation des services publics. Au niveau provincial et dans les territoires, sont également prévus certains droits à l'enseignement dans la langue de la minorité.

Art. 1. — Nouveau. Garantie constitutionnelle des droits et libertés mentionnés, sous les seules réserves normalement acceptées dans une société libre et démocratique de régime parlementaire.

Art. 2. — Libertés fondamentales de toute la population du Canada. Avec quelques modifications, il s'agit essentiellement de libertés reprises de l'art. 1 de la Déclaration des droits. Les voici :

- Liberté de «religion», mais assortie de la liberté de «conscience».
— Liberté de «pensée», etc. : déborde l'ancienne notion de liberté de «parole» pour comprendre non seulement le droit d'exprimer ses vues, mais encore celui de s'y tenir. S'y ajoute la liberté de la «presse», assortie, par souci d'actualisation, de la liberté des «autres grands moyens d'information».
— Liberté de «réunion pacifique», etc. : adjonction du qualificatif.

Art. 3-5. — Énonciation de certains droits essentiels au maintien d'un régime parlementaire libre et démocratique.

3. New. Section 3 would ensure the right of citizens to vote and become members of legislative bodies.

4. Section 4 would modify section 50 of the B.N.A. Act and similar provisions in provincial constitutions in respect of the duration of the House of Commons and the legislative assemblies and would combine the substance of those provisions with part of section 91, class 1 of the B.N.A. Act. It would guarantee federal and provincial elections at least once every five years (except in time of real or apprehended war, invasion or insurrection). (Section 91, class 1 would be repealed by section 51 of Schedule B.)

5. Section 5 would modify section 20 of the B.N.A. Act and similar provisions in provincial constitutions in respect of sittings of Parliament and the legislatures. It would require at least one sitting of those bodies every twelve months. (For repeals, see items 1(2) and 2(2) of Schedule I to Schedule B.)

6. Section 6 would recognize three rights. The first right is that of a citizen to enter, remain in and leave Canada. The other rights are those of a citizen or permanent resident, firstly, to move to and to take up residence in any province and, secondly, to seek a livelihood in any province, without discrimination based on provincial boundaries. These last two rights would be subject to the same general laws as are applicable to residents of that province (e.g. laws respecting the payment of taxes and the terms and conditions of employment) and to laws specifying reasonable residence requirements for newcomers as a condition for receiving public social services.

Sections 7-14. These sections set out basic legal rights in Canada. Some of these rights are now recognized in the Bill of Rights and others would be recognized for the first time in this Act. Of the latter, some now find expression in the *International Covenant on Civil and Political Rights* (the U.N. Covenant) to which Canada became a party in 1976. All rights would have immediate application except for the non-discrimination rights which would begin to apply three years later. (See the explanatory note for section 29.)

7. This provision derives from section 1 of the Bill of Rights with some modification in wording.

8. New. This provision derives in part from the U.N. Covenant.

9. This provision derives from paragraph 2(a) of the Bill of Rights.

10. The provisions on arrest and detention are in essence the same as those set out in paragraph 2(c) of the Bill of Rights.

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

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.

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.

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

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

10. Everyone has the right on arrest or detention

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

Annual sitting of legislative bodies

Séance annuelle

Rights of citizens to move

Droits des citoyens

Rights to move and gain livelihood

Droits généraux

Limitation

Restriction

Life, liberty and security of person

Vie, liberté et sécurité

Search or seizure

Fouilles, perquisitions et saisies

Detention or imprisonment

Détention ou emprisonnement

Arrest or detention

Arrestation ou détention

Séance annuelle

5. Le Parlement et les législatures tiennent une séance au moins une fois tous les douze mois.

Liberté de circulation et d'établissement

Droits des citoyens

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

Droits généraux

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit:

- 10 a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;
b) de gagner leur vie dans toute province.

Restriction

(3) Les droits mentionnés au 15 paragraphe (2) sont subordonnés:

- 20 a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;
b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Garanties juridiques

Vic, liberté et sécurité

25 7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Fouilles, perquisitions et saisies

30 8. Chacun a droit à la protection contre les fouilles, les perquisitions et les saisies abusives dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit.

Détenation ou emprisonnement

35 9. Chacun a droit à la protection contre la détention ou l'emprisonnement dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit.

Arrestation ou détention

40 10. Chacun a le droit, en cas d'arrestation ou de détention:
a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;

Art. 3. — Nouveau. Droit de vote et éligibilité des citoyens.

Art. 4. — Modification de l'art. 50 de l'AANB et des dispositions comparables des constitutions provinciales touchant la durée du mandat de la Chambre des communes et des assemblées législatives, et fusion de ces dispositions avec une partie de la rubrique 1 de l'art. 91 de l'AANB. Garantie d'élections fédérales et provinciales au moins tous les cinq ans, sauf en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées. (Abrogation, par l'art. 51 de l'annexe B, de la rubrique 1 de l'art. 91 de l'AANB.)

Art. 5. — Modification de l'art. 20 de l'AANB et des dispositions comparables des constitutions provinciales touchant les séances du Parlement et des législatures. Obligation pour ces instances de tenir une séance au moins une fois tous les douze mois. (Pour les abrogations, voir n^{os} 1(2) et 2(2) de l'annexe I de l'annexe B.)

Art. 6. — Reconnaissance de trois droits. Premier droit : celui des citoyens de demeurer au Canada, d'y entrer ou d'en sortir. Deuxième et troisième droits : ceux des citoyens ou des résidents permanents, d'abord, de se déplacer dans tout le pays et d'établir leur résidence dans toute province, ensuite, de gagner leur vie dans toute province, indépendamment de distinctions fondées sur les limites provinciales. Ces deux derniers droits sont subordonnés aux lois et usages d'application générale concernant les résidents de la province concernée (impôts, taxes, conditions de travail, etc.), ainsi qu'aux lois qui prévoient de justes conditions de résidence pour les nouveaux venus en vue de l'obtention de services sociaux publics.

Art. 7-14. — Énonciation des garanties juridiques fondamentales au Canada. Certains de ces droits figurent dans la *Déclaration des droits*, d'autres sont inscrits pour la première fois dans un texte fédéral. Parmi ces derniers, quelques-uns se trouvent dans le *Pacte international relatif aux droits civils et politiques (Pacte de l'ONU)*, auquel le Canada a adhéré en 1976. Application immédiate de tous ces droits, exception faite des droits à la non-discrimination (voir la note explicative de l'art. 29).

Art. 7. — Découle de l'art. 1 de la *Déclaration des droits* (modification partielle de forme).

Art. 8. — Nouveau. Découle en partie du *Pacte de l'ONU*.

Art. 9. — Découle de l'al. 2a) de la *Déclaration des droits*.

Art. 10. — Les dispositions relatives à l'arrestation et à la détention sont essentiellement les mêmes que celles de l'al. 2c) de la *Déclaration des droits*.

11. Paragraphs 11(c) and (d) would assure rights of an accused in criminal and penal proceedings at present found in paragraphs 2(e) and (f) of the Bill of Rights. Paragraphs 11(a), (b), (e), (f) and (g) would assure new rights of an accused in such proceedings and are drawn from similar provisions now found in the U.N. Covenant.

12. This provision derives from paragraph 2(b) of the Bill of Rights.

13. The protection against self-crimination is an elaboration of the right now provided in paragraph 2(d) of the Bill of Rights.

14. This provision derives from paragraph 2(g) of the Bill of Rights.

(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.

11. Anyone charged with an offence has the right

- (a) to be informed promptly of the specific offence; 10
- (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; 15
- (d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;
- (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; 20
- (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 25
- (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. 30

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.

Proceedings in criminal and penal matters

Treatment or punishment

Self-crimination

Interpreter

Affaires criminelles et pénales

Punition

Déclaration incriminante

Interprète

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- b) d'avoir recours sans délai à l'assistance d'un avocat;
- c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

Affaires criminelles et pénales

11. Tout inculpé a le droit:

- a) d'être informé dans les meilleurs délais de l'infraction précise qu'on lui reproche;
- b) d'être jugé dans un délai raisonnable;
- c) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;
- d) de ne pas être privé d'une mise en liberté assortie d'un cautionnement raisonnable, sauf pour des motifs fondés sur la loi et dans les conditions que celle-ci prévoit;
- e) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction;
- f) de n'être poursuivi ou puni qu'une fois pour une infraction dont il a déjà été définitivement acquitté ou déclaré coupable;
- g) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

Punition

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

Déclaration incriminante

13. Chacun a droit, s'il est contraint de témoigner, à ce qu'aucun témoignage incriminant qu'il donne ne soit utilisé pour l'incriminer dans d'autres procédures, sauf lors de poursuites pour parjure ou pour témoignages contradictoires.

Interprète

14. La partie ou le témoin qui, lors de procédures, ne comprennent pas ou ne parlent pas la langue employée ont droit à l'assistance d'un interprète.

Art. 11, al. 11c) et d). — Droits de l'inculpé, en matière de procédures criminelles et pénales, identiques à ceux qui figurent actuellement aux al. 2e) et f) de la *Déclaration des droits*.

Art. 11, al. 11a), b), e), f) et g). — Droits nouveaux octroyés à l'inculpé dans de pareilles procédures, tirés de dispositions comparables du *Pacte de l'ONU*.

Art. 12. — Découle de l'al. 2b) de la *Déclaration des droits*.

Art. 13. — Protection contre l'incrimination : précision du droit prévu à l'al. 2d) de la *Déclaration des droits*.

Art. 14. — Découle de l'al. 2g) de la *Déclaration des droits*.

Non-discrimination Rights

15. The guarantee of the right to equality before the law and to the equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, age or sex derives essentially from section 1 of the Bill of Rights except for ethnic origin and age which are new. Subsection (2) would ensure that "affirmative action" programs for disadvantaged groups will not be prohibited even though such programs may discriminate among persons. Section 15 would not have application until three years after the coming into force of this Act. (See the explanatory note for section 29.)

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.

Equality before the law and equal protection of the law

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(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.

Affirmative action programs

Égalité devant la loi et protection égale de la loi

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Programmes d'action sociale

Official Languages of Canada

Sections 16-22. These sections would give constitutional equality of status to English and French and recognize language rights at the federal level.

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.

Official languages of Canada

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16. (1) New. Subsection 16(1) declares English and French to be the official languages of Canada and would recognize their equality of status and use in all institutions of the Parliament and government of Canada. It derives from section 2 of the *Official Languages Act* 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.

Extension of status and use

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Langues officielles du Canada

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Portée

(2) New. Subsection (2) anticipates legislation by Parliament and the legislatures to extend the status of English and French beyond that specified in the Charter.

17. The right to use English and French in debates of Parliament is provided for in section 133 of the B.N.A. Act. The Charter would extend the right to cover other proceedings (e.g. Parliamentary committees).

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

Proceedings of Parliament

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Travaux du Parlement

18. The requirement in section 18 to print and publish federal statutes, etc., in English and French derives from section 133 of the B.N.A. Act. The section would also ensure that both language versions are equally authoritative.

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

Parliamentary statutes and records

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Documents parlementaires

19. This section would confirm the right to use both English and French in all courts established by Parliament. It derives from section 133 of the B.N.A. Act.

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.

Proceedings in courts established by Parliament

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Procédures devant les tribunaux établis par le Parlement

20. Section 20 would assure to members of the public the right, in specified circumstances, to use either English or French in communications with, and in receiving services from, institutions of the Parliament and government of Canada. The section derives in part from sections 9 and 10 of the *Official Languages Act* of Canada.

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

Communications by public with federal institutions

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Communications entre les administrés et les institutions fédérales

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Droits à la non-discrimination

Égalité devant la loi et protection égale de la loi 15. (1) Tous sont égaux devant la loi et ont droit à la même protection de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge ou le sexe.

Programmes d'action sociale (2) Le présent article n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation des personnes et des groupes défavorisés.

Langues officielles du Canada

Langues officielles du Canada 10 16. (1) Le français et l'anglais sont les langues officielles du Canada; elles ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions du Parlement et du gouvernement du Canada.

Portée 15 (2) La présente charte ne limite pas le pouvoir du Parlement et des législatures d'améliorer le statut du français et de l'anglais ou de l'une de ces langues, ou d'en développer l'usage.

Travaux du Parlement 20 17. Chacun a le droit d'employer la langue officielle de son choix dans les débats et travaux du Parlement.

Documents parlementaires 25 18. Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Procédures devant les tribunaux établis par le Parlement 30 19. Chacun a le droit d'employer la langue officielle de son choix dans toutes les affaires dont sont saisis les tribunaux établis par le Parlement et dans tous les actes de procédure qui en découlent.

Communications entre les administrés et les institutions fédérales 35 20. Chacun a, au Canada, à titre privé, droit à l'emploi de la langue officielle de son choix pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions situé dans une région du Canada où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement,

Art. 15. — La garantie du droit à l'égalité devant la loi et à la même protection de la loi, indépendamment de toute distinction fondée sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge ou le sexe, dérive essentiellement de l'art. 1 de la *Déclaration des droits*, sauf pour ce qui est de l'origine ethnique et de l'âge (ces deux derniers éléments sont nouveaux). Grâce au par. (2), les programmes d'action sociale visant les groupes défavorisés ne sauraient être interdits même s'ils risquent d'établir des distinctions entre des personnes. L'art. 15 ne s'applique que trois ans après l'entrée en vigueur de la présente loi (voir la note explicative de l'art. 29).

Art. 16-22. — Inclusion dans la Constitution de l'égalité de statut du français et de l'anglais et reconnaissance des droits linguistiques au niveau fédéral.

Art. 16, par. (1). — Nouveau. Le français et l'anglais sont déclarés langues officielles du Canada. Sont reconnus leur égalité de statut et leur usage dans toutes les institutions du Parlement et du gouvernement du Canada. Découle de l'art. 2 de la *Loi sur les langues officielles*.

Art. 16, par. (2). — Nouveau. Envisage, par intervention législative du Parlement et des législatures, l'amélioration du statut du français et de l'anglais par rapport au statut que leur octroie la Charte.

Art. 17. — Le droit à l'emploi du français et de l'anglais dans les débats du Parlement est prévu par l'art. 133 de l'AANB. La Charte élargit ce droit aux autres travaux (ceux des comités parlementaires par exemple).

Art. 18. — L'obligation d'impression et de publication des lois fédérales, etc., en français et en anglais découle de l'art. 133 de l'AANB. S'y ajoute ici la notion de force de loi et de valeur égales des deux versions.

Art. 19. — Confirmation du droit d'employer les deux langues officielles devant tous les tribunaux établis par le Parlement. Découle de l'art. 133 de l'AANB.

Art. 20. — Droit de chacun, à titre privé, dans des circonstances précisées, à l'emploi de la langue officielle de son choix pour communiquer avec les institutions du Parlement et du gouvernement du Canada et pour en recevoir les services. Découle en partie des art. 9 et 10 et de la *Loi sur les langues officielles*.

21. By section 21, existing language protection provided for by the present Constitution (e.g. the protection set out in section 133 of the B.N.A. Act and section 23 of the *Manitoba Act, 1870*) would be continued.

22. New. This section would preserve existing rights and privileges relating to languages other than English and French.

23. New. Subsection (1) would establish a right for Canadian citizens whose first language learned and still understood is English or French to have their children educated in that language. Subsection (2) would enable citizens who move from one province to another to have their children educated in English or French if any of their children started their studies in that language. In both cases, the right would be subject to there being a sufficient number of students in a given area to warrant the provision in that area of minority language educational facilities.

a substantial number of persons within the population use that language.

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.

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.

Continuation of existing constitutional provisions

Rights and privileges preserved

Language of instruction

Continuity of language of instruction

Maintien en vigueur de certaines dispositions

Droits préservés

Langue d'instruction

Continuité d'emploi de la langue d'instruction

qu'une partie importante de la population emploie la langue qu'il a choisie.

Maintien en vigueur de certaines dispositions

21. Les articles 16 à 20 n'ont pas pour effet, en ce qui a trait à la langue française ou anglaise ou à ces deux langues, de porter atteinte aux droits, privilèges ou obligations qui existent ou sont maintenus aux termes d'une autre disposition de la Constitution du Canada.

Art. 21. — Maintien de la protection linguistique prévue dans l'actuelle Constitution (par exemple, dans l'art. 133 de l'AANB et l'art. 23 de la Loi de 1870 sur le Manitoba).

Droits préservés

22. Les articles 16 à 20 n'ont pas pour effet de porter atteinte aux droits et privilèges, antérieurs ou postérieurs à l'entrée en vigueur de la présente charte et découlant de la loi ou de la coutume, des langues autres que le français ou l'anglais.

Art. 22. — Nouveau. Maintien des droits et privilèges existants en matière de langues tierces.

Droits à l'instruction dans la langue de la minorité

Langue d'instruction

23. (1) Les citoyens canadiens dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de leur province de résidence ont le droit de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité dans toute région de la province où le nombre des enfants de ces citoyens justifie la mise sur pied, au moyen de fonds publics, d'installations d'enseignement dans cette langue.

Art. 23. — Nouveau. Par. (1) : institution, pour les citoyens canadiens dont la première langue apprise et encore comprise est le français ou l'anglais, du droit de faire instruire leurs enfants dans cette langue. Par. (2) : droit pour les citoyens qui changent de province de faire instruire leurs enfants en français ou en anglais si l'un de ces derniers a commencé ses études dans cette langue. L'un et l'autre de ces droits sont subordonnés à la condition qu'il y ait, dans une région donnée, suffisamment d'élèves du groupe linguistique minoritaire pour que se justifie la mise sur pied d'installations d'enseignement dans la langue en question.

Continuité d'emploi de la langue d'instruction

(2) Le citoyen canadien qui change de résidence d'une province à une autre a le droit de faire instruire ses enfants, aux niveaux primaire et secondaire, dans la langue, française ou anglaise, dans laquelle l'un de ses enfants recevait son instruction dans la province de son ancienne résidence, dans toute région de sa nouvelle province de résidence où le nombre d'enfants de citoyens jouissant d'un droit reconnu au présent article justifie la mise sur pied, au moyen de fonds publics, d'installations d'enseignement dans cette langue.

24. New. Section 24 would make it clear that the Charter is not intended to affect any rights and freedoms not specified in it, including those of the native peoples.

Sections 25-30. These sections are all new and would provide guidance as to how the rights and freedoms guaranteed by the Charter would apply.

25. Section 25 provides that any law that is inconsistent with the Charter is inoperative to the extent of the inconsistency. This would establish the supremacy of the Charter over all other laws.

26. Section 26 would make it clear that no provision of the Charter other than the section respecting self-crimination (section 13) would affect existing or future laws respecting the admissibility of evidence.

27. This section makes it clear that the Charter, where relevant, would apply in its entirety to the Yukon Territory and the Northwest Territories.

28. The Charter would not extend any legislative powers.

29. On coming into force, the Charter would be entrenched in the Constitution and, except for the non-discrimination rights contained in section 15, would have immediate application. Section 15 would not have application for three years in order to permit Parliament and the provincial legislatures to make consequential amendments to other legislation. The Charter could only be amended under sections 36 and 50.

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.

Undeclared rights and freedoms 5

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.

Primacy of Charter 10

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.

Laws respecting evidence 15

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.

Application to territories and territorial authorities 20

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

Legislative powers not extended

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

Application of Charter 25

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

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

Exception 35

Droits et libertés non expressément visés

Primauté de la charte

Droit sur la preuve

Application aux territoires

Non-élargissement des compétences législatives

Application de la charte

Restriction

Droits et libertés non expressément visés

24. La présente charte ne nie pas l'existence des droits et libertés qu'elle ne garantit pas expressément et qui existent au Canada, notamment les droits et libertés des peuples autochtones du Canada.

Art. 24. — Nouveau. Fait bien comprendre que la Charte n'a pas pour effet de porter atteinte aux droits et libertés qui n'y sont pas précisés, comme ceux des peuples autochtones.

Art. 25-30. — Tous nouveaux. Visent à guider l'application des droits et libertés inscrits dans la Charte.

Dispositions générales

25. La présente charte rend inopérantes les dispositions incompatibles de toute autre règle de droit.

Art. 25. — Prévoit que toute règle de droit incompatible avec la Charte est inopérante. Établit la primauté de la Charte sur toute autre règle juridique.

26. A l'exception de l'article 13, les dispositions de la présente charte ne portent pas atteinte aux lois sur l'admissibilité de la preuve en justice, ni aux pouvoirs du Parlement et des législatures de légiférer en cette matière.

Art. 26. — Fait bien comprendre qu'à part l'art. 13 (incrimination), aucune disposition de la Charte ne porte atteinte aux lois, actuelles ou futures, sur l'admissibilité de la preuve en justice.

27. Dans la présente charte, les dispositions qui visent les provinces, leur législature ou leur assemblée législative visent également le territoire du Yukon, les territoires du Nord-Ouest ou leurs autorités législatives compétentes.

Art. 27. — Fait bien comprendre que, dans les circonstances indiquées, la Charte s'applique dans son intégralité au territoire du Yukon et aux territoires du Nord-Ouest.

28. La présente charte n'élargit pas les compétences législatives de quelque organisme ou autorité que ce soit.

Art. 28. — Non-élargissement par la Charte des compétences législatives.

Application de la charte

- 29. (1) La présente charte s'applique:
 - 25 a) au Parlement et au gouvernement du Canada, ainsi qu'à tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest;
 - 30 b) à la législature et au gouvernement de chaque province, ainsi qu'à tous les domaines relevant de cette législature.

Art. 29. — Dès son entrée en vigueur, la Charte sera inscrite dans la Constitution. Toutefois, la mise en application de l'art. 15 de la Charte sera reportée à trois ans pour permettre au Parlement et aux législatures d'apporter à d'autres lois des modifications corrélatives. Toute modification de la Charte devra se faire conformément aux procédures applicables visées aux art. 36 et 50.

(2) Par dérogation au paragraphe (1), l'article 15 ne s'applique que trois ans après l'entrée en vigueur, exception faite de la partie V, de la présente loi.

30. New. This section would give the Charter the title *Canadian Charter of Rights and Freedoms*.

PART II

31. (1) New. Subsection (1) would affirm the commitment by Parliament and the provincial legislatures to promote equal opportunities, further economic development and provide essential public services.

(2) New. Subsection (2) would affirm the commitment of the Parliament and government of Canada to take measures to ensure the provision of essential public services at reasonable levels of provincial taxation.

PART III

32. This section would introduce a new obligation for federal-provincial discussions on the Constitution. A constitutional conference of first ministers would be convened annually until a general procedure for amending the Constitution of Canada comes into force under Part V.

PART IV

Sections 33-40. New. These sections would provide an interim procedure for amending the Constitution that would apply until such time as a general procedure comes into force. Part IV would also provide a mechanism whereby the Senate and House of Commons and the provincial legislative assemblies could choose to adopt the general

Citation

30. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

Citation

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

Commitment to promote equal opportunities

- (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.

Commitment respecting essential public services

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.

Constitutional conferences

PART IV

INTERIM AMENDING PROCEDURE AND RULES FOR ITS REPLACEMENT

33. Until Part V comes into force, 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 resolutions of the Senate and House of Commons and by

Interim procedure for amending Constitution of Canada

Titre

Engagements relatifs à l'égalité des chances

Engagement relatif aux services publics essentiels

Conférences constitutionnelles

Procédure provisoire de modification

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30. Titre de la présente partie: *Charte canadienne des droits et libertés.*

PARTIE II

PÉRÉQUATION ET INÉGALITÉS RÉGIONALES

31. (1) Sous réserve des compétences législatives du Parlement et des législatures et de leur droit de les exercer, le Parlement et les législatures, ainsi que les gouvernements fédéral et provinciaux, s'engagent à:

- a) promouvoir l'égalité des chances de tous les Canadiens dans la recherche de leur bien-être;
- b) favoriser le développement économique pour réduire l'inégalité des chances;
- c) fournir à tous les Canadiens, à un niveau de qualité acceptable, les services publics essentiels.

(2) Le Parlement et le gouvernement du Canada s'engagent à prendre les dispositions propres à mettre les provinces en mesure d'assurer les services publics essentiels visés à l'alinéa (1)c sans qu'elles aient à imposer un fardeau fiscal excessif.

PARTIE III

CONFÉRENCES CONSTITUTIONNELLES

32. Avant l'entrée en vigueur de la partie V, le premier ministre du Canada convoque au moins une fois par an une conférence constitutionnelle réunissant les premiers ministres provinciaux et lui-même, sauf si la majorité d'entre eux décide de ne pas la tenir une année donnée.

PARTIE IV

PROCÉDURE PROVISOIRE DE MODIFICATION ET RÈGLES DE REMPLACEMENT

33. Avant l'entrée en vigueur de la partie 30V, la Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat et de la Chambre des communes et par l'assemblée

Art. 30. — Nouveau. Indication du titre de la Charte : *Charte canadienne des droits et libertés.*

PARTIE II

Art. 31, par. (1). — Nouveau. Le Parlement et les législatures s'engagent à promouvoir l'égalité des chances, à favoriser le développement économique et à fournir les services publics essentiels.

Art. 31, par. (2). — Nouveau. Le Parlement et le gouvernement du Canada s'engagent à mettre les provinces en mesure d'assurer les services publics essentiels sans qu'elles aient à imposer un fardeau fiscal excessif.

PARTIE III

Art. 32. — Nouvelle obligation imposée à l'endroit des délibérations fédéro-provinciales sur la Constitution : convocation annuelle d'une conférence constitutionnelle des premiers ministres jusqu'à l'entrée en vigueur de la procédure normale de modification de la Constitution prévue par la partie V.

PARTIE IV

Art. 33-40. — Nouveau. Est prévue une procédure provisoire de modification de la Constitution s'appliquant tant qu'une procédure normale n'est pas en vigueur. Est en outre prévu un mécanisme permettant au Sénat, à la Chambre des communes et aux assemblées législatives provinciales de décider d'adopter la procédure normale

amending procedure set out in Part V or some other amending procedure prior to the day on which the procedure set out in Part V would come into force automatically (i.e. two years after the rest of the Act comes into force). Finally it would provide that, in the event of a lack of agreement as to an appropriate general amending procedure, upon provincial request the people would, by means of a referendum, choose between a procedure proposed by the government of Canada and one proposed by the provinces.

33. This section sets out the general rule that, in the interim period, constitutional amendments would require the unanimous consent of both Houses of Parliament and the legislative assemblies or governments of all provinces.

34. This section provides a special rule whereby some amendments that would not apply to all provinces, such as the Terms of Union with certain provinces, could be made where authorized by both Houses of Parliament and the legislative assemblies of the provinces concerned.

35. The interim amending procedure could be initiated by the Senate, the House of Commons or a provincial legislative assembly or government. An authorization could be withdrawn before the amendment becomes law.

36. This section would provide a limitation on the use of the interim amending procedure. If there is another procedure for amending the Constitution, such as section 91, class 1 or section 92, class 1 of the B.N.A. Act, during the interim period it would apply rather than the unanimity rules set out in sections 33 and 34.

37. The interim amending procedure would be replaced by the general amending procedure, with or without amendments, two years after the rest of the Act comes into force or earlier if unanimous agreement is reached. If agreement is not reached and the provinces propose another procedure, the interim procedure would remain in effect until after a referendum is held under section 38.

38. Section 38 provides that if eight or more provinces having eighty per cent of the population of all provinces wish to propose an alternative general amending procedure

the legislative assembly or government of each province.

34. Until Part V comes into force, 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 by the legislative assembly or government of each province to which the amendment applies.

35. (1) The procedures for amendment described in sections 33 and 34 may be initiated either by the Senate or House of Commons or by the legislative assembly or government of a province.

(2) A resolution made or other authorization given for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

36. Sections 33 and 34 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 procedure prescribed by section 33 shall be used to amend the *Canadian Charter of Rights and Freedoms* and any provision for amending the Constitution, including this section, and may be used in making a general consolidation and revision of the Constitution.

37. Part V shall come into force

(a) with or without amendment, on such day as may be fixed by proclamation issued pursuant to the procedure prescribed by section 33, or

(b) on the day that is two years after the day this Act, except Part V, comes into force,

whichever is the earlier day but, if a referendum is required to be held under subsection 38(3), Part V shall come into force as provided in section 39.

38. (1) The governments or legislative assemblies of eight or more provinces that have, according to the then latest general

Amendment of provisions relating to some but not all provinces

Rules applicable to amendment procedures

Idem

Limitation on use of interim amending procedure

Coming into force of Part V

Provincial alternative procedure

Modification à l'égard de certaines provinces

Règles

Idem

Restriction du recours à la procédure provisoire

Entrée en vigueur de la partie V

Proposition de remplacement

législative ou le gouvernement de toutes les provinces.

34. Avant l'entrée en vigueur de la partie V, les dispositions de la Constitution du Canada applicables à certaines provinces seulement peuvent être modifiées par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat et de la Chambre des communes et par l'assemblée législative ou le gouvernement de chaque province à laquelle la modification s'applique.

35. (1) L'initiative des procédures de modification visées aux articles 33 et 34 appartient au Sénat, à la Chambre des communes, à l'assemblée législative d'une province ou au gouvernement de celle-ci.

(2) La résolution adoptée ou l'autorisation donnée, dans le cadre de la présente partie, peut être révoquée à tout moment avant la date de la proclamation qu'elle autorise.

36. Les articles 33 et 34 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée à l'article 33 s'impose toutefois pour modifier la *Charte canadienne des droits et libertés*, ainsi que les dispositions relatives à la modification de la Constitution, y compris le présent article; cette procédure peut également servir à toute codification ou révision générales de la Constitution.

37. La partie V entre en vigueur à la 35 première des dates suivantes:

a) avec ou sans modification, à la date fixée par proclamation prise conformément à la procédure visée à l'article 33;

b) deux ans après l'entrée en vigueur, exception faite de la partie V, de la présente loi.

Il demeure entendu que, si la tenue d'un référendum s'impose conformément au paragraphe 38(3), la partie V entre en vigueur 45 conformément à l'article 39.

38. (1) Les gouvernements ou assemblées législatives d'au moins huit provinces dont la population confondue représente, selon le

énoncée à la partie V ou toute autre procédure de modification avant l'entrée en vigueur d'office de la procédure normale (c'est-à-dire deux ans après l'entrée en vigueur du reste de la *Loi constitutionnelle de 1980*.) Il est enfin prévu que, faute d'accord sur une procédure normale, la population choisira par voie de référendum, sur demande provinciale, entre la procédure proposée par le gouvernement du Canada et celle des provinces.

Art. 33. — Énonciation de la règle générale selon laquelle, pendant la période d'application de la procédure provisoire, il faudra le consentement unanime des deux chambres du Parlement et des assemblées législatives ou des gouvernements de toutes les provinces.

Art. 34. — Énonciation de la règle spéciale selon laquelle certaines modifications non applicables à l'ensemble des provinces, comme en matière de conditions d'adhésion d'une province, pourront se faire sur autorisation des deux chambres du Parlement et des assemblées législatives des provinces concernées.

Art. 35. — L'initiative de la procédure provisoire de modification appartient au Sénat, à la Chambre des communes ou à l'assemblée législative ou au gouvernement d'une province. L'autorisation de modification peut par ailleurs être retirée avant que la modification n'ait force de loi.

Art. 36. — Restriction du recours à la procédure provisoire de modification. S'il existe une procédure différente de modification, par exemple celle qui est prévue aux art. 91 (rubrique 1) ou 92 (rubrique 1) de l'AANB, c'est elle qui, pendant la période d'application de la procédure provisoire, s'appliquera au lieu des règles de l'unanimité prévues aux art. 33 et 34.

Art. 37. — Remplacement, avec ou sans modification, de la procédure provisoire par la procédure normale deux ans après l'entrée en vigueur du reste de la présente loi, ou plus tôt en cas de consentement unanime. Faute de consentement et si les provinces proposent une autre procédure, la procédure provisoire restera en vigueur tant que n'aura pas eu lieu le référendum prévu à l'art. 38.

Art. 38. — Possibilité pour au moins huit provinces dont la population représente quatre-vingts pour cent de celle de toutes les provinces de proposer une procédure normale

they could do so within two years after the rest of the Act comes into force. A referendum would then have to be held within a further two year period to decide whether the procedure proposed by the provinces or the procedure set out in paragraph 41(1)(b) (or another procedure proposed by the government of Canada) should be adopted as the general procedure for amending the Constitution.

census, combined populations of at least eighty per cent of the population of all the provinces may make a single proposal to substitute for paragraph 41(1)(b) such alternative as they consider appropriate.

(2) One copy of an alternative proposed under subsection (1) may be deposited with the Chief Electoral Officer of Canada by each proposing province within two years after this Act, except Part V, comes into force but, prior to the expiration of that period, any province that has deposited a copy may withdraw that copy.

(3) Where copies of an alternative have been filed as provided by subsection (2) and, on the day that is two years after this Act, except Part V, comes into force, at least eight copies remain filed by provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces, the government of Canada shall cause a referendum to be held within two years after that day to determine whether

(a) paragraph 41(1)(b) or any alternative thereto proposed by the government of Canada by depositing a copy thereof with the Chief Electoral Officer at least ninety days prior to the day on which the referendum is held, or

(b) the alternative proposed by the provinces, shall be adopted.

39. Where a referendum is held, Part V, with any amendments necessary to reflect the choice of the voters, would come into force on proclamation issued within six months after the referendum.

39. Where a referendum is held under subsection 38(3), a proclamation under the Great Seal of Canada shall be issued within six months after the date of the referendum bringing Part V into force with such modifications, if any, as are necessary to incorporate the proposal approved by a majority of the persons voting at the referendum and with such other changes as are reasonably consequential on the incorporation of that proposal.

40. Section 40 would authorize the making of rules for the holding of a referendum and would ensure the right of citizens to vote in a referendum.

40. (1) Subject to subsection (2), Parliament may make laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

5

Procedure for perfecting alternative

Referendum

Coming into force of Part V where referendum held

Rules for referendum

Possibilité de mise au point

Référendum

Entrée en vigueur de la partie V après référendum

Règles en matière de référendum

recensement général le plus récent à l'époque, au moins quatre-vingts pour cent de la population de toutes les provinces peuvent présenter une proposition commune en vue de remplacer la procédure prévue à l'alinéa 41(1)b).

Possibilité de mise au point

(2) Chaque province concernée peut déposer le texte de la proposition visée au paragraphe (1) auprès du directeur général des élections du Canada dans les deux ans suivant l'entrée en vigueur, exception faite de la partie V, de la présente loi, étant entendu qu'elle peut retirer le texte au cours de cette période.

Référendum

(3) Dans les cas où, deux ans après l'entrée en vigueur, exception faite de la partie V, de la présente loi, au moins huit provinces remplissant les conditions démographiques visées au paragraphe (1) n'ont pas retiré leur texte, le gouvernement du Canada fait tenir, dans les deux années suivant l'échéance des deux ans, un référendum pour déterminer laquelle des procédures suivantes sera adoptée:

- a) celle qui est prévue à l'alinéa 41(1)b) ou l'éventuelle procédure de remplacement proposée par le gouvernement du Canada après dépôt de son texte auprès du directeur général des élections au moins quatre-vingt-dix jours avant la date du référendum;
- b) celle qui fait l'objet de la proposition des provinces.

Entrée en vigueur de la partie V après référendum

39. Dans les six mois suivant la date du référendum, une proclamation sous le grand sceau du Canada est prise en vue de faire entrer en vigueur la partie V, éventuellement modifiée dans la mesure nécessaire pour incorporer la proposition approuvée par la majorité des votants et pour intégrer les autres aménagements justifiés qui en découlent.

Règles en matière de référendum

40. (1) Sous réserve du paragraphe (2), le Parlement peut légiférer pour réglementer la tenue du référendum visé au paragraphe 38(3).

différente de modification dans les deux ans suivant l'entrée en vigueur du reste de la présente loi. Le cas échéant, est tenu, dans un nouveau délai de deux ans, un référendum pour déterminer si la procédure normale à adopter sera celle des provinces ou celle qui est visée à l'al. 41(1)b) (ou toute autre procédure proposée par le gouvernement du Canada).

Art. 39. — Dans les six mois suivant la date du référendum, une proclamation fait entrer en vigueur la partie V, assortie des aménagements justifiés par le choix des votants.

Art. 40. — Réglementation relative à la tenue du référendum et institution du droit de vote des citoyens à cette occasion.

(2) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

Right to vote

Droit de vote

PART V

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

Sections 41-51. New. These sections would provide a general procedure whereby the Constitution of Canada could be amended in Canada. Under the procedure, amendments would be made by proclamation issued by the Governor General after specified prior authorization has been obtained. Except where otherwise indicated, the procedure derives from the proposed *Canadian Constitutional Charter, 1971*, known as the Victoria Charter. As set out in Part IV, the general amending procedure would come into force after the other provisions of the *Canada Act*. This would leave time for further discussion and for possible agreed changes in the procedure to be made before it has effect. (For coming into force, see also section 58.)

41. The proposed general procedure for amending most constitutional provisions, other than those that relate only to Parliament, the federal executive government or provincial constitutions and those for which the Constitution provides another amending procedure, derives from the Victoria Charter and is set out in subsection 41(1). For an amendment to be made under the general procedure, it would be necessary to have the approval of the Senate and House of Commons and the legislative assemblies of at least six provinces representing all regions of Canada. (See subsection 41(2) for definitions.)

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

5 General procedure for amending Constitution of Canada

Procédure normale de modification

(a) resolutions of the Senate and House of 10 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 15 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, 20

(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, 25 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 30 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; 35

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

Definitions

"Atlantic provinces"

"Western provinces"

Définitions

«provinces de l'Atlantique»

«provinces de l'Ouest»

Modification autorisée par référendum

42. This provision, which is not found in earlier proposals, would permit an amendment to the Constitution to be made upon authorization by a national referendum

42. (1) An amendment to the Constitution of Canada may be made by proclamation 40 issued by the Governor General under the

Amendment authorized by referendum

(2) Tout citoyen canadien a le droit de vote à l'occasion du référendum visé au paragraphe 38(3). Ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.

PARTIE V

PROCÉDURE DE MODIFICATION DE LA CONSTITUTION DU CANADA

41. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée:

10 a) par des résolutions du Sénat et de la Chambre des communes;

b) par des résolutions des assemblées législatives d'une majorité des provinces; cette majorité doit comprendre:

15 (i) chaque province dont la population, avant la date de cette proclamation, représentait, selon un recensement général antérieur quelconque, au moins vingt-cinq pour cent de la population du Canada,

20 (ii) au moins deux des provinces de l'Atlantique dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces,

25 (iii) au moins deux des provinces de l'Ouest dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces.

30 (2) Les définitions qui suivent s'appliquent au présent article.

Définitions

35 «provinces de l'Atlantique» Les provinces de la Nouvelle-Écosse, du Nouveau-Brunswick, de l'Île-du-Prince-Édouard et de Terre-Neuve.

«provinces de l'Ouest»

40 «provinces de l'Ouest» Les provinces du Manitoba, de la Colombie-Britannique, de la Saskatchewan et de l'Alberta.

Modification autorisée par référendum

42. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada,

PARTIE V

Art. 41-51. — Nouveau. Procédure normale de modification de la Constitution au Canada : les modifications se font par proclamation du gouverneur général après autorisation bien déterminée. Sauf indication contraire, la procédure découle de la *Charte constitutionnelle canadienne de 1971*, ou *Charte de Victoria*. Conformément à la partie IV, elle entre en vigueur après les autres dispositions de la *Loi sur le Canada*, d'où la possibilité préalable de délibérations plus poussées et de modification de dernière heure. (Pour l'entrée en vigueur et les abrogations, voir aussi l'art. 58.)

Art. 41. — La procédure normale proposée pour la modification de la plupart des dispositions constitutionnelles, à l'exception de celles qui concernent le Parlement ou une province, l'exécutif fédéral ou les constitutions provinciales et de celles pour lesquelles la Constitution prévoit une autre procédure, découle de la *Charte de Victoria* et figure au par. (1). Règle : approbation par le Sénat, la Chambre des communes et les assemblées législatives d'au moins six provinces représentant toutes les régions du pays (voir les définitions au par. (2)).

Art. 42. — Ne figure pas dans les propositions antérieures. Possibilité de modifier la Constitution à la suite d'un référendum national tenu à l'initiative du gouvernement du

initiated by the government of Canada. For an amendment to be authorized by a referendum, a double majority would be needed; a majority of all votes cast and a majority of the votes cast in six or more provinces representing all regions of Canada.

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.

43. This section provides a special rule whereby amendments that would not apply to all provinces, such as Terms of Union with certain provinces, could be made upon authorization by the Senate and House of Commons and the provinces concerned.

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. Where the Senate does not approve a constitutional amendment approved by the House of Commons, the amendment could nevertheless be made if, after a delay period, the House of Commons approves the amendment a second time.

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. The procedures for amendment set out in sections 41 and 43 could be initiated at the national or provincial level. An authorization could be withdrawn prior to the making of the authorized amendment.

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.

15 Authorization of referendum

20 Amendment of provisions relating to some but not all provinces

30 Amendments without Senate resolution

45 Rules applicable to amendment procedures

Autorisati référendu

Modificati l'égard de certaines provinces

Modificati sans résoluti du Sénat

Règles applicables a procédures d modification

autorisée par un référendum tenu dans tout le pays conformément au paragraphe (2) et lors duquel la modification a été approuvée:

- a) d'une part, à la majorité des votants;
- 5 b) d'autre part, à la majorité des votants de chacune des provinces dont les résolutions de leurs assemblées législatives suffiraient, avec les résolutions du Sénat et de la Chambre des communes, à autoriser la
- 10 proclamation mentionnée au paragraphe 41(1).

Autorisation de référendum

(2) L'ordre de tenue d'un référendum mentionné au paragraphe (1) est donné par
15 proclamation du gouverneur général sous le grand sceau du Canada, autorisée par les résolutions du Sénat et de la Chambre des communes.

Modification à l'égard de certaines provinces

43. Les dispositions de la Constitution du
20 Canada applicables à certaines provinces seulement peuvent être modifiées par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des commu-
25 nes et de l'assemblée législative de chaque province à laquelle la modification s'applique.

Modification sans résolution du Sénat

44. La Constitution du Canada peut être modifiée par proclamation, dans le cadre du
30 paragraphe 41(1) ou de l'article 43, sans une résolution du Sénat autorisant la proclamation, lorsque, dans un délai de quatre-vingt-dix jours suivant l'adoption par la Chambre des communes d'une résolution à cet effet, le
35 Sénat n'a pas adopté une telle résolution et si, après l'expiration de ce délai, la Chambre des communes adopte de nouveau la résolution. Dans la computation du délai ne sont pas comptés les jours pendant lesquels le
40 Parlement est prorogé ou dissous.

Règles applicables aux procédures de modification

45. (1) L'initiative des procédures de modification visées au paragraphe 41(1) et à l'article 43 appartient au Sénat, à la Chambre des communes ou à l'assemblée législative d'une province.

Canada. L'autorisation de la modification par référendum exige une double majorité : celle de tous les votants et celle des votants d'au moins six provinces représentant toutes les régions du pays.

Art. 43. — Règle spéciale selon laquelle les modifications non applicables à l'ensemble des provinces, comme en matière de conditions d'adhésion d'une province, pourront se faire sur autorisation du Sénat, de la Chambre des communes et des provinces concernées.

Art. 44. — Si le Sénat n'approuve pas une modification approuvée par la Chambre des communes, la modification pourra néanmoins se faire, après un délai donné, à condition que les Communes donnent de nouveau leur approbation.

Art. 45. — L'initiative des procédures de modification visées aux art. 41 et 43 appartient à l'instance fédérale ou provinciale. L'autorisation correspondante peut être retirée tant que la modification n'a pas été faite.

46. This section would authorize the making of rules for the holding of a referendum and would ensure the right of citizens to vote in a referendum.

47. This section would make it clear that the general procedure for amendment does not apply where the Constitution contains another procedure for making an amendment such as the procedure set out in section 48 or 49. (But see also section 50.)

48. This section, together with section 50, would clarify and limit the existing power of Parliament pursuant to section 91, class 1 of the B.N.A. Act to amend the Constitution and that class would be repealed when Part V comes into force. (See also section 51.)

49. This section, together with paragraph 50 (a), would define the power of the provinces to amend their own constitutions. It would replace section 92, class 1 of the B.N.A. Act, which would be repealed when Part V comes into force. (See also section 51.)

50. Section 50 would make it clear that certain provisions of particular importance in the Constitution, or that might appear to come within another amending procedure, could only be amended under the procedure set out in section 41 or 42 which involves either both Houses of Parliament and the provincial legislative assemblies or a national referendum. For example, just as at present, a province could not change the office of Lieutenant Governor under its power to amend the provincial constitution. Similarly, Parliament could not alter the role of the Governor General under its power to amend the Constitution in relation to the executive government of Canada. These changes could only be made under the general amending procedure.

(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.

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

Idem

Rules for referendum

Right to vote

Limitation on use of general amending formula

Amendments by Parliament

Amendments by provincial legislatures

Matters requiring amendment under general formula

(2) La résolution adoptée dans le cadre de la présente partie peut être révoquée à tout moment avant la date de la proclamation qu'elle autorise.

5 46. (1) Le Parlement peut, sous réserve du paragraphe (2), légiférer pour régler la tenue du référendum visé à l'article 42.

(2) Tout citoyen canadien a le droit de vote lors du référendum visé à l'article 42; ce droit ne peut, sans motif valable, faire l'objet d'aucune distinction ou restriction.

15 47. Les articles 41, 42 ou 43 ne s'appliquent pas aux cas de modification constitutionnelle pour lesquels une procédure différente est prévue par une autre disposition de la Constitution du Canada. La procédure visée aux articles 41 ou 42 s'impose toutefois pour modifier les dispositions relatives à la modification de la Constitution, y compris le présent article; la procédure visée à l'article 20 41 peut également servir à toute codification ou révision générales de la Constitution.

25 48. Sous réserve de l'article 50, le Parlement a compétence exclusive pour modifier les dispositions de la Constitution du Canada relatives au pouvoir exécutif fédéral, au Sénat et à la Chambre des communes.

30 49. Sous réserve de l'article 50, la législation de chaque province a compétence exclusive pour modifier la constitution de celle-ci.

35 50. Toute modification de la Constitution du Canada portant sur les questions suivantes se fait selon la procédure visée aux articles 41 ou 42:

- a) les fonctions de la Reine, celles du gouverneur général et celles des lieutenants-gouverneurs;
- b) la *Charte canadienne des droits et libertés*;
- 40 c) les engagements énoncés, en matière de péréquation et d'inégalités régionales, à l'article 31;
- d) les pouvoirs du Sénat;
- 45 e) le nombre de sénateurs représentant chaque province au Sénat et les conditions de résidence qu'ils doivent remplir;

Art. 46. — Possibilité d'établir les règles de tenue du référendum et institution du droit de voter à cette occasion.

Art. 47. — Fait bien comprendre que la procédure normale ne s'applique pas dans les cas où la Constitution prévoit une autre procédure de modification, comme celle qui est visée aux art. 48 et 49. (Voir aussi art. 51.)

Art. 48. — Précise et limite, avec l'art. 50, le pouvoir dévolu au Parlement, en vertu de la rubrique 1 de l'art. 91 de l'AANB, de modifier la Constitution. Abrogation de la rubrique 1 de l'art. 91 à l'entrée en vigueur de la partie V. (Voir aussi art. 51.)

Art. 49. — Rétablit, avec l'al. 50a), le pouvoir dévolu aux provinces de modifier leur propre constitution. Remplace la rubrique 1 de l'art. 92 de l'AANB, qui sera abrogé à l'entrée en vigueur de la partie V. (Voir aussi art. 51.)

Art. 50. — Fait bien comprendre que certaines dispositions constitutionnelles d'importance particulière ou susceptibles de ressortir à une autre procédure de modification ne pourront être modifiées que par la procédure visée aux art. 41 ou 42, ce qui suppose l'intervention des deux chambres du Parlement et des assemblées législatives provinciales ou la tenue d'un référendum national. Ainsi, tout comme actuellement, une province ne pourra changer les fonctions de lieutenant-gouverneur en faisant jouer son pouvoir de modifier sa constitution. Parallèlement, le Parlement ne pourra modifier les fonctions du gouverneur général en faisant jouer son pouvoir de modifier la Constitution à l'endroit de l'exécutif fédéral. De pareilles modifications ne seront possibles que par le recours à la procédure générale.

51. When Part V comes into force, two provisions of the B.N.A. Act that contain authority to amend the Constitution would be repealed together with the provisions of this Act respecting interim amendments and annual constitutional conferences.

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 5

(g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada. 10

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. 15

Consequential amendments

PART VI

52. (1) New. This subsection would specify for the first time that certain constitutional Acts and Orders are to be included in the expression "Constitution of Canada". These documents are listed in Schedule I to Schedule B. The subsection does not exclude other Acts and Orders from also being a part of the Constitution.

(2) New. Subsection 52(2) expresses the general rule that amendments to the Constitution may henceforth only be made by the Canadian procedure provided in the Constitution.

53. New. This section would repeal or amend various Acts and Orders forming the Constitution of Canada consequential on the adoption of the *Canada Act*, would rename the British North America Acts to be Constitution Acts and modernize certain other titles of constitutional documents. It would also continue those Acts and Orders as law in Canada, whether or not they are repealed as law in the United Kingdom, and amend other enactments by reference to reflect the new titles.

PART VI

GENERAL

52. (1) The Constitution of Canada includes

(a) the *Canada Act*; 20

(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).

Constitution of Canada

(2) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada. 25

Amendments to Constitution of Canada

53. (1) The enactments referred to in Column I of Schedule I are hereby repealed, 30 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.

Repeals and new names

(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* fol-

Consequential amendments

Modifications corrélatives

Constitution du Canada

Modification

Abrogation et nouveaux titres

Modifications corrélatives

f) le droit d'une province d'avoir à la Chambre des communes un nombre de députés au moins égal à celui de ses sénateurs;

5 g) les principes de la représentation proportionnelle des provinces à la Chambre des communes prévus par la Constitution du Canada.

51. La rubrique 1 de l'article 91 et la 10 rubrique 1 de l'article 92 de la *Loi constitutionnelle de 1867* (antérieurement désignée sous le titre: *Acte de l'Amérique du Nord britannique, 1867*), l'*Acte de l'Amérique du Nord britannique (n° 2), 1949*, mentionné au 15 n° 21 de l'annexe I de la présente loi, et les parties III et IV de la présente loi sont abrogés.

Art. 51. — L'entrée en vigueur de la partie V entraîne l'abrogation de deux dispositions de l'AANB qui prévoient le pouvoir de modifier la Constitution, ainsi que celle des dispositions de la présente loi relatives à la procédure provisoire et aux conférences constitutionnelles annuelles.

PARTIE VI

PARTIE VI

DISPOSITIONS GÉNÉRALES

Constitution du Canada 52. (1) La Constitution du Canada comprend:

- 20 a) la *Loi sur le Canada*;
- b) les textes législatifs et les décrets figurant à l'annexe I;
- c) les modifications aux textes législatifs et aux décrets mentionnés aux alinéas a) et b).

Modification 25 (2) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.

Art. 52, par. (1). — Nouveau. Précise pour la première fois que certains textes et décrets constitutionnels sont visés par l'expression «Constitution du Canada». Les documents correspondants figurent à l'annexe I de l'annexe B. D'autres textes ou décrets n'en sont pas pour autant exclus de la Constitution.

Abrogation et nouveaux titres 53. (1) Les textes législatifs énumérés à la 30 colonne I de l'annexe I sont abrogés ou modifiés dans la mesure indiquée à la colonne II. Sauf abrogation, ils restent en vigueur en tant que lois du Canada sous les titres mentionnés à la colonne III.

Art. 52, par. (2). — Nouveau. Règle générale selon laquelle les modifications de la Constitution ne peuvent désormais se faire que par la procédure canadienne prévue dans la Constitution.

Modifications corrélatives 35 (2) Toute loi, sauf la *Loi sur le Canada*, qui fait mention d'une loi figurant à l'annexe I par le titre indiqué à la colonne I est modifiée par substitution à ce titre du titre correspondant mentionné à la colonne III; 40 tout Acte de l'Amérique du Nord britannique non mentionné à l'annexe I peut être cité sous le titre de *Loi constitutionnelle* suivi de

Art. 53. — Nouveau. Abrogation ou modification, à la suite de l'adoption de la *Loi sur le Canada*, de divers textes et décrets constitutionnels, substitution aux titres «Actes de l'Amérique du Nord britannique» des titres «lois constitutionnelles» et actualisation d'autres titres de documents constitutionnels. Maintien de ces textes et décrets dans le droit positif du Canada, qu'ils aient été ou non abrogés au Royaume-Uni, et modification de la mention d'autres textes compte tenu des nouveaux titres.

54. New. Many of the documents composing the Constitution of Canada were enacted by the United Kingdom Parliament, which enacted them only in English. While unofficial French versions appear in the Statutes of Canada, they do not have legal status. This section would provide for the enactment of official French versions of those documents.

55-56. Where any part of the Constitution of Canada is enacted in English and French, both language versions would be equally authoritative, as would both language versions of Schedule B.

57-58. Schedule B would come into force on proclamation except for Part V which would come into force as set out in sections 33 to 40.

59. This section would provide a short title for Schedule B.

lowed 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*.

French version of Constitution of Canada

English and French versions

English and French versions

Commencement

Exception respecting amending formula

Citations

Version française de la Constitution du Canada

Versions française et anglaise

Versions française et anglaise

Entrée en vigueur

Exception à l'égard des procédures de modification

Titres

l'indication de l'année de son adoption et éventuellement de son numéro.

Version française de la Constitution du Canada

54. Le ministre de la Justice du Canada est chargé de rédiger, dans les meilleurs délais, la version française des parties de la Constitution du Canada qui figurent à l'annexe I; toute partie suffisamment importante est, dès qu'elle est prête, déposée pour adoption par proclamation du gouverneur général sous le grand sceau du Canada, conformément à la procédure applicable à l'époque à la modification des dispositions constitutionnelles qu'elle contient.

Versions française et anglaise

55. Les versions française et anglaise des 15 parties de la Constitution du Canada adoptées dans ces deux langues ont également force de loi. En outre, ont également force de loi, dès l'adoption, dans le cadre de l'article 54, d'une partie de la version française de la 20 Constitution, cette partie et la version anglaise correspondante.

Versions française et anglaise
Entrée en vigueur

56. Les versions française et anglaise de la présente loi ont également force de loi.

57. Sous réserve de l'article 58, la présente loi entre en vigueur au jour fixé par proclamation du gouverneur général sous le grand sceau du Canada.

Exception à l'égard des procédures de modification

58. La partie V entre en vigueur dans les conditions prévues à la partie IV.

Titres

30 59. Titre de la présente annexe: *Loi constitutionnelle de 1980*; titre commun des lois constitutionnelles de 1867 à 1975 (n° 2) et de la présente loi: *Lois constitutionnelles de 1867 à 1980*.

Art. 54. — Nouveau. Beaucoup de documents constitutionnels canadiens sont des lois du Royaume-Uni, adoptées uniquement en anglais. Bien qu'une version française non officielle en figure dans les Lois du Canada, elle n'a pas valeur juridique. Le présent article prévoit l'établissement d'une version française officielle.

Art. 55-56. — Les parties de la Constitution du Canada adoptées en français et en anglais ont également force de loi dans les deux langues, de même que les deux versions de l'annexe B.

Art. 57-58. — L'annexe B entre en vigueur par proclamation, mais la partie V, conformément aux art. 33 à 40.

Art. 59. — Indication du titre de l'annexe B.

SCHEDULE I
to the
CONSTITUTION ACT, 1980
MODERNIZATION OF THE CONSTITUTION

Item	Column I Act Affected	Column II Amendment	Column III New Name
1.	British North America Act, 1867, 30-31 Vict., c. 3 (U.K.)	(1) Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the <i>Constitution Act, 1867</i> ." (2) Section 20 is repealed.	Constitution Act, 1867
2.	An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Gov- ernment of the Province of Manito- ba, 1870, 33 Vict., c. 3 (Can.)	(1) The long title is repealed and the following substituted therefor: " <i>Manitoba Act, 1870</i> ". (2) Section 20 is repealed.	Manitoba Act, 1870
3.	Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May, 1871.		British Columbia Terms of Union
4.	British North America Act, 1871, 34-35 Vict., c. 28 (U.K.)	Section 1 is repealed and the following substituted therefor: "1. This Act may be cited as the <i>Constitution Act, 1871</i> ."	Constitution Act, 1871
5.	Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873.		Prince Edward Island Terms of Union
6.	Parliament of Canada Act, 1875, 38-39 Vict., c. 38 (U.K.)		Parliament of Canada Act, 1875
7.	Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880.		Adjacent Territories Order
8.	British North America Act, 1886, 49-50 Vict., c. 35 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the <i>Constitution Act, 1886</i> ."	Constitution Act, 1886

ANNEXE I

LOI CONSTITUTIONNELLE DE 1980
ACTUALISATION DE LA CONSTITUTION

Column III New Name	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
Constitution Act, 1867	1. Acte de l'Amérique du Nord britannique, 1867, 30-31 Vict., c. 3 (R.-U.)	(1) L'article 1 est abrogé et remplacé par ce qui suit: «1. Titre abrégé: <i>Loi constitutionnelle de 1867.</i> » (2) L'article 20 est abrogé.	Loi constitutionnelle de 1867
Manitoba Act, 1870	2. Acte pour amender et continuer l'acte trente-deux et trente-trois Victoria, chapitre trois, et pour établir et constituer le gouvernement de la province de Manitoba, 1870, 33 Vict., c. 3 (Canada)	(1) Le titre complet est abrogé et remplacé par ce qui suit: « <i>Loi de 1870 sur le Manitoba.</i> » (2) L'article 20 est abrogé.	Loi de 1870 sur le Manitoba
British Columbia Terms of Union	3. Arrêté en conseil de Sa Majesté admettant la Colombie-Britannique, en date du 16 mai 1871		Conditions de l'adhésion de la Colombie-Britannique
Constitution Act, 1871	4. Acte de l'Amérique du Nord britannique, 1871, 34-35 Vict., c. 28 (R.-U.)	L'article 1 est abrogé et remplacé par ce qui suit: «1. Titre abrégé: <i>Loi constitutionnelle de 1871.</i> »	Loi constitutionnelle de 1871
Prince Edward Island Terms of Union	5. Arrêté en conseil de Sa Majesté admettant l'Île-du-Prince-Édouard, en date du 26 juin 1873		Conditions de l'adhésion de l'Île-du-Prince-Édouard
Parliament of Canada Act, 1875	6. Acte du Parlement du Canada, 1875, 38-39 Vict., c. 38 (R.-U.)		Loi de 1875 sur le Parlement du Canada
Adjacent Territories Order	7. Arrêté en conseil de Sa Majesté admettant dans l'Union tous les territoires et possessions britanniques dans l'Amérique du Nord, et les îles adjacentes à ces territoires et possessions, en date du 31 juillet 1880		Décret du conseil sur les territoires adjacents
Constitution Act, 1886	8. Acte de l'Amérique du Nord britannique, 1886, 49-50 Vict., c. 35 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit: «3. Titre abrégé: <i>Loi constitutionnelle de 1886.</i> »	Loi constitutionnelle de 1886

SCHEDULE I
to the
CONSTITUTION ACT, 1980—Continued

Item	Column I Act Affected	Column II Amendment	Column III New Name
9.	Canada (Ontario Boundary) Act, 1889, 52-53 Vict., c. 28 (U.K.)		Canada (Ontario Boundary) Act, 1889
10.	Canadian Speaker (Appointment of Deputy) Act, 1895, 2nd Sess., 59 Vict., c. 3 (U.K.)	The Act is repealed.	
11.	The Alberta Act, 1905 4-5 Edw. VII, c. 3 (Can.)		Alberta Act
12.	The Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.)		Saskatchewan Act
13.	British North America Act, 1907, 7 Edw. VII, c. 11 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the <i>Constitution Act, 1907.</i> "	Constitution Act, 1907
14.	British North America Act, 1915, 5-6 Geo. V, c. 45 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the <i>Constitution Act, 1915.</i> "	Constitution Act, 1915
15.	British North America Act, 1930, 20-21 Geo. V, c. 26 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the <i>Constitution Act, 1930.</i> "	Constitution Act, 1930
16.	Statute of Westminster, 1931, 22 Geo. V, c. 4 (U.K.)	In so far as they apply to Canada, (a) the expression "and Newfoundland" in section 1 and subsection 10(3) is repealed; (b) section 4 is repealed; and (c) subsection 7(1) is repealed.	Statute of Westminster, 1931
17.	British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the <i>Constitution Act, 1940.</i> "	Constitution Act, 1940
18.	British North America Act, 1943, 6-7 Geo. VI, c. 30 (U.K.)	The Act is repealed.	

ANNEXE I (suite)

LOI CONSTITUTIONNELLE DE 1980

Column III New Name	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
a (Ontario Boundary) Act,	9. Acte du Canada (limites d'Ontario 1889, 52-53 Vict., c. 28 (R.-U.))		Loi de 1889 sur le Canada (frontières de l'Ontario)
a Act	10. Acte concernant l'Orateur canadien (nomination d'un suppléant) 1895, 2 ^e session, 59 Vict, c. 3 (R.-U.)	La loi est abrogée.	
chewan Act	11. Acte de l'Alberta, 1905, 4-5 Ed. VII c. 3, (Canada)		Loi sur l'Alberta
chewan Act	12. Acte de la Saskatchewan, 1905, 4-5 Ed. VII, c. 42 (Canada)		Loi sur la Saskatchewan
tution Act, 1907	13. Acte de l'Amérique du Nord britannique, 1907, 7 Ed. VII, c. 11 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit: «2. Titre abrégé: <i>Loi constitutionnelle de 1907.</i> »	Loi constitutionnelle de 1907
tution Act, 1915	14. Acte de l'Amérique du Nord britannique, 1915, 5-6 Geo. V, c. 45 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit: «3. Titre abrégé: <i>Loi constitutionnelle de 1915.</i> »	Loi constitutionnelle de 1915
tution Act, 1930	15. Acte de l'Amérique du Nord britannique, 1930, 20-21 Geo. V, c. 26 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit: «3. Titre abrégé: <i>Loi constitutionnelle de 1930.</i> »	Loi constitutionnelle de 1930
of Westminster, 1931	16. Statut de Westminster, 1931, 22 Geo. V, c. 4 (R.-U.)	Dans la mesure où ils s'appliquent au Canada: a) l'expression «et Terre-Neuve» à l'article 1 et au paragraphe 10(3) est abrogée; b) l'article 4 est abrogé; c) le paragraphe 7(1) est abrogé.	Statut de Westminster de 1931
tution Act, 1940	17. Acte de l'Amérique du Nord britannique, 1940, 3-4 Geo. VI, c. 36 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit: «2. Titre abrégé: <i>Loi constitutionnelle de 1940.</i> »	Loi constitutionnelle de 1940
	18. Acte de l'Amérique du Nord britannique, 1943, 6-7 Geo. VI, c. 30 (R.-U.)	La loi est abrogée.	

SCHEDULE I
to the
CONSTITUTION ACT, 1980—Continued

Item	Column I Act Affected	Column II Amendment	Column III New Name
19.	British North America Act, 1946, 9-10 Geo. VI, c. 63 (U.K.)	The Act is repealed.	
20.	British North America Act, 1949, 12-13 Geo. VI, c. 22 (U.K.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the <i>Newfoundland Act</i> ."	Newfoundland Act
21.	British North America (No. 2) Act, 1949, 13 Geo. VI, c. 81 (U.K.)	The Act is repealed. (effective when section 51 of the <i>Constitution Act, 1980</i> comes into force)	
22.	British North America Act, 1951, 14-15 Geo. VI, c. 32 (U.K.)	The Act is repealed.	
23.	British North America Act, 1952, 1 Eliz. II, c. 15 (Can.)	The Act is repealed.	
24.	British North America Act, 1960, 9 Eliz. II, c. 2 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the <i>Constitution Act, 1960</i> ."	Constitution Act, 1960
25.	British North America Act, 1964, 12-13 Eliz. II, c. 73 (U.K.)	Section 2 is repealed and the following substituted therefor: "2. This Act may be cited as the <i>Constitution Act, 1964</i> ."	Constitution Act, 1964
26.	British North America Act, 1965, 14 Eliz. II, c. 4, Part I (Can.)	Section 2 is repealed and the following substituted therefor: "2. This Part may be cited as the <i>Constitution Act, 1965</i> ."	Constitution Act, 1965
27.	British North America Act, 1974, 23 Eliz. II, c. 13, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c. 28, s. 38(1) (Can) is repealed and the follow- ing substituted therefor: "3. This Part may be cited as the <i>Constitution Act, 1974</i> ."	Constitution Act, 1974

ANNEXE I (suite)

LOI CONSTITUTIONNELLE DE 1980

Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
Acte de l'Amérique du Nord britannique, 1946, 9-10 Geo. VI, c. 63 (R.-U.)	La loi est abrogée.	
Acte de l'Amérique du Nord britannique, 1949, 12-13 Geo. VI, c. 22 (R.-U.)	L'article 3 est abrogé et remplacé par ce qui suit: «3. Titre abrégé: <i>Loi sur Terre-Neuve</i> »	Loi sur Terre-Neuve
Acte de l'Amérique du Nord britannique (N° 2), 1949, 13 Geo. VI, c. 81 (R.-U.)	La loi est abrogée lors de l'entrée en vigueur de l'article 51 de la <i>Loi constitutionnelle de 1980</i> .	
Acte de l'Amérique du Nord britannique, 1951, 14-15 Geo. VI, c. 32 (R.-U.)	La loi est abrogée.	
Acte de l'Amérique du Nord britannique, 1952, 1 Eliz. II, c. 15 (Canada)	La loi est abrogée.	
Acte de l'Amérique du Nord britannique, 1960, 9 Eliz. II, c. 2 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit: «2. Titre abrégé: <i>Loi constitutionnelle de 1960.</i> »	Loi constitutionnelle de 1960
Acte de l'Amérique du Nord britannique, 1964, 12-13 Eliz. II, c. 73 (R.-U.)	L'article 2 est abrogé et remplacé par ce qui suit: «2. Titre abrégé: <i>Loi constitutionnelle de 1964.</i> »	Loi constitutionnelle de 1964
Acte de l'Amérique du Nord britannique, 1965, 14 Eliz. II, c. 4, Partie I (Canada)	L'article 2 est abrogé et remplacé par ce qui suit: «2. La présente partie peut être citée sous le titre suivant: <i>Loi constitutionnelle de 1965.</i> »	Loi constitutionnelle de 1965
Acte de l'Amérique du Nord britannique, 1974, 23 Eliz. II, c. 13, Partie I (Canada)	L'article 3, tel que modifié par le paragraphe 38(1) de la loi 25-26 Elizabeth II, c. 28 (Canada), est abrogé et remplacé par ce qui suit: «3. La présente partie peut être citée sous le titre suivant: <i>Loi constitutionnelle de 1974.</i> »	Loi constitutionnelle de 1974

SCHEDULE I
to the
CONSTITUTION ACT, 1980—Concluded

Item	Column I Act Affected	Column II Amendment	Column III New Name
28.	British North America Act, 1975, 23-24 Eliz. II, c. 28, Part I (Can.)	Section 3, as amended by 25-26 Eliz. II, c. 28, s. 31 (Can.) is repealed and the following sub- stituted therefor: "3. This Part may be cited as the <i>Constitution Act (No. 1), 1975.</i> "	Constitution Act (No. 1), 1975
29.	British North America Act, (No. 2), 1975, 23-24 Eliz. II, c. 53 (Can.)	Section 3 is repealed and the following substituted therefor: "3. This Act may be cited as the <i>Constitution Act (No. 2), 1975.</i> "	Constitution Act (No. 2), 1975

ANNEXE 1 (fin)

LOI CONSTITUTIONNELLE DE 1980

Column III New Name	Colonne I Loi visée	Colonne II Modification	Colonne III Nouveau titre
Constitution Act (No. 1), 1975	28. Acte de l'Amérique du Nord britannique, 1975, 23-24 Eliz. II, c. 28, Partie I (Canada)	L'article 3, tel que modifié par l'article 31 de la loi 25-26 Elizabeth II, c. 28 (Canada), est abrogé et remplacé par ce qui suit: «3. La présente partie peut être citée sous le titre suivant: <i>Loi constitutionnelle n° 1 de 1975.</i> »	Loi constitutionnelle n° 1 de 1975
Constitution Act (No. 2), 1975	29. Acte de l'Amérique du Nord britannique n° 2, 1975, 23-24 Eliz. II, c. 53 (Canada)	L'article 3 est abrogé et remplacé par ce qui suit: «3. Titre abrégé: <i>Loi constitutionnelle n° 2 de 1975.</i> »	Loi constitutionnelle n° 2 de 1975

E

NOTES

FOR THE YEAR ENDING 31st DECEMBER 1973

Particulars	1973	1972
Balance b/fwd		
Income		
Expenses		
Transfer to reserves		
Transfer from reserves		
Balance c/fwd		

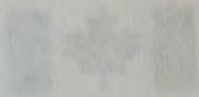
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OCTOBER 1980

F

THE CANADIAN
CONSTITUTION



EXPLANATION of a proposed
Resolution regarding
the Constitution of Canada

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TAB F

EXPLANATORY NOTES

THE CANADIAN CONSTITUTION

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EXPLANATION of a proposed
Resolution respecting
the Constitution of Canada

Canada

PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

Introduction

The Government of Canada has placed before Parliament a proposed 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 proposals 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.

The Resolution

The three main objectives of the proposed 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.

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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, the Honourable 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 proposed 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 proposed 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.

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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' Constitutional Conference will be held each year until a formula is implemented.

2) *A referendum*

If the provinces and federal government fail, yet again, to agree unanimously on a formula, but 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 within four years after patriation. 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.

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

If the provinces do not present an alternative formula, then an amending procedure, similar in principle 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. The decision to call a referendum would rest with the Canadian Parliament. In general, the formula would require that amendments to the Constitution be approved by Parliament and by either the legislative assemblies or, in a national referendum, a majority of voters in a majority of the provinces, including:

- 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.

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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. 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, legal rights, non-discrimination rights and language of education rights in the Constitution, so that they cannot be changed by Parliament or by any provincial legislature acting alone.

The current constitutional status of rights respecting the use of the French and English languages in Parliament, in federal statutes and in federally-established courts will be maintained. French and English will be declared the official languages of Canada, ensuring their equality in all federal institutions.

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*
This guarantees 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 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.

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

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 first language learned and still understood 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.

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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 unlawful searches or seizures*
This protects an individual and his or her property against searches or seizures by law enforcement authorities, unless they are conducted in accordance with the specified laws and procedures.
- *Protection against unlawful detention or imprisonment*
This ensures that no individual may be held by authorities or placed in prison without lawful 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 a 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 according to law. 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 a punishment is changed between the time the act occurs and sentencing, only the lesser punishment may be imposed.
- *Protection against cruel and unusual punishment or treatment*
This is designed to protect individuals against inhumane forms of treatment or punishment.
- *Right of a witness, when compelled to testify, not to have any incriminating evidence so given used against him or her in other proceedings*
This right reflects the principle 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 any of that evidence that is incriminating used against him or her 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, however, permit "affirmative action" programs that

are aimed specifically at improving the conditions of disadvantaged persons or groups. To allow the federal and provincial governments to make any necessary changes to their existing laws, this section will not come into effect until three years after patriation.

Existing Rights Entrenched

A second 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 Canadi-

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ans 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 educational 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 unlawful searches and seizures and against the retroactive application of penal 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.

By "entrenching" a Charter of Rights and Freedoms are we restricting the powers 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 the right to live and work anywhere in Canada and to enter, remain in or leave the country whenever they choose to do so. 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

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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 first language learned and still understood is English, could choose to educate their children in English 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 first language learned and still understood 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 that language. 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.

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 minority language rights will be observed throughout the country.

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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.

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 undue 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

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- 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 extend to Canada as part of its law. 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 Charter 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, which will provide a forum for detailed study of the proposed Resolution, 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.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE
CONSTITUTION OF CANADA - BALEFIN & BOK USE IN THE PARLIAMENT,
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CONFIDENTIAL

G

WESTERN CHARTER, 1971

... ..

PART I - PURPOSE AND SCOPE

Art. 1. The purpose of this Charter is to

Art. 2. This Charter shall apply to

Art. 3. The Charter shall be subject to

Art. 4. The Charter shall be subject to

Art. 5. The Charter shall be subject to

Art. 6. The Charter shall be subject to

Art. 7. The Charter shall be subject to

Art. 8. The Charter shall be subject to

Art. 9. The Charter shall be subject to

Art. 10. The Charter shall be subject to

Art. 11. The Charter shall be subject to

Art. 12. The Charter shall be subject to

Art. 13. The Charter shall be subject to

Art. 14. The Charter shall be subject to

Art. 15. The Charter shall be subject to

Art. 16. The Charter shall be subject to

Art. 17. The Charter shall be subject to

Art. 18. The Charter shall be subject to

Art. 19. The Charter shall be subject to

Art. 20. The Charter shall be subject to

PART II - FUNDAMENTAL RIGHTS

Art. 21. Every individual has the right to

Art. 22. A person who is a citizen of the

Art. 23. The Charter shall be subject to

Art. 24. The Charter shall be subject to

Art. 25. The Charter shall be subject to

Art. 26. The Charter shall be subject to

Art. 27. The Charter shall be subject to

Art. 28. The Charter shall be subject to

Art. 29. The Charter shall be subject to

Art. 30. The Charter shall be subject to

Art. 31. The Charter shall be subject to

Art. 32. The Charter shall be subject to

Art. 33. The Charter shall be subject to

Art. 34. The Charter shall be subject to

Art. 35. The Charter shall be subject to

Art. 36. The Charter shall be subject to

Art. 37. The Charter shall be subject to

Art. 38. The Charter shall be subject to

Art. 39. The Charter shall be subject to

Art. 40. The Charter shall be subject to

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TAB G

VICTORIA CHARTER, 1971

Constitutional Conference, Victoria, June 14-16, 1971

PART I—POLITICAL RIGHTS

Art. 1. It is hereby recognized and declared that in Canada every person has the following fundamental freedoms:

- freedom of thought, conscience and religion,
- freedom of opinion and expression, and
- freedom of peaceful assembly and of association;

and all laws shall be construed and applied so as not to abrogate or abridge any such freedom.

Art. 2. No law of the Parliament of Canada or the Legislatures of the Provinces shall abrogate or abridge any of the fundamental freedoms herein recognized and declared.

Art. 3. Nothing in this Part shall be construed as preventing such limitations on the exercise of the fundamental freedoms as are reasonably justifiable in a democratic society in the interests of public safety, order, health or morals, of national security, or of the rights and freedoms of others, whether imposed by the Parliament of Canada or the Legislature of a Province, within the limits of their respective legislative powers, or by the construction or application of any law.

Art. 4. The principles of universal suffrage and free democratic elections to the House of Commons and to the Legislative Assembly of each Province are hereby proclaimed to be fundamental principles of the Constitution.

Art. 5. No citizen shall, by reason of race, ethnic or national origin, colour, religion or sex, be denied the right to vote in an election of members to the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.

Art. 6. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House and no longer subject to being sooner dissolved by the Governor General, except that in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada if the continuation is not opposed by the votes of more than one-third of the members of the House.

Art. 7. Every Provincial Legislative Assembly shall continue for five years from the day of the return of the writs for the choosing of the Legislative Assembly, and no longer, subject to being sooner dissolved by the Lieutenant Governor, except that when the Government of Canada declares that a state of real or apprehended war, invasion or insurrection exists, a Provincial Legislative Assembly may be continued if the continuation is not opposed by the votes of more than one-third of the members of the Legislative Assembly.

Art. 8. There shall be a session of the Parliament of Canada and of the Legislature of each Province at least once in every year, so that twelve months shall not intervene between the last sitting of the Parliament or Legislature in one session and its first sitting in the next session.

Art. 9. Nothing in this Part shall be deemed to confer any legislative power on the Parliament of Canada or the Legislature of any Province.

PART II—LANGUAGE RIGHTS

Art. 10. English and French are the official languages of Canada having the status and protection set forth in this Part.

Art. 11. A person has the right to use English and French in the debates of the Parliament of Canada and of the Legislatures of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Prince Edward Island and Newfoundland.

Art. 12. The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French, and both versions of such statutes shall be authoritative.

Art. 13. The statutes of each Province shall be printed and published in English and French, and where the Government of a Province, prints and publishes its statutes in one only of the official languages, the Government of Canada shall print and publish them in the other official language; the English and French versions of the statutes of the Provinces of Quebec, New Brunswick and Newfoundland shall be authoritative.

Art. 14. A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada, any courts established by the Parliament of Canada or any court of the Provinces of Quebec, New Brunswick and Newfoundland, and to require that all documents and judgments issuing from such courts be in English or French, and when necessary a person is entitled to the services of an interpreter before the courts of other provinces.

Art. 15. An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and of the governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Art. 16. A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 13, 14, and 15 that do not expressly apply to that Province shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts shall apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 50.

Art. 17. A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of

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such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 18. In addition to the rights provided by this Part, the Parliament of Canada and the Legislatures of the Provinces may, within their respective legislative jurisdictions, provide for more extensive use of English and French.

Art. 19. Nothing in this Part shall be construed as derogating from or diminishing any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Part with respect to any language that is not English or French.

PART III—PROVINCES AND TERRITORIES

Art. 20. Until modified under the authority of the Constitution of Canada, Canada consists of ten Provinces, named Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, two Territories, named the Northwest Territories and the Yukon Territory, and such other territory as may at any time form part of Canada.

Art. 21. There shall be a Legislature for each Province consisting of a Lieutenant-Governor and a Legislative Assembly.

PART IV—SUPREME COURT OF CANADA

Art. 22. There shall be a general court of appeal for Canada to be known as the Supreme Court of Canada.

Art. 23. The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada, and eight other judges who shall, subject to this Part, be appointed by the Governor General in Council by letters patent under the Great Seal of Canada.

Art. 24. Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the Bar of any Province, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the Bar of any Province.

Art. 25. At least three of the judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the Bar of the Province of Quebec, have, for a total period of at least ten years, been judges of any court of that Province or of a court established by the Parliament of Canada or barristers or advocates at that Bar.

Art. 26. Where a vacancy arises in the Supreme Court of Canada and the Attorney General of Canada is considering a person for appointment to fill the vacancy, he shall inform the Attorney General of the appropriate Province.

Art. 27. When an appointment is one falling within Article 25 or the Attorney General of Canada has determined that the appointment shall be made from among persons who have been admitted to the Bar of a specific Province, he shall make all reasonable efforts to reach agreement with the Attorney General of the appropriate Province, before a person is appointed to the Court.

Art. 28. No person shall be appointed to the Supreme Court of Canada unless the Attorney General of Canada and the Attorney General of the appropriate Province agree to the appointment, or such person has been recommended for appointment to the Court by a nominating council described in Article 30, or has been selected by the Attorney General of Canada under Article 30.

Art. 29. Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be

appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 30. Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

(1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;

(2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province, or if he is unable to act, the next senior Judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 31. When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada: a majority of the members of a council constitutes a quorum, and a recommendation of the majority of the members at a meeting constitutes a recommendation of the council.

Art. 32. For the purpose of Articles 26 to 31 "appropriate Province" means, in the case of a person being considered for appointment to the Supreme Court of Canada in compliance with Article 25, the Province of Quebec, and in the case of any other person being so considered, the Province to the bar of which such person was admitted, and if a person was admitted to the bar of more than one Province, the Province with the bar of which the person has, in the opinion of the Attorney General of Canada, the closest connection.

Art. 33. Articles 26 to 32 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Art. 34. The judges of the Supreme Court of Canada hold office during good behaviour until attaining the age of seventy years, but are removable by the Governor General on address of the Senate and House of Commons.

Art. 35. The Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any decision on any constitutional question by any such court in determining any question referred to it, but except as regards appeals from the highest court of final resort in a Province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

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Art. 36. Subject to this Part, the Supreme Court of Canada shall have such further appellate jurisdiction as the Parliament of Canada may prescribe.

Art. 37. The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation of the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the court and requiring the court to hear and determine the questions.

Art. 38. Subject to this Part, the judgment of the Supreme Court of Canada in all cases is final and conclusive.

Art. 39. Where a case before the Supreme Court of Canada involves questions of law relating to the civil law of the Province of Quebec, and involves no other question of law, it shall be heard by a panel of five judges, or with the consent of the parties, four judges, at least three of whom have the qualifications described in Article 25, and if for any reason three judges of the court who have such qualifications are not available, the court may name such *ad hoc* judges as may be necessary to hear the case from among the judges who have such qualifications serving on a superior court of record established by the law of Canada or of a superior court of appeal of the Province of Quebec.

Art. 40. Nothing in this Part shall be construed as restricting the power existing at the commencement of this Charter of a Provincial Legislature to provide for or limit appeals pursuant to its power to legislate in relation to the administration of justice in the Province.

Art. 41. The salaries, allowances and pensions of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Art. 42. Subject to this Part, the Parliament of Canada may make laws to provide for the organization and maintenance of the Supreme Court of Canada, including the establishment of a quorum for particular purposes.

PART V—COURTS OF CANADA

Art. 43. The Parliament of Canada may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, maintenance, and organization of courts for the better administration of the laws of Canada, but no court established pursuant to this Article shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

PART VI—REVISED SECTION 94A

Art. 44. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits including survivors' and disability benefits irrespective of age, and in relation to family, youth, and occupational training allowances, but no such law shall affect the operation of any law present or future of a Provincial Legislature in relation to any such matter.

Art. 45. The Government of Canada shall not introduce a bill in the House of Commons in relation to a matter described in Article 44 unless it has, at least ninety days before such introduction, advised the government of each Province of the substance of the proposed legislation and requested its views thereon.

PART VII—REGIONAL DISPARITIES

Art. 46. The Parliament and Government of Canada and the Legislatures and Governments of the Provinces are committed to:

- (1) the promotion of equality of opportunity and well being for all individuals in Canada;

- (2) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and

- (3) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

Art. 47. The provisions of this Part shall not have the effect of altering the distribution of powers and shall not compel the Parliament of Canada or Legislatures of the Provinces to exercise their legislative powers.

PART VIII—FEDERAL-PROVINCIAL CONSULTATION

Art. 48. A Conference composed of the Prime Minister of Canada and the First Ministers of the Provinces shall be called by the Prime Minister of Canada at least once a year unless, in any year a majority of those composing the Conference decide that it shall not be held.

PART IX—AMENDMENTS TO THE CONSTITUTION

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

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

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

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

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

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

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

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

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

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;
- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

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

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

PART X—MODERNIZATION OF THE CONSTITUTION

Art. 58. The provisions of this Charter have the force of law in Canada notwithstanding any law in force on the day of its coming into force.

Art. 59. The enactments set out in the first column of the Schedule, hereby repealed to the extent indicated in the second column thereof, shall continue as law in Canada under the names set forth in the third column thereof and as such shall, together with this Charter, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

Art. 60. Every enactment that refers to an enactment set out in the Schedule by the name in the first column thereof is hereby amended by substituting for that name the name in the third column thereof.

Art. 61. The court existing on the day of the coming into force of this Charter under the name of the Supreme Court of Canada shall continue as the Supreme Court of Canada, and the judges thereof shall continue in office as though appointed under Part IV except that they shall hold office during good behaviour until attaining the age of seventy-five years, and until otherwise provided pursuant to the provisions of that Part, all laws pertaining to the court in force on that day shall continue, subject to the provisions of this Charter.

THIS SCHEDULE IS NOT FINAL, SUBJECT TO CONFIRMATION

Enactments	Extent of Repeal	New Name	Enactments	Extent of Repeal	New Name
British North America Act, 1867, 30-31 Vict., c. 3 (U.K.).	Long title; preamble; the heading immediately preceding section 1; sections 1, 5, the words between brackets in section 12; sections 19, 20, 37, 40, 41, 47, 50, the words "and to Her Majesty's Instructions" and the words "or that he reserves the Bill for the Signification of the Queen's Pleasure" in section 55; sections 56, 57, 63; the words between brackets in section 65; sections 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 81, 85, 86; the words "the Disallowance of Acts, and the Signification of Pleasure on Bills reserved" and the words "of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada" in section 90; head (1) of section 91; head (1) of section 92; 94A; sections 101, 103, 104, 105, 106, 107, 110, 120, 122, 123; the words between brackets in section 129; sections 130, 134, 141, 142; the heading immediately preceding section 146; sections 146, 147; the First Schedule; the Second Schedule.	Constitution Act, 1867.	An Act to amend and continue the Act 32 and 33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c. 3 (Can.).	Long title; Enacting clause; sections 3, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 25.	Manitoba Act, 1870.
			Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May 1871.	The whole except terms 4, 9, 10, 13, 14 in the Schedule.	British Columbia Terms of Union
			British North America Act, 1871, 34-35 Vict., c. 28 (U.K.), and all acts enacted under section 3 thereof.	Long title; Preamble, enacting clause; sections 1, 6.	Constitution Act, 1871.
			Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873.	The whole, except the conditions in the schedule relating to the provision of steam service and telegraphic communication between the Island and the mainland, the condition respecting the constitution of the executive authority and the Legislature of the province, and the condition applying the British North America Act, 1867 to the province.	Prince Edward Island Terms of Union

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THIS SCHEDULE IS NOT FINAL, SUBJECT TO CONFIRMATION - *Concluded*

Enactments	Extent of Repeal	New Name	Enactments	Extent of Repeal	New Name
Parliament of Canada Act, 1875, 38-39 Vict., c. 38 (U.K.).	Long title; Preamble, enacting clause.	Parliament of Canada Act, 1875.	Statute of Westminster, 1931, 22 Geo. V, c. 4 (U.K.), insofar as it applies to Canada.	Long title; the words "and Newfoundland" in sections 1 and 10(3); section 4 insofar as it applies to Canada; section 7(1).	Statute of Westminster, 1931.
Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880.	The whole, except the last paragraph.	Adjacent Territories Order.	British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.).	Long title; preamble, enacting clause, section 2.	Constitution Act, 1940.
British North America Act, 1886, 49-50 Vict., c. 35 (U.K.).	Long title; section 3.	Constitution Act, 1886	British North America Act, 1913, 7 Geo. VI, c. 30 (U.K.).	The whole.	
Canada (Ontario Boundary) Act, 1880, 52-53 Vict., c. 28 (U.K.).	Long title; preamble; enacting clause.	Canada (Ontario Boundary) Act, 1880.	British North America Act, 1916, 10 Geo. VI, c. 63 (U.K.).	Long title; preamble, enacting clause, section 2.	Constitution Act, 1916.
Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, 59 Vict., c. 3 (U.K.).	Long title; preamble, enacting clause, Section 2.	Canadian Speaker (Appointment of Deputy) Act, 1895.	British North America Act, 1919, 12 and 13 Geo. VI, c. 22 (U.K.).	Long title; third paragraph in preamble; enacting clause; sections 2, 3, terms 6(2), (3), 15(2), 16, 22(2), (4), 24, 27, 28, 29 in the Schedule.	Constitution Act, 1919.
Alberta Act, 1905, 4-5 Edw. VII, c. 3 (Can.).	Long title; enacting clause, sections 4, 5, 6, 7, 12, 13, 15, 16(2), 18, 19, 20, Schedule.	Alberta Act.	British North America (No. 2) Act, 1919 (U.K.), 13 Geo. VI, c. 81 (U.K.).	The whole	
Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.).	Long title; enacting clause; sections 4, 5, 6, 7, 12, 13, 14, 15, 16(2), 18, 19, 20, Schedule.	Saskatchewan Act.	British North America Act, R.S.C., 1952, c. 304 (Can.).	Section 2.	Constitution Act, 1952.
British North America Act, 1907, 7 Edw. VII, c. 11 (U.K.).	Long title; preamble, enacting clause, section 2, Schedule.	Constitution Act, 1907.	British North America Act, 1960, 9 Eliz. II, c. 2 (U.K.).	Long title; preamble; enacting clause; sections 2, 3.	Constitution Act, 1960.
British North America Act, 1915, 5-6 Geo. V, c. 45 (U.K.).	Long title; enacting clause, section 3.	Constitution Act, 1915.	British North America Act, 1961, 12 and 13, Eliz. II, c. 73 (U.K.).	Long title; enacting clause; section 2.	Constitution Act, 1961.
British North America Act, 1930, 20-21 Geo. V, c. 26 (U.K.).	Long title; fourth paragraph of preamble, enacting clause, section 3.	Constitution Act, 1930.	British North America Act, 1965, 14 Eliz. II, c. 4, Part I, (Can.).	Section 2.	Constitution Act, 1965.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (31)
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
OCTOBER 1980

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H

THE PARTIAL BILL OF RIGHTS

DECLARATION OF PRINCIPLES AND FUNDAMENTAL RIGHTS

Enacted by the Parliament of Canada in 1982

Enacted by the Parliament of Canada in 1982

Enacted by the Parliament of Canada in 1982

Enacted by the Parliament of Canada in 1982

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PART I

PART II

Enacted by the Parliament of Canada in 1982

Enacted by the Parliament of Canada in 1982

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TAB H

CANADIAN BILL OF RIGHTS

DÉCLARATION CANADIENNE DES DROITS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

[Sanctionnée le 10 août 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
(b) the right of the individual to equality before the law and the protection of the law;
(c) freedom of religion;
(d) freedom of speech;
(e) freedom of assembly and association; and
(f) freedom of the press.

Construction of law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
(b) impose or authorize the imposition of cruel and unusual treatment or punishment;
(c) deprive a person who has been arrested or detained
(i) of the right to be informed promptly of the reason for his arrest or detention,
(ii) of the right to retain and instruct counsel without delay, or
(iii) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

Preamble

Le Parlement du Canada proclame que la nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliciter ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

PARTIE I

DÉCLARATION DES DROITS

Reconnaissance et déclaration des droits et libertés

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe:

- a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;
b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;
c) la liberté de religion;
d) la liberté de parole;
e) la liberté de réunion et d'association, et
f) la liberté de la presse.

Interprétation de la législation

2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la Déclaration canadienne des droits, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

- a) autorisant ou prononçant la détention, l'emprisonnement ou l'exil arbitraires de qui que ce soit;
b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;
c) privant une personne arrêtée ou détenue
(i) du droit d'être promptement informée des motifs de son arrestation ou de sa détention,
(ii) du droit de retenir et constituer un avocat sans délai, ou
(iii) du recours par voie d'habeas corpus

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- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

- pour qu'il soit jugé de la validité de sa détention et que sa libération soit ordonnée si la détention n'est pas légale;
- d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;
- e) privant une personne du droit à une audition impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;
- f) privant une personne accusée d'un acte criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable; ou
- g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle pas la langue dans laquelle se déroulent ces procédures.

Duties of Minister of Justice

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la *Loi sur les règlements*, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

Devoir du ministre de la Justice

Short title

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

4. Les dispositions de la présente Partie doivent être connues sous la désignation: *Déclaration canadienne des droits*.

Titre abrégé

PART II

PARTIE II

Savings

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

5. (1) Aucune disposition de la Partie I ne doit s'interpréter de manière à supprimer ou restreindre l'exercice d'un droit de l'homme ou d'une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.

Clause de sauvegarde

"Law of Canada" defined

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

(2) L'expression «loi du Canada», à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l'entrée en application de la présente loi, qui est susceptible d'abrogation, d'abolition ou de modification par le Parlement du Canada.

Définition: «loi du Canada»

Jurisdiction of Parliament

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.

(3) Les dispositions de la Partie I doivent s'interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.

Jurisdiction du Parlement

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1. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

2. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

3. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

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12. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

13. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

14. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

15. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

16. The Government shall, in the event of a national emergency, have the authority to do all things that it may consider necessary or expedient for the purpose of dealing with that emergency.

PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (31)
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TAB I

CHARTER OF RIGHTS FROM BILL C-60, 1978

III RIGHTS AND FREEDOMS WITHIN THE CANADIAN FEDERATION

III DROITS ET LIBERTÉS À L'INTÉRIEUR DE LA FÉDÉRATION CANADIENNE

(a) Introductory

a) Principe général

Canadian Charter of Rights and Freedoms

5. The provisions of this division, which may be cited collectively as the Canadian Charter of Rights and Freedoms, are founded on the conviction and belief, affirmed by this Act, that in a free and democratic society there are certain rights and freedoms which must be assured to all of the people of that society as well as to people within that society individually and as members of particular groups, and which must, if they are to endure, be incapable of being alienated by the ordinary exercise of such legislative or other authority as may be conferred by law on its respective institutions of government.

5. La présente section, qui peut être citée sous le titre «Charte canadienne des droits et libertés» est fondée sur le principe, consacré par la présente loi, que tous les individus et groupes vivant dans une société libre et démocratique jouissent de droits et libertés fondamentales inaliénables dans l'exercice normal des pouvoirs que la loi confère aux organes de l'État, notamment le pouvoir législatif.

Charte canadienne des droits et libertés

(b) Political and Legal Rights and Freedoms

b) Droits et libertés publiques et politiques

Fundamental rights and freedoms

6. It is accordingly declared that, in Canada, every individual shall enjoy and continue to enjoy the following fundamental rights and freedoms:
- freedom of thought, conscience and religion;
- freedom of opinion and expression;
- freedom of peaceful assembly and of association;
- freedom of the press and other media for the dissemination of news and the expression of opinion and belief;
- the right of the individual to life, and to the liberty and security of his or her person, and the right not to be deprived thereof except by due process of law;
- the right of the individual to the use and enjoyment of property, and the right not to be deprived thereof except in accordance with law; and
- the right of the individual to equality before the law and to the equal protection of the law.

6. Tout individu jouit, au Canada, des droits et libertés fondamentales suivants:
- liberté de pensée et de conscience et liberté religieuse;
- liberté d'opinion et liberté de parole;
- liberté d'association et de réunion pacifique;
- liberté de la presse et des autres media pour la diffusion de nouvelles et l'expression d'opinions;
- droit à la vie, à la liberté et à la sécurité physique et droit de ne pas en être privé sans l'application régulière de la loi;
- droit de posséder des biens et de n'en être privé que conformément à la loi; et
- droit à l'égalité devant la loi et à la même protection devant la loi.

Droits et libertés fondamentales

Individual legal rights

7. In addition to the fundamental rights and freedoms declared by section 6, it is further declared that, in Canada, every individual shall enjoy and continue to enjoy:
- the right to be secure against unreasonable searches and seizures;
- the right not to be arbitrarily detained, imprisoned or exiled;
- the right, as an individual who has been arrested or detained,
(i) to be informed promptly of the reasons for his or her arrest or detention,
(ii) to retain and instruct counsel without delay, and
(iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for his or her release if the detention is not lawful;

7. Outre les droits et libertés fondamentales reconnus par l'article 6, tout individu jouit, au Canada, des droits suivants:
- droit d'être protégé contre les saisies et perquisitions déraisonnables;
- droit de ne pas être détenu, emprisonné ou envoyé en exil arbitrairement;
- droit, s'il est arrêté ou détenu,
(i) d'être informé sans délai des motifs de son arrestation ou de sa détention,
(ii) de bénéficier sans délai des services d'un avocat et de lui donner des instructions, et
(iii) à un recours par voie d'habeas corpus, pour faire contrôler la légalité de sa détention et obtenir sa libération si la détention n'est pas légitime;
- droit de ne pas témoigner devant une cour, un tribunal, une commission, un

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- the right not to give evidence before any 30 court, tribunal, commission, board or other authority, if the individual is denied counsel, protection against self-crimination or other constitutional safeguards: 35
- the right to the assistance of an interpreter in any proceedings before a court, tribunal, commission, board or other authority in which the individual is involved or is a party or witness, if he or she does not understand or speak the language in which the proceedings are conducted: 40
- the right to a fair hearing, in accordance with the principles of fundamental justice, for the determination of the individual's rights or obligations: 45
- the right, as an individual who has been charged with an offence, to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal, not to be denied reasonable bail without just cause having been established, not to be found guilty of the offence on account of any act or omission that at the time of such act or omission did not constitute an offence, and, if found guilty of the offence, not to be subjected to a punishment more severe than that applicable at the time the offence was committed: 50 and 15
- the right not to be subjected to any cruel and unusual treatment or punishment.

- conseil ou tout autre organisme si on lui 25 refuse les services d'un avocat, la protection contre les déclarations incriminantes ou les autres garanties constitutionnelles;
- droit aux services d'un interprète dans 30 toute procédure devant une cour, un tribunal, une commission, un conseil ou tout autre organisme, à laquelle il est partie, à laquelle il participe ou dans laquelle il est appelé à témoigner, s'il ne 35 comprend pas ou ne parle pas la langue des procédures;
- droit à une audition juste et impartiale, conforme aux principes fondamentaux de la justice pour la détermination de 40 ses droits et obligations;
- droit, s'il est accusé d'une infraction, d'être présumé innocent jusqu'à ce qu'il soit déclaré coupable lors d'un procès public et équitable devant un tribunal indépendant et impartial; droit de bénéficier d'une liberté assortie d'un cautionnement raisonnable sauf si le refus de 5 celle-ci est justifié; droit de ne pas être déclaré coupable d'une infraction fondée sur une action ou abstention qui, au moment où elle a été commise, ne constituait pas une infraction et, en cas de 10 déclaration de culpabilité, le droit de ne pas recevoir une peine plus élevée que celle qui était applicable au moment où l'infraction a été commise; et
- droit de ne pas être soumis à un traitement ou châtement cruel et inusité. 15

(c) Rights Within Canada of Canadian Citizens

c) Droits des citoyens canadiens au Canada

Rights of individuals as citizens

Droits des citoyens

8. Every citizen of Canada, wherever the place of his or her residence or domicile, previous residence or domicile, or birth, has 20

- the right to move to and take up residence in any province or territory of Canada, and in consequence thereof to enjoy the equal protection of the law within that province or territory in the matter of his or her residence therein; 25 and
- the right to acquire and hold property in, and to pursue the gaining of a livelihood in, any province or territory of 30 Canada;

subject to any laws of general application in force in that province or territory but in all other respects subject only to such limitations on his or her exercise or enjoyment of 35 those rights as are reasonably justifiable otherwise than on the basis of the place of his or her residence or domicile, previous residence or domicile, or birth.

8. Tout citoyen canadien a, dans toute province ou territoire du Canada, indépendamment de sa résidence ou de son domicile passés ou actuels et de son lieu de naissance. 20

- le droit d'établir sa résidence et de jouir en conséquence de la même protection devant la loi en ce qui a trait à sa résidence, et
- le droit d'acquérir des biens et d'assurer 25 sa subsistance,

sous réserve des lois d'application générale en vigueur dans la province ou le territoire et sous réserve des restrictions qui peuvent être raisonnablement justifiées autrement que par 30 son lieu de résidence ou de domicile passés ou actuels ou de son lieu de naissance.

(d) Non-discrimination

d) Discrimination

Rights and freedoms to be enjoyed without discrimination

Non-discrimination

9. The rights and freedoms declared by 40 sections 6, 7 and 8 of this Charter shall be enjoyed without discrimination because of race, national or ethnic origin, language, colour, religion, age, or sex.

9. Les droits et libertés reconnus par les articles 6, 7 et 8 de la présente Charte doivent être respectés sans discrimination 35 fondée sur la race, l'origine nationale ou ethnique, la langue, la couleur, la religion, l'âge ou le sexe.

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(e) Elections and Elected Legislatures

e) Élections des assemblées législatives

Democratic rights of citizens

Principles of the democracy

10. The principles of free and democratic elections to the House of Commons of Canada and to the legislative assembly of each province, including the principle of universal suffrage for that purpose, are fundamental principles of the Constitution of Canada; more particularly no citizen of Canada shall, because of his or her race, national or ethnic origin, language, colour, religion, or sex, be denied the right to vote in an election of members of the House of Commons of Canada or of the legislative assembly of a province, or be disqualified from membership therein.

10. L'élection libre et démocratique des députés à la Chambre des communes du Canada et aux assemblées législatives provinciales, notamment le suffrage universel, sont des principes fondamentaux de la Constitution du Canada; nul citoyen canadien ne peut, en raison de sa race, de son origine nationale ou ethnique, de sa langue, de sa couleur, de sa religion ou de son sexe être privé de son droit de voter aux élections des députés de la Chambre des communes du Canada ou de l'assemblée législative d'une province ni être empêché d'y être élu.

Duration of elected legislative bodies

Durée des corps élus

11. (1) Every House of Commons of Canada and legislative assembly of a province shall continue for five years, or in the case of a legislative assembly of a province for five or such lesser number of years as is provided for by the constitution of the province, from the date of the return of the writs for the choosing of its members and no longer, subject to its being sooner dissolved in accordance with law or the procedure recognized by accepted usage therefor.

11. (1) La Chambre des communes du Canada et les assemblées législatives provinciales sont élues pour cinq ans ou, dans le cas d'une assemblée législative provinciale, pour une période plus courte prévue par la Constitution provinciale, à compter de la date du rapport des brefs d'élections, à moins d'être dissoutes plus tôt conformément à la loi ou aux usages reconnus.

Continuation in special circumstances

Prorogation dans certaines circonstances

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by or under subsection (1), 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.

(2) Par dérogation au paragraphe (1), le Parlement du Canada peut proroger une chambre des communes, et un corps législatif provincial peut proroger une assemblée législative provinciale au-delà de la durée prévue audit paragraphe, en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, si cette prorogation ne fait pas l'objet d'une opposition exprimée par les votes de plus du tiers des membres de la Chambre des communes ou de l'assemblée législative, selon le cas.

Annual sessions of elected legislative bodies

Session annuelle

12. There shall be a session of the Parliament of Canada and of the legislature of each province at least once in every year, so that twelve months shall not intervene between its last sitting in one session and its first sitting in the next.

12. Le Parlement du Canada et les corps législatifs provinciaux siègent au moins une fois l'an. La session commence au plus tard un an après la fin de la session précédente.

(f) Official Languages and Language Rights

f) Langues officielles et droits linguistiques

Purposes for which English and French declared to be official languages

Objet des langues officielles

13. The English and French languages are the official languages of Canada for all purposes declared by the Parliament of Canada

13. Le français et l'anglais sont les langues officielles du Canada pour les objets désignés par le Parlement du Canada et les

or the legislature of any province, acting within the legislative authority of each respectively.

corps législatifs provinciaux dans leur sphère de compétence respective.

Proceedings in Parliament

Procédure du Parlement du Canada

14. (1) Any individual has the right to use English or French, as he or she may choose, in any of the debates or other proceedings of the Parliament of Canada.

14. (1) Tout individu a le droit de participer aux débats et procédures du Parlement du Canada en français ou en anglais, à son choix.

Proceedings in legislatures

Procédure des assemblées législatives provinciales

(2) Any individual has the right to use English or French, as he or she may choose, in any of the debates or other proceedings of the legislative assembly of any province.

(2) Tout individu a le droit de participer aux débats et procédures des assemblées législatives provinciales en français ou en anglais, à son choix.

Statutes and records, etc., of Parliament

Documents parlementaires

15. (1) The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French.

15. (1) Les lois, les archives, les comptes-rendus et les procès-verbaux du Parlement du Canada sont imprimés et publiés en français et en anglais.

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Statutes and records, etc., of legislatures

(2) The statutes and the records and journals of the legislatures of Ontario, Quebec and New Brunswick shall be printed and published in English and French, and all or any of the statutes and the records and journals of the legislature of any other province shall be printed and published in both of those languages or in either of them, accordingly as its legislature may prescribe.

(2) Les lois, les archives, les compte-rendus et les procès-verbaux des corps législatifs de l'Ontario, du Québec et du Nouveau-Brunswick sont imprimés et publiés en français et en anglais; les lois, les archives, les compte-rendus et le procès-verbaux des corps législatifs des autres provinces sont imprimés et publiés dans ces deux langues ou dans celle de ces deux langues que les corps législatifs désignent.

15 Documents et corps législatifs

Both versions of statutes authoritative

(3) Where the statutes of any legislative body described in subsection (1) or (2) are printed and published in English and French, both language versions thereof shall be equally authoritative.

(3) Lorsque les lois des autorités législatives visées aux paragraphes (1) et (2) sont imprimées et publiées en français et en anglais, les versions française et anglaise ont la même valeur.

25 Valeur des versions

Proceedings in Supreme Court and courts constituted by Parliament

16. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court constituted by the Parliament of Canada.

16. (1) Toute personne a le droit d'utiliser le français ou l'anglais devant la Cour suprême du Canada et les cours établies par le Parlement du Canada ainsi que dans les procédures et documents de ces cours.

30 Procédures judiciaires

Proceedings in courts of Ontario, Quebec and New Brunswick

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec or New Brunswick.

(2) Toute personne a le droit d'utiliser le français ou l'anglais devant les cours de l'Ontario, du Québec et du Nouveau-Brunswick et dans les procédures et documents de ces cours.

35 Idem

Proceedings throughout Canada in criminal matters and for offences where loss of liberty in issue

(3) In proceedings in any court in Canada - in which, in a criminal matter, the court is exercising any criminal jurisdiction conferred on it by or pursuant to an Act of the Parliament of Canada, or

(3) Tout individu appelé à témoigner devant un tribunal au Canada a le droit d'utiliser le français ou l'anglais, à son choix et d'être bien compris dans la langue de son choix sans être défavorisé par son choix.

40 Procédures pénales

in which, in a matter relating to an offence for which an individual charged with that offence is subject to be imprisoned if he or she is convicted thereof, the court is exercising any jurisdiction conferred on it by or pursuant to an Act of the legislature of any province,

- dans les procédures pénales où le tribunal exerce la compétence pénale que lui confère une loi du Parlement du Canada, et

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any individual giving evidence before the court has the right to be heard in English or French, as he or she may choose, and in being so heard, not to be placed at a disadvantage by not being heard, or being unable to be heard, in the other of those languages.

- dans les procédures pénales punissables par une peine d'emprisonnement où le tribunal exerce la compétence pénale que lui confère une loi provinciale.

5

Application of rules for regulating procedure, including notice

17. Nothing in section 16 shall be held to preclude the application, to or in respect of proceedings in any court described in subsection 16(2), or to or in respect of any proceedings described in subsection 16(3), of such rules for regulating the procedure in any such proceedings, including rules respecting the giving of notice, as may be prescribed by any competent body or authority in that behalf pursuant to law for the effectual execution and working of the provisions of either of those subsections.

17. Nulle disposition de l'article 16 n'a pour effet d'empêcher l'application, devant les cours décrites au paragraphe 16(2) ou au titre de leurs procédures ou des procédures et documents visés au paragraphe 16(3), des règles de procédure, notamment celles portant sur les avis, qui sont établies par l'autorité compétente pour l'application efficace de ces deux paragraphes.

15 Procédure et autres règles

Existing rights not abrogated

18. Nothing in sections 14 to 17 shall be held to abrogate, abridge or derogate 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.

18. Les articles 14 à 17 n'ont pas pour effet de limiter ou supprimer les droits, privilèges et obligations relatifs à l'emploi des langues française et anglaise, ou de l'une de ces deux langues, créés ou maintenus par d'autres dispositions de la Constitution du Canada.

25 Droits actuels

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Communications by members of public with federal governmental and other institutions

19. (1) Any member of the public in Canada has the right to use English or French, as he or she may choose, in communicating with the head or central office of any department or agency of the executive government of and over Canada, or of any judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to a law of Canada, wherever that office is located, or in communicating with any other principal 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 the Parliament of Canada, that a substantial number of persons within the population use that language.

19. (1) Tout individu a, partout au Canada, le droit de communiquer en français ou en anglais, à son choix, avec le siège de tout ministère ou organisme du gouvernement du Canada, de tout organisme judiciaire, quasi-judiciaire ou administratif et de toute société de la Couronne constitués en vertu d'une loi du Canada, et il a ce droit lorsqu'il communique avec les autres bureaux principaux établis dans les régions où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement du Canada, qu'un nombre important de personnes emploie cette langue.

Rapports des individus avec les organismes fédéraux

Communications with provincial institutions

(2) Any member of the public in any province has the right to use English or French, as he or she may choose, in communicating with any principal office of a department or agency of the executive government of that province, or of a judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to a law of that province, where that office is located within an area of that province in which it is determined, in such manner as may be prescribed or authorized by the legislature of that province, that a substantial number of persons within the population use that language.

(2) Tout individu a, dans les provinces, le droit de communiquer en français ou en anglais, à son choix, avec les bureaux principaux de tout ministère ou organisme du gouvernement provincial, de tout organisme judiciaire, quasi-judiciaire ou administratif et de toute société de la Couronne constitués en vertu d'une loi provinciale et établis dans les régions où il est reconnu, conformément aux modalités prévues ou autorisées par le corps législatif provincial, qu'un nombre important de personnes emploie cette langue.

Rapports avec les organismes provinciaux

Rights not to be limited

20. Nothing in sections 13 to 19 shall be held to limit the right of the Parliament of Canada or the legislature of a province, acting within the authority of each respectively pursuant to law, to provide for more extensive use of both the English and French languages; and nothing in those sections shall be held to derogate from or diminish any right, based on language, that is assured by virtue of section 9 or 10, or to derogate from or diminish any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Act with respect to any language that is not English or French.

20. Les articles 13 à 19 n'ont pas pour effet d'empêcher le Parlement du Canada et les corps législatifs provinciaux agissant dans leur champ de compétence respectif d'étendre davantage l'usage des langues française et anglaise et ne portent pas atteinte aux droits linguistiques garantis par l'article 9 ou 10, ni aux droits et privilèges passés ou futurs des autres langues découlant de la loi ou de la coutume.

Droits préservés

Language of instruction in schools

21. (1) Where the number of children in any area of a province in respect of whom notice has been given as contemplated by this section, warrants the provision of the facilities required to give effect to the right provided for by this section, any parent who is a citizen of Canada resident within that area and whose primarily spoken language is not that of the numerically larger of the groups comprising those persons resident in that province whose primarily spoken languages are either English or French, has the right to have his or her children receive their schooling in the language of basic instruction that is the primarily spoken language of the numerically smaller of those groups, in or by means of facilities that are provided in that area out of public funds and that are suitable and adequate for that purpose.

21. (1) Lorsque le nombre d'enfants habitant une région d'une province et ayant fait l'objet de l'avis prévu par le présent article justifie l'affectation de ressources suffisantes pour donner effet au droit conféré par le présent article, le père ou la mère qui est un citoyen canadien ayant sa résidence dans cette région et qui n'a pas, comme langue principale, la langue de la majorité des résidents de la province qui parlent principalement le français ou l'anglais, a le droit d'exiger que son ou ses enfants reçoivent, à l'école, leur éducation de base dans la langue d'enseignement qui est principalement parlée par la minorité, avec des ressources appropriées et adéquates fournies dans cette région avec des fonds publics.

Langue d'éducation dans les écoles

Notice

(2) The exercise by any parent of the right provided for by this section shall be subject to such reasonable requirements respecting the giving of notice by that parent of his or her intended exercise thereof as may be prescribed by the law of the province in which that parent resides.

(2) L'exercice du droit conféré par le présent article est subordonné au respect des exigences raisonnables auxquelles la loi de la province de résidence du père ou de la mère peut assujettir l'avis qu'il ou qu'elle doit donner de son intention d'exercer son droit.

Avis

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Reasonable provisions for determining whether numbers warrant

(3) Nothing in this section shall be held to limit the authority of the legislature of any province to make such provisions as are reasonable for determining, either generally or in any particular case or classes of cases, whether or not the number of children in any area of that province in respect of whom notice has been given as contemplated by this section, warrants the provision of the facilities required to give effect to the right provided for by this section.

(3) Le présent article ne limite pas le pouvoir d'un corps législatif provincial d'adopter des dispositions raisonnables permettant de déterminer, d'une manière générale ou d'une manière applicable à un cas particulier ou à des catégories de cas particuliers, si le nombre d'enfants habitant une région de la province et ayant fait l'objet de l'avis prévu au présent article justifie l'affectation de ressources suffisantes pour donner effet au droit conféré par le présent article.

Rights, etc., not affected

(4) Nothing in this section shall be held to derogate from or diminish any legal or customary right or privilege acquired or enjoyed in any province either before or after the commencement of this Act to have any child receive his or her schooling in the language of basic instruction that is the primarily spoken language of the numerically larger of the groups referred to in subsection (1) within that province, or to limit any authority conferred or obligation imposed either before or after that time by the law of that province to require any child, during any period while that child is receiving his or her schooling in any language of basic instruction that is not that primarily spoken language, to be given instruction in the use of that primarily spoken language as part of his or her schooling in that province.

(4) Le présent article ne porte pas atteinte aux droits et privilèges découlant de la loi ou de la coutume et que le père ou la mère avait dans une province, avant ou après la prise d'effet de la présente loi, d'exiger que son ou ses enfants reçoivent, à l'école, leur éducation de base dans la langue d'enseignement qui est principalement parlée par la majorité visée au paragraphe (1) et il ne limite pas le droit d'une province, avant ou après la prise d'effet de la présente loi, de donner le pouvoir ou d'imposer l'obligation de rendre obligatoire, dans le cadre de son programme d'instruction publique, l'enseignement de la langue parlée majoritairement dans la province, pendant toute période où l'enfant reçoit son éducation dans la langue qui n'est pas parlée majoritairement dans la province.

Interpretation

(5) The expression "parent" in this section includes a person standing in the place of a parent.

(5) Au présent article, les termes «père» ou «mère» désignent toute personne qui exerce l'autorité parentale.

Preservation of English and French as languages spoken or enjoyed by identifiable minority groups

22. In furtherance of — the appreciation by Canadians that the preservation of both English and French as the principal spoken languages of Canadians is vital to the prospering of the Canadian federation within the larger North American society, and — the resolve of Canadians that none of the institutions of government of the Canadian federation, acting within the legislative authority of each individually pursuant to law, should act in such a manner as to affect adversely the preservation of either English or French as the language spoken or otherwise enjoyed by any group of individuals constituting an identifiable and substantial linguistic community in any area of Canada within its jurisdiction,

22. Les Canadiens — étant convaincus que l'épanouissement du français et de l'anglais comme leur principal moyen d'expression est essentiel à l'évolution de la fédération canadienne en Amérique du nord, et — ayant résolu que les organes gouvernementaux de la fédération canadienne ne peuvent pas, dans leur champ de compétence respectif, agir d'une manière susceptible de nuire à l'épanouissement du français ou de l'anglais comme moyen d'expression de toute communauté linguistique importante et identifiable dans une région du Canada,

it is hereby proclaimed that no law made by any such institution after this Charter extends to matters within its legislative authority shall apply or have effect so as to affect adversely the preservation of either English or French as the language spoken or otherwise enjoyed by any such group of individuals.

il est par les présentes proclamé que les lois établies par ces organes, après que l'application de la présente Charte aura été étendue à leur champ de compétence, ne pourront pas avoir pour effet de nuire à l'épanouissement du français ou de l'anglais comme moyen d'expression desdites communautés.

(g) Generally Applicable Provisions

g) Dispositions générales

Laws not to apply so as to abrogate declared rights and freedoms

23. To the end that full effect may be given to the individual rights and freedoms declared by this Charter, it is hereby further proclaimed that, in Canada, no law shall apply or have effect so as to abrogate, abridge or derogate from any such right or freedom.

23. Afin de donner plein effet aux droits et libertés individuels reconnus par cette Charte, aucune loi, au Canada, ne peut avoir pour effet de limiter ou supprimer ces droits et libertés.

Protection des droits et libertés

PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

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Definition and enforcement of rights and freedoms where no other remedy available

24. Where no other remedy is available or provided for by law, any individual may, in accordance with the applicable procedure of any court in Canada of competent jurisdiction, request the court to define or enforce any of the individual rights and freedoms declared by this Charter, as they extend or apply to him or her, by means of a declaration of the court or by means of an injunction or similar relief, accordingly as the circumstances require.

24. En l'absence de tout autre recours prévu par la loi, tout individu peut, en suivant la procédure applicable, demander à toute cour compétente, au Canada, de définir les droits et libertés individuels que lui accorde la présente Charte et de leur donner effet par un jugement déclaratoire, une injonction ou une décision semblable, selon les circonstances.

Recours additionnel

Justifiable limitations

25. Nothing in this Charter shall be held to prevent such limitations on the exercise or enjoyment of any of the individual rights and freedoms declared by this Charter as are justifiable in a free and democratic society in the interests of public safety or health, the interests of the peace and security of the public, or the interests of the rights and freedoms of others, whether such limitations are imposed by law or by virtue of the construction or application of any law.

25. Aucune des dispositions de la présente Charte n'exclut les restrictions à l'exercice des droits et libertés individuels qu'elle reconnaît lorsqu'elles sont justifiées dans une société libre et démocratique par la santé, la sécurité et la paix publiques, ou l'exercice des droits et libertés individuels, que ces restrictions soient expresses ou qu'elles résultent de l'interprétation ou de l'application de la loi.

Restrictions légitimes

Rights not declared by Charter, including those of native people under Royal Proclamation

26. Nothing in this Charter shall be held to abrogate, abridge or derogate from any right or freedom not declared by it that may have existed in Canada at the commencement of this Act, including, without limiting the generality of the foregoing, any right or freedom that may have been acquired by any of the native peoples of Canada by virtue of the Royal Proclamation of October 7, 1763.

26. La présente Charte ne limite ni ne supprime les droits et libertés qu'elle ne reconnaît pas expressément et qui pouvaient exister lors de la prise d'effet de la présente loi, notamment les droits et libertés qu'ont pu acquérir les peuples autochtones du Canada par la Proclamation royale du 7 octobre 1763.

Droits non reconnus par la Charte

Identification of declared individual rights and freedoms

27. For greater certainty for the purposes of this Charter, the individual rights and freedoms declared by this Charter are those assured by or by virtue of sections 6 to 10, 14, 16, 19 and 21.

27. Les droits et libertés individuels reconnus par la présente Charte sont énoncés aux articles 6 à 10, 14, 16, 19 et 21.

Caractère des droits et libertés reconnus

Application to territories and territorial institutions

28. A reference in any of sections 10 to 22 to a province or to the legislative assembly or legislature of a province shall be construed as including a reference to the Yukon Territory or the Northwest Territories or to the Council or Commissioner in Council thereof, as the case may be.

28. Le Yukon et les Territoires du Nord-Ouest, ainsi que le Conseil ou le Commissaire en Conseil de ces territoires sont assimilés, pour l'application des articles 10 à 22, à une province, à une assemblée législative provinciale ou à un corps législatif provincial, selon le cas.

Application aux territoires et à leurs organismes

Legislative authority not extended

29. Nothing in this Charter shall be held to confer any legislative authority on any competent body or authority in that behalf in Canada, except as expressly contemplated by this Charter.

29. La présente Charte ne confère aux organes législatifs du Canada aucun pouvoir législatif autre que ceux qu'elle prévoit expressément.

Pas d'extension du pouvoir législatif

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J

COMPARATIVE SUMMARY OF
PUBLIC DOCUMENTS RELATING
TO THE EMERGENCY OF RIGHTS AND FREEDOMS

This summary compares the provisions
of the Canadian Charter of Rights and
Freedom contained in the various
documents with those provisions
enacted in the following laws, orders
and reports:

- 1. The Bill of Rights, 1960
- 2. The Charter of Rights and Freedoms, 1982
- 3. The Canadian Bill of Rights, 1960
- 4. The Charter of Rights and Freedoms, 1982
- 5. The Charter of Rights and Freedoms, 1982
- 6. The Charter of Rights and Freedoms, 1982
- 7. The Charter of Rights and Freedoms, 1982
- 8. The Charter of Rights and Freedoms, 1982
- 9. The Charter of Rights and Freedoms, 1982
- 10. The Charter of Rights and Freedoms, 1982

PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (31)
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
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TAB J

COMPARATIVE SUMMARY OF CERTAIN PUBLIC DOCUMENTS REGARDING THE CHARTER OF RIGHTS AND FREEDOMS

This summary compares the provisions of the Canadian Charter of Rights and Freedoms contained in the Proposed Resolution with those proposed or contained in the following laws, studies and reports:

- Canadian Bill of Rights (1960)
- Victoria Charter (1971)
- Special Joint Committee Report (1972)
- Bill C-60 (1978)
- Special Joint Committee Report (1978)
- Canadian Bar Association Study (1978)
- Task Force on Canadian Unity Report (1979)
- Quebec Liberal Party Proposals (1960)
- Alberta Bill of Rights
- Quebec Charter of Human Rights and Freedoms
- Saskatchewan Bill of Rights

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRITAINING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LIMITATIONS ON RIGHTS AND FREEDOMS

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

In addition, certain rights within the Charter are subject to specific limitations.

Section 3 - Democratic Rights - right to vote and stand for office "without unreasonable distinction or limitation".

Section 6(3) - Mobility Rights - 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.

- Canadian Bill of Rights (1960)

- No specific limitation clauses are included but the Bill does include provision for an override clause:

- Section 2 - Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate ...

- Victoria Charter (1971)

- Applied limitations only to the three fundamental freedoms.

- Article 3 - Freedoms limited in the interest of

- public safety, health or morals
- national security
- peace and security of others
- rights and freedoms of others.

- Special Joint Committee Report (1972)

- Recommended the following limitation clause:

- exercisable to the extent that they are reasonably justifiable in a democratic society.

be applied to all rights with the exception of language rights.

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- Bill C-60 (1978)
 - Section 25 - Limitations on rights in the interest of
 - public safety or health
 - peace and security of the public
 - rights and freedoms of others

applied to all individual rights included in the Charter.
- Special Joint Committee Report (1978)
 - Recommended that section 25 above be replaced by a section which exactly specified permissible limitations on protected rights and freedoms by the War Measures Act or similar legislation and the Government should be required to justify to Parliament the invocation of such legislation.
- Canadian Bar Association Study (1978)
 - Did not recommend limitation clauses.
- Task Force on Canadian Unity Report (1979)
 - Did not specifically recommend limitation clauses, but suggested use of override clause where necessary.
- Quebec Liberal Party Proposals (1980)
 - Did not recommend limitation clauses.

Provincial Bills of Rights

- Alberta - No specific limitation clause but an override clause is included in the Bill.
- Quebec - Most fundamental freedoms, non-discrimination, political and legal rights are given paramountcy over other laws unless the other laws contain an override clause. Economic and social rights do not have any paramountcy.
- Saskatchewan - No specific limitation clause but an override clause is included in the Bill.

FUNDAMENTAL FREEDOMS

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

- Canadian Bill of Rights (1960)

- Section 1
- c) freedom of religion;
 - d) freedom of speech;
 - e) freedom of assembly and association; and
 - f) freedom of the press.

- Victoria Charter (1971)

- Article 5 - freedom of thought, conscience and religion.
- freedom of opinion and expression
- freedom of peaceful assembly and of association.

- Special Joint Committee Report (1972)

- recommended same provisions as in Victoria Charter above.

- Bill C-60 (1978)

- Section 6 - included same provisions as in Victoria Charter above with the addition of:
 freedom of press and other media

- Special Joint Committee Report (1978)

- recommended same provisions as in Bill C-60 above.

- Canadian Bar Association Study (1978)

- freedom of conscience and religion
- freedom of thought, opinion, expression and communications
- freedom of peaceful assembly and association

- The Task Force on Canadian Unity Report (1979)

- recommended that fundamental freedoms be included in a Charter.

- Quebec Liberal Party Proposals (1980)

- recommended freedom of thought, religion, opinion, speech, association and the press.

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Provincial Bills of Rights

Alberta Section 1. (c) freedom of religion;
(d) freedom of speech;
(e) freedom of assembly and association; and
(f) freedom of the press.

Quebec Section 3 - Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

Saskatchewan Section 4- Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Section 5- Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

Section 6- Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with other associations of any character under the law.

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DEMOCRATIC RIGHTS

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

NOTE: The B.N.A. Act already provides for the annual sitting of Parliament, limits on maximum duration of parliament and extension in cases of national emergencies.

- Canadian Bill of Rights (1960)

- No provision.

- Victoria Charter (1971)

- Article 4 - Principles of universal suffrage and free and democratic elections.

- Article 5 - Right of citizen to vote and to qualify for elective office in the House of Commons or legislature without discrimination based on race, national or ethnic origin, color, religion or sex.

- Articles 6 and 7 - Limits on maximum duration of Parliament and legislatures except in cases of national emergencies. Provincial legislatures could only extend life when the Government of Canada had declared a national emergency.

- Article 8 - Requirement for annual sessions of Parliament and legislatures.

- Special Joint Committee Report (1972)

- recommended the same provisions as the Victoria Charter above with the addition of language as one of the grounds for non-discrimination and

- fair and equitable representations in the House of Commons and in the provincial legislatures.

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- Bill C-60 (1978)
 - Sections 10-12 - same provisions as the Victoria Charter above with the addition of language as one of the grounds for non-discrimination.
- Special Joint Committee Report (1978)
 - Recommended same provision as Bill C-60 above.
- Canadian Bar Association Study (1978)
 - Recommended same provisions as the Victoria Charter above (language was not included as a ground for non-discrimination). Also recommended - right of every person to reasonable access to all public information in the possession of federal, provincial and municipal departments and agencies.
- The Task Force on Canadian Unity Report (1979)
 - Recommended that political rights be included in a Charter.
- Quebec Liberal Party Proposals (1980)
 - Recommended the principle of universal suffrage and free elections.
 - Requirement for annual sessions of Parliament and legislatures.
 - Limits on maximum duration of Parliament and legislatures (4 years) except in cases of national emergencies.

NOTE: These rights were not included in the proposed Charter. The Quebec Liberal Party included the rights under Political Institutions.

Provincial Bills of Rights

- Alberta - no similar provision.
- Quebec
 - Section 22 - Every person legally capable and qualified has the right to be a candidate and to vote at an election.
- Saskatchewan
 - Section 8 - Every qualified voter resident in Saskatchewan shall enjoy the right to exercise freely his franchise in all elections and shall possess the right to require that no Legislative Assembly shall continue for a period in excess of five years.

In addition, Legislative Acts in several provinces limit the duration of the legislative assembly.

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PROPOSED RESOLUTION FOR JAMES ...
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
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MOBILITY RIGHTS

CHARTER OF RIGHTS AND FREEDOMS (1980)

- Section 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.

- Canadian Bill of Rights (1960)

- Section 2 - no law of Canada shall be construed or applied so as to authorize or effect the arbitrary exile of any person;

- Victoria Charter (1971)

- no provision.

- Special Joint Committee Report (1972)

- right to citizenship, once legally acquired, to be made inalienable under the Bill of Rights.

Limitation - Exercisable to the extent that they are reasonably justifiable in a democratic society.

- Bill C-60 (1978)

- Section 7 - Right of person not to be arbitrarily exiled from Canada.

Section 8 - Right of citizens to take up residence, acquire and hold property and pursue a livelihood, subject to laws of general application, but without discrimination based on province of residence or previous residence.

Limitation - those reasonably justifiable in a free and democratic society in interests of: (i) public safety or health, (ii) peace and security of public, (iii) rights and freedoms of others.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

- Special Joint Committee Report (1978)

- recommended that the above section in Bill C-60 be deleted because they did not feel that a permanent distinction between the right of citizens and landed immigrants should be engraved in the constitution.

Note: the mobility rights clause included in the Charter of Rights and Freedoms extends the rights to landed immigrants.

- Canadian Bar Association Study (1978)

- recommended no similar provision.

- The Task Force on Canadian Unity Report (1979)

- recommended entrenchment of free movement of services, goods and capital and reduction by provinces of impediments to mobility of labour.

- Quebec Liberal Party Proposals (1980)

- recommends right of citizens to settle anywhere in Canada and to enjoy the same rights as other citizens in the province of settlement.

Provincial Bills of Rights

Alberta - no similar provision.

Quebec - no similar provision.

Saskatchewan - no similar provision.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980 (31)

LEGAL RIGHTS

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

- Canadian Bill of Rights (1960)

- Section 1 (a) - right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law.

- Victoria Charter (1971)

- no similar provision.

- Special Joint Committee Report (1972)

- Recommended the right to life, liberty and security of the person so as not to be deprived thereof except in accordance with the principles of fundamental justice.

- Bill C-60 (1978)

- Section 6 - the right of the individual to life, and to the liberty and security of his or her person, and **the right** not to be deprived thereof except by **due** process of law.

- Special Joint Committee Report (1978)

- Recommended same provision as Bill C-60 above.

- Canadian Bar Association Study (1978)

- Right not to be deprived of life, liberty and security of the person except by due process of law.

- The Task Force on Canadian Unity Report (1979)

- Recommended that the Charter contain legal rights.

- The Quebec Liberal Party Proposals (1980)

- Recommended protection of rights to life, freedoms, physical integrity.

Provincial Bills of Rights

- Alberta

Section 1(a). The right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BALEFINDG BOOK USE IN THE PARLIAMENT, OCTOBER 1980

- Quebec

Section 1 - Every human being has a right to life and to personal security, inviolability and freedom.

Section 24 - No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

- Saskatchewan - no similar provision.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

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

- Canadian Bill of Rights (1960)
 - no similar provision.
- Victoria Charter (1971)
 - no similar provision.
- Special Joint Committee Report (1972)
 - Recommended protection against unreasonable searches and seizures.
- Bill C-60 (1978)
 - Right to be secure against unreasonable searches and seizures.
- Special Joint Committee Report (1978)
 - Recommended same provision as Bill C-60 above.
- Canadian Bar Association Study (1978)
 - Right against unreasonable searches and seizures.
- The Task Force on Canadian Unity Report (1979)
 - Recommended that the Charter contain legal rights.
- The Quebec Liberal Party Proposals (1980)
 - Recommended protection against unreasonable searches and seizures.

Provincial Bills of Rights

- Alberta - No similar provision.
- Quebec
 - Section 7 - A person's home is inviolable.
 - Section 8 - No one may enter upon the property of another or take anything therefrom without his express consent.
- Saskatchewan - No similar provision.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT OCTOBER 1980 (31)

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

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

- Canadian Bill of Rights (1960)

- Section 2(a) - no law of Canada shall be construed or applied so as to authorize or effect the arbitrary detention or imprisonment of any person.

- Victoria Charter (1971)

- No provision.

- Special Joint Committee Report (1972)

- No similar provision recommended.

- Bill C-60 (1978)

- Section 7 - right not to be arbitrarily detained or imprisoned.

- Special Joint Committee Report (1978)

- Recommended the same provision as Bill C-60 above.

- Canadian Bar Association Study (1978)

- No similar provision.

- The Task Force on Canadian Unity Report (1979)

- Recommended that the Charter contain legal rights.

- The Quebec Liberal Party Proposals (1980)

- No similar provision.

Provincial Bills of Rights

- Alberta - no similar provision.

- Quebec

Section 24 - No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

- Saskatchewan - Every person and every class of persons shall enjoy the right to freedom from arbitrary arrest or detention.
Section 7

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

- Canadian Bill of Rights (1960)

- Section 2(c) No law of Canada shall be construed or applied so as to deprive a person who has been arrested or detained

- (i) of the right to be informed promptly of the reason;
- (ii) of the right to retain and instruct counsel without delay; and
- (iii) of the right to remedy of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful.

- Victoria Charter (1971)

- no similar provision.

- Special Joint Committee Report (1972)

- Recommended the same provision as in Canadian Bill of Rights above.

- Bill C-60 (1978)

- Same provision as in Section 10 of the Charter of Rights and Freedoms.

- Special Joint Committee Report (1978)

- Recommended the same provision as in Section 10 of the Charter of Rights and Freedoms.

- Canadian Bar Association Study (1978)

- Recommended the same provision as in Canadian Bill of Rights.
- Recommended that the Charter contain legal rights.

- The Quebec Liberal Party Proposals (1980)

- Recommended the right of every person who is arrested or detailed to be promptly informed of the reasons for his arrest or detention and to be promptly brought before a competent tribunal.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

Provincial Bills of Rights

- Alberta - no similar provision.

- Quebec

Section 25 - Every person arrested or detained must be treated with humanity and with the respect due to the human person.

Section 28 - Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

Section 29 - Every person arrested or detained has a right to immediately advise his next of kin thereof and to have recourse to the services of an advocate.

Section 30 - Every person arrested or detained must be brought promptly before the competent tribunal.

Section 32 - Every person deprived of his liberty has a right of recourse to habeas corpus.

- Saskatchewan

Section 7 - Every person who is arrested or detained shall enjoy the right to an immediate judicial determination of the legality of his detention and to notice of the charges on which he is detained.

Canadian Bill of Rights (1960)

Section 1 - No law of Canada shall be construed or applied so as to deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause.

Charter of Rights (1979)

- No similar provision.

Special Joint Committee Report (1973)

- Recommended that a Charter include those rights already included in the Canadian Bill of Rights above, and the prohibition of retroactive penal laws or punishments.

Bill C-60 (1976)

Section 7 - The right of an individual who has been charged with an offence, to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal, and to be held without reasonable bail without just cause, shall be guaranteed, not to be infringed, if the offence in question is an offence under the law in force at the time of such act or omission and if such act or omission is found to be an offence, and if found guilty of the offence, not to be subjected to a punishment more severe than that applicable at the time the offence was committed.

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LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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;
- (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.

- Canadian Bill of Rights (1960)

- Section 2(f) - no law of Canada shall be construed or applied so as to deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause.

- Victoria Charter (1971)

- No similar provision.

- Special Joint Committee Report (1972)

- Recommended that a Charter include those rights already included in the Canadian Bill of Rights above, and the proscribing of retroactive penal laws or punishments.

- Bill C-60 (1978)

Section 7 - The right, as an individual who has been charged with an offence, to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal, not to be denied reasonable bail without just cause having been established, not to be found guilty of the offence on account of any act or omission that at the time of such act or omission did not constitute an offence, and, if found guilty of the offence, not to be subjected to a punishment more severe than that applicable at the time the offence was committed.

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- Special Joint Committee Report (1978)
 - Recommended that section 7 of Bill C-60 above be redrafted to provide also for the obligation to facilitate retention and instruction of counsel and for the protection against double jeopardy.
- Canadian Bar Association Study (1978)
 - Recommended: Right to a fair hearing
 - Right to be presumed innocent and not to be denied reasonable bail without just cause
 - Right not to be subjected to retroactive penal laws or punishments.
- The Task Force on Canadian Unity Report (1979)
 - Recommended that the Charter contain legal rights.
- The Quebec Liberal Party Proposals (1980)
 - Recommended: Right of every person to a public and impartial hearing by an independent tribunal.

Provincial Bills of Rights

- Alberta - No similar provision.
- Quebec
 - Section 23 - Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.
 - The tribunal may decide to sit in camera, however, in the interests of morality or public order.
 - It may also sit in camera in the interests of children, particularly in matters of divorce, separation from bed and board, marriage annulment or declaration or disavowal of paternity.
 - Section 31 - No person arrested or detained may be deprived without just cause of the right to be released on undertaking, with or without deposit or surety, to appear before the tribunal at the appointed time.
 - Section 33 - Every accused person is presumed innocent until proven guilty according to law.
 - Section 35 - Every accused person has a right to a full and complete defense and has the right to examine and cross-examine witnesses.
 - Section 37 - No accused person may be held guilty on account of any act or omission which, at the time when it was committed, did not constitute a violation of the law.
- Saskatchewan - no similar provision.

PROPOSED RESOLUTION
CONSTITUTION OF CANADA - BAILIFFING BOOK USE IN THE PARLIAMENT,
OCTOBER 1980

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

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

- Canadian Bill of Rights (1960)

- Section 2(b) - no law of Canada shall be construed or applied so as to impose or authorize the imposition of cruel and unusual treatment or punishment.

- Victoria Charter (1971)

- No similar provision.

- Special Joint Committee Report (1972)

- Recommended: The right not to be subjected to cruel and unusual punishment.

- Bill C-60 (1978)

- Section 7 - The right not to be subjected to any cruel and unusual treatment or punishment.

- Special Joint Committee Report (1978)

- Recommended same provision as Bill C-60 above.

- Canadian Bar Association Study (1978)

- Recommended: Right not to be subjected to cruel and unusual punishment.

- The Task Force on Canadian Unity Report (1979)

- Recommended that the Charter contain legal rights.

- The Quebec Liberal Party Proposals (1980)

- No similar provision.

Provincial Bills of Rights

- Alberta - no similar provision.

- Quebec

- Section 25 - Every person arrested or detailed must be treated with humanity and with respect due to the human person.

- Saskatchewan - no similar provision.

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PROPOSED RESOLUTION FOR SUBSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

- Canadian Bill of Rights (1960)

- Section 2(d) - no law of Canada shall be construed or applied so as to authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self-crimination or other constitutional safeguards.

- Victoria Charter (1971)

- No similar provision.

- Special Joint Committee Report (1972)

- Recommended that the Charter include those rights already included in the Canadian Bill of Rights above.

- Bill C-60 (1978)

- Section 7 - the right not to give evidence before any court, tribunal, commission, board or other authority, if the individual is denied counsel, protection against self-crimination or other constitutional safeguards.

- Special Joint Committee Report (1978)

- Recommended same provision as Bill C-60 above.

- Canadian Bar Association Study (1978)

- Right to protection against self-crimination.

- The Task Force on Canadian Unity Report (1979)

- Recommended that the Charter contain legal rights.

- The Quebec Liberal Party Proposals (1980)

- No similar provision.

Provincial Bills of Rights

- Alberta - no similar provision

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PROPOSED RESOLUTION
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
OCTOBER 1980

- Quebec

Section 38 - No testimony may be used to incriminate the person who gives it if he does so under the protection of the tribunal, except in the case of perjury.

- Saskatchewan - no similar provision.

- Canadian Bill of Rights (1960)

- Section 24 - No law of Canada shall be construed as applied so as to deprive a person of the right to the assistance of an interpreter in any proceedings in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

- Victoria Charter (1971)

- no similar provision.

- Special Joint Committee Report (1972)

- recommended the right to an interpreter.

- Bill C-60 (1975)

- same provisions as the Canadian Bill of Rights above.

- Special Joint Committee Report (1976)

- recommended same provision as in Bill C-60 above.

- Canadian Bar Association Report (1978)

- right to an interpreter.

- The Task Force on Canadian Policy Report (1979)

- recommended that B.C. Charter contain legal rights.

- The Quebec Liberal Party Proceedings (1980)

- no similar provision.

- Right to Life Act

- Alberta - no similar provision.

- Quebec

Section 36 - Every accused person has a right to be assisted by a qualified person as an interpreter if he does not understand or speak the language of the hearing.

- Saskatchewan - no similar provision.

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PROPOSED REVISIONS TO THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LEGAL RIGHTS (CONTINUED)

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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 assistance of an interpreter.

- Canadian Bill of Rights (1960)
 - Section 2(g) - no law of Canada shall be construed or applied so as to deprive a person of the right to the assistance of an interpreter in any proceedings in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.
- Victoria Charter (1971)
 - no similar provision.
- Special Joint Committee Report (1972)
 - Recommended the right to an interpreter.
- Bill C-60 (1978)
 - Same provisions as the Canadian Bill of Rights above.
- Special Joint Committee Report (1978)
 - Recommended same provision as in Bill C-60 above.
- Canadian Bar Association Study (1978)
 - Right to an interpreter.
- The Task Force on Canadian Unity Report (1979)
 - Recommended that the Charter contain legal rights.
- The Quebec Liberal Party Proposals (1980)
 - No similar provision.

Provincial Bills of Rights

- Alberta - No similar provision.
- Quebec

Section 36 - Every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing.

- Saskatchewan - no similar provision.

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CONSTITUTION OF CANADA
OCTOBER 1980

NON-DISCRIMINATION RIGHTS

CHARTER OF RIGHTS AND FREEDOMS (1980)

- Section 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, programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

- Canadian Bill of Rights (1960)

- Section 1a) - the right of the individual to equality before the law and protection of the law without discrimination by reason of race, national origin, colour, religion or sex;

- Victoria Charter (1971)

- no provision.

- Special Joint Committee Report (1972)

- right to equal treatment by the law
- protection from discrimination in employment or in membership in professional, trade or other occupational associations, or in obtaining public accommodation and services, or in owning, renting or holding property;

- Bill C-60 (1978)

- Section 6 - right to equality before the law and to equal protection of the law

Section 9 - enjoyment of fundamental freedoms, legal rights and mobility rights without discrimination based on race, national or ethnic origin, language, colour, religion, age or sex.

- Special Joint Committee Report (1978)

- recommended same provisions as Bill C-60 above but with minor language modifications to Section 6
- recommended that the Charter should not prevent special programs on behalf of disadvantaged groups;

- Canadian Bar Association Study (1978)

- right to equality before the law and to equal protection of the law.

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PROPOSED
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
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- The Task Force on Canadian Unity Report (1979)
 - recommended that non-discrimination rights be included in the Charter.
- The Quebec Liberal Party Proposals (1980)
 - recommended right to equality before the law and to protection of the law; and
 - recommended the basic principles of non-discrimination.

Provincial Bills of Rights

Alberta Section 1 rights and freedoms listed in the Bill exist without discrimination by reason of race, national origin, colour, religion or sex

1(b) the right of the individual to equality before the law and the protection of the law.

Quebec Section 10 Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin or social condition.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

NOTE: In addition, the Quebec Bill deals in particular with discriminatory notices and signs, non-discrimination in juridical acts, access to public places, employment, professional corporations, employment bureaus, and wages.

Saskatchewan Part II The Saskatchewan Bill prohibits discrimination because of race, creed, religion, colour, sex, marital status, physical disability, nationality, ancestry or place of origin with respect to:

- the right to engage in occupations,
- the right to purchase property,
- renting accommodation,
- access to public places,
- the right to education,
- notices, signs, publications,
- contracts,
- employment, employment agencies,
- membership in professional and trade associations,
- membership in trade unions,
- applications and advertisements for employment.

Note: All provinces have Human Rights legislation which deals with non-discrimination rights along the lines of the Saskatchewan law.

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PROCESSED BY THE
CONSTITUTION OF CANADA - BRITISH
OCTOBER 1980

OFFICIAL LANGUAGES OF CANADA

CHARTER OF RIGHTS AND FREEDOMS (1980)

- Section 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.

- Canadian Bill of Rights (1960)

- No similar provision.

- Victoria Charter (1971)

- Article 10 - English and French are the official languages of Canada with the status and protection set forth in the Charter.
- Article 18 - Power of Parliament or provincial legislatures to provide for more extensive rights re use of English and French.

- Special Joint Committee Report (1972)

- Recommended that French and English be constitutionally entrenched as the two official languages of Canada.

- Bill C-60 (1978)

- Section 13 - Power of Parliament and legislatures to declare English and French official languages of Canada for all purposes declared.
- Section 20 - Power of Parliament or provincial legislatures to provide for more extensive rights re use of English and French.

- Special Joint Committee Report (1978)

- Did not take a position on this matter.

- Canadian Bar Association Study (1978)

- recommended that English and French be constitutionally entrenched as the official languages of Canada and that each province should have the power to choose its own official language or languages, subject to the limitations set forth in those recommendations (language in legislature, courts, communications with government and education).

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRITAINING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

- The Task Force on Canadian Unity Report (1979)

- Recommended: principle of equality of status, rights and privileges of English and French languages for all purposes declared by the Parliament of Canada, within its sphere of jurisdiction,
- : a provincial legislature should have the right to determine an official language or official languages for that province, within its sphere of jurisdiction.

- The Quebec Liberal Party Proposals (1980)

- Recommended: the Constitution should recognize that French and English are the official languages of federal political institutions as well as of those bodies which fall within their jurisdiction.
- : The provinces should be empowered to legislate with respect to language, subject however to certain inviolate rights safeguarded by the constitutionally enshrined Charter of Rights and Liberties.

Provincial Bills of Rights

- No language provisions are included in any of the Provincial Bills of Rights. However, both Quebec and New Brunswick have language laws (Quebec's Bill 101 (1977) and New Brunswick's Official Languages Act, 1969). The provisions of these laws regarding minority language education rights are examined under Section 23 of this paper.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

LANGUAGE RIGHTS AT THE FEDERAL LEVEL

CHARTER OF RIGHTS AND FREEDOMS (1980)

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

- Canadian Bill of Rights (1960)

- No similar provision.

- Victoria Charter (1971)

- Article 11 - right to use English or French in debates in Parliament.
- Article 12 - statutes, records and journals of Parliament to be in English and French, with each version equally authoritative.
- Article 14 - right to use English or French in giving evidence and in any pleading or process before federal courts.
- Articles 15 and 17 - right of person to communicate in French or English with head or central offices of a federal government department or agency, and with any principal offices thereof in areas designated by Parliament.

- Special Joint Committee Report (1972)

- Recommended: The right to use either official language in Parliament.
 - : The right to have access in both official languages to the legislative records, journals and enactments of Canada.
 - : The right to use either official languages in dealing with judicial or quasi-judicial federal bodies.
 - : The right to communicate in either official languages with federal departments and agencies.

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PROPOSED RESOLUTION FOR JOURNAL OF THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

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- Bill C-60 (1978)

- Section 14 - Right to use English or French in all debates or other proceedings of Parliament.
- Section 15 - Statutes, records and journals of Parliament to be printed and published in English and French, both versions equally authoritative.
- Section 16 - Right to use English or French in all court proceedings at federal level.
- Section 19 - Right of member of public to communicate in English or French with head or central offices of any federal government institution, and with any principal offices thereof in areas designated by Parliament on basis of minority language numbers.

- Special Joint Committee Report (1978)

- Did not take a position on this matter.

- Canadian Bar Association Study (1978)

- Recommended - Right to use English or French in Parliament.
 - Statutes, records and journals of federal Parliament should be published in both English and French.
 - Right to be tried in either official language and right to use either language in giving evidence in any pleading or process in civil cases in any court in Canada.
 - Right to use either English or French in communicating with the head office of all federal departments and agencies and with every principal office of federal departments and agencies in any area where a substantial proportion of the population uses that language.

- The Task Force on Canadian Unity Report (1979)

- Recommended: Equality of both official languages in the Parliament of Canada.
 - : Right of the public to obtain services from and communicate with head offices of every department, agency, or Crown Corporation of the Government of Canada, the central administration in the National Capital Region, and all federal courts in Canada in either official languages; elsewhere, services provided in both official languages where significant demand.

- Quebec Liberal Party Proposals (1980)

- Recommended: The Right of any French or English-speaking person as well as of any native person to be served by the federal government in their language whenever the number of people seeking such services justifies it.

PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

Bill of Rights and Freedoms (1982)

Section 23(1) Citizens of Canada whose first language learned and still understood is that of the

- : The right of every French or English-speaking person as well as every native person to demand that a criminal or penal trial which exposes them to possible imprisonment be held in their mother tongue.
- : Also section 133 of the B.N.A. Act:
 - Use of English or French in debates in Parliament, in statutes, records and journals, and in courts.

When the province in question and, prior to the change, any child of that citizen has been receiving up to 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 this area.

Canadian Bill of Rights (1960)

- No similar provision.

Victoria Charter (1971)

- No similar provision.

Special Joint Committee Report (1973)

- Recommended: parents' right to have English or French provided as their child's main language of instruction in publicly supported schools where there is a sufficient number of persons to justify the provision of necessary facilities.

Bill C-90 (1974)

- Section 24 - Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas where it is reasonably determined by the province that the numbers of children in any area warrant the provision of necessary facilities.

- Preservation of right to have children educated in the majority language of the province.

- Right of a province to require a child enrolled in a minority language school to give instruction in the use of the majority language.

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PROCESSED RESOLUTION FOR
 CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
 OCTOBER 1980

MINORITY EDUCATIONAL RIGHTS

CHARTER OF RIGHTS AND FREEDOMS (1980)

Section 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.

- Canadian Bill of Rights (1960)

- No similar provision.

- Victoria Charter (1971)

- No similar provision.

- Special Joint Committee Report (1972)

- Recommended: parents' right to have English or French provided as their child's main language of instruction in publicly supported schools where there is a sufficient number of persons to justify the provision of necessary facilities.

- Bill C-60 (1978)

- Section 21 - Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas where it is reasonably determined by the province that the numbers of children in any area warrant the provision of necessary facilities.

- Preservation of right to have children educated in the majority language of the provinces.

- Right of a province to require that a child enrolled in a minority language school be given instruction in the use of the majority language.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT, OCTOBER 1980

- Special Joint Committee Report (1978)
 - Did not take a position on this matter.
- Canadian Bar Association Study (1978)
 - Right of any parent in Canada to choose English or French as the language of instruction for his children in publicly supported schools in areas of a province where numbers warrant.
- The Task Force on Canadian Unity Report (1979)
 - Recommended: Provincial laws which would recognize the principle of minority language education enunciated in the "Montreal Agreement" of 1978, with this right accorded to children of either minority who change their province of residence, but this limited to children of citizens. With respect to immigrants, at least in Quebec these children should be required to receive their education in French.

NOTE: While the recommendations of this report do not mention it explicitly, at page 109 the commentary suggests that in light of the unanimous agreement of the provinces in Montreal, the right to minority language education should be entrenched in the constitution.

- Quebec Liberal Party Proposals (1980)
 - Recommended: Right of every French or English-speaking person and every native person to request primary and secondary level education for their children in the province in which they reside in their mother tongue.

Provincial Laws

New Brunswick: Official Languages Act, 1969. In all public, trade or technical schools in New Brunswick, students whose "mother tongue" is English are to have English as their chief language of instruction, and students whose "mother tongue" is French are to have French as their chief language of instruction.

Quebec : Bill 101 (1977). Instructions in publicly funded schools is to be in French. As an exception, children whose mother or father received elementary education in English in Quebec may receive their elementary and secondary school instruction in English at the request of their parents.

CHARTER OF RIGHTS AND FREEDOMS

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SUMMARY OF PARLIAMENTS DEBATES AS STATED
BY THE MINISTER OF JUSTICE AND ATTORNEY GENERAL
ON OCTOBER 20, 1980

First Ministers discussed the principle of
enforcement initially and then discussed each of the
categories of rights. In a number of cases the Premier
did not expressly state his position on each category
of rights. In those cases the Agency is in certain
respects a "best guess" based on general comments.

Newfoundland Premier Clark stated the province was
willing to support the Charter's principles of
individual freedoms and democratic rights.
Other rights were not discussed in detail. A general
goal of equality was stated. The province was willing
to discuss each category of rights with the
federal government. The Premier indicated that the
province would support the Charter's principles of
equality and democratic rights. The province would
discuss the Charter's principles of equality and
democratic rights with the federal government.

Alberta Premier Turner stated the province was
willing to support the Charter's principles of
individual freedoms and democratic rights. The
province was willing to discuss each category of
rights with the federal government. The Premier
indicated that the province would support the
Charter's principles of equality and democratic
rights. The province would discuss the Charter's
principles of equality and democratic rights with
the federal government.

Prince Edward Island Premier MacLean stated the province
was willing to support the Charter's principles of
individual freedoms and democratic rights. The
province was willing to discuss each category of
rights with the federal government. The Premier
indicated that the province would support the
Charter's principles of equality and democratic
rights. The province would discuss the Charter's
principles of equality and democratic rights with
the federal government.

New Brunswick Premier LeBlond stated the province
was willing to support the Charter's principles of
individual freedoms and democratic rights. The
province was willing to discuss each category of
rights with the federal government. The Premier
indicated that the province would support the
Charter's principles of equality and democratic
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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (31)
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
OCTOBER 1980

CHARTER OF RIGHTS AND FREEDOMSSUMMARY OF PROVINCIAL POSITIONS AS STATED
BY FIRST MINISTERS DURING THE SEPTEMBER 10
DISCUSSION ON THE CHARTER OF RIGHTS

First Ministers discussed the principle of entrenchment initially and then examined each of the categories of rights. In a number of cases the Premiers did not expressly state their positions on each category of rights. In these cases the summary is in certain respects a "best guess" based on general comments.

- Newfoundland: Premier Peckford stated the province was willing to support the entrenchment of fundamental freedoms and democratic rights. Other rights cause the province a great deal of concern but they would be willing to discuss (not outright opposition). With respect to mobility rights, the Premier indicated that he felt an interim affirmative action provision allowing a province to protect employment opportunities until the unemployment rate in the province was no higher than other provinces would be important.
- Nova Scotia: The Premier opposed an entrenched Charter and with the exception of "Democratic Rights" would not agree to any of the rights proposed in the Charter. With respect to Democratic Rights, Nova Scotia suggested these should be included under government institutions. He stated that "the whole issue of an entrenched Charter of Rights may come very hard against the responsibility of the provinces as laid out in the B.N.A. Act and there is a feeling that entrenchment of rights in a general Canadian constitution, bypassing the primary role of the provinces in certain areas, may be destructive of the kinds of rights and freedoms that we do enjoy today."
- Prince Edward Island: Premier MacLean stated that the province opposed an entrenched charter as they felt it would weaken parliamentary democracy. He put forth the view that entrenchment would render rights inflexible and that the Charter would determine the rights of future generations in the mould of 1980. The Premier stated several times that the province's position was one of principle and not any sort of bargaining position. He did agree to entrenching Democratic Rights and the province seemed to agree with Mobility Rights if an override clause with respect to property rights was added.
- New Brunswick: Premier Hatfield gave full support to an entrenched Charter. He suggested that several categories of rights in the Charter required language modifications in order to clarify but that he supported the objective. Only in the case of minority language education rights did the Premier offer any real objections. He felt he could not agree with this provision as long as the "where numbers warrant" qualification was included.

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PROPOSED RESOLUTION FOR JOINT ADDRESS RESPECTING THE (31)
CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT,
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Quebec: Premier Levesque opposed an entrenched Charter but his opposition appeared to be based more on certain of the categories of rights included than on the principle of entrenchment. The Premier agreed to the entrenchment of Democratic Rights and raised very little opposition to legal rights, fundamental freedoms and non-discrimination rights. However, he stated that both mobility rights and minority language education rights would threaten the franco-phone culture and that he would never agree to these categories.

Ontario: Ontario supported entrenchment of the Charter and all categories of rights but provincial institutional language rights, which are no longer included in the Charter. Ontario did, however, have reservations about some provisions of the legal and mobility rights. It supported minority language education rights where numbers warrant.

Manitoba: Premier Lyon opposed an entrenched Charter as it was "totally contrary to our traditional and our successful parliamentary government and thereby not in the best interest of Canadians". He stated that we would be moving from a system which has worked into a system that has not worked well, using the U.S. as an example. He also stated that Parliament and the legislatures were better equipped to resolve social issues and that statute law was more flexible because it could be more easily amended. Manitoba's opposition to the Charter was so total that when all other provinces agreed that Democratic Rights should be entrenched (if not in a Charter then under government institutions). Premier Lyon would not agree to support these rights.

Saskatchewan: Premier Blakeney's opposition to the Charter was based mainly on the judiciary vs. legislature argument. He felt people could more easily approach their elected officials than a lawyer if their rights were threatened. The Premier did agree to support the entrenchment of Democratic Rights and stated that the province would support some language rights but would not specify which rights.

Alberta: Premier Lougheed followed much the same line as Manitoba and Saskatchewan did in his statement opposing the Charter. Although he agrees that rights of people must be protected from power of government he feels it is not necessary to entrench the Charter to accomplish this. He mentioned how the primacy of the Alberta Bill of Rights provided this protection and that the rights provided in the provincial Bill had not been diminished in the nine years it has been in force (the Alberta Bill is very limited). The Premier did agree to the entrenchment of Democratic Rights and did not offer a position on Mobility Rights. All other categories were opposed by the Province.

APPROVED RESOLUTION FOR JOINT ADDRESS RESPECTING THE CONSTITUTION OF CANADA - BRIEFING BOOK USE IN THE PARLIAMENT OCTOBER 1980 (31)

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British Columbia: British Columbia has opposed a Charter since it was first suggested and this position was maintained. Premier Bennett agreed to the entrenchment of Democratic Rights but not willingly. All other categories of rights were opposed by the Province.

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British Columbia: Premier Bennett stated the province was willing to support the entrenchment of fundamental freedoms and democratic rights. Other rights were the province's great deal of concern but they would be willing to discuss that outright opposition. With respect to mobility rights, the Premier indicated that he felt an interim affirmative action provision allowing a province to protect employment opportunities until the unemployment rate in the province was no higher than other provinces would be important.

New Scotia: The Premier opposed an entrenched Charter and with the exception of "Democratic Rights" would not agree to any of the rights proposed in the Charter. With respect to Democratic Rights, Nova Scotia suggested these could be included under government institutions. He stated that "the whole issue of an entrenched Charter of Rights may come very hard against the responsibility of the province as laid out in the B.N.A. Act and there is a feeling that entrenchment of rights in a general Canadian context... regarding the primary role of the provinces in certain areas, may be somewhat out of the kinds of rights and freedoms that we do enjoy today."

Prince Edward Island: Premier Bennett stated that the province opposed an entrenched Charter as they felt it would weaken parliamentary democracy. He put forward the view that entrenchment would weaken rights in fact and that the Charter would diminish the rights of future generations in the year of 1982. The Premier stated several times that the province's position was not of principle but of fact and that the province would agree to entrenchment of Democratic Rights but the province would not agree with mobility rights as it would have an impact with respect to property rights was added.

Alberta: Premier Bennett gave full support to an entrenched Charter. He suggested that several categories of rights in the Charter require legislative modifications in order to be effective and that he supported the objective. Only in the case of minority language educational rights did the Premier offer any real opposition. He stated that he would not have any real opposition as long as the "where there's a will, there's a way" qualification was included.

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