

INTRODUCTION TO BRIEFING MATERIALS FOR PROVINCIAL MHA'S

The following material has been brought together to assist Members of the House of Assembly in forming an opinion with respect to the current debate over the Trudeau proposals for amendment of the Canadian Constitution.

SECTION 1 Contains an outline of the constitutional amendment process and the nature of the current impasse.

SECTION 2 Contains an outline of the Province's concerns.

Specific examples of the nature of the impact by way of illustration only, for the impact of the constitutional proposals are very wide-spread.

SECTION 3 Contains the BNA Act (1949) which gives a force of law to our Terms of Union (attached thereto as a schedule) and a letter from Prime Minister Louis St. Laurent dated December 11, 1948 in answer to certain questions from Newfoundland's negotiators which, according to the Sullivan Royal Commission "Constitutes at the very least a formal representation on the basis of which Newfoundland entered Confederation." Consequently the undertakings contained therein would no doubt be interpreted by a court of law as equally binding as the Terms of Union.

SECTION 4 Contains a copy of the Statute of Westminster, Section 1 of which defines Dominion as including Newfoundland. It is interesting to note that by Item 16 of Schedule 1 of the Trudeau proposals (p. 44 of Section 8) it is intended that Newfoundland be deleted from the definition of a Dominion. Legal research is continuing as to the impact of this particular move, particularly with respect to the Province's case on offshore minerals.

SECTION 5 Contains the Victoria Charter of 1971 as agreed to by the Smallwood Government. No particular protective clauses are contained in this version of the amending formula.

SECTION 6

Contains the "Best Efforts Draft Amending Formula" otherwise known as the "Vancouver Consensus" agreed to by nine provinces (Quebec reserving its position) in the summer of 1980 which was rejected by the Federal Government. The main features of this formula are:

(a) Under Section 1 (1), general amendments would be made to the Constitution by resolution of the Senate and the House of Commons and the assent by resolution of the Legislative Assemblies of two-thirds of the provinces (i.e. six) representing at least fifty percent of the population of Canada according to the latest general census (i.e. including either Ontario or Quebec).

(b) Where an amendment affects one of the four areas of jurisdiction set out in sub-section 1 (2), a province could "opt out" and not have that particular amendment apply to it by passing a resolution requesting such exemption in its Legislative Assembly.

(c) Sub-section 3 contains the procedural short-cut which is the equivalent of Section 43 in the Trudeau proposals thus proving that it is not a "protective" clause; a true protective clause is contained in 1 (2) mentioned in (b) above.

(d) Section 9 contains a provision that no amendment of the amending formula with respect to the alteration of provincial boundaries can come into effect unless assented to by all the provinces, thus giving us an iron clad veto to all changes to the Labrador boundary. Section 9 (1) was included at the specific request of this Province.

SECTION 7

Contains part of a confidential report to Ministers by Sub-committee of Officials relating to the Charter of Rights. From Section 5 reprinted here, it is clear that the problem of interpretation of the Freedom of Religion Clause with respect to confessional schools was brought to the Federal Government's attention during the summer and the need for a specific protective clause was made by a number of provinces

(including Newfoundland). Unfortunately the advice given was not taken. Because of the confidential nature of this document, certain provisions not relevant to the Freedom of Religion issue have not been reproduced.

SECTION 8 Contains the Trudeau proposals

SECTION 9 Contains statistics with respect to the population of Canada. It is important to note, in particular, that the population of Quebec has fallen by 1.6% as a portion of the national total since 1979. At that rate they would fall under the 25% mark within ten years. Thus the words 'every province that at any time before the issue of the proclamation had, according to any previous general consensus, a population of at least twenty-five percent of the population of Canada' in Section 41 (1) (b), are quite significant, as by referring to any previous general census, a perpetual veto is given to Quebec.

SECTION 10 Contains two opposite views of the effect of the Trudeau constitutional proposals upon the rights of this province. The Daily News editorial claims that the various rights of the province can not be changed without our consent by virtue of Section 43 while the letter to the Editor of the Evening Telegram from Professor F. L. Jackson succinctly shows that by virtue of Section 47, a referendum under Section 42 could wipe away any protection that might exist under Section 43 (which is non-existent in any event - see Section 7 (c) above).

Given that there is a major problem with respect to the Trudeau proposals in relation to the rights of this province, the province's only true protection, as a minority within Canada, is recourse to the courts and the protection of the rule of law.

SECTION 11 Contains excerpts from the so-called "Kirby Memorandum". In that document, particularly on page 51, the arguments of the Federal Government are detailed

and it is presumably these arguments which they will make before the various courts of Canada in our legal challenge to the legality and constitutionality of their proposals.

One quite unfounded argument is that if we, in Canada, have developed a binding Canadian Constitution convention that it cannot affect action by the U.K. Parliament, i.e. that somehow we are still under the colonial rule of England (number 3 on page 51).

Section 11 also contains an interview with Mr. Chretien in the Financial Post of October 12, 1980 which expresses the Trudeau Government's view of Canada.

Mr. Chretien is quoted as stating "Because amending the constitution of Canada is an Act of the British Parliament. In fact, tomorrow, in my judgment, the British Parliament could decide that there are no more provinces in Canada."

In the view of the Province this attitude is legal and political nonsense. It has decided, in concert with five other provinces (British Columbia, Alberta, Manitoba, Quebec and Prince Edward Island) to challenge the legality and constitutionality of the federal proposals in three Courts of Appeal (Quebec, Manitoba and Newfoundland) from which there will no doubt be an appeal from one, or all cases, to the Supreme Court of Canada.

SECTION 12 Contains a Note on an Amendment of the B.N.A. Act from Laskin's book on constitutional law (Professor Laskin is now the Chief Justice of the Supreme Court of Canada). This document lays out some of the history of the amendment of the Canadian Constitution.

SECTION 13 Contains the Judgment of the Supreme Court of Canada of December 21, 1979 in respect to the attempted unilateral amendment of the Canadian constitution by the Federal Government with respect to the Senate. The Supreme Court of Canada struck down this attempt to unilaterally

amend the constitution in an area which impacted upon the rights of the provinces.

In doing so, the Supreme Court of Canada quoted with approval the fourth general principle from the Federal Government's own White Paper on Constitutional Amendment from 1965 which read as follows, "that the Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces." (See page 280 of the report of the Judgment). The current action by the Federal Government flies in the face of this principle, just as did its unsuccessful attempts to amend the Senate.

SECTION 14

Contains a paper by Professor W. R. Lederman, Q.C., (former Dean of Law at Queen's University) considered by many to be the most authoritative commentator on the Canadian Constitution. Professor Lederman in particular dealt with the need for provincial consent and had the following to say:

"In any event, we should not approach the British for basic changes concerning which there were substantial provincial dissents in Canada. In my view, not only would this be improper, it would be unconstitutional, it would be illegal. This would be contrary to our special constitutional law of amendment as established over the years by custom and precedent. This is not a popular view of the constitutional position in Ottawa, and perhaps not in London either, but I think it is the position. If the Ottawa Government doubts this, they could refer it to the Supreme Court of Canada for an advisory opinion. If the British Government in London doubts it, they have power to refer it to the Judicial Committee of the Privy Council for an advisory opinion."

Dr. Lederman's views are outlined in an article from the Halifax Chronicle Herald on October 22nd, also contained under this section.

Also contained in this section is an article by Ivan C. Rand (former Judge of the Supreme Court of Canada) which deals with the evolution of the Canadian Consti-

tution in general; this is a very scholarly article. The U.K.'s "trusteeship" role and the need for the agreement of provinces is discussed on page 145.

There are also articles from the Globe and Mail and Financial Post dealing with the legal aspects of the Trudeau proposals.

SECTION 15 Based on the conviction that the Trudeau proposals were illegal and unconstitutional and contained a devastating amending formula which could affect the rights of this province, the Premier went on province-wide television on October 20, 1980. His address on that occasion is contained in this section.

SECTION 16 Following the Premier's address, meetings were held in St. John's, Corner Brook and Grand Falls with representatives of some 80 different provincial-wide and local organizations. The outline contained in this section was distributed to these groups as well as a copy of the Trudeau proposals. These discussions were comprehensive, lively and demonstrated that the leadership of the Province has a very keen interest in Mr. Trudeau's constitutional proposals and their potential impact on this Province.

SECTION 17 In addition to pursuing our court case here in Canada, the Provinces have the option of petitioning and otherwise attempting to influence the attitude of the U.K. Parliament with respect to their role as trustee in this matter. A number of initiatives are under way in this respect.

Section 17 contains a London Daily Telegram editorial dated October 10, 1980, which points out that "Mr. Trudeau...is trying to bounce Britain into committing a dubious act over the vexed question of 'patriating' the 1867 British North America Act. He should be resisted." A Globe and Mail report of October 11th, 1980 on this editorial is also included.

These materials have been organized so as to be supplemented by further material. This will be done on a periodic basis and members are encouraged to maintain this briefing material and to insert further material in the appropriate sections.

OUTLINE OF THE CURRENT CONSTITUTIONAL IMPASSE:

- Canada is a sovereign state. Like every sovereign state we have a constitution.
- Our constitution is complete, i.e. includes an amending formula.
- Canada, like Newfoundland, evolved to statehood as a Dominion, as recognized in 1931 by the passage of the Statute of Westminster.
- At that time the provinces worried what the new status would mean for the amending process and part of the Canadian Constitution was left as an Act of the British Parliament to protect the interests of provinces in case the Federal Government might argue that under our new international status, that the central government could change the constitution unilaterally (just like they are trying to do now).
- Our present procedure to amend the constitution is simple. First, we in Canada agree as to the changes we want. This is done through unanimous agreement between our eleven governments, a procedure which has been successfully used many times in the past. Then the changes that have been agreed upon are sent to London and an amendment to the BNA Act is passed by the U.K. Government.
- Normally the U.K. passes with the minimum of comment the amendments and the procedure is a formality only.
- They have no real power over Canada as we are no longer a colony of England. They have, for instance, no power to initiate a new amendment on their own. They cannot, as Mr. Chretien recently said, take it upon themselves to abolish the provinces as this would be contrary to the Canadian Constitution according to which they must act.
- Indeed, when this current process started, Mr. Trudeau admitted all this by saying that the patriation of the constitution would be a symbolic act only.
- The reason why the U.K. role has been purely symbolic is that it has been considered unthinkable that Ottawa would abuse its role as the sole government that can send the U.K. an amending message by proposing something that was clearly unlawful and to the detriment of the rights of the provinces (thus putting the U.K.'s role as trustee to the test).

- Because Canada and the U.K. are separate independent sovereign states, international law governs the relationship between them and demands that the U.K. do nothing to unlawfully interfere in the internal affairs of Canada.
- The U.K. is in a box, for in this case, an analysis of Canadian constitutional law clearly shows that the proposed resolution which Ottawa wishes to send the U.K. is illegal and unconstitutional.
- What is the U.K. to do?
- It is our duty to provide the U.K. with a Supreme Court of Canada ruling on whether the proposed constitution is unlawful and unconstitutional or not.
- If the Supreme Court says that the proposed resolution is unlawful and unconstitutional then the proposed resolution should not be sent and if sent, the U.K. Parliament is not bound to act unlawfully and to violate the Canadian constitution by passing it.

PROVINCIAL GOVERNMENT'S CONCERNS RE THE CONSTITUTIONAL PROPOSALS
OF THE FEDERAL GOVERNMENT

The Government of Newfoundland's opposition to the constitutional proposals of the central Government can roughly be divided into two areas. One, on the manner in which the change is being carried out, and two, the content or lack of content of the proposed amendments.

The proposals are unconstitutional because they violate our constitution which requires the unanimous consent of the provinces where amendments affecting Federal-Provincial relationships and provincial rights are proposed. The amending methods which are proposed provide no protection to this Province in areas which we formerly thought were secure and unalterable without our consent.

The referendum procedure is not just a dead-lock breaking mechanism. It might be used that way but, more importantly, there is nothing in the proposals which says the referendum can be used only if the other procedure (i.e. consents of provincial legislatures) has been tried and has failed.

Under the Federal proposal nothing is immune from change. Everything which this Province holds sacred can be changed without the consent of the people or the Legislature of this Province. Much has been made of Section 43 of the proposals. That section does not provide any special protection to Newfoundland's Terms of Union, resources, border or education system. All it says is that amendments not affecting all provinces may be made with the consent of those provinces affected and the centre of government. It does not say that such amendments can only be made with the affected provinces' consent.

Even if this strained and wrong meaning is given to these words, there still remains the problems posed by Section 47. That section says the general amending procedures can be used to amend any other amending procedure. In other words Section 47 says the so-called protection clause (Section 43) can be repealed by a referendum under Section 42. The only conclusion to be drawn from this is that nothing is free from change and change contrary to the legitimate wishes and interests of the people and Government of Newfoundland.

Some specific examples might be appropriate.

Boundaries

The British North America Act of 1871 said boundaries couldn't be changed without a province's consent. Can this provision be repealed? Yes. By Section 47. Can our boundary thus be altered? The answer once again is yes.

Mobility of Rights

The Charter of Rights would definitely mean the elimination of our offshore hiring preference regulations. The province might attempt to keep them in place but, undoubtedly, at some point a Court challenge would be taken with the result that the regulations would be struck down as being contrary to the Charter.

Denominational Education & the Charter of Rights

We are all aware, to some extent, of the effects which a "freedom of religion" provision in the United States constitution has had. The Charter of Rights, as proposed by the Federal Government, would undoubtedly lead to a court challenge of the way our school system is funded and it should be pointed out that this challenge wouldn't necessarily happen in Newfoundland. The result of such a court action may well be the end of our school system as we now know it. At some point in time that may be the democratic desire of the people of Newfoundland, but, the decision should be ours to make if and when we want to make it.

We should not take the chance of an adverse court case. A protective clause (such as we have already proposed during this summer's constitutional talks) should be included.

The British North America Act, 1949

CHAPTER 22

AN ACT TO CONFIRM AND GIVE EFFECT TO TERMS OF UNION AGREED BETWEEN CANADA AND NEWFOUNDLAND.

(23rd March 1949).

WHEREAS by means of a referendum the people of Newfoundland have by a majority signified their wish to enter into confederation with Canada;

And whereas the Agreement containing Terms of Union between Canada and Newfoundland set out in the Schedule to this Act has been duly approved by the Parliament of Canada and by the Government of Newfoundland;

And whereas Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom to confirm and give effect to the said Agreement, and the Senate and House of Commons of Canada in Parliament assembled have submitted an address to His Majesty praying that His 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 King'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 Agreement containing Terms of Union between Canada and Newfoundland set out in the Schedule to this Act is hereby confirmed and shall have the force of law notwithstanding anything in the British North America Act, 1867 to 1946.

Confirmation
of Terms
of Union.

2. In accordance with the preceding section the provisions of the Newfoundland Act, 1933, other than section three thereof (which relates to guarantee of certain securities of Newfoundland) shall be repealed as from the coming into force of the said Terms of Union.

Repeal of
24 & 25 Geo. 5
c. 2.

SECTION III

STATEMENTS

ON

QUESTIONS RAISED

BY THE

NEWFOUNDLAND DELEGATION

DURING THE NEGOTIATIONS FOR THE UNION OF NEWFOUNDLAND
WITH CANADA

December 11, 1948

OTTAWA, December 11, 1948.

DEAR MR. WALSH,

During the course of our negotiations covering the final terms and arrangements for the union of Newfoundland with Canada a number of questions concerning Government policy were raised by your delegation and answered by the Canadian Government. In addition a number of temporary administrative arrangements were settled in order to facilitate the union.

It would not seem fitting to include in formal terms of union matters of this kind, since they are scarcely of a constitutional nature. I am therefore sending you the enclosed memorandum covering these various items. While these will not form part of the Terms of Union, they contain statements of the policy and intentions of this Government if union is made effective by the approval of the Parliament of Canada and the Government of Newfoundland and confirmed by the Parliament of the United Kingdom.

Yours sincerely,

(Sgd.) LOUIS S. ST. LAURENT,

Prime Minister of Canada.

The Honourable A. J. WALSH, K.C., LL.B.,
Chairman of the Newfoundland Delegation.

STATEMENTS ON QUESTIONS RAISED BY THE NEWFOUNDLAND
DELEGATION

(i) IMPORTS OF ESSENTIAL GOODS

Importation of essential capital goods will be continued through the existing system of permits, while cases of exceptional hardship in the consumer goods field will be dealt with on an individual basis.

It is not the intention of the Canadian Government to have import restrictions interfere with the normal operation of machinery and equipment already

No. 26

THE STATUTE OF WESTMINSTER, 1931

22 George V, c. 4 (U.K.)

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930

[11th December, 1931]

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

No 26

STATUT DE WESTMINSTER, 1931

22 George V, c. 4 (R.-U.)

Loi donnant effets à certains vœux formulés par les Conférences impériales de 1926 et de 1930

[11 décembre 1931]

Considérant que les délégués des Gouvernements de Sa Majesté du Royaume-Uni, du Dominion du Canada, du Commonwealth d'Australie, du Dominion de la Nouvelle-Zélande, de l'Union Sud-Africaine, de l'Etat libre d'Irlande, et de Terre-Neuve, aux Conférences impériales tenues à Westminster en les années de Notre-Seigneur mil neuf cent vingt-six et mil neuf cent trente, ont concouru aux énoncés et aux vœux formulés dans les rapports desdites Conférences;

Considérant qu'il est expédient et à propos, puisque la Couronne est le symbole de la libre association des membres de la Communauté des nations britanniques et que ces dernières se trouvent unies par une allégeance commune à la Couronne, d'exposer sous forme de préambule à la présente loi qu'il serait conforme au statut constitutionnel consacré de tous les membres de la Communauté dans leurs rapports réciproques, de statuer que toute modification de la Loi relative à la succession au Trône ou au Titre royal et aux Titres doit recevoir désormais l'assentiment aussi bien des Parlements de tous les Dominions que du Parlement du Royaume-Uni;

Considérant qu'il est conforme au statut constitutionnel consacré de statuer que nulle loi émanant désormais du Parlement du Royaume-Uni ne doit s'étendre à l'un quelconque desdits Dominions comme partie de

VICTORIA CHARTER (1971)

As agreed to by
Hammer Smallwood
in 1971
No protection
for NYfd

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 per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces; H
- (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.

BEST EFFORTS DRAFT

AMENDMENTS TO THE CONSTITUTION OF CANADA

Agreed to by all
10 provs
in Vancouver
1980

1. (1) 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 the assent by resolution of the Legislative Assembly in two-thirds of the provinces representing at least fifty percent of the population of Canada according to the latest general census.

(2) Any amendment made under sub-section (1) affecting:

(a) [the powers of the legislature of a province to make laws,]*

(b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,

(c) the assets or property of a province, or

(d) the natural resources of a province,

shall have no effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution prior to the issue of the proclamation, until such time as that Assembly may withdraw its dissent and approve such amendment by resolution.

boundary

2. A proclamation shall not be issued under Section 1 before the expiry of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly in each province has previously adopted a resolution of assent or dissent.

CONFIDENTIAL

July 24, 1980

CHARTER OF RIGHTS

Report to Ministers by
Sub-Committee of Officials

1. A sub-committee of officials representing all eleven governments and under the chairmanship of Roger Tassé met on July 22, 23 and 24 in Vancouver to examine the several issues on an entrenched Charter of Rights which had been referred to them by Ministers, namely

- (a) review the federal discussion draft of July 4, 1980 to consider how entrenchment of its provisions might impact on provincial legislative powers, having particular regard to the legal and practical implications of the proposed legal rights;
- (b) consider changes that would clarify and improve the language of the draft;
- (c) consider the possibility and desirability of entrenching the Canadian Bill of Rights rather than the proposed Charter;
- (d) consider the possibility of entrenching a Charter of Rights at the federal level only initially, thus permitting provinces to assess the impact of entrenched rights; and
- (e) consider the practicability of including an override (non-obstante) clause in an entrenched Charter, thus allowing jurisdictions to enact laws that would expressly supercede particular rights.

5. Fundamental Freedoms (Section 2): Concerns were expressed here respecting such matters as:

- would freedom of religion interfere with existing confessional school rights, tax exemptions for religious institutions and qualifications for performing marriages?
- would freedom of expression preclude laws regulating advertising?
- should freedom of the press and other media be made clearer?

On none of these was there strong feeling that major modifications were essential; only that further reflection was needed in drafting specific provisions.

Billings

THE
CANADIAN
CONSTITUTION



LA
CONSTITUTION
CANADIENNE

PROPOSED RESOLUTION
respecting the
Constitution of Canada

PROJET DE RÉOLUTION
concernant la
Constitution du Canada

Canada

native speakers Rego

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

(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

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 privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of Canada

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

(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

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

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

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

R-142M

1689, 10

BRIEFING MATERIAL ON THE TRUDEAU PROPOSALS ON THE CONSTITUTION (4)

POPULATION, CANADA AND PROVINCES
JUNE 1, 1971 AND JUNE 1, 1980

	<u>June 1, 1971¹</u>		<u>June 1, 1980²</u>	
	<u>#</u>	<u>% of Total</u>	<u>Estimate</u> <u>#</u>	<u>% of Total</u>
Newfoundland	522,104	2.42%	579,900	2.42%
Prince Edward Island	111,641	0.52	124,300	0.52
Nova Scotia	788,960	3.66	852,500	3.56
New Brunswick	634,557	2.94	707,100	2.96
Quebec	6,027,764	27.95	6,303,400	26.36
Ontario	7,703,106	35.71	8,570,400	35.84
Manitoba	988,247	4.58	1,028,300	4.30
Saskatchewan	926,242	4.29	969,200	4.05
Alberta	1,627,874	7.55	2,078,500	8.69
British Columbia	2,184,621	10.13	2,636,500	11.02
Yukon	18,388	0.09	21,400	0.09
North West Territories	34,807	0.16	43,000	0.18
Canada	21,568,311	100.00	23,914,400	100.00

Notes: 1 - 1971 Census
2 - Statistics Canada estimates
Source: 1971 Census and Statistics Canada, 91-201.

Newfoundland Statistics Agency
October 22, 1980

R-11344

1659, 11

BRIEFING MATERIAL ON THE TRUDEAU PROPOSALS ON THE CONSTITUTION (21)

R-11344

1659, 11

BRIEFING MATERIAL ON THE TRUDEAU PROPOSALS ON THE (21)
CONSTITUTION

PROPOSALS FOR CHANGING THE
CONSTITUTIONAL PROCEDURE

1. THE LEGAL POSITION

As soon as the contents of a bill have been
passed by the House of Commons, the bill is
sent to the Senate. The Senate has the power
to pass the bill, to reject it, or to amend it.
If the Senate rejects the bill, the bill is
sent back to the House of Commons. If the
Senate amends the bill, the House of Commons
may accept the amendments or may reject them.
If the House of Commons rejects the amendments,
the bill is sent back to the Senate. If the
House of Commons accepts the amendments, the
bill is sent to the Queen for royal assent.
If the Queen grants royal assent, the bill
becomes law.

4. POSSIBLE LEGAL CHALLENGES TO A
UNILATERAL IMPLEMENTATION PROCESS

1. The Legal Position

As soon as the contents of a unilateral patriation package become known, upon introduction in Parliament, it can be assumed that opposition both inside and outside Parliament will focus more on the validity of the procedure than on the contents of the package and most likely will demand that a reference be taken to the Supreme Court before the resolution proceeds further in Parliament. It will be necessary to have a position on this matter at that time.

As to the question of validity, it is the view of the Department of Justice that a law passed by the U.K. Parliament to patriate the Constitution, with an amendment formula and other changes, could not be successfully attacked in the courts. It seems abundantly clear that the legal power remains for the U.K. Parliament to enact such a law for Canada, and it also seems clear that they will do so whenever so requested by the Parliament and Government of Canada.

The more troublesome question is that of the requirements of the conventions (i.e., practices) of the Canadian Constitution with respect to constitutional amendment. While the British convention is that the U.K. Parliament will act when requested to do so by the Canadian Parliament, there is a potential problem with the Canadian convention concerning the role of the provinces prior to such a request being made. An argument is already being advanced by Ontario that patriation with an amendment formula would involve a change of a fundamental nature affecting the provinces and that on the basis of past practices there is now a clear convention in Canada that such action requires consultation with, and the consent of, all provinces. This is based on the premise that the "unilateral" adoption of an amending formula would affect existing rights of the provinces, at least their "right" of veto over amendments. (Unilateral patriation combined only with an amending formula requiring unanimity would, on this basis, not be assailable.) Further, it is argued that this convention would be enforced as a rule of law by the courts.

The main lines of argument against this case are:

- (1) there is no convention clearly applicable to patriation by itself, and the relevance of conventions to the rest of the package would very much depend on its contents (the strength of our argument here would therefore vary with the contents);
- (2) even if the unanimity convention applies, it has proven to be impossible to follow and therefore is no longer relevant (demonstrable after 53 years of seeking an agreed amending formula) (this is a stronger argument);
- (3) even if there is such a convention, it is a Canadian convention only and cannot affect action by the U.K. Parliament (also a stronger argument); and
- (4) in any event, conventions are not legally enforceable by the courts and do not limit the legal powers of Parliament (this is a very strong argument that is supported by the overwhelming weight of authority).

It may therefore be fairly safely assumed that if the question somehow came before a Canadian court, it would uphold the legal validity of the U.K. legislation effecting patriation. The court might very well, however, make a pronouncement, not necessary for the decision, that the patriation process was in violation of established conventions and therefore in one sense was "unconstitutional" even though legally valid.

Obviously, the foregoing suggests that while unilateral action can legally be accomplished, it involves the risk of prolonged dispute through the courts and the possibility of adverse judicial comment that could undermine the political legitimacy, though not the legal validity, of the patriation package. This points up the desirability of achieving agreement with the provinces on a patriation package.

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CONSTITUTIONAL LAW

A Study of the Constitution of the U.S.A. 1950

The Constitution of the United States is the supreme law of the land. It is the foundation of the government and the rights of the people. The Constitution is a living document that has been interpreted and amended over time. The Supreme Court has played a crucial role in interpreting the Constitution and resolving disputes between the branches of government and the states.

The Constitution is divided into seven articles. Article I establishes the legislative branch, the United States Congress, which consists of the House of Representatives and the Senate. Article II establishes the executive branch, the President of the United States. Article III establishes the judicial branch, the Supreme Court and the lower federal courts. The remaining four articles deal with the structure of the government, the powers of the states, and the process of amending the Constitution.

The Constitution is a unique document in world history. It is the only written constitution that has been in force for over two centuries. It has inspired other nations to adopt their own constitutions. The Constitution is a testament to the American people's commitment to liberty, justice, and the rule of law.

BRIEFING MATERIAL ON THE TRUDEAU CANDIDATE

R-1127

From Laskin

New Chief
Justice
of
Supreme
Court
of
Canada

CONSTITUTIONAL LAW

A Note on Amendment of the B.N.A. Act

The B.N.A. Act, 1867, contained no provision for its amendment. The changes that have been made in the Act have been the formal work of the British Parliament. Conventionally, the British Parliament has not acted on its own initiative or on the initiative of British governmental authorities but at the instance of the Dominion—in a few cases, at the instance of the federal executive and in most cases upon the presentation of a joint address by the Senate and House of Commons of Canada. It should, however, be noted that there have been some changes, allegedly of a purely formal and inconsequential nature, that were effected by the British authorities as a matter of routine statute law revision: see *Scott*, *Forgotten Amendments to the Canadian Constitution*, (1942) 20 *Can. Bar Rev.* 339.

Although it is fairly clear that as between Great Britain and Canada, it is the Dominion—and not the provinces—which has the ear of the British Parliament and government in respect of amendments to the B.N.A. Act, the real problem in amendments has been whether the Dominion can take the political risk of suggesting amendments without prior consultation or approval of the provinces. Of the possible amendments, those relating to the distribution of legislative power are of paramount importance. The only such amendments to date—the addition of "unemployment insurance" to the classes of subjects in section 91 and the conferring of legislative power in relation to old age pensions on the Dominion while maintaining provincial competence in relation thereto through a new section 94A—were made after the Dominion had obtained a new unanimous consent of the provinces given by their respective governments. The view has been expressed that the provinces are entitled to be consulted only in respect of allocation of legislative power, preservation of minority rights and language guarantees, but the governmental authorities in the provinces have taken a wider view of proper provincial participation in the present amending procedure: see *Note*, (1946) 24 *Can. Bar Rev.* 609. This has in some instances been buttressed by reliance on "compact" or "treaty" conceptions of confederation which in their rigid form would make amendments impossible without unanimity. (*Quaere*, whether only the original confederating provinces need be unanimous!) For views on the "compact" or "treaty" theory, see O'Connor Report, Annex 4, pp. 134-152.

It is a matter of record, however, that amendments to the B.N.A. Act have been made which have affected the provinces (although not in respect of legislative power) and yet they were not previously consulted. The following have been the important amendments to the Act: (1) 1871, 34 & 35 *Vict.*, c. 28 (resolving doubt as to power of the Dominion Parliament to create new provinces out of western territories; amendment passed at request of Dominion government; provinces not consulted); (2) 1875, 38 & 39 *Vict.*, c. 38 (resolving doubt as to power of the Dominion Parliament to determine its

BRIEFING MATERIAL
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RE BRITISH NORTH AMERICA ACT and 271
the FEDERAL SENATE

Supreme Court of Canada
Laskin, C.J.C., Martland, Ritchie, Pigeon,
Dickson, Estey, Pratte and McIntyre, JJ.
December 21, 1979.

CONSTITUTIONAL LAW - TOPIC 5572

Enumeration in s. 91 of the British North America Act -
Amendment of the Constitution of Canada - Scope of amend-
ment power of the Federal Government - The Supreme Court
of Canada stated that the power of amendment, granted to
the Federal Government by s. 91(1) of the British North
America Act, relates to the constitution of the Federal
Government in matters of interest only to the Federal
Government (see paragraphs 28, 31, 86 and 89) - The Su-
preme Court of Canada held that the Federal Government did
not have the power to abolish the federal Senate - The Su-
preme Court of Canada stated that the Federal Government
was empowered to unilaterally enact changes with respect
to the federal Senate which would not affect the fundamen-
tal character of the Senate (see paragraphs 57 and 115).

WORDS AND PHRASES

CONSTITUTION OF CANADA - Meaning of the phrase "Constitu-
tion of Canada" as found in s. 91(1) of the British North
America Act 1867 (see paragraphs 20 to 23 and 79 to 81).

Summary:

This case arose out of a reference to the Supreme Court of
Canada by the Governor in Council concerning the legislative
authority of the Parliament of Canada to abolish or make
changes in the character of the federal Senate. The ques-
tions posed are set out in paragraphs 1 and 59.

The Supreme Court of Canada held that the Federal Govern-
ment did not have the power to abolish the federal Senate.
The Supreme Court of Canada stated that the Federal Govern-
ment was empowered to enact unilaterally changes with re-
spect to the federal Senate which would not affect the
fundamental character of the Senate.

CASES JUDICIALLY NOTICED:

- Quebec North Shore Paper Company v. Canadian Pacific
Limited, 9 N.R. 471; [1977] 2 S.C.R. 1054, ref'd to.
[paras. 26 and 84].
- McNamara Construction (Western) Limited v. The Queen,
13 N.R. 181; [1977] 2 S.C.R. 654, ref'd to.
[paras. 27 and 85].

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THE CONSTITUTION AND THE
FUTURE OF CANADA

THE HOUSE OF COMMONS
OFFICE OF THE CLERK

BRIEFING MATERIAL ON THE TRUDEAU PROPOSALS ON THE (21)
CONSTITUTION

SPECIAL LECTURES
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THE CONSTITUTION AND THE
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BRIEFING MATERIAL ON THE TRUDEAU PROPOSALS ON THE (9)

THE HON. MR. GILBERT
MINISTER OF DOMESTIC AFFAIRS AND LABOUR
OTTAWA, ONTARIO

15

TO THE HON. MR. GILBERT, MINISTER OF DOMESTIC AFFAIRS AND LABOUR, OTTAWA, ONTARIO.
I AM PLEASED TO RECEIVE YOUR LETTER OF THE 11TH INSTANT AND AM GRATEFUL FOR THE INTEREST WHICH YOU HAVE EXPRESSED IN THE PROVISIONS OF THE CONSTITUTION WHICH RELATE TO THE FISHING INDUSTRY IN NEWFOUNDLAND. I AM SURE THAT YOU WILL BE INTERESTED TO KNOW THAT THE FEDERAL GOVERNMENT HAS BEEN ADVISED BY LETTERS AND MESSAGES, MANY HUNDREDS OF WHICH HAVE BEEN RECEIVED FROM NEWFOUNDLAND, THAT THE POSITION WHICH I TOOK AS YOUR PREMIER ON THE 1ST OF MARCH LAST IN REGARD TO THE FISHING INDUSTRY IN NEWFOUNDLAND AT THE RECENT CONSTITUTIONAL CONFERENCE WAS APPRECIATED.

IT IS WELL KNOWN THAT THERE ARE THREE MAJOR FISHING CENTRES IN THE PROVINCE OF NEWFOUNDLAND, AND THAT THE FISHING INDUSTRY IS ONE OF THE MAIN INDUSTRIES OF THE PROVINCE. THE FISHING INDUSTRY IS CURRENTLY CONTROLLED BY THE FEDERAL GOVERNMENT, AND IT IS THE POLICY OF THE FEDERAL GOVERNMENT TO ALLOW NEWFOUNDLAND TO DEVELOP THE FISHING INDUSTRY AT THE PRESENT TIME IT IS COMPLETELY CONTROLLED BY THE FEDERAL GOVERNMENT.

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BRIEFING MATERIAL ON THE PROPOSED
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Constitution

PROVINCE WIDE ADDRESS
 BY THE HONOURABLE A. BRIAN PECKFORD
 TO THE PEOPLE OF NEWFOUNDLAND AND LABRADOR
 OCTOBER 20, 1980

GOOD EVENING, LADIES AND GENTLEMEN. THIS EVENING I WANT TO SPEAK TO YOU ON A MATTER OF VITAL IMPORTANCE TO ALL OF US. I WISH TO SPEAK TO YOU, NOT AS PROGRESSIVE CONSERVATIVES, LIBERALS OR NEW DEMOCRATS, BUT AS CITIZENS, ALL, OF THE PROVINCE. THE MATTERS I WISH TO DISCUSS WITH YOU ARE ONES ABOVE AND BEYOND THE DIVISIONS OF PARTY POLITICS. THESE ISSUES BEAR UPON THE MOST VITAL ASPECTS OF LIFE IN OUR PROVINCE. THEY INCLUDE, THE RIGHT TO EDUCATE OUR CHILDREN, IN OUR OWN WAY, AND THE SANCTITY OF OUR LABRADOR BOUNDARY.

ALL OF YOU ARE AWARE OF THE CONSTITUTIONAL DISCUSSIONS BETWEEN THE PROVINCES AND THE FEDERAL GOVERNMENT OVER THE PAST FEW MONTHS. BY LETTERS AND MESSAGES, MANY HUNDREDS THROUGHOUT NEWFOUNDLAND AND LABRADOR HAVE INDICATED THEIR FIRM AND STRONG SUPPORT FOR THE POSITION WHICH I TOOK AS YOUR PREMIER ON BEHALF OF THE PEOPLE OF OUR PROVINCE AT THE RECENT CONSTITUTIONAL CONFERENCE IN OTTAWA.

AT THAT CONFERENCE, THERE WERE THREE MATTERS WHICH THE NEWFOUNDLAND GOVERNMENT FELT OF ABSOLUTE AND VITAL IMPORTANCE TO THE PEOPLE OF NEWFOUNDLAND, AND WHICH I FOUGHT TO HAVE RECOGNIZED AND INCLUDED IN THE CONSTITUTION. THESE WERE AND REMAIN:

1. A CHANGE TO ALLOW NEWFOUNDLAND TO GAIN SOME SAY IN ITS OWN MAIN INDUSTRY - THE FISHERY. AT THE PRESENT TIME IT IS ENTIRELY CONTROLLED BY THE FEDERAL

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1. A CHANGE TO ALLOW NEWFOUNDLAND TO GAIN SOME SAY IN ITS OWN MAIN INDUSTRY - THE FISHERY. AT THE PRESENT TIME IT IS ENTIRELY CONTROLLED BY THE FEDERAL

GOVERNMENT. WE SEEK A SHARE IN CONTROL OVER THE FISHERY TO ENABLE US TO DEVELOP THE SOCIAL AND ECONOMIC FABRIC OF OUR PROVINCE, PRESERVE ITS WAY OF LIFE AND SECURE, FOR ONCE AND FOR ALL, OUR OUTPORT LIFE FROM THE SPECTRE OF RESETTLEMENT.

2. RECOGNITION OF OUR RIGHTFUL OWNERSHIP OF OUR OFFSHORE OIL AND GAS RESOURCES. IN REQUIRING THIS WE HAVE MADE IT QUITE CLEAR THAT WE ARE PREPARED AND, INDEED EAGER TO SHARE THE WEALTH FROM THESE RESOURCES WITH OUR FELLOW CANADIANS TO THE SAME DEGREE THAT THEY HAVE SHARED WITH US IN THE PAST.
3. THE RIGHT TO TRANSMIT HYDRO POWER ACROSS QUEBEC IN THE SAME WAY AS OTHER PROVINCES NOW TRANSMIT OIL AND GAS. THIS RIGHT HAS ALWAYS EXISTED IN THE CANADIAN CONSTITUTION. IT REMAINS A NATIONAL DISGRACE THAT OUR PEOPLE HAVE BEEN DENIED THIS RIGHT.

MY GOVERNMENT REMAINS RESOLUTE AND DETERMINED IN THESE THREE AREAS - FISHERIES, OFFSHORE RESOURCES, AND POWER TRANSMISSION. THESE ARE THE PRINCIPAL POLICIES OF MY ADMINISTRATION IN THE AREAS OF ECONOMIC AND RESOURCE DEVELOPMENT. WE SHALL NOT CEASE IN OUR DETERMINATION TO GAIN THESE THREE VITAL RIGHTS FOR NEWFOUNDLAND, WITHOUT THEM WE WILL NEVER BE ANY BETTER OFF THAN WE ARE RIGHT NOW.

HOWEVER, IT IS NOT ABOUT THESE MATTERS WHICH I WISH TO TALK TO YOU TONIGHT, EVEN THOUGH THESE CHANGES ARE ABSOLUTELY NECESSARY IF OUR STANDARD OF LIVING AND QUALITY OF LIFE ARE TO BE MAINTAINED AND IMPROVED. FROM THE HUNDREDS OF MESSAGES WHICH SO MANY OF YOU HAVE BEEN KIND ENOUGH TO SEND AFTER THE CONSTITUTIONAL CONFERENCE, I KNOW THAT THESE ISSUES ARE WELL UNDERSTOOD BY NEWFOUNDLANDERS.

I WANT TO SPEAK TO YOU ABOUT ACTIONS TAKEN SINCE THE CONFERENCE BY THE FEDERAL GOVERNMENT AND THEIR IMPLICATIONS AND CONSEQUENCES FOR US AND OUR WAY OF LIFE. WE ALL KNOW WHAT HAS OCCURRED SINCE THE CONFERENCE. DESPITE THE FACT THAT THE TEN PREMIERS, IN THE LAST DAY OF THE CONFERENCE, WERE IN SUBSTANTIAL AGREEMENT CONCERNING CHANGES - INCLUDING THE THREE VITAL ISSUES TO NEWFOUNDLAND - THE PRIME MINISTER REFUSED THE COMPROMISE OFFER AND HAS MOVED TO ACT ON HIS OWN, NOT JUST TO TAKE CANADA'S CONSTITUTION FROM BRITAIN, BUT TO AMEND IT ENTIRELY TO SUIT HIS WISHES. BEFORE GOING INTO THE EFFECT OF THIS ON NEWFOUNDLAND, IT WOULD BE HELPFUL TO SAY A FEW WORDS ABOUT THE CONSTITUTION AS IT APPLIES TO US.

A CONSTITUTION IS A SOLEMN AGREEMENT INTENDED TO SET FORTH THE BASIC RULES OF HOW A PEOPLE LIVE TOGETHER. ONE MAIN FUNCTION IS TO PROTECT MINORITIES IN A COUNTRY FROM ACTS OF THE MAJORITY. AS SUCH IT IS VERY IMPORTANT TO NEWFOUNDLAND SINCE, WHILE RICH IN RESOURCES, WE ARE SMALL IN POPULATION COMPARED WITH THE REST OF CANADA.

THE WRITTEN PORTION OF THE CONSTITUTION OF CANADA IS CONTAINED IN THE BRITISH NORTH AMERICA ACT, WHICH IS AN ACT OF THE BRITISH PARLIAMENT. WHEN WE ENTERED CONFEDERATION IN 1949, CHANGES WERE MADE IN THAT ACT, INCLUDING THE TERMS OF UNION NEGOTIATED BETWEEN NEWFOUNDLAND AND CANADA. THIS WAS IMPORTANT BECAUSE WE WERE THEN, AS NOW, A MINORITY AND WERE DETERMINED THAT NEWFOUNDLAND'S PARTICULAR RIGHTS SHOULD BE PROTECTED. THUS OUR ACT OF CONFEDERATION WAS BASED ON A SOLEMN GUARANTEE THAT SUCH RIGHTS AS RECOGNITION OF THE LABRADOR BOUNDARY, AS DETERMINED BY THE PRIVY COUNCIL IN 1927, AND OUR DENOMINATIONAL EDUCATION RIGHTS, WOULD BE FOREVER RESPECTED.

UP TO RECENTLY WE HAD ACTED ON THE ASSUMPTION THAT THESE BASIC RIGHTS COULD NEVER BE CHANGED WITHOUT OUR CONSENT. WHILE THERE WAS NO WRITTEN PROCEDURE SET FORTH TO AMEND THE CONSTITUTION, WE HAVE BEEN JUSTIFIABLY CONFIDENT THAT SUCH BASIC RIGHTS COULD NOT BE CHANGED BECAUSE A WELL RECOGNIZED AND ACCEPTED CUSTOM HAD GROWN UP THAT NO CHANGE COULD BE MADE AFFECTING PROVINCIAL RIGHTS UNTIL THERE HAD BEEN CONSULTATION AND AGREEMENT WITH THE PROVINCES. FURTHERMORE, WE HAD CONFIDENCE THAT THE BRITISH GOVERNMENT WOULD NEVER LET OUR BASIC RIGHTS BE TAKEN AWAY. GIVEN THIS, NEWFOUNDLANDERS HAVE REMAINED CONFIDENT TO THIS DAY THAT NO CHANGES IN THEIR BOUNDARY OR EDUCATIONAL RIGHTS COULD BE MADE WITHOUT THEIR CONSENT.

FELLOW CITIZENS, I TELL YOU TONIGHT, IF THE FEDERAL GOVERNMENT'S CONSTITUTIONAL PROPOSAL IS ACCEPTED, "WE CAN NO LONGER BE CONFIDENT" OF OUR PROVINCIAL BOUNDARY AND THE RIGHT TO DETERMINE THE EDUCATION OF OUR CHILDREN.

THE PRIME MINISTER HAS MOVED NOT JUST TO HAVE THE CONSTITUTION BROUGHT FROM BRITAIN TO CANADA SO THAT IT WILL BE AN ACT OF CANADIANS - EVERYBODY, INCLUDING NEWFOUNDLAND, AGREES THE CONSTITUTION SHOULD BE "PATRIATED" OR BROUGHT TO CANADA. HE SEEKS TO DO MUCH MORE THAN THIS. HE SEEKS TO HAVE THE BRITISH ALTER OR TAILOR THE CONSTITUTION FIRST - TO INCLUDE TERMS ACCEPTABLE TO THE FEDERAL GOVERNMENT BEFORE BRINGING IT TO CANADA. HE DOES NOT WISH TO BRING THE BRITISH NORTH AMERICA ACT AS IT PRESENTLY EXISTS, INCLUDING OUR TERMS OF UNION, HOME TO CANADA, HE WISHES TO CHANGE IT FIRST.

THE CHANGES PROPOSED ARE CHANGES IN THE AMENDING FORMULA AND INCLUSION OF A CHARTER OF RIGHTS; IT IS IN THESE CHANGES THAT NEWFOUNDLAND'S BASIC AND GUARANTEED RIGHTS ARE THREATENED.

THE AMENDING FORMULA PROPOSED IS COMPLEX; IT BASICALLY SETS CANADA ON A ROAD AWAY FROM ITS PRESENT FEDERAL SYSTEM TOWARDS A CENTRALIZED, UNITARY STATE. THIS IS A PRACTICAL, NOT A THEORETICAL, MATTER. CANADIAN FEDERALISM, AS IT HAS BEEN PRACTISED OVER THE LAST 113 YEARS, IS AS PRACTICAL A POLITICAL SYSTEM AS COULD BE DESIGNED FOR NEWFOUNDLAND. IT ALLOWS US TO PRESERVE THE ESSENCE OF OUR CENTURIES OLD SOCIETY WHILE ALLOWING US AT THE SAME TIME TO PARTICIPATE IN THE LARGER CANADIAN NATION. THE FEDERAL GOVERNMENT WOULD CHANGE ALL OF THAT. THE "BOTTOM LINE" COULD RESULT IN CHANGES TO THE CONSTITUTION BEING MADE WITHOUT OUR CONSENT. ONTARIO AND QUEBEC ARE GIVEN THE RIGHT TO ABSOLUTE VETO ON ANY MEASURE. NEWFOUNDLAND IS NOT GIVEN THIS RIGHT AND ALTERATIONS CAN BE MADE WITHOUT ITS CONSENT. PREVIOUSLY, OUR LABRADOR BOUNDARY WAS SACRED AND NO CHANGES COULD BE

MADE WITHOUT OUR CONSENT. AT ANY TIME AFTER TWO YEARS FROM THE DATE OF FINAL ADOPTION OF MR. TRUDEAU'S RESOLUTION, IT WOULD BE POSSIBLE TO CHANGE OUR BOUNDARY WITHOUT THIS PROVINCE'S CONSENT. THIS MUST BE OF GRAVE CONCERN TO NEWFOUNDLANDERS.

OF EQUAL CONCERN IS THE THREAT TO OUR DENOMINATIONAL SYSTEM OF EDUCATION. ALTHOUGH IT CAN ALSO BE AFFECTED AS WELL BY THE AMENDING FORMULA, I SEE THE GREATEST DANGER TO THIS RIGHT IN OPERATION OF THE CHARTER OF RIGHTS AND PARTICULARLY THE PROVISION FOR FREEDOM OF RELIGION. OF COURSE EVERYONE AGREES WITH FREEDOM OF RELIGION, BUT THE QUESTION IS HOW THAT RIGHT IS TO BE PROTECTED. IN MR. TRUDEAU'S PACKAGE THIS WILL BE DETERMINED BY THE COURTS. WE ALL KNOW HOW THE COURTS HAVE DECIDED SUCH MATTERS IN THE REPUBLICAN SYSTEM OF THE UNITED STATES - THEY HAVE INTERPRETED IT AS A RIGHT TO PROHIBIT RELIGION BEING TAUGHT IN SCHOOLS. WHAT HAPPENS TO OUR DENOMINATIONAL SYSTEM OF EDUCATION UNDER SUCH A SYSTEM? I FEAR THAT THIS RIGHT GUARANTEED TO THE PEOPLE OF NEWFOUNDLAND BY TERM 17 OF THE TERMS OF UNION COULD BE TAKEN AWAY.

TO ME IT IS RATHER IRONIC THAT THOSE WHO TALK ABOUT "ENTRENCHING" HUMAN RIGHTS CAN CONTEMPLATE MEASURES WHICH COULD SERIOUSLY JEOPARDIZE THE RIGHTS GUARANTEED TO OUR PEOPLE BY TERMS OF UNION BETWEEN CANADA AND NEWFOUNDLAND.

TONIGHT I HAVE CHOSEN TO SPEAK TO YOU - NOT ABOUT THE FAILURE OF THE FEDERAL GOVERNMENT TO RECOGNIZE OUR RIGHTS IN FISHERIES, OFFSHORE AND HYDRO - ALTHOUGH I EMPHASIZE MY GOVERNMENT'S RESOLUTE RESOLVE TO ATTAIN THESE RIGHTS, BUT I SPEAK TO YOU TONIGHT OF THE POTENTIAL LOSS OF SOLEMN BASIC

RIGHTS WHICH WOULD BE THE RESULT OF THE IMPLEMENTATION OF THE FEDERAL GOVERNMENT'S PROPOSALS, THESE RIGHTS WERE GUARANTEED NEWFOUNDLAND FOR ALL TIME AND NOW THEY ARE SERIOUSLY THREATENED.

I WOULD BE REMISS IN MY DUTY AS PREMIER OF OUR PROVINCE IF I FAILED TO BRING THESE GRAVE MATTERS TO YOUR ATTENTION, AS YOU CAN SEE, BENEATH THE LEGAL JARGON ON CONSTITUTION DEBATE LIE ISSUES BASIC TO THE EXISTENCE OF OUR PROVINCE.

FOR THESE REASONS, MY GOVERNMENT HAS DETERMINED TO RESIST THE FEDERAL GOVERNMENT'S CONSTITUTIONAL PROPOSALS WITH EVERY MEANS AT ITS DISPOSAL. WE ARE JOINING WITH 5 OF OUR SISTER PROVINCES IN A COURT ACTION TO CHALLENGE THESE ILLEGAL ACTS OF OTTAWA. WE WILL ALSO APPROACH BRITAIN CONCERNING THE MATTER, SINCE IT IS INCONCEIVABLE THAT ANY BRITISH GOVERNMENT - WITH ITS PROFOUND RESPECT FOR FAIR PLAY AND MINORITY RIGHTS - COULD BE A PARTY TO MR. TRUDEAU'S ATTEMPT TO, IN EFFECT, TEARING UP THE SOLEMN COMPACT NEWFOUNDLAND MADE WITH CANADA ON CONFEDERATION, WE SHALL TAKE ALL SUCH STEPS AS MAY BE NECESSARY TO RESIST THIS THREAT TO NEWFOUNDLANDERS.

TO SO MANY NEWFOUNDLANDERS WHO INDICATED SUPPORT FOR GOVERNMENT'S POSITION AT THE RECENT CONSTITUTIONAL CONFERENCE, MAY I SAY THANK YOU. I APPEAL TO ALL NEWFOUNDLANDERS AND LABRADORIANS FOR THEIR CONTINUED SUPPORT, NOT ONLY TO REALIZE NEWFOUNDLAND'S RIGHTFUL POSITION IN THE CANADIAN FEDERATION, BUT TO PREVENT THE UNILATERAL TRAMPLING UPON SOLEMN RIGHTS GUARANTEED TO FUTURE GENERATIONS OF NEWFOUNDLANDERS, BUT WHICH NOW ARE IN PERIL.

LET ME REVIEW AND ELABORATE:

ALL THE PROVINCES AGREE THAT OUR WRITTEN CONSTITUTION, THE B.N.A. ACT, SHOULD BE A LAW OF CANADA - AND NOT A LAW OF ENGLAND - SURE, LET'S BRING IT HOME, EVERYONE AGREES'

HOWEVER, IN BRINGING IT HOME, THE FORMULA FOR CHANGING IT IN THE FUTURE SHOULD BE AGREED UPON BY ALL GOVERNMENTS. IT SHOULD NOT BE DECIDED WHAT THE FORMULA SHOULD BE BY JUST ONE GOVERNMENT - THE FEDERAL GOVERNMENT - UNILATERALLY - ACTING ALONE - NEVER SINCE CANADA BECAME A COUNTRY HAVE AMENDMENTS OR CHANGES TO THE CONSTITUTION AFFECTING THE PROVINCES BEEN MADE WITHOUT THE PROVINCES' CONSENT. SO, YES, LET'S BRING HOME THE B.N.A. ACT WITH THE PRESENT FORMULA FOR CHANGING IT. IF WE WISH TO CHANGE THE FORMULA LATER THEN WE CAN DO IT THROUGH CO-OPERATION AND CONSENSUS AND NEGOTIATION BY ALL 11 GOVERNMENTS. THIS HAS BEEN THE CANADIAN WAY FOR 113 YEARS. SIX CANADIAN PROVINCES BELIEVE THAT THE FEDERAL GOVERNMENT CANNOT CONSTITUTIONALLY ACT ALONE TO MAKE CHANGES AFFECTING THE POWERS OF THE PROVINCES. THEREFORE, THEY INTEND TO CHALLENGE THIS UNILATERAL ACTION IN THE COURTS.

BUT FOR NEWFOUNDLAND AND LABRADOR IT GOES BEYOND THIS. WE THOUGHT AND BELIEVED UP TO NOW THAT THERE WERE CERTAIN THINGS, PRINCIPLES, THAT COULD NEVER BE CHANGED WITHOUT OUR AGREEMENT - OUR CONSENT. THAT WE HAD CERTAIN RIGHTS. WE KNOW AND UNDERSTAND THAT MANY THINGS HAVE TO BE DECIDED BY THE MAJORITY IN CANADA - BUT WE ARE SURE THAT THERE ARE OTHER THINGS THAT SHOULD NOT BE SO DECIDED - THOSE ARE CALLED RIGHTS - THEY ARE SACRED - AND WERE ENSHRINED IN OUR TERMS OF UNION IN 1949.

ONE OF THOSE SACRED RIGHTS, WE THOUGHT, WAS OUR BOUNDARY. NEVER WAS IT BELIEVED IN ANY OF OUR WILDEST DREAMS THAT A BOUNDARY CONFIRMED IN 1927 BY THE HIGHEST COURT COULD POSSIBLY BE CHANGED BY PEOPLE OUTSIDE THIS PROVINCE. IT CAN NOW, IF MR. TRUDEAU'S PROPOSAL GOES THROUGH, NOT ONLY THAT, BUT QUEBEC HAS A VETO UNDER THE NEW FORMULA - ANY CHANGES THAT THEY DON'T LIKE CAN'T BECOME LAW. IF WE DON'T LIKE A CHANGE IT MEANS NOTHING. ON TOP OF THAT, QUEBEC HAS NEVER RECOGNIZED THE BOUNDARY AND THE 1927 PRIVY COUNCIL DECISION.

RIGHT NOW IT IS IMPOSSIBLE FOR THE BOUNDARY TO BE CHANGED WITHOUT NEWFOUNDLAND'S CONSENT. IF MR. TRUDEAU'S PROPOSAL GOES THROUGH IT WILL BE POSSIBLE FOR OUR BOUNDARY TO BE CHANGED WITHOUT OUR CONSENT. THIS IS FRIGHTENING. TO MAKE MATTERS WORSE, THE LABRADOR BOUNDARY HAS NOT BEEN SURVEYED - HAS NOT BEEN PLACED ON THE GROUND - IT IS NOT DIFFICULT TO IMAGINE THE QUEBEC GOVERNMENT A FEW YEARS FROM NOW, UNDER THESE NEW PROPOSALS, SUDDENLY WANTING THE BOUNDARY PLACED ON THE GROUND. THEY WOULD THEN INDICATE WHERE THEY THOUGHT IT SHOULD BE. NO DOUBT IT WOULD BE FURTHER EAST THAN WHERE NEWFOUNDLAND CONSIDERS IT SHOULD BE. NOW WE HAVE A DISPUTE BETWEEN TWO PROVINCES - THE FEDERAL GOVERNMENT STEPS IN - WHOSE SIDE WILL THEY BE ON? WHOSE SIDE ARE THEY ON NOW ON HYDRO TRANSMISSION? UNDER THE NEW CONSTITUTION PROPOSALS ANYTHING CAN BE PUT TO A NATIONAL REFERENDUM. PERHAPS THIS COULD BE THE WAY OUT OF THE IMPASSE FOR THE FEDERAL GOVERNMENT - REFERENDUM - WILL OTHER CANADIANS CARE WHERE THE FINAL LINE IS DRAWN - DOES ONTARIO CARE NOW - SASKATCHEWAN - NEW BRUNSWICK - NOVA SCOTIA - SURELY NOT QUEBEC.

AND CAN WE COUNT ON THE PEOPLE OF THE OTHER PROVINCES WHO NOW SUPPORT US TO CONTINUE TO SUPPORT US IN THE FUTURE ON THIS PARTICULAR MATTER, AND EVEN IF EVERY SINGLE PERSON IN THESE PROVINCES DID, WE WOULD STILL LOSE - BECAUSE THE MAJORITY OF CANADIANS DON'T LIVE IN THESE PROVINCES. THE REFERENDUM THEN WOULD FAVOUR QUEBEC,

ANOTHER EQUALLY SACRED RIGHT IN THIS PROVINCE AND WHICH WAS ENSHRINED IN OUR TERMS OF UNION, WAS OUR EDUCATION SYSTEM. IT IS A RIGHT OF THE PROVINCE NOW TO DECIDE ON HOW OUR CHILDREN WILL BE TAUGHT. AT THE TIME OF CONFEDERATION WE WISHED TO HAVE A DENOMINATION EDUCATION SYSTEM. WE HAVE CONTINUED TO SUPPORT THIS TYPE OF EDUCATION FOR OUR CHILDREN. WE BELIEVE THIS TO BE OUR RIGHT AS A PROVINCE - WHAT DOES IT MATTER TO THE FEDERAL GOVERNMENT, OR FOR THAT MATTER, TO ANY OTHER PROVINCE, WHAT FORM OF EDUCATION WE PRACTISE? UP TO NOW IT SEEMS WE'VE DONE PRETTY WELL BY IT. IT SURELY HAS NOT CAUSED A CRISIS OF NATIONAL UNITY. HOWEVER, LADIES AND GENTLEMEN, UNDER THE CONSTITUTIONAL PROPOSALS, THE FEDERAL GOVERNMENT PROPOSES THIS TYPE OR ANY TYPE OF EDUCATION WE MAY WISH, CAN BE CHANGED WITHOUT OUR CONSENT. BESIDES THE FACT THAT A REFERENDUM CAN POSSIBLY CHANGE IT, LIKE THE LABRADOR BOUNDARY, THE EDUCATION SYSTEM CAN ALSO BE SUBJECT TO A COURT RULING. UNDER THE TRUDEAU PROPOSALS A NUMBER OF RIGHTS WILL BE ENSHRINED IN THE CONSTITUTION - THEY INCLUDE FREEDOM OF RELIGION. IT IS POSSIBLE, THEREFORE, FOR THE SUPREME COURT OF CANADA TO HAVE TO RULE, BASED ON THE NEW PROPOSALS THAT THE DENOMINATIONAL EDUCATION SYSTEM IS UNCONSTITUTIONAL.

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A THIRD SACRED RIGHT HAS TO DO WITH OUR NATURAL RESOURCES - THOSE THAT ARE UNDISPUTED PROVINCIAL RESOURCES NOW - TREES, MINERALS ABOVE THE SALT WATER. UP TO NOW THESE COULD NOT BE TAKEN FROM US WITHOUT OUR CONSENT. UNDER THESE PROPOSALS IT IS POSSIBLE FOR THEM TO BE TAKEN FROM US WITHOUT OUR CONSENT. UNDER THESE PROPOSALS IT IS POSSIBLE FOR THEM TO BE TAKEN AWAY WITHOUT OUR CONSENT. NOT ONLY IS IT POSSIBLE FOR OUR IRON ORE IN LABRADOR TO BE TAKEN AWAY FROM US BY A BORDER CHANGE, BUT ALSO BY A NATIONAL REFERENDUM IF THE FEDERAL GOVERNMENT SO DESIRES. WE THOUGHT THESE RESOURCE RIGHTS WERE SACRED - COULD NOT BE TAKEN FROM US WITHOUT OUR CONSENT.

LADIES AND GENTLEMEN, EVERYTHING IS UP FOR GRABS. THESE SO-CALLED CONSTITUTIONAL REFORMS TAKE AWAY RIGHTS FROM THIS PROVINCE - SACRED RIGHTS THAT WERE RECOGNIZED AT THE TIME OF CONFEDERATION. THE POWER OF OUR PROVINCIAL LEGISLATURE IS THREATENED. THERE IS ONLY POWER FOR PEOPLE AND THE FEDERAL GOVERNMENT - PEOPLE MEANS REFERENDUM - REFERENDUM MEANS MAJORITY - MAJORITY MEANS WE'RE OUT IN THE COLD.

ANOTHER IMPORTANT POINT THAT MUST BE MADE IS THIS. THERE ARE THOSE WHO MAINTAIN THAT NEWFOUNDLAND HAS A CONTRACTUAL AGREEMENT WITH CANADA. THAT THE TERMS OF UNION OF 1949 FORM A CONTRACT. AS SUCH A CONTRACT CANNOT BE CHANGED BY ONE PARTNER. THEREFORE THESE NEW PROPOSALS CANNOT APPLY TO NEWFOUNDLAND. THIS, I'M SURE WAS HOW THE PEOPLE INVOLVED IN THE TERMS OF UNION UNDERSTOOD IT. PRIME MINISTER ST. LAURENT SAID THIS IN 1950 - THAT UNLESS SPECIAL PROVISION WAS MADE IN THE TERMS OF UNION THEN AN AMENDING FORMULA FOR THE B.N.A. ACT WOULD NOT APPLY.

IF ALL THIS WASN'T ENOUGH, THE FEDERAL GOVERNMENT PROPOSALS CONTAIN A PROVISION THAT COULD STRIKE DOWN OUR LOCAL JOB PREFERENCE, OFFSHORE. HOWEVER, THERE IS NO PROVISION IN THE PROPOSALS, AT THE SAME TIME, TO ENSURE MOBILITY OF HYDRO POWER ACROSS QUEBEC. LET ALL NEWFOUNDLANDERS AND LABRADORIANS, AND CANADIANS GENERALLY, BE CLEAR ON WHAT WE ARE DOING HERE.

1. OUR JOB PREFERENCE REGULATIONS APPLY ONLY TO THE OFFSHORE.
2. THAT THIS POLICY IS ABSOLUTELY NECESSARY IN ANY SUCH MASSIVE, DRAMATIC, DEVELOPMENT AS OFFSHORE OIL AND GAS. IF WE DON'T GET SOME OF OUR PEOPLE WORKING ON THE GROUND FLOOR, WE WON'T HAVE A CHANCE AT ALL.
3. WE HAVE THE HIGHEST UNEMPLOYMENT IN CANADA - IF WE WERE AT THE NATIONAL AVERAGE SUCH SPECIAL POLICIES WOULD NOT HAVE TO BE IMPLEMENTED.

NOW A CHANCE FOR NEWFOUNDLANDERS TO BENEFIT FROM JOB OPPORTUNITIES OFFSHORE COULD BE STRUCK DOWN BY THE COURTS IF MR. TRUDEAU'S PROPOSAL GOES THROUGH.

FELLOW CITIZENS, I BELIEVE WE ARE FACING ONE OF THE MOST SERIOUS MOMENTS IN OUR LONG AND TURBULENT HISTORY. AT THE VERY SECOND WHEN WE THOUGHT A BREAKTHROUGH TO PROSPERITY WAS WITHIN OUR GRASP IT MAY BE SNATCHED FROM US. THE GREAT CANADIAN PRINCIPLES OF SHARING, EQUAL TREATMENT CO-OPERATION, SEEM NO LONGER THE PRINCIPLES THE FEDERAL GOVERNMENT WISHES TO PURSUE. IN ONE WEEK IN SEPTEMBER MR. TRUDEAU DENIES OUR

FAIR AND ABSOLUTELY NECESSARY REQUESTS INVOLVING FISHERIES, HYDRO TRANSMISSION, AND OFFSHORE, AND IN THE NEXT WEEK HE ATTEMPTS TO TAKE AWAY BASIC RIGHTS, THE TERRITORIAL INTEGRITY OF THE PROVINCE AND OUR SYSTEM OF EDUCATION.

PROFESSOR JACKSON AT MEMORIAL UNIVERSITY HAD THIS TO SAY RECENTLY ABOUT THE PRIME MINISTER AND HIS CONSTITUTIONAL PROPOSALS:

"WHAT MAY HAPPEN IN THE NEXT MONTHS MAY CHANGE ALL OUR LIVES. FOR TRUDEAU'S TERRIFYINGLY CONSISTENT PROGRAM TO CONVERT THE PARLIAMENTARY SYSTEM OF DEMOCRACY INTO A REPUBLICAN, POPULIST ONE, ALSO MEANS THE CREATION OF AN ESSENTIALLY CENTRALIZED UNITARY AUTHORITY WHICH WILL OVERRIDE ANY AUTONOMY PROVINCIAL LEGISLATURES AND GOVERNMENTS NOW HAVE. THIS MEANS NEWFOUNDLAND, AND INDEED ALL THE PROVINCES, ARE TO BE REDUCED TO MERE REGIONAL ADMINISTRATIVE AGENCIES WITH NO SIGNIFICANT POWERS OF SELF-DETERMINATION REMAINING."

THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR FEELS IT HAS NO CHOICE BUT TO OPPOSE THESE PROPOSALS WITH ALL THE DETERMINATION IT CAN MUSTER. WE CANNOT SIT IDLY BY AS BASIC SACRED RIGHTS, NEGOTIATED IN 1949 - OUR BOUNDARY - OUR EDUCATION SYSTEM - BECOME LESS THAN SACRED - LESS THAN RIGHTS - AND CAPABLE OF BEING CHANGED WITHOUT THE CONSENT OF OUR PEOPLE OR OUR LEGISLATURE.

I HAVE CONSIDERED THIS ISSUE BY MYSELF, ALONE, OVER THE LAST FEW WEEKS. I HAVE LABOURED AND AGONIZED, I HAVE MET WITH CABINET, MY CAUCUS, AND MY PARTY. THEY FELL, LIKE ME, THAT THIS IS A GRAVE MOMENT IN OUR HISTORY AND FULLY SUPPORT THE EFFORTS I NOW OUTLINE.

TOMORROW I WILL INFORM THE LEADERS OF BOTH POLITICAL PARTIES THAT THE NEWFOUNDLAND GOVERNMENT CANNOT ACCEPT THE PRESENT PROPOSALS OF THE TRUDEAU GOVERNMENT. I WILL INVITE THE VARIOUS LEADERS OF THE PROVINCE TO BE BRIEFED BY THE GOVERNMENT. THESE WILL INCLUDE CHURCH LEADERS, THE FEDERATION OF LABOUR, THE NEWFOUNDLAND TEACHERS ASSOCIATION, THE RURAL DEVELOPMENT COUNCIL, AND THE LEADERSHIP OF MANY PROVINCIAL ORGANIZATIONS.

IN ADDITION, THE GOVERNMENT WILL SEND A LETTER TO EVERY HOUSEHOLD IN THE PROVINCE OUTLINING THE PROVINCIAL GOVERNMENT'S POSITION IN THIS TIME OF CRISIS AND SEEK FROM THEM SUPPORT FOR GOVERNMENT'S POSITION. I WILL, TOMORROW, CONTACT OUR SEVEN MP'S AND SIX SENATORS IN THE PARLIAMENT OF CANADA, OUTLINING OUR POSITION AND ASK THEM TO STAND UP FOR NEWFOUNDLAND. WE WILL ENCOURAGE THE WIDEST POSSIBLE PUBLIC DEBATE AND HOPEFULLY COMING FROM THIS WILL BE WIDE POPULAR SUPPORT. I HAVE ALREADY THANKED SENATOR ERIC COOK FOR HIS GALLANT AND COURAGEOUS STAND, WHICH SHOWS THIS IS A MATTER ABOVE PARTISIAN POLITICS. THIS LOYAL NEWFOUNDLANDER WILL GO DOWN IN OUR HISTORY AS A MAN OF PRINCIPLE.

WE SEEK THE SUPPORT OF ALL IN THIS PROVINCE
FOR OUR POSITION SO THAT WE CAN SHOW MR. TRUDEAU AND HIS
GOVERNMENT, THE PARLIAMENT OF CANADA, THE PRIME MINISTER
OF THE UNITED KINGDOM, HER GOVERNMENT, AND THE PARLIAMENT
OF ENGLAND, THAT NEWFOUNDLAND AND LABRADOR'S SACRED RIGHTS
AGREED TO IN 1949 CANNOT BE ARROGANTLY AND UNILATERALLY
TAKEN FROM US. I ASK THAT YOU SHOW THIS SUPPORT BY
TELEGRAM AND LETTER TO THE PRIME MINISTER AND MP'S,
AND ALSO TO ME AND YOUR PROVINCIALY ELECTED MEMBERS.

WE ARE A PROUD AND LONG SUFFERING PEOPLE AND LIKE
TENNYSON WE CAN EXCLAIM:

THOUGH MUCH IS TAKEN, MUCH ABIDES -
AND THOUGH WE ARE NOT NOW WHAT WE ONCE WERE
THAT WHICH WE ARE, WE ARE
ONE EQUAL TEMPER OF HEROIC HEARTS
MADE WEAK BY TIME, BUT STRONG IN WILL
TO STRIVE TO SEEK TO FIND AND NOT TO YIELD.

NEWFOUNDLAND NEEDS YOU NOW. DON'T LET HER DOWN!

NEWFOUNDLAND'S CONCERNS REGARDING THE
FEDERAL PROPOSAL FOR CONSTITUTIONAL AMENDMENT

Background

In ministerial negotiations throughout the summer of 1980 and at the September Conference of First Ministers on the Constitution, Newfoundland's representatives have argued for important changes in the present British North America Act which would provide this Province with the means to take its equal place with other Provinces in Confederation. We have also supported changes which would improve the rights of all citizens.

While we have been supportive of many changes, including, some of the federal proposals regarding a Charter of Rights, our support has always been qualified by reservations which would protect and continue essential guarantees given to Newfoundland in the Terms of Union.

We have also insisted that, while we wished to have Canada's constitution patriated, the process for accomplishing this goal must be agreed to by all of the Provinces and, more important, any amending formula proposed must have the support of the Provinces.

In short, Newfoundland sought to have confirmed;

- i) Ownership to its resources on land;
- ii) the exclusive right to the resources on its continental shelf;
- iii) a measure of control over its most important economic activity - the fishery;
- iv) equal treatment vis a vis other energy commodities in the movement of electrical energy to potential markets; and
- v) protection of the rights of Newfoundland under the Terms of Union.

The Present Federal Proposal

- * This proposal for unilateral federal action flies squarely in the face of Canadian constitutional practice which has for decades required the consent of Provinces affected by a proposed constitutional change.
- * The proposal does affect the rights of Provinces and the powers of provincial legislatures and, for this reason, is unacceptable and, we believe, illegal. On this basis, Newfoundland and five other Provinces (British Columbia, Alberta, Manitoba, Quebec and Prince Edward Island) have decided to challenge the action in court.

- * The Charter of Rights provisions have none of the reservations or explicit definitions which we believe are necessary to ensure that Newfoundland's rights under the Terms of Union (e.g. denominational education) cannot be eroded over time by court decisions regarding provisions of the Charter.
- * The proposed Amending Provisions (Part V, Section 41-51) place all of the rights of Newfoundland - its status as a province, its ownership of its resources, its territorial integrity-at risk. After two years from the proclamation of the proposed act, the federal government could, by invoking the provisions of Section 42, cause a national referendum to be held on any issue and, even if this issue were to change our boundaries and every Newfoundlander voted against the measure, cause the proposal to be implemented.
- * Section 43 provides no protection whatsoever, it simply says that the federal government and province may make a change regarding matters affecting only that province. It does not say the change must be made and it does not say that the change can only be made with the province's consent. Moreover, even Section 43 itself can be changed.
- * The provisions of the federal proposals regarding equalization are a statement of principle only and are unenforceable in any quantitative way.