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SECTION 4(1)
Duration of Legislative Bodies

Compilation of primary documents to assist in interpreting the public
meaning of Section 4(1) of the *Constitution Act, 1982*

Third Edition

August, 2025



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The Constitution Act, 1982
Part I. Canadian Charter of Rights and Freedoms
Democratic Rights

Maximum duration of legislative bodies

Section 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 of a general election of its members.*

PART 1:

Drafting History of the Charter of Rights and Freedoms Pertaining to Section 4(1)'s Public Meaning

Drafts of the Charter of Rights and Freedoms:

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

January 22, 1979: Proposed Charter of Rights & Freedoms, Ontario Draft tabled at the Continuing Committee of Ministers on the Constitution (January 22-24, 1979)

October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft (July 8-11, 1980)

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail (July 8-11, 1980)

July 16, 1980: Revised Discussion Draft with Memo re Section 1 (July 18, 1980)

August 5, 1980: Revised Discussion Draft with Memo (August 5, 1980)

August 8, 1980: Formalities to Bill: Joint Resolution (August 8, 1980)

August 22, 1980: Discussion Draft (Federal) (August 26-29, 1980)

August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment) (August 26-29, 1980)

September 3, 1980: Revised Discussion Draft (September 8-12, 1980)

September 3, 1980 : Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés (September 3, 1980)

September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada (September 24, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

November 17, 1980: Draft, Memorandum to Ministers re: Possible Amendments to proposed Resolution on Constitution of Canada (November 17, 1980)

November 20, 1980: Loose Drafts (November 20, 1980)

November 21, 1980: Appendices: Some French Text and Corrections to Follow Draft (November 21, 1980)

November 24, 1980: Annexes to Memorandum to Cabinet from Minister of Justice Dated November 24, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada (November 24, 1980)

November 25, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada (November 24, 1980)

December 12, 1980: Draft [No Title]

December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (December 19, 1980)

December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (December 30, 1980)

January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution (January 1981)

January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien (January 12, 1981)

February 13, 1981: Special Joint Committee, Final Report Submitted to Parliament (February 13, 1981)

Statutes and International Agreements:

1978: Bill C-60: An Act to amend the Constitution of Canada

[This section is incomplete]

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Drafts of the Charter of Rights and Freedoms

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

8. (1) Every House of Commons and legislative assembly of a province shall continue for five years, or in the case of a legislative assembly 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.

(Source: Meeting of Officials on the Constitution, *Canadian Charter of Rights & Freedoms, Federal Draft*, [January 8, 1979] (Ottawa: 11-12 January, 1979). Click [HERE](#))

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January 22, 1979: Proposed Charter of Rights & Freedoms, Ontario Draft tabled at the Continuing Committee of Ministers on the Constitution (January 22-24, 1979)

8. (1) No House of Commons and no legislative assembly of a province shall continue for longer than five years from the date of the return of the writs for the choosing of its members.

(Source: Continuing Committee of Ministers on the Constitution, *Proposed Charter of Rights & Freedoms, Ontario Draft*, Doc 830-70/042 (Vancouver: 22-24 January, 1979). Click [HERE](#))

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October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

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

(Source: Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation Federal Draft*, [October 17, 1979] (Halifax: 22-23 October, 1979). Click [HERE](#))

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November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

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

(Source: Meeting of Officials on the Constitution, Rights & Freedoms within Canadian Federation, *Federal Draft*, [November 5, 1979], Doc 840-177/005 (Toronto: 15-16 November, 1979). Click [HERE](#))

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July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft

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

(Source: Meeting of the Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation, Discussion Draft*. Tabled by the Delegation of the Government of Canada, 4 July 1980, Doc 830-81/027 (Montreal: 8-11 July 1980). Click [HERE](#).)

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July 16, 1980: Revised Discussion Draft with Memo re Section 1

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

(Source: Memo from Fred Jordan to Roger Tassé re Charter of Rights – Possible Modifications [with Possible Alternatives to Section 1 of July 4, 1980 Draft & Revised Discussion Draft (16 July 1980)] (18 July 1980). This text is found on p. 2. Click [HERE](#).)

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August 5, 1980: Revised Discussion Draft with Memo

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

(Source: Memo from Deputy Minister of Justice to Prime Minister, Charter of Rights incl. Discussion Draft, *The Canadian Charter of Rights and Freedoms* (5 August 1980). Click [HERE](#).)

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August 8, 1980: Formalities to Bill: Joint Resolution

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

(Source: Canada, Formalities to Bill, Draft Joint Resolution, An Act to Amend the Constitution of Canada (8 August 1980). Click [HERE](#).)

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August 22, 1980: Discussion Draft (Federal)

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

(Source: Continuing Committee of Ministers on the Constitution, *The Canadian Charter of Rights and Freedoms, Discussion Draft [Federal]*, (August 22, 1980), Doc 830-84/004 (Ottawa: 26-29 August 1980). Click [HERE](#).)

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August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment)

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

(Source: Continuing Committee of Ministers on the Constitution, *Provincial Proposal: The Canadian Charter of Rights and Freedoms* (August 28, 1980), Doc 830-84/031 (Ottawa: 26-29 August, 1980). Click [HERE](#).)

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September 3, 1980: Revised Discussion Draft

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

(Source: Federal-Provincial First Ministers' Conference, *The Canadian Charter of Rights and Freedoms, Revised Discussion Draft, Federal*, [September 3, 1980] Doc 800-14/064 (Ottawa: 8-12 September 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

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.

(Source: Canada, Parliament, DRAFT, "Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada" (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

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.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

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.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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.

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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December 12, 1980: Draft [No Title]

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.

(Source: [Department of Justice?], [DRAFT], Constitution Act, 1980. Click [HERE](#).)

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December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada

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.

(Source: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (19 December 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

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.

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien¹

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.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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February 13, 1981: Special Joint Committee, Final Report Submitted to Parliament:

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.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 57 (13 February 1981). Click [HERE](#).)

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¹ See also [January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution](#).

French:

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail

4. (1) La durée maximum de la Chambre des communes du Canada et des assemblées législatives provinciales est de cinq ans à compter de la date du rapport du bref d'élections.

(Source: Comité Permanent des Ministres sur la Constitution, *Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail*, Doc: 830-81/027 (Montréal: 8-11 juillet 1980). Click [HERE](#).)

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September 3, 1980: Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés

4. (1) La durée maximale de la législature de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date du rapport du bref d'élections.

(Source: Conference Fédérale-Provinciale des Premiers Ministres, *Document de Travail, Charte Canadienne des Droits et Libertés* (3 septembre 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

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.

(Source: Canada, Parliament, DRAFT, "Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada" (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

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.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

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.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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.

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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November 17, 1980: Draft, Memorandum to Ministers re: Possible Amendments to proposed Resolution on Constitution of Canada:

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

(Source: Memorandum to Ministers re: Possible Amendments to proposed Resolution on Constitution of Canada (17 November 1980). Click [HERE](#).)

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November 20, 1980: Loose Drafts:

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

(Source: [Department of Justice?], [Loose] Annex [Drafts] (20 November 1980). Click [HERE](#).)

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November 21, 1980: Appendices: Some French Text and Corrections to Follow Draft

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

(Source: [Department of Justice?], Appendices: Some French Text and Corrections to Follow Draft (21 November 1980). Click [HERE](#).)

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November 24, 1980: Annexes to Memorandum to Cabinet from Minister of Justice Dated November 24, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada

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

(Source: Annexes du Mémoire au Cabinet du Ministre de la Justice daté du 24 novembre 1980 concernant la possibilité d'apporter des modifications au Projet de résolution concernant la Constitution du Canada (24 novembre 1980). Click [HERE](#).)

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November 25, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada

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

(Source: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada (25 November 1980). Click [HERE](#).)

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December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire

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

(Source: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (30 décembre 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

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

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien:

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

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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Statutes and International Agreements

June 20, 1978: Bill C-60: An Act to amend the Constitution of Canada

11.(1) 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.

(Source: Bill C-60, *An Act to amend the Constitution of Canada with respect to matters coming within the legislative authority of the Parliament of Canada, and to approve and authorize the taking of measures necessary for the amendment of the Constitution with respect to certain other matters*, 3rd Sess, 30th Parl, SC, 1978 (June 20, 1978). Click [HERE](#))

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1969: Pierre Trudeau, *The Constitution and the People of Canada* presented to Federal-Provincial First Ministers' Conference (February 10-12, 1969) (click [HERE](#)), p. 6

The first objective of Confederation should be to ensure that the community we have created in Canada is of a kind and a character which is consistent with the essential values and traditions of our people. This means, first and foremost, the maintenance through the Constitution of a democratic society, a society in which the ultimate sovereignty of Canada is to be found in the people which comprise it. It means that the whole of the Constitution and the institution of government it creates ought to reflect and to protect those concepts of freedom, equality, and the dignity of the individual which surely characterize Canada.

This implies that the Constitution must also preserve the federal character of our country. For federalism has been devised for the very purpose of enabling the kind of diversity one finds in Canada to flourish within the bosom of a single and a united country. Federalism also protects the individual citizen from an undue concentration of power in the hands of a single government - a concentration such as to create the danger that individual fulfilment will be subordinated to some kind of monolithic authority. The first objective of Confederation the Government of Canada would propose, then, is:

To establish for Canada a federal system of government based on democratic principles.

How this objective will be realized is to be judged by the character of the institutions of government which are created by the Constitution. The

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kind of federalism the governments of Canada favour will be reflected in their proposals as to the institutions of federalism in the central government, the division of the power to govern between the federal and provincial governments, and the role to be assigned to the respective governments in representing the interests and expectations of Canadians in different regions and linguistic communities of our country. The kind of democratic institutions wanted will be reflected in the character of the institutions of government proposed in a revised constitution - both those of the central government and those of the provinces. The democratic values of our society will also be reflected in the kinds of constitutional guarantees which are proposed for ensuring that government will remain an expression of the public will. The mechanics for achieving this end are taken for granted by most of universal suffrage, periodic elections, and annual meetings of legislative bodies, but they should surely be the subject of constitutional guarantees if this objective of the Constitution is to be achieved.

p. 26

Many of the important aspects of the parliamentary system find their origins in constitutional conventions and not in constitutional documents. Our written Constitution therefore gives a highly inaccurate picture of our system of government. A new constitution should, by contrast, be a more comprehensive and comprehensible document which will present a realistic picture of our institutions and thus enhance public appreciation and understanding of their essential characteristics. This must, however, be achieved without making the Constitution unduly inflexible. Complete clarity of detail, making provision for every eventuality, would destroy the vitality and resilience so characteristic of our existing Constitution.

The Government of Canada has therefore advanced proposals in the area of central institutions which would preserve the essentials of the present system and put them beyond reach of impulsive change. The elements of the central Constitution which have previously been based on convention would be given more specific definition, while leaving room for reasonable modifications to be accommodated when political evolution leads to need for change.

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In this process of definition, we have proposed setting forth in the Constitution the relationships between the Head of State, the Governor General, the Prime Minister, the Privy Council, the Cabinet, and the Houses of Parliament. The conditions and means by which the Governor General, the Prime Minister and the Ministers assume and leave office would be defined for the first time. (Indeed, the very mention of the Constitution of the office of Prime Minister and of the Cabinet would be an innovation, as one may at present look in vain for any constitutional reference to them.) The principles of responsible government — including the requirement that every minister be or become a member of one of the Houses of Parliament, and that a ministry can survive only so long as it enjoys the confidence of the House of Commons—are also spelled out in our constitutional proposals. At the same time we would maintain those provisions which ensure representative government: the requirement of an annual session of Parliament, of universal suffrage in election of the House of Commons, and of elections at least once every five years. These are essential to the preservation of the democratic rights of all Canadians.

By these means, then, we have maintained and expanded upon the principles of the existing Constitution of the Government of Canada, in order to ensure that it will be democratic both in form and in substance.

p. 74 (propositions)

30. The House should be automatically dissolved five years from the day of the return of writs. A House of Commons might in time of war be continued by Parliament if such continuation were not opposed by the votes of more than one third of the members of such House.

February 9, 1971: Constitutional Conference, Working Session No. 3, Statement of Conclusions (click [HERE](#)), p. 3

Sections 91(1) and 92(1) would be repealed and replaced by a section giving the Parliament of Canada and the legislatures of the provinces power to amend their respective Constitutions except with regard to the following matters when the general procedure set out in I would apply: [...]

(c) maximum period between elections;

(The above three would apply to the legislatures as well as to Parliament; the following would apply to Parliament only.)

p. 4

4. It was agreed to entrench in the Constitution the following basic political rights:

(a) universal suffrage and free, democratic elections at least every five years;

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August, 1978: Otto Lang, *Constitutional Reform: The Supreme Court of Canada*, presented at Federal-Provincial First Ministers' Conference (October 30-November 1, 1978)

Turning to some of the major elements of the Charter, these may conveniently be discussed under the following headings: substantive rights and freedoms, enforcement, limitations, preservation of subsisting rights and distribution of powers.

(1) SUBSTANTIVE RIGHTS AND FREEDOMS

(a) Democratic Rights and Freedoms

Sections 10-12 of the Bill would enshrine in the Charter basic rights and freedoms with respect to the democratic processes of government in Canadian society.

Section 10 provides for two things. First, it states the fundamental principles upon which the federal and provincial elected legislative bodies are to be constituted-on the basis of free and democratic elections encompassing the principle of universal suffrage. It does not imply that

everyone is entitled to vote. It would continue to imply reasonable limitations on the franchise such as the exclusion of convicted persons in prison, non-citizens, members of the judiciary and minors.

[...]

Section 11(1) which limits the duration of a House of Commons or a provincial legislature to a maximum term reflects the provisions now found in section 50 and 85 of the BNA Act.

Commons Debates

October 6, 1980, Debate in the House of Commons (click [HERE](#)), p. 3285

Mr. Chrétien: The ethnic communities in Canada above all others understand the importance of an enshrined charter of rights and freedoms.

I appeal to the Leader of the Opposition, as a western Canadian, not to forsake the legacy of John Diefenbaker;

I appeal to him not to oppose a measure which is of such importance to Canadians of so many different cultural backgrounds. As a westerner and as the leader of a party which has

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always upheld the rights of the individual over the state, he should not oppose a measure containing a charter of rights.

Some have told us that provincial legislatures are better able than the courts to protect the rights and freedoms of Canadians. If rights and freedoms were to be dependent upon the governments of individual provinces, there would be no such thing as rights and freedoms common to all Canadians.

I believe that Canadians, wherever they live in Canada, should have common rights and freedoms. I am supported in this view by the special joint committees of the Senate and the House of Commons which, both in 1972 and in 1978, recommended the entrenchment in the constitution of a charter of rights. And it was once again proposed in Halifax in October 1979 by the federal government at a meeting of the continuing committee of ministers on the constitution.

I remind the House that this proposal was made in Halifax by the government led by the Leader of the Opposition.

The case for a charter of rights was made eloquently by the constitutional committee of the Canadian Bar Association, and I quote:

The symbolic and educational importance of proclaiming the rights of the individual as being beyond the power of a transient legislative majority can scarcely be exaggerated. A clear statement in the constitution of the fundamental values all Canadians share would, we think, have an important unifying effect. It would inculcate in all citizens, young and old, a consciousness of the importance of civil liberties and an authoritative expression of the particular rights and liberties our society considers fundamental. To the politician and the public servant, it would provide an authoritative standard for scrutinizing not only statutes but delegated legislation.

Beyond its symbolic and educational functions, a bill of rights can be an effective instrument of enforcement, particularly of fundamental political and legal rights. The courts can declare laws that violate constitutional rights invalid. In the absence of guaranteed rights, a transient majority in Parliament or a legislature can do incalculable harm to a minority or an individual. Unlike existing human rights legislation, which can always be abrogated or modified by statute, it would constrain future legislatures and governments from acting in violation of human rights. This protection is all the more important in our modern administrative state where there is such a vast quantity of delegated legislation that is not subjected to the type of questioning involved in parliamentary debate.

It is true that there are now non-constitutional bills of rights at the federal and provincial levels. But these are mere legislative directions to the courts as to how legislation is to be interpreted. Constitutional entrenchment should encourage courts to take a stronger stand to protect fundamental rights.

The resolution before the House provides for a Canadian charter of rights and freedoms binding upon Parliament, all provincial legislatures and all governments. The rights and freedoms in the charter include: freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of information; freedom of peaceful assembly and of association; the right to vote and to stand for office, and the right to elections at least once every five years.

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October 15, 1980, Debate in the House of Commons (click [HERE](#)), p. 3704

Hon. Yvon Pinard: [...] The second category of rights we want to have entrenched in the constitution deals with the democratic rights that we are all aware of but that are seldom mentioned although they are fundamental. I am talking of the sacred right of citizens to vote in Canada and to be elected. Anybody in Canada who meets the normal few criteria set in a democratic society has the right to be a candidate, to become the elected member of his riding and to be its representative in the Parliament of Canada. It is one of the great advantages of our

system and there is absolutely nothing wrong, indeed it is desirable that this kind of right be well entrenched in the Canadian constitution.

These democratic rights also include the duration of a Parliament. People will now have the assurance, written in the Canadian constitution, that elections will be held at least every five years and that Parliament will have to sit at least once a year. The other category of rights to be included in the constitution concerns the freedom to move to and settle in any area. It is quite essential that every Canadian, in whatever province, have the right and the freedom to enter and leave any province when he wishes and that every Canadian from whatever area and whatever province be entitled to earn his living in any province without being penalized and without being the victim of any discrimination. This is another category of rights which we want to see entrenched in the constitution and which protect Canadian citizens without penalizing the provincial governments.

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March 11, 1981, Debate in the House of Commons (click [HERE](#)), p. 8132

Mr. Gus Mitges: [...] Turning to the substance of the resolution, a Canadian charter of rights and freedoms will guarantee that Canadians are entitled to the following rights and freedoms with respect to all matters of federal, provincial and territorial responsibility: fundamental freedoms, which include freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of

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Information, and freedom of peaceful assembly and of association.

With respect to democratic rights, which comprise the right to vote in the election of the members of the House of Commons and of a legislative assembly, the charter will include the right to stand for office in either of these institutions; the requirement that no House of Commons and no legislative assembly continue for longer than five years except in extraordinary circumstances; and the requirement that there be an annual sitting of Parliament and of each legislature.

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February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Federal Draft Proposals Discussed by First Ministers² (click [HERE](#)), p. 3

NEW DRAFT PROPOSALS

² This is only a summary of the proposals. We hope to include the draft itself in future reports.

[...]

B. Democratic Rights

2. Limit on maximum duration of House of Commons and legislatures except in case of national emergency.

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July 8-11, 1980, Meeting of the Continuing Committee of Ministers on the Constitution, The Charter of Rights, Quebec's Position (click [HERE](#)), p. 1

Quebec's firm and resolute commitment to the protection of citizens' basic and individual rights is a course that was undertaken several years ago. Clearly, the protection of Quebec citizens provided by the Quebec Charter of Rights and Freedoms, in conjunction with the federal Bill of Rights, is unrivalled in scope by that of few—if any—other provinces. Quebeckers unanimously support the fundamental freedoms (such as freedom of religion, of thought, of speech, and of the press) and the basic principles of democracy (such as universal suffrage, elections every four or five years, and annual sittings of Parliament). These rights exist and are respected in Quebec.

Thus the question raised by the federal proposal for a constitutional Charter of Rights is not "Does Quebec intend to protect the rights of its citizens?" but rather "What is the best way to protect the rights of the citizens of Quebec?" The proposal to entrench a broad range of individual rights in the constitution provokes a number of concerns. Before supporting such a Charter, Quebec must be convinced that constitutional entrenchment offers the most effective means of protection, that the rights covered in the Charter represent values common to all Canadians, and that their meaning and scope are well defined.

i) Advantages of entrenchment

a. The protection of individuals would, in principle, be enhanced by entrenchment of a Charter of Rights in

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the constitution. Entrenchment would prohibit any body, even a legislature, from violating the principles contained in the Charter

b. It might also be maintained that the courts would accord greater value to an entrenched charter than to a merely legislative one, which, as the expression of the will of a particular legislature, can easily be amended by a conflicting expression of will from the same body. In any case, the courts have so far refused to grant to the present federal Bill of Rights any status clearly above that of other laws.

c. The ceremony of entrenchment would confer on the Charter of Rights a symbolic and inspirational value.

d. Lastly, entrenchment would ensure uniformity of basic and individual rights across Canada.

ii) Disadvantages of entrenchment

a. Entrenchment would limit the legislative jurisdiction of the provinces to an extent determined by the number and variety of rights contained in an entrenched Charter. The results of reform in federal and provincial jurisdictions must be known before the concrete consequences of entrenchment of a Charter of Rights can be adequately assessed. Entrenchment could be disadvantageous if it occurs before agreement on the division of powers between federal and provincial governments.

b. Entrenchment could lead to a “government of judges” and may not constitute the most democratic means of protection of rights.

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The subject of rights and liberties is a vast field, still in a state of constant evolution. Constitutional entrenchment would inevitably complicate and hamper this evolution and would strip elected assemblies of the power to shape it in accordance with democratic principles. This responsibility would pass from the hands of elected representatives into the hands of appointed judges.

This was, in fact, the point made recently by one of the most eminent members of the Canadian judicial system, Mr. Louis-Philippe Pigeon, former judge of the Supreme Court: “I wish to emphasize that, in considering the probable effect of an entrenched Charter of Rights, we must realize that entrenchment would entail handing over to the courts a significant portion of the power to legislate. In my opinion, it would be mistaken to view this as a function comparable to that of interpretation of a federal constitution.”

The Canadian political system is founded on legislative representation and sovereignty. By the transference of legislatures’ powers to the courts, citizens are deprived of their most effective instrument of influence over the evolution of their individual rights. Thus, the fundamental principles of democracy are at stake in the decision on whether or not a Charter of Rights should be entrenched, since we must decide whether it is citizens or judges who will determine the evolution of rights.

The broader the range of rights to be entrenched in the Charter, the more serious this latter disadvantage becomes.

For example, the federal draft proposes to entrench the freedom of citizens to move about from one province to another. No one, and least of all Quebec, objects to this freedom as a general principle. But when one considers its meaning, implications, and consequences, a problem

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arises. This freedom might mean that Quebec could, for example, be prevented from controlling entry into the professions, as it does now, on the ground that Quebec regulations were more

restrictive than those of other provinces and hence interfered with mobility. Similarly, entrenching the freedom of movement could lead to the standardization of educational systems across Canada, because differences among systems could be interpreted as barriers to mobility.

If the courts did interpret this right in such ways, and Quebec subsequently wanted to propose, for example, to amend the Charter to restore a more normal situation, it would have to set in motion the process of amending the Constitution in which this right had been entrenched. And we know that constitutional change does not come easily in Canada.

Obviously these disadvantages, inflexibility and diminished legislative responsibility, would be much less serious if the Charter entrenched only the most fundamental rights and freedoms, whose meaning and implications are well-known and have been tested in the courts. These rights and freedoms represent values to which all Canadians subscribe, and hence pose fewer difficulties. This is the case for the freedoms mentioned earlier—freedom of religion, freedom of expression, freedom of thought, freedom of the press, and so on—the fundamental principles of democracy. Along with these freedoms come the basic rights in criminal proceedings—the presumption of innocence, the right to a fair trial, the right to counsel, and so forth. The question here, then, is which rights should be incorporated in any charter.

In short, Quebec wants the fundamental rights of citizens to receive the broadest and most effective protection possible, but it questions what the best means of providing such protection would be. Quebec therefore approaches the issue of the entrenchment of rights with a very open mind, even though it has serious doubts about this method and is weighing

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its advantages and disadvantages. But Quebec will oppose the use of a Charter in a direct attempt to alter its social and cultural priorities, as might happen in the area of language rights.

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July 5, 1980: Charter of Rights and Freedoms, Background Notes³, Tabled at Continuing Committee of Ministers on the Constitution, (July 8-11, 1980) (click [HERE](#)), p. 1

Democratic Rights includes the right to vote in an election of members of the House of Commons or of a legislative assembly and the right to stand for office in either of these institutions. This section of the Charter also limits to five years the time any government may remain in power without "going to the people" and requires that Parliament and provincial legislatures meet at least once in every year.

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³ For the draft itself, please see Part 1 of this report. The draft was from July 4, 1980.

September 8-12, 1980: Federal-Provincial Conference of First Ministers, Report of the Continuing Committee of Ministers on the Constitution to First Ministers, Patriation and the Amending Formula (click [HERE](#))

BEST EFFORTS DRAFT

AMENDMENTS TO THE CONSTITUTIONS OF CANADA

[...]

8. Notwithstanding Sections 6 and 7, the following matters may be amended only in accordance with the procedure in section I:

[...]

3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies,