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**SECTION 4(2)**  
**Legislative Bodies in War**

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Compilation of primary documents to assist in interpreting the original  
public meaning of Section 4(2) of the *Constitution Act, 1982*

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**Third Edition**

**August, 2025**



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

Continuation [of legislative bodies] in special circumstances

**Section 4(2)** *In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly as the case may be.*

## ***PART 1:***

### **Drafting History of the Charter of Rights and Freedoms Pertaining to Section 4(2)'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)

**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)

RUNNYMEDE SOCIETY

**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

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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)

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion, or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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)

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefore by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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)

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the Legislature thereof beyond the time limited therefor by subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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)**

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the Legislature thereof beyond the time limited therefor by subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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**

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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**

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

(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**

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

(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**

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

(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)**

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

(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)**

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

(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**

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

(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**

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

(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]**

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

(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]**

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond

five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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**

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

(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]**

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

(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**

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

(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:**

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

(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<sup>1</sup>**

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

(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:**

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

(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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<sup>1</sup> 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**

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

(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**

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

(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**

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

(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]**

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

(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]**

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

(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**

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

(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:**

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

(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:**

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

(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**

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

(Source: [Department of Justice?], Appendices: Some French Text and Corrections to Follow Draft (21 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**

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

(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:**

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

(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:**

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

(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

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(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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**PART 2:**

**The Primary Record (Debates, Papers, Committees...) Pertaining to  
Section 4(2)'s Public Meaning**

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

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

**November 18, 1980:** Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 7 (click [HERE](#)), p. 87

**December 9, 1980:** Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 22 (click [HERE](#)), p. 21

**January 6, 1981:** Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 32 (click [HERE](#)), p. 11

**January 22, 1981:** Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 43 (click [HERE](#)), p. 91

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

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*Note: The following is a selection of excerpts, not intended to be an exhaustive summary. The reader is encouraged to view the document as a whole.*

**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**

[...]

*Section 11(2)* would permit a House of Commons or a provincial legislature, in time of real or apprehended war, invasion or insurrection, to extend its duration beyond the specified limit if such extension is not opposed by more than one-third of the members of the legislative body.

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**February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Federal Draft Proposals Discussed by First Ministers<sup>2</sup> (click [HERE](#)), p. 3**

NEW DRAFT PROPOSALS

[...]

**B. Democratic Rights**

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

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**November 18, 1980: Max Cohen (Chairman, Select Committee on the Constitution of Canada of the Canadian Jewish Congress), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 7 (click [HERE](#)), p. 87**

**Professor Cohen:** [...] Section 4 has that very important classical Canadian phrase with which we are so familiar in the War Measures Act— “real or apprehended”, “in time of real or apprehended war, invasion or insurrection”. Well, “real or apprehended” can now leave the

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

Canadian scene. It makes no particular contribution to the understanding of the art of government or the nature of the emergency process. We think the emergency theory set out in Section 28(a) does not require the “real or apprehended” doctrine and we suggest its total elimination from the language of any Canadian legislation or any Canadian charter.

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**December 9, 1980: Jean Lapierre & Wilson Head (President, National Black Coalition of Canada), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 22 (click [HERE](#)), p. 21**

**Mr. Lapierre:** On section 4(2) we have not had many representations, but you seem to be worried about the continuation of the House of Commons in special circumstances.

But in practice I do not think anybody has to worry, because the practice has been that governments have lasted for less than four or five years.

But you seem to be worried about the word “apprehended”. I was a little surprised, because it is new for me.

**Mr. Head:** Well the word “apprehended”—and I looked it up in the dictionary to make sure I was right when I talked about it; but that word to me is a very imprecise one. What is “apprehended”? Is it something that is going to happen, or something that you think is going to happen, or that there is evidence that it is going to happen, or how strong is the evidence? It seems to me that one has to be clear that it is going to happen, and then you should only restrict liberties to the extent that it is absolutely necessary, and as I have indicated in my comments to Mr. Nystrom that, in the case of discrimination, it is never necessary.

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**January 6, 1981: Diana Davidson (President Vancouver People’s Law School Society), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 32 (click [HERE](#)), p. 11**

**Mrs. Diana Davidson (President, Vancouver People’s Law School Society):** [...] With respect now to the democratic rights section, the phrase “real or apprehended war, invasion or insurrection”

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should be deleted. Moreover, there is little support for the suspension of the right to vote contained in Section 4(2). The feeling is that once democracy is suspended temporarily, we run the risk of having lost it for good. Many have pointed out to me that at time of war the right to vote is even more important in order to provide a method by which we can signify our reactions to the way in which the war is being conducted. By way of example, I ask you only to consider

the effect of suspending the right to vote in the United States during the Viet Nam War or in present day Israel's numerous apprehended and real emergencies.

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**January 22, 1981: Svend Robinson, Jake Epp, Jim Hawkes, Bob Kaplan, & Robert Bockstael, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 43 (click [HERE](#)), p. 91**

**Mr. Robinson:** [...] I will first read the proposed amendment.

I move that Clause 4 of the proposed constitution act, 1980 be amended by (a) striking out line 26 on page 3 and substituting the following:

(2) in time of real or imminent war;

(b) striking out line 33 on page 3 and substituting the following:

of Commons or the legislative assembly present and voting, as;

and (c) adding immediately after line 34 on page 3 the following:

(3) No continuation under Clause 4(2) of the House of Commons or a legislative assembly beyond five years shall last longer than six months but a continuation may be renewed under that subclause before it expires.

Mr. Chairman, as is evident, there are three separate proposals here, I will try to deal with them in the order in which they are presented.

The first proposal is that rather than the present wording in Clause 4(2), "in time of real or apprehended war, invasion or insurrection", that we should be using the word "imminent" to substitute for the word "apprehended".

The reason for that is the word "apprehended" allows our courts virtually no jurisdiction whatsoever to go behind that declaration. These are the same words that are contained in the War Measures Act, Mr. Chairman, which has certainly been judicially determined in a very narrow fashion to be a subjective kind of test. Is it apprehended or is it not? It does not matter whether there are any objective grounds for that, the only thing that matters is whether or not the government believes, that could be without any reasonable grounds, believes that there is an impending war, invasion or insurrection.

This would substitute the word "imminent" which would give the courts an opportunity to review that declaration because, Mr. Chairman, what we are talking about is a suspension of democracy itself, and surely when we are talking about something that fundamental, the courts should have an opportunity to ensure that this declaration which is made of an apprehended war, invasion or insurrection indeed has some objective basis.

I would point out that this particular amendment has been proposed by, among others, the Canadian Jewish Congress, the Newfoundland Bar Association, the Canadian Civil Liberties Association and the Vancouver People's Law School.

It may be argued by some that there is a safeguard of requiring a two thirds majority, however clearly that would not get around the concern which is raised with respect to the totally subjective nature of this test.

It may also be argued that there is a test of demonstrable justifiability; however, in response to that I would point out, Mr. Chairman, that all that has to be demonstrably justified is that there was an apprehension. It does not have to be

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demonstrably justified that there was any basis for that apprehension, merely that the apprehension itself existed.

So that is the purpose of the first proposed amendment, Mr. Chairman.

The purpose of the second proposed amendment, very briefly, is to clarify what majority is required, that we are talking about those persons who are indeed present and voting at the time the vote is taken and not one third of the total number of members who may in fact be eligible to vote.

The final section is perhaps the most important, Mr. Chairman, because what the proposed Clause 4(3) would indicate is that there cannot be an indefinite denial of the right of the citizens of Canada to decide for themselves who is to govern them. There cannot be an indefinite suspension of democracy.

As Clause 4(2) is now worded, once a decision is made by two thirds of the members of a federal Parliament or provincial legislature to extend their mandate beyond five years, that extension can be indefinite, and what this suggests is a very reasonable procedural safeguard. It suggests that there should be a review at least every six months to ensure that it is still the will of Parliament of the legislative assemblies that this state of emergency exists, that this suspension of democracy should be continued.

Now, again, there may be some who suggest that demonstrable justifiability should apply here, but surely there should be an option on the elected representatives of the people to determine for themselves at some point, at periodic intervals, whether the suspension of democracy should indeed continue.

So that is the purpose of that clause, Mr. Chairman. I would note that the ramifications of a declaration of emergency are very serious indeed because it has been held by the highest court of this land that when there has been a declaration of emergency, that the division of powers no longer exists. Under Section 91 &nd Section 92 the federal government can move in and encroach on any provincial powers.

So when we are talking about a suspension of democracy, when we are talking about a possible reallocation of powers in Canada, surely it is not unreasonable to suggest that elected members should have an opportunity to pass judgement on that at periodic intervals.

That is the purpose of the three amendments which are being proposed to Clause 4, Mr. Chairman, thank you.

**The Joint Chairman (Mr. Joyal):** Thank you very much, Mr. Robinson.

Honourable Jake Epp.

**Mr. Epp:** Mr. Chairman, before I comment on one or two of the amendments I would like a clarification in terms of procedure.

There are clauses of the three amendments that appeal to me. There are others that I cannot support. I am wondering if you can give us some clarification on that as to how you might proceed in order.

**The Joint Chairman (Mr. Joyal):** Well, as I have already suggested previously this afternoon we could certainly divide the proposed motion, and if there is on that very question an

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aspect that you want to reserve or that you want to suggest should be divided I am certainly ready to wait for any request put through by the honourable member in that respect.

**Mr. Epp:** Mr. Chairman, I will make the request, and as I make my other comments possibly members can reflect on it.

It would be my request in this amendment that you call the three separate amendments as separate votes. In other words, we discuss the whole amendment as one but you call for three votes.

That being the case, then, Mr. Chairman, if there is agreement, you could of course clarify that later.

**The Joint Chairman (Mr. Joyal):** I do not see any opposition around the table on that so you can go on, Mr. Epp.

**Mr. Epp:** Thank you, Mr. Chairman.

Mr. Chairman, regarding the amendment and the question, first of all, of real or apprehended war. If I understand correctly, the present regime that governs this area is the fact that we are at a situation where the government as such at the present time, and where governments in the past have been at a grave or probable danger and that the New Democratic Party amendment would move us toward a position of a clear and present danger.

I have difficulty with their amendment for this reason, that I believe it is the responsibility of government to govern and while all of us have seen the experience of 1970 and do not want to see

that repeated, I do feel on the other hand, on the other side of that balance well, so to speak, there is the need to govern, especially at that period of time.

For that reason I do not like the idea of “imminent” because who then determines what is imminent, and I think in this case it is the elected representatives of the people that must decide that rather than take it to court where the very delay of the action could cause grave difficulty and in fact danger to the country.

The second amendment, I believe that in view of the suspension of democratic rights it is not sufficient for those members who are present and voting, I believe it should be one third of the members in the House, in terms of membership, the people I believe have a right to know as to their representatives.

The last Clause, Clause 3, appeals to me. I believe that the government itself would want the reassurance of the House every six months in terms of approval of the position that they have taken.

**The Joint Chairman (Mr. Joyal):** Thank you very much, honourable Jake Epp.

Mr. Hawkes on the same point.

**Mr. Hawkes:** Thank you, Mr. Chairman.

I think the choice facing the Committee is the government’s original wording versus the amended wording, and this clause has been I guess more bothersome to me since I first saw it than perhaps it has been to most, and I would like to deal with the Minister for a minute on the original wording to make sure that I understand.

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I have watched that come through two drafts and now a third draft by the government, and I guess I am concerned that it has not been changed through that process, and I think that lack of change speaks to my continuing fear that we are rushing, that we have a restricted range of opinion, that we have not had time to read all of the written briefs with the care and attention that maybe they should have had, that witnesses have told us that they did not have time to study the wording in every case, but my first question to the Minister:

The present wording of this Clause, given your 12 years of experience in the House of Commons and the wisdom and knowledge that that brings about the rules of the House of Commons, given that, what is the hypothetical minimum number of members of that House that would have to vote for a resolution of continuation?

**Mr. Kaplan:** Well, I want to be sure I understand the question but before addressing the question I want to comment on the premise of your question with which I disagree.

I do not think the facts support your assertion. The government has been very firm about the formulation proposed. You suggest that there were three drafts of it; in fact, there are none in the

English version and only one in the French version, which is not done to change a policy in any way but to clarify the meaning of language.

So, from first to last the proposals of the government have been the same as they are before you now.

**Mr. Hawkes:** Correct, and I am sorry if I said that incorrectly but I ...

**Mr. Kaplan:** I thought the impression might be created that we had some degree of uncertainty about how this emergency situation ought to be handled and that is not the case.

**Mr. Hawkes:** I just suggested that it has been looked at three times, once in the original formulation, with the Justice Minister's amendments and then with the revision on the French side, which is the one we are presented with.

**Mr. Kaplan:** Well, I think I could say this is substantially unchanged from beginning to end.

**Mr. Hawkes:** Yes, I would agree.

**Mr. Kaplan:** Thank you.

**Mr. Hawkes:** Now, my question is: given your knowledge of the rules of the House of Commons regarding quorum, with this wording how many members of the House of Commons would it take to vote in the affirmative to continue the Parliament indefinitely?

**Mr. Kaplan:** It would have to be carried by a majority of the members who are present in the House and not opposed by one third of the total membership of the House of Commons, which is 90-odd.

**Mr. Hawkes:** The quorum in the House of Commons is 20?

**Mr. Kaplan:** This, incidentally, is the precise formulation contained in the BNA Act of 1867.

**Mr. Hawkes:** We are in a situation of supposed constitutional renewal ...

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**Mr. Kaplan:** Mr. Hawkes, I have to correct the information that I just gave you. The version of the BNA Act which established this formulation, which we are continuing and only changing the French version slightly, was enacted in 1949. Section 91 of the BNA Act.

**Mr. Hawkes:** Mr. Minister, the quorum in the House of Commons is 20, and is it conceivable that the unanimous agreement of those 20 people in quorum would have the force in law to continue the Parliament of Canada beyond five years in the extreme case with that wording?

**Mr. Kaplan:** Yes.

**Mr. Hawkes:** And that is satisfactory to the Government?

**Mr. Kaplan:** Well, how many members of Parliament might have survived to that particular time given the kind of war or other incident that one could imagine?

**Mr. Hawkes:** Do we also with the wording have the situation where ...

**Mr. Kaplan:** I am making the point that it is reasonably flexible and it is tending to be balanced in favour of the emergency power, but the apprehension has to be bona fide and I do not think Mr. Robinson gave sufficient weight to that.

The apprehension has to be a genuine bona fide apprehension and once it is, as Mr. Epp said, he wanted the government and the Parliament to have the authority to operate.

**Mr. Hawkes:** Do we have a situation with the wording as it sits where a motion could be posed by, say, 80 members of the House, I think more than one third would imply 95, but where a motion could be posed by 80 members of the House and supported by 60, and it would carry?

**Mr. Kaplan:** No, because it has to be carried in the normal way by a majority.

**Mr. Hawkes:** Then how am I supposed to ...

**Mr. Kaplan:** In order to be a resolution carried by our House of Commons it has to be carried by a majority, so that is test number one; but that is not sufficient. There is a second test and that is that it has to be unopposed by 95 members in the present House of Commons.

I would like to have the exact number. It is 94.

**Mr. Hawkes:** It says more than one third, I think, Mr. Minister, that takes you to 95.

**Mr. Kaplan:** Correct.

**The Joint Chairman (Mr. Joyal):** Thank you very much, Mr. Hawkes.

I see that it is 6 o'clock and I would like to adjourn the meeting to eight tonight.

EVENING SITTING

**The Joint Chairman (Mr. Joyal):** Order please.

Could I ask the honourable members of the committee to please take their seats so that we can resume our work where we left at dinner time.

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I will remind the honourable members that we have called Clause 4 and that we are debating an amendment by Mr. Robinson. I will now recognize Mr. Bockstael.

Mr. Bockstael.

**Mr. Bockstael:** Thank you, Mr. Chairman.

The members of the Liberal party or the government side feel that the word “imminent” is not a suitable word. “Immiment” could mean a month, a week, a day, and we are convinced that the word “apprehended” is more apropos and we want to stick to the word that better describes the potential or the possibility of such a situation. So that is to the first amendment which the NDP have proposed and we hold to our original text which wants to use an apprehended situation.

In the second instance that the House would have to come together every six months to decide whether it is allowed to continue, this is unnecessary; it would depend on the nature of the urgency. The position taken by the government to continue beyond its normal term of office would have to be evaluated and justified and it does not make sense, if the Cabinet was maintaining the work of the government during a recess, to have to bring all the members back so that at least two thirds are in favour of continuing at the time of an emergency; it does not seem a sound proposal.

Calling an election in such a situation would place the country with executive management of the country while we are trying to decide whether we are going to have a new Minister of National Defence, and it is not consequential. So we oppose that amendment that they propose and we hold to our original text also which indicated that we would want two thirds of the members of the House in favour of continuing rather than two thirds of the members present. We, on this side, would vote against all three amendments.

**Mr. Epp:** May I ask Mr. Bockstael what about the third part of the amendment? Mr. Bockstael, would you address that?

**Mr. Bockstael:** The third part? I believe that clause 4(2) was the word “imminent” in lieu of “apprehended” and we will stick to “apprehended”; the second one, “Commons or the legislative assembly present and voting”, we are saying ...

**Mr. Epp:** There was a third one.

**Mr. Bockstael:** The third one, no continuation unless the assembly is called together within six months automatically to renew or extend its mandate.

**Mr. Epp:** Do you agree with that one?

**Mr. Bockstael:** We do not agree with that one because it would necessitate calling Parliament to see if it can keep on going in the middle of a war, if you use it in that context.

**The Joint Chairman (Mr. Joyal):** Thank you very much, Mr. Epp.

I see that I have no other speakers on my list and I would like then to invite Mr. Robinson to conclude on his proposal.

**Mr. Robinson:** Thank you very much.

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Mr. Chairman, without repeating the arguments that I made earlier, I would like to emphasize the extreme importance which I believe this Committee should attach to the proposed rewording of Clause 4(2) to deal with the word "apprehended". Mr. Chairman, the words "apprehended" and "insurrection" have a rather unfortunate history in this country, to say the least. I would remind honourable members of this Committee that it was precisely the invocation of the sweeping powers under the War Measures Act in October of 1970, using that very authority, the sweeping authority of apprehended insurrection which took away the fundamental civil rights and civil liberties of many people, which involved the arbitrary arrest of over 450 Quebecois, which involved the denial of basic rights to communicate with their counsel, in some cases to communicate with their families, being held for up of three weeks.

That is the history of the words "apprehended" and "insurrection" in this country. Unless anybody thinks that the government of this country might not abuse that, we only have to look back to October, 1970 to see how those words were abused, because there is no doubt whatsoever that there was not a scintilla of evidence to support the apprehended insurrection which allegedly existed. We are still waiting today to see some evidence for this apprehended insurrection which resulted in a sweeping denial of civil liberties, particularly of the people of Quebec but, of course, which applied right across Canada.

So it is in view of that history, the history of the word "apprehended", what that means to the people of Quebec and I suspect the memory of the words "apprehended" and "insurrection" is much stronger in their minds than those of most other Canadians, that I suggest that this Committee should give the courts some jurisdiction, some leeway to go behind the arbitrary declaration of a government, that we think that an insurrection exists in this country.

Mr. Chairman, it is on that basis that I propose and am supported by the Canadian Civil Liberties Association and a number of others that the words "or apprehended" be substituted by the words "or imminent".

With respect to Clause 4(b), I believe that I discussed this briefly with Mr. Epp, my understanding was that Mr. Epp, in recognizing the serious nature of this sweeping away, the suspension of democracy, as I have called it, that there should not be perhaps as rigorous a voting requirement as this amendment would indicate. I would point out to Mr. Epp that in fact this makes it easier for a smaller number of members of Parliament who feel strongly on this subject to block the suspension of democracy and the indefinite continuation of Parliament.

Finally, Mr. Chairman, with respect to the proposed Clause 4(3), I would merely point out that what we are doing if we pass this is to permit the government to arbitrarily declare, with no reasonable grounds whatsoever, that they apprehend an insurrection, whatever that means, and to deny Canadians rights which they take for granted, to invade provincial powers with no time limitations whatsoever, with no time limitations

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whatsoever. This can go on indefinitely. And lest again, you think I am being academic, one need only look at countries in which this kind of power exists. This is the kind of power which is being used to maintain many corrupt dictators in power in other countries.

The amendment simply calls for the right of members of Parliament or a legislative assembly to have a review at six month intervals to ensure that the continuation of the state of emergency reflects the will of the people of Canada or of that particular province. If we are dealing with a war, that war may in some cases at some point, turn to be an unpopular war and there would no opportunity for Canadians, through their elected representatives, to voice their concerns about that.

In the case of the war in Vietnam, for example, had there been a provision such as this, had a government in the United States imposed this section of the act to extend their power indefinitely, a draconian declaration of suspension of democracy in the interest of national security, there would be no opportunity for congressmen in that situation, under this formulation, to at some point say, 'Enough, we want to pass judgment on that action'.

It is on that basis, Mr. Chairman, that these three amendments are proposed and I urge support from the members of this Committee.

**The Joint Chairman (Mr. Joyal):** Thank you very much, Mr. Robinson.

I will then call the vote separately on each of the three proposed amendments. I would like to call the vote on the amendments:

That Clause 4 of the proposed constitution act, 1980 be amended by

(a) Striking out line 26 on page 3 and substituting the following:

(2) In time of real or imminent war,

All those in favour of the amendments.

**Mr. Robinson:** I would ask that this be a recorded vote, please.

**The Joint Chairman (Mr. Joyal):** Certainly. I would like to complete the reading of the proposed amendment. I would repeat:

(a) Striking out line 26 on page 3 and substituting the following:

(2) In time of real or imminent war, That Clause 4 of the proposed Constitution Act, 1980 be amended by (a) striking out line 26 on page 3 and substituting the following:

3, de ce qui suit: ou d'insurrection, reelles ou imminentes.

May I invite the clerk of the Senate to call the vote, please.

Amendment negatived; yeas, 7; nays, 14.

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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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