PREM 19/143
**Polling**

**Election of Mr. J. Clark as Prime Minister of Canada.**

**UK/Canadian Relations.**

**Re-election of Mr. P. Trudeau as Prime Minister of Canada.**

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**May 1979**

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**PREM 19/143**
Part 1 ends:

Have to CHR Whip 6.11.80

Part 2 begins:

PCO to MODBA 11.11.80
Chief Whip

B.N.A. Act

Attached is an early copy of the memorandum being sent shortly to Members of Parliament.

6th November, 1980 Derek Howe.

cc: Michael Alexander.
Patriation of the Canadian Constitution

The Prime Minister held a meeting here on Monday, 3 November to discuss the patriation of the Canadian Constitution. It was attended by the Home Secretary, the Lord Chancellor, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Chief Whip, Mr. Ridley and Sir Robert Armstrong.

The Lord Privy Seal said that there was no precedent for the present situation which had arisen over the proposed legislation to patriate the Canadian Constitution. Six Canadian provinces had reacted strongly against Mr. Trudeau's proposals and three of them were taking the Canadian Federal Government to court. Mr. Trudeau considered that it was necessary for the patriation legislation to include a Bill of Rights in order to keep Quebec within the Canadian Federation. Nevertheless Quebec was one of the provinces opposing the proposal. The Canadians had been given repeated assurances that the British Government would introduce whatever legislation was requested by the Canadian Federal Government and Parliament, but it was likely that the Bill might encounter real difficulties with backbenchers at Westminster, particularly as it was the Right-wing political parties in Canada who were opposed to the Bill.

The Lord Chancellor said that in his view the preamble to the Statute of Westminster (which was not affected by Section 7(1) of that Statute) made the constitutional position clear. The Westminster Parliament could not amend a Bill attached to a Canadian request. The only question would be whether the request should be accepted or rejected as a whole, although the Government might postpone the introduction of the Bill if the legality of the Federal Government and Parliament's actions was being tested in the Canadian courts. It was also the view of Parliamentary Counsel that the draft Canada Act could be given a title describing it as a Bill to give effect to a Request by the Senate and House of Commons of Canada, which would make it even clearer that the House of Commons could not amend the Bill. This should ease the passage of the legislation through the Westminster Parliament, although an initial row would probably take place when the Bill was introduced in each House. As a weapon of last resort it would be open to the Westminster Parliament proprio motu to patriate the Canadian Constitution.
Constitution by means of a one clause Act which would simply transfer the powers now rested in Westminster to the Canadian Federal Parliament, even without their consent. Such action might lead to Canadian retaliation. A British refusal to pass the Canadian legislation might lead to a unilateral declaration of independence by the Canadian Federal Parliament, which might not thereafter be accepted by the provincial government, and could lead to a situation of chaos.

In discussion the following points were made:

(a) The inability to move amendments was not unique: it was analogous to that involved in the ratification of treaties by the Westminster Parliament.

(b) A Bill which could not be amended should go a long way towards removing the Government's difficulties with its backbenchers; but it would be desirable to establish that the Speaker would rule that the Bill was unamendable.

(c) The Select Committee on Foreign Affairs had asked the Foreign and Commonwealth Office to submit a paper on the question of patriating the Canadian Constitution. This would provide the Government with a useful opportunity to explain its position, though the Government's statement on its legal position would probably attract a lot of criticism from the dissentient Canadian Provinces and legal academics, who might well seek themselves to give evidence to the Select Committee.

(d) Mr. Trudeau was approaching this issue with great resolution and driving the legislation through the Federal Parliament. It was most improbable that he could be persuaded to drop the idea of a Bill of Rights and go for simple patriation.

(e) The challenge in the Canadian courts to the Federal Government's legislation would probably be exhausted fairly quickly and this was therefore unlikely to provide a reason for postponement on the part of the Westminster Parliament.

The Prime Minister, summing up the discussion, said that this was an important issue which ought to be discussed by the Cabinet on the basis of a paper by the Foreign and Commonwealth Secretary at their meeting on Thursday, 13 November. Once the legal position had been clarified and the Cabinet had taken a decision, the Foreign and Commonwealth Secretary, accompanied by his Legal Adviser, would be able to arrange to give evidence to the Select Committee on Foreign Affairs to explain the reason for the position which the Government was taking up; in the meantime he should / confine
confine himself to a purely factual paper. The Lord Chancellor and Attorney General should hold themselves in reserve to deal with the criticisms which were likely to be made of the Government's position on constitutional and legal grounds. The Chancellor of the Duchy of Lancaster should arrange through his officials to obtain the views of the Clerk of the House of Commons on whether a Bill requested by the Canadian Parliament and Government would be unamendable or, if not, whether it was feasible by suitably entitling the draft Canada Act to make it proof against amendments in the House of Commons. Care should be taken not to let it become known prematurely that the House of Commons was going to be confronted with legislation on a potentially contentious issue which they would be unable to amend.

I am sending copies of this letter to the Private Secretaries to those who attended and to Jim Nursaw (Law Officers' Department).

M. O'D. B. Alexander

G. G. H. Walden, Esq.,
Foreign and Commonwealth Office.
Ref: A03448

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MR. ALEXANDER

Patrriation of the Canadian Constitution

I attach a record of the meeting which the Prime Minister held yesterday to discuss Patriation of the Canadian Constitution. You said that you would distribute the record yourself: copies should probably go to those present at the meeting and also to the Foreign and Commonwealth Secretary and the Attorney General.

D. J. Wright

4th November 1980

CONFIDENTIAL
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NOTE of a Meeting to discuss
Patriation of the Canadian Constitution held at
10 Downing Street on
MONDAY 3 NOVEMBER 1980

PRESENT

The Prime Minister
The Home Secretary
The Lord Privy Seal
The Parliamentary Secretary, Treasury

The Lord Chancellor
The Chancellor of the Duchy of Lancaster
Minister of State, Foreign and Commonwealth Office
(Mr. Ridley)

SECRETARIES

Sir Robert Armstrong
Mr R M Hastie-Smith

The Lord Privy Seal said that there was no precedent for the present situation which had arisen over the proposed legislation to patriate the Canadian Constitution. Six Canadian provinces had reacted strongly against Mr Trudeau's proposals and three of them were taking the Canadian Federal Government to court. Mr Trudeau considered that it was necessary for the patriation legislation to include a Bill of Rights in order to keep Quebec within the Canadian Federation. Nevertheless Quebec was one of the Provinces opposing the proposal. The Canadians had been given repeated assurances that the British Government would introduce whatever legislation was requested by the Canadian Federal Government and Parliament, but it was likely that the Bill might encounter real difficulties with backbenchers at Westminster, particularly as it was the right-wing political parties in Canada who were opposed to the Bill.

The Lord Chancellor said that in his view the preamble to the Statute of Westminster (which was not affected by Section 7(1) of that Statute) made the constitutional position clear. The Westminster Parliament could not amend a Bill attached to a Canadian request. The only question would be whether the request should be accepted or rejected as a whole, although the Government might postpone the introduction of the Bill if the legality of the Federal Government and Parliament's actions was being tested in the Canadian courts. It was also the
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view of Parliamentary Counsel that the draft Canada Act could be given a title describing it as a Bill to give effect to a Request by the Senate and House of Commons of Canada, which would make it even clearer that the House of Commons could not amend the Bill. This should ease the passage of the legislation through the Westminster Parliament, although an initial row would probably take place when the Bill was introduced in each House. As a weapon of last resort it would be open to the Westminster Parliament proprio motu to patriate the Canadian Constitution by means of a one clause Act which would simply transfer the powers now rested in Westminster to the Canadian Federal Parliament, even without their consent. Such action might lead to Canadian retaliation. A British refusal to pass the Canadian legislation might lead to a unilateral declaration of independence by the Canadian Federal Parliament, which might not thereafter be accepted by the provincial government, and could lead to a situation of chaos.

In discussion the following main points were made:-

a. The inability to move amendments was not unique: it was analogous to that involved in the ratification of treaties by the Westminster Parliament.

b. A Bill which could not be amended should go a long way towards removing the Government's difficulties with its backbenchers; but it would be desirable to establish that the Speaker would rule that the Bill was unamendable.

c. The Select Committee on Foreign Affairs had asked the Foreign and Commonwealth Office to submit a paper on the question of patriating the Canadian Constitution. This would provide the Government with a useful opportunity to explain its position, though the Government's statement on its legal position would probably attract a lot of criticism from the dissentient Canadian Provinces and legal academics, who might well seek themselves to give evidence to the Select Committee.

d. Mr Trudeau was approaching this issue with great resolution and driving the legislation through the Federal Parliament. It was most improbable that he could be persuaded to drop the idea of a Bill of Rights and go for simple patrixation.

e. The challenge in the Canadian courts to the Federal Government's legislation would probably be exhausted fairly quickly and this was therefore unlikely to provide a reason for postponement on the part of the Westminster Parliament.

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Cabinet Office
4 November 1980
CONFIDENTIAL

FROM: OTTAWA 0318562 NOV 80
TO: IMMEDIATE FCO
TELEGRAM NUMBER 446 OF 3 NOVEMBER

CANADIAN CONSTITUTION

1. AFTER HEARING FROM MR BERTHOUD THAT CANADA HOUSE HAD BEEN INFORMED THAT THE FOREIGN AFFAIRS COMMITTEE WOULD DECIDE TO START THEIR OWN ENQUIRY INTO THE CONSTITUTIONAL PROBLEM ON WEDNESDAY, I INFORMED MR MARCHAND THIS MORNING IN VIEW OF MY PROMISE TO KEEP HIM INFORMED OF DEVELOPMENTS.

2. HE REACTED VERY BADLY, SAYING THAT THIS WAS AN UNFRIENDLY ACT AND INCOMPATIBLE WITH WHAT MRS THATCHER HAD TOLD THE CANADIAN PRIME MINISTER AND MINISTERS. AS THE CHAIRMAN OF THE COMMITTEE WAS A CONSERVATIVE THE CANADIANS WOULD HAVE THOUGHT THAT MR KERSHAW AND THE COMMITTEE COULD BE CALLED TO ORDER.

3. I SAID THAT THERE WAS NOTHING INCONSISTENT WITH WHAT THE CANADIANS HAD BEEN TOLD. MRS THATCHER HAD WARNED MR TRUDEAU ON 25 JUNE THAT IF THE ISSUE WAS VERY CONTENTIOUS HERE IT WOULD BE BOUND TO CREATE ARGUMENT IN THE UK; MOREOVER, I HAD MYSELF BEEN CONSISTENTLY WARNING OF THE DANGER OF PARLIAMENTARY ACCIDENTS. THE SELECT COMMITTEES OF THE HOUSE OF COMMONS WERE NOT POOLIES OF THE GOVERNMENT. THEY WERE A RELATIVELY NEW PHENOMENON, WHICH WERE GAINING IN IMPORTANCE AS THE HOUSE BEGAN TO ASSERT ITSELF MORE. IF HE DOUBTED MY VIEW ABOUT THE WAY IN WHICH CHAIRMEN OF PARLIAMENTARY COMMITTEES EXERCISED THEIR INDEPENDENCE HE HAD ONLY TO LOOK AT THE WAY IN WHICH MR DU CANN OPERATED.

4. I ADDED THAT MR RICHARDSON OF CANADA HOUSE HAD INDICATED THAT HE WOULD BE SENDING A TELEGRAM TO OTTAWA. IF HE (MR MARCHAND) WANTED CONFIRMATION ABOUT THE INDEPENDENCE OF PARLIAMENTARY SELECT COMMITTEES HE COULD CONSULT CANADA HOUSE. MR RICHARDSON HAD INDICATED THAT CANADA HOUSE MIGHT TRY TO RIDE THE FOREIGN AFFAIRS COMMITTEE OFF THE DECISION. I WAS IN NO POSITION TO ADVISE WHETHER SUCH ACTION WOULD BE LIKELY TO SUCCEED OR BE COUNTERPRODUCTIVE.

5. MR MARCHAND CALMED DOWN SOMewhat BUT KEPT REPEATING THE WORD "UNFRIENDLY" IN RELATION TO THIS DEVELOPMENT. I REPORT THIS AS A FURTHER INSTANCE OF THE PRESENT TOUCHINESS OF THE CANADIAN GOVERNMENT WHICH WE SHALL PROBABLY HAVE TO BE INCREASINGLY THICKSKINNED IN ENDURING.

FORD

LIMITED

NAD
PS
PSILPS
PSILMRIDLEY

COPY OF REPLY SENT TO
No. 10 DOWNING STREET
CONFIDENTIAL

FM OTTAWA 311545Z OCT 80
TO IMMEDIATE FCO
TELEGRAM NUMBER 463 OF 31 OCTOBER
INFO ROUTINE WASHINGTON, TREASURY, DEPT OF ENERGY, UKDEL OECD,
BANK OF ENGLAND (FCO PLEASE PASS)

MY TELS 458 AND 459

CANADIAN BUDGET

1. I HAVE DELAYED COMMENT ON THE BUDGET WHILE AWAITING REACTIONS FROM THE PROVINCES.

2. THIS WAS AN EXCEPTIONALLY POLITICAL BUDGET. THE MAIN THRUST WAS TO IMPose A FEDERALLY DETERMINED ENERGY POLICY AND TO CANADIANISE THE OIL INDUSTRY AND THUS IN THE ENERGY FIELD TO PARALLEL WHAT THE LIBERALS ARE DOING IN THE CONSTITUTIONAL.


4. THE OIL INDUSTRY, PARTICULARLY THE FOREIGN COMPANIES, WILL BE SERIOUSLY AFFECTED. HOW FAR CANNOT YET BE DETERMINED BUT THE SLIDE IN THEIR STOCKS ON THE TORONTO EXCHANGE HAS BEEN STEEP; AND IT IS NOW CLEAR THAT A LOT OF US VOLATILE MONEY IS ON THE MOVE. THE THREAT OF BEING BOUGHT OUT BY THE FEDERAL GOVERNMENT THROUGH THE USE OF THE CANADIAN OWNERSHIP LEVY MUST EFFECT THE FOREIGN MULTINATIONAL INVESTMENT PLANS; AND SHELL’S ALSANDS PROJECT IN TAR SANDS AND ESPO’S COLD LAKE HEAVY OIL PROJECT ARE NOW DOUBTFUL STARTERS. THE PROMISE OF A DOLLARS 4 BILLION WESTERN DEVELOPMENT FUND HAS EYE APPEAL TO THE UNTHINKING MAN IN THE STREET BUT IF THERE IS, AS I EXPECT THERE WILL BE, OVER EXPENDITURE IN OTHER AREAS THE FEDERAL GOVERNMENT WILL BE TEMPTED TO RAID THIS FUND; AND IT IS QUESTIONABLE WHETHER CROWN CORPORATIONS AND THE GOVERNMENT WILL BE CAPABLE OF DOING AS WELL IN THE ENERGY FIELD AS THE PRIVATE SECTOR.

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5. Even though it does touch a receptive public nerve through its Canadianisation emphasis, this budget must increase the atmosphere of confrontation. The small print shows that the energy programme treads hard on Western corns and no attempt has been made to be equitable as between the East and West, for example by taxing the Ontarian and Quebec output of electrical energy.

6. The budget is remarkable in that it does not set out any economic policy as such or attempt to produce new measures to deal, for example, with inflation, the current recession or even the large federal deficit. On the contrary, the effect of the oil price increases and the continuation (indeed increase) in the federal deficit will be to add to inflation. It must also be uncertain whether the government will control its expenditures adequately to contain the deficit within the new target it has set. There may well be problems about financing the deficit, and the upward pressures on interest rates are already evident. These factors, the uncertainties with the new policy, and the sharpened confrontation between the federal government and the provinces particularly Alberta, are likely to slow Canada's recovery from the present recession.

7. See MIFT.

Ford

[COPIES SENT TO TREASURY D/E/ENERGY]

Financial

NAD

EST JD

MR DAY

MR HARDING

COPIES TO

OVERSEAS SECT. B/ENGLAND

CONFIDENTIAL
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Ref. A03402

PRIME MINISTER

Patriation of the Canadian Constitution

You are due to have a meeting on this subject on Monday, 3rd November with the Home Secretary, Lord Chancellor, Chancellor of the Duchy of Lancaster, Lord Privy Seal, the Chief Whip and the Minister of State at the Foreign and Commonwealth Office, Mr. Ridley.

2. The basic Canadian constitutional instrument is the British North America Act 1867 which is an Act of the Westminster Parliament. In certain important respects this Act can only be amended by Act of Parliament in Westminster, notably as regards distribution of powers between the Federal and Provincial legislatures. This situation remained when Canada became fully independent under the Statute of Westminster in 1931 because the Canadian Delegation to the preceding imperial conferences were unable to agree on any changes in the status quo. Section IV of the 1931 Statute enacts as law the Constitutional Convention that the Westminster Parliament will not pass legislation extending to a Dominion other than at the express request and with the consent of the Dominion. The British North America Act has been so amended 14 times, invariably at the Canadian request. The British Government under both Labour and Conservative Administrations has consistently taken the general line that patriation would go through in this country if requested by the Canadian Government. You will recall that when you met Mr. Trudeau on 25th June last you said that a request to patriate would be agreed by us if it was the wish of the Government of Canada. You gave similar assurances to Mr. MacGuigan and Mr. Roberts, Mr. Trudeau's emissaries, when they called on you on 6th October. At that meeting Mr. MacGuigan told you that the Canadian Government was requesting something that was in their judgment necessary for the survival of Canada in its present form. There can be no doubt about the strength of Mr. Trudeau's resolution in the matter. He would certainly be very angry if he was now to be told that the British Government were not prepared to pass the legislation including the Bill of Rights through
Parliament. Delay beyond the Canadian deadline of 1st July 1981 may not be quite so disastrous in terms of Anglo-Canadian relations. The Canadian reaction would probably depend on how hard they felt the British Government had tried to meet their wishes.

3. The Canadian Federal Government has now laid its proposals in the form of a proposed Resolution in front of the Federal Parliament. An account of its stormy passage so far, and our High Commissioner's conclusions, are contained in Ottawa telegrams 450, 451 and 452 of 27th October of which I attach copies. Six (Alberta, British Columbia, Manitoba, Newfoundland, Prince Edward Island and Quebec) out of the ten Canadian Provinces now formally oppose Mr. Trudeau's proposals. Ottawa telegram 452 makes some interesting points about Mr. Trudeau's own attitude in this matter, his relative ignorance of the processes of the Westminster Parliament, and his possible actions if his legislation encounters serious Parliamentary difficulties or obstruction at Westminster. The dissentient Provinces are already lobbying for support in Westminster, and this is likely to intensify during the coming months. They will lobby through their Agents General and possibly through visits by the Provincial Premiers. Although this is not a matter which is likely to become a great popular cause in this country, it seems probable that what popular interest and sympathy is aroused, and (more immediately) what Parliamentary views are expressed, are likely to be on the side of the Provincial Governments rather than in support of Mr. Trudeau.

4. We have the authority of Sir Kenneth Wheare for the proposition that the Westminster Parliament is bound by convention not to alter the British North America Act except with the request and consent of the Dominion Government and (usually) Parliament, but that it is not bound by convention to alter the Act if and when the Dominion Government and Parliament request it to do so. The implication of this must be that, in terms of constitutional doctrine, the Westminster Parliament can, either for its own reasons or because persuaded by the Provincial Governments, decide not to act on a request from the Federal Government and Parliament. The Provincial Governments will argue that, to the extent that the Westminster Parliament
is allowed to intervene in Canadian domestic matters, not only must it do so only at the request and with the consent of the Federal Government but also that it must not do so in such a way as to take sides in a dispute between the Federal and Provincial Governments.

5. If this is right - and you may think that one of the conclusions from your meeting should be that an opinion should be sought from the Law Officers on the matter - we are not constitutionally bound to introduce at Westminster whatever Resolution is passed by the Canadian Parliament. You have of course said that the British Government will introduce at Westminster whatever Resolution is passed by the Canadian Parliament, and there are good political reasons for doing so: a refusal to do so would certainly be castigated by Mr. Trudeau as an intrusion in the internal affairs of Canada, and he would no doubt blame the British Government for whatever consequences might follow. On the other hand, assuming that Mr. Trudeau has not reached agreement with the Provincial Premiers on the contents of the Federal Resolution, a decision by the British Government to introduce a Resolution at Westminster would be attacked by them as an intrusion in the internal affairs of Canada and as a breach of the trust placed by the Provinces of Canada in Britain by virtue of the British North America Act. Mr. Trudeau's actions are putting the British Government and Parliament in a very difficult position.

6. There is one further difficulty. We are told that the legality of the Federal Resolution and of Mr. Trudeau's actions is being challenged in the Canadian courts, and that the Provincial Premiers propose to press the challenge to the Supreme Court. Presumably we should not wish to introduce legislation at Westminster until the Resolution's legality in Canadian law had been established in the Canadian courts.

7. The problem is created for us, not by the proposal for patriation as such but by the Federal Government's decision to incorporate in the Resolution and the draft Bill constitutional provisions on such matters as legal rights, official languages and educational rights which are matters for the Canadians themselves to decide and go well beyond the question of patriation. You will
not wish to go back on your commitment to Mr. Trudeau to introduce at Westminster whatever Resolution is passed by the Canadian Parliament. But it would be open to you to say to Mr. Trudeau that, in the form which the Resolution now takes, and given the certainty that the Provincial Governments will lobby in London, the Bill he now proposes would be controversial at Westminster, that at best we could find ourselves unable to meet his timetable for completing the Bill by 1st July 1981 and at worst the Bill could fail to pass, particularly in the House of Lords. In addition - you might say - you understand that the legality of the proposed Resolution is being challenged in the Canadian courts, and you think that it would be difficult for Her Majesty's Government to introduce the Bill at Westminster until the outcome of that challenge was finally known. None of these difficulties would arise if what was proposed was a simple patriation of the British North America Act to Canada, leaving the constitutional additions proposed to be the subject of debate and legislation in the Canadian Parliament once the Constitution has been patriated. You therefore hope that he will consider very seriously amending his request, so that all that Westminster is required to do is simply to patriate the British North America Act, leaving other matters to be dealt with in Canada where they belong.

HANDLING

8. Against this background the immediate aim of your meeting could be to consider what the British Government's decision and posture should be. You may care to begin the meeting by inviting the Lord Privy Seal to say something about the Canadian Constitution and the question of external relations between Britain and Canada. You will want to make it clear to the meeting that you are committed to Mr. Trudeau to introduce at Westminster whatever Resolution is passed by the Canadian Parliament, and that there would be grave political disadvantages in going back on that commitment. You could then discuss the potential dislocation of the Parliamentary timetable, the damage to the Government's legislative programme and the possibility of political upset inherent in taking the proposed 59 clause Bill through the Westminster Parliament. If the meeting is disposed to share my view that it may be difficult to get the Bill through, particularly in the House of Lords, you may
wish to consider with your colleagues whether even now to urge Mr. Trudeau
to go for simple patriation, leaving the additional matters to be dealt with in
Canada, once the British North America Act has been patriated.

9. If the meeting decides to take that course, there will be an opportunity
to discuss that alternative with Mr. Michael Pitfield, the Secretary to the
Cabinet in Ottawa and a close confidant of Mr. Trudeau, when he is in London
on Monday, 10th November.

10. If the meeting decides that that course is not practicable, then you will
wish to concentrate on how to minimise the potential dislocation of the
Parliamentary timetable and the damage to the Government's legislative
programme of taking the Bill through Parliament. The discussion might cover
the following points:

(a) You may like to invite the Chancellor of the Duchy of Lancaster to say
something about the timetable and to describe the outcome of his
telephone call to Mr. Yvon Pinard, Leader of the Canadian Lower
House on 27th October. He or the Lord Privy Seal may be able to
say when the Canadians are likely to get their Bill to London. When
can it be expected to be passed by the Westminster Parliament?
Would the timetable be significantly affected if it was a simple Bill
which did not include a Bill of Rights?

(b) Would there be any advantage to the Government in introducing the Bill
without putting the Whips on? How would Mr. Trudeau react to such
a procedure? What would its advantages and disadvantages be from
a domestic political point of view?

(c) Are there any procedural devices which might be adopted to simplify
the passage of the Bill through Parliament? It has been suggested
that the draft Canada Act should be re-entitled "a Bill to give effect
to a request by the Senate and House of Commons of Canada". This
would prevent amendments at least in the Commons being put down
to delete for example the Charter of Rights as being out of order,
since such a deletion would not give effect to the Canadian request.
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This device might abbreviate but not stop debate in the House of Commons and make clear the basis of the legislation. But since the House of Lords rules of procedures are more flexible, the Lords might not feel so inhibited about introducing amendments. What do the Chancellor of the Duchy of Lancaster and Chief Whip feel about a device of this kind? Are there any other devices which ought to be considered?

(d) It seems certain that the dissentient Provinces and probably the Canadian Indians will start lobbying the British Government against the proposed legislation soon. What line should the Government take to counter the accusation that the British Government and the British Parliament are guilty of a breach of trust in not taking account of the strong objections to the proposed legislation? What is the feeling likely to be among the Government’s supporters in the House of Commons and in the Opposition on this issue? What should the Government’s public posture be on the issue as a whole?

CONCLUSIONS

II. There are in broad terms three possible courses of action which the British Government can take to implement a policy of acceptance. The Government can accept the Resolution wholeheartedly and try and push it through the House of Commons and the House of Lords, using whatever pressures are necessary to complete this process. Or the Government can launch the Resolution in the House of Commons, stand back and let it take its chance. This would be an unusual course to take with a Constitutional Bill, but the situation is unusual. Or the Government can go back to Mr. Trudeau and suggest some simpler procedure from a Westminster point of view which would remove the onus of having to pass his proposed Bill of Rights. The discussion at the meeting may lead you to decide which of these courses of action offer the best chance of success. You may care to conclude the meeting by inviting the Chancellor of the Duchy of Lancaster in consultation with the Lord Privy Seal and the Attorney General, to produce a paper for the Cabinet
setting out the problem and the preferred solution. If you decide to go for
the third course - going back to Mr. Trudeau with the proposal for a simpler
Bill - it would be convenient to take advantage of Mr. Pitfield's visit to London
on 10th November to raise this with him, however informally, and you might
wish to instruct me to do so.

(Robert Armstrong)

Approved by Sir R Armstrong
and signed on his behalf.

31st October, 1980
ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

31 October, 1980

Sir,

FOREIGN AFFAIRS COMMITTEE OF HOUSE OF COMMONS

I enclose a copy of a letter which I received yesterday from the Secretary to the Foreign Affairs Committee and a copy of a reply which, on the Attorney-General's instructions, I have just sent. The Attorney-General is firmly of the view that it would be wrong, and incompatible with his position as Legal Adviser to the Government in this matter, for this Department to testify to the Committee. Judging from something which the Committee Secretary said to me on the telephone before he sent his letter, I think that it is possible that the Committee may try to press the Attorney-General to change his mind on the basis of his role as adviser to the House on certain kinds of legal issues. If so, the Attorney-General proposes to take the line that he does not accept that he has any duty to the House to advise in this matter and that his giving advice would, in any event, be incompatible with his primary function as adviser to the Crown (ie his Ministerial colleagues).

Before I put the matter up to the Attorney-General I discussed it with John Freeland (Second Legal Adviser in the FCO) who saw no difficulty about our proposed line so far as the FCO was concerned. I also discussed it with Tom Legg who said that he thought that the Lord Chancellor would probably take the same line.

I am copying this letter and its enclosures to Nick Saunders at No.10 and Murdo MacLean in the Whip's Office.

Yours sincerely,

H STEEL

Robin Birch Esq
Private Secretary to the
Chancellor of the Duchy of Lancaster
Privy Council Office, Whitehall
London SW1
31 October, 1980

Dear Rose,

Thank you for your letter of 30 October informing me of the intention of the Foreign Affairs Committee of the House of Commons to carry out a study of "the role of the British Parliament in relation to the British North America Acts". As I explained when we spoke on the telephone on 29 October, the Law Officers have no Ministerial responsibility in this matter and the Attorney-General has therefore directed me to say that he regrets that he must decline the Committee's invitation to this Department to submit a memorandum and to give oral evidence. The Minister who would appear to have responsibility for the subject matter of the Committee's study is the Foreign and Commonwealth Secretary, and the Foreign and Commonwealth Office are presumably competent to assist the Committee on the particular issues (including the legal and constitutional issues) with which, as you say, the Committee will be concerned. I would mention, however, that in testifying to the Committee the FCO will of course be subject to the convention that they are precluded from disclosing what advice, if any, they may have received from the Law Officers.

Yours sincerely,

H. Steel

J R Rose Esq
Clerk to the Committee
Foreign Affairs Committee
Committee Office
House of Commons
London, SW1A OAA

cc P Thompson Esq, FCCU, FCO
Lord Nicholas Gordon Lennox, FCO
T S Légg Esq, Lord Chancellor's Office
Dear Michael,

THE CANADIAN CONSTITUTION: MEETING ON 3 NOVEMBER

You might find it useful to have a note of recent events bearing on the Canadian constitutional issue before the Prime Minister's meeting on Monday afternoon.

On 25 June Mr Trudeau called on the Prime Minister. She said that whether or not the request for patriation was made with the agreement of all the Provinces, such a request would be agreed if it was the wish of the Government of Canada. Mr Trudeau subsequently wrote (18 August) saying he was "gratified to receive your assurances of support". On 8 July Lord Carrington saw the Canadian Secretary of State for External Affairs, Mr MacGuigan, and spoke similarly.

On 13 September the Constitutional Conference chaired by Mr Trudeau, with the ten provincial leaders, broke up without agreement either on an amending formula for the British North America Act (BNAA) or on how to enlarge the Act to form a new Constitution for Canada.

On 26 September talks took place at the Foreign and Commonwealth Office between a senior legal Canadian team and FCO legal and other officials. This provided us with the first opportunity to examine

M O'D B Alexander Esq
10 Downing Street

CONFIDENTIAL
examine the new proposals of the Canadian Federal Government. The proposals went beyond the expected resolution for a Joint Address to HM The Queen, plus an Act to amend the Constitution. Most notably, it included a 'Charter of Rights and Freedoms', an item which had always been controversial in Canada. At the talks, FCO officials made it clear that the proposals went further than had been hoped; the degree of controversy they excited in Canada was likely to be mirrored in this country.

On 6 October two Ministerial emissaries of Mr Trudeau, Mr Mark MacGuigan (External Affairs) and Mr John Roberts (Environment) called both on the Prime Minister and on Lord Carrington. Mrs Thatcher made it clear that there was no question of the British Government refusing a request from the Canadian Government for patriation of their Constitution. At the same time she asked the emissaries why the Canadians wanted the Westminster Parliament to pass a Bill of Rights. This would make the issue more controversial in this country and as a consequence the passage of the proposals through Westminster might be more prolonged. Lord Carrington spoke similarly and mentioned the possibility of a lengthy debate both in the House of Commons and in the Lords.

In the early hours of 24 October, Mr Trudeau applied the guillotine on debate in the Canadian House of Commons on a motion to refer the draft Resolution on the Constitution for formal consideration by a Joint Commons/Senate Committee. This procedure was strongly contested by both opposition parties (Progressive Conservatives and new Democrats). The Joint Committee is due to report by 9 December. Mr Trudeau may guillotine subsequent debate; present indications are that the Canadians will try to get the request for patriation to the UK earlier than the two visiting Ministers indicated (January/February).

/On 27 October
On 27 October the Chancellor of the Duchy of Lancaster telephoned his opposite number in Canada, Mr Pinard, to discuss this issue (he had been unable to meet Mr Roberts during his visit to the UK). He emphasised the difficulties of our parliamentary programme and said that if the Bill did not reach us by the beginning of January it would not be possible to complete it within the forthcoming session, and it would have to be taken in the session beginning in the autumn of 1981; under these circumstances, it could be concluded by the Spring of 1982, provided it was a simple Bill, not including a Bill of Rights. Otherwise, it could be expected to run until the end of the 1981/82 legislative session.

Most recently, the Select Committee on Foreign Affairs of the House of Commons have told us that they would like to consider the Canadian constitutional issue. There will be publicity for this from about 5 November.

I attach annexes on (a) the constitutional position, (b) opposition within Canada to Mr Trudeau's proposals, and (c) reference to the Canadian Courts. I have also added the text of the Lord Chancellor's answer to a Parliamentary Question by Lord Avebury on Monday 27 October.

I am sending copies of this letter and enclosures to the Private Secretaries of other Ministers attending Monday's meeting.

Yours ever,

M A Wickstead
APS/Lord Privy Seal
THE CANADIAN CONSTITUTION

THE CONSTITUTIONAL POSITION.

The basic Canadian constitutional instrument is the British North America Act 1867 (BNAA), as from time to time amended. It is an Act of the Westminster Parliament. It conferred on Canada Dominion status and established a federal system of government in Canada and set out the powers of the Federal Parliament and the Provincial Legislatures. While the Provincial and Federal legislatures are given powers to amend the BNAA within their respective spheres of competence, the BNAA can, in certain important respects, be amended only by Act of Parliament in Westminster, notably as regards distribution of powers between the Federal and Provincial Legislatures.

2. All the Dominions became fully independent under the Statute of Westminster 1931. Section 7 reserves to the Westminster Parliament the power to amend the balance between Canadian Federal and Provincial powers in the BNAA. This was because the Canadian delegations to the preceding Imperial Conference were unable to agree on any change in the status quo. At the same time, Section 4 enacts as law the Constitutional Convention, which was already being applied in practice, that the Westminster Parliament will not pass legislation extending to a Dominion other than at the express request and with the consent of the Dominion. No Act of the UK Parliament affecting Canada has been passed unless Canada has requested it, and consented to its enactment. The BNAA has been so amended 18 times. On none of these occasions was there widespread opposition from the Provinces. Where Federal/Provincial relations were affected, the provincial governments were consulted. When there have been objections, these have come from at most one or two provinces. Although no clearly defined procedure for amendment was laid down in the BNAA, the practice has grown up over the years that Canadian requests for amendment are submitted by means of a formal Address to the Crown from both Canadian Houses of Parliament.
3. Over the years, at a series of Federal/Provincial Conferences, the Canadians have sought to agree first to seek repeal of the relevant parts of the Statute of Westminster so as to confer on Canada powers of Constitutional Amendment (the process of patriation) and second, in that context, to present a formula agreed between the Federation and the Provinces for amending the Canadian Constitution in substance (the so-called amending formula).

4. The British Government, under both Labour and Conservative administrations, have consistently taken the general line that patriation would go through in this country if requested by the Canadian Government. Specifically, Mr Luce said in answer to a question on 27 July 1979:

"The Canadian Prime Minister has expressed publicly his intention of working with the Provincial Governments of Canada towards an agreed package of constitutional changes which could lead to a request that this power of amendment should be a matter of Canadian competence and should no longer be exercisable by the UK Parliament. If a request to effect such a change were to be received from the Parliament of Canada it would be in accordance with precedent for the United Kingdom Government to introduce in Parliament and for Parliament to enact appropriate legislation in compliance with the request."

This followed the pattern of previous Parliamentary Questions; but these did not, at least in all cases, refer to 'an agreed package'. Hitherto, nevertheless, the assumption has been that the Address from the Canadian Parliament would be against a background of broad provincial agreement. There is no precedent for the UK purporting to question a Canadian request for amendment to the BNAA, although we have made technical adjustments to Canadian proposals.

5. In lobbying Westminster, the Provinces can, nevertheless, be expected to argue that the absence of broad provincial agreement puts into question the convention on which we have acted in the past, and that we are in some sense guardians of the provincial
interest, or at least of fair play, since the power to amend the Federal/Provincial balance is reserved by Section 7 of the Statute of Westminster (cf paragraph 2 above). We may legitimately argue that the Canadian Federal Government and the UK have, for 50 years, dealt with each other as independent sovereign powers and the UK Government cannot be expected to look behind the act of the legitimate representative of Canada, the Federal Government, unless its actions are clearly tainted with illegality. A request for patriation without provincial agreement would not be illegal, but merely unprecedented in constitutional terms. In the circumstances, only a challenge in the Courts would put us on notice of a possible illegality (on this, see Annex C).

6. This point is reinforced by the consideration that if the British Parliament were, in spite of constitutional precedent, to decline to act on a request from the Canadian Parliament or Government, HMG would lay themselves open to charges of interference in Canadian domestic politics. To query whether there was adequate internal support in Canada for such a request would be tantamount to questioning the authority of the Canadian Parliament or Government to make it. We cannot set ourselves up as the arbiters of the correct balance of the case presented to us; this must be the responsibility of the Canadian Government alone. The only defensible position is to respond to the request of the Federal authorities, though it is of course open to us to query parts of the proposals which we consider will cause controversy and thus legislative delay in this country.
THE CANADIAN CONSTITUTION:
OPPOSITION IN CANADA TO THE FEDERAL GOVERNMENT'S PROPOSALS.

The main opposition party, the Progressive Conservatives under Mr Joe Clark, have consistently opposed Mr Trudeau's proposed 'unilateral' patriation of the Constitution (ie without the agreement of the Provinces). In the recent debate in the Canadian House of Commons, Mr Clark has concentrated on the impropriety of seeking to make a last use of the colonial situation to force through constitutional change which could not be agreed in Canada.

2. The much smaller New Democratic Party at first opposed Mr Trudeau's constitutional programme; more recently, their leader Mr Broadbent has agreed to support the Federal Government over their proposals now that Mr Trudeau has promised to think again about granting the Provinces the right to levy indirect taxes on and to share powers over inter-provincial trade in non-renewable resources.

3. Of the Provinces, Ontario has consistently been solidly behind Mr Trudeau. New Brunswick have recently taken their cue from Ontario. Prince Edward Island and Nova Scotia are of comparatively small importance and seem to be reserving their position. The other six Provinces are opposing Mr Trudeau's proposals and favour taking them to the Canadian Courts (see Annex C). Each of the Provinces has an individual axe to grind; but their central objection is against Mr Trudeau rail-roading through proposals which will, in their view, fundamentally upset the prevailing balance as between Federal and provincial powers in Canada. They feel, as strongly as does Mr Trudeau, that the future of Canada in its present shape is at stake. The High Commissioner believes that Mr Trudeau will succeed by early January in forcing his proposals through; those opposing him can then be expected to look to 'the mother of Parliaments' to refuse to connive in what seems to the Provinces to be a dictatorial act by a Government with a comparatively small majority (only 11, with 3 seats now vacant).
THE CANADIAN CONSTITUTION

REFERENCE TO THE CANADIAN COURTS.

Six out of ten Canadian Provinces are supporting court action against the proposed moves by the Federal Government for patriation of the Constitution. The Provinces concerned are Quebec, British Columbia, Alberta, Manitoba, Saskatchewan and Newfoundland. The first stage would be actions in the provincial courts, possibly culminating in referral to the Supreme Court. Points to be put to the Courts for decision would revolve around the central question of the constitutionality/legality of the Federal Government amending/patriating the Constitution without the agreement of the provinces, at least in relation to matters now the responsibility of the Provinces.

2. It is not clear to us whether the Canadian Courts would have jurisdiction to rule on the validity of a proposed constitutional resolution of the Canadian Parliament of the kind envisaged. Any legal proceedings instituted in Canada would almost certainly include application for an interim injunction or equivalent, which would restrain the Canadian Parliament from making the request.

3. In the absence of such an injunction, it would be possible for the issue to be before the Canadian Courts at the time when the request for patriation was made to the UK. Under these circumstances, it is the view of FCO Legal Advisers that it would be contrary to legal policy and (arguably) constitutionally improper to act on the request while the matter was sub judice.

4. The Canadian Courts might of course find they had no jurisdiction in this field. However, even this decision might be subject to appeal, so delay could not be discounted.

5. Lastly, a Canadian petition against the request might be lodged with the Privy Council in this country. FCO Legal Advisers believe that there would be no right for the Canadians to bring a matter of this kind before the Privy Council; there is no obvious legal issue suitable for any reference and any petition for a reference would be the subject of advice by HMG, which could, therefore, prevent any such reference.
THE TEXT OF THE LORD CHANCELLOR'S ANSWER TO A PARLIAMENTARY
QUESTION BY LORD AVEBURY ON MONDAY, 27 OCTOBER

ANNEX D

CANADIAN CONSTITUTION:
PATRIATION PROPOSALS

2.48 p.m.

Lord AVEBURY: My Lords, I beg leave to ask the Question which stands in my name on the Order Paper.

The Question was as follows:

To ask Her Majesty's Government what proposals were made, or information given, by Mr. Mark McGuigan, Canadian Minister of External Affairs, and Mr. John Roberts, Minister of Science, Technology and the Environment, concerning the patriation of the Canadian constitution during their recent meetings with the Prime Minister and the Secretary of State for Foreign and Commonwealth Affairs.

The LORD CHANCELLOR (Lord Hailsham of Saint Marylebone): My Lords, the two Canadian Ministers came as emissaries of the Canadian Prime Minister to tell Her Majesty's Government of the intentions of the Canadian Government on this subject.

Lord AVEBURY: My Lords, does the position of Her Majesty's Government remain as stated by the noble Lord, Lord Trefgarne, on 25th July 1979, that if a request to patriate the Canadian Constitution were to be received from the Parliament of Canada it would be in accordance with precedent for the Government to introduce in Parliament, and for Parliament to enact, appropriate legislation complying with that request, as we have done on the 14 occasions since Confederation when the Federal Parliament has made such requests? Has the noble and learned Lord noted that the Canadian House of Commons voted by 156 to 83 in favour of the proposals presented to it by Mr. Trudeau? Would the Government publish a document setting out the basis on which the Canadian Legislature is asking us now to act?

The LORD CHANCELLOR: My Lords, no request has been received as yet from the Canadian Legislature and I notice from the public prints that it is still going through that Legislature. So far as I know, there is no change in the constitutional position since 27th July. It so happens that the Parliamentary Answer I have was given in another place by my honourable friend Mr. Luce; it would surprise me if it were different from that which was given by my noble friend Lord Trefgarne.

Lord GARNER: My Lords, are the Government satisfied that Canadian Ministers are sufficiently alive to the embarrassment which might be caused to this Parliament if proposals which were controversial inside Canada were to be put forward?

The LORD CHANCELLOR: I do not as yet feel any embarrassment myself, my Lords.
Dear Steel

Confirming my phone calls, the Committee decided yesterday "to study the role of the British Parliament in relation to the British North America Acts and to report".

The intention is that this should be a brief study, with oral evidence on November 12th, on December 3rd and 10th, and a Report as soon as possible thereafter.

I am directed by the Committee to request a memorandum from your Department to reach me by next Tuesday afternoon, 4th November, at the latest, so that the Committee can consider it on Wednesday 5th November. I am also directed to request that witnesses from your Department be available to give oral evidence before the Committee on Wednesday 12th November at 10.30 am (or later), probably in public. The memorandum should deal in as much detail as is possible in the circumstances with the legal and constitutional issues involved and with HM Government's advice to Parliament. This letter is addressed to the FCO, the Lord Chancellor's Office and the Law Officers' Department. Should the papers best be presented as a joint paper, that will of course be acceptable to the Committee.

I apologize for the short notice involved. The decision to hold this inquiry will remain confidential until after the next meeting.

Yours Sincerely,

J. R. Rose
Clerk to the Committee

Copies to: P. Thompson Esq., FCCU, FCO
           Lord Nicholas Gordon Lennox, FCO
           T. S. Legg Esq., Legal Administration Division,
             Lord Chancellor's Office, House of Lords
           H. Steel Esq., Law Officers' Department,
             Royal Courts of Justice, Strand.
The National Citizens' Coalition is a non-partisan body of some 30,000 Canadians. Unusually heavy mail shows that members are very disturbed by the Trudeau Government's plans to incorporate its own Charter of Rights and freedoms in a new constitution without any mandate from the people. Accordingly, we ask your help to deny Mr. Trudeau his Charter and to allow him only to "take" the British North America Act unchanged to Ottawa. In support of this request, we submit the following:

1. Changing the constitution was not an issue in the February 1980 federal election or in any of the latest provincial elections. The people have not been consulted.

2. The Liberals are kept in office by the habitual voting prejudices of Quebecers. The Prime Minister, the speakers of both houses, and 45% of the Cabinet are French Canadians. In the 1980 election, they won 74 of Quebec's 75 seats and 68% of the popular vote. Outside Quebec, however, the Progressive Conservatives won 40% of the popular vote, the Liberals 35.2% and the New Democrats 23.5%. West of the Ontario border, only two Liberals were elected.

3. During the Quebec referendum campaign in May 1980 (as to whether Quebec should separate from Canada) Trudeau promised to change the constitution. Afterwards he said: "We made the pledge that the rest of Canada would deliver if Quebec delivered." His rush to write a new constitution is inspired not by the national interest but by a Liberal partisan interest in favor of the province that keeps it in power.

4. Trudeau's Charter would incorporate his Official Languages Act of 1969 in a new constitution, where it would be beyond the reach of future parliaments. By declaring English and French to be the official languages of Canada, enjoying equal rights and privileges "in all the institutions of the Parliament and Government of Canada", it contravenes the BNA Act, Section 133, which limits the use of French to the Canadian Parliament, the Quebec Legislature and the federal and Quebec courts. Outside Quebec, French Canadians comprise only 5.3% of the total. The effect of the Act, by discriminating in favor of French Canadians in all federal government institutions throughout English Canada, has been divisive in the extreme. The federal government pays provincial francophone associations to demand provincial and municipal services in French: Schools, courts etc.

5. In 12 years Trudeau has changed Canada radically. Immigration policy has been reversed. Governmental intrusion in the economy has mushroomed. The West has been alienated. Discrimination on language grounds has driven neighbors and even families apart.

6. Coalition members and, we are convinced, the majority of Canadians think it would be wise to put these changes to the test of longer experience before incorporating any of them into a new constitution.

For The National Citizens' Coalition

Colin M. Brown
President
Patriation of the Canadian Constitution

Following my letter of 9 October and subsequent discussions with yourself, Nick Sanders and the Foreign and Commonwealth Office, we arranged (as I told you on the telephone) for the Chancellor to speak to Mr Yvon Pinard who is President of the Canadian Privy Council and Leader of the Lower House in the Canadian Federal Parliament. I attach a Note of the discussion which you may like to have in advance of the Prime Minister's meeting on 3 November.

I am sending copies of this letter to the Private Secretaries to the members of QL, to Miles Wickstead (Lord Privy Seal's office), to Bill Beckett (Law Officers' Department) to David Wright (Cabinet Office) and to Murdo Maclean and Michael Pownall.

Yours ever,

R A BIRCH
Private Secretary

Michael Alexander, Esq.,
Private Secretary
No 10 Downing Street
NOTE OF A TELEPHONE CONVERSATION BETWEEN THE CHANCELLOR OF THE
DUCHY AND MR YVON PINARD, LEADER OF THE CANADIAN LOWER HOUSE

The Chancellor telephoned Mr Yvon Pinard on 27 October 1980 to
talk about the issue of the patriation of the Canadian constitu-
tion. The Chancellor said that he was grateful for the opportunity
to talk to Mr Pinard, and that the Government were anxious to
help if they can; there were, however, great difficulties arising
from the pattern of the Parliamentary programme. The new session
would not start until after 20 November because of the weight of
the last session's legislative programme, and it would be impossible
to get the Canadian Bill through in the next unless it was received
at the end of December, or at the latest, the start of January.
The Bill being a constitutional one would have to be taken on the
Floor of the House.

Mr Pinard said that his government's main deadline was to have
approval of the Bill in our Parliament by 1 July 1981. He had
been under the impression that with a lighter legislative programme
in the new session we should be able to meet this timetable, but
the Chancellor explained that while the programme would be shorter
than that of the last session it would still be of normal weight.
Indeed, the new session would be shorter than usual because of the
late start.

Mr Pinard said that the Canadian legislation would go into
committee in the next week or so and would return to the floor of
the Lower House on about 9 December; it would then also go into
the Upper House. It was possible in theory to get the Bill
finished by Christmas, but this depended on a smooth passage. He
had, however, taken the main message that the Bill should be sent
to London as soon as possible.
The Chancellor said that if the Bill did not reach us by the start of January it would not be possible (particularly if the Bill of Rights were included) to complete it within the forthcoming session, and it would have to be taken in the session beginning in the Autumn of 1981 (commencing in October or November). It could be concluded by, say, the Spring of 1982 in these circumstances, provided it was a simple Bill not including a Bill of Rights. If it did, it could be expected to run until the end of the 1981/82 legislative session (August 1982).

The Chancellor explained that the Parliamentary attitude to the Bill would not necessarily be within the control of the Government, especially if it were controversial in domestic Canadian terms since the Canadian provincial interests would lobby British MPs and a delay could be expected.

The Chancellor said that he was willing either to visit Canada himself or to receive visitors thence if this would be helpful. Mr Pinard thanked the Chancellor for this and it was agreed that they would keep in touch from time to time about progress.

R A BIRCH
27 October 1980
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DESKY 209398Z OCT 88
PM OTTAWA 271758Z OCT 88
TO IMMEDIATE FCO
TELEGRAM NUMBER 451 OF 27 OCTOBER

MY IMMEDIATELY PRECEDING TELEGRAM: CONSTITUTION

1. AS FORECAST IN ITS LEAKED PAPER OF AUG 30 THE FEDERAL GOVT IS EXERTING ALL ITS POWERS TO CONTROL THE DEBATE BOTH INSIDE AND OUTSIDE PARLIAMENT AND TO RIDE ROUGH-SHOD OVER OPPOSITION. A MAJOR PROPAGANDA CAMPAIGN (AT A RUNURED COST OF OVER DOLLARS 6 MILLION) IS IN PROGRESS AND FEDERAL MINISTERS HAVE BEEN RANGING THE COUNTRY-SIDE IN SUPPORT OF THE GOVERNMENT. IN GENERAL THEIR TACTIC IS TO HIGHLIGHT THE ACT OF PATRIATION AS ACCORDING WITH CANADA'S DIGNITY AND ADULTHOOD AND TO GLOSS OVER THE AMENDMENTS TO THE NORTH AMERICA ACT WHICH THE GOVERNMENT IS SEEKING BEFORE PATRIATION.

2. IN THE HOUSE THE DEBATE WAS HEATED AND THREATENED TO BECOME VIOLENT AT THE MOMENT OF CLOSURE, HR CLARK CONCENTRATED HIS OPPOSITION ON:
   (A) THE QUESTIONABLE LEGALITY OF THE GOVERNMENTS PROPOSALS;
   (B) THE IMPROPRIETY OF SEEKING TO MAKE A LAST USE OF THE COLONIAL SITUATION TO FORCE THROUGH CONSTITUTIONAL CHANGE WHICH COULD NOT BE AGREED IN CANADA;
   (C) THE DANGERS INHERENT IN THE FEDERAL GOVERNMENTS PROPOSAL TO WRITE INTO THE CONSTITUTION AUTHORITY FOR IT TO ACHIEVE CONSTITUTIONAL CHANGE THROUGH REFERENDA OF ITS OWN INITIATION; AND
   (D) THE WAY IN WHICH HR TRUDEAU WAS PUSHING EVENTS TO ACHIEVE HIS PERSONAL AMBITION.

BEFORE THE DEBATE BEGAN MR CLARK SHOVED SOME DOUBT WHETHER HE FELT THE COUNTRY WAS BEHIND HIM AND A LACK OF CONVICTION ABOUT HIS ABILITY TO KEEP HIS PARTY RANKS UNITED. AS THE DEBATE WORE ON HE BECAME INCREASINGLY EFFECTIVE AND SEEMED TO WIN ON POINTS WITH A THOROUGHLY AROUSED PARTY BEHIND HIM. HIS ATTEMPT TO SUBMIT AN ALTERNATIVE PROPOSAL COVERING SIMPLE PATRIATION WITH THE VANCOUVER AMENDING FORMULA WAS DEFEATED (132 - 112).

3. THE NDP WERE SCHIZOPHRENIC, TORN BETWEEN THEIR POLITICAL BASE OUT WEST AND THEIR CENTRALIST PHILOSOPHY. AFTER HR TRUDEAU HAD PROMISED TO THINK AGAIN OVER GRANTING PROVINCES THE RIGHT TO LEVY INDIRECT TAXES ON AND TO SHARE POWERS OVER INTERPROVINCIAL TRADE IN NON-RENEWABLE RESOURCES. MR BROADBENT AGREED TO GIVE THE FEDERAL GOVT GENERAL SUPPORT OVER ITS PROPOSALS AND VOTED WITH IT ON THE MOTION THOUGH AGAINST IT ON THE CLOSURE OF DEBATE.

4. HR TRUDEAU'S MASTERY OF HIS OWN PARTY CAUCUS SEEMS COMPLETE.

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5. The federal govt loudly proclaims that public opinion is on its side; but it has refused to release the results of any of its recent polls. The last published Gallup poll (my letter of 28 Sept to Berthoud) was based on soundings in early August and revealed only 27% in favour of unilateral patriotism, with 26% firmly against. The Ottawa media energetically support the federal govt. Elsewhere press opinion has been mildly critical.

6. In Quebec leading editorials have been almost universally hostile to the proposed unilateral action. So has been Mr Claude Ryan, leader of the Quebec Liberal opposition. Mr Levesque has vowed all-out war against it and promised to carry his fight to London, if need be. The public are probably fairly evenly divided. Mr Trudeau's personal prestige is enormous but the noes only got a little more than half the francophone vote in last May's referendum and Mr Trudeau's centralist convictions are suspect in the provinces.

7. In Ontario the Globe and Mail (the nearest to a national newspaper in Canada) has come out firmly against the govt and there are signs that members of the provincial Tory party are growing increasingly concerned at the way in which their premier Davis has lined up with Mr Trudeau against the federal Tories (Davis did in fact criticise the use of the guillotine last week). The province is essentially Canada's quote fat cat unquote and would benefit from stronger powers in Ottawa. Moreover the population resent the new richness of the West. While Ontarians may be uneasy over Trudeau's haste, I see no sign that Premier Davis is out of line with his electorate.

8. In New Brunswick Premier Hatfield has a tenuous hold over the administration of a province where a large Acadian francophone minority votes Liberal. Though clearly upset by Trudeau's unilateral action he can hardly risk overt opposition and has taken his cue from Ontario. With the prospect that its off-shore oil resources may be whipped from underneath its nose Newfoundlander is vigorously lined up with the West. Prince Edward Island with its 110,000 population hardly counts; and Nova Scotia with a strong Liberal minority is cautiously reserving its position. Over the past week-end the Premier of Saskatchewan was exploring the possibility of joint actions by Saskatchewan, PEI, New Brunswick and Nova Scotia to initiate some compromise proposal. So far there has been no indication what might be.

9. Out West public opinion is hard to fathom. Loyalty to Canada is deeply felt by John Citizen who has not yet understood the distinction between patriation and amendment of the North America Act. Instinctively he wants to go along with patriation and a United Canada; nevertheless he is suspicious of Ottawa and resentful of Ontario. Out in the boondocks of British Columbia last week.
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Was struck by the general reluctance to oppose patriation and the chances that the federal govt might (in spite of Mr Trudeau) persuade the populace to acquiescence. There was a general feeling that Canada had survived constitutional rows before and that in the end would through some compromise survive again. On the other hand Mr Trudeau’s scornful dismissal last Thursday of the dangers of Western separatism and his contemptuous remarks about Premier Blakeney’s hesitations must have increased the odds on more confrontation; so too may this week’s coming federal budget an new energy policy. Premier Blakeney’s hesitations are known to be the result of his fears that he may lose the support of his electorate if he goes too far to meet Ottawa. In Alberta Premier Lougheed is in firm control and on Oct 29 tabled legislation to permit referenda in the province; he has also for some time been working on possible action to counter new federal energy measures, if need be. Ten days ago one of his backbenchers mentioned to me that Alberta might even boycott Ontario manufactures (exclam). Though I hardly think this likely, I have heard comment likening public opinion out west to that of Massachusetts before the Boston Tea Party; yet I doubt if Western alienation has yet proceeded quite that far. The fact that the federal government has almost certainly within the last few days decided to back off from its most controversial energy proposals provides hope that it will not let the situation get out of hand and may even pay more respectful heed to Mr Blakeney. If no compromise is achieved, I would expect the Western premiers (with the possible exception of Mr Blakeney) to carry their opposition to London at least by lobbying through their agents.

16. To sum up, it thus looks as if in Canada Mr Trudeau will succeed by early January in forcing through his will against widespread opposition. We must also expect that those opposing him will then look to the mother of parliaments’ to refuse to concur in what they will perceive as the dictatorial act of a government with a majority of only 11 (three seats are now vacant) which could as yet unforeseeably change the development of the Canadian Confederation.

Ford

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[No. 10 D5]

COPIES TO:

LORD CHANCELLOR

CHANCELLOR OF THE DUCY OF LANCASTER

THE HOME SECRETARY
1. Stage one of Mr. Trudeau's plan to change Canadian Confederation was completed last Friday.

2. The federal government had laid its proposals in the form of a proposed resolution on October 2. Debate in the House started on October 6 on a motion to refer the draft for formal consideration by a joint Commons/Senate committee. This motion precluded any clause by clause discussion of the proposed resolution and amendments to the North America Act or the tabling of amendments, though there was discussion on the substance of the proposal. In spite of vigorous objections by both opposition parties discussion was guillotined by the Govt at 1:00 AM on Oct 24. The motion was approved (156 - 83) with the NDP supporting the Government after Mr. Trudeau had agreed to amend his proposals to take some account of the West's concerns about resources and fears about the use of referenda to achieve constitutional change. 9 Liberal, 21 Conservative and 9 NDP were about at the time of voting.

3. The draft resolution will be taken briefly by the Senate this week and discussions in the joint committee should start on November 3. According to our information the government will ride the committee hard by holding 14 sessions weekly and intends to meet its deadline of December 9 for referral back to the House of Commons. The committee will set its own procedures, and it is not yet clear what outside evidence it will be willing to listen to. It is not yet known what further debate in the House will be permitted. Present indications are that further amendments of the resolution will not then be permitted and that Mr. Trudeau may again invoke the guillotine to curtail debate.

4. In the meantime New Brunswick has with obvious reluctance joined Ontario in giving broad support to the federal proposals and Nova Scotia and Saskatchewan have backed off from all-out opposition. The remaining six provinces are supporting court action and their attorneys general agreed on Oct 23 to launch actions in the provincial courts of Manitoba, Quebec and Newfoundland. (Mr. Trudeau has refused to seek quick opinion from the Supreme Court as he did over Bill C68 in 1978 and provincial Govts only have access to the Supreme Court via their own Courts).
IN MANITOBA THE PRESS HAS REPORTED THAT THE PROVINCIAL CABINET IS HOPING FOR A COURT DATE BEFORE CHRISTMAS AND WILL PUT THE FOLLOWING QUESTIONS FOR DECISION:

(A) WHETHER, IF AMENDMENTS TO THE CONSTITUTION AS SOUGHT BY THE FEDERAL GOVERNMENT WERE ENACTED, FEDERAL-PROVINCIAL RELATIONSHIPS, RIGHTS, POWERS AND PRIVILEGES AS DESCRIBED IN THE CONSTITUTION WOULD BE CHANGED, AND IF SO, IN WHAT WAY?

(B) WHETHER IT IS A CONSTITUTIONAL PRACTICE THAT THE FEDERAL GOVERNMENT NOT ASK THE QUEEN TO PUT BEFORE THE BRITISH PARLIAMENT A MEASURE TO AMEND CANADA'S CONSTITUTION IN A WAY THAT WOULD ALTER FEDERAL-PROVINCIAL RELATIONSHIPS WITHOUT FIRST OBTAINING AGREEMENT OF THE PROVINCES?

(C) WHETHER THE AGREEMENT OF THE PROVINCES IS REQUIRED FOR AMENDMENT TO THE CONSTITUTION WHERE FEDERAL-PROVINCIAL RELATIONSHIPS WOULD BE AFFECTED.

NO ANNOUNCEMENT HAS YET BEEN MADE ABOUT LITIGATION IN QUEBEC AND NEWFOUNDLAND. THIS LITIGATION COULD LAST FOR MONTHS.

4. SEE MY IMMEDIATELY FOLLOWING TELEGRAM.

FORD

STANDARD

BAD
CABINET OFFICE

[No 10 DS]

COPIES TO:

WRD CHANCELLOR

CHANCELLOR OF THE DUCY OF LANCASTER

HOME SECRETARY

- 2 -

RESTRICTED
LIST OF MINISTERS ATTENDING THE MEETING AT 10 DOWNING STREET ON MONDAY 3 NOVEMBER AT 1630 TO DISCUSS PATRIATION OF THE CANADIAN CONSTITUTION

Home Secretary
Foreign and Commonwealth Secretary
Lord Chancellor
Chancellor of the Duchy of Lancaster
Lord Privy Seal
Chief Whip

24 October 1980
14 October 1980

Thank you for your letter of 13 October suggesting how we should reply to the letter received by the Prime Minister from the Agent-General for Quebec. I agree that we should proceed as you propose.

M. O'D. B. ALEXANDER

Paul Lever, Esq.,
Foreign and Commonwealth Office.
CONFIDENTIAL

Ref. A03227

MR. ALEXANDER

Patriation of Canadian Constitution

Thank you for your minute of 13th October.

2. As I told you yesterday, I agree with the Prime Minister that it will not be possible for the British Government to do anything other than introduce at Westminster whatever resolution is passed by the Canadian Parliament. I am sorry that that view did not emerge clearly from my minute of 9th October. That minute was intended to be concerned with the domestic political implications of what happens after the introduction of the Bill, and what the Government's posture should be during the proceedings on the Bill in Parliament. I am clear that the British Government will be under a duty to introduce the Bill. The present custodian of the Canadian Constitution is of course Parliament, not the Government. There will be a campaign by the provincial governments, which will no doubt make much of the argument that the passage of the Bill put forward by the federal Government would be a breach of trust between the British Parliament and the Canadian provinces - even though I am told that opinion polls have produced majorities in favour of patriation (though not necessarily of this Bill) in every single province. The position of the Government in the Parliamentary debates may have to be to recommend Parliament to pass the Bill as proposed by the Canadian Parliament. But it may be prudent to try to assess the possibilities of the Bill failing to pass, and to consider whether, in addition to recommending the passage of the Bill, the Government should put the whips on for the purpose of dealing with the Bill in the House of Commons.

(Robert Armstrong)

14th October, 1980

CONFIDENTIAL
10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

PATRIATION OF CANADIAN CONSTITUTION

The Prime Minister has seen your minute to me of 9 October on this subject. She agrees that it would be useful to have a small meeting with the Ministers listed in paragraph 5 of your minute and we shall be arranging this.

On the substance of the issue, the Prime Minister does not believe that it will be possible for the British Government to do anything other than introduce at Westminster whatever Resolution is passed by the Canadian Parliament. In her view, the most dangerous course for HMG would be to attempt to substitute their judgement for that of the elected Government of Canada. The Queen is The Queen of Canada. The Prime Minister believes that, above all, we must avoid putting Her in the position of receiving conflicting advice from Mr. Trudeau and from the Prime Minister.

13 October 1980

M. O'D. B. ALEXANDER
Dear Michael,

Thank you for your letter of 3 October enclosing a letter received by the Prime Minister from the Agent-General for Quebec in London.

Identical letters have been received by the Secretary of State and Mr Ridley. Lord Carrington recommends that Mr Ridley should reply to all three along the lines of the attached draft.

Yours sincerely,

(P Lever)
Private Secretary

M O'D B Alexander Esq
10 Downing Street
LONDON
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Thank you for your letter of 3 October giving the Quebec Government’s view on the Canadian Constitution.

I understand that you have addressed similar letters to the Prime Minister and Lord Carrington, and I have been asked to thank you for these also. The contents of your letters have been noted.
Dear Michael,

PATRIATION OF THE CANADIAN CONSTITUTION

Thank you for sending me a copy of your letter to Paul Lever of 6 October in which you said that the Prime Minister had advised the two Ministers of the Canadian Government to discuss with the Chancellor of the Duchy the likely Parliamentary problems for us in meeting the desired timetable of the Canadian Government for completing the process of patriation.

As you know, we made considerable, but in the end vain, efforts to meet Mr Roberts (even though a meeting was actually at one time fixed for 5pm yesterday in Brighton), but after discussion with the Chancellor of the Duchy I spoke to Mr Ganiel of the Canadian High Commission to ask him to tell Mr Roberts that (as the Prime Minister had said) while we accept our obligation to act on the request of the Canadian Government, if we are to have any prospect of meeting the timetable we ought to have the bill by early January at the very latest, if not in December. Mr Ganiel said that the High Commission had been advised that the Parliamentary process need take no more than three or four days of Parliamentary time – an estimate which I see is quoted in today’s Times – but I stressed that we could not guarantee that there would not be considerable Parliamentary problems, especially if back-benchers were briefed by the various provincial Canadian administrations to make difficulties. Such a process was quite a likely prospect, not least in the light of the reported domestic Canadian arguments, and the Government would have little practical prospect of controlling the matter. I also told Mr Ganiel that the Chancellor of the Duchy would be willing to telephone Mr Roberts in Canada shortly when he had had time to reflect upon the implications of the Canadian request.

I am sending copies of this letter to the Private Secretaries to members of QL, to Miles Wickstead (Lord Privy Seal’s Office), to Bill Beckett (Law Officers’ Department), to Murdo MacLean (Chief Whip’s Office) and to David Wright (Cabinet Office).

Yours ever,

R A Birch

M Alexander Esq
10 Downing Street
It was not clear to me from the record of the Prime Minister's meeting with Canadian Ministers whether they had given her a copy of the Resolution and draft Bill presented to the Canadian Parliament. I have acquired a copy of it, and am sending you a copy herewith. The draft Bill has nearly 60 clauses, and (as indeed became clear) goes a great deal further than simply patriating the Canadian Constitution.

2. Many of the provincial governments will object strenuously to what they will see as this attempt to deprive them of their entrenched rights. The argument about this will not be confined to Canada: it will be carried on in this country as well. The Quebecois are already beginning to lobby British Members of Parliament.

3. If this Bill passes the Canadian Parliament and the British Government introduces it at Westminster, it will certainly not be non-controversial; and presumably, as a Constitutional Bill, all its stages would have to be taken on the Floor of the House. The implications for the Government's legislative programme are considerable.

4. But there are other risks more serious than that. Mr. Trudeau really is putting the British Government and the British Parliament into a trap. If the Canadian Parliament passes the Resolution and draft Bill, it would be very difficult for the British Government to do other than introduce it at Westminster: not to introduce it would attract the criticism of the Federal Government that we were intervening unwarrantedly in the internal affairs of Canada. If on the other hand the Bill is introduced, and if the Government sought to use its majority to push the Bill through the House of Commons, provincial governments would accuse the British Government and the British Parliament of a breach of trust. They would say that the decision to leave the Constitution at Westminster was in effect an act of trust by both the Federal Government and the provincial
governments of the day, and that what we were doing was a breach of the provincial governments' trust at the behest of the Federal Government without agreement. Moreover, even if the Bill passed the House of Commons, there is no guarantee that it would pass the House of Lords, where the Government cannot be sure of a majority.

5. In short, I think that we face a very uncomfortable and perhaps dangerous prospect. The need for decision is not on us yet, and will not be until the Resolution and draft Bill have passed through the Canadian Parliament. But I wonder whether it would be a good idea for the Prime Minister to have a small meeting with the Home Secretary, the Foreign and Commonwealth Secretary, the Lord Chancellor and the Chancellor of the Duchy of Lancaster to discuss the prospect and to consider what the British Government's decisions and posture should be.

ROBERT ARMSTRONG

9th October, 1980
I am writing to acknowledge receipt of your letter dated 6 October to Miss Stephens, together with its enclosed documentation.

This was most useful.

Mr. Christian Hardy.
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October 6, 1980.

Dear Miss Stephens,

Herewith is some documentation relating to the decision just announced last week by the Prime Minister of Canada, The Right Honourable Pierre Elliott Trudeau, to "patriate" the Canadian constitution.

As you know, two Canadian Ministers, The Honourable Mark MacGuigan, Secretary of State for External Affairs, and The Honourable John Roberts, Minister of State for Science and Technology and Minister of the Environment, will be seeing Prime Minister Thatcher this afternoon on this subject.

Yours sincerely,

[Signature]

Christian Hardy,
Deputy High Commissioner.

Miss C. M. Stephens,
Personal Assistant to Prime Minister Thatcher,
Prime Minister's Office,
10 Downing Street,
LONDON SW-1.
THE CANADIAN CONSTITUTION

1980

HIGHLIGHTS of a proposed Resolution respecting the Constitution of Canada
eface

This booklet contains highlights of a proposed Resolution tabled in the House of Commons respecting the Constitution of Canada. It is published by the Government of Canada in the interest of contributing to public discussion.

The full text of the proposed Resolution, an explanatory document and additional copies of the highlights may be obtained by writing to:

Publications Canada
Box 1986, Station “B”
OTTAWA, CANADA
K1P 6G6
Introduction

Canadians are now witnessing a truly historic event as Parliament is being asked to take steps to patriate Canada’s Constitution. The Government of Canada has placed before Parliament a proposed Resolution to bring the Constitution home, and to end the responsibility of the British Parliament to amend the Canadian Constitution.

In addition to patriation, the Resolution contains several important constitutional provisions:

- For the first time, the basic rights and freedoms of Canadians will be entrenched in a Canadian Charter of Rights and Freedoms so that they cannot be infringed upon by any single government, legislature, or Parliament. Individuals and minorities who feel aggrieved will have recourse to the courts.

- In the Charter, Canadians will be assured of the freedom to move across the country, take up residence, and pursue employment in any province.

- The Charter will guarantee that citizens of the English or French language minority in a province have the right to educate their children in that language wherever numbers warrant.

- The principle of equalization, which involves the redistribution of wealth among the richer and poorer provinces, will be recognized so that Canadians in all provinces can continue to be provided with a reasonable level of public services.

- An amending procedure will ensure that all changes to the Constitution can be made in Canada.

The Resolution

A proposed Joint Resolution of the Senate and House of Commons containing provisions for patriation and the constitutional proposals outlined above is now before Parliament. If the proposed Resolution is endorsed by Parliament, the Government of Canada will submit the Joint Address to the Queen, requesting that the British Parliament enact the provisions contained in the Resolution, and transfer to Canada authority over all the provisions contained in British constitutional statutes relating to Canada.
The highlights of the provisions in the Resolution are described below. For a more detailed explanation, readers should refer to the full text of the Resolution or to the accompanying document explaining the proposals in non-legal language.

The Canadian Charter of Rights and Freedoms

The Charter will guarantee that Canadians are entitled to the following rights and freedoms in 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 information; and freedom of peaceful assembly and of association.

- **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 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 each legislature.

- **Mobility rights**, which enshrine the rights of every Canadian to move freely from one province to another, to establish a residence and to seek a job anywhere in Canada, as well as to enter, remain in, or leave the country.

- **Minority language educational rights**, which provide that citizens of the English-speaking or French-speaking minority of a province have the right to educate their children in that minority language, wherever numbers warrant.

- **Legal rights**, which include among them the right to life, liberty, and security; the right to equality before the law; protection against unlawful search or seizure, detention and imprisonment; protection against denial of counsel, undue delay of trial, and cruel or unusual treatment or punishment; and the right to the assistance of an interpreter.

- **Non-discrimination rights**, which protect citizens from discrimination on the basis of race, national or ethnic origin, colour, religion, age or sex. (To allow the federal and provin-

- **Official governments to make appropriate adjustments, these particular rights will not take effect until three years after patriation.)

The Charter will also enshrine some rights that were previously set out in federal legislation or in the Constitution:

- **Official language rights**, which provide for the right to use English or French in Parliament, in federal courts, and in communications with any head or central office of the Government of Canada.

The use of either English or French in the legislatures, the courts, and in statutes and records of the provinces of Quebec and Manitoba will continue to be protected by existing constitutional provisions.

Finally, the Charter declares that Canadians enjoying rights, which are not mentioned in the Charter, will continue to enjoy them. This includes the traditional rights and freedoms enjoyed by the native peoples of Canada.

Equalization and Regional Disparities

The Parliament and Government of Canada will be committed to the principle of making equalization payments to the poorer provinces. Both orders of government will be committed to promoting equal opportunities for Canadians, furthering economic development to reduce disparities, and providing essential public services at a reasonable level to all Canadians.

Amending Formula

The Resolution provides that those amendments to the Constitution, which formerly had to be made in London, will require the unanimous consent of Parliament and the provinces until an acceptable amending formula can be found using one of three methods:

- If, during the next two years, federal and provincial governments can reach unanimous agreement on a formula, it will be adopted. To facilitate agreement, a First Ministers' Constitutional Conference will be held each year until a formula is implemented.
• Si les provinces et le gouvernement du Canada n'arrivent pas à s'accorder sur une formule, ou si le gouvernement fédéral, ou le gouvernement provincial, ou si le gouvernement provincial ou le gouvernement régional, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement régional, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernement provincial ou le gouvernement territorial, ou si le gouvernem
LA CONSTITUTION CANADIENNE
1980

POINTS SAILLANTS d'un projet
de résolution concernant
la Constitution du Canada
Note aux lecteurs

Cette brochure comprend les points saillants d'un projet de résolution concernant la Constitution du Canada qui est déposé devant la Chambre des communes. Elle est publiée par le gouvernement du Canada en guise de contribution à la discussion publique.

Vous pouvez vous procurer le texte intégral du projet de résolution, un document explicatif à ce sujet, ou des exemplaires additionnels des points saillants en écrivant à:

Publications Canada
C.P. 1986, succursale «B»
OTTAWA (CANADA)
K1P 6G6
Introduction

Les Canadiens sont maintenant témoins d’un événement historique de grande importance, alors que l’on demande au Parlement d’entamer le processus du rapatriement de la Constitution au Canada. Le gouvernement du Canada a déposé devant le Parlement un projet de résolution permettant de ramener la Constitution chez nous, et de mettre un terme à la responsabilité du Parlement britannique de modifier pour nous la Constitution du Canada.

En plus du rapatriement, la résolution contient plusieurs dispositions d’importance en matière constitutionnelle:

- Pour la première fois, les libertés et les droits fondamentaux des Canadiens seront inscrits dans une Charte canadienne des droits et libertés de sorte qu’ils ne pourront pas être transgressés par un gouvernement, par le Parlement ou par une assemblée législative provinciale. Les individus et les minorités qui se sentent lésés pourront avoir recours aux tribunaux.
- La Charte garantira aux Canadiens la liberté de se déplacer à travers le pays, d’établir leur résidence et de chercher du travail dans n’importe quelle province.
- La Charte garantira aux citoyens appartenant à la minorité francophone ou anglophone d’une province le droit de faire instruire leurs enfants dans la langue de cette minorité, là où le nombre le justifie.
- Le principe de la péréquation qui permet de redistribuer les richesses des provinces plus riches aux provinces plus pauvres sera reconnu afin de continuer à offrir aux Canadiens de toutes les provinces des services publics essentiels de qualité acceptable.
- Une formule d’amendement permettra d’apporter des modifications à la Constitution au Canada même.

La résolution

Le Parlement du Canada a devant lui un projet de résolution conjointe du Sénat et de la Chambre des communes. Ce projet de résolution contient des dispositions relatives au rapatriement, ainsi que les changements constitutionnels mentionnés ci-haut. Si le Parlement adopte ce projet de résolution, le gouvernement du Canada soumettra à la Reine l’adresse conjointe demandant que le Parlement britannique adopte les dispositions contenues dans
la résolution et transfère au Canada le pouvoir sur les dispositions contenues dans les lois constitutionnelles britanniques qui nous touchent.

Les points saillants de ces dispositions, lesquelles sont contenues dans la résolution, sont repris ci-après. Si le lecteur désire d'autres explications, il pourra se référer au texte intégral du projet de résolution ou au document explicatif rédigé en termes non juridiques.

La Charte canadienne des droits et libertés

La Charte garantira aux Canadiens les libertés et les droits suivants qui relèvent des autorités fédérale, provinciale ou territoriale:

- Les libertés fondamentales comprennent la liberté de conscience et de religion, la liberté de pensée, de croyance, d'opinion et d'expression, notamment la liberté de la presse et des grands moyens d'information, et la liberté d'association et de réunion pacifique.

- Les droits démocratiques incluent le droit de voter aux élections en vue de la désignation des députés de la Chambre des communes ou des assemblées législatives, le droit de se porter candidat à l'une ou l'autre de ces institutions, des dispositions qui limitent à cinq ans la durée de la Chambre des communes et des assemblées législatives, sauf en cas de circonstances spéciales, et une disposition exigeant que le Parlement et les assemblées législatives siègent au moins une fois tous les 12 mois.

- La liberté de circulation et d'établissement reconnaît à tout Canadien le droit de se déplacer librement d'une province à l'autre, d'établir sa résidence et de chercher du travail n'importe où au Canada, de même que le droit de demeurer au pays et d'en franchir les frontières.

- Les droits à l'instruction dans la langue de la minorité donnent aux citoyens du Canada appartenant à la minorité francophone ou anglophone de leur province le droit de faire instruire leurs enfants dans la langue de cette minorité, là où le nombre d'enfants le justifie.

- Les garanties juridiques qui incluent, entre autres, le droit à la vie, à la liberté et à la sécurité de la personne, le droit à l'égalité devant la loi, le droit d'être protégé contre les fouilles, les saisies ou les perquisitions abusives, la détention ou l'emprisonnement illégal; le droit à l'assistance d'un avocat et d'être jugé dans un délai raisonnable, le droit d'être protégé contre un traitement ou une peine cruel et inusité, et le droit à l'assistance d'un interprète lors de procédures.

- Le droit à la non-discrimination qui protège les citoyens contre la discrimination fondée sur la race, la nationalité ou l'origine ethnique, la couleur, la religion, l'âge ou le sexe. (Pour permettre aux gouvernements fédéral et provinciaux de prendre les dispositions qui s'imposent, ces droits particuliers n'entreront en vigueur que trois ans après le rapatriement.)

La Charte comprendra également certains droits qui étaient déjà garantis par des lois fédérales ou par la Constitution:

- Le droit à l'usage des langues officielles donnera à toute personne le droit d'utiliser le français et l'anglais au Parlement, devant les tribunaux fédéraux, et dans les communications avec les sièges sociaux ou les bureaux principaux du gouvernement du Canada.

L'usage du français ou de l'anglais, dans les assemblées législatives, devant les tribunaux, dans les documents parlementaires du Québec et du Manitoba, continuera de jouir de la protection des dispositions constitutionnelles actuelles.

La Charte garantira enfin que les Canadiens qui bénéficient de droits non inscrits dans la présente Charte continueront d'en jouir. Cela inclut les droits et les libertés traditionnels des peuples autochtones du Canada.

La péréquation et les inégalités régionales

Le Parlement et le gouvernement du Canada seront obligés de respecter le principe de la péréquation face aux provinces les moins bien nanties. Les deux ordres de gouvernement devront s'engager à promouvoir l'égalité des chances des Canadiens, à favoriser le développement économique pour réduire les inégalités, et à fournir des services publics essentiels de qualité acceptable à tous les Canadiens.

La formule d'amendement

La résolution prévoit que les modifications à la Constitution, qui devaient auparavant être effectuées à Londres, devront être
adoptées à l'unanimité par le Parlement et les provinces jusqu'à ce qu'une formule d'amendement acceptable soit retenue conformément à l'une des trois façons suivantes:

- si au cours des deux prochaines années, les gouvernements fédéral et provinciaux en arrivent à un accord unanime sur une formule, celle-ci sera adoptée. Afin d'en venir à un accord plus facilement, une conférence constitutionnelle des premiers ministres aura lieu chaque année jusqu'à ce qu'une formule soit mise en application;

- si les provinces et le gouvernement fédéral ne s'entendent pas à l'unanimité sur une formule, mais que huit provinces ou plus représentant au moins 80 p. 100 de la population canadienne conviennent, dans les deux ans suivant le rapatriement, d'une formule d'amendement qui respecte les exigences présentées dans la résolution, celle-ci ainsi qu'une formule semblable à celle de Victoria seront soumises à la population lors d'un référendum. Le gouvernement fédéral pourra alors présenter sa propre formule, au lieu de la version modifiée de la formule de Victoria;

- si les provinces ne proposent pas de formule de rechange, la formule de Victoria modifiée entrera automatiquement en vigueur deux ans après le rapatriement. Règle générale, cette formule exigerait que toute modification de la Constitution soit approuvée par le Parlement et soit par les assemblées législatives ou, lors d'un référendum national, par une majorité des votants d'une majorité des provinces, comprenant:

  - toute province ayant, ou ayant eu, une population au moins égale à 25 p. 100 de la population du Canada;

  - au moins deux des provinces de l'Atlantique dont la population réunie représente au moins 50 p. 100 de la population de l'ensemble de ces provinces; et

  - au moins deux des provinces de l'Ouest dont la population réunie représente au moins 50 p. 100 de la population de l'ensemble de ces provinces.

If the provinces do not present an alternative formula, the modified Victoria formula will automatically come into effect two years after ratification. In general, this formula would require that amendments to the Constitution be approved by Parliament and by either the Legislative Assembly or a majority of voters in a national referendum during the following two years. If a majority of the provinces and federal government fail to agree upon

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THE CANADIAN CONSTITUTION
1980

EXPLANATION of a proposed Resolution respecting the Constitution of Canada
Introduction

The Government of Canada has placed before Parliament a proposed Resolution containing constitutional proposals of historic importance. When these proposals come into effect, they will signify the passing of the last vestige of Canada's former colonial status. The fundamental nature of our political system will not be changed: Canada will remain a parliamentary democracy with a federal system of government and the Queen as Head of State. However, now, after 113 years, we will finally have a Constitution that is completely our own and that can be amended entirely within this country. The changes are also momentous in that, for the first time, Canadians will have basic rights and freedoms enshrined in and protected by the Constitution.

This booklet is published to help Canadians understand the nature and significance of the proposals before Parliament. The reader interested in more detailed information should refer to the Resolution itself, which has been published with clause-by-clause explanatory notes.*

*Requests for copies should be addressed to:

Publications Canada
Box 1986, Station “B”
OTTAWA, CANADA
K1P 6G6
The Resolution

The three main objectives of the proposed Resolution are discussed in detail below, but in brief they are as follows:

- to "patriate" the Constitution and provide for an amending formula
- to entrench a Canadian Charter of Rights and Freedoms, including mobility rights and minority language educational rights
- to entrench the principle of equalization.

In addition the Resolution provides for the expeditious preparation of an official French version of the Constitution.

Patriation with an Amending Formula

When the Fathers of Confederation sat down in Charlottetown in 1864 to begin to draft the resolutions that would become the British North America (BNA) Act, they did not include an amending procedure, since it was to be an act of the British Parliament and therefore subject to the normal provisions for altering legislation in Britain. Today, 116 years later, every time Canada wants to amend any part of the Canadian Constitution that relates to the division of powers between the Parliament of Canada and the legislatures of the provinces and to certain other provisions, it still has to ask the Parliament of the United Kingdom to pass an amendment to the BNA Act. Canada is the only sovereign country in the world that still has to turn to the Parliament of another country to amend its own Constitution.

This unusual situation has caused concern in Canada for more than 50 years. It has not been corrected, however, because federal and provincial governments have been unable to agree on an amending formula.

The search for a formula began in 1927. This first attempt was unsuccessful as was a subsequent attempt in
1931. As a result, Canada requested that the BNA Act be excepted from the terms of the Statute of Westminster, which recognized the independence of the self-governing countries of the Commonwealth and provided that the jurisdiction of the British Parliament no longer apply to them.

Again, at federal-provincial conferences in 1935-36 and in 1950, attempts were made to find an acceptable formula—without success.

During the 1960s a concerted effort was made to find a formula that would satisfy the federal and provincial governments. In 1961 an amending procedure known as the "Fulton formula," named after the then Minister of Justice, the Honourable E. Davie Fulton, was developed. It did not receive unanimous support, but in 1964, at a federal-provincial conference, a modified version of this formula, advanced by the Minister of Justice of the time, the Honourable Guy Favreau, and known as the "Fulton-Favreau formula," was approved in principle. Subsequently, it too failed to win unanimous provincial support and was set aside.

Between 1968 and 1971, a continuing Constitutional Conference discussed patriation and an amending procedure. All governments represented at the Victoria Conference in June 1971 agreed to what became known as the "Victoria amending formula." It seemed that, at last, a satisfactory formula had been found. However, when the Government of Quebec decided after the Victoria Conference that it was not prepared to proceed with the full constitutional package, of which the amending formula was a part, this attempt failed as well.

The search was again taken up in 1975-76 and in 1978-79 and finally during the constitutional negotiations of the summer of 1980. While various formulas were discussed, no agreement was reached.

Fifty-three years after the search began, we still have not agreed on a formula. It is widely recognized that it is not only inconvenient to have to ask the British Parliament to amend the BNA Act, it is also inconsistent with our status as a sovereign state. Not only that, but the absence of a Canadian amending formula has made step-by-step constitutional reform more difficult. In 1980, no government can easily accept the affront to national pride of having to perpetuate the system of asking the British Parliament to amend our Constitution item by item, a procedure equally burdensome to the British and to Canadians.

The desirability of patriation has been acknowledged for years by both federal and provincial governments. As recently as May of 1980, Mr. William Yurko, a Progressive Conservative Member of Parliament from the riding of Edmonton East, introduced a resolution in the House of Commons calling for patriation of the Constitution. His resolution was given unanimous approval by the House. Moreover, Canadians across the country have expressed the opinion that patriation is desirable and should be achieved soon.

Thus, in view of the fact that there is now a widespread belief that patriation has become essential for reasons of both national pride and practicality, the Government of Canada has laid before Parliament a proposed Resolution designed to bring about the patriation of the Constitution. Since no amending formula has yet been agreed upon by the provinces and the federal government, the proposed Resolution provides for both the time and means to establish a formula.

In general, the Resolution provides that any amendments to those parts of the BNA Act, which now must be made in London, will for a period of time after patriation require the unanimous approval of Parliament and the provinces. This will ensure that the Constitution will be patriated with, if anything, more legal protection for the provinces than they currently have.
An amending formula requiring "unanimity," however, is undesirable in the long term, since it could lead to constitutional stagnation. For while an amending formula must be sufficiently rigid to prevent the Constitution from being changed at whim or altered against the will of a significant proportion of the population, it must not be so rigid that constitutional change becomes almost impossible. It is not an easy task to strike this delicate balance—but it is possible.

To ensure that Canada will not be faced forever with the requirement of getting unanimity on constitutional changes, the Resolution provides three means for bringing the process to a conclusion:

1) **Unanimous federal-provincial agreement on a formula**
   Following patriation, the federal and provincial governments will have two years to find and agree unanimously on an amending formula. If they succeed, the Constitution will be amended to bring this formula into effect. To facilitate agreement, a First Ministers' Constitutional Conference will be held each year until a formula is implemented.

2) **A referendum**
   If the provinces and federal government fail, yet again, to agree unanimously on a formula, but eight or more provinces, representing at least 80 per cent of the total population of all the provinces, agree within two years after patriation on an amending procedure that meets the requirements set out in the Resolution, this formula and a formula similar in principle to the Victoria formula will be put to the people in a referendum within four years after patriation. The federal government will also have the opportunity, at that time, to put forward a formula of its own choice, instead of the modified Victoria formula.

3) **A formula set out in the proposed Resolution will come into effect**
   If the provinces do not present an alternative formula, then an amending procedure, similar in principle to the Victoria formula, will automatically come into effect two years after patriation. The formula is based on the principle that amendments to certain parts of the Constitution should require a consensus in each region of the country as well as a general consensus across Canada. The Victoria formula required this consensus to be expressed through provincial legislative assemblies and the House of Commons and Senate in Ottawa. The formula in the Resolution will, in addition, allow the consensus to be expressed through a national referendum. The decision to call a referendum would rest with the Canadian Parliament. In general, the formula would require that amendments to the Constitution be approved by Parliament and by either the legislative assemblies or, in a national referendum, a majority of voters in a majority of the provinces, including:
   - every province that has or has had a population of at least 25 per cent of the population of Canada
   - at least two Atlantic provinces with combined populations of at least 50 per cent of the population of all the Atlantic provinces
   - at least two Western provinces with combined populations of at least 50 per cent of the population of all the Western provinces.

   Thus, probably within two years, but certainly within four years after patriation, the Constitution will have an amending formula, which will replace the interim formula of unanimity. Whether this formula is achieved by inter-governmental agreement, by referendum or by the automatic acceptance of the formula proposed in the Resolution, Canadians will soon have a formula that will allow them to amend the Constitution in Canada. An obstacle to constitutional change will have been removed.
The Canadian Charter of Rights and Freedoms

It has long been acknowledged that in a free and democratic society an individual must be assured certain basic rights and freedoms. At one time it was believed that these rights and freedoms could be adequately protected simply by the ordinary processes of parliamentary democracy, but increasingly it has been recognized that more protection is required. The international community has expressed this need through such instruments as the Universal Declaration of Human Rights (1948), and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966). The Canadian government, after consultation with the provinces, joined many other nations in subscribing to these international commitments to foster and protect the basic rights of people.

In Canada, there also has been a growing recognition that legislatures should provide more positive protection for basic human rights. In 1960, Parliament adopted the Canadian Bill of Rights. Saskatchewan, Alberta and Quebec have provincial bills of rights. In addition, there are federal and provincial laws that prohibit discriminatory practices in a broad range of social and economic activities.

While these various statutes afford some measure of protection for basic rights and freedoms, this protection, by its very nature, is limited.

The legislature or Parliament that passed the law yesterday could decide to repeal or restrict it tomorrow. The individual's only immediate redress would be to try to convince the same government that restricted the rights to reinstate them.

In a country as diverse as Canada, with two official languages and many cultural groups, basic rights and freedoms require more protection than this. Rights by their very nature pertain to individuals and minorities, and their protection should not be left simply to the goodwill of the majority or the government of the day. They must be guaranteed in the Constitution, so as to protect them from change by any single government, Parliament or legislature.

Most contemporary Western societies have recognized that the best way to protect minority rights is to entrench them in the Constitution. In fact, virtually all federal states in the world have constitutionally-enshrined rights and freedoms. Canadians are thus by no means alone in recognizing the need to guarantee rights in the Constitution.

The Charter of Rights and Freedoms, proposed in the Resolution, will entrench fundamental freedoms and democratic rights, mobility rights, legal rights, non-discrimination rights and language of education rights in the Constitution, so that they cannot be changed by Parliament or by any provincial legislature acting alone.

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

Entrenched Rights

The rights and freedoms to be entrenched for all Canadians in all matters of federal, provincial and territorial responsibility are as follows:

Fundamental Freedoms
- Freedom of conscience and religion
  This provides that an individual is free to follow his or her religious beliefs and the dictates of his or her conscience.
• Freedom of thought, belief, opinion and expression, including freedom of the press and other media
  This guarantees not only the right to express one’s views but equally the right to hold those views, even
  though others may not share them. It explicitly mentions the press and other media of information to leave
  no question about their existing right to disseminate news and opinion.

• Freedom of peaceful assembly and of association
  This ensures that there is no question about the right to demonstrate or associate for peaceful purposes and
  in a peaceable manner in Canada.

Democratic Rights

• The right to vote and to stand for office
  This ensures that Canadian citizens will have the right to vote in an election of members of the House of
  Commons or of a provincial legislative assembly and the right to qualify for membership in either of those
  institutions.

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

Mobility Rights

• The Charter establishes, for the first time, the right of citizens and permanent residents of Canada to move
  freely throughout the country. This confirms the fact that Canadians, regardless of province of residence,
  should be able to establish themselves and seek employment anywhere in the country. It also en-
  trenches the well-established right that every Canadian citizen is entitled to enter, remain in, or
  leave Canada.

Language of Education Rights

• Citizens of Canada, whose first language learned and still understood is that of the English-speaking or
  French-speaking minority population of a province, will have the right to educate their children in that
  minority language at the primary and secondary school levels, wherever the number of children war-
  rants the provision of such educational facilities.

Legal Rights

• Right to life, liberty and security of the person
  This ensures that there will be no interference by the state with these vital rights of individuals, except by
  duly specified legal procedures that are inherently fair in their application.

• Right to security against unlawful searches or seizures
  This protects an individual and his or her property against searches or seizures by law enforcement
  authorities, unless they are conducted in accordance with the specified laws and procedures.

• Protection against unlawful detention or imprisonment
  This ensures that no individual may be held by authorities or placed in prison without lawful
  justification.

• Right to know reasons for arrest, right to counsel and to test validity of detention
  This protects individuals arrested or detained by law enforcement authorities against actions that may in-
 fringe upon a person’s liberty. It ensures that the individual will know why he or she is being held, and
  that he or she will be able to seek advice from a lawyer on the matter. A court will determine expeditiously
  whether the detention is lawful.
- **Rights, when charged with an offence, to certain fundamental protections**
  These protections include the right to be informed promptly of the charge; to be tried within reasonable time; to be presumed innocent until proven guilty in a fair and public trial, and to be granted bail according to law. They also include protection against being found guilty if an act wasn’t an offence when it occurred and against being tried twice for the same offence. In addition, if a punishment is changed between the time the act occurs and sentencing, only the lesser punishment may be imposed.

- **Protection against cruel and unusual punishment or treatment**
  This is designed to protect individuals against inhumane forms of treatment or punishment.

- **Right of a witness, when compelled to testify, not to have any incriminating evidence so given used against him or her in other proceedings**
  This right reflects the principle that no one should be required to incriminate himself or herself. While a witness may be compelled to testify in a particular case, he or she is protected from having any of that evidence that is incriminating used against him or her in other cases.

- **Right to assistance of an interpreter**
  This provision guarantees to a party or witness involved in proceedings the right to an interpreter if he or she doesn’t speak or understand the language of the proceedings.

**Non-Discrimination Rights**

- This establishes the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex. This section of the Charter does, however, permit “affirmative action” programs that are aimed specifically at improving the conditions of disadvantaged persons or groups. To allow the federal and provincial governments to make any necessary changes to their existing laws, this section will not come into effect until three years after patriation.

**Existing Rights Entrenched**

A second set of rights, which at the present time are guaranteed either constitutionally or by federal legislation, will now be codified in the Charter. They apply only to Parliament and the Government of Canada.

**Language Rights in Parliament**

- Any individual has the right to use either English or French in any debates or other proceedings of Parliament. The statutes, records and journals of Parliament must be printed and published in both languages.

**Language Rights in Courts**

- Any individual has the right to use English or French before the Supreme Court or any other federal court.

**Language Rights in Federal Institutions**

- This entrenches English and French as the official languages of Canada and those provisions of the federal *Official Languages Act*, which give the right to the public to communicate with and receive services from any head or central office of an institution of the Parliament or Government of Canada in either English or French, and, in areas where numbers warrant, from any other office of such institutions.

The use of either English or French in the legislatures, the courts and in the statutes and records of the provinces of Quebec and Manitoba will continue to be protected by existing constitutional provisions.
It should be noted that a section of the Charter entrenching "Undeclared Rights," ensures that if individuals or groups of Canadians have rights, which are not explicitly mentioned in the Charter, they will still be able to enjoy them fully. The provision makes specific reference to the rights and freedoms of the native peoples of Canada.

No right or freedom of an individual or minority exists in absolute terms. For example, "freedom of expression" does not mean that an individual can defame his neighbour. Equally, the "right to vote" does not mean that a person under the age of majority has the vote. That such limits exist is recognized by the opening sections in the Charter, which indicate that the rights are subject to such reasonable limits as are consistent with a "free and democratic society." These limits will, as in the past, be spelled out in our laws. However, their reasonableness in any particular case will be determined by the courts and where the limits are found to be unreasonable they will be struck down.

Questions and Answers

Why do we need a Charter of Rights and Freedoms in the Constitution?

The argument usually made against an "entrenched" Charter of Rights and Freedoms is that, since our rights and freedoms are already well protected by tradition and, in some cases, even legislation, it is unnecessary to write them into the Canadian Constitution. Yet, we are all aware of instances, within the last 50 years, where some Canadians have been deprived of their rights on the grounds of racial origin or their religious or political beliefs. An entrenched Charter, by proclaiming specified rights to be beyond the normal power of legislative majorities, provides a sense of security and, moreover, a practical means of redress, through the courts, to individuals and minorities who feel aggrieved. It also reminds governments at all levels that their powers are limited and must be exercised with care and respect for the inherent rights of the people.

In addition, the Charter ensures that a person not only can move freely from one place to another in the country, but also that each individual will enjoy the same basic rights and freedoms wherever he or she lives.

What are the "new" rights and freedoms in the Charter?

Several important new rights are included in the Charter. The right of Canadians to move from province to province and to seek employment in one province while residing in another would be guaranteed for the first time. Minority language educational rights and the right to receive services from the federal government in English or French are guaranteed. Freedom of conscience has been added to the traditional freedom of religion. Protection against unlawful searches and seizures and against the retroactive application of penal sanctions has been added, as well as the right of a person charged with an offence to be informed promptly of the charge and to be tried within reasonable time. The right to vote and to stand for elective office would be expressly assured as well.

By "entrenching" a Charter of Rights and Freedoms are we restricting the power of the elected legislatures and giving too much power to the courts?

An entrenched Charter of Rights and Freedoms will limit the power of Parliament and provincial legislatures to pass laws or take actions that contravene or restrict unduly these guaranteed rights of Canadians. In this sense, therefore, the power of the legislatures including the Parliament in Ottawa will be restricted. Nothing in the Charter, however, prevents any legislature or Parliament from adding to our rights or increasing their protection. Moreover, in an age when activities of government affect almost every aspect of our social and economic life, legislative majorities should not have complete freedom to act, inadvertently or deliberately, against the rights of an individual or a minority. If they do so, it is appropriate for aggrieved individuals to seek redress through the courts. Traditionally
the courts have settled disputes between citizens and the state, and, in the future, they will have the guidance of a Charter to assist them in this. The basic question is not whether an entrenched Charter gives more power to the courts or less power to the legislatures. The important point is that, in future, governments, legislatures and courts alike will be obliged to respect and defend the rights of all Canadians.

Why do we need to include mobility rights in the Charter?

Most Canadians assume that they have the right to live and work anywhere in Canada and to enter, remain in or leave the country whenever they choose to do so. However, Canadians have begun to learn that what they thought was a "right" was merely a practice. Provinces are increasingly establishing barriers to mobility—for example, a number of them have preferential hiring policies in some fields. When one province erects a barrier for Canadians outside the province this may easily incite another province to retaliate. If this were to continue, the concept of a single Canadian citizenship could become meaningless. For, if being a Canadian means anything, it must mean the liberty to move anywhere in the country. By entrenching mobility rights in the Charter, this fundamental right of citizenship will be guaranteed.

How does the Charter deal with language rights?

The Charter recognizes that English and French are the official languages of Canada. It ensures that all current constitutional and legislative language rights, with respect to the institutions of the Parliament and Government of Canada, are maintained. Where language minorities have had historic rights, such as the English-speaking community in Quebec and the French-speaking community in Manitoba, these rights will continue to be protected in the Constitution. The Charter does not make any specific provision for the extension of these rights to other provinces. However, if any province wants any of these language rights to be entrenched, there is a general provision in both the interim formula and in the proposed procedure based on principle on the "Victoria formula" for the Constitution to be amended with the agreement of Parliament and that provincial legislature. Finally, the Charter does not interfere with any future or existing rights or privileges to use any other language, such as Cree, Inuktitut or Ukrainian and specifically guarantees the right to an interpreter in judicial proceedings.

How does the Charter treat the right to minority language education?

In Quebec, Canadian citizens, whose first language learned and still understood is English, could choose to educate their children in English where numbers warrant. In the other nine provinces and the Yukon and Northwest Territories, a similar right to educate their children in French would be conferred on Canadian citizens whose first language learned and still understood is French. This constitutional right to choose would not apply to non-citizens, or to citizens who belong to the official language majority population of the province. Thus a province would remain free to place the children of immigrants in the majority language school system of the province and to require children who are members of the language majority of that province to receive their education in that language. A provision in the Charter also ensures that citizens, who move between provinces, will be able to continue to educate their families in the language in which the children started their education, either English or French, wherever facilities are available. The Charter would, of course, in no way restrict the right of citizens to have their children educated in the majority language of a province. Neither would it in any way prohibit the teaching or use of the minority and minority languages, or indeed, of other languages. Nor would it restrict a province from extending to all its residents a choice of either official language in the field of education.
Why is it necessary to include the question of language of education in the Charter? Would it not be best to have it dealt with by the provinces among themselves, through reciprocal arrangements?

It is the government's strongly held view that only through an amendment of the Constitution can Canadians be definitely assured that certain common basic minority language rights will be observed throughout the country. Reciprocal arrangements cannot guarantee protection against alterations as a result of short-term political or social changes, or against withdrawal at any time by any province that may consider that its commitment is no longer desirable. In addition, although reciprocal arrangements have been discussed since 1977, none currently exist. The Charter, in fact, gives effect to the principle of minority language educational rights agreed to by all provinces in 1978.

Are the rights of the native peoples protected by the Charter?

The provision specifies that nothing in the Charter can deny any other rights or freedoms that exist in Canada, including specifically those that may pertain to the native peoples. This will ensure that the native peoples, while gaining the added protection that all Canadians will enjoy through the entrenchment of the Charter, will not, at the same time, lose any other rights they may now have. The federal government will be continuing discussions with the native peoples' groups to determine whether other rights, more specific to the native peoples, should be added to the Charter.

Equalization and Regional Disparities

The practice of using federal revenues to redistribute wealth to the poorer provinces of this country is well-accepted. Since 1957, unconditional transfers known as equalization payments, have been made by the federal government to enable every province to provide a reasonable level of public services, without having to impose an undue tax burden on its residents. This practice has become so well established that it has now emerged as a fundamental "principle" of Canadian federalism.

The Constitution Act, 1980 entrenches the principle of equalization and commits both orders of government to:

- promoting equal opportunities for the well-being of Canadians
- furthering economic development to reduce disparity in opportunities and, specifically,
- providing essential public services of reasonable quality to all Canadians.

How The Changes Will Be Brought Into Effect

It is not always recognized that the British North America Act, a British statute enacted in 1867, is only a part of our Constitution. In addition, there are subsequent acts that amend the 1867 Act and that have been passed by the United Kingdom Parliament, or in some cases, by the Parliament of Canada or the legislature of a province. Certain notable British statutes, such as the Statute of Westminster, 1931, and certain fundamental Canadian acts, such as those creating the provinces of Manitoba, Alberta and Saskatchewan also form part of Canada's Constitution.

"Patriation of the Constitution" does not mean that a pile of papers will be physically brought home to Canada. Rather, it implies two things:

- severing the last link between the Canadian and British Parliaments by bringing to an end any power of the British Parliament to make laws respecting the Constitution of Canada
• confirming the Constitution as part of the law of Canada and establishing an amending formula to permit the amendment in Canada of those parts of the Constitution that could previously only be amended by the British Parliament.

Patriation of the Constitution will be brought about by a request made by the Senate and the House of Commons (called a Joint Address) to the Queen, asking that the British Parliament pass legislation entitled The Canada Act. This act will transfer to Canada the full power of amendment of the Canadian Constitution and will provide that no future British law should extend to Canada as part of its law. The symbolic recognition of this change appears in the new titles given to the old acts: the British North America Act and its subsequent amending statutes, will in future be known as the Constitution Acts, 1867 to 1975. In addition, the Constitution Act, 1980 containing the Charter of Rights and Freedoms, the proposed amending formula and the principle of equalization will be added to the Constitution. The procedure for effecting these changes is as follows:

• A motion to establish a Special Joint Committee consisting of members of the House of Commons and Senators will be debated in both Houses of Parliament. The Committee, which will provide a forum for detailed study of the proposed Resolution, will be requested to complete its work and to report the results to the House of Commons and the Senate by December 9, 1980. If the Committee recommends adoption of resolutions in the form of the proposed Resolution, with or without changes, and both the House of Commons and Senate concur in that recommendation, those concurrences will constitute a request or Joint Address. The government will then transmit the Joint Address to the Queen. The British government will ask the Parliament at Westminster to adopt the Canada Act as requested, to come into effect in Canada at a time fixed by a proclamation issued by the Governor General.

This procedure will ensure the orderly transfer to Canada of complete authority over the Constitution. For the first time, Canada will have a Constitution entirely its own.
LA CONSTITUTION CANADIENNE
1980

DOCUMENT EXPLICATIF
sur le projet de résolution concernant la Constitution du Canada
Introduction

Le gouvernement du Canada a déposé devant le Parlement un projet de résolution renfermant des changements constitutionnels d’une importance historique. L’entrée en vigueur de ces changements libérera le Canada des derniers vestiges de son ancien statut colonial. La nature fondamentale de notre système politique ne changera pas : le Canada va demeurer une démocratie parlementaire avec un régime fédéral de gouvernement et la Reine restera à la tête de l’État. Toutefois, après 113 ans, nous aurons enfin une Constitution à nous, et nous serons en mesure de la modifier chez nous. Il s’agit de changements importants puisque, pour la première fois, la Constitution canadienne énoncera et protégera les libertés et les droits fondamentaux des Canadiens. Cette brochure permettra aux Canadiens de comprendre la nature et l’importance des propositions déposées devant le Parlement. Pour plus de détails, on pourra consulter le texte intégral du projet de résolution qui a été publié avec des notes explicatives sur chacun des articles.*

*Pour en obtenir des exemplaires, il faut s’adresser à :
Publications Canada
C.P. 1986, succursale “B”
Ottawa (Canada)
K1P 6G6
La résolution

Le projet de résolution poursuit trois objectifs principaux que l'on étudiera plus loin, mais qui s'énoncent comme suit:

- «rapatrier» la Constitution et nous doter d'une formule d'amendement;
- inclure dans la Constitution une Charte des droits et des libertés comprenant la liberté de circulation et d'établissement et les droits à l'instruction dans la langue de la minorité;
- inclure dans la Constitution le principe de la péréquation.

De plus, la résolution prévoit la rédaction, dans les meilleurs délais, de la version française officielle de la Constitution.

Le rapatriement avec une formule d'amendement

Lorsque les Pères de la Fédération se réunirent à Charlottetown, en 1864, pour rédiger les résolutions qui allaient constituer l'Acte de l'Amérique du Nord britannique (A.A.N.B.), ils ne se soucièrent pas d'y inclure une formule d'amendement, l'A.A.N.B. devant être une loi du Parlement britannique soumise aux procédures régulières de modification en vigueur en Grande-Bretagne. Si bien qu'aujourd'hui encore, après 116 ans, le Canada est toujours obligé de demander au Parlement du Royaume-Uni d'adopter une loi chaque fois qu'il veut modifier toute disposition de l'A.A.N.B. relative au partage des pouvoirs entre le Parlement du Canada et les assemblées législatives provinciales, ainsi que certaines autres dispositions. Le Canada est le seul pays souverain qui doive avoir recours au parlement d'un autre pays pour effectuer des changements à sa propre Constitution.

Voilà plus de 50 ans que cette anomalie préoccupe le Canada. Malgré tout, elle n'a jamais été rectifiée parce que
le gouvernement fédéral et les gouvernements provinciaux ne sont pas arrivés à se mettre d'accord sur une formule d'amendement.

La recherche d'une telle formule commença en 1927. Cette première tentative échoua, tout comme celle de 1931. C'est pour cela que le Canada demanda l'exclusion de l'A.A.N.B. des dispositions du Statut de Westminster qui reconnaissait l'indépendance de tout pays du Commonwealth possédant son propre gouvernement et le libérait par le fait même de la tutelle du Parlement britannique.

Aux conférences fédérales-provinciales de 1935-1936, puis à celle de 1950, on s'efforça à nouveau de mettre au point une formule d'amendement acceptable, mais toujours sans succès.

Au cours des années 60, on assista à un effort concerté pour aboutir à une formule qui conviendrait au gouvernement fédéral et aux gouvernements provinciaux. L'année 1961 donna le jour à une formule d'amendement connue sous le nom de «formule Fulton», du nom du ministre de la Justice d'alors, M. E. Davie Fulton. Celle-ci ne recueillit pas l'unanimité, mais, à la conférence fédérale-provinciale de 1964, une version modifiée, proposée par le ministre de la Justice de ce temps-là, M. Guy Favreau, et maintenant appelée «la formule Fulton-Favreau», fut approuvée en principe; on dut cependant la mettre de côté, faute d'accord unanime.

De 1968 à 1971, la question du rapatriement et de la formule d'amendement fut examinée dans le cadre d'une conférence constitutionnelle permanente. Tous les gouvernements présents à la conférence de Victoria, en juin 1971, acceptèrent ce que l'on appelait depuis «la formule de Victoria». On avait enfin trouvé, croyait-on, une formule acceptable pour toutes les provinces. Cependant, lorsque le gouvernement du Québec décida, à la suite de la conférence de Victoria, qu'il n'était pas prêt à accepter l'ensemble de la proposition constitutionnelle dont faisait partie la formule d'amendement, il fallut se résigner à un autre échec.


Ainsi, après 53 ans de travail en quête d'une formule d'amendement, la réussite nous échappe encore. Tout le monde reconnaît qu'il est non seulement peu pratique de devoir demander au Parlement britannique de modifier l'A.A.N.B., mais que c'est aussi en contradiction avec notre statut d'État souverain. De plus, l'absence de formule d'amendement canadienne rend la réforme constitutionnelle plus difficile. En 1980, aucun gouvernement ne peut accepter facilement de voir sa fierté nationale blessée chaque fois qu'il demande au Parlement britannique de modifier sa constitution article par article; cette façon de procéder représente un fardeau pour les Britanniques et pour nous.

Depuis des années, les gouvernements fédéral et provinciaux s'accordent pour reconnaître qu'il est souhaitable de rapatrier la Constitution. Tout récemment, en mai 1980, M. William Yurko, député progressiste-conservateur de la circonscription d'Edmonton-Est, a déposé devant la Chambre des communes une résolution demandant le rapatriement de la Constitution. Cette résolution fut approuvée à l'unanimité. En outre, les Canadiens de toutes les régions du pays ont exprimé l'opinion qu'il était souhaitable de rapatrier la Constitution sans tarder.

Ainsi, puisqu'il est maintenant reconnu, de façon générale, qu'il est essentiel de procéder au rapatriement de la Constitution, tant pour des raisons de fierté nationale que pour des raisons d'ordre pratique, le gouvernement du Canada a déposé devant le Parlement un projet de résolution visant à rapatrier la Constitution. Puisque les gouvernements fédéral et provinciaux n'ont pas encore convenu d'une formule d'amendement, le projet de résolution prévoit et les moyens et le moment opportun d'établir une telle formule d'amendement.
De façon générale, la résolution prévoit que toute modification des dispositions de l'A.A.N.B., qui, à l'heure actuelle, ne peuvent être modifiées qu'à Londres, requerront, pendant une période de temps suivant le rapatriement, l'approbation unanime du Parlement et de l'assemblée législative ou le gouvernement de toutes les provinces. La résolution garantira que la Constitution sera rapatriée de façon à assurer aux provinces au moins une plus grande protection que celle dont elles jouissent à l'heure actuelle.

Toutefois, une formule d'amendement exigeant «l'unanimité» n'est guère souhaitable à longue échéance, puisqu'elle pourrait provoquer la stagnation du débat constitutionnel. Une formule d'amendement doit être suffisamment rigide pour éviter que la Constitution ne soit modifiée par simple caprice ou que les changements qui y seraient apportés n'aillent à l'encontre du désir d'une partie importante de la population, mais elle doit cependant être assez souple pour empêcher qu'on soit dans l'impossibilité de procéder à quelque changement constitutionnel que ce soit.

Établir l'équilibre entre ces deux positions n'est pas chose facile, mais c'est cependant une tâche réalisable.

Pour faire en sorte que le Canada ne soit pas toujours tenu d'obtenir l'unanimité sur les questions de réforme constitutionnelle, le projet de résolution prévoit trois façons de mener à bien cette procédure, soit:

1) Un accord fédéral-provincial unanime en ce qui a trait à une formule d'amendement
À la suite du rapatriement de la Constitution, les gouvernements fédéral et provinciaux auront deux ans pour trouver une formule d'amendement et en arriver à un accord unanime. S'ils réussissent, la formule d'amendement entrera en vigueur. Afin d'en venir à un accord plus facilement, une conférence constitutionnelle des premiers ministres aura lieu chaque année jusqu'à la mise en application d'une formule d'amendement.

2) Un référendum
Si les provinces et le gouvernement fédéral ne réussissent pas, une fois de plus, à en arriver à un accord unanime sur une formule, mais que huit provinces ou plus, représentant au moins 80 p. 100 de toute la population, conviennent, dans les deux ans suivant le rapatriement, d'une formule d'amendement qui respecte les exigences présentées dans la résolution, celle-ci, ainsi qu'une formule semblable à celle de Victoria, seront soumises à la population lors d'un référendum, dans les quatre ans suivant le rapatriement. Le gouvernement fédéral pourra aussi, à ce moment-là, présenter sa propre formule au lieu de la version modifiée de la formule de Victoria.

3) L'entrée en vigueur de la formule exposée dans le projet de résolution
Si les provinces ne présentent pas de formule de rechange à ce moment-là, une formule d'amendement semblable à celle de Victoria entrera automatiquement en vigueur, deux ans après le rapatriement. Cette formule se fonde sur le principe voulant que les modifications de certaines dispositions de la Constitution exigent un consensus dans chacune des régions du pays ainsi qu'un consensus du Canada tout entier. La formule de Victoria exigeait que ce consensus soit exprimé par l'entremise des assemblées législatives provinciales, de la Chambre des communes et du Sénat, à Ottawa. La formule exposée dans la résolution prévoit en outre la possibilité que ce consensus soit exprimé par le biais d'un référendum national. Il appartiendra au Parlement du Canada de décider de la tenue d'un référendum national.

Règle générale, cette formule exigerait que toute modification de la Constitution soit approuvée par le Parlement et, soit par les assemblées législatives ou, lors d'un référendum national, par une majorité des votants d'une majorité des provinces, comprenant:

—toute province ayant, ou ayant eu, une population au moins égale à 25 p. 100 de la population du Canada;
—au moins deux des provinces de l'Atlantique dont la population réunie représente au moins 50 p. 100 de la population de l'ensemble de ces provinces; et

—au moins deux des provinces de l'Ouest dont la population réunie représente au moins 50 p. 100 de la population de l'ensemble de ces provinces.

Ainsi, probablement au cours de la période de deux ans, mais sûrement au cours de celle de quatre ans qui suivrait son rapatriement, la Constitution serait dotée d'une formule d'amendement qui remplacerait la formule provisoire exigeant l'unanimité. Que cette formule soit mise en œuvre au moyen d'un accord intergouvernemental, d'un référendum ou par l'acceptation automatique de la formule proposée dans la résolution, les Canadiens disposeront sous peu d'une formule qui leur permettra de modifier la Constitution au Canada. Un obstacle à la réforme constitutionnelle aura ainsi été éliminé.

**La Charte canadienne des droits et libertés**

Il est reconnu depuis longtemps que, dans une société libre et démocratique, l'individu doit pouvoir jouir de libertés et de droits fondamentaux. On a cru pendant longtemps que les simples procédures de la démocratie parlementaire assuraient la protection des libertés et des droits, mais on reconnaît de plus en plus la nécessité d'en assurer une plus grande protection. La communauté internationale a répondu à ce besoin par diverses conventions internationales, comme la Déclaration universelle des droits de l'homme (1948), et les Pactes internationaux relatifs aux droits civils et politiques, et aux droits économiques, sociaux et culturels (1966). Après consultation avec les provinces, le gouvernement canadien a adhéré, suivant l'exemple de plusieurs pays, à ces engagements internationaux visant à promouvoir et à protéger les droits fondamentaux des individus.

Les Canadiens se sont rendu compte aussi de la nécessité pour les assemblées législatives de légiférer davantage afin d'assurer la protection des droits fondamentaux de la personne. Le Parlement adopta, en 1960, la Déclaration canadienne des droits. La Saskatchewan, l'Alberta et le Québec ont tous des lois de nature semblable. De plus, le Canada et toutes les provinces ont promulgué des lois interdisant toute pratique discriminatoire dans divers secteurs d'activités sociales et économiques.

Toutefois, si ces diverses lois offrent une certaine protection des libertés et des droits fondamentaux, cette protection est en fait restreinte.

L'assemblée législative ou le Parlement qui hier adoptait une loi, peut l'annuler ou en restreindre l'application demain. Dans ce cas, l'individu n'a d'autre recours immédiat que de confronter ce même gouvernement qui a supprimé ces droits de les garantir à nouveau.

Dans un pays aussi divers que le Canada, avec deux langues officielles et de nombreux groupes ethniques, les libertés et les droits fondamentaux doivent être mieux protégés. Les droits touchent les individus et les minorités, et leur protection ne doit donc pas dépendre du seul bon vouloir de la majorité ou du gouvernement de l'heure. Ils doivent être garantis par la Constitution, de sorte qu'ils soient protégés contre tout changement apporté par le Parlement, un gouvernement ou une assemblée législative.

La plupart des sociétés occidentales contemporaines ont reconnu que pour assurer une meilleure protection des droits des minorités, il fallait les inscrire dans la constitution. En fait, presque tous les États fédératifs du monde ont des libertés et des droits inscrits dans leur constitution. Les Canadiens ne sont donc pas les seuls à reconnaître la nécessité de garantir les droits dans la Constitution.
La Charte des droits et libertés que renferme le projet de résolution, permettra d’inclure dans la Constitution les libertés fondamentales, les droits démocratiques, la liberté de circulation et d’établissement, les garanties juridiques, le droit à la non-discrimination et les droits à l’instruction dans la langue de la minorité, de sorte qu’ils ne pourront être modifiés unilatéralement par le Parlement ou par une assemblée législative provinciale.


Les droits inscrits

Les droits et libertés qui seront inscrits dans la Charte pour tous les Canadiens dans tous les domaines de responsabilité fédérale, provinciale ou territoriale sont les suivants:

Les libertés fondamentales

- **La liberté de conscience et de religion**
  Un individu est libre d’avoir ses propres croyances religieuses et d’écouter la voix de sa conscience.

- **La liberté de pensée, de croyance, d’opinion et d’expression, notamment la liberté de la presse et des autres moyens d’information**
  Ceci garantit non seulement le droit d’exprimer ses opinions, mais aussi celui de ne pas y renoncer même si d’autres ne les partagent pas. La mention explicite de la presse et des autres grands moyens d’information ne laisse aucun doute sur les droits actuels de la presse à diffuser les nouvelles et les opinions.

**La liberté d’association et de réunion pacifique**
Ceci confirme le droit de manifester ou de s’associer d’une manière pacifique et à des fins pacifiques au Canada.

Les droits démocratiques

- **Le droit de voter et de poser sa candidature**
  Tout citoyen canadien aura le droit de voter aux élections en vue de la désignation des députés de la Chambre des communes ou des assemblées législatives provinciales, et le droit de se porter candidat à l’une ou l’autre de ces institutions.

- **Le droit aux élections périodiques**
  Cette disposition limiterait la durée d’un gouvernement au pouvoir à une période de cinq ans à compter de la date des élections, et exigerait que le Parlement et les assemblées législatives provinciales siègent au moins une fois tous les 12 mois.

La liberté de circulation et d’établissement

- **La Charte reconnaît pour la première fois aux citoyens et aux résidents permanents, le droit de circuler librement dans tout le pays. Le Canada étant une entité, il est donc admis que les Canadiens, indépendamment de leur province de résidence, peuvent s’installer et chercher du travail partout au Canada. Elle reconnaît aussi le droit établi qu’ont les citoyens canadiens de demeurer au pays et d’en franchir les frontières.

Les droits à l’instruction dans la langue de la minorité

- **Les citoyens du Canada dont la première langue apprise et encore comprise est celle de la minorité**
Les garanties juridiques

- Le droit à la vie, à la liberté et à la sécurité de la personne
  Ceci garantit qu’il n’y aura pas d’intervention de l’État au chapitre des droits fondamentaux de l’individu, sans avoir recours à des procédures juridiques bien établies, et à l’application de la loi.

- Le droit d’être protégé contre les fouilles, les saisies ou les perquisitions illégales
  Il s’agit d’un droit qui protège un individu et ses biens personnels contre les fouilles, les saisies et les perquisitions des autorités responsables de l’application de la loi, à moins qu’elles ne soient effectuées dans les conditions que celle-ci prévoit.

- La protection contre la détention ou l’emprisonnement illégal
  Ce droit garantit que personne ne peut être retenu par des autorités responsables de l’application de la loi ou emprisonné sans motifs fondés sur la loi.

- Le droit d’être informé des motifs de son arrestation, d’avoir recours à l’assistance d’un avocat, de faire contrôler la légalité de sa détention
  Cet article protège les individus arrêtés ou détenus contre certaines actions des autorités responsables de l’application de la loi, qui pourraient restreindre leur liberté. Chaque individu devra être informé des motifs de son arrestation, devra pouvoir consulter un avocat et faire contrôler, par un tribunal, la légalité de sa détention.

- Les droits d’une personne accusée d’une infraction à certaines protections fondamentales
  Ces protections comprennent le droit d’une personne de connaître rapidement les accusations qui pèsent contre elle; d’être jugée dans un délai raisonnable; d’être présumée innocente tant qu’elle n’est pas déclarée coupable à l’issue d’un procès public; d’être libérée sous cautionnement en conformité à la loi. Ces protections garantissent qu’un individu ne sera pas déclaré coupable d’une infraction qui, au moment où elle a été commise, ne constituait pas une infraction, et qu’il ne sera pas jugé deux fois pour la même infraction. De plus, si une peine qui sanctionne une infraction est modifiée entre le moment de l’infraction et la sentence, la peine la moins sévère devra être imposée.

- La protection contre des peines ou traitements cruels et inusités
  Cet article protège les individus contre des formes de peine ou de traitement inhumain.

- Le droit d’un témoin qui est obligé de témoigner à ce qu’aucun témoignage incriminant qu’il donne ne soit utilisé pour l’incriminer dans d’autres procédures
  Ce droit reflète le principe voulant que personne ne soit obligé de faire des déclarations qui l’incriminent. Un témoin peut être obligé de comparaître dans un cas particulier, mais son témoignage ne peut servir à l’accuser dans d’autres procédures.

- Le droit à l’assistance d’un interprète
  Cet article garantit à toute partie ou témoin le droit à l’assistance d’un interprète lors de procédures, s’il ne parle pas ou ne comprend pas la langue dans laquelle se déroule la procédure.

Le droit à la non-discrimination

- Ceci établit le droit à l’égalité devant la loi, et à la même protection de la loi sans distinction fondée sur la race, l’origine nationale ou ethnique, la couleur, la religion, l’âge ou le sexe. Cet article de la Charte permet cependant la tenue d’activités ou de programmes autorisés par la loi et destinés particulièrement à améliorer la situation des personnes ou des groupes défavorisés. Afin de permettre aux gouvernements fédéral et provinciaux d’apporter les modifications
nécessaires aux lois existantes, cette section entrera en vigueur trois ans après le rapatriement.

La codification de droits déjà garantis

Un deuxième groupe de droits, qui sont à présent garantis par la Constitution ou par la législation fédérale, seront désormais codifiés dans la Charte. Ils ne s'appliquent qu'au Parlement et au gouvernement du Canada.

Les droits linguistiques et le Parlement

- Tout individu a le droit de participer aux débats du Parlement, en français ou en anglais. Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement doivent être imprimés et publiés en français et en anglais.

Les droits linguistiques et les tribunaux

- Tout individu peut utiliser le français ou l'anglais devant la Cour suprême du Canada et toute autre cour fédérale.

Les droits linguistiques et les institutions fédérales

- Ceci permet d'enchâsser dans la Constitution le français et l'anglais comme langues officielles du Canada, et les dispositions de la Loi sur les langues officielles qui assurent au public le droit de communiquer et d'obtenir les services du siège social ou du bureau principal de toute institution du Parlement ou du gouvernement du Canada, en français ou en anglais, et, dans les régions où le nombre le justifie, de tous les autres bureaux de ces institutions.


Il faut indiquer qu'un article de la Charte inscrivant les «droits non expresément visés» assure à toute personne ou tout groupe de Canadiens déttenant des droits non inscrits dans la Charte, qu'ils pourront continuer à en jouir pleinement. Cette disposition concerne tout particulièrement les droits et les libertés des peuples aborigènes du Canada.

Aucun droit et aucune liberté d'un individu ou d'une minorité n'existe en termes absolus. La «liberté d'expression», par exemple, ne signifie pas qu'un individu peut diffamer son voisin. De même, le «droit de vote» ne permet pas à un mineur de voter. Les premiers articles de la Charte montrent bien que de telles restrictions existent en précisant que les droits sont garantis sous les réserves normalement acceptées «dans une société libre et démocratique». Comme par le passé, nos lois continueront de préciser ces réserves. Toutefois, les tribunaux détermineront encore à quel point ces réserves sont raisonnables dans tout cas particulier. Toute réserve jugée exagérée sera rejetée.

Questions et réponses

Pourquoi inscrire une Charte des droits et des libertés dans la Constitution?

Ceux qui s'opposent à l'enchâssément d'une Charte prétendent que nos libertés et nos droits sont déjà bien protégés par la tradition et même, dans certains cas, par les lois, et qu'il n'est donc pas nécessaire de les inclure dans la Constitution canadienne. Cependant, nous connaissons tous des exemples où, au cours des 50 dernières années, des Canadiens ont été lésés dans leurs droits pour des raisons relatives à leur race, leur religion ou leurs allégeances politiques. Une Charte inscrite dans la Constitution placera ces droits hors de la portée de l'application arbitraire des lois, ce qui sera rassurant, mais aussi offrira aux individus ou aux groupes victimes d'injustice, un moyen pratique d'obtenir réparation devant les tribunaux. Cela rappellera aussi aux deux ordres de gouvernement que leurs pouvoirs
sont limités et qu’ils doivent les exercer avec le souci et le respect des droits fondamentaux de la population. Enfin, la Charte assurera non seulement à tout individu le droit de circuler librement d’un endroit à l’autre du pays, mais elle lui garantira aussi le droit de recevoir le même traitement et la même protection, quel que soit son lieu de résidence.

Quels sont les «nouveaux» droits et libertés inscrits dans la Charte?

Plusieurs nouveaux droits importants sont inclus dans la Charte. Le droit des Canadiens de se déplacer d’une province à l’autre et de chercher un emploi dans une province autre que celle où ils habitent serait garanti pour la première fois. Le droit à l’instruction dans la langue de la minorité et celui d’obtenir des services du gouvernement fédéral dans l’une ou l’autre des deux langues officielles sont aussi garantis. La liberté de conscience est ajoutée à la traditionnelle liberté de religion. Le droit d’être protégé contre les fouilles, les saisies et les perquisitions abusives et contre l’application rétroactive de sanctions pénales est prévu, ainsi que le droit d’une personne accusée d’une infraction d’être informée rapidement de cette accusation et d’être jugée dans un délai raisonnable. Le droit de vote et le droit de poser sa candidature aux élections fédérales et provinciales sont également assurés.

En enchâssant une Charte des droits et des libertés dans la Constitution, diminue-t-on les pouvoirs des assemblées législatives et ne donne-t-on pas trop de pouvoirs aux tribunaux?

Une Charte des droits inscrite dans la Constitution empêchera le Parlement et les assemblées législatives d’adopter des lois ou de prendre des mesures allant à l’encontre des droits des Canadiens ou les restreignant indûment. On peut donc dire qu’en ce sens, les pouvoirs des assemblées législatives et du Parlement à Ottawa seront diminués.

Cependant, la Charte n’empêche nullement les assemblées législatives ou le Parlement d’ajouter des droits ou de leur assurer une meilleure protection. Il y a lieu d’ajouter qu’à une époque où les activités gouvernementales influencent presque tous les aspects de notre vie économique et sociale, on ne peut laisser à une majorité l’entière liberté d’agir au détriment des droits d’une minorité, que ce soit intentionnellement ou par inadvertance. Dans une telle éventualité, il est normal que les victimes demandent réparation en s’adressant aux tribunaux. Il est traditionnel que les tribunaux règlent les disputes entre les citoyens et l’État; à l’avenir, ils disposeront d’une Charte qui les guidera dans ce travail. Mais la question n’est pas de savoir si une Charte des droits inscrite dans la Constitution donnera plus de pouvoirs aux tribunaux ou en retirera aux assemblées législatives. L’important est que, désormais, les gouvernements, les assemblées législatives et les tribunaux seront tenus de respecter et de protéger les droits de tous les Canadiens.

Pourquoi est-il nécessaire d’inscrire la liberté de circulation et d’établissement dans la Charte?

La majorité des Canadiens tiennent pour acquis qu’ils ont toujours eu le droit de s’établir et de travailler n’importe où au Canada, ainsi que le droit de demeurer au pays et d’en franchir les frontières comme bon leur semble. Or, les Canadiens s’aperçoivent que ce qu’ils croyaient être un «droit» est en fait une simple question d’usage.

Les provinces créent de plus en plus d’entraves à la libre circulation; en effet, certaines d’entre elles ont, par exemple, adopté des politiques d’emploi préférentielles dans certains domaines. Une province qui créait une entrave à la libre circulation des Canadiens résidant dans une des autres provinces peut inciter une autre province à user de représailles. Une telle situation, si elle se poursuit, risque d’enlever toute signification à la notion de la citoyenneté canadienne unique. Le fait d’être Canadien ne peut avoir un sens que si la liberté de se déplacer partout dans le pays est protégée.
En inscrivant la « liberté de circulation et d’établissement » dans la Charte, le droit fondamental à la citoyenneté sera garanti.

Que dit-on des droits linguistiques dans la Charte?

La Charte reconnaît que le français et l’anglais sont les langues officielles du Canada. Elle garantit le maintien de tous les droits linguistiques actuels, d’origine constitutionnelle ou législative, ayant trait aux institutions du Parlement et du gouvernement du Canada. Elle prévoit aussi que, là où des minorités linguistiques ont joui de droits historiques — comme la population anglophone du Québec ou la population francophone du Manitoba — la Constitution continuera de protéger ces droits. La Charte ne contient aucune disposition précise permettant d’étendre ces droits à d’autres provinces. Toutefois, si une province veut que ces droits soient inscrits dans la Constitution, il existe une clause générale dans la formule provisoire, ainsi que dans la procédure qui s’inspire en principe de la formule de Victoria visant à modifier la Constitution avec le consentement du Parlement et de l’assemblée législative de cette province. Enfin, la Charte n’entrave pas les droits et privilèges présents et futurs des citoyens d’utiliser toute autre langue, comme le cri, l’inuktitut, ou l’ukrainien, et elle assure en particulier le droit d’avoir un interprète lors de procédures.

Que dit la Charte des droits à l’instruction dans la langue de la minorité?

Au Québec, les citoyens dont la première langue apprise et encore comprise est l’anglais pourront faire instruire leurs enfants en anglais, là où le nombre le justifie. Dans les neuf autres provinces, ainsi qu’au Yukon et dans les Territoires du Nord-Ouest, les citoyens dont la première langue apprise et encore comprise est le français jouiront du même droit de faire instruire leurs enfants en français. Ce droit constitu-

tionnel de choisir la langue d’enseignement n’est toutefois pas reconnu aux personnes qui ne sont pas citoyens canadiens ni à celles appartenant à la majorité linguistique de la province. Ainsi, une province demeurerait libre d’exiger que les enfants des immigrants fréquentent les écoles où l’on enseigne la langue de la majorité de cette province, et que les enfants qui appartiennent à la majorité linguistique de cette province soient instruits dans cette langue. Une disposition de la Charte prévoit aussi que les citoyens qui déménagent d’une province à l’autre puissent continuer de faire instruire leur famille dans la langue dans laquelle leur instruction a débuté, en français ou en anglais, selon les possibilités. Bien entendu, la Charte ne limitera en aucune façon le droit des parents de faire instruire leurs enfants dans la langue de la majorité de la province. Elle n’interdira pas non plus de quelque façon que ce soit l’usage ou l’enseignement des langues de la majorité et de la minorité, ou même d’autres langues. La Charte n’empêchera pas non plus une province d’offrir à sa population le choix de l’une ou l’autre des langues officielles en matière d’enseignement.

Pourquoi est-il nécessaire d’inclure la question de la langue d’enseignement dans la Charte?
Ne vaudrait-il pas mieux qu’elle soit réglée entre des provinces, au moyen d’accords réciproques?

Le gouvernement du Canada soutient fermement que seule une modification de la Constitution assurera définitivement aux Canadiens le respect de certains droits linguistiques fondamentaux des minorités partout au pays. Des accords réciproques ne donneraient aucune garantie contre les modifications qui pourraient découler de changements politiques ou sociaux à court terme, ni contre le retrait d’une province qui estimerait que son engagement n’a plus de raison d’être. De plus, bien que des discussions se poursuivent depuis 1977 sur les accords réciproques, aucun accord n’existe actuellement. La Charte prévoit en fait l’entrée en vigueur du principe des droits à l’instruction
La Charte protège-t-elle les droits des autochtones?

Il est précisé que rien dans la Charte ne peut annuler des droits ou libertés qui existent déjà au Canada, et tout particulièrement en ce qui a trait aux autochtones. Ceux-ci sont donc assurés que l’inscription de la Charte dans la Constitution leur procurera la même protection qu’à tous les Canadiens, mais aussi qu’ils ne perdront aucun des droits dont ils peuvent jouir à présent. Le gouvernement fédéral va poursuivre ses entretiens avec les groupes autochtones pour voir s’il y a lieu d’inclure dans la Charte des droits supplémentaires propres aux autochtones.

La péréquation et les inégalités régionales

La redistribution aux provinces les moins riches d’une partie de la richesse du pays en utilisant les revenus fédéraux est une pratique bien acceptée. Depuis 1957, le gouvernement fédéral a versé, sans aucune condition, des paiements de transfert, connus sous le nom de paiements de péréquation, pour permettre à toutes les provinces de fournir des services publics satisfaisants sans avoir recours à une taxation excessive. Cette pratique est si bien établie à l’heure actuelle qu’elle apparaît comme l’un des principes fondamentaux du fédéralisme canadien.

La Loi constitutionnelle de 1980 inclut le principe de la péréquation et oblige les deux ordres de gouvernement à :
— favoriser l’égalité des chances des Canadiens pour leur bien-être ;
— favoriser le développement économique pour réduire l’inégalité des chances ;
— fournir à tous les Canadiens des services publics essentiels de qualité acceptable.

Comment les changements entreront-ils en vigueur?

On ne se rend pas toujours compte que l’Acte de l’Amérique du Nord britannique, qui est une loi britannique promulguée en 1867, n’est en fait qu’une partie de notre Constitution. Il faut y ajouter les lois qui ont modifié la Loi de 1867 et qui ont été adoptées par le Parlement du Royaume-Uni et, à l’occasion, par le Parlement du Canada ou l’assemblée législative d’une province. Certaines lois britanniques, comme le Statut de Westminster de 1931 et certaines lois canadiennes fondamentales comme celles établissant les provinces du Manitoba, de l’Alberta et de la Saskatchewan font aussi partie de notre Constitution.

Lorsqu’on parle de « rapatrier » la Constitution, on ne parle pas, à vrai dire, de ramener au Canada une pile de documents. Le rapatriement signifie en fait deux choses :
• rompre le dernier lien entre les Parlements britannique et canadien en ce qui concerne les modifications de la Constitution du Canada ;
• confirmer la Constitution comme loi canadienne et adopter une formule d’amendement permettant de changer ici même les parties de la Constitution qui ne pouvaient l’être auparavant que par le Parlement britannique.

Le rapatriement de la Constitution peut être réalisé par une demande émanant du Sénat et de la Chambre des communes, (appelée adresse commune) présentée à la Reine, demandant au Parlement britannique d’adopter une loi, intitulée Loi sur le Canada. Cette loi transférera au Canada le pouvoir absolu de modifier la Constitution canadienne, et garantira qu’aucune loi britannique ne fera, à l’avenir, partie du droit au Canada. Ce changement se reflétera de façon symbolique dans le titre que porteront les anciennes lois : à l’avenir, l’Acte de l’Amérique du Nord britannique et les lois le modifiant seront connus sous le nom de Lois constitutionnelles de 1867 à 1975. De plus, la Loi constitutionnelle de 1980, comprenant la Charte des droits et libertés, la formule d’amendement proposée et le principe de la péréquation et des inégalités régionales, sera
elle aussi ajoutée à la Constitution. La procédure pour apporter ces changements est la suivante:

Une motion proposant la création d'un Comité spécial mixte, composé de députés de la Chambre des communes et de sénateurs, sera inscrite à l'ordre du jour des deux chambres du Parlement. Ce comité discutera et étudiera en détail le projet de résolution ci-mentionné. Il devra terminer ses travaux et en soumettre les résultats à la Chambre des communes et au Sénat le 9 décembre 1980. Si le comité recommande l'adoption du projet de résolution, avec ou sans modifications, et que la Chambre des communes et le Sénat entérinent la recommandation, cette acceptation se traduira par une demande ou une adresse commune. Le gouvernement du Canada fera parvenir l'adresse commune à la Reine. Le gouvernement britannique demandera alors au Parlement de Westminster d'adopter la Loi sur le Canada, comme demandé, afin qu'elle puisse entrer en vigueur au Canada à la date prévue par proclamation du gouverneur général.

Cette procédure permettra le transfert légal au Canada de tout pouvoir sur la Constitution. Pour la première fois, le Canada aura une Constitution bien à lui.
October 2, 1980.

The attached background paper has been prepared by the Department of External Affairs. The purpose of the paper is to explain the relationship between the Canadian and United Kingdom Parliaments in connection with the patriation of the Constitution of Canada.
October 2, 1980

BACKGROUND PAPER

PATRIATION OF THE BRITISH NORTH AMERICA ACT

A. INTRODUCTION

The principal document making up Canada's constitution is the British North America Act of 1867 and the various amendments to the BNA Act made since that date. There are, of course, several other pieces of legislation which also make up Canada's constitution, but in essence reference in public discussion to the constitution of Canada is to the British North America Act, comprising the Act of 1867 and its several amendments.

The British North America Act is a statute of the United Kingdom Parliament, a so-called Imperial Statute because it was passed by Westminster and applied to what was then a British colony, Canada. In certain limited areas the BNA Act itself allows for amendments to be made to it directly by the Parliament of Canada and by provincial legislatures. However, all of the elements of the BNA Act central to the federal system can only be amended by the United Kingdom Parliament. These are the so-called "entrenched" provisions, which set out the division of legislative powers as between the Parliament of Canada and the provincial legislatures and which provide certain fundamental guarantees respecting language and education rights. Since 1867, numerous amendments to the BNA Act have been made by the U.K. Parliament, including amendments to the entrenched provisions.

Important to an understanding of the contemporary constitutional situation in Canada is the effect of the Statute of Westminster, passed by the British Parliament in 1931. The Statute of Westminster does two things. First, it recognizes the full sovereignty and legislative autonomy of all of the self-governing member states or Dominions of the Commonwealth. It gives them the power to pass laws even if such laws override pre-existing Imperial laws. Second, it ensures that no law of the Parliament of the United Kingdom can in future extend to a Dominion unless requested and consented to by that Dominion. However, because of the lack of agreement in Canada at that time on an amending formula for the Canadian constitution, the full legislative powers conferred upon the Parliament of Canada and upon the legislatures of the Canadian provinces under the Statute of Westminster were especially restricted under section 7 of the Statute. This restriction was inserted at the request of the Canadian delegates at the 1930 Imperial Conference. It was done so as to avoid the possibility of the provisions of the BNA Act being unilaterally amended, repealed or altered by the Canadian Parliament or by the provincial legislatures as ordinary statutes under their enhanced legislative powers conferred upon these bodies by the Statute of Westminster.

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The formal, legal effect of the foregoing provision means that the Colonial Laws Validity Act, 1865--by which any colonial law which is repugnant to an Imperial Statute specially extending to the colony is rendered void and inoperative--continues to be in force in respect of the BNA Act. The result is that at the present time neither the Parliament of Canada nor the legislatures of Canada's provinces can pass laws repealing, amending or altering the central provisions of the BNA Act. To do so still requires an act of the U.K. Parliament.

B. THE PROCESS OF AMENDING THE BNA ACT

Apart from the enactment of the BNA Act itself in 1867, there have been twenty-one enactments by the U.K. Parliament and one Imperial Order in Council (under section 146 of the BNA Act) which constitute amendments or additions to the Canadian Constitution.

While, as previously stated, only the U.K. Parliament can enact amendments to the BNA Act, it has long been the practice that such enactments can only be made at the request and consent of Canada. This procedure was followed prior to the enactment of the Statute of Westminster, 1931. Constitutional experts agree that the requirement for request and consent has now become enshrined in British and Canadian constitutional practice as a convention. A constitutional "convention", as learned authors have pointed out, consists of customs, practices, maxims or precepts which, although not enforceable by the courts, nonetheless govern the workings of the constitution.

How is such request and consent manifested? It has become settled Canadian constitutional convention that the request for and consent to constitutional amendment by the U.K. Parliament must come from the federal legislative branch in Canada, i.e. the Canadian House of Commons and Senate. By the same constitutional convention the federal executive may not by itself formulate such a request. This rule requiring a request from the Canadian Parliament was originally established in 1871 when a joint address was made from both Houses of Parliament in Canada to the British sovereign to secure the first amendment to the BNA Act. Although two subsequent amendments in 1875 and 1895--were secured on address made by the Canadian executive alone to the Imperial Government, the original practice has been used in all subsequent requests for amendment. It is now settled constitutional convention that the proper procedure is for an address to be made by both Houses of Parliament in Canada requesting and consenting to the proposed constitutional amendment. The present address is therefore formulated as a joint address--that is, an address adopted in identical terms by both Canadian Houses of Parliament.

To whom is given such request and consent for constitutional change given? The Canadian address requesting a particular amendment is made by both Houses of Parliament in Canada and presented through appropriate means to the U.K. Parliament. The actual procedure is for the Federal Government...
to present a resolution for adoption by the House of Commons and the Senate. The resolution is formulated as an address to the Queen, praying that the appropriate measure be laid before the U.K. Parliament. Once the resolution is adopted by both Houses of Parliament in Canada, the request is transmitted simultaneously by the Governor General to Her Majesty and by the Government of Canada to the U.K. Government through normal diplomatic channels. The address to the Queen in the present instance is styled as coming from "the Senate and the House of Commons of Canada in Parliament assembled".

Together with the address to Her Majesty from the Canadian Parliament, a bill is also drafted by the Federal Government and included with the joint address. Since 1930, it has become practice to include in the bill which is sent with the joint address a preamble reciting that the Senate and Commons of Canada in Parliament assembled have submitted an address to the Sovereign praying for the enactment of the provisions thereafter set forth. The present bill, forwarded together with the joint address, recites in the preamble that Canada has requested and consented to the measure and that the Senate and House of Commons of Canada have submitted an address to the Queen requesting that the measure be laid before Parliament.

C. PATRIATION OF THE BNA ACT

The search for an amending formula for the Canadian constitution is very much part of the entire patriation debate. Both should be seen as part of the same issue. An amending formula, which allows for changes to be made to Canada's constitution in Canada and by Canadians and without the necessity of referring the matter to the United Kingdom Parliament, will ensure in a very real sense that the constitution belongs to Canada because only Canada as a nation will have the legal authority to alter or amend it.

Mere patriation of the constitution without an amending formula—simply terminating the formal authority of the U.K. Parliament to amend the BNA Act—would not make the constitution a workable Canadian document for the future. Patriation of the constitution with the absence of an amending formula would place the Government of Canada and the governments of the provinces into a kind of constitutional straight-jacket. It would simply perpetuate the present stalemate among the two levels of government in Canada and make it impossible for Canadians to alter their own constitutional document. There would be no procedures in the constitution outlining how such changes are to be made.
For over fifty years, Canadians have been struggling with the problem of patriation and of finding an amending formula for their constitution. The first attempt at resolving this fundamental problem was made at a federal-provincial conference in 1927 which aimed at fulfilling the objectives of the 1926 Balfour Declaration by transferring to Canada full legal power over its constitution. Absence of agreement of all the provinces over an amending formula resulted in failure of this first attempt. The next round of dominion-provincial conferences in 1931 examined the legal implications of the proposed Statute of Westminster on federal and provincial legislative powers. As a result of the conference and pending agreement within Canada on an amending formula, section 7, paragraph 1, of the Statute of Westminster was drafted so as to modify full Canadian legislative sovereignty as reflected in that statute and preserve British legislative supremacy in Canadian constitutional matters.

Further attempts to reach agreement on patriation plus an amending formula by means of federal-provincial conferences convened in 1935-36 and in 1950 also failed to achieve results.

The next attempt to agree on patriation and an amending formula took place in 1960-61 through a further series of federal-provincial meetings. The result of these meetings was the drafting of the Fulton Formula for amending the constitution. While the Fulton Formula had wide support, it did not, however, receive unanimous approval of the provinces. At a subsequent round of federal-provincial conferences in 1964 the Fulton Formula was redrafted and became the Fulton-Pavreau Formula. This new draft had wide acceptance and was approved by the legislatures of all provinces except Quebec.

The federal-provincial conference of 1968 embarked upon yet another search for an acceptable amending formula. In the context of a wide-ranging examination of the entire Canadian constitution, it attempted to build upon the earlier efforts, particularly those in 1960-61 and 1964 which had produced the Fulton Formula and the Fulton-Pavreau Formula. This round of constitutional talks lasted from 1968 to 1971, meeting frequently as a full conference at first minister level and at the committee and sub-committee levels. The result of this intensive round of constitutional talks was the Canadian Constitutional Charter, 1971, otherwise known as the Victoria Charter. The Victoria Charter reflected consensus on numerous elements of a revised constitution, including, of course, patriation and an amending formula. While consensus on all of these elements was reached at the conference itself, Quebec subsequently indicated it could not accept the Charter.
Further attempts at reaching agreement on patriation and an amending formula and on other elements of constitutional change were initiated by the federal government in 1975–76 and again in 1978–79. While numerous meetings of ministers and officials took place at this latter round, little was resolved, particularly on the question of the amending formula and patriation. The latest round of constitutional talks began in June, 1980 and continued at ministerial and official levels throughout the summer. These meetings culminated in the first ministers' meeting of September 8-12, 1980. Numerous items of constitutional change were discussed at this latest conference and while consensus on certain items appeared near, there was no overall agreement reached on a complete package of measures for constitutional reform or on an amending formula.

It is worth noting that several important and in-depth studies on the Canadian constitution have dealt with the issue of patriation. The 1972 Final Report of the Special Joint Committee of the Senate and of the House of Commons on the Constitution and the 1978 Report of the Committee on the Constitution of the Canadian Bar Association both contain specific recommendations that the Canadian Constitution should be patriated. The 1979 Report of the Task Force on Canadian Unity (Pepin-Robarts) did not formulate specific recommendations regarding patriation, but clearly envisaged the proposals contained in the report as being embodied in "a new Constitution which should be adopted in Canada".

D. THE MECHANICS OF PATRIATION

Patriation in simple terms, and as reflected in the present measure before Parliament, involves a procedure whereby a statute is adopted by the U.K. Parliament on request from the Canadian Parliament by which;

(a) an act entitled the Constitution Act, 1980 is given the force of law in Canada, continuing the existing provisions of the BNA Acts together with the important additions of an amending formula and a charter of rights;

(b) the U.K. Parliament recognizes that no future act by that Parliament shall extend to Canada as part of Canadian law;

(c) section 7(1) of the Statute of Westminster, 1931, which preserves the legislative supremacy of the U.K. Parliament insofar as the BNA Acts are concerned, is repealed;...

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(d) provision is made that after the new
U.K. legislation is given Royal Assent
by the Queen, the Constitution Act will
come into force in Canada upon proclama-
tion by the Governor General.

E. PROVINCIAL INVOLVEMENT IN THE CONSTITUTIONAL
AMENDING PROCESS

By constitutional convention and in accordance
with Canada's sovereign status the U.K. Parliament
cannot on its own volition enact an amendment to the
Canadian Constitution without a formal request from
both Houses of Parliament. Further, it is clear that
by constitutional convention provincial authorities—either executive or legislative—have no standing to
directly request on their own behalf that the U.K.
Government pass an amendment or refuse to pass an
amendment to the Constitution. The British Government,
in accordance with correct constitutional convention,
will decline to act on any such provincial requests
for constitutional amendment. To not do so would consti-
tute a direct interference in Canadian internal affairs.

It is useful to illustrate the above rule by
referring to the recent case of the proposal to amend
the BNA Act to abolish the Upper House in Quebec. In
1965, the Quebec legislature formulated an address to
the Queen requesting that the BNA Act be amended to
abolish the Quebec Legislative Council. The Government
of Quebec had failed to secure the passage of the
necessary legislation because of the Legislative Council's
refusal to assent to the abolition legislation. While
the address was directed to the Queen, by convention
only the Governor General on advice from the federal
Cabinet could transmit the address. In addition, unless
the federal government was agreeable to the British
government taking steps to introduce legislation as
requested, the British government could not have taken
any action on the basis of the Quebec request. In
this instance, the federal government agreed to the
Governor General transmitting this provincial address
to the Queen as a proper request from a constitutional
point of view, concerning purely a matter of concern
to the Province and not involving in any manner the
legislative powers of the province or the constitutional
division of powers as between the federal government
and the provinces, and only coming as a result of the
Quebec Government's bona fide inability to obtain con-
currence of the Upper House to its own abolition. Had
the request not been so narrowly defined to deal with
a matter entirely within provincial concern, it likely
would not have been transmitted by the Governor General
with favourable advice from the federal government
that the requested measure be presented in the U.K.
Parliament.
Apart from the 1965 address from the Quebec legislature there have been numerous unilateral provincial requests for constitutional amendment addressed to the Crown. However, the U.K. Government has consistently and correctly refused to act on them in the absence of concurrence in the request by the federal government. The first of such requests was made by the Nova Scotia House of Assembly in 1868, asking the Queen to request Parliament to abolish the BNA Act insofar as it applied to that province. The Governor General forwarded the request to London but the British Government did not, of course, accede to the province's request. Two attempts by Nova Scotia, in 1879 and 1894, to obtain an amendment to the BNA Act abolishing the Upper House of the Province by direct address to the Queen by the Provincial Assembly were unsuccessful, the British Government refusing to act on them in the absence of a favourable recommendation by the federal government. Several other requests formulated by provincial legislatures were similarly turned down. Thus, an address by the legislature of Ontario (1869), a "complaint" made to London by the British Columbia Government (1874), addresses by Prince Edward Island (in 1877 and 1886), addresses by Nova Scotia and New Brunswick (following the Interprovincial Conference of 1888), were all forwarded to London but since none had the express concurrence of the federal government in Canada they were all ignored by the British Government.

At this point, it is important to emphasize that there are two distinct issues regarding constitutional amendment, including patriation, and the role of the provinces in the process. The first set of issues concerns the relationship between the Canadian Parliament and the British Parliament. As has been shown, the provinces have no standing in the amendment or patriation process insofar as the British Government or Parliament are concerned. To begin with, the provinces have no right to propose constitutional amendments to the U.K. on their own. Moreover, for the provinces to expect the British Government or Parliament to pay heed to provincial views on amendments or patriation as proposed by the Parliament of Canada would be asking the British Government to breach a long-standing convention and to interfere in Canadian internal affairs. The British Government and Parliament must be concerned only with a request which comes to them from the Canadian Parliament in accordance with proper constitutional convention. As was correctly stated by the government spokesman in the British House of Commons in 1943 when introducing legislation amending the BNA Act and when asked about the opposition expressed by the Legislative Assembly and the Government of Quebec to the proposed amendment:

"I suggest that it is really improper in the present circumstances for the House to ques
tion the discretion of a sovereign Parliament in the Commonwealth of Nations. It is only

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owing to a technical legislative peculiarity that it comes to the House at all, and it is very improper that the House should question the discretion of a national and absolutely sovereign Parliament."

Similarly, statements made on behalf of the British Government in the House of Commons on June 10, 1976, and in the House of Lords on July 25, 1979, clearly stated the British Government's position to the effect that if a request for amendment were received from the Canadian Parliament, the British Government would be bound to introduce the measure and the British Parliament would be bound to enact it in compliance with the request.

The second set of issues concerns the role of the provinces in the constitutional amendment process as far as internal Canadian constitutional procedures are concerned. Here, it is important to recall that there have been eighteen amendments to the BNA Act adopted by Parliament at Westminster. Of these, only four instances involved the unanimous consent of the provinces: unemployment insurance, 1940; old-age pensions, 1951; retirement age for provincial Superior Court judges, 1960; and the addition of supplementary benefits to old-age pensions, 1964. The Statute of Westminster, 1931 (which was not an amendment to the BNA Act, of course) also involved the unanimous consent of the provinces, bringing the total number of cases of unanimous provincial consent to five. The 1907 amendment requested by the Canadian Parliament was approved by all the provinces except British Columbia and was passed by the U.K. Parliament nonetheless (with a minor change in wording to attempt to accommodate the province's concerns). The BNA Act, 1930, transferring resources to the four western provinces, had the consent only of those four provinces. The BNA Act, 1949 confirmed the terms of union between Newfoundland and Canada and had the consent of that province only. None of the other constitutional amendments - in 1878, 1871, 1875, 1886, 1893, 1895, 1915, 1916, 1927, 1946, 1949 (No. 2), and 1950 involved the securing of provincial consent, unanimous or otherwise.

At the present time in Canada the degree of provincial concurrence needed on matters of constitutional change has not been finally defined. But whatever the force of the different arguments over the proper usage or practice regarding provincial involvement in the amending process, it remains strictly a matter of internal concern to Canada. And because the role of the provinces in matters of constitutional reform is strictly a domestic matter, it is consequently of no concern to either the U.K. Government or the U.K. Parliament. The British Government...
and Parliament must accept the constitutional validity of a request coming from the Canadian Parliament and not look behind the request or question it in any manner. To do otherwise would amount to second-guessing the views of a sister parliament within the British Commonwealth and would constitute interference in internal Canadian affairs.

CONCLUSIONS

The present position of the British Government and Parliament in relation to Canada and the Canadian constitution can be briefly summarized as follows:

(a) Canada is a sovereign, independent, fully autonomous state, as recognized by the Statute of Westminster, 1931 and by the evolution of that independent status in law and practice.

(b) For reasons related to Canada's situation as a federal state—with both the federal and provincial legislatures enjoying plenary law-making powers within their areas of jurisdiction, as set out in the BNA Act—the power of amending entrenched provisions of the constitution was withheld from the Canadian Parliament and the provincial legislatures under section 7 of the Statute of Westminster, 1931.

(c) The Canadian constitution in most respects remains an act of the British Parliament and its entrenched provisions can be amended only by the British Parliament.

(d) However, by constitutional convention and by reason of Canada's sovereign status:

(i) the British Parliament cannot act to amend the Canadian constitution except when requested to do so by the federal authorities, normally in a joint address to the Queen by both Canadian Houses of Parliament;

(ii) The British Parliament is bound to act in accordance with a proper request from the federal government and cannot refuse to do so.

(e) The British Parliament or Government may not look behind any federal request for amendment, including a request for patriation of the Canadian constitution. Whatever role the Canadian provinces might play in constitutional amendments is a matter of no consequence as far as the U.K. Government and Parliament are concerned.
Government Notice of Motion

The Minister of Justice

That a Special Joint Committee of the Senate and of the House of Commons be appointed to consider and report upon the document entitled "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" published by the Government on October 2, 1980, and to recommend in their report whether or not such an Address, with such amendments as the Committee considers necessary, should be presented by both Houses of Parliament to Her Majesty the Queen;

That 15 Members of the House of Commons to be designated no later than three sitting days after the adoption of this motion be members on the part of this House of the Special Joint Committee;

That the Committee have power to appoint from among its Members such sub-committees as may be deemed advisable and necessary and to delegate to such sub-committees all or any of their powers except the power to report directly to the House;

That the Committee have power to sit during sittings and adjournments of the House of Commons;

That the Committee have power to send for persons, papers and records, and to examine witnesses and to print such papers and evidence from day to day as may be ordered by the Committee;

That the Committee submit their report not later than December 9, 1980;

That the quorum of the Committee be 12 members, whenever a vote, resolution or other decision is taken, so long as both Houses are represented and that the Joint Chairmen be authorized to hold meetings, to receive evidence and authorize the printing thereof, when 6 members are present so long as both Houses are represented; and

That a Message be sent to the Senate requesting that House to unite with this House for the above purpose, and to select, if the Senate deems it to be advisable, Members to act on the proposed Special Joint Committee.
Qu'un Comité spécial mixte du Sénat et de la Chambre des Communes soit institué pour examiner le document intitulé "Projet de résolution portant adresse commune à Sa Majesté la Reine concernant la Constitution du Canada", publié par le gouvernement le 2 octobre 1980, faire rapport sur la question, et faire des recommandations dans son rapport quant à l'opportunité, pour les deux Chambres du Parlement, de présenter à Sa Majesté cette adresse, modifiée, le cas échéant, par le Comité;

Que la Chambre des Communes désigne, dans les trois jours de séance qui suivent l'adoption de cette motion, quinze députés pour la représenter au sein du Comité spécial mixte;

Que le Comité soit autorisé à choisir parmi ses membres ceux qui feront partie des sous-comités qu'il peut estimer opportuns ou nécessaires et à déléguer à ces sous-comités tout ou partie de ses pouvoirs sauf celui de faire rapport directement à la Chambre;

Que le Comité ait le pouvoir de siéger pendant les séances et les ajournements de la Chambre des Communes;

Que le Comité soit autorisé à convoquer des personnes, à exiger la production de documents et pièces, à interroger des témoins et à faire imprimer au jour le jour les documents et témoignages qu'il juge à propos;

Que le Comité fasse rapport au plus tard le 9 décembre 1980;

Que le quorum du Comité soit fixé à douze membres, à condition que les deux Chambres soient représentées pour les votes, résolutions ou autres décisions, et que les coprésidents soient autorisés à tenir des réunions, recevoir des témoignages et en autoriser l'impression lorsqu'au moins six membres sont présents, à condition que les deux Chambres soient représentées; et

Qu'un message soit envoyé au Sénat l'invitant à se joindre à la Chambre aux fins énumérées ci-dessus, et à désigner, si la chose lui paraît souhaitable, certains de ses membres pour faire partie de ce Comité spécial mixte.
Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

THE PRIME MINISTER

25005–2-10-80
Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Loi modifiant la Constitution du Canada

Sa Très Excellente Majesté la Reine, considérant:

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

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

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


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

4. Titre abrégé de la présente loi: Loi sur le Canada.
SCHEDULE B
CONSTITUTION ACT, 1980

PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Guarantee of Rights and Freedoms

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

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:
   (a) freedom of conscience and religion;
   (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of information; and
   (c) freedom of peaceful assembly and of association.

Democratic Rights

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

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.
   (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

ANNEXE B
LOI CONSTITUTIONNELLE DE 1980

PARTIE I
CHARTE CANADIENNE DES DROITS ET LIBERTÉS

Garantie des droits et libertés

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

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes:
   a) liberté de conscience et de religion;
   b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres grands moyens d'information;
   c) liberté de réunion pacifique et d'association.

Droits démocratiques

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

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

**Mobility Rights**

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

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

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

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

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

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

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

**Legal Rights**

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

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

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

10. Everyone has the right on arrest or detention

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

Vie, liberté et sécurité

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

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

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

10. Chacun a le droit, en cas d’arrestation ou de détention:

(a) d’être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
(b) to retain and instruct counsel without delay; and
(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Anyone charged with an offence has the right:
(a) to be informed promptly of the specific offence;
(b) to be tried within a reasonable time;
(c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
(d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;
(e) not to be found guilty on account of any act or omission that at the time of the 20 act or omission did not constitute an offence;
(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

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

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

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

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

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

Affirmative action programs

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

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

Official Languages of Canada

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

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

Proceedings of Parliament

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

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

Droits à la non-discrimination

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

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

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

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

Langues officielles du Canada

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

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

20. Chacun a, au Canada, à titre privé, droit à l'emploi de la langue officielle de son choix pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions situé dans une région du Canada où il est reconnu, conformément aux modalités prévues ou autorisées par le Parlement,
prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

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

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

**Minority Language Educational Rights**

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

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

**Maintien en vigueur de certaines dispositions**

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

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

**Droits à l’instruction dans la langue de la minorité**

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

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

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

General

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

Laws respecting evidence

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

Application to territories and territorial authorities

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

Legislative powers not extended

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

Application of Charter

29. (1) This Charter applies

(a) to the Parliament and government of Canada and to all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
(b) to the legislature and government of each province and to all matters within the authority of the legislature of each province.

Exception

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

Droits et libertés non expressément visés

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

Dispositions générales

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

Droit sur la preuve

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

Application aux territoires

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

Non-élargissement des compétences législatives

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

Application de la charte

29. (1) La présente charte s’applique:

a) au Parlement et au gouvernement du Canada, ainsi qu’à tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest;

b) à la législature et au gouvernement de chaque province, ainsi qu’à tous les domaines relevant de cette législature.

Restriction

(2) Par dérogation au paragraphe (1), l’article 15 ne s’applique que trois ans après l’entrée en vigueur, exception faite de la partie V, de la présente loi.
PART II
EQUALIZATION AND REGIONAL DISPARITIES

31. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;
(b) furthering economic development to reduce disparity in opportunities; and
(c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the government of Canada are committed to taking such measures as are appropriate to ensure that provinces are able to provide the essential public services referred to in paragraph (1)(c) without imposing an undue burden of provincial taxation.

PART III
CONSTITUTIONAL CONFERENCES

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

PART IV
INTERIM AMENDING PROCEDURE AND RULES FOR ITS REPLACEMENT

33. Until Part V comes into force, an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and by

PARTIE II
PÉRÉQUATION ET INÉGALITÉS RÉGIONALES

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

a) promouvoir l’égalité des chances de tous les Canadiens dans la recherche de leur bien-être;

b) favoriser le développement économique pour réduire l’inégalité des chances;

c) fournir à tous les Canadiens, à un niveau de qualité acceptable, les services publics essentiels.

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

PARTIE III
CONFÉRENCES CONSTITUTIONNELLES

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

PARTIE IV
PROCEDURE PROVISOIRE DE MODIFICATION ET RÈGLES DE REMPLACEMENT

33. Avant l’entrée en vigueur de la partie V, la Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat et de la Chambre des communes et par l’assemblée
the legislative assembly or government of each province.

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

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

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

36. Sections 33 and 34 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedure prescribed by section 33 shall be used to amend the Canadian Charter of Rights and Freedoms and any provision for amending the Constitution, including this section, and may be used in making a general consolidation and revision of the Constitution.

37. Part V shall come into force
(a) with or without amendment, on such day as may be fixed by proclamation issued pursuant to the procedure prescribed by section 33, or
(b) on the day that is two years after the day this Act, except Part V, comes into force, whichever is the earlier day but, if a referendum is required to be held subsection 38(3), Part V shall come into force as provided in section 39.

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

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

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

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

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

37. La partie V entre en vigueur à la première des dates suivantes:
(a) avec ou sans modification, à la date fixée par proclamation prise conformément à la procédure visée à l’article 33;
(b) deux ans après l’entrée en vigueur, excepté faite de la partie V, de la pré-40 sente loi.

Il demeure entendu que, si la tenue d’un référendum s’impose conformément au paragraphe 38(3), la partie V entre en vigueur conformément à l’article 39.
census, combined populations of at least eighty per cent of the population of all the provinces may make a single proposal to substitute for paragraph 41(1)(b) such alternative as they consider appropriate.

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

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

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

(b) the alternative proposed by the provinces,

shall be adopted.

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

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

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

40. (1) Sous réserve du paragraphe (2), le Parlement peut légiférer pour réglementer la tenue du référendum visé au paragraphe 38(3).
PART V
PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by
(a) resolutions of the Senate and House of Commons; and
(b) resolutions of the legislative assemblies of at least a majority of the provinces that includes
(i) every province that at any time 15 before the issue of the proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada,
(ii) at least two of the Atlantic provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Atlantic provinces, 25 and
(iii) at least two of the Western provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the 30 population of all the Western provinces.

(2) In this section,
"Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;
"Western provinces" means the provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

42. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the right to vote in a referendum held under subsection 38(3).

DROIT DE VOTE

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

PARTIE V
PROCÉDURE DE MODIFICATION DE LA CONSTITUTION DU CANADA

41. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée:
(a) par des résolutions du Sénat et de la Chambre des communes;
(b) par des résolutions des assemblées législatives d'une majorité des provinces; cette majorité doit comprendre:
(i) chaque province dont la population, avant la date de cette proclamation, représentait, selon un recensement général antérieur quelconque, au moins vingt-cinq pour cent de la population du Canada,
(ii) au moins deux des provinces de l'Atlantique dont la population confonde représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces,
(iii) au moins deux des provinces de l'Ouest dont la population confonde représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de l'ensemble de ces provinces.

(2) Les définitions qui suivent s'appliquent au présent article.
"provinces de l'Ouest" Les provinces du Manitoba, de la Colombie-Britannique, de la Saskatchewan et de l'Alberta.

42. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada.
Great Seal of Canada where so authorized by a referendum held throughout Canada under subsection (2) at which

(a) a majority of persons voting thereat, and

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

have approved the making of the amendment.

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

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

44. An amendment to the Constitution of Canada may be made by proclamation under subsection 41(1) or section 43 without a resolution of the Senate authorizing the issue of the proclamation if, within ninety days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those ninety days, the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing those ninety days.

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

Autorisation de référendum

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

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

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

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

Règles applicables aux procédures de modification
(2) A resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Rules for referendum

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

Right to vote

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

Limitation on use of general amending formula

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

Amendments by Parliament

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

Amendments by provincial legislatures

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

Matters requiring amendment under general formula

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

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
(b) the Canadian Charter of Rights and Freedoms;
(c) the commitments relating to equalization and regional disparities set out in section 31;
(d) the powers of the Senate;
(e) the number of members by which a province is entitled to be represented in the 45

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

5 Réglementation des référendums

Droit de vote

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

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

Restriction du recours à la procédure normale

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

Modification par le Parlement

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

Modification par les législatures provinciales

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

Procédure normale de modification

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

a) les fonctions de la Reine, celles du gouverneur général et celles des lieutenants-gouverneurs;
b) la Charte canadienne des droits et libertés;
c) les engagements énoncés, en matière de péréquation et d'inégalités régionales, à l'article 31;
d) les pouvoirs du Sénat;
e) le nombre de sénateurs représentant chaque province au Sénat et les conditions de résidence qu'ils doivent remplir;
Senate and the residence qualifications of Senators;
(f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province; and
(g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

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

52. (1) The Constitution of Canada includes
(a) the Canada Act;
(b) the Acts and orders referred to in Schedule I; and
(c) any amendment to any Act or order referred to in paragraph (a) or (b).

Consequential amendments

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

52. (1) La Constitution du Canada comprend:
(a) la Loi sur le Canada;
(b) les textes législatifs et les décrets figurant à l'annexe I;
(c) les modifications aux textes législatifs et aux décrets mentionnés aux alinéas a) ou b).

Amendments to Constitution of Canada

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

Repeals and new names

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

Consequential amendments

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

PART VI
GENERAL

52. (1) La Constitution du Canada comprend:

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

53. (1) Toute loi, sauf la Loi sur le Canada, qui fait mention d'une loi figurant à l'annexe I par le titre indiqué à la colonne I est modifiée par substitution à ce titre du titre correspondant mentionné à la colonne III; tout Acte de l'Amérique du Nord Britannique qui n'est pas mentionné à l'annexe I peut être cité sous le titre de Loi constitutionnelle suivi de
l'indication de l'année de son adoption et éventuellement de son numéro.

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

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

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

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

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

59. This Schedule may be cited as the 30 Constitution Act, 1980 and the Constitution Acts, 1867 to 1975 (No. 2) and this Act may be cited together as the Constitution Acts, 1867 to 1980.
<table>
<thead>
<tr>
<th>Item</th>
<th>Column I</th>
<th>Column II</th>
<th>Column III</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>British North America Act, 1867, 30-31 Vict., c. 3 (U.K.)</td>
<td>(1) Section 1 is repealed and the following substituted therefor: &quot;1. This Act may be cited as the Constitution Act, 1867.&quot;</td>
<td>Constitution Act, 1867</td>
</tr>
<tr>
<td>2.</td>
<td>An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c. 3 (Can.)</td>
<td>(1) The long title is repealed and the following substituted therefor: &quot;Manitoba Act, 1870.&quot;</td>
<td>Manitoba Act, 1870</td>
</tr>
<tr>
<td>3.</td>
<td>Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May, 1871.</td>
<td>British Columbia Terms of Union</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>British North America Act, 1871, 34-35 Vict., c. 28 (U.K.)</td>
<td>Section 1 is repealed and the following substituted therefor: &quot;1. This Act may be cited as the Constitution Act, 1871.&quot;</td>
<td>Constitution Act, 1871</td>
</tr>
<tr>
<td>5.</td>
<td>Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873.</td>
<td>Prince Edward Island Terms of Union</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880.</td>
<td>Adjacent Territories Order</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>British North America Act, 1886, 49-50 Vict., c. 35 (U.K.)</td>
<td>Section 3 is repealed and the following substituted therefor: &quot;3. This Act may be cited as the Constitution Act, 1886.&quot;</td>
<td>Constitution Act, 1886</td>
</tr>
</tbody>
</table>
## SCHEDULE I

**to the CONSTITUTION ACT, 1980—Continued**

<table>
<thead>
<tr>
<th>Item</th>
<th>Column I Act Affected</th>
<th>Column II Amendment</th>
<th>Column III New Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>The Alberta Act, 1905 4-5 Edw. VII, c. 3 (Can.)</td>
<td>Alberta Act</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>The Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.)</td>
<td>Saskatchewan Act</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>British North America Act, 1907, 7 Edw. VII, c. 11 (U.K.)</td>
<td>Section 2 is repealed and the following substituted therefor: &quot;2. This Act may be cited as the Constitution Act, 1907.&quot;</td>
<td>Constitution Act, 1907</td>
</tr>
<tr>
<td>14.</td>
<td>British North America Act, 1915, 5-6 Geo. V, c. 45 (U.K.)</td>
<td>Section 3 is repealed and the following substituted therefor: &quot;3. This Act may be cited as the Constitution Act, 1915.&quot;</td>
<td>Constitution Act, 1915</td>
</tr>
<tr>
<td>15.</td>
<td>British North America Act, 1930, 20-21 Geo. V, c. 26 (U.K.)</td>
<td>Section 3 is repealed and the following substituted therefor: &quot;3. This Act may be cited as the Constitution Act, 1930.&quot;</td>
<td>Constitution Act, 1930</td>
</tr>
<tr>
<td>16.</td>
<td>Statute of Westminster, 1931, 22 Geo. V, c. 4 (U.K.)</td>
<td>In so far as they apply to Canada, (a) the expression &quot;and Newfoundland&quot; in section 1 and subsection 10(3) is repealed; (b) section 4 is repealed; and (c) subsection 7(1) is repealed.</td>
<td>Statute of Westminster, 1931</td>
</tr>
<tr>
<td>17.</td>
<td>British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.)</td>
<td>Section 2 is repealed and the following substituted therefor: &quot;2. This Act may be cited as the Constitution Act, 1940.&quot;</td>
<td>Constitution Act, 1940</td>
</tr>
</tbody>
</table>

## ANNEXE I (suite)

**LOI CONSTITUTIONNELLE DE 1980**

<table>
<thead>
<tr>
<th>Colonne I</th>
<th>Loi visée</th>
<th>Colonne II Modification</th>
<th>Colonne III Nouveau titre</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Acte concernant l'Orateur canadien (nomination d'un suppléant) 1895, 2e session, 59 Vict, c. 3 (R.-U.)</td>
<td>La loi est abrogée.</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Acte de l'Alberta, 1905, 4-5 Ed. VII c. 3 (Canada)</td>
<td>Loi sur l'Alberta</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Acte de la Saskatchewan, 1905, 4-5 Ed. VII, c. 42 (Canada)</td>
<td>Loi sur la Saskatchewan</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Acte de l'Amérique du Nord britannique, 1943, 6-7 Geo. VI, c. 30 (R.-U.)</td>
<td>Dans la mesure où ils s'appliquent au Canada: a) l'expression &quot;et Terre-Neuvas&quot; à l'article 1 et au paragraphe 10(3) est abrogée; b) l'article 4 est abrogé; c) le paragraphe 7(1) est abrogé.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Statut de Westminster de 1931</td>
</tr>
<tr>
<td>17.</td>
<td>Acte de l'Amérique du Nord britannique, 1940, 3-4 Geo. VI, c. 36 (R.-U.)</td>
<td>L'article 2 est abrogé et remplacé par ce qui suit: &quot;2. Titre abrégé: Loi constitutionnelle de 1940.&quot;</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Column I Act Affected</td>
<td>Column II Amendment</td>
<td>Column III New Name</td>
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<tr>
<td>20.</td>
<td>British North America Act, 1949, 12-13 Geo. VI, c. 22 (U.K.)</td>
<td>Section 3 is repealed and the following substituted therefor: “3. This Act may be cited as the Newfoundland Act.”</td>
<td>Newfoundland Act</td>
</tr>
<tr>
<td>24.</td>
<td>British North America Act, 1960, 9 Eliz. II, c. 2 (U.K.)</td>
<td>Section 2 is repealed and the following substituted therefor: “2. This Act may be cited as the Constitution Act, 1960.”</td>
<td>Constitution Act, 1960</td>
</tr>
<tr>
<td>25.</td>
<td>British North America Act, 1964, 12-13 Eliz. II, c. 73 (U.K.)</td>
<td>Section 2 is repealed and the following substituted therefor: “2. This Act may be cited as the Constitution Act, 1964.”</td>
<td>Constitution Act, 1964</td>
</tr>
<tr>
<td>26.</td>
<td>British North America Act, 1965, 14 Eliz. II, c. 4, Part I (Can.)</td>
<td>Section 2 is repealed and the following substituted therefor: “2. This Part may be cited as the Constitution Act, 1965.”</td>
<td>Constitution Act, 1965</td>
</tr>
<tr>
<td>27.</td>
<td>British North America Act, 1974, 23 Eliz. II, c. 13, Part I (Can.)</td>
<td>Section 3, as amended by 25-26 Eliz. II, c. 28, 38(1) (Can.) is repealed and the following substituted therefor: “3. This Part may be cited as the Constitution Act, 1974.”</td>
<td>Constitution Act, 1974</td>
</tr>
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</table>

**LOI CONSTITUTIONNELLE DE 1980**

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<tr>
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</tr>
<tr>
<td>28.</td>
<td>British North America Act, 1975, 23-24 Eliz. II, c. 28, Part I (Can.)</td>
<td>Section 3, as amended by 25-26 Eliz. II, c. 28, s. 31 (Can.) is repealed and the following substituted therefor: &quot;3. This Act may be cited as the Constitution Act (No. 1), 1975.&quot;</td>
</tr>
<tr>
<td>29.</td>
<td>British North America Act, (No. 2), 1975, 23-24 Eliz. II, c. 53 (Can.)</td>
<td>Section 3 is repealed and the following substituted therefor: &quot;3. This Act may be cited as the Constitution Act (No. 2), 1975.&quot;</td>
</tr>
</tbody>
</table>
From the Private Secretary

6 October 1980

Dear Paul,

PATRIATION OF THE CANADIAN CONSTITUTION

As you know two Canadian Ministers, Messrs. MacGuigan and Roberts, called on the Prime Minister this afternoon to brief her on the intentions of the Canadian Government in respect of the patriation of the Canadian Constitution. Much of the discussion was taken up with a briefing from the two Canadians on the present state of play in Canada. Since this will be familiar ground, I do not propose to record it in detail. The main point was that, according to Mr. MacGuigan, the Canadian Government were requesting something which was in their judgement necessary for the survival of Canada in its present form. Commitments had been entered into viz-à-viz the electorate in Quebec which had to be honoured.

The Prime Minister commented that she had originally expected to be going to the Westminster Parliament with a straightforward request for patriation of the Canadian Constitution and no more. She thought this would have been relatively straightforward. But now she would have to add that the Canadian Government also wanted the Westminster Parliament to pass a Bill of Rights. Some one was certain to ask why the Canadian Parliament could not pass the Bill of Rights for themselves once the Constitution had been patriated. Mr. Roberts explained that the difficulty arose because of the amending formula which the Canadian Government would be instituting as part of their Constitutional proposals. This formula would necessarily be somewhat rigid in order to protect the position of the Provincial Governments. Once it was in place however it would be very difficult to secure the adoption of a Bill of Rights. This would have constitutional implications and could not, in a Federal structure, simply be passed by the Parliament in Ottawa.

The Prime Minister
The Prime Minister said that she took the point but was concerned lest she should be accused of interfering in Canadian internal affairs. Mr. Roberts said that the answer to any such accusation had to be that the British Government were responding to a joint resolution of the House of Commons and Senate of Canada. The surest way to provoke accusations of interference would be to reject such a request. In any case the proposed legislation was being placed before the Canadian Parliament today and it would now be impossible for the Canadian Government to consider removing the Bill of Rights from it. The Prime Minister commented at this point on the very short notice the British Government had been given of the Canadian Government's intentions.

Both the Prime Minister and Mr. Ridley noted that the addition of a Bill of Rights to the legislation being passed through the Westminster Parliament was likely to mean that the issue would become more controversial in this country and that, as a consequence, its passage would be more prolonged. Mr. MacGuigan said that the Canadian Government expected that the proceedings in the Canadian Parliament would be finished in January or February of next year and that the request for patriation would be made immediately thereafter. He hoped that if the request reached London no later than February there would be no difficulty in meeting the Canadian Government's deadline of 1 July for completion of the process as a whole. The Prime Minister told Mr. MacGuigan that this would not be an easy timetable to observe. The period in question would include both the Easter Recess and the Whitsun Recess and Parliament would be coping with the Budget and the Finance Bill. She had hoped that the request for patriation would be made before Christmas. At the very latest it should be no later than early January. She advised Mr. MacGuigan and Mr. Roberts to try to discuss the problems with the Chancellor of the Duchy of Lancaster before they returned to Canada.

There was some discussion about the forms of opposition that would be mounted against the legislation. Mr. Roberts said that within Canada the opposition would have three sources. There would be those, notably in Quebec, who would argue that no patriation should /be agreed until
be agreed until there had been a redistribution of powers between the Federal Government and the Provinces; there would be those who would argue that a Bill of Rights was inappropriate; and there would be those who would argue that patriation should not take place until various questions of resource allocation and of social and economic policy had been resolved. It would be open to those who were opposed to the legislation to contest the legality and constitutionality of what was proposed in the Canadian Courts. Outside Canada, those opposed to the new Bill could be expected to lobby British politicians actively. The Prime Minister asked whether there was likely to be an appeal in the Canadian Courts against the legality of what the British Government were going. Mr. Roberts said that this was not on the cards.

Mr. Ridley commented nonelessly that it would be very awkward if the British Parliament were to patriate a Constitution that the Canadian Courts might subsequently find illegal. Mr. Roberts acknowledged the point but repeated that a failure on the part of the British Government to respond to a request from the Canadian Government would involve the British Government more deeply than agreement to the request.

The Prime Minister made it clear that there was no question of the British Government refusing a request from the Canadian Government for patriation of their Constitution. The inclusion of the Bill of Rights might have made the situation more complicated but had not changed it in its essentials. She would refuse to get into any discussion of the merits of the proposals. We would do our best to meet the Canadian Government's timetable requirements. The simpler the Bill the better both from the point of view of avoiding controversy and of getting it through the Westminster Parliament quickly. Mr. Ridley made the point that it would be essential that whatever legislation was submitted by the Canadians should be right from the outset. It would be essential to avoid having to amend it during its passage through the Westminster Parliament.

In response to a question from the Prime Minister Mr. MacGuigan said that both Mr. Callaghan and Mr. Steel had pledged their support at an earlier stage. He would be seeing Mr. Callaghan again tomorrow.

/I am
I am sending copies of this letter to Murdo Maclean (Chief Whip's Office), Robin Birch (Office of the Chancellor of the Duchy of Lancaster), Bill Beckett (Law Officers' Department) and David Wright (Cabinet Office).

Johns ever

Michael Alexander

Paul Lever, Esq.,
Foreign and Commonwealth Office.
Mr. Alexander

You might like to glance at the side-lines passages of the Canadian press conference. The two Ministers made the point repeatedly that if the Canadian Parliament presents a Joint Resolution on patroliogy, then Ministers here had made it clear that we would not stand in the Canadian's way. Charter 1
Charles Anson

With the compliments of
THE NEWS DEPARTMENT

[Signature]

7.10.80

FOREIGN AND COMMONWEALTH OFFICE
LONDON, SW1A 2AH
PRESS CONFERENCE GIVEN BY
THE HON. MARK MACGUIGAN AND THE HON. JOHN ROBERTS
IN LONDON, ON OCTOBER 6TH, 1980

THE HON. MARK MACGUIGAN
(SECRETARY OF STATE FOR EXTERNAL AFFAIRS)

Ladies and Gentlemen,

I will be very brief in making a few opening comments. Then I will invite my colleague, the Hon. John Roberts, to do the same, and then we will take questions alternately as between us.

We are here to inform the British Government and the leaders of other British political parties about our proposed resolution concerning the Canadian constitution - not just as to its details, but as to the reasons why we are putting it forward. We are doing this as a courtesy to them, because of the fact that, after all, we are asking them to take the final step, not only with reference to this matter but really for all time as far as the Canadian constitution is concerned, and so, as a matter of courtesy, we have come to explain what we are about.

We also had - as many of you know - an opportunity yesterday of speaking with Her Majesty The Queen on the same subject and having quite a full meeting with her at Balmoral Castle.
There are just about two points I want to make of a general nature, some of which will be already familiar to those of you who spoke to us last night.

The first of those is that we do have a political mandate from the people of Canada for these changes, through the elections which have taken place in Canada, but this Resolution is far from being an implementation of our election platform in my political party. We have not gone nearly that far; there are many other things that we would like to do to the Canadian constitution. We have been very careful to exercise a great deal of self-restraint in not going beyond what we consider to be a necessary minimum and what is more, not trenching in any way on the rights of the provinces in favour of the Federal Government. This document that we are presenting is absolutely neutral as to the balance of powers between the Federal and Provincial Governments. What we are doing is limiting all Governments in favour of the people. There is a people's package of rights, people's rights with respect also to the amending procedure which will limit what all Governments can do and, of course, this includes the Federal Government as well as the Provincial Governments; and that has been recognized by the Premier of the largest province of Ontario who has singled us out for a commendation, saying that he would support our initiative and has stressed the fact that we have exercised self-
restrait, that we have not gone so far as we could have gone, and that we have listened to the things which the Provinces said to us during the Summer and have acted judiciously in accordance with those requests.

We had a good day today, meeting a number of British officials. All of the talks with all of the people proceeded on the common assumption that the existing constitutional convention involving action by the United Kingdom Parliament at the request of a Joint Resolution from both Houses of the Canadian Parliament, that that constitutional convention would be followed. We talked about all of the aspects of the Bill with all of the people we saw. I am sure you will want to ask some more questions about that and maybe there are even a few more things we can tell you, but that in general, is the kind of day that we had.

(Summary of the above in French)

Now, my Colleague, the Hon. John Roberts, who has had a lot of responsibility in this area in the last few months, I know would also like to address some remarks to you.
THE HON. JOHN ROBERTS

I think just, Ladies and Gentlemen, really to affirm really, two essential points: that our trip here is a trip of information and explanation, that we have provided to the Queen, to British political figures — including the Government — and to others, an explanation of the details of our proposals and why it is that we are proceeding in this way at this time.

We have had an extremely sympathetic response, considerable interest, a reiteration and reaffirmation of what is the constitutional position, an indication that there is no desire to look beyond or behind the Resolution that will be presented by the Parliament of Canada to the British Government and British Parliament. We were interested, in turn, in getting some appreciation from British political figures of the difficulties that they might have with the timetable. They clearly have a crowded agenda to their forthcoming Parliament and we were interested in getting some views from them about how quickly they might be able to proceed with presenting a Resolution or rather a Bill to the British Parliament on the basis of the Canadian Resolution and they, in turn, were anxious to know if we could give them some idea of how quickly Parliament in Canada might pass the Resolution which we today, in Canada, presented to the House of Commons.

(summary of the above in French)
QUESTION (in French)

MR. MACGUIGAN (reply in French)

Just a word in English to explain the question and the answer:

It was "What kind of anxieties were being expressed to us" and I was replying that the only anxieties, really, and the only problems that have arisen have been with respect to the timing of the procedures. We cannot say when the Canadian Parliament will have completed its study. Therefore, we cannot tell the British Government when they will be receiving it, and this poses certain problems for their timing of their parliamentary presentation, and this can be quite a complicated matter because their parliamentary time-table is at least as complicated as ours! But this is the difficulty that we have in that it probably will require further discussions - not necessarily face-to-face - but will require a keeping in touch of the Governments as to... as the events in the Canadian Parliament unfold.

(French) MR. ROBERTS (Then in English)

What I am really saying is that the questions which we have discussed - and on several occasions it was made absolutely clear to us - there is no desire to enter into the substance and to look behind the Resolution which the Parliament of Canada
presents to Great Britain, but there are concerns about their agenda, about when it would be fitted into their busy schedule, especially since we do not know when we will finish our debate in Ottawa, and some concern that if there are members of Parliament who want to bring forward particular views, that this may have some effect of retarding the parliamentary process. But that is a question of procedure which is entirely in their hands and one about which we really have no competence.

We were very pleased by the indications of support and goodwill expressed to us.

**QUESTION (....Radio)**

Did you get assurances from Prime Minister Thatcher that the Government will support the Joint Resolution when it is taken to Westminster?

**MR. ROBERTS**

We did not seek assurances; we did not come here to seek assurances. We came here to explain, to indicate what is happening, what was taking place. There is no need to seek those assurances since the British Government has affirmed, has recognized, the existing constitutional convention and without asking for reassurances it was made – as I said – clear to us again today that the British Government will follow the Joint Resolution passed by the House of Commons, Canada. They do not wish to and will not be drawn into
discussion on the substance of the issues underlying that Resolution.

MR. MACGUIGAN

I suppose it might be fair to say that the assurances were implicit rather than explicit. The whole discussion, as I mentioned, was on the basis of the existing convention and no-one at any time suggested any course of action other than that.

ANDREW WALKER (BBC WORLD SERVICE)

To some extent you have answered this question, but if I could just follow this up. In your background paper, everything you have said this evening, suggests that the Canadian Provinces have no part to play in this so far as the British Government and Parliament is concerned. Is that the view of the British Government as you understand it also?

ANSWER

I think it is implicit in what we have just said to you that the constitutional convention clearly recognized by the Government of Great Britain is that the British Parliament would act on a Joint Resolution passed by the House of Commons and Senate of Canada.

MICHAEL ??? (HALIFAX HERALD)

The Nova Scotian Premier, John Buchanan, is presently in town and I was talking to him this morning and he says -
and I invite your reaction to this - he said quite emphatically that the Provinces do have rights on this constitutional question, the right to protect the citizens and the powers granted to the Provinces by the British North America Act in 1867. Would you react to that, Sir?

**ANSWER**

Whatever rights that the Provinces have are to be debated within Canada and not here. Certainly, this is a valid question, a valid question for debate in the House of Commons and undoubtedly, some Members of Parliament will be raising that point within the next few weeks. We will have the judgment of Parliament sooner or later on that question. We are confident of the outcome and we are confident that we have the support of the Canadian people in the course which we are proposing.

**STEWART PARKINSON (.....News)**

Mr. Roberts, you were talking about the problem of the agenda. Did you get any indication from the British Government representatives how long it might take the British Parliament - both the House of Commons and the House of Lords - to pass such a Resolution?

**MR. ROBERTS**

I think I am being accurate in saying it was not so much a question of the length of time it would take to pass...
I do not think there was any fear of a greatly extended debate. It was a question of when, during the schedule, it would be possible to find those dates. My understanding is that the agenda of Parliament is already outlined until next Autumn, but not knowing that they would be receiving this kind of proposal from us, already in at least a tentative fashion the work program for Parliament has been set out, so that it will be a question of seeing whether it can be re-arranged to permit the very brief debate that will be required to do what we wish to do, and of course, it is very difficult for them to do that since we do not know when the Resolution will be passed by the Canadian House of Commons and the Canadian Senate and therefore cannot yet really give them a very good idea of when we will be able to send it to them.

So it is not a question of the length of the debate so much as a question of when in the whole schedule.

QUESTION

......in the process it will be how long the debate is likely to take?

MR. ROBERTS

I do not think there is much sense that the debate would take a very great length of time.
QUESTION

Are you in a position to give an assurance to British Ministers that the manner in which you propose they should act would not be construed in Canada as taking sides?

ANSWER

Yes, and not only that, but we could also give them the assurance that if they did not follow our recommendation — the recommendation which we are confident the Canadian Parliament will send — that that course of action would be extraordinarily unacceptable in Canada, because who after all more are/qualified to express the wishes of the Canadian people on the Canadian constitution — Members of the Canadian Parliament or Members of the British Parliament? The answer to that is self-evident.

QUESTION

In the discussions with Mrs. Thatcher today, was there any sense that they thought there might be some widespread opposition if the Provincial Governments come over here and spread their opposition to this measure in Britain?

ANSWER

I think you used the words "widespread opposition". I think on those terms, no. There is a feeling that there may be some Members of Parliament who, for a variety of reasons,
might take an action in Parliament or whatever, but I do not think that the impression would be widespread.

**QUESTION (in French)**

**ANSWER (in French)**

I was just saying: he was asking what we would do. Would we declare our independence unilaterally if the British refuse to accept our request for a constitutional amendment, and I said that that question simply could not arise because we already have an indication from the British that they accept the long-standing convention, that they will bring to the House as Government business whatever the Canadian Parliament requests in a Joint Address, so there is not going to be any question of that kind.

**QUESTION**

I think it was indicated by the Prime Minister and yourselves that in Parliament in Canada you hoped to complete the Joint Resolution by mid-December. That being the case, are you hopeful then that it will clear Westminster by July 1st, which is another hopeful date I think the Cabinet has?

**ANSWER**

I think there is an important point to be made here. I hope we can make it clearly. What we are proposing to the
House of Commons in Canada today is that the Committee Stage, the Joint Committee of the House of Commons and Senate, complete its work by December 9th, and its work will be important because that is where the details will be discussed and possible amendments would be discussed. But December 9th does not close off the debate; that is simply the date at which the Committee reports to the House of Commons. There then almost certainly will be extensive debate in the House of Commons on the Report of the Committee before the Committee Report is finally adopted. So you should not regard somehow December 9th as a cut-off date in Parliamentary procedure - it is only a cut-off for that first stage - which will be followed by what could be - what I hope will not be but what could be - an extensive discussion in the House of Commons after that date and there is also, of course, the Christmas Recess, which normally takes place fairly soon after the 9th December, and it is for that reason that we cannot really indicate at the present time to the British Government how long the debate in the House of Commons will continue. We know its first stage will be completed by December 9th; we do not know when the Resolution will be passed finally.

We would like very much to get it through as quickly as possible before the end of the year and like to get it to Great Britain early in January, but it is simply not possible for us to predict at the moment how feasible that will be.
QUESTION

Did you receive from people you spoke to today, any indication that there had been provincial lobbying on the other side, and after another day in London, what is your estimate of the chances of extensive provincial lobbying here?

ANSWER

We did receive an awareness from the people with whom we spoke today that there was likely to be provincial lobbying. They have heard rumours to this effect, as you have and as we have, but none of us have any real knowledge of it. Provinces are meeting in two weeks' time, I believe, to decide on their strategy and I do not think anyone can predict at this point.

With respect to the effect of such lobbying here, it certainly will not have any effect on the British Government or on the British Opposition leaders, the Opposition structures. We could not predict what would happen with isolated back-bench groups in any of the parties. It is quite possible that they will be receptive, but they may not be; we do not know. But we are satisfied that the British Government can adequately manage the Bill through the House of Commons and through the House of Lords.

QUESTION

In the past, every time the Canadians seem to be coming close to some sort of agreement on the constitution it has fallen apart and yet no previous Federal Government has ever
come forward to Britain with this sort of presentation.
Now, presumably, that means there was some weakness in their case in the past. How has this changed that makes it possible now that suddenly this convention is making everything clear?

**ANSWER**

I think the basis of fact in the question is not really accurate. There are many occasions on which the British Parliament has been approached for amendments in substance and of considerable importance to the British North America Act. We have, it is true, for many years — at least for the last decade — tried to have political agreement from the Provinces as the basis for a changed constitution; not as the result of legal requirement, but in a belief that that was how the public of Canada wished us to proceed, to obtain a consensus of support.

I think it is now clear to us, after the mandate we received in the last election and after the events of the Quebec Referendum and after the failure of the most recent conference to succeed, that there is very strong pressure on us from public opinion to act in the way in which we decided to act. The way in which we acting is both legal and it is not opposed in any way to the constitutional precedents. I think that is accepted clearly — constitutional provisions are accepted by the British Govern-
ment and by the Opposition parties, that we are acting in a constitutional way to do what it is we believe the people of Canada wish to see happen, on the basis of the mandate which we have received.

**QUESTION**

This is the Federal point of view, but presumably, in 1931, when you could not reach an agreement, you decided not to press - not you obviously...

**ANSWER**

I am feeling old, but I hope I am not looking quite that old!

**QUESTION**

But the Federal Government at the time decided not to push the case and left this amending formula issue open and now suddenly...

**ANSWER**

...hardly say 50 years after 1931 is suddenly! And in a sense the amending issue is still open, because the procedure which we have suggested which is to require unanimity for the next two years, is designed to encourage the Provincial Governments to come together and find in agreement with us a formula which we can all accept more easily.

And we also have designed a procedure for taking
alternative amending procedures to the Canadian people for their judgment in the form of a referendum, so in that sense the amending procedure is still open. But, of course, it is true that we are, finally after 50 years, undertaking an act which has not before been undertaken — that is the patriation of the constitution. If we had done it before, we would not have to do it again! So there is always a first time.

**QUESTION**

Yes, but the point you just made, in fact what you were doing is exercising a pressure tactic when you say, you know, you in effect put a deadline of two years for agreement, otherwise....

**ANSWER**

What pressure? What we are doing is exercising a constitutional power which we have had after very vigorous attempts not to have had to exercise it for a long time. So if you want to call that a pressure tactic, I suppose it. I would call it responding both to the situation we have and to the clear support we have from the people of Canada.

**QUESTION**

Gentlemen, what do you say to those British critics — I think you met one or two at lunch today — who suggested it may be alright for the British Parliament to be asked to patriate
the constitution, perhaps even to provide for a controversial being asked amending formula, but has no business/to discuss or think about matters such as an entrenched Bill of Rights when Britain itself does not even have a Charter of Rights, which is quite against the tradition of this country, and something which could rather be done by Canada itself when you get it back to Canada and make whatever amendments Canadians want.

**ANSWER**

That surely is a judgment for the Canadian Parliament and the Canadian Government to make rather than for British Parliament or British academics for that matter to make. We certainly could defend our position in terms of the fact that as a federal country with an enormous number of minorities, both ethnic and regional, we have a reason for a Bill of Rights which does not exist in a unitary and homogeneous state like the United Kingdom. But we do not feel, really, that we have to make that kind of argument to the British Government or the British Parliament, but we feel that they recognize - they should and they do recognize - that this is a decision for Canadians and not for them.

**QUESTION**

In your meeting with Mrs. Thatcher today, could you give us some feeling for the tone of the meeting? Was she her usual vigorous self?
ANSWER

Very friendly. Very direct. Very intelligent. Perceptive about the situation. Understood both the politics and also the constitutional position and very frank and forthright and also very sympathetic and helpful, and we were very glad to have had the chance to meet her, to explain what we were doing, and also to get from her the sense about those problems which we have already discussed - the time-table problems which they feel they may face. That was really, I think, the important thing that we gained out of the conversation: a better understanding than we had before of the agenda problems of the House of Commons that they face. It was very useful information.

ERIC LAWSON

Did you get any indication in your meetings today if objections by backbenchers would delay the proceedings in Parliament here, and if so, by what kind of time? You had discussions about timing. How long the objections might set it back?

ANSWER

No. I think the question was raised hypothetically if there were such objections what impact that would have, but given, as I said earlier, that we do not even know when we will be finished in the Canadian House of Commons, it was not really possible to have a discussion about that time-table.
QUESTION

...possible judgment here as being probable or still hypothetical?

ANSWER

I think it was really a question of speculative, rather. They were also concerned, very clearly, that they should not be - they felt that constitutionally they should not be in a position of going beyond and examining the questions of substance. Those are Canadian domestic matters.

QUESTION (Canadian Press)

Just a follow-up question to one you answered before about giving assurances to the people here or to the British Government that they will not be seen in Canada as taking sides in this move to patriate the constitution: Obviously, there is a battle going on in Canada now between certain provinces especially and the Federal Government and obviously, if the British Government does accede to a request from the Canadian Government, it would seem to me that you would have a fairly large segment of the population, perhaps about 40.1% or so at least in one province that I can think of, that would definitely see it as the British Government taking sides on the issue.
ANSWER

Well, there are always political battles going on in every country, but in this case there are very well-recognized rules by the British in dealing with those political battles. But, first, let me say that this was, in the broadest sense, an election issue we raised in 1979 when we won the greater part of the vote – that is, more votes than any other party though we did not in seats – in the last election we not only had a plurality in votes, we also had a majority in the House of Commons, again with our attitude here well known. So we have a mandate from the people of Canada and the Canadian request will come to the British Parliament through the Canadian Parliament. If it does not make it through the Canadian Parliament, then there will be nothing to discuss here. But we are confident that it will and that is the channel which has been recognized for 113 years as the channel for constitutional amendments, and so the British do not have to ask "How can we resolve this problem in Canada?" All they have to do is to follow the established policy of how they should treat such conflicts when...if there are conflicts...what they should follow.

QUESTION

...wrote a letter to "The Times" several weeks ago disputing that point and saying that this constitutional convention more or less does not really exist. There are no precedents for what is being attempted now because, as I
recall it, he said that there has been no significant provincial opposition to a major constitutional issue.... there has been opposition from one or two provinces, that sort of thing, but not the kind of opposition that you are finding today.

**ANSWER**

You have an academic's gloss on real life. Now, this may be something that can be debated. My colleague and I are both academics and we have engaged in exercises of this kind, but in fact, there is a convention which the British Government is prepared to follow and which we believe the British Parliament will be prepared to follow, and in the past there has often been opposition. When Newfoundland wanted to enter the Canadian Confederation in 1949, there was a great deal of opposition from those Newfoundlanders who did not want to. There were petitions presented in the British Parliament; there were debates led by Sir A.F. Herbert, and despite all this, the British Government held firm - the British parliamentarians did - and said 'this is not really a matter for us; we cannot pass judgment on these things.' So there are lots of precedents. In 1943, the province of British Columbia opposed unemployment insurance. In 1949, they did not even consult the provinces because they knew that the province of Quebec was opposed to Newfoundland's entry. In fact, until 1930, they never consulted the Provinces on anything; they did not care. It is only since that time that we have even been good enough to talk to them about it!
I think in the past you have had this kind of opposition from one province or from one or two provinces, that sort of thing, but not a general opposition.

If they were not asked, how do you know? I mean, there may have been lots of provinces objecting and in recent years there certainly have been provinces which have objected strenuously to changes and they have been ignored.

Surely it is bizarre to say it is all right to have an amendment to the constitution if you do not bother to ask the provinces, but if you do ask the provinces and a large number of them are opposed to it, then you cannot proceed? Up until 1930 we did not ask at all! It would not have mattered whether they were for or against.

Consultation with the provinces has been a matter of courtesy or it has been a matter of political tactics; it has not been a matter of constitutional obligation.

One follow-up question here. Are there not two sides to confederation, the Federal Government and the provinces, and if one side, the provinces, disagree, surely the point that was made by Professor Marshall?
ANSWER

We are protecting the provincial sides here. My colleague answered this more fully, but the amending formula protects the provinces and the Bill of Rights does not give us anything at their expense. We have not taken anything from the provinces in our favour. As I opened by saying, we have been very modest in our demands. We could have gone much further than we have.

Not only, as my colleague has said, are we not disturbing the balance of power between the Federal and Provincial Governments, but if there are questions about the legality or the constitutionality of the action we are taking — and I really do not think that there are — the way to resolve those is not by a decision of the British Government or British politicians, but through a reference in the Canadian Courts and that can take place — I would not recommend it, I would not advise it — but if there is concern about that matter on the part of a province, they have that channel open to them. It is not a question for the British Parliament to decide what the Canadian constitutional conventions are.

QUESTION (Alan Harvey, Reuters)

Could you make it clear for an international audience that has not been following this closely in its rather complex and inward-looking thing, why it is necessary at this precise time to do this. What do you hope to achieve? What are you setting your hands free for?
You say "start at this time". This is an issue that has been with us since 1931 at least, when the British Government proposed to turn over to the Canadian Government complete constitutional powers and because of the nature of the Canadian federal system, we decided we would rather seek some means of protecting the administrative and legislative competencies of the Provincial Governments. After repeated attempts through conferences to arrive at a Resolution and particularly intensively over the past 10 years, we felt that the time had come to act and the public wished us to act. That Resolution was very much reinforced by the Quebec Referendum last Spring in which not only the Federal Government but the premiers of the provinces went to the people of Quebec and said: "It is a very difficult crisis in Canadian history and we are prepared to undertake very significant changes to the Canadian constitution." In subsequent federal provincial conferences we were once again unable to reach agreement with the provincial governments on what should be done and we felt therefore that we had no alternative but to act, not on the complete package of proposals we presented, but act on basic human rights and act on bringing the control of the Canadian constitution at last to Canada and I think there is great evidence we have widespread support for that, and we therefore triggered the automatic mechanism for undertaking those changes and that is for the presentation to the House of Commons in Canada of a Resolution embodying the implementation of the
Charter of Rights and an amending formula and we believe that the people of Canada and their parliamentary representatives will support us in that effort.

You asked: but why now? The answer is because given the promises and commitments that were made not only by us, but by provincial premiers, to Quebecers and to other Canadians, that we feel that we cannot go back empty-handed to those Quebecers in a provincial election or the next federal election without having fulfilled those rather serious commitments that were made to them. We have a mandate from the electorate to do so. We will have a mandate from Parliament to do so; that is why we are proceeding now to do so.
3 October, 1980.

I enclose a copy of a letter received today by the Prime Minister from the Agent General for Quebec.

I have acknowledged M. Loiselle's letter. I should be grateful for advice as to whether or not you would advise the Prime Minister to send a substantive reply, and if so, in what terms.

W. O'D. B. ALEXANDER

Paul Lever, Esq.,
Foreign and Commonwealth Office.
3 October, 1980.

I am writing on the Prime Minister's behalf to acknowledge receipt of your letter to her of 3 October about the patriation of the Canadian Constitution. Your letter has been brought to the Prime Minister's attention.

M. O'D. B. ALEXANDER

Monsieur Gilles Loiselle
3rd October 1980

The Rt. Hon. Margaret Thatcher,
Prime Minister,
10 Downing Street,
London SW1

Dear Prime Minister,

I have been instructed by my government to bring to your urgent attention the fact that it will oppose with every means at its command any attempt by the federal government of Canada to patriate the Constitution unilaterally.

We know at this time that this position, which is unanimously supported by all parties represented in the Quebec National Assembly, is also that of a majority of the governments of other Canadian provinces.

The Quebec government, and constitutional experts agree, considers that patriation, unless it comes as the result of a large consensus of the democratically elected governments of the Canadian provinces and of Ottawa, is wrong and most divisive since it strikes at the very basis of the federation and threatens the already fragile balance of power which exists in Canada.

May I therefore ask you, Madam Prime Minister, to take very carefully into consideration my government's view in this matter before taking any action.

I have the honour to be, Madam,

Yours sincerely,

The Agent General for Quebec,

GL/HRG

12 Upper Grosvenor Street, London, W1X 9PA, England
3 October 1980

Dear Michael,

The Canadian Constitution: Briefs for the Prime Minister

I attach briefs for the Prime Minister's meeting with Messrs Roberts and MacGuigan at 3.30pm on Monday, 6 October.

You may like to know that News Department here are coming under pressure from the Canadian media for Ministerial interviews on Canadian constitutional matters. We have declined any such interviews before the Prime Minister sees the two Canadian emissaries. Thereafter, it may be helpful to explain to the media our view that this is a matter for the Canadians; but in general we propose to say as little as possible to the press, not least because the question will, as from 6 October, be under consideration by the Canadian Parliament.

Yours at

(P Lever)
Private Secretary

M O'D B Alexander Esq
10 Downing Street

CONFIDENTIAL
VISIT BY THE HON JOHN ROBERTS, CANADIAN MINISTER OF STATE FOR SCIENCE AND TECHNOLOGY AND MINISTER OF THE ENVIRONMENT, AND THE HON MARK MACGUIGAN, SECRETARY OF STATE FOR EXTERNAL AFFAIRS TO LONDON ON 6 OCTOBER 1980.

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POINTS TO MAKE.

Interested to know intentions of Canadian Government in respect of the Constitution. Mr Trudeau seems moving faster than he suggested at meeting in June. How does timing now look at Canadian end?

2. I told Mr Trudeau in June HMG would feel bound to recommend to Parliament that any Federal request to patriate the Constitution should be agreed. This remains our position, but a bit worried over timing and substance.

Timing

3. There now seems considerable provincial opposition to the constitutional proposals. Controversy in Canada likely to be mirrored in this country. This could lead to difficult debate in Parliament and attempts at amendment; thus delay. Legislative programme already overfull. Cannot make firm arrangements until formal request for patriation received. Wrong therefore at this stage to make any promises about legislative timing here.

Substance

4. Realise proposals still have to go through your Parliament. Hope they will emerge in form which will secure wide acceptance in Canada and thus avoid Canada's battles being fought over in British Parliament. Concerned about the incorporation of a 'Bill of Rights' in the draft legislation; it could arouse controversy here. Is this element necessary? A simple request for patriation with an amending formula would greatly simplify our procedures here.

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ESSENTIAL FACTS.

The Constitutional Position

The basic Canadian constitutional instrument is the British North America Act 1867 (BNAA), as from time to time amended. It is an Act of the Westminster Parliament. It conferred on Canada Dominion status and established a federal system of government in Canada and set out the powers of the Federal Parliament and the Provincial legislatures. While the Provincial and Federal legislatures are given powers to amend the BNAA within their respective spheres of competence, the BNAA can, in certain important respects, be amended only by Act of Parliament in Westminster, notably as regards distribution of powers between the Federal and Provincial legislatures.

2. All the Dominions became fully independent under the Statute of Westminster 1931. Section 7 reserves to the Westminster Parliament the power to amend the balance between Canadian Federal and Provincial powers in the BNAA. This was because the Canadian delegations to the preceding Imperial Conferences were unable to agree on any change in the status quo. At the same time, Section 4 enacts as law the Constitutional Convention, which was already being applied in practice, that the Westminster Parliament will not pass legislation extending to a Dominion other than at the express request and with the consent of the Dominion. No Act of the UK Parliament affecting Canada has been passed unless Canada has requested it, and consented to its enactment. The BNAA has been so amended 14 times. On occasions when provincial rights have been closely affected, the proposed amendments have enjoyed the support of all the Canadian provinces concerned. Although no clearly defined procedure for amendment was laid down in the BNAA,
the practice has grown up over the years that Canadian requests for amendment are submitted by means of a formal Address to the Crown from both Canadian Houses of Parliament.

3. Over the years, at a series of Federal/Provincial Conferences, the Canadians have sought to agree first to seek repeal of the relevant parts of the Statute of Westminster so as to confer on Canada power of Constitutional Amendment (the process of patriation) and second, in that context, to present a formula agreed between the Federation and the Provinces for amending the Canadian Constitution in substance (the so-called amending formula).

4. The British Government, under both Labour and Conservative administrations, have consistently taken the general line that patriation would go through in this country if requested by the Canadian Government. Specifically, Mr Luce said in answer to a question on 27 July 1979:

"The Canadian Prime Minister has expressed publicly his intention of working with the Provincial Governments of Canada towards an agreed package of constitutional changes which could lead to a request that this power of amendment should be a matter of Canadian competence and should no longer be exercisable by the UK Parliament. If a request to effect such a change were to be received from the Parliament of Canada it would be in accordance with precedent for the United Kingdom Government to introduce in Parliament and for Parliament to enact appropriate legislation in compliance with the request."

This followed the pattern of previous Parliamentary Questions; but these did not, at least in all cases, refer to 'an agreed package'. Hitherto, nevertheless, the assumption has been that the Address from the Canadian Parliament would be against a background of broad provincial agreement. There is no precedent for the UK purporting to question a Canadian request for amendment to the BNAA, although we have made technical adjustments to Canadian proposals.
5. In lobbying Westminster the Provinces can, nevertheless, be expected to argue that the absence of broad provincial agreement puts into question the convention on which we have acted in the past, and that we are in some sense guardians of the provincial interest, or at least of fair play, since the power to amend the Federal/Provincial balance is reserved by Section 7 of the Statute of Westminster (cf paragraph 2 above). We may legitimately argue that the Canadian Federal Government and the UK have, for 50 years, dealt with each other as independent sovereign powers and the UK Government cannot be expected to look behind the act of the legitimate representative of Canada, the Federal Government, unless its actions are clearly tainted with illegality. A request for patriation without provincial agreement would not be illegal, but merely unprecedented in constitutional terms. In the circumstances, only a challenge in the courts would put us on notice of a possible illegality.

6. This is reinforced by the consideration that if the British Parliament were, in spite of constitutional precedent, to decline to act on a request from the Canadian Parliament or Government, HMG would lay themselves open to charges of interference in Canadian domestic politics. To query whether there was adequate internal support in Canada for such a request would be tantamount to questioning the authority of the Canadian Parliament or Government to make it. We cannot set ourselves up as the arbiters of the correct balance of the case presented to us; this must be the responsibility of the Canadian Government alone. The only defensible position is to respond to the request of the Federal authorities, though it is of course open to us to query parts of the proposals which we consider will cause controversy and thus legislative delay in this country.

Recent Events (date order)

7. In July 1979, 300 Chiefs from the National Indian Brotherhood of Canada (led by Chief Starblanket) came to lobby against the patriation of the Canadian Constitution without safeguards for Indian rights. They were received at the FCO at official level and told that HMG
could not interfere in this essentially internal Canadian matter. Considerable Parliamentary interest was aroused, and a short debate took place at the House of Lords at which Lord Trefgarne set out HMG's point of view.

8. In February 1980 the elections resulted in Mr Trudeau's Liberals returning to power with a majority of about 12 seats over the combined opposition (Progressive Conservatives and National Democratic Party). Mr Trudeau made it clear from the start that one of his principal aims was to achieve the patriation of the Constitution, if necessary without unanimous agreement from the provinces.

9. A referendum took place in Quebec in May 1980 which resulted in the rejection of the proposals of the Parti Quebecois (PQ) for 'sovereignty association' for Quebec with the rest of Canada. Mr Trudeau had campaigned for this result and promised that if it was achieved, he would move fast to readjust the relationship between the Federal and Provincial governments.

10. On 25 June Mr Trudeau called on the Prime Minister. Mrs Thatcher told him that whether or not the request for patriation was made with the agreement of all the provinces, such a request would be agreed if it was the wish of the Government of Canada. The Prime Minister also made it clear that HMG did not want to be accused of interfering; they would take the line that it was for Canada to decide her future and not HMG. Mr Trudeau subsequently (18 August) wrote to the Prime Minister, partly about the Economic Summit, and said that, on the constitutional issue, he was "gratified to receive your assurances of support".

11. On 8 July Lord Carrington saw Mr MacGuigan and said that if the Federal Government asked the British Government to introduce legislation, the British Government would do so; but once the request was made there was bound to be a good deal of Canadian lobbying which could lead to a debate in the UK which the Canadians would find unseemly.
12. Over the summer, a series of Federal and Provincial constitutional consultations took place, culminating in a Constitutional Conference in September attended by Mr Trudeau and the ten provincial leaders. The Conference broke up on 13 September without agreement on an amending formula for the BNAA or on how to enlarge the Act to form a new Constitution for Canada.

13. On 26 September talks took place at the Foreign and Commonwealth Office, at the request of the Canadians, between a senior legal Canadian team, the FCO Legal Adviser (Sir Ian Sinclair) and other officials. These were designed to explain and work out the technical and legal modalities of the patriation of the Canadian Constitution. The talks provided the first opportunity to examine the Canadian proposals. This showed that they went beyond the expected resolution for a Joint Address to HM The Queen plus an Act to amend the Constitution of Canada. An amending formula, whereby the Canadians would be enabled to amend the Constitution after patriation was, as expected, included but in double-barrelled shape; the first part provided for the continuance of the present unanimity situation for up to four years, and the second for the application of the Victoria formula, slightly amended, unless another formula had meanwhile been agreed (the Victoria formula broadly stipulates a decision by the majority of the provinces, including Ontario and Quebec and including at least two Atlantic and two Western provinces). In addition, the proposals included a Charter of Rights and Freedoms, a part of which was the controversial provision for educational language rights for minority language groups (eg French in Ontario and English in Quebec). There was also a section laying down principles concerning 'Equalization and Regional Disparities' aimed at the reduction of economic disparities as between provinces and within provinces.

14. At the talks the British side commented that the Canadian proposals were more extensive than expected. The Canadians conceded that they were likely to prove controversial in Canada. The British
told them that the degree of controversy in Canada was likely to be mirrored in this country; MPs might be lobbied and ask why the Canadians wanted, in effect, to pass far-reaching constitutional measures, such as the Charter of Rights and Freedoms, through the British Parliament instead of sorting them out first in Canada and then simply coming to the UK for patriation along with an amending formula. MPs were also liable to table amendments. The British side made it clear that these were preliminary comments at first sight of the Canadian proposals; comments of substance would follow. On timing, they told the Canadians that considerable delays could be expected in Parliament, though much would depend on the degree of controversy in Canada itself.

15. Most recently, the Canadians have warned us of the imminent publication of the Canadian constitutional proposals (the story is carried in British papers today, 3 October); the proposals will be debated in the Canadian Parliament, which is to reconvene (early) on 6 October. The Canadian aim is to get the proposals through Parliament 'by Christmas'. The Canadians told us at the same time of Mr Trudeau's desire to send two emissaries to London to explain his proposals personally to Mrs Thatcher (also to HM The Queen, in her capacity as Queen of Canada; she is seeing them at Balmoral for lunch on Sunday, 5 October).

16. At the Legislative Committee of the Cabinet on 2 October the Home Secretary indicated that although the FCO had secured a contingency slot for the Canadian legislation to go through Parliament, there might not be time for it during the coming session. Although the Canadians have been warned of delays, and have of course not yet formally requested patriation, they will be upset if the legislation is delayed for over a year from now. It may be necessary to ask the Legislative Committee to consider again whether time cannot be found; but it is important meanwhile that the Canadians should be told that we cannot, at this stage, give any firm promises on timing.
17. At the same Legislative Committee the Lord Chancellor indicated that he would be unhappy to see the British Parliament being asked to enact a measure including the Charter of Rights and Freedoms. He thought it preferable for the British legislation to confine itself to patriating the Constitution. The Home Secretary has since minuted the Prime Minister recording the misgivings of the Legislative Committee and suggesting that a Bill incorporating a Charter of Rights and Freedoms would be complex and highly controversial and would take up a good deal of the time of both Houses. Although officials similarly warned the Canadian team of the potential difficulties of a wide-ranging request, there is little doubt that the Federal Government would greatly resent a refusal by HMG to enact legislation which contained this element and had been approved by the Federal Government. The Canadian proposals in their present form will need further careful consideration.

Canadian Opposition to Mr Trudeau's Proposals

18. The Canadian legal team admitted that some of the individual Canadian proposals - particularly perhaps the Charter of Rights and Freedoms with its language provisions - might prove contentious in Canada. Even the concept of patriation itself at this time could be controversial. 'Unilateral' patriation by Ottawa without provincial agreement would encounter considerable opposition. Most of the provinces have particular axes to grind, eg control of natural resources (affecting Alberta and Newfoundland). There are also groups (especially the Red Indians) who want their problems sorted out before patriation takes place. In general, the provinces have been heavily critical of Mr Trudeau's desire to push patriation through so fast.

19. According to the Canadian press, after the break up of the Constitutional Conference seven premiers considered that there was no need to incorporate citizens' rights into a new Constitution,
as they were already firmly established in law; in particular, there was opposition to creating new linguistic rights. Our High Commissioner has, however, commented that the Federal Government's present proposals should strike fair-minded people as reasonable; but the Canadian Government has so far shown no signs of seeking the agreement of many of those most closely concerned; they appear to have consulted neither the Progressive Conservatives, nor the National Democratic Party, nor do they seem to have attempted to win over the Provincial Premiers. Two of the Premiers (Lougheed of Alberta and Levesque of Quebec) have indicated that they are already lobbying in the UK against Mr Trudeau's proposals and will step up their campaign. The High Commissioner believes that Newfoundland and British Columbia, at least, can be expected to follow suit. The Indians also seem likely to renew their campaign in this country.

20. As the Canadian proposals in their present form have only just been published, it is too early to say how much opposition they will arouse in Canada. Preliminary indications are that provincial opposition will be considerable and, on some parts of the proposals, perhaps unanimous. The Quebec Agent-General has just written, on instructions, to the Prime Minister to say that his Government will oppose unilateral patriation with every means at their command.

The Two Ministers
21. Personality notes are attached. Mr Roberts is the senior Minister.
THE HON JOHN ROBERTS, PC MP

Minister of State for Science and Technology and Minister of the Environment.

Born in Hamilton, Ontario, in 1933.

Educated at Oakwood College, Toronto, the University of Toronto and Trinity College, Oxford, where he received D Phil and later a graduate of the Ecole Nationale d'administration, Paris.

A former DEA officer who was Executive Assistant to the Ministry of Forestry and Rural Development 1966 – 68. First elected to the House of Commons as Liberal member for St Paul's (a Toronto riding) in 1968. Parliamentary Secretary to the Minister of Regional and Economic Expansion 1979 – 72. Defeated in the 1972 general election but re-elected in 1974. Secretary of State 1976 – 79.

An articulate and polished member of the Cabinet. Divorced and re-married.

THE HON MARK R MacGUIGAN, PC MP

Secretary of State for External Affairs

Born 1931. A native of Prince Edward Island where he took his first degree at St Dunstan's University. Went on to study at the University of Toronto, Osgoode Hall and Columbia University. Dean of the Faculty of Law at the University of Windsor 1967 – 68.

Awarded Honorary Degree of doctor of Laws by the University of Prince Edward Island in 1971. First elected to the House of Commons in 1968, after defeats in federal and provincial elections. 1972 – 74 Parliamentary Secretary to Minister of Manpower and Immigration and to the Minister of Labour, 1974 – 75.

Little experience of foreign affairs before taking up his current appointment. Although he gives a weak first impression in his new role, his performance has improved and he should not be dismissed as a nonentity. Much respected by the Canadian High Commissioner in London, Mrs Wadds, whose appointment (made under the Conservatives) he has confirmed.

Married to an American professor of philosophy. Three children.
Prime Minister

BRITISH NORTH AMERICA ACTS 1867-1964

I have seen a copy of the Home Secretary's minute of 2 October about the patriation of the Canadian Constitution. In view of the forthcoming call on you on Monday 6 October by the two Canadian emissaries from Mr Trudeau (Mr Roberts, Environment, and Mr MacGuigan, External Affairs), it may be useful to have our reaction.

The Home Secretary raises two linked issues, of substance and of timing. To take first the question of timing, when he was in Canada in June, the Minister of State, Mr Ridley, told the Canadian Minister of Justice, Mr Chretien, that the Canadians should give us ample warning if there was any question of seeking patriation; the Parliamentary time-table was very full, and unless we had adequate notice, the UK Parliament might not be able to deliver the goods at the right time. When the Canadian Prime Minister saw you on 25 June, he said that the Canadians, if they made remarkable progress, would work on or set a deadline of Spring or early Summer 1981; but if there were further disagreements there might be more delay. You explained that it would make it easier for HMG if Canada were united in its approach. At a meeting with FCO officials on 26 September, it was made plain to Canadian legal experts that the legislative process in the UK would not necessarily be plain sailing.

Despite the indications already given to the Canadians, they no doubt hope that it will be possible to pass the necessary legislation quickly, certainly during the forthcoming session of Parliament. We shall need to consider this carefully in the light
of the message brought by the two Canadian Ministers. Meanwhile, I agree with the Home Secretary that we should not make any firm promises about the timing of our legislative programme.

On the question of substance, the Canadian proposals, which we saw for the first time on 25 September, do indeed incorporate a 'Charter of Rights and Freedoms'. Our officials made it clear to Canadian officials the following day that we would prefer a simpler and more limited provision, providing for patriation and an amending formula only. We did not however imply that HMG would decline to enact legislation such as that proposed last week by the Canadians. To do so would undoubtedly cause us serious difficulties with the Canadian Government. This question of substance will certainly need to be considered most carefully, as the Home Secretary suggests. Your meeting with the Canadian Ministers will provide an opportunity for us to indicate that a simpler and less contentious formula would create fewer difficulties for us and facilitate our parliamentary processes.

I am copying this minute to members of The Queen's Speeches and Future Legislation Committee, and to Sir Robert Armstrong.

3 October 1980
The Queen’s Speeches and Future Legislation Committee were told at their meeting today by the Minister of State, Foreign and Commonwealth Office (Nicholas Ridley) that discussion with the Canadian Government on the patriation of these Acts had reached a point where it seemed likely that the United Kingdom Government would agree to introduce the necessary legislation in the next session. FCO therefore suggested that a reference should be made in the Opening Speech. We understood that, as well as provisions to terminate the United Kingdom Parliament’s powers of amendment and the conferring of such powers on the Canadian legislature, the proposed legislation was likely also to include an extended schedule of human rights.

The Committee were not, of course, in a position, nor was it appropriate for us, to consider the details of the Canadian Government’s request, nor their political and Parliamentary implications. But I should report that all members of the Committee expressed very considerable doubt as to whether it would be practicable to legislate next session in the way we understood the Canadian Government to be suggesting. When Cabinet considered next session’s legislative programme on the basis of my papers C(80) 26 and 27 they were aware only of the contingent possibility of legislation for the patriation of the Canadian constitution. Any bill which went further than this and dealt with the subject of human rights would be bound to be complex and highly controversial. Even if such legislation could be got ready in time with the agreement of all the departments concerned, it would take up a good deal of time in both Houses which is now earmarked for the Bills to which we are already committed.
In the light of this the Committee decided not to include a reference to the possible need for this legislation in the draft Opening Speech which I shall shortly be putting to Cabinet. We hoped it would be possible to avoid any firm commitment about the timing of such legislation until all those who will be affected had had an opportunity to consider the implications of what is proposed.

I am copying this minute to the Foreign and Commonwealth Secretary, the members of the Queen's Speeches and Future Legislation Committee, and to Sir Robert Armstrong.

2 October 1980
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Foreign and Commonwealth Office
London SW1A 2AH

30 September 1980

Prime Minister
The timing is very awkward.
(We are already going to have to ask you to see René Lévesque on 6 October and to give him lunch and a look at his subject is important. Can we offer him 30 minutes?)

Yours,

[Signature]

Canadian Emissary

Since the Prime Minister saw Mr Trudeau on 25 June, we have been intermittently discussing with the Canadians their proposal to send over an emissary to explain constitutional proposals to HMG and put the Federal Government's case across to opinion-formers in this country. The Canadians have now asked us formally, through their High Commission, whether the Hon John Roberts, Minister of State for Science and Technology and Minister for the Environment, who has also played an important part in recent discussions between the Federal Government and the provinces on the constitution, might be received by the Prime Minister on 5, 6 or 7 October. Mr Roberts would come as personal envoy from Mr Trudeau to the Prime Minister, but would also probably want to give publicity to the Federal case in this country.

We were at first a little reluctant to recommend acceptance of such an emissary before the main lines of discussion of these constitutional proposals in the Canadian Parliament (due to reconvene on 6 October) became clear. However, at the legal talks with the Canadians which took place at the end of last week (reported in FCO telno 309 of 26 September - copy attached), it emerged that the Canadians will be asking us to pass through Parliament measures including important amendments to the Canadian Constitution, eg the incorporation of a Charter of Rights and Freedoms. This means that the Canadian proposals are likely to excite controversy both in Canada and in the UK. As a result, we now believe that it would be useful to take the opportunity

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opportunity of such a Canadian visit to drive home to
the Canadians at a high level the kind of difficulties
which may be experienced in Parliament if we are asked
to put these proposals through in their present form.

Lord Carrington naturally realises how pre-
occupied the Prime Minister will be with the
forthcoming Party Conference; but he hopes that she
might find a short period, perhaps on 6 October, to
receive this emissary. If she can do so, more detailed
briefing material will follow. Lord Carrington would
also see Mr Roberts separately. We are, in addition,
considering the possibility of a message from
Mrs Thatcher to Mr Trudeau and will let you have our
recommendations soon.

Yours etc

Paul

(P Lever)
Private Secretary

M O'D B Alexander Esq
10 Downing Street
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00 OTTAWA  DESKBY 262000Z
GRS 1054
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DESKBY 262000Z
FM PCO 2618302 SEP 80
TO IMMEDIATE OTTAWA.

TELEGRAM NUMBER 309 OF 26 SEPTEMBER
YOUR TELNO 415 OF 24 SEPTEMBER: CANADIAN CONSTITUTION.
1. CANADIANS DULY DELIVERED PROPOSALS TO US YESTERDAY. THEY
TOOK THE SHAPE OF AN EXPLANATORY NOTE, A RESOLUTION FOR A JOINT
ADDRESS TO HM THE QUEEN, AN ACT TO AMEND THE CONSTITUTION OF
CANADA (CANADA ACT) AND, AS SCHEDULE A TO THE LATTER, A
CONSTITUTION ACT 1980. THE LATTER EMBODIES A CANADIAN CHARTER
OF RIGHTS AND FREEDOMS (INCLUDING LANGUAGE RIGHTS), A PROVISION
FOR EQUALISATION AND REGIONAL DISPARITIES, AN INTERIM AMENDING
PROCEDURE AND A DEFINITIVE AMENDING PROCEDURE. THIS PROVIDES
FOR THE CONTINUANCE OF THE PRESENT UNANIMITY SITUATION FOR UP TO
FOUR YEARS, FOLLOWED BY THE APPLICATION OF THE VICTORIA FORMULA,
SLIGHTLY AMENDED, UNLESS ANOTHER FORMULA HAS BEEN MEANWHILE
AGREED. DEADLOCK-BREAKING REFERENDUM PROCEDURES ARE ALSO
ENVISAGED. LEGISLATIVE TIDYING-UP PROCEDURES ARE ALSO EMBODIED
IN THE PROPOSALS. THIS IS A SUMMARY ACCOUNT OF A LENGTHY (26
PAGE) DOCUMENT: LE GAULT OF THE CANADIAN TEAM (DEA) PROMISED
HE WOULD LET YOU HAVE THE FULL TEXT ON MONDAY.

2. TALKS WITH THE CANADIAN TEAM TOOK PLACE THIS MORNING IN A
FRIENDLY AND INFORMAL ATMOSPHERE. IN RESPONDING TO THE CANADIAN
PROPOSALS WE AIMED TO STEER BETWEEN TWO EXTREMES. ON THE
ONE HAND WE WISHED TO AVOID ANY IMPLICATION THAT WE WERE BACK-
TRACKING ON MRS. THATCHER'S UNDERTAKING TO MR. THUDEAU OF 25 JUNE
THAT WHETHER OR NOT THE REQUEST FOR PATRIATION WAS WITH THE
AGREEMENT OF ALL THE PROVINCES, IT WOULD BE AGREED IF IT WAS THE
WISH OF THE GOVERNMENT OF CANADA. ON THE OTHER HAND, WE WANTED
TO LEAVE THE CANADIANS IN NO DOUBT ABOUT THE PARLIAMENTARY
DIFFICULTIES WHICH MIGHT BE EXPECTED IF THE QUESTION REMAINED A
CONTROVERSIAL ONE IN CANADA. SIR I. SINCLAIR, WHO LED THE
BRITISH TEAM, EXPLAINED THAT THERE HAD BEEN LITTLE TIME TO STUDY

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THE CANADIAN PROPOSALS IN DETAIL: IT WAS OUR TASK TO EXAMINE THEM FROM THE TECHNICAL POINT OF VIEW AND DISCUSS MODALITIES, RATHER THAN SUBSTANCE. THE LATTER WOULD NEED TO BE CONSIDERED LATER. NONETHELESS, HE THOUGHT IT LEGITIMATE TO MAKE THE PRELIMINARY COMMENT THAT THE CANADIAN PROPOSALS WERE MORE EXTENSIVE THAN WE HAD ANTICIPATED THEY MIGHT BE. IN LATER DISCUSSION IT EMERGED THAT THE CANADIANS EXPECTED THE PROPOSALS TO EXCITE CONTROVERSY IN CANADA – THOUGH THEY HELD OUT SOME HOPE THAT IN THEIR PRESENT FORM THEY MIGHT POSE LESS DIFFICULTIES THAN HERETOFORE. WE EXPRESSED THE VIEW THAT THE EXTENT OF CONTROVERSY WHICH THE PROPOSALS MIGHT GENERATE IN WESTMINSTER WAS LIKELY TO MIRROR THE EXTENT OF CONTROVERSY WHICH THEY WOULD ENGENDER IN CANADA. MPS MIGHT BE LOBBIED AND ASK WHY THE CANADIANS WANTED, IN EFFECT, TO PASS FAR REACHING CONSTITUTIONAL CHANGES THROUGH THE BRITISH PARLIAMENT RATHER THAN SORTING THEM OUT FIRST IN CANADA AND THEN COMING TO US SIMPLY FOR PATRIATION ALONG WITH AN AGREED AMENDING FORMULA. BRITISH MPS MIGHT ALSO TABLE AMENDMENTS.

3. THE CANADIANS RESPONDED BY SAYING THAT THEY HOPED BRITISH PARLIAMENTARIANS WOULD BE SATISFIED THAT THEIR CANADIAN OPPOSITE NUMBERS, WHOSE BUSINESS IT WAS, HAD SORTED MATTERS OUT TO THE MAXIMUM AND THAT THE BRITISH WOULD THUS PASS THE LEGISLATION IN ACCORDANCE WITH OUR UNDERTAKINGS. MEANWHILE, THE CANADIAN PROVISIONS WERE OF COURSE SUBJECT TO ALTERATION IN THE CANADIAN PARLIAMENT. THEY DOUBTED, HOWEVER, WHETHER SUCH ALTERATIONS WOULD BE VERY SUBSTANTIAL.

4. TECHNICAL DISCUSSION CENTRED MAINLY ON TWO OF THE POINTS MENTIONED IN MY TELNO 283 OF 9 SEPTEMBER, IE:
   (A) THE CANADIAN DESIRE TO HAVE THE BRITISH LEGISLATION IN BOTH FRENCH AND ENGLISH;
   (B) THE QUESTION OF THE DATE OF ENTRY INTO FORCE OF THE CANADA ACT IN BOTH COUNTRIES.

WE TOLD THE CANADIANS THAT AT FIRST SIGHT WE SAW NO INSUPERABLE DIFFICULTIES IN THESE PROPOSALS, THOUGH WE MIGHT WISH TO PROPOSE AN ALTERNATIVE FORMULA FOR (B). IN ALL CASES, WE REFERRED THEM FOR AN AUTHORITATIVE REPLY TO THIS AFTERNOON’S TALKS WITH SIR H ROWE, FIRST PARLIAMENTARY COUNSEL (SEE BELOW).
5. THE CANADIANS TOLD US THAT THEY HOPED THE MEASURES MIGHT BE PUBLISHED AS EARLY AS THURSDAY, 2 OCTOBER. AT AROUND THIS TIME, THEY MIGHT ALSO ANNOUNCE (ALONG THE LINES ALREADY AGREED WITH YOU) THAT A CANADIAN TEAM HAD VISITED THIS COUNTRY FOR TECHNICAL TALKS ABOUT THESE CONSTITUTIONAL PROPOSALS, WITHOUT PREJUDICE TO THEIR DISCUSSION IN THE CANADIAN PARLIAMENT.
6. OVER LUNCH, MR. TASSE, THE CANADIAN LEADER, INDICATED TO DAY THAT A CANADIAN EMISSARY MIGHT WANT TO PAY AN EARLY VISIT TO THE UK AND MENTIONED 6 OCTOBER AS A POSSIBLE DATE. DAY TOLD HIM THAT OUR PREFERENCE REMAINED THAT WE SHOULD RECEIVE SUCH AN EMISSARY AFTER THE MAIN LINES OF DISCUSSION IN CANADA HAD BECOME CLEAR IN PARLIAMENT. HE ALSO REMINDED TASSE OF MOVEMENTS OF THE SECRETARY OF STATE.
7. AT THE AFTERNOON MEETING, SIR H. ROWE OPENED BY QUESTIONING WHETHER UK LEGISLATIVE ACTION WAS APPROPRIATE OR DESIRABLE.
   IN HIS PERSONAL VIEW, CANADA POSSESSED THE SOVEREIGN POWER TO ACHIEVE THE DESIRED RESULT. HE NEVERTHELESS ACCEPTED THE POINT MADE BY THE CANADIAN SIDE THAT CANADIAN CONSTITUTIONAL LAWYERS AND THE SUPREME COURT MIGHT BE OF A DIFFERENT PERSUASION.
8. THE MEETING THEN TURNED TO THE CANADA ACT. THE CANADIAN SIDE WERE RECEPTIVE TO SIR HENRY’S SUGGESTIONS FOR IMPROVEMENT AND SIMPLIFICATION. AGREEMENT WAS REACHED AS FOLLOWS:
   TITLE – AN ACT TO AMEND THE CONSTITUTION OF CANADA.
   RECITALS – DELETE SECOND RECITAL.
   SECTION 1 – ADD AT END ‘AS PROVIDED IN PARTS IV AND VI OF THAT ACT’.
   SECTION 2 AND SCHEDULE B – DELETE.
   SECTION 3 – DELETE ‘THIS ACT’ AND SUBSTITUTE ‘THE CONSTITUTION ACT’. DELETE ‘DEEMING’ PROVISION.
   SECTION 4 – CANADIANS TO SUGGEST FORMULA ALONG THE LINES OF:
   SECTIONS 5 AND 6 – DELETE
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SECTION 7 - NO CHANGE (ALTHOUGH SIR H ROWE'S PREFERENCE WAS TO ADD A DATE).

THERE WAS NO DISCUSSION OF THE CONSTITUTION ACT.

9. SUBJECT TO ANY COMMENTS FROM OTTAWA AND CONSULTATIONS AMONGST THEMSELVES, THE CANADIANS UNDERTOOK TO PUT A CLEAN TEXT BACK TO US THROUGH HARDY EARLY NEXT WEEK.

10. WE SHALL BE CONSIDERING THE NEXT STEPS EARLY NEXT WEEK AND WOULD BE GRATEFUL MEANWHILE FOR ANY COMMENTS.

CARRINGTON

NNNN DISTRIBUTION LIMITED NAD CCD NEWS DEPT OID LEGAL ADVISERS PS PS/LPS PS/MR RIDLEY PS/PUS SIR E YOUDE MR DAY MR HARDING SIR L ALLINSON SIR I SINCLAIR
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Ref. A03099

MR. ALEXANDER

Mr. Michael Pitfield, the Clerk of the Privy Council and Secretary to the Cabinet in Ottawa, was one of the representatives of Canada at last week's meeting of Personal Representatives. In the course of a short discussion with him, he asked me to convey to the Prime Minister his Prime Minister's gratitude for her understanding approach on the question of the patriation of the Canadian Constitution.

2. I made it clear that the Prime Minister stood by what she had said to Mr. Trudeau at their meeting on 25th June. I added, however, that a unilateral request for patriation would present the Prime Minister with some political difficulties. The breakdown of Mr. Trudeau's talks with the provincial Prime Ministers had been reported in the British Press, and there had been some discussion of the possibility of a unilateral request for patriation. The Prime Minister might encounter some objections to unilateral patriation from back-benchers in the House of Commons, particularly if provincial Prime Ministers sought to stir up opinion in Britain. Mr. Pitfield acknowledged this difficulty, but said that a poll had recently been conducted in Canada which showed an overwhelming majority in favour of patriation of the Constitution, even in the western provinces.

3. Mr. Pitfield referred to the visit being made by Canadian Government lawyers to Britain at present. He said that Mr. Trudeau had not made up his mind yet either about content or about timing; but he had it in mind that, before announcing a decision, he would send over a Minister or Ministers to discuss the matter with the British Government. After an announcement Mr. Trudeau might wish to send Mr. Pitfield over for further consultations on the matter.

4. I am sending a copy of this minute to Mr. Walden.

(Robert Armstrong)

29th September, 1980
The following document, which was enclosed on this file, has been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate CAB (CABINET OFFICE) CLASSES.

Reference: AC(80) 33rd Conclusions, Minute 1

Date: 18 September 1980

Signed __________________ Date ______________

PREM Records Team
PRIME MINISTER · PREMIER MINISTRE

OTTAWA, K1A 0A2

August 18, 1980

Dear Margaret,

It was a pleasure to see you in Venice and again in London.

I found our frank discussion about the constitution to be extremely useful. While I of course expected nothing less, I was gratified to receive your assurances of support.

I am now considering the site for our next Summit and will let you know once we have made a decision. I was pleased our views about the conduct of the Summit coincided, and I assure you changes will be made next year. We are in complete agreement about the need for a frank and less formal exchange of views. I believe in this way we can tackle the issues without the unnecessary clutter of form and protocol and without having our deliberations pre-determined by an elaborately and exhaustively negotiated communiqué. I look forward to consulting you further as preparations progress.

With kind regards,

Yours sincerely,

The Right Honourable Margaret Thatcher,
Prime Minister of the United Kingdom of Great Britain and Northern Ireland.
4 September 1980

Dear Mike

I attach the top copy of a letter from Mr Trudeau to the Prime Minister which we have received via the Canadian High Commission.

Yours sincerely

M A Arthur
Private Secretary to the Lord Privy Seal

Mike Pattison Esq
10 Downing Street
CONFIDENTIAL

EXTRACT FROM

PRIME MINISTER'S MEETING WITH MR. PIERRE TRUDEAU, PRIME MINISTER OF CANADA - 11.30 AM, 25 JUNE 1980

Present:

Prime Minister
Mr. Nicholas Ridley
Sir John Ford
Mr. M.O'D.B. Alexander
Mr. B.R. Berry

Mr. Pierre Trudeau
Mrs. Jean Wadds
Mr. H. Breau
Mr. P.M. Pitfield
Mr. K. Goldschlag
Mr. L.A.H. Smith
Mr. R. Fowler

Introduction

The Prime Minister welcomed Mr. Trudeau and said it was good of him to find time to call in before his return to Canada. The Prime Minister and Mr. Trudeau agreed that they would discuss any bilateral questions first, before going on to more general questions.

Patriation of the Constitution

The Prime Minister asked Mr. Trudeau whether the British Government was going to have to enact legislation or not. Mr. Trudeau replied that, as the Prime Minister had got straight to the point, he would try and answer her similarly. He said that he could not give a time as this would depend on work throughout the summer and the results of the conference scheduled for September. If remarkable progress had been made by then, and a unanimous decision had been reached - which, he said, was unlikely - they might decide to work on or to set a deadline of spring or early summer next year. If things did not go well, for example if there were further disagreements with Mr. Levesque, there might be more delay.

Mr. Trudeau said that he could not, at this moment, predict any course of action. But it was not inconceivable that the Canadians would be taking steps towards patriation. He said that he had given a clear undertaking to Quebec and to the other provincial...
provincial premiers to unblock the log jam. They had to move on. He did not wish to give the Quebeckers and others the opportunity to say that he could not obtain any agreement, that they would be stuck for another five years with separatist tendencies or that there were reasons for holding another Referendum. Mr. Trudeau said he was determined on movement, and sooner or later the British North America Act would have to be amended.

Mr. Ridley said that in his view HMG, if asked, would have no choice but to enact the required legislation. Mr. Trudeau asked whether the Minister was hinting that this was what Britain would like to do. The Prime Minister said that HMG did not want to be accused of interfering in any way. HMG could help; and if, for example, queues of Indians knocked on the door of No.10, the answer would be that it was for Canada to decide her future and not HMG. It would of course make it easier for HMG if Canada was united in its approach. Mr. Trudeau replied that HMG would be accused of interfering whichever way things went: as for unanimity, he said that that could be forgotten. The provinces would want to be heard and one or more of them would say they were not getting what they wanted.

The Prime Minister said that her line would be that whether or not the request was with the agreement of all the provinces, a request to patriate would be agreed if it was the wish of the Government of Canada. Mr. Trudeau agreed and expressed the view that HMG would have no choice in the matter. The Prime Minister reiterated that she hoped that she would not have masses of people lobbying in front of No.10. Mr. Trudeau said that he did not want to cause the UK any problems – he would try to make things as easy as possible. He meant to unite Canadians if possible. But he recognised that he might in fact make things worse. He could foresee that Quebec, and perhaps other provinces, would not go along with what he wanted. The greater the degree of support he got the less time it would take to get the measures agreed.

Mr. Ridley pointed out that it was important to get it across in Canada that HMG had no intention of interfering in what was Canada's
Canada's internal affair. If protest groups lobbied and publicity was given to them, this should not be misinterpreted as interference. The Prime Minister reiterated that she could not see groups, Indians or others; it was not a matter for her, but for Canada, although she would not wish to be accused of being totally rigid.

Mr. Trudeau agreed that this was the right attitude. If provinces tried to get access to HMG, they had no locus standi. It was important not to encourage speculation about what would happen in this or that situation. He intended to proceed on the basis that unanimity would be achieved. The Prime Minister said that she would avoid answering hypothetical questions about what might happen if the request for patriciation was not unanimous. If there were any questions, the answer would be that HMG had not been approached about the problem; that this was a matter for the elected Government of Canada; and that it was apparent the Canadian Prime Minister was trying to achieve consensus in his country on the subject.

Anglo/Canadian Air Talks

Mr. Ridley said that the talks in Ottawa last week, in which HMG had been negotiating with the Canadians over Sir Canada's monopoly on air services into Western Canada, had broken down again. The UK negotiators had been withdrawn at the weekend of 21/22 June. HMG hoped that the two sides could get together again soon. Mr. Trudeau said he was unaware of the breakdown. Sir John Ford described the background to the problem since Mr. Trudeau and his colleagues appeared to be unfamiliar with the details.

The Prime Minister said it was important that negotiations should be restarted in the interests of freer trade. Mr. Trudeau said that he would take this message home with him. He was not really conscious of the problem. He wondered whether letting British Airways into the West Coast would open the floodgates for other airlines. He undertook to familiarise himself with the issues and either get the talks restarted or explain, if positions were too
far apart, why the Canadians did not feel able to continue. It was agreed that, in principle, both sides would look for ways to re-open the talks as soon as possible.

Venice Summit

The Prime Minister asked Mr. Trudeau for his impressions. Mr. Trudeau said he was pleased and a bit surprised by the leaders' willingness to discuss political issues. Economic talks were important and had in the past helped to limit disarray among the participants in tackling economic problems. Perhaps the political talks would have the same result. Although each country had different answers to questions such as the Olympics, at least airing the difficulties avoided the differences becoming unmanageable. No-one had considered the break-up of the alliance. Discussion of the post-Afghanistan situation made it less likely that divergent solutions to the problem would be adopted. His general impression was good. Was the Prime Minister more pessimistic?

The Prime Minister said that she and Herr Schmidt had been keen to have the political discussion. For the first time since the Forties a totally independent country had been invaded by Russia. Western strategy post-Afghanistan had been strengthened at Venice. The pressure needed to be kept up on the non-aligned countries. This had been agreed.

But the Heads of Government had not got down to as much detail as she would have liked. What could be done if, for example, Pakistan or Turkey or Saudi Arabia fell apart? The world was full of trouble spots. There were two world ideologies and the free world should be putting its case much more strongly. It was clear that the detailed planning and discussion of how to manage world crises could not be carried out in the atmosphere of a Venice Summit, when the leaders were hounded all the time by journalists etc. She was disappointed that they had not been able to get to grips with details, but perhaps in the circumstances not much more could have been done. There was always the danger of leaks and misinformation.

/Mr. Trudeau
April 15, 1980.

Prime Minister

... 

Dear Prime Minister,

The Prime Minister of Canada, The Right Honourable Pierre Elliott Trudeau, has asked me to transmit to you the attached letter.

Yours sincerely,

Jean Casselman Waddes
High Commissioner

The Right Honourable Margaret Thatcher,
Prime Minister of the United Kingdom of Great Britain and Northern Ireland,
10 Downing Street,
LONDON.
My dear Prime Minister,

It was a pleasure to receive your kind message on the occasion of our electoral success.

The euphoria of election night has already given way to a deep concern over serious international issues which I know are very much in the forefront of your mind as well. The search for global economic stability and peace is a priority of both our governments, and I look forward to working closely and co-operatively with you to achieve our shared goals.

Thank you for your good wishes,

With warm regards,

Yours sincerely,

The Right Honourable Margaret Thatcher
Prime Minister of the United Kingdom
of Great Britain and Northern Ireland
London, England
GRS 90
UNCLASSIFIED
FM FCO 2017132 FEB 80
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 77 OF 20 FEBRUARY

MESSAGE TO MR TRUDEAU

PLEASE CONVEY THE FOLLOWING MESSAGE FROM THE PRIME MINISTER TO MR TRUDEAU:

BEGINS
QUOTE ON BEHALF OF THE BRITISH GOVERNMENT AND PEOPLE I SHOULD LIKE TO OFFER YOU WARM CONGRATULATIONS ON YOUR VICTORY IN THE CANADIAN GENERAL ELECTION.
I WISH YOU AND YOUR COLLEAGUES EVERY SUCCESS, AND I AM CERTAIN THAT THE WIDE RANGE OF COMMON INTERESTS AND THE LONG AND HAPPY TRADITION OF CLOSE CO-OPERATION BETWEEN CANADA AND THE UNITED KINGDOM WILL CONTINUE. I LOOK FORWARD TO MEETING YOU SOON AND TO WORKING WITH YOU. UNQUOTE
ENDS.

CARRINGTON

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BIRD MAITLAND
LORD N.Y. LENNOX

COPIES SENT TO
No 10 DOWNING STREET
20 February 1980

Canadian Election

The Prime Minister has seen your letter to me of 19 February and has approved the draft message to Mr Trudeau enclosed with it.

M. O'D. J. MACANDER

G G H Walden Esq
Foreign and Commonwealth Office
19 February 1980

Dear Michael,

Prime Minister

CANADIAN ELECTION

As you know, Mr Pierre Trudeau, Leader of the Liberal Party, is forming the new Government in Canada. I enclose a draft telegram to the High Commission in Ottawa incorporating a message of congratulation to Mr Trudeau from the Prime Minister.

Yours sincerely,

(G G H Walden)

M O'D B Alexander Esq
10 Downing Street
MESSAGE TO MR TRUDEAU

Please convey the following message from the Prime Minister to Mr Trudeau:

Begins 'On behalf of the British Government and people I should like to offer you warm congratulations on your victory in the Canadian General Election.

I wish you and your colleagues every success, and I am certain that the wide range of common interests and the long and happy tradition of close co-operation between Canada and the United Kingdom will continue. I look forward to meeting you soon and to working with you.'

Ends.
CONFIDENTIAL

GRS 280

CONFIDENTIAL
RM OTTAWA 042100Z FEB 80
TO PRIORITY FCO
TELEGRAM NUMBER 83 OF 4 FEBRUARY

CANADIAN ELECTION

WITH A FORTNIGHT TO GO UNTIL ELECTION DAY THE ELECTION CAMPAIGN
ONLY LAST WEEK BEGAN TO COME TO LIFE: AND FOREIGN POLICY HAS SHOWN
SIGNS OF EMERGING AS A MAJOR ISSUE AS A RESULT OF PUBLIC DISQUIET
OVER AFGHANISTAN.

2. TRUDEAU HAS ATTACKED CLARK FOR BEING WEAK AND INCOMPETENT
GENERALLY AND IN PARTICULAR FOR NOT BEING ROBUST ENOUGH IN SUPPORT
OF THE USA OVER IRAN. YET HE HAS DISAGreed WITH CLARK FOR HIS STRONG
STAND WITH PRESIDENT CARTER ON BOYCOTTING OLYMPICS IN MOSCOW.

3. FOR HIS PART CLARK HAS CASTIGATED TRUDEAU FOR HIS AMBIGUOUS
ATTITUDE TO NATO AND SOVIET UNION WHICH LED HIM TO NEGLect CANADA’S
DEFENCE FORCES AND OFTEN TREAT THE SOVIET UNION ON A PAR WITH THE
USA; AND HE IS STRESSING THAT CANADA MUST NOW LOOK TO HER DEFENCES
AND HER REAL ALLIES.

4. THE NDP, BECAUSE OF THEIR PAST PACIFIST IDEAS, ARE TRYING TO
AVoID FOREIGN POLICY ISSUES AND ARE CLEARLY EMBARRASSED BY THIS
TURN OF EVENTS. WE MUST RECOGNISE, HOWEVER, THAT AN NDP SUPPORTED
MINORITY LIBERAL GOVERNMENT WOULD PLAY ON TRUDEAU’S COLDNESS TOWARDS
PREVENTIVE MILITARY PREPAREDNESS AND NATO.

CONFIDENTIAL /5. FOR ALL
5. FOR ALL ITS INEXPERIENCE THE RETURN OF THE CLARK GOVERNMENT (A POSSIBILITY WHICH IS STILL NOT TO BE EXCLUDED AS THE LATEST POLLS SHOW THE ELECTORATE IN A VOLATILE MOOD WITH THE LIBERAL LEAD ERODING) WOULD, I BELIEVE, BE IN OUR AND THE US BEST INTERESTS AS WELL AS CANADA'S. ANY OVERT ACTION TO HELP THE CLARK GOVERNMENT WOULD BE COUNTER–PRODUCTIVE: BUT I THINK THAT ANYTHING WE CAN DO TO SHOW APPRECIATION OF MR CLARK'S AND MISS MACDONALD'S ROBUSTNESS WOULD BE HELPFUL, E.G. IF MRS THATCHER, WHO IS MUCH ADMIRÉD HERE, COULD REFER TO CANADA'S ROBUST LINE IN TALKING ABOUT OLYMPICS AND IF YOU COULD FIND OCCASION OVER THE NEXT TWO WEEKS TO MENTION IN WARM TERMS CANADA'S RECENT CONTRIBUTIONS TO WORLD DIPLOMACY, E.G. AT TOKYO, LUSAKA AND NATO MEETINGS.

FORD

DEPARTMENTAL DISTN. [COPIES SENT TO NO 10 DOWNING ST] N AM D EESD MBD SAD CRD CABINET OFFICE
NOTE FOR THE FILE

COURTESY CALL BY THE CANADIAN
HIGH COMMISSIONER

Dr Paul Martin, the Canadian High Commissioner called on the Chancellor at 09.45 on 6th July, 1979. Mr. Michell supported the Chancellor. The Chancellor and Dr. Martin had a wide-ranging discussion. Dr. Martin had called on the Chancellor on instructions from the Canadian Prime Minister, to ask him about the British Government's thinking on two problems currently facing the Canadian Government: how to cut public expenditure and public sector manpower; and how to conduct effective dialogue with the two sides of industry.

The Chancellor outlined to him what the Government was doing in these areas; as far as contacts with the social partners were concerned, he described in some detail the role of NEDC, but made it clear that the Government had not yet fully thought through its approach. For his part, he was convinced that every opportunity of fruitful contact should be taken.

2. In answer to Dr. Martin's questions, the Chancellor set out on familiar lines his impressions of the Tokyo Summit.

3. In conclusion, Dr. Martin said that the Canadian Prime Minister was anxious to keep in the closest touch with Mrs. Thatcher and with the Chancellor. This was for two reasons; first because the Canadian Government was facing problems very similar to those being tackled by the British Government; and second because he attached great importance
to traditional ties of history and language, which must not be allowed to weaken.

M.A. HALL
9th July, 1979

Distribution:

PS/Prime Minister
Chief Secretary
Financial Secretary
Minister of State (Commons)
Minister of State (Lords)
Sir Douglas Wass
Sir Kenneth Couzens
Mr. Barratt
Mr. Jordan-Moss
Mrs. Hedley-Miller
Mr. Turnbull
Mr. Michell
Mr. Dixon
Mr. F.E.R. Butler
1. MR CLARK’S LIST CONTAINS A NUMBER OF SURPRISES. HIS CABINET IS 30 STRONG. ALTHOUGH SOME OF THE MEMBERS ARE CLASSIFIED AS QUOTE MINISTERS OF STATE UNQUOTE AND WILL, THEREFORE, BE SUBORDINATE TO OTHERS, THEY ARE ALL FULL MEMBERS OF THE CABINET. (MR CLARK’S OFFICE HAD ALWAYS MAINTAINED THAT, WHEN IN POWER, HE WOULD ADOPT SOMETHING MORE AKIN TO THE BRITISH SYSTEM). HIS APPOINTMENTS ARE HEAVILY WEIGHTED IN FAVOUR OF ONTARIO, WITH 10 OUT OF 30 SEATS GOING TO MEMBERS FROM THAT PROVINCE. APART FROM MR CLARK HIMSELF ALBERTA HAS ONLY 2 REPRESENTATIVES, LESS THAN QUEBEC WHICH, THANKS TO THE APPOINTMENT OF 2 SENATORS AND BOTH CONSERVATIVE MPS FROM THE PROVINCE, HAS 4 PLACES. OTHER PRAIRIE STATES ARE NOT WELL REPRESENTED AND THIS IS BY NO MEANS THE GOVERNMENT OF QUOTE THE NEW MEN FROM THE WEST UNQUOTE THAT SOME PEOPLE HAD EXPECTED.

2. WITH THE EXCEPTION OF SENATOR FLYNN NONE HAVE EXPERIENCE OF OFFICE. A NUMBER OF THEM WERE, HOWEVER, WELL KNOWN TO US IN OPPOSITION AND YOU MAY FIND SOME IMMEDIATE COMMENTS USEFUL. A FULLER AND MORE CONSIDERED COMMENTARY WILL FOLLOW BY BAG.

3. SECRETARY OF STATE FOR EXTERNAL AFFAIRS.

MISS FLORA MACDONALD HAS BEEN TO THE LEFT OF THE PARTY CENTRE. HER SHADOW PORTFOLIO WAS THE COMPLEX ONE OF FEDERAL/PROVINCIAL RELATIONS AND HER ONLY CONTACT WITH FOREIGN AFFAIRS WAS AS A STRONG CRITIC OF THE LIBERAL GOVERNMENT’S POLICY ON URANIUM EXPORTS, WHERE SHE FAVOURED A VERY RESTRICTIVE LINE IF NOT A TOTAL BAN. I WOULD EXPECT HER TO BE STRONG ON QUOTE THIRD WORLD UNQUOTE QUESTIONS, AND YOU MAY FIND HER DIFFICULT OVER RHODESIA.

4. INDUSTRY, TRADE AND COMMERCE.
THE PORTFOLIO HAS BEEN GIVEN TO MR DE COTRET WHO WAS DEFEATED AT
THE GENERAL ELECTION AND IS EXPECTED TO BE NOMINATED TO THE
SENATE. HE IS SUPPORTED BY MR MICHAEL WILSON AS MINISTER FOR
INTERNATIONAL TRADE, WHO WAS ELECTED TO THE HOUSE FOR THE FIRST
TIME IN THE GENERAL ELECTION. IT IS NOTABLE THAT THEY ARE BOTH
FROM INDUSTRIALISED CENTRAL CANADA AND AS A FORMER PRESIDENT
OF THE CANADIAN CONFERENCE BOARD MR DE COTRET HAS A WIDE KNOWLEDGE
OF INDUSTRY AS WELL AS ECONOMICS.

5. FINANCE.

MR JOHN CROSBY (NEWFOUNDLAND) WAS WIDELY TIPPED FOR THIS
POST. AS A FORMER PROVINCIAL MINISTER OF FINANCE HE LOOKS A GOOD
CHOICE.

6. ENERGY.

MR HNATYSHYN (SASKATCHEWAN) HAS ACTED AS DEPUTY HOUSE LEADER IN
OPPOSITION. IN THIS POST HE STOOD WELL IN THE PARTY ALTHOUGH
HE WAS OVERSHADOWED BY MR WALTER BAKER (WHO CONTINUES AS HOUSE
LEADER IN THE NEW CABINET).

7. DEFENCE.

MR MACKINNON (BRITISH COLUMBIA) HAS TAKEN OVER THE PORTFOLIO HE
COVERED IN OPPOSITION. HE FAVOURS THE MAINTENANCE AND EXPANSION
OF CANADA'S DEFENCE EFFORT AND THERE IS NO DOUBT THAT, FROM OUR
POINT OF VIEW, HIS HEART IS IN THE RIGHT PLACE.

8. TRANSPORT.

MR MAZANKOWSKI WAS IN OPPOSITION THE MOST OUTSPOKEN CRITIC OF THE
PROPOSED MOVE OF LONDON - CANADA AIR SERVICES TO GATWICK.

DEPARTMENTAL DISTN.
NAD
WED
ECON
En S\-S\-D
CABINET OFFICE

[COPIES SENT TO TREASURY]
[\[TRADE AND D\[ENERGY]
NEW FEDERAL GOVERNMENT

1. THE NEW CABINET WHO WERE SWORN IN AT 1400 HRS TODAY ARE:

MR JOE CLARK
MR JOHN CROSBIE
MISS FLORA MACDONALD
SENATOR JACQUES FLYNN

MR WALTER BAKER
MR JAMES MCGRATH
MR ERIC NIELSON
SENATOR MARTIAL ASSELIN

MR ALLAN LAWRENCE
MR DAVID MACDONALD
MR LINCOLN ALEXANDER
MR ROCH LA SALLE
MR DONALD MAZANKOWSKI
MR ELMER MCKAY
MR JAKE EPPS

MR JOHN FRASER
MR WILLIAM JARVIS
MR ALLAN MCKINNON

MR SINCLAIR STEVENS
MR JOHN WISE
MR RON ATKAY
MR RAY HNATYSHYN

PRIME MINISTER
FINANCE
EXTERNAL AFFAIRS
JUSTICE AND ATTORNEY GENERAL, SENATE LEADER
NATIONAL REVENUE AND PRESIDENT OF THE QUEEN'S PRIVY COUNCIL FOR CANADA FISHERIES AND OCEANS PUBLIC WORKS CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (NEW PORTFOLIO) SOLICITOR-GENERAL AND CONSUMER AND CORPORATE AFFAIRS SECRETARY OF STATE AND COMMUNICATIONS LABOUR SUPPLY AND SERVICES MINISTER, TRANSPORT REGIONAL ECONOMIC EXPANSION INDIAN AFFAIRS AND NORTHERN DEVELOPMENT POSTMASTER GENERAL AND ENVIRONMENT FEDERAL PROVINCIAL RELATIONS NATIONAL DEFENCE AND VETERAN AFFAIRS TREASURY BOARD AGRICULTURE EMPLOYMENT AND IMMIGRATION ENERGY MINES AND RESOURCES, AND SCIENCE AND TECHNOLOGY
MR DAVID CROMBIE
MR ROBERT DE COTRET

MR HEWART GRAFFTEY
MR PERCY BEATTY
MR ROBERT HOWIE
MR STEVE PAPROSKI

MR RON HUNTINGDON
MR MICHAEL WILSON

2. COMMENT IN MIFF,

FORD

[Signature]

[Stamp]
THE PROGRESSIVE CONSERVATIVE PARTY OF CANADA

Summary

1. The origins of the Progressive Conservative Party of Canada can be traced back to the loosely-defined liberal-conservative coalition government led by Sir John Macdonald which held power in the immediate post-Confederation period (1868-73). After the formation of a separate Liberal Party and an initial victory by that party in the 1873 elections, the Conservatives went on to dominate the Canadian political scene from 1878 until almost the end of the century, basing their policies mainly on expansion to the Pacific, railroad development and strong economic nationalism.

2. From 1896 to 1921 the Conservatives, drawing the bulk of their support from Anglophone Ontario, alternated in power with the Liberals, based on Francophone Quebec. During World War I, the generally pro-British pro-imperial Conservative government did much to enhance the international status of Canada as well as to confirm and enlarge Canadian autonomy. However, although the Conservatives retained their predominance in the 1917-21 Conservative/Union Liberal Government, they were thereafter destined to fall into a long decline which began in the early 1920s and continued until the 1950s. This was the result of poor party organisation, recurrent changes in the party leadership, continued lack of Conservative support in Quebec, and, most importantly, the rise of several new parties (the Co-operative Commonwealth Federation, the Social Credit Party etc). By 1956 the Conservatives' very survival as a major party was in doubt.

3. The party also owed its decline to the lack of a clearly-defined ideology. Canadian Conservatives incorporated a variety of ingredients, not all of which were compatible: among them a belief in collectivism and privilege, nationalism, Lockean liberalism, concern for individual as well as collective rights and acceptance of the primacy of politics over economics.

4. The advent of Mr John Diefenbaker to the leadership of the Progressive Conservatives in 1956 heralded a serious, though not entirely successful, attempt to re-define the party's aims and ideology. Diefenbaker's platform, which emphasised Canadian nationalism and economic development (eg particularly of the Canadian North) and put forward a "one Canada" theme while pursuing greater de-centralisation, attracted both tory and liberal elements within his own party as well as the electorate. As a result, he gained in 1958 the largest electoral victory in Canadian history. Diefenbaker nevertheless failed to realise the opportunity thus presented to him to establish

/the
the Progressive Conservatives as the major Canadian Party. This was due partly to his own indecisiveness, particularly over economic and defence policy, and partly to his desire to pander to public opinion. Other factors included his failure to synthesise the Tory and liberal strains in his party's ideology as well as his inability to create a permanent and electorally-successful Conservative coalition. Moreover, his anti-US, generally pro-UK, stance, particularly in trade matters, proved unrealistic and divisive. He was unwilling to adjust his own view of Canadian unity to allow for Quebec's perception of its own separate identity. Diefenbaker led his party to inevitable defeat in the 1963 elections, thereby effectively sentencing it to a further term in the political wilderness.

5. From 1963-1968 Diefenbaker remained the leader of a defeated party that had little prospect of returning to power. Moves to find a successor to him led to internal strife within the party. Eventually, in 1967, Mr Robert Stanfield, the Premier of Nova Scotia, was elected to take over the party leadership but, despite his heroic efforts to reunite the party and to broaden its appeal, he failed to lead it to electoral success in 1972 and 1974.

6. Mr Joe Clark, virtually unknown within the Party except as a member of the "Red Tories", unexpectedly succeeded Stanfield as party leader in February 1976. He has had his ups and downs since his election but in spite of his failure to develop a wide appeal or rapport with the electorate, he can now expect to lead his party to make a very creditable showing in the next General Election. His standing in Canada has grown as it has appeared increasingly likely that he will head the next Government. Furthermore he has brought the Party machine and caucus under his control and has gradually assembled a team of promising, though untried, talent. There are about a dozen potential ministers loyal to Clark who are at present being groomed to take over the major ministries. They appear at least as capable as the ministers they would succeed in the present Government.

7. The Progressive Conservatives remain essentially the party of Anglophone, particularly Western, Canada and it has no appeal to the voters of Quebec. The increasingly apparent radicalism of the West, which is determined to resist policies laid down in Ottawa by a Government that does not take full account of the West's importance, would find full expression through a Progressive Party Government in power.
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THE PROGRESSIVE CONSERVATIVE PARTY OF CANADA

History

1. Origins The roots of the Progressive Conservative party can be traced back to the leadership of Sir John Macdonald who fought and won the election of 1867 on a platform of full support for Confederation. Yet, at that time there were no firm party demarcation lines. Macdonald's government from 1867 to 1873 consisted of a loose coalition of liberal and conservative elements who favoured Confederation. Unity, such as it was, centred on the common desire to build a nation and keep it together. Indeed, the pro-Confederation forces fought the 1867 election under the banner of the Liberal-Conservative party.

2. By the time of the 1872 election, however, the amorphous coalition of the Confederation period was breaking up. Liberal cabinet ministers had been replaced by Conservatives and political groupings had begun to take on a slightly more coherent pattern. The Conservative Party continued to fight elections under the Liberal-Conservative flag (it did so until 1920) but from 1872 onwards it was opposed by a Liberal party. A two party system had begun to emerge.

3. Conservative Hegemony 1878-96 From 1873 to 1878 the Liberals held power. Election kickbacks from the promoters of the Canadian Pacific Railway had brought about the downfall of the Macdonald government. But the period from 1878-96 was one of Conservative hegemony. Macdonald had always been a firm believer in central government. He despised the state system of the United States. During the Confederation Debates he emphasised that "Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation". (1) Conservative policy during this period was founded on three major precepts:

(a) Expansion of Canada westward
(b) Development of the Canadian Pacific railroad
(c) A "national policy" of economic nationalism.

All three were inter-related to the extent that the overriding objective was to make Canada one nation politically, geographically and economically.

4. Macdonald's Conservative governments encouraged the completion of the Canadian Pacific Railway which enabled wheat to be moved from Western Canada to the more industrialised East. Moreover, some 140 million acres of land were made available for settlement in the West. Whilst these policies had obvious attractions for the West, the National Policy appealed to both East and West. Macdonald clearly enunciated the purpose of his policy in a campaign speech on 28 August 1878:

"The time has come, gentlemen, when the people of this Dominion have to declare whether Canada is for the Canadians, or whether it is a pasture for cows to be sent to England. It is for the electors to say whether every appliance of civilisation shall be manufactured within her bounds for our own use, or whether we shall remain hewers of wood and drawers of water to the United States". (2)

/Accordingly,
Accordingly, Canadian tariff policy was adjusted so that high rates were paid on "luxury" items and a general rate of approximately 30% was levied on imports of finished consumer goods. The lines between Conservative economic nationalism and Liberal policies of free trade were clearly drawn.

5. In the elections of 1878, 1882, 1887 and 1891 the Conservatives won every seat in British Columbia and a majority of seats on each occasion in both Manitoba and Ontario. Quebec also was a Conservative stronghold in the elections of 1878 and 1882, the Conservatives gaining a total of 93 seats in these elections as opposed to the Liberals 37. One of the key features of Conservative political success had been the establishment of a tacit alliance between English-speaking Protestants and French-speaking Roman Catholics. This had been maintained by an assiduous cultivation of the Roman Catholic Church hierarchy, but by 1896 the alliance had been broken.

6. Loss of Support The "Riel Affair" contributed to the Conservatives' loss of support in Quebec. In 1885 the government crushed a rebellion led by Louis Riel self-styled leader of the settlers in the Red River settlement and British Columbia. Fifteen years earlier Riel had led another rebellion and had executed a prominent Ontario Orangeman, Thomas Scott. In 1870 he had escaped arrest, but not so in 1885 when an English speaking jury convicted Riel of treason. Responsibility for the decision as to whether he should be hanged rested with the federal government. Passions were aroused in both Quebec and Ontario with each province respectively opposing or supporting Riel's hanging. The Conservative government finally ordered Riel to be hanged and there were immediate political repercussions. In 1886 the Quebec provincial Conservative government lost office. The following year the Conservatives won the federal election, but Conservative support from Quebec in the House of Commons dropped from 48 in 1882 to 35. The Riel affair forced the Conservatives to choose between Quebec and Ontario. They had chosen Ontario.

7. This trend was further exacerbated by the rise of militant protestantism amongst Conservatives in Ontario. Led by D'Alton McCarthy this group espoused an overtly anti-French policy. Macdonald refused to proceed on this basis, French Canadians being retained in the Cabinet. Nevertheless, a serious rift had developed within the Conservative party. Its dimensions were graphically revealed in 1895 over the Separate School settlement in Manitoba (the provincial legislature had abolished separate schools for Roman Catholics in Manitoba. The Catholic Church objected and demanded relief from the Dominion government. Since the Privy Council declared the Manitoba law to be intra vires, the government was faced with the problem of passing remedial legislation.) The Cabinet could not agree and a number of Cabinet members, not all of whom were Francophones, resigned. Attempts were made to paper over the rift and the Conservatives under Tupper (Macdonald had died in 1891) entered the election with a promise to pass a Remedial Bill. It was to no avail. The Liberals, led by Wilfrid Laurier, won. The Conservatives gained only 16 seats in Quebec compared to the Liberals 49.

8. Almost entirely under the direction of Sir John Macdonald the Conservatives had become the prominent political party in the early post-Confederation years. Their policies of economic nationalism /appealed
appealed to many areas of the country. Moreover, Macdonald's leadership had united conservative elements from both Quebec and Ontario, but even he had not been able to completely subordinate the racial and religious tensions inherent in such an alliance. Bereft of his leadership, the Conservatives had lost Quebec. The loss was not irrevocable, but henceforth it was the Conservatives who were required to win, rather than defend, a secure party advantage in Quebec.

9. Two-Party Government 1896-1921 During this period the Liberals won the elections of 1896, 1900, 1904 and 1908. It was not until 1911 that the Conservatives returned to power. Much of the Liberal success derived from the dominating leadership of their Francophone leader Sir Wilfrid Laurier. The growing prosperity of the country also contributed to it. Yet the bedrock of Liberal success was the support gained in Quebec. In 1900 Liberals gained 56 seats in Quebec, Conservatives 7. In 1904 the respective figures were 54 and 11 and in 1908 53 and 11. Conservative leader, Robert Borden, ruefully remarked after the 1908 election:

"Outside Quebec, we had a small majority; and in the House the Government was practically without a majority except that derived from Quebec". (3)

10. Conservative strength in these elections was centred on Ontario. At each election the Conservatives won the majority of Ontario seats, albeit by slim margins at times. Only in 1911 did the Conservatives win an overwhelming victory in Ontario and this, allied to a respectable result in Quebec (Conservatives 27; Liberals 37), ensured victory. Two factors contributed to the Conservative success of 1911. Firstly, the Laurier government, true to their free trade principles, had succeeded in agreeing a draft reciprocity treaty with the United States. Though it would probably have been of benefit to Canada, the treaty – which was never signed – was vigorously attacked. Conservatives assailed it as being both a reversal of the "national policy" and also indicative of an attempt to sever ties with Britain. Campaigning under the jingoistic slogan of "No truck or trade with the Yankees!" the Conservatives were able to win the support of many Ontario Liberals.

11. Secondly, Laurier had proposed the establishment of a Canadian navy. This was attacked by the Conservatives as an irrelevance. Defence policy should, in their view, be based on the Empire. The Laurier proposal was thus seen as a further attempt to break with Britain. However, in Quebec naval policy was criticised from a different perspective. Quebec nationalists, led by Henri Bourassa (who had parted company with Laurier over Canadian support for Britain in the Boer War) charged that Canadian Navy would lead to Quebeois being pressed into service under Protestant captains. And all for the purpose of fighting British wars! Thus in the election of 1911 "Laurier was attacked by the Conservatives in eight provinces as too French to be British, while the nationalists, financed to a large extent by Conservative funds in what Laurier called the 'unholy alliance', denounced him in Quebec as too British to be French". (4) A Conservative victory was assured. Yet even in 1911 the Liberals won a majority of the Quebec seats.

12. Increasing Role of Foreign Affairs The Conservative government under Borden did not embark on any major departures from the domestic policy of the Laurier government. But it was foreign affairs, rather than domestic policy which was in the forefront of attention. Indeed,
it was as Canada's first wartime Prime Minister that Borden achieved acclaim. Despite the pro-imperial pro-British sympathies of the Conservatives, it was a Conservative government under Borden which was instrumental in enlarging Canadian autonomy. Borden insisted that Canada should be consulted and informed about all policy decisions made by the War Cabinet in London. This was one factor which led ultimately to the formation of the Imperial War Cabinet, in which Canada was represented. Borden also played a part in obtaining representation for the self-governing Dominions at the Paris Peace Conference. Canada became a member of the League of Nations and in May 1920 the Borden government announced that Canada would have diplomatic representation in Washington. (The appointment of a Canadian Minister Plenipotentiary did not take place until 1927.)(5)

13. The war years represented a crucial stage in the development of Canada's international status. In domestic affairs also, this period marked a watershed. By 1917 Parliament had already been extended one year beyond its usual life in order to avoid political dissenion. A further prolongation was considered impossible. Accordingly Borden suggested to Laurier that a coalition government should be formed to prosecute the war. Laurier's initially favourable reaction became outright refusal when Borden indicated that conscription should be an essential policy of any Union Government. French Canadians had initially supported participation in the war, but without the enthusiasm of Anglophone Canada. As the war dragged on French Canadian support dwindled. Increasingly, French Canadians viewed the war as being prosecuted for British interests. Furthermore, English-speaking Protestant clergy were sent into Quebec as recruiting officers. This, allied to the fact, that English was the only language of command in the army caused many Quebecois to view the war as a device for seducing French Canadians away from their language and their religion.

14. Conscription divided the Liberal party. Many English speaking Liberals supported Borden and joined him, forming a Union Government. Francophone Liberals, under Laurier's leadership, remained unalterably opposed to the measure. The 1917 election resulted in an overwhelming victory for the Union government. 153 seats were won in the House (115 Conservatives and 28 Union Liberals). Only 62 Laurier Liberals were elected, of whom 62 were from Quebec. Despite the Union's overwhelming victory only 3 Union members were elected from Quebec. In the 1917 election the Conservatives completely identified themselves as the party of English-speaking, Protestant Canadians loyal to the Empire. The tacit alliance of conservatives from Quebec and Ontario which had underpinned the Conservative party under Macdonald had been broken completely and almost irrevocably.

15. Years of Decline 1921-57 Somewhat suprisingly the overwhelming victory of the Union (largely Conservative-dominated) government in 1917 heralded the demise of the Conservative party, not the Liberal party. It was the Liberals who won the election of 1921. Indeed, on only one occasion during this period, in 1930, did the Conservatives win an overall majority of seats in the House of Commons. One of the major reasons for the decline was poor party organisation. Although the Conservatives had dominated the Unionist government, the Conservative party machine had fallen into disrepair. A trend had been established which lasted for much of this period. This was true at both the federal and provincial level. By 1935 there were no Conservative provincial governments. R B Hanson, leader of the federal Conservatives
Conservatives observed in 1940 that in Alberta, Saskatchewan and Quebec the party had virtually "ceased to exist"(6). When Conservatives won a provincial election in 1943 it was the first Conservative success in a federal or provincial election in 12 years. In the war years the party came perilously close to extinction. Even in 1956, on the eve of the Diefenbaker years, the Conservative record in federal elections had raised the question of how much longer it could survive.(7)

16. Renaming of Party  A further factor contributing to this sorry record of failure was lack of consistency. In the period 1921-57 the Conservative party had eight leaders, not including those appointed on a caretaker basis. By contrast, the Liberals had only two. Not even the name of the Conservative party remained unchanged. In 1920 it was decided to adopt the designation "National Liberal and Conservative Party". The political shorthand was to be "National Party". In 1922 the party name was changed back to the traditional "Liberal-Conservative" designation. By 1938 a further change was made, following disastrous election results from 1935 onwards. "National Conservative" became the party label. This was retained until December 1942 when a party convention which chose the Progressive politician, John Bracken, as leader accepted the new title of "Progressive Conservative". This title has remained as the party's designation to this day. Yet the eight changes in leadership and five changes in party titles in the period 1921-1957 epitomise the lack of direction and leadership which beset the Conservatives.

17. Other Problems  Conservative failure also stemmed from the party's virtual extinction in Quebec. Between 1920 and 1957 the highest number of seats won by the party in Quebec was 24 in 1930, when the Conservatives won the general election. At all other elections prior to 1957 the Conservatives gained no more than five Quebec seats in each election. Such dismal results in the second most populated province virtually doomed the party to electoral disaster. Sporadic attempts were made to woo French Canadian voters. In 1958 R J Manion was chosen as party leader. Central to his election was the fact that he was a Roman Catholic married to a French Canadian. Such a desperate expedient revealed the party's plight. The Conscriptation Crisis of World War I had left the indelible impression in Quebec that the Conservatives were an Anglophone, Protestant party. For a time it appeared that Manion might gain some success. Attempts to establish an informal alliance with the conservative Quebec Union Nationale provincial government under Premier Duplessis seemed to hold some promise. This initiative was aborted by the outbreak of World War II. In his provincial electoral campaign Duplessis denounced the British connection. Further collaboration by the Conservatives became impossible.

18. World War II also revived the debate over conscription. Aware of Quebec's views, Manion had declared against conscription, although he was severely criticised within his party for this. Manion's caretaker successor, R B Hanson, also refused to declare in favour of conscription. Meighen, who returned as leader in 1941 had no such qualms. Once again the Conservatives were identified as the conscriptionist party. Once again the effect on Conservative fortunes in Quebec was predictable. In the 1945 elections the Conservatives won one seat in Quebec compared to the Liberals 54. Attempts to bring together conservative forces in Francophone and Anglophone Canada had founded on the seemingly immovable rocks of racial/linguistic differences and attitudes to Britain.

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19. Not all of the problems of the Conservative party were entirely of their own making. The inability of the only majority Conservative government, under R B Bennett, to cope with the 1930s depression left the party with an unfortunate legacy. For many years it was identified as the party of the depression. Similarly, the formidable qualities of the Liberal leader, Mackenzie King, (Premier for 22 years) accentuated the leadership problems within the Conservatives. Under his able leadership the Liberals succeeded in obtaining support in both Francophone and Anglophone Canada. They also made the centre ground of Canadian politics their own. During World War II there was a considerable trend to the left in Canadian politics. Mackenzie King moved decisively, proclaiming new Liberal policies on social welfare. Already hamstrung by their identification as the Anglophone party, the Conservatives found it difficult to discover an electorally popular method of attacking Liberal policies. Too often the initiative rested with Mackenzie King. Ideological battles fought in characteristically muted form, took place on ground of Mackenzie King's choosing. The Conservatives were continually out-maneuvered.

20. Rise of Third Parties The final reason for Conservative failure during these years was the rise of third parties. This represented a challenge to both major parties. But it was the weaker party, the Conservatives, who suffered most. In the 1921 election the Progressives gained more seats than the Conservatives in the House of Commons. The Progressives were a farmer-dominated party which advocated free trade, lower tariffs and publicly-owned utilities. Such policies might have been expected to draw support away from the Liberals. In fact it was the Conservatives who suffered. At the federal level Progressive gains in Ontario and the prairie provinces cost the Conservatives dear. Unlike the Liberals they did not have a secure base in Quebec. The election of the Progressive Premier of Manitoba, John Bracken, as leader of the Conservatives in 1942 represented a belated attempt to co-opt the Progressive forces. It was too little and too late. By World War II the Progressives had ceased to be a potent force in federal politics. Nor was Bracken able to deliver much of the Progressive support which still existed, as indicated by the Conservative failure in the 1945 election.

21. Two other third party movements also developed in the period 1921-1957. The Co-operative Commonwealth Federation (CCF) was the forerunner of today's New Democratic Party. It was an alliance between labour and farmers, which advocated mildly socialist ideas, including public ownership of key industries. It scored no dramatic breakthroughs at the federal level though most of the CCF seats came from the Western provinces. Yet in 1943 a public opinion poll showed the CCF leading the Conservatives and the Liberals. The effect was to move the centre of Canadian politics leftwards. Mackenzie King's adept manoeuvering ensured that this "isolated" the Conservatives, rather than "squeezed" the Liberals. The Social Credit party first achieved success in Alberta in 1935, winning the provincial election. Theoretically, it was based on a simplistic monetary formula incorporating price regulation, control of credit and the payment of dividends to citizens as their social credit. In Alberta Social Credit remained as the provincial government from 1935 to 1971. More importantly for the Conservatives, Social Credit continued to win a large number of federal seats in Alberta up to, and including the 1957 election. This was a considerable loss to the Conservatives who needed to win Western seats to counterbalance the Liberal advantage in Quebec.
22. Apparent Eclipse Prior to the advent of John Diefenbaker most commentators believed that the only option for the Conservatives was mere survival. The possibility of forming a government seemed pure fantasy. In the 1953 election the Liberals obtained more seats than the Conservatives in every province. The party image seemed increasingly outdated. An Anglophone, Protestant party that could no longer win a majority in Ontario and the Western provinces, let alone make inroads into the Liberals' Quebec stronghold seemed to have no future. Indeed, in 1953 the Conservatives' 51 seats in the House of Commons was only 7 seats greater than the combined strength of the minor parties. Bereft of effective leadership and organisation the party seemed to be increasingly irrelevant. Its very existence as a major party was in doubt.

Conservative Ideology

23. Background In more general terms part of the reason for the trials and tribulations of the Conservative party derived from the fuzziness of its ideological precepts. It is a truism that the two party system of Canadian politics is not based on ideology. Yet the ideological evolution of the Conservative party cannot be ignored. The beliefs of the party and the image it presented to voters were important. They also provide an essential background to the Diefenbaker years.

24. Conservatism in Canada incorporated many ingredients. The first, and one which distinguished it from Liberalism, was torism. A belief in collectivism and privilege was brought to Canada by the Loyalists who left the United States. It was reinforced by the continuing influx of immigrants from the United Kingdom which at times resulted in a nationalistic and sometimes nostalgic approach to problems. Yet Canadian Conservatism was not an hermetically sealed faith while the Loyalists were unwilling to accept the doctrinaire liberal society of the United States. They had nevertheless been profoundly influenced by the ideas of John Locke, and Lockean liberalim with its concern for individual rights was an important ingredient of Conservatism. (Not surprisingly, therefore, the party established by Sir John Macdonald was formally described as the Liberal-Conservative party.)

25. The Influence of Macdonald These various ideological elements were exemplified by the way in which Macdonald guided the Conservative party. The concept of Confederation itself contained certain key elements which were to become central features of party ideology. Loyalty to the Crown was important and the Conservatives realized in 1867 that a shared loyalty to a common Crown could establish a bond in a heterogeneous society. Acceptance of privilege also derived from a belief in the monarchical system. It did not, however, lead to a belief in a large hereditary ruling class. The liberalism of North America was too strong to accept such a view. Macdonald faithfully reflected this in his decision that the Canadian Senate should not be an hereditary chamber. This, he believed, would be "altogether unsuited to our state of society". (8)

26. Confederation also revealed Macdonald's belief in collectivism. He viewed Canada as a collective whole and was prepared to initiate state action in a way that ran counter to the more pure liberalism of
the Liberal party. In his view precepts of individualism and laissez-faire economics could not be allowed to endanger Canadian unity. Action by the state was thus essential to defend Canadian industries through the tariff and to unite the country through a national railway system. Individual economic interests might favour a continental railway structure and exchange of goods. Nevertheless, the Conservatives, unlike the Liberals, believed that these had to be subordinated to the collective interest of Canada as a nation. The ultimate primacy of politics over economics was an essential part of Conservative ideology.

27. The rise of Liberal elements

The Conservatives' loss of Quebec in 1896 initiated a trend which paradoxically served to dilute the tory strain in the Conservative party's ideology. For the collectivist hierarchical tradition had appealed to the deeply conservative nature of Quebec society where the value of the group was regarded as paramount. Racial and religious factors, not ideology, caused the demise of the Conservatives in Quebec. Deprived of this support the liberal elements in the party became more prominent. Even under Macdonald, Conservative reverence for British traditions had been accompanied by considerable reservations about the British social structure. This distance became more virulent under the more liberally-inclined Borden. (During an Imperial War Cabinet Lord Curzon asked for Borden's opinion of the British social system. The Canadian Conservative leader was blunt: "We regard your social order as little more than a glorified feudal system".) Borden's liberal hostility to privilege was also reflected in his unwillingness to allow Canadians peerages, or other British marks of social distinction.

28. Neither Borden nor Arthur Meighen (Prime Minister and leader of the party from 1920) relinquished their belief in collective values. Meighen, for example, believed that water power should be both developed and operated by the state. Borden had played a leading part in establishing Canada's separate identity as a state. But Meighen's "Ready, aye, ready" remark concerning support for Britain during the Chanak crisis of 1922* revealed a deep-rooted nostalgic acceptance of British policy. This was increasingly at odds with Canadian opinion and in striking contrast with Mackenzie King's anti-imperial ideology.

29. The Depression years

The Depression years caused the Conservative Premier Bennett to propose a Canadian version of the New Deal with emphasis on collective action by the state. The new course proposed by Bennett was however an electoral failure. It also failed to have any lasting impact on Conservative ideology. Successive leaders such as Meighen returned to the old mixture of liberalism and toryism, increasingly outdated though this had become. It was the election of the Progressive politician John Bracken which resulted in a major change in the ideology of the party. The Progressive Conservative party

/became

*After repudiating the Treaty of Sevres, the Turkish armies approached the area of the Straits garrisoned by a small British force. HMG cabled the Dominions to ask what aid might be expected from them in case of war. The responses showed varying degrees of readiness to participate.
became imbued with a more powerful and radical strain of liberalism than had previously existed in the Conservative party. Progressive Conservative hostility to tariffs was accepted. The Progressives also pressed for decentralisation of government(11).

30. Under Bracken's leadership the Progressive Conservatives also moved towards the liberal theory of individualism; that each individual should be enabled to fulfil his talents. Differences would still exist in such a society. Egalitarianism was not the goal. Yet they would be less obvious and less stratified than the old concept of a tory social order. This change in ideological orientation had a marked effect on the party, but electorally it was a hazardous and initially unsuccessful change. Tory elements within the party were disenchanted. In the long run, however, the change served to lessen the influence of the nostalgic elements of toryism on the party. Divesting the party of its out-of-date ideological baggage was an essential element in ensuring the PC's survival as a major party.

The Diefenbaker Years: 1957-63

31. Background John Diefenbaker was elected leader of the Progressive Conservatives in 1956. He had been a leading Conservative for many years having unsuccessfully sought the party leadership in both 1942 and 1948. In 1956 he was not the front-runner for the leadership. Nevertheless, the party convention determined to gamble on the fiery orator from Saskatchewan. It was a calculated risk. Diefenbaker seemed to offer little hope of gaining Quebec votes. Nor did he appeal to the more tory elements in the party to whom he was a prairie radical. Despite these disadvantages, in 1957 Diefenbaker became the first Conservative Prime Minister since Bennett's victory in 1930. He held the post until 1963. During this period the PC's fought and won three general elections, in 1957, 1958 and 1962. In 1963 they were defeated.

32. Success and Failure The electoral history of these years reveals the extent of PC success and failure. The narrow victory in the 1957 election represented a psychological breakthrough. It was based on important gains in Ontario, together with less significant gains in the Maritime Provinces and the West. The 1958 election results exceeded the PC's wildest dreams. 208 PC members were elected compared to 48 Liberals. It was the largest victory in Canadian history. The PC's won a majority of the vote in every province except Newfoundland. The Liberal's stronghold of Quebec fell at last. In Quebec 67 Conservatives were elected compared to 14 Liberals. The PC percentage of the popular vote in Quebec was 62%, only 1% less than the PC vote in Ontario.

33. For a time it seemed that the PC's, under Diefenbaker's leadership, had reforged the old Macdonald alliance of Conservative support in Ontario and Quebec. The key to continued PC success seemed to be within grasp. It was not to be. In 1962 the PC's won a narrow 116-99 victory over the Liberals. The PC vote in Quebec fell sharply and even in Ontario the Liberals gained more seats than the PC's. Diefenbaker remained in power due to support from the Western

/provinces
provinces and the increased strength of the Social Credit party in Quebec. One year later the Liberals increased their majorities in both Quebec and Ontario, thereby establishing a Liberal government. At the end of the Diefenbaker government the only advance the PC's had made was to solidify their support in the West.

34. What were the reasons for these successes and failures? No analysis of these years is possible without reference to the dominating political personality of Mr Diefenbaker. The successes of 1957 and 1958 stemmed directly from his revitalising effect on the party and his electrifying effect on the voters. His oratory and tireless campaigning were important factors in the PC successes. Not much reliance was placed on the detailed proposals of the PC's election platforms. Yet those policies which Diefenbaker emphasised revealed a considerable change in the ideological direction of the Party.

35. Firstly in his call for a "New National Policy", Diefenbaker returned to the collectivist roots of the Conservative party. He also revealed the Conservative instinct to subordinate economic forces to political direction. Particular emphasis was placed on developing the Canadian North. Diefenbaker affirmed "Whereas Sir John Macdonald was concerned with opening the West, we shall be concerned with the developments in the Northern Frontier". Further, "We believe in a positive national policy of development in contrast with the present negative laissez-faire and haphazard one". (13) Specific proposals were also made for a National Energy Board and a National Highways policy.

36. Emphasis on Nationalism Diefenbaker also placed emphasis on Canadian nationalism. His "New National Policy" and his campaign speeches were full of references to "One Canada". At times this nationalism appeared as openly anti-American. The call for "immigrant capital to become Canadian" (14) was one example. But domestically "One Canada" had a philosophical basis entirely different from the tory strain in the Conservative party. Diefenbaker espoused the radically progressive views of John Bracken in supporting the thesis of "unhyphenated Canadianism" (a US-style Canadian "melting pot"). This was a call for assimilation, not the acceptance of diversity, and it differed entirely from the tory legacy of Macdonald which accepted the diversity of Francophone and Anglophone Canadians within one collective whole. Moreover, Diefenbaker's social individualism was inimical to privilege, another of the central precepts of toryism. "One Canada" meant that "equality of opportunity must be assured to our people in every part of Canada" (15). Diefenbaker also declared that "I wish to bring about the concept of one Canada with special rights and privileges to no area" (16). This was a nationalism which had a distinctly liberal individualistic flavour.

37. Decentralisation In many respects, therefore, Diefenbaker both redefined and redirected the tory precepts of the Conservative party. At the same time his social policy presented a radically liberal view. The various strands were not entirely consistent. In addition to the "One Canada" theme and "unhyphenated Canadianism" Diefenbaker criticised the Liberals for centralising government control in Ottawa. A decentralisation was required, with the Provinces playing their
rightful role. For Quebec policy should be "confederation, not centralisation". The trends towards greater conformity and greater decentralisation were not easily reconcilable given the unique position of Quebec. Diefenbaker's appeal to both the Tory and Liberal elements in his own party and the electorate was obvious. It played a large part in his success in 1957 and 1958.

38. Diefenbaker's personality and political appeal were buttressed by more mundane factors. Many Canadians believed that the Liberals had been in power too long. After 22 years it was time for a change. In 1958 there was also a bandwagon effect. The PC's were going to win and Quebec decided not to be left behind. Many provinces also believed that they would receive a better deal from a Conservative government. This was particularly true for those provinces which had not shared to the full in Canada's vaunted prosperity. Whatever the reasons, however, Diefenbaker returned to Ottawa after the 1958 election with a huge majority. He then had his opportunity to establish the PC's as the major Canadian party.

39. Diefenbaker's Shortcomings That he failed to realise this opportunity is not in doubt. Paradoxically two of the major reasons for this had previously contributed to PC success. The first was Diefenbaker's own personality. PC government tended to be a one-man band that didn't work. Diefenbaker overshadowed his inexperienced Cabinet. But this did not make for decisive government. On the contrary indecisiveness was Diefenbaker's cardinal characteristic. He refused to formulate a coherent defence policy; he wavered on the economic measures to combat unemployment. Too often the face-saving formula of a Royal Commission was employed when action was required. This fear of action derived in part from Diefenbaker's continual desire to be in step with public opinion. Inaction was regarded as being less dangerous than action.

40. In addition the liberal and Tory elements in Diefenbaker's ideological appeal were never reconciled. In 1957 and 1958 Diefenbaker had used these to appeal to different segments of the nation but his years in power failed to bring together the divergent strains in Canadian Conservatism. Soon the nationalism espoused by Diefenbaker shaded into nostalgia, exemplified by his attitude to Britain and the Commonwealth. Diefenbaker's call for a 15% diversion of Canadian trade from the US to the UK was both unrealistic and unfulfilled. The anti-American strains remained. In the 1963 election Diefenbaker urged the electorate to "vote Canadian", charging that Liberal defence policy was made in the United States. Despite discord within his own party he rejected the stationing of nuclear weapons on Canadian soil. Such attitudes were increasingly regarded as either irrelevant or divisive. Similarly, no real attempt was made to ensure that Quebec remained within the Conservative fold. The Diefenbaker vision of "One Canada" was the antithesis of the Quebec view of their separate identity. The alarming fact was not that Diefenbaker was unsuccessful in seeking an accommodation between these views, it was that he did not even try. Presented with an unparalleled opportunity to reforge a winning electoral coalition Diefenbaker simply defaulted. The result was to sentence the PC's to a further term in the political wilderness.
In the Wilderness

41. Diefenbaker led his Party to defeat in the general election of April 1963. He continued as Party Leader, surrounded by his old praetorian guard, but there was little prospect of the Conservatives returning to power under his leadership. Equally there was no clear alternative to him as Party Leader in that the Premier of Ontario, Mr John Robarts, was the only obvious choice as his successor, was not interested in the job.

42. In the general election of November 1965 the Liberals, under Mr Pearson, increased their majority over the Conservatives. Discontent with Mr Diefenbaker's leadership became more acute within the Conservative Party. After a lot of plotting and acrimony the Party passed what amounted to a vote of no confidence in Mr Diefenbaker by deciding to hold a Leadership Convention in the course of the next year. Mr Robert Stanfield, the Premier of Nova Scotia, was reluctantly persuaded to declare himself a contender. He ran a poor campaign and went in to the Convention as "everyone's no. 4 candidate". Mr Diefenbaker also ran but was never in the race. Eventually Mr Stanfield was elected on the fifth ballot.

The Stanfield Years 1967-1975

43. Mr Stanfield faced a choice when he took over the Party Leadership. He could either try to renew the Party, finding his support among those elements who had unseated Mr Diefenbaker, or he could attempt to rehabilitate the Diefenbaker faction. Given the bitter feelings that subsisted, there was no way of doing both. He chose the latter, and the kingmakers found themselves excluded from Court. His troubles were compounded when Mr Trudeau succeeded Mr Pearson as Leader of the Liberal Party in 1968 and swept the country in a June general election in which the Conservatives were more heavily defeated than at any time over the previous 15 years. They retained only four seats in Quebec (where they have never recovered), took only seventeen out of the eighty-eight seats in Ontario, lost seventeen seats on their heartland of the Prairies and held no seats at all in British Columbia. They also, with one exception, failed to win any seats in the urban centres of Canada. Most of their front-bench talent failed to win re-election, but Mr Diefenbaker and all of his old guard were returned.

Mr Stanfield was left to try to lead a "ragged collection of right-wingers, reactionaries, populists, unfocussed progressives and political has-beens"(19). In attempting to do so and to wage an effective opposition he could count on the support of no more than thirty members of his own caucus.

44. Over the ensuing years Mr Stanfield made heroic efforts to keep his Party together and to broaden its appeal. He travelled endlessly throughout the country, worked patiently within the Party, developed a self-deprecatory wit that earned him the occasional favourable notice in the media, and succeeded in maintaining his Party in being through some difficult days. His efforts came close to reward at the
general election of October 1972, when the Progressive Conservatives increased their representation to 107 seats, only two less than the Liberals. If the Conservative Party had been running in better shape and had fought a better campaign the prevailing anti-Liberal mood of the country could well have returned them to power.

45. The general election of July 1974 saw the Liberals back with an absolute majority and the next year Mr Stanfield retired from the Party leadership. Sir Terence O'Neill, the former Prime Minister of Northern Ireland, remarked that "if ever one of nature's gentlemen strayed into politics, the name of that man is Stanfield". The very qualities that made him so attractive, his humility, his diffidence, his reticence and his refusal to seem anything other than the man he was, were in the last resort inadequate for the task that was thrust upon him, but it is largely thanks to him that his Party survived as the second-largest in Canada and is today able to contemplate the prospect of winning the next election.

The Rise of Mr Joe Clark

46. Background Mr Clark emerged from the Leadership Convention of February 1976 as an unexpected choice. He was not well known in the Party except as a member of the "Red Tories" and was not even thought to be the main contender from that group. A variety of circumstances worked in his favour. Mr Lougheed, the Premier of Alberta, who could have had the leadership by acclamation, refused to leave his Province. The two pre-Convention favourites ran strongly in the early ballots, but it was clear that neither could win over the other's supporters and obtain the crucial extra votes they needed for election. Thanks to an excellent speech at the Convention, Mr Clark won the greater part of the left-wing support of his Party, and tucked himself handily into third place. Two other contenders from the right wing and centre of the Party spotted him as the eventual winner and immediately swung their support to him. Thereafter he climbed steadily in the polling and on the fourth ballot, with only himself and Mr Wagner from Quebec left in the race, secured just over the 50% plus one of the vote that was needed to elect him. The sense of the Convention was neatly symbolised by Mr Diefenbaker's unavailing efforts to swing support to Mr Clark's opponents. Twice he made a slow, dramatic progress across the floor of the Convention to endorse another candidate: twice he failed to carry any significant body of support with him. The Conservative Party's course for the future was by no means plotted, but the break with its past was clear enough.

47. At first sight, Mr Clark was no more the man the Progressive Conservatives needed than Mr Stanfield had been. Thanks to his success at the Convention he had a honeymoon period with the press and stood high in public esteem for a while, but his slight figure, his solemn, rather wooden manner, his obvious inexperience and lack of style began to tell against him. The election of the secessionist Parti Quebecois in Quebec in November 1976, and the immediate threat it seemed to pose to Canada was also a disadvantage for him. Mr Trudeau appeared to be the only Federal leader capable of resisting the PQ effectively. Mr Clark looked like a boy confronted with a man's job.

48. But the threat from the PQ came to seem less immediate and acute. Mr Trudeau's role as champion of national unity amounted to less of an asset, even something of a liability as he was criticised for concentrating on Quebec rather than on the bad state of the economy,
which had a more direct impact on most Canadians. With the advent of public television in the House of Commons Mr Clark emerged with a new forceful style that saw him regularly on the offensive at Question Time. Mr Trudeau was eventually obliged to abandon his tactics of leaving one or other of his Ministers to deal with him while he remained above the battle except for occasional dismissive interventions.

49. Factors in Clark's Favour Mr Clark's standing in the country has grown as it has appeared increasingly likely that he will lead the next Government of Canada. His fellow Albertans, who look to him as something of a cissie; the Bay Street financiers who distrust him as a soft-centred liberal with no experience of life outside politics; even some Quebeckers, who see in him a well-intentioned but totally uncomprehending representative of Anglophone Canada - all have had to adjust their views to take account of the fact that he may be the next Prime Minister. A number of factors have worked in Mr Clark's favour, some of them general, some of them personal:

(i) Canada has a long tradition of dull, worthy politicians. Mr Trudeau, with his pre-eminence and flamboyance, was the exception to the rule. Canadians have had their fling with the iridescence of Mr Trudeau's northern Camelot and are now ready to return to their more traditional and sober-sided ways. Quite apart from this, there is a wider feeling that after fifteen years of Liberal Government the simple fact of being a democracy demands a change.

(ii) Moreover, the lights have long since dimmed in Camelot and Mr Trudeau himself has changed. The brilliant, tough-minded young reformer has become a tired defender of a tired Government. So many of the hopes he raised and personified in the self-confidence of the late 60s and early 70s have been dashed, particularly that of a booming bilingual Canada incorporating a contented Quebec. The PCs' Speakers Manual for the next campaign is stuffed with quotations from the early Trudeau years set against a statement of the current realities. Domestic issues, apart from national unity, have never excited Mr Trudeau's interest, but he has taken less trouble to conceal this over the past few years, at a time when Canadians have increasingly focussed on their own problems. Mr Trudeau's quickness of thought and speech that inspired the nation ten years ago has been directed towards vilifying opponents in the House and in the press, for whom he too easily shows an arrogant contempt. His status on the international scene counts for very little in Canada today.

/(iii)
(iii) Mr Clark has done an unspectacular but first-class job in holding his Party together. In the difficult early days Mr Wagner sulked in his tent - and has now been translated to oblivion in the Senate. Mr Jack Horner from Alberta crossed the floor of the House to take a Ministerial appointment; but it is the Liberals who squirm as he clumps around incompetently on the Government’s front bench. Another Conservative MP from Alberta, Stan Schumacher, refused to make way for Mr Clark when the boundaries of their adjacent ridings were changed - then suddenly found that his constituency organisation had not re-adopted him for the next election. This was the first occasion on which Mr Clark showed his prowess as - in the words of one of his admiring colleagues - "a mean son of a bitch". Mr Diefenbaker was allowed to rumble on - who could stop him? - but Mr Clark effectively dished him by having his main lieutenant appointed to the prestigious but powerless post of Party Chairman.

(iv) Mr Clark has moved appreciably closer to the centre of his Party, and is no longer a "Red Tory". He stands for the broad range of respectable, centrist Conservative policies and commands the willing respect of all except the red-neck right of the Party.

50. As he has brought the Party machine and caucus under his control he has also gradually assembled a team of promising, albeit untried, talent. The shadow portfolios still largely reflect Mr Clark's political debts from the past and his desire to keep all sections of the Party contented, but it is an open secret that a number of the incumbents would not retain their portfolios in office. Near ible, there are about a dozen potential Ministers, loyal to Mr Clark and of a similar cast politically, who are being groomed to take over the major Ministries and who look at least as capable as the Ministers they would succeed in the present Government.

Current Ideology

51. The Progressive Conservatives have two words in their title: it is misleading to emphasise the second of them at the expense of the first. Over a broad range of policies their positions are close to identical with those of the Liberal Party. They share some of the characteristic beliefs of Conservative Parties throughout the world, such as an insistence on a reduced level of Government expenditure, a smaller bureaucracy and a reliance on private enterprise as the mainspring of the economy. But they are not a party of big business, with whom their contacts are in fact tenuous. They do not advocate sweeping reductions in the comprehensive system of social security benefits, health insurance, etc that the

/Liberal
Liberal Government have put in place in Canada. Their heartland lies in the Prairies, but they are not essentially a party of the agricultural interest. In opposition at least the NDP, the Social Democratic third party of Canada, have had no difficulty in finding common cause with them, and NDP leaders seem to contemplate the possibility of a coalition with them, if the Progressive Conservatives were returned as a minority government, as at least feasible.

52. The Progressive Conservatives are essentially the party of Anglophone, particularly Western, Canada. With few exceptions they would carry virtually every seat west of Ontario in a general election. The Liberals have for a long time been the party of central Canada, the industrialised Provinces of Quebec and Ontario. The West has, with justice, felt neglected. The Liberal Government have been prepared to let strikes in the port of Vancouver continue for weeks without intervention, despite the impact on the grain farmers in the Prairies; troubles affecting the auto industry in southern Ontario have led them to recall Parliament within 48 hours. During this period of neglect, the economic strength of the West within Canada has increased. The primary producers, the resource industries and the agricultural exporters have developed, while the relative importance of the manufacturing industries in Quebec and Ontario has declined. The extent of this process should not be exaggerated: Canada remains an important manufacturing country and its population is still largely concentrated in central Canada, but it has gone far enough for the West to see itself as "an economic giant but a political pygmy". In many areas it may have no clearly formulated ideas on the policies it wishes to see changed, but it has a determination that it will no longer be subordinated to policies laid down by a Government in Ottawa that does not give full weight to the West's importance. Much of the West is radical in the sense that it questions the assumptions on which government has been conducted in Canada over the past 15 years. This radicalism would find full expression through a PC Government in power in Ottawa.
FOOTNOTES


(3) Quoted in Williams, John R. *op. cit.* p.31

(4) Williams, John R. *op. cit.* pp 32-33


(9) Ibid, p. 87

(10) Ibid, p. 91

(11) Carrigan, D. Owen *op. cit.* p.163

(12) Quoted in Christian W. & Campbell, C. *op. cit.* p. 98

(13) Carrigan, D. Owen, *op. cit.* p. 228

(14) Ibid, p. 229

(15) Ibid, p. 225

(16) Ibid, p. 228

(17) Ibid, p. 255

(18) Diefenbaker established 15 Royal Commissions. A remarkable number in 6 years. See Newman, Peter C. *Renegade in Power; The Diefenbaker Years* Toronto McClelland and Stewart 1963 p. 82

(19) Quoted in Geoffrey Stevens *Stanfield*
PRIME MINISTER

Paul Martin, High Commissioner for Canada, telephoned this morning to say that the (Conservative) Premier of Manitoba had arrived today in London and would be staying until Friday evening. The Premier, elated by Mr. Clark's election victory, asked whether he could see you for a few minutes during his brief visit. Mr. Martin told him that it was late in the day to suggest this but he undertook to get in touch and see whether you would agree to see the Premier.

I explained that Thursday and Friday this week were exceptionally busy days for you and that there was little chance of your being able to readjust your programme in order to fit in another visitor. Nevertheless, I undertook to put the proposal to you.

Both Bryan Cartledge and I think that this is asking too much. You have spoken to Mr. Clark about his victory, and in terms of international relations need do no more at this stage. If you do see one of the Canadian State Premiers, you will lay yourself open to pressure to see others. If you agree not to see him, we could send back, through Paul Martin, an appropriate message of congratulations and good wishes.

24 May 1979
PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T16/79

GR 90

RESTRICTED

FM FCO 24/4502 MAY 1979
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 118 OF 24 MAY

MESSAGE TO MR CLARK

1. PLEASE CONVEY THE FOLLOWING MESSAGE FROM THE PRIME MINISTER TO MR CLARK:

BEGIN

QUOTE I SHOULD LIKE TO OFFER YOU WARM CONGRATULATIONS ON BEHALF OF THE BRITISH GOVERNMENT AND PEOPLE ON YOUR VICTORY IN THE CANADIAN GENERAL ELECTION. I WISH YOU AND ALL YOUR COLLEAGUES GREAT SUCCESS AND AM GLAD TO BE ABLE TO WORK WITH YOU TO STRENGTHEN THE CLOSE FRIENDSHIP AND CO-OPERATION BETWEEN CANADA AND THE UNITED KINGDOM WITHIN THE COMMONWEALTH FAMILY. I KNOW THAT THE PEOPLE OF OUR TWO COUNTRIES WILL CONTINUE TO VALUE AND BENEFIT FROM THEIR DEEP AND HISTORIC FRIENDSHIP. I LOOK FORWARD TO MEETING YOU SOON. UNQUOTE

ENDS

CARRINGTON

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FILES:
NAD PS
CCD PS/LPS
NEWS D MR LEAHY

RESTRICTED
1. THE PROGRESSIVE CONSERVATIVES, UNDER MR JOE CLARK, DEFEATED THE LIBERALS IN YESTERDAY'S ELECTION WITHOUT WINNING THE 142 SEATS THAT WOULD GIVE THEM AN ABSOLUTE MAJORITY. THE STANDING OF THE PARTIES IS:

PC'S: 135
LIBERALS: 114
NEW DEMOCRATIC PARTY: 26
SOCIAL CREDIT: 6

ONE SEAT IN VANCOUVER IS STILL UNDECIDED IN A VERY CLOSE COUNT BETWEEN THE PC AND LIBERAL CANDIDATES.

2. EARLY THIS MORNING MR TRUDEAU ANNOUNCED ON TELEVISION HIS INTENTION OF RESIGNING WITHIN A DAY OR TWO AFTER CONSULTING HIS CABINET COLLEAGUES AND OF REMAINING AS LEADER OF OPPOSITION. HE APPEALED TO THE LIBERAL PARTY TO CLOSE RANKS BEHIND HIM.

BUT HIS FUTURE LEADERSHIP IS LIKELY TO COME UNDER ATTACK WITHIN THE PARTY. MR CLARK IS EXPECTED TO HOLD A NEWS CONFERENCE LATER TODAY TO ANNOUNCE HIS PLANS. WHEN HE IS APPOINTED PRIME MINISTER HE WILL, AT AGE 39, BECOME THE YOUNGEST IN CANADA'S HISTORY.

3. THE LIBERALS HELD THEIR OWN IN THE MARITIMES AND STRENGTHENED THEIR GRIP ON QUEBEC WHERE THEY TOOK 67 OF THE 75 SEATS AND THE PC'S ONLY 2. THE PC'S RAN STRONGLY IN ONTARIO, PARTICULARLY IN THE INDUSTRIAL SOUTH WHERE 8 CABINET MINISTERS WENT DOWN TO DEFEAT, AND THE NDP MADE NO GAINS (SMI CLN) BUT THE 58 SEATS THEY WON IN THE PROVINCE WERE JUST SHORT OF WHAT THEY NEEDED FOR AN ABSOLUTE MAJORITY. WEST OF ONTARIO THE PC'S SWEEP THE LIBERALS ASIDE BUT HAD TO CONTENT WITH STRONG OPPOSITION IN KEY AREAS FROM THE NDP, WHO WON 17 SEATS.

4. THE PROVISIONAL FIGURES FOR THE POPULAR VOTE SHOWS THAT THE LIBERALS WON 40% (MUCH OF IT REPRESENTED BY QUOTE OVERKILL UNQUOTE IN QUEBEC), THE PC'S 36% AND THE NDP 18%.

S. DESAIGNE
5. DESPITE THE CLOSENESS OF THE OUTCOME MR CLARK’S POSITION LOOKS STRONG. IF THE SPEAKER (A LIBERAL) IS RE-ELECTED BY THE HOUSE, MR CLARK COULD GOVERN WITH THE SUPPORT OF THE SOCIAL CREDITISTS. ALTERNATIVELY HE COULD SEEK A DEAL WITH THE NDP. WHETHER THE LATTER AGREE TO ONE OR NOT, THEY WILL HARDLY WANT TO BRING ABOUT AN EARLY DEFEAT FOR THE NEW GOVERNMENT.


FORD

FCO/WHITEHALL D

NAMD
Canadian Election

As you know, Mr Trudeau has conceded defeat in the Canadian general election and a new government is to be formed by Mr Joe Clark, Leader of the Progressive Conservative Party. I enclose a draft telegram to the High Commissioner in Ottawa incorporating a message of congratulations to Mr Clark from the Prime Minister.

J S Wall

B G Cartledge Esq
10 Downing Street
Message to Mr Clark

1. Please convey the following message from the Prime Minister to Mr Clark:

BEGIN

"I should like to offer you warm congratulations on behalf of the British Government and people on your victory in the Canadian General Election. I wish you and all your colleagues great success and am glad to be able to work with you to strengthen the long tradition of close friendship and co-operation between Canada and the United Kingdom within the Commonwealth family. I know that the people of our two countries will continue to value and benefit from their deep and historic friendship. I look forward to meeting you soon."

ENDS
Prime Minister: Many, many congratulations. We're so thrilled.
Mr. Clark: Well, thank you very much.
Prime Minister: How do you feel?
Mr. Clark: There's no question that your victory paved the way for ours.
Prime Minister: Well, I did hope that. You know we've been watching it anxiously the last few days and I just hope that we might have been able to help a little. But the great thing is that the tide is moving all over.
Mr. Clark: It was British Columbia where the difference was made finally and we're delighted. I will naturally welcome any suggestions you may have as to how an incoming Prime Minister handles the job. You seem to have been doing very well.
Prime Minister: You just get stuck in, that's all. You have to get stuck in and really rely on your own instincts. I've forgotten, do you have to form a new Government immediately?
Mr. Clark: We have about a two-week delay here unlike you and there is a minority situation as you know. Mr. Trudeau has indicated though that he will be recommending to the Governor-General that I be called upon to form a Government and I imagine that that will occur within six days to two weeks.
Prime Minister: The only thing that I did was to form what I call a 'well-balanced Government', that is to say that some of us were known to be fervent believers in the almost pure political belief and I had to balance it out with other people - not for me, but to give a certain confidence that one is determined to take the middle ground. You know they always charge you with
extremism during an election campaign. But apart from that all I did was just get on but never take a decision before I'm ready to.

Mr. Clark: Well, I've just come through my first press conference as Prime Minister and have steadfastly refused to take any decisions before I was ready to.

Prime Minister: Oh, absolutely right. Well I heard you on our radio and I thought you were superb.

Mr. Clark: Well, thank you very much and, as I say, your victory was very helpful to us and I look forward to seeing you in Tokyo and being in touch properly before then.

Prime Minister: Good, and we'll exchange experiences then.

Mr. Clark: We certainly shall.

Prime Minister: But we're very, very thrilled, and thrilled for you, thrilled for everything we believe in and many congratulations. And from what we've heard over hear you were absolutely marvellous - a famous victory.

Mr. Clark: Well, we have a very good group of people and I think we have won a quite significant victory. We have a problem still in Quebec but that is something we can overcome.

Prime Minister: Yes, but you know once you're in office it makes the world of difference

Mr. Clark: Yes, I'm sure that's the case.

Prime Minister: You have all the authority you haven't had before.

Mr. Clark: Probably, we shall be appointing some Ministers from Quebec to ensure that very kind of balance that you mentioned.
Prime Minister: That's just exactly right. You'll be marvellous. So get some sleep and you'll be absolutely wonderful.

Mr. Clark: Thank you.

Prime Minister: Thank you for 'phoning. Goodbye.

Mr. Clark: Goodbye now.