Report of the Special Joint Committee on a Renewed Canada

Joint Chairmen:
Hon. Gérald A. Beaudoin, Senator
Dorothy Dobbie, M.P.

A RENEWED CANADA

The Report of the Special Joint Committee of the Senate and the House of Commons

Joint Chairmen
Hon. Gérald Beaudoin, Senator
Dorothy Dobbie, M.P.

February 28, 1992

SENATE

HOUSE OF COMMONS

Issue No. 66

Thursday, February 27, 1992
Friday, February 28, 1992

Joint Chairmen:
Hon. Gérald Beaudoin, Senator
Dorothy Dobbie, M.P.

SÉNAT

CHAMBRE DES COMMUNES

Fascicule N° 66

Le jeudi 27 février 1992
Le vendredi 28 février 1992

Coprésidents :
L'hon. Gérald Beaudoin, sénateur
Dorothy Dobbie, députée

Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on a

Renewed Canada

Procès-verbaux et témoignages du Comité mixte spécial du Sénat et de la Chambre des communes sur le

Renouvellement du Canada

RESPECTING:

The Government of Canada's proposals for a renewed Canada.

INCLUDING:

The Report to the Senate and to the House of Commons

CONCERNANT :

Les propositions du gouvernement du Canada relatives au renouvellement du Canada.

Y COMPRIS :

Le Rapport au Sénat et à la Chambre des communes

Third Session of the Thirty-fourth Parliament, 1991-92

Troisième session de la trente-quatrième législature, 1991-1992

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ORDERS OF REFERENCE OF THE HOUSE OF COMMONS

Extract from the Votes & Proceedings of the House of Commons of Wednesday, June 19, 1991:

Mr. Clark (Yellowhead), seconded by Mrs. Vézina, moved, — That a Special Joint Committee of the Senate and the House of Commons be appointed to inquire into and make recommendations to Parliament on the Government of Canada's proposals for a renewed Canada contained in the documents to be referred to it by the Government;

That fifteen Members of the House of Commons and ten Members of the Senate be the Members of the Special Joint Committee: such Members on the part of the House of Commons to be designated upon the report of the Standing Committee on House Management, which report shall be deemed concurred in upon presentation or, if the House is not sitting at the time of such Standing Committee on House Management Report such report shall be deemed concurred in upon its being filed with the Clerk of the House of Commons;

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

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

That the Committee, or sub-committees, have the power to travel, and to hold public hearings, within Canada;

That the Committee provide Canadians with an opportunity to participate fully in the development of the government of Canada's plan for a renewed Canada;

That the Committee have the power to hold joint sittings with the committees of legislatures or individual members of provincial and territorial legislatures;

That the Committee develop procedures to ensure aboriginal peoples participate fully in the development of the Government of Canada's plan for a renewed Canada and, in particular, on issues of special interest to them;

That the Committee have the 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 be authorized to put in place mechanisms designed to encourage and facilitate the participation of individuals and groups of Canadians;

That the Committee be empowered to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings or of proceedings of its sub-committees, pursuant to the principles and practices governing the broadcasting of the proceedings of the House of Commons;

That the Committee be granted allocations for expert assistance;

That the Committee be empowered to retain the service of professional, clerical and stenographic staff as deemed advisable by the Joint Chairs;

That the Committee submit its report not later than February 28, 1992 provided that, if the House of Commons is not sitting, the report will be deemed submitted on the day such report is deposited with the Clerk of the House of Commons and with the Clerk of the Senate;

That changes in membership of the Committee be effective immediately after a notification, signed by the Member acting as Chief Whip of any recognized party, has been filed with the Clerk of the Committee;

That the quorum of the Committee be thirteen Members whenever a vote, resolution or other decision is taken so long as both Houses are represented, and the Joint Chairs are authorized to hold meetings, to receive evidence and to authorize the printing thereof, when nine 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 advisable, ten Senators to act on the proposed Special Joint Committee.

ATTEST

ROBERT MARLEAU

Clerk of the House of Commons

ORDERS OF REFERENCE OF THE SENATE

Friday, 21st June, 1991

ORDERED: That a Message be sent to the House of Commons to inform the House that the Senate do unite with the House of Commons in the appointment of a Special Joint Committee to inquire into and make recommendations to Parliament on the proposals of the Government of Canada for a renewed Canada contained in documents to be referred to it, from time to time, by the Government of Canada;

That ten members of the Senate and twenty members of the House of Commons be appointed to be members of the Special Joint Committee;

That the quorum of the Joint Committee be thirteen Members whenever a vote, resolution or other decision is to be taken so long as both Houses are represented, and that the Joint Chairs are authorized to hold hearings, to receive evidence and to authorize the printing thereof, when nine Members are present so long as both Houses are represented;

That the members to act for the Senate on the Joint Committee be the Honourable Senators Atkins, Balfour, Barootes, Beaudoin, Beaulieu, Bélisle, Frith, Gigantès, MacEachen and Molgat;

That it be an instruction to the Joint Committee that it provide Canadians the opportunity to participate fully in the development of the plan proposed by the Government of Canada for a renewed Canada;

That it be an instruction to the Joint Committee that it develop mechanisms designed to encourage and facilitate the participation of individuals and groups of Canadians;

That it be an instruction to the Joint Committee that it develop procedures to ensure that aboriginal peoples participate fully in the development of the plan proposed by the Government of Canada for a renewed Canada, and, in particular, on issues of special interest to them;

That it be an instruction to the Joint Committee that it submit its final report not later than February 28, 1992.

That, if either the Senate or the House of Commons is not sitting on the day such report is deposited with the Clerk of the Senate and the Clerk of the House of Commons, the same shall be deemed submitted;

That the Joint Committee be empowered to appoint, from among its Members, such sub-committees as may be deemed advisable, and to delegate to such sub-committees all or any of its powers, except the power to report to the Senate;

That the Joint Committee, or sub-committees, thereof, be empowered to travel, and to hold public hearings, within Canada.

That the Joint Committee be empowered to sit during sittings and adjournments of the Senate;

That the Joint Committee be empowered to hold joint hearings with committees of legislatures or with individual members of provincial and territorial legislatures;

That the Joint Committee be empowered 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 Joint Committee;

That the Joint Committee be empowered to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings and of the proceedings of its sub-committees, pursuant to the principles and practices governing the broadcasting of proceedings of the House of Commons;

That the parties represented on the Joint Committee be granted allocations for expert assistance with the work of the Committee in proportion to representation of the said parties in the House of Commons; and

That the Joint Committee be empowered to retain the services of professional, clerical, and stenographic staff as deemed advisable by the Joint Chairs.

ATTEST

GORDON BARNHART

Clerk of the Senate

EXECUTIVE SUMMARY

At the end of our extraordinary experience together we have a new sense of hope and optimism for our country. Our contacts with Canadians across the country — through their letters and briefs, or through their participation in our hearings and in five major constitutional conferences — has shown us again the side of the Canadian character which is so much admired outside Canada, though often taken too much for granted at home.

The Canadians we met over the last few months displayed exactly the qualities of civility, tolerance, decency, solidarity, and generosity of spirit that we like to claim as distinctive features of the Canadian character but sometimes do not dare hope to find. Over the months we have been at work, the great good sense of the Canadian people has emerged again to occupy the centre of public life. Their moderation, their love of country, their willingness to reach out to each other across the barriers of language, region or culture impressed us everywhere and filled us with gratitude. It seems to us now that we are renewing more than our country or our Constitution: we are renewing our faith in ourselves.

How We Conducted Our Work

The Special Joint Committee on a Renewed Canada was established by an Order of the House of Commons dated June 19, 1991, and an Order of the Senate dated June 21, 1991, to make recommendations on the Government of Canada's proposals for a renewed Canada. We received 3,000 submissions — a parliamentary record — held 78 meetings totalling 227 hours of hearings, and listened to testimony from 700 individuals.

The Committee visited every province and territory and participated in five national constitutional conferences organized by major Canadian research institutes to examine dimensions of the federal government's proposals. We were enormously impressed by the good-will and sincere concern of all the groups and individuals who took the trouble to prepare submissions or presentations to us, or who participated in the constitutional conferences. The way in which the conference participants made every effort to understand each other's point of view and to reach a consensus that was best for the country showed us again what is so genuinely admirable about Canada, and why it should and can remain united.

The Roots of the Future

In their moments of doubt, Canadians sometimes seem to think that the Canadian experiment is much more fragile or artificial than it really is. This is understandable. But it is too short-sighted. The roots of Canada today are much deeper and older than we often think. There are important themes or ideals in Canadian life that provide the foundation for our country

and our Constitution, and that should give us confidence about the future. These include the search for an identity based on just relations among Canadians and among Canadian communities; the building of a unified Canadian economy that sustains a high level of social well-being; a parliamentary tradition that has spawned a political culture characterized by civility, mutual respect, and widening liberty within a framework of peace, order and good government; and a marked preference for evolutionary over radical or revolutionary change.

We believe that federalism is a system particularly well suited to respond to the two chief needs and trends of the contemporary world: the need for provincial or local autonomy and the simultaneous need for participation in wider political and economic communities capable of responding to the global challenges and problems of a shrinking world. One of the major themes of our report is the growing reality of interdependence in the contemporary world. The real challenge for governments and communities everywhere is to manage that interdependence. The strength of federalism is precisely the capacity it offers to manage our inevitable interdependence for the greater good of all Canadians, while respecting the diversity and the distinct needs of our various communities.

The Elements of Renewal

In the renewal of our Constitution and of our country, there are two immediate challenges to which we think Canadians must respond: the challenge of *inclusion* and the challenge of *vision*. Both have four parts.

The Challenge of Vision

The challenge of vision is to redefine ourselves around a new sense of purpose, and to give ourselves the tools that can make these goals a reality.

1) The first step is the inclusion in our Constitution of a new provision, sometimes called a Canada Clause, that will declare to ourselves and to the world who we are and what we wish to be as a political community. We have recommended a Preamble and a Canada Clause.

2) The second step should establish a new social contract among Canadians and among the political partners in the federation. We call this new contract the Canadian Social Covenant and we have provided a draft for Canadians to consider.

3) We believe that the Constitution should also include a declaration committing Canadians and their governments to the important economic goals of our country. We call this element of renewal the Declaration on the Economic Union. The Declaration and the Covenant would mutually support and reinforce each other. A new social contract will be an important element in economic renewal; a competitive economy is an essential condition of social well-being.

4) None of these elements would get us very far, however, if we did not also give ourselves the political instruments to turn them into reality. Definitions and declarations are important steps, but it is also important to go beyond words to actions. We must give ourselves the means to achieve the political cohesion and direction necessary to turn hopes into reality. We think the traditional Canadian instrument of the First Ministers Conference has an important role to play.

Because of our belief in the need for a new spirit of cooperation and shared management between all levels of government, we also put forward a series of proposals concerning intergovernmental relations and the use of the federal spending power. We recommend, for example, an important new constitutional provision giving constitutional protection to intergovernmental agreements, ensuring that they may not be altered at the whim of one level of government or the other. This proposal takes on special significance in the light of another recommendation for federal-provincial agreements on the management of joint policy fields where provinces have a primary interest, agreements that would guide the use of the federal spending power and that would be constitutionally protected by the previous proposal. This proposal might apply to such areas as *tourism*, *forestry*, *mining*, *recreation*, *housing*, *municipal affairs*, *regional development* and *family policy*. In addition we propose a new constitutional provision that would permit the federal and provincial governments to delegate legislative powers to each other, under a process that will ensure public debate and transparency.

We also recommend two new areas of concurrent jurisdiction to be shared between the federal and provincial governments (*inland fisheries* and *personal bankruptcy*) as well as the right to opt-in to an amendment affirming exclusive provincial jurisdiction over *labour market training*. Finally we recommend that constitutional recognition be provided for the right of a province to opt out of any new Canada-wide shared-cost program and to receive compensation if it meets the objectives of the new Canada-wide program. Constitutional guarantees would provide that no unilateral changes could be made to the funding arrangements over a mutually agreed period.

We believe that, taken together, these recommendations will help to establish the sense of direction and the spirit of cooperation and shared management of our interdependence that is essential if Canada is to hold its own, and indeed forge ahead, in a ruggedly competitive world. We will not be able to meet the challenge of vision, however, if we have not first established a minimum national consensus, if we have not made major progress toward meeting the other challenge, the *challenge of inclusion*.

The Challenge of Inclusion

The challenge of inclusion is to ensure that individual Canadians and Canadian communities have access and opportunity to participate as fully as they choose in our common life and institutions, that they feel respected and that their distinctive contribution is valued and welcome. This challenge also has four parts.

1) The first priority is to ensure that Quebec feels itself a full and willing partner in the constitutional family once again. If we cannot, it will be very difficult for us to get on with the important tasks facing our country including those we have identified in the challenge of vision. For Quebec we think our proposals offer an impressive package of adjustments that address real needs and concerns in appropriate and coherent ways. Our proposals deal with the definition and protection of Quebec's distinct society, the amending formula, central institutions, the division of powers, intergovernmental relations and the use of the federal spending power.

Among other things, our recommendations affirm Quebec's distinct society both in the *Charter* and in our proposed Canada Clause and Preamble. In the central institutions of the federation, we recommend a constitutional guarantee of three civil law justices from Quebec (out of nine) on the Supreme Court of Canada, an amendment securing the Quebec government's role (similar to other provinces) in the appointment of Supreme Court judges from Quebec, and a double majority procedure for matters affecting language and culture in a reformed Senate. We suggest two changes to the amending formula: one that would require Quebec's consent to any constitutional changes to the central institutions of the federation (the House of Commons, Senate and Supreme Court of Canada), and another that would allow Quebec (and other provinces) to opt out of any amendment transferring powers to the federal government and to receive reasonable compensation. On the division of powers we made recommendations with respect to Quebec's legislative jurisdiction over *culture*. We leave open the possibility that other provinces may have their legislative jurisdiction over culture affirmed. We also suggest that First Ministers could examine whether another distribution of powers and responsibilities in the fields of *marriage and divorce* would better meet Quebec's special needs, while protecting mobility and enforceability of judgments and orders. Of course, Quebec would benefit equally from our recommendations on intergovernmental agreements, the federal spending power, legislative delegation, concurrent powers, labour market training, and shared-cost programs, already mentioned.

Taken as a whole, and with other recommendations on intergovernmental relations and the spending power already mentioned, we believe that our proposals respond to Quebec's key concerns — and to those of many other provinces — in a fair and honourable manner. They do so in a way that is equitable to all provinces, recognizing Quebec's distinct society and needs without creating any inequities or privileges or diminishing in any way the role and strength of the federal government to respond to national needs.

2) The second challenge is the inclusion of the aboriginal peoples. They too must be included within Canada as equal partners. We believe our proposals can help Canadians make progress along this road.

We recommend, first and foremost, that the inherent right of aboriginal peoples to self-government within Canada should be recognized and entrenched in the Canadian Constitution. As far as the implementation of self-government is concerned, we

recommend the use of working groups to aid negotiations, the entrenchment of a transition process, the creation of a mechanism (such as an independent tribunal) to assist implementation, and we also recommend that the fundamental rights of all Canadians, both men and women should continue to receive full constitutional protection. Among other things, we propose that future constitutional amendments affecting the rights of aboriginal peoples should require their consent prior to implementation, that aboriginal representatives be invited to future constitutional conferences, that a constitutional conference be convened within two years after constitutional recognition of the aboriginal peoples' inherent right of self-government comes into force, that the aboriginal peoples be represented in a reformed Senate in a manner to be negotiated with them, and that the federal government should respond to the representations of the Metis for access to a land and resource base.

We do not believe this report has said or should try to say the last word on the place of the aboriginal peoples in Canada's future constitutional order. There are many steps still to come, including the report of the Royal Commission on Aboriginal Peoples. We have tried to make a useful contribution to this ongoing process, to advance it in constructive ways, and are hopeful we have succeeded. But we are conscious that many others must now take a part in the process of decision, including the aboriginal peoples themselves.

3) The third part is the challenge of inclusion of Western and Atlantic Canada. For too long, Canadians living outside Central Canada have felt excluded from national decision-making, because the much larger population of the central provinces gives them so much larger a voice in our national political institutions. Neither Western nor Atlantic Canadians want out of Canada. They both want in. We must equip ourselves with the instruments of federalism possessed by every other successful federation to give the people of Canada's regions a real voice and influence in the national political life of our country, counterbalancing in fair and appropriate ways the weight that central Canadians now enjoy through representation by population.

That is why we recommend an elected Senate with a better share of representation for provinces with smaller populations, a Senate with real powers over all federal legislation, and a power to review and approve the appointment of heads of major federal agencies whose policies and decisions have profound impact on daily life in all of Canada's regions. We do not believe that a reformed, elected Senate is a panacea. It cannot solve everything. But we think it will make an important contribution to unifying the country, giving greater legitimacy and strength to our national goals and institutions, as Western and Atlantic Canadians become accustomed to seeing their own concerns and outlook holding greater weight in the national decision-making process.

4) The fourth part of the challenge of inclusion is to reflect more adequately than at present the gender balance and genuine diversity of Canadian society. We have addressed this challenge in a variety of ways. The Preamble and Canada Clause we have drafted, for example, are intended to provide a definition and portrait of our country in which all Canadians can recognize themselves and feel included in the Canadian family.

The most important proposal we make to address this challenge is perhaps our recommendation for an electoral system based on proportional representation in a reformed Senate. One of the repeated themes at the Calgary constitutional conference was that many groups in Canadian society look to electoral reform in the Senate as a means to reflect more accurately the gender balance and diversity of Canadian society in our national political life. We believe our proposal for Senate reform can help to accomplish this objective. The provision for political parties to present slates of candidates in multi-member constituencies will give parties the opportunity to present slates representative of Canadian diversity and to be judged by the voters for doing so. In this way we can advance the process of inclusion that will bring all parts of Canadian society into the mainstream of political life.

The Way Ahead

We believe that the proposals offered in our report are an imaginative and coherent response to the two challenges we identified in it: the challenge of *inclusion* and the challenge of *vision*. It now remains to take these recommendations a step further and to begin the discussions between governments, and between Canadians, that will lead to action and bring about the renewal of our country.

The time is short. The Quebec referendum scheduled for October 1992 is one of the urgent deadlines that await us, but it is not the only one. Many Canadians believe, and we agree, that it is essential to take action on the Constitution now so that the country can get on with other things, including the economic and social renewal we included in the challenge of vision. If Canada cannot break the constitutional logjam swiftly, the rest of the world will pass it by.

Because of the pace at which these deadlines are approaching, we believe that intergovernmental discussion should begin as soon as possible after our report is submitted to Parliament. We make no assumption about the precise form such discussion should take, but we believe it is now essential to engage as many governments as possible in the constitutional dialogue in order to arrive at an intergovernmental consensus on the elements of renewal at the earliest possible moment. In order to speed up this process as much as possible, we suggest that our report should serve as the basis for discussion from which an intergovernmental consensus could be built.

As they develop their own consensus we believe that First Ministers would be well advised to think in terms of at least two constitutional packages. It will be essential to avoid putting the country in the position in which a reform package were to fail because one or two elements required a unanimous agreement that was not forthcoming. We suggest therefore that governments should consider developing one set of proposals that require only the approval of two-thirds of the provinces representing at least 50 per cent of the Canadian population, and another set of proposals on which unanimity may be required.

Involving the People in the Constitutional Process

One of the most interesting results of the patriation process that occurred between 1980 and 1982 was the degree of public interest generated in the Constitution of Canada. Since that time, through the work of various parliamentary committees and of the Citizens' Forum, public interest and participation have increased and found many avenues of expression. Thousands of groups and individuals have appeared before federal and provincial committees; people have become involved in constitutional groups which could almost be compared to constitutional assemblies.

Most recently we have had the experience of five constitutional conferences held in various cities across Canada addressing aspects of the Government of Canada's proposals for a renewed Canada. The conferences were televised and widely covered by the media. Out of each conference came a report which we have found helpful in doing our work as a committee.

We believe the process of public consultation and public involvement in the constitutional process should continue in various forms across the country. Canadians have much to offer the constitutional process and mechanisms should be established to allow them to make their views known.

We recommend that the federal, provincial and territorial governments be urged to consult with and involve the public in constitutional discussions through a variety of processes. We also recommend that a federal law be enacted to enable the federal government, at its discretion, to create a process of public consultation to confirm the existence of a national consensus or to facilitate the adoption of the required constitutional amendments. Finally, we recommend that the government ensure the meaningful involvement of all the provinces, territories and aboriginal leaders on the development of the format and substance of the government's response to this report.

A Future Together

At the beginning of our report we remarked that, in moments of doubt, Canadians sometimes seem to think that the Canadian experiment is more fragile or artificial than it really is. Our own experience together and our encounters with Canadians have strengthened our conviction that the roots of our partnership are much deeper, and its foundations much stronger, than the ups and downs of everyday life reveal. We have sketched a few of the important themes that bind us together, the two main challenges we face as a country in a changing world, and some of the concrete constitutional reforms we must undertake to meet those challenges. Taken together we believe that our portrait of Canada is realistic, our diagnosis accurate, and our remedies practical. We think they give reason for all Canadians to look to the future with confidence, confident that together we can meet all the challenges facing our country, confident that we can look forward to a future together as proud, as envied and as worthy as our past.

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PART I

Introduction

CHAPTER I

Our Mandate and Work

The Special Joint Committee on a Renewed Canada was established by an Order of the House of Commons dated June 19, 1991, and an Order of the Senate dated June 21, 1991. Both Orders instructed us to inquire into and make recommendations to the Parliament of Canada on the proposals of the federal government for the renewal of our country. The proposals were made public by the government on September 24, 1991, in a document entitled "Shaping Canada's Future Together." The next day, on September 25, 1991, we held our first public meeting and began our work.

• How We Conducted Our Work

Our central commitment was to provide Canadians with an opportunity to participate in the development of the government's plan for a renewed Canada. To this end, we set out to gather as much information as we could on the views of Canadians vis-à-vis the federal government's proposals.

Public hearings were an important component of our work. Seventy-eight meetings totalling 227 hours of hearings were held, and over 700 individuals representing many more Canadians appeared to testify. We also travelled to every province and territory of the nation to seek out the views of Canadians. Although holding meetings across such a vast country proved to be a physically gruelling experience, we have no regrets. It allowed us to acquaint ourselves directly with the feelings and opinions of Canadians in a way that would have been impossible had we stayed in Ottawa.

We also sought the opinion of Canadians by way of written submissions. Their response was astounding. Nearly 3,000 submissions were received.

Also of considerable benefit to us was our participation in five national conferences dealing with constitutional reform. The conferences, organized by major Canadian research institutes and sponsored by the federal government, were held in various cities across the country during the months of January and February. The first four conferences each dealt with a topic of direct concern to our work: the division of powers (Halifax), the reform of our democratic institutions (Calgary), the renewal of the Canadian economic union (Montreal), and the shared rights and

values of Canadians (Toronto). A concluding conference (Vancouver) was held to review the consensus developed at the first four conferences and provide participants with a last opportunity to express their views. The insightful discussions and vigorous debates that took place during these conferences were of considerable help to us.

We would like to express our deep appreciation to all those Canadians who contributed to our work. Without their participation, we would have been unable to successfully complete this Report.

• What We Learned

As we criss-crossed the nation, one fact became strikingly clear: most Canadians are deeply attached to their country and want it to remain united. Disagreements may exist on specific issues related to the renewal of Canada, but the majority of Canadians have profound affection for their country.

Unfortunately, the fondness of Canadians for their country has been clouded over by feelings of frustration and despair regarding Canada's unresolved constitutional problems. Canadians are tired of the constant bickering over the Constitution. Canadians are also worried by other matters that affect their country. The state of the economy and Canada's capacity to compete in a globalized world market, for instance, were recurring preoccupations expressed in submissions as well as by those who appeared before us. The condition of our public finances and the ability of our governments to continue to provide the social services for which Canada is renowned were other recurring themes of our discussions with Canadians. Still another concern was the state of the environment and the very real possibility that tomorrow's children may inherit an ecologically depleted planet as a result of today's excesses.

We understand these concerns. The world around us continues to change at an unrelenting pace. We believe that the significance of the constitutional debate should not be underestimated. A constitution is the legal and political foundation upon which a nation rests. It describes the mechanisms and processes through which citizens can address the difficulties of the present and take advantage of the opportunities of the future. Our nation will be unable to face the challenges of the emerging "new world order" if its own house is not in order.

Canada is at a critical point in its history. Either it continues on the path of unity, a strong nation, confident of its future and of its people, or it engages itself on a drastically new path, one laden with uncertainty and doubt. This Report sets out our contribution to the building of a new and stronger Canada.

CHAPTER II

The Roots of the Future

The challenges facing our country are so enormous, and our emotions so stretched, that it is sometimes hard to imagine that we should be able to meet both our external and internal needs at the same time. In this mood we are inclined to exaggerate the difficulties, underestimate our resources of character and experience, and take refuge in shallow or short-term views.

We are not given to this view. It does not do anything approaching justice to the very great Canadian achievements of the last decades that have won Canada the respect and envy of the world. Nor does it do justice to the authentic and underlying convictions of Canadians, what they believe in their heart of hearts.

Our experience together over the past few months — our travels, our conversations with Canadians, our participation in a series of remarkable constitutional conferences — all this has persuaded us that Canadians still possess immense reserves of energy, good-will, talent, and hopes for their country.

Canadians sometimes seem to think that the Canadian experiment is a much more fragile or artificial one than it really is. But that view does not take account of the roots of contemporary Canadian life, which are far deeper and older than many Canadians today are inclined to think. It does not do justice to the very long journey that Canadians have taken together toward the ideals of Canadian life — a journey that, in the eyes of the world, is a noble one, and of great worth.

A constitution is but the expression of the values and principles which are at the root of our nationhood. Thus it is worthwhile to go back briefly to the origins of those values and principles.

• In Search of Canadian Identity

Canadians are no better and no worse than other human beings: we have as much inherent capacity for perpetrating or tolerating injustice as any other people. Nevertheless, certain inescapable conditions of Canadian life, certain consistent circumstances or influences, and

certain initial choices dictated by these set Canadian life in an initial pattern. The logic of this pattern, worked out afresh in each generation, has obliged us to uncover gradually — sometimes painfully, and often generations too late — the requirements of justice in a Canadian setting.

Two constitutional documents which served as cornerstones of early Canadian life are the Royal Proclamation of 1763 and the Quebec Act of 1774. In these documents much of what was to follow in Canadian life was laid down. In the first it was determined that established governments in Canada would treat with the aboriginal peoples as autonomous and self-governing peoples. In the second, that legal provision would be made for a distinctive society in Quebec with institutions, laws and culture quite different than those of the surrounding English-speaking societies. The full implications of these decisions were by no means foreseen, and we have not stopped working out their meaning today.

One of the unanticipated consequences of these decisions was that Canada could never really embrace what later came to be known in the United States as the concept of the "melting-pot." Canadians chose instead to support linguistic and cultural diversity. There would also be two great linguistic communities in Canada, with all that this implies for institutions, communications, networks, social structure, and governments in modern societies.

These initial commitments, the meaning of which was only gradually and painfully worked out, led us to discover additional standards of fairness for individuals, for communities, for regions, and cultures within the Canadian family. Thus Canada's social fabric is now interwoven with programs of income security, social insurance, pensions and old-age security, equalization, regional development, measures which have made Canada the envy of much of the world, and that have come to define many Canadians' own sense of identity.

• Territory and Economy

Another important theme of Canadian life has been the search for a union wide enough to stimulate the kind of vigorous economic activity that would enhance broader social well-being.

From earliest times the fur trade spread its way west from the St. Lawrence and Hudson's Bay to embrace a continent and sketch in the future shape of Canada. When the Canadian ministers went to Charlottetown in 1864 they were the guests of Maritime delegates already assembled to investigate the benefits of a wider union among their own provinces. The achievement of Confederation in 1867, the purchase of Rupert's Land, the entry of British Columbia, the creation of the prairie provinces, the saga of the transcontinental railway were all important steps in the continuing quest to consolidate a national territory adequate to promote a world-class economy. When Newfoundlanders completed the union by their decision to join Canada in 1949, they did so in the hope that they could raise their own standard of economic and social life by participating in the wider economic space that Canada offered.

Today the importance of maintaining solid economic performance in a highly competitive world economy is greater than at any time in our past. But the challenge now is not just to preserve the broad economic space that Canada offers: it is to find the means that will allow us to make the economy based upon it as efficient and productive as any in the world.

• A Parliamentary People

The celebration this year of the bicentenary of parliamentary institutions in Ontario and Quebec has served to remind us that for at least 200 years we have been a parliamentary people.

The development of distinctive parliamentary systems is something that English-speaking and French-speaking Canadians have accomplished together. They were not handed these institutions fully-formed. The principles of responsible parliamentary government were not fully worked out even in Britain when parliamentary institutions came to Canada. And Canadians were among the pioneers of the emerging principles of parliamentary responsibility. The partnership of Louis-Hippolyte LaFontaine and Robert Baldwin in the establishment of responsible government in the province of Canada is one of the great sagas of our history and an enduring symbol of the partnership of the English-speaking and French-speaking peoples in Canada. The similar role of Joseph Howe in Nova Scotia is an equally important part of the world heritage of parliamentary democracy, where Canada was a beacon and example to a host of new countries which followed her into the commonwealth of nations.

Canadians were also pioneers of the marriage of parliamentary institutions and federalism. Until the Canadians proved it could be done, there was some doubt whether these two concepts could be made to live together. The successful Canadian experience showed the way for Australia, India and other modern federations.

Canadians cherish the political values and the political culture the parliamentary tradition has nurtured in Canada. They are proud of the fact that Canadian life has been less marked by violence and disorder than other countries and that Canadians have by and large sought the path of moderation, compromise, understanding, and respect for each other. Peace, Order and Good Government is more than a legal phrase in our Constitution. It is an expression, as we said earlier, of Canadian values and principles. It is proof that together we have developed a parliamentary democracy in North America with distinctive notions of civility, community, solidarity, and ordered liberty that transcend language or region and set us apart from the rest of the continent.

• The Evolutionary Way

Parliamentary institutions are themselves inherently evolutionary. Based largely on convention and precedent, they have evolved from those of a centralized and powerful European

monarchy to those of a modern North American federal democracy with remarkable continuity, and continue to evolve today to allow a larger role for communities and individual members.

This evolutionary pattern has become ingrained in the Canadian temperament. On several occasions in our history, Canadians have been invited to stray from this path, to break with the past, to join with others or to abandon each other. The final verdict of the people has always been to keep the links unbroken, with the past and with each other.

The Canadian way is the path of gradualism, flexibility and liberty.

• Three Roads

Today Canadians face a choice among three roads that beckon them: the way of the status quo; the path of radical change; and the path of evolutionary progress. While many people may feel comfortable with the status quo, it is not this Committee's way.

Shall we continue on the evolutionary path of the past, or choose a radically new one? Many voices urge us to strike out on new paths that would break sharply with the past. Many look to other political models, in the U.S. or Europe, and hold them up to us to imitate. Yet few of these models have genuine relevance to Canada which has its own traditions, circumstances, experience and needs.

It seems to us self-evident that the only practical and noble way to build on the Canadian inheritance is to continue on the Canadian path of tolerance, liberty and order within a parliamentary framework. We are convinced that we can significantly advance the cause of social justice in our time and in the future: justice for English-speaking and French-speaking people everywhere, both women and men; for Quebec; for Atlantic and Western Canada; for the people of the North; for the aboriginal peoples; for new Canadians; and for all those who have not been able or allowed to play their full part in Canadian life.

• Common Interests and the Common Good

Canadians will be held together in this common enterprise by the values and ideals of Canadian life but also by self-interest, in the highest and best sense. By combining their talents, energies, resources, capital and territory, Canadians have built one of the most prosperous communities on earth and have been able to share their good fortune to equalize opportunities among people and regions, and to pursue the goal of social justice.

Economic Interests:

The Canadian union has allowed the development of one of the world's strongest economies and has allowed Canadians to enjoy one of the world's highest standards of living.

The success of the Canadian economy is not just a question of "space". It is also the result of the common instruments Canadians have largely been able to forge to manage their economic space, and the influence their resulting economic strength has given them in the world. From this point of view the potential fragmentation of the Canadian state is particularly worrisome.

Globalization and increasing competitiveness in the international economy make the importance of the Canadian economic union greater than ever. It must be preserved and enhanced.

Social Interests:

As we already noted, the Canadian union has fostered the construction of one of the most admirable and admired social safety nets anywhere, a social security system that has made it the envy of the world. The network of Canadian social programs has become one of the strongest elements of our Canadian identity, our infrastructure of social programs is a benefit of Canadian citizenship that is cherished by all Canadians, including Quebecers.

Cultural Interests:

The Canadian federation has also played a very important role in helping Canadians to build and develop an increasingly impressive body of cultural achievements, creations, and institutions. By pooling their resources, Canadians have fostered artistic creation at a level of excellence that has often brought international recognition. The Canada Council, CBC/Radio-Canada, the National Film Board, the National Museums, the Social Sciences and Humanities Research Council and other such institutions have been the central influence in the cultural renaissance and flowering that Canada has experienced in the post-war period. This is as true in Quebec as elsewhere in Canada, and one of the achievements of modern Canada of which we can be proud.

The preservation of this cultural heritage and the means for its extension in the years to come are objectives that must be pursued in the process of constitutional renewal.

• Values and Identity

One of the developments of recent years which should encourage us about the potential for cooperation among Canadians is a noticeable convergence at the level of fundamental values. There are still important nuances of taste and life-style across the various Canadian communities, as in any country, but on the critical matters there is also a remarkable degree of agreement. As the report of the Quebec Liberal Party's constitutional committee (Allaire report) noted recently: "Québécois share fundamental values of the Canadian people, including respect for human rights, freedom of expression, unity and harmony between fellow citizens, and the right of every individual to fulfil his essential needs. These values have earned Canadians the respect of the entire world community." *[Unofficial translation].*

Canadians do not want identical lives, cultures or beliefs. But there is no necessary conflict between strong local, provincial, or cultural identities and wider national or pan-Canadian identities. As scholarly research has shown, these are often mutually reinforcing, not incompatible. Those who have the strongest local identities often have the strongest Canadian identities as well, and a weak Canadian identity may well translate as a weak local or provincial identity.

As long as there is a Canada there will continue to be a place — and a need — for a vibrant Canadian identity, not as something that competes with or negates other identities but as something that supports and complements them, the sum of the whole. There will also be a role for all levels of government to express and promote these various intertwined identities, both the wider Canadian one and the particular provincial, cultural or other identities it embraces and cherishes.

• Federalism: the Management of Interdependence

The genius of the federal form of government is that it can respond simultaneously to the need for autonomy and diversity for provincial, regional, local or cultural communities; and to the need for participation in a wider political and economic community capable of responding to inter-regional and global challenges.

Thus Canadian federalism proved remarkably foresighted. It provided a base for the growth and development of local and provincial communities. It recognized the principles of diversity and linguistic duality in embryo form and provided a basis for the growth and development of the French-speaking community in Quebec and elsewhere through much effort and struggle. At the same time, the Canadian federal system provided the means for national decision-making, economic leadership, and the sharing of resources and opportunities through an effective central government.

The original framers of the Canadian Constitution divided the responsibilities of federal and provincial legislatures in a manner which, on the whole, has stood the test of time. The division has evolved to meet changing needs and has shown itself capable of continuing adjustment as circumstances may require. By and large the courts have interpreted the division of powers creatively in accordance with what in our time has come to be called (especially in the European context) the principle of "subsidiarity": the principle which holds that things that require to be managed on a wide scale should be the responsibility of the federal government, while things that can be well managed at the provincial or local level should be located there. Our remarkable economic, social and cultural achievements attest the wisdom of the Fathers of our 1867 Constitution.

But naturally, the Fathers of Confederation could not foresee all the requirements that an evolving world would impose upon their original design. After 125 years there is now a widely recognized need to adapt our institutions, both of parliament and of federalism, to allow some

of these requirements to be met more effectively, and make it possible for Canada to respond to some of the key needs of today. In particular there is a need to remedy the obvious gap in our institutional framework: the absence of an effective second chamber in the federal parliament that can give the people of Canada's regions or provinces a larger voice in national decision-making.

In approaching the reforms of our federal system and institutions, it will be very important to avoid being waylaid by some of the myths of federalism. Apart from the distribution of powers between two orders of government, both responsible to the same population but for different purposes, there are no absolute principles or characteristics of federalism. Every federal community has its own history, character and needs, and the federal idea must be adapted to the specific requirements of time and place. Indeed one of the strengths of federalism is precisely its flexibility and adaptiveness, its ability not just to reconcile the needs of different communities and to reconcile local interests with more general ones but to do so in different ways in different places and at different times.

It is certainly not the case, for example, that the "equality" of the constituent states is a sacred principle of federalism. In fact there are only two federations that have chosen to represent the member states "equally" in the second chamber of the federal legislature: all the others have done it "unequally." It would certainly be possible for Canada to adopt the principle of equality in the reform of the Senate of Canada, or in any other matter, but it would have to be for reasons other than that federalism required it, because federalism in and of itself requires no such thing.

Another prevalent myth of federalism which could greatly undermine efforts to adapt our own federation to the needs of today is the notion that federalism functions best and most legitimately when powers are defined and divided with surgical precision, the two orders of government operating in what used to be called "water-tight compartments." This is a myth of federalism which is enjoying a rebirth in our time as reformers of federalism seek to disentangle the activities and roles of governments. There is undoubtedly much to be done in this area, and there is good reason to avoid unnecessary or costly overlap and duplication. However, globalization is swiftly wiping out the boundaries between the local, the national and the international, as all informed observers acknowledge.

The reality of our world, the central fact of which account must be taken, in the design of federalism and in the fate of nations, is not independence but interdependence. The complexity and scale of modern problems of public policy and management no longer permit, if they ever did, a "water-tight" division of powers. The challenge before us in the reform and renewal of our federal system, and in securing our place in the world, is to manage the interdependence among governments within the Canadian federation. It is to that end that much of our effort must now turn if Canada is to be able to forge a place in the new world that is emerging before our eyes. The strength of federalism is precisely that it offers us the tools and the opportunity to manage our interdependence for the greater good of all Canadians.

• The Constitution: Importance and Limits

Because federalism involves a distribution of responsibilities among at least two orders of government, the constitution assumes a vital role in defining the nature of that distribution and serving as a reference point for the settlement of disputes or disagreements.

A written constitution is important to a people as the source and guardian of certain fundamental rights and principles. These rights are important to all citizens. But they are especially important to minorities within the wider population as a source of protection against the abuse of power by the majority which may be inclined to push aside the rightful claims of the minority from time to time, either wilfully or simply through blindness and neglect.

All three of these conditions apply in Canada. Canada is a federal country, and it is now endowed with a Charter of Rights that is an important, though not the only, bulwark of liberties. It is also the home of important minorities that seek and deserve the reassurance that constitutional guarantees can give them. For Quebec and for linguistic minorities throughout the country constitutional provisions are an important source of protection and security, and an assurance about their place and role in the country. For them as for other minorities and groups, the constitution should guard against changing circumstances and shield them from vulnerability to the changing moods of the majority.

While a constitution is of the greatest importance to a federal, bilingual country like Canada — that is why it has occupied so much of our national life in recent years — we should also be mindful of its limits. A constitution cannot bear all our burdens. We cannot and should not try to have everything about our country and its political life reflected in it. We cannot put everything into the constitution in the hope that it will somehow make up for our own shortcomings. The ultimate responsibility is our own, and the Canadian Constitution is wise in maintaining that as much as possible should be decided by Canadians through their normal political life and institutions, not by fiat of the constitution or the courts. A constitution cannot foresee everything, and it cannot solve everything. It is not a mechanism for resolving disputes over public policy.

What a constitution can do is to establish the ground rules, the framework, the goals and the spirit in which we can address these essential tasks, and this is important enough.

In adapting that framework for the 21st century there are two priorities that stand out. We must give ourselves effective federal institutions that will allow us to make and implement the important decisions that will be required to make the Canadian economy and society competitive in a globalizing and interdependent world. And we must do so in a way that all regions and cultures recognize as legitimate and just, reflecting and responding in a reasonable manner to their own values, aspirations and concerns. This means we must create for ourselves institutions, processes and arrangements that Canadians feel are fair and representative, through which Canadians feel adequately consulted and involved, through which the various provincial societies are able to work together for the greater good of the wider Canadian society.

• Conclusion

In constitutional matters as in life, perfection can be the enemy of the good. The greatest obstacle to constitutional progress at this turning point in our history would be a fit of constitutional perfectionism. There can be no perfect solution. In constitution-making there is always a risk, because things are never perfectly clear, neither intentions nor words, and the future is unknown. Constitution-making is a process that evolves over time as a country develops.

The question before us is not whether we can discover and establish the ideal form of the Canadian Constitution. The question is whether we can make the constitutional adjustments needed now that will allow us to continue our journey together in the best spirit of our past, whether we can find the means to permit a continued broadening-down of justice and well-being for all the people and communities of Canada.

PART II

Toward Renewal

In the renewal of our Constitution and of our country, there are two immediate challenges to which Canadians must respond: a challenge of *inclusion* and a challenge of *vision*.

1. The Challenge of Inclusion

The *challenge of inclusion* has four parts. The first challenge is the challenge of Quebec, the urgent need to include Quebec willingly in the Canadian constitutional family. Quebec has never ceased to be part of the Canadian Constitution in law: the Constitution applies in Quebec as fully as elsewhere. But the failure to secure the consent of the Quebec legislature or government to the patriation of the Constitution in 1982 has promoted the view, particularly in Quebec, that the process of constitutional renewal initiated by patriation was not fully completed. The first priority then must be the inclusion of Quebec.

The second part of the challenge of inclusion is the challenge of the aboriginal peoples. Canadians are committed to include the first inhabitants of our land as full partners in the national enterprise, establishing with them relations of equity and justice consistent with the dignity of their status as the first peoples of Canada. It is now time to make good on this commitment, long neglected or respected only in part.

The third part of the challenge of inclusion is the challenge of Western and Atlantic Canada. For too long Canadians living in the western and eastern provinces have felt excluded from national decision-making because the much larger population of the central provinces gives them so much larger a voice in our national political institutions. We have all listened to the frustrations of our fellow Canadians from the west and east who feel that, on election night and between elections, their own political preferences are overshadowed by the wishes of Ontario and Quebec. It is time to address this problem which, if it were allowed to fester much longer, could transform alienation into something much more grave and destructive. Neither Western nor Atlantic Canadians want out of Canada. They both want in. It is now of the highest importance to supply an adequate response to this altogether legitimate aspiration. We must equip ourselves with the instruments of federalism possessed by virtually every other successful federation: such instruments will allow the people of Canada's regions to have, and to feel that they have, a real voice and influence in the national political life of our country, counterbalancing in fair and appropriate ways the weight that central Canadians now enjoy through representation by population.

We think that the institutional remedy we offer for Western and Atlantic Canada can also help respond to the fourth part of the challenge of inclusion, the need to reflect more adequately than at present the gender balance and genuine diversity of Canadian society. The public life of Canada is still largely the preserve of its traditional leaders and does not always express the

changing make-up and outlook of Canadian society. Our political institutions do not yet reflect the fact that over half the population are women, still less the variety of special needs and cultural perspectives that are now part of the Canadian reality. We think it is important for future social and political consensus in our country to begin the process of inclusion that will bring all parts of Canadian society into the mainstream of political life. We believe a start can be made by the same electoral and institutional reforms that will also bring western and eastern Canadians much more fully into the national decision-making process.

2. The Challenge of Vision

A response to the challenge of inclusion will help to strengthen the foundation of Canadian life and the legitimacy of our national political institutions. But the question remains: for what purpose, and to what ends?

The question is not an idle one. And some kind of response to it is an important part of our national renewal. We are not living in a world that is as comfortable or forgiving as it has been for Canada at some times in the recent past. It is a harsher and more competitive world, as so many Canadians in all social conditions and regions have discovered over the past few years. Unless Canadians are able to redefine themselves around a new sense of purpose, a new vision of identity and goals, together with the tools that can make them a reality, we will not be able to hold on to many of our most cherished social achievements, let alone keep pace with a rapidly evolving world.

We think a response to the *challenge of vision* can take four important forms, among others. First there is a need for a new provision in the Constitution that defines the Canadian people and their highest political values. This clause would declare to the world what it means to be Canadian and what Canadians wish to be as a political community.

Next the Canadian Constitution should establish a new social contract among Canadians, and among the political partners of the Canadian federation. It should furnish a statement of the country's highest social objectives: the social achievements it wishes to protect and preserve, the broad social goals it wishes to pursue in the future, the values and principles of social policy it wishes to guarantee to future generations of Canadians.

We believe that the Constitution should also include a declaration committing Canadians and their governments to the important economic goals of our country, the objectives we must achieve if the country is to preserve and enhance the quality of social, civic and private life on which it has come to pride itself, as being the very essence of Canada. These matters mutually support and reinforce each other. A new social contract will be an important element in economic renewal; and a competitive economy is the essential condition of social well-being.

Finally, but no less important, we believe it will be essential for Canadians to give themselves the new political and governmental instruments they need to turn these values and objectives into reality. Canada has not always lacked for good ideas. But it has often lacked

the means to forge a political consensus, the instruments of political cohesion that could give them effect. Definitions and declarations are an essential first step, but it is also important to go beyond words to actions. For that reason we think it is time for Canada to take a further step along the road of political maturity. We must give ourselves the means to achieve the political cohesion and direction that will be necessary for strength and well-being in the emerging world our children will inherit.

CHAPTER III

People and Communities

The Constitution has played a great part in shaping Canada. It has been the blueprint for building our country, establishing how we govern ourselves and providing the foundation for our sense of justice and mutual respect. The Constitution has allowed us to achieve a degree of harmony and prosperity that is the envy of the modern world. But, these will not endure unless the Constitution continues to respond to the fundamental needs and aspirations of all Canadians.

Canada is people, many different people. Yet, our differences need not be a source of tension, as they perhaps too often are. We are bound together by the things we have in common. One of these things, perhaps the most important of them, is the mutual respect we share for the diverse characteristics of individuals and communities. Our differences make us distinctive, they are protected by our freedoms, but they must not be allowed to divide us.

In this section of the report, we discuss a number of the proposals of the federal government relating to people and communities. These proposals concern the Canada Clause, Quebec's distinct society, English- and French-speaking communities, the aboriginal peoples, property rights and the legislative override provision. All of these proposals affect the identity of our people and communities and the relationships among them.

A. STATEMENT OF CANADIAN IDENTITY AND VALUES

At least one thing is clear from the present Constitutional debate: the Constitution is no longer the preserve of experts and specialists. Canadians across this country are profoundly interested in their Constitution and what happens to it. Despite its legal language and the complexity of the questions it raises, the Constitution belongs to *all* the people of Canada. This is why we believe that the Constitution must include a statement that describes who we are as a people and what we aspire to be.

We have heard many suggestions about how to express our identity and aspirations. We believe there is agreement on two important points: the statement must be both *memorable* and *inclusive*. It cannot be a dry list of ingredients taken from the constitutional cupboard. It needs a sense of poetry and, as was said at the Conference on Identity, Rights and Values, it should be a "written flag," flying in our hearts and minds. It must unite us with the history and values

that we share, not merely containing something for everyone, but rather expressing what we *together* recognize and hold dear.

It is not easy to craft a statement that is both memorable and inclusive. But we can start by thinking about the things that define us as country.

We should turn first to our history as groups of people bearing diverse languages and cultures and making this equally diverse land our common home. Our history begins with the aboriginal peoples. It follows the French and then the British settlers. It continues with the arrival of peoples from all over the world. Our history is ever-present and constantly unfolding.

From our history comes the fundamental respect we hold for one another, respect expressed in our democratic and judicial institutions and our rights and freedoms, both individual and collective. Our history gives us a rich tapestry of linguistic and cultural communities that thrive together, both nourishing and sharing their identities.

This diversity is a two-way street. We respect the differences of others that they may respect ours; we safeguard our own characteristics and are enriched by those of others. In particular, we recognize the distinct society of Quebec and the vitality of our two official languages across this country. We equally recognize the aboriginal peoples and their inherent rights as the cornerstone of their languages, cultures and values.

Finally, we are defined by the land on which our country is built and the environment that it supports. We are nothing without them. They are constitutional in the most literal sense of the word. We must affirm our commitment to the environment for our own sake and, more importantly, for the sake of generations to come.

The proposal to entrench a statement of our identity and values raises the question of where it should be placed in the Constitution. There have been many suggestions. The federal government has proposed placing it in section 2 of the *Constitution Act, 1867*. Others have suggested it should replace the existing preamble to that Act, or that it should be a preamble to a new constitutional Act, or to the Constitution as a whole. It has also been suggested that there should be both a preamble and a "Canada Clause," each of which would address different aspects of our identity and values. The first would be a more poetic version which could appeal to our hearts and love for our country, its people and their values. The other would specifically list our characteristics as Canadians and the things we hold dear.

The Writers' Union of Canada proposed a draft at the Conference on Identity, Rights and Values held in Toronto. Their proposal met with considerable favour both for its content and as a unified proposal, as opposed to the many, yet very valuable, isolated characteristics and values submitted by individuals and the workshop rapporteurs.

The Committee has looked at the many excellent lists of values and characteristics submitted to us in our hearings and at the five constitutional conferences. They have made a valuable contribution to our deliberations.

We recommend that a statement of Canada's identity and values be included in a prominent place in the Constitution. We recommend the following preamble:

PREAMBLE

We are the people of Canada,
drawn from the four winds of the earth,
a privileged people,
citizens of a sovereign state.

Trustees of a vast northern land,
we celebrate its beauty and grandeur.
Aboriginal peoples, immigrants,
French-speaking, English-speaking,
Canadians all,
we honour our roots and value our
diversity.

We affirm that our country
is founded upon principles that
acknowledge the supremacy of God,
the dignity of each person,
the importance of family,
and the value of community.

We recognize that we remain free
only when freedom is founded on
respect for moral and spiritual values,
and the rule of law
in the service of justice.

We cherish this free and united country,
its place within the family of nations,
and accepting the responsibilities
privileges bring,
we pledge to strengthen this land
as a home of peace, hope and goodwill.

We further recommend that a Canada Clause be included in section 2 of the *Constitution Act, 1867* and, as such, interpretative in effect.

We recommend the following Canada Clause:

CANADA CLAUSE

The following would be added to the *Constitution Act, 1867* as section 2:

Declaration

2. We, Canadians all, convinced of the nobility of our collective experiment, hereby renew our historic resolve to live together in a federal state;

We acknowledge that we are deeply indebted to our forebears:

the aboriginal peoples, whose inherent rights stem from their being the first inhabitants of our vast territory to govern themselves according to their own laws, customs and traditions for the protection of their diverse languages and cultures;

the French and British settlers, who to this country brought their own unique languages and cultures but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada; and

the peoples from myriad other nations, scattered the world over, who came to our shores and helped us greatly to fulfil the promise of this fair land;

We reaffirm our profound attachment to the principles and values that have drawn us together, enlightened our national life, and afforded us peace and security, such as our unshakable respect for the institutions of Parliamentary democracy; the special responsibility of Quebec to preserve and promote its distinct society; the right and responsibility of aboriginal peoples to protect and develop their unique cultures, languages and traditions; a profound commitment to the vitality and development of official language minority communities; an abiding obligation to assure the equality of women and men; and the recognition of the irreplaceable value of our multicultural heritage;

We pledge to honourably discharge our responsibility to our children, so that they may do the same for their own, of ensuring their prosperity and the integrity of their environment.

Therefore we, Canadians all, formally adopt this, our Constitution, including the *Canadian Charter of Rights and Freedoms*, as the solemn expression of our national will and hopes.

The Committee has examined alternative drafts which can be found in Appendix B.

B. QUEBEC'S DISTINCT SOCIETY AND CANADA'S LINGUISTIC DUALITY

Among the striking and precious realities of Canadian life are the twin facts that our country is composed of not one but two great language communities, French-speaking and English-speaking; and the large majority of the French-speaking community lives within one of our largest provinces, where it is itself a majority, the only French-speaking majority in any political community in North America.

The recognition of Quebec as a distinct society is in reality the affirmation of a legal, sociological and demographic fact. Various British statutes affecting British North America enacted long before Confederation recognized this fact. For example the Quebec Act of 1774, responded to French Canada's demands for the preservation of its laws and customs. The Constitutional Act of 1791, divided Quebec into two parts corresponding to the linguistic and cultural divergence of its inhabitants. These two statutes acknowledged and provided the political framework for a distinct society in Quebec with institutions, laws and culture quite different from those of other political communities in North America. In 1867, Confederation recognized and reestablished Quebec's distinct society as an autonomous political community while it embraced the principle of linguistic duality in the political institutions of a new country that would eventually span a continent.

In the 1960s, Quebec's Quiet Revolution provided another opportunity for a major step forward, as English-speaking Canadians learned again the true nature of Canada and French-speaking Québécois, like French-speaking Canadians elsewhere, considered their future possibilities and the needs of modern French-speaking communities in North America. In Ottawa and in the provinces outside Quebec francophone rights were once again affirmed and strengthened, especially by the *Official Languages Act* of 1969. In numerous places outside Quebec strong, modern francophone communities developed, especially in New Brunswick and Ontario, while the French-speaking society of Quebec went through not one but two social revolutions, mastering first of all the instruments of modern government and then establishing itself in the vanguard of business life in the province. In doing so it questioned and debated its relationship with English-speaking Canadians in Quebec and in Canada as a whole, a debate that continues today.

The patriation of the Constitution in 1982 represented both a progress and a setback in the gradual search for the stable foundations of Canadian life. On the one hand, it recognized and protected linguistic duality in Canada's national political institutions more clearly and firmly than ever before while it extended important protection for minority linguistic rights throughout the country. At the same time, it accomplished these important things without the formal approval of the Government of Quebec, the only political institution controlled by a majority of francophones.

The federal government's proposals are intended to provide both symbolic and substantive reassurance about the place of Quebec, of French-speaking Canadians and of all linguistic

minorities in the future life of Canada, and to provide a new moral basis for Canadian life. They would accomplish two things. First they would provide constitutional recognition of a self-evident fact — that Quebec forms a distinct society in North America, where a French-speaking majority has fostered a unique culture and a distinctive civil law tradition, among other things — and to ensure that the *Canadian Charter of Rights and Freedoms* is interpreted in a manner consistent with this fact. Second they would provide similar recognition of the existence both of French-speaking Canadians throughout the country but especially in Quebec, and of English-speaking Canadians also present in Quebec but primarily located in other provinces — and ensure that the *Charter* would be interpreted in a manner consistent with these realities also. This proposal is entirely consistent with other parts of the *Charter* which already provide such explicit recognition for aboriginal rights and Canada's multicultural heritage.

Linguistic duality is placed in the *Charter* as an interpretive clause to recognize official language minority communities in a minority situation in Quebec and throughout Canada.

Most witnesses appearing before the Committee affirmed the necessity to recognize Quebec's distinct society or Canada's linguistic duality. Both the Toronto and Vancouver constitutional conferences strongly and unequivocally endorsed constitutional recognition of both these fundamental realities of Canada. The committee believes that after several years of difficulty and misunderstanding Canadians of both languages have passed through an important learning experience and are ready for another major step forward in providing a stable and enduring moral foundation for the Canadian future.

We recommend:

The *Canadian Charter of Rights and Freedoms* should be amended to include the following section after section 25:

Quebec's distinct society and Canada's linguistic duality

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the vitality and development of the language and culture of French-speaking and English-speaking minority communities throughout Canada.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;

(b) a unique culture; and

(c) a civil law tradition.

C. ABORIGINAL MATTERS

1. We Believe in the Promise of Canada

Across this land, from sea to sea to sea, there is a call for a fundamental change in the way governments and aboriginal peoples relate to each other. That call comes from people of all backgrounds and is supported by Canadians. Only through fundamental renewal can we achieve a strong and united nation, with all residents opting in to the renewed Canada.

This renewal can be achieved only by building relationships between aboriginal peoples and other communities. We must start by redefining the relationship between aboriginal peoples and the Government of Canada. The first building block is mutual recognition. The old colonial, paternalistic ways and institutions must be swept away, replaced by new institutions built on the recognition of inherent rights.

The renewed Canada can be built only through partnership shared by all the peoples of Canada. Partnership implies the acceptance of the basic values of sharing, honesty and kindness.

Above all, we must show mutual respect.

Our recommendations on issues affecting aboriginal peoples represent only one step in a wider renewal process. Aboriginal communities have also established their own constitutional process and the Royal Commission on Aboriginal Peoples is continuing its work.

As Canada goes through a metamorphosis in its 125th year, we hope that our recommendations will help aboriginal peoples to view themselves as part of the Canadian family.

We believe in the promise of Canada. We invite aboriginal peoples and all others to join in building this renewed Canada. Only together, as partners, can we make the promise of Canada a reality.

2. The Work of the Committee

The Committee heard from aboriginal peoples from all parts of Canada. Three days in Ottawa were devoted to consultations with the four national organizations. The Committee also heard from the Native Women's Association of Canada. The Liaison Committee of six members met with aboriginal representatives across Canada, meeting for a day with the Metis National Council in Edmonton, the Assembly of First Nations in Vancouver, the Native Council of Canada in Yellowknife and the Inuit Tapirisat of Canada in Iqaluit. The Committee heard from

the leaders of Indians in Nova Scotia, Quebec, British Columbia, Yukon and the Northwest Territories, Metis in Manitoba, Treaty Indians in Saskatchewan, and Inuit in the Northwest Territories.

We were impressed by the commitment of aboriginal peoples to a united Canada. Ms. Sheila Lumsden, the Youth Coordinator for the Inuit Tapirisat of Canada told us in Iqaluit that Inuit youth: "feel positive about Canada and the future." Chief Roland Crow of the Federation of Saskatchewan Indian Nations noted that, "We are pleased to be here to present our views about how this country, this beautiful country called Canada, can stay together."

As Mr. Jim Durocher, of the Metis National Council said:

> We do not seek sovereignty outside of Canada. We believe strongly in the need in Canadian unity and seek a new version of Canadian federalism. We believe there is room for all of us in this great land. This is our land. We have always been prepared to share it, but that does not mean that we are prepared to step aside and let our rights be trampled upon. There is room for everyone. No one needs to gain at the expense of others.

We noted the spirit of openness and generosity with which Canadians in all parts of Canada are now prepared to approach these issues. The Honourable Moe Sihota, the Minister responsible for Constitutional Affairs for British Columbia, told us that:

> British Columbia is committed to ensuring this round of negotiations and reform does in fact deal with aboriginal issues in a manner that satisfies the legitimate aspirations of First Nations.

The federal government proposals, *Shaping Canada's Future Together*, specifically refer to aboriginal peoples in four proposals, as well as in the wording suggested for the Canada Clause. We want to address mechanisms for the participation of aboriginal peoples in the present and future constitutional processes. As well, we want to examine the rights to be entrenched in the Constitution and the jurisdictions that aboriginal governments would exercise. We also address the representation of aboriginal peoples in the Senate, as well as their recognition in the Canada Clause.

3. Aboriginal Self-Government

Aboriginal peoples frequently told the committee that they had functioning systems of government for thousands of years before the arrival of Europeans, or in the case of the Metis formed a provisional government in what is now Manitoba. At the time of Confederation in 1867, aboriginal peoples were not recognized or included as equals. So after 125 years, witnesses argued the time has come to bring aboriginal peoples into the Constitution with equality and respect.

There is a strong consensus that the right to self-government should be described as "inherent". Many witnesses stressed that the word "inherent" merely expresses reality: the right

derives from the status and history of aboriginal peoples and is not conferred by the Constitution.

Aboriginal leaders have stated that they do not intend to use the phrase "inherent right" to assert international sovereignty as it is practised by nation states. Although the expression nation-to-nation is used, these relationships are viewed as a form of bond within Canada — expressed for many in treaties with the Crown — rather than a basis for the establishment of an independent nation state.

A process to define the powers that will be exercised by aboriginal governments should be entrenched in the Constitution. This process will require negotiations between the federal and provincial governments and aboriginal peoples. The process must provide for the full involvement and informed consent of aboriginal peoples, and will fulfil the government's commitment to ensure the participation of aboriginal peoples in the current constitutional round. Self-government would manifest itself differently for different aboriginal peoples, for example Metis people living in cities may wish to have their own housing authorities and school boards.

At a more technical level, the Committee has been told that the inherent right of self-government may already be entrenched in section 35 of the *Constitution Act, 1982*. Most witnesses argued that the right should be justiciable as soon as it is entrenched and we see no reason for delay. We did not hear any evidence on whether the entrenchment of this right would affect land claims. We consider this is an important issue which deserves further study.

The Committee has also benefitted from the thoughtful analysis of the Royal Commission on Aboriginal Peoples, which published its commentary on February 13, 1992. We endorse their six criteria for the entrenchment of the aboriginal right to self-government:

> ...any new constitutional provision...should indicate that the right is *inherent* in nature, *circumscribed* in extent, and *sovereign* within its sphere. The provision should be adopted with the *consent* of the aboriginal peoples, and should be *consistent* with the view that section 35 may already recognize a right of self-government. Finally, it should be *justiciable* immediately.

We note that in recommending the immediate entrenchment of self-government we have therefore recommended against the period of delay.

The Committee recommends the entrenchment in section 35 of the *Constitution Act, 1982* of the inherent right of aboriginal peoples to self-government within Canada.[1]

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[1]See Draft Constitutional Amendments, Appendix A at p. 107.

a. Self-Government: Jurisdiction and Implementation

Indians, status and non-status, on and off reserve, Inuit and Metis have different existing situations and therefore different interests in any self-government negotiations. For example, Indians living on reserve could quickly take control of their own lands and resources. The implementation process must accommodate these different interests.

Many people inquired of the Committee what rights would be entailed in aboriginal self-government. During our hearings, aboriginal leaders themselves provided various lists of potential jurisdictions. These lists included the responsibilities set out in the proposals of the Government of Canada.

It is envisaged that some areas of jurisdiction will be exclusive to aboriginal governments; others would remain exclusively under federal or provincial control; others would be shared and some may not be exercised by aboriginal peoples. The Committee anticipates a variety of agreements which will correspond to the wide range of community needs across Canada. The resulting pattern of exclusive and overlapping spheres of jurisdiction is, of course, a familiar feature of the existing federal system in Canada. Constitutional recognition of aboriginal self-government can only contribute to a more united Canada.

The implementation of self-government will require negotiations between aboriginal peoples and existing governments, federal, provincial and territorial, to establish their respective jurisdictions and relationships.

One productive way to proceed may be to begin with a few major, broadly applicable agreements under which communities would then negotiate individual agreements at their own pace. These agreements could take the form of treaties or amendments to existing treaties, which would receive constitutional protection. The Committee's preference is for rapid progress. The simplest approach might be for each of the four national aboriginal organizations to negotiate such an agreement, but in some cases there may be good reasons for having negotiations at the regional level. The circumstances of Treaty Indians on the Prairies, for example, are different than those of Indians in British Columbia. Involvement of provincial governments in these negotiations because of their constitutional powers is necessary. The Working Group, Tribunal and dispute resolution mechanisms developed in negotiations such as those involving the Tungavik Federation of Nunavut may be a useful model and should be looked at carefully as an aid to the negotiation process.

Parties to a negotiation sometimes find themselves at an impasse even with the best of intentions. Recourse to the courts is time consuming, costly and the outcome is often uncertain. We believe that another mechanism is required to assist in the implementation of self-government and to resolve differences. A large variety of expert tribunals exist which could serve as models. A mechanism such as an independent tribunal might be of assistance, leaving open the possibility of recourse to a court of law.

The modern application of self-government will require negotiations with respect to the jurisdiction to be exercised by self-governing aboriginal communities. We recommend the entrenchment of a transition process to identify the responsibilities that will be exercised by aboriginal governments and their relationship to federal, provincial and territorial governments.[2]

b. The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* is a uniquely Canadian expression of the balance between individual and collective rights. Some witnesses told us that aboriginal customary law, a part of self-government, may clash with the European-based liberal democratic values reflected in the *Charter*. Several aboriginal organizations noted that they were thinking of, or in the process of developing, their own Charter, with a different balance of collective and individual rights more attuned to their particular traditions. The four parallel aboriginal constitutional processes are on-going, and the final position of these organizations on this important issue is still to be determined.

The *Charter* states in section 25, "the guarantee of this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada." The *Charter* is available to protect individuals against the arbitrary actions of governments. The Committee heard from the Native Women's Association of Canada, who strongly supported the continued application of the *Charter*. They also proposed that aboriginal self-government should be entrenched in a way that ensures its equal application to men and women.

We recommend that the fundamental rights and freedoms of all Canadians, including the equality of the rights of men and women, ought to receive full constitutional protection.

c. Federal Responsibilities Under Section 91(24)

In 1867, the federal government assumed responsibility for "Indians and Lands reserved for Indians" under section 91(24) of the *Constitution Act, 1867*. Parliament has responsibility for Inuit as a result of a 1939 decision of the courts, but it has never assumed legislative responsibility for Metis. The Committee heard from the Metis that the federal government should now accept responsibility for Metis under section 91(24).

We recommend that the federal government respond to the representations of the Metis for access to a land and resource base.

For First Nations, one of the constitutional effects of entrenching the right to self-government will be the eventual transfer of federal jurisdiction for "Indians, and Lands reserved

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[2]See Draft Constitutional Amendments, Appendix A at p. 107.

for Indians" under section 91(24) to Indian people themselves. Once this is accomplished, section 91(24) can be deleted. More important, the need for the *Indian Act* will be lessened to the point where it will become almost irrelevant for Indians. The transfer of the powers of the Minister of Indian Affairs to self-governing Indian communities will also require clarification of the fiduciary relationship with Indians. Under self-government, relations between the federal government and aboriginal governments would be similar to those between the federal and provincial governments.

We recommend that federal treaty obligations, fiduciary and trust responsibilities, and the provision of fiscal transfers that continue after the implementation of forms of self-government by various aboriginal groups be administered by a small bureau jointly managed by the federal government and representatives of the aboriginal peoples.

4. Aboriginal Constitutional Process

In its report tabled in the spring of 1991, the Special Joint Committee on the Process for Amending the Constitution of Canada discussed and recommended certain changes to address the concerns of aboriginal peoples. The Committee concurs with the analysis leading to those recommendations, and supports their intent, but we believe that a formal constitutional conference can be successful only if solid progress on self-government can be made at the level of the working groups proposed. While the Special Joint Committee on the Process for Amending the Constitution of Canada recommended a fixed timetable for constitutional conferences, we believe that greater reliance on working groups to make progress will mean that these conferences will be of greater use if more flexibility is allowed in their timing.

We recommend:

i) **in order to protect the aboriginal and treaty rights which the Constitution guarantees to the aboriginal peoples of Canada, that any amendment to the Constitution of Canada directly affecting the aboriginal peoples[3] require the consent of the aboriginal peoples of Canada prior to its implementation;**

ii) **that representatives of the aboriginal peoples of Canada be invited to all future constitutional conferences relating to the matters referred to in paragraph (i); and**

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[3]These matters are contained in section 91(24) of the *Constitution Act, 1867*, and sections 25 and 35 of the *Constitution Act, 1982.*

iii) **that the Constitution provide that a constitutional conference be convened within two years after the amendment on the inherent right of self-government of the aboriginal peoples of Canada comes into force.**[4]

5. Representation of Aboriginal Peoples in the Senate

The Government of Canada proposes to guarantee representation for aboriginal peoples in a reformed Senate. There is general support for this inclusiveness in Canadian political institutions, and the Committee supports the principle.

The discussions on this subject occurred in advance of the publication by the Royal Commission on Electoral Reform and Party Financing of its comprehensive report on representation in the House of Commons. The mechanism proposed for the election of aboriginal members to the Commons is more complex than a simple guarantee, but could apply equally to an elected Senate. The mechanism has also been developed with the benefit of considerable consultation and consideration.

Under the proposal of the Royal Commission, aboriginal voters would have the choice of whether to register on an aboriginal voters list or on the general voters list. Aboriginal constituencies would be created whenever a sufficient number of voters elected to register. These constituencies would be the same as general constituencies in all respects, except they would necessarily be geographically much larger. This approach would guarantee access to the electoral process on equal terms, but would not guarantee a fixed number of seats.

The Royal Commission consulted widely on its proposal and found general support for its proposal for aboriginal constituencies, including a majority view that this would compliment the objective of self-government. The Committee believes that this approach is worthy of consideration for a reformed Senate.

We recommend that, if they wish, aboriginal peoples be guaranteed representation in a reformed Senate, and commend the mechanism and options proposed by the Royal Commission on Electoral Reform and Party Financing.

6. A Canada Clause in the Constitution: Reference to Aboriginal Peoples

There are three areas where reference to aboriginal peoples is required.

First, a statement to the effect that Canada is a people made up of Indians and Inuit, the first peoples, followed much later by English and French-speaking peoples, the union of these peoples the Metis, and peoples from numerous other nations from every continent.

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[4]See Draft Constitutional Amendments, Appendix A at p. 107.

It would also be appropriate to incorporate the central notion of the inherent right of aboriginal peoples to self-government within Canada.

Aboriginal peoples have expressed the strong desire for the protection of their unique cultures, languages and traditions to be incorporated in the Constitution. The Committee believes this is a legitimate aspiration of the first peoples of Canada which serves to enrich us all.

We recommend that the role of the Indian, Inuit and Metis peoples in the development of Canada, as well as their inherent rights as the First Peoples be recognized in the proposed Canada Clause. In addition, the clause should contain a recognition of the right and responsibility of aboriginal peoples to protect and develop their unique cultures, languages and traditions.[5]

7. Conclusions

There are a number of other areas where aboriginal peoples, like many other Canadians, may be affected by the constitutional proposals. Witnesses have expressed particular concerns with the effects of a redistribution of federal powers to the provinces in advance of the transfer of powers to aboriginal governments, and economic union. The Committee believes that the governments involved must take appropriate measures to consult all those affected and take their views into account.

As Chief Peter Chiese said in his prayer to open the constitutional circle of the Assembly of First Nations: We must all lift each other up.

D. OTHER CHARTER ISSUES

1. Entrenching Property Rights

As part of its proposal to reaffirm the rights and freedoms of citizens, the Government of Canada has proposed that the *Canadian Charter of Rights and Freedoms* be amended to guarantee property rights.

This proposal recognizes that property rights are an important aspect of our society, as already recognized in the *Canadian Bill of Rights* and the *Alberta Bill of Rights*. Since 1982, two provincial legislative assemblies, British Columbia and Ontario, supported the addition of property rights to the *Charter* as did the House of Commons in 1988. Canada also endorsed property rights as a fundamental human right when it signed the Universal Declaration of Human Rights in 1947.

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[5]See Draft Constitutional Amendments, Appendix A p. 129.

We have heard a great deal of opposition to this proposal. Concerns have been expressed and fears were raised about its impact on, for example, aboriginal land claims, women's rights, provincial matrimonial property laws as well as laws protecting the environment. Specific concerns were also raised with respect to the special needs of Prince Edward Island to protect its shoreline and farmlands from absentee landlords.

Unfortunately, there was little explanation by the federal government for the inclusion of property rights in its proposals let alone as an addition to the *Charter*. While recognizing the views of those opposed, it is important to note the comments of Mr. John Tait, Deputy Minister of Justice, who made it very clear that no right in the *Charter* is absolute. All rights are subject to section 1 which states that the rights and freedoms set out in the *Charter* are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. He went on to say that all rights are also limited by section 25 dealing with aboriginal people and by section 28 as it applies to the equality of the sexes.

The government members of the Committee support the federal proposal that the right to enjoy property and not to be deprived thereof without due process and reasonable compensation be entrenched in the *Canadian Charter of Rights and Freedoms*. The opposition members of the Committee disagree with this position.

2. Notwithstanding Clause

The notwithstanding clause or override provision is found in section 33 of the *Canadian Charter of Rights and Freedoms*. It allows Parliament, or a provincial legislature, to pass legislation that overrides section 2 (fundamental freedoms), sections 7 to 14 (legal rights) and section 15 (equality rights) of the *Charter*.

The federal government is proposing to maintain section 33 while making it harder to use. Under the proposal, the override provision could be invoked only if at least 60 per cent of all members of a legislature voted in favour of it. As the provision now stands, the consent of a majority of the members present at a sitting of the legislature is sufficient to override the *Charter* in a piece of legislation.

The presence of the override provision in the *Charter* is controversial. During our hearings in Halifax, Ottawa, Winnipeg and Toronto, a number of witnesses argued persuasively for a more fundamental change than the federal government is proposing. They asked us to consider making it impossible to use the clause to override equality rights guaranteed in section 15 of the *Charter*. That section guarantees the equality of every individual before and under the law, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Other witnesses told us that the notwithstanding clause is a particularly Canadian solution to resolve the inherent tension between the supremacy of Parliament and the power of the courts.

We are not certain that this debate can be resolved during this round of constitutional reform, if ever.

Many asked us to recommend the addition of a new provision that will stipulate that the rights and freedoms guaranteed by the *Charter* are guaranteed equally to all regardless of race, colour or national or ethnic origin, or that section 27 of the *Charter* — the clause dealing with Canada's multicultural heritage — be amended to provide that the *Charter* shall be interpreted in a manner consistent with racial and ethnic equality. We think these proposals merit further study, but fear that there may not be time this round to deal adequately with the complex issues involved.

Because of the complexity of the issues raised, we believe that study of the federal government's proposal to make the notwithstanding clause more difficult to invoke be postponed for another round of constitutional discussions.

- **New Democratic Party Dissent**

The New Democrats consider that the concerns expressed about the notwithstanding clause were not adequately described. A number of witnesses insisted that the notwithstanding clause undermines the very nature of the *Canadian Charter of Rights and Freedoms*. Minority groups in particular argued that at least section 15(1) of the *Charter* should be exempted from the notwithstanding clause. With the simple legislative majority override, they argued, minorities are no more protected from rights abuse than they would be without the *Charter*.

Therefore the New Democratic Party members of the Committee recommend that section 15(1) of the *Canadian Charter of Rights and Freedoms* be exempted from section 33.

During hearings in Toronto, Halifax, Ottawa and Winnipeg witnesses from many national and regional organizations representing ethnic and racial minorities suggested that the rights and freedoms guaranteed by the *Charter* be guaranteed equally to all regardless of race, colour, national or ethnic origin.

The new section they proposed would be modelled on section 28 which provides that rights are guaranteed equally to both sexes. We think this proposal also merits further study by the First Ministers but fear that we have not had time to consider the apparently complex issues involved.

That being said, we assert that Canada owes its character in large part to the ethnically and racially diverse people who have come to its shores from other lands not only to build a new life, but to participate fully in public debate and citizenship. One of the themes of this constitutional round is described as inclusiveness: for Quebec, for French speaking and English speaking minorities, for aboriginal peoples, for Canada's regions. We think, therefore, that all

of Canada's diverse peoples must see themselves in the Constitution as Canadians of equal status. Our Basic Law must reflect the diversity of our country.

That is why we recommend the suggestion from the Anti-Defamation League of the B'nai B'rith. They proposed that section 27 of the *Charter* — the clause dealing with Canada's multicultural heritage — be amended to provide that the *Charter* shall be interpreted in a manner consistent with racial and ethnic equality. This would build on an existing provision of the *Charter* that is widely supported and which has begun to be used by the courts to interpret the *Charter* in light of the racial and ethnic diversity of Canada.

The New Democratic Party members recommend that section 27 of the *Canadian Charter of Rights and Freedoms* be amended to provide that the *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians and the preservation and promotion of racial and ethnic equality.

3. The Right to Privacy

As stated in the federal proposal, the *Canadian Charter of Rights and Freedoms* was a significant step forward in the protection of the fundamental rights of Canadians. However, under the *Charter* there is no specific guarantee of a right to privacy. We heard testimony that an individual's right to enjoy personal privacy is a central shared value among Canadians. In a society in which surveillance has increased, the right to privacy will become even more important.

This was one of the conclusions of the Justice and Solicitor General Committee of the House of Commons in its unanimous 1987 report on the revision of the federal *Privacy Act*. That Committee suggested that serious consideration be given to creating a constitutional right to personal privacy. It went on to say that the absence of "common law and/or charter based right to personal privacy in Canada is a significant impediment to the protection of individual human rights."

Some government members of the Committee support the entrenchment of a right to privacy. The opposition members disagree.

CHAPTER IV

Federal Institutions for a Renewed Canada

INTRODUCTION

The Government of Canada's proposals outline a series of changes to two of our major central institutions: Parliament and the Supreme Court of Canada. These proposals are important because the institutions they will affect have such an immense impact on the way we live. Parliament is the foundation of our democracy, representing the people in the making of the laws, and holding government accountable for its actions. The Supreme Court is the guardian of the rule of law, exercising final authority in the interpretation of the law, including the Constitution itself.

Although some of the changes proposed by the federal government do not involve constitutional amendments, we have found it useful to consider them alongside those which do require amendments because, together, they will have a combined effect on the working of our institutions. In addition to considering the proposals individually, we have thus asked ourselves whether, in combination, they go in the right direction, and to the required extent.

Our recommendations reflect two broad themes. The first is the need of Canada's outlying regions for better representation within our central institutions, and the need of all regions for an enhanced capacity to articulate their distinctive concerns. We recommend that the House of Commons review its practices and procedures. We also make recommendations which will enhance the legitimacy of Senators as representatives of the Canadian regions. Our recommendations will also increase provincial and territorial input into appointments to the Supreme Court of Canada.

Our second theme complements the first. The combined effect of our recommendations will be a subtle shift of power out of the hands of the executive government, and into the hands of those who directly represent the needs and concerns of people outside Ottawa.

In concert, our recommendations and the federal government proposals to which they contribute will, we believe, increase the role of consensus in our social and political life. Governments will face greater impediments if they seek to do things which are strenuously opposed in particular regions, or are generally unpopular. More positively, there will be a

greater incentive for governments to build a broad consensus before making changes which impact on peoples' lives.

These themes of change respond to basic messages Canadians have been sending to governments. We believe our recommendations will help Canada's central institutions contribute fully to national renewal, and the lives of Canadians.

A. THE HOUSE OF COMMONS

In proposal 8 the Government of Canada commits itself to further reform of House of Commons procedures and practices. This proposal does not involve changes to the Constitution. It is recognized, as well, that procedural reform cannot be brought about by the Government acting on its own. By convention, House procedure is arrived at by consensus among the major political parties. The reforms proposed by the federal government carry forward the general thrust of parliamentary reform since the early 1980s.

The legitimacy of the legislative institutions of our democratic parliamentary system is an indispensable component of Canadian renewal. In our view, the full range of options for the reform of the House of Commons needs to be explored, so that all Canadians can take pride in it as their effective voice at the centre of government, and feel for their House of Commons the unqualified respect they plainly desire to feel.

We recommend:

i) **as reform of the procedures, practices and representational effectiveness of the House of Commons does not require constitutional change, the federal government's proposals on this matter should not be pursued during the current constitutional round; and**

ii) **the question of a comprehensive review of the procedures and practices of the House of Commons should be addressed by the House of Commons.**

B. REFORM OF THE SENATE

1. The Need for Reform

In its September 1991 constitutional proposals, the Government of Canada recognizes that, in a renewed Canada, central institutions must become more responsive to the needs of Atlantic and Western Canada. Senate reform is presented as a central element in the response to these needs. It is argued that an elected, more equitable and effective Senate, with its legitimacy enhanced, could make a fundamental contribution to increased regional participation in the federal parliament.

In making this argument, the federal proposal reflects a consistent finding of major studies since the mid-1980s, including those of the 1984 Special Joint Committee on Senate Reform (the Molgat-Cosgrove Committee), the 1985 Alberta Select Special Committee on Upper House Reform, and the Royal Commission on the Economic Union and Development Prospects for Canada of the same year. These studies all recognized the existence of increasingly bitter resentments in Western and Atlantic Canada over the perceived unresponsiveness of successive Canadian governments to the needs of people and communities outside central Canada. As well, they argued that an effective Senate could make a significant contribution to resolving this problem, and that direct election was an essential precondition for effectiveness.

Our hearings have strongly confirmed the need for more effective representation of the outlying regions, and more responsive government. Many Canadians in the West and in the Atlantic provinces have a sense that their needs and concerns routinely lose out in decision-making within the central government. This sense of injustice, in turn, sometimes breeds a generalized suspicion of the centre, and resistance to legitimate demands coming, in particular, from Quebec.

A renewed Canada cannot be achieved through fairness for some. It will need to offer fairness to all. For many Canadians, Senate reform has become a crucial element in the renewal of Canada.

The breadth of the demand for Senate reform, and the importance attached to progress in this area by Canadians outside central Canada, was also strongly in evidence at the Calgary conference on institutional reform. In the words of the conference report:

> Conference participants were unanimous in rejecting the status quo; for a wide range of reasons, they found the existing Senate inadequate and felt that it must be reformed.

We believe that the need for increased regional responsiveness within central institutions, and the potential of a reformed Senate to contribute to the meeting of this need, are elements in a growing constitutional consensus among Canadians. The task which remains is the design of an upper chamber which responds to this consensus.

The federal government's proposal outlines some of the features which a reformed Senate might possess. Others, such as the electoral system and distribution of seats, are left unspecified, and highlighted for special attention by this Committee.

2. The Role and Functions of a Reformed Senate

a. Roles

The history of Canada's Senate, and upper chambers in other countries, tells us that there are many roles which could be played by a reformed Senate. It could be, among others, a house of cultural and linguistic minorities; a house reflecting Canada's diversity, and giving special

representation to women, aboriginal peoples and ethnic groups; a house of the provinces, representing provincial governments; or a house giving increased representation to the people of the smaller provinces or regions, and thus counterbalancing the principle of representation by population expressed in the House of Commons.

The choice among these options is not arbitrary. In reforming the Senate, we must identify real problems, and respond to them with appropriate institutional remedies.

The prevailing consensus about the Senate, backed up by the consistent findings of parliamentary committees and other investigations in recent years, is that the primary role of the Senate should be regional representation. A reformed Senate must contribute visibly to the meeting of this need, or risk being irrelevant.

- Regional Representation: Governments or People? Regions or Provinces?

In most recent proposals, including that of the Government of Canada, regional representation has been seen to require the representation of people, rather than governments. This is an important distinction.

The idea that provincial or territorial governments should be represented within the Senate (possibly through their capacity to appoint Senators) attracted considerable interest in the 1970s. It was revived, in a qualified form and as an interim measure, by the Meech Lake Accord and still has its proponents, several of whom were among our witnesses.

While the representation of provincial and territorial governments achieves a form of provincial and territorial representation, it is subject to a major objection. Provincial and territorial governments are selected in elections fought on provincial or territorial issues. They do not necessarily represent the views, or even broad political party preferences, of voters with respect to national issues. They thus have legitimacy when they address those aspects of national decisions which affect the jurisdictions and responsibilities of provincial and territorial governments, but they have no mandate to deal with national issues generally.

These considerations lead us to conclude that, for the purpose of Senate reform, regional representation means representing the people of the regions, rather than provincial or territorial governments.

The federal proposal argues that the reality of contemporary Canadian politics is that people identify primarily with their provinces or territories, rather than their geographical regions. The Senate should therefore represent people on a provincial or territorial rather than a regional basis.

We think this argument has merit, although it remains true that many people describe themselves as "Westerners," "Northerners," or "Maritimers." The evolution of the various regions since Confederation has acted to highlight many of the differences between and among

provinces in the West and Atlantic Canada, and between these and the North. If the term "regional representation" were to provide a rationale for glossing over these differences among provinces and territories, it could provide a seriously misleading basis for the reform of central institutions.

We therefore conclude that regional representation must be understood as the representation of the people of the provinces and territories, rather than their governments. It must also be recognized that, for people in the central provinces, regional representation is already substantially achieved through the operation of the representation by population principle in the House of Commons. It is primarily the people in the Atlantic and Western provinces and the territories who continue to need enhanced representation. This is the specific meaning of the regional representation role which must be carried out by a reformed Senate.

b. Functions

It is useful to distinguish between the central purpose, or role, of an institution, and the various activities which it carries out. Most institutions have one basic role, but perform a number of functions, some of which may be required by that role and some of which may be relatively unrelated to it. One of the challenges of institutional reform is to ensure that these secondary functions do not interfere with the performance of the basic role, and identify implications which a change of basic role may have for the secondary functions.

- Legislative Review

Clearly, the review of federal legislation should be the primary function of a reformed Senate. If it were unable to do this, the ability of the Senate to represent regional needs and concerns would be seriously undermined. This was the view of virtually all witnesses appearing before the Committee.

- Policy Studies

A number of our witnesses have noted the achievements of the current Senate in the investigation of policy issues. These also receive special mention in the federal government's proposal, which applauds the work of Senate committees in the investigation of policy issues. In our view this function, as is the case with legislative review, is directly related to the basic role of the Senate. Committee investigations, in both Houses, are an indispensable means for identifying and representing the concerns of Canadians.

- Reflecting Canada's Duality

Witnesses noted that, at Confederation, Quebec was awarded a slightly larger quota of Senate seats in recognition of needs created by its role as the institutional home of a distinct society living in the French language in North America. These needs remain, and must be

reflected broadly in federal institutions and practices, as well as in any redistribution of Senate seats.

Canada's duality has a second dimension, created by the existence of francophone communities throughout Canada, and an anglophone community within Quebec. We believe that the reflection of this reality should be recognized as an important function of any reformed Senate, and incorporated within the design of constituencies.

- Reflecting diversity

Several witnesses argued that the Senate should more broadly reflect Canada's diversity. This issue received special attention at the Calgary constitutional conference where demands for gender equality and greater political participation were made by under-represented groups. We believe that a reformed Senate can play a useful role in reflecting Canada's diversity, and that this role can be enhanced through careful attention to the details of reform.

- Representation of Aboriginal Peoples

In its proposals 6 and 9, the Government of Canada calls for guaranteed aboriginal representation in a reformed Senate. There was considerable support for this proposal among our witnesses.

c. Summing Up

To sum up, we believe that Senate reform has become vitally important so that Canadians can have an upper house which directly represents the people of the regions, especially the less populous regions/provinces. We also believe that the representation should be by province and territory, and that the Senate will carry out its representative role by performing a variety of functions, most importantly the review of legislation.

3. The Selection of Senators

a. The Principle

As has been seen above, the predominant view among advocates of Senate reform since the early 1980s has been that the Senate should be directly elected. Our witnesses fully reflected this view, paying scant attention to the alternatives of appointment or indirect election (e.g., selection by other legislatures).

We too believe that the time has come for Canada to directly elect its Senators. The reasons which led successive committees and other investigative bodies in the early 1980s to favour direct election in our judgement fully retain their validity. If we wish to establish a strong and effective institution to ensure the responsiveness of the central government to regional

needs, that institution needs to have the legitimacy which comes from having been chosen directly by the people.

We recommend:

Senators should be chosen by the people of Canada by direct election.

b. An Electoral System for a Reformed Senate

One possible electoral system option for a reformed Senate would employ single member constituencies with plurality voting. This is the "first-past-the-post" system now in use for the House of Commons. One of its advantages is that it is familiar to Canadians, and the basis on which a candidate is declared elected is easily understood. Also, it is relatively easy to administer, and the possibilities for abuse are thus minimized. Finally, it brings candidates close to voters by using relatively small single-member constituencies, and thus fosters ties between electors and the elected.

Among our witnesses, however, and at the Calgary constitutional conference, the "first-past-the-post" system for a reformed Senate had few supporters, despite the fact that its virtues were generally recognized. Its decisive drawback, for most of its critics, was that it often produces results which are not reflective of the levels of support obtained by various political parties from voters. Typically, it transforms relatively small pluralities of the popular vote into handsome majorities in the legislature, while underrepresenting the smaller political parties.

The dominant theme in the presentations of our witnesses was the advocacy of some form of proportional representation. It was argued by many that such a system, irrespective of its other advantages, would be desirable because it would clearly distinguish the composition of the Senate from that of the House of Commons. This would help to avoid the possibility that an elected Senate would simply duplicate the voting patterns of the House of Commons.

It was recognized, as well, that proportional representation would better reflect the party preferences of voters within the various regions, and avoid the tendency of the present system to translate these preferences into relatively monolithic single-party groups of elected representatives from the various provinces.

Finally, a number of our witnesses anticipated a theme which surfaced at the Calgary conference, when they argued that proportional representation would also provide better representation for women and other groups underrepresented within our current system.

The tendency of proportional representation systems to restrict even the larger political parties to minorities of seats, and (in some cases) to foster the development of small single-issue parties, was recognized by several witnesses. It was not, however, viewed as an insuperable problem. The probability of government-party minorities in a reformed Senate was seen as a positive contribution to its distinctive role.

We have come to share the conviction of many Canadians that an electoral system achieving proportional representation would contribute significantly to the legitimacy and effectiveness of a renewed Canadian Senate.

We recommend:

The Senate should be elected by proportional representation.

The decision to adopt a system involving proportional representation leaves a number of important choices to be made, because there are wide variations among such systems. Indeed, the performance of each system is a product of the combined effect of a multitude of individual features, which can sometimes interact to counter what should be its basic characteristics. For example, in theory the system used to elect the Australian Senate reduces the focus on party affiliation, and focuses the attention of voters on candidates. In practice, however, the parties widely distribute "How to vote" cards, and voters often rely on these to vote for party slates.

The design of an electoral system requires attention to the whole range of possible features, in order to ensure that various features support one another to achieve the desired combined effect. Unless the details are settled in a comprehensive way, a commitment to any particular feature may only impede the attainment of the overall effects desired. For this reason, we have chosen to state a number of objectives which we believe the electoral system of a reformed Senate should serve, rather than to specify selected details of the system.

In addition to achieving the proportional representation of the various political parties within the Senate, the electoral system adopted for a reformed Senate should have the following characteristics:

a) parties should nominate slates of candidates in multi-member constituencies;

b) independent candidates should be able to present themselves for election;

c) parties should use the opportunity presented by multiple nominations to promote gender equality and the representation of Canada's social and cultural diversity within the political process; and

d) voters should have the flexibility to exercise a democratic preference among candidates within and across the slates of candidates nominated by political parties.

The system we favour satisfies all of these principles. Under our system, provinces would be divided into districts, each electing three or four Senators. Electors would be allowed to rank candidates on the list and the three or four candidates with the largest number of votes would be declared elected. This method combines the best features from both proportional representation and first-past-the-post: voters are free to choose; small parties are encouraged;

and the confusing and cumbersome single transferable vote option associated with some forms of proportional representation is eliminated.

c. Size of Constituencies and of the Senate

A concrete proposal for the distribution of Senate seats requires the establishment of the size of constituencies (implying their number, and thus the size of the Senate) as well as the establishment of the general principle of distribution.

A number of considerations have to be weighed in establishing the size and number of constituencies. First, attention must be given to the compatibility of the constituency size with the electoral system. A system involving proportional representation, such as we have recommended, requires multi-member constituencies returning at least four members.

It must be recognized, as well, that large constituencies have a number of drawbacks. They add to the distance between candidates and voters, and tend to make voters more reliant on party affiliations in choosing candidates. At the same time, they tend to make candidates more dependent on party assistance in coping with the organizational challenges and costs of campaigning, and give an advantage to widely-known party notables at nomination time. These factors create special impediments for independent candidates who may wish to run.

With these considerations in mind, we think that constituencies should be no larger than is necessary for the successful operation of an electoral system involving proportional representation.

This requires, first of all, either that the number of seats assigned to each province or territory in the Senate be at least four, or that it be recognized that the system will provide only a very rough approximation of proportionality in the territories and, possibly, smaller provinces.

Secondly, our "no larger than necessary" principle requires that, where possible, the quotas of seats assigned to most provinces should be divisible into more than one constituency, and in the case of the larger provinces, into several constituencies, normally electing no more than four Senators.

With these considerations in mind,

We recommend:

Where possible, the constituencies from which Senators will be elected to a reformed Senate should be multi-member constituencies, normally electing, where practicable, at least four Senators.

d. Timing and Electoral Terms

A final issue relating to the electoral system is the timing of elections and the length of terms. We heard diverse views about this, with some witnesses recommending each of the three major options: elections simultaneous with those of the House of Commons; elections simultaneous with those of the provinces and territories; and elections at scheduled intervals established by fixed terms of office.

Of the major options, we think the second — simultaneity with provincial and territorial elections — is the least desirable, although we note that it has some strong proponents, particularly in Western Canada. This option would result in frequent interruptions of the business of Parliament, as various provincial and territorial delegations sought re-election. Furthermore, it would inevitably involve Senators in electoral campaigns focused on provincial and territorial issues, rather than directing attention to the provincial and territorial perspectives on national issues which their role will require them to represent. It would also blur the distinction between federal and provincial responsibilities, and make it more difficult for voters to hold either level of government accountable for its actions.

The federal government's proposal favours elections simultaneous with those for the House of Commons. The explanation given is that this would emphasize the federal character of the Senate, and recognize that the Senate and the House of Commons share a common legislative agenda. We recognize that both of these points are valid. We are concerned, however, that simultaneity with House of Commons elections would associate a reformed Senate too closely with the House of Commons, and prevent the emergence of a less partisan and more individualistic style of campaigning.

A number of our witnesses called for fixed electoral terms and elections separate from those for either the House of Commons or provincial legislatures. This was also the clear preference of those in attendance at the Calgary constitutional conference. It was felt that separate elections would help to distance Senate elections from those for the House of Commons, enable them to be less partisan, and enhance the likelihood that Senators would represent regional concerns rather than party positions following their election.

We think our witnesses have identified the key issue here: what arrangements will make the most effective contribution to regional representation? We think fixed terms are the superior solution, for the reason identified by our witnesses.

The various proposals provided to us, or made in recent years, differ widely from one another over the appropriate length of a Senator's term in office. Proposals range from relatively long terms, of up to nine years, to terms of four years or less. Proposals also differ over whether all Senators should be elected at the same time, or have staggered terms with perhaps one-half running in each election.

Our discussions have led us to the conclusion that staggered terms should be avoided. An electoral system involving proportional representation works best when there are relatively large numbers of competing candidates, and staggered terms would mean that only a fraction of the Senate's membership would run in each election. We also think terms as long as nine years would tend to insulate Senators from their electors, and reduce their credibility.

We recommend:

A reformed Senate should have fixed terms of no more than six years in length.

4. Distribution of Seats

The distribution of seats in the Senate was a much-debated issue at the time of Confederation. The views expressed by our witnesses, and by those in attendance at the Calgary constitutional conference, provide ample testimony that this issue continues to be sensitive and, for some Canadians, highly symbolic.

a. A Distribution Principle

We think it is important to recognize that there would be little difference, in practice, among many current proposals for the distribution of Senate seats. In all of the proposals which we have reviewed, no single province or territory would have a sufficient number of Senators to block legislation opposed within that province or territory. Equally, no single province or territory would have a large enough group of Senators to ensure the passage of legislation favoured by its residents. The fate of all legislation will be determined by coalitions of Senators from various provinces and territories, and the influence of Senators from any particular province or territory will depend much more heavily on their ability to build these coalitions than on their numerical strength.

We believe, for the reasons stated above in our discussion of the idea of regional representation, that the central basis upon which seats in a reformed Senate should be distributed is now provincial and territorial rather than regional. In this, we agree with the federal proposal, as well as a number of previous studies and proposals.

The view that seats should be distributed on a provincial and territorial rather than a regional basis leaves open two major possibilities: an equal number of seats for each province, or an "equitable" number which departs from strict equality in order to give some reflection to the disparities in size among the various provinces.

The central question here is one of fairness. Should Prince Edward Island, with approximately 0.5 per cent of the national population, have the same number of Senate seats as Ontario, with 36.6 per cent of the national population, or Quebec, with 25.5 per cent? Given these population disparities, we think strict equality would sacrifice fairness to the people of the provinces and territories in the name of fairness to the provinces and territories themselves. The

provinces and territories would be treated equally, but there would be vast inequalities in the weight of representation given to people in the various provinces and territories. Yet the purpose of a directly-elected Senate is to represent the people of the provinces and territories, not the provinces and territories or their governments.

These considerations might have to be set aside, if equal representation of the provinces in the upper chamber were a reflection of some fundamental principle of federalism. There is, however, no evidence of this. Provincial inequality, in this respect, did not trouble the Fathers of Confederation when they established the existing Senate. Nor did it trouble the founders of most other federal countries, where the sub-national units usually have unequal representation in the upper house. Nor is any principle of equality, with respect to representation in upper houses, asserted in the classical theoretical works on federalism, such as *The Federalist*, or the writings of Alexis de Tocqueville. We conclude therefore that there is no requirement for equality flowing from the federal principle itself.

Finally, we believe that the people of the territories should be represented in a reformed Senate according to the same principle as the people of the provinces. If the new Senate were being established to represent governments, then it might be appropriate to reflect differences between territorial and provincial status in its composition. The people of the territories, however, have the same status as the people of the provinces. They are citizens of Canada. If the populations of the various provinces warrant equal numbers of Senators, then, for the same reasons, the populations of the territories must be given numbers of Senators equal to those given to the populations of the provinces.

Alternatively, Canadians can leave aside a concern with strict equality, and focus on the principle of fairness. This principle, we believe, requires that the smaller provinces (and the territories) be assigned a sufficiently large number of seats to enable the Senate to perform its role of counterbalancing the principle of representation by population embodied in the lower House. Strict equality is not needed.

We recommend:

The distribution of seats among the provinces in a reformed Canadian Senate should be equitable, reflecting the need of less populous provinces and the territories for disproportionately large numbers of seats in the Upper House.

b. Our Proposed Distribution

Our discussions have convinced us that, while the principle of fairness is the indispensable basis for distributing Senate seats, it does not prescribe any particular distribution. Instead, it provides a basis for judgments, and requires these judgments to take account of multitude of factors. A fair distribution of Senate seats must, for example, recognize the overall need for a Senate which will counterbalance, but not overwhelm, the principle of representation by population. A fair distribution must also respect traditional regional protections, while

responding to the fact that demographic trends have substantially changed the distribution of the national population that existed in 1867. It must, as well, be recognizable by most Canadians as being fair. The renewal of Canada is about restoring the national consensus on which our institutions are grounded; it cannot be achieved through the creation of winners and losers.

The distribution of Senate seats also has to take into account section 51A of the *Constitution Act, 1867* which requires that the number of members of the House of Commons from a province shall not be less than its number of Senators. Too small a Senate may not provide enough of a guarantee for a province's representation in the House of Commons; too large a Senate may require an increase in a province's representation in the Commons. Guided by such technical considerations, and after lengthy discussions about the balances involved in distributing Senate seats among the provinces, territories and (prospectively) aboriginal governments, we have identified two possible alternatives that are presented below for further consideration.

Seats in a reformed Canadian Senate could be distributed as follows:

British Columbia	18	12
Alberta	18	12
Saskatchewan	12	8
Manitoba	12	8
Ontario	30	20
Quebec	30	20
New Brunswick	10	8
Nova Scotia	10	8
Prince Edward Island	4	4
Newfoundland	7	6
Northwest Territories	2	2
Yukon	1	1
TOTAL	**154**	**109**

- **Liberal Party dissent**

The Liberal members disagree with the recommended options for the composition of the Senate. The Liberal members feel that Canadians do not need a larger Senate as proposed by

the majority but that, in fact, a smaller and more equal Senate than we now have would add to its effectiveness. Therefore, the Liberal members recommend the following:

Yukon	1
Northwest Territories	1
British Columbia	9
Alberta	9
Saskatchewan	8
Manitoba	8
Ontario	18
Quebec	18
New Brunswick	8
Nova Scotia	8
Newfoundland	8
Prince Edward Island	4
TOTAL	**100**

c. Aboriginal Representation

In our discussion, elsewhere in this report, of the federal government's proposal for guaranteed aboriginal representation in the Senate we recognize that the establishment of aboriginal governments will create a new order of government in Canada. Since the purpose of the Senate involves representation of the populations of Canada's sub-units (provinces and territories), it may then be simply a matter of consistency to represent aboriginal peoples.

Since aboriginal self-government remains, with certain exceptions, to be achieved, a recommendation for the precise form of representation for aboriginal peoples in the Senate would, in our view, be premature.

We recommend:

Guaranteed aboriginal representation in the Canadian Senate will be a logical extension of aboriginal self-government, and the details of this representation should be negotiated with aboriginal peoples, consistent with the relationship between numbers of seats and population applied to the distribution of Senate seats among provinces and territories.

5. The Powers of the Senate

The powers of the Senate are one of the key issues that will determine both the success with which a reformed Senate can perform its role and the legitimacy that it is given by the people of Canada's provinces, territories and regions to represent them and their interests. The Senate's powers cannot, however, be considered in isolation from other features of the reformed Senate, especially the distribution of seats. These will always interact. For example, if

provinces and territories were to be equally represented in a reformed Senate, the larger provinces would be much less willing to give the Senate wide powers. By the same token, a Senate with very weak powers would be unlikely to achieve great credibility in Canadian public opinion nor would it attract credible candidates to seek election. Furthermore, an elected Senate that had very wide powers would also risk confrontation with the House of Commons and potential deadlock of the parliamentary system. For these reasons all the features of a reformed Senate need to be considered together and their combined impact carefully evaluated.

a. Ordinary Legislative Review

The Government of Canada's proposals in *Shaping Canada's Future Together* recommend a Senate with relatively strong but carefully circumscribed powers. As a general rule the government suggests that in order for measures to become law the approval of both the Senate and the House of Commons should continue to be required as at present. In other words the Senate would be able not merely to hold up legislation coming from the House of Commons but to defeat it outright where appropriate.

However, the government's proposal suggests two important qualifications or exceptions to the general rule. In relation to matters of particular national importance, such as national defence and international issues, the Senate would have a suspensive veto power for six months, following which a measure could be presented to the House of Commons once again and become law, if adopted, without further consideration by the Senate. Another exception is suggested for "appropriation bills and measures to raise funds including borrowing authorities." On these matters, it is proposed, the Senate would have no legislative role.

These proposals were considered by the Calgary constitutional conference, which generally supported the idea that "as a general rule" the approval of the Senate should be required for ordinary legislation, but did not approve the exceptions suggested in the federal government's proposals.

Our conclusion is in harmony with that of the Calgary conference and extends it. We agree that as a general rule the approval of the House of Commons and Senate should continue to be required for all ordinary legislation. We do not agree, however, that matters of particular national importance such as national defence and international issues should be excluded from this rule. This is not a large category and measures that would be included in it are not always of major importance but instead often house-keeping matters between governments such as double taxation agreements. Among the other more important matters many would be of very high interest to the people of Canada's regions: measures such as the Canada-United States Free Trade Agreement. We can see no convincing reason why the Senate should have less power to deal with these issues than others. We recommend therefore that legislation in this category be treated like other ordinary legislation and require the approval of the Senate as well as the House of Commons.

We recommend:

The powers of a reformed Senate should be similar to those of the House of Commons on all bills except supply bills, as discussed below. All normal legislation with policy content should require the consent of the Senate. There should be no exception for matters of "national importance" such as national defence and international issues.

On the other hand we do believe that the relationship between the powers of the Senate and the powers of the House of Commons is a matter that needs careful consideration. Although it is important that the Senate have powers wide enough to allow it to carry out legislative review and regional representation effectively and with heightened legitimacy in the eyes of Canada's regions, it is also important to preserve the balance of the parliamentary system and the principles of responsible government. The federal government's proposals suggest that the Senate should not become a "confidence chamber", and we agree. But confidence is more than a matter of confidence motions. It is also the ability of the democratically-elected majority to carry out the main lines of its legislative program and to be held accountable for doing so by the electorate. While it is quite appropriate in our view to modify some of the traditional notions of responsible government in order to make room both for better regional representation through an elected Senate and also more effective representation in the House of Commons, we would not wish to create a parliamentary stalemate where one house of parliament simply frustrated the will of the other.

We think it is very important therefore to give careful attention to the deadlock-breaking mechanisms and procedures that should be put in place to arbitrate major disagreements between the Senate and the Commons. This is especially important since the electoral system we have proposed for a reformed Senate would mean that governments would rarely, if ever, have a majority in the Senate. This question received the attention of a majority of workshops at the Calgary conference, some of which proposed some form of override power for the House of Commons in cases of deadlock. Such a power has also been recommended in previous Senate Reform proposals. The report of the Alberta Special Select Committee on Senate Reform proposed in 1985, for example, that the House of Commons should be able to override decisions of the Senate by a vote larger in percent than the Senate's vote to amend or defeat. In a similar vein, a report published by the Canada West Foundation in 1990 suggested that the House of Commons should be able to override the Senate by means of a two-thirds vote of the House. Others have suggested an override by simple majority vote or the resolution of deadlock through a "Reconciliation Committee" composed of representatives from the Senate and the Commons.

Although we do not disagree with the idea of a conference committee as a means for resolving major differences (which is already provided for in the rules of the Senate and the Standing Orders of the Commons), we think that it should only be a first step and that there should be some further means to resolve deadlock between the Senate and the House of Commons on matters the Commons believes to be of crucial importance to the country. We therefore favour the idea of an override power to be used by the House of Commons. Whether

the override power should require a Commons vote greater in percent than the Senate's, as proposed by the Alberta Select Committee, or a two-thirds vote of the Commons as proposed by the Canada West Foundation, or some other formula, is a matter on which we do not feel it necessary to make a recommendation at this time. But the concept of a deadlock-breaking mechanism in the form of a special override power for the House of Commons is an important concept which we believe should be included in any future proposals for Senate reform. Our conclusion is in harmony with the consensus of the Calgary conference.

We recommend:

In cases of deadlock on normal bills, the House of Commons should be able to override a Senate vote.

Some members of the Committee believe the override should require a 60 per cent majority in the House of Commons.

If the Senate possessed unlimited time to consider legislation it would be able to thwart the will of the House of Commons regardless of its formal powers or the deadlock-breaking mechanisms provided in the Constitution. Especially in a reformed Senate where governments may never have a majority we believe it is important to have constitutional provisions that provide for an orderly progress of the legislative business of the Senate. We therefore endorse another recommendation of the Alberta Special Select Committee that there should be a time limit of 180 days for Senate consideration of ordinary legislation, following transmission from the House of Commons.

The Senate should be required to dispose of normal legislation within 180 days after it is received from the House of Commons.

- **Liberal Party dissent**

The Liberal members of the Committee believe that a fundamental objective of Senate reform is to provide a more effective control of the Executive.

The Liberal members of the committee disagree with the majority recommendation concerning the powers of the Senate because of the proposed House of Commons override of a Senate veto of legislation. Such an override will undermine the effectiveness of a reformed Senate.

Therefore, the Liberal members of the Committee recommend that a reformed Senate be granted an absolute veto on all bills, except for appropriation and budget bills for which a 30 day and a 180 day suspensive veto respectively would apply, after which period the appropriation or budget bill could be passed in the House by a simple majority.

b. Supply Bills

The Government of Canada's proposals for Senate reform also recommend an important qualification to the Senate's powers to deal with "appropriation bills and measures to raise funds including borrowing authorities." In relation to these matters it is suggested that the Senate should have no legislative role at all.

There are two issues to be examined here. One has to do with the definition of appropriation bills, and the other has to do with the Senate's role.

On the question of definition, we think it is important that appropriation bills be narrowly defined. Some have assumed that the proposal is meant to include all money bills. Witnesses who appeared before us on behalf of the federal government and who have spoken at the constitutional conferences have assured us that the proposals intend a much narrower definition, one that would include only main appropriation bills and routine tax measures. All other bills with significant policy content would be subject to scrutiny by the Senate. Even this definition may be somewhat too wide. One government witness suggested that "the extension of the application or changes in [tax] rates" would fall outside the Senate's authority, even though taxation may have an important impact on regional interests. We think that appropriation bills in this category should be clearly and narrowly defined to include only supply measures solely for the ordinary functioning of the government.

If appropriation bills are defined in this manner, we agree that the powers of the Senate in relation to them should not be equal to those of the House of Commons. It should not be possible for the Senate to block supply and to halt the ordinary functioning of government simply because of a disagreement with the House of Commons or with the government. It is essential for the ordinary business of government to be carried on without interruption while appropriate debate on legislation continues. The government must be able to govern. We therefore agree that the Senate's powers should be curtailed in this area.

However, the federal government's proposal goes too far. If it were accepted, the Senate would not be able even to debate supply bills, let alone defeat them. We see no reason why the Senate should not have an opportunity to express views on supply bills even if it cannot block supply. We propose that the Senate should have a legislative role in relation to supply bills, narrowly defined, but that it should be required to dispose of them within a 30-day period. In cases of disagreement with the House of Commons, it should be necessary for the House of Commons to reaffirm the measure; it should not become law automatically at the end of the suspensive period.

In the case of supply bills, the Senate should be required to dispose of the measure within 30 days of receiving it from the House of Commons. At the end of the 30-day period if the bill is amended or defeated by the Senate it would be necessary for the House of Commons to reaffirm the measure by a simple majority.

If these proposals were to be adopted it would be necessary to establish some appropriate means to identify whether a measure were a supply bill as defined above. We suggest that the power to certify bills as belonging to the category of supply bills should reside in the Speaker of the House of Commons. The Senate should be able to reverse a certification decision of the Speaker of the House of Commons by a vote of 80 per cent of Senators. But there should be no appeal to the House of Commons or to the courts. In order to prevent a government from including in a routine supply bill measures which have significant regional impact or which would otherwise fall within the wider powers of the Senate, the Speaker should have authority to split bills, where appropriate, and to determine where portions of bills should be put into separate legislation for consideration by the Senate.

The Speaker of the House of Commons should certify bills as supply bills for the ordinary functioning of the government.

c. Double Majority

The Government of Canada's constitutional proposals recommend that the Senate should have a double majority voting procedure for matters of language and culture. Similar proposals have already been put forward by the Alberta Special Select Committee, the government of Newfoundland (1989), the Macdonald Commission (1985), the Special Joint Parliamentary Committee on Senate Reform (1984), and in many other reports and proposals. The government of Newfoundland and Labrador has suggested that a double majority provision should apply also to constitutional amendments affecting linguistic or cultural rights or the civil law. At the Calgary constitutional conference wide support was also expressed for a double majority proposal; no workshop opposed it.

We agree with the federal government's proposal for a double majority provision in the Senate for matters of language and culture. Senate approval for matters relating to the language and culture of French-speaking communities should require the support of a majority of Senators voting and a majority of francophone Senators voting. Since the purpose of a double majority provision is to protect the minority, a similar provision is not required for English-speaking Senators.

Measures affecting the language or culture of French-speaking communities should require the approval of a majority of Senators voting and a majority of francophone Senators voting.

As in the case of supply bills, it will be necessary to provide an appropriate process to establish whether or not a measure falls into the category that requires approval in the Senate by a double majority. We suggest that the power to certify bills as requiring a double majority should be exercised by the Speaker of the Senate, on the assumption that the Speaker would be elected by a reformed Senate, not appointed by the government as at present. In this regard, the Speaker of the Senate should consult the Commissioner of Official Languages.

If it is thought necessary to provide an appeal mechanism there should be an appeal to the whole Senate, one in which a double majority is used, but not to the courts. In the case of an appeal that seeks to overturn a ruling of the Speaker that a measure should be subject to a double majority, a successful vote should require a two-thirds majority of all Senators voting and a majority of francophone Senators voting. In the case of an appeal that seeks to overturn a ruling of the Speaker that a measure should not be subject to a double majority, a successful appeal should require only a majority of Senators voting and a majority of francophone Senators voting. The reason for this distinction is simple and flows from the rationale of the double majority itself: in order to protect the minority it should be harder for the majority to overturn a ruling of the Speaker in this area.

The Speaker of the Senate should certify bills as being measures affecting language or culture of French-speaking communities on which a double majority voting procedure is required. There should be no appeal of the Speaker's decision to the courts.

d. Ratification of Appointments

The Government of Canada's proposals recommend that a reformed Senate have the power to ratify the appointment of the heads of a number of federal agencies including the Governor of the Bank of Canada, the heads of national cultural institutions (such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council, and the National Arts Centre), and the heads of regulatory board and agencies (such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency).

We agree with this recommendation (proposal 11). Since these agencies can have a significant impact on the lives of Canadians in all parts and regions of the country, it is appropriate that the Senate have the opportunity to review the suitability of candidates.

We take the list of potential agencies included in the federal government's proposal to be illustrative rather than exhaustive. Other agencies might well be added to the list, including the heads of the federal research granting councils which have a major impact on higher education and culture right across the country.

The Senate should have a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, as well as the heads of regulatory boards and agencies.

C. THE SUPREME COURT OF CANADA

Established by an Act of Parliament as a general court of appeal in 1875, the Supreme Court of Canada became a true court of last resort in 1949, when appeals from the decisions of the Canadian courts to the Judicial Committee of the British Privy Council were abolished. With the enactment of the *Canadian Charter of Rights and Freedoms* in 1982, the Supreme Court took on even wider responsibilities. In addition to its role as constitutional arbiter, particularly on the distribution of powers between Parliament and the provincial legislatures, it became responsible to decide whether federal and provincial laws violate the individual rights and freedoms entrenched in the *Charter*. Since the Court has become a mainstay of Canadian public life, its composition and operation are of paramount importance. The time has come to further the process initiated by the enactment of sections 41 and 42 of the *Constitution Act, 1982*. These, as enhanced by the current proposals for amendment, would prevent the Court's basic characteristics from being altered by unilateral federal legislation which can be enacted without consultation with the other partners in the federation.

The government proposes to amend the *Constitution Act, 1982* to provide for the appointment of the Supreme Court judges from lists of candidates submitted by provincial and territorial governments. Such amendment could be approved under the amending formula set out in section 38(1) of the *Constitution Act, 1982*, that is with the consent of the federal government and seven provinces including at least 50 per cent of the population (the 7/50 formula).

The federal government says it is prepared to proceed with a more comprehensive proposal entrenching in the Constitution the existence of the Supreme Court of Canada and its current composition, which totals nine judges including three from the province of Quebec trained in civil law. This guarantee is of vital importance to Quebec as it provides an element in the protection of the distinct society, particularly the civil code. Participants in the present debate seem to agree that now is the time to go ahead with an amendment achieving this comprehensive reform. We note that paragraph 41(d) of the *Constitution Act, 1982* requires unanimous approval of the federal and provincial governments for such an amendment.

None of those who appeared before us or took part in the debate on the Supreme Court of Canada questioned the need to entrench the Court in the Constitution. However, opinions were divided on the process for appointing judges.

Some recommended that nominating councils be set up to enable the legal community, at both the federal and provincial levels, to have a say in a decision that would ultimately rest with the federal government. Others suggested the creation of an arbitration body to resolve deadlocks in intergovernmental consultations. Without rejecting either idea out of hand, we feel that the key element of the reform is participation by the provinces and territories. The Court deals with the nation's basic political issues. We consider that governments should agree on candidates for appointment to the Court. The Constitution can only establish the framework for

this process. To have the Constitution entrust a non-political body with the settlement of potential disputes seems to us inappropriate.

We agree with the Government proposal to amend the Constitution Act, 1982, to provide for the appointment of the Supreme Court judges from lists of candidates submitted by provincial and territorial governments. To prevent paralysis of the Supreme Court's activities by a drawn-out dispute, we propose the constitutionalization of a simpler version of the mechanism contained in section 30 of the *Supreme Court Act*. This section empowers the Chief Justice of Canada to appoint, on a temporary basis, an *ad hoc* justice from among judges of the Federal Court or a provincial superior court. Such an appointment would be made only if governments reach a deadlock. It would enable the Court to operate normally until a mutually acceptable candidate is found. Such amendments could be adopted under the 7/50 formula.

We also recommend that the government's proposal in its comprehensive version, merits the support of all governments.[6] Under this proposal, the existence of the Supreme Court of Canada and its current composition, which totals nine judges including three from the province of Quebec trained in civil law, would be entrenched.

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[6]See Draft Constitutional Amendments, Appendix A at p. 109.

CHAPTER V

Sharing Responsibilities and Benefits

INTRODUCTION

As we are about to celebrate the 125th anniversary of the Canadian federation, new internal and external challenges force us to re-examine once more how we allocate the responsibilities for various policy issues between the two orders of government and how we could improve on the management of our economic and social affairs. Although this task may appear particularly complex and difficult in the current constitutional round, we believe that it is best viewed as only one more step of a normal and continuing process of adjustment and adaptation to changing needs and conditions.

Internally, the Government of Quebec has expressed dissatisfaction with the current sharing of responsibilities between the federal and provincial governments and believes that a re-arrangement is required to better serve the needs of the province's residents. Not all provinces have expressed a similar wish to exercise greater responsibility in various areas, but many believe that we could significantly improve on the ways governments manage their shared responsibilities. At the core of the issue is interdependence and how our federal system could be made more effective in managing this interdependence while respecting the essence of federalism, i.e., a clear allocation of legislative responsibilities between the two orders of government.

Externally, globalization and increased world competition compel us to ensure that our economy functions as smoothly as possible if we want to secure our future and that of our children. Changing world conditions will bring about change, whatever we do. The real issue is whether we want to be able to influence the course of change or simply let it fashion and mould our nation while we look on passively, doing nothing to protect or raise our standards of living. What is at stake is not greater personal wealth, but the very foundations of our commitment to caring and sharing, so widely admired and envied abroad. The social values we cherish need a well-functioning and strong economy to nurture them. There is little dispute about the need to secure our economic and social well-being, but the way we go about achieving this objective is subject to greater discussion and difference of views and opinions. We believe that during the current constitutional round it is important in debating the merits of various proposals, not to lose sight of the ultimate objective, which is to ensure the well-being of all Canadians.

A. MANAGING INTERDEPENDENCE IN OUR FEDERAL SYSTEM

1. Introduction

a. The 1867 Constitution: a Flexible Tool Meeting the Needs of Canadians

In 1867, when the Fathers of Confederation laid the foundations of Canadian federalism, the role of government was much more limited than now. Governments were primarily responsible for providing a legal framework within which society could go about its daily business, for providing a limited number of services such as law enforcement, national defence, roads, bridges, and for supporting major public works such as canals and railways. Government spending was small and only of limited use as a policy tool. The world has changed considerably since Confederation. The problems and challenges faced by Canada are more complex. Canadians have learned to expect governments to assume more economic, social and cultural responsibilities than they did in the 19th century.

A key element of a constitution in a federal system is the assignment of responsibilities and powers to the two orders of government. The framers of the 1867 Constitution focused extensively on the division of legislative powers, reflecting the predominance of legislation as a policy tool at that time. They applied two broad principles to the distribution of legislative powers set out in sections 91 to 95 of the *Constitution Act, 1867.* The first is that matters that are interprovincial or international in scope should be assigned to the federal parliament; matters that are essentially provincial or local in scope, or that can be best addressed by laws tailored to a particular provincial community should be assigned to the provincial legislatures. The second is based on a rough distinction between those things that are rooted in communal and cultural differences, and for which the various provincial communities in Canada are likely to have quite different wants or needs, and those things that largely transcend cultural or social differences and are likely to be of common interest to citizens throughout the country.

In addition to empowering the federal parliament and the provincial legislatures to make laws with respect to specific subject matters, the Constitution explicitly or implicitly authorizes the two orders of government to tax, to spend and to provide services. Taken together, these constitute the four powers or instruments governments can use to achieve their policy objectives.

b. Adapting Governmental Responsibilities and Powers to New Political, Social and Economic Conditions

The technical, economic and social innovations and developments of the 20th century have opened new policy fields requiring clarification of the legislative responsibilities of each order of government. The courts have been instrumental in this process. They have clarified and extended the legislative powers of the federal government in new policy fields by applying the existing division of powers to new situations. Not all judicial decisions, however, broadened federal powers. In many instances, the courts protected and clarified the authority of the provincial legislatures by restricting the scope of federal jurisdiction.

The use of the other three powers, in particular that of the spending power, was also broadened by governments in response to various economic and social developments, particularly from the 1930s onwards.

As a result, the relatively tight compartmentalization of the division of areas of responsibilities that prevailed from Confederation to World War I, began to crumble during the Great Depression and World War II. This reflected the fact that governments, particularly the federal government, expanded the range of their activities, notably in the social policy field. Frequently, they did so not through the exercise of their legislative powers, but through the use of the other powers or instruments at their disposal.

Despite the absence of explicit references to government expenditures in the Constitution, government spending has become a key influence in the modern world and affects virtually every aspect of our lives.

c. The Emergence of the Federal Spending Power

In response to a broad demand for economic and social reforms after World War II the federal government launched a number of national initiatives which were dependent on the spending power. In contrast to most federal activities prior to World War II, the new federal programs were often established in areas of exclusive provincial jurisdiction. We were told that in fiscal year 1991/1992, about 35 per cent of federal spending is taking place in areas of provincial legislative jurisdiction.

At the same time that the federal government greatly expanded its activities, provincial governments became much more active, particularly from the early 1960s onwards. In fact, total expenditures of provincial and municipal governments and hospitals (P-L-H) are now almost 40 per cent larger than those of the federal government, whereas, in 1960, P-L-H expenditures were about equal to those of the federal government.

The spending power emerged as a powerful instrument of change to a large extent in response to the growing complexity of the modern world which blurs purely legal distinctions in the division of legislative powers. Many problems of modern society have a provincial dimension and a national or international dimension. The result is that both orders of government frequently have an interest in a given policy field and a presence through the use of their full range of powers.

d. Provincial and Other Reactions to the Federal Spending Power

Federal spending is occasionally seen as a blunt instrument used to impose federal programs on unwilling provinces. The use of the spending power can have a negative impact on provincial fiscal policies by encouraging the implementation of programs and budgetary allocations that may be inappropriate in the light of local conditions. Some provincial governments, in particular those of Quebec, have frequently expressed concerns about the use

of the federal spending power in areas of exclusive provincial legislative jurisdiction. Other provincial governments have emphasized the budgetary planning problems they have had with shared-cost programs in areas of provincial jurisdiction due to the fact that the federal government may change unilaterally the terms of the program. Many briefs submitted to the Committee argued that the expansion of federal programs into areas of provincial jurisdiction has led to inefficient delivery of services and costly overlaps and duplications, where both levels of government adopt similar programs for roughly identical populations.

Strict compartmentalization of policy areas may have been the most appropriate arrangement to meet the demands of the people towards the end of the 19th century. Today, new challenges force us once more to be imaginative in designing the system by which we govern ourselves. The division of legislative powers is only one aspect of effective governance. In fact, we believe that focusing exclusively on the distribution of legislative powers would miss the essence of the current debate on the distribution of powers. Another source of tension within the Confederation is the use of the federal spending power in areas of exclusive provincial jurisdiction.

In response to these concerns, we will consider, in the context of our recommendations on jurisdictional change, the possibility of placing certain controls on the federal spending power through intergovernmental agreements.

There is clearly a need for coordination and cooperation between governments in cases where the federal power to spend affects areas falling under the exclusive legislative jurisdiction of the provinces. We say all this, recognizing, of course, the importance of the federal spending power, especially as it relates to the smaller, less populous provinces.

We do not believe that a withdrawal of the federal government is an appropriate response for all provinces. We think we can find ways to give provinces, which desire so, the option of exercising a leadership role in their areas of exclusive jurisdiction. We need also greater cooperation for the better management of our limited public resources and the better definition of mutually supportive roles or responsibilities. This will not stifle innovation or compromise the federal principle. Canada is not alone in facing these issues: cooperation between governments and greater policy coordination is a worldwide trend.

Many people are deeply attached, for example, to national standards, seeing this as an essential part of Canadian citizenship. Others see national standards as being rules and norms the federal government imposes on the provincial governments without respecting diversity in needs and aspirations. While these two views appear irreconcilable, we believe that a more cooperative and harmonious federalism would go a great way towards establishing bridges between the two polar views. Standards should be developed cooperatively between the two orders of governments and with the participation of the Canadian people.

The nature of national standards may vary considerably from field to field. In some areas, like health and other social programs, we think it is important to maintain uniform standards.

But in some newer areas, there is room for flexibility. For example, do labour training standards have to be identical across provinces or would it be enough to cooperatively establish a core or minimum standard which each province would be free to enrich? Could mutual recognition of provincial standards be envisaged? This is not the place to specify labour training standards, but the point is that cooperation between the federal and provincial governments and public input are essential in establishing new standards and that we need to be remain flexible and imaginative as often a wide variety of avenues are open for exploration.

Our reflection on how we could improve the functioning of the Canadian federal structure and better adapt it to different regional needs and wants has lead us to conclude that, in addition to a clarification of the roles of the two orders of government in a number of areas, we need a wider range of instruments or arrangements to deal with shared responsibilities.

2. Instruments to Manage our Federal System and Promote Intergovernmental Cooperation

a. Concurrency

In the original distribution of responsibilities for law-making between the two orders of government, the Fathers of Confederation recognized that in some fields both the federal and provincial governments should have law-making powers, because both had legitimate interests in these areas. From the start, agriculture and immigration were what is called "concurrent powers", that is to say both orders of government are equally entitled to make laws in the field. In order to avoid conflict, and avoid putting citizens in the awkward position of being subject to contradictory laws, the Constitution provided that whenever a provincial and a federal law conflicted in these areas, the federal law would prevail. That is what is meant by saying that federal and provincial powers in these areas are "concurrent", but the federal power is "paramount".

In the post-war period two new concurrent powers were added to the Constitution. In 1951 and 1964, old-age pensions and supplementary benefits were established as a concurrent power of both the federal and provincial governments. In 1982 both the federal and provincial governments were given power to make laws concerning the export of natural resources and electrical power from a province. In the second case the federal power was again made "paramount". But in the first case — pensions — provincial powers were given precedence, the first time this was done anywhere in the world.

Canada's experience with concurrent powers and the wide use that is made of concurrent powers in other federal constitutions have encouraged many people in Canada to wonder whether an even wider application of "concurrency" might not be a solution to Canada's longstanding debate about the appropriate distribution of law-making responsibilities.

In our discussions we have to date been able to identify a few areas where concurrency might be considered. Two of these are *inland fisheries* and *personal bankruptcy*. In these two

fields the federal government's law-making power should be paramount, and the fields should be managed by intergovernmental agreements, similar to those already implemented or proposed in the field of immigration, through which governments would agree how to employ their concurrent law-making powers and coordinate their activities and policies in the field.

Because of its different civil code, Quebec may have special needs in the areas of *marriage and divorce*. We recommend that First Ministers examine whether any alternative arrangements to the current distribution of powers and responsibilities in this field would allow Quebec to better meet its special needs, while ensuring mobility and the enforceability of judgments and orders.

A great number of witnesses have spoken about the importance of the *environment* and the contribution governments can make to its protection. At the present time, there is no subject heading in the Constitution dealing with this matter. But, both the federal and provincial governments, under various heads of power, share responsibility for the environment. We agree with this sharing of responsibility and see no need for constitutional change in this area.

We recommend that *inland fisheries* and *personal bankruptcy* be made concurrent powers with federal paramountcy.[7]

b. Streamlining Government

Because a federal system involves two orders of government, it occasionally results in some degree of overlap and duplication of programs and services.

Several witnesses told us that there is room for improvement in the way governments manage their common policy interests. They thought more could be done to reduce unnecessary overlap and duplication. Running through their commentary was the desire that in addition to reforming the Constitution, governments should commit themselves to making the existing system work better. We agree.

We therefore support efforts to streamline government. We urge governments to keep the public informed of their discussions, and to bear in mind that the capacity of the federal government to maintain national or international standards should not be diminished by the eventual streamlining agreements.

The proposal of the Government of Canada for streamlining government (proposal 26) strikes us as a reasonable approach. It is designed to maximize efficiency in the delivery of services through administrative agreements between the two orders of government. For example, the federal government, with the consent of a province, may contract out the operation of a ferry service on a fee-for-service basis. Of course, federal standards and regulations would have to be met by the province in such an endeavour.

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[7]See Draft Constitutional Amendments, Appendix A at p. 114.

Streamlining does not involve constitutional change, but intergovernmental cooperation and agreement on the rationalization of services and their delivery. Specifically, the federal proposal lists a number of areas for streamlining. We do not believe it would be useful for us to comment on the specific items identified by the Government of Canada as candidates for streamlining. The topic is not one involving constitutional change, and governments are in a better position than the Committee to cooperatively identify the subject matters for streamlining and to work out the administrative and financial details of any streamlining agreements. Any streamlining agreements involving a rationalization of program delivery would not alter the legislative authority of Parliament or the provincial legislatures.

We recommend that the federal and provincial governments examine ways to eliminate unnecessary overlap and duplication and make more efficient use of public resources.

c. Delegation

The Constitution does not permit the delegation of legislative power by Parliament to a provincial legislature, or vice versa. The federal government has proposed that the Constitution be amended to permit this form of delegation.

Legislative delegation would provide Parliament and the legislatures with greater flexibility in recognizing the different needs of different provinces. It would also provide a broader means for coordinating the exercise of federal and provincial powers, fostering intergovernmental cooperation and harmonizing laws. Legislative delegation could be an important tool for streamlining government services and regulation, improving the functioning of the Canadian federation and responding to the needs of particular provinces for the ultimate benefit of Canadians as a whole.

Despite these advantages, legislative delegation has raised a number of concerns among the witnesses who appeared before us. These concerns reflect the fact that the federal government's proposals do not elaborate how and under what circumstances legislative delegation would be permitted. In the past, federal-provincial arrangements have been largely negotiated in secret with little if any public participation. If this practice were extended to legislative delegation, it would attract great criticism. Concerns also arose on the basis that delegation could result in a rearrangement of the federal-provincial distribution of powers and responsibilities without appropriate public consultation.

We consider that these concerns must be addressed before legislative delegation is permitted. To do this, we suggest that the proposal to permit legislative delegation should contain a number of limits on its use.

First, powers should only be delegated by law, after consultation with the public and debate in Parliament and the provincial legislative assemblies. Legislative delegation must be done openly and publicly with an opportunity for a renewed Senate to safeguard against any erosion

of the federal-provincial division of powers and responsibilities. As part of this consultation, the governments involved in the delegation of power and other governments should consider the effect of the delegation on the federation as a whole. If the proposed delegation would have effect outside of the boundaries of the province concerned, then perhaps it should be the subject of discussions at a First Ministers' Conference.

Second, Parliament or a provincial legislature should be able to define the scope of the powers it delegates and impose conditions governing their exercise. In this way, Parliament and the legislatures could ensure that the powers they delegate are used in a way that is consistent with the objectives of the delegation.

Third, delegation should be accompanied by financial compensation reflecting the costs involved in administering legislation enacted under the delegated powers and the financial compensation shall reflect the spirit of section 36 of the *Constitution Act, 1982*.

Fourth, in the case of delegation to a provincial legislature, the provincial government should assume the official languages obligations of the federal government.

Fifth, each delegation of power should be renewed every five years to provide an opportunity to determine whether the power still needs to be delegated. Over the course of a number of years, circumstances may change and there must be a mechanism for ensuring that there is a continuing need for a delegation of the power and that the terms of the delegation reflect this need.

Finally, where Parliament or a legislature decides that a delegation of its power is no longer needed, or that its terms should be changed, it should be able to revoke or amend the delegation. This would ensure that ultimate accountability remains with the delegating Parliament or legislature. However, to prevent undue disruption and ensure a smooth reversion of power, there should be a requirement to give reasonable advance notice of the revocation or amendment.

We recommend that the proposal to permit legislative delegation between Parliament and the provincial legislatures be adopted within a constitutional framework that will ensure that the concerns expressed about it are met.[8]

d. Intergovernmental Agreements

Intergovernmental agreements are important tools for coordinating the activities of the federal and provincial governments. They have been concluded in a host of areas and relate to the exercise of powers, the expenditure of money, the provision of services and the administration and enforcement of laws.

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[8]See Draft Constitutional Amendments, Appendix A at p. 114.

Although intergovernmental agreements are similar to agreements between private individuals, they differ substantially in at least one way. Because of the constitutional principle of parliamentary supremacy, they are not binding on Parliament or the legislatures. This results in uncertainty and, as the recent challenge to the *Canada Assistance Plan* amendments has shown, it can create bitter divisions between governments.

Two of the federal government's proposals recognize this problem. The government has offered to negotiate and give constitutional protection to agreements relating to immigration and cultural matters. However, we consider that this problem should be addressed more generally. For example, the government's proposals relating to shared-cost programs and conditional transfers (proposal 27) illustrate another area in which intergovernmental agreements may require constitutional protection.

There are a number of ways in which intergovernmental agreements can be protected. The greatest protection would be afforded by a constitutional amendment that would make them part of the Constitution. However, the complexity of the constitutional amendment process makes this impracticable in most cases. Not only would it be difficult to give the agreements constitutional status, it would also be difficult to change or revoke them should the need arise.

A better way to give intergovernmental agreements stability and protect them from unilateral changes would be to provide a process in the Constitution for their approval. The agreements would not form part of the Constitution and the *Canadian Charter of Rights and Freedoms* would apply to them. The approval process would be designed to open the agreements to public scrutiny and debate.

We propose a process that would provide for the approval of an agreement by laws or resolutions passed by Parliament and the legislature of each province that is a party to the agreement. Once approved, any alteration or revocation of the agreement would have to be approved as well, unless the agreement itself established a different process for its alteration or revocation. This process would give stability to intergovernmental agreements and it would ensure public debate in Parliament and the legislatures on the merits of the agreements.

We recommend that the *Constitution Act, 1867* be amended to provide a mechanism for giving more certainty to the public policy process in relation to intergovernmental agreements and protecting them from unilateral amendment.[9]

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[9]See Draft Constitutional Amendments, Appendix A at p. 116.

3. Improving Shared Management of Specific Fields

a. Labour Market Training

Labour market training is not listed as an explicit head of power in the *Constitution Act, 1867*, but is considered to be a natural extension of education, a legislative power allocated exclusively to provinces under section 93 of the *Constitution Act, 1867.* The federal government is active in this area under its constitutional responsibility for unemployment insurance and through the use of the federal spending power.

Concerns have been expressed at times, particularly in the province of Quebec, about the presence of the federal government in training. Federal labour training programs are said to be difficult to integrate consistently with provincial training, education, social, regional development and industrial programs. Public and private concerns have also been raised, mostly in Quebec, about overlaps and duplications and excessive administrative costs for governments and the private sector.

More provincial control over labour market training programs is a practical answer to the diversity of the country. As well, for language reasons, Quebecers are less likely than residents of other provinces to pursue employment opportunities outside of the province. Quebec's labour training needs differ from those of other parts of the country. We believe that the current constitutional round is an opportune time to examine whether better ways exist for the federal and provincial governments to manage their shared presence in the field.

As a part of the proposals related to the division of powers, the federal government has put forward proposal 18 stating that

> section 92 of the *Constitution Act, 1867* be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.

We believe that the federal government should respect the provincial exclusive jurisdiction in labour market training. Not all provincial governments would want to assume responsibility for current federal programs. Indeed, we recognize the particular importance of federal labour training programs for some of the smaller provinces and we expect the federal government to continue to be a major provider of such services in these provinces. Nevertheless, the option to exercise this responsibility should be available.

Financial compensation would need to be considered in the case of jointly agreed-on federal withdrawal from labour training. Although we believe that the specifics of the financial arrangement should be a matter of discussion and negotiation between the two governments, we recommend that two broad principles be respected.

First, we believe that compensation should be subject to a condition that the funds be spent on training. Such a general condition should be agreeable to both parties as it gives Parliament

a guarantee that the funds will be spent in the area for which they are earmarked and it does not constrain provincial governments in their activities. Furthermore, in the spirit of the *Official Languages Act* any compensation should be conditional on a commitment by a province to take account of the needs of its official language minority. As the proposed agreement would give a province complete freedom in defining and implementing training programs, we believe that the proposed general condition would not impinge on provincial priorities in labour market training.

Second, because training is so important for economic development and growth, we believe that the allocation of federal training monies among provinces should be done in the spirit of section 36 of the *Constitution Act, 1982* which commits governments to further economic development to reduce disparities in opportunities.

Our recommendations do not affect the authority of the Parliament of Canada to legislate on matters related to labour market training in its areas of exclusive jurisdiction such as unemployment insurance.

We recommend that:

i) **the *Constitution Act, 1867* be amended to provide that any province may affirm by law its exclusive legislative jurisdiction over labour market training.[10]**

ii) **the federal government negotiate an intergovernmental agreement with every province exercising this option. The agreement would define and clarify the responsibilities of each order of government and set jointly agreed-on limits on federal spending on labour market training in the province. Standards in such programs are to be agreed upon mutually between provincial and federal governments and set out in such agreements. This intergovernmental agreement could be constitutionally protected as discussed above at page 68.**

iii) **financial compensation would be subject to a general condition that the funds be actually spent on training.**

iv) **because training is a key to economic development, the share of federal labour training funds allocated to a province that has signed an intergovernmental agreement should reflect the spirit of section 36 of the *Constitution Act, 1982*. By this we mean that a province's share of federal training funds should not be based on a simple measure of the province's weight in the Canadian economy such as population, employment or production share but should reflect its relative needs.**

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[10]See Draft Constitutional Amendments, Appendix A at p. 117.

v) **the federal government's obligations for aboriginal affairs be maintained and respected and its official languages obligations shall also be provided for under the intergovernmental agreement.**

vi) **the federal government's ability to legislate on labour market training not be affected in areas of exclusive jurisdiction pertaining to unemployment insurance or any other head of power.**

The federal government proposal on labour market training also suggested that leadership in the area of skills standards should be exercised jointly by the federal and provincial governments and the private sector be given an enhanced role in training and standard setting.

The Committee agrees with this proposal.

We believe that it is important to recognize that the private sector, that is workers, businesses and the education community, has an important contribution to make in this area.

Standards have become a controversial and emotional issue in Canada. In the case of setting skills standards, we recognize that improvement is required. However, we also believe that the federal government should not impose its views arbitrarily on the provinces and the private sector. We support the federal government's proposal to adopt a cooperative and harmonious approach involving all the partners in the development of jointly-acceptable national standards.

We believe that intergovernmental agreements in the field of labour market training would be one important instrument for promoting the development of skills standards. Formal mechanisms and processes for defining such standards and involving the federal and provincial governments and the private sector should be an integral part of intergovernmental agreements in labour market training.

Also to accommodate particular provincial needs, governments should examine the possibility of allowing for some diversity in standards. This would take into account that standards could be agreed upon by provinces and indeed, some provinces may not want this power at all. It should also be noted that standards should be framed in such a matter as to promote mobility of labour.

b. Recognizing Areas of Provincial Jurisdiction: Tourism, Forestry, Mining, Recreation, Housing, Municipal Affairs

The Government of Canada's proposal 24 states that it *"is prepared to recognize the exclusive jurisdiction of the provinces and to discuss how best to exercise its own responsibilities in a manner appropriate to the sector in the following areas: tourism, forestry, mining, recreation, housing, municipal/urban affairs"* while at the same time affirming that, *"the*

Government of Canada is committed to ensuring the preservation of Canada's existing research and development capacity and its obligations for international and native affairs".

The Constitution currently gives provinces either explicit or implicit exclusive legislative power over these areas. Mining, forestry and municipal institutions are cited explicitly as exclusive provincial jurisdictions in sections 92 and 92A of the Constitution. Although tourism, recreation and housing are not listed explicitly in the Constitution they are considered to be exclusive provincial jurisdictions under the provincial powers to legislate on matters related to the management of public lands and property and civil rights and on all matters of local and private nature.

The federal government is also active in these fields, mostly through the use of its spending power, but also through its responsibility for international trade, research and development and aboriginal affairs. The federal government proposes to maintain its responsibilities in these areas, while respecting the provinces' jurisdiction under the explicit and implicit heads of powers in sections 92 and 92A.

The federal spending power has been used two ways: one, through the establishment of unilateral programs such as various research and development programs; and two, through bilateral shared-cost agreements such as in tourism, where the federal government offers dollars for federal programs within provincial boundaries that can only be accessed through matching dollars spent by the provinces.

Some of these programs, particularly the latter, have been the cause for irritation between the two levels of government. Shared-cost programs can have the effect of forcing provincial governments into spending simply to access federal funds, even though the programs in question may not be a matter of priority for that province. The duplication and overlap of administration and spending is wasteful. It causes confusion in the public and promotes competition that increases the cost of government.

It is proposed that federal monies usually spent in a particular area would be unconditionally turned over to the province for use in this area upon signing an agreement. Any continued use of the federal spending power in the field would be conditional on the approval of the province.

For Quebec, whose priorities may be materially affected because of language or other differences, the opportunity to manage these programs according to provincial imperatives is particularly attractive.

On the other hand, some provinces are satisfied, indeed happy, with the status quo and would argue against a withdrawal of the federal government from these programs. In fact, on the basis of the testimony we have heard, we are not convinced that all provinces may want the federal government to vacate all these fields or that the federal government could or should do so.

In short, we believe that it would be unrealistic to expect that a given area could be tightly sheltered from any federal influence. This is implied not only by the federal government's obligations for international affairs and aboriginal peoples and the protection and support of Canada's research and development capacity but also by the general impact on the various sectors of federal tax and spending policies. In many instances, the latter policies will impact directly or indirectly on these sectors even though the latter are not specific policy targets. At issue is how we manage this shared influence. We believe that the federal and provincial governments' approach to this issue should be flexible and allow for diversity of wants and needs.

We recommend that the federal government offer to negotiate bilateral agreements in the areas of *tourism, forestry, mining, recreation, housing, municipal/urban affairs* with any province wishing to do so, to better define the roles of each government and to harmonize their policies.

Such agreements would explicitly recognize the province's leadership role in the field and the province's authority to control the initiation, design and delivery of programs in the field. Such understandings between the federal government and a province would be constitutionally protected by using the approval process for intergovernmental agreements discussed above at pages 68-69.

We believe that the approach described above could also be applied to other areas which are either totally within provincial jurisdiction or are presently shared with the federal government. We recommend the areas of *regional development*, and *family policy* as ideal candidates for such a treatment to the extent that these are within provincial jurisdiction.

The federal spending power could be dealt with in a similar fashion in relation to *energy*.

Although spending by the federal government is currently of limited importance in some of the areas listed above, clarifying responsibilities now will help to prevent future tensions and conflicts should the federal government decide at some point to become more active in these areas of exclusive provincial jurisdiction.

We recognize that *health, education* and *social services* are under provincial jurisdiction. The federal government has instituted a number of Canada-wide programs in some of these areas. We believe that the federal government should continue to deliver these.

- **Liberal Party Dissent**

The Liberal members of the Committee disagree with the conclusion of the majority with respect to regional development, energy and health. The Liberal members believe that there is a better way to meet the challenges of interdependence referred to earlier in this report.

Regional development is important to all of Canada. It has been particularly important in Atlantic Canada, many parts of Quebec, the West and the North. The federal role in regional development has been essential and it must continue.

Section 36 of the Constitution Act, 1982, says "Parliament and the legislatures, together with the government of Canada and the provincial governments are committed to furthering economic development to reduce disparities in opportunities."

To give concrete effect to that commitment, the Liberal members recommend creating a new concurrent head of power with provincial paramountcy in the Constitution entitled Regional Development. The objective is to make it possible for both levels of government to collaborate in establishing priorities which do not conflict.

This concurrent legislative jurisdiction would be much stronger for Quebec than having to rely on negotiating an agreement that requires the approval not only of the National Assembly but also of the Senate and the House of Commons.

The Liberal members never received an explanation from government members as to the reason why there is a reference to energy in this Section. Liberal members take the view that any agreements with respect to energy, must at least respect national energy needs, environmental priorities and the rights of aboriginal peoples.

In energy, as in all subject matters, Liberal members believe that any restrictions on the federal spending power can only be the result of negotiated agreements.

The Liberal members believe that the protection of health care is so fundamental to Canadians that they recommend that the Constitution enshrine not only a commitment but an obligation of governments to provide universal, publicly funded hospital and medical care to all citizens.

c. *Culture and Broadcasting*

1) Introduction

Culture provides Canadians with the ability to appreciate and understand one another. It binds us together, as members of a community, and is a civilizing force that brings out what we have in common, regardless of language, colour, religion or beliefs.

The role of governments is to provide the legal, fiscal and physical support to enable culture and the arts to flourish. Obviously, governments cannot regulate all aspects of cultural expression. Nor would we want this to be the case. There is, after all, no official culture in Canada. But there are a myriad of governmental policies and laws that have a direct impact on our cultural life. And it is to the relative role of the federal and provincial governments in our federal system, and the proposals of the Government of Canada for constitutional reform, that we now turn.

2) The Need for a Continuing Federal Presence

In our analysis of the division of powers, we have shown how it is necessary to move beyond a narrow focus on the distribution of legislative jurisdiction, and assess the impact in a given policy field of a government's power to spend, tax and provide services through institutions, agencies or crown corporations.

The federal government is present in the field of culture through a combination of these powers. It has a legislative presence through its jurisdiction over copyright and broadcasting; a spending presence through direct grants to individuals, organizations and minority language communities; an institutional presence through agencies such as the National Film Board or the national museums. As for taxes, its policies encourage the preservation of our cultural heritage and provide direct support for all the arts.

For us, there is no question that the federal government must and will remain involved in the arts. It is quite clear that there are many aspects of Canada's artistic or cultural life that can be dealt with only at the federal level. For example, it is a federal responsibility to ensure that Canada's trade agreements permit vulnerable cultural industries to survive. Federal *institutions* such as the National Library, the Canada Council or the National Arts Centre are cultural treasures which foster the development of the Canadian identity and are a source of pride for all Canadians. We and most Canadians want them to carry on.

Similarly, the federal government should be able to continue to use its taxation power to support the arts through measures such as capital cost allowances for film, or deductibility for donations to cultural institutions.

Nor do we question the need to maintain existing federal legislative powers in relation to copyright and broadcasting. It is clear that these are matters that in any federation fall rationally under federal jurisdiction to prevent the disorder of competing claims and policies.

3) The Legitimate Role of the Provinces

The continuing need for a federal presence in culture does not in any way preclude or belittle the legitimate role of the provinces. Indeed, under the Constitution, the provinces have the primary legislative role with respect to general cultural matters. Although culture is not an enumerated head of power, cultural activities have a direct relationship to provincial jurisdiction

over education, property and civil rights, and matters of a local or private nature in the province.

Provincial spending and tax measures are as important for many of the performing arts, museums, libraries, and other institutions and artistic endeavours as federal spending and tax policies.

4) The Proposals of the Government of Canada

In *Shaping Canada's Future Together* the federal government is making two proposals that are closely related. First, it indicates its willingness to negotiate with any province, upon its request, an agreement to define clearly the role of each order of government in relation to cultural activities (proposal 20). Where appropriate, the government proposes to "constitutionalize" the resulting agreement.

Second, with respect to broadcasting, the federal government proposes to consult with the provinces on the issuance of new licences, to allow provincial broadcasting undertakings to evolve into full public broadcasters, to regionalize the operations of the CRTC and to allow for provincial participation in the nomination of regional commissioners of the CRTC.

The principal difficulty with the federal proposals is that many fear they mean the federal government will withdraw entirely from the cultural field. As we see it, the purpose of the agreements would be to enable governmental support for the arts to be tailored to the needs of each province. They should not be an excuse for a federal withdrawal from arts funding. Federal spending is crucial to the continued existence of vital cultural activities in all parts of the country. We agree with the Prince Edward Island Council of the Arts who said:

> There should be national funding of the arts because it is essential for the well-being and development of the cultural sector in Canada. Furthermore, it is essential for national unity and the survival of Canada as a nation.

Although we do not share the apprehension that the federal proposal would involve a major reduction of federal support for the arts, we are willing to accept that serious concern exists among artists and cultural industries.

> **We believe the federal offer to negotiate arrangements on culture with all provinces requires further examination. In particular, governments should consult the artistic and cultural communities affected before proceeding with this initiative.**

5) The Special Needs of Quebec

A recurring theme of our hearings, and of the constitutional conferences we attended, was that the special needs of Quebec with respect to the preservation of a majority French-speaking society in North America must be recognized during this round of constitutional reform.

The Halifax Conference on the Division of Powers found the federal proposals on culture desirable for Quebec, in view of the unique problems faced by the Government of Quebec as the principal agent for the preservation and promotion of Quebec's distinctiveness, but questioned the need for cultural agreements with the other provinces. We heard from several witnesses, such as Keith Kelly, National Director of the Canadian Council of the Arts, who said that there is a "need to create a special relationship" between the federal government and the Government of Quebec, but who were worried about the implications of any major reorganization of responsibility for culture between the two orders of government that would affect all provinces.

- ***Affirming Quebec's Legislative Powers***

We have already identified the need for a continued federal presence in culture through the exercise of its legislative powers over such matters as copyright and broadcasting. We have recognized the importance of federal spending in the arts and the contribution of institutions such as the Canada Council, the National Film Board and the CBC to our national life. And we note with pride the contribution of federal organizations such as Radio-Canada to the vitality of the French language in North America.

However, in view of the widespread acceptance of the unique situation of Quebec, we believe it would be appropriate to affirm the primordial interest of the Government of Quebec in cultural affairs as the only senior government in North America with a French-speaking majority.

Although all provinces have legislative jurisdiction over cultural affairs it is not explicitly enumerated in the Constitution.

We recommend that the legislative jurisdiction of Quebec over cultural affairs be explicitly affirmed through an amendment to the *Constitution Act, 1867*,[11] upon Quebec's request.

We leave open the possibility that in the future other provinces may be interested in having their legislative jurisdiction over cultural affairs affirmed in the Constitution.

- ***Rationalizing Federal/Provincial Spending in Quebec and the Exercise of Powers***

Together with this affirmation of the primary *legislative* jurisdiction of the legislature of Quebec over cultural affairs, we believe it would be necessary to act upon the federal government's undertaking to negotiate with the Government of Quebec an intergovernmental agreement that would define clearly the role of each government in the cultural field. Such an agreement would be an important tool for coordinating the activities of the federal and provincial

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[11]See Draft Constitutional Amendments, Appendix A at p. 118.

governments. It could be modelled on the existing Canada/Quebec agreement on immigration — an area where shared responsibility is explicit in the Constitution.

We believe an agreement on culture should identify areas where direct payments to individuals and private cultural organizations would be the exclusive responsibility of the province. Quebec would receive its share of federal spending programs on culture to be disposed of in accordance with the priorities established by the province. The federal presence in programs meeting fundamental national objectives, e.g., international or interprovincial cultural exchanges, would be maintained.

In the field of broadcasting, an agreement would identify the broad objectives for the issuance of new licences in the province; establish language-related content requirements; set out the desirable balance between private, public, special interest and community broadcasters. The federal regulator, the CRTC, would be bound by the agreement.

An arrangement along these lines would allow governments to better define their roles and activities. It would give additional flexibility to Quebec to continue its leading role in promoting its distinct culture. Most important, it would demonstrate to Quebecers that their culture is secure in Canada and underline the adaptability of the federal system.

As for the federal government's proposal to "constitutionalize" intergovernmental agreements on culture, we prefer our proposal with respect to intergovernmental agreements generally, i.e., that they be given stability by protecting them from unilateral amendment (see p. 68 above).

We recommend that the Government of Canada negotiate with the Government of Quebec an agreement to establish cooperative arrangements in the fields of culture. Such an agreement would set out the respective roles of the federal and provincial governments in funding activities and identify those funds that should be transferred to the province as discussed above. Any continued use of the federal spending power would be conditional on the approval of the province, subject to the ability of the federal government to maintain programs clearly identified as related to national objectives.

In the field of broadcasting, an agreement should be entered into to improve the participation of Quebec in federal regulation of broadcasting. Improving provincial input in federal regulation of broadcasting may be of interest to other provinces and the negotiation of agreements should be open to them as well.

- **Liberal Party Dissent**

The Liberal members of the Committee believe that in cultural matters the Quebec government must play a leading role, but that there must be a federal presence.

Therefore, the Liberal members recommend a new head of power in the Constitution to be entitled "Cultural Matters". It would provide that both Parliament and provincial legislatures may make laws with respect to cultural matters. Provincial laws would have paramountcy, subject to the federal power over national cultural institutions and the federal power to make payments directly to individuals and organizations.

The Liberal members recommend that the federal government not make capital expenditures in the cultural area without the approval of the appropriate province, unless the federal government undertakes to pay operation and maintenance costs.

With respect to broadcasting, the Liberal members reaffirm that there is exclusive federal jurisdiction. No intergovernmental agreement should be able to bind the CRTC.

d. Immigration

The federal government's proposal offers to negotiate particular immigration agreements with the provinces and to constitutionalize them. This proposal recognizes immigration as a matter of shared jurisdiction between the federal and provincial governments. Immigration also has a substantial effect on other matters within provincial jurisdiction. Intergovernmental cooperation is necessary to avoid regulatory confusion and overlap. The need for these types of agreements and the feasibility of negotiating them has been demonstrated over the years by successive agreements between the federal government and the Government of Quebec, the last of which came into effect April 1, 1991.

Further reasons for immigration agreements lie in the economic, linguistic and demographic differences among the provinces. These may require particular aspects of immigration to be treated differently from one province to another. For example, different steps may be necessary to ensure that immigrants fit comfortably into the communities where they settle, depending on the characteristics and needs of each community. This is nowhere more true than in Quebec where particular attention must be paid to preserving and promoting its distinct linguistic and cultural character.

The main objective of the federal government's proposal is to give immigration agreements stability by preventing them from being amended or revoked without the agreement of all the governments that are parties to them. The Committee considers that this objective is commendable.

The federal government's proposal does not outline what means will be used to accomplish this objective. There has been some suggestion that it will be accomplished through constitutional amendments to make the immigration agreements part of the Constitution. However, we consider that this would be both impractical and unnecessary. Constitutional changes of this nature require the consent of the Senate, the House of Commons and the legislative assemblies of at least seven provinces containing at least 50 per cent of the population. The same requirement would apply if changes had to be made to agreements

included in the Constitution in this fashion. If an agreement relates to only one or two provinces, there is little reason to involve the governments of the other provinces.

There are two simpler ways of protecting immigration agreements. First, the Constitution could be amended to include a process for giving the force of law to immigration agreements and preventing them from being unilaterally amended or revoked. The process would require resolutions of the Senate and the House of Commons and the legislative assembly of the province concerned. It would also ensure that the agreements are subject to the *Canadian Charter of Rights and Freedoms* and should clearly recognize the federal government's responsibility to set national standards and objectives relating to immigration or aliens.

The second way of protecting immigration agreements would be through our proposal regarding the protection of federal-provincial agreements generally. This proposal similarly involves the participation of only those jurisdictions that are parties to the agreement. It is discussed above at pages 68-69.

We support the proposal of the Government of Canada to negotiate and give more certainty to the public policy process in relation to immigration agreements with the provinces. We recommend that these agreements be constitutionally protected from unilateral amendment.[12]

e. *Shared-Cost Programs: The Exercise of the Federal Spending in Areas of Provincial Jurisdiction*

A number of concerns have been raised in recent years about the use of the federal spending power in areas of exclusive provincial jurisdiction, particularly in the case of national shared-cost programs. We recognize that this is a source of considerable intergovernmental tension and greater formal cooperation would go a long way towards eliminating many, if not all, irritants. We do not think, however, that a blanket restriction on the use of the federal spending power is an appropriate response. On the contrary, we believe that the interests of all our fellow Canadian citizens would be better served by a flexible approach promoting greater harmony and cooperation.

We believe that the issue of national shared-cost programs is best addressed by reviewing separately concerns about existing programs and those related to new programs.

- **Existing Shared-Cost Programs**

Numerous witnesses have spoken highly of existing shared-cost programs, such as the *Canada Assistance Plan*, which have allowed all Canadians to benefit equally, and regardless of their province of residence, from the expansion of the national social programs. These programs have come to be perceived as some of the important threads of the Canadian fabric.

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[12]See Draft Constitutional Amendments, Appendix A at p. 118.

We heard, however, a number of concerns about the fact that the federal government could unilaterally change the terms of these programs. This is seen as imposing in some cases undue financial hardship on provinces. As federal monies are financing such programs, we strongly believe that Parliament has to retain ultimate control of the programs' terms and conditions. However, we also recognize that provincial governments legitimately require a certain degree of certainty and assurance if the programs are to be implemented successfully.

We recommend that the federal and provincial governments work together towards establishing procedures for implementing changes in terms and conditions of existing shared-cost programs. For example, we believe that one could consider fixing the program's terms and conditions under a binding intergovernmental agreement for a period of, for example, four to five years. In our view, such an approach would not undermine Parliament's authority while addressing many of the provincial governments' concerns.

- **New Shared-Cost Programs**

The issue of new national shared-cost programs is complex and its resolution requires striking a delicate balance between legitimate provincial and national concerns.

To eliminate further intergovernmental conflict in this area, the federal government has put forward a proposal to commit itself "*not to introduce new Canada-wide shared-cost programs ... in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population*" and to "*provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program*". (proposal 27)

This proposal received a great number of responses among the witnesses appearing before the Committee. Some feared that the proposal could undermine the social fabric of Canada while a few supported an even stronger and tighter restriction on the use of the federal spending power.

We believe that a satisfactory middle-ground solution can be found between these sharply opposing views and we suggest that the following elements are the key building blocks to a generally acceptable compromise: flexibility, provincial input in the program design, withdrawal option and compensation if similar provincial programs are implemented. It is important that the provinces not feel compelled to participate. The emphasis should be on provinces opting in, to take advantage, rather than opting out. Furthermore, we believe that the objective test for compensation should be the consistency of the purpose or goal of the provincial program with that of the federal program; a certain degree of diversity in the delivery of the program should be allowed for.

Although the proposal's intention to take better account of provincial concerns and needs is laudable, we believe that subjecting the initiation of these programs to a 7/50 rule would

unnecessarily constrain the federal government. A more flexible approach is required. In our view, a more satisfactory compromise would be one that would not subject a new federal initiative to provincial approval but would allow for provincial opting-out with conditional compensation. It offers the advantage of giving the federal government and the provinces considerably more room to innovate. At the same time it provides greater scope for competition and innovation in program delivery as more provinces could opt to implement their own programs while respecting the spirit and objectives of the national program.

As to the conditions attached to the potential compensation, we endorse the more precise wording "*(provincial) programs meeting (the) objectives of the new Canada-wide programs*" contained in the federal government proposal.

Finally, we believe that any new Canada-wide shared-cost program should assure provinces that terms and conditions of the program will not change abruptly.

We recommend:

i) **that the *Constitution Act, 1867* be amended, by adding a section stating that the Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the Government of Canada in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the new Canada-wide program; and**[13]

ii) **that any new Canada-wide shared-cost program be constitutionally protected from unilateral changes to the terms of the program over a jointly agreed-on period through the approval process for inter-governmental agreements discussed at pages 68-69.**

4. Residual Power

The residual power in a federal constitution is what is left over after specific legislative powers have been distributed between the two levels of government. In Canada, federal legislative authority over residual matters is based on the opening words of section 91 of the *Constitution Act, 1867*. These grant Parliament the power to make laws for the "peace, order and good government of Canada."

We were told that the federal residual power has been very narrowly interpreted by the courts. Generally speaking, the courts have restricted it to 1) matters of national concern, or 2) national emergencies.

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[13]See Draft Constitutional Amendments, Appendix A at p. 120.

A third branch of peace, order and good government is also said to exist: the "gap" or "purely residual" branch. It has been applied less frequently than the other branches of the federal residual power. Moreover, the provinces possess a kind of "gap" power of their own in section 92(16), which gives their legislatures the exclusive authority to enact legislation with respect to all matters of a "local or private nature in the province."

The federal government is proposing to recognize the jurisdiction of the provincial legislatures to enact legislation for non-national matters not specifically assigned to Parliament by the Constitution. This proposal would preserve Parliament's authority to deal with national matters or emergencies. In other words, the government proposes to transfer to the provinces only the third or "gap" branch of the federal residual power.

We are of the view that the government's proposal does not amount to a constitutional change, but is an attempt to reflect in the words of the Constitution the existing judicial interpretation of residual powers, both federal and provincial. While some witnesses have asked for an elimination of the "national concern" branch of the residual power, the majority have argued that Parliament must be able to legislate when a matter is of truly national dimensions and where uniformity of law throughout the country is crucial or the problem is beyond the ability of the provinces to deal with even if they act together. No witnesses recommended the abolition of the "emergency branch" of the federal residual power.

We believe that the "national concern" and "emergency" powers of Parliament must be maintained, and are confident that, as in the past, the courts will be prudent in applying them so as not to disrupt the federal/provincial balance in the Constitution.

As for transferring the "gap branch" of the federal residual power to the provinces, we question the need for such a change in view of the limited scope of non-national "purely residual" federal matters. We are concerned that any change to the term "peace, order and good government" in the opening words of section 91 may affect the "national concern" and "emergency" branches of the federal residual power.

We recommend that the residual power should not be changed.

5. Declaratory Power

Under paragraph 92(10)(c) of the *Constitution Act, 1867*, Parliament may declare a work "to be for the general advantage of Canada". The effect of a declaration is to bring the work within the legislative jurisdiction of Parliament. This power is generally known as the "declaratory power". It has been used at least 470 times since Confederation, principally during the 19th century and the early part of the 20th century in relation to transportation undertakings such as railways, canals and bridges. Since 1960 it has only been used five times. However, declarations are still in force in respect of many works.

The Government has proposed that the declaratory power be removed from the Constitution. This proposal echoes a number of reports on the Constitution proposing that the declaratory power be abolished or only be exercised with the approval of the provinces.

We have heard many witnesses who welcomed the federal government's proposal as a step towards promoting greater harmony between the federal and provincial governments. However, we also heard much apprehension expressed about the effect the removal of the declaratory power could have. Particular concern was expressed about its effect on grain elevators which are now regulated by Parliament by virtue of this power. In addition, the Standing Committee of the House of Commons on the Environment has expressed concern that this proposal would remove a power that Parliament needs to deal with environmental matters.

We agree that these concerns must be met before the declaratory power can be abolished. It may be necessary to provide that works now declared under this power should continue under federal jurisdiction, at least until there is agreement among all concerned that they should be returned to provincial jurisdiction.

Many of the declared works have been federally regulated for so long that it may not be practicable to return them. In addition, some of the declarations eliminate doubts about whether particular works fall under federal or provincial jurisdiction and it may be necessary to continue them in force to avoid resurrecting uncertainties.

The government members of the Committee support the proposal that the federal declaratory power be repealed, subject to a transitional provision for existing declared works. The opposition members of the Committee disagree with the proposal to repeal the declaratory power.

B. ENSURING THE WELL-BEING OF CANADIANS AND MANAGING INTERDEPENDENCE

The Committee believes the current round of constitutional negotiations provides a unique opportunity to adjust the Constitution to respond to the twin goals of creating and equitably distributing the benefits of our efforts as a nation.

Canada is not just a political union made up of the provinces and territories and a common market in which goods move freely, but one which encourages the creation of those circumstances which allow people to prosper in all parts of the country. Even more so, Canada is a social union, in which governments are expected to promote equality of opportunity, access to basic social services and the health and education of our population. This twin reality is inadequately reflected in our Constitution and in our institutions of federalism. This is why we believe the Constitution should be revised. The principle components of our recommendations in the social and economic fields are those for a common market, a Social Covenant, a Declaration of the Economic Union, and reforms to the Bank of Canada.

1. The Common Market — Section 121

One of the principle forces behind Confederation in 1867 was the need to create an economic union linking the former British North American colonies. Section 121 of the *Constitution Act, 1867* — the common market clause — was one of the most important provisions of the new Constitution. It prohibited tariff barriers between the provinces so that goods such as lumber, agricultural products and manufactured products — the principle components of the 19th century economy — could be freely traded among them. However, despite section 121, barriers to trade continue to exist between the provinces.

The federal government proposes to expand section 121 to cover the mobility of persons, goods, services and capital without barriers or restrictions based on provincial or territorial boundaries (proposal 14). The proposed amendment to section 121 would have restricted the ability of any government to erect and maintain territorial "barriers or restrictions", except those that may be put in place with respect to regional economic development and equalization, regional development within a province, and restrictions in the national interest.

The majority of witnesses, including all the provincial premiers who appeared before us, endorsed the principle of the common market, although they expressed a number of concerns about its operation. Witnesses were not sure what would constitute a "barrier or restriction" under this proposal, and were concerned for the future of agricultural marketing boards, public insurance schemes, and possibly even social programs and employment standards.

Although we support the thrust of the federal proposal, we agree that the legitimate concerns which were expressed about its unintended impact must be addressed. Indeed, such matters as provincial monopolies, generally available subsidies and tax-based schemes to encourage capital formation (such as the Quebec Stock Saving Plan) should be exempt from section 121.

We recommend that section 121 of the *Constitution Act, 1867* be replaced with a new section establishing Canada as an economic union. This new section would not permit governmental prohibitions or restrictions on the movement of goods, services, persons and capital if the prohibitions or restrictions impeded the efficient functioning of the economic union and constituted arbitrary discrimination or disguised restrictions on trade across provincial or territorial boundaries. However, the new section 121 would contain exceptions to address the legitimate concerns that we have heard. It would also require governments to seek agreement on equivalent national standards to enhance the mobility and well-being of persons in Canada.[14]

[14]See Draft Constitutional Amendments, Appendix A, p. 120

Some witnesses had a further objection to the proposal to expand section 121. They accepted that a trading nation such as Canada needs to ensure the free flow of goods, services, people and capital domestically, but they maintained that the courts are not the appropriate forum in which to settle disputes on such complex issues of law and public policy. They would prefer to see dispute settlement contained with another process, which would encourage negotiations and leave the final settlement of disputes in the hands of recognized experts in this field.

We recommend that a dispute settlement mechanism be chosen which would comprise three steps: 1) a review mechanism to determine whether a complaint presents a *prima facie* case; 2) a conciliation mechanism which would attempt to reach a negotiated settlement; and 3) a trade tribunal which would make a final and binding decision, should conciliation fail.[15]

2. The Social Covenant

Putting in place mechanisms to ensure efficiency and the creation of the greatest amount of wealth possible is vitally important, but Canadians also demand more. Canadians want to ensure that the benefits which accrue to the nation through our greater efficiency are distributed equitably, through the promotion of the goals of social well-being which are a part of being Canadian. Thus, we have felt this round of constitutional negotiations to be an appropriate time to include a Social Covenant in the Constitution.

At present, the main constitutional pillars from which our social safety net hangs are section 36 of the *Constitution Act, 1982* and sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. Although the commitments to equal opportunity, economic development and essential public services in section 36 and the protection for security of the person and equality in the *Charter* are vitally important, the Constitution can do more. Because of its generality, the legal and persuasive status of section 36 is very weak. Because sections 7 and 15 of the *Charter* are rights granted to individuals, they are unable to express governmental commitments to society as a whole. Our intention in recommending a Social Covenant is to reinforce the commitments contained in these sections of the Constitution and express other governmental commitments to social programs which Canadians see as part of their national identity.

We recommend the *Constitution Act, 1982* be amended by adding a new section 36.1, which would commit governments to fostering the following social commitments:

a) - comprehensive, universal, portable, publicly administered and accessible health care;

b) - adequate social services and social benefits;

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[15]No draft constitutional amendment has been prepared for this recommendation.

c) - high quality education;

d) - the right of workers to organize and bargain collectively; and

e) - the integrity of the environment.

While these commitments are in many ways as important to Canadians as their legal rights and freedoms, they are different. These commitments express goals, not rights and they embrace responsibilities of enormous scope. Therefore, while these are appropriate subjects for constitutional recognition, elected governments should retain the authority to decide how they can best be fulfilled. We believe that the matters addressed in the Social Covenant are best resolved through democratic means. However, these commitments must be more than merely words. Thus, we believe that the compliance of governments with the Social Covenant must be subject to public review, including public hearings and periodic reports by a specialized commission, whose reports would be tabled in Parliament and provincial and territorial legislative bodies.

3. The Declaration of the Economic Union

Many witnesses told us that they wanted the federal and provincial governments to cooperate to streamline their activities and conserve expenditures. They also said that they wanted to preserve a strong federal government that could institute national programs.

Witnesses said they wanted all governments to manage tax resources better and to protect the national social programs they have come to expect.

Clearly, the ability of governments to deliver social programs is linked to the ability of the economic union to generate wealth. And just as clearly, Canadians are committed to both. These ideas were repeated over and over at the Conference on the Economic Union in Montreal.

In order to ensure that our fundamental social commitments as a just nation can be met, we recognize the importance of fostering the productivity of all Canadians. Although our proposal to amend section 121 of the *Constitution Act, 1867* goes a long way toward achieving this goal, we believe the goal would be further promoted through a statement in the Constitution expressing the commitment of governments to strengthen the economic union.

We recommend that the *Constitution Act, 1982* be amended by adding a new section 36.2, which would commit governments to:

a) - working cooperatively to strengthen the economic union;

b) - ensuring the mobility of persons, goods, services and capital;

c) - pursuing the goal of full employment; and

d) - ensuring all Canadians have a reasonable standard of living.[16]

While these are appropriate subjects for constitutional recognition, elected governments should retain authority to decide how they can best be fulfilled. However, these commitments must be more than mere words. Thus, we believe that the compliance of governments with the Declaration of the Economic Union must be subject to public review, including public hearings and periodic reports by a specialized commission, whose reports would be tabled in Parliament, and provincial and territorial legislative bodies.

4. Reforming the Bank of Canada

We endorse the proposals to establish a regular cycle of appearances by the Governor of the Bank before Parliament to discuss and review financial and economic developments, and to require the Governor to meet with the federal and provincial ministers of finance.

We recognize that the questions of the nature of the mandate and the legitimacy of the Bank of Canada are intimately linked, but believe that, given the little support for the federal proposal and the wide range of alternative suggestions put forward by a great number of people, these issues would be best examined outside the current constitutional round.

We recommend therefore that the issue of the Bank of Canada mandate not be part of the constitutional discussions.

However, we believe that a greater sensitivity to regional concerns would contribute to strengthen the legitimacy of the Bank of Canada. However, none of these changes require constitutional amendments. They should therefore be considered outside the framework of constitutional reform.

We recommend that the federal government proceed with its proposal to consult provincial and territorial governments in the matter of appointments to the Board of Directors of the Bank of Canada and the establishment of regional consultative panels.

5. The Conference of First Ministers

Since the early 1960s, the First Ministers of Canada have felt compelled by events to meet more and more frequently, publicly and privately, to discuss national political issues of common concern.

Today, Canadians face the challenges of international competition, social changes and environmental quality. After having heard their concerns during the past few months, we are

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[16]See Draft Constitutional Amendment, Appendix A, p. 122

lead to believe that the constitutional framework of the country must provide for joint action by all governments in Canada. The time has come to depart from conflicting federalism and entrench in our Constitution a permanent forum where the decision-makers will discuss the current issues of public policy.

In the Meech Lake Accord, the First Ministers agreed to constitutionalize an annual conference on the economy and other matters. Since 1987, the social needs of the population and the burden of taxpayers have increased. We feel that social changes and the severe fiscal pressure under which our governments operate require the joint management of social and economic policy.

We therefore propose the entrenchment in the Constitution of an annual conference of the First Ministers which would deal primarily with social and economic matters but also with any other issue that the First Ministers would wish to discuss.[17]

[17]See Draft Constitutional Amendments, Appendix A at p. 124.

CHAPTER VI

Amending Formula

• The Constitutional Background

1) *Constitution Act, 1982*

As a result of the 1982 "patriation" amendments, there are now five procedures for amending the Constitution of Canada:

a) **The general procedure** in section 38 of the *Constitution Act, 1982*, requires the consent of Parliament and two-thirds of the provinces with 50 per cent of the population. It applies to all amendments that do not fall under one of the other procedures, including most amendments to the division of powers, the powers of the House of Commons and Senate, the Supreme Court of Canada (except its composition) and the creation of new provinces. It permits opting out for all matters transferring powers from the provinces to Parliament, and compensation for education and culture.

b) **The unanimity procedure** in section 41 of the *Constitution Act, 1982*, requires the consent of Parliament and the legislative assemblies of all provinces. It applies to changes to the monarchy, the minimum number of members in the House of Commons to which a province is entitled, the general use of the English or French languages, the composition of the Supreme Court of Canada, and any amendment to the amending formulas.

c) **The bilateral procedure** in section 43 of the *Constitution Act, 1982*, requires only the consent of Parliament and two or more provinces. It applies to an amendment in relation to any provision that applies to one or more, but not all provinces, such as alterations to provincial boundaries or amendments to a provision relating to the use of the English or French language within a province. It cannot be used for amendments to the division of powers.

d) **The federal unilateral procedure** in section 44 of the *Constitution Act, 1982*, allows Parliament to make amendments related to the federal executive, the House of

Commons and Senate of Canada, that do not affect their powers or the method of selection.

e) **The provincial unilateral procedure** in section 45 of the *Constitution Act, 1982*, permits the legislature of each province to amend the constitution of the province so long as the amendments do not affect provisions that can only be amended pursuant to one of the other amending procedures, such as the office of the lieutenant governor.

2) *The Meech Lake Accord*

The 1987 Meech Lake Accord proposed to expand the unanimity formula set out in section 41 of the *Constitution Act, 1982* to cover changes to federal institutions, such as the powers, composition and method of selection of the House of Commons or Senate, the Supreme Court of Canada (other than the composition of the court) and the creation of new provinces. Currently these changes can be made in accordance with the general procedure for amendment. In addition, the accord would have broadened the right of compensation to a province opting out of a transfer of legislative powers to the federal Parliament. This right would have been extended from "education or other cultural matters" to *"any"* legislative powers. These proposals required the unanimous consent of Parliament and the provinces under section 41, as they included amendments to the amending formula.

• The Proposal of the Government of Canada

In *Shaping Canada's Future Together* the Government of Canada has proposed to proceed with the changes to the amending procedure, if it were found desirable to proceed with any items requiring unanimity in the final package. It suggests expanding the unanimity procedure to cover changes to the powers, composition or method of selection of the House of Commons, Senate or Supreme Court of Canada. The creation of new provinces would stay under the general procedure for amendment, requiring the consent of two-thirds of the provinces representing 50 per cent of the population.

• The Place of Quebec in the Amending Formula

We heard testimony from several witnesses who argued that changes to the amending formula are too difficult because of the requirement for the unanimous consent. Others told us that recognition in the amending formula of the special situation of Quebec as the only province with a French-speaking majority is crucial if the majority of Quebecers are to feel secure in their future in Canada. Our own view is that the question of the amending formula must be resolved if we are to emerge from the current constitutional crisis.

We believe that the accommodation of French-speaking Quebec, with its different language, legal system and culture, requires that fundamental changes to the original 1867 pact should not occur without the consent of the legislative assembly of that province.

It is not necessary or helpful to go into the controversy over the 1982 patriation of the Constitution with an amending formula. Suffice it to say that the amending procedures have never been endorsed by the Quebec National Assembly. In our hearings, we were told that Quebec, the only province in which French-speaking Canadians form a majority, has legitimate fears that amendments can be made without its consent to the powers, composition and method of selection of the House of Commons or the Senate, or to the functions of the Supreme Court of Canada which is charged with the interpretation of the Quebec civil code, an attribute of Quebec's distinctiveness. In our view the representation of Quebec should not be reduced in the Senate without its consent. It is our view that the best way to provide protection for a province with a special identity is to provide protection in federal institutions. Nor should the province, in order to promote and protect the French-speaking character of the province, have to opt out of an amendment transferring legislative power to the federal parliament without compensation in matters other than education and culture.

We recognize the difficulty of achieving consensus on such an important matter as the amending formula. But the Committee is convinced that every effort must be made to reach an agreement among all the provinces and the federal government, if Canada is to be renewed.

There are no magic solutions. Nevertheless, we believe that the answer lies in one of five approaches:

1) One option is the unanimity procedure set out in section 41 of the *Constitution Act, 1982*. It could be expanded to include all the items set out in section 42 which are now subject to the general procedure (with the exception of the establishment of new provinces and the extension of existing provinces into the territories which we discuss in detail below). This would mean that the agreement of all provinces would be needed to make changes to representation in the House of Commons, the powers and method of selection of the Senate, the minimum number of members of a province in the Senate and the Supreme Court of Canada. In addition, section 40 of the *Constitution Act, 1982* would be amended to provide for reasonable compensation to a province for any amendment that transfers provincial legislative powers to Parliament.

2) A second option would be to require the consent of two Atlantic provinces, Ontario, Quebec, and two western provinces representing 50 per cent of the population of that region for any amendment to the principle of representation in the House of Commons, the powers and composition of the Senate and the Supreme Court of Canada; compensation would be available for any province opting out of a transfer of legislative powers to Parliament. This recommendation is similar to other "regional veto" proposals set out in the Victoria Charter (1971) and the Beaudoin-Edwards report (1991). In addition,

compensation would be available for provinces opting out of a transfer of legislative authority to the federal parliament in relation to *"any"* matter.

3) A third option would be to amend section 42 to require that, with the exception of the creation of new provinces or the extension of existing provinces into the territories, Quebec must be among the provinces consenting to any future amendment relating to the matters listed in that section (House of Commons, Senate, Supreme Court of Canada); compensation would be available for provinces in relation to *"any"* matter as in the other options described above.

4) A fourth option would be to leave the general procedure for amending the Constitution as it is, but upon the request of any province or combination of provinces representing the regions of Canada, a referendum would be required for an amendment under that section to enter into force. The referendum would have to be carried nationally and in each region identified in the formula. Implicit in this suggestion is that Quebec constitutes one of the regions of Canada.

5) A fifth option would be to amend the general procedure for amendment, to require that Quebec be among the two-thirds of the provinces for all amendments under that procedure; compensation would be available for provinces in relation to *"any"* matter as in the options described above.

We urge the First Ministers to examine each of these and other approaches. Because of the importance of the amending formula, in particular to the security of those who look to the Constitution for the protection of their rights and distinctiveness, it should be a matter of the highest priority during this round of constitutional negotiations to find an amending formula that meets the needs of Quebec.

• The Effect of New Provinces on the Amending Formula

One of the most controversial elements of the Meech Lake Accord was the proposal to change the existing amending procedure respecting the creation of new provinces. If the Meech Lake proposal had entered into force, the amending formula would have been changed to require unanimous consent among the provinces.

Many Canadians, particularly those residing in the territories, are opposed to any change that will make it more difficult for the territories to become provinces. Nevertheless, we recognize the legitimate concerns of existing provinces over the effect that the creation of new provinces would have on the equilibrium in the federation.

One possibility to avoid diluting the power of any existing province in the current general procedure would be to provide that the new province should not be counted as a province for

the purposes of the amending procedures until the procedures are amended to specifically include the new province. The Beaudoin-Edwards committee endorsed this proposal in the following terms:

> ... that it be recognized that the creation of a new province may change the equilibrium within the federation and may require review of the existing amending procedure. Should the addition of a new province require a change in the amending procedure, such change would be governed by the amending procedure in effect at that time.

When we were in Whitehorse, Premier Penikett told us that he recognized that the "diluting effect on the amending formula" is a legitimate concern. He said:

> We have said to every parliamentary committee that we have addressed on the question that we are quite prepared to contemplate the possibility one day of becoming provinces without being provinces for the purposes of being a member of the amending formula club. We don't know quite how that would be done legally, but it seems to me that is an issue that, as Beaudoin-Edwards said, should be discussed at the time you are dealing with the amending formula.

We believe that Premier Penikett has set out a valid option and one that should be examined.

> **We endorse the recommendations of the Beaudoin/Edwards Committee on the need to review the effect of the creation of new provinces out of the existing territories on the amending procedures.**

PART III

Conclusion

PART III

Conclusion

At the end of our extraordinary experience together we have a new sense of hope and optimism for our country. Our contacts with Canadians across the country — through their letters and briefs, or through their participation in our hearings and in five major constitutional conferences — has shown us again the side of the Canadian character which is so much admired outside Canada, though often taken too much for granted at home.

The Canadians we met over the last few months displayed exactly the qualities of civility, tolerance, decency, solidarity, and generosity of spirit that we like to claim as distinctive features of the Canadian character but sometimes do not dare hope to find. Over the months we have been at work, the great good sense of the Canadian people has emerged again to occupy the centre of public life. Their moderation, their love of country, their willingness to reach out to each other across the barriers of language, region or culture impressed us everywhere and filled us with gratitude. It seems to us now that we are renewing more than our country or our Constitution: we are renewing our faith in ourselves.

The Way Ahead

We believe that the proposals offered in our report are an imaginative and coherent response to the two challenges we identified in it: the challenge of *inclusion* and the challenge of *vision*. It now remains to take these recommendations a step further and to begin the discussions between governments, and between Canadians, that will lead to action and bring about the renewal of our country.

The time is short. The Quebec referendum scheduled for October 1992 is one of the urgent deadlines that await us, but it is not the only one. Many Canadians believe, and we agree, that it is essential to take action on the Constitution now so that the country can get on with other things, including the economic and social renewal we included in the challenge of vision. If Canada cannot break the constitutional logjam swiftly, the rest of the world will pass it by.

Because of the pace at which these deadlines are approaching, we believe that intergovernmental discussion should begin as soon as possible after our report is submitted to Parliament. We make no assumption about the precise form such discussion should take, but we believe it is now essential to engage as many governments as possible in the constitutional dialogue in order to arrive at an intergovernmental consensus on the elements of renewal at the earliest possible moment. In order to speed up this process as much as possible, we suggest that our report should serve as the basis for discussion and as the starting point from which an intergovernmental consensus could be built.

As they develop their own consensus we believe that First Ministers would be well advised to think in terms of at least two constitutional packages. It will be essential to avoid putting the country in the position in which a reform package were to fail because one or two elements required a unanimous agreement that was not forthcoming. We suggest therefore that governments should consider developing one set of proposals that require only the approval of two-thirds of the provinces representing at least 50 per cent of the Canadian population, and another set of proposals on which unanimity may be required.

Involving the People in the Constitutional Process

One of the most interesting results of the patriation process that occurred between 1980 and 1982 was the degree of public interest generated in the Constitution of Canada. Since that time, through the work of various parliamentary committees and of the Citizens' Forum, public interest and participation have increased and found many avenues of expression. Thousands of groups and individuals have appeared before federal and provincial committees; people have become involved in constitutional groups which could almost be compared to constitutional assemblies.

Most recently we have had the experience of five constitutional conferences held in various cities across Canada addressing aspects of the Government of Canada's proposals for a renewed Canada. While the number of participants may have been limited, the conferences were televised and widely covered by the media. Out of each conference came a report which we have found helpful in doing our work as a committee.

We believe the process of public consultation and public involvement in the constitutional process should continue in various forms across the country. Canadians have much to offer the constitutional process and mechanisms should be established to allow them to make their views known.

We recommend that a federal law be enacted, if deemed appropriate by the Government of Canada, to enable the federal government, at its discretion, to hold a consultative referendum on a constitutional proposal, either to confirm the existence of a national consensus or to facilitate the adoption of the required amending resolutions.

We recommend that the government ensure the meaningful involvement of all the provinces, territories and aboriginal leaders on the development of the format and substance of the government's response to this report.

A Future Together

At the beginning of our report we remarked that, in moments of doubt, Canadians sometimes seem to think that the Canadian experiment is more fragile or artificial than it really is. Our own experience together and our encounters with Canadians have strengthened our

conviction that the roots of our partnership are much deeper, and its foundations much stronger, than the ups and downs of everyday life reveal. We have sketched a few of the important themes that bind us together, the two main challenges we face as a country in a changing world, and some of the concrete constitutional reforms we must undertake to meet those challenges. Taken together we believe that our portrait of Canada is realistic, our diagnosis accurate, and our remedies practical. We think they give reason for all Canadians to look to the future with confidence, confident that together we can meet all the challenges facing our country, confident that we can look forward to a future together as proud, as envied and as worthy as our past.

APPENDIX A

Draft Constitutional Amendments

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PREAMBLE

We are the people of Canada,
drawn from the four winds of the earth,
a privileged people,
citizens of a sovereign state.

Trustees of a vast northern land,
we celebrate its beauty and grandeur.
Aboriginal peoples, immigrants,
French-speaking, English-speaking,
Canadians all,
we honour our roots and value our
diversity.

We affirm that our country
is founded upon principles that
acknowledge the supremacy of God,
the dignity of each person,
the importance of family,
and the value of community.

We recognize that we remain free
only when freedom is founded on
respect for moral and spiritual values,
and the rule of law
in the service of justice.

We cherish this free and united country,
its place within the family of nations,
and accepting the responsibilities
privileges bring,
we pledge to strengthen this land
as a home of peace, hope and goodwill.

CANADA CLAUSE

The following would be added to the *Constitution Act, 1867* as section 2:

Declaration

2. We, Canadians all, convinced of the nobility of our collective experiment, hereby renew our historic resolve to live together in a federal state;

We acknowledge that we are deeply indebted to our forebears:

the aboriginal peoples, whose inherent rights stem from their being the first inhabitants of our vast territory to govern themselves according to their own laws, customs and traditions for the protection of their diverse languages and cultures;

the French and British settlers, who to this country brought their own unique languages and cultures but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada; and

the peoples from myriad other nations, scattered the world over, who came to our shores and helped us greatly to fulfil the promise of this fair land;

We reaffirm our profound attachment to the principles and values that have drawn us together, enlightened our national life, and afforded us peace and security, such as our unshakable respect for the institutions of Parliamentary democracy; the special responsibility of Quebec to preserve and promote its distinct society; the right and responsibility of aboriginal peoples to protect and develop their unique cultures, languages and traditions; a profound commitment to the vitality and development of official language minority communities; an abiding obligation to assure the equality of women and men; and the recognition of the irreplaceable value of our multicultural heritage;

We pledge to honourably discharge our responsibility to our children, so that they may do the same for their own, of ensuring their prosperity and the integrity of their environment.

Therefore we, Canadians all, formally adopt this, our Constitution, including the *Canadian Charter of Rights and Freedoms*, as the solemn expression of our national will and hopes.

QUEBEC'S DISTINCT SOCIETY AND CANADA'S LINGUISTIC DUALITY

The *Canadian Charter of Rights and Freedoms* would be amended to include the following section after section 25:

Quebec's distinct society and Canada's linguistic duality

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the vitality and development of the language and culture of French-speaking and English-speaking minority communities throughout Canada.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;

(b) a unique culture; and

(c) a civil law tradition.

ABORIGINAL MATTERS

Subsections 35(3) and (4) of Part II of the *Constitution Act, 1982* would be amended to read as follows:

Inherent right of self-government

(3) For greater certainty, the rights recognized and affirmed by subsection (1) include the inherent right of self-government within Canada.

Treaty rights

(4) For greater certainty, in subsection (1) "treaty rights" includes

(a) rights that now exist by way of land claims agreements or may be so acquired; and

(b) rights of self-government that may be declared to be treaty rights for the purposes of subsection (1) in any treaty, agreement or other arrangement negotiated under section 35.2.

Aboriginal and treaty rights guaranteed equally to both sexes

(5) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in this section are guaranteed equally to male and female persons.

The following sections would be added to Part II of the *Constitution Act, 1982*:

Treaties, agreements and arrangements

35.2 (1) The structure, powers, rights and privileges of aboriginal self-government and the relationship between aboriginal and other governments within Canada shall be elaborated in treaties, agreements or other arrangements relating to self-government entered into, either before or after this section comes into force, by representatives of the aboriginal peoples of Canada and the governments of Canada, the provinces or the territories.

Commitment to negotiate

(2) The government of Canada and the provincial and territorial governments are committed to negotiating the treaties, agreements and other arrangements.

Implementation of treaties, etc.

(3) The treaties, agreements and other arrangements shall be implemented in accordance with their terms, which may

(a) provide for their implementation through amendments to the Constitution of Canada or the laws of Canada, the provinces or the territories; or

(b) declare the rights they recognize to be treaty rights for the purposes of subsection 35(1).

Conferences to be convened by the Prime Minister of Canada

35.3. (1) At least one constitutional conference on matters affecting the aboriginal peoples of Canada shall be convened by the Prime Minister of Canada within two years after this section comes into force.

Idem

(2) The first ministers of the provinces, the leaders of the governments of the territories and representatives of the aboriginal peoples of Canada shall be invited to each conference.

Subject-matter of conferences

(3) In addition to constitutional matters affecting the aboriginal peoples of Canada, the conferences may deal with the negotiation of treaties, agreements or other arrangements relating to aboriginal self-government.

Other conferences

35.4. Representatives of the aboriginal peoples shall be invited to all conferences convened by the Prime Minister of Canada to discuss constitutional matters directly affecting the rights of the aboriginal peoples recognized under section 35.

SUPREME COURT OF CANADA

Two texts are proposed. Each of them would add a number of sections to the *Constitution Act, 1867* immediately after section 101. The first text could be enacted under

the general constitutional amending procedure (7/50). The second text would require unanimity.

First Proposed Text

Names of candidates

101A. (1) Where a vacancy occurs in the Supreme Court of Canada, the Minister of Justice for Canada shall invite the government of each province and territory concerned to submit the names of at least five candidates, each of whom has been admitted to the bar of the province or territory.

Appointment from names submitted

(2) After the Minister has received the names of at least five candidates from each of the governments referred to in subsection (1), or ninety days have elapsed since they were invited to submit the names, the Governor General in Council shall appoint a candidate whose name was submitted and who is acceptable to the Queen's Privy Council for Canada, but this subsection does not apply in relation to the appointment of the Chief Justice of Canada from among the remaining judges of the Supreme Court of Canada.

Interim judges

101B. (1) If none of the candidates whose names are submitted under subsection 101A(1) is acceptable to the Queen's Privy Council for Canada, the Minister of Justice for Canada shall recommence the appointment procedure prescribed by section 101A and the Chief Justice of Canada may in writing request a judge of the Federal Court or a superior court of a province or territory to attend at the sittings of the Supreme Court of Canada as an interim judge for the duration of the vacancy, but before making the request the Chief Justice shall consult the chief judge of the Federal Court or the superior court, as the case may be.

Evidence of appointment

(2) A duplicate of the request of the Chief Justice of Canada shall be filed with the Supreme Court of Canada and is conclusive evidence of the authority of the judge named in the request to act as an interim judge of that Court.

Duties

(3) It is the duty of an interim judge, in priority over the judge's other judicial duties, to attend the sittings of the Supreme Court of Canada at the time and for the period during which

the judge's attendance is required and during this period the judge has the powers and privileges, and shall discharge the duties, of a judge of that Court.

No names submitted

101C. If no names of candidates are submitted to the Minister of Justice within ninety days after their submission is invited under section 101A, the Governor General in Council shall appoint a person who is acceptable to the Queen's Privy Council for Canada.

Second Proposed Text

Continuation of the Court

101A. (1) The Court that exists under the name of the Supreme Court of Canada is continued as a general court of appeal for Canada and as an additional court for the better administration of the laws of Canada, and the court shall continue to have all the powers of a superior court of record.

Composition

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

Who may be appointed

101B. (1) Any person may be appointed a judge of the Supreme Court of Canada who has been admitted to the bar of a province or a territory and, for a period of at least ten years, has been a judge of any court in Canada or a member of the bar of any province or territory.

Three judges from Quebec

(2) At least three of the judges shall be appointed from among the persons who have been admitted to the bar of Quebec and, for a period of at least ten years, have been members of the bar of that province or have been judges of any court of Quebec or any other court created by an Act of the Parliament of Canada.

Names of candidates

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the Minister of Justice for Canada shall invite the government of each province and territory concerned to submit the names of at least five candidates to fill the vacancy, each of whom has been a member of the bar of the province or territory and meets the requirements of section 101B.

Appointment from names submitted

(2) After the Minister has received the names of at least five candidates from each of the governments referred to in subsection (1), or ninety days have elapsed since they were invited to submit the names, the Governor General in Council shall appoint a candidate whose name was submitted and who is acceptable to the Queen's Privy Council for Canada, but this subsection does not apply in relation to the appointment of the Chief Justice of Canada from among the remaining judges of the Supreme Court of Canada.

Appointment from Quebec

(3) With respect to an appointment under subsection 101B(2), the Governor General in Council shall appoint a person whose name is submitted by the Government of Quebec.

Appointment from other provinces or territories

(4) With respect to any other appointment, the Governor General in Council shall appoint a person whose name is submitted by the government of a province, other than Quebec, or a territory.

Interim judges

101D. (1) If none of the candidates whose names are submitted under section 101C(1) is acceptable to the Queen's Privy Council for Canada, the Minister of Justice for Canada shall recommence the appointment procedure prescribed by section 101C and the Chief Justice of Canada may in writing request a judge of the Federal Court or a superior court of a province or territory to attend at the sittings of the Supreme Court of Canada as an interim judge for the duration of the vacancy, but before making the request the Chief Justice shall consult the chief judge of the Federal Court or the superior court, as the case may be.

Evidence of appointment

(2) A duplicate of the request of the Chief Justice of Canada shall be filed with the Supreme Court of Canada and is conclusive evidence of the authority of the judge named in the request to act as an interim judge of that Court.

Duties

(3) It is the duty of an interim judge, in priority over the judge's other judicial duties, to attend the sittings of the Supreme Court of Canada at the time and for the period during which the judge's attendance is required and during this period the judge has the powers and privileges, and shall discharge the duties, of a judge of that Court.

No names submitted

101E. If no names of candidates are submitted to the Minister of Justice within ninety days after the Minister invites their submission under subsection 101C(1), the Governor General in Council shall appoint a person who meets the requirements of section 101B and is acceptable to the Queen's Privy Council for Canada.

Tenure, salaries, etc.

101F. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

Relationship to section 101

101G. (1) Sections 101A to 101F shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101, except to the extent that such laws are inconsistent with those sections.

References to the Supreme Court of Canada

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada.

CONCURRENCY

Classes 12 and 21 in section 91 of the *Constitution Act, 1867* would be amended to read as follows:

12. Sea coast fisheries.

21. Corporate bankruptcy and insolvency.

Section 95 of the *Constitution Act, 1867* would be amended to read as follows:

Concurrent powers of legislation

95. In each province, the legislature may make laws in relation to agriculture, inland fisheries and personal bankruptcy and insolvency in the province and to immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture, inland fisheries and personal bankruptcy and insolvency in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to any of these classes of subjects shall have effect in and for the province in so far as it is not repugnant to any Act of the Parliament of Canada.

DELEGATION

The following section would be added to the *Constitution Act, 1867* after section 95:

Legislative Delegation

Legislative delegation

95A. (1) The Parliament of Canada or the legislature of a province may delegate to the other any of its authority to make laws under this Act.

Resolution, public hearings and report

(2) An Act delegating authority under this section shall not be enacted unless

(a) each House of Parliament and the legislative assembly of the province have adopted resolutions giving notice of the proposed delegation;

(b) a committee of either House of Parliament and a committee of the legislative assembly have held public hearings concerning the proposed delegation;

(c) the governments of the other provinces have been permitted to attend and make representations at the public hearings;

(d) each committee has reported on the advisability of the proposed delegation and tabled its report in the house or assembly from which it was formed; and

(e) at least one year has elapsed since the day on which the later of the resolutions was passed under paragraph (a).

Financial compensation

(3) Parliament or a legislature that delegates authority under this section shall provide reasonable compensation to the government that administers legislation enacted under the delegated authority, taking into account the costs of enacting and administering the legislation.

Official language responsibilities

(4) Where the Parliament of Canada delegates authority to the legislature of a province under this section,

(a) laws made under the delegated authority shall be published in both English and French; and

(b) the obligations imposed on institutions of the government of Canada under subsection 20(1) of the *Canadian Charter of Rights and Freedoms* shall be carried out by the institutions of the government of the province in respect of the administration and enforcement of laws made under the delegated authority.

Amendment or repeal

(5) A bill to amend or repeal an Act that delegates authority under this section may not be enacted unless, at least two years before its enactment, a notice of intention to introduce it has been given to

(a) the Prime Minister of Canada, in the case of a delegation of authority to Parliament; and

(b) the first minister of the province to whose legislature authority is delegated, in the case of a delegation of authority to a provincial legislature.

Expiry after five years

(6) An Act delegating authority under this section expires five years after its enactment, but if it is re-enacted before that time without change, subsection (2) does not apply to the re-enactment.

INTERGOVERNMENTAL AGREEMENTS

The following section would be added to the *Constitution Act, 1867* after the proposed section 95A (delegation):

Intergovernmental Agreements, Contracts and Arrangements

No inconsistent laws to be made

95AA. (1) Where the Government of Canada and the government of a province enter into an agreement, contract or other arrangement that is approved as provided in this section, the agreement, contract or arrangement shall prevail over any inconsistent law made, either before or after the approval, by or under the authority of an Act of the Parliament of Canada or the legislature of the province.

Approval

(2) An agreement, contract or other arrangement is approved when

(a) the Parliament of Canada and the legislature of the province have enacted the approval; or

(b) resolutions approving the agreement, contract or arrangement have been adopted by each House of the Parliament of Canada and the legislative assembly of the province.

Resolutions

(3) Where a resolution approving an agreement, contract or other arrangement is laid before a House of Parliament or a legislative assembly, it shall be deemed to be adopted on the twenty-first sitting day of the House or assembly after it is laid, unless, before that time, at least twenty members of the House or assembly move that the resolution be debated.

Revocation and amendment

(4) An agreement, contract or other arrangement approved under this section may not be amended or revoked except in accordance with its terms or by a further agreement, contract or arrangement approved as provided in this section.

Application

(5) This section also applies, with such modifications as the circumstances require, where an agreement, contract or other arrangement is entered into by the Government of Canada and the governments of two or more provinces.

LABOUR MARKET TRAINING

The following section would be added to the *Constitution Act, 1867* after section 93:

Labour market training

93A. In each province, the legislature may by law affirm its exclusive authority to enact laws in relation to labour market training and where a province affirms its authority under this section, the Government of Canada shall negotiate an agreement with the province relating to labour market training in the province.

CULTURE

The following section would be added to the *Constitution Act, 1867* after section 93:

Cultural matters in Quebec

93B. The authority of the Legislature of Quebec exclusively to make laws in relation to cultural matters in Quebec is hereby affirmed.

IMMIGRATION

The *Constitution Act, 1982* would be amended to include the following sections after section 95.

Agreements on Immigration and Aliens

Commitment to negotiate

95B. The Government of Canada shall, at the request of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

Agreements

95C. (1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95D(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

Limitation

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

Application of Charter

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada or the legislature or government of a province, pursuant to any such agreement.

Proclamation relating to agreements

95D. (1) A declaration that an agreement referred to in subsection 95C(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

Amendment of agreements

(2) An amendment to an agreement referred to in subsection 95C(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(b) in such other manner as is set out in the agreement.

Application of sections 46 to 48 of the *Constitution Act, 1982*

95E. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95D(1), any amendment to an agreement made pursuant to subsection 95D(2).

FEDERAL SPENDING

The following section would be added to the *Constitution Act, 1867* immediately after section 106:

Shared-cost programs

106A. (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a Canada-wide shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the Canada-wide program.

Legislative power not extended

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or the legislatures of the provinces.

Section 121 of the *Constitution Act, 1867* would be replaced by the following section. A mechanism for resolving disputes concerning the application of this section is also required, but has not been included in this draft.

Free movement of goods, etc.

121. (1) Canada is an economic union within which goods, services, persons and capital may move freely.

Prohibitions or restrictions

(2) The Parliament and Government of Canada, the provincial legislatures and governments and the territorial councils and governments shall not by law or practice impose any prohibition or restriction that is inconsistent with subsection (1) and is based on provincial or territorial boundaries if the prohibition or restriction impedes the efficient functioning of the economic union and constitutes a means of arbitrary discrimination or a disguised restriction of trade across provincial or territorial boundaries.

Saving

(3) Subsection (2) does not invalidate a restriction or prohibition imposed by or under

(a) a federal law enacted to further the principles of equalization or regional development;

(b) a provincial or territorial law enacted to reduce economic disparities between regions wholly within a province or territory; or

(c) a federal, provincial or territorial law enacted for

(i) public protection, safety or health,

(ii) the establishment and functioning of government-owned corporations exercising monopolies in the public interest, or

(iii) the preservation of existing marketing and supply management systems in the national, provincial or territorial interest, subject to Canada's international commitments.

Federal-provincial agreement

(4) The federal, provincial and territorial governments shall seek agreement on equivalent national standards for mutual implementation to enhance the mobility of persons and to further the well-being of Canadians wherever they live or work in Canada.

No derogation from s. 6 of the *Canadian Charter of Rights and Freedoms*

(5) Nothing in this section abrogates or derogates from the mobility rights guaranteed by section 6 of the *Canadian Charter of Rights and Freedoms*.

THE SOCIAL COVENANT AND THE ECONOMIC UNION

The title to Part III of the Constitution Act, 1982 would be amended to read "THE SOCIAL COVENANT AND THE ECONOMIC UNION" and the following sections would be added to Part III:

Social Covenant

36.1 (1) Parliament, the legislatures and the territorial councils, together with the government of Canada and the provincial and territorial governments, are jointly committed to

(a) providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered, and accessible;

(b) providing adequate social services and benefits to ensure that all Canadians have reasonable access to housing, food and other basic necessities;

(c) providing high quality public primary and secondary education to all persons resident in Canada and ensuring reasonable access to post-secondary education;

(d) protecting the rights of workers to organize and bargain collectively; and

(e) protecting and preserving the integrity of the environment in an economically sustainable manner.

Review agency

(2) The [intergovernmental agency to be established] shall review, assess and report on the performance of the federal, provincial and territorial governments in meeting the goals of the Social Covenant stated in subsection (1).

Economic Union

36.2 (1) Parliament, the legislatures and the territorial councils, together with the government of Canada and the provincial and territorial governments are jointly committed to

(a) working together to strengthen the Canadian economic union;

(b) free movement of persons, goods, services and capital; and

(c) the goal of full employment; and

(d) ensuring that all Canadians have a reasonable standard of living.

Review agency

(2) The [intergovernmental agency to be established] shall review, assess and report on the performance of the federal, provincial and territorial governments in meeting the goals of the Economic Union stated in subsection (1).

Tabling of reports

36.3 The reports of the [agency] under subsection 36.1(2) or 36.2(2) shall be laid before Parliament, the legislatures of the provinces and the councils of the territories.

Legislative authority not altered

36.4 Sections 36.1 to 36.3 do not alter the legislative authority of Parliament, the provincial legislatures or the territorial councils, or the rights of any of them with respect to the exercise of their legislative authority.

THE CONFERENCE OF FIRST MINISTERS

The following section would be added to the *Constitution Act, 1867* after section 147:

XII. CONFERENCE OF THE FIRST MINISTERS

Conference established

148. A 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 each year to discuss economic and social matters affecting Canada.

APPENDIX B

Alternative Preambles and Canada Clause Examined by the Committee

TABLE OF CONTENTS

We, Canadians, acknowledging

that the aboriginal peoples were the first inhabitants of this vast territory which is our country,

that modern Canada is rooted in the historic meeting in North America of the Indians, the Inuit, the French, the British, the Metis and other peoples from the world over,

that we are depositaries of diverse social, cultural and natural riches,

that our country has carved a unique place in the commonwealth of nations,

State our will to maintain a Canadian confederation founded on

equality of individuals that respects their differences and the diversity of their cultures;

equality of the provinces that respects their unique characteristics.

We, Canadians,

confident in our future, and

alive to the spirit of equity and justice,

Are resolved to build a country

that respects the dignity of the person, protects our rights and freedoms, both individual and collective, and recognizes in them the foundation for justice and peace;

that recognizes the inseparability of the rights and freedoms of each person from the rights and freedoms of others and the well-being of all;

that recognizes the responsibility entrusted to the aboriginal peoples to protect and develop their culture, languages and traditions;

that recognizes Quebec's responsibility to protect and promote the distinct character of its society, unique in North America;

that fosters the vitality and development of the language and culture of French-speaking and English-speaking minority communities;

that recognizes the contribution to its heritage of citizens speaking languages and bearing cultures from around the world;

that safeguards its natural environment and uses it rationally and responsibly to ensure prosperity for generations to come;

that recognizes the rule of law and subscribes to democratic, parliamentary government.

We, Canadians,

responding to our changing world, and

conscious of the need to assume our rightful place in it and to ensure economic progress and a flourishing society and cultural life,

Are convinced of the need to

strengthen our common market and the Canadian economic union;

reaffirm throughout our country our commitment to social justice and our attachment to the principle of equal opportunity;

renew our governmental institutions that they may be more representative, more sensitive to our needs and more effective to confront the great challenges of the day.

PREAMBLE (II)

Canada is spirit

the spirit of the aboriginal peoples who have revered and nurtured this splendid, bountiful land from time immemorial;

the spirit of the French and British settlers who struggled to make this land their home within the shores of three oceans;

the spirit of all other people who came and continue to come from every continent to enrich this land with their toil and their traditions.

Canada is belief

belief in the strength that springs from the diversity of its people;

belief in the inherent right of its first peoples to govern themselves, and to preserve and enhance their traditions, languages and cultures;

belief in the responsibility of Quebec, as a unique representative of French-speaking people in North America, to preserve and promote its distinct society;

belief in fostering the vitality and development of the two languages of our law and of the official language minority communities throughout this land; and

belief in fostering the cultural riches of our many heritages.

Canada is commitment

commitment to democracy and the rule of law;

commitment to the human rights and freedoms of all people;

commitment to the social and economic well-being of all Canadians.

As citizens of Canada, we are dedicated to living in harmony, preserving, expanding and sharing our spiritual and material wealth, our separate and common legacies, our cultures and our arts;

As citizens of the world, we are dedicated to international peace and the preservation of the earth for future generations.

We proclaim the Constitution of Canada to be the supreme law of our land and declare this to be its preamble.

CANADA CLAUSE

The following would be added to the *Constitution Act, 1867* as section 2:

Declaration

2. As we have pledged to strengthen our land as a home of peace, hope, and goodwill among nations, we declare that:

CANADA IS:

- a country made up of Aboriginal peoples, its first peoples, followed by the French and English speaking peoples and immigrants from the four corners of the world
- a country characterized by a vital and developing linguistic duality
- a constitutional monarchy and a parliamentary democracy whose citizens are guaranteed full access to the electoral process
- a federation whose identity encompasses the characteristics and values of all its communities, provinces, and territories

CANADA RECOGNIZES:

- that Indian, Inuit, and Métis peoples, with many languages, cultures, and traditions, have the inherent right to self-government within Canada
- that the province of Quebec bears a special responsibility to preserve and promote its distinct society
- its commitment to fostering the vitality and development of official language minority communities throughout Canada

- that people from many lands, faiths and cultures strengthen and enrich our life together

CANADA AFFIRMS:

- the principles of compassion, fairness, integrity and respect for life, in the context of openness, mutual respect and responsibility, with all participating fully without discrimination

- the equality of women and men

- its commitment to the dignity and worth of all its people, citizens and communities and to their individual rights and freedoms under the rule and equal application of the law, as the foundation for justice and social harmony

CANADA IS COMMITTED TO:

- the protection of families and children

- the responsible stewardship of its land, water resources and environment

- the achievement of the spiritual, cultural, economic, educational, political and social well-being and health of all its people

- the responsibility to promote peace and justice for all nations and among all peoples

So long as the sun rises, the rivers flow,
and the winds blow,
we proclaim our loyalty to this land called Canada.

APPENDIX C

List of Witnesses

NAME OF WITNESS	ISSUE	DATE
21ST CENTURY CANADA COMMITTEE	54	92/01/27
Jocelyn Adamson		
Dierdre Nicholson		
Laurie Gechke, Spokesman		
Ron Gray		
Dr. Calvin Netterfield		
ACADIAN COMMUNITIES ADVISORY COMMITTEE	6	91/10/10
Robert Arsenault, Chairman		
ACADIAN FEDERATION OF NOVA SCOTIA	44	92/01/16
Paul Comeau, Director General		
Ronald Bourgeois, Coordinator		
ACTION CANADA NETWORK	6	91/10/10
Mary Boyd, Chairperson		
Urban Laughlin, Member		
ACTRA	61	92/02/06
Sandy Crawley, President		
Sonja Smits, Member		
Garry Neil, General Secretary		
ADVISORY COUNCIL ON THE STATUS OF WOMEN	6	91/10/10
Linda Gallant, Chairperson		
ADVISORY COUNCIL ON THE STATUS OF WOMEN OF NEW BRUNSWICK	43	92/01/15
Jeanne d'Arc Gaudet, Chairperson		
Dawn Bremner, Vice-Chair		
AETNA CANADA	10	91/10/28
Rose Marie Earle, Director, Communications and Employee Relations		

NAME OF WITNESS	ISSUE	DATE
AFFORDABLE HOUSING ASSOCIATION OF NOVA SCOTIA Grant Wanzel, Chair	44	92/01/16
AFRO-CANADIAN CAUCUS OF NOVA SCOTIA Davies Bagambiire	44	92/01/16
AIRD, Paul	13	91/10/29
ALBERTA FEDERATION OF LABOUR Don Aitkin, President Audrey M. Bath, Secretary-Treasurer	50	92/01/22
ALBERTA PREMIER'S COUNCIL ON THE STATUS OF PERSONS WITH DISABILITIES Eric Boyd, Executive Director Cliff Bridges, Communications Coordinator	50	92/01/22
ALBERTA SELECT SPECIAL CONSTITUTIONAL REFORM The Honourable James Horsman, MLA, Medicine Hat, Minister of Federal and Intergovernmental Affairs, Chairman The Honourable Ken Rostad, MLA, Attorney General Fred Bradley, MLA Gary Severtson, MLA Jack Ady, MLA Pam Barrett, MLA Bob Hawkesworth, MLA Yolande Gagnon, MLA Stan Schumacher, MLA, Deputy Chairman The Honourable Dennis Anderson, MLA, Minister of Consumer and Corporate Affairs The Honourable Nancy Betkowski, MLA, Minister of Health Pearl Calahasen, MLA Stockwell Day, MLA Barrie Chivers, MLA John McInnis, MLA Sheldon Chumir, MLA	49	92/01/22

NAME OF WITNESS	ISSUE	DATE
ALGONQUIN NATION	57	92/02/03
Grand Chief Jean-Maurice Matchewan		
David Nahwegahbow, Legal Adviser		
Russell Diabo, Policy Adviser		
James Morrison, Historian		
Richard Falk, Professor of International Law, Princeton University		
ALLIANCE QUEBEC	29	91/12/11
Robert Keaton, President		
Casper Bloom, Chairman of Committee		
Alan Hilton, Committee Member		
Marjorie Goodfellow, Committee Member		
ANDERSON, Brian	13	91/10/29
ARCTIC INSTITUTE OF NORTH AMERICA	49	92/01/22
Cynthia Hill, Chairperson		
Mike Robinson, Executive Director		
Bob Blair, Director		
ASSEMBLY OF FIRST NATIONS	35	92/01/08
Ernie Benedict, Elder		
Myrtle Bush, Co-ordinator		
Tom Porter, Sub-Chief, Mohawk Nation Traditional Council		
Mike Mitchell, Grand Chief, Mohawk Council of Akwesasne		
Tony Hall, Professor of History, University of Lethbridge		
Leroy Littlebear, Professor of Native Studies University of Lethbridge		
Moses Okimaw, Legal Adviser		
ASSEMBLY OF FIRST NATIONS	62	92/02/10
Ovide Mercredi, National Chief		
Moses Okimaw, Legal Adviser		
Mary Ellen Turpel, Legal Adviser		
Leroy Littlebear, Professor of Native Studies		
Myrtle Bush, Co-ordinator		

NAME OF WITNESS	ISSUE	DATE
ASSOCIATION CANADIENNE-FRANÇAISE DE L'ALBERTA	50	92/01/22
Denis Tardif, President		
Marc Arnal, Vice-President		
Georges Arès, Executive Director		
ASSOCIATION CANADIENNE-FRANÇAISE DE L'ONTARIO	27	91/12/10
Jean Tanguay, President		
Yves Le Bouthillier, member		
Gilles Le Vasseur, member		
ASSOCIATION CULTURELLE FRANCO-CANADIENNE DE LA SASKATCHEWAN	47	92/01/21
Denis Magnan, President		
Maria Lepage, President, Fédération provinciale des Fransaskoises		
Roger Lepage, Executive Director		
Florent Bilodeau, Counsel		
Marguerite Compagne, Representative, Regional Branches		
ASSOCIATION DES JURISTES D'EXPRESSION FRANÇAISE DU NOUVEAU-BRUNSWICK	43	92/01/15
Louise R. Guerrette		
Zoel Dionne		
ASSOCIATION DES PARENTS FRANCOPHONES DE YELLOWKNIFE	52	91/01/23
Marie Claire Leblanc, President		
Diane Mahoney, President, Fédération franco-ténoise des Territoires		
Bernadette Leblanc-Fortier, Member of the Executive Committee		
Chantale Francoeur, Development Officer		
ASSOCIATION FRANCO-YUKONNAISE	56	92/01/28
Florine Leblanc-Hutchinson		
Pierre Laroche		
Jeanne Beaudoin		

NAME OF WITNESS	ISSUE	DATE
BARKER, Tom	16	91/11/04
B'NAI BRITH CANADA David Matas, Senior Legal Counsel Lyle M. Smordin, Vice-President	16	91/11/04
BCE INC. A. Jean De Granpré, President	32	91/12/17
BLACK UNITED FRONT OF NOVA SCOTIA Reverend Ogueri J. Ohanaka, Executive Director	44	92/01/16
BLAKE CASSELS & GRAYDON Peter W. Hogg, Professor, Osgoode Hall Law School, York University Theodore A. King Mitchell Wigdor Anne Thomas	33	91/12/18
BOARD OF TRADE OF METROPOLITAN TORONTO Donald King, President Gerry Meinzer, Vice-President	60	92/02/04
BOULANGER, Gaston	16	91/11/04
BOWKER, MARJORIE Retired Judge, Provincial Court of Alberta	32	91/12/17
BRANDON CHAMBER OF COMMERCE Gordon Peters, President	17	91/11/06
BRANDON TEACHERS' ASSOCIATION Marion Robinsong, Spokesperson, Equality and Education Committee	18	91/11/06
BRANDON WOMEN'S STUDY GROUP Paula Mallea Mary Annis Donna Everitt	18	91/11/06

NAME OF WITNESS	ISSUE	DATE
BRANDON-SOURIS NDP CONSTITUENCY ASSOCIATION Ian Robson, Spokesperson	18	91/11/06
BRITISH COLUMBIA CHAMBER OF COMMERCE E.A. George, Executive Director Ian MacLeod, First Vice-President	54	92/01/27
BURGES, Bill	18	91/11/06
BUSINESS COUNCIL ON NATIONAL ISSUES Thomas D'Aquino, President William W. Stinson, Chairman and CEO, Canadian Pacific Ltd. Bertin F. Nadeau, Chairman of the Board Provigo Inc.	61	92/02/06
CALGARY CHAMBER OF COMMERCE John Currie, President and Chairman of Unity Task Force Bill Kaufmann, General Manager and Director George Calliou, Member of Unity Task Force Colin MacDonald, Member of Unity Task Force	50	92/01/22
CAMERON, Jamie Professor, Osgoode Hall Law School, York University	29	91/12/11
CAMPBELL, Robert S.W.	13	91/10/29
CANADA FOR ALL COMMITTEE Murad Velshi, Chairman Ishrath Velshi Soma Ray Kikee Malik	13	91/10/29
CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN Linda Gallant, Chairperson	6	91/10/10
CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS	14	91/10/31

NAME OF WITNESS	ISSUE	DATE
Fred Wilson, President Donald Savage, Executive Director Robert Kerr, Past President		
CANADIAN ASSOCIATION OF VISIBLE MINORITIES Reverend Darryl Gray, National Co-Chair	44	92/01/16
CANADIAN BAR ASSOCIATION J.J. Camp Q.C., President Honourable Paule Gauthier, Vice-President Terence Wade, Senior Director Melina Buckley, Associate Director	30	91/12/12
CANADIAN CATHOLIC SCHOOL TRUSTEES ASSOCIATION Mervyn A. Lynch, President Lawrence Dufresne, Vice-President	49	92/01/22
CANADIAN CHAMBER OF COMMERCE Timothy Reid, President Miller A. Ayre, Chairman Philip O'Brien, Vice-Chairman	38	92/01/13
CANADIAN CITIZENSHIP FEDERATION Constance Middleton-Hope, President Diana Togneri Nicholas Zsolnay	14	91/10/31
CANADIAN COMMITTEE FOR A TRIPLE E SENATE Bert Brown, Chairman	21	91/12/02
CANADIAN CONFERENCE OF THE ARTS Keith Kelly, National Director	24	91/12/04
CANADIAN CONSTRUCTION ASSOCIATION John Halliwell, President Michael Atkinson, Senior Director Michael Makin, Director	23	91/12/03
CANADIAN COUNCIL OF CHRISTIANS AND JEWS (ONTARIO REGION)	12	91/10/29

NAME OF WITNESS	ISSUE	DATE
Sheldon Godfrey		
CANADIAN DAY CARE ADVOCACY ASSOCIATION	14	91/10/31
Barbara Kilbride, Executive Director		
Penny Bertrand		
CANADIAN ENVIRONMENTAL LAW ASSOCIATION AND POLLUTION PROBE	32	91/12/17
Barbara Rutheford, Counsel		
Paul Muldoon, Counsel		
CANADIAN ETHNOCULTURAL COUNCIL	14	91/10/31
Lewis T. Chan, President		
Anna Chiappa, Executive Director		
Emillio Binavince, Honorary Legal Counsel		
Andrew Cardozo		
Art Miki, President, National Association of Japanese Canadians		
CANADIAN FEDERATION OF STUDENTS	21	91/12/02
Kelly Lamrock, National Chairman		
Catherine Remus, Government Relations Officer		
CANADIAN FILM & TELEVISION PRODUCTION ASSOCIATION	24	91/12/04
Peter Mortimer, Director		
Stephen Ellis, Treasurer of the Association		
CANADIAN HOME BUILDERS' ASSOCIATION	26	91/12/09
John K. Kenward, Director		
Gary Reardon, President		
Laurier Dechêne, Secretary		
Gord Thompson, Past President		
CANADIAN HOUSING AND RENEWAL ASSOCIATION	34	91/12/18
Sylvia Haines, Executive Director		
David Crenna		
Robert Player, Past President		
Michael Wilson, Member		
CANADIAN HUMAN RIGHTS COMMISSION	34	91/12/18

NAME OF WITNESS	ISSUE	DATE
Maxwell Yalden, Chief Commissioner		
CANADIAN JEWISH CONGRESS	58	92/02/03
Les Scheininger, National President		
Max Bernard, Chairman, National Unity Committee		
CANADIAN LABOUR CONGRESS	59	92/02/04
Shirley G.E. Carr, President		
Nancy Riche, Executive Vice-President		
Dick Martin, Executive Vice-President		
Richard Mercier, Secretary-Treasurer		
Robert White, National President, C.A.W.		
Judy D'Arcy, National President, C.U.P.E.		
Dawn Ventura, Research Director		
Cindy Wiggins, Researcher		
CANADIAN LABOUR FORCE DEVELOPMENT BOARD	27	91/12/10
Laurent Thibault, Co-Chairperson		
Gérard Docquier, Co-Chairperson		
CANADIAN PARENTS FOR FRENCH	30	91/12/12
Josalys Scott, Executive Director		
Pat Brehaut, National President		
CANADIAN PARKS AND WILDERNESS SOCIETY MANITOBA CHAPTER	18	91/11/06
Roger Turenne		
CANADIAN REAL ESTATE ASSOCIATION	21	91/12/02
David Higgins, President-Elect		
Gaylord Watkins, Special Constitutional Counsel		
Patricia Verge, Vice-President		
CANADIAN TEACHER'S FEDERATION	62	92/02/10
Allan McDonald, President,		
Stirling McDowell, Secretary General,		
Harvey Weiner, Deputy Secretary General,		
Dr. Wilf Brown, Director, Economic Services		
CANADIANS FOR EQUALITY OF RIGHTS UNDER		

NAME OF WITNESS	ISSUE	DATE
THE CONSTITUTION Keith Henderson, Chairman Howard Greenfield, Vice-Chairman	32	92/12/17
CARVER, Horace	6	91/10/10
CATHOLIC WOMEN'S LEAGUE OF CANADA Agnes Ebbs, Convener of Resolutions Catherine Gregory	41	92/01/14
CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION Bruce Porter, Co-ordinator	24	92/12/04
CERTIFIED GENERAL ACCOUNTANTS' ASSOCIATION OF CANADA Marcel Hardy, President Ronald J. Bourke, 1st Vice-President S. Anthony Toth, Director of Public Affairs Wm. Laurence Scott, Government Affairs Adviser	57	92/02/03
CHANAL INC. Keith Walker, Chief Director for Newfoundland and Labrador Daniel Reid, Secretary	41	92/01/14
CITIZENS FOR PUBLIC JUSTICE Tim Schouls, Research Coordinator Gerald Vandezande, Director, National Public Affairs	12	91/10/29
CITY OF CALGARY Al Duerr, Mayor	50	92/01/22
CITY OF VANCOUVER Gordon Campbell, Mayor and First Vice-President of the Union of British Columbia Municipalities	53	92/01/27
CITY OF YELLOWKNIFE R.M. Findlay, Deputy Mayor	52	92/01/23

NAME OF WITNESS	ISSUE	DATE
Coquitlam, British Columbia		
Ann Cardus, Port Moody-Coquitlam, British Columbia		
Brenda Wahlen, Port Moody-Coquitlam, British Columbia		
Margaret Wanlin, Thunder Bay-Atikokan, Ontario,		
Barb Ellingson, Red Deer, Alberta		
Paul Abbott, Red Deer, Alberta		
Lynn Lemieux, Edmonton East, Alberta		
David Gravelle, Calgary Southwest, Alberta		
Allen Millar, Calgary Southwest, Alberta		
Jean Thompson, Wild Rose, Alberta		
Joe Elliott, York-Simcoe, Ontario,	63	92/02/10
Niki Rauzon-Wright, York-Simcoe, Ontario		
Trevor Wilson, York-Simcoe, Ontario		
Joe Gordon, York-Simcoe, Ontario		
Wilfred Posehn, Calgary North, Alberta		
Marc Kealy, Ontario Riding, Ontario		
Steven Rae, Ontario Riding, Ontario		
Brian Shedden, Ontario Riding, Ontario		
Ashok Bhatia, Ontario Riding, Ontario		
Keith MacGregor, Ontario Riding, Ontario		
Laura Nigro, Ontario Riding, Ontario		
Janet Greene-Potomski, Windsor-Lake St Clair, Ontario		
Patrick Rafferty, Wellington-Grey-Dufferin-Simcoe, Ontario		
George Schreyer, Selkirk, Manitoba		
John Gleeson, Selkirk, Manitoba		
Preston Cook, Thunder Bay-Nipigon, Ontario		
Greta Baron, Thunder Bay-Nipigon, Ontario		
Hylda Howes, Haldimand-Norfolk, Ontario		
Mary Edmonds, Haldimand-Norfolk, Ontario		
Catherine Paradoski, Beaver River, Alberta		
Dr. John Gerrard, Saint-Boniface, Manitoba		
Dr. Jean-Pierre Després, Saint-Boniface, Manitoba		
Mark Sutor, Sarnia-Lambton, Ontario		
Shirley Latham, Sarnia-Lambton, Ontario		
Peter Westfall, Sarnia-Lambton, Ontario		
Diane Cork, Ottawa Centre, Ontario		
Nini Pal, Mount Royal, Quebec		

NAME OF WITNESS	ISSUE	DATE
McGill University		
DENE NATION	52	92/01/23
Bill Erasmus, National Chief		
DENTON, Kady	18	91/11/06
DEPARTMENT OF FINANCE	3 & 9	91/10/01
Fred Gorbet, Deputy Minister		91/10/24
DEPARTMENT OF JUSTICE	1,3,7,8 & 9	91/09/25
John Tait, Deputy Minister	8 & 9	91/09/25
		91/10/01
		91/10/22
		91/10/23
DION, Léon	28	91/12/10
Professor, Department of Political Science, Laval University		
DOMOKOS, Alex	16	91/11/04
DOULL, James	41	92/01/14
Professor, Dalhousie University		
DOWSETT, Thomas	18	91/11/06
DROVER, Martin	13	91/10/29
ECONOMIC COUNCIL OF CANADA	34	91/12/18
Judith Maxwell, Chairman		
Caroline Pestieau, Deputy Chairman		
Harvey Lazar, Deputy Chairman		
EDMONTON CHAMBER OF COMMERCE TASK FORCE ON CONSTITUTIONAL REFORM	49	92/01/22
John P.J. Rossal, Chairman of the Chamber's Constitutional Reform Task Force		
John Knebel, Chairman of the Board		
Fred Windwick, President of the Chamber		

NAME OF WITNESS	ISSUE	DATE
FÉDÉRATION DES COMMUNAUTÉS FRANCOPHONES ET ACADIENNES François Dumaine, Counsel Raymond Bisson, President Marc Godbout, Director General Sylvio Morin, Director of Communications	31	91/12/17
FÉDÉRATION DES FRANCO-COLOMBIENS Marie Bourgeois, President Yseult Friolet, Director General	54	92/01/27
FÉDÉRATION DES FRANCOPHONES DE TERRE-NEUVE ET DU LABRADOR Conrad Titley, Executive Director Robert Cormier, President	41	92/01/14
FÉDÉRATION DES JEUNES CANADIENS FRANÇAIS INC. Gino Leblanc, President Paul LePierre, Director General	28	91/12/10
FRASER VALLEY REAL ESTATE BOARD Ruth Boulton, Chairman Ken MacKenzie, Executive Officer Mary Wade Anderson, Legislative and Public Affairs Committee	53	92/01/27
FRIEND OF THE VALLEY Gerry McKinney, Chairperson	18	91/11/06
GAASENBEEK, Johannus	13	91/10/29
GARANT, Patrice Professor, Laval University	57	92/02/03
GARNEAU, Raymond	58	92/02/03
GERAETS, Théodore Professor, Philosophy Department, University of Ottawa	22	91/12/03

NAME OF WITNESS	ISSUE	DATE
GERMAN CANADIAN CONGRESS Gerry Meinzer, President Alexander Sennecke, President-elect Alexander Münter, Vice-President	26	91/12/09
GOVERNMENT OF BRITISH COLUMBIA The Honourable Moe Sihota, Minister of Constitutional Affairs	54	92/01/27
GOVERNMENT OF MANITOBA The Honourable Gary Filmon, Premier Clayton Manness, Minister of Finance Jim McCrae, Minister of Justice	64	92/02/11
GOVERNMENT OF NEW BRUNSWICK The Honourable Frank McKenna, Premier	42	92/01/15
GOVERNMENT OF NEWFOUNDLAND The Honourable Clyde Wells, Premier	40	92/01/14
GOVERNMENT OF NOVA SCOTIA The Honourable Donald Cameron, Premier	45	92/01/16
GOVERNMENT OF ONTARIO The Honourable Bob Rae, Premier	38	92/01/13
GOVERNMENT OF PRINCE EDWARD ISLAND The Honourable Joseph Ghiz, Premier	4	91/10/09
GOVERNMENT OF SASKATCHEWAN The Honourable Roy Romanow, Premier The Honourable Robert Mitchell, Minister of Justice and Attorney General George Peacock, Consultant to Government of Saskatchewan on Constitutional Matters	47	92/01/21
GOVERNMENT OF YUKON The Honourable Tony Penikett, Premier William E. Byers, Constitutional Counsel Rino Ouellet, Director, Bureau des services en français	55	92/01/28

NAME OF WITNESS	ISSUE	DATE
GREEN, John	18	91/11/06
GRIFFITH, Edward	13	91/10/29
GROUP OF 22	25	91/12/05
Honourable Maurice Sauvé		
Honourable Allan E. Blakeney		
Honourable William G. Davis		
Harrison McCain		
Susan Sherk		
Kathleen Mahoney		
HALIFAX BOARD OF TRADE	44	92/01/16
Andrew M. Horgan, Chairman		
HANLY, Dr. Ken	18	91/11/06
HARRIS, Richard	28	91/12/10
Professor, Department of Economics		
Simon Fraser University		
HEALTH ACTION LOBBY	60	92/02/04
Sharon Sholzberg-Gray, Executive Director		
Dr. Luc Granger		
Judith Oulton		
Kevin Doucette		
HEENEY, Dennis	18	91/11/06
HELLYER, The Honourable Paul T.	12	91/10/29
HELLENIC CANADIAN CONGRESS	58	92/02/03
Harry Tsimberis, Vice-President, Quebec		
André Gerolymotos, Secretary		
HERITAGE CANADA	23	91/12/03
Mary Elizabeth Bayer, Chair		
Douglas Franklin, Director		
Jacques Dalibard, Executive Director		
HODGES, Gregory J.	13	91/10/29

NAME OF WITNESS	ISSUE	DATE
HOGG, Peter Professor, Osgoode Hall Law School, York University	33	91/12/18
HOUSING CO-OP COUNCIL OF MANITOBA Rudy H. Comeault, Representative	16	91/11/04
HOWE, T.A.	48	92/01/21
HYNES, William	13	91/10/29
IMPERIAL ORDER OF THE DAUGHTERS OF THE EMPIRE Jean Throop, President, National Chapter Sandra Connery	28	91/12/10
INDEPENDENT ALLIANCE Allan Nordling, Leader	55	91/01/28
INDIGENOUS BAR ASSOCIATION IN CANADA Donald E. Worme, President Marion Buller, Vice President Mary Ellen Turpel, Board Member Moses Okimaw, Board Member Roger Jones, Secretary/Treasurer	34	91/12/18
INDIGENOUS WOMEN'S COLLECTIVE OF MANITOBA INC. Winnie Grisbrecht	15	91/11/04
INUIT TAPIRISAT OF CANADA Rosemarie Kuptana, President Jose Kusugak, Member, Inuit Committee on Constitutional Issues Susan Aglukark, Executive Assistant to the President John Amagoalik, Constitutional Adviser, Tungavik Federation of Nunavut Joe Otokiak, National Spokesperson John Merrit, Counsel, Tungavik Federation of Nunavut Wendy Moss, Coordinator of Constitutional Affairs	37	92/01/09

NAME OF WITNESS	ISSUE	DATE
Rosemarie Kuptana, President John Amagoalik, Member Constitutional Committee Wendy Moss, Coordinator, Constitutional Issues Committee	64	92/02/11
ITALIAN CANADIAN CONGRESS Antonio Sciascia, former National President Giusseppe Manno, President, Quebec Section	58	92/02/03
JOHNSON, A.W. Professor, Department of Political Science, University of Toronto	33	91/12/18
KEDDIE, Dorothy	18	91/11/06
KEEN, Carolyn	13	91/10/29
KERR, Edward	13	91/10/29
KING, Ted A.	33	91/12/18
LA CHAMBRE DE COMMERCE DU MONTRÉAL MÉTROPOLITAIN Jean Guibault, President, Nycol Pageau-Goyette, Chairman of the Board	60	92/02/04
LA CHAMBRE DE COMMERCE DU QUÉBEC John H. Dinsmore, President, Forum Entreprises-Universities Claude Descoteaux, Executive Vice-President Pierre Fortier, Vice-President Jacques Plante, Vice-President Pierre Martin, Chairman of the Board	57	91/02/03
LA CHAMBRE DE COMMERCE FRANCOPHONE DE SAINT-BONIFACE Germain Perron, President Richard Chartier, Legal Counsel	16	91/11/04

NAME OF WITNESS	ISSUE	DATE
LA FÉDÉRATION PROVINCIALE DES COMITÉS DE PARENTS FRANCOPHONES DU MANITOBA Gérard Lécuyer, Director General Gilbert Savard, President	16	91/11/04
LEARNING DISABILITIES ASSOCIATION OF CANADA Beulah Phillpot, Director	52	92/01/23
LIBERAL PARTY OF ALBERTA Lawrence Decore, Leader	50	92/01/22
LIBERAL PARTY OF BRITISH COLUMBIA Gordon Wilson, Leader	53	92/01/27
LIBERAL PARTY OF MANITOBA Sharon Carstairs, Leader	15 & 39	91/11/04 92/01/13
LIBERAL PARTY OF NOVA SCOTIA Vincent J. MacLean, Leader	45	92/01/16
LIBERAL PARTY OF SASKATCHEWAN Lynda Haverstock, Leader	47	92/01/21
MACKLING, Al	16	91/11/04
MACLEAN'S GROUP Rick Miller Sheila Simpson Charles Dupuis Carol Geddes Karen Collings	39	92/01/13
MACQUARRIE, Bob	52	92/01/23
MAINSE, David	13	91/10/29
MALCOLMSON, PATRICK Professor of Political Science, St. Thomas University	43	92/01/15
MANITOBA ACTION COMMITTEE ON THE STATUS		

NAME OF WITNESS	ISSUE	DATE
OF WOMEN Jenny Robinson	16	91/11/04
MANITOBA COMMITTEE FOR A TRIPLE E SENATE Jerry Fullerton, Vice President	17	91/11/06
MANITOBA CONSTITUTIONAL TASK FORCE Professor W. N. Fox-Decent, Chairperson Jean Friesen Oscar Lathlin Shirley Carstairs Darren Praznick Shirley Render Jim McCrae	15	91/11/04
MANITOBA FARM WOMEN'S CONFERENCE Elaine Froese, Spokesperson	18	91/11/06
MANITOBA LEAGUE OF THE PHYSICALLY HANDICAPPED INC. Donald Halechko, Chairperson David Martin, Provincial Coordinator	15	91/11/04
MANITOBA MÉTIS FEDERATION Fortunat Guiboche, Senator Holly Ferguson, Member Dorothy Rokovetsky, Member	18	91/11/06
MANITOBA WOMEN'S INSTITUTE Joyce Johnson, President	18	91/11/06
MANITOBA WRITERS' GUILD INC. Neil Besner, President Terry Lulashnyk, Lobbying Chair	16	91/11/04
MARANATHA GOOD NEWS CENTRE Roger Armbuster, Minister	17	91/11/06
MCCULLOUGH, Helen	16	91/11/04
MCDONNELL, Patrick	16	91/11/04

NAME OF WITNESS	ISSUE	DATE
Art Miki, President	29	91/12/11
Sachiko Okuda, Executive Committee Member		
NATIONAL BLACK COALITION OF CANADA	16	91/11/04
Wade Williams		
NATIONAL CONSORTIUM OF SCIENTIFIC & EDUCATIONAL SOCIETIES	31	91/12/17
Dr. Caroline Andrew, Chairperson		
Dr. Clément Gauthier, Representative		
Robert Léger, Representative		
Dr. Pierre Ritchie, Representative		
NATIONAL INTERFAITH AD HOC WORKING GROUP ON CANADA'S FUTURE	13	91/10/29
Archbishop E.W. Scott, Chair		
Manohar Singh Bal		
Ernest Benedict		
Dr. Karen Mock		
Rev. Father Alexander Taché		
Sister Eva Solomon		
Gerald Vandezande		
NATIONAL UNION OF PROVINCIAL GOVERNMENT EMPLOYEES	30	91/12/12
James Clancy, President		
NATIVE COUNCIL OF CANADA	35	92/01/08
Patrick Brascoupe		
Martin Dunn		
Rosalee Tizya		
Sue Heron-Herbert		
Claude Aubin		
Chris Reid		
Jane Gottfreidson		
Carl Lariviere		
William Beaver		
Sam Gull		
Terry Doxtator		
Ron George, President	64	92/02/11
Phil Fraser, Vice-President		

Martin Dunn, Co-Chair, Constitutional Review Commission
Yves Assiniwi, Special Adviser
Dwight Dorey, Chair, Constitutional Task Force
Brad Morse, Constitutional Adviser

NATIVE WOMEN'S ASSOCIATION OF CANADA 61 92/02/06
Gail Stacey Moore, President
Teressa Nakanee, Constitutional Coordinator
Virginia Meness, Executive Assistant
Margo Nightingale, Assistant Constitutional Coordinator
Marge Friedel, Treasurer, National Métis Women of Canada
Dianne Soroka, Counsel
Winnie Giesbrecht, Executive Council Member
Sarah Fiddes, Executive Council Member

NEW BRUNSWICK COMMISSION ON CANADIAN FEDERALISM 42 92/01/15
Marie-Marthe Aldéa Landry, Q.C., Co-Chair
James Lockyer, Co-Chair
James Downey
Pierrette Ringuette-Maltais, MLA
Erminie Cohen
Yvon Fontaine
Albert Levi
Ronald LeBreton

NEW BRUNSWICK FEDERATION OF LABOUR 43 92/01/15
Maurice Clavette, Secretary-Treasurer

NEW DEMOCRATIC PARTY OF MANITOBA 39 92/01/13
Gary Doer, Leader

NEW DEMOCRATIC PARTY OF NOVA SCOTIA 45 92/01/16
Alexa McDonough, Leader

NEW DEMOCRATIC PARTY OF PRINCE EDWARD ISLAND 6 91/10/10

NAME OF WITNESS	ISSUE	DATE
NOVA SCOTIA WORKING COMMITTEE ON THE CONSTITUTION The Honouar Eric Kierans, Chairman Junior Bernard Wanda Thomas Bernard Dr. Donald Campbell Rev. Jim Chang Yvon Deveau Rick Laird Marilyn Peers Darlah Purdy Laraine Singler Myrna Slater Dr. Brian Crowley	46	92/01/17
NUU-CHAH-NULTH TRIBAL COUNCIL George Watts, President	54	92/01/27
OFFICE OF THE PRIVACY COMMISSIONER OF CANADA Bruce Phillips, Privacy Commissioner of Canada David Flaherty, Professor, University of Western Ontario Edward Ratushny, Professor, University of Ottawa	26	91/12/09
O'NEIL, Diane	16	91/11/04
ONTARIO CONFERENCE OF CATHOLIC BISHOPS Bishop O'Mara Archbishop Marcel Gervais Peter Lauwers, Counsel	39	92/01/13
ONTARIO REGION OF THE CANADIAN COUNCIL OF CHRISTIANS AND JEWS Sheldon J. Godfrey, Barrister & Solicitor	12	91/10/29
ONTARIO SELECT COMMITTEE ON ONTARIO IN CONFEDERATION Dennis P. Drainville, Chair Gilles Bisson, Vice-Chair Jenny Carter Alvin Curling Ernie Eves	11	91/10/28

NAME OF WITNESS	ISSUE	DATE
PROVINCIAL RELATIONS	1,3,7	91/09/25
Jocelyne Bourgon, Associate Secretary to the Cabinet	8 & 9	91/10/01
		91/10/22
		91/10/23
		91/10/24
Ron Watts, Assistant Secretary, Constitutional Development	3,8	91/10/01
Scott Serson, Deputy Secretary to the Cabinet	8	91/10/23
Nicholas d'Ombrain, Deputy Secretary to the Cabinet, (Machinery of Government and Senior Personnel)		
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA	31	91/12/17
Iris Craig, President		
Sally Diehl, Head of Research		
Pierre Choquette, Research Officer		
PROGRESSIVE CONSERVATIVE PARTY OF PRINCE EDWARD ISLAND	6	91/10/10
Pat Mella, Leader		
PROGRESSIVE CONSERVATIVE PARTY OF SASKATCHEWAN	47	92/01/21
D. Grant Devine, Leader		
PUBLIC SERVICE ALLIANCE OF CANADA	30	91/12/12
Daryl T. Bean, President		
QUEBEC FEDERATION OF HOME AND SCHOOL ASSOCIATIONS	34	91/12/18
Barbara Milne-Smith		
RAY, Dr. Ratna.	13	91/10/29
REGROUPEMENT ECONOMIE ET CONSTITUTION	30	91/12/12
Claude Beauchamp, President		
Guy St-Pierre, Vice-President		
Ivanhoé Beaulieu, Communications		
RESNICK, Philip	22	91/12/03

NAME OF WITNESS	ISSUE	DATE
Professor, Department of Political Science, University of British Columbia		
RILEY, Anthony	18	91/11/06
ROBERTSON, Gordon Former Clerk of the Privy Council and Secretary to the Cabinet	31	91/12/17
SASKATCHEWAN ARTS BOARD Valerie Creighton-Wells, Executive Director John Griffiths, Vice-Chairman	48	92/01/21
SASKATCHEWAN ORGANIZATION FOR HERITAGE LANGUAGES Dr. Tonis Harras, Member of the Board Pamela J. Wilson, Executive Director Yars Lozochuk, Committee member	48	92/01/21
SASKATCHEWAN WHEAT POOL Garf Stevenson, President Glen McGlaughlin, Executive Director of Policy and Member's Services Dr. John Beke, General Counsel Nial Kuyek, Executive Assistant Darryl Kristjanson, Policy Analyst	48	92/01/21
SCHINDLER, Edward	13	91/10/29
SHUGARMAN, David Professor, Department of Political Science, York University	31	91/12/17
SIMEON, Richard Professor, Department of Political Science, University of Toronto	29	91/12/11
SMITH, Jennifer Professor, Dalhousie University	27	91/12/10
SOCIAL ASSISTANCE COALITION OF MANITOBA	16	91/11/04

NAME OF WITNESS	ISSUE	DATE
Harold McQueen		
SOCIÉTÉ DES ACADIENS ET ACADIENNES DU NOUVEAU-BRUNSWICK	43	92/01/15
Réal Gervais, President		
Norbert Roy, Director General		
Michel Doucet, Counsel		
SOCIÉTÉ FRANCO-MANITOBAINE	16	91/11/04
Georges Druwé, President		
Cécile Bédard, General Director		
STANDING COMMITTEE ON CULTURE AND COMMUNCIATIONS	61	92/02/06
Bud Bird, M.P., Chairman		
Sheila Finestone, M.P., Vice-Chairman		
Jean-Pierre Hogue, M.P., Vice-Chairman		
STANDING COMMITTEE ON THE ENVIRONMENT	61	92/02/06
David MacDonald, M.P., Chairman		
Paul Martin, M.P.		
Jim Fulton, M.P.		
Yvon Côté, M.P., Vice-Chairman		
ST. THOMAS AQUINAS SOCIETY	6	91/10/10
Father Éloi Arsenault, President		
Jean-Paul Arsenault, Member		
Aubrey Cormier, Executive Director		
STANDING COMMITTEE ON COMMUNICATIONS AND CULTURE	61	92/02/06
Bud Bird, M.P.		
Sheila Finestone, M.P.		
Jean-Pierre Hogue, M.P.		
STANDING COMMITTEE ON ENVIRONMENT	61	92/02/06
Hon. David MacDonald, M.P.		
Paul Martin, M.P.		
Jim Fulton, M.P.		
Yvon Côté, M.P.		

NAME OF WITNESS	ISSUE	DATE
STRUCK, George	16	91/11/04
SWINTON, Katherine Professor, Faculty of Law, University of Toronto	10	91/10/28
SYED, Hasanat Ahmad Editor/Publisher of New Canada	13	91/10/29
TASK FORCE ON CANADIAN FEDERALISM Julius Grey, President Monty Berger, Director Roger Comtois, Vice-President	57	92/02/03
TAYLOR, MCCAFFREY, CHAPMAN AND SIGURDSON G. Patrick S. Riley	15	91/11/04
THÉRIAULT, Ben	13	91/10/29
TOWNSHIPPER'S ASSOCIATION Myrna MacAulay, President Marjorie Goodfellow, Chair, Constitutional Issues Committee Michael Fox, Director Susan Mastine, Executive Director	58	92/02/03
TREASURY BOARD Ian Clark, Secretary	9	91/10/24
TURNLEY, Pat	18	91/11/06
UNION OF NOVA SCOTIA INDIANS Daniel Christmas, Executive Director Professor Bruce Wildsmith, Legal Adviser	44	92/01/16
UNIVERSITY OF ALBERTA STUDENTS' UNION Randy Boissonnault, Vice-President Martin Kennedy, Speaker, Student's Council	50	92/01/22
VANCOUVER BOARD OF TRADE Dr. Owen Anderson	54	92/02/27

NAME OF WITNESS	ISSUE	DATE
WOMEN ON WINGS	56	92/01/28
Judi Kwa Molas Johnny		
YUKON PARTY	55	91/01/28
John Ostashek, Leader		
The Honourable Dan Lang		
YUKON STATUS OF WOMEN COUNCIL	56	92/01/28
Lynn Gaudet		
Lois Pope		
Jon Leah Hopkins		
ZUCAWICH, Gerald	16	91/11/04

APPENDIX D

List of Submissions

A. B. Cash Investment
Abbott, George
Abbott, Richard B.
Abitbol, Isaac Jacques
Aboriginal Rights Coalition
Aboriginal Women's Unity Coalition
Ackerman, Don
Action Canada Network
Action Life
ACTRA
Ad Hoc Community Committee
Adainac, Jonathan B.
Adam, Arthur G.
Adam, Barry D.
Adam, Paul
Adamkovics, J.I.
Adams, Carol
Adams, D.S.
Adkin, Dennis W.
Advisory Council on the Status of Women
Advisory Group on Race Relations in Halifax
Aebtemicluk, Breat
Affordable Housing Association of Nova Scotia
Afro-Canadian Caucus of Nova Scotia
Afro-Canadian Congress
Agoto, Ed
Ahmadiyya Movement In Islam
Ahmed, S. D.
Ahtahkakoop Reserve No. 104
Aids Committee of Ottawa
Aird, Paul
Akler, N.
Alberta Association of Registered Nurses
Alberta Federation of Labour
Alberta Premier's Council on the Status of Persons with Disabilities and Alberta Select Special Committee on Constitutional Reform
Albertans for Property Rights Association
Alcock, Tom
Alder, Rob
Alexander, Chiara
Alexander, David
Alexandria, Anne Gloria
Algonquin Nation
Allaire, Armand, J.
Allen, Berna M.
Allergy Information Association
Alliance of Canadian Cinema, Television and Radio Artists
Alliance Quebec
Allix, Hereward
Allward, Brian
Altenhof, Laura
Alvarez, Francisco
Amirault, Dorothy
Amirault, Thérèse
Ammann, Raymond
Amos, Elizabeth
Anderson, Bruce W.
Anderson, Doris
Anderson, Edna (M.P.)
Anderson, Elizabeth
Anderson, Marjorie
Anderson, Muriel A. & Jas. H.
Anderson, R.C.
Anderson, S.M.
Andras, Tony
Andrews, Charlie
Andrews, D.G.
Andrews, George
Andrews, Harry W.
Andy, K.
Angebrandt, Matt F.
Angelson, Kenneth

Angle, R.P. Randy
Angus Reid Group
Anjo, William R.
Anstey, Mark
Anstruther, Alex
Antonovitch, Dennis
Appleton, John M.
Archambault, Ghislain
Archibald, Russell W.
Archives Council of Prince Edward Island
Arctic Institute of North America
Ardiel, Laura
Argue, Lois
Argue, Thelma I.
Armstrong, Irwin R.
Armstrong, Joe C.W.
Armstrong, John L.
Arnold, T.
Arnott, Casey
Aronson, Beacha
Aronson, Doron
Aronson, Gordon R.
Arsenault, Claude
Arsenault, K.J.
Arseneault, Guy H. (M.P.)
Artindale & Partners
Artistic Futures
AS-Arinah
Asch, Michael
Ashton, Art
Assad, T.A.
Assels, Margaret
Asselstine, Dean E.
Assembly of British Columbia Arts Councils
Assembly of First Nations
Association canadienne de la radio et de la télévision de langue française
Association canadienne-française de l'Alberta
Association canadienne-française de l'Ontario
Association culturelle franco-canadienne de la Saskatchewan
Association culturelle de Bellevue inc.
Association des enseignantes et des enseignants riens
Association des juristes d'expression française de l'Ontario
Association des juristes d'expression française du Nouveau-Brunswick
Association des juristes catholiques du Québec
Association des parents francophones de Yellowknife
Association des parents du Québec
Association franco-yukonnaise
Association minière du Québec inc.
Association of Canadian Clubs
Association of Manitoba Archivists
Association of Municipalities of Ontario
Association of Universities and Colleges of Canada
Astral Communications
Atamanenko, Alex T.
Atkinson, Don
Atlantic Episcopal Assembly
Augey, Yan
Austin, Neville
Australian National University
Ayden, Edward
Ayoub, Anna
Azoulay, Robert J.
B.C. Coalition of Head Taxpayers, Spouses and Descendants
B.C. Film
B.C. Youth Council
B'Nai Brith Canada
Babiak, E.
Bacsalmasi, Stephen P.
Bage, Sheri
Bailey, E.T.W.
Bailey, Nan
Baillie, Judy
Bain, Dave B.
Bain, William F.C.
Baines, Bob R.W.
Baines, T.F.
Baird, Rebekah
Baire, Gail
Baiton, Grace L.
Baker, Adrien
Baker, Geraldine

Baker, Jack
Bakker, J.J.
Balaban, Alana
Balassone, Gabriel
Balic, Mirko
Ball, Ed
Balm, Mitch B.
Bandy, Dave W.
Banerjee, Chin
Banister, Harold B.
Banks, Margaret A.
Banks, Ted
Banks, William
Barbely, Fredrick
Barclay, F.W.
Barker, Frances & Stanley
Barns, G. Melville
Barnsley, Reginald C.
Barr, Anne
Barratt, Greg
Barraud, E.V.
Barron, Mansell I.
Barter, Rhonda
Bartlett, Jean
Barton, Bernard & Carrie
Baskerville, Grace
Basuk, Jack
Batchelor, John
Bateman, H.E.G.
Batho, John
Battersby, Roy
Battrum, Phyllis L.
Baugh, David J.
Baxter, Barbara
Bayne, Andrea
BCE Inc.
Beakes, Herbert
Bearcroft, Norma
Beard, Holly C.
Beattie-Morison, James
Beatty, Perrin (M.P.)
Beaubien, Paul
Beauchamp, Grégoire
Beauchamp, René C.
Beaudin, Lucien
Beaule, Paul
Beaule, Valerie
Beck, Gerry K.J.
Beck, L. Grant
Beer, Ronald J.
Behr, Carol Joan
Belcher, Jessie M.
Belgrave, Kevin
Bell City Auto Center Inc.
Bell, Ronald G.
Bellan, Ruben C.
Belliveau, Peter
Belliveau, William E.
Bender, J.F.
Benjaminson, M.
Benn, P.J.
Bennett, Jacqueline
Bennett, Richard A.F.
Benson, Carolyn R.
Bentley, C. Fred
Benton, S.B.
Berg, Kenneth L.
Berger, Adrien
Berger, David (M.P.)
Bernier, Alain
Berrigan, G. J.
Berry, A.J.
Berthiaume, Wilfred R.
Bertrand, Antonio
Bertrand, Chantal
Bertrand, Gabrielle (M.P.)
Bertrand, Geo. A.
Berze, Joseph
Betts, Glenn
Bielski, Witoed J.
Biesinger, Larry
Bigas, Jim D.
Billard, Allan
Billowes, Colin
Binnie, Victor
Birch, David J.
Bird, Arthur
Bird, Charles
Birtch, James
Bischof, Leslie J.

Bishop, Anne
Bishop, Collin
Bishop, John M.
Bjornson, David (M.P.)
Black United Front of Nova Scotia
Blackmore, Ewart W.
Blair, Gary L.
Blair, Jean E.
Blake, Cassels & Graydon
Blanchet, Pauline
Blanchette, Alain
Blattberg, Charles
Blecker, Mathias
Bleuer, Otto
Blitzer, Steve
Bloc Québécois
Block, Isaac
Blondeleau, Robert
Bloodworth, E.L.T.
Board of Directors of the Edmonton Northwest Progressive Conservative Board of Trade of Metropolitan Toronto
Bobee, Jay
Boddy, Dale
Boehm, R. WM.
Bogdanovic, Zarko
Boisvert, Michel A.
Boisvert, R.F.
Boivin, Georges
Boivin, Sonia
Boldrini, Dr P.
Bolton, Ben
Bongelli, Steve
Bonnett, Diane
Booiman, S.H.
Borbely, A.G.
Borle, Hector
Bosch, Arnold
Bosecker, D.F.
Boser, Walter
Bosveld, B.J.
Bouchard, Roch
Bouchette, Jane & Murray
Boudria, Don (M.P.)
Boudrot, Jason D.L.
Boulter, Joe
Bourget, Gabriel
Bowers, Rachel
Bowes, Mark A.
Bowker, Marjorie
Bowley, R.E.
Boxen, Gloria
Boyarzin, Greg
Boyer, Jean-Guy
Boyle, Nuala M.
Braaten, Larry
Bradford, Henry M.
Bradshaw, David
Bradshaw, Valerie
Brandell, D.L.
Brandl, A.R.
Brandon Women's Study Group
Braukmann, Ralf B.
Bray, Arthur
Brazeau, Maurice
Breakwell, Laurence K.
Brewin, John (M.P.)
Brill, Rudy
Brillinger, R. H.
Brind, Joyce R.
Bripon, A.
Brisco, Howard C.
British Columbia Chamber of Commerce
British Columbia Public Interest Advocacy Centre
Brix-Kugler, Paul
Brock, Herb E.
Brock, Kathy L.
Brode, Patrick
Brooker, Michael
Brooks, Lloyd
Brooks, Lorne K. & Georgina
Broughton, R.W.
Brown, A.E.
Brown, Eileen
Brown, Garfield
Brown, Glenn R.
Brown, Ian
Brown, Michael J.
Brown, Philip

Brown, Walter & Dorothy
Brownhill, Diane
Browning, Dale A.
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Canada Life
Canada Trust
Canadian Art Museums
Canadian Association of Broadcasters
Canadian Association of University Teachers
Canadian Association of Visible Minorities
Canadian Bar Association
Canadian Cancer Society
Canadian Catholic School Trustees Association
Canadian Chamber of Commerce
Canadian Citizenship Federation
Canadian Co-operative Association
Canadian Coalition for the Rights of Children
Canadian Committee for a Triple E Senate
Canadian Conference of the Arts
Canadian Construction Association
Canadian Council of Churches
Canadian Council on Social Development
Canadian Criminal Justice
Canadian Day Care Advocacy Association
Canadian Environmental Law Association
Canadian Ethnocultural Council
Canadian Federation of Agriculture
Canadian Federation of Biological Societies
Canadian Federation of Students

Canadian Film & Television Production Association
Canadian Friends Service Committee
Canadian Gas Association
Canadian Home Builders' Association
Canadian Housing and Renewal Association
Canadian Human Rights Commission
Canadian Insolvency Association
Canadian Institute of Traffic and Transportation
Canadian Jewish Congress
Canadian Labour Congress
Canadian Labour Force Development Board
Canadian Manufacturers Association
Canadian Maritime Law Association
Canadian Museums Association
Canadian Parents for French
Canadian Parents for French, Newfoundland and Labrador
Canadian Parks and Wilderness Society
Canadian Parks/Recreation Association
Canadian Pensioners Concerned
Canadian Petroleum Association
Canadian Polish Congress
Canadian Pork Council
Canadian Quebecers for a United and Prosperous anada
Canadian Real Estate Association
Canadian School Boards Association
Canadian Teacher's Federation
Canadian Training and Development Group Inc.
Canadian Union of Public Employees
Canadians for Constitutional Money
Canadians for Equality of Rights Under the Constitution
Canadore College
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Committee of Citizens with Disabilities
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Commonwealth Historic Resource Management Limited
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Compu-Clone Computer Solutions Inc.
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Fédération culturelle canadienne-française
Fédération des communautés francophones et acadiennes
Fédération des femmes canadiennes-françaises de l'Ontario
Fédération des Franco-Colombiens
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North Shore Arts Commission
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Northern Alberta Heritage Language Association
Northern Alberta Institute of Technology
Northwest Territories Federation of Labour
Northwest Territories Status of Women Council
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Russell, C.S.
Russell, Doug
Russell, I.
Russell, Mervyn
Rutherford, Fred J.
Rutledge, Fred
Ruygrok, Gerald W.
Ryder, Bruce
Sadeski, Thomas A.
Saffery, Peter
Sager, Bruce
Sally Franco Real Estate Inc.
Salopek, M.
Salvation Army
Salvatore, Don
Sampson, Lynne
Sampson, Rob
Samuel, David J.
Sanders, E.S.
Sanders, Gordon
Sanderson, Dorothy
Sara, Harkirpal Singh
Sarazen, Phil
Sarnia/Lambton Constituent Assembly Committee
Saskatchewan Arts Alliance
Saskatchewan Arts Board
Saskatchewan Association for Community Living
Saskatchewan Council of Cultural Organizations
Saskatchewan Human Rights Commission
Saskatchewan Organization for Heritage Languages
Saskatchewan Wheat Pool
Saucier, Marc-André
Sauer, Nelda
Saunders, A.
Saunders, Gladys E.
Saunders, John M.
Sauriol, André
Sauvé, Robert
Savage, Flo
Saville, Frances
Sawyer, Elizabeth
Sayeau, Mary L.
Sayers, Russell
Scarcella, G.
Schaan, Barbara J.
Schaen, Andrew
Schagen, Lorraine
Scharf, Earl
Scharff, Alan F.
Scheininger, Stephanie
Schell, Florence

Schermerhorn, H.R.
Schioler, John
Schlaht, Troy
Schmalz, Donald J.
Schmidt, D.
Schmidt, Eldon
Schmuland, Allan
Scholz, Peter Samuel Sandler
Schoub, Doreen
Schueler, Sherry
Schultohen, Jane
Schultz, Juergen P.
Schultz, Mathew
Schumacher, E.S.
Science Council of Canada
Scott, Arnold
Scott, Cecil J.
Scott, Craig
Scott, Dawn
Scott, Douglas G.
Scott, Evelyn
Scott, H.
Scott, H.A.D.
Scott, J.W.
Scott, K.H.
Scott, Len
Scott, Norman Patrick
Scott, Patrick F.
Scruton, R.E.
Seafood Producers Association of Nova Scotia
Sealey, Gary
Sebastyan, G.Y. (Stephen)
Seedhouse, T.G.
Seeley, Leroy E.
Selinger, Frank H.
Seller, David M.
Seminiuk, Glen
Sereda, Peter John
Serr, J.
Seto, David
Seventh-Day Adventist Church in Canada
Seward, L.B.
Seymour, Ian R.
Seymour, M.
Shand, Caje
Shapero, Gerald D.
Shapiro Cohen Andrews Finlayson
Sharpe, Frank
Shatner, Conrad
Shaw, Beverly
Shaw, George
Shaw, Helen
Shaw Realty Inc.
Shea, Jacqueline
Shee, John
Shelley, Richard
Shelswell, Craig
Sheng, Robert
Shepherd, Rodney
Shepherd, Sherry
Shibley, Brian
Shill, N.R.
Shirkey, Ray
Shirley, J.L.
Shirley, R.
Shivas, John
Shopland, Harold J.
Shore, Martin
Shortreed, R.
Shufflebotham, D.L.
Shugarman, David
Sibley, George
Side, Sam
Siewert, Dan A.
Sigsworth, John W.
Sigurdson, Fred H.
Silvano, Maturi
Silver, Earl
Sim, Susan
SIM Canada
Simard, Jacques L.
Simard P.
Simcoe North Progressive Conservative Association
Simek, Frank
Simeon, Richard
Siminoski, James E.
Simkin, Kenneth H.R.
Simmons, Douglas
Simon Fraser University Faculty Association

Simpkins, Alex
Simpson, J.
Sinclair, Don
Sinclair, Verna J.
Sinclair, W.L.
Singerling, Dirk A.
Sivaramalingam, Siva
Slater, David W.
Sloane, W.
Slobodzian, S.
Sloman, Robert
Slote, Murray L.
Small, George W.
Smart, R. Philip
Smith, Agnes
Smith, Diane
Smith, Donald E.
Smith, Doris M.
Smith, Edgar A.
Smith, George Wm.
Smith, Gordon G.
Smith, H.B.
Smith, Harold
Smith, J.S.H.
Smith, Jane
Smith, Jennifer
Smith, John E.
Smith, Marjorie L.
Smith, Michael
Smith, Norman V.
Smith, Peter R.
Smith, R. Guy C.
Smith, Rhea
Smith, Ron
Smith, Sheila J.
Smith, William E.
Smoke, Arthur L.
Snarr, W.B.
Sneddon, Jim
Snewchuk, Ivan
Snihur, H.A.
Snihur, John D.
Snow, Kathleen, M.
Snow, Wanda
Snyder, John
Social Justice Commission Archdioces of Edmonton
Social Planning Council of Ottawa-Carleton
Société des Acadiens et Acadiennes du Nouveau-Brunswick
Société franco-manitobaine
Société nationale des Québécois, secteur Val d'Or
Sokoloff, S.
Solonynko, Card
Sonderland, E.V.P.
Sorensen, Poul
Sotomayor, Cirilo J.
Southward, K.S.
Soward, Stuart E.
Speer, David
Speller, Bob (M.P.)
Spence, Tom
Spencer, Joan E.
Spencer, Miles E.
Spinney, Robert E.
Sport Federation
Sproule, Robert S.
Spurr, Carol A.
Squamish Nation
St-George, Michael
St-Jean, Jeanne
St-Louis, Stéphane
St. Marie, Joseph
Stabins, Andy
Stabler, Eric
Stackhouse, John
Stafford, Carl D.
Stagey, Gail
Stagg, Fred A.
Standing Committee on Communications and Culture
Standing Committee on Environment
Standing Committee on Human Rights and the Status of Disabled Persons
Stapleton, Jim
Stasiuk, Dan
States of Mind
Ste-Croix, Yvonne
Steel, David B.

Steele, Jim
Steele, Willa A.
Steen, R. May
Steeves, Daniel R.
Steeves, W.M.
Stein, Brian
Stephens, Ray
Stepien, Gary J.
Stevens, Alastair B.
Stevenson, Gordon
Stevenson, J.T.
Stewart, Christine (M.P.)
Stewart, Diane
Stewart, J.J.
Stewart, Keith G.
Stewart-Muldoon, Ann Kathleen
Stewart, Norma
Stewart, Robert C.
Stewart, Terry
Stewart, William L.
Stewart, Wm. M.
Stewert, Dan A.
Stigins, Lois Potter
Stirling, Norine
Stirling, Robert W.
Stirton, A.W.
Stock, George R.
Stocks, Frances & David
Stocks, Gilbert
Stockton, J.R.
Stokoe, Rodney
Stone, John B.
Stone, R.
Stone, Reta L.
Storell, P.
Storey, Lee
Storey, Monica
Storey, Stephanie
Strader, Brian
Straight, Peter A.
Strathcona Constitution Committee
Stratton, Robert T.
Streetob, Eric G.
Strike, Gary
Strok, W.
Strong, Elizabeth
Stuart, D.D.
Stuart, Robert M.
Stuart, Ross E.
Stupich, David D. (M.P.)
Sturhahn, Otto
Sturton, A.B.
Sudbury Multicultural/Folk Arts Association
Suggett, Dean
Sullivan, Harry M.
Summers, Keith M.
Sumter-Freitag, Addena
Sunatori, Go Simon
Sundance Housing Co-operative
Sundararaj, Subramaniam
Sunderland, E.V.P.
Surrey Chamber of Commerce
Surrey Museum, B.C.
Sutherland, Shawn
Suthren, Joseph W.
Sutor, Diane
Sutor, Scott
Sutor, Stan
Sutowiffe, H.F.
Sutton District High School
Svensson, Ulf
Swarbrick, Glenn
Sweeney, Graham
Swenson, Orville
Swift Current National Exhibition Centre
Switzer, Bruce
Switzer, Gary
Sword, Karen
Synod of Alberta and the Territories,
Evangelical Lutheran Church in Canada
Szekat, Linda & Egon
Szpiro, Daniel A.
Taddeo, Nelson S.
Tait, Cliff
Tapley, L.E.
Tarkington, Dorothy
Task Force on Canadian Federalism
Taylor, Cynthia
Taylor, Gladys
Taylor, Gord J.R.

Taylor, J.M.
Taylor, James W.
Taylor, John Ross
Taylor, McCaffrey, Chapman and Sigurdson
Taylor, Robert B.
Taylor, Ron
Team Zebre
Ted Regan Productions
Teggart, John H.
Telfer, David G.
Telfser, Henry
Terrell, David S.
Territorial Committee
Thachuk, Rick
Tham, Angeline
Thériault, Fernando
Thérien, Roger
Thiesenhausen, Olive
Thiessen, Ellen
Thiessen, Irmgard
Thiessen, Raphael
Thomas, Barbara
Thomas, Bev
Thomas, David
Thomas, J.R.
Thomas, Michael Sr.
Thompkins, R.W.
Thompson, Kenneth S.
Thompson, Melvin F.
Thompson, Michael J.
Thompson, Patrick R.
Thompson, Philip A.
Thomson, J.M.
Thomson, James John
Thomson, William
Thorn, Sybil
Thornley, Barbara
Thornton, E & M
Thors, John
Thunder Bay Health Coalition
Thurley, Michael
Thye, Chan Kwok
Tiel, Hans
Tigg, Raymond J.
Tighe, Jeffrey W.
Tilston, Luck
Timberg, Marion
Timmermans, John
Timmins, Brian L.
Timmins Chamber of Commerce
Titley, Daniel
Tkatch, John Willard
Tobin, Eric
Tolley, D.W.
Toporoski, Richard M.
Toronto Plastics Limited
Toth, Frank & Marion
Tourigny, Bruno
Towers, R.M.
Town of Neepawa
Townshippers' Association
Trabold, Karl J.
Trafford, John J.
Tran, Ann
Travell, R.
Travers, E.G.
Tremblay, Arthur (Senator)
Tremblay, Denis
Tremblay, Renelle
Tretise, E.J.
Trevitt, Dr. Frank E.
Trotter, Sheila
Truijen, Eric & Lorrie
Turcotte, Jim & Dorothy
Turner, David J.
Turner, Garth, M.P.
Turner-Gyorgy, Robyn
Turner, John
Turner, John C.
Turner, John M.P.
Turner, M.
Turpel, Mary Ellen E.
Tushaus, Jeannie
21st Century Canada Committee
Twigge, David
Tyas, Philip Eldon
Tylucki, Ted
Umbach, Ronald H.
Union of Manitoba Municipalities
Union of Nova Scotia Indians

United Church of Canada
United Nurses of Alberta
Unity
Unity Group of Kingsville
University of Alberta
University of Alberta Students' Union
University of B.C.
University of Saskatchewan
University of Toronto
University of Western Ontario
Unrau, Henry B.
Upchan, Marie (Trudy)
Uridge, Michael K.
Vadnais, Yvan
Valade, George
Valcin, Yvon
Valentine, Harry C.
Van De Kamer, Paul
Van De Walle, Walter (M.P.)
Van Der Staay, H.
Van Heerden, Pieter
Van Orden, Maynard
Vanclief, Lyle
Vancouver Foundation
Vancouver Port Corporation
Vancouver Symphony Orchestra
Vanden Brink, Henry and Mary
Vanderhorst, Geo.
Vandor, Tom
Vandurme, Ray
Vankoughnet, Bill (M.P.)
Varga, Chev. Geza
Varin, Pierre
Venables, Nev L.
Verdegem, Medard L.
Verner, Robert
Vick, Danny
Viens, Gary
Vinay, Jean-Paul
Vincent, Jean Robert
Virage - Famille - Santé - Loisirs
Vogt, Harry
Von Boetticher, Pete
Vooro, Matt
Voss, Gunter
Wade, J.K.
Wade, John C.L.
Wagner, Ken
Waigh, Roy
Wakefield, Maureen and Robin
Walcier, Y.
Walde, C.M.
Walford, J.N.
Walke, Philip H.
Walker, Eileen
Walker, Kathleen
Walker, R. Garth
Walla, J.
Wallace, Elisabeth
Wallace, G.M.
Wallace, Philip R.
Wallie, William
Wallis, Ian D.
Walmesley, R.
Walsh, Anthony Michael
Walsh, Brian
Walsh, F.R.
Walsh, John Kenneth
Walton, Kathleen
Wanigaratne, Susiri C.
Wankel, W.J.
Ward, Alban
Ward, B.
Ward, Christine
Ward, Ronald
Wardrop, Brenda
Ware, Dennis W.
Warner, Mrs.
Warren, Florence A.C.
Wasson, Dean
Wasteneys, Geoffrey
Waterland, Thomas M.
Watkins, Peter B.
Watson, Albert
Watson, Flora A.
Watson, Margaret & John
Watson, Muriel
Watson, Robert Kelley
Watson, William S.
Watson, Winnifred

Watton, Daphne
Watts, Christopher
Watts, Fred
Watts, K.H.
Watts, Marjorie
Wayne, Donna
Weadon, Bryn M.
Weaver, G.E.
Weaver, Norton & Lillian
Webb, M.F.
Webb, Peter
Webber, Peter
Webster, Christopher
Webster, George
Wedgerfield, Heide
Weinberger, Alisa
Weinrib, Lorraine
Weir, Arthur
Weiss, George R.
Welfare, David
Weller, Norman S.
Wells, Grace M.
Wells, Phillip H.
Wendorf, Ruth
Werezak, Dave
Werner, Colin
West Coast Environmental Law Association
West, John M.
West, S.G.
Westall, Alma
Westerbert, Arnold R.
Western Coalition for Equality Rights
Westervelt, Myrle
Westman Coalition for Equality Rights
Weyrich, F. Jr.
Wheeler, John M.
Whelan, Ben
Whelan, Susan
Wherry, Lillian
Whinoup, Greg
Whistler, Barbara K.
Whitaker, Ian
Whitbourn, Fred
White, Agnes
White, Roger R.
White, Sean
Whitehead, Lois
Whyte, John D.
Wiebe, Armin
Wiedenfeld, Liselotte
Wierzchowski, Mina
Wigle, Robert M.
Wilbee, S.
Wild, Shelley
Wildlife Habitat Canada
Wildsmith, Bruce H.
Wilkins, D.
Wilkins, J.
Willard, Dorothy J.
Willcock, Elizabeth
William, Byene
Williams, Brock
Williams, Bryan
Williams, C.D.
Williams, Clifford J.
Williams, Colin J.
Williams, G.
Williams, Marc
Williams, Marge
Williams, R.D.
Williams, Sue P.
Willits, Edith M.
Willits, Gerald G.
Wilson, Connie
Wilson, David N.
Wilson, Douglas G.
Wilson, E.C. Grant
Wilson, Geoff (M.P.)
Wilson, Gordon
Wilson, J.A.
Wilson, Murray
Wilson, Neil
Wilson, S.E.
Wilson, W.W.
Wilstead, Nadine
Windsor & District Chamber of Commerce
Windsor-Essex Skills Training Advisory Committee
Windsor Homeless Coalition
Windsor Islamic Association

Winkworth, A.
Winnipeg Chamber of Commerce
Winter, Ann
Winter, Paul
Winterbon, Bruce
Wipprecht, John
Wise, Leonard
Wittenberg, Gerritolina G.
Wodehouse, Herbert
Woehrling, José
Wohl, Jon
Wolff, Clark
Wolff, Earl
Wolff, Kathryn
Wolff Von Wulfing, W.J.
Women Alive
Women on Wings
Wood, Charmaine
Wood, Gary
Woodard, A.T.
Woods, B.
Woods, Bradley D.
Woods, Robert Matthew
Woolverton, Bill
World Federalists of Canada
Wotta, Joe
Wright, Bruce F.
Wright, Eric N.
Wright, Moiya
Wright, Ronn
Wrightman, Audrey
Writers Union of Canada
WRS Associates
Wurm, Hans
Wyatt, A.R.C. and Muriel
Wylie, H.
Wyss, Jennifer
Yakimov, Andrei
Yanko, Paula
Yaraskavitch, James
Yaremchuk, Ken
Yates, James
Yates, Ruth E.
Yazbeck, James T.
Yeo, Harvey M.
Yorick, V. Jeanne
York University
Youck, V. Jeanne
Young, Aurele
Young, Dennis
Young, Douglas
Young, John B.
Young, K.
Young Liberals of Canada
Young, Murray
Young, R.H.
Yue, Chi Lap
Yukon Human Rights Commission
Yukon Independent Alliance
Yukon Party
Yukon Status of Women Council
Zarand, Noreen
Zarubiah, Peter
Zuercher, Werner
Zuger, E.
Zyri, Adam

A copy of the relevant Minutes of Proceedings and Evidence of the Special Joint Committee on a Renewed Canada *(Issues Nos. 1 to 65 of the Third Session of the Thirty-Fourth Parliament and Issue No. 66, which includes this Report)* is tabled.

Respectfully submitted,

The Joint Chairmen,

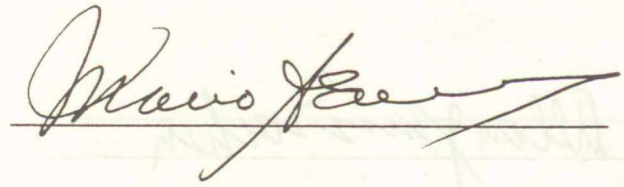
Gérald A. Beaudoin

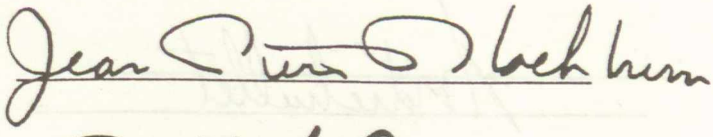
SENATOR GÉRALD BEAUDOIN

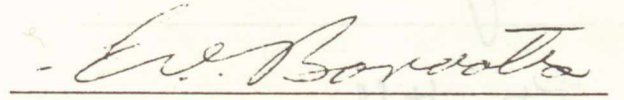
Dorothy Dobbie

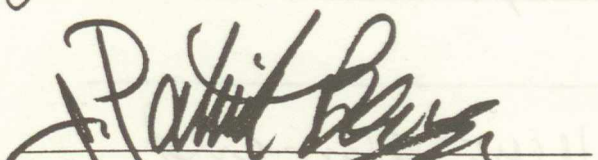
DOROTHY DOBBIE, M.P.

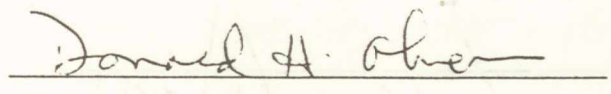
FOR/POUR

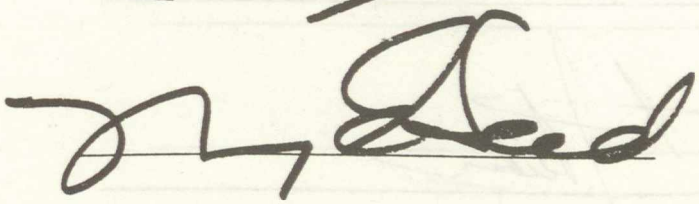


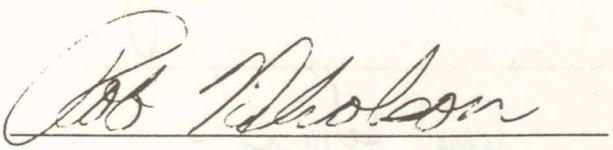


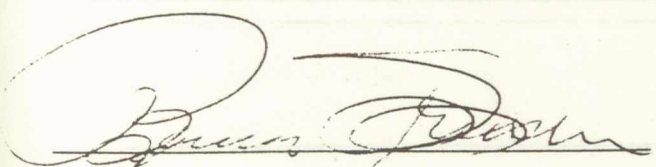


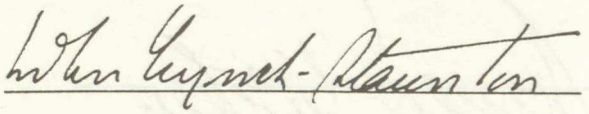


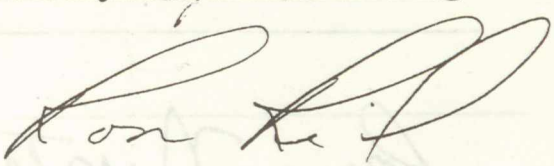


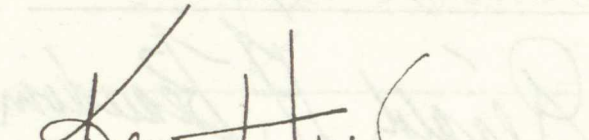


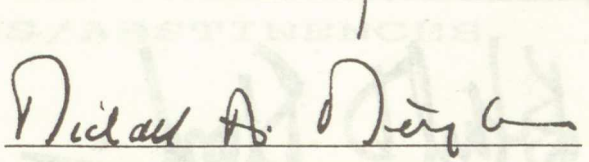


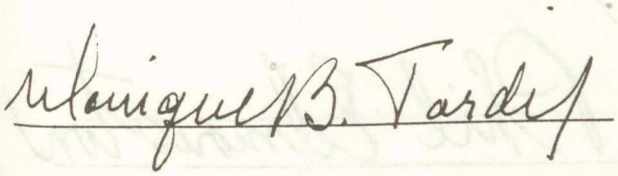


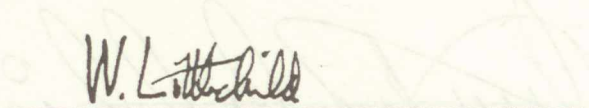


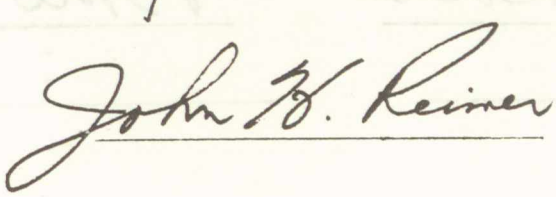


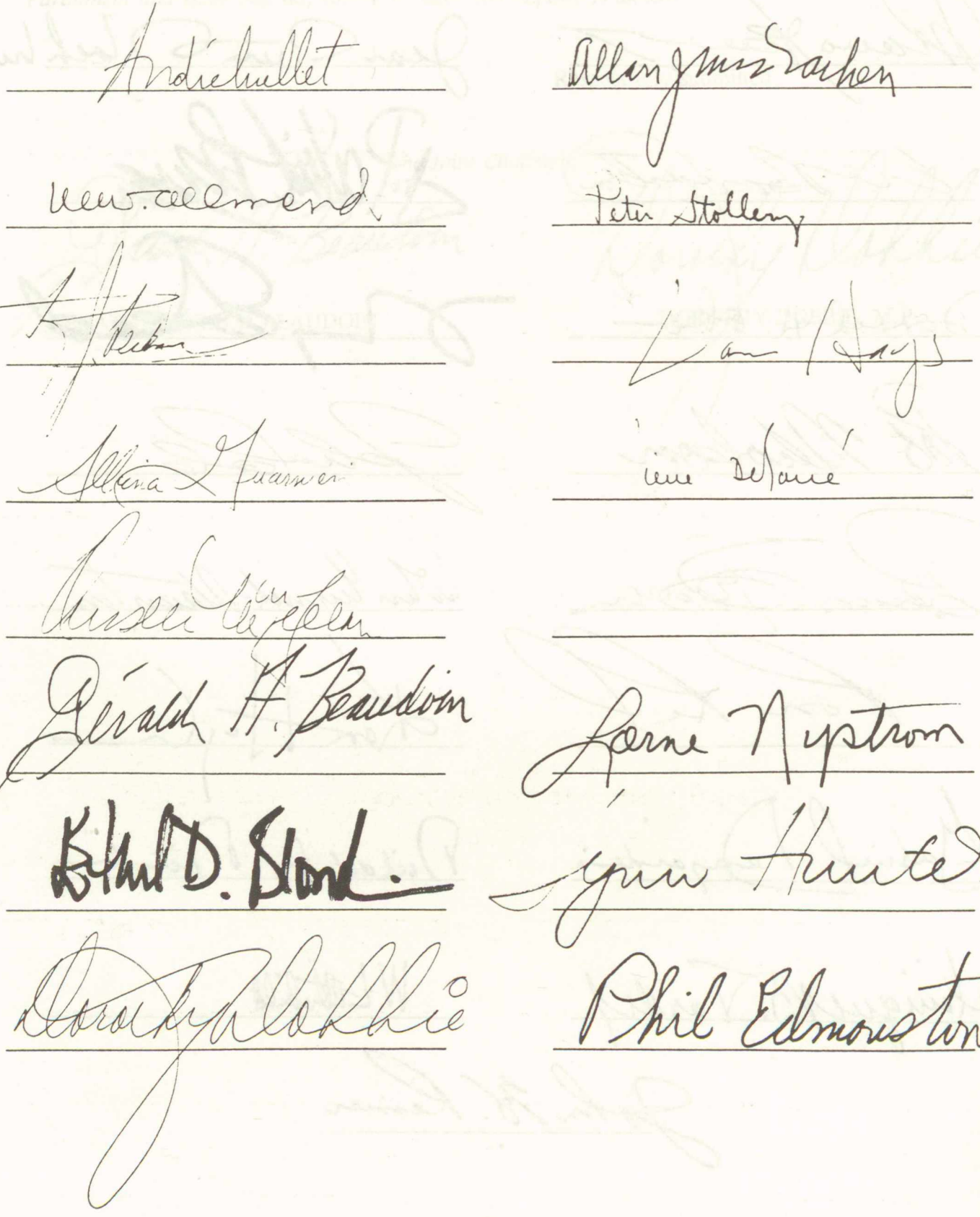












AGAINST/CONTRE

ABSTENTATIONS/ABSTINENCES

MINUTES OF PROCEEDINGS

THURSDAY, FEBRUARY 27, 1992
(71)

[Text]

The Special Joint Committee on a Renewed Canada met *in camera* at 8:20 o'clock p.m. this day, in Room 200 of the West Block, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Dorothy Dobbie, presiding.

Members of the Committee present:

Representing the Senate: The Honourable Senators E.W. Barootes, Gérald Beaudoin, Mario Beaulieu, Pierre De Bané, Daniel Hays, John Lynch-Staunton, Allan J. MacEachen, Michael Meighen, Donald Oliver and Peter Stollery.

Representing the House of Commons: Jean-Pierre Blackburn, Ethel Blondin, Gabriel Desjardins, Dorothy Dobbie, Ronald Duhamel, Benno Friesen, Albina Guarnieri, Ken Hughes, Lynn Hunter, Wilton Littlechild, Russell MacLellan, Rob Nicholson, Lorne Nystrom, André Ouellet, Ross Reid, John Reimer, Monique B. Tardif and Ian Waddell.

Other members present: Phillip Edmonston, Howard McCurdy and Nelson Riis.

In attendance: David Broadbent, Executive Director and Roger Tassé, Constitutional Adviser.

Pursuant to its Orders of Reference dated Wednesday, June 19, 1991 and Friday, June 21, 1991, the Committee resumed its study of the Government's proposals for a Renewed Canada *(see Minutes of Proceedings, Wednesday, September 25, 1991, Issue No. 1).*

The Committee proceeded to consider its draft Report.

At 8:32 o'clock p.m., the Committee adjourned to the call of the Chair.

FRIDAY, FEBRUARY 28, 1992
(72)

The Special Joint Committee on a Renewed Canada met *in camera* at 10:30 o'clock a.m. this day, in Room 200 of the West Block, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Dorothy Dobbie, presiding.

Members of the Committee present:

Representing the Senate: The Honourable Senators Gérald Beaudoin, Mario Beaulieu, John Lynch-Staunton, Michael Meighen, Donald Oliver and Nancy Teed.

Representing the House of Commons: Jean-Pierre Blackburn, Patrick Boyer, John Cole, Gabriel Desjardins, Dorothy Dobbie, Phillip Edmonston, Albina Guarnieri, Ken Hughes, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet, Ross Reid, John Reimer and Monique B. Tardif.

Other members present: Iain Angus, Howard McCurdy, Marcel Prud'homme and Ian Waddell.

In attendance: David Broadbent, Executive Director and Roger Tassé, Constitutional Adviser.

Pursuant to its Orders of Reference dated Wednesday, June 19, 1991 and Friday, June 21, 1991, the Committee resumed its study of the Government's proposals for a Renewed Canada *(see Minutes of Proceedings, Wednesday, September 25, 1991, Issue No. 1).*

The Committee resumed consideration of its draft Report.

On motion of Jean-Pierre Blackburn (seconded by André Ouellet and Lorne Nystrom), it was agreed, — That the draft Report be adopted as the Committee's Report to Parliament and that the Committee staff and party legal advisers be authorized to correct any technical, typographical, stylistic or translation errors contained in the Report and that the Report with any changes be deposited with the Clerks of both Houses before midnight tonight.

On motion of Monique B. Tardif, it was agreed, — That the Committee authorize the printing of 10,000 copies of Issue No. 66 which includes the Report of the Committee.

On motion of Ken Hughes, it was agreed, — That the Committee authorise the production of audio-cassette versions of its Report in both official languages.

On motion of Albina Guarnieri it was agreed, — That the Principal Clerk of Committees of the House of Commons be authorized to reprint copies of the Committee's Report.

At 11:05 o'clock p.m., the Committee adjourned to the call of the Chair.

Richard Rumas
Charles Robert

Joint Clerks of the Committee

ACKNOWLEDGEMENTS

The members of the Special Joint Committee gratefully acknowledge the dedication and hard work of the staff in the preparation and production of this report, and in the work of the Committee.

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