



**THE PROCESS
FOR AMENDING THE
CONSTITUTION OF CANADA**

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

**Joint Chairmen:
Hon. Gérard Beaudoin, Senator
Jim Edwards, M.P.**

June 20, 1991

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SENATE
HOUSE OF COMMONS

SENAT
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Issue No. 1
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THE PROCESS FOR AMENDING THE CONSTITUTION OF CANADA

Joint Chairmen:
Hon. Gerald
Jim Edwards

Co-présidents

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

*Procès-verbaux et témoignages du Comité spécial de
Séniat et de la Chambre*

Process for amending
the Constitution of
Canada

Processus de
modification de
la Constitution
Canada



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

RESPECTING:

A study of the process for amending the Constitution of
Canada

Une étude du processus de modification de la
Constitution du Canada

INCLUDING:

The Report to the Senate and to the House of Commons

Y COMPREND:

Le Rapport au Sénat et à la Chambre des communes

Third Session of the Forty-fourth
Parliament of Canada
1991

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Jim Edwards, député

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1991

Troisième session de la trente-quatrième législature,
1991

SPECIAL JOINT COMMITTEE OF THE SENATE AND
OF THE HOUSE OF COMMONS ON THE PROCESS
FOR AMENDING THE CONSTITUTION OF CANADA

Joint Chairmen:

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Jim Edwards, M.P.

Representing the Senate:

The Honourable Senators

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Gérald Comeau
Philippe Gigantès
Michael Kirby
Nathan Nurgitz—(5)

Representing the House of Commons:

Members

Ken Atkinson
Gabrielle Bertrand
Jean-Pierre Blackburn
Coline Campbell
Ronald Duhamel
Jim Edwards
Lynn Hunter
Wilton Littlechild
Rob Nicholson
Lorne Nystrom
André Ouellet
Ross Reid—(12)

(Quorum 9)

Serge Pelletier

Eugene Morawski

Joint Clerks of the Committee

Other Senators who served on the Committee:

Willie Adams
E.W. Barootes
Eric Berntson
Roch Bolduc
Pat Carney
Consiglio Di Nino
Jerahmiel S. Grafstein
Richard Hatfield
Daniel Hays
Janis Johnson
James Kelleher
Noel Kinsella
Paul Lucier
Finlay MacDonald
Michael Arthur Meighen
Gildas Molgat

COMITÉ MIXTE SPÉCIAL DU SÉNAT ET DE LA
CHAMBRE DES COMMUNES SUR LE PROCESSUS DE
MODIFICATION DE LA CONSTITUTION DU CANADA

Coprésidents :

L'hon. Gérard Beaudoin, sénateur
Jim Edwards, député

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Les honorables sénateurs

Gérald Beaudoin
Gérald Comeau
Philippe Gigantès
Michael Kirby
Nathan Nurgitz—(5)

Représentant la Chambre des communes :

Les députés

Ken Atkinson
Gabrielle Bertrand
Jean-Pierre Blackburn
Coline Campbell
Ronald Duhamel
Jim Edwards
Lynn Hunter
Wilton Littlechild
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André Ouellet
Ross Reid—(12)

(Quorum 9)

Les cogreffiers du Comité

Serge Pelletier

Eugene Morawski

Autres sénateurs qui ont participé aux travaux du Comité :

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John Sylvain
Jean-Maurice Simard
Norbert Thériault—(22)

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Other Members of Parliament who served on the Committee:

Warren Allmand
Eugène Bellemare
Maurizio Bevilacqua
Bud Bird
Bill Blaikie
Ethel Blondin
John Brewin
Harry Brightwell
Pauline Browes
Catherine Callbeck
Gabriel Desjardins
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Scott Thorkelson
Pierrette Venne
Ian Waddell—(30)

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ORDERS OF REFERENCE

Extract from the Votes & Proceedings of the House of Commons of Monday, December 17, 1990:

— That a Special Joint Committee of the Senate and of the House of Commons be appointed to consult broadly with Canadians and inquire into and report upon the process for amending the Constitution of Canada, including, where appropriate, proposals for amending one or more of the amending formulae, with particular reference to:

- (i) the role of the Canadian public in the process;
- (ii) the effectiveness of the existing process and formulae for securing constitutional amendments; and
- (iii) alternatives to the current process and formulae, including those set out in the discussion paper prepared by the Government of Canada entitled "Amending the Constitution of Canada";

That twelve Members of the House of Commons and five 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 report of the Striking Committee no later than three sitting days after the adoption of this motion, which report shall be deemed concurred in upon presentation;

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 their 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 a sub-committee, have power to travel, and hold public hearings, within Canada;

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

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

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

That the Committee submit its report not later than July 1, 1991, 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 notification thereof, 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 nine Members, whenever a vote, resolution or other decision is taken so long as both Houses are represented, and the Joint Chairmen are authorized to hold meetings, to receive evidence and authorize the printing thereof, when six Members are present, so long as both Houses are represented; and

That a Message be sent to the Senate requesting that House to unite with this House for the above purpose, and to select, if the Senate deems it to be advisable, five Members to act on the proposed Special Joint Committee.

And the question being put on the motion, it was agreed to on division:

ATTEST

ROBERT MARLEAU

Clerk of the House of Commons

Extract from the Minutes & Proceedings of the Senate of Wednesday, January 30, 1991:

— That the Senate do unite with the House of Commons in the appointment of a Special Joint Committee to consult broadly with Canadians and inquire into and report upon the process for amending the Constitution of Canada, including, where appropriate, proposals for amending one or more of the amending formulae, with particular reference to:

- (i) the role of the Canadian public in the process;
- (ii) the effectiveness of the existing process and formulae for securing constitutional amendments; and
- (iii) alternatives to the current process and formulae, including those set out in the discussion paper prepared by the Government of Canada entitled "Amending the Constitution of Canada";

That twelve Members of the House of Commons and five Members of the Senate be the Members of the Special Joint Committee, such Members on the part of the Senate to be designated no later than three sitting days after the adoption of this motion;

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 their powers except the power to report directly to the Senate;

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

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

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

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

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

That the Committee submit its report not later than July 1, 1991, provided that, if the Senate is not then 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 for Members of the House of Commons be effective immediately after notification thereof, 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 nine Members, whenever a vote, resolution or other decision is taken so long as both Houses are represented, and the Joint Chairmen are authorized to hold meetings, to receive evidence and authorize the printing thereof, when six Members are present, so long as both Houses are represented; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Extract from the Minutes & Proceedings of the Senate of Tuesday, May 14, 1991:

— That a Special Joint Committee of the Senate and of the House of Commons be appointed to consult broadly with Canadians and inquire into and report upon the process for amending the Constitution of Canada, including, where appropriate, proposals for amending one or more of the amending formulae, with particular reference to:

- (i) the role of the Canadian public in the process;
- (ii) the effectiveness of the existing process and formulae for securing constitutional amendments; and
- (iii) alternatives to the current process and formulae, including those set out in the discussion paper prepared by the Government of Canada entitled "Amending the Constitution of Canada";

That five Members of the Senate and twelve Members of the House of Commons be the Members of the Special Joint Committee;

That, notwithstanding Rule 66, the Honourable Senators Beaudoin, Comeau, Gigantès, Kirby and Nurgitz act on behalf of the Senate as Members of the Committee;

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 their powers except the power to report directly to the Senate;

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

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

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

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

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

That the papers and evidence received and taken on the subject during the Second Session of the Thirty-fourth Parliament be referred to the Committee;

That the Committee submit its report not later than July 1, 1991, provided that, if the Senate is not then sitting, the report will be deemed submitted on the day such report is deposited with the Clerk of the Senate and with the Clerk of the House of Commons;

That changes in membership of the Committee for Members of the House of Commons be effective immediately after notification thereof, 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 nine Members, whenever a vote, resolution or other decision is taken so long as both Houses are represented, and the Joint Chairmen are authorized to hold meetings, to receive evidence and authorize the printing thereof, when six Members are present, so long as both Houses are represented; and

That a Message be sent to the House of Commons requesting that House to unite with this House for the above purpose, and to select, if the House of Commons deems advisable, Members to act on the proposed Special Joint Committee.

ATTEST

GORDON BARNHART

Clerk of the Senate

Extract from the Votes & Proceedings of the House of Commons of Friday, May 17, 1991:

— That a message be sent to the Senate to acquaint their Honours with the fact that the House of Commons does unite with the Senate in the reconstitution of the Special Joint Committee on the Process for amending the Constitution of Canada that existed in the Second Session of the present Parliament with all the same powers and conditions contained in the Order of Reference dated December 17, 1990.

That the membership of the House of Commons on the Committee be the same membership as on the last day of the Second Session of the present Parliament.

That the evidence adduced by the Special Joint Committee on the Process for amending the Constitution of Canada in the Second Session of the present Parliament be deemed to have been referred to the Special Committee hereby appointed;

That the portion of the budget of the Special Joint Committee on the Process for amending the Constitution of Canada not expended during the Second Session of the present Parliament be deemed to constitute the entire budget of the Special Committee hereby appointed, unless a supplementary budget is approved by the Board of Internal Economy;

That all contracts entered into by the Special Joint Committee on the Process for amending the Constitution of Canada during the Second Session of the present Parliament be deemed contracts for the Special Committee hereby appointed and be deemed to be in force, unless the Special Committee hereby appointed orders otherwise;

That all motions and orders adopted by the Special Joint Committee on the Process for amending the Constitution of Canada during the Second Session of the present Parliament be deemed to have been adopted by the Special Joint Committee hereby appointed, unless it otherwise orders.

ATTEST

ROBERT MARLEAU

Clerk of the House of Commons

Extract from the Votes & Proceedings of the Senate of Wednesday, May 22, 1991:

— That all motions and orders adopted by the Special Joint Committee on the Process for amending the Constitution of Canada during the Second Session of the present Parliament be deemed to have been adopted by the Special Committee, unless it orders otherwise; and

That a message be sent to the House of Commons to acquaint that House accordingly.

ATTEST

GORDON BARNHART

Clerk of the Senate

ACKNOWLEDGEMENTS
MEMBERS OF THE JOINT CHAIRMEN



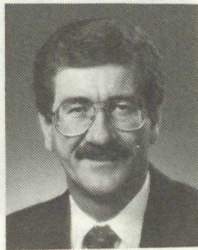
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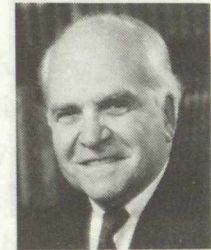
Jim Edwards, M.P.



MEMBERS OF THE COMMITTEE: Senators



Gérald Comeau



Philippe Gigantès



Michael Kirby



Nathan Nurgitz



MEMBERS OF THE COMMITTEE: Members of Parliament



Ken Atkinson



Gabrielle Bertrand



Jean-Pierre Blackburn



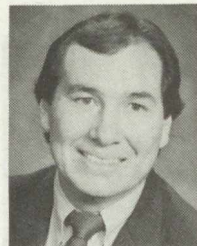
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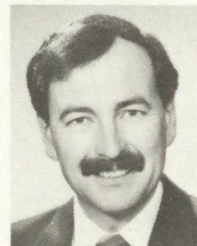
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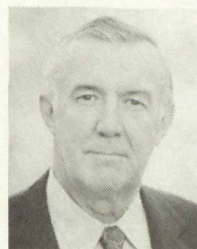


André Ouellet



Ross Reid

Have also participated in a special way:



Sen. Richard Hatfield



Pauline Browes, M.P.



Shirley Maheu, M.P.

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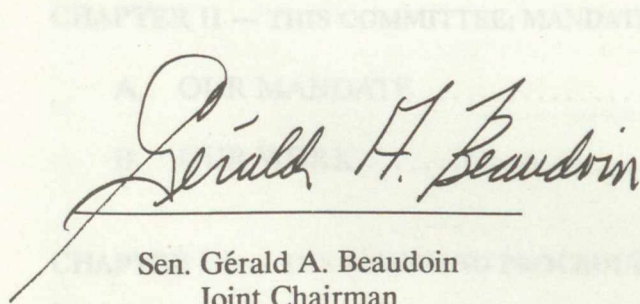
The Joint Chairmen

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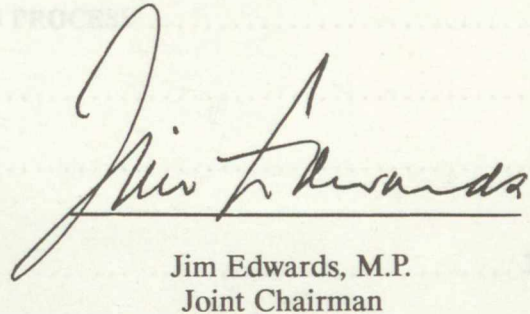
Our Committee had a life of 135 days. During its hundreds of hours of public hearings, and its long days of private deliberation and debate, it was free of partisanship. Each member approached the issues from his or her own set of values and perspective, and where there was disagreement, it was on questions of principle. All had the same fervently-held objective: to propose that which could preserve Canada, not just through its present crisis, but into another century.

Mid-way through our work, we suffered a serious loss. Senator Richard Hatfield, who had for almost two decades as Premier of New Brunswick played a key role in rebuilding Confederation, died on Friday, April 26, 1991. When first named to the Committee, he was full of enthusiasm for his new task. Even as he lost strength, he kept closely in touch with our work, and he told friends that his keenest regret was in not seeing it through to the end.

We profoundly appreciate the contribution made to this Report by the Joint Clerks of the Committee and their staff; by the Research Staff of the Library of Parliament; and by our interpreters, translators and all who laboured towards its successful completion.



Sen. Gérald A. Beaudoin
Joint Chairman



Jim Edwards, M.P.
Joint Chairman

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INTRODUCTION

Canada is clearly at the threshold of a period of major constitutional revision. Canadians thus face two fundamental questions. How can change best be achieved? What specific changes should now be sought?

This report is our contribution to the search for answers to the first of these questions.¹ It presents our findings and recommendations on the process through which the Constitution is amended. Attention is given both to the formal amending procedure, which sets out rules governing the ratification of amendments, and to the more informal phases of the process in which amendment proposals are developed and public involvement may occur.

We begin, in Chapter I, with an overview of the history of constitutional change in Canada. Following Chapter II, which describes the mandate of this Committee, we proceed in Chapter III with a discussion of the rules which now govern the amending of Canada's Constitution and which are contained in Part V of the *Constitution Act, 1982*. Chapter III is perhaps the most technical section of our report. It deals for the most part with changes that will require amending of the Constitution. The exceptions are our remarks on participation by aboriginal peoples and the territories in constitutional discussions. They are included in the chapter because they follow from analysis required in the text for other purposes.

Chapters IV to VI deal with phases of the constitutional change process that are not governed by the rules entrenched in Part V of the *Constitution Act, 1982*. The main purpose of these chapters is to review and compare various mechanisms which could enhance public involvement in the process of constitutional change, and make the process more responsive to public needs. In Chapter IV we examine the possible use of referenda, primarily in achieving approval of constitutional proposals. In Chapter V we turn to an earlier stage of the process, in which amendment proposals are developed, and look at the possible use of constituent assemblies. In Chapter VI we discuss public hearings by parliamentary committees, which could be used at various stages of the constitutional change process.

In Chapter VII, we review what we learned from a number of international experts on the constitutions of selected foreign countries. In Chapter VIII we list our recommendations.

The theme which unites all parts of this report is our belief that significant progress is possible. Canada has possessed the capacity to amend its own constitution only since 1982, and in our view has only begun to explore the full possibilities for constitutional renewal, both in process and in substance. Our findings have identified improvements to the process which, we believe, could have a significant impact on future attempts at constitutional change. The potential for meaningful progress exists.

¹ Questions pertaining to the division of powers and central institutions—the House of Commons, the Senate, and the Supreme Court—are not part of our mandate. Our recommendations therefore do not deal with these subjects.

Our optimism is not due, however, merely to the existence of possibilities. Our conversations with Canadians over the past few months have convinced us that the will to change exists. The range of constitutional dissatisfactions which surfaced during the Meech Lake process persists and, in general terms, now provides an agenda for constitutional renewal. Canadians share the desire for change.

In our view they also share the capacity to bring about constitutional renewal. While our discussions across the country have identified areas of sharp disagreement, they have also refreshed our awareness that Canadians are reasonable people, able and willing to work with one another to build consensus. Nowhere in our travels did we encounter the kind of blind dogmatism which closes the door to compromise and inevitably results in discord. We found, instead, reasonable people with strong convictions born of their immediate personal experience and with a commitment to fairness.

As Canadians achieve understanding of the differences in their personal experience, we believe that their shared political culture can provide a vital basis for consensus-building. We hope that this report contributes to the improvement of the process through which consensus, and constitutional renewal, can be achieved.

Today, as in 1864-1867, parliamentarians must show creative imagination.

CHAPTER I

The Constitutional Context

A. BACKGROUND

1. Canada acquired a federal Constitution in 1867. This document was the product of meetings held in Charlottetown (September 1864), Quebec City (October 1864), and London (December 1866). The writers were delegates from the Province of Canada (Upper Canada, now Ontario, and Lower Canada, now Quebec), Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. The 72 Quebec and 69 London Resolutions formed the basis of what became Canada's Constitution, the *British North America Act, 1867*. It was a British statute because at the time Canada was a British colony enjoying independence in internal matters only. With the patriation of the Constitution in 1982, the BNA Act was renamed the *Constitution Act, 1867*.
2. The Fathers of Confederation who attended the 1864 and 1866 conferences were all elected members of their provincial legislatures, delegated by their respective legislatures. Although the first conference was held in Charlottetown, Prince Edward Island did not enter Confederation until 1873¹, after Manitoba, which was created by federal statute in 1870, and British Columbia, which joined Canada in 1871.² Saskatchewan and Alberta became provinces in 1905 by the enactment of two federal statutes.³ Newfoundland and Labrador joined Canada in 1949, and a British statute gave the Canada-Newfoundland agreement force of constitutional law.
3. Canada in 1867 was a constitutional monarchy with a parliamentary system in the British mould. Nova Scotia had had a system of responsible government since 1846, and the Province of Canada since 1847. On July 1, 1867, Canada became a true federation, as the Preamble and several sections of the *Constitution Act, 1867* attest. Canadian courts would later acknowledge this federal character in numerous rulings.

¹ By Order in Council, June 26, 1873 (London).

² By Order in Council, May 16, 1871 (London).

³ Rupert's Land and the North-Western Territory were admitted on June 23, 1870 by Order in Council (London). Those British territories in North America that were not already part of Canada were annexed to Canada on July 31, 1880 by Order in Council (London).

4. Canada gradually became an independent country between 1919 and 1931, as the Supreme Court affirmed in 1967 in the *Offshore Mineral Rights* case.⁴ Canada retained the basic features of earlier years: constitutional monarchy, parliamentary system, responsible government, federal state. In 1982, a charter of rights was enshrined in the Constitution.

5. Despite its obvious merits, the Canadian Constitution of 1867 had one serious flaw: it contained no general amending formula. In general, when a constitutional change proved necessary, the federal Houses of Parliament addressed the Queen and the Parliament at Westminster to modify the *British North America Act, 1867*. More than 20 amendments⁵ were passed in this way between 1867 and 1982, when the Constitution was patriated.

6. Although the situation of 1867 was acceptable at the time, it became anachronistic once Canada's independence was recognized by the *Statute of Westminster* in 1931.

7. Starting in 1927, various Canadian governments set to work to find a general amending formula, and made a number of unsuccessful attempts before finally achieving that goal.⁶

8. In the Quebec referendum of May 20, 1980, Quebecers, by a 60 to 40 per cent margin, denied their government a mandate to negotiate national sovereignty and economic association with Canada. An important constitutional conference was then held in Ottawa in September 1980 concerning, in particular, the amending formula. The conference ended in failure.

9. In October 1980, the Government of Prime Minister Trudeau attempted to patriate the Constitution, but that effort was supported by only two provinces, Ontario and New Brunswick. Three others (Manitoba, Newfoundland and Labrador, and Quebec) challenged the initiative before their respective courts of appeal. The initiative was declared constitutional by the Manitoba and Quebec courts, but unconstitutional by that of Newfoundland and Labrador. The case went to the Supreme Court of Canada in April 1981. On September 28, 1981, the Supreme Court of Canada ruled that the federal Houses of Parliament could, in law, make a unilateral address to the Queen

⁴ *Re: Offshore Mineral Rights of British Columbia*, [1967] S.C.R. 792.

⁵ The following amendments were made between 1867 and 1982: (1) the *Rupert's Land Act, 1868*; (2) the *British North America Act, 1871*; (3) the *British North America Act, 1875*; (4) the *British North America Act, 1886*; (5) the *Statute Law Revision Act, 1893*; (6) the *Canadian Speaker (Appointment of Deputy) Act, 1895*; (7) the *British North America Act, 1907*; (8) the *British North America Act, 1915*; (9) the *British North America Act, 1916*; (10) the *Statute Law Revision Act, 1927*; (11) the *British North America Act, 1930*; (12) the *Statute of Westminster, 1931*; (13) the *British North America Act, 1940*; (14) the *British North America Act, 1946*; (15) the *British North America, 1946*; (16) the *British North America Act, 1949*; (17) the *British North America (No. 2) Act, 1949*; (18) the *Statute Law Revision Act, 1950*; (19) the *British North America Act, 1951*; (20) the *British North America Act, 1960*; (21) the *British North America Act, 1964*; (22) Order in Council Amendments (section 146 of the *British North America Act*); (23) *Constitution Act, 1982*.

⁶ A first attempt was made in 1927, following the Balfour Declaration of 1926 on the equality of the Dominions; a second in 1931, when the Statute of Westminster was passed; a third in 1935, when the House of Commons set up a legislative committee; a fourth in 1949, with Prime Minister Saint-Laurent's partial patriation contained in section 91.1 of the *Constitution Act, 1867*; a fifth in 1960-61, the Fulton formula; a sixth in 1964, the Fulton-Favreau formula; a seventh in 1968-71, the Victoria Charter with its four regional vetoes; an eighth in 1976, the three options proposed by Prime Minister Trudeau (1. patriation; 2. a new amending formula; 3. patriation, the amending formula, the status of the Supreme Court and the protection of fundamental and language rights); a ninth in 1979 that comprised 15 points, including the amending formula; a tenth in 1980 (with 12 points) and lastly an eleventh in November 1981, the present amending formula.

and Parliament at Westminster to patriate the Constitution and entrench a charter of rights, but that for this purpose a constitutional convention required “substantial support” by the provinces, something that was lacking in the circumstances.⁷

10. Prime Minister Trudeau called a conference of the 11 first ministers to secure that support. Nine of the 10 provinces agreed to the proposal on November 5, 1981. In the days and weeks that followed, the Senate and House of Commons passed a resolution on the Constitution of Canada and submitted a joint address to the Queen,⁸ and the British Parliament passed the *Canada Act*, which included the *Constitution Act, 1982*. That Act patriated the Canadian Constitution and entrenched within it an amending formula, a Charter of Rights, and several constitutional amendments including section 92A, which gave the provinces the right of indirect taxation in the area of natural resources. Quebec, which had sat at the bargaining table in Ottawa in November 1981, withheld its approval. The National Assembly of Québec endorsed this position, with the majority of provincial Liberals voting with the governing Parti Québécois.⁹

11. Quebec challenged the constitutionality of patriation before its own Court of Appeal and the Supreme Court of Canada, arguing that Quebec had to be one of the provinces providing the required “substantial support” for such a constitutional proposal. In December 1982, the Supreme Court of Canada ruled that there was no constitutional convention to that effect and that Quebec had no veto.¹⁰ Quebec was bound by the *Constitution Act, 1982*.

12. The Liberal Party came to power in Quebec following the provincial election in December 1985. At Mont Gabriel, in May 1986, Quebec laid on the bargaining table five conditions that would have to be met for it to rejoin the “constitutional family”.¹¹ At their annual meeting held in August 1986 at Edmonton, the Premiers agreed to limit the next constitutional round to addressing Quebec’s five conditions. On April 30, 1987 at Meech Lake, 11 first ministers signed the Meech Lake Accord. The Quebec National Assembly held public hearings a few days later, and the agreement was put in legal form and signed by the 11 first ministers in the Langevin Block in Ottawa on June 3, 1987. The Accord then had to be ratified by the 11 legislatures in order to comply with the amending procedure entrenched in sections 38 to 49 of the *Constitution Act, 1982*.

13. The House of Commons and eight provincial legislatures gave their consent. New Brunswick and Manitoba failed to do so, and Newfoundland and Labrador rescinded its consent on April 6, 1990. A final constitutional conference was then held in Ottawa from June 2 to 9, 1990. New Brunswick finally approved the Accord on June 15, 1990, but Manitoba and Newfoundland and Labrador failed to do so. The Accord was thus rendered null and void on June 23, 1990, three years after it was ratified by Quebec.

⁷ *Re: Resolution to Amend the Constitution*, [1981] S.C.R. 753.

⁸ The vote in the House of Commons, held December 2, 1981, was 246 to 24 in favour; the vote in the Senate, held December 8, 1981, was 59 to 23 in favour.

⁹ The vote was 111 to 9 at the National Assembly.

¹⁰ *Re: Objection to a Resolution to Amend the Constitution*, [1982] 2 S.C.R. 793.

¹¹ These conditions were: (1) recognition of Quebec as a distinct society; (2) a greater provincial role in immigration; (3) a provincial role in the appointment of the three civil law judges to the Supreme Court of Canada; (4) limitations on the federal spending power; and (5) a veto for Quebec on constitutional amendments.

14. Much could be written on the history of the patriation of Canada's Constitution. Quebec has been seeking a right of veto since discussions began in 1927. The issue has appeared on the agenda a good ten times. A number of formulas have been proposed.

- (a) The Fulton-Favreau formula requires resolutions of the Senate, the House of Commons, and the legislatures of two-thirds of the provinces, representing at least 50 per cent of the population, for all modifications except those matters requiring unanimity.
- (b) The Victoria formula requires resolutions of the Senate, the House of Commons, and the legislatures of at least two of the Atlantic provinces; all provinces having, or having ever had, at least 25% of the national population; and at least two of the Western provinces, representing at least 50 per cent of the population in that region.
- (c) The Pepin-Robarts formula requires resolutions of the House of Commons and the Council of the Federations (Upper House), ratified by a referendum with majorities in each of: (1) Atlantic provinces, (2) Quebec, (3) Ontario, and (4) the Western provinces and the territories.
- (d) The Toronto formula requires resolutions of the Senate, the House of Commons, and the legislatures of two-thirds of the provinces, representing at least 80 per cent of the population.
- (e) The Vancouver formula requires a resolution of the Senate, the House of Commons, and the legislatures of two-thirds of the provinces, representing at least 50 per cent of the population.

B. THE SITUATION AFTER THE FAILURE OF THE MEECH LAKE ACCORD

15. In late summer 1990, Quebec established the Bélanger-Campeau Commission. This expanded parliamentary committee¹² concluded:

The Commission recommends to the National Assembly the adoption, in the spring of 1991, of legislation establishing the process by which Quebec determines its political and constitutional future.¹³

¹² In addition to the 18 National Assembly members, commission members were: Michel Bélanger (co-chairman), Jean Campeau (co-chairman), André Ouellet (Liberal Party of Canada), Jean-Pierre Hogue (Progressive Conservative Party of Canada), Lucien Bouchard (Bloc Québécois), Marcel Beaudry (associate with the firm of Beaudry, Bertrand), Cheryl Campbell Steer (associate with the firm of Ernst and Young), Jean-Claude Beaumier (Chairman of the Union des municipalités du Québec), Claude Béland (President of the Confédération des Caisses populaires et d'économie Desjardins du Québec), Guy D'Anjou (President of the Fédération des commissions scolaires catholiques), Ghislain Dufour (President of the Conseil du patronat du Québec), Louis Laberge (President of the Fédération des travailleurs du Québec), Gérald Larose (President of the Confédération des syndicats nationaux), Roger Nicolet (President of the Union des municipalités régionales de comtés), Lorraine Pagé (President of the Centrale de l'enseignement du Québec), Charles-Albert Poissant (Chairman of the Board and Chief Executive Officer of Donahue Inc.), Jacques Proulx (President of the Union des producteurs agricoles) and Serge Turgeon (President of the Union des artistes).

¹³ Report of the Commission on the Political and Constitutional Future of Quebec, March 1991, p. 79.

The Commission proposed a model for this referendum legislation:

The legislation would contain three sections, that is, a preamble; a first part dealing with a referendum to be held on Quebec sovereignty; and a second part dealing with the offer of a new partnership of constitutional nature.

16. At the federal level, two initiatives were taken: the Citizens' Forum on Canada's Future (the Spicer Commission) was established in November 1990 and a Special Joint Committee of the Senate and the House of Commons on the Process for Amending the Constitution of Canada (this Committee) was created on January 30, 1991. As well, in the Throne Speech of May 13, 1991, the Government signalled its intention to establish a parliamentary committee to review its forthcoming proposals on the Constitution and to consult widely with Canadians.

C. EXECUTIVE FEDERALISM

17. It is appropriate, in an overview of constitutional development, to mention executive federalism. The 11 first ministers began meeting fairly regularly in the years following the Second World War. These meetings ultimately gave birth to "executive federalism".

18. This new "institution" or "tradition" grew out of the Senate's failure, in the opinion of some, to fulfill at all times its role as the house representing regional and provincial interests. The provincial premiers thus stepped in to fill the void. Executive federalism also stems in part from the absence of a constitutional amending formula. Each time a need for constitutional change emerged, the two levels of government had to meet in order to negotiate the amendment that would be passed on to Westminster for enactment.

19. Legislative power was at its height in the United States in 1787 and in Canada in 1867. In the twentieth century, executive power has prevailed. Hence the new dynamic within Canadian federalism. Executive negotiation has become the preferred approach for negotiating constitutional amendments.

20. The inter-provincial conferences instituted in 1887 and revived much later in 1960 have since become an annual event. They have helped to strengthen executive federalism.¹⁴

21. Federal-provincial constitutional conferences have become numerous in Canada as witness the Fulton-Favreau Conference of 1964; the 1971 Victoria Conference, which was devoted in part to a four regional veto amending formula; and the November 1981 conference on patriation of the Constitution.

D. CONCLUSION

22. In some respects, the present situation recalls that of the years around 1864, when the Fathers of Confederation established a federal system of government in Canada. The political and economic situation at that time was truly difficult and called for considerable creativity. This is also the case today.

¹⁴ The 1887 Conference was convoked by Quebec Premier Honoré Mercier and revived by a much later successor, Quebec Premier Jean Lesage in 1960.

23. Periods of centralization and decentralization succeed one another in the histories of federal states. Federalism is not a static condition—far from it. At this very difficult time in our history, it is up to parliamentarians to shoulder their responsibilities, first among which is that greatest of all social contracts—the Constitution, and its amending process.

This Committee: Mandate and Process

A. OUR MANDATE

1. On December 17, 1990, the House of Commons passed a resolution establishing a Special Joint Committee of the Senate and House of Commons to study the process which Canadians use to amend their Constitution, and to suggest improvements. This resolution called upon the Senate to join with the House of Commons in establishing the Committee, and the Senate formally resolved to do so on January 30, 1991.

2. The mandate given to this Committee by the two Houses of Parliament was quite specific. It directed attention to the way in which the Constitution is amended, and the rules governing constitutional change which are set out in Part V of the *Constitution Act, 1982*. Our mandate did not direct us to study other major constitutional issues although, inevitably, our discussions did touch on such issues as the division of powers between the federal and provincial governments, the reform of the Senate and other federal institutions, and the rights of aboriginal peoples and other minorities.

3. Our mandate mentions a number of important amending process issues: (a) the role of the Canadian public in the amending process; (b) the effectiveness of the existing process and the formal rules, or amending formulas, which govern it; and (c) the need to explore alternatives, such as referenda, constituent assemblies and public hearings. Our mandate does not restrict us to the study of these items. It allows us to determine what falls within the amending process and to decide what possible reforms we should consider.

4. The creation of this Committee was an expression of Parliament's belief that the amending procedure requires improvements, and that any new constitutional change initiatives must begin with careful attention to the current amending process, and the procedural rules which govern this process. These convictions have established the fundamental direction of our work.

B. OUR WORK

5. Our formal work began in Ottawa on February 5, 1991, when we met to elect our two joint chairmen and establish the strategy we would follow in carrying out our mandate. We decided to hold an initial round of hearings in Ottawa, with invited academics and other specialists on the

amending process. This was followed by public hearings in all the provincial and territorial capitals, as well as Vancouver and Montreal. The nature of our work, we felt, made it especially important for us to be in direct touch with Canadians in all regions.

6. We began our hearings with expert witnesses starting February 19, meanwhile informing the public of our mandate and seeking public input through advertisements placed in newspapers across the country and announcements on the parliamentary television channel. It was our hope that the contributions of these experts would be useful to members of the public responding to our invitation to submit briefs, as well as providing us with an expanded knowledge base at the outset of our work.

7. We began our regional hearings in the West, with meetings from March 18 to 24 in Edmonton, Yellowknife, Whitehorse, Victoria, Vancouver, Regina and Winnipeg. Hearings in Atlantic Canada from April 8 to 12 took us to Fredericton, Halifax, St. John's and Charlottetown. We next heard witnesses in Toronto, Ottawa and Montreal, before concluding our regional hearings in Quebec City on April 30. We then heard additional witnesses in Ottawa, including five authorities on the constitutions of other federal countries, namely Belgium, Australia, Switzerland, Germany and the United States, before moving, in early May, into the drafting of this report.

8. Our call for written submissions yielded over 500 briefs, from some 450 individuals and organizations. In all, we heard 209 witnesses (individuals or groups) in the course of our hearings. We would like to express our heartfelt thanks to all who contributed by sending in submissions and appearing before the Committee. We have been impressed, and on occasion moved, by the effort which so many Canadians invested in their submissions. They ranged from one-page letters with brief responses to the questions raised by our mandate, to major works of analysis and commentary running to 50 and 100 pages. There are a lot of people who care about this country and its future. We thank them on behalf of all Canadians.

9. This report does not agree with everything that every witness has told us. That would have been impossible, since our witnesses differed from one another on all of the issues we have undertaken to address. What follows does, however, respond to what we have heard and make it clear that our decisions have been informed by the contributions of those Canadians who have favoured us with their knowledge, insights and opinions.

CHAPTER III

The Amending Procedure

A. INTRODUCTION

1. The procedure for amending the Constitution of Canada, which is set out in Part V of the *Constitution Act, 1982*, includes five amending formulas. Each of these formulas applies to a specific category of constitutional amendment and defines the requirements relating to provisions allowing for changes to aspects of the Constitution within each category. The five ways of amending our Constitution are: 1) the general formula (two-thirds of the provinces, representing at least 50 per cent of the population; 2) the unanimity formula; 3) the bilateral formula; 4) the federal unilateral formula; and 5) the provincial unilateral formula. Each will be dealt with briefly here.

1. The General Formula

2. Subsection 38(1) of the *Constitution Act, 1982* provides the general formula for amending the Constitution. The general amending formula requires the consent of two-thirds of the provinces, with at least 50 per cent of the population of the provinces. Section 38(1) reads as follows:

38(1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

- (a) resolutions of the Senate and House of Commons; and
- (b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

3. This general procedure, commonly referred to as the two-thirds and 50 per cent rule, has a residual effect. That is, it applies to all amendments other than those subject to other sections. It applies, in particular, to amendments concerning the division of legislative powers, most of the *Canadian Charter of Rights and Freedoms*, and matters specified in section 42(1) of the *Constitution Act, 1982*:

42(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

- (a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

- (b) the powers of the Senate and the method of selecting Senators;
- (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
- (d) subject to paragraph 41(d), the Supreme Court of Canada;
- (e) the extension of existing provinces into the territories; and
- (f) notwithstanding any other law or practice, the establishment of new provinces.

4. Under subsection 38(3) of the *Constitution Act, 1982*, a province may exercise its right to opt out of a constitutional amendment that diminishes its legislative powers, proprietary rights or privileges. Subsections 38(2) and 38(3) read as follows:

38(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

5. When a province exercises its right to opt out of an amendment that transfers to Parliament provincial legislative powers relating to education or other cultural matters, reasonable compensation is provided, pursuant to section 40 of the *Constitution Act, 1982*.

6. The right to opt out does not apply to the amendments set out above in section 42(1), according to section 42(2) of the *Constitution Act, 1982*.

2. The Unanimity Formula

7. Section 41 of the *Constitution Act, 1982* stipulates that certain amendments to the Constitution require the consent of the Senate, the House of Commons and the legislative assembly of each province. Unanimity is required in relation to five matters. Section 41 reads as follows:

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- (b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

- (c) subject to section 43, the use of the English or the French language;
- (d) the composition of the Supreme Court of Canada; and
- (e) an amendment to this Part.

3. The Bilateral Formula

8. Section 43 of the *Constitution Act, 1982* authorizes amendments to provisions in the Constitution that apply to one or more, but not all, provinces. The consent of the province(s) involved is required. Section 43 stipulates that:

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including:

- (a) any alterations to boundaries between provinces; and
- (b) any amendment to any provision that relates to the use of the English or the French language within a province,

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 each province to which the amendment applies.

9. Section 43 provides two possible examples but the use of the word “including” suggests that there may be others.

4. The Federal Unilateral Formula

10. Section 44 of the *Constitution Act, 1982* authorizes Parliament to amend the provisions of the Constitution in relation to the executive government of Canada or the Senate and House of Commons, subject to sections 41 (unanimity) and 42 (general formula). Section 44 reads as follows:

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

5. The Provincial Unilateral Formula

11. Pursuant to section 45 of the *Constitution Act, 1982*, the legislature of a province may amend the constitution of that province, subject to section 41. Section 45 reads as follows:

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

6. General Explanations

12. Amendments are made by proclamation issued by the Governor General and authorized by resolutions of the Senate, the House of Commons and provincial legislatures. The procedure can be initiated by either the House of Commons, the Senate or a provincial legislative assembly.

13. The House of Commons can veto any amendment initiated by the Senate or a provincial legislature. The Senate veto is decisive only on issues covered by section 44. In all other cases, the Senate veto is only suspensive (180 days), under subsection 47(1) of the *Constitution Act, 1982*.

14. A resolution of assent adopted by a province in those cases set out in sections 38, 41, 42 or 43 of the *Constitution Act, 1982* may be revoked at any time before the amendment to which it relates is proclaimed.

15. Pursuant to subsection 39(1) of the *Constitution Act, 1982*, a constitutional amendment under section 38 does not come into force until one year has passed, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent. The maximum delay for the ratification of amendments passed under section 38 (general formula) is three years. There is no specific delay for the other amendments set out in the amending procedure.

16. Finally, it should be noted that under section 49 of the *Constitution Act, 1982*, the Prime Minister of Canada must convene a constitutional conference to review the provisions of the amending procedure within 15 years after the coming into force of the provisions on April 17, 1982. Thus, a first ministers' conference will have to be convened by 1997.

B. THE NEED FOR CHANGE

1. What We Heard

17. The rules set out in the formal amending procedure, which substantially define the process by which amendments are ratified, produced considerable controversy among our witnesses. There was disagreement about whether change should be made at all. Many witnesses called for changes in areas not governed by the amending procedure, while recommending that the procedure itself be left alone. As well, witnesses who favoured changes to the amending formulas disagreed about what those changes should be.

18. Some witnesses opposing amendment of the amending formulas argued that, while a variety of changes to the ratification rules may be desirable in principle, change of this kind is not practical now. It is not practical, we were told, because Quebec's decision not to participate in federal-provincial constitutional discussions, announced in the wake of the collapse of the Meech Lake process, closes the door on constitutional changes requiring unanimity (among which are changes to the amending procedure).

19. Other opponents of change took a somewhat different position: that change of the ratification rules is not needed even in principle. It was argued here that the amendment procedure has only existed since 1982, and that Canada's experience with its rules is thus too limited to permit conclusions about their value. Witnesses taking this position argued as well that the amending procedure was not the central cause of the failure of the Meech Lake Accord.

20. A smaller group of witnesses accepted the view that it is difficult to change the Constitution under the current amending procedure, and added that it should be difficult. According to these witnesses, the Constitution expresses enduring values and should be relatively unchanging.

21. On the other side in this discussion were witnesses advocating changes in the amending procedure. The changes they proposed, and the arguments with which they supported their positions, differ widely from one another and may be seen as a series of progressively larger steps away from the status quo. The most moderate positions involve changes which do not detract from reliance on federal and provincial legislatures to ratify amendments. One group of witnesses proposed expanding the number of participants involved in the ratification process to include, in certain instances, aboriginal peoples or territorial governments. Another group sought new roles for current players, frequently in response to concerns associated with Quebec.

22. A further group of witnesses called for various other reforms of the current process, from elimination of the role of the provinces to the need for greater restrictions on future amendments. A final group, which will be dealt with elsewhere, opposed ratification by legislatures and called for the use of referenda.

2. Our Analysis

23. Even though the amendment procedure is relatively new (1982) and has been used three times (twice successfully), the fact remains that citizens of the territories, aboriginal peoples and a substantial number of Canadians in Quebec have expressed, to varying degrees and for different reasons, the feeling that they are not adequately protected by the basic two-thirds and 50 per cent formula provided in sections 38 and 42 of the *Constitution Act, 1982*.¹

24. Territorial residents are not satisfied with sections 42(1)(e) (extension of existing provinces) and 42(1)(f) (establishment of new provinces). A number of Canadians are dissatisfied with section 40 (financial compensation only where a province opts out of an amendment relating to education and other cultural matters). Quebec does not feel adequately protected under the Constitution with respect to the Supreme Court (section 41(d)) or the Senate (subsections 42(1)(b) and (c)). The Meech Lake Accord would have recognized the constitutional status of the Supreme Court and included three civil law judges as well as the number of senators per province and the powers of the Senate. Changes to these two provisions would have required unanimity.²

25. We will come back to many of these points later in this chapter. The need for change, however, is abundantly evident. It is evident to us, as well, that the protection of Quebec with respect to the Supreme Court can be beneficially enhanced.

¹ The 1982 amending procedure has been used three times. First, in 1983, Section 38 — the general formula — was used for an amendment with respect to aboriginal peoples. Quebec did not vote, but Parliament and nine provinces gave their consent. Second, the bilateral formula of section 43 of the *Constitution Act, 1982* was used for an amendment concerning the application of section 93 of the *Constitution Act, 1867* to Newfoundland and Labrador. Third, the Meech Lake Accord was not ratified on time and lapsed on June 23, 1990. The Resolution, because of two points, required unanimous agreement, since it contained a change to the amending procedure as well as to the composition of the Supreme Court (section 41). The amending formula was therefore used twice successfully.

² Section 23.6 of the *Constitution Act, 1867* provided that the 24 senators from Quebec must have property worth at least \$4,000 in the electoral division they represent. This applies only to Quebec. Is this enough to give it a full guarantee according to section 43 of the *Constitution Act, 1982*? Some think it is. Many legal experts are doubtful. This is why in the Meech Lake Accord Quebec wished to be protected by the unanimity rule. Other provinces took the view that in any case the issue of Senate reform was important enough to justify the unanimity rule.

3. Our Recommendations

- 1) **We recommend that the Constitution of Canada be amended to provide that at least three judges of the Supreme Court of Canada be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec. The other six judges would be appointed from other provinces and the territories.**

C. ABORIGINAL PEOPLES AND THE TERRITORIES

26. A major source of current dissatisfaction with the amending procedure is its failure to define formal roles for aboriginal peoples or the territories. Their claims to inclusion are examined separately in what follows.

1. Aboriginal Peoples

a. What We Heard:

27. Aboriginal peoples and many other witnesses agreed that any description of the founding peoples of Canada that does not recognize aboriginal peoples is fundamentally flawed. This basic principle, it was argued, entails a formal role for aboriginal peoples in constitutional change. For many, this role must involve a constitutional guarantee that issues of concern to aboriginal peoples will not be left on the sidelines when other national issues are dealt with in future years. Several witnesses suggested that a role for aboriginal peoples in the initiation of amendments could be achieved through revival of the provision proposed in the June 1990 companion amendments package, which would have entrenched a requirement for triennial constitutional conferences on aboriginal issues, involving direct participation by aboriginal representatives.

28. A second major theme of aboriginal witnesses was the need for recognition of a right of consent of aboriginal peoples to constitutional change. This principle was seen as a corollary of what was widely portrayed as the primary constitutional priority of aboriginal peoples — entrenchment of the right to self government. The underlying concept here is that of sovereign nations and government-to-government relations, and the implication is that the consent principle would apply only to treaties or constitutional provisions defining the status and rights of aboriginal peoples. While some spoke of the principle of consent in terms suggesting that it could occur during or at the end of the process of developing proposals, and therefore would not have to be constitutionalized, others called for a constitutional guarantee.

29. A consent requirement could, in practice, operate as a veto. Several witnesses suggested, however, that the use of the word “consent”, which puts the emphasis on consensus-building rather than adversarial relations, reflects the spirit in which such a right would be used. It is seen by aboriginal peoples not primarily as a power to block constitutional change, but rather as a power to shape constitutional change in the light of aboriginal needs. It would apply, at a minimum, to amendments relating to constitutional provisions which recognize the rights of aboriginal peoples. Some witnesses called for a broader application, to constitutional provisions critically affecting aboriginal interests (but not restricted to aboriginal peoples).

30. While aboriginal witnesses and others differed among themselves on the necessary mechanisms, the broad themes of participation and consent were consistent throughout their testimony. It is noteworthy that we heard no "other side" on this issue. No one denied that aboriginal peoples must have a defined place in Canada's constitutional amending process.

b. Our Analysis

31. The view that Canada has two founding nations was put forward many years ago. In 1839, Lord Durham spoke of "two nations warring in the bosom of a single State" The term "two founding nations" came into wider use at the time of Confederation. Georges-Étienne Cartier, the dominant figure of Lower Canada (Quebec), John A. Macdonald, the leader of Upper Canada (Ontario), and the other Fathers of Confederation were all of French, English, Scottish or Irish extraction.

32. The aboriginal peoples were not invited to the negotiating table in 1867 and were ignored in the *British North America Act*, aside from section 91.(24), which assigned to Parliament legislative authority over "Indians and lands reserved for Indians." More recently, the rights of aboriginal peoples were recognized in section 25 of the Charter and sections 35 and 35.1 of the *Constitution Act, 1982*.

33. Subsequently, especially since the beginning of this century, people who were not of British or French extraction came to Canada from all parts of the world and have made a significant contribution to building Canada into what it is today. Section 27 of the *Canadian Charter of Rights and Freedoms* mentions our multicultural heritage.

c. Our Recommendations

- 1) In order to protect the aboriginal and treaty rights which the Canadian Constitution guarantees to the aboriginal peoples of Canada, we recommend that any amendment to the Constitution of Canada directly affecting the aboriginal peoples³ require the consent of the aboriginal peoples of Canada.
- 2) We recommend that representatives of the aboriginal peoples of Canada be invited to participate in all future constitutional conferences.
- 3) We recommend that the Constitution of Canada provide for a process of biennial constitutional conferences to address the rights of aboriginal peoples, the first such conference to be convened no later than one year after the amendment comes into force.⁴

2. Territories

a. What We Heard

34. The concerns about the amending process expressed by representatives of the territorial governments and other northerners who submitted briefs or appeared before us were very similar to the concerns of aboriginal peoples. They feel excluded and powerless. Particular resentment was

³ These matters are contained in s. 91(24) of the *Constitution Act, 1867*, and sections 25, 35 and 35.1 of the *Constitution Act, 1982*.

⁴ A similar process was provided for in s. 37 of the *Constitution Act, 1982*, which has now lapsed.

expressed about section 42 of the *Constitution Act, 1982*, which makes the creation of new provinces and the extension of provincial boundaries into the territories subject to the two-thirds and 50 per cent rule.

35. For most northerners, the remedy for exclusion has two dimensions. First, there is the need for a territorial voice at the constitutional table when first ministers are developing amendments. We will deal with this subject later.

36. Second, there is the need for a formal role in the ratification of amendments, at least where they directly affect territorial boundaries or status. Our witnesses presented several alternatives.

37. Several witnesses called for the insertion of "and territories" wherever reference is made to provinces in the current amending procedure. This would entitle territorial legislatures to participate in the ratification process with the same powers as provinces, and was seen as recognition that northerners are equal to other Canadians.

38. Most northern witnesses, however, opted for significant powers over matters directly affecting the territories, rather than quasi-provincial powers which, given the two-thirds and 50 per cent requirement of section 38, would still leave decisive power outside territorial hands. One option proposed was that sub-paragraph 42(1)(e), which makes extensions of provincial boundaries into the territories subject to the two-thirds and 50 per cent rule, should be modified to require consent by the legislature of the territory affected. It was suggested as well that existing section 43 provisions concerning changes of provincial boundaries should be modified to require the consent of any territory affected.

39. Witnesses also recommended the deletion of sub-paragraph 42(1)(f), which makes the creation of new provinces subject to the two-thirds and 50 per cent rule and thus places the future status of the territories in the hands of the federal government and existing provinces. Several witnesses suggested that the creation of new provinces, along with the extension of provincial boundaries, could either be moved to section 43 (i.e., to be decided bilaterally by the federal government and the territory concerned), or a separate constitutional provision concerning these matters could be developed. Each method was recommended on the same basis: the need for a return to the situation as it existed before 1982, where the move from territory to province would be decided by the territory concerned and the federal government.

40. As was the case with issues of concern to aboriginal peoples, our witnesses who addressed territorial issues differed over means rather than ends. No one disputed the principle that the territories should participate in the constitutional life of the country and should have a defined role in the ratification of amendments directly affecting territorial interests.

b. Our Analysis

41. It is certainly understandable that territorial residents do not want their territory to be annexed to an existing province against their will. It is also understandable that they would like to go back to the situation that prevailed before 1982. Between 1871 and 1982, a federal territory or a part of a federal territory could accede to the status of a new province simply by the passage of federal legislation. Manitoba in 1870 and Saskatchewan and Alberta in 1905 became provinces by federal legislation. There was some uncertainty about Manitoba, but a British law cast aside the legal indecision in 1871. From 1871 to 1982, the constitutional technique was very simple.

42. The provinces considered the matter differently in 1982. While the fears of residents of the territories are understandable, it cannot be denied that the existing provinces have valid reasons to be concerned about the creation of new provinces. In particular, the establishment of new provinces has implications with respect to equalization payments. Furthermore, creation of new provinces could alter the existing balance of provinces and regional blocs on issues where the two-thirds and 50 per cent rule applies.

43. Should we go back to the situation prior to 1982? Should the solution provided in the Meech Lake Accord, replacing the two-thirds and 50 per cent rule with the unanimity formula, be adopted? Should we be limited to the status quo?

44. Section 43 cannot settle this issue. A constitutional amendment is required in order to meet the concerns of the territories.

c. Our Recommendations

1) We recommend that the extension of existing provinces into the territories require the consent of the legislature of any territory and any province affected, and the Parliament of Canada.

2) We recommend:

a) that the creation of new provinces in the territories require only the consent of the legislature of any territory affected, and the Parliament of Canada; and

b) 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.

3) We recommend that the territorial governments be invited to participate in all future constitutional conferences.

D. PARLIAMENT AND PROVINCIAL LEGISLATURES

1. What We Heard:

a. Equality, Vetoes and Unanimity

45. Many of our witnesses recognized that Canada's current amending formula reflects complex trade-offs made in the attempt to reconcile the doctrine of equality of the provinces with the need for special protections felt in Quebec and other provinces. A major element in this reconciliation was seen to be the unanimity rule. It was portrayed as an attempt to give all provinces a veto over certain critically important kinds of change, and thus provide both provincial protection and equality, while at the same time avoiding excessive restrictions on all constitutional change.

46. Our witnesses were, however, sharply divided over the success of the existing formula and over the direction which any attempt to alter it should take. For many, equality of the provinces is held to be indisputable.
47. Others take a different view. A number of witnesses pointed out that the doctrine of equality of the provinces is relatively recent and was rarely invoked before the early 1970s. These witnesses argued that it is not part of the Canadian tradition and that the Fathers of Confederation installed a variety of inequalities (or asymmetries) in the British North America Act of 1867 without apparent misgivings.
48. Interestingly, many witnesses who favoured equality of the provinces also indicated that they would be receptive to special constitutional protections for Quebec, and none offered an argument in favour of equality of the provinces as a principle which should apply throughout the Constitution. Those who favoured equality of the provinces took the principle to be self-evident. A much smaller number of witnesses argued that equality of the provinces should apply in some areas (for example, that each province should have the same legislative jurisdictions) but need not apply within the amending formula. A great many more simply viewed the doctrine as an inescapable modern fact of federal-provincial life, too deeply entrenched to be changed. Several witnesses told us, for example, that many provinces would not now accept differences among provincial amending powers.
49. Another approach to the question of equality was taken by several witnesses whose comments were clearly reflective of recent thinking relating to the equality rights of individuals. It was argued that treating people equally when they are not equal fosters inequality, not equality. It may, indeed, sometimes be necessary to treat people differently in order to equalize their broader life situations and opportunities. For example, affirmative action programs permit groups that have traditionally experienced discrimination to enjoy employment opportunities broadly equal to those of other Canadians. The same reasoning, it was claimed, applies to the constitutional role of the provinces, even though issues of federalism are clearly different from those of individual rights.
50. The view that differential treatment may be necessary in order to achieve broad equality was repeatedly expressed by Quebecers. Anglophone advocates for English language minority rights within the province joined with other Quebecers on this issue, although they also expressed fears about their own rights within the province. These witnesses do not believe that distinctive powers for their provincial government over constitutional change relating to language and culture, or even a general provincial veto power, conflict with equality. On the contrary, these powers are seen as necessary if Quebecers are to gain something which is already taken for granted by the English-speaking majority outside Quebec — linguistic and cultural security. Quebecers clearly stated their insistence that what distinguishes them in the Canadian federation and in Canadian institutions must be protected.
51. The unanimity formula drew special attention from critics of the current procedure. Witnesses pointed out that this formula enables any province to block constitutional change, even if it represents only a small fraction of the national population. One witness went on to ask whether Canada can afford to postpone change that is needed now merely because it “. . . cannot go through the eye of the needle provided in section 41 of the *Constitution Act, 1982*”.
52. Other witnesses argued that provinces are unlikely to forego the powers given them by the existing unanimity requirement and that, since amending this requirement requires unanimous support from provincial legislatures, it must be accepted as a more or less permanent feature of the Canadian constitutional landscape.

53. A number of witnesses, however, saw the unanimity requirement as an important defence of the position of the smaller provinces, since it enables any province, regardless of its size, to protect its interests on fundamental matters. It was also argued that by preventing the majority from imposing change on the minority, the unanimity requirement creates an imperative for the development of consensus.

54. Several witnesses went on to advocate the review and possible expansion of the unanimity rule. It was argued, for example, that the *Canadian Charter of Rights and Freedoms* provisions and language rights provisions are of such fundamental importance that unanimity should be required.

b. Proposals

55. The proposals we heard recapitulate virtually every type of proposal developed during Canada's long search for an amending procedure, as well as offering some novel permutations.

56. Some witnesses called for redistributing items between the unanimity requirement and the two-thirds and 50 per cent requirement. Among these were witnesses taking the approach reflected in the Meech Lake package and arguing that certain matters which now require the support of only two-thirds and 50 per cent are so fundamental that unanimity should be required.

57. We heard many proposals for variations on the current two-thirds and 50 per cent rule. These proposals preserve formal equality by not attaching special powers to any individual province, but would raise the population requirement to 80 or 85 per cent, and thus, in practice, give the most populous provinces a veto. It was also suggested that such a rule could require the support of all provinces having (or having ever had) a stated percentage of the population (eg. 50 per cent). Some said that such a rule should replace the unanimity formula, while others said it should replace both the unanimity rule and the current two-thirds and 50 per cent rule.

58. Still others called for an explicit Quebec veto. It was suggested, as one means of achieving this, that the two-thirds and 50 per cent rule be amended to require that the necessary two-thirds of the provinces include Quebec.⁵ While some witnesses argued that a Quebec veto should apply to all amendments, others called for a veto which would be restricted to a defined class of matters in which the province of Quebec has distinctive needs and interests. This could include matters now covered by the unanimity rule. Many witnesses went further and included matters relating to language and culture, the civil law system, the Senate, the House of Commons and the Supreme Court of Canada.

59. Some witnesses argued that an amending formula establishing regional vetoes, such as the formula agreed upon by federal and provincial first ministers at the Victoria Conference in 1971,⁶ remains the most suitable option for Canada. They noted that a regionally-based formula avoids the rigidities of unanimity, which derives from the attempt to combine special protections for Quebec with adherence to the requirements of equality of the provinces. It was argued as well that regional formulas also avoid the need for a veto restricted to Quebec, and the political difficulties involved in persuading people outside Quebec of the fairness of such an arrangement.

⁵ This proposal is also contained in "A Quebec Free to Choose", Report of the Constitutional Committee of the Quebec Liberal Party, January 28, 1991, p. 41 (widely known as the Allaire Report).

⁶ See Chapter I, paragraph 14.

60. Those favouring a regionally-based formula had differing views about the pattern of regions which such a formula should reflect. Particularly in the North and in British Columbia, we heard opposition to the traditional four-part regional division which underlies the Victoria formula, and arguments on behalf of a five-region model.

2. Our Analysis:

a. *The Idea of Equality of the Provinces*

61. No exact parallel can be drawn between the equality of individuals and that of the provinces because while equality of individuals is expressly recognized in section 15 of the *Canadian Charter of Rights and Freedoms*, the Constitution expressly recognizes distinctions among provinces.

62. A number of obvious asymmetries are apparent in the Canadian Constitution, including for example a dual private law system, two official languages at the federal level and in two provinces, certain constitutional guarantees, and exceptions to the principle of representation according to population.

63. The decisions with regard to federalism have nothing to do with the Charter. According to the Supreme Court of Canada when Parliament legislates, it is bound by the Charter. However, the manner in which a federation is structured is not dictated by the Charter.

64. In 1867, membership in the Senate was based not on equality of the provinces but on equality of the three regions or "divisions", increased to four regions in 1915. Moreover, within each region, provincial representation is not always based on equality of the provinces.

65. The Triple-E (elected, equal, effective) formula calls this system into question with respect to representation in the Senate, and substitutes the principle of equal representation of all provinces.

b. *Quebec: A Distinct Society*

66. Canada is a complex country, and the amending formula must take this complexity into account. The distinct or unique character of Quebec must be reflected in the amending procedure of the Constitution of Canada. Quebec's distinctiveness may be traced back to 1774 when the *Quebec Act* was adopted by the Parliament of Westminster. That act reintroduced French laws in a British colony. Quebec is the only province with a civil law system, a language and a culture that are predominantly French. This distinctiveness is recognized to a certain extent in several sections of the Constitution Act, 1867: 92.(13), 94, 98, 133, as well as in an important statute as the *Supreme Court Act*. The amending procedure should reflect Quebec's distinct character, which is fundamental to the nature of our country.

c. *Looking for a Constitutional Protection*

67. Quebec has sought constitutional protection since the Dominion-Provincial Conference of 1927. Protection was offered in Victoria in June 1971, but Quebec rejected the Victoria Charter because a dispute over the division of powers was unresolved.

68. Quebec subsequently sought a direct or indirect veto. The so-called Toronto formula, requiring two-thirds of the provinces with 80 per cent of the population, and the two-thirds and 75 per cent formula were considered but rejected.

69. During the negotiations on the Meech Lake Accord in 1987, Quebec's demand for a veto over constitutional change in certain key areas was resolved by broadening the unanimity requirement in section 41, so that effectively all provinces, including Quebec, would have a veto. The following would have been added to section 41:

- (a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
- (b) the powers of the Senate and the method of selecting Senators;
- (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
- (d) subject to paragraph 41(d), the Supreme Court of Canada;
- (e) the extension of existing provinces into the territories; and
- (f) notwithstanding any other law or practice, the establishment of new provinces.

70. The unanimity rule is unwieldy. In general, it is not found in the constitutions of modern federations. Few witnesses advocated the rule.

d. A Veto for Quebec

71. On a number of occasions, discussion focussed on the question of a veto on all matters now under the two-thirds and 50 per cent requirement. This would involve a requirement that Quebec be among the two-thirds. Some witnesses argued that Quebec should be given such a veto without the need for regional vetoes.

72. This protection was justified because Quebec has a language, a culture, and a system of law that differ from those of the other provinces.

e. The Pepin-Robarts Formula

73. The constitutional amendment formula advocated in the 1979 Pepin-Robarts Report consists of a resolution by the Council of Federation (Upper House) and the House of Commons ratified by a national referendum with a majority in each of the four regions: (a) the Atlantic provinces; (b) Quebec; (c) Ontario; (d) the four western provinces and the North. This is the Australian referendum formula tailored to fit the Canadian context. This formula reflects the regional diversity of Canadian society, and requires final approval from the people.

f. The Victoria Formula

74. The 1971 Victoria formula of four regional vetoes came back to the forefront during the periods when Committee members asked questions of the witnesses.⁷

75. A few witnesses believed that this formula was out of date and should not be revived. Others claimed the opposite.

⁷ See Chapter I, paragraph 14.

g. Five Regional Vetoes

76. Some witnesses proposed five regions instead of four. British Columbia could constitute the fifth region.

h. The Protection of Quebec's Interests

77. We must also consider the issue of a veto in areas in which Quebec can claim distinctiveness: language, culture and civil code, for example.

78. Thus, within the central institutions (the Senate, House of Commons, and Supreme Court of Canada), Quebec seeks to guarantee the presence of three judges among the nine judges of the Supreme Court.⁸ Quebec's current protection under section 41 of the *Constitution Act, 1982* is not ironclad, as legal experts such as Professor Peter Hogg explained to the Committee.

79. Prior to the negotiation of what became the Meech Lake Accord in 1987, Quebec sought a veto over significant constitutional change as one of its five conditions for accepting the *Constitution Act, 1982*. During negotiations on the Accord, the response of the other provinces to Quebec was an expanded unanimity requirement.

80. Some witnesses suggested a double majority (anglophone and francophone) rule for the Senate with regard to cultural and linguistic matters, and a "Canadian" and "Quebec" majority rule for questions affecting "civil law". In these areas of constitutional amendments, the Senate would have a decisive veto instead of merely a suspensive veto.

81. Whether the issue is a partial veto, constitutional guarantees, or special protection for Quebec within central institutions (Senate, House of Commons and Supreme Court), Quebec would find it difficult to be content with the current amending process. Quebec has sought a more explicit protection on Senate and Supreme Court appointments. In a federation, these central institutions play a very important role.

82. The Pepin-Robarts formula, the Victoria formula or the five-regional-vetoes rule could replace or partially modify sections 38, 41 and 42 and leave sections 43, 44 and 45 intact. One of these three formulas⁹ could also replace section 41 alone.

83. Given the range of possible alternatives to the current amending procedure and the range of considerations which needs to be addressed, the task of evaluating amending formulas is intimidating. The general contours of the amending procedure we feel would be best suited to the needs of Canada emerge, however, from an examination of the critical balances which amending formulas must achieve.

84. Amending procedures strike a centrally important constitutional balance, the balance between resistance to change and receptivity to change. A degree of resistance to change is needed in order to achieve stability in the fundamental law of the land. It is also necessary in order to ensure that

⁸ Quebec judges would be required to be Quebec lawyers or to have been members of the Quebec bar for at least ten years.

⁹ See Chapter I, paragraph 14.

amendments have been fully considered and are not the product of passing fads. At the same time, too much resistance to change results in rigidity and the failure of a constitution to evolve in tandem with changing public priorities and needs.

85. The balance between stability and change is particularly sensitive in Canada, because the Constitution is a source of vital protection for Quebec and other provinces, as well as for minorities. When the current amending rules were established in 1982, Quebec's need for safeguards against the imposition of unacceptable change, in combination with the determination of other provinces to have powers equal to those of Quebec, led to the creation of an amending procedure with strong safeguards against undesired change. As has been noted, change in some categories must be approved unanimously in order to be ratified, and in most other categories dissident provinces can opt out of changes.

86. The amending rules clearly enable change in matters requiring unanimity to be resisted unless it is backed by a high level of consensus. At the same time, however, the general procedure permits change to occur even where it is opposed by up to three provinces, containing 49.9 per cent of the population. While provinces may opt out of changes made under this rule, they are likely to incur financial penalties for doing so, except in the areas of education and culture.

87. In our view, the current formula is an awkward compromise which may prevent needed changes from occurring and which also fails to provide the full protection required by individual provinces, in particular by Quebec. Canadians must not allow themselves to forget that Quebec is the institutional shelter for six million of their fellow citizens whose first language is French, who perceive their government and its powers as primary defences against the assimilationist pull of the surrounding 250 million English-speaking North Americans. Our recognition of the distinctiveness of Quebec society is hollow unless we show ourselves willing to do what is necessary to maintain that distinctiveness. It is clear that for most Quebecers, one necessary improvement would be the broadening of protections against unacceptable constitutional change.

88. A new amending formula must also address the concerns of Canadians in minority regions--in the West and in Atlantic Canada. Many Canadians in these regions are strongly committed to the doctrine of equality of the provinces and have expressed, as well, their desire for greater weight in national decision-making.

89. Our view is that the doctrine of equality of the provinces does not preclude variations in provincial roles or powers. Such variations or asymmetries have occurred since 1867 and have, for the most part, contributed positively to the flexibility which is a fundamental advantage of our federal arrangements. Just as the equality of individuals should not be seen as requiring identical treatment, so the equality of the provinces should not be seen as precluding the tailoring of roles and powers to the particular needs of people in any individual province.

90. We also are concerned that a narrow view of equality of the provinces may bring it into conflict with equality of the person. If Canada's smallest province, with .5 per cent of the population, has the same power over constitutional change as its largest province, with 37 per cent of the population, then the constitutional weight of any individual in the smallest province becomes vastly disproportionate to the weight of a citizen of the largest province.

91. Canadians cannot have both equalities of the person and of provinces. They can, however, have a balance between these two equalities if they are willing to recognize that the principle of equality of the provinces allows for variations among the provinces in specific roles and powers, according to their different needs and for the purpose of furthering overall equality.

92. Our view is that a balance between the equalities of province and person can be achieved in a regionally-based amending formula, along the lines of the Victoria formula, which recognizes the Atlantic provinces, Quebec, Ontario, and the West as regions and gives each a veto over constitutional amendments. In addition to balancing the equalities, this formula largely avoids the combination of too much protection (unanimity) and too little protection (two-thirds and 50 per cent) contained in our present formula. It thus strikes a more consistent balance between resistance to change and receptivity to change even while, as we propose, preserving the unanimity requirement for certain essential matters.

93. A regional formula, in tandem with a commitment to carry out Senate reform which would address desires in the minority regions for greater weight in national decision-making, could, we feel, meet the needs of both central and outlying regions in Canada.

3. Our Recommendations

1) **We recommend that the amending formula contained in sections 38 and 42 of the *Constitution Act, 1982* (whereby the approval of the Senate, the House of Commons and at least two-thirds of the provinces representing at least 50 per cent of the population is required) and the amending formula in section 41 (whereby the approval of the Senate and the House of Commons and every province is required) be changed such that constitutional amendments would require the approval of the Senate and the House of Commons and each of the four regions of Canada, as follows:**

- a) **at least two of the following provinces: Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;**
- b) **Quebec;**
- c) **Ontario; and**
- d) **at least two of Manitoba, British Columbia, Saskatchewan and Alberta, representing at least 50% of the population of that region.**

except that the requirement of unanimity should be retained respecting

- i) **the use of the English or the French language (as contained in section 41(c) of the *Constitution Act, 1982*);**
- ii) **the proprietary rights of provinces;**
- iii) **the offices of the Queen, Governor General and Lieutenant Governor;**

iv) any change to provisions i to iii,

and excepting provisions with respect to the territories and the aboriginal peoples contained in other recommendations.

- 2) In making this recommendation, the Committee realizes that, in practice, a new amending formula should be adopted only in the context of a substantial package of constitutional reforms including, for instance, the reform of the Senate.
- 3) We recommend that the amending formula contained in sections 43, 44 and 45 of the *Constitution Act, 1982* remain unchanged.

E. FLEXIBILITY OPTIONS

94. Our attention has been drawn to a number of proposals for constitutional and other protections designed to prevent any single province from using a veto power to block constitutional change in all provinces. A number of these proposals fall outside the amending procedure and thus warrant mention primarily for future reference. Among these are: increased use of the existing federal capacity to delegate administrative authority to the provinces, and provisions allowing certain exclusive federal and provincial powers to become concurrent powers, with a stipulation in each case indicating which order of government would have paramountcy.

95. Other possibilities for introducing greater flexibility into our Constitution involve the amending procedure. They relate to section 43, which sets out the rules for amendments affecting the federal government and some but not all provinces; and the opting out provision (section 38(3) of the *Constitution Act, 1982*), which is an element of the existing general (two-thirds and 50 per cent) formula. We examine, in addition, the delegation of powers.

1. Section 43 (Bilateral Formula)

a. *What We Heard*

96. A number of witnesses suggested that section 43 might be used to allow delegation of certain federal powers to one or several provinces with particular reasons to exercise those powers, without affecting the other provinces, or without requiring their constitutional assent.

97. Some witnesses noted that this arrangement would allow Quebec to deal directly with the federal government on a carefully limited class of issues, such as linguistic and cultural powers, which bear a different relationship to the government of Quebec than to other provincial governments. They stressed, however, that section 43 was intended to deal only with constitutional provisions which apply in some but not all provinces. They noted that extending section 43 to permit widespread bilateral deal-making could lead to creation of a checkerboard of provincial powers and jurisdictions, and to protracted instability.

98. Other witnesses disagreed with extending the use of section 43 as a means of tailoring the distribution of federal and provincial powers in response to specific needs of Quebec or any other province. Language, education and culture were specifically mentioned as examples of matters which affect all provinces, and therefore fall outside section 43.

b. Our Analysis

99. Section 43 does not permit one province to be given a different legislative status from another. In principle, provinces enjoy equal powers insofar as the division of powers between Parliament and the ten provincial legislatures is concerned.

100. Some marked cases of asymmetry do exist. Section 93 of the *Constitution Act, 1867*, which deals with education is not the same for all provinces, notably for Manitoba and above all for Newfoundland and Labrador.¹⁰ Quebec is exempted from section 94 of the *Constitution Act, 1867*, which provides for the uniformity of laws relative to property and civil rights. Section 98 of the *Constitution Act, 1867*, reflects this asymmetry in its provision concerning the appointment of Quebec's judges.

101. Section 43 of the *Constitution Act, 1982* is restricted to "any provision that applies to one or more, but not all, provinces". Since, in principle, sections 91 (federal powers) and 92 (provincial powers) apply to all provinces, section 43 cannot be used to grant an asymmetric legislative status to any one province.

102. A province can only be granted different legislative powers if the federal government and two-thirds of the provinces, representing at least 50 per cent of the population, consent to the change. In short, what is needed is a constitutional amendment based on section 38 and not on section 43.

2. Opting Out

a. What We Heard:

103. Sections 38(3) and 40 of the *Constitution Act, 1982* enable provinces to opt out of amendments reducing provincial legislative powers, proprietary rights, or any other rights or privileges of the province.¹¹ The province receives financial compensation when opting out of an amendment which transfers its provincial powers over education and culture. A number of witnesses argued that these provisions are a valuable source of constitutional flexibility. They enable provinces to protect themselves from amendments which do not meet their needs, without blocking constitutional changes elsewhere in Canada.

104. Most who favoured the opting-out rule recommended extending the right to reasonable compensation (as the Meech Lake Accord did) to cover not just education and culture but any amendment transferring jurisdiction from the provincial governments to the federal government.

105. Opinion was by no means unanimous on the opting-out provision, however. Some witnesses viewed opting out with suspicion, as a means for gradually introducing province-to-province variations in powers and status.

¹⁰ The protection of denominational rights and denominational school systems varies in certain cases.

¹¹ If a legislative competence is transferred to the Parliament of Canada by a constitutional amendment, a province may choose to opt out and retain its legislative competence. This is the right to opt out. If proprietary rights of the provinces were to be transferred to the federal Parliament by amendment, a province could choose to retain them.

b. Our Analysis

106. The right to opt out is included in subsection 38(3). Section 40 recognizes the right of a province to financial compensation only for amendments "relating to education or other cultural matters". The Meech Lake Accord would have extended the right of a province to financial compensation where a proposed amendment transferred legislative powers from a provincial legislature to Parliament.

107. The right of a province to opt out exists only for the transfer of a legislative power from a province to the federal Parliament. Opting out thus offers a certain protection to provinces for amendments concerning the division of powers, but not for amendments concerning central institutions. One cannot opt out of the Senate, the House of Commons or the Supreme Court. This is one of the reasons that the Meech Lake Accord would have expanded the unanimity requirement to include central institutions.

3. Administrative arrangements and delegation of legislative power

108. The Constitution is a document designed to serve as a lasting foundation for government. It should not be amended like an ordinary statute. However, there is no question that the Constitution is evolving considerably as a result, for example, of court decisions, notably those of the Supreme Court of Canada.

109. Administrative arrangements between Ottawa and individual provinces, concerning such matters as immigration, social security, and fisheries, also add flexibility to the process of implementing federalism without making it necessary to amend the Constitution. Such arrangements have been particularly important since World War II.

110. Parliament cannot, however, delegate its legislative powers to a provincial legislature, and vice versa. This is impossible without an amendment to the Constitution.¹² Powers attributed to Parliament and legislatures by the Constitution are mutually exclusive. Certain amending formulas authorizing this kind of delegation have been proposed, including the Fulton-Favreau formula, but the idea was set aside in 1981.

111. Having regard to the actual context respecting the division of powers, and since the right to opting out would no longer exist if the four regional vetos were adopted, it might be advantageous for Parliament and legislatures to be allowed to delegate to one another legislative powers in order to settle a particular problem in a given province.

4. Our Recommendations

- 1) The delegation of powers between Parliament and legislatures does not exist. Its existence should be provided for by constitutional amendment, and we strongly recommend that the next constitutional committee study that question in the framework of the division of powers.**

¹² See the *Interdelegation case*, *Attorney General of Nova Scotia vs. Attorney General of Canada*, [1951] S.C.R. 31

2) We recommend that the relationship between opting out and an amending procedure with four regional vetoes be studied by the next Parliamentary Committee. The next Committee should also study in what fields a province should be able to exercise a right to opt with compensation.

F. THE THREE-YEAR RATIFICATION PERIOD

1. What We Heard

112. The three-year maximum time limit, which currently applies to constitutional amendments based on the two-thirds and 50 per cent rule received comments from a number of witnesses. Several drew attention to the fact that the limit applies only to amendments proceeding under the general formula, and called for the Constitution to be amended to make it clear that the limit applies in all formulas. It was also suggested that the start of the ratification period should not have to await the passage of a constitutional resolution in one of the legislatures. This proposal is intended to eliminate delays which would result when no legislature passes a resolution (after first ministers have agreed on one, presumably). An alternative starting point for the ratification process in the Constitution was not specified, however.

113. The major concern of those commenting on the ratification period, however, was its length. Several witnesses argued it should be lengthened, to five years for example, in order to reduce the time pressures involved in the process.

114. The dominant theme among witnesses who called for a change in the time period was, however, that the current period is too long. Proposals for an appropriate period ranged from 30 days to two years. Witnesses related most of these proposals directly to the Meech Lake experience. It was argued that the length of time during which the Meech Lake amendments were before legislatures had a major impact on the fate of the package. For many, this made the need to shorten the ratification period virtually self-evident.

115. Opponents of a shortened period argued that the purpose of the ratification process is not necessarily to ratify proposals, but to subject them to scrutiny, and that the process should therefore be open to influence by mobilized public opinion or elections. Many also disputed the claim that the three-year ratification period was a major factor in the failure of the Meech Lake amendments. The problems encountered by the amendments, according to these witnesses, were political rather than due to flaws in process.

2. Our Analysis

116. Elsewhere in this report, we have called for mandatory public hearings on constitutional amendment resolutions. We have called for participation by the territories and aboriginal peoples in the constitutional discussions that lead to such amendment resolutions. We have recommended the possible usage of a referendum to confirm the existence of a national consensus. With these changes, we do not think that a full three years for the legislatures of Canada to ratify a formal amendment resolution is either appropriate or necessary. Decisions by legislatures to accept or reject a resolution should and could be reached sooner.

117. We believe the ratification period should be restricted to two years. We were not convinced that there would be an advantage to lengthening the ratification deadline or eliminating it altogether. The final months leading up to the demise of the Meech Lake Accord failed to convince us that six more months would have changed anything. Some constitutions do not provide for any ratification deadline whatsoever. The framers of the Constitution chose to include one. A ratification deadline is essential. Two years is a reasonable period of time.

118. The deadline should be set at two years in all cases. At present, a three-year time limit is expressly stated only for the general amending formula. No ratification period is specified in the case of section 41. Some legal scholars have concluded that the three-year time limit should apply implicitly. Others believe that there is no actual time limit. Doubts persist and these must be cleared up once and for all.

119. Section 46 of the *Constitution Act, 1982* stipulates that “a resolution of assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it”. A few witnesses referred to this matter. There appeared to be some opposition to a resolution of dissent. One possibility would be to allow a province or the federal Parliament to revoke a resolution only if such action is approved in a referendum by a simple majority of the people concerned.

3. Our Recommendations

We recommend that the maximum period for the ratification of proposed constitutional amendments be two years, beginning on the day on which a proposal is ratified by either a federal or provincial legislature.

G. PROVINCIAL EQUALITY AND PROPRIETARY INTERESTS

1. What We Heard

120. The concept of provincial equality was advanced largely by Alberta, during discussions leading to the 1982 constitution. It is reflected in section 41, which sets out five categories of amendments requiring unanimity, the final of which, 41(e), requires unanimity for any change to any part of the current amending formulas. Alberta's concern is linked to Senate reform and to its insistence that¹³ “provincial rights, proprietary interests and jurisdiction” must remain guaranteed as they are in section 38(3). If they are transferred to the federal authority, any province may choose to opt out of the transfer and retain them.

121. The concept of provincial equality was again reflected in the Meech Lake Accord: amendments changing the nature of central institutions would have required unanimous consent.

122. One Premier who is a champion of provincial equality rejects the concept of unanimity.¹⁴

¹³ Letter to Jim Edwards, M.P. from Hon. Don R. Getty, Premier of Alberta — April 29, 1991.

¹⁴ “Our amending formula is absurd insofar as it allows a single province to hold up important reforms”.

2. Our Analysis

123. The guarantee that Alberta has is iron-clad only as long as section 41(e) remains. But, if unanimity were no longer required to amend Part V (dealing with the amendment procedure), or if proprietary rights are not included in section 41, then section 38(3) is at risk. We should therefore retain the unanimity rule for proprietary rights.

3. Our Recommendations

We recommend that the proprietary rights of the provinces remain protected by the unanimity rule.¹⁵

¹⁵ See our recommendation concerning the amending formulas, pages 26-27.

The Referendum

A. INTRODUCTION: THE CANADIAN EXPERIENCE

1. The *Constitution Act, 1867*, which establishes among other things the legislative, executive and judicial powers, has no provisions at all dealing with the referendum. Sections 3, 4 and 5 of the *Canadian Charter of Rights and Freedoms*, which establish the democratic rights of every Canadian citizen (including participation in the electoral process as voter or candidate), are equally silent on the subject. Since it is neither explicitly authorized nor explicitly forbidden, recourse to a referendum is thus left to the preference of our political leaders: it is optional. Any government in Canada, whether federal, provincial or municipal, may decide to hold a referendum in the exercise of its powers. When not entrenched in the Constitution, a constitutional referendum is nothing more than a consultative mechanism.¹

1. Definition and Types of Referenda

2. A referendum is a consultation of the people about a specific measure. *Webster's Third New International Dictionary* defines "referendum" as:

the principle or practice of submitting to popular vote a measure passed upon or proposed by a legislative body or by popular initiative (p. 1908).

3. There are various types of referenda. A referendum may be consultative or binding. The process itself may be optional or compulsory.

4. In certain countries (such as Switzerland), a distinction is made between the "popular veto", which enables the public to oppose a measure passed by the federal assembly or other legislature, and the "popular initiative", which gives a certain number of citizens, the number being defined by law, the right to demand that the legislature or assembly consider a bill that the citizens present to

¹ Rather than distinguishing between the terms "plebiscite" and "referendum", the Committee has opted to use "referendum" as colloquially understood. A consultative referendum is one whose results are not legally binding on the government. A referendum with force and effect, on the other hand, is a binding, or ratification, referendum. See the Pepin-Robarts Task Force Report, *Coming to Terms—The Words of the Debate*, 1979, p. 19-20; P. Boyer, *Lawmaking by the People—Referendum and Plebiscite in Canada*, Toronto, Butterworth, 1982, pp. 12-14.

it.² Neither of these procedures exists in Canada.

2. The National Referenda of 1898 and 1942

5. The government of Canada has twice resorted to a referendum to have a controversial question settled by the people. In 1898, when there was disagreement over the legalization of the sale of alcoholic beverages, Sir Wilfrid Laurier's government gave the public the opportunity to decide. In 1942, William Lyon Mackenzie King's government wished to be released from its promise not to impose conscription, and held a referendum on the subject.³

6. The results of these referenda threw into sharp contrast the differences of opinion that existed between the province of Quebec and the rest of Canada on the two subjects. In both cases Quebec voiced an opinion that was opposed to that of the other provinces.

7. The Canadian political system, founded on the principles of "responsible government", "the rule of law", "fundamental rights" and "democratic rights", did not in 1867 require that the holding of referenda be institutionalized. The Fathers of Confederation preferred to keep the principle of parliamentary democracy intact rather than introduce direct democracy.

8. Neither the *Constitution Act, 1867* nor any of its amendments was ever ratified by a national referendum. Such a procedure was suggested during the discussions on patriation of the Constitution, but the suggestion was not adopted.⁴

3. Provincial Referenda

9. Every Canadian province except New Brunswick has held at least one referendum. Prohibition was the question at one time or another in all provinces. But the one that comes to mind most readily is the 1980 sovereignty-association referendum in Quebec.⁵

4. The Newfoundland and Labrador Referenda of 1948

10. Two referenda were held in Newfoundland and Labrador in 1948 before it joined the federation in 1949. Both of them concerned its future, and involved more than one question or more than one choice. In the first, held June 3, 1948, the electorate had to choose among (a) the status quo; (b) the principle of responsible government; or (c) joining Canada. In this referendum 44.55 per cent of voters favoured the second option, and 41.32 per cent the third. On July 22, 1948, a second referendum was held with only two questions: joining Canada or responsible government. This time 52.44 per cent chose the first solution and the 47.66 per cent the second.

² See chapter VII, part 3.

³ The question was worded as follows: "Are you in favour of releasing the government from any obligation arising out of any past commitments restricting the methods of raising men for military service?"

⁴ See Prof. P. Meekison (Issue #4, 21/02/1991); and R. Romanow et al., *Canada . . . Notwithstanding: The Making of the Constitution, 1976-1982*, Carswell, Toronto, 1984.

⁵ See P. Boyer, note 1 *supra*, p. 39ff.

5. Referenda and Votes of Confidence

11. At neither the federal nor the provincial level does a referendum act as a vote of confidence. The value of a federal or provincial referendum is moral, political and consultative. Mackenzie King won his 1942 referendum and modified his war policy accordingly. Quebec Premier René Lévesque lost his referendum on May 20, 1980, and remained in power, successfully contesting the provincial election in May of the following year. There is nothing unconstitutional about a government defeated in a consultative referendum remaining in power as long as the legislature supports it.

6. Wording of the Referendum Question and Organization of the Referendum

12. A referendum question may be worded by the executive (the government) or the legislature (Parliament or legislative assembly), or delegated to a third body. The wording of the Quebec referendum question of May 20, 1980, was determined by the Quebec government. The legislation governing referenda may require either a simple or a qualified majority for the question to pass. The legislation may also set out how referenda are to proceed and all the details related to their organization. In the Quebec referendum, for example, the legislation required supporters of the "Yes" and "No" sides to form a single group each.

7. Referendum Legislation

13. Attempts have been made at both the federal and the provincial levels to introduce a more permanent system of direct participation. Under the Bertrand government in Quebec, a referendum bill was submitted to the National Assembly in 1970 but did not pass. In April 1978 the Trudeau government introduced in the House of Commons Bill C-40, *An Act respecting Public Referendums in Canada on Questions relating to the Constitution of Canada*, which reappeared on the order paper several months later, during a subsequent session, with the number C-9. Neither bill was adopted.

14. Quebec passed the "*Loi sur la consultation populaire*" in 1978. In March 1991, British Columbia passed the *Constitutional Amendment Approval Act*, which requires the provincial legislature to submit proposed constitutional amendments to the electorate and receive the approval of the people before ratifying them. A bill dealing with popular initiatives is currently under study before the Saskatchewan legislature. The National Assembly of Quebec is currently studying a bill providing for an eventual referendum on the political and constitutional future of Quebec (Bill No. 150).

B. WHAT WE HEARD

15. The presentations to the Committee that dealt with referenda,⁶ either in testimony at the hearings or in written briefs, were concerned as much with the principle of the referendum as with organizing and administering such a process. In its first part, this section will look at the general comments made on the principle of the referendum; in the second, it will look more specifically at how a referendum might be organized and administered.

16. A great number of witnesses took the position that the Constitution belongs to the people and the people must be enabled to pronounce on it. From their perspective, a referendum is one of the best means of giving citizens the feeling that the Constitution does indeed belong to them and of allowing them the last word on approving or amending it.⁷

1. The Principle of the Referendum

17. A referendum may be used as either a consultative mechanism or a ratification mechanism. When it is used as a consultative mechanism, the aim is to discover the people's views on a given issue. It becomes a sort of full-scale poll, preceded by debate. When a referendum is used as a ratification (or repeal) mechanism, it gives the people the power to decide whether a proposed measure should become--or remain--law. A ratification referendum has force and effect. Because the results are binding on Parliament or the government, such a referendum is sometimes called a binding referendum.

a. Some General Questions

18. A number of witnesses expressed the view that Canada's experience with referenda was such that the prospect of holding another one, and even more, of using the procedure regularly, was not particularly appealing.

19. Before resorting to this mechanism, the precise goal would have to be made very clear. If the government wishes to determine citizens' views on a particular question, public hearings or a constituent assembly could accomplish this as well as a referendum. To a number of witnesses, a referendum is not the ideal consultative instrument. Shades of opinion on a proposal cannot be differentiated. It forces those who disagree with a single element of the proposal to reject the whole thing, instead of leaving open the possibility of a collegial body settling differences of opinion or choosing an option. It is all or nothing.

20. Referring specifically to the federal consultations of 1898 and 1942, a number of witnesses commented that referenda might have made these clashes of opinion between the different communities over their perception of Canadian society appear even more starkly obvious, and

⁶ It should be noted that the majority of oral and written presentations to the Committee did not deal with referenda.

⁷ This claim may arise from the fact that the *Charter of Rights and Freedoms* recognizes what are now referred to as "new constitutional players", and that these groups see this recognition as giving them a kind of special proprietary interest in the document that recognizes them. However, their claim should not be confused with somewhat similar remarks by Chief Justice Rinfret in *A.G. Nova Scotia v. A.G. Canada* [1951] SCR 31, which were made in a totally different context and do not necessarily mean the same thing. According to Chief Justice Rinfret: "The Constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled".

might therefore have accentuated divisions and polarized the debate. A future referendum might have the same results. Indeed, there are those who fear that a national referendum might overwhelm the votes of minorities.

b. Political Responsibility

21. Some witnesses criticized the use of a referendum on the grounds that by resorting to it, our political leaders would be abdicating their responsibility, leaving decisions up to the public instead of dealing with them themselves. In the opinion of these witnesses, our politicians would be evading the consequences of difficult decisions. On the other hand it was also argued by adherents of the idea of direct popular democracy that this mechanism is a means for public participation that can only benefit society as a whole. By taking part directly and regularly in the decision-making process, the public at large would be better informed and more aware of the Canadian reality.

22. Some witnesses claimed that some politicians have used the possibility of a referendum on an issue as a threat to obtain concessions from other parties.

23. Witnesses who want politicians to shoulder their own responsibilities usually commented that if a referendum has to be held, it should be non-binding. They argued that a referendum must not become a substitute for political decision-making and that a consultive referendum would have several advantages. If the result were close, politicians could regard the referendum as simply an opinion poll and choose not to act on it, while if the result were unequivocal, the people would be more likely to accept it as binding. Politicians would always have the option of interpreting the vote and analyzing its consequences before applying the results.

24. Along the same lines, some witnesses pointed out that politicians are not elected to act only as popular opinion demands, but that they must display judgment and make decisions if they are truly to assume their role as representatives of the community. According to these witnesses, the different elements of the community have to be taken into account.

c. Obligatory or Optional Referenda

25. Some witnesses mentioned that if it is decided to make the referendum part of the constitutional process, the next step is to decide whether it should be obligatory or optional. Would a referendum have to be held in all cases, only when Parliament or the government saw fit, or would it depend on the importance of the question?

26. Apart from the witnesses who favour holding a referendum on all constitutional questions, the common view was that only constitutional amendments of special importance should be subject to a referendum. A purely technical matter, for example, might not require the expense of a national referendum.

27. When the question arose of who would decide what issues are important, the witnesses generally conceded that Parliament or the government ought to determine whether a referendum would be held or not. Among the many suggestions made to us, two should be noted here: one argued that as a general rule a referendum should be held unless there was a qualified majority (two-thirds or more) against holding one in both Houses of Parliament; the second took the opposite view and argued that there should not be a referendum unless both Houses of Parliament voted in favour of it.

28. Others suggested that a referendum on the Constitution could be initiated by the public in the form of a petition signed by a specified and fairly substantial number of voters.

29. Other witnesses also submitted that a referendum could be held only when a legislature did not ratify a proposal. In that case the referendum would be at the provincial level and would constitute the approval or rejection of the legislature's decision. Similarly, some witnesses said a referendum should be required at the provincial level to authorize a newly elected premier not to respect his predecessor's commitment to support a constitutional amendment.

d. Referenda and Minorities

30. A number of comments were made by witnesses about the heterogeneity of Canada's population and the appropriateness of holding referenda within such a society. We saw that the idea sparked vigorous opposition from groups representing minorities. The associations of francophones living outside Quebec were unanimous in opposing referenda on constitutional issues. Alliance Quebec, for its part, although it did not categorically reject the idea of a referendum, expressed the view that it would be better avoided. The representatives of the First Nations who spoke to the issue all voiced serious doubts about referenda as a means of consulting the people or reaching a decision.

31. Several witnesses feared that "the dictatorship of the majority" might deprive them of their rights. Making decisions in this way is, in their view, not at all suited to a pluralistic society. It carries the risk of stirring up prejudice and accentuating differences. Although democracy in the strictest sense of the word might be considered a form of "dictatorship by the majority" because it expresses the will of the majority, it still has room for minority rights. Interest groups can make themselves heard, and their opinions are not usually crushed beneath the weight of the majority's indifference.

e. Popular Participation

32. A number of witnesses expressed scepticism about the use of the referendum as a means of involving the public in discussions on constitutional matters. When there is a crisis and feelings are running high, it is reasonable to expect the public to turn out for a referendum in fairly large numbers, but this is unlikely to be the case when the subject is not one of national interest or when there is no link at all with people's concerns.

33. Furthermore, people lose interest when referenda on constitutional matters are held frequently. In Switzerland, where there have been 30 referenda between 1979 and 1990, voter turn-out is around 30 to 40 per cent.⁸

34. Some witnesses concluded that referenda ought to be held very infrequently, and only on important issues, while others argued that the effect of using referenda might be to make the people more aware of the workings of government and more eager to participate.

f. At What Stage in the Amending Process

35. Some witnesses argued that if a referendum were used as a consultative measure, it should be held after the amending proposal is drafted but before it is ratified, so that if necessary the proposal could be amended. If, on the other hand, a binding referendum was the mechanism chosen, it would

⁸ See chapter VII.

logically have to occur after the final version of the amending proposal was drafted and would constitute the adopting procedure, or at any rate part of it. Some witnesses suggested that a proposed amendment could be ratified according to the existing formula and a referendum then held to confirm it.

g. *Timeframe for Holding a Referendum*

36. A number of witnesses reminded us that the time allowed to elapse between putting forward the proposition and holding the referendum should meet two specific criteria. It should be long enough for the most productive debate possible, but short enough to maintain public interest in the issue. The timeframe could also depend on the importance of the question.

2. *Organizing and Administering a Referendum*

37. In addition to the principle of the referendum, the Committee considered how such a consultative or ratifying procedure should be organized and administered.

a. *Entrenchment or Passage of Federal Legislation*

38. Some witnesses contended that the referendum ought to be a stage in the amending process and therefore ought to be part of the amending formula itself. Others argued for greater flexibility, stating their view that the terms and conditions of a referendum ought to be defined by federal legislation, without entrenchment of the principle of a referendum in the Constitution.

39. Witnesses who opposed entrenching the idea of referenda in the Constitution's amending formula argued that once it was entrenched, a referendum would become obligatory every time an amendment was proposed, whether the subject was appropriate for the process or not. Submitting minor or purely technical amendments to a referendum would be nothing but a waste of effort.

40. Both groups agreed that the administrative procedures for holding a referendum should be spelled out in a federal law.

b. *Drafting the Referendum Question*

41. Some witnesses contended that the wording of the question was so important it should require approval by Parliament and the provincial legislatures, while others made various suggestions on the procedure to follow in drafting the question:

- The normal process for passing bills into law should be followed for approving the wording of the question.
- A constituent assembly should draft the question.
- An independent group should draft the question.
- The question should be approved following an agreement between the federal government and the provinces.
- The question should be taken from a popularly initiated petition.

42. Some witnesses said the question should be formulated so that it could be easily understood by the public, while others claimed that the only possible formulation was a statement of the proposed amendment followed by a very specific question such as "Do you agree with this proposal?"

c. Financing

43. Witnesses agreed almost unanimously that spending during the referendum campaign should be strictly monitored and even limited, to avoid any imbalance between the ability of groups with sufficient means at their disposal, and that of groups without such resources, to intervene forcefully in the process.⁹

44. Some witnesses even suggested public funding for the campaign, through adaptation of the provisions in the current legislation on election campaigns. In justification of the expenditure of public money, these witnesses said that constitutional issues are so important for the people of Canada that it would be appropriate for the community to assume the cost of the consultation or ratification process. Moreover, they argued that if the idea of "umbrella committees" were retained, each of these would have to be funded as well.

d. The Referendum Campaign

45. The campaign leading up to the referendum emerged as a major concern when the witnesses discussed referenda. On a number of occasions we were told that the campaign should be regulated, either by regulating financing (discussed above) or by requiring the establishment of "umbrella committees".

46. "Umbrella committees" is the name given to the groups that would oversee each of the possible options for answering the referendum question. To be able to participate in the campaign, a person or group would have to be affiliated with one of these committees.¹⁰

47. Most witnesses were of the opinion that the agency responsible for organizing federal elections should take charge of constitutional referenda as well, and that it should exercise the same sort of control over the referendum campaign as over an election.

e. Referendum Information

48. In a referendum campaign, the quality and appropriateness of the information available on the question at issue are of fundamental importance. Some witnesses argued that the referendum campaign should be strictly regulated. Others took the opposite tack and called for total freedom of expression.

49. In response to the argument that people might not have all the information required to respond adequately on polling day, some witnesses claimed that this might well be true at the start of the campaign leading up a referendum but that as the campaign continued voters would acquire the knowledge necessary to decide. Through the debate, the political parties and other interested groups would inform the public about the substance of the problem and the referendum question.

⁹ The Royal Commission on Electoral Reform and Party Financing is currently considering the question of third-party involvement in election campaigns, and its eventual recommendations will be of interest to anyone concerned about this matter.

¹⁰ During the 1980 referendum campaign in Quebec, supporters of the "Yes" and "No" sides had to associate themselves with the umbrella committee representing the option they favoured, if they wished to participate in the campaign.

f. Interpretation of Referendum Results

50. Discussions on this point focussed mainly on the majority or majorities required when a referendum is held: a national, regional or provincial majority, a simple or qualified majority.

51. Those who contended that any decision must be based on a majority usually said that the answer that obtained 50 per cent of the votes plus one on a national level would constitute the result. Those who favoured a qualified majority contended that this percentage is not high enough, with many mentioning 66 per cent instead.

52. A number argued, however, that it might be necessary to require a double or even a multiple majority, generally defined as a simple majority at the national level combined with another majority in a particular province, at the provincial level as a whole, or in a region of the country.

53. The following types of majority were mentioned by witnesses:

- a majority at the national level plus a majority in Quebec;
- a majority at the national level plus a majority in at least two-thirds of the provinces representing 50 per cent of the population, as in the general constitutional amending formula currently in effect;
- a majority at the national level and in a majority of the provinces;
- a majority at the national level and in each of the following regions: Quebec, Ontario, the Atlantic provinces and the West;
- a majority at the national level and in five regions: Quebec, Ontario, the Atlantic region, the Prairies and British Columbia.

54. In defining the regions, the Northwest Territories and the Yukon were regarded by some witnesses as an additional region and sometimes added, individually or together, to British Columbia or the Prairie provinces.

C. ANALYSIS

55. Our analysis will centre on two points: 1. A Ratification Referendum entrenched in the Constitution. 2. An Optional Referendum authorized by the Federal Legislation.

1. A Ratification Referendum Entrenched in the Constitution

56. An obligatory referendum could replace ratification of constitutional amendments by Parliament and the provincial legislatures. In view of the heterogeneous nature of Canada, such a referendum would require more than a national majority. Regional majorities (Atlantic region, Quebec, Ontario, the West) would be necessary. At this point in our history, however, we do not believe that a ratification referendum should be entrenched in the Constitution.

2. An Optional Referendum (Authorized by Federal Legislation)

57. We have explained that the referendum principle must not be entrenched in the Canadian Constitution. It should remain optional, as is now the case. The federal or provincial governments could have the option of resorting to this mechanism, as currently provided for in Canadian law. All that would be needed would be for the federal Parliament or the provincial legislatures to bring in simple legislation in keeping with the legislative power-sharing structure. This has been the situation since 1867, and we could easily continue in this manner.

58. Ours is a parliamentary democracy. Our government is accountable to Parliament and a Charter of Rights and Freedoms which protects our individual and democratic rights is entrenched in our Constitution. Each level of government is free to resort to direct democracy for laws that come under its purview.

59. The federal government has announced it will table proposals for renewed federalism in early September. A joint committee of the Senate and House of Commons will hold hearings in the provincial and territorial capitals to gather the views of Canadians and of other committees, and will report back no later than February 1992. We feel these are timely initiatives.

60. In our opinion, the federal authorities would be well advised to table draft referendum legislation before Parliament.

61. Referenda would be optional. Authorities could resort to this mechanism when they deem it necessary. In our opinion, given the heterogeneous nature of the country, the draft legislation should stipulate a double majority: a national majority and a majority in each of the four regions (Atlantic region, Quebec, Ontario, the West).

62. Referenda would not amend the Constitution of Canada and the results would carry some political but no legal weight. The results would not be binding on the two levels of government, but would constitute an eloquent message.

D. OUR RECOMMENDATIONS

We recommend that a federal law be enacted 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. The referendum should require a national majority and a majority in each of the four regions (Atlantic, Quebec, Ontario, and the West).

The territories would participate in the referendum, after having selected the region in which they would be included for the purpose of calculating regional majorities.

Constituent Assemblies

1. Virtually all of our witnesses called for changes within the initial phase of the constitutional amending process, when proposals are developed. Witnesses were divided chiefly over whether the traditional process involving negotiations among first ministers should merely be reformed or replaced with a substantially different alternative.
2. By far the most commonly suggested alternative to executive federalism was some form of constituent assembly or constitutional convention.¹ Indeed, our hearings suggested that the idea of a constituent assembly has acquired something of a hold on the Canadian political imagination during the 12 months since the Meech Lake amendments failed to achieve ratification. While constituent assemblies were virtually unmentioned in public discussion as recently as a year ago, and to our recollection unmentioned even by the most vociferous critics of the Meech Lake process during the period when it was still unfolding, this forum is now the subject of continuing attention in the media and in our hearings and submissions.

A. WHAT ARE THEY?

3. Constituent assemblies are bodies convened for the purpose of writing constitutions or, much less commonly, of developing amendments to existing constitutions. A distinction is sometimes made between two classes of assemblies. One kind is composed of delegates selected from the population at large. These bodies are invariably called constituent assemblies, and their members may be selected either by direct election or some form of appointment. The other kind is composed of elected legislators. Assemblies of this kind are sometimes referred to as constitutional conventions.
4. With only a few exceptions, our witnesses used the term "constituent assembly" as an umbrella term, referring to both assemblies and conventions. This may be, in part, because a number of our witnesses clearly had Quebec's recent Bélanger-Campeau Commission in mind as a model, and that mechanism included both elected politicians and appointed representatives of major socio-economic groups. For our purposes, the broad definition of constituent assembly is useful because it does not exclude important possibilities from discussion. It enables us to consider, in this chapter, assemblies, conventions and hybrids of the two.

¹ The two constituent assemblies which are most often referred to are the American Convention of Philadelphia (1787) and the one of Charlottetown-Quebec-London (1864-66). Both were composed of legislators and parliamentary delegates.

B. WHAT WE HEARD

1. Proposals

5. The proposals given us by our witnesses plainly suggest that the idea of a constituent assembly means highly different and sometimes incompatible things to different people. Some witnesses called for an assembly directly elected by the people, with candidates running on their constitutional principles in ridings either based on those used in existing elections or designed especially for the constituent assembly election.

6. Others called for an appointed assembly, usually recommending that the power to appoint delegates be vested either in the federal and provincial governments and/or legislatures, or placed in the hands of aboriginal peoples and particular interest groups representing various sectors of Canadian society, such as language, multicultural, religious and disadvantaged groups, vocational groups, and economic interests such as business and labour. A number of witnesses recommended a variant which would involve the nomination of candidates by special interest groups or legislators, followed by their selection by governments or legislatures or, in one case, random draw.

7. A further group of witnesses called for hybrid combinations. Most of these involved assemblies composed of a block of elected delegates and a block of appointed delegates. This was claimed, frequently, to combine the best of both worlds: political responsibility and broadened participation.

8. Witnesses differed over most of the additional features which a constituent assembly might have. For some, the most effective constituent assembly would be composed of no more than 20 or 30 people—barely larger than a parliamentary committee—while for others its value rests on an accurate mirroring of the diversity of Canadian society, and it is seen as a body of at least several hundred people. Some witnesses called for decision-making by a simple majority on all issues, while others advocated double majorities, regional majorities, and/or majorities of more than 50 percent.

2. Principles

9. Given that the idea of a constituent assembly means different things to different people, it is not surprising that radically different reasons were advanced for creating one in the first place. These arguments provide a basis for assessing the relative merits of different models of a constituent assembly, as well as for deciding whether or not to proceed with one at all.

(a) *Arguments In Favour*

10. Proponents of constituent assemblies generally argued that the range of constitutional dissatisfactions apparent among Canadians at the present time necessitates a comprehensive review of the Constitution. This, they felt, would raise a wide range of controversial issues. A constituent assembly was portrayed as an effective mechanism for building the necessary consensus among constitutional interests by fostering mutual understanding, negotiations, and trade-offs.

11. According to their individual visions of what a constituent assembly might be like, proponents placed varying degrees of emphasis on five more specific advantages. First, it was claimed that a constituent assembly would be more representative of Canadian society than first ministers' meetings, and would thus develop amendments more reflective of public needs and wants. This argument was sometimes associated with the view that an assembly should be deliberately structured to include a cross-section of Canadian society, including both linguistic and cultural minorities, major socio-economic interests, and aboriginal peoples.
12. Second, it was claimed that Canadians suffer from a sense of exclusion from the critical decisions made during the development of amendment proposals. A constituent assembly, it was argued, would foster a sense of participation. This argument was emphasized by those who called for some form of elected assembly, but was also suggested in the comments of witnesses who argued that an assembly open to the public and the media, and employing public hearings, would foster a sense of participation among all Canadians.
13. Third, it was argued that partisan politics interfere with both representation and consensus-building, and that a constituent assembly would remedy these problems by fostering a non-partisan style of decision-making. Witnesses who emphasized the dangers of partisanship frequently included in their proposals a specific ban on the presence of elected politicians in the constituent assembly.
14. Fourth, it was claimed that the combination of representativeness, public inclusion, and non-partisan decision-making would make the proposals of a constituent assembly legitimate in the eyes of Canadians as a whole. This argument was frequently associated with criticism of any process which relies on negotiations among first ministers for the development of amendment proposals.
15. Fifth, it was argued that a constituent assembly is well adapted to the complex nature of the task at hand. It would be established for the sole purpose of developing constitutional amendments, and its members would work at this full-time and on a continuous basis. Witnesses claimed that members of such a body would not be subject to the multiple responsibilities of elected officials.

(b) Arguments Against

16. By no means all of our witnesses were swayed by these arguments, however. Many did not comment on constituent assemblies of any kind, and focussed on other aspects of the amending process. Those who were explicitly opposed to constituent assemblies may be subdivided into two groups: those favouring the negotiations among first ministers, which has been the primary source of amendments in the past, and those favouring hybrid solutions involving both first ministers and legislative hearings. This second approach, focussing on the merits of public hearings, is discussed in Chapter VI.
17. We heard two basic defences of processes centrally involving negotiations among first ministers. We were told, first, that many of the features of Canadian government, both constitutional features and actual programs, of which Canadians are most proud are the product of first ministers' initiatives of the past. Witnesses mentioned the Canada and Quebec pension plans and unemployment insurance as examples of programs which reflect past amendments to the Constitution. Second, several witnesses noted that first ministers have generally succeeded in reaching agreement once they get to the table, and that the failure of the Meech Lake process was not due to the inability of first ministers to reach a consensus.

18. Affection for first ministers' negotiations was not, however, the major basis for opposition to constituent assemblies. Most witnesses who opposed such assemblies based their opposition on anticipated problems of such mechanisms. Many mentioned the time which would be required to establish an assembly, and have it complete its work. We were told that constitutional proposals are needed urgently if Quebec's 1992 deadline is to be met.

19. Other practical problems were seen by some witnesses to outweigh any advantages of a constituent assembly (and there was a good deal of scepticism about the advantages envisioned by advocates of assemblies). A number of witnesses argued more categorically that foreseeable drawbacks would make assemblies entirely unworkable.

20. The practical problems raised by witnesses varied according to which model of a constituent assembly was being discussed. We were told that any attempt to make an assembly represent a cross-section of Canadian society by appointing representatives of minorities, interest groups and occupations would run into multiple problems. It would face the daunting task of determining which groups and interests warranted representation, and would be subject to endless criticism by members of groups which were not represented. The attempt to create a constituent assembly could thus result merely in a new and wholly unnecessary class of constitution-related conflicts.

21. Some witnesses claimed that such an attempt would face problems in determining the number of seats to be given to various groups within the assembly. The net result would be that the legitimacy of such a body would be undermined before it even began its work, and that consensus-building could well be troubled by ongoing quarrels about representation.

22. When witnesses focussed on constituent assemblies elected for the sole purpose of drafting constitutional proposals, a number raised questions about their purpose. It was argued that such assemblies would simply reproduce the characteristics of legislatures, and that there was therefore no point in going to the trouble of creating them. This point was made most frequently in relation to political parties. It was argued that parties would inevitably have a prominent role in elections for a constituent assembly, and that political partisanship would influence decision-making within assemblies.

23. Other witnesses envisioned relatively non-partisan elections focussed on constitutional issues, but were still pessimistic about probable results. They argued that assemblies composed of people elected for their specific constitutional positions would be composed of people with no mandate to compromise, and would therefore not achieve consensus. Sceptics about elected assemblies argued more generally that they would be less accountable to the public than legislatures because they would be one-time affairs, composed of members who would not be subject to re-election.

24. Witnesses concerned about partisanship argued that assemblies which proved simply to be new forums for familiar partisan debates would lose legitimacy in the eyes of the public. These conclusions about legitimacy were echoed by witnesses who believed that assemblies would not give the public a sense of participation in constitution-making. We were told that assemblies would inevitably consist of elites—either elected or appointed—and that the proportion of the population that would actually participate in an assembly would be minuscule. The result, we were told, was that the broader public would be, and would feel, excluded from decision-making.

C. OUR ANALYSIS

25. We have given much thought to the arguments of our witnesses about constituent assemblies. Our basic conclusion is that a legislative committee, structured appropriately, can install the desirable features of a constituent assembly within our existing system, while avoiding the drawbacks. In particular, such a committee can provide Canadians with a representative, responsive and accountable mechanism for constitutional change. We outline, in what follows, the thinking that has led us to this conclusion, and then provide our specific recommendation.

1. Preliminary Considerations

26. We have seen, above, that the idea of a constituent assembly means different things to different people. There was, however, a common theme in most of the presentations received on constituent assemblies. It was most clearly apparent in the comments of witnesses who often said little more than that a constituent assembly would now be useful, or was demonstrably needed.

27. The common theme was public disillusionment with the process of first ministerial bargaining through which the Meech Lake package was developed, and the conviction that different mechanisms must be found. The one thing that all of the models of constituent assemblies placed before us have in common is that they do not involve, in the phrase which occurred in a multitude of variations in our testimony, eleven men making deals behind closed doors. This, we suspect, is the essence of their appeal.

28. This leads us to a preliminary conclusion. Public dissatisfaction with the first ministerial negotiation methods of developing constitutional amendment proposals is so high that any proposals now brought forward would be in immediate jeopardy, irrespective of their merits, if they were seen by the public as being a product solely of eleven first ministers making deals behind closed doors. Canada must now find a way of developing amendments which is more responsive to public inputs and more open to public scrutiny.

29. Is a constituent assembly the best way to develop amendments? Our response to this critical question hinges on two major considerations: representation and participation.

2. Representation

30. One of the central arguments in favour of constituent assemblies is that they could be composed so as to contain a cross-section of Canadian society, and would thus provide better representation than other mechanisms. This argument relies on the idea that people can only be represented by other people like themselves, and would result in an assembly carefully structured to include representatives of minorities, gender groups, socio-economic groups, and other components of the Canadian reality.

31. Our concern with this approach is that it assumes that political representation must involve sociological representation: that only members of any particular group can speak for that group. Our experience as politicians is that, on the contrary, social and economic groups contain sharp divisions over political values and policies. No white middle-aged man can claim to represent,

politically, all white middle-aged men, because white middle-aged men disagree strongly among themselves over almost any conceivable political issue. The same applies to other groups, whether they are based on gender, ethnicity, occupation, income level or any other sociological category.

32. The only person who can represent an individual, politically, is a person who broadly shares the political values and policy commitments of that individual. We need, in our view, improved political representation within our constitutional process. We do not need to replace political representation with some other form of representation which, inevitably, would do a poorer job of translating the fundamental values of Canadians into political rules of the game, or constitutional reality.

33. We do not say, here, that sociology is irrelevant to politics. It is a reasonable supposition that people whose values are significantly formed by their experiences as ethnic minorities, people in poverty, or members of other interests groups will, on the whole, find their most compelling representatives among others who have shared those experiences. This means that a process of political representation dominated by members of any particular social, economic or other particular interest may appropriately be viewed with suspicion. It does not mean, however, that political representation can be, as it were, constructed artificially through some magic combination of socio-economic, ethnic, gender, vocational and other representatives.

34. We are not saying, either, that minority interests should not be represented. Minority groups have particular interests which can easily be lost in the processes of majoritarian democracy. Representatives of minority groups are credible spokespersons on behalf of these interests. Ways need to be found to ensure that their voices are heard, and that they receive adequate responses, when the particular interests of minorities are at stake in constitutional change. This does not mean, however, that minority group representatives necessarily represent the broader political views and values of minorities, or that they should play the role of political representatives of these groups in the constitutional decision-making process.

35. We therefore reject, in principle, constituent assembly models which rely exclusively on elaborate schemes of representation designed to reproduce the Canadian social reality within a constitutional discussion forum. We also agree with those of our witnesses who argued that these models would involve severe practical problems. They would, in our opinion, generate expectations for representation considerably beyond those which apply to more routine processes—expectations which would be almost impossible to meet.

3. Participation

36. A second major argument for a constituent assembly comes from those who claim that it would enable Canadians to feel a sense of participation in constitutional change. This argument is typically made by proponents of an elected constituent assembly, who argue (a) that public participation could be achieved through the direct election of non-partisan assembly members on the basis of their constitutional views and values, and (b) that assembly members elected for the specific purpose of constitutional revision would better reflect the views of electors than, for example, politicians elected on general party platforms.

37. We are unconvinced by both of the arguments just summarized. The view that elections for a constituent assembly would give members of the general public a sense of participation in its subsequent deliberations is, in our view, doubtful for two reasons. First of all, the act of voting for

somebody, by itself, does not provide a sense of participation in deliberations to which that person contributes, particularly if the representative's views are not reflected in outcomes. If voting provided a feeling of participation, the public should have felt this during the Meech Lake process, when decisions were taken by elected legislators.

38. As well, we think that the assumption that such elections could be non-partisan is unrealistic. Political parties have strong constitutional commitments and available organizations. Even if their formal participation could be successfully banned, their informal participation on behalf of sympathetic candidates would be inevitable. If, furthermore, elected politicians were prevented from participating, as a number of our witnesses suggested, their places would frequently be taken by party activists and party loyalists whose partisan feeling is sometimes more fierce than that of many politicians. In short, elections for a constituent assembly would strongly resemble elections for existing political offices.

39. We are also unconvinced by the second part of the argument summarized above: that the election of people on the basis of their specific constitutional positions would improve representation and decision-making. In our view, it would be more likely to disable both. If people were elected on the basis of their specific constitutional views, they would not be able to represent voters' desires for negotiation and compromise. If, on the other hand, they were elected because of their general values, and their willingness to engage in negotiation about specifics, they would not differ from politicians currently elected in general elections.

40. The people who would be most inclined to run in elections for a constituent assembly could well be the ones with the most definite views, and the ones least inclined to compromise. As well, the fact that a constituent assembly would be a one-time event, and that members would not be accountable to voters for their contribution (or lack of it) to consensus-building, could well foster further rigidity. If, on the contrary, the lack of accountability fostered flexibility, then it would negate the advantages sought, in the first place, through elections focussed specifically on constitutional issues.

41. We do not think, moreover, that it would be desirable to have elections focussed on specific constitutional positions. Many Canadians do not have specific positions, and are more comfortable communicating the general values and preferences which are expressed when votes are cast within the existing process. It is up to those who are elected to translate these general values and preferences into concrete decisions, about the constitution or regular legislation, as the case may be. This translation requires political representation — representation by individuals who are broadly in tune with the values and priorities of those they represent.

42. Our conclusion is that an elected constituent assembly would not be an improvement on existing elected bodies. It would either turn out to be indistinguishable from them, and thus an unneeded expense, or less able to reconcile commitments to principle with the delicate art of consensus-building.

D. CONCLUSIONS

43. Our arguments thus far have eliminated the two constituent assembly variants which differ most from present arrangements. These are appointed assemblies composed of representatives of the various linguistic, ethnic, economic, social, vocational and other salient groups which make up Canadian society, and elected assemblies composed of individuals who campaign on non-partisan, and specifically constitutional, platforms.

44. The arguments which we have made suggest characteristics which any new mechanism for developing constitutional proposals in Canada must have, regardless of whether or not Canadians opt for a constituent assembly.
45. First of all, the mechanism which Canada needs now must be more clearly responsive to the diversity of Canadians than the first ministerial negotiations mechanism. We have argued, above, that the proper way in which to achieve this responsiveness is by placing representatives of minority groups in a position where they can articulate the particular interests of their groups, and receive a response.
46. Parliamentary and legislative committees have traditionally devoted an ample — some would even say disproportionate — amount of their time to the hearing of various minority groups. We think this allocation of time is fully justified, given the inherent tendency of majoritarian democracy to override, or simply fail to hear, the voices of minorities.
47. Our main concern, here, is that the representation of these interests is frequently a somewhat haphazard affair, dictated as much by the exigencies of committee scheduling as by any larger plan. We think this problem could be dealt with by a more formalized approach to the involvement of aboriginal peoples and minority groups. This could involve the designation, in consultation with such groups, of advisory bodies which could represent the interests of aboriginal peoples and minority groups on an ongoing basis, and monitor decision-making in the larger constituent body in order to identify matters of specific concern to them. Such an approach would enhance the likelihood that these issues would receive concentrated attention by the media and the public.
48. We believe, as well, that the mechanism which Canada needs now must consist of individuals chosen by the people as their political representatives. This conclusion stems, first of all, from our conviction that appointed assemblies would lack legitimacy in the eyes of the public. People want a sense of participation, and perhaps more importantly a sense of effective influence, in constitutional decision-making. Only a directly-elected body, we believe, can give Canadians this sense. As we argue above, however, there is no convincing case to be made for having separate elections for the purpose of composing a constituent assembly.
49. The mechanism which Canada needs now must strike a balance between responsiveness to particular interests, and responsiveness to the general interest of the majority. Our survey of mechanisms which would be dramatically different than those currently in use has not convinced us that this general goal would be served by radical change. What Canadians need to do, in our opinion, is to systematically build, and balance, the two kinds of responsiveness within our present system.

E. OUR RECOMMENDATIONS

We recommend:

- a) **that the parliamentary committee, to be established presently by both Houses of Parliament to review the proposal of the Government of Canada for constitutional reform, be composed of members of the House of Commons and Senate, of sufficient number to be representative of the Canadian population;**

- b) that the parliamentary committee create, in consultation with aboriginal leadership, a special task force to address issues of concern to aboriginal peoples, the membership of which would include representatives of the aboriginal peoples and would be chaired by a member of the parliamentary committee;
- c) that the parliamentary committee create similar task forces in other areas as it deems appropriate, each chaired by a member of the parliamentary committee; and
- d) that the committee hold, as appropriate, joint hearings with other committees that will have been established by provincial and territorial governments or legislatures.

A. WHAT WE HEARD

1. Need for Public Hearings

Several witnesses called for a mechanism which would enable the public to express its views on any proposal for constitutional amendment. These calls were largely due to the fact that a number of witnesses blamed the demise of the Meech Lake Accord on a lack of sufficient public input into the process.

Witnesses said they felt they were being left out of discussions on important issues that directly affected them when a constitutional agreement was negotiated exclusively by federal and provincial political leaders without the public being consulted in advance.

A few witnesses insisted that public hearings should be televised. This would, in their opinion, satisfy a dual objective: informing the public and giving it the opportunity to respond.

According to a number of witnesses, legislative procedures to even constitutional provisions already proved to ensure that constitutional and constitutional agreements can be negotiated without the public first having an opportunity to express its views.

2. What Stage in the Process?

Witnesses expressed their views on the timing of public hearings. However, they all agreed that it was important that the public be consulted before the text of constitutional amendments is decided by political leaders. It is difficult, according to many witnesses, to ensure that their opinions would be taken into consideration when the text is decided by political leaders. To ensure that public hearings have an impact on the process, the opinions of the witnesses, he held an early public hearing in the assembly process.

Witnesses maintained that public hearings should be televised. This would, in their opinion, satisfy a dual objective: informing the public and giving it the opportunity to respond. However, witnesses also expressed concern about the cost of such hearings, or whether provincial governments would be able to afford to do so.

44. The Commission has been asked to consider the possibility of a special committee to study the issue of constitutional reform. The Commission believes that the best way to proceed is to establish a special committee to study the issue of constitutional reform. The membership of this committee should include representatives of the various political parties and should be chaired by a member of the Commission.

45. The Commission believes that the best way to proceed is to establish a special committee to study the issue of constitutional reform. We think this is a very important issue and that it is essential to have the voice of the people heard.

46. Our objective is to ensure that the process of constitutional reform is a fair and open one. We think the best way to do this is to establish a special committee to study the issue of constitutional reform. This committee should be composed of representatives of the various political parties and should be chaired by a member of the Commission. We think this is a very important issue and that it is essential to have the voice of the people heard.

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CONCLUSIONS

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CHAPTER VI

Public Hearings

A. WHAT WE HEARD

1. Need for Public Hearings

1. Several witnesses called for a mechanism which would enable the public to express its views on any proposal for constitutional amendment. These calls were largely due to the fact that a number of witnesses blamed the demise of the Meech Lake Accord on a lack of sufficient public input into the process.
2. Witnesses said they felt they were being left out of discussions on important issues that directly concerned them when a constitutional agreement was negotiated exclusively by federal and provincial political leaders without the public being consulted in advance.
3. A few witnesses maintained that public hearings should be televised. This would, in their opinion, satisfy a dual objective: informing the public and giving it the opportunity to respond.
4. According to a number of witnesses, legislative, procedural or even constitutional provisions are urgently needed to ensure that henceforth, no constitutional agreement can be negotiated without the public first having an opportunity to express its views.

2. At What Stage in the Process?

5. Witnesses expressed their views on the subject in many different ways. However, they all emphasized how important it was for the public to have some input before the text of a constitutional accord is finalized by political leaders. In addition to demanding the right to be heard, witnesses also sought assurances that their opinions would be taken into consideration when the time came to conclude an agreement. To ensure that public hearings have an impact on the process, they should, in the opinion of the witnesses, be held as early as possible in the amending process.
6. Witnesses maintained that public hearings should be mandatory for any constitutional proposal. They differed, however, on whether only the government or the federal Parliament should hold public hearings or whether provincial governments or their legislative assemblies should also

stage them. On the one hand, there is the desire to avoid overlapping hearings on the same subject while, on the other hand, there is the desire to give as many people as possible an opportunity to be heard. Some witnesses argued that national hearings would provide a broader range of opinions on the subject, while provincial hearings would mean that no single body would coordinate all of the views expressed.

7. Moreover, some witnesses contended that public hearings should be held when the amending resolution came before Parliament and the provincial legislative assemblies. This additional measure would, they felt, ensure that the public had sufficient opportunity to speak on the subject.

3. Before What Type of Body?

8. Witnesses suggested many different types of forum within which public hearings could be held. These included a national commission of inquiry, a special joint parliamentary committee, an expanded parliamentary committee, a joint federal-provincial parliamentary committee, or public hearings before a constituent assembly. Virtually all of these suggestions refer to a type of forum that already exists in our parliamentary system.

B. OUR ANALYSIS

9. Without wishing to pass judgment on witnesses' comments about the failure of the Meech Lake Accord, it is worth noting that Quebec had already held public hearings on the draft agreement before the Accord was put into final form in the Langevin Block in June of 1987. However, it was not until after the Langevin agreement that the federal Parliament and the legislative assemblies of Manitoba, New Brunswick, Prince Edward Island and Ontario also held public hearings, before they announced their decision on the resolution to amend the Constitution.

10. The Canadian Constitution expresses enduring values. Canadians need to have the opportunity to voice their views on an amendment before it is passed into law. Public hearings should therefore give Canadians the opportunity to speak out. In addition, everyone who wishes to observe the process should be able to do so, by attending the hearings or following them on television.

11. By holding hearings, Parliament would be responding to a major concern of Canadians, that of being heard on matters that concern them. Furthermore, the hearings would provide the opportunity for broader public understanding of constitutional issues.

12. To respond to another concern, the fear that public input may occur too late to influence the process, it would be important for the hearings to be held early enough that the arguments put forward could indeed influence the agreement.

13. To allow the greatest possible number of people to express their views, and to make sure that the public and the members of the body responsible for holding the hearings were well informed, that body could take the form of a commission or a parliamentary committee, to which could be added expert advisers on particular elements of the proposed agreement.

14. Before 1982, public hearings were held on constitutional matters only if delegated legislation or a resolution of Parliament specifically required them. At the provincial level there was at that time no mechanism at all for public hearings on constitutional matters, because amendments did not have to be ratified by the provincial legislatures. Since 1982, the provincial legislatures have been required to participate in the amending process, and this has opened the way to public hearings at the provincial level.

15. To reach a still greater number of people, it would be desirable for the provinces also to hold public hearings on the elements of a proposed agreement.

C. OUR RECOMMENDATIONS

We recommend that Parliament's procedural rules be amended to make mandatory the holding of public hearings on any proposed constitutional amendment initiated by the Government of Canada, or to which the Government of Canada has given its agreement in principle, such hearings to be held early enough to allow for changes to the proposal.

We recommend to the provincial and territorial legislatures that they consider adopting similar procedures.

B. BELGIUM (Francis Delpech)

The process for amending the constitution of Belgium was outlined by Francis Delpech. It involves two separate phases: initiating and enacting. The King initiates the revision process by tabling a proposed amendment, which is then adopted by the Chamber of Representatives and the Senate (composed of members of the King).

Francis Delpech notes that Belgium is a unitary state, and that it is a constitutional monarchy. He also notes that Belgium is a unitary state, and that it is a constitutional monarchy.

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to the fact that the public hearing process was not a one-way street. It was a process that allowed the public to be heard and to be heard. The public hearing process was not a one-way street. It was a process that allowed the public to be heard and to be heard. The public hearing process was not a one-way street. It was a process that allowed the public to be heard and to be heard.

2. Many of the witnesses who testified at the public hearing were concerned about the impact of the proposed project on the environment. They were concerned about the impact of the proposed project on the environment. They were concerned about the impact of the proposed project on the environment.

3. Before What Type of Body?

C. OUR RECOMMENDATIONS

The Commission believes that the public hearing process should be held at the provincial level. The Commission believes that the public hearing process should be held at the provincial level. The Commission believes that the public hearing process should be held at the provincial level.

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B. OTHER ANALYSIS

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The Contribution of International Experts

A. INTRODUCTION

1. The Committee felt it would be useful to examine the constitutional amending processes in force in five federations with a number of important similarities to Canada. Therefore, we invited five international experts from Belgium¹, Australia, Switzerland, Germany and the United States, to discuss the amending processes in their countries. These presentations are the focus of this chapter.

B. BELGIUM (Francis Delpérée)

2. The process for amending the constitution of Belgium² was explained by Dean Francis Delpérée³. It involves two separate phases: initiating the revision and carrying out the revision itself. The legislative power (the House of Representatives or the Senate in cooperation with the King) initiates the revision process by tabling a proposed amendment, which is then put to a

¹ A controversy exists even in Belgium as to whether that country is a true federal state. Some contend that it is on the way to embracing federalism and that it is a quasi-federal state. In his submission to the committee, on May 2, 1991, Professor Delpérée stated that Belgium is a kind of federal state.

² Article 131 of the Belgian Constitution sets out the amending process and reads as follows:

131. The legislative power has the right to declare that it is necessary to revise such constitutional provision as it shall designate. After this statement, both Chambers are automatically dissolved. Two new Chambers will be convened in accordance with article 71. These Chambers, in agreement with the King, shall decide the points submitted for revision. In this case, the Chambers may not debate unless at least two-thirds of the members of each of them are present and no change shall be adopted unless it secures at least two-thirds of the total votes cast.

³ Professor of Constitutional Law and Dean of the Faculty of Law at the *Université catholique de Louvain-La-Neuve*, Belgium.

simple majority vote in each House. When the initiative results in a joint formulation of "declarations of revision" by the two Houses and the King, Parliament is automatically dissolved, elections are declared, and the Houses are reconvened within 40 days.

3. Declarations of revision must meet two conditions. The first concerns the form of the declaration: the provisions (subclauses and paragraphs) of the Constitution that are to be either added, amended or repealed must be specifically designated. The second concerns time: the revision process cannot last indefinitely and there are certain times when the Houses cannot meet.

4. The two newly elected Houses are summoned by the King to form a constituent assembly which will carry out the revision. If the revision process moves forward, the two Houses study the provisions in question and the revision must receive a qualified majority of two-thirds, with at least two-thirds of the members present. If the proposed amendment is passed, the King gives his consent, sanctions the amending provisions, promulgates the new provisions, and sees to their publication. Revised provisions are effective from the date of publication.

5. According to Dean Delpérée, the amending process is rather rigid. This inflexibility is tempered, however, by "special laws" which are not constitutional law but which, in his view, complement the Constitution. Thus a special law, one that does not have constitutional force, is enacted if there is a two-thirds majority vote for the proposed law. Dean Delpérée feels that this special law helps to breathe life into the Constitution. He also favours amending paragraph 5 of Article 131 of the Belgian Constitution to better ensure consensus between the two major linguistic communities in Belgium when constitutional amendments are sought. The amendment he recommends reads as follows:

In this case, the Chambers may not debate unless at least two-thirds of the members of each of them are present and *only if the majority of the members of each linguistic group are present*. No change shall be adopted unless it secures *the majority of votes of each linguistic group in each chamber, provided that the total number of favourable votes cast by the two linguistic groups represents two-thirds of the total votes cast*. (Additions are italicized).⁴

⁴ Page 15 of the brief of Dean Delpérée.

C. AUSTRALIA (Leslie Zines)

6. Australia has been a federal state since 1901. Professor Leslie Zines⁵, explained to the Committee the process for amending the Australian Constitution. Section 128 of the Constitution of Australia⁶ sets out the amending procedure.

7. Only the Parliament of the Commonwealth⁷ (the federal parliament), which is bicameral, has the power to initiate the constitutional amending process.

8. Any constitutional amendment must be adopted by an absolute majority of both Houses of Parliament. If one of the two Houses withholds its consent or proposes changes, the House in which the process was initiated can either adopt the changes or reject them, but the proposed constitutional amendment must subsequently be adopted once more and must receive an absolute majority.

9. Once the proposed constitutional amendment has been adopted by Parliament, it is put to a referendum. The majority required in a referendum varies according to the nature of the constitutional amendment proposal. In accordance with Section 128, special majorities are

⁵ Professor of Constitutional Law, Australian National University.

⁶ Article 128 of the Constitution of Australia reads as follows:

128. This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months, the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for or against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

In this section, "Territory" means any territory referred to in section 122 of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

⁷ In practice, only the House of Representatives can initiate an alteration or adopt an amendment after it has been rejected by the Senate.

required, in the case of referenda on proposed amendments which would reduce the proportionate representation of any State in the Senate or House of Representatives or the minimum number of representatives of a State in the House of Representatives, or would alter the borders of a State or affect the provisions of the Constitution in relation thereto. The referendum in any of these cases requires the approval of a majority of voters in the nation as a whole, a majority of voters in a majority of States, and a majority of voters in the State affected by the amendments. All other constitutional amendments require a national majority and approval by a majority of voters in a majority of States. The constitutional amendment proposal is then presented to the Governor General for the Queen's assent.

10. Of the 42 amendment proposals submitted to the people since 1901, eight have been ratified.

11. Each State has its own Constitution, which can be amended by legislation passed by either a simple, absolute or two-thirds majority, or by way of a referendum, depending on the constitutional provisions of the State. However, as Professor Zines noted: "Any State constitutional provisions are, of course, subject to the Constitution of the Commonwealth and any valid federal law."⁸

12. Professor Zines also noted that most powers of the central Parliament are not exclusive and can be exercised concurrently by the States. However, in cases of incompatibility, the federal statute is paramount.

⁸ Page 5 of the brief of Professor Zines.

D. SWITZERLAND (Jean-François Aubert)

13. Switzerland has been a federal state since 1848. It is made up of twenty cantons and six demi-cantons. Professor Jean-François Aubert⁹ presented a brief to the Committee on the procedure for amending the Swiss Constitution.¹⁰

14. The Swiss Constitution was rewritten in 1874. There has not been a total revision since 1874, but there have been 119 partial revisions, most notably in 1891, 1977 and 1987.

15. Revision may be proposed by the federal Parliament (with a simple majority in both Houses) or by popular initiative in the form of a petition signed by at least 100,000 citizens. If the formalities have been respected (which is generally the case), Parliament must put the proposal before the whole electorate without amending it. Parliament may, however, table a counter-proposal. In that case the referendum will be a choice among the original initiative, the counter-proposal and the status quo.

⁹ Professor of Constitutional Law at the University of Neuchâtel

¹⁰ The amending procedure of the Swiss Constitution, which contains four sections, reads as follows:

Article 118

The Federal Constitution can be wholly or partially revised at any time.

Article 119

Total revision shall take place according to the forms laid down for federal legislation.

Article 120

¹ When one section of the Federal Assembly decrees the total revision of the Federal Constitution and the other section does not agree, or when 100,000 Swiss citizens eligible to vote request the total revision of the Federal Constitution, the question of whether such a revision should take place shall in either case be submitted to the vote of the Swiss people, who shall decide the issue by voting "yes" or "no".

² If in either of these cases the majority of Swiss citizens casting a vote give an affirmative answer, both councils shall be elected anew in order to undertake the revision.

Article 121

¹ When the Federal Assembly elaborates a counter-proposal, three questions will be submitted to the voters on the same ballot. Each voter may declare without reservation:

1. If he prefers the popular initiative instead of the regime in operation;
2. If he prefers the counter-proposal instead of the regime in operation;
3. Which one of the two texts should come into force in the case which the people and the cantons would prefer both texts instead of the regime in operation.

² The absolute majority is separately determined for each question. Questions without answers are not taken into account.

³ When both popular initiative and counter-proposal are accepted, it is the result given to the third question which prevails. The text which is coming into force, at the third question, is the one which receive the most votes from the voters and from the cantons. However, if, at the third question, one text received more votes from the voters and the other one more votes from the cantons, neither one is coming into force.

Article 123

¹ The revised Federal Constitution or the revised part of it, as the case may be, shall enter into force if it has been approved by the majority of the Swiss citizens casting a vote and the majority of the Cantons.

² In order to determine the majority of the Cantons, the vote of each Half-Canton is counted as half a vote.

³ The result of the popular vote in each Canton is considered to be the vote of that Canton.

16. Whether the revision is proposed by Parliament or by the people, it is subject to a mandatory referendum and must be approved by a majority of the voters in a majority of the cantons ("double majority"). The legislatures and governments of the cantons do not play an active role in constitutional revision. At most, they may submit proposals, which are not binding on the federal Parliament, although the cantons are usually consulted when the federal Parliament is formulating revision proposals.

17. Conceived in 1848, the double majority principle operates to protect individual cantons from domination by a national majority government. Professor Aubert noted that in 252 referenda, the majorities had differed seven times. A total of 119 referenda have resulted in partial revisions to the Swiss Constitution.

18. Incidentally, between 1979 and 1990 the Swiss participated in thirty referenda on seventy-eight questions, among which sixty-four were related to the Constitution. Forty-four were rejected and thirty-four passed, with a participation rate of from 30 to 40% of registered voters.¹¹

19. Overall, according to Professor Aubert, revisions proposed by the federal Parliament have a 75% success rate while those initiated by the citizenry have a 10% success rate.

20. Professor Aubert also discussed the question of language blocs (German, French and Italian languages) concluding that the influence of linguistic divisions on constitutional revision appears to be minimal.

E. GERMANY (Helmut Steinberger)

21. It was Dr. Helmut Steinberger¹² who explained to the Committee the procedure for amending the German Constitution (the *Grundgesetz* or "Basic Law") set out in section 79.¹³ Under section 79, provisions of the Constitution can only be changed with the consent of two-thirds of the *Bundestag* (the Assembly or lower house) and two-thirds of the *Bundesrat* (the Federal Council or upper house). These majorities "are not related to the numbers of members present and voting, but to the statutory numbers of members, regardless of whether a member is absent or not voting".¹⁴ There is no time limit. The *Laender* (states) have no role in amending the Constitution. Dr. Steinberger noted that:

¹¹ Professor Aubert justifies as follows the distinction between the two success rates: "The revisions proposed by the Parliament have been approved three times out of four. They are, in effect, prudent, detailed, well prepared. The revisions proposed by the citizens have great less success. They are, in general, worked by minorities which are not able to impose themselves in Parliament. Those revisions have been approved one time out of ten." (page 5 of his brief).

¹² Retired Justice of the Federal Constitutional Court of the Federal Republic of Germany, Dean of the faculty of Law at the University of Heidelberg, Co-Director of the Max Planck Institute for Comparative Public and International Law in Heidelberg and Vice-President of the Council of Europe's Commission on Democracy through Law.

¹³ Section 79 of the German Constitution reads as follows:

79(1) The Basic Law can be amended only by laws which expressly amend or supplement the text thereof.

79(2) Any such law shall required the affirmative vote of two-thirds of the members of the Federal Diet and two-thirds of the vote of the Federal Council,

79(3) Amendments of the Basic Law affecting the division of the Federation into states, the participation on principle of the states in legislation, or the basic principles laid down in articles 1 and 20, shall be inadmissible."

¹⁴ The number of members in the *Bundestag* is fixed by the *Elections Act*, while the number of members on the *Bundesrat* is set down in section 51(2) of the Constitution. Page 5 of the brief of Dr. Steinberger.

There is no room for ratification of amendments by the states, no veto power, no opting out of a single state or a minority of states.

There does not exist in the Federal Republic a kind of constitutional convention—as distinguished from strict law—rendering their exclusion from the amending process “improper”.

The Basic Law considers their interests in the amending process safeguarded by the rights of the Federal Council (*Bundesrat*) in this process and by the substantive protection effected by section 3 of article 79, which eventually could be enforced by the Federal Constitutional Court.¹⁵

22. Section 79(3) of the Constitution stipulates that the provisions which deal with separation of powers, the federal structure, participation by the *Laender* in the legislative process, and fundamental rights cannot be amended. Dr. Steinberger termed this provision an “eternity clause.” The federal Constitutional Court has the authority to decide whether a constitutional amendment respects section 79 of the German Constitution.

23. Proposed constitutional amendments are introduced in the same way as ordinary legislation, i.e. in the Bundestag by either the federal government, a member of the *Bundestag*, or a member of the *Bundesrat*. The Federal President, other federal bodies, and state *Laender* do not have the power to initiate amendments. Nor is there any provision in that case for initiative by the electorate, according to Dr. Steinberger.

24. Upon its adoption by the Bundestag, a bill proposing an amendment must be transmitted to the *Bundesrat* without delay. If the *Bundesrat* does not accept the bill, it may call for the convening of a conciliation committee within three weeks. In any event, a two-thirds majority in both houses is required for the proposed amendments to become law. There are no time requirements.

25. Once passed, the amending bill is signed by the Federal President and becomes law. The Federal President has the right to verify that the amending procedure was respected. In Dr. Steinberger’s opinion, the President has no right of review in regard to the substantive compatibility of the bill with the Basic Law. This issue is a controversial one in Germany. Nor does the President have the right to block promulgation of new amendments to the Constitution by refusing to sign the bill for political reasons, according to Dr. Steinberger. The German Constitution has been amended 36 times since 1949 under the provisions of article 79(1) and (2), and once under the provisions of article 29.

26. According to article 29, the federal territory can be re-organized to ensure that the federal states have the size and capacity to be able to fulfil effectively the functions incumbent upon them.¹⁶ An ordinary federal statute suffices for this re-organization, but the states affected must be consulted. A referendum is expressly provided for in article 29(4), as is the exercise, in specific circumstances, of a popular initiative, but territorial re-organization is the only instance where these are possible.

¹⁵ Dr. Steinberger’s brief, p. 7

¹⁶ A bill designed to re-organize the federal territory must, according to Dr. Steinberger, take into account regional, historical and cultural ties, economic expediency, regional policy, and the requirements of town and country planning.

27. The central government may also, under article 24(1) of the Constitution, authorize the transfer of sovereign powers to intergovernmental institutions such as the European Community.

28. The general rule is that although the Constitution respects the autonomy of the *Laender*, and gives the federal government no constitutional power to interfere when a state is drawing up or amending its constitution, the constitutional order in the states must conform to the principles of republican, democratic and social government based on the rule of law, as required by the Constitution. Democratic principles¹⁷ must be respected. This provision is called the “homogeneity clause”. The central government has the power to ensure that the *Laender* respect this clause.

F. UNITED STATES (James Pope)

29. Professor Pope¹⁸ explained to the Committee the amending formulas set out in the U.S. Constitution of 1787.¹⁹ He began by pointing out that the U.S. Constitution is the oldest written constitution still in force in the world, and that it has been amended 26 times in two centuries.

30. Proposals to amend the U.S. Constitution may come from Congress or from a state legislature. In order for a constitutional amendment to be passed, at least two-thirds of the members present in both houses (the House of Representatives and the Senate) must vote in favour. However, the amendment does not come into force until it is ratified by three-quarters of the states. No state legislature may make an amendment to the constitutional reform proposal—they can only accept or reject it.

31. A state legislature may also propose constitutional amendments. If two-thirds of the states call for it, a “national constitutional convention”²⁰ may be held to propose constitutional amendments. An amendment so proposed must then be ratified by three-quarters of the states. A convention of this kind was held in 1787. The Articles of Confederation, which was the first U.S. constitution, required unanimous consent by the states in order for it to be amended. The delegates to the Philadelphia Convention exceeded their mandate and, rather than proposing amendments, drafted

¹⁷ These democratic principles may be summed up as the right of the people to choose their elected representatives in general, direct, free, equal and secret elections.

¹⁸ Professor, Rutgers School of Law, Newark, New Jersey.

¹⁹ The relevant section reads as follows:

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

²⁰ In the sense of “constituent assembly”.

a new Constitution that was ultimately approved by the 13 existing states.²¹ There has been no constitutional convention since then simply because, according to Professor Pope, the necessary precondition—consent of two-thirds of the states—has never been met.

32. Professor Pope also discussed another means of amending the U.S. Constitution—extra-legal amendments, accomplished by going outside of the legal framework for amendment. These amendments are based on the theory of popular sovereignty, which was invoked when the Articles of Confederation were replaced by the present U.S. Constitution after the Philadelphia Convention in 1787. The Supreme Court, which was established by this same Constitution, legitimized the constitutional amendments resulting from the Philadelphia Convention because of their basis in the sovereignty of the people,²² even though the amendment procedure set out in the Articles of Confederation had not been respected.

33. Professor Pope felt that a constituent assembly convened to draft constitutional proposals has a number of advantages. One is that it draws attention to the distinction between constitutional politics and ordinary politics, and sends a signal to the public that something very different is happening—that there is a constitutional crisis to be resolved. A second advantage might be greater public involvement in the process, particularly in the election of delegates. Professor Pope contended that “deliberation, compromise and collective creativity—the great strengths of the convention form—will be essential.”²³

34. With respect to the referendum, Professor Pope noted that the referendum is used routinely in some states, notably California, but has never been used at the national level. In his view, the referendum is not a remedy for lack of public participation in the drafting of constitutional proposals, nor was it a justification for a constitutional amendment by extra-legal processes. He added that the referendum could nevertheless be a useful tool when a constitutional amendment was to be ratified, as long as the public was well informed about the importance of the issues.

35. According to Professor Pope, the main goal of constitutional amendments is to facilitate “constitutional politics”²⁴ by: (1) stimulating broad and deep popular participation; (2) maximizing public virtue; and (3) creating a democratic forum that is not dependent on political parties and interest groups.

²¹ The new Constitution nonetheless came into effect when nine states (or just over two-thirds) had ratified it.

²² The American constitution begins with the words: “We, the People . . .”

²³ Page 11 of Professor Pope brief.

²⁴ In contrast to ordinary, day-to-day politics.

LIST OF RECOMMENDATIONS

A. Recommendations which require amendments to the Constitution:

Amending Formula (four regional vetoes)

- 1) We recommend that the amending formula contained in sections 38 and 42 of the *Constitution Act, 1982* (whereby the approval of the Senate, the House of Commons and at least two-thirds of the provinces representing at least 50 per cent of the population is required) and the amending formula in section 41 (whereby the approval of the Senate and the House of Commons and every province is required) be changed such that constitutional amendments would require the approval of the Senate and the House of Commons and each of the four regions of Canada, as follows:
 - a) at least two of the following provinces: Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;
 - b) Quebec;
 - c) Ontario; and
 - d) at least two of Manitoba, British Columbia, Saskatchewan, and Alberta, representing at least 50 per cent of the population of that region.

except that the requirement of unanimity should be retained respecting

- i) the use of the English or the French language (as contained in section 41(c) of the *Constitution Act, 1982*), including the rights of linguistic minorities;
- ii) the proprietary rights of provinces;
- iii) the offices of the Queen, Governor General and Lieutenant Governor;
- iv) any change to provisions i to iii,

and excepting provisions with respect to the territories and the aboriginal peoples contained in other recommendations.

- 2) In making this recommendation, the Committee realizes that, in practice, a new amending formula should be adopted only in the context of a substantial package of constitutional reforms including, for instance, the reform of the Senate.

- 3) We recommend that the amending formula contained in sections 43, 44 and 45 of the *Constitution Act, 1982* remain unchanged.

Ratification Period

- 4) We recommend that the maximum period for the ratification of proposed constitutional amendments be two years, beginning on the day on which a proposal is ratified by either a federal or provincial legislature.

Aboriginal Peoples

- 5) In order to protect the aboriginal and treaty rights which the Canadian Constitution guarantees to the aboriginal people of Canada, we recommend that any amendment to the Constitution of Canada directly affecting the aboriginal peoples require the consent of the aboriginal peoples of Canada.
- 6) We recommend that the Constitution of Canada provide for a process of biennial constitutional conferences to address the rights of aboriginal peoples, the first such conference to be convened no later than one year after the amendment comes into force.

Territories

- 7) We recommend that the extension of existing provinces into the territories require the consent of the legislature of any territory and any province affected, and the Parliament of Canada.

Creation of New Provinces

- 8) We recommend:
 - a) that the creation of new provinces in the territories require only the consent of the legislature of any territory affected, and the Parliament of Canada; and
 - b) 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.

The Supreme Court of Canada

- 9) We recommend that the Constitution of Canada be amended to provide that at least three judges of the Supreme Court of Canada be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten

years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec. The other six judges would be appointed from other provinces and the territories.

Proprietary rights of provinces

- 10) We recommend that the proprietary rights of the provinces remain protected by the unanimity rule.

B. Recommendations which do not now require amendments to the Constitution:

Aboriginal Peoples

- 11) We recommend that representatives of the aboriginal peoples of Canada be invited to participate in all future constitutional conferences.

Territories

- 12) We recommend that the territorial governments be invited to participate in all future constitutional conferences.

Delegation of Legislative Powers

- 13) The delegation of powers between Parliament and legislatures does not exist. Its existence should be provided for by constitutional amendment, and we strongly recommend that the next constitutional committee study that question in the framework of the division of powers.

Opting Out and Compensation

- 14) We recommend that the relationship between opting out and an amending procedure with four regional vetoes be studied by the next parliamentary committee. The next committee should also study in what fields a province should be able to exercise a right to opt out with compensation.

Referendum

- 15) We recommend that a federal law be enacted 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. The referendum should require a national majority and a majority in each of the four regions (Atlantic, Quebec, Ontario and the West).
- 16) The territories would participate in the referendum, after having selected the region in which they would be included for the purpose of calculating regional majorities.

Constituent Assemblies

17) We recommend:

- a) that the parliamentary committee, to be established presently by both Houses of Parliament to review the proposal of the Government of Canada for constitutional reform, be composed of members of the House of Commons and Senate, of sufficient number to be representative of the Canadian population;
- b) that the parliamentary committee create, in consultation with aboriginal leadership, a special task force to address issues of concern to aboriginal peoples, the membership of which would include representatives of the aboriginal peoples and would be chaired by a member of the parliamentary committee;
- c) that the parliamentary committee create similar task forces in other areas as it deems appropriate, each chaired by a member of the parliamentary committee; and
- d) that the committee hold, as appropriate, joint hearings with other committees that will have been established by provincial and territorial governments or legislatures.

Public Hearings

- 18) We recommend that Parliament's procedural rules be amended to make mandatory the holding of public hearings on any proposed constitutional amendment initiated by the Government of Canada, or to which the Government of Canada has given its agreement in principle, such hearings to be held early enough to allow for changes to the proposal.
- 19) We recommend to the provincial and territorial legislatures that they consider adopting similar procedures.

FOR

Gerald H. Beaudoin

W Littlehale

Gerald Orman

B. J. Ayre

Bob Johnson

Ken Atkinson

Salvatore Buzza

J. S. Colburn

Jim L. ...

Ken ...

André Guellet

Don ...

Michael ...

Michael ...
Seaton

AGAINST

Lorne Nyström

Lynn Hunter

ABSTENTIONS

MINORITY REPORT — NEW DEMOCRATIC PARTY

It is with regret that we feel it necessary to dissent from the Report of the Special Joint Committee on the Process for Amending the Constitution of Canada. We have worked hard within the committee to respond to those who came before us and to ensure that the principles at the heart of New Democratic Party policy were respected and reflected in the committee's work.

When we became engaged in this process, we entered it with four goals to be achieved: to open the process of constitutional reform to the scrutiny and involvement of the people who are governed by the constitution; to provide a constitutional role for the Aboriginal peoples of Canada; to ensure a just and equitable role in our constitutional processes for those resident in the northern territories; and to respond fairly to the legitimate concern of Quebec that its consent be required for changes in areas of vital importance to the residents of the province. We worked for and support most of this committee's recommendations.

On issues of Aboriginal participation, the New Democratic Party caucus agrees with the committee's recommendations. Our party advocates that the consent of the Aboriginal peoples to any constitutional change directly affecting their rights be required; the committee, too, believes in this. We support the proposal that regular constitutional conferences on aboriginal issues be reconvened. We also agree with the committee that the First Nations should be given a place at the constitutional table to ensure that their concerns on all matters were heard.

On the issue of territorial participation, we have repeatedly advanced the view that the creation of new provinces was a matter purely for agreement between the territory and the federal government, as had been the case for all other provinces prior to 1982. We hold, too, that justice requires territorial consent to the extension of existing provinces into their present boundaries. In both cases, the committee has made recommendations which we are happy to accept. Our party also maintains that the territorial governments must be invited to all future constitutional conferences; the committee agrees with this principle.

We have often asserted that the Parliament of Canada must make public hearings on proposals for constitutional amendment mandatory. We are pleased that the committee is recommending this. Further, we are of the same view as the committee that a referendum on the constitution can be used as a means to confirm a national consensus which would be developed through broad-based discussion, consultation, and negotiation or to facilitate the adoption of amending resolutions by the provincial legislatures.

Lastly, we needed to decide on the vital issue of what view of our federation our amending formula should reflect. We have concluded that equality of the regions, as reflected in the so-called "Victoria Formula", is the most reasonable and viable means of achieving necessary constitutional development. We recognize that there are legitimate arguments against such a formula but, after weighing the pros and cons, we are satisfied that this was the right decision for the committee to make. This formula recognizes the equality of the people of the West, Quebec, Ontario, and the Atlantic. In some cases this would even give smaller provinces more influence in the constitutional process. British Columbia and Saskatchewan or Newfoundland, New-Brunswick and Prince Edward Island could influence the course of a constitutional proposal under the four-region formula, while under our present formula it requires four smaller provinces acting together to have this same impact.

We believe the requirement of a credible process of constitutional decision-making is so fundamental to successful constitutional reform that, despite the Committee's progressive recommendations on these issues of crucial importance to the New Democratic Party, we must dissent from this report. A process without credibility in the eyes of the public so threatens to undermine the results of the next round of constitutional development that we are unable to accept this report as it stands.

This was our consistent refrain within the committee. Aside from our stand on constituent assemblies, this point of view led us to advocate the principle that constitutional reform proposals should be made subject to free votes in Parliament. This would help to remove the partisanship which we believe should not be a part of constitution-building. While the committee refused to endorse such a suggestion, we would hope that the next Parliamentary committee would consider it.

The risk of an illegitimate process has been a concern for us all along. A significant part of this Committee's mandate was to advise the government on methods for formulating constitutional amendments. Yet the Throne Speech outlined a fairly detailed process, which the government still intends to follow, before the committee even had a chance to begin serious negotiations on the substance of its recommendations, let alone report to Parliament.

Many will remember the spectacle of the Ontario Liberal government holding hearings on the proposed 1987 constitutional amendments but making it clear that, despite whatever was said by witnesses, Ontario would approve the package. Is it any wonder that when the public is told it will get the chance to make presentations on the substance of constitutional reform, the overwhelming reaction is suspicion or, worse still, disdain for the entire committee process?

Why a Constituent Assembly?

Above all we want this coming round to succeed. We have a fundamental belief that to succeed, this round must be more inclusive. We need a constitutional process in which all people across the country can see something of themselves reflected, in a way we repeatedly heard they do not see themselves reflected in the government or Parliament. As the Report of this committee notes, 158 witnesses supported the principle of a constituent assembly, while only twenty-three opposed the principle. Recent polls show that a significant majority of Canadians support this proposal. And a number of provincial Premiers, from across the country and the political spectrum, who are committed first and foremost to a process which can succeed, have recognized the necessity of such a process. We feel these facts speak volumes about a heartfelt popular need to be involved in the process of creating our constitution.

This process should build a consensus out of shared goals, common ideals, and mutual tolerance and do so in a democratically legitimate fashion. If our constitution is amended yet again by intergovernmental negotiation, will history not repeat itself, bringing us still closer to disaster?

That is why it is time to break with our tradition of elite accommodation and do something dramatic, something to renew the democratic urge that the people have been expressing. To not learn this lesson and ignore the democratic impulse will imperil the nation.

The government, of course, responds that the public will have access to the committee, as witnesses. This ignores the difference between being a witness, whose opinion may be lost when a consensus is negotiated, and a committee member, whose viewpoint cannot be ignored.

Neither can a referendum alone achieve the goal of participation. A referendum allows one to say "Yes," or "No." It does not allow one to say "Yes, but . . .". Defeating or accepting a set of proposals created by others behind closed doors and sold to the public is not the same as helping create the rules.

Instead we must create, and abide by, an approach which allows people into the constitutional process. Parliamentarians have no monopoly on creativity, intelligence, or concern for the fate of our nation. Government suggestions that they are the only proper representatives of the people's will, when the people themselves are telling us that they are not, are unacceptable manifestations of political ego.

We believe it vital to broaden the process, and to do it now. We must give a voice to those Canadians who do not see themselves fully and appropriately represented in our constitutional development. They are demanding that they not only be heard but be listened to.

We recognize that it will be a difficult task to create a constituent assembly that is not only truly representative and legitimate but is capable of working quickly. We are confident that we have a mechanism which will be capable of representing the various points of view which need to be heard in our constitutional development while being efficient enough to work within the very real time limits which we recognize exist. But the heart of the matter is that an assembly gives us a credible process to create a truly national consensus to point the way out of the maze in which we are lost. This, above all else, is what we have to achieve.

Toward A Constituent Assembly

With public support and the goodwill of all involved, we are confident that we can build a constituent assembly to meet Canada's present needs. In our view, such a process must involve both elected legislators and non-politicians. It would be able to travel the country and elicit views on the substance of constitutional reform from Canadians. It could then submit a report in which the evidence given could be interpreted through a greater number of points of view than would be possible in a traditional Parliamentary committee.

We envision the composition of such an assembly to include the following:

- 1) even division between elected Parliamentarians and others
- 2) gender parity
- 3) the participation of Aboriginal peoples, in recognition of their status within Canada
- 4) equitable regional distribution, including equitable representation of northern Canada
- 5) the drawing of the non-Parliamentary contingent from representatives of the official language minority communities; representatives of racial and ethno-cultural minorities; representatives of physically and mentally disabled persons; and representatives of other social groups whose important points of view are under-represented within our present electoral system. This contingent must reflect the diversity which is the strength of our nation.

We should make it clear that this body should not be enshrined in the *Constitution Act* as an alternative to legislative ratification for all future amendments. This assembly would instead be designed to develop a set of consensus proposals on the present issues of constitutional reform, to be put to the country's legislatures for ratification according to the requirements of the present constitution.

In conclusion, we must reiterate that a process such as this is essential to making the results of the next round of constitutional reform legitimate and acceptable to the Canadian people. While we agree with most recommendations made by this committee, and would use an assembly as an opportunity to advocate these views, we believe that we have no right to dictate to Canadians what their constitution "must" look like. Thus our fundamental conflict over the process for amending the constitution requires us to dissent from this report.

Lorne Nystrom, M.P.

Lynn Hunter, M.P.

ADDENDUM OF LYNN HUNTER, M.P.,

SAANICH-GULF ISLANDS

As the sole British Columbian on the committee, and on behalf of all nineteen B.C. New Democrat Members of Parliament, I wish to promote in the strongest terms the concept of B.C. as a region in this country for the purposes of the amending formula. British Columbia is under-represented in both the House of Commons and the Senate. In supporting a modified Victoria amending formula, I argued forcefully for acceptance by the committee of a fifth region, British Columbia.

British Columbians have interests distinct from the prairie region. The diversity of economic, geographic and political issues in the West demands that the Constitution reflect those diversities. The five region concept would give the West a more representative influence in the constitutional development of Canada. The presence of a second Western veto will go some distance in addressing western alienation with respect to constitutional matters.

I therefore recommend that in the next round of constitutional discussions British Columbia be recognized as a region for the purposes of the amending formula.

Lynn Hunter, M.P.

APPENDIX A

Part V, Constitution Act, 1982

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA

General
procedure for
amending
Constitution
of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) resolutions of the Senate and House of Commons; and

(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of
members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of
dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Revocation of
dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Restriction on
proclamation

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Idem

(2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Compensation

40. Where an amendment is made under subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment
by unanimous
consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

- (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- (b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;
- (c) subject to section 43, the use of the English or the French language;
- (d) the composition of the Supreme Court of Canada; and
- (e) an amendment to this Part.

Amendment by general procedure

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

- (a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
- (b) the powers of the Senate and the method of selecting Senators;
- (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
- (d) subject to paragraph 41(d), the Supreme Court of Canada;
- (e) the extension of existing provinces into the territories; and
- (f) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions relating to some but not all provinces

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

- (a) any alteration to boundaries between provinces, and
- (b) any amendment to any provision that relates to the use of the English or the French language within a province,

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 the House of Commons and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Amendments by provincial legislatures

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

Initiation of amendment procedures

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

Revocation of authorization

(2) A resolution of assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Amendments
without Senate
resolution

47. (1) An amendment to the Constitution of Canada made by proclamation under sections 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Computation
of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

Advice to
issue
proclamation

48. The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this Part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this Part.

Constitutional
conference

49. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.

NAME OF WITNESS	ISSUE	DATE
26 MILLION CANADIANS' CONSTITUTION DRAFT COMMITTEE Michael Hahn, President	22	01/04/71
ABBOTT, George M. Dept. of Political Science Okanagan College Salmon Arm, B.C.	13	01/02/71
ALLIANCE QUÉBÉCOISE Robert Beaudin, President Prof. Stephen Sévigny, Member of Legal Committee Aba Hinton, Member of Legal Committee	28	01/02/71
ANDERSON, Richard General Manager, Hill & Knowlton Public Affairs International	24	01/02/71
ARBOUR, Prof. J. Maurice Faculty of Law Laval University Quebec City, Quebec	23	01/02/71
ARMSTRONG, Joe	25	01/02/71
ASSEMBLY OF MANITOBA CHIEFS Chief Louis Stevenson Chief Dennis Whiteford	17	01/02/71
ASSEMBLY OF FIRST NATIONS Kumad Sood, Grand Chief George Erasmus, National Chief	20 26	01/04/70 01/02/71

APPENDIX B

List of Witnesses

NAME OF WITNESS	ISSUE	DATE
26 MILLION CANADIANS' CONSTITUTION DRAFT COMMITTEE Michael Hahn, President	22	91/04/17
ABBOTT, George M. Dept. of Political Science Okanagan College, Salmon Arm, B.C.	13	91/03/21
ALLIANCE QUÉBEC Robert Keaton, President Prof. Stephen Scott, Member of Legal Committee Alan Hilton, Member of Legal Committee	28	91/04/26
ANDERSON, Richard General Manager, Hill & Knowlton Public Affairs International	31	91/05/01
ARBOUR, Prof. J. Maurice Faculty of Law Laval University Quebec City, Quebec	29	91/04/29
ARMSTRONG, Joe	25	91/04/23
ASSEMBLY OF MANITOBA CHIEFS Chief Louis Stevenson Chief Dennis Whitebird	17	91/03/26
ASSEMBLY OF FIRST NATIONS Konrad Sioui, Grand Chief George Erasmus, National Chief	30 26	91/04/30 91/04/24

NAME OF WITNESS	ISSUE	DATE
ASSOCIATION CANADIENNE-FRANÇAISE DE L'ONTARIO Jean Tanguay, President Fernand Gilbert, General Manager Yves Le Bouthillier, Professor of Common Law Program in French, Faculty of Law, University of Ottawa, Ottawa, Ontario J.L. Gilles Le Vasseur, lawyer and professor, University of Ottawa, Ottawa, Ontario	26	91/04/24
ASSOCIATION CANADIENNE-FRANÇAISE DE L'ABLERTA France Levasseur-Ouimet, President George Arès, General Manager	10	91/03/18
ASSOCIATION FRANCO-YUKONNAISE Luc Laferté, Consultant Hélène St-Onge, Member André Pinette, Member	12	91/03/20
ASSOCIATION CULTURELLE FRANCO-CANADIENNE DE LA SASKATCHEWAN Suzanne Bugeau-Stradecki, President	16	91/03/26
AUBERT, Prof. Jean-François Economic Sciences and Faculty of Law Neuchâtel University Neuchâtel, Switzerland	33	91/05/06
BAI, David H.	10	91/03/18
BAILEY, Donald A. Dept. of History University of Winnipeg Winnipeg, Manitoba	17	91/03/26
BANKS, Margaret A.	24	91/04/22
BEAMISH, Daniel	22	91/04/17
BELLIVEAU, Peter	18	91/04/08
BENTON, Major S.B.	18	91/04/08
BERNATCHEZ, Me Yves	30	91/04/30

DATE	NAME OF WITNESS	ISSUE	DATE
	BLAKENEY, The Hon. Allan	16	91/03/26
	BOEHM, William	25	91/04/23
	BOULTER, Joe	13	91/03/21
	BRETZER, Trudy	24	91/04/22
	CAIRNS, Prof. Alan Dept. of Political Science University of British Columbia Vancouver, British Columbia	23	91/04/18
	CAMERON, Jamie Osgoode Hall School of Law Faculty of Law York University North York, Ontario	6	91/02/28
	CAMPBELL, Colin	24	91/04/22
	CANADIAN ETHNOCULTURAL COUNCIL Lewis T. Chan, President Carmencita Hernandez Andrew Cardozo, Executive Director Emilio Binavince, Honorary Counsel C.W. Cho, Executive Committee Dieter Kiesewalter	26	91/04/24
	CANADIAN REAL ESTATE ASSOCIATION Pierre J. Beauchamp, Executive Vice-President Shirley A. Taylor, Manager, Government & Industry Relations David L. Humphreys, Advisor, Federal Affairs. C. Gaylord Watkins, Barrister & Solicitor, Specialist-Consultant on Constitutional Matters	34	91/05/07
	CANTLIE, Ronald B.	10	91/03/18

DATE	NAME OF WITNESS	ISSUE	DATE
	CENTRE FOR DEMOCRACY AND HUMAN RIGHTS Prof. Graeme Decarie, Chairman, History Department, Concordia University, Montreal, Quebec Leo E. Leblanc, representing business (Builder) and French Canadians Katie Davidman, Social Science student, Marianopolous College Gerald Kazenel, Chairman	28	91/04/26
	CHAMBRE DES NOTAIRES DU QUÉBEC Jacques Taschereau, President Guy Belisle, Chairman of Constitutional Committee Jean-François Dugas, Member of Constitutional Committee André Auclair, Member of Constitutional Committee	27	91/04/25
	CHAN, Arnold G.	25	91/04/23
	CHILDREN'S CRUSADE FOR PEACE AND UNITY Walter H. Davis, Founder David Scott	20	91/04/11
	CHRISTIAN, William Dept. of Political Science University of Guelph Guelph, Ontario	24	91/04/22
	CHRISTIAN HERITAGE PARTY OF CANADA Robert Adams, Quebec President Jean Blaquière, Quebec Spokesman	28	91/04/26
	CLARK, Robert M.	14	91/03/22
	CLARK, Ross	10	91/03/18
	COALITION 33 John Kelly	14	91/03/22
	COHEN, Maxwell	34	91/05/07
	COMMITTEE ON CONFEDERATION Bud Smith, Chairman	13	91/03/21

DATE	NAME OF WITNESS	ISSUE	DATE
	CONSEIL DES ATIKAMEKW ET DES MONTAGNAIS René Simon, President Ernest Ottawa, Vice-President Francis Malec, Co-ordinator of Regional Negotiations Alain Sachel, Advisor	30	91/04/30
	CONSEIL DU PATRONAT DU QUÉBEC Ghislain Dufour, President Jacques Garon, Director of Research Sébastien Allard, Administrator Luc Huppé, Legal Counsel Robert Langlois	27	91/04/25
	CORMIER, Prof. Hugues Faculty of Medicine Laval University Quebec City, Quebec	27	91/04/25
	COTTERILL, Ewan	11	91/03/19
	COUNCIL FOR YUKON INDIANS Dayle MacDonald, Vice-Chairperson Stephen Walsh, Legal Counsel	12	91/03/20
	COUNCIL OF THE HURON-WENDAT NATION Max Gros-Louis, Grand Chief Luc Lainé, Counsellor in Self-Government	27	91/04/25
	COURCHENE, Thomas J. Dept. of Economics Queen's University Kingston, Ontario	22	91/04/17
	COWAN, Glenn Keith	13	91/03/21
	CRAIG, Gordon	15	91/03/25
	DE MONTIGNY, Yves Faculty of Law Common Law Section University of Ottawa Ottawa, Ontario	3	91/02/20

DATE	NAME OF WITNESS	ISSUE	DATE
	DE MESTRAL, Armand C. Faculty of Law McGill University Montreal, Quebec	5	91/02/27
	DEACON, Donald M.	21	91/04/12
	DELPÉRIÉ, Francis Dean of Faculty of Law Catholic University of Louvain Thomas More College Louvain-la-Neuve, Belgium	32	91/05/02
	DESCHÊNE, Hon. Jules	30	91/04/30
	DI NORCIA, Vincent	25	91/04/23
	DION, Prof. Léon Dept. of Political Science Laval University Quebec City, Quebec	30	91/04/30
	DOULL, James A. Professor Emeritus, Dalhousie University, Halifax, Nova Scotia	20	91/04/11
	EBERTS, Mary Faculty of Law University of Toronto Toronto, Ontario	24	91/04/22
	EDMONTON MULTICULTURAL SOCIETY Robinson Koilpillai, First Vice-President	10	91/03/18
	EMANUELLI, Claude Faculty of Law University of Ottawa Ottawa, Ontario	7	91/03/05
	EQUALITY PARTY Keith Henderson, Chairman of Committee on Constitution of Canada	28	91/04/26
	ESTEY, Justice Willard Z.	24	91/04/22

DATE	NAME OF WITNESS	ISSUE	DATE
	ETHNO-CULTURAL ASSOCIATION OF NEWFOUNDLAND AND LABRADOR Dr. Chung Won Cho, President Gunter Hartmann, Dept. Head, Political Science Viv Wright, Co-ordinator	20	91/04/11
	FEDERAL-PROVINCIAL RELATIONS OFFICE Mary Dawson, Assistant Deputy Minister, Public Law, Dept. of Justice James R. Hurley, Senior Constitutional Advisor	2	91/02/19
	FÉDÉRATION DE L'ÂGE D'OR Philippe Lapointe, President	28	91/04/26
	FÉDÉRATION DES FRANCO-COLOMBIENS Marie Bourgeois, President Yseult Friolet, General Manager	15	91/03/25
	FÉDÉRATION DES FRANCOPHONES DE TERRE-NEUVE ET DU LABRADOR Francine Labrie, Executive Director François Dumaine, Legal Counsel, Fédération des Francophones Hors Québec Inc.	20	91/04/11
	FÉDÉRATION DES ACADIENS DE LA NOUVELLE-ÉCOSSE Paul Comeau, Director General Réal Boudreau, Legal Counsel	19	91/04/09
	FÉDÉRATION DES FRANCOPHONES HORS QUÉBEC INC. Guy Matte, President Aurèle Thériault, General Manager	23	91/04/18
	FISHER, O.	22	91/04/17
	FONTAINE, Yvon Professor of Law Moncton University Moncton, New Brunswick	18	91/04/08
	FOUCHER, Pierre Faculty of Law University of Moncton Moncton, New Brunswick	3	91/02/20

DATE	NAME OF WITNESS	ISSUE	DATE
	FOX, Derek Deputy Leader for the Official Opposition, Government of Alberta	10	91/03/18
	FREEDOM PARTY OF ONTARIO William Frampton	25	91/04/23
	FRÉMONT, Jacques Faculty of Law University of Montreal Montreal, Quebec	4	91/02/21
	GAGNON, Alain-G. Professor of Political Science McGill University Montreal, Quebec	28	91/04/26
	GARNEAU, Raymond	29	91/04/29
	GERAETS, Théodore F. Professor of Philosophy University of Ottawa Ottawa, Ontario	3	91/02/20
	GERRARD, Jon	11	91/03/19
	GILMOUR, Jeffrey G.	16	91/03/26
	GOVERNMENT OF YUKON TERRITORY The Hon. Tony Penikett, Leader	12	91/03/20
	GRAHAM, Jeffrey S.	25	91/04/23
	GRANDBOIS, Pierre Student	29	91/04/29
	GRANT, Arthur M.	14	91/03/22
	GROUPE SÉCOR Marcel Côté, Associate	27	91/04/25
	HALL, Tony	10	91/03/18

DATE	NAME OF WITNESS	ISSUE	DATE
	HÉBERT, Raymond M. Associate Professor University of Saint-Boniface Winnipeg, Manitoba	17	91/03/26
	HENRIPIN, Jacques Professor of Demographics University of Montreal Montreal, Quebec	28	91/04/26
	HINDU SOLIDARITY Chi Kalevar	24	91/04/22
	HOGG, Peter Faculty of Law Osgoode Hall Law School York University North York, Ontario	7	91/03/05
	HYNDMAN, The Hon. Walter Former Lt. Governor of P.E.I.	21	91/04/12
	INUIT TAPIRISAT OF CANADA Rosemarie Kuptana, President Michael McGoldrick, Constitutional Advisor	34	91/05/07
	INUVIALUIT REGIONAL CORPORATION Roger Gruben, Chairman Les L. Carpenter, Deputy Chairman	11	91/03/19
	JACKSON, Francis L. Dept. of Philosophy Memorial University St. John's, Newfoundland	20	91/04/11
	JANDA, Richard Faculty of Law McGill University Montreal, Quebec	27	91/04/25
	JEANNIOT, Pierre Former president of Air Canada	27	91/04/25
	KATZ, Harry S.	24	91/04/22

DATE	NAME OF WITNESS	ISSUE	DATE
	KAYMAN, Clarice	28	91/04/26
	KELLY, Ron	21	91/04/12
	KEY, Chapin	14	91/03/22
	KRAMPE, C. William	14	91/03/22
	LAFORREST, Prof. Guy Dept. of Political Science Laval University Quebec City, Quebec	29	91/04/29
	LANSCAIL, Donald	15	91/03/25
	LAURENTIAN GROUP CORPORATION Claude Forget, Executive Vice-President, Corporate Affairs	28	91/04/26
	LAURENTIAN BANK Louis Bernard, Senior Vice-President (Administration)	27	91/04/25
	LEAGUE FOR HUMAN RIGHTS, B'NAI BRITH CANADA David Matas, Counsel Gabe Broden, Executive Director	17	91/03/26
	LEESON, Howard Dept. of Political Science University of Regina Regina, Saskatchewan	16	91/03/26
	LEHOUX, Ray	15	91/03/25
	LEMIEUX, Vincent Dept. of Political Science Laval University Quebec City, Quebec	2	91/02/19
	LOWRY, Peter J.	24	91/04/22

DATE	NAME OF WITNESS	ISSUE	DATE
	MacCORMACK, John R. Prof. Emeritus of History & Director of Institute of Human Values St. Mary's University Halifax, Nova Scotia	19	91/04/09
	MacDONALD, Ronald	19	91/04/09
	MacLAUCHLAN, Wade Associate Professor of Law Dalhousie University Halifax, Nova Scotia	19	91/04/09
	MacLEOD, David D.	10	91/03/18
	MacMILLAN, Bruce	24	91/04/22
	MACQUARRIE, Robert	11	91/03/19
	MANITOBA ADVISORY COUNCIL ON THE STATUS OF WOMEN Marilyn Gault, Chairperson Flora Zaharia, Council Member Betty Nordrum, Policy Analyst	17	91/03/26
	MANN, J. Fraser	25	91/04/23
	McEVOY, John P. Faculty of Law University of New Brunswick Fredericton, New Brunswick	6	91/02/28
	McLEOD, Prof. Alex N.	25	91/04/23
	McWHINNEY, Ed Professor of International Law and Relations Dept. of Political Science Simon Fraser University Burnaby, British Columbia	4	91/02/21
	MEEKISON, J. Peter Vice-President (Academic) University of Alberta Edmonton, Alberta	4	91/02/21

DATE	NAME OF WITNESS	ISSUE	DATE
	MENDES, Errol P. Faculty of Law University of Western Ontario London, Ontario	2	91/02/19
	METIS SOCIETY OF SASKATCHEWAN Clem Chartier, Counsel Jim Durocher, President	16	91/03/26
	METIS NATIONAL COUNCIL Yvon Dumont, Spokesman	23	91/04/18
	MEYER, Linda	14	91/03/22
	MILLER, Anthony	21	91/04/12
	MILNE, David Dept. of Political Studies University of P.E.I. Charlottetown, Prince Edward Island	21	91/04/12
	MINISTRY OF INTER-GOVERNMENTAL AFFAIRS OF NEW BRUNSWICK Aldéa Landry, Vice Premier of New Brunswick	18	91/04/08
	MONAHAN, Patrick J.	25	91/04/23
	MORGAN, Robert E.S.	27	91/04/25
	MORSE, Bradford W. Faculty of Law University of Ottawa Ottawa, Ontario	3	91/02/20
	MULTICULTURAL ASSOCIATION OF NOVA SCOTIA Barbara Campbell, Executive Director Mukhtyar S. Tomar, President	19	91/04/09
	MULTICULTURAL COUNCIL OF SASKATCHEWAN Terry Mountjoy, General Manager	16	91/03/26
	MUNRO, Donald W.	13	91/03/21

DATE	NAME OF WITNESS	ISSUE	DATE
	NATIONAL CONGRESS OF ITALIAN CANADIANS Annamarie Castrilli, President of National Level Gregory Grande, President of Toronto District Manlio D'Ambrosio, President of Ontario Region	24	91/04/22
	NATIVE COUNCIL OF P.E.I. Graham Tuplin, President	21	91/04/12
	NATIVE COUNCIL OF CANADA Viola Robinson, President Robert Groves, Special Advisor	31	91/05/01
	NICHOLS, Kimball R.	13	91/03/21
	NICHOLSON, Peter J.	24	91/04/22
	NISHISATO, Ira	24	91/04/22
	NORTHERN FOUNDATION Anne Hartmann, President Geoffrey Wasteneys, Vice-President John Carpet, Director	31	91/05/01
	OLIVER, Peter Faculty of Law McGill University Montreal, Quebec	27	91/04/25
	OTHER CITIZENS' FORUM Mark Cameron Nicola Malim-Hall Steven Chase	15	91/03/25
	PALMER, Harry E.	10	91/03/18
	PAQUET, Raymond	30	91/04/30
	PARDY, Larry D.	20	91/04/11
	PARENT, Michel Student	29	91/04/29

DATE	NAME OF WITNESS	ISSUE	DATE
	PATTERSON, Stephen E. Professor of History University of New Brunswick Fredericton, New Brunswick	18	91/04/08
	PEOPLE'S VOICE Richard Rosenberg C. Patrick Newbound	17	91/03/26
	PHILLIPS, Charlie	19	91/04/09
	POPE, James G. Associate Professor of Law Rutgers School of Law New Jersey State University Newark, New Jersey, U.S.A.	34	91/05/07
	PRESBYTERIAN CHURCH IN CANADA John F. Allan	13	91/03/21
	RAINBOW COALITION Marc Brunel Belhomme, Head	27	91/04/25
	RAYNOR, Doug	10	91/03/18
	REAL WOMEN OF CANADA C. Gwendolyn Landolt, National Vice-President Anne Hartmann, Director Patrick Brode, Constitutional Consultant	23	91/04/18
	REISNER, Dr. Thomas A. Dept. of Literature Laval University Quebec City, Quebec	29	91/04/29
	RENEGADES OF SCARBOROUGH R.G.F. (Fred) Hill Stan Gardiner	24	91/04/22
	RESNICK, Philip Dept. of Political Science University of British Columbia Vancouver, British Columbia	13	91/03/21
	ROBERTS, William	24	91/04/22

DATE	NAME OF WITNESS	ISSUE	DATE
	ROBERTSON, Gordon	6	91/02/28
	ROELAND, Lana	17	91/03/26
	ROSE, Alex K.H.	10	91/03/18
	ROY, N. Dianne	19	91/04/09
	ROYAL TRUST OF CANADA Hartland MacDougall Joseph Chertkow Pat Novinger	24	91/04/22
	RUPPRECHT, Hans-Christian	15	91/03/25
	RUSSELL, Peter H. Dept. of Political Science University of Toronto Toronto, Ontario	9	91/03/07
	SCHWARTZ, Brian Prof. of Constitutional Law University of Manitoba Winnipeg, Manitoba	17	91/03/26
	SCOTT, Stephen A. Faculty of Law McGill University Montreal, Quebec	4	91/02/21
	SCOTT, Anthony	14	91/03/22
	SEARCY, Joyce	14	91/03/22
	SEVERIDE, Norman	14	91/03/22
	SIM, Peter	17	91/03/26
	SIMEON, Richard Dept. of Political Science University of Toronto Toronto, Ontario	5	91/02/27

DATE	NAME OF WITNESS	ISSUE	DATE
	SMITH, Jennifer Dept. of Political Science Dalhousie University Halifax, Nova Scotia	2	91/02/19
	SMITH, Melvin H.	15	91/03/25
	SMYTH, Steven	12	91/03/20
	SOCIAL ACTION COMMISSION OF THE ROMAN CATHOLIC ARCHDIOCESE OF ST. JOHN'S Dr. Laurel Doucette Bobbie Boland	20	91/04/11
	SOCIÉTÉ SAINT-THOMAS D'AQUIN Father Éloi Arsenault, Vice-President Aubrey Cormier, Executive Director	21	91/04/12
	SOCIÉTÉ FRANCO-MANITOBAINE Richard Chartier, Vice President Edmond La Bossière, Planning & Research Officer	17	91/03/26
	SPARKS, D.G.	15	91/03/25
	SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM OF THE NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY Hon. Michael Ballantyne, Chairman Hon. Richard Nerysoo, Member John Ningark, Member	31	91/05/01
	STEINBART, Alice	17	91/03/26
	STEINBERGER, Dr. Helmut Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht Heidelberg, Germany	33	91/05/06
	STUDENTS' COMMITTEE ON CONSTITUTIONAL ISSUES OF THE UNIVERSITY OF WESTERN ONTARIO Graham Johnson	25	91/04/23
	SULLIVAN, Harry	13	91/03/21

DATE	NAME OF WITNESS	ISSUE	DATE
	SWAN, Leighton	15	91/03/25
	SWINTON, Katherine Faculty of Law University of Toronto Toronto, Ontario	9	91/03/07
	TAIT, Michael	25	91/04/23
	TEED, Eric L.	21	91/04/12
	THOMAS, David M. Dept. of Political Science Mount Royal College Calgary, Alberta	10	91/03/18
	THOMAS, Paul G. Dept. of Political Studies University of Manitoba Winnipeg, Manitoba	26	91/04/24
	THOMPSON, Robert N.	13	91/03/21
	TOOLE, Barry	18	91/04/08
	TRAYNOR, Betty	15	91/03/25
	UKRAINIAN CANADIAN CONGRESS Orest Rudzik Nestor Woychyshyu	25	91/04/23
	UNION OF NOVA SCOTIA INDIANS Kevin Christmas, Executive Director	19	91/04/09
	UNION D'ENTRAIDE DES AGRICULTEURS DU CENTRE DU QUÉBEC Maurice Lapalme, Vice-President Michel Champagne, Director Claude Beauchemin, Member	30	91/04/30
	WATTS, Ronald L. Institute of Intergovernmental Relations Queen's University Kingston, Ontario	8	91/03/06

DATE	NAME OF WITNESS	ISSUE	DATE
	WEBSTER, Lee	15	91/03/25
	WHITAKER, Prof. Reg Dept. of Political Science York University North York, Ontario	24	91/04/22
	WHYTE, Prof. John D. Faculty of Law Queen's University Kingston, Ontario	25	91/04/23
	WILLIAMS, Dr. Blair	31	91/05/01
	WINSOR, Douglas	20	91/04/11
	WOLFE, Max M.	18	91/04/08
	WRIGHT, Timothy A.	24	91/04/22
	YWCA OF CANADA Noëlle-Dominique Willems Dee Parkinson	25	91/04/23
	ZINES, Leslie Robert Garran Professor of Law Australian National University Canberra, Australia	32	91/05/02

APPENDIX C

List of Submissions

ALBERTA CONSTITUTIONAL REFORM TASK FORCE
ALBERTA SOCIAL CREDIT PARTY
ALEXANDER
ANSELL, Brad
APODAL, I.
ARBOUR, J. Maurice
ARMSTRONG, H.W.D.
ARMSTRONG, Joe C.W.
ARMSTRONG, John L.
ARTHUR, Marian
ARTHURS, Jim
ASPINALL, Ron M.B.
ASSELS, Margaret
ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS
D'ÉCOLES CATHOLIQUES
ASSOCIATION PROGRESSISTE-CONSERVATRICE DE BEAUPORT-
MONTMORENCY-ORLÉANS
BABIN MICHON, Charlotte
BAILEY, Brock R.
BAILEY, Wilfred J.

	ISSUE	DATE
BANASUIK, Harry S.		
BANK OF MONTREAL	15	01-0020
BARR, Bruce A.		
BARRON, David		
BAUGH, David J. Dept. of Political Science Red Deer College Red Deer, Alberta	25	12-1985
BEHN, Roger		
BELIK, Myron		
BERG, C.D.		
BERG, K. & A.		
BERGER, Thomas R.		
BERNIER, Alain		
BIERI, E. & G.		
BIRD, Donald A.		
BISHOP, John		
BOEHM, Bill		
BOLDT, Victor		
BOOIMAN, S.H.		
BOSCHMAN, William H.		
BOSVELD, Bev J.		
BOUDREAU, Bernard		
BRIGGS, Dan		
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION		
BROWN, Harold W.		
BULKOWSKI, Peter		
BULUT, Patricia		

CAMPBELL, Clayton J.
CANADIAN COUNCIL ON SOCIAL DEVELOPMENT
CANADIAN PACIFIC LTD.
CANTWELL, Robert
CARDINAL, Fred M.
CARES, Mary
CARROLL, Keera
CEBULIAK, Tim A.
CERISANO, Stanley
CHABOT LALIBERTÉ, Marthe
CHAN, Arnold G.
CHARBONNEAU, Robert
CHARTER OF RIGHTS COALITION (MANITOBA)
CITIZEN'S COALITION FAVOURING MORE
EFFECTIVE CRIMINAL SENTENCES
CLARK, Keiron
CLARKE, Allan L.
CLARKE, George A.
COLLIE, Henry
COMMISSIONER OF OFFICIAL LANGUAGES
CONACHER, Duff
CONFEDERATION COMMITTEE OF CABINET
(BRITISH COLUMBIA)
CONNOR, Thomas R.
COOPER, William H.
COUCHMAN, Bruce
COULSON, Tony

CROSMAN, Fenton C.
CROW, Stanley
CROWTHER, Verna E.
CUNNINGHAM, A.R.
CURTIS, Vincent
CUTHBERTSON, Irene
DAVIES, William Gwynne
DAVISON, Einar B.
DAY, Jean
DAYKIN, Harold
DEAN, Geoffrey
DEVISON, John A.
DICKEY, Bruce
DORVAL GUAY, Georgette
DUKAS, Neil
DUPUIS, Albert
DUMAIS, Louise
EDWARD, H.K.
ELLEFSON, Jack
ENGLANDER, Matthew
FAELLO, Joseph
FARRAH, William C.
FARRIS, Kevin John
FÉDÉRATION FRANCO-TÉNOISE
FONTAINE, Alain
FONTAINE, Chad C.

FORTIN, Patrice
 FOSTER, Frank
 FOSTEY, Allan
 FREEDOM PARTY OF ONTARIO
 GEDIES, Adolf J.R.
 GERNER, M.
 GERRY, Clark W.
 GIBSON, R. Dale
 Faculty of Law
 University of Manitoba
 Winnipeg, Manitoba
 GIGANTÈS, Philippe Deane
 Senator
 GILBERT MORISSETTE, Jacqueline
 GLAVIC, Mike
 GODBOUT, Pauline
 GOSSELIN, Wilfrid
 GOURLAY, David R.B.
 GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
 GRAND, Alex M.
 GRANDBOIS, Pierre
 GREGORY, Alan F.
 GREIFENEDER, M.
 GROLLE, Hendrick
 GROSHAW, George Bain
 GUNN, Donald C.
 HALL, Fred L.
 HALLS, Lois

HANSON, M.S.
 HARLEY, Peter
 HEBNEY, Dennis
 HEMMING, Timothy C.S.
 HERVIBUX, Gordon
 HESTER, K.D.
 HINCH, Paul E.
 HITCHEN, Robert
 HOKKE, John J.
 HOLLNER, Benjamin
 HORN, George B.
 HORNE, Kenneth J.
 HOUSTON, Alvin J.
 HOWARD, T.R.
 HYSLE, Doug
 IFFERBAR, Klaus
 IN DE WAI, Jansen
 JAEGER, Michael A.
 JAMIA, Roy and Allan
 JAMES, Charles
 JWA, Sam B.
 JOHNSON, Martin S.
 JOYNT, C.S.
 KAISER, E.
 KEANE, J. Gordon
 KINGSMILL, John

HANSON, M.S.
 HARLEY, Peter
 HEENEY, Dennis
 HEMMING, Timothy C.S.
 HERVIEUX, Gaston
 HESTER, K.D.
 HINCH, Paul E.
 HITCHEN, Robert
 HOKKE, John J.
 HOLLINGER, Benjamin
 HORN, George B.
 HORNE, Kenneth L.
 HOUSTON, Alex J.
 HOWARD, T.P.
 HYSLIP, Doug
 IFTEKHAR, Zaheed
 IN DE WAL, Jansen
 JAEGER, Michael A.
 JAMHA, Roy and Allan
 JEANES, Charles
 JIWA, Ismail B.
 JOHNSON, Marion S.
 JOYNT, C.S.
 KAISER, E.
 KEANE, J. Gregory
 KINGSMILL, John

KLENMAN, Norman
 KNAUS, Jakob
 KOVNATS, Ian
 KYBA, Andrew
 LACOMBE, Doug
 LANGHORNE, William
 LARSEN, Anthony
 LAVOIE, J. Maurice
 LAWRANCE, Howard W.
 LEA, Joseph William
 LeBLANC, Guy
 LEBLANC, Raymond J.
 LEHMANN, Wady
 LEHOUIILLER, Roméo
 LEMAY, Denise
 LESSARD, Françoise
 LEVY, Gary
 Dept. of Political Science
 University of Western Ontario
 London, Ontario
 LINTON, Louise
 LIVINGSTONE, David
 Dept. of Sociology
 Ontario Institute for Studies in Education
 Toronto, Ontario
 LUDBERG, David
 LYON, Vaughan
 Dept. of Political Studies
 Trent University
 Peterborough, Ontario
 MacDONALD, Daniel B.

MacIVER, M.	KLEMAN, Norman
MacKAY, Gavin A.	KNAUS, Jakob
MacKINNON, Frank Prof. Emeritus of Political Science University of Calgary Calgary, Alberta	KOVATZ, Jan
MacLEAN, Gordon A.	KYBA, Andrew
MacLEOD, Margaret E.	LACOMBE, Doug
MANN, J. Fraser	LANGHORNE, William
MARTIN, George A.	LARSEN, Anthony
MARTIN, Martha	LAVOIE, J. Maurice
MARTIN, Michel	LAWRANCE, Howard W.
MAYER, Joseph K.	LEA, Joseph William
McDAID, William	LEBANC, Guy
McDOUGALL, John R.	LEBANC, Raymond J.
McLAUHLAN, Charles	LEHMANN, Wally
McLELLAN, Alexander F.	LEHOULLIER, Romeo
McLEOD, Alex N.	LEMAY, Denise
McNARRY, L.R.	LESSARD, Françoise
McRAE, Ken	LEVY, Gary Dept. of Political Science University of Western Ontario London, Ontario
McWILLIE, Robert & Jane	LINDN, Louise
MEEK LAVALLÉE, Susanne	LIVINGSTONE, David Dept. of Sociology Ontario Institute for Studies in Education Toronto, Ontario
MESTER, Terry	LUBBERG, David
MONAHAN, Patrick J. Director of Centre for Public Law and Public Policy Osgoode Hall Law School York University North York, Ontario	LYON, Vaughan Dept. of Political Studies York University Toronto, Ontario
MOORE, G.E.	MADONALD, Daniel B.
MORROW, Blaine	

MORROW, T. D.
MOWBRAY, George
MUNICIPALITY OF METROPOLITAN TORONTO
NADEAU, Veronica
NATIONAL CITIZENS' COALITION / ALBERTANS FOR
RESPONSIBLE GOVERNMENT
NATIVE COUNCIL OF PRINCE EDWARD ISLAND
NESBITT, R.A.
NEUMANN, Robert
OLIVER, Allan
OLSEN, Dennis Ray
ONTARIO MILK MARKETING BOARD
PARENT, Michel
PARKER, Charles Eugene
PEKOE, Thomas
PELLIER, Peter D.
PICILLO, E.
PILLING, D.
POITRAS, Patricia
PORTORARO, Dominic
POTTER, Steven C.
POWELL, Murray
PRAIRIE POLICY INSTITUTE
PRETULAC, Fred
PULSIFER, Orville B.
QUINET, Félix
QUITTNER, J.

RANSOME, C.W.

RAY, Ajit K.

REDWAY, Alan
Member of Parliament

REID, David

REISNER, Thomas A.
Professor of English
Laval University
Quebec City, Quebec

RHINESS, Brian

RIVERSIDE EXCHANGE

ROCHEFORT, Cécile

RODEWOLDT, I.

ROGERS, Benjamin

ROGERS, Elizabeth

ROSE, Sidney D.

ROSS, Wilmot F.

ROWLES, Charles A.

RUYGROK, Gerald W.

SAANICH-GULF ISLANDS PROGRESSIVE-CONSERVATIVE ASSOCIATION

SANTE' MAWI'OMI WJIT MIKMAQ ESKASONI INDIAN RESERVE

SAUMUR, Lucien

SAVE CANADA COMMITTEE

SCHALM, Alfred

SCHINDLER, Dietrich

SCHULTZ, Barbara D.

SCHULZ, Randal E.

SCHURR, Ruben

SECRÉTARIAT PERMANENT DES PEUPLES FRANCOPHONES

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

SELLES, Peter

SETO, David

SHAPTON, Robert

SHERGOLD, C.

SHORE, M.E. & H.H.

SLAVEN, Robert

SLIPP, Marke

SMITH, Donald E.

SMITH, Kathleen M. & Gordon G.

SMITH, Kenneth L.

SMITH, Reginald Hodgson

SMITH, S.A.

SNYDER, Wilfred

SOCIÉTÉ DES ACADIENS ET ACADIENNES DU
NOUVEAU-BRUNSWICK

SPEIGHT, Helen

STEEL, Lobo

STEINBERGER, Helmut
Dean of Faculty of Law
University of Heidelberg & Co-director
Max-Planck-Institut for Comparative Public
and International Law
Heidelberg, Germany

STEVENS, Alastair B.

STEWART, Gail Ward

STEWART, T.A.

STONE, Howard

ST-ONGE, Antoni M.

STUDENTS' COMMITTEE ON CONSTITUTIONAL ISSUES OF THE
UNIVERSITY OF WESTERN ONTARIO

SWOGER, Gordon

SYKES, Henry

TAIT, Michael

TAMNEY, Roderick

THOMAS, J.R.

THORPE, F.J.

TOMBLIN, Steven G.
Dept. of Political Science
Memorial University
St. John's, Newfoundland

TRIBE, Laurence

UKRAINIAN CANADIAN CONGRESS

VADLAMUDY, Sabbanna V.

VAN KUYK, Agnes

VANKOUGHNET, Bill
Member of Parliament

VINDEN, Russ

VOLPE, Joseph
Member of Parliament

WADE, Douglas G.

WAHLEN, Brenda M.

WAN, Willy & Peter

WARD, Harvey L.

WATSON, Anne

WATSON, Douglas B.

WEAGLE, Anthony

WEBSTER, C.T. *relevant Minutes of Proceedings and Evidence of the Special Joint Committee on
the Process for Amending the Constitution of Canada (Issues Nos. 1 to 34 of the Second Session of the
WELSMAN, Jack *Session and Issue No. 1 of the Third Session of the Thirty-fourth Parliament, which
includes this Report) is tabled.**
WHITE, Sean

WILFORD, Philip E.

Respectfully submitted,

WILLEMS, Harry

WILLIAMS, Colin

The Joint Chairmen,

WINKLER, Gerhard E.

WISE, Leonard

WOYTOWICH, W.W.

BEAUDOIN

JIM EDWARDS, M.P.

WRATHELL, Malcolm

YACHIMEC, Mike

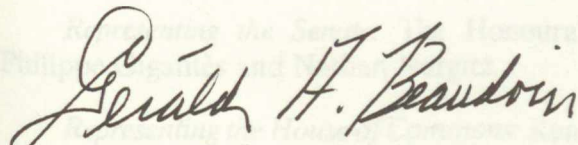
YAKIMOV, Andrei

YOUNG LIBERALS OF CANADA

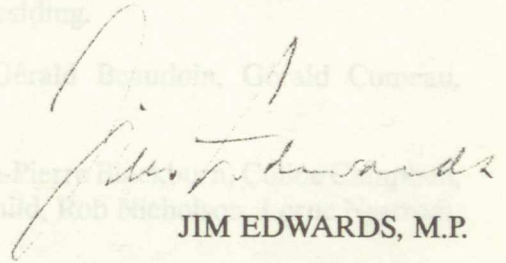
A copy of the relevant Minutes of Proceedings and Evidence of the Special Joint Committee on the Process for amending the Constitution of Canada (*Issues Nos. 1 to 34 of the Second Session of the Thirty-fourth Parliament and Issue No. 1 of the Third Session of the Thirty-fourth Parliament, which includes this Report*) is tabled.

Respectfully submitted,

The Joint Chairmen,



SENATOR GÉRALD BEAUDOIN



JIM EDWARDS, M.P.

MINUTES OF PROCEEDINGS

TUESDAY, MAY 21, 1991

(1)

[Text]

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 10:20 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau, Philippe Gigantès and Nathan Nurgitz.

Representing the House of Commons: Ken Atkinson, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991 and Friday, May 17, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 12:05 o'clock p.m., the Committee adjourned until later this day.

AFTERNOON SITTING

(2)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 3:37 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991 and Friday, May 17, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (see *Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 5:35 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING

(3)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:10 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin and Gérald Comeau.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991 and Friday, May 17, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (see *Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 9:45 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, MAY 23, 1991

(4)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 9:10 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Nathan Nurgitz.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Ronald Duhamel, Jim Edwards, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

On motion of Jean-Pierre Blackburn, seconded by Wilton Littlechild, it was agreed,—That the Committee order a reprint of Issue 10 which would include the testimony of Tony Hall as read.

On motion of Ronald Duhamel, it was agreed,—That the Clerk retain the copies of the *in camera* blues of May 7, 1991 until further instruction from the Committee.

At 11:47 o'clock p.m., the Committee adjourned until later this day.

AFTERNOON SITTING

(5)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 4:07 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin and Gérald Comeau.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Ronald Duhamel, Jim Edwards, Rob Nicholson and Lorne Nystrom.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 5:03 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, MAY 28, 1991

(6)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 10:20 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau, Philippe Gigantès and Michael Kirby.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Rob Nicholson, Lorne Nystrom and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

It was agreed,—That the Committee engage the services of text revisers to assist it in its drafting of the report.

At 12:02 o'clock p.m., the Committee adjourned until later this day.

AFTERNOON SITTING

(7)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 3:40 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 5:55 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING

(8)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:25 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 9:15 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, MAY 29, 1991

(9)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 4:25 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau, Philippe Gigantès, Michael Kirby and Nathan Nurgitz.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

It was moved,—That the Minister be invited to appear before the Committee.

After debate, the question being put on the motion, it was allowed to stand.

At 8:15 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, MAY 30, 1991

(10)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 9:15 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 12:00 o'clock p.m., the Committee adjourned until later this day.

AFTERNOON SITTING

(11)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 3:32 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft report.

At 5:20 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, JUNE 4, 1991
(12)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 10:15 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Rob Nicholson, Lorne Nystrom and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 12:00 o'clock p.m., the Committee adjourned until later this day.

AFTERNOON SITTING
(13)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 3:40 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 5:25 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING (14)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:45 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 9:55 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, JUNE 5, 1991

(15)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:13 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 10:15 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, JUNE 6, 1991

(16)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 9:10 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

Other Member present: Shirley Maheu.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 12:02 o'clock p.m., the Committee adjourned to the call of the Chair.

MONDAY JUNE 10, 1991

(17)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 4:25 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 5:50 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING

(18)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:25 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 10:05 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, JUNE 11, 1991

(19)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 3:46 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau, Philippe Gigantès and Michael Kirby.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 5:35 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING

(20)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:35 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau, Philippe Gigantès and Michael Kirby.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 9:16 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, JUNE 12, 1991

(21)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 4:30 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Coline Campbell, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991, Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 5:58 o'clock p.m., the Committee adjourned until later this day.

EVENING SITTING

(22)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 7:40 o'clock p.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Jean-Pierre Blackburn, Coline Campbell, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson, Lorne Nystrom, André Ouellet and Ross Reid.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of its draft report.

At 9:35 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, JUNE 18, 1991

(23)

The Special Joint Committee on the Process for amending the Constitution of Canada met *in camera* at 10:05 o'clock a.m. this day, in Room 536, Wellington Building, the Joint Chairmen, the Honourable Senator Gérald Beaudoin and Jim Edwards, presiding.

Representing the Senate: The Honourable Senators Gérald Beaudoin, Gérald Comeau and Philippe Gigantès.

Representing the House of Commons: Ken Atkinson, Gabrielle Bertrand, Jean-Pierre Blackburn, Ronald Duhamel, Jim Edwards, Lynn Hunter, Wilton Littlechild, Rob Nicholson and Lorne Nystrom.

In attendance: From the Research Branch of the Library of Parliament: Daniel Dupras and Jack Stilborn, Research Officers.

Pursuant to its Orders of Reference dated Monday, December 17, 1990, Wednesday, January 30, 1991, Wednesday, May 15, 1991, Friday, May 17, 1991 and Wednesday, May 22, 1991, the Committee resumed its study of the process for amending the Constitution of Canada (*see Minutes of Proceedings, Tuesday, February 5, 1991, Issue No. 1*).

The Committee resumed consideration of a draft Report.

It was agreed,—That reasonable travelling expenses be reimbursed to Senator Gérald Comeau to join the Committee for hearings on June 3 and 7, 1991.

It was agreed,—That the reports, as amended, submitted by the New Democratic Party be printed as addenda to the Committee's Report.

It was agreed,—That the draft Report, as amended, of the Special Joint Committee on the Process for amending the Constitution of Canada be adopted as the Committee's Report to Parliament and that the Joint Chairmen be instructed to present it to both Houses.

It was agreed,—That the Committee be authorized to print an additional 3,500 copies of Issue No. 1, which includes the Report, thereby making available a total number of 5,000 copies.

It was agreed,—That the Joint Chairmen be authorized to correct any typographical, stylistic or translation errors contained in the Report.

It was agreed,—That the Joint Clerks be instructed to destroy all copies of drafts and *in camera* proceedings relating to its study of the draft Report.

It was agreed,—That all Members wishing to sign the Report of the Special Joint Committee on the Process for amending the Constitution of Canada may do so before 3:00 p.m. on June 18, 1991 in the Joint Clerk's office.

At 12:13 o'clock p.m., the Committee adjourned to the call of the Chair.

Serge Pelletier
Eugene Morawski
Joint Clerks of the Committee

