Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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

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

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

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

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

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

Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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

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

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

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

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

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

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

French version

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

French version

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

4. This Act may be cited as the Canada Act.
SCHEDULE B
CONSTITUTION ACT, 1980
PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

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

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

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

SCHEDULE B
CONSTITUTION ACT, 1981
PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Guarantee of Rights and Freedoms
1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society.

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

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

Title: The date in the title would be changed from 1980 to 1981 to reflect the probable date of coming into force of the Act.

1. This proposed amendment would narrow the limits that could be placed on the rights and freedoms guaranteed in the Charter. For a right to be limited, the limitation would be required to be prescribed by law and to be both reasonable and capable of being demonstrably justified.

2. An amendment would be made to the French version of paragraph (b) to make it clear that the paragraph relates to more than major media of information. Paragraph (c) would be divided into two paragraphs to make it clear that the freedoms contained therein are separate freedoms. These freedoms are expressed separately in the International Covenant on Civil and Political Rights.

3. An amendment to the French version would make it clear that the right to vote and the right to be qualified for membership in a legislative body are separate rights.
### Duration of elected legislative bodies

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

Continuation in special circumstances

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

### Annual sitting of legislative bodies

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

### Mobility Rights

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

Rights of citizens to move

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

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

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

Rights to move and gain livelihood

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

Continuation in special circumstances

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

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Mobility Rights

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

Rights of citizens to move

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

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

(b) to pursue the gaining of a livelihood in any province.
The rights specified in subsection (2) are subject to:
(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Legal Rights

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

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

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

10. Everyone has the right on arrest or detention:
(a) to be informed promptly of the reasons therefor;
(b) to retain and instruct counsel without delay; and
(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

8. The right to be secure against search and seizure would be subject to the test of whether the search or seizure is reasonable as opposed to whether it is provided for by law.

9. The right not to be detained or imprisoned would be subject to the test of whether the detention or imprisonment is arbitrary rather than whether it is provided for by law.

10. An amendment would be made in the French version of paragraph 10(a) to better express the intent of the paragraph. Paragraph 10(b) would be amended to include, with the right to retain counsel, an additional right to be informed of that right.
II. Any person charged with an offence has the right:
(a) to be informed promptly of the specific offence;
(b) to be tried within a reasonable time;
(c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
(d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;
(e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

11. The following paragraphs of section 11 would be amended as follows:
(a) The French version would be amended to better express the intent of the paragraph.
(b) This new paragraph would state the right of an accused not to be called as a witness in proceedings against the accused, a right at present reflected in the Canadian Bill of Rights.
(c) The present paragraph (d) would be amended so that the right to reasonable bail would be subject to the test of whether any denial of bail is for just cause rather than whether it has been finally convicted or acquitted of the offence in Canada, not to be tried for the same, and if so convicted, prosecution in Canada of a person for crimes recognized by international law at the time of their commission.
(d) (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment:
(g) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence under Canadian or international law:
(h) if finally convicted or acquitted of the offence in Canada, not to be tried for it again and, if so convicted, not to be punished for it more than once; and
(i) if convicted of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

(ii) A technical amendment to paragraphs (h) and (i), the present paragraphs (f) and (g), would permit the deletion of the words "he or she" and clarify those paragraphs.
12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

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

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

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

Title: The change in title would place emphasis on the main subject of section 15 which is to guarantee equality.

15. (1) The word "everyone" would be replaced by the words "every individual" to make it clear that this right would apply to natural persons only. The addition of the words "and under" the law after "before" would ensure that the right to equality would apply in respect of the substance as well as the administration of the law. The addition of the words "and equal benefit" of the law after "protection" would extend the right to ensure that people enjoy equality of benefits as well as the protection of the law. Certain prescribed grounds of discrimination would be listed in the section. However, those grounds would not be exhaustive.
Affirmative action programs

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

Official Languages of Canada

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

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

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

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

Procedings of Parliament

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

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

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Sections 16 to 20: In each of those sections, a new subsection (2) would make the language rights provided for in the Charter applicable to New Brunswick. Similar rights are now provided for by the law of that province.

16. (2) This subsection would confirm that English and French are the official languages in New Brunswick and provide for their equality of status and use in provincial institutions.

(3) The present subsection 16(2) would be amended to reflect more correctly the objective of advancing the equality of English and French.

17. (2) This subsection would confirm a right to use both official languages in the legislature of New Brunswick.
18. The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

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

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

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

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

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

19. (2) This subsection would confirm the right to use English and French in the courts of New Brunswick.
20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communications by public available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

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

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

20. (1) This amendment would go to the courts rather than Parliament the ultimate determination as to whether other federal offices should provide bilingual services. The test for the provision of services in English or French would be based on a significant demand for services in the language rather than on the number of persons in the area using the language. The amendment would also require the provision of services where there is a reasonable requirement for such services (e.g. at a customs port of entry or an airport).

(2) This subsection would confirm the use of both English and French in respect of communications with and services from New Brunswick provincial institutions.
23. (1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

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

(3) The right of citizens of Canada under this section to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province applies where they reside in an area of the province in which the number of children of citizens who have such a right is sufficient to warrant the provision out of public funds of minority language instruction in that area.

23. (1) This amendment would, in addition to the right guaranteed in the present draft subsection (1), guarantee to citizen parents who have received their primary school instruction in Canada in one of the official languages, the right to have their children receive school instruction in the same language in a province in which that language is the minority language. (See also subsection (3).)

(2) This amendment would delete the limitation in the present subsection (2) whereby the right to have all children instructed in the language of school instruction of the first child applies only where the parents move from one province to another. (See also subsection (3).)

(3) The limitation of the language of instruction rights to situations where the number of children warrant the provision of instruction is restated in subsection (3) to remove references to the provision of "educational facilities".
Enforcement

24. Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

General

25. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.
28. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

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

Exception

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

Citation

30. This Part may be cited as the Canadian Charter of Rights and Freedoms.

PART II

EQUALIZATION AND REGIONAL DISPARITIES

31. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to (a) promoting equal opportunities for the well-being of Canadians; (b) furthering economic development to reduce disparity in opportunities; and (c) providing essential public services of reasonable quality to all Canadians.

Citation

30. This Part may be cited as the Canadian Charter of Rights and Freedoms.

PART II

EQUALIZATION AND REGIONAL DISPARITIES

Commitment

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

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

PART III
CONSTITUTIONAL CONFERENCES

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

Commitment respecting essential public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

PART III
CONSTITUTIONAL CONFERENCES

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

(2) This amendment would make express reference to the principle of making equalization payments. It would change the proposed commitment of the Parliament and government of Canada in respect of the provision of public services from one related to the burden of provincial taxation in a particular province to one related to the provision in all provinces of comparable services at comparable rates of taxation.
PART IV

INTERIM AMENDING PROCEDURE AND RULES FOR ITS REPLACEMENT

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

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

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

(2) A resolution made or other authorization given for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.
36. Sections 33 and 34 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedure prescribed by section 33 shall be used to amend the Canadian Charter of Rights and Freedoms and any provision for amending the Constitution, including this section, and may be used in making a general consolidation and revision of the Constitution.

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

38. (1) The governments or legislative assemblies of seven or more provinces that have, according to the then latest general census, combined populations of at least eighty per cent of the population of all the provinces may make a single proposal to substitute for paragraph 41(1)(b) such alternative as they consider appropriate.
Procedure (2) One copy of an alternative proposed for
proposed under subsection (1) may be
perfecting
alternative
deposited with the Chief Electoral
Office of Canada by each proposing
province within two years after this
Act, except Part V, comes into
force but, prior to the expiration of that
period, any province that has deposited a
copy may withdraw that copy.

Procedure (3) Where copies of an alternative have
been deposited as provided by subsection (2) and,
on the day that is two years after this Act,
except Part V, comes into force, at least
eight copies remain deposited by provinces that
have, according to the then latest general
census, combined populations of at least
eighty per cent of the population of all the
provinces, the government of Canada shall
cause a referendum to be held within two
years after that day to determine whether
(a) paragraph 41(1)(b) or any alternative thereto
approved by the government of Canada by depositing a copy thereof with
the Chief Electoral Officer at least ninety
days prior to the day on which the referen-
dum is held, or
(b) the alternative proposed by the prov-
ces,
shall be adopted.

(3) This amendment would parallel
the amendment to subsection (1)
by requiring that any federal
alternative amendment procedure be
approved by Parliament rather than
the government of Canada. It also
contains a change in number from
eight to seven consequential on
the amendment to subsection (1) and
a technical change in terminology
for consistency of expression.
39. Where a referendum is held under subsection 38(3), a proclamation under the Great Seal of Canada shall be issued within six months after the date of the referendum bringing Part V into force with such modifications, if any, as are necessary to incorporate the proposal approved by a majority of the persons voting at the referendum and with such other changes as are reasonably consequential on the incorporation of that proposal.

40. (1) Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in a referendum held under subsection 38(3).

(2) If a referendum is required to be held under subsection 38(3), a Referendum Rules Commission shall forthwith be established by the Governor General in Council consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;
(b) a person appointed by the Governor General in Council; and
(c) a person appointed by the Governor General in Council

(i) on the recommendation of the governments of a majority of provinces, or
(ii) if the governments of a majority of provinces do not recommend a candidate within thirty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the
Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of the first mentioned thirty day period or, if none are so recommended, from among such persons as the Chief Justice considers qualified.

(3) A Referendum Rules Commission shall cause rules for the holding of a referendum under subsection 38(3) approved by a majority of the Commission to be laid before Parliament within sixty days after the Commission is established or, if Parliament is not then sitting, on any of the first ten days thereafter that Parliament is sitting.

(4) Subject to subsection (1) and taking into consideration any rules approved by a Referendum Rules Commission in accordance with subsection (3), Parliament may enact laws respecting the rules applicable to the holding of a referendum under subsection 38(3).

(5) If Parliament does not enact laws respecting the rules applicable to the holding of a referendum within sixty days after receipt of a recommendation from a Referendum Rules Commission under subsection (4), the rules recommended by the Commission shall forthwith be brought into force by proclamation issued by the Governor General under the Great Seal of Canada.

(6) Any period when Parliament is prorogued or dissolved shall not be counted in computing the sixty day period referred to in subsection (5).

(3) New. The Referendum Rules Commission would be required to recommend rules to Parliament within sixty days after its establishment.

(4) New. This subsection would amend the present subsection (1) to require Parliament, in enacting rules for a referendum, to take into consideration any rules approved by a Referendum Rules Commission.

(5) New. The rules recommended by a Referendum Rules Commission would come into force on proclamation if Parliament does not enact rules under subsection (4) within sixty days after the receipt of the Report of the Commission.

(6) New. This provision would exclude from the computation of the time for Parliament to act any period when Parliament is prorogued or dissolved.
41. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

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

(b) resolutions of the legislative assemblies of at least a majority of the provinces that includes

(i) every province that at any time before the issue of the proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada,

(ii) at least two of the Atlantic provinces that have, according to the then latest general census, combined population of at least fifty per cent of the population of all the Atlantic provinces, and

(iii) at least two of the Western provinces that have, according to the then latest general census, combined population of at least fifty per cent of the population of all the Western provinces.

41. (1) This amendment would delete the requirement that an amendment to the Constitution be approved by provinces having at least fifty per cent of the population of the Atlantic provinces. As amended, subsection 41(1) reflects the Victoria formula. Some minor changes in wording would also be made in subparagraphs (b)(ii) and (iii) to remove a possible ambiguity.
(2) In this section, "Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;

"Western provinces" means the provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

Amendment 42. (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 referendum held throughout Canada under subsection (2) at which

(a) a majority of persons voting thereat, and

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

(2) A referendum referred to in subsection (1) shall be held where directed by proclamation issued by the Governor General under the Great Seal of Canada, which proclamation may be issued where

Authorization of referendum

42. (2) This amendment would make it clear that the referendum procedure is a deadlock breaking mechanism. A referendum could be held where an amendment to the Constitution has been approved by the Senate and House of Commons but, within twelve months after such approval, sufficient provincial legislative assemblies have not approved the amendment.
An amendment to the Constitution of Canada has been authorized under paragraph 41(1)(a) by resolutions of the Senate and House of Commons; the requirements of paragraph 41(1)(b) in respect of the proposed amendment have not been satisfied within twelve months after the passage of the resolutions of the Senate and House of Commons; and the issue of the proclamation has been authorized by the Governor General in Council.

Time

(3) A proclamation issued under subsection (2) in respect of a referendum shall provide for the referendum to be held within two years after the expiration of the twelve month period referred to in paragraph (b) of that subsection.

(3) If a referendum is to be held, it would be required to be held after the expiration of the period for provincial approval but within three years after approval of the amendment by the Senate and House of Commons.
Amendments without Senate resolution

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

Amendments 44. (1) An amendment to the Constitution of Canada may be made by proclamation under subsection 41(1) or section 43, as appropriate, without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, at any time after the expiration of those one hundred and eighty days, the House of Commons again passes 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).

Rules applicable to amendment procedures

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

44. (1) This amendment would add to subsection (1) the words "as appropriate" to indicate that the reference to subsection 41(1) or section 43 is not a simple alternative. Further, the amendment would increase from 90 to 180 days the period for Senate consideration of an amendment.

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

44. (1) Technical. Section 44 would be divided into two subsections to facilitate reading.
(2) A resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

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

Right to vote

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

Right to vote

(2) Where a referendum is to be held under section 42, a Referendum Rules Commission shall forthwith be established by commission issued under the Great Seal of Canada consisting of

(a) the Chief Electoral Officer of Canada, who shall be chairman of the Commission;
(b) a person appointed by the Governor General in Council; and
(c) a person appointed by the Governor General in Council
   (i) on the recommendation of the governments of a majority of provinces, or
   (ii) if the governments of a majority of provinces do not recommend a candidate within thirty days after the Chief Electoral Officer of Canada requests such a recommendation, on the recommendation of the Chief Justice of Canada from among persons recommended by the governments of the provinces within thirty days after the expiration of the first mentioned thirty day period or, if none are so recommended, from among such persons as the Chief Justice considers qualified.

46. (1) This is the present subsection 46(2).

(2) New. This subsection would provide for the establishment of an advisory commission, to be called a Referendum Rules Commission, consisting of the Chief Electoral Officer as chairman and two other persons, one to represent the provinces and the other to represent the government of Canada. The present subsection (1), as amended, would become subsection (4).
### Duty of Commission

(3) A Referendum Rules Commission shall cause rules for the holding of a referendum under section 42 approved by a majority of the Commission to be laid before Parliament within sixty days after the Commission is established or, if Parliament is not then sitting, on any of the first ten days thereafter that Parliament is sitting.

### Rules for referendum

(4) Subject to subsection (1) and taking into consideration any rules approved by a Referendum Rules Commission in accordance with subsection (3), Parliament may enact laws respecting the rules applicable to the holding of a referendum under section 42.

### Proclamation

(5) If Parliament does not enact laws respecting the rules applicable to the holding of a referendum within sixty days after receipt of a recommendation from a Referendum Rules Commission under subsection (4), the rules recommended by the Commission shall forthwith be brought into force by proclamation issued by the Governor General under the Great Seal of Canada.

### Computation of period

(6) Any period when Parliament is prorogued or dissolved shall not be counted in computing the sixty day period referred to in subsection (5).

### Rules to have force of law

(7) Subject to subsection (1), rules made under this section have the force of law and prevail over other laws made under the Constitution of Canada to the extent of any inconsistency.

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(3) New. A Referendum Rules Commission would be required to recommend rules to Parliament within sixty days after its establishment.

(4) This subsection would amend the present subsection (1) to require Parliament, in enacting rules for a referendum, to take into consideration any rules approved by a Referendum Rules Commission.


(6) New. This provision would exclude from the computation of the time for Parliament to act any period when Parliament is prorogued or dissolved.

(7) New. This subsection states the legal effect that rules made under section 46 would have.
47. The procedures prescribed by section 41, 42 or 43 do not apply to an amendment to the Constitution of Canada where there is another provision in the Constitution for making the amendment, but the procedures prescribed by section 41 or 42 shall nevertheless be used to amend any provision for amending the Constitution, including this section, and section 41 may be used in making a general consolidation or revision of the Constitution.

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

(2) The procedures prescribed by section 41 or 42 do not apply in respect of an amendment referred to in section 43.

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

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

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

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

47. Section 47 would be divided into two subsections to make it clear that the general amendment procedure or referendum procedure could not be used to amend a provision of the Constitution relating to one or more but not all provinces without the consent of the provinces to which the provision relates. The deletion of the reference to a revision or consolidation would ensure that amendments could not be made in the context of a general revision that could not otherwise be made.
50. An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with a procedure prescribed by section 41 or 42:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the Canadian Charter of Rights and Freedoms;

(c) the commitments relating to equalization and regional disparities set out in section 31;

(d) the powers of the Senate;

(e) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province; and

(g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada.

50. The French version of paragraph (a) would be amended to substitute for the word "fonction" the word "charge" for purposes of clarification.
Consequential amendments

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

PART VI
GENERAL

Constitution of Canada

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

Amendments to the Constitution of Canada

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

Consequent-
ial amend-
ments

51. Class I of section 91 and class I of section 92 of the Constitution Act, 1867 (formerly named the British North America Act, 1867), the British North America (No. 2) Act, 1949, referred to in item 22 of Schedule I to this Act and Parts III and IV of this Act are repealed.

PART VI
GENERAL

Privacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

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

Amendments to the Constitution of Canada

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

Repeals and new names

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

51. Technical. This change in numbering is consequential on an amendment to Schedule I. (See item 3 of the Schedule.)
(2) Every enactment, except the Canada Act, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in Schedule I may be cited as the Constitution Act followed by the year and number, if any, of its enactment.

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

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

56. The English and French versions of this Act are equally authoritative.
57. Subject to section 58, this Act shall come into force on a day to be fixed by proclamation issued by the Governor General under the Great Seal of Canada.

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

59. This Schedule may be cited as the Constitution Act, 1980 and the Constitution Acts, 1867 to 1975 (No. 2) and this Act may be cited together as the Constitution Acts, 1867 to 1980.

59. Technical. This amendment is consequential on the date change in the title of the Act.

Schedule I. Schedule I would be amended by adding thereto the Rupert's Land and North-Western Territory Order to make it clear that this Order is part of the Constitution of Canada. (See item 3.) The items after item 3 would be renumbered.