Consensus Report
On the Constitution

CHARLOTTETOWN

August 28, 1992

Final Text

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PREFACE

This document is a product of a series of meetings on constitutional reform involving the federal, provincial and territorial governments and representatives of Aboriginal peoples.

These meetings were part of the Canada Round of constitutional renewal. On September 24, 1991, the Government of Canada tabled in the federal Parliament a set of proposals for the renewal of the Canadian federation entitled Shaping Canada's Future Together. These proposals were referred to a Special Joint Committee of the House of Commons and the Senate which travelled across Canada seeking views on the proposals. The Committee received 3,000 submissions and listened to testimony from 700 individuals.

During the same period, all provinces and territories created forums for public consultation on constitutional matters. These forums gathered reaction and advice with a view to producing recommendations to their governments. In addition, Aboriginal peoples were consulted by national and regional Aboriginal organizations.

An innovative forum for consultation with experts, advocacy groups and citizens was the series of six televised national conferences that took place between January and March of 1992.

Shortly before the release of the report of the Special Joint Committee on a Renewed Canada, the Prime Minister invited representatives of the provinces and territories and Aboriginal leaders to meet with the federal Minister of Constitutional Affairs to discuss the report.

At this initial meeting, held March 12, 1992 in Ottawa, participants agreed to proceed with a series of meetings with the objective of reaching consensus on a set of constitutional amendments. It was agreed that participants would make best efforts to reach consensus before the end of May, 1992 and that there would be no unilateral actions by any government while this process was under way. It was subsequently agreed to extend this series of meetings into June, and then into July.

To support their work, the heads of delegation agreed to establish a Coordinating Committee, composed of senior government officials and representatives of the four Aboriginal organizations. This committee, in turn, created four working groups to develop options and recommendations for consideration by the heads of delegation.

Recommendations made in the report of the Special Joint Committee on a Renewed Canada served as the basis of discussion, as did the recommendations of the various provincial and territorial consultations and the consultations with Aboriginal peoples. Alternatives and modifications to the proposals in these reports have been the principal subject of discussion at the multilateral meetings.

Including the initial session in Ottawa, there were twenty-seven days of meetings among the heads of delegation, as well as meetings of the Coordinating Committee and the four working groups. The schedule of the meetings during this first phase of meetings was:

March 12	Ottawa
April 8 and 9	Halifax
April 14	Ottawa
April 29 and 30	Edmonton
May 6 and 7	Saint John
May 11, 12 and 13	Vancouver
May 20, 21 and 22	Montreal
May 26, 27, 28, 29 and 30	Toronto
June 9, 10 and 11	Ottawa
June 28 and 29	Ottawa
July 3	Toronto
July 6 and 7	Ottawa

Following this series of meetings, the Prime Minister of Canada chaired a number of meetings of First Ministers, in which the Government of Quebec was a full participant. These include:

August 4	Harrington Lake
August 10	Harrington Lake
August 18, 19, 20, 21 and 22	Ottawa
August 27 and 28	Charlottetown

Organizational support for the full multilateral meetings has been provided by the Canadian Intergovernmental Conferences Secretariat.

In the course of the multilateral discussions, draft constitutional texts have been developed wherever possible in order to reduce uncertainty or ambiguity. In particular, a rolling draft of legal text was the basis of the discussion of issues affecting Aboriginal peoples. These drafts would provide the foundation of the formal legal resolutions to be submitted to Parliament and the legislatures.

In areas where the consensus was not unanimous, some participants chose to have their dissents recorded. Where requested, these dissents have been recorded in the chronological records of the meetings but are not recorded in this summary document.

Asterisks in the text that follows indicate the areas where the consensus is to proceed with a political accord.

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I: UNITY AND DIVERSITY

A. PEOPLE AND COMMUNITIES

1. Canada Clause

A new clause should be included as section 2 of the Constitution Act, 1867 that would express fundamental Canadian values. The Canada Clause would guide the courts in their future interpretation of the entire Constitution, including the Canadian Charter of Rights and Freedoms.

The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:

"2. (1) The Constitution of Canada, including the Canadian Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the following fundamental characteristics:

(a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;

(b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;

(c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;

(d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;

(e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;

(f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;

(g) Canadians are committed to the equality of female and male persons; and

(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.

(2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed.

(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language and, for greater certainty, nothing in this section derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada."

2. Aboriginal Peoples and the Canadian Charter of Rights and Freedoms

The Charter provision dealing with Aboriginal peoples (section 25, the non-derogation clause) should be strengthened to ensure that nothing in the Charter abrogates or derogates from Aboriginal, treaty or other rights of Aboriginal peoples, and in particular any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions.

3. Linguistic Communities in New Brunswick

A separate constitutional amendment requiring only the consent of Parliament and the legislature of New Brunswick should be added to the Canadian Charter of Rights and Freedoms. The amendment would entrench the equality of status of the English and French linguistic communities in New Brunswick, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of these communities. The amendment would also affirm the role of the legislature and government of New Brunswick to preserve and promote this equality of status.

B. CANADA'S SOCIAL AND ECONOMIC UNION

4. The Social and Economic Union

A new provision should be added to the Constitution describing the commitment of the governments, Parliament and the legislatures within the federation to the principle of the preservation and development of Canada's social and economic union. The new provision, entitled The Social and Economic Union, should be drafted to set out a series of policy objectives underlying the social and the economic union, respectively. The provision should not be justiciable.

The policy objectives set out in the provision on the social union should include, but not be limited to:

- providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered and accessible;
- providing adequate social services and benefits to ensure that all individuals resident in Canada have reasonable access to housing, food and other basic necessities;
- providing high quality primary and secondary education to all individuals resident in Canada and ensuring reasonable access to post-secondary education;
- protecting the rights of workers to organize and bargain collectively; and,
- protecting, preserving and sustaining the integrity of the environment for present and future generations.

The policy objectives set out in the provision on the economic union should include, but not be limited to:

- working together to strengthen the Canadian economic union;
- the free movement of persons, goods, services and capital;
- the goal of full employment;
- ensuring that all Canadians have a reasonable standard of living; and,
- ensuring sustainable and equitable development.

A mechanism for monitoring the Social and Economic Union should be determined by a First Ministers' Conference.

A clause should be added to the Constitution stating that the Social and Economic Union does not abrogate or derogate from the Canadian Charter of Rights and Freedoms.

5. Economic Disparities, Equalization and Regional Development

Section 36 of the Constitution Act, 1982 currently commits Parliament and the Government of Canada and the governments and legislatures of the provinces to promote equal opportunities and economic development throughout the country and to provide reasonably comparable levels of public services to all Canadians. Subsection 36(2) currently commits the federal government to the principle of equalization payments. This section should be amended to read as follows:

> Parliament and the Government of Canada are committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Subsection 36(1) should be expanded to include the territories.

Subsection 36(1) should be amended to add a commitment to ensure the provision of reasonably comparable economic infrastructures of a national nature in each province and territory.

The Constitution should commit the federal government to meaningful consultation with the provinces before introducing legislation relating to equalization payments.

A new Subsection 36(3) should be added to entrench the commitment of governments to the promotion of regional economic development to reduce economic disparities.

Regional development is also discussed in item 36 of this document.

6. The Common Market

Section 121 of the Constitution Act, 1867 would remain unchanged.

Detailed principles and commitments related to the Canadian Common Market are included in the political accord of August 28, 1992. First Ministers will decide on the best approach to implement these principles and commitments at a future First Ministers' Conference on the economy. First Ministers would have the authority to create an independent dispute resolution agency and decide on its role, mandate and composition. (*)

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II: INSTITUTIONS

A. THE SENATE

7. An Elected Senate

The Constitution should be amended to provide that Senators are elected, either by the population of the provinces and territories of Canada or by the members of their provincial or territorial legislative assemblies.

Federal legislation should govern Senate elections, subject to the constitutional provision above and constitutional provisions requiring that elections take place at the same time as elections to the House of Commons and provisions respecting eligibility and mandate of Senators. Federal legislation would be sufficiently flexible to allow provinces and territories to provide for gender equality in the composition of the Senate.

Matters should be expedited in order that Senate elections be held as soon as possible, and, if feasible, at the same time as the next federal general election for the House of Commons.

8. An Equal Senate

The Senate should initially total 62 Senators and should be composed of six Senators from each province and one Senator from each territory.

9. Aboriginal Peoples' Representation in the Senate

Aboriginal representation in the Senate should be guaranteed in the Constitution. Aboriginal Senate seats should be additional to provincial and territorial seats, rather than drawn from any province or territory's allocation of Senate seats.

Aboriginal Senators should have the same role and powers as other Senators, plus a possible double majority power in relation to certain matters materially affecting Aboriginal people. These issues and other details relating to Aboriginal representation in the Senate (numbers, distribution, method of selection) will be discussed further by governments and the representatives of the Aboriginal peoples in the early autumn of 1992 (*).

10. Relationship to the House of Commons

The Senate should not be a confidence chamber. In other words, the defeat of government-sponsored legislation by the Senate would not require the government's resignation.

11. Categories of Legislation

There should be four categories of legislation:

1) Revenue and expenditure bills ("Supply bills");

2) Legislation materially affecting French language or French culture;

3) Bills involving fundamental tax policy changes directly related to natural resources;

4) Ordinary legislation (any bill not falling into one of the first three categories).

Initial classification of bills should be by the originator of the bill. With the exception of legislation affecting French language or French culture (see item 14), appeals should be determined by the Speaker of the House of Commons, following consultation with the Speaker of the Senate.

12. Approval of Legislation

The Constitution should oblige the Senate to dispose of any bills approved by the House of Commons, within thirty sitting days of the House of Commons, with the exception of revenue and expenditure bills.

Revenue and expenditure bills would be subject to a 30 calendar-day suspensive veto. If a bill is defeated or amended by the Senate within this period, it could be repassed by a majority vote in the House of Commons on a resolution.

Bills that materially affect French language or French culture would require approval by a majority of Senators voting and by a majority of the Francophone Senators voting. The House of Commons would not be able to override the defeat of a Bill in this category by the Senate.

Bills that involve fundamental tax policy changes directly related to natural resources would be defeated if a majority of Senators voting cast their votes against the bill. The House of Commons would not be able to override the Senate's veto. The precise definition of this category of legislation remains to be determined.

Defeat or amendment of ordinary legislation by the Senate would trigger a joint sitting process with the House of Commons. A simple majority vote at the joint sitting would determine the outcome of the bill.

The Senate should have the powers set out in this Consensus Report. There would be no change to the Senate's current role in approving constitutional amendments. Subject to the Consensus Report, Senate powers and procedures should mirror those in the House of Commons.

The Senate should continue to have the capacity to initiate bills, except for money bills.

If any bill initiated and passed by the Senate is amended or rejected by the House of Commons, a joint sitting process should be triggered automatically.

The House of Commons should be obliged to dispose of legislation approved by the Senate within a reasonable time limit.

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13. Revenue and Expenditure Bills

In order to preserve Canada's parliamentary traditions, the Senate should not be able to block the routine flow of legislation relating to taxation, borrowing and appropriation.

Revenue and expenditure bills ("supply bills") should be defined as only those matters involving borrowing, the raising of revenue and appropriation as well as matters subordinate to these issues. This definition should exclude fundamental policy changes to the tax system (such as the Goods and Services Tax and the National Energy Program).

14. Double Majority

The originator of a bill should be responsible for designating whether it materially affects French language or French culture. Each designation should be subject to appeal to the Speaker of the Senate under rules to be established by the Senate. These rules should be designed to provide adequate protection to Francophones.

On entering the Senate, Senators should be required to declare whether they are Francophones for the purpose of the double majority voting rule. Any process for challenging these declarations should be left to the rules of the Senate.

15. Ratification of Appointments

The Constitution should specify that the Senate ratify the appointment of the Governor of the Bank of Canada.

The Constitution should also be amended to provide the Senate with a new power to ratify other key appointments made by the federal government.

The Senate should be obliged to deal with any proposed appointments within thirty sitting-days of the House of Commons.

The appointments that would be subject to Senate ratification, including the heads of the national cultural institutions and the heads of federal regulatory boards and agencies, should be set out in specific federal legislation rather than the Constitution. The federal government's commitment to table such legislation should be recorded in a political accord (*).

An appointment submitted for ratification would be rejected if a majority of Senators voting cast their votes against it.

16. Eligibility for Cabinet

Senators should not be eligible for Cabinet posts.

B. THE SUPREME COURT

17. Entrenchment in the Constitution

The Supreme Court should be entrenched in the Constitution as the general court of appeal for Canada.

18. Composition

The Constitution should entrench the current provision of the Supreme Court Act, which specifies that the Supreme Court is to be composed of nine members, of whom three must have been admitted to the bar of Quebec (civil law bar).

19. Nominations and Appointments

The Constitution should require the federal government to name judges from lists submitted by the governments of the provinces and territories. A provision should be made in the Constitution for the appointment of interim judges if a list is not submitted on a timely basis or no candidate is acceptable.

20. Aboriginal Peoples' Role

The structure of the Supreme Court should not be modified in this round of constitutional discussions. The role of Aboriginal peoples in relation to the Supreme Court should be recorded in a political accord and should be on the agenda of a future First Ministers' Conference on Aboriginal issues (*).

Provincial and territorial governments should develop a reasonable process for consulting representatives of the Aboriginal peoples of Canada in the preparation of lists of candidates to fill vacancies on the Supreme Court (*).

Aboriginal groups should retain the right to make representations to the federal government respecting candidates to fill vacancies on the Supreme Court (*).

The federal government should examine, in consultation with Aboriginal groups, the proposal that an Aboriginal Council of Elders be entitled to make submissions to the Supreme Court when the court considers Aboriginal issues (*).

C. HOUSE OF COMMONS

21. Composition of the House of Commons

The composition of the House of Commons should be adjusted to better reflect the principle of representation by population. The adjustment should include an initial increase in the size of the House of Commons to 337 seats, to be made at the time Senate reform comes into effect. Ontario and Quebec would each be assigned eighteen additional seats, British Columbia four additional seats, and Alberta two additional seats, with boundaries to be developed using the 1991 census.

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An additional special Canada-wide redistribution of seats should be conducted following the 1996 census, aimed at ensuring that, in the first subsequent general election, no province will have fewer than 95% of the House of Commons seats it would receive under strict representation-by-population. Consequently, British Columbia and Ontario would each be assigned three additional seats and Alberta two additional seats. As a result of this special adjustment, no province or territory will lose seats, nor will a province or territory which has achieved full representation-by-population have a smaller share of House of Commons seats than its share of the total population in the 1996 census.

The redistribution based on the 1996 census and all future redistributions should be governed by the following constitutional provisions:

(a) A guarantee that Quebec would be assigned no fewer than 25 percent of the seats in the House of Commons;

(b) The current Section 41(b) of the Constitution Act, 1982, the "fixed floor", would be retained;

(c) Section 51A of the Constitution Act, 1867, the "rising floor", would be repealed;

(d) A new provision that would ensure that no province could have fewer Commons seats than another province with a smaller population, subject to the provision in item (a) above;

(e) The current provision that allocates two seats to the Northwest Territories and one seat to Yukon would be retained.

A permanent formula should be developed and Section 51 of the Constitution Act, 1867 should be adjusted to accommodate demographic change, taking into consideration the principles suggested by the Royal Commission on Electoral Reform and Party Financing.

22. Aboriginal Peoples' Representation

The issue of Aboriginal representation in the House of Commons should be pursued by Parliament, in consultation with representatives of the Aboriginal peoples of Canada, after it has received the final report of the House of Commons Committee studying the recommendations of the Royal Commission on Electoral Reform and Party Financing (*).

D. FIRST MINISTERS' CONFERENCES

23. Entrenchment

A provision should be added to the Constitution requiring the Prime Minister to convene a First Ministers' Conference at least once a year. The agendas for these conferences should not be specified in the Constitution.

The leaders of the territorial governments should be invited to participate in any First Ministers' Conference convened pursuant to this constitutional provision. Representatives of the Aboriginal peoples of Canada should be invited to participate in discussions on any item on the agenda of a First Ministers' Conference that directly affects the Aboriginal peoples. This should be embodied in a political accord (*).

The role and responsibilities of First Ministers with respect to the federal spending power are outlined at item 25 of this document.

E. THE BANK OF CANADA

24. Bank of Canada

The Bank of Canada was discussed and the consensus was that this issue should not be pursued in this round, except for the consensus that the Senate should have a role in ratifying the appointment of its Governor.

III: ROLES AND RESPONSIBILITIES

25. Federal Spending Power

A provision should be added to the Constitution stipulating that the Government of Canada must provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the federal government in an area of exclusive provincial jurisdiction, if that province carries on a program or initiative that is compatible with the national objectives.

A framework should be developed to guide the use of the federal spending power in all areas of exclusive provincial jurisdiction. Once developed, the framework could become a multilateral agreement that would receive constitutional protection using the mechanism described in Item 26 of this report. The framework should ensure that when the federal spending power is used in areas of exclusive provincial jurisdiction, it should:

(a) contribute to the pursuit of national objectives;

(b) reduce overlap and duplication;

(c) not distort and should respect provincial priorities; and

(d) ensure equality of treatment of the provinces, while recognizing their different needs and circumstances.

The Constitution should commit First Ministers to establishing such a framework at a future conference of First Ministers. Once it is established, First Ministers would assume a role in annually reviewing progress in meeting the objectives set out in the framework.

A provision should be added (as Section 106A(3)) that would ensure that nothing in the section that limits the federal spending power affects the commitments of Parliament and the Government of Canada that are set out in Section 36 of the Constitution Act, 1982.

26. Protection of Intergovernmental Agreements

The Constitution should be amended to provide a mechanism to ensure that designated agreements between governments are protected from unilateral change. This would occur when Parliament and the legislature(s) enact laws approving the agreement.

Each application of the mechanism should cease to have effect after a maximum of five years but could be renewed by a vote of Parliament and the legislature(s) readopting similar legislation. Governments of Aboriginal peoples should have access to this mechanism. The provision should be available to protect both bilateral and multilateral agreements among federal, provincial and territorial governments, and the governments of Aboriginal Peoples. A government negotiating an agreement should be accorded equality of treatment in relation to any government which has already concluded an agreement, taking into account different needs and circumstances.

It is the intention of governments to apply this mechanism to future agreements related to the Canada Assistance Plan (*).

27. Immigration

A new provision should be added to the Constitution committing the Government of Canada to negotiate agreements with the provinces relating to immigration.

The Constitution should oblige the federal government to negotiate and conclude within a reasonable time an immigration agreement at the request of any province. A government negotiating an agreement should be accorded equality of treatment in relation to any government which has already concluded an agreement, taking into account different needs and circumstances.

28. Labour Market Development and Training

Exclusive federal jurisdiction for unemployment insurance, as set out in Section 91(2A) of the Constitution Act, 1867, should not be altered. The federal government should retain exclusive jurisdiction for income support and its related services delivered through the Unemployment Insurance system. Federal spending on job creation programs should be protected through a constitutional provision or a political accord (*).

Labour market development and training should be identified in section 92 of the Constitution as a matter of exclusive provincial jurisdiction. Provincial legislatures should have the authority to constrain federal spending that is directly related to labour market development and training. This should be accomplished through justiciable intergovernmental agreements designed to meet the circumstances of each province.

At the request of a province, the federal government would be obligated to withdraw from any or all training activities and from any or all labour market development activities, except Unemployment Insurance. The federal government should be required to negotiate and conclude agreements to provide reasonable compensation to provinces requesting that the federal government withdraw.

The Government of Canada and the government of the province that requested the federal government to withdraw should conclude agreements within a reasonable time.

Provinces negotiating agreements should be accorded equality of treatment with respect to terms and conditions of agreements in relation to any other province that has already concluded an agreement, taking into account the different needs and circumstances of the provinces.

The federal, provincial and territorial governments should commit themselves in a political accord to enter into administrative arrangements to improve efficiency and client service and ensure effective coordination of federal Unemployment Insurance and provincial employment functions (*).

As a safeguard, the federal government should be required to negotiate and conclude an agreement within a reasonable time, at the request of any province not requesting the federal government to withdraw, to maintain its labour market development and training programs and activities in that province. A similar safeguard should be available to the territories.

There should be a constitutional provision for an ongoing federal role in the establishment of national policy objectives for the national aspects of labour market development. National labour market policy objectives would be established through a process which could be set out in the Constitution including the obligation for presentation to Parliament for debate. Factors to be considered in the establishment of national policy objectives could include items such as national economic conditions, national labour market requirements, international labour market trends and changes in international economic conditions. In establishing national policy objectives, the federal government would take into account the different needs and circumstances of the provinces; and there would be a provision, in the Constitution or in a political accord, committing the federal, provincial and territorial governments to support the development of common occupational standards, in consultation with employer and employee groups (*).

Provinces that negotiated agreements to constrain the federal spending power should be obliged to ensure that their labour market development programs are compatible with the national policy objectives, in the context of different needs and circumstances.

Considerations of service to the public in both official languages should be included in a political accord and be discussed as part of the negotiation of bilateral agreements (*).

The concerns of Aboriginal peoples in this field will be dealt with through the mechanisms set out in item 40 below.

29. Culture

Provinces should have exclusive jurisdiction over cultural matters within the provinces. This should be recognized through an explicit constitutional amendment that also recognizes the continuing responsibility of the federal government in Canadian cultural matters. The federal government should retain responsibility for national cultural institutions, including grants and contributions delivered by these institutions. The Government of Canada commits to negotiate cultural agreements with provinces in recognition of their lead responsibility for cultural matters within the province and to ensure that the federal government and the province work in harmony. These changes should not alter the federal fiduciary responsibility for Aboriginal people. The non-derogation provisions for Aboriginal peoples set out in item 40 of this document will apply to culture.

30. Forestry

Exclusive provincial jurisdiction over forestry should be recognized and clarified through an explicit constitutional amendment.

Provincial legislatures should have the authority to constrain federal spending that is directly related to forestry.

This should be accomplished through justiciable intergovernmental agreements, designed to meet the specific circumstances of each province. The mechanism used would be the one set out in item 26 of this document, including a provision for equality of treatment with respect to terms and conditions. Considerations of service to the public in both official languages should be considered a possible part of such agreements (*).

Such an agreement should set the terms for federal withdrawal, including the level and form of financial resources to be transferred. In addition, a political accord could specify the form the compensation would take (i.e. cash transfers, tax points, or others)(*). Alternatively, such an agreement could require the federal government to maintain its spending in that province. A similar safeguard should be available to the territories. The federal government should be obliged to negotiate and conclude such an agreement within a reasonable time.

These changes and the ones set out in items 31, 32, 33, 34 and 35 should not alter the federal fiduciary responsibility for Aboriginal people. The provisions set out in item 40 would apply.

31. Mining

Exclusive provincial jurisdiction over mining should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry (*).

32. Tourism

Exclusive provincial jurisdiction over tourism should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry (*).

33. Housing

Exclusive provincial jurisdiction over housing should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry (*).

34. Recreation

Exclusive provincial jurisdiction over recreation should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry (*).

35. Municipal and Urban Affairs

Exclusive provincial jurisdiction over municipal and urban affairs should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry (*).

36. Regional Development

In addition to the commitment to regional development to be added to Section 36 of the Constitution Act, 1982 (described in item 5 of this document), a provision should be added to the Constitution that would oblige the federal government to negotiate an agreement at the request of any province with respect to regional development. Such agreements could be protected under the provision set out in item 26 ("Protection of Intergovernmental Agreements"). Regional development should not become a separate head of power in the constitution.

37. Telecommunications

The federal government should be committed to negotiate agreements with the provincial governments to coordinate and harmonize the procedures of their respective regulatory agencies in this field. Such agreements could be protected under the provision set out in item 26 ("Protection of Intergovernmental Agreements").

38. Federal Power of Disallowance and Reservation

This provision of the Constitution should be repealed. Repeal requires unanimity.

39. Federal Declaratory Power

Section 92(10)(c) of the Constitution Act, 1867 permits the federal government to declare a "work" to be for the general advantage of Canada and bring it under the legislative jurisdiction of Parliament. This provision should be amended to ensure that the declaratory power can only be applied to new works or rescinded with respect to past declarations with the explicit consent of the province(s) in which the work is situated. Existing declarations should be left undisturbed unless all of the legislatures affected wish to take action.

40. Aboriginal Peoples' Protection Mechanism

There should be a general non-derogation clause to ensure that division of powers amendments will not affect the rights of the Aboriginal peoples and the jurisdictions and powers of governments of Aboriginal peoples.

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IV: FIRST PEOPLES

Note: References to the territories will be added to the legal text with respect to this section, except where clearly inappropriate. Nothing in the amendments would extend the powers of the territorial legislatures.

A. THE INHERENT RIGHT OF SELF-GOVERNMENT

41. The Inherent Right of Self-Government

The Constitution should be amended to recognize that the Aboriginal peoples of Canada have the inherent right of self-government within Canada. This right should be placed in a new section of the Constitution Act, 1982, section 35.1(1).

The recognition of the inherent right of self-government should be interpreted in light of the recognition of Aboriginal governments as one of three orders of government in Canada.

A contextual statement should be inserted in the Constitution, as follows:

The exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:

(a) to safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and,

(b) to develop, maintain and strengthen their relationship with their lands, waters and environment

so as to determine and control their development as peoples according to their own values and priorities and ensure the integrity of their societies.

Before making any final determination of an issue arising from the inherent right of self-government, a court or tribunal should take into account the contextual statement referred to above, should enquire into the efforts that have been made to resolve the issue through negotiations and should be empowered to order the parties to take such steps as are appropriate in the circumstances to effect a negotiated resolution.

42. Delayed Justiciability

The inherent right of self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a five-year period through constitutional language and a political accord (*).

Delaying the justiciability of the right should be coupled with a constitutional provision which would shield Aboriginal rights.

Delaying the justiciability of the right will not make the right contingent and will not affect existing Aboriginal and treaty rights.

The issue of special courts or tribunals should be on the agenda of the first Ministers' Conference on Aboriginal Constitutional matters referred to in item 53.(*).

43. Charter Issues

The Canadian Charter of Rights and Freedoms should apply immediately to governments of Aboriginal peoples.

A technical change should be made to the English text of Sections 3, 4 and 5 of the Canadian Charter of Rights and Freedoms to ensure that it corresponds to the French text.

The legislative bodies of Aboriginal peoples should have access to section 33 of the Constitution Act, 1982 (the notwithstanding clause) under conditions that are similar to those applying to Parliament and the provincial legislatures but which are appropriate to the circumstances of Aboriginal peoples and their legislative bodies.

44. Land

The specific constitutional provision on the inherent right and the specific constitutional provision on the commitment to negotiate land should not create new Aboriginal rights to land or derogate from existing aboriginal or treaty rights to land, except as provided for in self-government agreements.

B. METHOD OF EXERCISE OF THE RIGHT

45. Commitment to Negotiate

There should be a constitutional commitment by the federal and provincial governments and the Indian, Inuit and Métis peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of government. The negotiations would focus on the implementation of the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements.

46. The Process of Negotiation

Political Accord on Negotiation and Implementation

- A political accord should be developed to guide the process of self-government negotiations (*).

Equity of Access

- All Aboriginal peoples of Canada should have equitable access to the process of negotiation.

Trigger for Negotiations

- Self-government negotiations should be initiated by the representatives of Aboriginal peoples when they are prepared to do so.

Provision for Non-Ethnic Governments

- Self-government agreements may provide for self-government institutions which are open to the participation of all residents in a region covered by the agreement.

Provision for Different Circumstances

- Self-government negotiations should take into consideration the different circumstances of the various Aboriginal peoples.

Provision for Agreements

- Self-government agreements should be set out in future treaties, including land claims agreements or amendments to existing treaties, including land claims agreements. In addition, self-government agreements could be set out in other agreements which may contain a declaration that the rights of the Aboriginal peoples are treaty rights, within the meaning of Section 35(1) of the Constitution Act, 1982.

Ratification of Agreements

- There should be an approval process for governments and Aboriginal peoples for self-government agreements, involving Parliament, the legislative assemblies of the relevant provinces and/or territories and the legislative bodies of the Aboriginal peoples. This principle should be expressed in the ratification procedures set out in the specific self-government agreements.

Non-Derogation Clause

- There should be an explicit statement in the Constitution that the commitment to negotiate does not make the right of self-government contingent on negotiations or in any way affect the justiciability of the right of self-government.

Dispute Resolution Mechanism

- To assist the negotiation process, a dispute resolution mechanism involving mediation and arbitration should be established. Details of this mechanism should be set out in a political accord (*).

47. Legal Transition and Consistency of Laws

A constitutional provision should ensure that federal and provincial laws will continue to apply until they are displaced by laws passed by governments of Aboriginal peoples pursuant to their authority.

A constitutional provision should ensure that a law passed by a government of Aboriginal peoples, or an assertion of its authority based on the inherent right provision may not be inconsistent with those laws which are essential to the preservation of peace, order and good government in Canada. However, this provision would not extend the legislative authority of Parliament or of the legislatures of the provinces.

48. Treaties

With respect to treaties with Aboriginal peoples, the Constitution should be amended as follows:

- treaty rights should be interpreted in a just, broad and liberal manner taking into account the spirit and intent of the treaties and the context in which the specific treaties were negotiated;

- the Government of Canada should be committed to establishing and participating in good faith in a joint process to clarify or implement treaty rights, or to rectify terms of treaties when agreed to by the parties. The governments of the provinces should also be committed, to the extent that they have jurisdiction, to participation in the above treaty process when invited by the government of Canada and the Aboriginal peoples concerned or where specified in a treaty;

- participants in this process should have regard, among other things and where appropriate, to the spirit and intent of the treaties as understood by Aboriginal peoples. It should be confirmed that all Aboriginal peoples that possess treaty rights shall have equitable access to this treaty process;

- it should be provided that these treaty amendments shall not extend the authority of any government or legislature, or affect the rights of Aboriginal peoples not party to the treaty concerned.

C. ISSUES RELATED TO THE EXERCISE OF THE RIGHT

49. Equity of Access to Section 35 Rights

The Constitution should provide that all of the Aboriginal peoples of Canada have access to those Aboriginal and treaty rights recognized and affirmed in Section 35 of the Constitution Act, 1982 that pertain to them.

50. Financing

Matters relating to the financing of governments of Aboriginal peoples should be dealt with in a political accord. The accord would commit the governments of Aboriginal peoples to:

- promoting equal opportunities for the well-being of all Aboriginal peoples;

- furthering economic, social and cultural development and employment opportunities to reduce disparities in opportunities among Aboriginal peoples and between Aboriginal peoples and other Canadians; and

- providing essential public services at levels reasonably comparable to those available to other Canadians in the vicinity.

It would also commit federal and provincial governments to the principle of providing the governments of Aboriginal peoples with fiscal or other resources, such as land, to assist those governments to govern their own affairs and to meet the commitments listed above, taking into account the levels of services provided to other Canadians in the vicinity and the fiscal capacity of governments of Aboriginal peoples to raise revenues from their own sources.

The issues of financing and its possible inclusion in the Constitution should be on the agenda of the first Ministers' Conference on Aboriginal Constitutional matters referred to in item 53 (*).

51. Affirmative Action Programs

The Constitution should include a provision which authorizes governments of Aboriginal Peoples to undertake affirmative action programs for socially and economically disadvantaged individuals or groups and programs for the advancement of Aboriginal languages and cultures.

52. Gender Equality

Section 35 (4) of the Constitution Act, 1982, which guarantees existing Aboriginal and treaty rights equally to male and female persons should be retained. The issue of gender equality should be on the agenda of the first Ministers' Conference on Aboriginal Constitutional matters referred to under item 53 (*).

53. Future Aboriginal Constitutional Process

The Constitution should be amended to provide for four future First Ministers' Conferences on Aboriginal constitutional matters beginning no later than 1996, and following every two years thereafter. These conferences would be in addition to any other First Ministers' Conferences required by the Constitution. The agendas of these conferences would include items identified in this report and items requested by Aboriginal peoples.

54. Section 91(24)

For greater certainty, a new provision should be added to the Constitution Act, 1867 to ensure that Section 91(24) applies to all Aboriginal peoples.

The new provision would not result in a reduction of existing expenditures by governments on Indians and Inuit or alter the fiduciary and treaty obligations of the federal government for Aboriginal peoples. This would be reflected in a political accord (*).

55. Métis in Alberta/Section 91(24)

The Constitution should be amended to safeguard the legislative authority of the Government of Alberta for Métis and Métis Settlements lands. There was agreement to a proposed amendment to the Alberta Act that would constitutionally protect the status of the land held in fee simple by the Métis Settlements General Council under letters patent from Alberta.

56. Métis Nation Accord (*)

The federal government, the provinces of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Métis National Council have agreed to enter into a legally binding, justiciable and enforceable accord on Métis Nation issues. Technical drafting of the Accord is being completed. The Accord sets out the obligations of the federal and provincial governments and the Métis Nation.

The Accord commits governments to negotiate: self-government agreements; lands and resources; the transfer of the portion of Aboriginal programs and services available to Métis; and cost sharing arrangements relating to Métis institutions, programs and services.

Provinces and the federal government agree not to reduce existing expenditures on Métis and other Aboriginal people as a result of the Accord or as a result of an amendment to section 91(24). The Accord defines the Métis for the purposes of the Métis Nation Accord and commits governments to enumerate and register the Métis Nation.

V: THE AMENDING FORMULA

Note: All of the following changes to the amending formula require the unanimous agreement of Parliament and the provincial legislatures.

57. Changes to National Institutions

Amendments to provisions of the Constitution related to the Senate should require unanimous agreement of Parliament and the provincial legislatures, once the current set of amendments related to Senate reform has come into effect. Future amendments affecting the House of Commons, including Quebec's guarantee of at least 25 percent of the seats in the House of Commons, and amendments which can now be made under s.42 should also require unanimity.

Sections 41 and 42 of the Constitution Act, 1982 should be amended so that the nomination and appointment process of Supreme Court judges would remain subject to the general (7/50) amending procedure. All other matters related to the Supreme Court, including its entrenchment, its role as the general court of appeal and its composition, would be matters requiring unanimity.

58. Establishment of New Provinces

The current provisions of the amending formula governing the creation of new provinces should be rescinded. They should be replaced by the pre-1982 provisions allowing the creation of new provinces through an Act of Parliament, following consultation with all of the existing provinces at a First Ministers' Conference. New provinces should not have a role in the amending formula without the unanimous consent of all of the provinces and the federal government, with the exception of purely bilateral or unilateral matters described in Sections 38(3), 40, 43, 45 and 46 as it relates to 43, of the Constitution Act, 1982. Any increase in the representation for new provinces in the Senate should also require the unanimous consent of all provinces and the federal government. Territories that become provinces could not lose Senators or members of the House of Commons.

The provision now contained in Section 42(1)(e) of the Constitution Act, 1982 with respect with the extension of provincial boundaries into the Territories should be repealed and replaced by the Constitution Act, 1871, modified in order to require the consent of the Territories.

59. Compensation for Amendments that Transfer Jurisdiction

Where an amendment is made under the general amending formula that transfers legislative powers from provincial legislatures to Parliament, Canada should provide reasonable compensation to any province that opts out of the amendment.

60. Aboriginal Consent

There should be Aboriginal consent to future constitutional amendments that directly refer to the Aboriginal peoples. Discussions are continuing on the mechanism by which this consent would be expressed with a view to agreeing on a mechanism prior to the introduction in Parliament of formal resolutions amending the Constitution.

VI: OTHER ISSUES

Other constitutional issues were discussed during the multilateral meetings.

The consensus was not pursue the following issues:

- personal bankruptcy and insolvency
- intellectual property
- interjurisdictional immunity
- inland fisheries
- marriage and divorce
- residual power
- legislative interdelegation
- changes to the "notwithstanding clause"
- Section 96 (appointment of judges)
- Section 125 (taxation of federal and provincial governments)
- Section 92A (export of natural resources)
- requiring notice for changes to federal legislation respecting equalization payments
- property rights
- implementation of international treaties

Other issues were discussed but were not finally resolved, among which were:

- requiring notice for changes to federal legislation respecting Established Programs Financing
- establishing in a political accord a formal federal-provincial consultation process with regard to the negotiation of international treaties and agreements
- Aboriginal participation in intergovernmental agreements respecting the division of powers
- establishing a framework for compensation issues with respect to labour market development and training
- consequential amendments related to Senate reform, including by-elections
- any other consequential amendments required by changes recommended in this report