Annexure I

The Constitution of Canada Act, 1982

Canada Act 1982
Statutes of the United Kingdom, 1982, Elizabeth II, Chap. II
Assented to 29 March 1982

The 1976 election of the Parti Québécois (PQ), with its goal of sovereignty-association (political independence with some form of economic association with Canada), revived the constitutional question, but other factors, such as the rising tide of western-Canadian regionalism, reflecting the redistribution of wealth and economic power in the 1970s, and the lingering inability of Canadians to repatriate their constitution, also played a role in the events that led to the signing of the Canada Act by Queen Elizabeth II on 17 April 1982. After the defeat of the “yes” forces in the PQ referendum on negotiating sovereignty-association in May 1980, the pace of events intensified: in September 1980 the First Ministers failed to agree to constitutional reform; in October 1980 the Trudeau government revealed its intention to proceed unilaterally and most provincial governments opposed such an action; in September 1981 the Supreme Court ruled that federal unilateral repatriation was legal but against constitutional convention; in November 1981, after intense lobbying by women and native groups, sexual equality and aboriginal treaty rights amendments were added to the package; in December 1981 the Canadian Parliament approved the constitutional resolution; and in March 1982 the British Parliament gave final approval to the Canada Act.

The Trudeau government had achieved a great deal—a standard domestic amending formula (the approval of Parliament plus the legislatures of seven provinces representing 50 percent of the population); an entrenched Charter of Rights and Freedoms; and other amendments (concerning education and language) to the British North America Act which was renamed the Constitution Act—but Lévesque’s rejection of the agreement meant that the Quebec constitutional dilemma had not been solved and would continue to perplex Canadian politicians and their constituents throughout the 1980s and into the 1990s.
Annexure I

AN ACT TO GIVE EFFECT TO A REQUEST BY THE SENATE AND HOUSE OF COMMONS 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, 1982 set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2. No Act of the Parliament of the United Kingdom passed after the Constitution Act, 1982 comes into force shall extend to Canada as part of its law.

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

4. This Act may be cited as the Canada Act 1982.

SCHEDULE B
CONSTITUTION ACT, 1982
PART 1
Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

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 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 communication;
   (c) freedom of peaceful assembly; and
   (d) freedom of association.
Annexure I

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right
(a) to be informed without unreasonable delay of the specific offence;
(b) to be tried within a reasonable time;
(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
(e) not to be denied reasonable bail without just cause;
(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 unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
(i) if found guilty 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.

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

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in 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 or who is deaf has the right to the assistance of an interpreter.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Annexure I

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

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 advance the equality of status or use of English and French.

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.

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.

20. (1) 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, 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.

(2) Any member of the public in 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.

Minority Language Educational Rights

23. (1) Citizens of Canada
   
   (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
   
   (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

   (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

   (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.

   (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

   (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

24. (1) 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.

   (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal people of Canada including

   (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
Annexure I

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

26. 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.

27. This charter shall be interpreted in a manner consistent with the preservation and enhancement of the multi-cultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

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

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

Application of Charter

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of 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 in respect of all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).
Annexure I

Citation

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

PART II

Rights of the Aboriginal Peoples of Canada

35. (1) The existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal people of Canada" includes the Indian, Inuit and Métis peoples of Canada.

PART III

Equalization and Regional Disparities

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

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

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

PART IV

Constitutional Conference

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal people of Canada, including the identification and definition of the rights of those people to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

(3) The Prime Minister of Canada shall invite elected representatives of the government of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.
PART V

Procedure for Amending Constitution of Canada

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

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

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

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

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

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

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

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

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

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

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

42. (1) An Amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):
(a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
(b) the powers of the Senate and the method of selecting Senators;
(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
(d) subject to paragraph 41 (d), the Supreme Court of Canada;
(e) the extension of existing provinces into the territories; and
(f) notwithstanding any other law or practice, the establishment of new provinces.

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

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including
(a) any alteration to boundaries between provinces, and
(b) any amendment to any provision that relates to the use of the English or the French language within a province, may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolution of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

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

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

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

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

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

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

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

PART VI

Amendment to the Constitution Act, 1867

50. The Constitution Act, 1867 (formerly named the British North America Act, 1867) is amended by adding thereto, immediately after section 92 thereof, the following heading and section:

"Non-Renewable Natural Resources, Forestry Resources and Electrical Energy"

92A. (1) In each province, the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom, and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom.

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between
production exported to another part of Canada and production not exported from the province.

(5) The expression "primary production" has the meaning assigned by the Sixth Schedule.

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section."

51. The said Act is further amended by adding thereto the following Schedule.

"THE SIXTH SCHEDULE"

Primary Production from Non-Renewable Natural Resources and Forestry Resources

1. For the purposes of section 92A of this Act,

(a) production from a non-renewable natural resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of saw-logs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood."

PART VII

General

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.

(2) The Constitution of Canada includes

(a) the Canada Act 1982, including this Act;

(b) the Acts and orders referred to in the schedule; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

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

53. (1) The enactments referred to in Column 1 of the schedule are hereby repealed or amended to the extent indicated in Column II thereof and, unless
Annexure II

authority, it may be considered in determining whether a particular law fits within the legislative authority of Parliament or any of the legislatures.

Gerald-A. Beaudoin, O.C., Q.C.
Professor of Law, University of Ottawa

B. Jamie Cameron
Associate Professor, Osgoode Hall Law School, York University

E. Robert A. Edwards, Q.C.
Assistant Deputy Attorney General, Government of British Columbia

Peter W. Hogg, Q.C.
Professor, Osgoode Hall Law School, York University

Katherine Swinton
Professor, Faculty of Law, University of Toronto

Roger Tasse, O.C., Q.C.
Barrister and Solicitor

Motion for a Resolution to Authorize an Amendment to the Constitution of Canada

The (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE
Constitution Amendment

Constitution Act, 1867

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 133 thereof, the following section:

"133.1 (1) The Constitution of Canada, as it relates to New Brunswick, shall be interpreted in a manner consistent with the recognition that, within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges.

(2) The rule of the legislature and Government of New Brunswick to preserve and promote the equality of status and equal rights and privileges of the two linguistic communities referred to in subsection (1) is affirmed.

(3) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislature or Government of New Brunswick, including any powers, rights or privileges relating to language."

Citation

2. This amendment may be cited as the Constitution Amendment, (Year of proclamation) (New Brunswick).
Annexure II

General under the Great Seal of Canada to amend the Constitution of Canada as soon as possible after proclamation of the Constitution Amendment, 1987.

Signed at Ottawa,
June 9, 1990

Brian Mulroney, Canada
David Peterson, Ontario
Robert Bourassa, Quebec
John Buchanan, Nova Scotia
Frank McKenna, New Brunswick
Gary Filmore, Manitoba*
Bill Vander Zalm, British Columbia
Joseph Ghiz, Prince Edward Island
Grant Devine, Saskatchewan
Don Getty, Alberta
Clyde Wells, Newfoundland**

*Subject to the Public hearing process
**The Premier of Newfoundland endorses now the undertaking in Part of this document and further undertakes to endorse fully this agreement if the Constitution Amendment, 1987 is given legislative or public approval following the Consultation provided for in Part I.

Ottawa
June 9, 1990

Dear Prime Minister,

In response to certain concerns which have been expressed in relation to section I of the proposed Constitution Amendment, 1987 (Meech Lake Accord), it is our pleasure to confirm our opinion on the following.

In our opinion, the Canadian Charter of Rights and Freedoms will be interpreted in a manner consistent with the duality/distinct society clause of the proposed Constitution Amendment, 1987 (Meech Lake Accord), but the rights and freedoms guaranteed thereunder are not infringed or denied by the application of the clause and continue to be guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, and the duality/distinct society clause may be considered, in particular, in the application of section I of the Charter.

The Constitution of Canada, including sections 91 and 92 of the Constitution Act, 1867, will be interpreted in a manner consistent with the duality/distinct society clause. While nothing in that clause creates new legislative authority for Parliament or any of the provincial legislatures, or derogates from any of their legislative
Meech Lake/Langevin Accord, 1987

1990 Constitutional Agreement
Signed 9 June 1990 [Source: Canada: Canadian Intergovernmental Conference Secretariat,
First Ministers’ Meeting on the Constitution, June-9-10, 1990,
Final Communiqué. Document: 800-029/006]

The ratification of the Meech Lake/Langevin Accord (Accord) by the Quebec National Assembly on 23 June 1987 began a three-year constitutional odyssey that ended in failure. Although Prime Minister Mulroney insisted that the Accord was unalterable, the steadfast opposition by the premiers of Manitoba, New Brunswick, and Newfoundland eventually forced the conditional acceptance of an amended agreement on 9 June 1990, only to see it fall apart when ratification was not forthcoming from the provincial legislatures of Manitoba and Newfoundland prior to the 23 June 1990 deadline. In the year that followed, a flood of inquiries by provincial and federal governments, and by private organizations (Manitoba Task Force, Bélanger-Campeau Commission, Allaire Committee, Citizens’ Forum on Canada’s Future, Beaudouin-Edwards Committee, the Ethno-Cultural Council, and the Group of 22, for example) kept the constitutional question in the headlines. On 24 September 1991 Prime Minister Mulroney unveiled a new 28-part proposal which endeavoured to meet a number of concerns and demands, particularly those of Quebec (a “distinct society” clause), western Canadian provinces (an elected Senate), and Native groups (Aboriginal self-government and land claims).

Whereas on April 30, 1987, the Prime Minister of Canada and the Premiers reached agreement in principle on means to bring about the full and active participation of Quebec in Canada’s constitutional evolution;

And whereas on June 3, 1987, all first ministers signed the 1987 Constitutional Accord and committed themselves to introducing as soon as possible the Constitution Amendment, 1987 in Parliament and the provincial legislative assemblies;

And whereas the Constitution Amendment, 1987 has been authorized by Parliament and the legislative assemblies of Quebec, Saskatchewan, Alberta, Prince Edward Island, Nova Scotia, Ontario and British Columbia;
Annexure II

1. The Meech Lake Accord

The Premiers of New Brunswick, Manitoba and Newfoundland undertake to submit the Constitution Amendment, 1982 for appropriate legislative or public consideration and to use every possible effort to achieve decision prior to June 23, 1990.

2. Senate Reform

After proclamation, the federal government and the provinces will constitute a commission with equal representation for each province and an appropriate number of territorial and federal representatives to conduct hearings and to report to Parliament and the legislative assemblies of the provinces and territories, prior to the First Ministers' Conference on the Senate to be held by the end of 1990 in British Columbia, on specific proposals for Senate reform that will give effect to the following objectives:

—The Senate should be elected.
—The Senate should provide for more equitable representation of the less populous provinces and territories.
—The Senate should have effective powers to ensure the interests of residents of the less populous provinces and territories figure more prominently in national decision making, reflect Canadian duality and strengthen the Government of Canada's capacity to govern on behalf of all citizens, while preserving the principle of the responsibility of the Government to the House of Commons.

Following proclamation of the Meech Lake Accord, the Prime Minister and all Premiers agree to seek adoption of an amendment on comprehensive Senate reform consistent with these objectives by July 1, 1985.

The Prime Minister undertakes to report semi-annually to the House of Commons on progress achieved towards comprehensive Senate reform.

The Prime Minister and all Premiers, reaffirming the commitment made in the Edmonton Declaration and the provisions to be entrenched under the Constitution Amendment, 1987, undertook that Senate reform will be the key constitutional priority until comprehensive Senate reform.

The Prime Minister and all Premiers, reaffirming the commitment made in the Edmonton Declaration and the provisions to be entrenched under the Constitution Amendment, 1987, undertook that Senate reform will be the key constitutional priority until comprehensive reform is achieved.

If, by July 1, 1985, comprehensive Senate reform has not been achieved according to the objectives set out above under section 41 of the Constitution Act, 1982, as amended by the Constitution Amendment, 1982, the number of Senators by which a province is entitled to be represented in the Senate will be amended so that, of the total of one hundred and four Senators, the representation of Ontario will be eighteen Senators, the representation of Nova Scotia, New Brunswick, British Columbia, Alberta, Saskatchewan, Manitoba and Newfoundland will be eight Senators each, and the representation of all other provinces and the territories will
remain unchanged. In the case of any province whose representation declined, no new appointments would be made until that province’s representation had by attrition declined below its new maximum. In the event of such a redistribution of Senate seats, Newfoundland would be entitled to another member of Parliament in the House of Commons under section 51A of the Constitution Act, 1867.

3. Further Constitutional Amendments

(1) Charter Sex-Equality Rights


(2) Role of the Territories

—In appointments to the Senate and the Supreme Court of Canada.

—In discussion on items on the agenda of annual constitutional and economic conferences where, in the view of the Prime Minister, matters to be discussed directly affect them.

(3) Language Issues

—Add to the agenda of constitutional conferences matters that are of interest to English-speaking and French-speaking linguistic minorities.

—Require resolutions of the House of Commons, the Senate and the legislative assembly of New Brunswick to amend that province’s Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick (Bill 88).

(4) Aboriginal Constitutional Issues

First Ministers’ constitutional conferences to be held once every three years, the first to be held within one year of proclamation; representatives of aboriginal peoples and the territorial governments to be invited by the Prime Minister to participate in the discussion of matters of interest to the aboriginal people of Canada.

The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the Premiers will lay or cause to be laid before their legislative assemblies, a resolution, in the form appended hereto, and will seek to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Constitution of Canada as soon as possible after proclamation of the Constitution Amendment, 1987.

4. Agenda for Future Constitutional Discussions

(1) Creation of New Provinces in the Territories

The Prime Minister and all Premiers agreed future constitutional conferences should address available options for province-hood, including the possibility that, at the request of the Yukon and Northwest Territories to become provinces, only a resolution of the House of Commons and Senate be required.

(2) Constitutional Recognitions

The Prime Minister and Premiers took note of repeated attempts by First Ministers
over the past years to draft a statement of constitutional recognitions. All such attempts were unsuccessful.

The Prime Minister and Premiers reviewed drafts submitted by the federal government and Manitoba, Saskatchewan, Ontario and British Columbia, and agreed to refer immediately the drafts to an all-party Special Committee of the House of Commons. Public hearings would begin across Canada on July 16, 1990 and a report on the substance and placement of the clause-in a manner consistent with the Constitution of Canada—would be prepared for consideration by First Ministers at their conference in 1990.

(3) Constitutional Reviews

The Prime Minister and all Premiers agreed jointly to review, at the constitutional conference required by section 49 of the Constitution Act, 1982, the entire process of amending the Constitution, including the three year time limit under section 39(2) of that Act and the question of mandatory public hearings prior to adopting the measure related to a constitutional amendment, including revocation of a constitutional resolution.

Pursuant to section 50 of the Constitution Act, 1982, as proposed in the Constitution Amendment, 1987, the Prime Minister and the Premiers also committed to a continuing review of the operation of the Constitution of Canada, including the Canadian Charter of Rights and Freedoms, with a view to making any appropriate constitutional amendments.

5. Sections 2: Constitution Amendment, 1987

The Prime Minister and Premiers took note of public discussion of the distinct society clause since its inclusion in the Meech Lake Accord. A Number of Canada’s most distinguished constitutional authorities met to exchange views on the legal impact of the clause. The Prime Minister and Premiers reviewed their advice and other material.

The Prime Minister, in his capacity as chairman of the Conference, received from the above-noted constitutional authorities a legal opinion which is appended to the final Conference communiqué.

6. New Brunswick Amendment

—Add a clause that within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges.

—Affirm an additional role of the legislature and government of New Brunswick; to preserve and promote the quality of status and equal rights and privileges of the province’s two official linguistic communities.

The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the Premier of New Brunswick will lay or cause to be laid before the legislative assembly of New Brunswick, a resolution, in the form appended hereto, and will seek to authorize a proclamation to be issued by the Governor
Annexure III

Charlottetown Accord, 1992

A Voter's Handbook for The Referendum

What the accord says—and what it means

In an evocative, almost nostalgic touch, the 60-clause constitutional agreement at the centre of the Oct. 26 referendum is known simply as the Charlottetown accord. It was in Charlottetown, after all, that politicians from Britain's North American colonies first discussed the daring notion of a federal union in early September of 1864. But the patriotic allusion to the birthplace of Canada has obscured other, perhaps more important lessons from the first Charlottetown Conference. It is now little known that the politicians went to Charlottetown under duress—Prince Edward Island threatened to stay away unless it hosted the gathering. The conference itself started three years of acrimonious debate: the Fathers of Confederation squabbled over the division of federal and provincial powers; they fought bitterly over the structure of the Senate and other institutions. And when, after myriad meetings and compromises, they finally hammered out their basic constitutional document, the British North America Act, 1867, it was an arid text, devoid of poetry, in which different Canadians could discern vastly different visions of their nation.

Still, Canada has lasted 125 years.

The new agreement is an intricate package that, if approved, would overhaul Canada's Constitution. Its wide-ranging proposals would alter the established division of powers, the interpretation of basic rights, the financial arrangements among governments and the very structure of such institutions as the Senate and House of Commons. Like the original Confederation pact, it is an uneasy compromise—an understanding that was reshaped and refined to the point that Ottawa, all 10 provinces, the two territories and four aboriginal groups were able to endorse it in August, after six months of gruelling, often caustic negotiations. More pointedly, as with the Confederation agreement, it offers no inspiring national vision. Like their predecessors in 1864, the negotiators instead embraced often-contradictory understandings of the nation.

As a result, the accord is a fragile, almost fragmented document: no government and no group got everything that it wanted; all accepted some elements that displeased them. Each component is surrounded by a thicket of qualifiers and conditions; many important provisions require further negotiations. The West received an elected Senate with equal membership from each province; in return,
Quebec received a guarantee of 25 per cent of the House of Commons seats, no matter how the national population shifts. Aboriginals gained recognition of their inherent right to self-government; in return, aboriginal laws cannot be inconsistent with provincial and federal laws "which are essential to the preservation of peace, order and good government in Canada." Quebec received recognition of its distinct society; in return, the text includes a partial, and probably limiting, definition of that society. Each negotiator, in fact, made concessions in some sections to receive benefits in others.

In the referendum, Canadians will decide whether they can accept those compromises. But both sides are also asking voters to weigh what will likely happen in the aftermath of the referendum. The accord's detractors claim that it is a flawed document that will lead to too many disruptive changes. They say that if Canadians reject it, the nation will survive; new leaders will eventually forge better agreements. Its supporters, however, claim that the accord represents the best possible compromise among widely disparate interests. They add that if Canadians support it, their leaders can then turn their attention to pressing economic and social problems. As well, some Yes proponents warn that rejection of the agreement might lead to the eventual breakup of Canada.

In the end, the voters will pass judgment on the compromises—and the potential consequences. Over the past two weeks, each Canadian household was to have received a copy of the accord. The referendum question facing voters is deceptively simple: "Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992?" Yes. Or No. But there are no easy answers, especially in the eight contentious areas that form the heart of the agreement. In the following pages, Maclean's examines those key components—and the controversies surrounding their effects—in the order that they appear in the Charlottetown accord.

**Verbatim**

*The Canada Clause*

(from the draft legal text of the Charlottetown accord)

1. 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;
Annexure III

(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 languages.

(4) For greater certainty, nothing in this section abrogates or derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada."

1. The Canada Clause

The issue: For generations, many Canadians have complained about the lack of an inspiring preamble in Canada's Constitution. There is no poetic statement of national ideals and aspirations in the four paragraphs at the beginning of the Constitution Act, 1867. Instead, there is a briskly practical explanation that Confederation, with a Constitution that is "similar in principle to that of the United Kingdom," would help the provinces and promote the British Empire. The controversial Canada clause began as a simple remedy for that lack of poetry. In September, 1991, Ottawa proposed the inclusion of a general statement that outlined who Canadians "are as a people and who we aspire to be."

The agreement: After months of negotiations, the clause has lost its poetry—but it has vastly greater powers than Ottawa had originally envisaged. The current version has become a four-section "interpretative" device that applies to the entire Constitution, including the Charter of Rights. Its list of "fundamental characteristics" is explicitly intended to guide the courts as they wade through the tangle of competing rights and values.

The very list is contentious. It would:

★ recognize Quebec as a "distinct society," which includes a French-speaking majority, a unique culture and a civil law tradition;

★ give a role to the legislature and government of Quebec in preserving and promoting that distinction;
Annexure III

★ commit Canadians—and their governments—to the vitality and development of official-language minority communities;

★ commit Canadians—though not their governments—to racial and ethnic equality, to the equality of men and women and to respect for individual and collective rights;

★ recognize the right of aboriginals to promote their languages, cultures and traditions and define their governments as one of three orders of government in Canada, along with Ottawa and the provinces.

The Controversy: Opponents of the Charlottetown accord argue that the Canada clause would establish a distressing “hierarchy” of rights because it commits governments only to the development and promotion of language rights—and not to racial, ethnic and gender equality. They also point out that the powerful clause does not mention the rights of such groups as the disabled and homosexuals.

In response, supporters of the accord point out that the Charter already affirms key rights in blunt language: rights are guaranteed equally to men and women; the law must treat each person equally without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability. They argue that the wording of the Canada clause does not allow the courts to trample upon those firm guarantees. Indeed, they say, governments are the servants of Canadians: if Canadians are committed to an ideal, governments must do their bidding. They blame the clumsy wording on the negotiators’ misguided yearning for balance: that is, the government of Quebec has the right to promote the distinct society—so Canadians and their governments should commit themselves to minority-language rights.

Still, there is no doubt that the Canada clause could subtly affect key court decisions—if only because it adds new characteristics for the courts’ consideration. The Charter already allows governments to set “reasonable limits” on rights: no one, for example, can use freedom of expression to libel an individual. The Canada clause would put new factors into that search for delicate balance. It could have made a difference to some decisions, such as the Supreme Court of Canada ruling in 1988 that Quebec contravened the Charter when it banned the use of English on outdoor commercial signs (although that ban continues because of the so-called notwithstanding clause, which allows provinces to maintain some legislation, even if it violates Charter provisions). Under the accord, Quebec’s status as a distinct society could influence the court to accept such a ban.

2. Social and Economic Union

The Issues: There are two—the free flow of goods, services, people and capital among the provinces and territories; and the guarantee of basic social rights to all Canadians. They became twinned when some politicians, mainly from the left, said that they could not support the Conservative government’s proposed economic clauses without the inclusion of a so-called social charter. On the economic side, provinces have often inhibited free trade with each other in order to protect the interests of local businesses. Federal efforts since September, 1991, to negotiate the
removal of those barriers have met resistance from many provinces on the grounds that they would threaten local economies. Recently, inter-provincial barriers have become increasingly apparent as Ottawa negotiated free trade agreements, first with the United States, then with the United States and Mexico. Those agreements provide for fewer barriers to trade with the rest of North America than there are among provinces. On the social side, Ontario Premier Bob Rae and others suggested that the Constitution should include a list of social rights as a poignant reminder that Canadians have both economic and social goals.

The agreement: The Charlottetown accord would commit governments to “the principle of the preservation and development of Canada’s social and economic union.” The economic aims include: the goal of full employment; the free movement of goods, services, people and capital; and working together to strengthen the economic union. The first ministers would consider the establishment of an independent agency to resolve disputes among governments. They would also set up a “mechanism for monitoring” the economic and social union at a future conference. The social commitments include: reasonable access to housing, food and other basic necessities; a health care system that is comprehensive, universal, portable, publicly administered and accessible; and the preservation of the environment for present and future generations.

The controversy: The agreement means almost nothing. It makes little progress in the so-far intractable problem of removing economic barriers: it simply hands that challenge to future first ministers’ conferences. The social provisions, in turn, are little more than pious commitments that carry little legal clout. As a result, the accord’s detractors denounce both provisions as shams. The accord’s proponents argue that governments must dismantle their trade barriers through political negotiations—not through constitutional clauses. As to specifying social rights, they say that would effectively hand to the courts the traditional role of governments to dictate social policy and spending.

The only provision in the clause that could have major weight before the courts is an amendment to the current equalization provisions, under which the poorer provinces receive funds from the rest of Canada. The Constitution already commits Ottawa and the provinces to providing reasonably comparable levels of public services to all Canadians. The accord adds a new commitment: “to ensure the provision of reasonably comparable economic infrastructures of a national nature in each province and territory.” It is possible that the courts could interpret such a specific addition to force wealthier governments to make equalization payments to poorer provinces, even if those richer governments are themselves hard-pressed.

3. Parliamentary Reform

The issue: Provinces in Atlantic Canada and the West have complained for decades that the federal government caters to Central Canada at the expense of their interests. To remedy that, some provinces have demanded an elected Senate with an equal number of members from each province. They argue that an equal upper house would balance the dominant influence of Ontario and Quebec in the House of Commons, where representation is roughly based on population. But that
demand triggers a clash between two visions of the nation. Many Canadians—especially in the West and Newfoundland—consider all provinces to be equal. But in Quebec, where there is a strong sense that French-Canadians and English-Canadians are the two founding partners of Canada, an equal Senate is widely seen as diminishing Quebec’s pivotal role within Confederation.

The agreement: The accord walks a careful line between those approaches: it changes both the Senate and the House of Commons to respond to both visions. It would replace the 104-seat, appointed upper house, in which Quebec has 24 seats, with a smaller, elected chamber: six seats for each province; one for each territory; and an additional, still unspecified number of seats for aboriginal peoples. Senate elections would be held at the same time as federal elections; each provincial government would have the right to decide if its voters or its legislature would elect its senators (only Quebec has indicated a preference for its legislature). Provinces could also stipulate that their Senate representation must include equal numbers of men and women.

To balance that recognition of provincial equality in the Senate, the accord would guarantee Quebec a minimum of 25 percent of the seats in the House of Commons. As well, while eliminating 42 Senate seats, the accord would add 42 new seats to the Commons, creating a 337-seat chamber. Quebec would get 18 of those seats, Ontario 18, British Columbia four and Alberta two. (There would then be a further adjustment after the 1996 census to ensure that every province has at least 95 percent of the seats that it would receive under strict representation by population.) The accord also provides for special voting procedures if a bill affects French language or culture: that bill would have to receive so-called double-majority approval—a majority of French-speaking senators as well as an overall majority of senators.

The accord would also create an intriguing new relationship between the Commons and the Senate. In theory, the current Senate can defeat most legislation; in reality, the unelected body has rarely blocked or even amended Commons’ bills. In contrast, the new Senate would have the potential to exert real power.

A simple majority of senators could defeat bills that make fundamental changes in the taxation of natural resources or electrical energy. And the new chamber could force the government to take a second, hard look at most other legislation (although it can only delay basic spending bills for 30 days). Under the legal text, if the Senate defeats a bill, a joint Senate-Commons committee would attempt to find a compromise; failing that, a simple majority vote in a joint Commons-Senate sitting, called the Congress, would determine the fate of the bill.

The Controversy: Many detractors point to Quebec’s guaranteed 25-per-cent representation in the Commons. They argue that other provinces, notably British Columbia, are growing fast while Quebec’s population is declining. But the accord’s proponents counter that it honors and protects Quebec’s historic place within Canada. They also point out that the rough guidelines for representation by population would apply to the other provinces.

Some of the accord’s detractors also dislike the restrictions on the proposed Senate’s powers. They argue that it cannot represent the regions effectively unless
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it can defeat all Commons legislation—with the exception of basic money bills—through a simple majority vote. Proponents counter that, with more than 60 per cent of Canadians living in Ontario and Quebec, senators who represent a minority of the population should not have the power to defeat all legislation.

4. Other Institutions

The issues: The Constitution Act, 1982, barely recognizes the Supreme Court of Canada: it simply outlines how governments can amend it. As well, the Constitution does not allow for a provincial voice in the operation of the Bank of Canada, the nation’s most influential financial institution. And it makes no provision for regular federal-provincial meetings.

The agreement: The accord would firmly entrench the Supreme Court in the Constitution Act, 1867—as a symbol of the court’s importance to the nation. In accordance with the current Supreme Court Act, the court would have nine justices, including three from Quebec. But the federal government, which has had exclusive power to appoint the judges, would make its selections from lists provided by the provinces and territories. The accord would also allow an elected Senate to block the appointment of the Bank of Canada governor. And it would entrench a requirement for annual first ministers’ conference.

The controversy: Some opponents want a guarantee of more judges from outside Central Canada. Accord opponents also maintain that entrenchment of first ministers, conferences will encourage a trend towards “executive federalism”—the formulation of important national policies by a select and often secretive group of ministers or first ministers.

5. Spending power

The issue: When the Fathers of Confederation created the nation, they divided the power to make laws between the provincial and federal levels of government. Their work was diligent and explicit: the Constitution Act, 1867, states that provinces have the right, among other things, to administer saloon licences and to establish asylums; Ottawa, in turn, regulates lighthouses and quarantines. The Fathers were equally careful to establish sources of revenue for those governments: provinces can use direct taxation such as sales taxes; Ottawa can raise money “by any mode or system of taxation.” But those 19th-century politicians overlooked a critical aspect of the federation: whether Ottawa could spend money on programs within areas of provincial jurisdiction.

That constitutional oversight has shaped the nation. After the Second World War, Ottawa poured money into shared-cost programs in many traditional areas of provincial responsibility: medicare; income-support for needy pensioners; a generous funding program for universities. Federal spending has fostered the Canadian dream of a caring, expansive, social-safety net. But federal spending has also disturbed many provinces because Ottawa determines the spending priorities—and because Ottawa often decides the shape of the programs. One point of contention:
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although the province are paying an increasing portion of the tab for health-care, Ottawa can withdraw its contribution if the provinces impose user fees.

The agreement: The accord recognizes that Ottawa has a constitutional right to spend money in areas of provincial jurisdiction—but it would limit that ability. Under the accord, Ottawa can establish new shared-cost programs in areas of exclusive provincial jurisdiction, but if a province decided to opt out of any program, Ottawa would still pay the federal share as long as the province set up a program "compatible with the national objectives."

The controversy: The accord's opponents claim that those limits would prevent future federal initiatives involving child care, education and health. They say that provinces would devise vastly differing programs; there would be no national standards and no national response to society's changing needs. As an example, those opponents speculate that Ottawa might eventually introduce a nonprofit child-care program; provinces, in turn, could opt out and still receive federal funds for private day care institutions—or for programs that pay mothers to stay at home. The accord's supporters argue that federal spending often ignores pressing local needs; federal guidelines often distort each province's ability to tailor programs that respond to those needs. As well, federal spending has created inefficiency and overlap.

6. Division of powers

The issue: When the Fathers of Confederation allotted federal and provincial powers, they could not foresee how modern complications would blur their tidy categories. They made little provision, for one, for the protection of the environment. They could not have anticipated the birth of new technologies such as broadcasting and aeronautics—although the courts eventually assigned those two fields to Ottawa. And they did not foresee that jurisdictions would increasingly overlap as governments became more active. As a result, many provinces, especially Quebec, have called for an overhaul of the 1867 list: they want more powers—and a clearer division of those powers.

The agreement: The Charlottetown accord contains two basic approaches to the distribution of powers. First, the accord tackles the so-called six sisters: forestry, municipal and urban affairs, mining, tourism, housing and recreation. Although Ottawa spends about $3 billion each year in those areas, it has always conceded that the provinces have the right to legislate in those fields. Under the accord, provincial jurisdiction would become explicit—and exclusive. If a province wanted Ottawa to withdraw from its programs in those fields, it would negotiate an agreement to obtain federal funds to continue those programs. Those agreements would guarantee the amount and the type of funding—and they would last for a maximum of five years.

Secondly, the accord allows for agreements in five fields of shared management:

☆ Immigration: The accord provides for detailed federal-provincial agreements, which would likely be similar to a 14-year-old pact between Ottawa and Quebec. There, both governments set the selection criteria, and independent immigrants who want to settle in Quebec must meet Quebec's requirements.
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★ Labor-market development: Manpower training would become an exclusive provincial responsibility; unemployment insurance would remain a federal responsibility.

★ Culture: The provinces would receive exclusive jurisdiction over cultural matters "within the provinces." Ottawa would maintain its responsibility for such national institutions as the Canada Council and the CBC.

★ Telecommunications: The provinces might participate in the selection of members of the Canadian Radio-television and Telecommunications Commission (CRTC). They could also sign agreements that would allow them to regulate some telecommunications carriers, such as telephone companies, if they agree to harmonize their procedures with Ottawa. It is not likely that Ottawa would negotiate agreements that cover cable TV.

★ Regional development: Both levels would retain their right to devise programs. But the federal government would have to negotiate regional development agreements at the request of individual provinces. Those agreements would likely set goals and funding.

The controversy: Detractors oppose the proposals for differing reasons. Some argue that they would create a "patchwork quilt." Canada: if each province negotiated an agreement in each area, there could be hundreds of different arrangements would commit federal funds for us to five years, even if priorities changed. Other critics argue that the accord does not go far enough. Quebec nationalists, for instance, argue that the province requires the unequivocal transfer of more powers to promote its well-being. By contrast, the accord's supporters maintain that it constitutes a practical, flexible mechanism for adapting to a complicated, rapidly changing world: each province has the right to decide what powers it wants; each province has the right to change its arrangements.

7. Aboriginal Rights

The Issue: European settlement strictly limited native lands—and put severe pressure on traditional customs. As a result, native people now face a staggering array of social problems. Last week, in one illustration of their difficulties, the Royal Commission on Aboriginal Peoples reported that unemployment rates on some reserves are as high as 95 per cent—and the high school drop-out rate is up to 50 per cent. The teenage suicide rate is among the highest in the world. That devastation has deeply affected aboriginal leaders. Increasingly, in the courts, lawyers have asserted their peoples' right to hunt and fish and to administer their own lands, citing their treaties with the British Crown, Royal Proclamations, and their inherent aboriginal rights.

The agreement: The natives' determination—and their growing legal strength—resulted in a remarkable accord provision: constitutional recognition of their inherent right to self-government. The accord would allow the 633 Indian bands across Canada to negotiate individual self-government agreements with Ottawa, the provinces, or territories. The 32,000 Inuit and the 500,000 Métis and non-status Indians, many living in urban centres, would also share that right. Five years after the
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self-government provision takes effect, negotiators who remained deadlocked could ask the courts to decide the scope of self-government.

The controversy: Those provisions have caused enormous uncertainty because self-government has not been defined. It could, for example, encompass such areas as health, education, justice, commercial law, environmental protection and resource management. Among the few clues to its possibly breathtaking scope is the so-called contextual clause. It stipulates that aboriginal legislatures have the right "to safeguard and develop their languages, cultures, economies, identities, institutions and traditions." They would also have the right "to develop, maintain and strengthen their relationship with their lands, waters and environment." The draft legal text adds that those rights would allow aboriginal legislatures "to determine and control their development as peoples according to their own values and priorities and to ensure the integrity of their societies.

Still, the accord does contain several vital limitations. The legal text clearly states that aboriginal rights are guaranteed equally to men and women; that right is untouchable; it applies "notwithstanding" any other provision. The text also stipulates that aboriginal laws may not be inconsistent with federal or provincial laws "that are essential to the peace, order and good government of Canada." (Still, the courts could largely restrict the use of that clause to national, economic or military emergence). Finally, there is no provision within the legal text to compel other governments to finance aboriginal governments; instead, governments would negotiate non-binding political accords. That provision would leave Ottawa and the provinces with some control over the still-undetermined cost of self-government.

There remains, however, a serious debate about the consequences of self-government. Its opponents argue that it could create undemocratic, racially based territories similar to the notorious black homelands of South Africa. They note that the charter's democratic rights do not apply to aboriginal governments. In theory, aboriginal governments could deny the vote to their citizens or, they could allow natives to vote but deny the vote to non-natives living on their territory. As well, the accord adds a new twist to the charter's limitations on mobility rights. Currently, the provinces can pass laws that hinder the rights to move and to work within Canada—if those laws are designed to improve the condition of socially or economically disadvantaged peoples. The accord would extend that provision to aboriginal governments—but it would also let those governments restrict mobility to protect and to advance their languages and cultures. Critics say that the provision could allow reserve to ban non-aboriginal workers from reserve-based industries.

The accord's supporters argue that Canada's bureaucrats have suffocated aboriginal peoples with non-democratic rules for more than a century—and that Ottawa itself created Canada's reserves. As well, they maintain that Canadians should not assume that the British parliamentary tradition represents the only model for legitimate representative government. Indeed, many aboriginal bands have operated through consensus for centuries.
8. The Amending Formula

The issue: Quebec has always maintained that the Constitution Act, 1982, removed its traditional veto over major constitutional changes. Although the Supreme Court ruled in 1982 that Quebec’s veto never officially existed, Quebec has vehemently demanded its return. Under the current complicated formula for amending the Constitution, there are only five areas, including changes to the status of the Queen, which require the unanimous consent of the provinces (effectively a veto for all provinces). Other changes require only the consent of seven provinces with at least 50 per cent of the national population. Quebec’s demand puzzles and irritates other provinces because it appears to define a special status for that province. Native people, in turn, are demanding a veto over changes that affect them.

The agreement: The accord would add three provisions to the list of those that require unanimous consent: changes to the Senate; changes to the House of Commons, including Quebec’s 25-per-cent guarantee, and changes to the role and composition of the Supreme Court (the nomination process would remain subject to the so-called seven-fifty rule). As well, the accord would turn back the constitutional clock: it cancels a provision in the Constitution Act, 1982, that requires the consent of seven provinces with 50 per cent of the population for the creation of new provinces. Instead, Ottawa would regain its right to create new provinces through a simple act of Parliament—after first consulting all provinces at a first ministers’ meeting. Then all provinces would have to agree before any new province received its allotment of six senators and the right to participate in amendments that affect other provinces. The accord also stipulates that aboriginals have to consent to constitutional amendments that directly refer to them.

The controversy: The accord’s detractors say that unanimity among governments is almost impossible. As a result, they add, it is dangerous to apply unanimity to such a critical institution as Parliament. The accord’s proponents counter that it should be difficult to change the basic structure of government. As for the admission of new provinces, Quebec nationalists claim that public pressure would force the existing provinces to sede Senate seats and amending powers to new provinces, resulting in a loss of status and power for Quebec. Other critics argue that new provinces should automatically receive the same rights as existing ones.

Mary Janigan

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Getting Here From There

The history of Canada’s Constitution is a dramatic tale of clashing visions, political tugs-of-war and a terrible over-sight. Some highlights:

1867: After three years of often fractious negotiations by the Fathers of Confederation, the British Parliament passed their proposed constitution as the British North America Act, 1867. It detailed the division of federal and provincial powers; established minority language rights; and described the structure of such institutions as the Senate. But it had a glaring flaw: it did not contain a formula for
changing it. As a result, when Canada wanted amendments to its own Constitution, it had to ask Britain.

1867 to 1927: Ottawa and the provinces fought numerous court battles to define their powers. The disputes often revolved around the interpretation of two key clauses: the extent of the provinces’ power to regulate property and civil rights, and the interpretation of Ottawa’s power to make laws for peace, order and good government. In that raw scuffle for power, little attention was paid to Canadians’ inability to change the 1867 Act.

1927 to 1979: As Canada began to play an increasing role in world events, dependence on Britain became an embarrassment. But Ottawa and the provinces could not agree on a plan: over five decades, there were 10 unsuccessful attempts to bring the Constitution home from Britain with an amending formula. Meanwhile, the British Parliament complied with Canada’s requests for constitutional changes: in 1940, for one, it added unemployment insurance to the list of federal powers.

1980 to 1982: Impatient with provincial disagreement, Prime Minister Pierre Trudeau introduced a parliamentary resolution that asked Britain to patriate the Constitution. But the Supreme Court of Canada ruled that unwritten constitutional convention, or custom, required Ottawa to obtain an unspecified “consensus”. Five weeks later, in a late-night deal, Ottawa and nine provinces—including Quebec—agreed on a patriation package that included the Charter of Rights and an amending formula. In 1982, the Constitution came home—over Quebec’s objections.

1982 to 1992: That Quebec discontent has fuelled much of the debate through the past decade. The controversial Meech Lake accord of 1987, which recognized Quebec as a distinct society, was designed to win the province’s acceptance of the Constitution. But that accord failed to win the required unanimous consent of provincial legislatures by June, 1990—partly because it did not address the concerns of some western leaders and other groups such as natives. In response, the negotiators of the Charlottetown accord attempted to deal with the concerns of most regions and most groups. On Oct. 26, Canadians will decide if they have succeeded.

Mary Janigan

Macleans (Toronto), vol. 105, No. 3, pp. 24-29, 76.

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On October 26th Canadians everywhere are being asked to vote “Yes” or “No” to our Constitutional Referendum.

Your vote is important. The outcome of this Referendum will decide whether Canada will move ahead as one proud and united country or, once again, get mired in endless rounds of debate.

Maclean Hunter was founded in Canada in 1887. For over 100 years we have been a proudly Canadian company.

We believe that a “Yes” vote will make all regions of Canada, including Quebec and the Western Provinces, better and stronger.
We believe that a "Yes" vote will ensure that the rich cultural heritage and standard of living enjoyed by Canadians will be upheld and enriched.

We believe that a "Yes" vote will solidify Canada's position in the international community now and in the future.

We believe in one Canada

Maclean Hunter

Elections Canada Referendum 92
You have a say in the matter

The steps in this referendum are basically the same as in an election. Key dates are:

- Door-to-door enumeration of voters, October 2-7, followed by a mailing to each voter of a Notice of Enumeration card to confirm that your name is on the voters' list;
- Revision of the voters' list: if you don't receive your card or if it's incorrect, call Elections Canada before October 19 at the latest;
- Advance polls for anyone unable to vote on referendum day—October 22-23.

Of course, on referendum day, October 26, 1992, you may vote at a polling station in your area. And, as in an election, your vote is secret.

Referendum Committees

Any individual or group intending to spend more than $5,000 on a campaign to directly support or oppose the referendum question must register with the Chief Electoral Officer of Canada as a Referendum Committee. Information about referendum committees is available by calling Elections Canada.

Access is Your Right

Changes to law now guarantee improved accessibility for all voters. If the place where you vote is fully accessible, your enumeration card will show this symbol. But if you see this symbol, it means your polling site is not accessible to all persons with disabilities. In that case, your local Elections Canada office has information about other voting sites. Information is also available about special services for persons with hearing, reading or other disabilities.

Need More Information?

- Watch and Listen for Elections Canada's media campaigns;
- Contact the Elections Canada office for your riding;
- Tune in to the Parliamentary TV Channel; or
- Call toll free, 1-800-367-2323, and for persons who are hard of hearing and persons who are deaf, TDD 1-800-463-6777.
Annexure III

The Referendum Question

On October 26, 1992, you will be asked to make an X or other mark in either the YES circle or the NO circle. The text of the referendum question is shown below as it will appear on the ballot.

This publication is available in large type, braille and audio-cassette formats.

Jean-Pierre Kingsley
Chief Electoral Officer of Canada

Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992.

Elections Canada: The Non-Partisan agency responsible for the conduct of the federal referendum.
Constitutional Referendum, 1992
Analysis of Results

<table>
<thead>
<tr>
<th>Constituency</th>
<th>% of Yes Vote</th>
<th>% of No Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Canada Vote:</td>
<td>44.7</td>
<td>54.3</td>
</tr>
<tr>
<td>(B) By Province &amp; Territory:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td>40</td>
<td>60</td>
</tr>
<tr>
<td>British Columbia</td>
<td>32</td>
<td>68</td>
</tr>
<tr>
<td>Manitoba</td>
<td>38</td>
<td>62</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>62</td>
<td>38</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>49</td>
<td>51</td>
</tr>
<tr>
<td>Ontario</td>
<td>50.1</td>
<td>49.9</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>74</td>
<td>26</td>
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<tr>
<td>Quebec</td>
<td>44</td>
<td>56</td>
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<tr>
<td>Saskatchewan</td>
<td>45</td>
<td>55</td>
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<tr>
<td>North-Western Territories</td>
<td>60</td>
<td>40</td>
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<tr>
<td>Yukon Territory</td>
<td>44</td>
<td>56</td>
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<tr>
<td>(C) By Sex:</td>
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<tr>
<td>Male</td>
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<td>55</td>
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<tr>
<td>Female</td>
<td>43</td>
<td>57</td>
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<tr>
<td>(D) By Education:</td>
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<tr>
<td>Public/Elementary School</td>
<td>41</td>
<td>59</td>
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<tr>
<td>Some High School</td>
<td>41</td>
<td>59</td>
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<tr>
<td>High School Graduates</td>
<td>43</td>
<td>57</td>
</tr>
<tr>
<td>Vocational/Technical/college</td>
<td>35</td>
<td>65</td>
</tr>
<tr>
<td>Some University</td>
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<td>62</td>
</tr>
<tr>
<td>University Graduates</td>
<td>54</td>
<td>46</td>
</tr>
</tbody>
</table>
Annexure IV

<table>
<thead>
<tr>
<th>Constituency</th>
<th>% of Yes Vote</th>
<th>% of No Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>(E) By Age:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18-24 Years</td>
<td>38</td>
<td>62</td>
</tr>
<tr>
<td>25-34 Years</td>
<td>34</td>
<td>66</td>
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<tr>
<td>35-44 Years</td>
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<td>56</td>
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<tr>
<td>45-54 Years</td>
<td>57</td>
<td>43</td>
</tr>
<tr>
<td>55-64 Years</td>
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<td>68</td>
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<tr>
<td>65+</td>
<td>61</td>
<td>39</td>
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<tr>
<td>(F) By Income (Annual):</td>
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<tr>
<td>Under $ 15,000</td>
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<td>56</td>
</tr>
<tr>
<td>$ 15,000-$ 29,999</td>
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<td>61</td>
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<tr>
<td>$ 30,000-$ 44,999</td>
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<td>59</td>
</tr>
<tr>
<td>$ 45,000-$ 59,999</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>$ 60,000+</td>
<td>54</td>
<td>46</td>
</tr>
</tbody>
</table>


★ Canada and 6 of the 10 Provinces said NO to the Referendum.
★ Younger Canadians & Households earning less than $ 60,000 per year said NO to the Referendum.
★ In terms of Sex, both men & women, also said, by and large NO to the Referendum.
★ As identifiable groups, only the Northwestern Territories and the University Graduates said YES to the Referendum.
★ Referendum was, thus, lost, leaving Canadians, including the Quebecois Francophones, ask themselves: Where Do We Go From Charlottetown?
★ Accepting defeat of the Referendum, Prime Minister Mulroney observed: “The Charlottetown agreement is history.”