

*encl<sup>d</sup>*  
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BRIEF TO THE SPECIAL JOINT COMMITTEE  
OF THE SENATE AND OF THE HOUSE OF COMMONS ON THE  
CONSTITUTION OF CANADA

BY

PREMIER RICHARD HATFIELD

ON

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THE PATRIATION OF THE CANADIAN CONSTITUTION WILL BE ONE OF THE MOST IMPORTANT AND EXCITING EVENTS IN THE HISTORY OF OUR COUNTRY.

I HAVE PROVIDED A DETAILED OUTLINE OF THE CHANGES WHICH I PROPOSE PARLIAMENT MAKE TO THIS RESOLUTION.

DURING THE SUMMER AND AT THE FIRST MINISTERS CONFERENCE IN SEPTEMBER, MANY OF THE FUNDAMENTAL ISSUES OF CONSTITUTIONAL REFORM WERE DISCUSSED IN A MANNER AND TO AN EXTENT WHICH WE HAVE NOT WITNESSED IN CANADA FOR MANY YEARS. ALTHOUGH THE CONFERENCE ITSELF HAS BEEN CHARACTERIZED AS A FAILURE, I REMAIN CONVINCED THAT IT LAID THE GROUNDWORK FOR REACHING AN ACCEPTABLE AGREEMENT SHOULD ALL GOVERNMENTS WANT TO DO THAT.

HAVE BEEN RETAINING AN APPROPRIATE BALANCE IN THE POWERS EXERCISED BY THE PROVINCIAL AND FEDERAL LEVELS OF GOVERNMENT, AND IN REFLECTING IN THE CONSTITUTION A STRONG AND JUST COMMITMENT TO THE RIGHTS OF THE ENGLISH-SPEAKING AND FRENCH-SPEAKING PEOPLE IN OUR COUNTRY AND THE RESPECT FOR THE TWO HISTORIC AND OFFICIAL LANGUAGES.

I AM ALSO CONVINCED THAT CANADIANS NEED AND DESERVE A STRONG AND CLEAR STATEMENT OF HUMAN AND LEGAL RIGHTS, ENTRENCHED AND PROTECTED FROM THE FASHIONS AND WHIMS OF LEGISLATIVE ACTION WHETHER AT THE FEDERAL OR PROVINCIAL LEVELS. THERE HAVE BEEN TOO MANY EXAMPLES OF VIOLATIONS OR NEGLECT OF HUMAN RIGHTS IN THIS COUNTRY FOR US TO HESITATE ANY LONGER IN GRANTING TO OUR CITIZENS THE LEGAL AS WELL AS THE MORAL RIGHT TO THE FREEDOMS WHICH MOST OF US ALREADY ENJOY.

THIS RESOLUTION, WHICH IS A FIRST STEP IN CONFIRMING AND IMPROVING THE MANNER IN WHICH ALL CANADIANS LIVE, WORK AND GOVERN TOGETHER, MUST GIVE CLEAR INDICATION OF THE REASONS THAT FRENCH AND ENGLISH SPEAKING PEOPLE SHOULD REMAIN AND WORK TOGETHER IN CANADA.

THIS CLEAR INDICATION MUST NOT ONLY REFLECT THE COMMITMENT OF THE FEDERAL GOVERNMENT AS SET OUT IN SECTIONS 16 TO 20 OF THE RESOLUTION ASSURING EQUALITY OF FRENCH AND ENGLISH IN THE PARLIAMENT, THE COURTS, IN THE JOURNALS, RECORDS AND STATUTES OF PARLIAMENT, AND IN SERVICES TO PEOPLE; BUT IT MUST ALSO REFLECT THE COMMITMENT OF THOSE PROVINCES OUTSIDE QUEBEC WHERE MOST OTHER FRENCH-SPEAKING CANADIANS LIVE, WORK AND RAISE FAMILIES.

I HAVE ALREADY ANNOUNCED THE FIRM COMMITMENT OF THE GOVERNMENT OF NEW BRUNSWICK TO SEEK TO HAVE THE ESSENTIAL ELEMENTS OF ITS OFFICIAL LANGUAGES ACT ENTRENCHED IN THE CONSTITUTION. I HAVE SPOKEN RECENTLY ALSO ON A NUMBER OF OCCASIONS ABOUT MY CONCERN THAT THE PROVINCE OF ONTARIO, ONE OF THE FOUNDERS OF OUR COUNTRY AND ONE WHICH REPRESENTS THE GREATEST CONCENTRATION OF POLITICAL POWER IN CANADA, SHOULD ALSO MAKE A CONCRETE COMMITMENT TO EQUALITY OF FRENCH AND ENGLISH IN THIS COUNTRY.

RECOGNITION OF THE HISTORIC EQUALITY BETWEEN FRENCH-SPEAKING AND ENGLISH-SPEAKING CANADIANS IS NOT SIMPLY A MATTER FOR QUEBEC AND THE FEDERAL GOVERNMENT; AND IT IS MORE THAN A MATTER OF SIMPLE PROVINCIAL LAW OR LOCAL POLITICAL EXPEDIENCY. IT IS A MATTER OF FUNDAMENTAL PRINCIPLE.

CANADA'S CHARTER OF RIGHTS WOULD NOT BE COMPLETE WITHOUT A CLEAR REFERENCE TO THE RIGHTS OF THIS COUNTRY'S STATUS INDIANS. IT IS NOT CLEAR WHETHER SECTION 24 GUARANTEES THESE RIGHTS AND IF IT DOES, WHETHER THEY ARE ADEQUATELY PROTECTED IN VIEW OF OTHER PROVISIONS SUCH AS THOSE DEALING WITH ANTI-DISCRIMINATION. AT THIS TIME IN THE REFORM OF THE CONSTITUTION WE SHOULD RECOGNIZE AND PROTECT LEGALLY VALID LAND CLAIMS WHERE THEY HAVE NOT BEEN EXTINGUISHED AS WELL AS INDIAN TREATIES BETWEEN THE CROWN AND NATIVE PEOPLES.

AS FOR THOSE PROVISIONS IN THIS RESOLUTION WHICH TOUCH UPON THE ISSUE OF THE APPROPRIATE BALANCE IN OUR FEDERATION BETWEEN THE FEDERAL AND PROVINCIAL LEVELS OF GOVERNMENT, THE UNIQUE CHARACTERISTIC OF OUR FEDERATION IS THAT THE RESPONSIBILITY FOR GOVERNING THE WHOLE COUNTRY IS CLEARLY DIVIDED BETWEEN A CENTRAL AND A SERIES OF PROVINCIAL GOVERNMENTS. THIS SUGGESTS THAT NOT ONLY HAS EACH GOVERNMENT THE RIGHT TO CERTAIN JURISDICTIONS AND THAT WITHIN THE FEDERATION, EACH PROVINCIAL GOVERNMENT HAS EQUAL STATUS BUT THAT ONE OF THE FUNDAMENTAL RESPONSIBILITIES OF THE CENTRAL GOVERNMENT IS TO MAKE SURE THAT THE FEDERATION WORKS IN THOSE AREAS WHICH ARE NOT PROVINCIAL OR WHICH INVOLVE THE ABILITY OF PROVINCES TO MAINTAIN THEIR VIABILITY WITHIN THE FEDERATION.

SECTION 31 OF PART TWO OF THE RESOLUTION GOES RIGHT TO THE HEART OF ONE OF THESE ISSUES; NAMELY, THE ABILITY OF PROVINCES TO PROVIDE AN ADEQUATE LEVEL OF SERVICES TO THEIR CITIZENS REGARDLESS OF THE ECONOMIC CIRCUMSTANCES IN WHICH THEY FIND THEMSELVES.

A UNIQUE AND FAR-REACHING CONTRIBUTION THAT CANADA, AS A FEDERATION HAS MADE TO PUBLIC ADMINISTRATION IS THE CONCEPT OF EQUALIZATION WHICH ALLOWS THE CENTRAL GOVERNMENT TO DISTRIBUTE WEALTH IN CANADA TO THOSE AREAS OF THE COUNTRY WHICH, BECAUSE OF FEWER RESOURCES, DISTANCE FROM MARKETS, SIZE OR POPULATION ARE UNABLE TO FINANCE OUT OF THEIR OWN REVENUES, SERVICES OF A STANDARD WHICH ALL CANADIANS DESERVE AND EXPECT. EQUALIZATION IS OF FUNDAMENTAL CONSTITUTIONAL IMPORTANCE TO CANADA BECAUSE IT HELPS KEEP OUR FEDERATION STRONG BY ALLOWING THE CITIZENS OF OUR COUNTRY TO ENJOY A COMPARABLE LEVEL OF PUBLIC SERVICES.

EQUALIZATION IS MORE THAN A CONCEPT HOWEVER, IT SERVES THE CONSTITUTIONAL PURPOSE I MENTIONED AND IT RECOGNIZES THE EXCLUSIVE JURISDICTION PROVINCES ENJOY BY BEING UNCONDITIONAL.

SECTION 31(2) OF THE RESOLUTION FAILS TO MENTION "EQUALIZATION PAYMENTS" AND THEREFORE THE PROPOSED SECTION LEAVES OPEN THE POSSIBILITY OF MEASURES BEING TAKEN WHICH EITHER ARE NOT SUFFICIENT, OR WHICH MIGHT INTERFERE WITH PROVINCIAL JURISDICTION. EQUALIZATION AS IT IS GENERALLY UNDERSTOOD TODAY HAS BEEN WIDELY SUPPORTED BY A SUCCESSION OF FEDERAL AND PROVINCIAL GOVERNMENTS. A CONSTITUTION SHOULD NOT FORCE US TO ACCEPT LESSER RIGHTS OR BENEFITS THAN WE ALREADY ENJOY. THE SECTION MUST BE AMENDED TO INCLUDE REFERENCE TO EQUALIZATION PAYMENTS TO BE USED TO PROVIDE ESSENTIAL SERVICES.

I WOULD LIKE TO MAKE A FURTHER POINT ABOUT SECTION 31. IT NOT ONLY DEALS WITH EQUALIZATION, IT DEALS ALSO WITH THE RESPONSIBILITY OF PARLIAMENT AND THE LEGISLATURES TO PROMOTE EQUAL OPPORTUNITY FOR THE WELL-BEING OF CANADIANS, TO FURTHER ECONOMIC DEVELOPMENT AND TO REDUCE DISPARITIES IN OPPORTUNITIES. THE PROMOTION OF ECONOMIC WELL-BEING AND DEVELOPMENT AND THE REDUCTION OF REGIONAL DISPARITIES ARE RESPONSIBILITIES SEPARATE FROM THE PAYMENT OF EQUALIZATION AND SHOULD NOT BE CONSIDERED TO BE PART OF THE SAME THING.



I WOULD THEREFORE PROPOSE THAT PARLIAMENT MAKE A SEPARATE SECTION IN THE CONSTITUTION OF THOSE RESPONSIBILITIES DEALING WITH THE PROMOTION OF ECONOMIC WELL-BEING AND THE REDUCTION OF REGIONAL DISPARITIES SO THAT NO ONE CAN CONFUSE EQUALIZATION PAYMENTS TO PROVINCIAL GOVERNMENTS WITH THE REDUCTION OF REGIONAL DISPARITIES.

AS IMPORTANT TO OUR CONSTITUTIONAL DEVELOPMENT AS EQUALIZATION IS THE EQUALITY UNDER LAW OF THE PROVINCES. ALTHOUGH SOME ARE VERY LARGE BY ANY STANDARDS AND OTHERS ARE VERY SMALL BY THE SAME STANDARD, CONSTITUTIONALLY EACH HAS AN EQUAL VOICE IN THE OPERATION OF OUR COUNTRY. NOTHING SHOULD BE PLACED IN THE CONSTITUTION WHICH DIMINISHES THAT CONCEPT. SECTION 41, WHICH SETS OUT A METHOD OF CONSTITUTIONAL AMENDMENT DOES DIMINISH THAT CONCEPT BY REQUIRING THE PROVINCE OF PRINCE EDWARD ISLAND TO SEEK THE SUPPORT OF TWO OTHER PROVINCES IN THE ATLANTIC REGION FOR ANY CONSTITUTIONAL AMENDMENT, WHEN ANY OTHER PROVINCE HAS ONLY TO GET THE AGREEMENT OF SOME OTHER PROVINCE. THIS IS BECAUSE AN AMENDMENT CAN ONLY BE PASSED IF APPROVED BY TWO PROVINCES IN THE ATLANTIC REGION WITH COMBINED POPULATION OF A LEAST FIFTY PERCENT OF THE POPULATION OF THE REGION, THUS RELEGATING

PRINCE EDWARD ISLAND TO THE STATUS OF A SECOND-CLASS PROVINCE FOR THE FORESEEABLE FUTURE. I RESPECTFULLY SUGGEST TO THIS COMMITTEE THAT AN AMENDMENT BE INTRODUCED STRIKING THE REQUIREMENT OF A COMBINED FIFTY PERCENT POPULATION FROM THAT SECTION AS IT AFFECTS THE ATLANTIC REGION.

I NOW COME TO THE FINAL ARGUMENT I WISH TO MAKE TO THE MEMBERS OF THIS COMMITTEE. IT CONCERNS THE REFERENDA PROVISIONS. A REFERENDUM, FOR WHATEVER PURPOSE IT IS HELD, SHOULD NOT BE PART OF THE CONSTITUTION OF CANADA. A REFERENDUM, IN THE CONTEXT OF THE PARLIAMENTARY SYSTEM OF CABINET GOVERNMENT WHICH WE HAVE BEEN PRACTISING, IS AN AFFRONT TO THE ELECTORATE OF THE COUNTRY AND TO THE RESPONSIBILITY WHICH THE VOTERS HAVE GIVEN PROVINCIAL OR FEDERAL GOVERNMENTS. IT IS AN ADMISSION OF FAILURE ON THE PART OF GOVERNMENTS THAT RESORT TO IT AND AN ABROGATION OF THE TRUST THAT THE ELECTORS PLACED IN THE GOVERNMENT WHICH THEY PUT IN POWER. IT IS YIELDING TO RULE BY MIGHT ON ISSUES WHICH REQUIRE REASONED AND RESPONSIBLE DELIBERATION BY FREELY ELECTED PERSONS. IF WE REACH AGREEMENT IN CANADA AMONG THE ELEVEN GOVERNMENTS ON THE KIND OF CONSTITUTION WE WANT, IT WILL NOT HAVE BEEN DONE BY TURNING THE DIFFICULT QUESTIONS ABOUT IT OVER TO THE VERY PEOPLE WHO ELECT US TO DEAL WITH THEM.

BUT MORE THAN THAT, THE PROVISIONS FOR REFERENDA IN THIS BILL COULD AFFECT SOMETHING AS SENSITIVE AND FUNDAMENTAL AS THE CHARTER OF RIGHTS WHICH OUTLINES, AMONG OTHER THINGS, THE RIGHTS OF MINORITIES. WE WOULD THEN BE PUTTING OURSELVES IN THE IRONIC AND DANGEROUS POSITION OF EXPOSING THE RIGHTS OF MINORITIES TO THE WILL OF THE MAJORITY IN A SITUATION WHERE THE ISSUES WOULD BE OVER-SIMPLIFIED, AND VULNERABLE TO DEMAGOGUERY AND EXPLOITATION; AND WHERE THE BALANCE OF INTERESTS AND LEADERSHIP PROVIDED BY A FREELY ELECTED GOVERNMENT WOULD BE ABSENT.

I CANNOT EMPHASIZE TOO STRONGLY MY REJECTION FOR REFERENDA. TODAY IT MAY BE THE CONSTITUTION, OR THE RIGHTS OF INDIANS, OR THE RIGHT NOT TO BE IMPRISONED ARBITRARILY; TOMORROW IT MAY BE THE WEIGHT LIMITS ON HIGHWAYS, OR THE NUMBER OF SOLDIERS IN A REGIMENT, OR THE BANK OF CANADA INTEREST RATE.

THE CONSTITUTIONAL RESOLUTION SHOULD BE STRIPPED OF ANY PROVISIONS FOR REFERENDA. TRUST THE BEST PARLIAMENTARY SYSTEM IN THE WORLD! IT WORKS WHEN THOSE WHO ENJOY THE POWERS OF OFFICE ACCEPT THE RESPONSIBILITIES OF PUBLIC OFFICE.

Proposals by the Government of New Brunswick for  
Amendment of the Proposed Resolution for a Joint  
Address to Her Majesty the Queen Respecting the  
Constitution of Canada

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1. Section 1 be amended by changing the period at the end thereof to a comma and adding thereto the following:

"where those limits do not involve discrimination solely on the grounds of race, colour, sex, language, religion, political opinion, national or social origin, property or birth."

2. Section 8 be amended to read as follows:

"Everyone has the right to be secure against unreasonable search and seizure."

3. Section 9 be amended to read as follows:

"Everyone has the right not to be arbitrarily detained or imprisoned."

4. Section 11(d) be amended to read as follows:

"not to be denied reasonable bail without just cause."

5. Section 15(1) be amended to read as follows:

"Everyone has the right to equality before the law and to the equal protection of the law without discrimination on any ground such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status.

6. Subsection 16(2) be renumbered to subsection 16(3) and the following be inserted as subsection 16(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.".

7. Section 17 be renumbered as subsection 17(1) and the following be inserted as subsection 17(2):

"Everyone has the right to use English or French in any debates and other proceedings of the Legislature of New Brunswick.".

8. Section 18 be renumbered as subsection 18(1) and the following be inserted as subsection 18(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."

9. Section 19 be renumbered as subsection 19(1) and the following be inserted as subsection 19(2):

"Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature of New Brunswick."

10. Section 20 be renumbered as subsection 20(1) and the following be inserted as subsection 20(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."

11. Subsection 31(2) be amended to read as follows:

"Parliament and the Government of Canada are further committed to the principle of making equalization payments to provincial governments that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation."

12. Section 41(1)(a)(ii) be amended to read as follows:

"at least two of the Atlantic provinces,  
and".

December 4, 1980