

THE CHARLOTTETOWN AGREEMENT

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BUSINESS COUNCIL ON NATIONAL ISSUES

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THE CHARLOTTETOWN AGREEMENT

SUMMARY

The Canada Clause

- ◆ A statement defining the fundamental characteristics of the Canadian identity, including, a parliamentary democracy, respect for human rights and freedoms, linguistic duality, Quebec's distinct society, and the equality of the provinces. To serve as a guide to the courts in interpreting the Constitution, including the Canadian Charter of Rights and Freedoms.

Quebec's Distinct Society

- ◆ The Constitution to be interpreted in a manner consistent with the preservation and promotion of Quebec's distinctiveness, including its French language, unique culture, and civil law tradition.
- ◆ The role of the legislature and government of Quebec to preserve and promote the distinct society of Quebec to be affirmed.

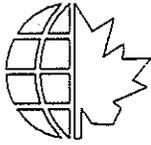


The Social and Economic Union

- ◆ A new provision describing the commitment of Parliament and the Legislatures to preservation and development of Canada's social and economic union. This provision would not be justiciable.
- ◆ The policy objectives underlying the social union: universal health care; adequate social services; high quality education; collective bargaining rights; and, a commitment to preserve the integrity of the environment.
- ◆ The policy objectives underlying the economic union: the free movement of persons, goods, services and capital; the goal of full employment; ensuring a reasonable standard of living; and, a commitment to sustainable and equitable development.
- ◆ A separate political accord to deal with strengthening the Canadian common market. First Ministers to decide on the best approach to reduce interprovincial trade barriers, and would have the authority to create an independent dispute resolution agency.

The Senate

- ◆ An **equal** Senate of 62 members, composed of six Senators from each province and one Senator from each territory.



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- ◆ Senators to be **elected**, either by the population at large, or by the members of the legislatures. Election of Senators to take place at the same time as elections to the House of Commons.

- ◆ **Powers of the Senate:**
 - The Senate would not be a confidence Chamber.
 - A 30 day suspensive veto with respect to "supply bills".
 - A veto over bills that result in fundamental tax policy changes related to natural resources.
 - Defeat of ordinary legislation would trigger a joint sitting with the House of Commons, at which a simple majority would decide.
 - A double majority would be required for bills materially affecting the French language or culture.
 - Ratification by the Senate of appointments to selected federal boards and agencies.
 - Senators would not be eligible for Cabinet posts.

The House of Commons

- ◆ The House of Commons to be expanded to 337 members, with additional seats as follows:
 - Ontario and Quebec - 18 seats each
 - British Columbia - 4 seats
 - Alberta - 2 seats



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- ◆ A constitutional provision to guarantee Quebec at least 25 percent of the seats in the House of Commons.

The Supreme Court

- ◆ The Supreme Court to be entrenched in the Constitution, with the requirement that three members of the Court must have been admitted to the civil law bar of Quebec.
- ◆ Appointments to the Court to be made by the federal government from lists submitted by provincial and territorial governments.

First Ministers' Conferences

- ◆ To enhance federal-provincial co-operation, a provision to be added to the Constitution requiring an annual meeting of First Ministers.

Aboriginal Peoples

- ◆ Constitution to be amended to recognize that aboriginal peoples have the inherent right to self-government. This right to be interpreted in light of a "contextual statement" to be included in the Constitution. Justiciability of this provision to be delayed for five years.

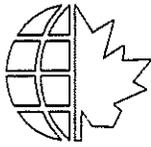


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- ◆ Aboriginal governments to be one of the three orders of government in Canada. Negotiations among aboriginal peoples, federal and provincial governments to determine issues of jurisdiction, lands and resources, and economic and fiscal arrangements.
- ◆ The right of self-government will not create new aboriginal rights to land, nor derogate from existing treaty rights.
- ◆ Federal and provincial laws continue to apply until they are superseded by laws passed by aboriginal governments. Such laws to be consistent with the preservation of peace, order and good government in Canada.
- ◆ Representation of aboriginal peoples in the Senate to be guaranteed, and further consideration given to their representation in the House of Commons, as well as their role in relation to the Supreme Court.

Federal Spending Power

- ◆ Constitutional amendment to state that the federal government must provide reasonable compensation to a province that opts out of a new federal cost-shared program in an area of exclusive provincial jurisdiction, provided that province carries on a program that is compatible with national objectives.
- ◆ A framework to be developed on the use of the federal spending power that would have as an objective, among others, the reduction of overlap and duplication.



Division of Powers

- ◆ **Exclusive provincial jurisdiction** to be recognized in the Constitution with respect to labour market development and training, forestry, mining, tourism, housing, recreation, and municipal and urban affairs. But a continuing federal presence could be negotiated at provincial request.

- ◆ Federal government to retain responsibility for **unemployment insurance**. Federal spending on job creation programs would be protected, and the federal government would continue to have a role in the development of national labour market policy objectives.

- ◆ All provinces could choose to exercise more control over **immigration** to their province.

- ◆ Provinces to have exclusive control over **culture** within the provinces. Federal government to have continuing responsibility for Canadian cultural matters, including national cultural institutions.

- ◆ Federal government to negotiate with provinces to coordinate activities of regulatory agencies in the field of **telecommunications**.

- ◆ At the request of a province, the federal government would be obliged to negotiate **regional development** agreements. These agreements could be protected from unilateral change.



The Amending Formula

- ◆ Once Senate reforms achieved, unanimity required for amendments to the Constitution related to the House of Commons, the Senate, and the Supreme Court, with the exception that the process for appointments to the Supreme Court would remain subject to the general (7/50) amending formula.
- ◆ New provinces to be created through an act of Parliament. New provinces would not acquire a role in the amending formula, nor be assigned additional Senators, without the unanimous consent of the federal government and the provinces.



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QUESTIONS/ANSWERS

- ◆ **While elected and equal, will the Senate meet the third "e", namely effective?**

An elected Senate will have significantly more credibility and influence than the current appointed body. The provinces will each have 6 senators, thus giving them more say in decisions of the federal government. The Senate will be able to block, by a majority vote, any bills involving fundamental tax policy changes directly affecting natural resources. The defeat in the Senate of any other legislation would trigger a joint sitting of the Senate and the House of Commons. This kind of pressure could lead to important changes in the bill. Senators will have an important role in the ratification of key federal appointments, such as the Governor of the Bank of Canada. Finally, the Senate has the power to initiate legislation, and the House of Commons would be obliged to deal with it within a reasonable time.

- ◆ **Will the amending formula be changed to provide a veto over constitutional change in favour of any one province?**

Unanimous consent will be required only for amendments to the Constitution involving national institutions -- any further changes to the Senate, the House of Commons, or the Supreme Court. Virtually all other changes could be accomplished through the 7/50 formula (7



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provinces making up at least 50% of the population). New provinces could be created by an Act of the federal Parliament, after consultation with the existing provinces. However, a change in the number of Senators for the new province, or a full role in the amending formula, are issues that would require unanimous consent.

◆ **What is the importance of the Canada Clause?**

While an interpretive provision only, the Canada Clause will set out the fundamental values which we share as a people and a country. These include our system of government -- a parliamentary democracy within a federal state; the distinctiveness of Quebec; the rights of aboriginal peoples; our linguistic duality; and, our commitment to basic human rights -- racial, ethnic and gender equality.

◆ **What is the Social and Economic Union and how would it be enforced?**

The Social and Economic Union describes the commitment of federal and provincial governments to key social and economic policy objectives. It would not be justiciable; instead a mechanism for monitoring its implementation is to be determined by a First Ministers' Conference (FMC).

◆ **How would the common market be preserved and enhanced?**

Although changes unfortunately will not be made to section 121 to provide a constitutional guarantee of the free movement of services,



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goods, capital and labour, First Ministers did recognize the need to strengthen the Canadian common market. A political accord has been reached that will require First Ministers, at a future FMC, to decide how to implement this principle, and to establish a dispute resolution mechanism.

◆ **What changes are proposed to improve the administration of government in Canada?**

- Annual First Ministers' Meetings entrenched in the Constitution.
- Clarification of many federal and provincial responsibilities that should reduce overlap and duplication.
- A series of policy objectives to strengthen the economic union.
- Better discipline on the use of the federal spending power in areas of provincial jurisdiction.
- Provision for greater use of intergovernmental agreements.

◆ **Will the agreement lead to significant decentralization or transfer of powers to the provinces?**

No. In areas such as forestry, mining and municipal affairs, the agreement will essentially recognize what is already the fact -- exclusive provincial jurisdiction -- and will reduce the overlap and duplication which now occurs when both levels of government are active in the field. In other areas (culture, regional development and telecommunications) both federal and provincial governments have legitimate roles, and the agreement will clarify respective responsibilities. The federal government will continue to maintain responsibility for



important national programs such as unemployment insurance, will retain the ability to develop new cost-shared programs, and will have an important role in the development of national standards.

◆ **How will governments maintain commitments to labour market development and training?**

Labour market development and training would be matters of exclusive provincial jurisdiction. Unemployment insurance and related employment services would remain with the federal government. Provinces would be able to pursue their own priorities in labour market development and training, and build closer bridges between education and training. The federal government would maintain its responsibilities in the establishment of national policy objectives in the area of labour market development, and would continue to commit funds to job creation programs. All governments have committed themselves to develop common occupational standards in consultation with business and labour.

◆ **What would happen to regional development under the Constitution?**

Regional development will remain a shared area of jurisdiction. The federal government would be required to negotiate regional development agreements with provinces or territories at their request. Designated agreements could be protected from unilateral change. Governments would be committed to providing reasonably comparable



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economic infrastructure of a national nature in each province and territory.

◆ **How will the system of equalization payments be protected?**

The wording of the constitutional commitment to equalization would be strengthened. The government of Canada would be committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. The federal government would also be committed to consulting the provinces before changing the legislation.

◆ **How will the aboriginal right to self-government work?**

- The Constitution will be amended to recognize that aboriginal peoples have the inherent right to self-government. This will be accompanied by a "contextual statement" in the Constitution that will provide some assistance in interpretation. Further negotiations will be conducted between representatives of aboriginal peoples, federal, provincial and territorial governments to determine how the right will be implemented. The justiciability of the right will be delayed for five years, and, at that time, the courts would have to be satisfied that every effort has been made to resolve matters through negotiations before they would give effect to the right. It is acknowledged that the right of self-government would not create new rights to land.



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- Aboriginal governments would constitute one of the three orders of government in Canada. Federal and provincial laws would continue to apply to aboriginal communities until superseded by aboriginal laws, and such laws would have to be consistent with the principles of peace, order and good government.

◆ **How does the agreement satisfy the interests of Quebec?**

- Recognition as a distinct society, with the legislature having the right to preserve and promote that distinctiveness.
- Guaranteed floor of 25% of the seats in the House of Commons.
- Entrenchment in the Constitution of Canada's linguistic duality.
- Greater control over immigration within its territory.
- Exclusive jurisdiction over job training and manpower development. Together with its responsibility for education, this will give Quebec full control over development of its human resources.
- Recognition of exclusive provincial jurisdiction with respect to forestry, mining, housing, tourism, recreation, and municipal affairs. Quebec will be able to request that the federal government withdraw from these areas and receive financial compensation.
- Aboriginal rights will be recognized, while at the same time the territorial integrity of Quebec will be respected.
- Quebec will be able to withdraw from new federal cost-shared programs and be assured of financial compensation.
- Jurisdiction over culture within its territory, and an agreement with the federal government with respect to telecommunications.
- Francophone Senators will be able to safeguard matters related to French language and culture.



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- Guarantee that three justices of the Supreme Court will be admitted to the civil law bar of Quebec.
- Veto (along with other provinces) over future changes to federal institutions.
- The federal government can be obliged to negotiate regional development agreements with the province, and these will be protected from unilateral change.

◆ **What will Ontario gain from the Charlottetown Agreement?**

- Promotion of common policy objectives through the Social and Economic Union.
- Protection against unilateral federal change of Canada Assistance Plan programs.
- More effective, responsive and streamlined government through a revised division of powers.
- Greater control over job training and labour market development.
- Potential to strengthen the competitiveness of manufacturing and service sectors.
- Greater representation in the House of Commons.
- Veto over future changes to key federal institutions.

◆ **What are the advantages for Western Canada?**

- Recognition of the equality of the provinces in a reformed Senate, with the West getting 40% of the seats.
- Senate will be able to prevent fundamental tax policy changes related to natural resources, such as the National Energy Program.



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- Senate will be able to reflect regional interests in its screening of key federal appointments.
 - Recognition of provincial jurisdiction in natural resource fields, and provisions for intergovernmental agreements, will reduce overlap and give Western provinces more control over their own economies.
 - Preservation of the federal government's ability to act in the national interest.
 - Power available to one province (including the veto and the right to assert exclusive jurisdiction) is available to all.
 - Key federal-provincial agreements, particularly related to cost-sharing, will be protected from unilateral change.
 - Provides a framework for promotion of new relationships with aboriginal peoples.
- ◆ **How will the agreement protect the interests of Atlantic Canada?**
- Commitment to equality of the provinces and a strong voice for Atlantic Canada in federal institutions. Atlantic provinces receive 40% of Senate seats.
 - Strong central government is preserved, and its role in areas such as unemployment insurance, job creation programs and development of national standards is maintained.
 - Federal government will only withdraw from specific fields at the request of a province.
 - Present national cost-shared programs are preserved and strengthened through restrictions against unilateral change. New programs can still be established, but provinces wishing to opt out can do so with full compensation.



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- Commitment to equalization and regional development, so as to ensure comparable economic infrastructure in each province.
- Social and Economic Union contains commitment to important policy objectives.



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A RESPONSE TO THE CRITICS

Argument: Canadians can vote **NO** and agree to put off further constitutional reform.

Response: Rejection of the present agreement would lead to more, not fewer, constitutional demands, and an even more fractious debate. A significant delay in constitutional reform would frustrate Quebec, thereby increasing the chances of its separation from Canada. It would also delay the long overdue recognition of the fundamental rights of aboriginal peoples. Senate reform, so vital to many of the provinces - - and particularly the West -- would not happen for many years. Uncertainty about Canada's future would harm our economy, dampen investment, and possibly lead to devaluation of the dollar and an increase in interest rates. Finally, we need to get on with modernization of the Constitution in light of rapid change around the globe.



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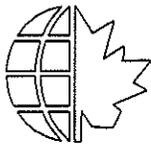
Argument: Canadians are being rushed into a referendum without the benefit of an informed debate on the merits of the Charlottetown Agreement.

Response: Canada's citizens have had the benefit of an informed debate. This set of public consultations has been the most extensive ever undertaken in Canada on constitutional issues, lasting some two years. It has included the Citizen's Forum, the Beaudoin-Edwards Committee, the Beaudoin-Dobbie Report and a series of national conferences. Also during this period, every province and territory established a forum for public consultation. Many of the views expressed are reflected in the Agreement.

Argument: The constitutional status quo has served Canada well for 125 years. We should take the additional time necessary to get a better deal.

Response: The Constitution has served Canada well for the last 125 years. However, the future Canada will have to be strong and united to adapt to the challenges of the 21st century.

Until Quebec becomes a signatory, Canada will be impeded from making needed changes to the Constitution, e.g., a



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reformed Senate, Aboriginal self-government, updating the division of powers and reducing overlap/duplication.

The Charlottetown Agreement represents a real breakthrough in a number of key areas. And unlike previous sets of constitutional proposals, it has won the unanimous support of all the provincial governments.

Finally, arguing that more time and negotiations are needed to come up with a "perfect" Constitution ignores the obvious fact that there is no consensus in Canada on what a "perfect" Constitution would look like. As revealed during the past two years of public consultations, there are differing views on many of the details of an ideal Constitution. Continuing consultations and negotiations will not alter this fact.

Argument: Because some Canadians may have doubts about particular elements of the Charlottetown Agreement, they should vote NO.

Response: *The Charlottetown Agreement is a product of almost two years of public consultations and intergovernmental discussions. It represents a workable and honourable compromise, and embodies an impressive degree of consensus on many of the most basic Constitutional issues confronting Canada. Some Canadians may have concerns about*



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specific parts of it. But given the Agreement's comprehensive nature, and the great difficulty our country has had in addressing outstanding constitutional matters in recent decades, Canadians should view it as an overall package, one that is more than the sum of its parts.

Argument: The Charlottetown Agreement does not resolve our constitutional disagreements, it simply enshrines in the Constitution more negotiations over the next 50 years. It entrenches more constitutional uncertainty.

Response: This Agreement goes a long way to satisfying many legitimate concerns that Canadians across this country have had with respect to our Constitution. These concerns have been dealt with in an open and fair fashion, with a spirit of compromise and accommodation.

But after more than two years of ceaseless constitutional debate and discussion, our leaders must shift their priorities and concentrate on building a stronger economy, tackling unemployment, and improving Canada's competitiveness. Ratifying the Charlottetown Agreement will allow Canadians to address these economic challenges. Voting NO will only prolong the dominance of constitutional issues on the national agenda -- and unnecessarily divert attention from more important problems.



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The Agreement may not end debate over the Constitution for the next 50 years. However, a YES vote should help to put the constitutional issue to rest for many years to come.

Argument: Constitutional change will be virtually impossible in the future since all provinces will now have a veto.

Response: Each province will have a veto on constitutional change to central institutions. This includes amendments affecting the role and composition of the Supreme Court, the Senate and House of Commons. This is in recognition of the equality of the provinces and the importance of these fundamental institutions of federalism. All other changes to the Constitution can be made with the approval of 7 provinces having over 50% of the population.

Argument: The Charlottetown Agreement does not sufficiently protect regional interests.

Response: The interests of various regions have been strengthened through the proposals for an equal Senate, with the West and Atlantic Canada each having 40% of the seats. The Senate, as an elected body, will have legitimacy and real powers: a veto over taxation of natural resources; the right



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to force a joint sitting with the House of Commons, and possible reconsideration of a bill; a veto over certain key federal appointments, such as the Governor of the Bank of Canada; and, the right to initiate legislation. In addition, provinces will have a veto over changes to federal institutions, a role in the selection of Supreme Court judges, and clearer powers to manage their own economies.

Argument: Under the Charlottetown Agreement, devolution of powers to the provinces and the restrictions on the federal spending power will impair the federal government's ability to implement national programs and policies.

Response: Several major proposals regarding the division of powers have been agreed to that acknowledge different provincial needs and concerns. Of major importance are the limits that would be placed on the federal government's spending power in areas of provincial jurisdiction.

Provinces would be able to opt-out of new national shared-cost programs in areas of exclusive provincial jurisdiction. Existing programs would not be affected by this provision.

This would not result in a patch-work quilt of programs. Nor would it constrain the federal government from being able



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to establish national standards, since the proposal places obligations upon the provinces. A province opting out of a new Canada-wide program will have to set up a compatible program with national objectives to receive compensation from the federal government.

There is no basis for suggesting that provincial administration of government programs is inferior to federal administration. There is already considerable variation in the way provincial governments design and deliver programs in such key areas as education, welfare and health care. And many of the most progressive innovations in government policy in Canada have originated at the provincial rather than the federal level. This is true of health care, labour market training, and social assistance programs.

Argument: The Agreement proposes the proliferation of federal-provincial agreements and their entrenchment in the Constitution. As a result, the coherence of the national government will be seriously eroded.

Response: Intergovernmental agreements have been an important mechanism for coordinating the activities of federal and provincial governments for many years. There are literally hundreds of such intergovernmental agreements in place today.



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The purpose of the entrenchment of some of these agreements into the Constitution is to provide for greater stability. Once entrenched, neither the federal nor provincial government(s) will be able to unilaterally change or cancel an agreement by altering policies or legislation.

The proposals outlined in the Charlottetown Agreement will not create an unstable mix of federal-provincial agreements. What they will do is clarify areas of jurisdiction and help to ensure that both levels of government work together effectively to design and deliver programs to Canadians.

Argument: The Canadian Economic Union has likely been weakened, rather than strengthened, by the Charlottetown Agreement.

Response: *It is true that the Agreement does not go as far as the Canadian business community wanted in creating a stronger Canadian common market and economic union. But it does call for a new provision to be added to the Constitution that commits governments to the principle and development of the Canadian economic union. This will provide a basis for continuing efforts to build a more cohesive economic union.*



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Argument: The Agreement recognizes labour market training as an area of provincial jurisdiction. This will exclude the federal government from any meaningful role in improving training and labour force skills development.

Response: Training and labour market development have been identified as areas of exclusive provincial jurisdiction. This will allow provincial governments to develop programs to suit their own particular needs and to better integrate training activities with provincial educational and social assistance programs. The development of these bridges would increase efficiency in the delivery of these programs.

The federal government retains the exclusive jurisdiction over unemployment insurance legislation, particularly for income support and directly related services.

In its obligation to fulfil national standards, the federal government also retains the right to initiate job creation programs and other labour market programs. It would also have a role in national policy objectives for national labour market development.



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Argument: The Agreement, by recognizing provincial jurisdiction over forestry and mining, will impair the federal government's ability to take strong action to protect the environment.

Response: Environmental jurisdiction is shared by federal and provincial governments and is not affected by this agreement. The federal government will continue to set national environmental policy objectives through the Green Plan. The federal government will continue to speak for all Canadians at the international level.

Finally, the Agreement recognizes what is already clear in the Constitution: provinces have jurisdiction in the areas of forestry and mining.

Argument: Individual and minority rights in the Charter will be undermined by Quebec's distinct society clause.

Response: This is incorrect. During the multi-lateral discussions and negotiations, it was widely agreed that the Canada Clause should include recognition of Quebec as a distinct society. However, while this clause is significant because it would guide the Courts in its interpretation of the entire Constitution, the Canada Clause does not confer any new legislative powers on Quebec.



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Also included in the Canada Clause are commitments to:

- *the vitality and development of official language minority communities throughout Canada; and,*
- *a respect for individual and collective human rights and freedoms of all people.*

Thus, while the Charter will be interpreted in a manner consistent with Quebec's distinct society characteristics, its protection of minorities is in no way diminished.

Finally, it is important to note that key groups representing English-speaking and ethnic minorities in Quebec have voiced strong support for the Charlottetown Agreement.

Argument: Equality rights are threatened because the Canada Clause is a powerful interpretive clause that will give the courts direction on how to interpret the rest of the Constitution, including the Charter. The Canada Clause provisions on equality for women and racial minorities are weak.

Response: *The Canadian Charter contains very strong guarantees of equality rights. In addition, the Charter is backed up with effective federal and provincial human rights legislation. In the case of women, in particular, what is needed now to*



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ensure gender equality depends more upon other legislation, adequate budgets and changes in attitudes and practices.

Argument: The proposal to include a new provision in the Constitution which would set out policy objectives on the social union will impose excessive costs upon governments, businesses and Canadians in general.

Response: The policy objectives set out in the provision on the social union reflect views that are widely shared among Canadians. These policy objectives will be non-justiciable in the Constitution. Thus, the financial impact of this provision will be minimal or non-existent.

Argument: Culture is to be treated as a matter of exclusive provincial jurisdiction. This represents a potentially dangerous transfer of powers.

Response: The federal government will continue to have responsibility to promote Canada's identity. In addition, the federal government retains its responsibility for national cultural institutions, including grants and contributions delivered by these institutions and for Canadian cultural policy. How-



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ever, for the first time, the federal role in the area of culture will be explicitly recognized.

Provincial jurisdiction will be limited to cultural matters within the province.

Argument: It will be virtually impossible to repeal the notwithstanding clause in the Charter and thereby assure full and complete protection of individual and minority rights, including equality rights.

Response: The Beaudoin-Dobbie Committee recommended that proposed changes to the notwithstanding clause be set aside. This was agreed to by all participants to the multi-lateral process. Essentially, nothing has changed. The ability of governments to remove the notwithstanding clause from the Charter still exists, provided the political will to do so is there.

In addition, consultations with Canadians clearly showed no consensus on this issue.