

~~2-11-R-6-022~~
C.2
INSTITUTE OF INTER-
GOVERNMENTAL RELATIONS.

THE YEAR IN REVIEW 1982:
INTERGOVERNMENTAL RELATIONS
IN CANADA

Sheilagh M. Dunn

Institute of
Intergovernmental Relations
Queen's University
Kingston, Ontario

Copyright © 1982

ISSN-0226-9341
ISBN-0-88911-038-7

CONTENTS

PREFACE	v
1 DEVELOPMENTS IN CANADIAN FEDERALISM	1
Federalism and the Economy	2
A New Federalism	5
Québec	8
Regional Discontent	11
2 A YEAR AT THE POLLS	15
Newfoundland	16
Saskatchewan	19
Prince Edward Island	23
New Brunswick	25
Alberta	30
3 THE CONSTITUTION	35
The Patriation Process	36
Québec and Confederation	44
A New Era of Constitutional Reform	50
4 JUDICIAL REVIEW	59
Amendment of the Constitution	60
Appointment of Judges: Cases Involving s. 96	63
Charter of Rights and Freedoms	65
Communications	69
Criminal Law	71
Hydro	75
Labour Relations	76
Paramountcy	78
Public Health	79
Taxation	80

5	DEBATE OVER THE ECONOMY	87
	First Ministers' Conference on the Economy	88
	The Debate Continues	95
	Provincial Fiscal Policies	98
	Federal Fiscal Policy	108
	The World of "6 and 5"	114
6	ECONOMIC AND FISCAL FEDERALISM	125
	Fiscal Arrangements	125
7	ECONOMIC DEVELOPMENT	139
	Federal Economic Development Policy	141
	Economic Development and Intergovernmental Relations	145
	Provincial Economic Development Policies	149
	Economic Policy Areas	156
8	SOCIAL AND CULTURAL POLICY	173
	Communications	174
	Education	177
	Justice	179
	Medicare	180
	INDEX	183

PREFACE

This volume is the sixth annual review of developments in Canadian federalism to be published by the Institute. Together, these surveys constitute a running history of a turbulent period in Canadian history. Since federalism and intergovernmental relations touch on almost all aspects of Canadian public policy and political life, the Year in Review brings together events in many different fields, from medicare to trade policy and from courts to elections to First Ministers' Conferences. In 1982, a dramatic period of constitutional debate came to an end. Attention shifted to the way federalism and regional diversity affect the expression and management of serious economic problems, suggesting a changing agenda for practitioners and students of intergovernmental relations.

Pulling all this together is a massive task, undertaken for the second year by Sheilagh Dunn, Institute Research Associate. She was assisted by Geraldine Ketchum, librarian, who marshalled much of the material, and by Rob MacKinnon and Mary Louise McAllister who prepared the material on provincial elections. We thank John Whyte, Professor of Law at Queen's for reviewing Chapter 4 on judicial decisions, and Catherine Murray, for reviewing the section on communications. Lilian Newkirk prepared the manuscript for publication, and Mary Pearson provided editorial assistance and handled the publication process. I am grateful to all these staff members for their contribution.

Richard Simeon

1 DEVELOPMENTS IN CANADIAN FEDERALISM

One of the most enduring preoccupations of Canadian intergovernmental relations — patriation of the British North America Act with a domestic amending formula — was put to rest on April 17 when Queen Elizabeth II proclaimed the Constitution Act, 1982. As well, Canadians gained an entrenched Charter of Rights and Freedoms; there was a commitment to identify, define and possibly guarantee aboriginal rights; the principle of equalizing regional disparities in services and economic opportunities was recognized; and the division of powers between the provincial and federal government over natural resources was elaborated. While many important constitutional issues remain unresolved (see especially Chapter 3), other issues dominated the public agenda in 1982.

Management of the economy was a major problem in federal-provincial relations in 1982. Record high interest rates sparked a deadlocked debate in which all the provinces insisted that Ottawa forsake its inflation-fighting policy and move to bring down interest rates. As the recession deepened, and unemployment and productivity demanded attention, the federal and provincial governments put aside their debate and began to cooperate, albeit cautiously, on measures to assist the economy and ease the financial plight of Canadians. The federal government's "new federalism" policy was another challenge to the federal system but one which was at least partially diverted by the demands of the recession.

Broader challenges to federalism are posed by provinces, regions and communities which, in asserting their distinctiveness, are seeking recognition from governments and the rest of the country. Québec has questioned, in a fundamental way, its place in the federation, arguing that its status as a society with a distinct linguistic, cultural and social heritage protected by the provincial government's powers and resources, has been ignored and was rejected in the events leading to the constitutional settlement. In 1982, regional discontent gave rise to the election of a Western Canada Concept (WCC) candidate to the Alberta legislature. Although he was defeated in the subsequent provincial general election, the sentiments expressed by the WCC in the 1982 election

campaigns had a wide appeal in the west. In Newfoundland, Premier Brian Peckford continued his campaign to affirm and guarantee the province's distinctiveness. In 1982, this was most apparent in the federal-provincial negotiations over the ownership and management of offshore resources. These regional concerns were only weakly addressed in the constitutional settlement. However, the notion of improving regional representation in central institutions has surfaced again, especially in relation to the Senate (see Chapter 3).

FEDERALISM AND THE ECONOMY

The federal-provincial discussions on the economy in 1982 revealed not only divergent opinions about the thrust of macro-economic policy but two sharply opposed models of economic policy-making in a federal state. The provinces pressed hard for a first ministers' conference on the economy; in favouring this mechanism, the provinces were arguing for consultation, collaboration, joint action and provincial input into national economic policies. This notion applied as well to federal-provincial fiscal arrangements which, from the provincial perspective, should be matters of intergovernmental decision, and not of federal fiat.

The federal government did not share this view. Prime Minister Trudeau had grown increasingly disenchanted with first ministers' conferences and "executive federalism," particularly when federal policies and decisions were openly criticized. As Trudeau exclaimed: 113

executive federalism is characterized by the idea that the role of Parliament in governing the country should diminish while premiers should acquire more influence over national public policy. In effect, this theory means that Canada's national government would be a council of first ministers... Indeed, we have heard from Premier Bennett that federalism demands that the federal government give in whenever the provinces reach a unanimous position. ("Transcript of the Prime Minister's Speech at the Liberal Party of Canada Fund Raising Dinner," Vancouver, November 24, 1981, p. 12)

The federal government eventually agreed to meet with the provinces to discuss short term economic management, long term economic development and fiscal arrangements but maintained that the February conference was merely a "consultation." Federal policies were in place for all three areas and no federal-provincial agreement was necessary, federal spokesmen claimed. Nor was there any need for elaborate pre-conference planning at the ministerial and official levels, something which most provinces saw as essential to the success of such conferences as policy-making arenas.

At the conference, the premiers unanimously denounced federal fiscal and monetary policy, scrutinized Ottawa's plans for economic development and

pushed for a compromise on its proposals for fiscal arrangements. They presented alternative policies in all three areas. The clash of views on the purpose of the conference and the topics of discussion made the conference manifestly unsuccessful. In their concluding statements, most of the premiers confessed that they were "disappointed" and "frustrated" with the results. British Columbia Premier William Bennett was disappointed that "we have signed no agreements, released no firm plans that would offer our people a range of solutions to their practical, every-day concerns."

Much of the premiers' collective frustration stemmed from the federal government's attitude toward the conference. Premier Lévesque called it a "dialogue of the deaf." Ontario Premier Davis, not noted for being an outspoken opponent of the federal government, told the Prime Minister:

I guess my frustration really stems from what is more an attitudinal approach on the part of you, sir, and the government of Canada, an approach where I sense that minds were made up prior to our arrival in the nation's capital. When I see the press releases, when I listen to the statements made by the well intentioned ministers of the Crown... I sense that those points were not only inflexible and intransigent, but they were really, I guess, cast in stone. (First Ministers' Conference on the Economy, Verbatim Record, February 4, 1982, p. 74)

To Premier Blakeney of Saskatchewan, Ottawa had deliberately precluded "that type of quasi-negotiation" where federal policies would be explained and ways sought of dovetailing them with provincial policies (Globe and Mail, February 5, 1982, p. 9).

Newfoundland's premier, Brian Peckford, felt that this conduct did a disservice to the policies under discussion and the federal system. He declared that perhaps the country needed "a Supreme Court on the economy to get ourselves back into line as to what can and cannot work in a diverse nation such as Canada." In a television interview shortly after the conference, Alberta Premier Lougheed suggested that the Prime Minister and premiers meet annually in a public conference to discuss the economy (CTV, "Question Period," transcript, February 5, 1982, p. 1).

Despite this experience, the provinces were convinced of the value of first ministers' conferences. At their annual meeting held in Halifax in August, the premiers issued a communiqué which, they said, should form the basis of another economic summit. The proposal was rejected by deputy prime minister Allan MacEachen who said the country did not need a "second disaster" like the February conference. The Prime Minister told the House of Commons:

I will speak my mind quite clearly on this. I think that a meeting which would be wildly unsuccessful and would break down as did the February meeting, when there was total disagreement and practically chaos in the so-called collective approach of all First Ministers, would be counter-productive. I would rather have no meeting if it appears from the meeting of the Finance Ministers that there is not some possibility of... agreement, and if the signs seem to emerge from that meeting that the Premiers will use the next meeting as they did the February one, to make ten speeches on television blaming the federal government for all the evils of the nation. (House of Commons, Debates, December 14, 1982, p. 21569)

When the federal and provincial governments turned their attention to public sector wage restraint -- a more immediate solution to mounting inflation than Ottawa's "tight money" policy -- there was more harmony. The provinces resisted the federal government's entreaties to adopt its "6 and 5" wage and price restraint program without modification, arguing that to be effective, such schemes must be tailored to the needs of each jurisdiction. Mounting provincial deficits also convinced the provincial governments that restraining their expenditures was necessary. By the end of the year, the federal government and nine provincial governments had instituted controls or guidelines on public sector wages and a majority of governments had capped publicly administered prices.

Although inflation had abated by the end of the year, unemployment was still rising. Facing a winter with the highest unemployment rate since World War II, federal and provincial finance ministers discussed job creation and complementary budget actions to stimulate the economy in a common effort to bring the country out of recession.

There were a number of reasons for the failure of the February conference. First, there was a legacy of mutual distrust from the constitution and other issues, despite their settlement, which hung over the conference. This was exacerbated by Ottawa's reorganization of the Department of Regional Economic Expansion (DREE) and the glimmerings of its "new federalism" policy which were revealed shortly before the first ministers met in Ottawa. Second, the governments' disagreement over the most urgent economic problem facing the country was aggravated by the public nature of the conference and the lavish media attention. Third, there were three very large, very complex issues facing the first ministers with only a few days to discuss them; on all three items, there was some intergovernmental wrangling, ranging from a total deadlock on short term economic management, to a more moderate debate over economic development to frustrated bargaining on fiscal arrangements. Fourth, the fact that the provinces and the federal government had opposite views about the purpose of the conference contributed to the confusion. The

premiers publicly voiced their concerns about federal policies, decisions and attitudes, which confirmed Ottawa's aversion to such conferences, while the provinces chafed at the federal government's unwillingness to do more than "consult."

Thus, cooperation may be much more likely when governments agree on the nature of the problem, where they all have the policy instruments or jurisdiction to make an impact, where debates take place largely out of the glare of publicity, and where the agenda is not overloaded with several simultaneously conflicting issues.

But, we did see glimmerings of a more cooperative approach in federal-provincial relations and the economy by the end of the year. Public sector wage and price restraint, as a method of combatting inflation was an issue on which all governments agreed; it did not, by its very nature, pit regions and governments against each other. Rather, it appealed to all governments as employers facing public sector wage demands when revenues were falling. Furthermore, as the recession deepened and unemployment rose, the costs of continued intergovernmental discord were apparent. Governments were aware that they would pay a heavy penalty, politically and economically, for failing to act cooperatively.

But, the continuing debate over federal and provincial roles in national policy-making, and over how much national policy should emerge from intergovernmental collaboration was illustrated by the continuing emphasis by Ottawa on the need for a "new federalism."

A NEW FEDERALISM

Since its election in February 1980, the Liberal federal government has asserted its powers and resources in an attempt to arrest the "drift to decentralization." Ottawa was disturbed that provincial authority and fiscal weight had expanded to the detriment of the federal government; the view that the Canadian federation should be further decentralized prompted the federal government to assert its powers, authority and resources in national endeavours, independently of the provinces. As Prime Minister Trudeau explained in a speech in Vancouver on November 24, 1981:

It was time to stop the swinging of the pendulum in that direction (toward decentralization). It was time to reassert in our national policies that Canada is one country which must be capable of moving with unity of spirit and purpose towards shared goals. If Canada is indeed to be a nation, there must be a national will which is something more than the lowest common denominator among the desires of the provincial governments. And when there is conflict... between the national will and the provincial will, the national will must prevail. Otherwise, we

are not a nation. ("Transcript of the Prime Minister's Speech at the Liberal Party of Canada Fund Raising Dinner," Vancouver, November 24, 1981, p. 13)

In several policy areas, Ottawa formulated national goals and the means to achieve them. In the constitutional debate, the federal government succeeded in having a Charter of Rights and Freedoms entrenched in the constitution which guaranteed fundamental, democratic, mobility, legal, equality and minority language educational rights for Canadians. The National Energy Program was designed to realize the national goal of energy self-sufficiency, greater Canadian ownership of the industry, development of the "Canada Lands" in the North and offshore, and a wider sharing of energy revenues across the whole country. Ottawa sought to bridge regional interests, and to assert its capacity to promote regional development in the November 1981 budget and in the associated reorganization of economic responsibilities which followed. The federal government sought a greater role in health care and post-secondary education policies to pursue a number of designated national objectives, including mobility and accessibility.

But federalism and the style of federal-provincial relations which had developed placed serious constraints on Ottawa's ability to act as a national government, federal spokesmen declared. As the Prime Minister claimed:

We have tried governing through consensus; we have tried governing by being generous to the provinces... by offering a rather massive transfer of powers... and that was never enough. So we have changed that and we have said on the constitution as we are doing with the economy, there is not much point... shifting powers and resources to the provinces because there is no stop. The pendulum will keep swinging until we end up with a community of communities or a... confederation of shopping centres... and that is not my view of Canada. I thought we could build a strong Canada through co-operation. I have been disillusioned. ("Transcript of the Prime Minister's News Conference," Ottawa, February 25, 1982, p. 23)

When the Prime Minister told the premiers at the First Ministers' Conference on the Economy in February that "cooperative federalism is dead," the provinces and the media were shocked. Trudeau confirmed this verdict at a press conference later in the month when he declared "the old type of federalism where we give money to the province, where they kick us in the teeth because they didn't get enough... is finished." But the "new federalism" as it came to be called, was just the confirmation of evolving federal attitudes toward the federal system and how Ottawa planned to circumvent its constraints.

① The "new federalism" had several elements. The federal government was disenchanted with the process of "executive federalism" and wanted to avoid situations where meetings of both levels of government echoed the adversarial politics of parliamentary government. The First Ministers' Conference on the Economy was held only after repeated provincial demands, and Ottawa characterized the meeting as "consultative," contending that it had policies in place for fiscal and economic management, economic development and federal-provincial fiscal arrangements. While the provinces could comment on these policies, there was absolutely no need for joint decision-making, the federal government contended.

② A second element of the "new federalism" was "visibility" or "presence." Ottawa felt that its contributions to the provinces through various forms of transfers -- equalization, Established Programs Financing, DREE or other cost-sharing agreements -- for many different policy areas were neither acknowledged by provincial governments nor recognized by the public. Ottawa adopted several devices for increasing its visibility. It drew back from some cost-sharing arrangements and began to deliver programs directly. This was most evident in regional economic development policy as DREE was disbanded, federal economic development coordinators placed in each provincial capital and General Development Agreements allowed to expire. Where joint projects were conducted with the provinces, press releases and billboards acknowledged the participation of both levels of government. Ottawa's pursuit of greater accountability by the provinces for its spending of money transferred under Established Programs Financing was also related to visibility.

This aspect of "new federalism" was not as upsetting to the provinces as the threat of federal cutbacks in transfers from Ottawa for vital programs. As Premier Davis declared at the February first ministers' conference:

I will put up a red and white sign on the campus of the University of Toronto or anywhere else to visibly display to the people of our province just what the government of Canada is doing. I have never been hung up on that particular part of political life! (Verbatim Record, February 4, 1982, p. 80)

And Premier Hatfield of New Brunswick warned that there were political risks in the federal government's search for political credit. If Ottawa went ahead with its plans to cap EPF transfers, he said,

I will remind the people of New Brunswick that that was why we had to reduce our improvements, why we could not do what should have been done, because the federal government wanted and needed money for political credit to provide something somewhere else. (Verbatim Record, February 4, 1982, p. 41)

③ Finally, the assertiveness which characterized Ottawa's attitude to federal-provincial relations was also seen in Parliament. Constitutional limits were tested in several pieces of legislation: Bill C-48 asserted federal jurisdiction over the offshore areas of the East coast while Bill S-31 blocked provincial control over companies operating interprovincial and international transportation undertakings. As well, the Prime Minister and other government spokesmen stressed that Parliament was the only institution which represented the whole country and could act in the national interest.

Reactions to the "new federalism" by the provinces and media were harsh. It was called "competitive federalism," "centrally-controlled federalism," "déjà vu federalism" and "the new doctrine of unilateralism" by provincial politicians. Editorialists in English Canada called it "one way federalism" and "federal imperialism." French-Canadian editorialists termed it "le fédéralisme autoritaire" and "pax canadiana." The harshest criticism came from Québec. At the Premiers' Conference in August, Premier Lévesque argued that the departmental reorganization and plans for delivering regional economic development programs were based on:

a concept of Canada in which the government in Ottawa is the defender of an abstract "national interest," which is different from that of the provinces. The provincial governments have come to be considered not as partners or working members of the same body politic, but rather as embarrassing anachronisms to be reduced in size and diminished in power... and to be controlled on a more day-to-day basis by blackmail or unilateral measures. (Premier René Lévesque, "Federal-Provincial Relations," 23rd Annual Premiers' Conference, Halifax, N.S., August 24-28, 1982, p. 4)

The general consensus on the federal policy was ironically represented by the Prime Minister's statement in Charlottetown in April that "This country is too big to be governed by Ottawa alone."

QUEBEC

The federal strategy of disengagement from federal-provincial relations and assertion of its own authority was, interestingly, echoed by Québec's position following the constitutional accord of November 1981.

Québec maintained that the Canada Act passed by Britain and the ensuing Constitution Act, 1982 were illegitimate because Québec had not assented to the changes. The province sought judicial affirmation that it possessed a conventional veto in constitutional amendment which was denied ultimately by the Supreme Court in December. While the province refused to participate in any further constitutional changes, it did invoke s. 33,

the "notwithstanding" clause, providing blanket exemption of Québec legislation from certain guaranteed rights in the Charter.

As part of its initial reaction to the constitutional accord, Québec announced that it would not participate in any non-economic intergovernmental conferences. With the appointment of Jacques-Yvan Morin as Intergovernmental Affairs Minister, replacing Claude Morin who retired from politics, Québec announced a "selective" increase in its participation at federal-provincial and interprovincial conferences. However, Morin made it clear that the province was also developing closer relations with the United States, especially the northeastern states, and francophone countries to balance its relations within Canada.

Québec's stance on program delivery stressed the need for exclusive rather than joint action by governments. The province claimed that it should be left free to deliver programs to the people of Québec in areas for which it was best suited — education, cultural and social policy, communications and regional development to name a few — as the provincial government was closer to the people and more attuned to their needs. Furthermore, the government preferred tax transfers to cash payments or other intricate forms of fiscal arrangements to reflect this autonomy. These claims have been consistently asserted by Québec since the Quiet Revolution.

One of the most interesting features of Québec's struggle with the federal system after the constitutional accord was its relations with the other provinces. Former Intergovernmental Affairs Minister Claude Morin concluded that the seven provinces and Québec, while united on the surface, held fundamentally divergent views on the purpose of the alliance. (For more views on the "Gang of Eight" see letter from Roy Romanow to Claude Morin, *Le Devoir*, January 21, 1982, p. 7; letter from Morin to Romanow, *Le Devoir*, February 20, 1982, p. 15; series of articles by Morin in *Le Devoir*, August 31 - September 2, 1982 and Claude Morin, "Le Québec seul dans son coin," *Policy Options*, July-August 1982, p. 10 - 16.) Québec's wariness towards the other provinces in 1982 reflected its experience with the "Gang of Eight."

The unanimous opposition of the provinces to Ottawa's fiscal and monetary policy which emerged at the February first ministers' conference was "accidental" according to Premier Lévesque. Again in August, while Québec supported the communiqué on the economy issued by the premiers at their annual conference, Jacques-Yvan Morin saw it as a "circumstantial alliance:"

we are no longer in the context of the constitutional debate and common fronts. We are dealing with precise economic questions, questions on which we can make circumstantial alliances. We well know that on fundamental issues like the

constitutional question we can't count on the other provinces.
(quoted in Globe and Mail, August 24, 1982, p. 8)

As long as Québec was part of the federal system, Morin maintained "we have to get the best share possible... above all during an economic crisis. We have to hold hands, roll up our sleeves and organize cooperation" (quoted in Montreal Gazette, August 27, 1983, p. A1).

While the government of Québec tried to adjust to the exigencies of federalism, spokesmen also made it clear that the federal system was singularly unsuited to Québec's needs and desires. For instance, as the economic recession deepened and Québec's budgetary deficit worsened, the government argued that it was the federal system which frustrated the province's healthy economic development. According to this analysis, the two levels of government were "raiding" or "siphoning" each other's economy. Sovereignty would allow not only Québec's language and culture to flourish but its economic potential as well. As Premier Lévesque explained in reference to the worsening economic situation:

what's going on now makes it even more obvious and more and more urgent as time goes by that we make up our minds as Québécois and get out without hostility, but get out. It's a crazy system more and more. (CTV National News, transcript, March 14, 1982)

At the August Premiers' Conference, while the communiqué on federal-provincial relations listed provincial dissatisfaction with Ottawa's actions in several policy areas, Premier Lévesque lashed out at the federal system in general. Noting that the premiers annually discussed the health of Canadian federalism, Lévesque claimed:

What we find every time and even more so this year, is that our political system is creating problems rather than solving them. It is as if the federal system -- or at least this one we have here -- carried the germs of a permanently disabling disease and the systems were (sic) aggravated by its centralizing aims.

...

A great many of our difficulties must be attributed to the inability of our federal system to devise original solutions that can accommodate the various provinces and their diversities. This inherent inflexibility in the system... means that in Canada today we have an unwieldy government of high costs and overlapping responsibilities that is almost totally unable to act in a co-ordinated and efficient manner. We no longer believe that the disease can be cured... (p. 1, 4)

Thus, in discussing the merits of campaigning in the next provincial election on sovereignty and detaching it from economic association with Canada, the PQ continues to challenge the compatibility of the province of Québec and the federal system. And, as long as Québec remains part of the system, the government will strive for special arrangements which take account of the province's characteristics.

REGIONAL DISCONTENT

Québec's place in the federation has been a source of tension in Canadian politics particularly since the 1960s. But as internecine strife among federal and provincial governments has widened and increased in intensity in the past several years, the dissatisfaction of the general Canadian population with their governments and political representation has become widespread and acute. This has formed the basis of outbreaks of regional discontent in the west and east; in the former case, all governments were the object of censure, while in Newfoundland, the provincial government had led the charge for greater provincial security and recognition.

Western separatism, which has been associated largely with the fortunes of the Western Canada Concept, rose and fell dramatically in 1982. The country was jolted when Gordon Kesler, a WCC candidate, was elected on February 17 in the Olds-Didsbury by-election in Alberta. The WCC was inspired by many sentiments and goals as illustrated by its official creed:

We advocate independence for Western Canada.

We believe in democracy, freedom, liberty and equality.

We stand for one nation, one official language, a referendum on the form of government, one regional elected senate, free enterprise, citizens' rights of referendum, initiative and recall.

We promise a lower cost of living, to stop compulsory metrification (sic), less government interference and control, encouragement of secondary industry, recognition and enhancement of established pension programs, social justice for the deserving and needy, penal reform and uniform justice, preservation and expansion of productive farmland, freedom of the news media, irrevocable guarantees of personal and private property rights, lower taxes.

We recognize God as the Supreme Power.

(as printed in Edmonton Journal, February 19, 1982, p. A9)

The WCC's stand against "government interference" was reflected in its opposition to several federal policies -- official bilingualism, gun control, the National Energy Program. The provincial government was also

denounced for being too "big" and interventionist; the WCC's attack on the Heritage Fund was an example of this thinking. The party was characterized as "right-wing," regarding any government role in the economy as "socialism." The federal and provincial governments were criticized for failing to include property rights in the amended constitution. Their "populist" touch included an aversion to "government by order-in-council" and calls for greater public participation in the political process.

At the heart of the WCC's position favouring independence for western Canada was a feeling of economic impotence flowing from government policies, and political frustration because of the seeming inability of the political system to represent these views. The party itself was divided and uncertain about the place of independence and separation in its political platform. Kesler indicated that "good responsible government and responsible free enterprise" would precede independence and that goal would be sought only if the public approved.

Although the WCC as an electoral force may have faded, gaining only three per cent of the popular vote in the Saskatchewan election and 11 per cent in Alberta, it did serve as a vessel for western discontent; those attitudes and emotions did not necessarily fade with the electoral fortunes of the Western Canada Concept. Following Kesler's election, the Lougheed government felt it necessary to reassert its hostility to Ottawa and some attribute the defeat of the Blakeney government in Saskatchewan to discontent over its "cooperation" with Ottawa.

In Newfoundland, the Peckford government since the late 1970s has been trying to capture and recapture the powers and resources it feels the province needs to realize its economic potential. These objectives are linked to elements of Newfoundland's distinctiveness. Provincial jurisdiction over the fishery is appropriate since the fishery is the "backbone" of the economy and the "raison d'être" of rural communities. Regaining control of sales of Labrador hydro-electricity from Québec was associated with the need to protect the province's economic future. The government sought an electoral mandate to support its pursuit of ownership and management of offshore mineral resources which were "simply a means toward human betterment." The size of the Conservatives' victory in the April 6 election indicated many Newfoundlanders supported the government's crusade.

The inability of the national party system and electoral process to produce a majority government with adequate representation from all regions gave rise to the view that provincial governments provided an additional or alternate form of representation in national politics. Prime Minister Trudeau took issue with this tendency to distrust the representativeness of the national political system. To the assertion that

his government was attempting to govern a region which did not want to be governed by the Liberal party, Trudeau responded:

that is a pretty novel view of federalism and ... it is certainly a view which unfortunately is beginning to take root in this province (Saskatchewan) and in Alberta... This is a concept that only people from Saskatchewan can govern Saskatchewan. And only people from Alberta can govern Alberta, which is the essence of separatism. If the country is too big for you and others that it cannot be governed by people who have been elected with a majority from the whole country, then let's put an end to it ... Let's say nobody from Ottawa, whether they be Liberals, Tories or NDP can really govern the whole country. ("Transcript of the Prime Minister's Question and Answer Session at the University of Saskatchewan," Saskatoon, March 19, 1982, p. 26-7)

Calls for proportional representation and improvements to regional representation in the Senate reflected this dissatisfaction with the capacity of central institutions to represent the diversity of the country. But the birth of several new political parties which identify themselves with regions or a distinct group of people indicates a wider discontent with political representation in Canada. The Western Canada Concept, the Alberta Reform Movement, the Northern Party, the Cape Breton Labour Party and the Aboriginal Peoples' Party were fledgling political organizations in 1982, challenging established political parties in the provinces. Public consultation, through referenda or extensive public debate, is a common theme of these new parties and those dissatisfied with the old.

Thus, the regional strains which gave rise to and dominated the constitutional debate have by no means been overcome by the constitutional settlement. They remain a profound challenge to Canadian institutions and leaders at both levels. The shift to a focus on the economic aspects of federalism -- to the problems of regional and sectoral adjustment, to problems of international competitiveness, to the economic consequences of a fragmented economic market, and to the individual and collective capacity of governments to facilitate growth -- do not obliterate or transcend these underlying regional differences. Rather, the new economic agenda and the older one of political unity and diversity are intricately entwined.

2 A YEAR AT THE POLLS

Five provincial general elections were held in 1982. One government fell and four others were returned to office. In all five cases, the Conservative Party was victorious; in Newfoundland, Saskatchewan and Alberta, the Tories won by landslides, while the party gained solid two to one majorities in P.E.I. and New Brunswick.

The fact that four governments were returned in the middle of the worst economic recession since the 1930s belied the common perception of widespread voter dissatisfaction with governments in general. Many polls taken during 1981-82 indicated strong anti-government feelings among respondents as well as an increasing number of undecided voters. Much of this sentiment was attributed to the precarious state of the economy as voters suffered under high interest rates, inflation and unemployment. But respondents were more dissatisfied with the federal government and trusted Ottawa less than their provincial governments. This did not mean that people were pleased with the provincial governments, but that their feelings were more negative towards the federal government.

In addition to this general discontent, western separatism captured much attention in 1982. The National Energy Program's emphasis on public ownership and the preoccupation of the federal government in particular with the constitution had exacerbated the west's disaffection with the Liberal Party and those associated with it. Polls showed that westerners felt they were not benefitting from the exploitation of natural resources and that they wanted to regain control of their destiny.

There were mixed interpretations about the implications of Gordon Kesler's election to the Alberta legislature as a Western Canada Concept (WCC) member in a February by-election. Did it signal a new, prairie wildfire movement that would sweep across Alberta as suddenly and effectively as had William Aberhart's Social Credit fifty years before? Would it spill over into Saskatchewan and British Columbia? Or was it a protest vote to let Premier Lougheed know that Albertans' hostility was not confined to Ottawa? The failure of the WCC to elect a member in

either the Saskatchewan or Alberta general elections may point to its electoral collapse but the Western Canada Concept did serve to highlight the scope and degree of animosity to both levels of government held by prairie voters.

The results of the nine provincial elections held since 1981 seem to augur well for the Conservative Party. It was victorious in seven provinces; the NDP won in Manitoba and the PQ were returned in Québec. The last Liberal provincial government was defeated in P.E.I. in 1979. The unpopularity of the federal government and the Prime Minister with voters across the country has led to provincial election campaigns where politicians from all parties dissociated themselves from the federal government while accusing their opponents of the cardinal sin of close ties with Ottawa. Premier Lougheed managed to withstand this accusation but Premier Blakeney in Saskatchewan was defeated, partly because he was seen as being too "cosy" with Ottawa. Premier Peckford in Newfoundland ran his campaign almost solely on a federal-provincial issue while Premiers Hatfield and Lee were critical of the federal government in their campaigns. Conservatives across the country have capitalized on and benefitted from this popular dissatisfaction with the Liberals in Ottawa.

The NDP made several slight but significant gains in 1982. The defeat of the NDP government in Saskatchewan was a severe blow; the party was seen as technocratic, removed from the people and too friendly with Ottawa. However, the NDP retains the provincial government in Manitoba. In Alberta, the lone NDP MLA, Grant Notley, leader of the party, gained one seatmate and the NDP became the official opposition. The first NDP member was elected to the New Brunswick legislature in that provincial election, which also saw the Conservatives significantly increase their vote among francophones.

NEWFOUNDLAND

On March 15, the first of the 1982 campaigns was kicked off as Newfoundland Premier Brian Peckford called a snap election for April 6. In his statement to the press, Mr. Peckford drew attention to his government's recent achievements but the key issue for the premier was the control and management of the offshore and the division of future offshore revenues between Newfoundland and Ottawa. For Peckford it was a "one-issue election," and he was going to the people to seek a "clear mandate" for the government's position. Discussions between Newfoundland and the federal government had broken down a month earlier. Mr. Peckford's government simply would not accept a weak "Nova Scotia type agreement which involves no real say and an unfair share of the money." April 6 was the deadline for a negotiated settlement and the short, three week campaign also favoured the government.

The call came less than three months past the halfway point of the Conservatives' term of office. Apparently, Nova Scotia Premier John Buchanan's successful strategy six months before -- an early election asking for a show of support in the government's offshore negotiations with Ottawa -- had not been lost on Peckford. Perhaps too he had taken the gloomy message of the forecasters to heart and decided that while Newfoundland's economy was suffering, the situation would probably grow even darker in the months to come.

The Liberals and the NDP labelled the government's request for a mandate on the offshore a "red herring." They emphasized instead the woeful state of the province's economy, particularly the rate of unemployment, which stood at 15 per cent.

Liberal leader Len Stirling called the focus on the offshore a "desperation move" in the face of a slumping economy, and countered with the slogan "Make Work, Not War." He placed much of the blame for Newfoundland's problems on the government's confrontationist approach to federal-provincial relations. Stirling felt that good relations with Ottawa were essential to the prospects of economic development, claiming "There are still only two sources of income in this province -- private enterprise and federal-provincial partnership."

On the offshore mineral issue, Newfoundland Liberals pointed out that the stalled negotiations gave Nova Scotia a head start in the race for the location of the petroleum industry's east coast headquarters and ancillary service industries. Stirling vowed that he would negotiate an agreement with the federal government within 90 days, and that the terms would be better than those received by the Nova Scotia government. He also pledged a referendum to ensure that such a settlement was acceptable to the people of Newfoundland.

However, the Liberal leader pointed out that even if the province were immediately given complete jurisdiction over the offshore, production would still be ten years away. Thus, the most important issue was the health of the fishing industry. The Liberals had a number of proposals to revitalize fishing, featuring a guarantee that all fish plants which formed the economic base of any of the Island's rural communities would remain in operation. Stirling promised to negotiate a federal-provincial funding arrangement which would enable the government to invest in ailing plants and keep them running.

The NDP, led by Peter Fenwick, also stressed the problems of the economy and the government's failure to respond effectively to them. They pointed to the size of the province's debt, the number of unemployed (34,000), mounting bankruptcies and the badly sagging forestry, fishing and mining industries. They also attacked the government for its inability

to work productively with Ottawa, not just over the offshore but in a number of policy areas. Armed with the endorsement of the Newfoundland and Labrador Federation of Labour, the party nominated candidates in 23 of the 52 ridings.

The two-pronged Tory campaign consisted of an assault on the inequities of the federal system, and a spate of economic assistance proposals. The premier explicitly rejected the province's traditional economic base as the engine of future development, arguing that energy was the key to prosperity. "There are only two ways to get out of the mess we're in. Let's face it. We won't make a dent in our unemployment with fishery and forestry" (quoted in *Montreal Gazette*, April 3, 1982). Those two ways were offshore oil and Churchill Falls hydro electricity.

In any settlement of the offshore, Newfoundland wanted 35 to 40 per cent of oil revenues, an equal voice in management, and the right to the same treatment as provinces with onshore oil reserves. The government claimed that this arrangement was necessary for the protection of all aspects of the province's way of life.

The government also wanted a fair share of the revenues from the Churchill Falls power station. The Smallwood government had locked the province into a 65 year deal with Québec from which Newfoundland was currently receiving about \$10 million per year and Québec approximately \$500 million. The Newfoundland Supreme Court had ruled that the government could refuse to release the water to Hydro-Québec, and the premier threatened to "let the water flow back into the ocean before I'll let them use it for the price they're paying." The government was pushing for a renegotiation of the contract with Québec.

Criticism of the Conservatives' focus on the offshore forced them to modify their strategy in mid-campaign. The government had prepared a number of fallback measures. Thus Peckford announced a road works program and raised the possibility of a ferrosilicon smelter in the near future for Labrador. The government also promised assistance during the week before the election to private companies to purchase fish plants having financial difficulties, saving over 700 jobs, and to Forestry Products Ltd., which had announced plans to shut down an operation with more than 500 employees.

The result was a stunning victory for Mr. Peckford and his party as they captured 44 of the legislature's 52 seats. The Liberals' ranks were reduced to eight seats, while the NDP were shut out. Stirling announced his intention to call a leadership convention. Whether Newfoundlanders had been motivated by Peckford's request for a mandate or by his hard-hitting, emotional style, it was clear that they preferred his analysis of and prescriptions for the province's problems to those of his Liberal and NDP rivals.

Table 2:1
Results of the 1982 Newfoundland Election

	Standings at Dissolution	Election 1982	% Popular Vote 1979	% Popular Vote 1982
Conservatives	34	44	50.4	61.2
Liberals	17	8	40.6	34.9
NDP	--	--	7.8	3.7
Vacant	1	--	--	--

SASKATCHEWAN

Predictions of a spring election in Saskatchewan were commonplace in the early months of 1982. The February 17 by-election victory of the WCC's Gordon Kesler in Alberta had caused some trepidation. NDP strategists in Saskatchewan were convinced that if an election were well-timed, the separatist threat could be nipped in the bud and cut into the Tory vote by as much as five to 10 per cent.

Premier Allan Blakeney had been handed what many considered the perfect issue on which to fight a Prairie election -- federal Transport Minister Jean-Luc Pepin's plans to make substantial changes in the hitherto sacrosanct Crow's Nest Pass freight rate on unprocessed agricultural goods shipped from the west. The NDP did not hesitate to take up the fight and launched a high-profile campaign with pamphlets, television advertisements and public meetings to rally public opinion behind the government in its battle with Ottawa.

The traditional pre-election budget contained a carefully crafted set of enticements for groups of voters. The centrepiece was a mortgage aid program with grants of up to \$2400; it was accompanied by a shelter allowance for the elderly and a freeze on power rates.

As the pieces of the government's strategy were fitted into place, the province's hospital workers went out on strike on March 11. After two weeks of stalemate, the government legislated them back to work and Blakeney announced an election for April 26 at his own nomination meeting.

It soon became clear that the Crow rate issue would have little impact on the outcome of the election. All of the parties in the campaign were opposed to Ottawa's plans. Blakeney was thus forced to claim that he was better qualified to bargain with Ottawa over the matter -- an argument

which drew attention to Blakeney himself and the party. Many voters felt that the government was no longer close to them, that the bureaucracy had acquired excessive influence, that too much public policy was negotiated behind closed doors, and that the provincial government was too cosy with Ottawa. The premier had been trying to distance himself from Trudeau for some time, but the Ottawa-Regina connection was a theme that both the Conservatives and the WCC emphasized over and over during the course of the election.

The Conservatives under Grant Devine ran a "Time for a Change" campaign. To the NDP slogan "Tested and Trusted" they replied "Tired and Rusted." They made two major pledges — abolition of the 20 cent gasoline tax, and subsidies to hold mortgage rates at an effective 13 1/2 per cent maximum for homebuyers or homeowners faced with renewals. They also vowed to lower the personal income tax by 10 per cent, cut health and education taxes by \$320 million per year, provide farm purchase loans of up to \$350,000 at low interest rates, and establish a natural gas network for rural areas.

Blakeney responded by asking where the money would come from to finance these proposals, labelling the Tory leader "Dr. Deficit" and charging that Devine would cut back on medicare. As the contest wore on, the NDP was forced to meet opposition promises with a list of its own. These included a universal denticare plan, a "visioncare" program assisting children and senior citizens to purchase eyeglasses, elimination of school property taxes for all homeowners, farmers and small businessmen, a doubled home mortgage tax credit, and reduced auto insurance rates for drivers with good records. This, however, left them vulnerable to the same charges of excessive spending they had made against the Conservatives.

The Tories attacked the government for establishing a large and inefficient bureaucracy, focussing particularly on the province's 24 Crown corporations. They portrayed the NDP as "fat cats" who had lost touch with the people. The argument was reinforced by the contrasting styles of the two leaders: Blakeney, a former Rhodes scholar, projected an image of pin-striped professionalism and cool rational efficiency, while PC leader Grant Devine liked to refer to himself as "just a farm boy with a Ph.D." (in agricultural economics). Instead of giving voters a choice between a socialist and a free enterpriser, the election seemed to offer them a technocrat and a populist.

The other parties suffered overwhelming defeats. Former MP Ralph Goodale's attempt to turn around the provincial Liberals' fortunes was thwarted when the party failed to win a seat and saw its share of the popular vote plummet from 14 to five per cent. Saskatchewan Liberals regarded the federal party as a millstone, and tried to dissociate themselves from its policies. For instance, they demanded that any change

to the Crow rate be postponed until a consensus had developed among Saskatchewan farmers.

Traditionally farmers were one of the Liberals' bases of support and a target group for them in the election. The strategy was to reach what they believed was a substantial constituency located between the NDP on the left and the Conservatives on the right. They also tried to exploit the NDP's technocratic image by criticizing their preoccupation with resource-based economic development at the expense of "people issues." The deterioration of the party's support base in the west continued, however, as those who voted NDP in 1978 chose to swing to the Tories rather than return to the Liberal fold.

The infant Western Canada Concept fared even worse, despite the Saskatchewan branch's attempts to moderate some of the more extreme views expressed by Kesler in Alberta. Leader Ray Bailey stated that separation would not be attempted in Saskatchewan until the four western provinces and the two territories had WCC governments, and then only after negotiations with Ottawa for a better deal had broken down and popular approval had been obtained in a referendum. The party's immediate goals included constitutional entrenchment of property rights, western control over the sale of natural resources, a regionally based elective Senate, and a referendum on capital punishment. They also favoured retention of the Wheat Board and the Crow rate but would sell off Saskoil, reduce royalties on petroleum extraction and fight to get rid of the National Energy Program. Bailey was reluctant to remove the gasoline tax, though he discussed reducing it. A fixed date for elections every four years would take away one of the government's advantages over opposition parties, he argued.

Tory politicians contended that virtually all of the WCC's policy goals short of separation were shared by western Conservatives. Why, they asked, should voters support the WCC when there was already a party in the field to give them what they wanted, and stay within Canada. They feared that the conservative vote would be split, allowing the NDP to be reelected.

The fifth party in the race was the Aboriginal Peoples' Party (APP) under interim leader John Dorion. It was formed to bring native people together and draw attention to their concerns, especially land claims and constitutional rights, rather than to win seats. Over a period of time, Dorion hoped the APP could gain influence as a spoiler against politicians deemed unsympathetic to their cause, particularly in the north where natives comprised a substantial majority of the population. This was not to be the case in 1982, however, as the party was able to attract less than one per cent of the total vote.

The final result was a landslide for the Conservatives as NDP ranks in the legislature were reduced to seven. Blakeney was reelected but all but

one of his Cabinet members were defeated. Analysts noted that the week before the two parties had been neck and neck in the polls, but that a large 30 per cent of the respondents were still undecided. With an 86 per cent turnout, it appeared that the vaunted NDP organization had been outhustled by the energetic and hungry Tories. While some saw this as a result of the Canadian Union of Public Employees' decision to withhold its support, others pointed out that the party's own polls had been indicating a surprising degree of disaffection as far back as the first week of the campaign.

The fact that Saskatchewan had recently graduated to the status of a "have" province, that it had the highest rate of growth and the lowest rate of unemployment in the country, had no doubt created a certain sense of complacency. Commentators observed that Saskatchewan's citizens were nevertheless worried about the deepening economic recession in the country as a whole and the west in particular, and the threat this posed down the road. High interest rates and taxes were also causing much concern, and the PCs' mortgage plan and their promise to lift the tax on gasoline seemed made to order.

Finally, this apparent lack of awareness of people's economic fears dovetailed neatly (at least from the Tories' point of view) with the close relationship that had been forged between the NDP and the civil service. Whatever the ideological predispositions of the electorate, there seemed to be a feeling that the government had become a thing apart from ordinary citizens and their lives. Over the past several years, the civil service had not only grown in size but had become increasingly bureaucratized and politicized as well.

The defeat in Saskatchewan produced waves throughout the country, as politicians scrambled to calculate the meaning of the defeats of the Lyon and Blakeney governments sandwiched around Premier Peckford's decisive triumph in Newfoundland.

Table 2:2
Results of the 1982 Saskatchewan Election

	Standings at Dissolution	Election 1982	% Popular Vote 1978	% Popular Vote 1982
NDP	44	8	48.1	37.6
Conservatives	15	56	38.1	54.1
Unionest	2	—	—	—
Liberals	—	—	13.8	4.5
Western Canada Concept	—	—	—	3.3

PRINCE EDWARD ISLAND

On August 31, P.E.I. Premier James Lee ended weeks of speculation by calling an election for September 27. Encouraged by favourable polls, he decided the time was ripe to test himself against the Liberals' Joe Ghiz and the NDP's David Burke. Each had been leading his party for less than a year at the time of the announcement; Lee had succeeded the popular Angus MacLean as Conservative leader and premier the previous autumn.

From the beginning it was a two-party race as the NDP was in a state of disarray. A leadership convention was planned for November. The party had never won a seat in P.E.I., provincially or federally, and the number of candidates had fallen from 20 in 1976 (in a 32 seat legislature) to three in 1982.

The Conservatives chose to run on their record, emphasizing the virtues of "good responsible management." They avoided specific promises, arguing that new programs were not possible in the prevailing economic climate. They also stressed the fact that P.E.I. was the only province in which taxes had not been raised in 1982. Apart from restraint, the main issues for the Tories were economic development and job creation, energy costs, protection of the province's unique way of life, and leadership.

They opened their campaign with a proposal to turn P.E.I. into a "haven of excellence" by encouraging new industry, especially in the areas of communication, information and medical technologies, and emphasizing the Island's "special identity" in marketing. Lee cited several examples of the government's success in employment creation, the most important of which was the agreement with the other Atlantic provinces to locate the new veterinary college in Charlottetown. The government had also been successful in assisting food processing and forestry products plants to locate in the province.

Energy costs on the Island were the highest in the country. The Conservatives were awaiting the results of a joint study with Ottawa of the province's energy needs, after which they would press the federal government for subsidies. In addition, they promised to implement the McQuaid Commission's recommendation for a \$2 million tax rebate to Maritime Electric. The Tories were also looking at alternative sources such as coal, wood and wind, and encouraging Chevron Corporation in a \$25 million oil and gas exploration program planned for 1983. They refused, however, to reverse the MacLean government's decision not to purchase nuclear power from New Brunswick's Point Lepreau facility. They pointed out that negotiations were currently under way to obtain electricity from Hydro-Québec, and late in the campaign, Lee announced a tentative agreement to buy 50 megawatts at cost.

Another important plank in the Conservative platform was the preservation of the Island's rural communities. In line with the "think small" philosophy he had espoused since his leadership drive the year before, Lee promised to continue the government's small scale farm program. Charging that the Liberals were going to sell out the rural community, he vowed that his government would continue its road paving program at the rate of 100 kilometres per year.

Additional items on the Tory agenda included the encouragement of forestry management programs, establishment of trade links with other provinces and U.S. states and the extension of collective bargaining rights to fishermen.

Finally the Conservative campaign emphasized leadership. Polls had indicated that most Islanders felt more at ease with the stolid, soft-spoken James Lee than with the flamboyant, hard-driving Joe Ghiz. Tory newspaper ads centred on "Jim Lee and the PC Team" and advised voters that "Strong experienced leadership is critical. This is no time for rash promises."

The Liberals struck a different note in their campaign. Led by the energetic Mr. Ghiz, they put forward a list of specific proposals designed to lure the Island's swing voters into the Liberal fold. Energy was the central issue of the Liberal campaign. A Liberal government would freeze the provincial tax on gasoline, press Ottawa for a grant of \$300 per year for up to five years for those who switched to alternative energy sources, and provide a discount of up to \$25 per month to consumers using less than 500 kilowatt hours per month. It would also give the recommended rebate of \$2 million to consumers rather than to Maritime Electric. Last, the Liberals called for the purchase of 35 to 40 megawatts of nuclear power from the Point Lepreau station.

The Liberals promised a two per cent reduction in interest rates on mortgages, both new and renewable, and a lower rate on working capital loans to all businesses and industries. In addition they would establish an assistance program by which 50 per cent of labour costs would be mortgageable for up to ten years at six per cent on new construction and renovation.

Other proposals included low interest loans for farmers and fishermen, marketing assistance for the fishing industry, creation of a wood energy industry, a new forestry management program, drug subsidies for senior citizens, expansion of the political rights of civil servants, and conflict of interest laws governing cabinet ministers. Ghiz criticized the government for failing to deal with rising unemployment and said that more jobs would result from Liberal interest rate policies, particularly in the construction industry.

The Conservative response was that these "rash promises" would cost the taxpayers \$30 million. Ghiz claimed that the total was \$8 million, and accused the Tories of "... outright misinterpretation and cold, calculated deception." He maintained that the interest rate subsidies would cost very little because the government's higher credit rating permitted it to borrow at about two per cent less than the average citizen which would be passed on to the public.

Furthermore, he said, the money for the new programs would be found in the existing budget by rearranging priorities. Highway paving, a long-standing partisan issue in P.E.I. was cited as an appropriate target for cost cutting, provoking a vigorous defence of the government's record from Lee and charges that the Liberals would "sell out" the farmers who were benefitting from new roads.

The outcome of the election was no surprise to most observers; the Conservative government was returned with 21 seats, while the Liberals held fast with 11. Ghiz managed a narrow victory in his own riding over Barry Clark, the popular Minister of Tourism, Industry and Energy in the Lee government who was the only minister to be defeated. The NDP captured less than one per cent of the popular vote.

Table 2:3
Results of the 1982 P.E.I. Election

	Standings at Dissolution	Election 1982	% Popular Vote 1982	
			Assemblymen	Councillors
Conservatives	21	21	52.6	51.7
Liberals	10	11	44.2	44.8
NDP	—	—	—	—
Vacant	1	—		

NEW BRUNSWICK

Two days after the announcement of the P.E.I. election, Premier Richard Hatfield told reporters that New Brunswickers would go to the polls on October 12. The call came just at the end of the Conservatives' fourth year in office, and was no surprise to the Liberals and the NDP.

There had been rumours of an election the previous spring, but Tory strategists apparently had been reluctant to take on Liberal leader Doug

Young so soon after his victory at the February leadership convention. The mood of the electorate was uncertain, and there was concern that the poor state of the economy would produce an anti-government backlash. All provincial governments had been taking pains to lay the blame at Ottawa's door, but whether the economic arguments would be acceptable to voters was not clear. Hatfield had been trying to distance himself from Prime Minister Trudeau and the federal government ever since the conclusion of the constitutional talks the year before, but it was unclear whether he had succeeded in severing that link in the eyes of the public.

By summer, however, Ottawa had provided the premier with the opportunity to show people where he stood; the Department of National Defence announced plans to close down CFB Chatham by 1984. This would mean a loss of 1500 jobs for the Miramichi region in the north of the province where the unemployment rate was already estimated at 40 to 50 per cent. All parties objected strenuously to the move.

Of the four parties contesting the election, only the Parti Acadien (PA) chose not to make jobs the foremost issue. Nor did the party concentrate on the establishment of a separate Acadie. According to leader Louise Blanchard, this was a long run goal, to be achieved over a 10 to 20 year period. Instead, the party emphasized the need for decentralization of government operations, particularly in fisheries, forestry and agriculture to the northwest, northeast and southeast of the province. Miss Blanchard also called for parallel services in both French and English. When challenged about the cost, she argued that "it would be less expensive than bilingualism."

The PA had yet to win a seat in the legislature, though in 1978 it had managed to triple its 1974 share of the popular vote to 3.5 per cent. But the other three parties were concerned about offsetting the appeal of the Parti Acadien. Hatfield hoped that his efforts on behalf of francophone Canadians during the constitutional negotiations and his government's entrenchment of French as an official language in New Brunswick would undercut the PA in its bid for increased support and perhaps even entice some Acadiens into the Tory camp. NDP leader George Little, whose party was also looking for its first seat, hoped that the high unemployment in the north would generate support for his candidates and that anti-government votes would not be siphoned off to the other "third" party. Doug Young, whose Liberals traditionally did very well in the francophone north, was determined to resist the PA's attempts to cut even further into his primary base of support.

The Conservatives, the Liberals and the NDP adopted somewhat similar campaign strategies, spending the first three or four weeks addressing the party faithful at nomination meetings, praising or excoriating the government's performance in office, and slowly unveiling their own

proposals. The Tories saved the release of their full platform, complete with cost estimates, for the last week of September, while the Liberals and the NDP held off until the week before the election.

Political observers agreed that the campaign was characterized chiefly by the number of promises competing for the voters' favour. Unlike the election in P.E.I. where the government stoutly maintained that no new programs could be afforded, New Brunswick Conservatives countered the Liberals' shopping list (estimated at \$80 million) with one of their own priced in the neighbourhood of \$70 million (over a period of three years). The NDP checked in with a final figure of \$67 million.

Mr. Hatfield identified jobs as the top priority for his party, predicting that 35,000 would be created over four years in forestry, agriculture and fishing. He pointed to several companies still operating because of government aid, including SMI Industries of Bathurst (\$4 million) and Heath Steele Mines of Newcastle (\$3 million). A special job protection unit would be created to help businesses or jobs threatened with extinction. More courses in computer science and technology would be offered, and a new community college would be built to serve as a training centre for advanced technology. There would be employment spinoffs from a variety of assistance programs for small business and for the housing, fishing and high-tech industries, as well as from the \$400 million plus to be spent on highways, secondary roads and bridges over four years.

On energy, Hatfield argued that New Brunswick's rates were the lowest in the Maritimes and, while admitting that they would rise in the future, pledged to keep them below the rate of increase of the cost of living for the next four years. New Brunswickers were also expected to benefit from the second stage of the Point Lepreau generating plant when it came on stream, and its construction would mean 8000 jobs over four years.

Mortgage assistance for first-time homebuyers to keep their rates two per cent below the prevailing level for up to two years, as well as a mortgage insurance program (Homeguard), would be implemented. Rent review (but not control) at six and five per cent for 1982 and 1983 would be put into effect, and rental assistance provided for disabled persons of all ages; the minimum age of senior citizens qualifying for rental assistance would be lowered to sixty. As well there would be a \$40 per month increase per person (\$60 per couple) in Guaranteed Income Supplement (GIS) payments for the elderly, and the premier promised to consider some sort of transportation assistance for them.

Other proposals included the introduction of universal kindergarten in September 1984, a tripling of the budget for the Youth, Recreation and Cultural Resources department, and incentives to encourage downtown

development. Perhaps as a response to the Parti Acadien and its potential supporters, he told students at the Université de Moncton that the government planned to revise all of the administrative districts in the province to give local people a greater say in government policies and services to reflect their various cultural and linguistic backgrounds.

The Liberals promised they would create 20,000 jobs with a number of measures designed to stimulate the economy, and by working with Ottawa to use UIC funds for wages for new jobs. They also said they would establish a Premier's Council of Economic Development to seek advice from experienced businessmen, and would set up a \$20 million small business development fund. A mortgage relief program would generate 5500 new home purchases, with spinoffs for the manufacturing, building supply and transportation industries. Mr. Young was highly critical of Ottawa's decision to close the base at Chatham, and suggested that he would be able to convince the federal government to take better care of New Brunswick's interests. Late in the campaign, federal Defence Minister Gilles Lamontagne announced that the Payroll Services Directorate of the Defence department would be moved to the base, creating 300 to 400 jobs.

A key plank in the Liberal platform was government wage restraint. They promised to follow the federal "6 and 5" program although it would be more flexible and voluntary. Young apparently felt that government employees would opt for wage restraint rather than job cutbacks. He also pledged not to raise taxes during his first term of office and promised to eliminate property taxes for senior citizens.

A Liberal government would continue subsidies to hold the Farm Adjustment Board's loan rates at 12 per cent, even if Ottawa dropped out; there would also be a \$5 million agricultural development fund. The lumber companies' authority over private usage of the forests would be ended, and a new community college would be built on the Miramichi River, emphasizing training for trades in the mining and forestry industries.

Young attacked the New Brunswick Electric Power Commission for excessive profits which he claimed amounted to \$166 million over three years; his first move would be to drop the \$7 per month service charge on residential power bills, making it retroactive to April 1 and providing New Brunswickers with a \$70 rebate. He was guarded about the future of the Point Lepreau II nuclear facility, insisting that safety be guaranteed and that all funding come from outside the province. He also promised to terminate the controversial spruce budworm spray program over the next four years, and set up a Forest Protection Research Fund at \$2 million per year to develop new ways of dealing with the problem.

Additional commitments included rent controls at 6 and 5 per cent, introduction of kindergarten beginning in September 1983, creation of a

Youth Advisory Board, expansion of medicare and prescription drug services for senior citizens, and abolition of the New Brunswick Highway Patrol.

The NDP argued that the province needed a manufacturing base and sound economic planning rather than ad hoc responses to financial emergencies. They proposed a Miramichi Action Plan in which the government would undertake a \$300 million joint venture to establish a pulp and paper mill in the region, and provide incentives for a zinc smelter as well as a methanol plant which would turn a profit on wood wastes. The use of peat moss for energy would be encouraged, a wharf and warehouse would be built at Chatham harbour, \$4 million would be spent on labour intensive forest management programs, and a community college would be constructed.

A Department of Energy would be created and development of new sources encouraged, including hydro, peat moss and wood for methanol; a two way natural gas pipeline would be built as well. Energy conservation would be pursued through government incentives and renovations to public buildings. Little denounced Point Lepreau II as "megalunacy," and criticized the government for ignoring the problem of permanent waste disposal. The Power Commission would be forced to roll back prices and appear before a regulatory agency to justify future increases.

The NDP promised special assistance for the elderly, a children's dental program, extension of tenants' and workers' rights, increases in student aid and a one per cent reduction in mortgage interest for those with incomes below \$30,000 per year.

Besides promises, the campaign was characterized by personal attacks and mud-slinging. Hatfield chose to emphasize "leadership" as a key issue, and made repeated references to Young's personal ambition and his reported role in forcing his predecessor's resignation. He also suggested that the Liberal leader was inexperienced and irresponsible. Young argued that leadership was not an issue, but pointed to the premier's private aircraft and extensive travel, as well as to past instances of corruption in his government. He accused the premier of "play-acting" by being Prime Minister Trudeau's ally in Ottawa and his enemy in New Brunswick.

Both leaders criticized Ottawa for its policies, Hatfield hammering DREE and FIRA and Young complaining about the economy. When the federal government announced the new plans for CFB Chatham, both tried to take credit for it, though the premier suggested it was not enough. Young criticized the Tories for their large deficit, while Hatfield contended that the Liberals' promises would actually cost \$203 million, and over four years, \$800 million. All three leaders admitted that many of their proposals were short term in nature, intended to weather the recession until the economy turned around.

The Liberals were confident of victory, pointing out that polls taken in mid-September indicated a Liberal majority with at least 34 of the 58 seats in the legislature; 30 per cent of respondents had been undecided. Hatfield said he did not believe in polls and did not use them.

The result was something of a surprise — 39 seats for the Conservatives, 18 for the Liberals, 1 for the NDP (its first), and none for the PA. Significantly, the Tories did well in the francophone north, despite the fact that Mr. Young was bilingual, suggesting that Hatfield's efforts had not been in vain. The PA's share of the popular vote dropped from four per cent while the NDP's climbed from six per cent to 10, stirring hopes for better things to come down the road.

Table 2:4
Results of the 1982 New Brunswick Election

	Standings at Dissolution	Election 1982	% Popular Vote 1978	% Popular Vote 1982
Conservatives	30	39	43.96	47.1
Liberals	28	18	43.93	41.2
NDP	—	1	6.4	10.1
Parti Acadien		—	3.5	1

ALBERTA

On October 5, Premier Peter Lougheed announced the final election of 1982 — Albertans would go to the polls on November 2. The province had been in a state of political turmoil since the stunning by-election victory of the Western Canada Concept's Gordon Kesler in Olds-Didsbury on February 17. The seat had been solidly Socred for decades; former leader Bob Clark had held it for the previous twenty-one years, and had campaigned actively on behalf of his successor, but Kesler had won a commanding 42 per cent of the vote.

The WCC win was attributed by politicians and pundits alike to a feeling of hostility towards the federal government, much of which had spilled over onto the provincial government, particularly in rural areas. The constitutional agreement and the energy pricing deal between Alberta and Ottawa had rubbed many people the wrong way. Social Credit leader Rod Sykes maintained that "People are fed up with the fact that (Mr. Lougheed) is clearly in bed with Mr. Trudeau." Kesler had also criticized the premier for taking away Albertans' property rights in the constitutional

settlement, for intervening in various sectors of the economy, and in particular for "destroying" the oil industry.

The event was obviously of great concern to Alberta Conservatives, and their worries were heightened considerably two months later with the defeat of the Blakeney government in Saskatchewan, the province with the healthiest economy in Canada. It suggested that a trend might have been developing in the west -- the Manitoba government had fallen in November 1981, and then the Saskatchewan government was defeated only five months later. Premier Lougheed apparently was advised to call a snap election and head off any protest vote before the WCC could get fully organized, but he held off.

In an interview at the end of May, the premier identified what he felt were the reasons for the unrest. At the centre was the economic downturn; it had been sudden and Albertans had become accustomed to prosperity. The existence of the \$11.7 billion Heritage Trust Fund upset people who felt the money should be channelled into current spending in a time of recession. Finally, the Conservatives had been in power for over ten years. For the premier, it was necessary to "spend more time than in the past, myself and the MLAs, in a dialogue with our citizens. We have to be more responsive to them." He also said he would be doing less travelling outside the province. Later in the year, when the party was gearing up for the election, Tory MLAs were asked to stay close to home.

Meanwhile, the WCC had been beset by internal problems; there was a great deal of infighting over the spring and summer over who would lead the party and how much prominence would be given to separation in its platform. At an August convention, Kesler was elected leader, an apparent victory for the "moderates," as the goal became "independence" only as a last resort and after a referendum had taken place. "Separatism" was downplayed and policy issues emphasized.

The election was noteworthy for the number of parties running, though only the PCs, the NDP and the WCC offered full slates. The Conservatives made a variety of promises, including pensions for widows and widowers between the ages of 55 and 64, senior citizens' home improvement grants, interest rate subsidies, reductions in oil and gas royalties, formation of a venture capital corporation, a winter highway construction program, and renter credits. They also were committed to "dramatic changes" in the use of the Heritage Savings Trust Fund -- its income of about \$1 billion per year would go to the mortgage assistance program already in place, and the amount channelled into the fund from royalties on non-renewable resources would be lowered from 30 per cent to 15 per cent. All of this was part of the government's "economic resurgence program" designed to respond to issues which their polls had indicated were of concern to citizens.

The NDP had high hopes going into the election, and hoped to establish itself as the official opposition. A party poll in mid-October had suggested that the Tories were losing support in and around Edmonton, and that the number of undecided was a substantial 39 per cent. The party also expected to do well in the north, where it had finished close to the winners in several ridings in 1979.

For NDP leader Grant Notley, the big issues were "the sad state of democracy" in the province and the condition of the economy. The size of the government's majority in the legislature (73 out of 79 seats) had weakened opposition and made government a "closed-door" affair. Notley proposed setting up a government agency to dispense 10 per cent mortgages and small business loans, aiding the development of a number of small heavy oil plants around Cold Lake, and constructing a heavy oil upgrading plant, with possible assistance from the private sector and/or the government of Saskatchewan. In addition, performance guarantees would be required in order for companies to qualify for tax concessions, price incentives for improved oil recovery programs would be increased and the oil royalty and the natural gas marketing structures would be simplified to benefit the small producer. A highway improvement program would be initiated, light rapid transit (LRT) systems would be introduced in Edmonton and Calgary, and gas and electricity costs would be equalized across the province. Notley also criticized the government for mismanaging the economy and mishandling social services and health care.

The WCC, on the other hand, offered a right wing alternative. Its platform advocated legislation requiring the government to balance its budget, elimination of the capital gains tax, reduction of taxes on agricultural fuels and fertilizer and home heating fuel, cuts designed to decrease the size of the civil service, raising of pension supplements to the elderly by \$65 to \$150 per month, and entrenchment of property rights in the constitution. The party also had its own mortgage assistance scheme to counter those of the Conservatives and the NDP.

Other parties included the just-formed Provincial Rights Association, headed by former Socreds Ray Speaker and Walter Buck, and by Howard Thompson, who had lost the battle for the leadership of the WCC to Mr. Kesler by 34 votes. This was an obvious threat to the WCC since they would be appealing to the same constituency. Also on the right were the last remnants of the withering Social Credit, and Thomas Sindlinger's new Alberta Reform Movement, which was campaigning primarily on changes in the use of the Heritage Fund as well as more open and accountable government. The Liberals ran with Calgary oilman Nick Taylor at their head.

The election saw a turnout of over 80 per cent, more than 20 per cent above the 1979 mark. Besides the WCC, one of the uncertain elements in

the race was the impact of many recent arrivals in the province. It seems evident that they did not help the small parties on the right. The Conservatives were returned with 62 per cent of the vote and 75 seats in the legislature, while the NDP trailed in second place with 18 per cent, up 3 per cent but only two seats. Nevertheless it did gain the status of official opposition. (Mr. Speaker and Mr. Buck were elected as independents.) The Social Credit lost its three seats and its share of the popular vote fell below one per cent.

As for the WCC, it drew 11 per cent of the vote and lost the only seat it had. Mr. Kesler had decided to run in his home riding of Highwood rather than in Olds-Didsbury; several analysts suggested that this was a serious error and undermined his credibility, since he had promised in February to move to Olds-Didsbury if elected. The leader charged that Albertans had been "bought with their own money" and complained of unfair treatment by the media. It appears more likely however, that the WCC's internal wrangling and Mr. Lougheed's skilful leadership, combined with a feeling among the electorate that the WCC was fine for registering a protest vote but much less attractive as a government, were greater factors in the final outcome.

Table 2:5
Results of the 1982 Alberta Election

	Standings at Dissolution	Election 1982	% Popular Vote 1979	% Popular Vote 1982
Conservatives	73	75	57.4	62.3
Social Credit	3	--	18.8	--
NDP	1	2	15.7	18.7
WCC	1	--	--	11.8
Independent	1	2	--	3.9
Liberals	--	--	6.2	1.8

3 THE CONSTITUTION

The arduous path to a revised constitution has been chronicled in earlier versions of the Year in Review. In 1982, with the proclamation of the Constitution Act by Queen Elizabeth II on April 17 on Parliament Hill, Canada finally possessed a domestic amending formula and gained an entrenched Charter of Rights and Freedoms.

But challenges to Canada's constitutional structure still exist. After patriation, Québec tried to affirm its constitutional distinctiveness but its quest for a veto was halted when the Supreme Court decided in December that there was no constitutional convention requiring Québec's consent to amendment of the constitution. Québec then sought an expanded opting-out provision which would accord financial compensation in all cases. However, the other governments were reluctant to modify the amending formula after so many years of discord. The "Québec agenda" remains unresolved and constitutes a serious challenge to the structure and existence of Canadian federalism.

The status of natives in Canada emerged rapidly as a prominent constitutional issue which will not be settled quickly. With the recognition and affirmation of aboriginal rights in the patriation resolution, and the provision for a constitutional conference to discuss those rights, native groups and their concerns gained a rapid ascendancy in the constitutional process.

With patriation and a domestic amending formula, the urgency of constitutional change may have dissipated. The structure of the amending formula contemplates a much slower, particularistic process as resolutions for changes to the constitution wind their ways through the legislatures of the country. The urgency of reallocating powers between federal and provincial governments on a large scale appears to have been put aside for the moment. However, central institutions may be a likely candidate for reform, especially once the Macdonald Royal Commission on the economy reports. Changes to the Senate and the electoral system are also advocated by governments and the public as a way of ensuring adequate representation of regions and provinces at the centre.

Although the heady pace of constitutional negotiations has subsided, changes to the Constitution Act, 1982 may be inevitable as governments and courts feel their way with the Canadian Charter of Rights and Freedoms, as northerners chafe at their "colonial status" and long for provincehood, as provinces seek ways of enhancing their status vis-à-vis the federal government and Québec ponders its future in the Canadian federation.

THE PATRIATION PROCESS

As the patriation resolution went to Westminster in December 1981, the British Parliament was relieved that the Supreme Court's yardstick of "substantial consent" had been met. The ongoing objections of Québec and Indian groups were not considered sufficient cause to delay passage of the Canada Act. The federal government urged quick consideration of the bill so that the Queen could come to Canada and proclaim the Constitution Act, 1982.

Continuing Challenges: Native Groups

The "London lobby" was part of Indian strategy in the patriation process from the beginning when the resolution was tabled in Parliament in October 1980. Indian groups sent briefs to the Kershaw Committee, established an "embassy" in London and lobbied British parliamentarians and journalists. As well, appearances were made at the United Nations and international human rights forums.

As the patriation resolution reached London, attention was directed to three legal actions initiated by Indians as a way of delaying or amending the patriation process. The legal arguments differed in the cases, especially on the extent of Indian sovereignty and the relationship of Indians to the Crown in right of Canada.

The Indian Association of Alberta, joined later by the Nova Scotia and New Brunswick Indian Associations, argued that responsibility for Indian treaties was still held by the British Crown and had not devolved to the Canadian government.

Second reading of the Canada Act was delayed as the Indian Associations argued their case in the Court of Appeal in December. On January 28, 1982, Lord Denning, Master of the Rolls, handed down a judgment on *The Queen v. The Secretary of State for Foreign and Commonwealth Affairs* which dismissed the natives' argument; the court unanimously ruled that the Crown in right of Canada now held the responsibility for treaty obligations. The concept of the indivisibility of the Crown had changed in the twentieth century, said Lord Denning. He pointed out that obligations binding on the British Crown had divided and some transferred to the Crown in right of Canada. Thus, the Canadian courts were the

suitable place for litigation. But Lord Denning offered some moral support for the Indians' position. In his view,

the discussion in this case will strengthen their hand so as to enable them to withstand any onslaught. They will be able to say that their rights and freedoms have been guaranteed to them by the Crown... No Parliament should do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada "so long as the sun rises and the river flows." That promise must never be broken. (quoted in Norman K. Zlotkin, *Unfinished Business: Aboriginal Peoples and the 1983 Constitutional Conference*, Kingston: Institute of Intergovernmental Relations, 1983, p. 35)

Leave to appeal to the House of Lords was denied.

The Union of British Columbia Chiefs, the Four Nations Confederacy of Manitoba and the Grand Council Treaty 9 of Ontario argued in another action that the British Parliament lacked the power to amend the Canadian constitution without the consent of three sovereign entities -- the federal Parliament, the provincial legislatures and the Indian nations. This case was heard together with the action launched by Saskatchewan Indians who argued that treaties concluded by Indians with the British Crown were international treaties and responsibility for them could not be transferred to Canada.

On May 7, these two cases were dismissed by Vice-Chancellor Megarry of the High Court of Justice, Chancery Division. The status of treaties had been settled in the January 28 decision, he declared, thus disposing of the Saskatchewan argument. He also rejected the argument that the British Parliament would be acting unconstitutionally in passing the Canada Act. He pointed out that in Britain, sovereignty is not divided as in a federal system. Therefore, as the sole repository of sovereignty, Parliament cannot act unconstitutionally. (See Zlotkin, *op. cit.* for citations.) Leave to appeal was also denied.

Although the Indians did not obtain judicial support for their arguments, they did succeed in delaying second reading of the Canada Act. Furthermore, most of the debate in the British Parliament was devoted to the concerns of native groups as they lobbied Members of Parliament and the House of Lords to amend the act in favour of their concerns.

Continuing Challenges: Québec in Britain

As the British Parliament considered the Canada Act, Québec tried to convince the British government, MPs and members of the House of Lords that Québec's opposition to the bill raised a number of serious

constitutional, legal and political questions which warranted delaying passage of the bill.

On December 19, 1981, Premier Lévesque wrote to Prime Minister Thatcher outlining Québec's case, emphasizing that the province's objections were "not based on technicalities, but touch rather the general thrust of the resolution which aims at reducing the role of Québec within the Canadian federation while denying Québec the means to defend the mother tongue and culture of its French population and to promote the interests of all its citizens" (Premier Lévesque to Prime Minister Thatcher, December 19, 1981, p. 4).

Lévesque summarized Québec's specific objections to the contents of the patriation resolution. The amending formula was seen as a dangerous threat to Québec's existing powers because the lack of comprehensive financial compensation dictated either double taxation or the surrender of jurisdiction to Ottawa to escape this burden. Second, Lévesque argued that the s. 23 minority language educational rights infringed on exclusive provincial jurisdiction over education guaranteed in s. 93 of the then BNA Act. Finally, the "ill-defined" provision for mobility rights would seriously constrain Québec's ability to "quite legitimately discriminate in its legislation to preserve and enhance its integrity as a culturally different society operating within the context of the dominant Anglophone culture of the continent" (ibid.).

The premier also outlined the steps which the Québec government and the National Assembly had taken to protest patriation. The appeal to the courts which followed an unsuccessful attempt by the government to exercise a veto over the amendment plan was evidence that "the Government of Québec is determined to use all legitimate and democratic means that are available to safeguard rights which the Parliament of the United Kingdom and the Judicial Committee of the Privy Council have always scrupulously respected in the past" (ibid., p. 7). Lévesque suggested that consideration of the Canada Act be delayed until the Canadian courts had definitely ruled on the existence of a veto for Québec:

We respectfully submit, Madam Prime Minister, that, at best, the urgency of patriation is artificial. We respectfully suggest that any precipitous action on the part of the Parliament of the United Kingdom would be widely interpreted here as an indication that in the views of the British Parliament, the historic assumption of Canada's cultural and linguistic duality is unfounded and that Québec, as the homeland of the French-speaking people of Canada, can be deprived with impunity of its rightful place within the federation. (ibid., p. 8)

In February, the agent-general for the Québec delegation in London, Gilles Loisel, circulated a 14 page memorandum to members of the House of Commons and the House of Lords which set forth Québec's argument that the Canadian resolution was conventionally unconstitutional and that Westminster should delay passage of the bill. The memorandum argued that the resolution struck at the compact between French-speaking and English-speaking Canada which had been formed in 1867 and a denial of that compact in the resolution was inconsistent with the foundations of the federation. The conclusion stressed that, while the resolution reflected a numerical majority of the provinces, "no matter how large this majority may be -- it cannot satisfy the test for 'substantial consent' suggested by the Supreme Court when the representative government of one of the two founding peoples of Canada has withheld its consent" ("The Role of the United Kingdom Parliament in Relation to the British North America Act", Second Memorandum by the Government of Québec, February 1982, p. 12).

However, Québec's concerns did not generate as much support as the appeals of Indian groups. The fact that Québec's legal action was taking place in Canada, the fact that there was no question of the British Parliament's holding any residual responsibility for Québec, and perhaps the fact that Québec's claims about cultural and linguistic distinctiveness sat uneasily with members who faced similar challenges from regional groups in the United Kingdom, contrived to dilute Québec's appeal in the British Parliament.

Westminster Acts

Much of the debate which took place in the British Parliament in the first few months of 1982 took its cue from the third report of the House of Commons Foreign Affairs Committee under the chairmanship of Sir Anthony Kershaw. Since the Committee's two previous reports, which argued that the British Parliament need not automatically respond to any request for constitutional amendment from the Canadian Parliament if it felt sufficient provincial support was lacking, the situation facing Westminster had changed. The November 5 accord had met the Supreme Court's requirement of "substantial consent."

The Committee examined the remaining challenges to the passage of the Canada Act from Québec and Indians. In reference to Québec, the Committee noted:

It is regrettable that so large and so distinctive a Province as Québec, a founding Province, dissents from the present proposals. That dissent may have significance for the welfare of Canada. However, that is a matter of political judgement and not something which should concern the UK Government and

Parliament in dealing with a constitutionally proper request from an independent and sovereign country. (House of Commons, First Report from the Foreign Affairs Committee 1981-82, Third Report on the British North America Act: The Role of Parliament, printed December 22, 1981, p. v)

The Committee found even less reason to object to the Canada Act on the basis of objections raised by Indian groups. They accepted the judgment of Lord Denning that the British Parliament no longer held any responsibility for Indians; furthermore, they considered the provisions for discussions of aboriginal rights in the Constitution Act, 1982 sufficient protection.

In conclusion, the Committee felt that Members of Parliament would welcome the opportunity to discharge itself of "anomalous" powers which it had been holding for Canada's convenience for over 50 years.

First reading of the Canada Act took place on December 22, 1981. Some procedural issues were raised before second reading, the most important of which was whether amendments could be made. Some feared that amendments would upset the delicate balance of the accord reached in Canada in November. Others felt that British parliamentarians were well within their rights and, in some ways, obliged to amend the Canada Act to make it more satisfactory. The Speaker ruled that amendments could be presented. This placed strong pressure on the governing Conservatives to defeat any amendments and ensure that the spirit of the Canadian request was respected.

Second reading, held on February 17, was over in less than seven hours. The bill was supported by the government and major opposition parties. Spokesmen for both the Conservative and Labour parties stressed the duty of the British Parliament to accede to the Canadian request. Humphrey Atkins, Lord Privy Seal, gave tribute to Canada as a "shining example of freedom and democracy" and stressed the incongruity of Canada's request because the country had been "in every real sense" independent for a long time. He expressed "regret" that Québec had not agreed with the proposal but considered that the Supreme Court's yardstick of "substantial consent" had been met. Atkins noted that if the British Parliament were to wait until all litigation was exhausted, "we might easily wait for a matter of years. I do not believe that the request made to us by the people of Canada should be deferred that long."

Denis Healey, chief Labour spokesman for foreign and Commonwealth affairs, had some reservations about the bill. It failed to resolve Québec's concerns. He felt the timing was rushed. Healey advocated delay until all judicial routes were expended. "After 50 years, a few more weeks would not have been of importance," he declared. The leaders of the Labour

Party felt the British Parliament should not interfere with the bill by amending it, saying that could cause a major constitutional rift between Canada and Britain. However, Healey felt it was right "to ventilate" the concerns of Québec and natives "in the hope that the authorities in Canada will take account of the views."

Other MPs questioned the wisdom of proceeding until all legal routes had been exhausted while a small number of MPs denounced the bill because it denied or dealt inadequately with the concerns of natives and Québec.

The Canada Act was approved in principle by a margin of 334-44. It was opposed by 24 Conservatives, 15 Labour members, the Ulster Unionists and the Scottish National Party on several grounds — timing, the concerns of natives and the absence of Québec's consent. The bill was considered by the Committee of the Whole on February 23. About 60 amendments were proposed, largely dealing with native rights. Only one amendment tabled dealt with Québec and it was not debated. A single amendment to extend the entrenchment of native rights was put to a vote and defeated. The act passed third reading by a vote of 177-33 on March 8; attendance in the House was considerably diminished from second reading.

The House of Lords considered the Canada Act during the second and third weeks of March. The peers echoed many of the same comments made by MPs, but appeared less willing to tolerate long speeches. After third reading on March 25, the bill was passed, and royal assent was given on March 29.

The debate in the British Parliament underscored the desire of the government and parliamentarians to rid themselves of the "incongruous and anachronistic" link between Canada and Britain which saw Britain enact changes to Canada's constitution. The concerns of Indian groups were embraced more readily at Westminster than Québec's misgivings about the bill. Although many parliamentarians felt that bill should be delayed until all litigation was exhausted, they seemed to be referring to the cases launched by Indian groups in Britain. Québec's demand for legal recognition of its constitutional veto was being heard in Canada and did not get underway until March 15.

Proclamation

Section 58 of the Constitution Act, 1982 provided that it would come into force when proclaimed by the Queen or the Governor-General. It was arranged that the Queen would visit Canada to proclaim the new constitution on April 17.

As the day of proclamation approached, the federal government launched a \$7 million publicity campaign to tell Canadians about their new constitution. The Canadian Unity Information Office (CUIO) directed the

two-pronged campaign. Slightly over half of the allotted budget was devoted to publications, including copies of the Constitution Act, 1982, a guide to the changes made to the constitution and souvenir posters of the Charter of Rights and Freedoms printed on parchment-like paper. Three vans were sent across the country with promotional material and exhibits.

More controversial was the \$3 million spent on radio, television and newspaper ads, bulletin boards and direct mailings. The theme of the campaign was "Today we can truly say, the future belongs to us." Because the process and substance of the changes were complicated and legalistic, the campaign stressed simpler, shorter messages and encouraged people to write for more information. David Peacock, the architect of the campaign at Vickers and Benson advertising agency, noted that the media campaign was based on an historical perspective: "What we've done in television and radio is what you might call a kaleidoscope of Canadian history, the last 115 years of Canadian history, and we've condensed it into 60 seconds" (CBC Radio, "Sunday Morning," transcript, April 11, 1982).

The federal opposition parties and the Parti Québécois objected vigorously to this aspect of the campaign. Perrin Beatty, a Progressive Conservative MP who scrutinized government advertising expenditures, felt money spent to inform Canadians about the nature of the changes was acceptable but objected to attempts to "try to whip up a fervour for the fact of constitutional change, rather than for its substance" (CBC Radio "The House," transcript, April 17, 1982). Svend Robinson, the NDP justice critic, was afraid that the "selling of the constitution" might stir up negative emotions, especially in Québec. An executive member of the PQ, Henry Milner, found the expenditures "unsavoury" in a time of high unemployment. In his words:

I think for the rest of Canada the constitution is sort of a yawn... But, in Québec, the interest that exists is negative. It's a feeling that it's something we've been left out of ... and now we find ourselves with our tax money when we desperately need the money to use for job creation... being used to celebrate this party. (CFCF TV, "Pulse News," April 12, 1982)

In contrast, the PQ planned a simple protest march in Montreal on the day of proclamation to highlight its disapproval.

The Queen arrived in Ottawa on April 15 for a four day stay which included a gala cultural performance and a dinner for young Canadian "achievers." The proclamation ceremony began at 11:00 a.m. on Saturday, April 17 on Parliament Hill. Prime Minister Trudeau's opening speech dealt largely with Québec. He noted that many people in Québec had a strong attachment to Canada as revealed by the "No" victory in the May

1980 referendum. Trudeau characterized these people as the "silent majority" which "by definition does not make a lot of noise. It is content to make history." After signing the elaborately scripted proclamation, the Queen addressed the crowd. She expressed "regret" that the government of Québec had chosen not to participate in the event but stressed that:

no law by itself can create or maintain a free society, or a united society, or a fair society. It is the commitment of the people that alone can transform a printed constitution or charter into a living and dynamic reality. (quoted in Toronto Sunday Star, April 18, 1982, p. C2)

As one foreign journalist noted, the turbulent weather that prevailed during the Queen's speech "seemed to symbolize Canada's political division. There was sunshine one minute, a sharp thunderstorm the next."

To mark the occasion, nine premiers and NDP Leader Ed Broadbent were sworn in as Privy Councillors. Premier Lévesque refused the invitation.

In Québec, a small demonstration was held in Hull on the evening before proclamation; Vice-Premier and Minister of Intergovernmental Affairs Jacques-Yvan Morin declared at a press conference that "la crise de l'Etat du Canada commence avec la promulgation de la constitution" as the country would polarize and carry Québec toward independence (Le Droit, April 17, 1982, p. 17). On Saturday, a crowd of approximately 20,000 in a "frugal and dignified" demonstration marched through the streets of Montreal. Premier Lévesque led the crowd, flanked by members of his cabinet and union leader Louis Laberge, and addressed the marchers at Lafontaine Park. In a brief speech, Lévesque proclaimed the "Marche du Québec" as a "cry of refusal" against "this horror of a constitution made without us, against us, behind our backs." He declared that the day marked:

une nouvelle page d'histoire du Québec, un nouveau chapitre. Ce n'est plus une histoire de colonisé, c'est le commencement de la fin. Aujourd'hui, ici même, nous posons la première brique de notre véritable histoire. C'est un peuple qui décide de se prendre en main la conclusion de ce chapitre, nous l'écrivons tous ensemble, le jour où nous deviendrons une véritable patrie, une véritable pays. (La Presse, April 19, 1982, p. A4)

To mark their opposition to patriation, the Société Saint-Jean-Baptiste de Montréal, la Confédération des Syndicats Nationaux, la Fédération des Travailleurs du Québec and La Centrale de l'Enseignement du Québec placed newspaper ads claiming "Cette constitution n'est pas la nôtre. Elle ne sera jamais la nôtre."

Québécois were not the only group to mark their dissatisfaction with patriation. Status Indians across Canada joined in a day of mourning declared by the National Indian Brotherhood. The Northwest Territories also refused to celebrate patriation as northerners felt their drive to provincial status was impeded by the amending formula or that the territory might be absorbed into existing provinces.

QUEBEC AND CONFEDERATION

Throughout 1982, the government of Québec fought the "iron collar" of federalism in many ways. The Parti Québécois pulled away from relations with other provincial governments and pursued a closer relationship with the United States. In several policy areas -- communications, post-secondary education, economic development -- the Québec government opposed the "centralizing" thrusts of the federal government. The constitution, however, was the foremost challenge to the PQ government.

Québec's response to patriation took two forms. First it sought a judicial affirmation of a veto over constitutional amendment and invoked the non obstante clause (s.33) of the Charter of Rights and Freedoms for all Québec legislation. Second, the Parti Québécois discussed a longer term program to fight Ottawa, including a plan to run candidates in federal elections, and to emphasize sovereignty independently of economic association in the next election.

Québec and the Charter

Two days prior to proclamation of the revised Canadian constitution by Queen Elizabeth II, Premier Lévesque made a special appearance on television, using colour slides and graphics to underline his message.

He began by noting that Québec's absence at the proclamation ceremony was an indication of the "nation's systematic isolation" in the Canadian federal arrangement. The premier denounced patriation as a guise for the centralizing intentions of the federal government. The old BNA Act and the new Constitution Act were, in his words, not only "soporific" and "lawyer like" but "pernicious" in their effect on Québec.

Lévesque outlined four reasons for Québec's objection to the Constitution Act, 1982. Three of the arguments had been reiterated since November 1981. First, the Charter plunged the province into "cultural insecurity" because it opened up access to English language schools in Québec. Second, the amending formula rendered Québec unable to resist "une centralisation forcée" because it could be overruled by seven other provinces. Furthermore, the lack of comprehensive financial compensation if Québec opted out of amendments would lead to double taxation. Third,

he argued that the mobility rights clause could thwart the province's collective development. He cited a ruling from the federal Minister of Fisheries and Oceans preventing a Québécois only crew on a lobster boat which was financed largely by the provincial government. The fourth objection was new: henceforth all Québec legislation could be contested in court and ultimately subject to the decisions of the Supreme Court where a majority of judges was trained in a legal system which did not apply in Québec.

Lévesque gave little indication of precise measures to oppose the Constitution Act, except to say that when the National Assembly was recalled at the end of April, legislation would be introduced to limit the "damage" to provincial laws.

The premier stressed the need to counter "with all available means" a constitution which was choking modern Québec. He said the Trudeau government and the upper reaches of the anglophone bureaucracy in Ottawa were trying to weaken Québec and make it "une province comme les autres." Citing demographic projections and the centralizing urges of Ottawa, Lévesque declared that the province must soon decide:

à affirmer enfin cette majorité, que, nous sommes ici au Québec et à décider que ce Québec doit nous appartenir... comme un PAYS, comme un VRAI PAYS où on sera vraiment chez nous! (Discours du Premier Ministre, M. René Lévesque lors d'une émission spéciale au réseau TVA, Montréal, le 15 avril 1982, p. 11)

On May 5, Justice Minister Marc-André Bédard tabled Bill 62, An Act respecting the Constitution Act, 1982. There were two parts to the bill. The first section provided that every piece of Québec legislation existing on or after April 17, 1982 would contain an express declaration to the effect that the law would operate "notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982." Thus:

in respect of fundamental freedoms, legal rights and equality rights, the rights and powers of the National Assembly of Québec will be fully preserved and its Acts will be subject only to the Québec Charter of Human Rights and Freedoms. (National Assembly of Québec, 32nd legislature, 3rd session, Bill 62, 1982, p. 2)

The second part of the bill provided that a proclamation under s. 59 (1) of the Constitution Act, 1982, which would allow the provisions for minority language educational rights outlined in s. 23 (1)(a) to apply in the province, would not be involved in Québec without the National Assembly's consent.

Both the Liberal opposition under Claude Ryan and the federal government objected to the omnibus, retrospective character of the legislation. Minister of State Serge Joyal stated that the federal government had assumed that s. 33 would be used for "well defined and well limited" purposes in individual pieces of legislation rather than as a blanket exemption. Liberal leader Claude Ryan found the legislation "vindictive."

The Québec government's refusal to invoke s. 59 (1) threw the conflict between Bill 101 and the Canadian Charter of Rights on minority language education rights into relief. Education Minister Camille Laurin insisted that Bill 101 was "rooted in the most authentic and sacred legitimacy" and no other "legal text" would prevail over it.

While the constitutionality of sections of Bill 101 governing the language of advertising and the professions was upheld, its provisions for minority language education were contested in the courts shortly after the proclamation of the Constitution Act, 1982. The Québec Association of Protestant School Boards, along with several other plaintiffs, asked Chief Superior Court Judge Jules Deschênes for a ruling on whether school boards were obligated to admit children to minority language education who qualified under the Canadian Charter. In his decision, handed down on September 8, Justice Deschênes ruled that the "Québec clause" was rendered inoperative by the "Canada clause" of the Canadian charter. (For a fuller discussion of the case, see Chapter 4.)

Premier Lévesque declared that Deschênes' decision was a blow to Québec's "fundamental" power over education which was already in danger. Québec's exclusive jurisdiction over education was one of the foundations of Confederation. Education Minister Camille Laurin ordered Protestant school boards not to accept new English language students until a final decision was rendered.

Search for a Veto

As the British Parliament debated the Canada Act, the Québec Court of Appeal considered Québec's arguments for recognition of a veto in constitutional amendment. The province argued that a constitutional convention required unanimous provincial consent. Alternatively, the lawyers for Québec contended that Québec's consent was essential because Confederation was based on a compact guaranteeing cultural duality. The federal government argued that the court should refuse to rule on the case because of its "political flavour... aimed at retarding the adoption of the constitutional bill in Britain" (Montreal Gazette, March 2, 1982, p. A1). However, if the court felt impelled to rule on the case, federal lawyers claimed Québec had given up its right to a veto when it signed the constitutional accord with seven other provinces in April 1981. The two sides differed dramatically in their perceptions of the effect of the

court decision. The federal government felt a decision in favour of Québec would be purely academic because the Canada Act would have been enacted. Québec on the other hand, asked "where are we now if the new political morality is based on the ashes of a violated convention?" (Globe and Mail, March 18, 1982, p. 3).

The Court of Appeal dismissed the province's case in a unanimous decision on April 7. Premier René Lévesque responded philosophically to the judgment, observing that, "We never thought we had royal straight flush... even to start with... and it's not the first time the Québec Court of Appeal (has) disappoint(ed) us" (CFCF TV, "Pulse News" transcript, April 7, 1982). He said that the decision would be appealed to the Supreme Court.

On December 6, the Supreme Court unanimously rejected both of Québec's arguments, distinguishing between a constitutional convention which could be established by objective standards, and a political or moral expedient for Québec's consent which had no force in law (see Chapter 4 for a fuller discussion).

Premier Lévesque said the decision shattered the province's "illusion," held for 115 years, that the country was founded on duality between English and French Canada. Québec was reduced to an "internal colony" under the "imperial control" of another people. For Intergovernmental Affairs Minister Jacques-Yvan Morin there was one irony in the judgment; he pointed out that Québec could now refute the argument that it had abandoned its veto by signing the April 1981 patriation accord with seven other provinces because it was clear that the province never possessed a veto to forsake.

After the court ruled, federal leaders made several offers to discuss Québec's objections to the constitution. In April, the Prime Minister offered to help Québec win a veto. Since 1968, he said, Ottawa had favoured the Victoria formula which would have given Québec a legal veto but Québec had worked against Ottawa's attempts. Later, Fisheries and Oceans Minister Pierre De Bané said that the government was considering a modification to Parliament's role in the amending formula to ensure that a majority of Québec MPs would have to approve any amendment as well as a majority of members. The idea was submitted to the Québec government for consideration.

Following the Supreme Court's decision on the Québec veto, Premier Lévesque sent a lengthy telex to the Prime Minister. He pointed out that the province's entry to Confederation rested on the assumption that it possessed a certain "insurance policy;" the decisions of the courts had shattered this illusion and allowed the "rape" of essential collective rights held by Québec.

Lévesque reiterated Québec's conditions for changes to the constitution which would make it acceptable to Québec: a recognition of duality, a veto for the province and the insulation of provincial powers from the Charter. Most urgent were the veto and the need to release Québec from any limitations on minority language education.

Calling on the Prime Minister's "good faith" and his earlier promise, Lévesque asked Trudeau to table immediately a resolution in the House of Commons which would give Québec either a general veto or the right to opt out of any amendment with full compensation, and which would exclude Québec from the application of s. 23 of the Charter. Only in this way would the Prime Minister prove that he could act in the interests of Québec and for the rights of Québec, challenged the premier.

The Prime Minister sent an equally lengthy reply to Premier Lévesque on December 24. He repeated the argument that the federal government had fought for a veto for Québec since the 1960s, finding it paradoxical that Québec had signed away its veto in April 1981 and had fought Ottawa in the courts when it tried to guarantee a veto for Québec in the form of the Victoria formula. He pointed out that Québec and Ottawa could not by themselves work out a veto for the province since the consent of other provinces was required. If Québec agreed to participate in the current constitutional discussions -- leading up to the March 15-16, 1983 conference of first ministers in Ottawa -- and gave its formal acceptance to the constitution once its demands were satisfied, the Prime Minister was ready to explore all the options with the premiers for the protection of the legitimate interests of Québec. In response to Lévesque's specific demands, Trudeau rejected a full opting-out provision with financial compensation as "progressive balkanization." He also called on Lévesque to fulfill his commitment to reciprocal minority language education made in St. Andrews in 1978.

Support for a Québec veto from the other provinces seemed unlikely. Ontario Intergovernmental Affairs Minister Tom Wells said a Québec veto would amount to a "radical new amending formula" and full compensation should be offered to all provinces. The Alberta minister, Jim Horsman, said that the province was not interested in opening up discussions on a blanket veto for Québec although he and New Brunswick's deputy minister for intergovernmental affairs, Barry Toole, agreed that some recognition of Québec's cultural distinctiveness might be possible.

A few weeks prior to the March 1983 conference, the Minister of Intergovernmental Affairs Jacques-Yvan Morin declared that Québec had decided to put aside its search for a veto but would continue to seek a more satisfactory opting-out arrangement.

The Parti Québécois and Confederation

As the 1981 Year in Review noted, Premier Lévesque and the militants of the PQ clashed over the shape of sovereignty for Québec and the means of attaining it. A party convention in December 1981 decided that the next provincial election should be held on the issue of sovereignty and that a majority of votes, not seats, should be considered a mandate for sovereignty. Economic association with Canada would be only one option, to be discussed after sovereignty had been attained. Premier Lévesque opposed this decision and threatened to resign as party president but decided to wait for the results of an internal party referendum on the matter.

The results of the mail-in referendum were tabulated by February 1982. Ninety-five per cent of the respondents agreed with Lévesque that a majority popular vote was required before a mandate for sovereignty could be considered, that sovereignty should be linked with economic association (but not as a prerequisite) and that the rights and institutions of the English-speaking minority should be respected. With his popularity as party leader confirmed, Lévesque claimed the PQ was "back on track." However, he argued that the party as the government must turn its attention to immediate economic, financial and budgetary problems.

Later in the year, the Parti Québécois executive developed a theme which linked Québec's economic problems to Confederation. Sovereignty, it claimed, would allow the province's economic potential to flourish by releasing it from negative or unsuitable central policies. A document circulated to the PQ caucus at a meeting at the end of August warned:

tant que nous accepterons un statut de dépendance au sein de la fédération canadienne nous serons traités comme une quantité négligeable, soumis à une insécurité économique et culturelle perpétuelle, déstabilisés dans nos choix de société, menacés dans nos chances d'avenir. (Le Devoir, September 1, 1982, p. 1)

It was felt that events in the past year -- the world recession, Ottawa's monetary policy and patriation -- had rendered ineffectual Québec's successful efforts at stimulating economic performance, enhancing personal security, reorganizing public finances, strengthening the acceptance of the French language and pursuing constitutional demands. Moreover, Ottawa's economic policies worked against Québec. Not only did the federal government spend less per capita in Québec but its policies kept the province in a state of economic dependence (Le Devoir, September 1, 1982, p. 1). In short, given the serious state of Québec's economy and public finances, sovereignty was touted as a tool to fight the economic crisis.

The Parti Québécois also considered running PQ candidates in federal elections, an idea which had been tossed around for years but gained new vigour late in 1981. The Liberal Party was seen to be "operating in a vacuum" and to have gained "legitimacy by default" because it faced no effective electoral opposition. Surveys conducted for a committee of the PQ national executive showed that the PQ could gain as much as 37 per cent of the popular vote, leaving the Liberals with 25 per cent, eight per cent for the Progressive Conservatives and three per cent for the NDP while 23 per cent did not answer (*Le Devoir*, March 13, 1982, p. 1). These calculations suggested a possible PQ victory in 21 seats, enough, perhaps to produce a minority Conservative government in Ottawa with the PQ holding the balance of power. Arguments raised against the proposal were mostly organizational in nature, such as the drain on resources, financing, and relations between the two wings. Premier Lévesque was opposed to the idea, saying it was premature.

In November, a proposal of the national executive was modified by delegates to the National Council of the PQ. The executive wanted the principle of a federal wing approved with a final decision made once a federal election were called. As amended, the motion approved only of some kind of participation with any decision to be made at an "appropriate time," reflecting Premier Lévesque's doubts. A committee, headed by Marcel Leger, a firm supporter of the idea of a federal wing, was struck to study forms of participation.

A NEW ERA OF CONSTITUTIONAL REFORM

Several items for possible constitutional reform were prominent in 1982 -- the status of aboriginal rights and treaties, the entrenchment of property rights, reform of the Senate, either as an elected forum or a provincially appointed body, and provincial status for the western and eastern Arctic.

S. 37 Conference and Aboriginal Rights

As provided in s. 37 of the Constitution Act, 1982, a constitutional conference would be held by April 17, 1983 with the first ministers, territorial representatives and spokesmen for native groups to discuss "constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples."

Organization of the conference began shortly after patriation. The Prime Minister met with the leaders of each of the three national organizations of aboriginal peoples -- the Assembly of First Nations (AFN) representing 300,000 status Indians, the Native Council of Canada

(NCC) speaking for over one million non-status Indians and Métis, and the Inuit Committee on National Issues (ICNI), the constitutional arm of the Inuit Tapirisat of Canada which acts on behalf of 25,000 Inuit. Each organization was offered two seats at the conference table plus room for a delegation. As many of the issues affected the territories, representatives of the government of Yukon and the elected executive of the Northwest Territories were invited to participate in the preparatory work and the conference.

However, there was some uncertainty as to who would actually attend the conference. The Assembly of First Nations maintained that their rights should be discussed only by the federal government and Indians as responsibility for Indians was exclusively federal. The AFN sent observers to meetings of officials held to discuss the agenda but did not decide to attend the conference until late January 1983. National Chief David Ahenakew acknowledged that there were some matters which involved the provinces but warned that there were certain rights and relationships which could be settled only between Ottawa and Indians.

There were rifts also in the Native Council of Canada. The Métis chafed at sharing a place at the conference table with non-status Indians, claiming that the latter were more concerned with gaining rights which status Indians possessed under the Indian Act. The Métis argued that their claims, especially for self-government, were constitutional rather than legislative in nature. Less than two months before the conference, Métis organizations from the four western provinces and Ontario pulled out of the NCC. They formed the Métis National Council and sought separate representation at the conference.

As the planning for the conference advanced, Québec's participation was uncertain. In July, Prime Minister Trudeau wrote to Premier Lévesque to convey the results of his June meetings with the three major native groups and invited Québec to participate in the meetings of officials organizing the conference. In a reply dated August 19, Lévesque pointed out to the Prime Minister the "paradox" of asking Québec to participate in a conference to discuss aboriginal rights when Québec's demands had not yet been satisfied. Québec eventually sent observers to the preparatory meetings and decided to attend the conference to act on behalf of aboriginal groups in Québec.

Representatives of native organizations, federal, provincial and territorial governments met in various combinations to hammer out an agreement on an agenda. The federal government suggested five items for discussion: aboriginal rights, treaty rights, native self-government, native representation in political institutions and provision of social services. The major constitutional issues raised by natives were:

self-determination and self-government, a native consent clause for future constitutional amendments affecting aboriginal rights, native representation in Parliament and legislatures as well as the definition of aboriginal rights. Other more limited issues were native women's rights, economic development and native services and programs. Trudeau warned native leaders that they would encounter difficulty in pursuing a consent clause or native self-government and advised them to formulate a "realistic" agenda.

The first meeting of all sides was held in October 14 in Winnipeg. Four working groups were established at the meeting to examine proposed agenda items and narrow down the list. The working group on legal and political issues addressed suggestions about the amending formula, political representation, the Charter, women's rights and entrenchment of aboriginal title. Economic development, mobility rights, hunting and fishing rights and affirmative action programs were dealt with by another group. The third working group looked at social, cultural and linguistic issues while the fourth looked at procedural questions. Several meetings of officials were held in preparation for a meeting of attorneys-general shortly before the March conference.

For a good discussion of the participants and issues pertaining to the s. 37 conference, see Norman K. Zlotkin, *Unfinished Business: The 1983 Constitutional Conference and Aboriginal Peoples*, published by the Institute of Intergovernmental Relations, 1983.

Property Rights

Under the amending formula in Part V of the Constitution Act, 1982, the way was opened for more constitutional reform. In many minds, the division of powers and reform of central institutions were prime candidates for a "Phase II" in constitutional reform.

The amendment formula provided that the constitution could be changed if authorized by a resolution of the Senate and House of Commons and resolutions of the legislatures of at least two-thirds of the provinces representing 50 per cent of the population.

The British Columbia government took the initiative in utilizing s. 38 when, on September 21, the legislature unanimously resolved that the right to enjoyment of property be added to the constitution. Section 7 of the Canadian Charter of Rights and Freedoms would be amended to read:

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

Gerry Mercier, Conservative MLA and former Attorney-General of Manitoba, introduced a similar resolution in the Manitoba legislature in October. The entrenchment of property rights had sparked considerable support among the provinces, political parties and interest groups during the hearings of the Joint Committee on the Constitution in 1981.

Senate Reform

Reform of the Senate has been on the agenda of constitutional reform since the late 1960s as one way of enhancing regional or provincial participation in national institutions. Four major proposals for Senate reform emerged over the years: an elected Senate; a House of the Provinces composed of representatives of provincial governments along the lines of the West German Bundesrat; a House of the Federation, as proposed in the federal government's Bill C-60 which allowed provincial input to appointments, increased representation, particularly for the western provinces, and a suspensive veto except in important federal-provincial matters; and a slightly modified version of the existing Senate.

The Supreme Court decided in 1979 that the Senate could not be abolished by the federal government nor could it make changes to representation in the Senate or its veto.

As intensive constitutional discussions took place among governments, British Columbia led the fight for Senate reform. The provincial government saw the Senate's primary purpose as representing provincial or regional interests in national law-making and equalizing regional participation in the process. British Columbia called for equal representation from five regions, whose members would be appointed and led by provincial governments. An absolute veto in matters affecting central agencies and institutions and laws directly affecting the provinces was favoured. The proposal was not widely endorsed and raised little enthusiasm in the 1978-80 round of negotiations.

After patriation, Senate reform remained a live issue but in a different form. In February 1982, Senator Duff Roblin, Deputy Leader of the Opposition, moved a motion that:

this House affirms that the federal character of representative and responsible government in Canada will be strengthened if the membership of the Senate is constituted by election rather than by appointment. (Senate, Debates, February 24, 1982, p. 3698)

Senator Roblin's premise was that the ability of the Senate to utilize its full powers was hampered by its method of appointment. In his words:

For all its theoretical power, the appointed Senate knows its place. The Senate declines to engage the elected House of Commons, even when legitimate regional interests may be at risk. Thus, the main purpose of the second chamber,... the recognition of regional interests at the federal legislative centre, goes by default and is rendered negatory (sic). (Senate, Debates, February 24, 1982, p. 3701)

In the Senator's view, popular election would invest the Senate with political legitimacy.

Liberal Senator Peter Bosa felt an elected Senate would be hindered by the inevitable involvement of national political parties and "elected Senators would feel precisely the same pressure to dampen expressions of regional dissent as members of Parliament do now through cabinet solidarity and the pressures of political party discipline" (Senate, Debates, May 12, 1982, p. 4081). He argued that there would be confusion about "who speaks for Canada," especially since he felt the Senate could not really overshadow the premiers. Finally, Senator Bosa argued that the House of Commons and other legislatures would put up a great deal of resistance to an elected Senate. He concluded by supporting a reformed Senate.

In September, five Senators from both the Liberals and Conservatives went to Australia to study the structure and effectiveness of elected federal and state senates. In mid-December, Senator H.A. Olson, government leader of the Senate, presented a motion seeking the establishment of a joint Senate-House of Commons Committee to study Senate reform.

However, the notion of a House of the Provinces had not died completely. In August, the government of Alberta released a discussion paper on strengthening western representation in national institutions entitled *A Provincially-Appointed Senate: A New Federalism for Canada*. Previously, the Alberta government felt that the place of the west in Confederation and feelings of alienation would not be solved by structural change to the Senate. The document stated that:

the recent trend towards unilateralism and centralization has convinced the Alberta government that a determined effort must be made to strengthen and protect further the rights of the provinces in Confederation if we are to avoid the drift toward a unitary state. (p. 2)

The Alberta paper agreed with Senator Roblin's observation that the Senate's method of appointment was one of the major reasons for failure of the Senate to represent regional interests or to act as a body of "sober second thought." Furthermore, the need to strengthen available means of

regional representation was highlighted by the declining regional function of the Cabinet and political parties.

The Alberta government recommended that the Senate be appointed exclusively by provincial governments as this would "increase the input and influence of the provinces in those matters of federal policy which directly affect them." It would also enhance federal-provincial communication and cooperation. Alberta favoured a weighted system of representation according to population similar to that in the West German Bundesrat. The Senate would be given an absolute veto over the use of exceptional federal powers, the spending power and other powers significantly affecting provincial jurisdiction. It would also approve appointments to federal boards or agencies, international treaties and Supreme Court and certain provincial court appointments.

Status of the Northwest Territories

The political status and structure of the Northwest Territories was a hotly contested topic in the north in 1982, but the foundations of the debate were actually laid in the late 1970s.

Division of the Northwest Territories first surfaced in the early 1960s, sparked by the frustration of the non-native population in dealing with a government based in Ottawa. The proposals in the 1970s reflected the eastern Arctic's alienation from the government in Yellowknife. As a consequence, the native/non-native split in the population was highlighted; the eastern Arctic is sparsely settled, mostly by Inuit, while the population of the more economically developed western Arctic is more diversified.

Once the federal government undertook land claim negotiations with native groups, after the Supreme Court in 1973 acknowledged that aboriginal rights could exist, three of the major submissions by native groups linked land claims in the north to new political structures. The Dene Nation, representing Indians in the Mackenzie Valley and Delta, argued that provincial-type jurisdictions be transferred to an elected Parliament of Dene in a land to be called Denedeh. The Métis Association of the Northwest Territories suggested another boundary and favoured a Senate of delegates from elected community councils in the Mackenzie corridor. The Inuit Tapirisat of Canada submitted a proposal on behalf of 17,000 Inuit in the central and eastern Arctic which claimed all lands north of the treeline (thus encompassing parts of the western Arctic) and proposed that a new land called Nunavut be accorded full provincial status after 15 years. As the Special Representative for Constitutional Development in the Northwest Territories put it, "The negotiation of division is therefore negotiation of alternative governments. The recommendation is not for division under whatever circumstances, but

rather division under the terms of the governments proposed" (Constitutional Development in the Northwest Territories, Report of the Special Representative, January 1980, p. 8). The 1978 Agreement in Principle reached with the Committee for Original Peoples' Entitlement (COPE), representing 2500 Inuvialuit in the western Arctic, set a precedent for separating government restructuring from negotiated land rights and cash settlements. The federal government consistently claimed that it would not discuss government restructuring in conjunction with negotiations over land claims. While native groups have reluctantly separated land claims from constitutional development, they have pursued alternative means of attaining more autonomy.

While the non-native population was generally opposed to division and the Special Representative for Constitutional Development recommended against division, the election of a majority of native members in the Legislative Assembly of the Northwest Territories in 1979 brought a consensus between east and west on the desirability of division of the territory. In 1980, the Assembly's Committee on Unity endorsed the idea of division and called for a referendum on the proposal to be held within two years. The Legislative Assembly adopted the Committee's recommendations and the plebiscite was held in April 1982.

Prior to the April 14 vote, the Constitutional Alliance of the Northwest Territories was formed, composed of leaders from the Inuit Tapirisat, COPE, the Métis Association, the Dene Nation and the Legislative Assembly. The Alliance worked towards a large turnout for the plebiscite and considered strategies given the likelihood of a 'yes' vote in the plebiscite. Meanwhile, groups based in the western Arctic met to formulate a position to counter that of the Inuit Tapirisat for the eastern Arctic. However, the balance of natives and non-natives in the western Arctic is much closer than in the east and Dene Nation proposals met stiff resistance from parts of the Legislative Assembly and non-native groups.

The poll held on April 14 asked simply "Do you think the Northwest Territories should be divided, yes or no?" The result reflected the deep division in the north. The overall result was 56 per cent in favour of splitting the territory; but the opposing 44 per cent was concentrated largely in the western Arctic where turnout was not high. In the eastern Arctic, where turnout was as high as 73 per cent, voters favoured division by a 4-1 margin. Southern commentators and the federal government felt the close result implied no clear message. The Inuit, on the other hand, were "jubilant" at the high turnout and the overwhelming implicit support for the Nunavut proposal. They "got a rough lesson in regionalism and media power" after seeing the reception of the results in the south (Peter Jull, "Next Steps for Nunavut," Policy Options, September/October 1982,

p. 6). The Legislative Assembly voted unanimously to ask the federal government to begin the process of division by appointing a commissioner to recommend a boundary.

Meanwhile, the different groupings in the Northwest Territories were formulating constitutional positions. In July, at a meeting of the Constitutional Alliance, two separate organizations were set up to work on constitutional issues for each of the two proposed new territories. The Nunavut Constitutional Forum consisted of Inuit and Legislative Assembly representatives, while the Western Constitutional Forum was made up of Dene, Métis and legislative leaders. COPE was given the option of joining either or both forums. Their purpose was:

- to develop a process of public discussion;
- to develop constitutional positions for each territory addressing:
 - protection of aboriginal rights,
 - voting and residency requirements,
 - division of powers,
 - structure and style of government,
 - financing,
 - amendment of the constitution;
- to initiate constitutional discussions with the federal government;
- to develop boundary lines; and
- to set a timetable and budget.

In late November, the federal cabinet agreed in principle to the division of the Northwest Territories. However, Indian Affairs Minister John Munro said ultimate division was contingent on four conditions: all land claims must be settled; agreement must be reached on the number of political units and their boundaries; local agreement on the division of powers within the units was required; and the process must have attained majority support in the north.

Munro made it clear that provincial status for the new territories was unlikely in the near future, arguing that the small population, the vast area, the undeveloped economy, and Ottawa's need to "protect Canada's national interests" militated against serious consideration of provincial status. However, Yukon's evolution towards responsible government would be confirmed in legislation and steps would be taken to advance responsible government in the Northwest Territories. Munro also confirmed that financing for the territories would be on a formula basis rather than annual negotiated grants.

As a result of the government's decision, the NDP Member of Parliament for Nunatsiag, Peter Ittinuar, crossed the floor to sit with the Liberals and press for self-government from within the caucus.

Leaders of native and political groups in the Northwest Territories responded quickly to Munro's announcement. They objected to the government's condition that land claims be settled before any steps were taken to divide the territory. This, they said, was a "catch 22." They felt the political pressure for settling land claims came only from division. They also dismissed Munro's statement that provincehood was not immediately foreseeable.

4 JUDICIAL REVIEW

With the proclamation of the Canadian Charter of Rights and Freedoms in the Constitution Act, 1982, constitutional litigation will no longer be almost solely limited to federal-provincial disputes over the division and separation of powers. Citizens will be able to challenge the constitutionality of federal and provincial legislation on the grounds that rights and freedoms guaranteed under the Charter are violated.

But the significance of different sections of the Charter for the provincial and federal governments varies. Sections 7-14, which guarantee legal rights, apply most readily to the criminal justice system and the treatment of persons charged with an offence. This section and its provisions were invoked many times in 1982 as a defence in criminal cases, sometimes resulting in acquittal. Section 11(d) which allows any person charged with an offence "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal" raised questions in an Ontario case, to be heard by the Supreme Court of Canada, about the fitness of judges appointed by provincial governments to provincial courts. Several judges refused to hear cases on the grounds that the accused could not be guaranteed a "fair and public hearing by an independent and impartial tribunal" because judges were appointed and paid by provincial governments. They felt their impartiality was violated as the government was also the prosecutor in these cases. Another provision of s. 11(d), the right to be presumed innocent until proven guilty, was upheld over "reverse onus" clauses in legislation such as the Food and Drug Act, the Customs Act and the Narcotic Control Act which require the accused to demonstrate that he/she did not intend to commit the offence. The Supreme Court of Canada agreed to consider these "reverse onus" cases in 1983.

In the challenge to the constitutionality of Québec's language legislation, many of the most prominent features of the Charter which affect governments' powers were canvassed. The ability of citizens to seek

remedy from the courts for an alleged violation of guaranteed rights, provided in s. 24, ran up against the power of governments to impose "reasonable limits," granted in s. 1, on rights guaranteed under the Charter. In his decision, Chief Justice Jules Deschênes of the Québec Superior Court found that the provincial legislation conflicted with s. 23 of the Charter, which guarantees minority language educational rights, and was thus rendered inoperative to the extent of the conflict as provided in s. 52. The federal government has set aside funds to assist challenges to federal or provincial laws which are seen to violate the language provisions of the Charter. The case must have "consequences for a number of people" to qualify for assistance. This strategy of contesting legislation on behalf of groups or organizations may become more pronounced as governments rely on s. 1 or invoke the override provided in s. 33. As noted in Chapter 3, Québec passed an omnibus bill which provided blanket exemption to all Québec legislation from s.2 and s.7 to 15 of the Charter. Some doubts were raised about the constitutionality of the legislation but it was not challenged in 1982.

But the division of powers will remain an important component of the courts' work. Judicial review either by reference or litigation is actively pursued by governments in Canada. At the end of 1982, jurisdiction over offshore mineral rights, communications, lotteries and Labrador hydro were all before the courts. As well, the jurisprudence on constitutional conventions, represented largely by the Supreme Court decision on the patriation reference, was elaborated with that court's decision on the Québec veto.

AMENDMENT OF THE CONSTITUTION

Shortly after the constitutional accord was signed by nine provinces and the federal government in November 1981, Québec tried to invoke what it saw as its traditional veto on constitutional amendment. Prime Minister Trudeau dismissed the claim, arguing that it was substantiated neither by law nor custom; the Supreme Court had found no legal basis for provincial consent, while constitutional convention required only "substantial consent" of the provinces.

Québec felt that the 1981 Supreme Court decision had not fully canvassed the scope and type of the provincial consent required by convention. Accordingly, the government referred the following question to the Québec Court of Appeal:

Is the agreement of Québec, by convention, constitutionally required for the adoption by the Canadian Senate and House of Commons of a resolution whose object is to amend the Canadian constitution in such a way as to affect

- (i) the legislative authority of the Québec legislature by virtue of the Canadian constitution;
- (ii) the status or role of the Québec legislature or government within the Canadian federation;

and, does Québec's objection render such a resolution unconstitutional in the conventional sense?

When the court began hearings on the reference in March, the patriation resolution was before the British Parliament. Counsel for the federal government urged the court to dismiss the reference as any decision would have no effect on the legality of the patriation process. However, the judges felt they must address the issue. Their decision, *Re Attorney-General of Québec and Attorney-General of Canada* (1982) 134 D.L.R. (3d) 719, handed down on April 7, unanimously dismissed the province's arguments.

In its appeal to the Supreme Court, Québec's arguments were virtually identical to those advanced in the Court of Appeal. Sensitive to the importance of the case, the Supreme Court delivered a unanimous, unattributed decision on December 6, *The Attorney General of Québec and the Attorney General of Canada et al.* (1982) 140 D.L.R. (3d) 385.

There were two streams to Québec's argument that there was a constitutional convention requiring Québec's consent. First, the province contended that Québec's agreement to the constitutional amendments was required because the unanimous consent of all the provinces was necessary. Second, Québec asserted that this agreement was required because duality between French and English Canada was the very foundation of Canadian federalism. The Supreme Court analyzed these propositions in this way:

... not only are they quite distinct from each other, they actually contradict one another: the rule of unanimity is predicated on the fundamental equality of all the provinces as it would give a power of veto to each of them whereas an exclusive power of veto for Québec negates the rule of unanimity as well as the principle of fundamental equality. (p. 392)

In support of the first proposition, lawyers for Québec argued that the Supreme Court had not explicitly ruled out the unanimity principle by favouring the "substantial consent" rule advanced by Saskatchewan. Just as "substantial consent" was dictated by the "federal principle," so too was unanimity.

The Supreme Court rejected the argument that a conventional rule of unanimity existed. The patriation reference was quoted to show that the

court had considered the unanimity argument. In applying Sir Ivor Jennings' test for the establishment of constitutional conventions, the majority in 1981 found that unanimity had failed the third test — that all the actors in the precedents accepted the rule as a binding one. The majority then held that convention required only substantial provincial consent which "means less than unanimity." Moreover, the minority in 1981 had also dismissed the convention of unanimity. Consequently, said the court in 1982, there could be no claim to a Québec veto based on unanimity.

In arguing that Québec itself possessed a conventional veto on constitutional amendment, counsel relied on the principle of duality. A wealth of material endorsing the principle of duality was submitted representing the opinions of federal and provincial politicians, constitutional experts and informed observers. Precedents were cited where constitutional amendments were shelved or held up when Québec's consent was withheld. Lawyers for the province contended that "custom and reason suffice by themselves to establish the normative nature of the rule."

But the Supreme Court found that the standard requiring recognition by the actors of a binding rule was the most important element of Jennings' test as "it is the normative one, the formal one which enables us unmistakably to distinguish a constitutional rule from a rule of convenience or from political expediency" (p. 404). The judges felt that such a fundamental constitutional convention would have been explicated by federal and provincial politicians before if it had existed:

in our view, a convention could not have remained wholly inarticulate, except perhaps at the inchoate stage when it has not yet been accepted as a binding rule. There is no example that we know of of a convention being born while remaining completely unspoken, and none was cited to us. (p. 405)

In the patriation reference, the majority opinion on convention had carefully stressed that conventions cannot be enforced by the courts as they are not "judge-made rules" like common law rules. In the Québec veto case, the court further delineated the nature of constitutional conventions:

It should be borne in mind however that conventional rules, although quite distinct from legal ones, are nevertheless to be distinguished from rules of morality, rules of expediency and subjective rules. Like legal rules, they are positive rules the existence of which has to be ascertained by reference to objective standards. In being asked to answer the question whether the convention did or did not exist, we are called upon to say whether or not the objective requirement for

establishing a convention had been met. But, we are in no way called upon to say whether it was desirable that the convention should or should not exist. (p. 393)

Thus, the court ruled that Québec did not possess a conventional veto as it had not passed the "objective standards" by which the court had come to judge constitutional conventions. It had, at best, rested on the good intentions of the federal government as the other provinces had not expressed any special right for Québec. The political reaction to the veto decision is covered in Chapter 3.

APPOINTMENT OF JUDGES: CASES INVOLVING S. 96

As discussed in the 1981 Year in Review, the proliferation of provincial administrative tribunals with quasi-judicial functions has created potential conflicts with s. 96 of the Constitution Act, 1867. That section gives the federal government the power to appoint the judges of the superior, district and county courts. Essentially, provinces cannot confer functions normally exercised by a federally appointed court on a provincially appointed inferior court or administrative tribunal. Thus, the courts must determine what constitutes a s. 96 function. In the 1981 decision of the Supreme Court, *Reference Re Residential Tenancies Act*, Dickson J. outlined a three-step test to determine whether an administrative tribunal set up by a province is analogous to a s. 96 court. In *Reference Re Section 6 of the Family Relations Act* (1982) 131 D.L.R. (3d) 257, the Supreme Court of Canada dealt with another aspect of the s. 96 problem: whether functions assigned to a provincial court were functions normally exercised by a s. 96 court and therefore beyond the power of the province. The British Columbia legislation in question conferred upon judges of the Provincial Court the jurisdiction to issue orders concerning the guardianship of a child, custody of or access to a child, occupancy of a family residence and access to a family residence by a parent. The validity of these sections of the act was referred to the courts. At issue was not whether the substance of the legislation fell within provincial powers but rather whether the method adopted by the province for realizing the objectives of the legislation was valid.

B.C. argued that the jurisdiction to issue the orders listed above broadly conformed to the jurisdiction generally exercised by inferior courts prior to 1867, and therefore was retained after Confederation. Second, the province contended that s. 6 of the Family Relations Act was an integral part of a wide-ranging legislative plan to assist in the resolution of family disputes. B.C. was supported by the intervention of six provinces. The federal government argued that s. 6 was *ultra vires* because superior courts had broad, general jurisdiction over custody and guardianship in 1867 and still held that jurisdiction.

In a majority decision handed down by Estey J., the validity of some of the impugned sections was upheld. Estey found nothing in legal history to demonstrate the existence of an exclusive jurisdiction by superior courts in the field of guardianship or custody. The majority applied the test drawn from *Labour Relations Board Saskatchewan v. John East Iron Works Ltd.*, a 1949 decision of the Judicial Committee of the Privy Council. There, Lord Simonds suggested that it was sufficient to establish that the power or jurisdiction in question was one not traditionally falling within s. 96; thus, any residual powers would fall to inferior courts. This was a more liberal test than that used in the *Adoption Reference* by Mr. Justice Duff which asked whether the impugned jurisdiction was broadly analogous to that exercised by inferior courts prior to Confederation, suggesting that all other powers fell to superior courts.

Estey added a purposive interpretation to his conclusion. He found constitutional developments revealed an increasing recognition of the capacity of provinces to institute wide-ranging programs through administrative and judicial agencies. Moreover, he found the kind of problems addressed in the *Family Relations Act* would be more appropriately dealt with by the

less formal and less demanding procedures of the provincial court...the highly refined techniques evolved over centuries (in superior courts) for the determination of serious and frequently profound difficulties arising in the community are unnecessary for the disposition of much of the traffic directed to the magisterial courts by contemporary provincial legislation. (p. 295)

In his minority decision, Laskin C.J. upheld the decision of Hinkson J.A. of the B.C. Court of Appeal who had ruled the legislation *ultra vires*. Looking at the historical antecedents for each of the questioned functions -- custody, guardianship, occupancy of the family residence and non-entry orders -- he concluded that they were more analogous to the jurisdiction of a s. 96 court than that of a provincial court, thereby using the stricter test. Laskin also dismissed the subsidiary provincial argument that the scope of the whole act necessitated single jurisdiction. He found it

no answer to say that the Provincial Courts are more accessible to those who might need relief under the *Family Relations Act* than is the Supreme Court... This was not an answer in the immediate post-1867 period when communication and accessibility of judicial services were far less advanced than they are at the present time and it is not an answer today. (p. 280)

CHARTER OF RIGHTS AND FREEDOMS

On September 8, Chief Justice Jules Deschênes of the Québec Superior Court delivered a landmark decision in which he found Québec's language legislation unconstitutional as it conflicted with the minority language education rights guaranteed in the Charter (see *Québec Association of Protestant School Boards et al. v. Attorney General of Québec et al.* (No. 2) (1982) 140 D.L.R. (3d) 33). In his judgment, Deschênes considered the relationship between several of the most important sections of the Charter, notably ss. 1, 23, 24, 33 and 52.

The plaintiffs, the Québec Association of School Boards, the Protestant School Board of Montreal and the Lakeshore School Board, supported by the intervention of the federal government, sought a declaration that:

the restrictions on access to English language education contained in Sections 72 et seq. of *La Charte de la Langue Française* and the regulations thereunder, to the extent that they are inconsistent with sections 23(1)(b), 23(2) and 23(3) (of the Canadian Charter of Rights and Freedoms) are of no force and effect.

The sections in dispute were the language of instruction provisions of the Charter of the French Language as listed below:

72. Instruction in the kindergarten classes and in the elementary and secondary schools shall be in French, except where this chapter allows otherwise.
73. In derogation of section 72, the following children, at the request of their father and mother, may receive their instruction in English:
 - (a) a child whose father or mother received his or her elementary instruction in English, in Québec;
 - (b) a child whose father or mother, domiciled in Québec on the date of the coming into force of this act, received his or her elementary instruction in English outside Québec;
 - (c) a child who, in his last year of school in Québec before the coming into force of this act, was lawfully receiving his instruction in English, in a public kindergarten class or in an elementary or secondary school;

- (d) the younger brothers and sisters of a child described in paragraph c.

The school boards argued that these provisions conflicted with the entrenched minority language educational rights of the Canadian Charter of Rights and Freedoms which reads:

- 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.

Section 59 of the Charter was added at the last moment of intergovernmental negotiations so that the right of the English minority

in Québec to have their children receive primary and secondary school instruction in English would not be imposed on the government of Québec without its agreement. That section provided that s. 23(1)(a) of the Charter would come into effect when authorized by the government or legislative assembly of Québec. However, the school boards were challenging that the "Québec clause" of Bill 101 conflicted with the "Canada" clause of the Charter whose test for eligibility was based on parents or siblings having received education in English anywhere in Canada.

Two procedural questions were dealt with first. Section 24(1) of the Charter allows anyone whose rights guaranteed under the Charter have been infringed or denied to apply to a court of competent jurisdiction "to obtain such remedy as the court considers appropriate and just in the circumstances." Deschênes decided that the request for a declaratory judgment fell well within the nature of remedies and cited several recent academic texts in support.

The second procedural question asked whether, to apply to the courts for remedy, one's rights must already have been violated or whether anticipation of violation was sufficient. Specifically, the school boards were arguing on behalf of children whose right to minority language education would be denied under Bill 101 when the school year began in September 1982. As one basis for the conclusion that s. 24 applied to the future as well as the past, Deschênes cited Professor Peter Hogg's observation that:

(s. 24) does not authorize an application in respect of a merely apprehended infringement. However, the liberal approach of the Supreme Court of Canada to standing in constitutional cases (see especially *Borowski v. Minister of Justice* (1981)) may well spill over into s. 24 applications, leading the Court to assume a discretionary power to grant standing in cases not literally covered by s. 24. (p. 42)

Another reason for this conclusion was Deschênes' decision that the extraordinary nature of the Constitution Act, 1982, as the supreme law of Canada, meant that it should be interpreted liberally; it was not meant to be "a procedural yoke or a punitive corset."

Deschênes then compared the pertinent sections of the Charter and Bill 101. He found that there was a conflict between the provisions of Bill 101 and s. 23 because the former was more restrictive. He went on to consider which law must prevail.

Although s. 52 of the Charter specifies that the Canadian constitution is the supreme law of Canada which prevails over other laws that are

inconsistent with it, Deschênes concluded that it must be read in conjunction with s. 1 which allows "reasonable limits" on guaranteed rights. Québec argued that the Bill 101 provisions for minority language education did constitute "reasonable limits prescribed by law" which could be "demonstrably justified in a free and democratic society." The school boards and the federal government contended that s. 1 did not apply to s. 23. The arguments on the relationship between s. 23, s. 1 and s. 33 implied intentions on the part of the drafters which Deschênes found were not apparent in reading the Charter. He was anxious to avoid compensating for the "legislature's deficiencies" and decided s. 1 was a general derogatory clause, as Québec had argued.

But, in recognizing the applicability of s. 1, the role of the courts expanded. Once the restriction of rights allowed by s. 1 passed beyond reasonable limits into "infringement or denial," s. 24 allowed the courts to remedy the situation.

The next question considered was whether the "Québec clause" was a limitation, as allowed by s. 1, or a denial of minority language rights, as prohibited by s. 24. As Deschênes stated:

The frontier is, therefore, clearly marked. No legislature can cross it. It may limit a guaranteed right, but it may not abrogate or "deny" such a right. (p. 59)

Québec argued that the prohibitive effect of s. 73 of Bill 101 fell within the limits allowed by s. 1. But the Court did not accept this argument. One might, said Deschênes, allow a prohibition where restriction alone was allowed, but prohibition of guaranteed rights was not "restraint within reasonable limits." Deschênes vigorously dismissed the Québec argument that the restriction of a collective right might result in the denial of individual rights:

The court is amazed, to use a euphemism, to hear this argument from a government which prides itself on maintaining in America the flame of French civilization with its promotion of spiritual values and its traditional respect for liberty.

In fact, Québec's argument is based on a totalitarian conception of society to which the court does not subscribe. Human beings are, to us, of paramount importance and nothing should be allowed to diminish the respect due to them. Other societies place the collectivity above the individual. They use the Kolkhoze steamroller and see merit only in the collective result even if some individuals are left by the wayside in the process.

This concept of society has never taken root here -- even if certain political initiatives seem at times to come dangerously close to it -- and this court will not honour it with its approval. Every individual in Canada should enjoy his rights to the full when in Québec, whether alone or as a member of a group and if the group numbers 100 persons, the one hundredth has as much right to benefit from all the privileges of citizens as the other ninety-nine. The alleged restriction of a collective right which would deprive the one hundredth member of the group of the rights guaranteed by the Charter constitutes, for this one hundredth member, a real denial of his rights. He cannot simply be counted as an accidental loss in a collective operation: our concept of human beings does not accommodate such a theory. (p. 65-66)

Deschênes concluded that the Québec clause was not a "reasonable limitation" and declared that it was inoperative to the extent of the inconsistency, as provided by s. 52. He went on in a lengthy obiter dictum to consider the implications of Section 1. Québec, he said had met three of the four tests: its legislated limits on language use were "prescribed by law in a free and democratic society" and were "demonstrably justified." But Bill 101 fell on the last condition -- the limits it imposed were not "reasonable limits," since the means employed in s. 73 were disproportionate to the ends identified in the legislation.

The decision was appealed to the Québec Court of Appeal.

COMMUNICATIONS

One of the 1981 court decisions which quickened the drive by some provinces to gain control over certain aspects of broadcasting was reversed in 1982.

In October 1981, Justice Seabright of the Newfoundland Provincial Court acquitted Shellbird Cable Limited of a criminal charge that the company had been receiving and distributing a television channel not authorized by its license from the Canadian Radio-television and Telecommunications Commission (CRTC). Shellbird, in addition to relaying four authorized channels, had been distributing a Public Broadcasting Service (PBS) signal which it received via an earth-satellite signal receiving dish situated in Corner Brook, Newfoundland. Seabright's decision hinged on the technology of satellites. He ruled that the reception and distribution of PBS programming did not constitute "broadcasting" as defined in the Broadcasting Act. There, "broadcasting" was considered to be radiocommunications propagated without an "artificial guide." Seabright considered satellites to be an artificial guide and ruled that the CRTC lacked jurisdiction to regulate Shellbird's use of satellite reception (see Chapter 8, The Year in Review 1981 for a fuller discussion).

In *R. v. Shellbird Cable Limited* (unreported, Newfoundland Court of Appeal, April 20, 1982), this decision was reversed. Mifflin C.J.N., speaking for the court, found Seabright's literalist interpretation of the Broadcasting Act too narrow and gave support to a wider reading of the Act.

In the first instance, the court supported the federal government's contention that the Broadcasting Act covered non-broadcast as well as broadcast services, provided they are carried on a broadcasting undertaking. Furthermore, in its reading of the objectives of the Act, the court concluded that the regulation of broadcasting undertakings was essential to the achievement of the goals set out in the legislation, the most important of which was seen to be programming content:

To exempt programs which do not fall within the strict definition of broadcasting from regulation by the Commission would be contrary to the policy of the Act ... and would ultimately defeat the whole purpose of having a national broadcasting policy for which the statute was enacted. (p. 12)

The court ruled that the CRTC did have jurisdiction to regulate the interception and distribution of the PBS signal by Shellbird and therefore the company had violated the conditions of its license. For the court, it was essential that regulation of programming not be divided according to the mode of transmission. This decision supported the 1973 judgment of the Ontario Court of Appeal, *Re C.F.R.B.*, on the relationship between communications carriers and content. There, the court declared "it would be flying in the face of all practical considerations and logic to charge Parliament with the responsibility for the regulation and control of the carrier system and to deny it the right to exercise legislative control over what is the only reason for the existence of the carrier system, i.e., the transmission and reception of intellectual material" (quoted in Peter Hogg, *Constitutional Law in Canada*, p. 339).

In mid-July, the Attorney-General of British Columbia filed a writ against the Attorney-General of Canada and the Canadian Radio-television and Telecommunications Commission in the B.C. Supreme Court. At dispute was jurisdiction over pay television. The province sought a declaration that, "upon its true construction," the Broadcasting Act did not authorize the CRTC to regulate the production, acquisition, packaging or distribution of programs intended for pay television nor did it have jurisdiction to conduct hearings, issue or revoke licenses for pay TV. Alternatively, the province contended that even if the Broadcasting Act authorized the CRTC to regulate in this manner, the Act was *ultra vires* to that extent.

The provincial government also sought a declaration about the nature of and jurisdiction over intraprovincial non-broadcasting undertakings conducted by operators of broadcasting undertakings. Listed as non-broadcasting undertakings were:

- pay television
- non-programming surveillance
- non-programming monitoring
- subscriber opinion polling
- energy meter reading
- viewership rating
- non-programming controlling and switching
- non-programming video games
- information services
- shared computer services.

B.C. argued that such undertakings operated within the province were beyond the authority granted by the Broadcasting Act or beyond the authority of the Act itself. There was no decision by the year end.

CRIMINAL LAW

The division of powers between the federal and provincial governments over criminal law has been a source of recurring conflict. Section 91(27) of the Constitution Act, 1867 gives Parliament the authority to pass criminal legislation but s. 92(14) confers the administration of justice on the provinces. Accordingly, the provinces cannot create criminal offences in the course of legislating to protect the welfare of the provincial populations from undesirable social practices.

As reported in the 1981 Year in Review, the Alberta Provincial Court found a section of a Calgary by-law, directed at controlling prostitution by making it an offence to be on the streets for that purpose, *ultra vires* as an infringement of Parliament's criminal law power. That decision was reversed by the Alberta Court of Appeal in February (see *R. v. Westendorp* (1982) 134 D.L.R. (3d) 338). Kerans J.A. found that municipal governments were given the power by provincial legislation to control public nuisances on or near streets, public places or buildings. He cited the evidence of several witnesses in concluding that "streethawking" in Calgary had become a public nuisance which was a matter of local concern and therefore, within the powers of the city. He dismissed the argument that the by-law provision was directed at prostitution, finding instead that it sought "only to protect the citizens who use the streets from the irritation and embarrassment of being unwilling participants in that market (for sexual favours)" (p. 350).

Leave to appeal was granted by the Supreme Court. In *Lenore Jacqueline Westendorp v. The Queen* (Supreme Court of Canada, January 25, 1983, unreported), the Supreme Court unanimously upheld the acquittal granted by the Provincial Court judge on the grounds that the by-law was an invasion of the federal criminal law power.

Westendorp's counsel attempted to argue that the charge was a violation of s. 7 of the Canadian Charter of Rights and Freedoms. This line of argument was abandoned when it became clear that:

counsel for the appellant not only sought to infuse a substantive content into s. 7, beyond any procedural limitation of its terms, but also to rely on s. 7 to challenge the validity of the by-law provision without accepting as a necessary basis for the s. 7 submission that it could only apply if the by-law was to be taken as valid under the distribution of powers between the legislating authorities. (p. 3)

Parenthetically, this statement by Chief Justice Laskin set back the claim that s. 7 should be interpreted as a "substantive due process" clause in line with American jurisprudence.

In examining the pith and substance of s.6.1 of the Calgary by-law, Laskin found that it was "specious" to regard it as relating to street control. Rather, the by-law provision was activated only when sexual services were offered or solicited. Given that the purpose of s.6.1 was the control of prostitution, the court considered whether this was a valid attempt to control public nuisances or a colourable attempt to deal with prostitution. Laskin dismissed Kerans J.A.'s assessment that any effect on prostitution was in the nature of a "preemptive strike" as "baffling." He went on to say:

What appears to me to emerge from Kerans J.A.'s consideration of the by-law is to establish a concurrency of legislative power, going beyond any double aspect principle and leaving it open to a Province or to a municipality ... to usurp exclusive federal legislative power. If a Province or municipality may translate a direct attack on prostitution into street control through reliance on public nuisance, it may do the same with respect to trafficking in drugs. (p. 10)

This decision cast doubt on similar by-laws passed by other municipalities. Control of prostitution, including jurisdiction, was also being examined by a House of Commons standing committee.

The prosecution of criminal offences is another area of contention between the two levels of government. The federal government can prosecute

criminal offences which are part of legislation based on federal heads of power other than the criminal law power. This was confirmed by the 1979 Supreme Court decision, *R. v. Hauser*. There, a majority of the court found that the federal government's Narcotic Control Act was based on the residual aspect of the peace, order and good government power. Therefore, the Attorney-General for Canada could prefer indictments under the Act. What the judgment did not determine was whether the federal government could prosecute criminal charges which were founded in the criminal law power.

However, in his separate concurring judgment in *Schneider v. The Queen*, (1983) 139 D.L.R. (3d) 417, where B.C.'s Heroin Treatment Act was upheld as legislation in relation to public health rather than narcotics, Chief Justice Laskin of the Supreme Court of Canada stated:

... in my view, the majority judgment in the *Hauser* case ought not to have placed the Narcotic Control Act under the residuary power. Unless we revert to a long abandoned view of the peace, order and good government power as embracing the entire catalogue of federal legislative powers, I would myself have viewed the Narcotic Control Act as an exercise of the federal criminal law power ... and, had I sat in *Hauser*, I would have supported the reasons of Spence J. who in *Hauser*, saw the Narcotic Control Act as referable to both the criminal law power and to the trade and commerce power. (p. 421)

The relationship between the criminal law power, the trade and commerce power and peace, order and good government was addressed in two recent cases. *R. v. Hoffman-la Roche Ltd.* (Nos. 1 & 2) (1982) 125 D.L.R. (3d) 607 dealt with the issue which the majority avoided in *Hauser*: whether the Attorney-General for Canada can prosecute charges flowing from legislation which depends on the criminal law power. *Hoffman-la Roche*, a drug company, was charged under the Combines Investigation Act with conducting its business in such a way that competition was lessened or diminished. Supported by the Ontario Attorney-General, the company argued that the federal government had no power to lay the charge as the Act has been interpreted by the courts as criminal legislation. Martin J.A., in the Ontario Court of Appeal, found that "at the least", Parliament has concurrent jurisdiction to enforce legislation founded on s. 91(27) as long as that legislation was "like the Combines Investigation Act, mainly directed at suppressing in the national interest, conduct which is essentially transprovincial in its nature, operation and effects..." (p. 634). In obiter, Martin went on to find a close relationship between the criminal law power and Parliament's general power to make laws for the peace, order and good government of the country:

... where the subject-matter of the legislation has a national dimension, the residual power and the criminal law power are

mutually supportive. In some cases the line between criminal legislation enacted under s. 91(27) to protect the national interest by suppressing conduct as criminal, and legislation enacted under the general power to protect the national interest, may be so fine as to be scarcely discernible, if discernible at all. (p. 643)

He also found grounds that the Combines Investigation Act could be upheld on the trade and commerce power. Viewed as a whole, the legislation could be seen as "general regulation of trade affecting the whole dominion," an aspect of the trade and commerce power delineated in *Citizens Insurance Co. v. Parsons*, an 1881 decision of the Judicial Committee of the Privy Council.

In *Re Canadian Pacific Transport Co. Ltd. et al.* and *Provincial Court of Alberta et al.* (1982) 135 D.L.R. (3d) 89, the issue was whether the federal government could support the Combines Investigation Act under the trade and commerce power or the general power. The Attorney-General for Canada argued that, although the Act has traditionally been upheld on s. 91(27), it could also be supported under these other heads of power "so that it does not 'depend' for its validity upon the criminal law power" (p. 94). The Alberta Court of Appeal dismissed the argument that the Act was directed at "general regulation of trade," finding instead that it dealt with ethical conduct in commercial practice which made criminal the breach of certain ethical standards (p. 112). When such a scheme is not based on the criminal law power it becomes legislation in relation to property and civil rights and therefore, is *ultra vires* the federal government.

Prowse J.A. also rejected the contention that the Combines Investigation Act could be supported under the peace, order and good government power. He found it neither a matter of national emergency nor a new subject matter which did not exist at the time of Confederation. Nor were the commercial practices targetted in the legislation matters of "national concern transcending the local authorities' power to meet and solve by legislation." Prowse stated:

to treat an aggregate of provincial concerns, without more, as a ground for enabling Parliament to legislate in respect of property and civil rights would 'smother provincial powers' and I see no basis in the present case for treating such an aggregate of provincial concerns as a matter of national concern...(p. 115)

Leave to appeal was granted by the Supreme Court. The case was heard in September in conjunction with the appeal on *Kripps Pharmacy* in which the related question of prosecutorial authority for violation of the Food and

Drug Act was raised. Neither decision had been handed down by the end of the year.

Which federal head of power supports the Combines Investigation Act was raised as well in *Attorney-General of Canada et al. v. Law Society of British Columbia et al.* (1982) 137 D.L.R. (3d) 1. The decision arose from two separate appeals. Donald Jabour, a British Columbia lawyer who was disciplined by the Law Society for "conduct unbecoming a lawyer" for advertising his legal services, asked the courts for a declaration that the Law Society had violated the Combines Investigation Act and his freedom of speech. After the Restrictive Trade Practices Commission, under the authority of the Act, launched an investigation into the purchase, sale and supply of legal services in B.C., the Law Society asked the courts to declare that the Act did not reach the Society, or if it were applicable, that it was *ultra vires*. Jabour, supported by the intervention of the federal government, asked the court whether the Combines Investigation Act was supported by the criminal law power or the trade and commerce power.

Estey J., speaking for a unanimous court, found that the Act did not apply to the Law Society as a matter of interpretation of the terms in which the offence is defined in the Combines Investigation Act, thus eliminating the need to rule on the validity of the Act. However, he did state that the federal government's argument that the Act was founded on the trade and commerce power "does not advance the appellant's position."

HYDRO

In 1980, the Newfoundland government introduced the Upper Churchill Water Rights Diversion Act which sought to repeal the statutory lease held with Québec for water rights of the Upper Churchill River. The legislation was referred to the courts before proclamation. On March 5, the Newfoundland Court of Appeal upheld its validity which had been challenged by Québec (see *Reference re Upper Churchill Water Rights Diversion Act*, 1980 (1982) 134 D.L.R. (3d) 288). Québec argued that the legislation was *ultra vires* on four grounds: that it interfered with extraprovincial contractual rights, that it amounted to regulation of trade and commerce, that it "sterilized" a federally incorporated company and that the Upper Churchill hydro project was an interprovincial undertaking. The Court identified the subject matter of the legislation as the provision of electric power to the province, thus falling under provincial jurisdiction. That it affected an extraprovincial contract could be withstood as "necessarily incidental to the unquestioned rights of the legislature of the Province to legislate in respect to the ownership, control and management of a natural resource wholly situated within its territorial limits."

Québec appealed the decision to the Supreme Court where the Newfoundland position was supported by Saskatchewan, Manitoba and British Columbia and the federal government intervened on Québec's side. The case was still under consideration at the end of 1982.

LABOUR RELATIONS

Since the 1925 decision of the Judicial Committee of the Privy Council, *Toronto Electric Commissioners v. Snider*, regulation over labour relations in most sectors of the economy falls within provincial jurisdiction over property and civil rights. However, the Canada Labour Code applies to labour relations on or in connection with works, undertakings or businesses within federal jurisdiction. Because jurisdiction is divided, there are two regimes for union certification and constitutional questions may arise from this process. This was the situation in two cases considered by the courts in 1982; both decisions granted jurisdiction over labour relations in those particular sectors to Parliament.

In the first case, *Re Whitebear Band Council and Carpenters' Provincial Council of Saskatchewan et al.* (1982) 135 D.L.R. (3d) 128, the Whitebear Band Council asked the Saskatchewan Court of Appeal to quash a decision of the Saskatchewan Labour Relations Board which recognized the Carpenters' Provincial Council as the appropriate bargaining unit for 20 native carpenters and carpenters' apprentices working on the reserve on a federal government home construction and renovation program managed by the Band Council. The Council contended that the undertaking on which the employees were engaged was "an integral part of and necessarily incidental to exclusive federal legislative jurisdiction in relation to 'Indians and Lands Reserved for the Indians'," as granted by s.91(24) of the Constitution Act, 1867, and therefore, was beyond the authority of the provincial labour relations board. It pointed to the Federal Court of Appeal's decision in the *St. Regis* case as support for the argument. The union and the board argued that nothing in the circumstances moved the undertaking beyond the scope of property and civil rights and they pointed to the *Four B* decision of the Supreme Court in support. (See 1981 Year in Review for a description of the *St. Regis* and *Four B* decisions.)

To decide whether labour relations is an integral part of a subject matter over which Parliament has primary jurisdiction, the nature of that subject matter must first be established. Here, the role of the Band Council played a crucial part. Cameron J.A. dismissed the applicability of *Four B*, where neither the ownership by natives of the business, nor the location of the business on a reserve nor the employment of natives warranted classification of shoe manufacturing as a federal activity, because there the Band Council had played no part. Band Councils, he concluded, acted as the agents of Parliament and the Minister, carrying

out functions pursuant to federal jurisdiction over Indians. Cameron was satisfied, therefore, that the power to regulate the labour relations of a band council and its employees, engaged in activities contemplated by the Indian Act, was an integral part of federal jurisdiction granted under s.91(24).

The court did consider the nature of the enterprise in which the carpenters were involved. Cameron concluded that construction of houses on the reserve could not be isolated from the general function of the Band Council. In this respect, he followed the reasoning of Beetz J. in *Montcalm Construction* which favoured looking at a business "as a going concern" rather than the exact nature of the construction undertaking.

For these reasons, the court quashed the decision of the labour relations board.

A dispute over union certification ran throughout the Ottawa-Newfoundland negotiations on offshore mineral resources. The Seafarers' International Union appealed to the Federal Court of Appeal to review and set aside a decision by the Canada Labour Relations Board that it lacked jurisdiction to entertain the union's application to represent 116 workers of Crosbie Offshore Services Ltd. On March 8, the court delivered its decision, *Re Seafarers' International Union of Canada and Crosbie Offshore Services Ltd.* (1982) 135 D.L.R. (3d) 485.

The province of Newfoundland and Labrador and the CLRB opposed the union's appeal, arguing that the enterprise fell within provincial jurisdiction over property and civil rights and local undertakings. The union argued before the court that the ships on which the Crosbie workers were employed were engaged in a transportation undertaking outside provincial boundaries and therefore fell within federal jurisdiction. Intervening in support of the appeal, the federal government contended that the enterprise or undertaking was operating on the continental shelf; federal lawyers asserted an exclusive proprietary and legislative right for the Crown in right of Parliament in respect to the exploration and exploitation of mineral resources of the seabed of the continental shelf.

Thurlow C.J. decided that the undertaking could be classified as shipping beyond provincial boundaries, falling under exclusive federal jurisdiction over shipping and navigation. Having reached this conclusion, the Chief Justice found it unnecessary to consider whether federal jurisdiction over labour relations could be established by regarding offshore oil and gas exploration as a federal undertaking. He suggested that the question be put aside, "notwithstanding the careful presentation" by the federal lawyer, until it arose as an essential part of another case.

Canadian National Railway Co. v. Courtois et al. (1982) 136 D.L.R. (3d) 213, considered another aspect of labour relations — occupational health and safety. Canadian National applied to the Québec Superior Court for a declaration that an investigation by the provincial Occupational Health and Safety Commission into a railway accident which occurred in the province was beyond the Commission's power since it intruded into the exclusive federal jurisdiction over interprovincial railway undertakings. The Commission claimed that the investigation was warranted under provincial jurisdiction over property and civil rights and asked that the functional test be applied to determine whether the province's law interfered with the operation of the federal undertaking.

Just as the cases cited above asked whether Parliament could assert a right to regulate labour relations — which fell normally to the provinces — as an integral part of its jurisdiction over some other matter, this case considered whether provincial occupational and health safety legislation applied to railways or whether the provisions of the federal Railway Act, authorizing the Canadian Transport Commission to investigate railway accidents, applied. As stated by Brassard J., the functional test asks whether the provincial law interferes with the operation of the federal undertaking or whether it affects the undertaking "fundamentally and determinatively."

The Commission argued that a distinction could be made between the inquiry itself and any subsequent remedial orders in respect to the impact on the federal undertaking. This argument was dismissed. Brassard decided that safety in the workplace, working conditions and methods of operation are a vital part of railway operations, and therefore, the inquiry and any remedial orders could not avoid having a determinative effect on Canadian National.

PARAMOUNTCY

The Supreme Court's decision in Multiple Access Ltd. v. McCutcheon et al. (1982) 138 D.L.R. (3d) 1 was an excellent example of judicial interpretation of the validity and consistency of federal and provincial legislation. The defendants, senior executives of a publicly traded company, were alleged to have had violated the "insider trading" violations of the Ontario Securities Act. The defendants maintained that the insider trading provisions of the provincial statute were inoperative as they duplicated sections of the Canada Corporations Act which was paramount. At trial, Mr. Justice Henry of the Weekly Court held that paramountcy did not arise because the two pieces of legislation were not incompatible. Mr. Justice Morden of the Divisional Court reversed this decision, ruling that, because they were duplicates, the two provisions could not "live together and operate concurrently" so the doctrine of paramountcy was invoked. On appeal to the Supreme Court, additional

constitutional questions were added and the federal government and five provincial governments intervened.

Where the lower courts had addressed only the relationship of the federal and provincial insider trading provisions, the Supreme Court was asked to consider the validity of the impugned sections before addressing their consistency.

Counsel for Multiple Access and Ontario argued that the insider trading provisions of the federal legislation created civil liabilities and rights which infringed on provincial jurisdiction. Dickson J., speaking for a majority, said the provisions were a valid discharge of Parliament's company law power, flowing from the general power and the trade and commerce power. Estey J., speaking for dissenting Justices Beetz and Chouinard, found the relevant provisions of the federal legislation *ultra vires* as they infringed on provincial jurisdiction.

Dickson also upheld the validity of the provincial legislation as an exercise of authority over property and civil rights. He dismissed the argument that the provincial insider trading provisions "sterilized" the functions of a federally incorporated company and impaired its status or essential powers.

Having established the validity of each of the sections in question, Dickson considered whether the two could operate concurrently or whether the federal legislation was paramount. Dickson dismissed the notion that duplication constituted grounds for paramountcy. In his view, duplication did not create the contradiction which was required by the more "modern and narrow" test of conflict expressed by Mr. Justice Martland in *Smith v. The Queen*: that compliance with one law would involve breach of the other. In Dickson's words:

there would seem to be no good reason to speak of paramountcy and preclusion except where there is a dual conflict in operation as where one enactment says "yes" and the other says "no"; "the same citizens are being told to do inconsistent things;" compliance with one is defiance of the other. (p. 30)

As concurrent compliance with both sets of insider trading legislation was possible, Dickson found that the doctrine of paramountcy was not invoked.

PUBLIC HEALTH

At issue in *Brenda Ruth Schneider v. The Queen* (supra), was the validity of British Columbia's Heroin Treatment Act. Schneider, a heroin addict, charged that the Act, particularly its provisions for the compulsory

treatment and detention of heroin users, was an invasion of federal jurisdiction.

In the Supreme Court of British Columbia, McEachern C.J.S.C. decided that Parliament's jurisdiction over narcotics included protection of addicts from drug use. McEachern also ruled that the provincial legislation was a colourable infringement on the criminal law power. The provincial Court of Appeal unanimously reversed the lower court decision, holding that the legislation was in relation to classes of subjects falling under s. 92(7), (13), (15) and (16) of the Constitution Act, 1867. It ruled that the establishment and maintenance of facilities for rectifying drug dependency could not be read as narcotic control as expressed in *Hauser*.

In the Supreme Court, counsel for Schneider maintained that the legislation violated Parliament's power to make laws for peace, order and good government of Canada, its criminal law power and its treaty-making power. Dickson J., speaking for the court, found that the treatment of narcotic use failed to satisfy any of the tests which would justify its falling under the general power. It was largely a local or provincial problem rather than one of national concern; it had not "attained such dimensions as to affect the body politic of the dominion" as failure to provide treatment in one province would not endanger the interests of another province. Nor had heroin addiction reached a state of emergency, Dickson found. Rather, he concluded that

the subject of narcotics is (not) so global and indivisible that the legislative domain cannot be divided, illegal trade in narcotics coming within the jurisdiction of the Parliament of Canada and the treatment of addicts under provincial jurisdiction. (p. 435)

Dickson also dismissed the argument that the legislation made narcotic dependency a crime and was therefore a colourable infringement on Parliament's criminal law power. The legislation was directed at lessening heroin users' dependency on the drug, not at punishing heroin users. The treaty implementation argument was dismissed as well.

Dickson concluded that the pith and substance of the legislation was in relation to public health which fell under provincial jurisdiction over matters of a private and local nature. The fact that both the federal and provincial governments supported the validity of the provincial legislation was, for Dickson, important, but not decisive.

TAXATION

Three items in the Constitution Act, 1867, relate to federal and provincial powers over taxation. Section 91(3) gives the federal

government the power to raise money by "any mode or system of taxation," including direct and indirect taxes. Section 92(2) restricts the provincial power to direct taxation "within the province (for) the raising of Revenue for Provincial Purposes." Section 125 is a check on the power of either level of government as it prohibits the taxation of any lands or property belonging to Canada or any province. This provision was at issue in one case considered in 1982 by the Supreme Court while the constitutionality of provincial taxes arose in two other cases.

After the National Energy Program was released late in 1980, the Alberta government asked the provincial Court of Appeal whether the application of the natural gas and gas liquids tax (NGGLT) to the export of natural gas owned by the province was *ultra vires* the federal government. That court declared that the levy was in pith and substance a tax rather than a regulatory mechanism imposed under the trade and commerce power. Therefore, s. 125 was offended and the application of the tax to provincially owned natural gas was invalid. The federal government appealed the decision to the Supreme Court. Five provinces plus an industry association intervened on Alberta's behalf. Despite the agreement reached between the federal government and the Alberta government in September 1981 which reduced the tax to zero for five years, the Supreme Court still delivered a decision, *Reference Re Proposed Federal Tax On Exported Natural Gas* (1982) 136 D.L.R. (3d) 385. A majority of the court upheld the decision of the Alberta Court of Appeal; the Chief Justice and Justices McIntyre and Lamer dissented.

The Alberta government asked whether natural gas owned by the province until it was transported to the United States through a pipeline and sold to a buyer there was taxable under the natural gas and gas liquids tax. The majority phrased the question this way: "is it within the legislative authority of the Parliament of Canada to impose a tax in respect to natural gas which, at all material times prior to its export, belongs to the Crown in Right of Alberta?"

The federal government argued that the tax was an export tax on provincial goods which was allowed by virtue of the *Johnny Walker* decision where customs duties on liquor imported into B.C. were deemed an exercise of the trade and commerce power. But the court found the National Energy Program document explicitly denied the existence of an export tax. Furthermore, the tax was levied on all sales of natural gas, not just exports. The federal government further argued that the tax was founded on Ottawa's power to regulate trade and commerce under s. 91(2) of the Constitution Act, 1867. However, in the view of the court, the tax in no way regulated the flow, production or consumption of natural gas nor modified economic behaviour in pursuit of policy goals. In short, the tax was simply a revenue-raising measure and this conclusion was supported by assertions from the energy policy document. Therefore, because the measure was in pith and substance taxation, its scope was subordinated to the

provisions of s. 125 of the Constitution Act, 1867 and did not apply to provincial property.

Chief Justice Laskin and Justices McIntyre and Lamer dissented. They found the tax was within the powers of the federal government. Speaking for the minority, Laskin C.J. dismissed the lower court decision as a "triumph of form over substance." It was plain, he said, that the Alberta Court of Appeal had "substituted an attack on the mechanics of the tax... in place of addressing the substantive issues;" the Privy Council's decision in *Atlantic Smoke Shops v. Conlon* and the recent *Simpsons-Sears* case showed that courts should not be "beguiled" by the form of a tax in using it as grounds for invalidation. The minority built a supporting network of policy and constitutional relationships around the NGGLT which, for them, supported its validity.

The lower court's characterization of the natural gas and gas liquids tax as a form of "pure" taxation, or strict revenue-raising, was "too formal" according to Laskin. Taxes were often designed with other economic objectives in mind; in the case of the NGGLT, it was part of a comprehensive regulatory scheme directed at energy allocation and conservation. Laskin decided that the tax and the regulatory scheme in which it was placed could not be separated:

To strip challenged legislation of a basic support and then, on that footing, to find vulnerability in what is left is not an acceptable judicial approach to a policy as carefully structured as the comprehensive one which is before us. (p. 392)

The minority also disagreed with the lower court's decision that the tax was not an export tax. The court had "plainly misconstrued" the federal position; it was clear to Laskin that the federal government had been persuaded not to impose an export tax payable by the recipient of the exported gas but had substituted a tax to be paid by the producer-distributor of the gas exports.

Once the minority had established that the NGGLT was an export tax ensconced in the regulatory scheme of the National Energy Program, it considered the relationship of the tax to other provisions of the Constitution Act, 1867, particularly s. 125. That provision for Crown immunity could be reconciled with s. 91 by limiting the immunity of the provincial Crown to federal taxation in respect to intraprovincial transactions. The minority concluded that the tax was a transaction tax which arose when property were moved across a border and thus, s. 125 was not invoked. That the tax was collected from the provincial Crown did not affect its character nor did it bring the tax within the "cocoon" of s. 125. As Laskin stated:

there is no principle of provincial Crown immunity from federal legislative authority, whether regulatory authority or tax authority, once a provincial Crown purports to enter the export field and engage in international transactions. That is this case. Indeed, the national government would become hostage to Crowns in right of the province if the latter could transcend general federal control of international trade simply by asserting that it was bringing Crown properties into the international market. (p.391)

In an obiter dictum, Laskin considered the relationship of the federal government's general power to the case. In the view of the minority, "the power to legislate for the peace, order and good government of Canada is to us a more apt repository of authority for proposed legislation of the scope and extent envisaged by the National Energy Program" (p. 416). Laskin argued for a less conservative interpretation of the general power, claiming that "sterilizing grants of constitutional power does a disservice to a living constitution." He approved of the relaxing of strictures on the peace, order and good government clause included in the Reference re Anti-Inflation Act and Hauser decisions.

Two judgments delivered by the Supreme Court in 1982 considered whether provincial taxes were direct or indirect.

A decision handed down on January 26, *Minister of Finance of New Brunswick et al. v. Simpsons-Sears Ltd.* (1982) 130 D.L.R. (3d) 385, had a convoluted history. In the mid-1970s, Simpsons-Sears objected to the application of the New Brunswick government's Social Services and Education Tax to the distribution of its catalogues. The catalogues were shipped from Ontario and distributed free of charge in New Brunswick. In a majority decision delivered by Ritchie J. in 1978, the Supreme Court ruled on a non-constitutional basis that the tax did not apply to the company. The court decided that the construction of the legislation suggested that the ultimate consumer of the goods should pay the tax and the definition of "consumer" and "consumption" did not apply to the company in its handling of the catalogues. The Act was amended by the New Brunswick government to bring promotional material into the definition of consumption, bringing Simpsons-Sears into the ambit of the tax.

However, Simpsons-Sears appealed the application of the tax on a different basis. First, the question was whether the tax, as constructed in the legislation, applied to the company. Second, did taxing the company in respect of the free distribution of its catalogues constitute "direct taxation within the province" as set out in section 92(2).

Constitutional jurisprudence has established several tests for determining whether a tax is direct or indirect. Generally, a direct tax

is paid by "the very person who it is intended or desired should pay it." Indirect taxes may be paid by one person "in the expectation and intention that he shall indemnify himself at the expense of another" (Peter Hogg, *Constitutional Law of Canada*, p. 402). However, many of the taxes imposed on businesses could be recouped as part of the price of goods or services. As Hogg points out, if all of these taxes were judged indirect, provincial tax bases would be severely undercut (p. 403).

The lower courts ruled that the tax was indirect, and therefore beyond the powers of the province, because its general tendency was to be passed on by the company to the purchasers of goods and thus the ultimate consumer would bear the tax. This decision aroused much concern in all the provinces because it implied that all taxes imposed on businesses and retailers would be indirect. Limerick J.A., dissenting from the New Brunswick Court of Appeal decision, expressed this concern:

A tax which is imposed on a retailer and is absorbed by it as a cost of operation and is passed on only as an unidentified ingredient in the cost of the goods sold is not thereby an indirect tax. If it were so all taxes imposed on retailers such as Income Tax, real estate taxes, taxes on personal property used and totally consumed in the retailer's business such as taxes on paper, accounting books, pencils, building supplies, etc. would also be indirect taxes. (quoted on p. 395)

The Supreme Court drew back from this extreme position. Laskin C.J. ruled that, in general, the ability of a company to pass on the cost of taxes did not automatically classify the tax as indirect. Rather, he stated, a more apt classification of indirect taxes was that expressed by Rand J. in *C.P.R. v. Attorney-General of Saskatchewan*: "If the tax is related or relatable, directly or indirectly, to a unit of the commodity or its price,... then the tax tends to cling as a burden to the unit or transaction presented to the market." Since there was no sale of catalogues, the tax could not be tied to any unit of commodity or the price of any commodity. Consequently, the amended New Brunswick legislation was determined to be *intra vires* and the fears of many provinces were put to rest.

The validity of another provincial tax was considered in a unanimous Supreme Court decision handed down in August, *Re Newfoundland and Labrador Corporation Ltd. et al. v. Attorney General for Newfoundland et al.* (1983) D.L.R. (3d) 577. The issue was originally considered in a reference to the Newfoundland Court of Appeal which, in 1980, found the Mining and Mineral Rights Tax Act, 1975 *intra vires* the province. Two taxes were imposed by the legislation. The "mining tax" was placed on an operator's taxable income derived from mining operations within the province. The mineral rights tax was imposed on all operators and anyone

who received payments for granting mineral rights to an operator. The appellants, Newfoundland and Labrador Corp. Ltd. and Javelin International Ltd., had granted their exploration rights by contract to mining companies in exchange for payments made by the producers. It was the mineral rights tax which was contested primarily by the appellant but the question put before the court addressed the constitutionality of the whole act and whether the act, if upheld, applied to the appellants.

In general, the Supreme Court found both types of taxes were income taxes "placed on the person intended should pay the tax" and therefore were direct taxes.

The companies had contended that the specific application of the mineral rights tax to the owner (but not operator) of mineral rights was a tax on gross revenue; the "general tendency" would be for the taxpayer to pass on the tax to someone else, thereby making it indirect. The court dismissed this argument. Martland J. found no opportunity for the company to pass on the tax as it was not engaged in any commercial transaction. He cited with approval Lord Greene's dictum in the Privy Council's 1950 decision, *Attorney-General for British Columbia v. Esquimalt and Nanaimo Railway Company* that:

It is probably true of many forms of tax which are indisputably direct that the assessee will desire, if he can, to pass the burden of the tax on to the shoulders of another. But this is only an economic tendency. The assessee's efforts may be conscious or unconscious, successful or unsuccessful; they may be defeated in whole or in part by other economic forces. This type of tendency appears to their Lordships to be something fundamentally different from the "passing on" which is regarded as the hallmark of an indirect tax. (p. 589-90)

The court also dismissed the subsidiary arguments that the tax was imposed on operations outside the province and therefore, beyond the reach of the province and that the tax trespassed on federal control over the regulation of trade and commerce.

5 DEBATE OVER THE ECONOMY

For much of 1982, the federal and provincial governments carried on an extensive and well-publicized debate over management of the economy. As interest rates began their alarming climb in mid-1981, the country plunged into a recession. Consumer spending declined, investment was cut off; business laid off workers as the demand for goods dropped and unemployment rose. Construction flagged because high interest rates reduced the demand for housing which, in turn, contributed to higher unemployment.

The federal government felt inflation was the country's principal economic problem; others, including the provincial governments, thought interest rates posed the greatest challenge. Ottawa held fast to its double-barrelled strategy designed to reduce inflation; the Bank of Canada kept its grip on growth in the money supply while the federal government tried to restrain its deficit to limit the inflationary impact of its own spending. But Ottawa warned that it could not fight inflation on its own and urged provincial governments to control their expenditures and the private sector to moderate its wages and prices.

At the First Ministers' Conference on the Economy held in February, the premiers unanimously called for lower interest rates which would encourage borrowing and thus stimulate investment and productivity. They argued that if the Canadian dollar dropped as a consequence of Canadian dollars going to the United States to earn higher interest, the benefits would still outweigh the disadvantages.

In their spring budgets, the provinces tried to deal with the recession and its consequences in the face of Ottawa's refusal to change its monetary policy. Some provinces introduced expansionary budgets in the belief that increased public spending would stimulate the economy and ease unemployment. Others opted for reduced government spending on the grounds that unrestrained government expenditures fuelled inflation. Most introduced programs to alleviate the "interest rate crunch" on

homeowners, small businesses and farmers. Job creation schemes to assist those thrown out of work by the recession were commonplace.

After introducing its "6 and 5" wage and price restraint program in its June 28 budget, the federal government tried to convince the provinces and private sector to adopt the scheme in a unified effort to fight inflation and ease pressure on the economy. The provinces maintained that wage restraint must be tailored to each jurisdiction's needs. By the end of the year, nine provinces had wage restraint programs in place.

In addition to this common adoption of wage restraint, the federal and provincial governments by the end of the year had agreed to cooperate in fighting unemployment and discussed the possibility of complementing budgets to stimulate the economy. So, in some ways, the economic crisis forced the two levels of government to cooperate in managing the economy and deal with the consequences of the recession.

FIRST MINISTERS' CONFERENCE ON THE ECONOMY

Throughout 1981, the provincial premiers called repeatedly for a first ministers' conference on the economy, led by Premier Davis of Ontario. The two federal-provincial economic summits held in 1978, where labour and business were also participants, were held out as models of cooperative federalism, although few concrete results could be attributed to those deliberations.

In a protracted exchange of letters with the Prime Minister, Premier Davis argued that inflation could be combatted only by effective federal-provincial cooperation. He challenged Trudeau's confidence in the anti-inflationary impact of the October 1980 federal budget, claiming "those policies will not work and are not seen to be working by all key players in the economy" (Davis to Trudeau, April 15, 1981, p. 1). Davis also expressed the belief that, while all governments supported the need for fiscal restraint, they disagreed with the federal government's "increasing reliance on the Bank of Canada to contain inflation."

The Prime Minister eventually acceded to the premiers' demands to hold a first ministers' conference early in 1982. But he set out parameters — both substantive and procedural — for the conference. In a telex to Premier Davis, the Prime Minister declared that:

The overriding economic concern of my government in the near term is to ensure future growth and price stability by exercising in an equitable manner the restraint necessary to break the inflationary cycle. All governments must recognize that there simply is no alternative policies (sic) — to

stimulate the economy at this time will invariably lead to worsened prospects for inflation, real growth, and employment. I intend to ask all provincial governments what policies they are prepared to adopt to complement federal restraint policies in the months ahead. (Telex from Prime Minister Trudeau to Premier Davis, December 16, 1981, p. 2)

Thus, Trudeau challenged the provinces' assertion that the economy needed stimulus, arguing instead that fiscal restraint along with a tight money policy would defeat inflation.

In his letters to the Prime Minister, Premier Davis reiterated his belief that federal-provincial summits were required to deal effectively with national economic problems, rather than the series of bilateral meetings of departmental ministers proposed by Ottawa. Although Trudeau agreed to hold the first ministers' meeting, he characterized it as "consultative." This approach reflected the federal government's disenchantment with "executive federalism" and first ministers' conferences where the provinces were able to offer advice on matters of federal responsibility.

The federal government and the provinces disagreed over the extent to which the conference should be public. Trudeau argued that the limited number of participants and open sessions at the November 1981 constitutional conference had contributed to a "businesslike" atmosphere which helped produce an agreement. He said he was anxious to avoid the "unnecessary formality and sometimes overly-bureaucratic machinery" which structured the deliberations at the two economic conferences in 1978. The provinces, particularly Québec, favoured maximum possible openness but settled eventually for the same mixed format used at the constitutional conference.

There were three items on the agenda: economic management, fiscal arrangements and long term economic development. The latter two subjects are discussed in Chapters 6 and 7 respectively.

As the conference began, there was no clear idea of what was to be achieved. The federal government clearly felt that the meeting was not for decision-making. Furthermore, federal policy on all three agenda items was well-known. Ottawa's monetary policy had been in place since 1975 and was backed up by the inflation fighting budget of October 1980. Policy statements on economic development and fiscal arrangements had been released with the November 1981 budget. Ottawa made it clear that it was not obliged to seek agreement with the provinces before altering the equalization formula or Established Programs Financing (EPF). The belief that a deal could and should be made was most prevalent concerning fiscal arrangements. All the provinces acknowledged that the federal government

had exclusive jurisdiction over national fiscal and monetary policy but felt that alternative policies needed to be expressed.

The experience of the provinces in previous first ministers' conferences, especially those dealing with the constitution and fiscal arrangements, raised expectations of an agreement or communiqué which all governments supported. Given the recent success of the constitutional conference in attaining a definitive federal-provincial agreement, comparisons with the economic summit were inevitable and expectations perhaps exaggerated.

There were also conflicting interpretations of the purpose of the conference. Premier Lougheed hoped that a consensus could be reached on a path to economic recovery. In his view, federal-provincial cooperation was essential: "It is a reality of our federal state and to ignore it is to invite failure." Premier Hatfield felt "the buck stops here with the First Ministers' Conference" as all Canadians looked for action on the economy. Premier Pawley of Manitoba, attending his first meeting of the premiers and the Prime Minister, felt the conference should be the beginning of a "systematic process of consultation on joint policy development and coordination." Prime Minister Trudeau, on the other hand, believed that the first ministers were meeting to "consult each other, to tell each other what we are doing, to exchange ideas, and to see what we can do to coordinate our efforts to improve the economy..."

The conference took place as the federal government's new approach to intergovernmental relations crystallized. In reorganizing the Department of Regional Economic Expansion (DREE) and declaring an end to "blank cheque federalism," the federal government affirmed its desire to strengthen its presence in the country's eye. This shift to "parallelism" in delivering programs influenced primarily the first ministers' discussions on economic development and fiscal arrangements. The debate over national fiscal and monetary strategy was much more a confrontation between alternatives put forward by policy spokesmen than a debate founded on divergent views of federalism, intergovernmental relations and governmental self-interest.

In addition to the federal government's attitude to federal-provincial relations, the summit in Ottawa was held in a bleak economic context. Inflation was running over 12 per cent; unemployment was at 8.6 per cent with every prospect of rising higher. Short term interest rates were down at about 15 per cent, having peaked in the spring and summer of 1981. The beleaguered budget brought down by Allan MacEachen in November was a ready source of criticism and perhaps weakened the federal government's credibility. In addition to protesting the economic squeeze wrought by high interest rates, the provinces were united in their opposition to federal plans to change the federal-provincial fiscal arrangements. The

conference centre in Ottawa was picketted by public service unions who called on the first ministers to reject any proposals for public sector wage and price controls.

Inflation or Interest Rates?

In his opening remarks on February 2, Prime Minister Trudeau defended his government's fiscal and monetary policy. Interest rates were high to restrict the amount of borrowing, thus curtailing spending and inflation. This policy was also being followed in the United States. But Canadian interest rates had to be higher than those in the U.S. to avoid capital outflows to the States and a run on the Canadian dollar. Ottawa maintained that interest rates were high because inflation was running at unprecedented levels. If inflation were lowered, it was argued, interest rates would decline. Thus, inflation was the country's principal economic problem. Trudeau rejected economic stimulus because it would "unacceptably risk our chances of reducing inflation and lowering interest rates in the longer run, while achieving only marginal and temporary employment gains." Trudeau restated the goals of the November 1981 budget — restraint, equity and economic renewal — arguing that his government was fighting inflation without burdensome social costs and was laying the groundwork for a brighter economic future.

The provinces' opposition to a tight money policy was well-voiced prior to the conference but the united attack on federal fiscal and monetary policy at the conference was largely coincidental. The premiers charged that high interest rates were actually fuelling inflation as the costs borne by homeowners, farmers, and businesses rose. As well, productivity was declining and unemployment increasing as industries and small businesses collapsed under heavy financial burdens. Premier Peckford of Newfoundland echoed the sentiments of the other premiers in claiming, "it is difficult to distinguish whether we suffer more from the disease than from the alleged cure."

The premiers unanimously called on Ottawa to lower interest rates to stimulate investment, productivity and economic growth. This argument was expressed in contemporary terms by Brian Peckford:

It seems to me that the federal government in the last year or so went for (the) demand side. In other words, reduce the amount of demand by high interest rates; therefore not as many people will borrow, therefore the demand will be less... I'm really saying let's go to the supply side of things; lower your interest rates, let people borrow, create jobs, and thereby create more supplies of things in the economy. The jobs will give you the money to buy that extra supply. (CTV, "Canada A.M.," transcript, February 2, 1982)

The provinces also met the federal argument that the dollar would fall precipitously if interest rates were lowered. They contended that a lower dollar could have a beneficial impact on the economy. As Premier Lougheed stated:

A depreciation of the dollar creates the incentive to purchase domestically produced goods instead of imported goods. The availability of cheaper domestically produced goods, especially now when there is excess capacity in many industries, reduces the impact of higher import prices on consumers. Replacing imports with goods produced in Canada would also stimulate employment in the hard-hit manufacturing sector. ("Notes for Opening Remarks by Premier Lougheed," Federal-Provincial Conference of First Ministers' on the Economy, Ottawa, February 1982, p. 6)

Premier Pawley was the only provincial leader who raised the possibility of exchange controls to protect a devalued dollar. He felt that there might be a need to restrict the outflow of "speculative dollars" (CBC FM, "Sunday Magazine," transcript, January 31, 1982).

The federal government countered this argument by arguing that export markets for Canadian products were weak and a lower dollar would do nothing to stimulate exports. Rather, the price of imports would rise and create "secondary round inflation" (interview with Treasury Board President Don Johnston, CTV, "Canada A.M.," February 3, 1982).

In addition to stimulating investment by lowering interest rates, the provinces saw a role for governments in creating a favourable climate for investment, both foreign and domestic. Premier Lougheed argued that the tax expenditures eliminated in the federal budget should be restored and the Foreign Investment Review Agency's (FIRA) scrutiny of foreign investment relaxed. B.C. Premier Bill Bennett sketched a proposal for tax free development bonds which would provide money for investment without imposing on government treasuries. Premier Blakeney of Saskatchewan presented a more interventionist proposal, calling for the establishment by both levels of government of a Canadian Public Investment Fund which would finance important capital projects and stimulate employment and economic growth. Premier Lévesque argued for immediate stimulative measures and presented a proposal for a federal-provincial "emergency fund" to create jobs and ease the impact of high interest rates on employers.

Only Premier Lougheed referred directly to wage and price restraint in the opening remarks. He suggested that the federal and provincial governments agree on "balanced national guidelines" for wages and salaries

in the public sector, and he recommended that public sector wages and salaries not outstrip those in the private sector. He emphasized that he was not advocating wage and price controls as the 1975-78 program had shown these to be "ineffective and inequitable." This was part of a six point, "made in Canada" interest rate policy outlined by Lougheed which also recommended a return to emphasis on the private sector, restoration of investor confidence through re-introduction of tax expenditures eliminated in the federal budget and relaxation of foreign investment review, expansion of export potential and a strengthened transportation system.

In an afternoon session which was closed to the public, federal Finance Minister Allan MacEachen reiterated the federal approach to fighting inflation. There appeared to be little debate about the alternative policies put forth by the provinces. Toward the end of the meeting, Bank of Canada Governor Gerald Bouey made a detailed presentation on the consequences of lower interest rates for the dollar. He contended that every fall of \$.03 in the dollar would amount to a one per cent increase in inflation. The almost U.S. \$40 billion in aggregate provincial debt meant that a 10 per cent depreciation in the dollar would translate into an extra \$400 million in debt servicing costs. Premier Hatfield of New Brunswick was the only premier to acknowledge publicly that he had been swayed by Bouey's presentation. Hatfield confessed that, in his view, the premiers had been somewhat cavalier about the impact of their proposals on the Canadian dollar.

Despite provincial charges that the prevailing level of interest rates was "demented," "perverse" and "immoral," Prime Minister Trudeau in his closing remarks stuck to the federal line that it was necessary to deal with inflation first.

Trudeau also rejected the "illusion" that the federal government was preoccupied with inflation for inflation's sake while the provinces were the only governments concerned about unemployment or economic growth. He argued that fighting inflation would assist employment and economic stimulus. In his words:

...if comparisons had to be made I would say that we are more concerned about unemployment and economic growth than many of the provincial governments have shown themselves to be precisely because we are ready to tackle the problem of inflation. Experience both here and elsewhere has shown us that you cannot have real, long-term economic development or generate lasting employment unless you are first prepared to deal with the problems like inflation which stand in their way. ("Transcript of the Prime Minister's Closing Statement," First Ministers' Conference on the Economy, Ottawa, February 4, 1982)

In their closing statements, the premiers continued to castigate the federal government's economic management policy. Ottawa's concern for the dollar was termed an "obsession" and the inflationary impact of a devalued dollar rejected as "exaggerated." However, some premiers found cause for optimism because they had been able to tell Canadians that there was an alternative to tracking American interest rates. So, while they recognized that the federal government would never announce a change in policy under its exclusive jurisdiction at a federal-provincial conference, they believed they had contributed to a climate of opinion which might eventually result in a changed course.

The prospect of public sector wage restraint arose in the final session of the conference. In his closing remarks, the Prime Minister outlined a proposal for temporary public sector wage guidelines which he urged all governments to adopt. He suggested that all salaries over \$50,000 be frozen, those under \$15,000 would be accorded increases matching the cost of living, while salaries in between would be accorded graduated increases. Trudeau recalled that the Supreme Court's 1976 judgment on the Anti-Inflation Act left control over wages, prices and profits largely in provincial hands except in a national emergency. But he challenged the provinces to adopt this scheme for public sector wage restraint:

So I asked you, and I ask you tonight, what action are you prepared to take within your own jurisdiction to help establish the conditions for dependable, long-term economic growth, a lowering of inflation which should encourage that growth and the lowering of interest rates which would follow from that lowering of inflation. ("Transcript of the Prime Minister's Closing Statement...", p. 8)

The premiers were taken aback by the Prime Minister's proposition. They declared that no such specific proposal had been tabled in previous sessions. Generally, the premiers argued that wage restraint for public servants was discriminatory and guidelines should be applied to private sector wages and prices to have any effect against inflation. As Premier Blakeney explained:

It was not a plan tabled. It was a general idea expressed as to whether or not we could find some guidelines to apply to public servants, and our position was very simple: if we're talking about an overall program that would be guidelines not only for public servants but for the private sector and prices and incomes and dividends and professional fees and the like, we weren't enthused about that measure of control over the economy but we would certainly listen and talk. But if the proposal was just to control the wages of public servants ... we weren't

interested at all ... (CBC TV, "The Journal," transcript, February 4, 1982)

Peter Lougheed admitted at the end of the conference that "quantified" national guidelines for public sector wages were impractical in a country as diverse as Canada (Edmonton Journal, February 4, 1982, p. D7).

For an assessment of the first ministers' conference and Canadian federalism, see Chapter 1.

THE DEBATE CONTINUES

At the closing of the first ministers' conference, the premiers vowed to carry on the fight against the federal government's fiscal and monetary policy. The spring budgets offered an opportunity for the provinces to restate their criticisms.

B.C. Finance Minister Hugh Curtis argued that Canada was in "lock-step" with the U.S. policy of tight money and high interest rates. He declared, "we are told that we really do have made-in-Canada economic policies. If this is the kind of policy we make in Canada, perhaps we should look elsewhere." The Manitoba budget claimed that "the blunt instruments of neo-conservatism — arbitrary cutbacks and punitive interest rates — have failed disastrously everywhere they have been tried... and have caused the worst recession in this country in decades." Conservative Saskatchewan Finance Minister Bob Andrew declared that "we in Saskatchewan feel like David without a slingshot. As long as the feds pursue a scorched earth policy of high interest rates, unemployment is going to continue growing" (Regina Leader-Post, August 14, 1982, p. C1). Québec Finance Minister Jacques Parizeau spoke of the extensive costs incurred in protecting the dollar. He called the U.S. \$.80 Canadian dollar a "symbol." For Québec, he said, the economic plunge into recession was taking on the appearance of a "rout." Ontario linked "the cross of crushing interest rates" with "the thorns of the November federal budget." The cancellation of many tax expenditures had smothered private and corporate investment at a time when the economy needed stimulus. The Alberta budget noted that a constructive economic strategy, based on increased exports (natural gas, in particular), encouragement of risk-takers and private investment could replace the policy of tracking American interest rates. Premier Lougheed made a number of high profile speeches promoting this strategy, calling for a suspension of foreign investment review and drastic alteration of the Canadianization provisions of the National Energy Program (NEP). He stated that he would accept a lower Canadian dollar and lower interest rates rather than the current policy of tracking U.S. rates (see Address to the Empire and Canadian Clubs of Toronto, June 2, 1982 and speech to the Investment Dealers' Association of Canada, Jasper, June 21, 1982).

Premiers' Conference

By August, when the annual Premiers' Conference was held in Halifax, wage restraint programs were in place in several jurisdictions as attempts to tackle inflation. However, the provinces argued that a more comprehensive solution, preferably an intergovernmental one, was required to pull Canada out of its recession and achieve economic recovery.

The need to stimulate investment was central to the provinces' discussions. Alberta attributed much of the blame for declining investment to "deteriorating confidence that Canada will correct its economic management mistakes. It reflects a deep concern over increasingly interventionist, discriminatory and inconsistent national policies" (The Road to Recovery: Restoring Investor Confidence, August 1982, p. 3). Premier Peckford of Newfoundland agreed that foreign investment review and FIRA had "systematically contributed to the erosion of foreign investor confidence." Alberta argued that the foreign investment review process should be suspended for two years while Newfoundland contended that the act should be repealed and FIRA abolished. Alberta, Saskatchewan and Ontario urged that the tax system be used to encourage investment, particularly by restoring tax expenditures eliminated in the 1981 budget.

The premiers' communiqué listed elements of a "comprehensive" plan for economic recovery. On monetary policy, they claimed advantage should be taken of falling interest rates and that rates should not be kept artificially high in relation to U.S. rates. A majority of provinces favoured abolition of FIRA; Québec and Ontario were in the minority. All provinces except Manitoba agreed that the foreign investment review policy should be substantially changed. Premier Howard Pawley of Manitoba felt that relaxing foreign investment review would lead to "bargain sales" of Canadian manufacturing industries. Québec favoured a sectoral approach to foreign investment rather than the current case-by-case approach. The premiers also maintained that the National Energy Program should be altered to encourage Canadian equity without discouraging foreign investment and the tax system should be altered to encourage equity investment which would create jobs. They agreed that all governments should work toward deficit reduction.

The premiers called on the Prime Minister to convene a meeting of first ministers in the week of September 13 to discuss this plan. The federal government rejected a first ministers' conference as "premature" and criticized the vagueness of the premiers' proposals. Deputy Prime Minister Allan MacEachen criticized the provinces for ignoring the extent of the international recession and for failing to recognize that inflation was Canada's principal economic problem. MacEachen suggested that the finance

ministers from both levels of government meet to flesh out the August proposals.

But the provinces did not relent in their pursuit of a first ministers' conference. At the urging of Ontario's Premier Davis, Nova Scotia Premier John Buchanan, the chairman of the Premiers' Conference, again asked the Prime Minister in November to call the first ministers together. In his reply, Trudeau said he was not opposed to such a meeting "at the appropriate time," but he preferred to wait until the provinces provided details of their August proposals and until meetings with the provinces then being conducted by several federal ministers holding economic portfolios were completed. The Prime Minister also implied that the provinces should be very careful in preparing for a first ministers' meeting as Canadians "would have every right in judging us very harshly if a First Ministers' Conference failed to contribute in some concrete way to the co-operation that must exist if we are to deal effectively with the serious economic problems confronting us" (Office of the Prime Minister, Release, December 1, 1982, p. 2).

Finance Ministers' Meeting

When the federal and provincial finance ministers met at Meech Lake on December 16, the unemployment rate had risen to a post-war high of 12.7 per cent. With a harsh economic winter facing Canadians and the prospect of increased unemployment, the ministers discussed measures to stimulate the economy and put aside the debate over interest rates and inflation, both of which had declined in recent months.

One of the means of economic recovery discussed was investment. There was a broad difference of views between Ottawa and some of the provinces. The federal government felt consumer spending should be stimulated and private savings unlocked while the more outspoken provinces favoured significant political changes to FIRA, the NEP and monetary policy (Le Devoir, December 16, 1982, p. 8).

The finance ministers discussed at length the effectiveness of tax cuts in stimulating spending and investment. The federal minister was concerned that tax breaks for business should be used for job creation, rather than debt payment or improving corporate liquidity. Rather, specific cuts targetted at expanding sectors were favoured (CTV, "Question Period," transcript, December 17, 1982, p. 4-5). It was generally felt that tax cuts for consumers would be ineffective as Canadians were already saving large amounts and would not necessarily spend the money saved in a tax break. Furthermore, governments needed the revenues to finance extraordinary expenditures such as increased welfare payments. The ministers concluded, according to federal minister Marc Lalonde, that if

consumers were persuaded that interest rates would fall, spending would pick up (Montreal Gazette, December 18, 1982, p. C1).

The finance ministers agreed to step up capital works projects to be conducted in cooperation with other governments and the private sector. Housing, energy and transportation were suggested as areas for spending; the ministers agreed to meet early in 1983 to delineate specific projects.

The Meech Lake meeting was characterized by an "unusual air of affability" among the federal and provincial ministers. Saskatchewan's Bob Andrew sensed "a truce, and we began to build a bridge to cooperative federalism" (Globe and Mail, December 17, 1982, p. 1). Frank Miller of Ontario thought it was the best meeting he had attended "in terms of ability to talk to each other and agree" (Ottawa Citizen, December 17, 1982, p. 1). According to Québec's representative, Jacques Parizeau, it was "the first time in quite a few years we have made real progress" (Vancouver Sun, December 19, 1982, p. A1).

Several reasons were advanced for this spirit of cooperation. Marc Lalonde was regarded as more forthcoming and less intransigent than his predecessor. The dismal state of the national economy and rising unemployment called for governments to put aside their differences and work together. The issues of inflation and interest rates were less pressing. Finally, there was general acceptance of short term deficit increases despite the already swollen deficits of most governments.

PROVINCIAL FISCAL POLICIES

The federal-provincial conference of first ministers held in February failed to produce a coordinated fiscal strategy to combat inflation. Some argued that responsibility for managing the national economy was the federal government's alone; others felt that concerted action by both the federal and provincial governments was essential but was rendered difficult by the adversarial politics of first ministers' conferences. In the absence of federal-provincial agreement, the ten provincial governments formulated individual fiscal strategies which were unveiled in spring budgets. Provincial treasurers pointed out that many provisions in their budgets were designed to mitigate the effect of "undesirable" federal policies, such as high interest rates and program cutbacks.

The dangers of economic forecasting have been obvious in the past few years and provincial finance ministers were reluctant to base their budgets on firm projections of inflation or interest rates. They recognized the vulnerability of provincial finances to developments in the economy, such as declining corporate profits and rising unemployment. Throughout 1982, this vulnerability of the provincial treasuries became painfully evident. Hasty revisions to budgetary plans were made before the

year ended as deficits mounted under unforeseen expenditures, and as the economic recession worsened.

Provincial Budget Strategies

The Alberta and New Brunswick budgets stood out as clearly expansionary. Alberta Treasurer Lou Hyndman found that the provincial economy had performed "surprisingly well" in 1981 but warned that due to the negative effect of federal policies, "Alberta's full potential will not be realized this year; surging economic growth has been postponed." Ordinary spending was increased by 25 per cent, the province's capital construction program was expanded by one-third, and \$3 billion in Crown corporation investments were planned. This influx of public funds was designed to stimulate economic activity and provide jobs.

As a consequence, the Alberta budgetary deficit rose by almost 200 per cent to \$758 million; the province had incurred its first operating deficit in 1981-82 when oil and gas revenues declined significantly. No taxation changes were made to increase revenues.

Shortly after the Alberta budget was released on March 18, Premier Lougheed announced substantial changes to the province's oil and gas incentive and taxation programs. Reduced royalties, enhanced royalty tax credits and a grant program for well maintenance and service were designed to attract investment to the industry and stimulate economic activity. The anticipated provincial deficit rose to \$2.45 billion as a result of these changes.

The May 4 budget introduced by New Brunswick Finance Minister Fernand Dubé was explicitly termed expansionary. In his words, "It is designed to not only support economic activity, but to turn the corner faster to a stronger and more robust provincial economy." The budget was built around the province's economic development strategy, *Meeting the Challenge of the Eighties* (see Chapter 7) which had been released earlier in the year.

Natural resources departmental budgets were increased by over 25 per cent while the Commerce and Development budget was expanded by 62 per cent, reflecting the desire of the province to develop its manufacturing base and the withdrawal of the federal government from some industrial assistance programs. Net capital expenditures were increased by 29 per cent over the 1981 budget estimate. Ten million dollars was accorded to the Department of Labour and Manpower to stimulate close to 4,000 jobs.

Dubé made a few taxation increases, on the grounds that the tax burden of New Brunswickers was relatively low, especially in comparison to the expanded services provided in the budget. He eliminated the 5.5 per cent reduction in personal income tax, yielding an extra \$148 million. Railway

rolling stock was made taxable and was expected to yield \$1 million per year. Exemptions under the retail sales tax were broadened and property taxes reduced.

Given the government's "aggressive and active" approach to the economic situation, the provincial budgetary deficit rose by 119 per cent to \$421.9 million. Dubé assured members of the legislature that the provincial debt was "clearly manageable."

The March 18 budget of the Saskatchewan NDP government tabled before the provincial election, was also expansionary while balancing revenues and expenditures at \$2.5 billion. Although it was never adopted by the legislature, the budget was designed to "put people first, not inflation." A mortgage interest relief program was introduced, a shelter allowance for senior citizens was provided, and the tax on children's clothing and footwear was eliminated. Two billion dollars in capital investment by Crown corporations was planned to stimulate nearly 4,000 construction jobs.

At the other end of the pole from the Alberta and New Brunswick budgets were those of Nova Scotia and British Columbia. These were based on the premise that the economic situation required conservative fiscal policies rather than major new government expenditures which would be "intrusive rather than helpful" (Globe and Mail, May 17, 1982, p. 1).

In his April 30 budget, Nova Scotia Finance Minister Joel Matheson stated that 1982-83 would be "a year of constraint during which we can strengthen our fiscal base for the exciting era ahead." Programs were streamlined, expenditures reduced and taxes raised as the government reduced its budget by approximately 20 per cent. The growth rate in operating expenditures was held close to 13 per cent, and Matheson noted that efforts were being made in all policy sectors to coordinate government expenditure plans to ensure cost effectiveness.

The Nova Scotia government raised the rates of a large array of taxes, designed to yield \$181 million. The personal income tax was raised by four per cent to 56.5 per cent of the basic federal tax and the general corporate income tax rate was raised to 15 per cent from 13 per cent. The retail sales tax rose by two points to 10 per cent and long distance telephone calls became taxable under this levy. A tax of four per cent was imposed on purchases of equipment used in non-renewable resource production or processing which should yield revenues as the offshore oil agreement between Canada and Nova Scotia stimulates activity. Gasoline taxes were placed on an ad valorem basis at 20 per cent to be adjusted quarterly. Taxes on tobacco and general insurance premiums were raised, as were fees for motor vehicles. Other government licenses and fees would be adjusted to "better reflect a user-pay concept."

Finance Minister Hugh Curtis of British Columbia rejected higher taxes in his restraint oriented budget. He found "heavier taxation would undermine our economic future — by discouraging investment initiative, by removing incentives to work and by penalizing those who take risks in pursuit of economic betterment." Curtis also dismissed borrowing as a means of raising revenues, a basic tenet of the Social Credit platform:

(W)e shall continue to resist the borrowing trap into which many other governments have fallen — seldom to emerge. Prudent families would never borrow to buy groceries, although many borrow for a new car, and most will borrow for a new home. This government adheres to similar rules of careful financial management. We shall not borrow to finance the ongoing operations of programs... (p. 2)

Hit hard by the decline in corporate revenues, especially in the resource sector, British Columbia turned to expenditure restraint in a program announced by the Premier shortly after the first ministers' conference. Spending increases by the provincial and municipal governments, school and hospital districts and other provincially funded agencies were held at 12 per cent. Public sector wages would be increased by 10 per cent for one year with a freeze on the salaries of the highest paid civil servants.

This "economic stabilization program" included some measures for economic stimulus which were detailed in the budget. By drawing on a number of special accounts, Curtis set up another special account for employment development. Managed by a new Cabinet Committee, \$132.9 million was to be devoted to manpower training. The tax on paid-up capital held by banks was raised to two per cent from 0.8 per cent and the \$15 million raised would be accorded to the employment development fund.

Prince Edward Island and the new Conservative government in Saskatchewan both chose to run deficits in 1982-83 rather than raise taxes or eliminate public programs. Both provinces had achieved surpluses in 1981-82; the Saskatchewan government had been running surpluses for the last 20 years.

P.E.I. Finance Minister Lloyd MacPhail, in his March 25 budget, held government expenditure growth to 12 per cent and avoided any tax changes. However, revenue growth was expected to be only 9.3 per cent from provincial sources and seven per cent from federal transfers. Consequently, a deficit of \$14 million was expected. MacPhail warned that, while deficit financing was necessary in the short run to prevent unnecessary pressure on the local economy, it implied that "in coming years the Province will have to gradually make further reductions in its expenditure base and that most of those seeking additional benefits will be disappointed."

In his November 24 budget, Saskatchewan Finance Minister Bob Andrew charged that the Blakeney government had overestimated revenues by over \$200 million while expenditures had been underestimated by \$100 million. As well, the Conservatives claimed the Heritage Fund, "our hedge against tough times," was empty, having "fed the ravenous appetite of the family of Crown corporations."

This apparent gap between revenues and expenditures widened as the Conservatives implemented their mortgage interest reduction plan at a cost of \$35 million and eliminated the provincial gasoline tax which cut \$122 million from government revenues. To prevent the deficit from widening further as a result of these programs, the government cut expenditures for travel, contract work and government advertising and instituted a hiring freeze. In all, expenditures were cut by \$170 million.

Expenditures were increased for agriculture, health, education and social services over the estimates put forth by the NDP government. The government replaced the Land Bank with a farm purchase program which would help young farmers buy farms with low interest loans. The Land Bank had been attacked by the Conservatives in the election; in the budget, Andrew reiterated the party's belief that "Saskatchewan farmers expect intelligent help from their government, not a landlord-tenant relationship." Fifteen million dollars was set aside for job creation over the winter and the program would be conducted jointly with the federal government.

Tobacco taxes were increased and the tax on general insurance premiums was raised by one point to three per cent. At the same time, insurance companies were exempted from the provincial capital corporation tax.

Public sector wage restraint was also the centrepiece of the May 25 budget of Québec Finance Minister Jacques Parizeau. Like British Columbia, the provincial government felt that the people of Québec bore an already heavy fiscal burden; since taxes were raised in the province's November 1981 supplementary budget, Parizeau was reluctant to increase rates again. Neither could the province adopt deficit financing as its fiscal strategy, as had Alberta, New Brunswick, P.E.I. and the Devine government in Saskatchewan. Faced with a deficit of almost \$2.9 billion in 1982-83, the province simply could not afford to borrow any more. The cost of servicing the deficit rose from 12 per cent of the budget in 1981-82 to 17 per cent in 1982-83 because of rising interest rates. The government had already slashed \$1.5 billion from public programs and expenditures in 1981 — a choice which other provinces were beginning to face late in 1982. While further cuts were not discounted, the government warned that programs and services might be completely eliminated or suspended.

Québec staked its fiscal salvation on cutting back public sector salaries and fringe benefits which accounted for 52 per cent of budgetary expenditures. The estimates released by the Conseil du Trésor on March 23 indicated that more program cutbacks would be forthcoming but on a less drastic scale and the government's "slim fiscal margin" would be devoted to job creation. Consequently, the government was seeking solutions to the escalating cost of remuneration and working conditions of employees in the public and parapublic sectors to cover a gap between revenues and expenditures and keep the deficit from increasing.

Parizeau's budget elaborated on this strategy. He outlined the severe limitations which the deficit and federal cutbacks imposed on the government and concluded that public sector wage settlements had to be examined for possible savings as they accounted for over 50 per cent of expenditures. Parizeau noted that public sector wage rates in Québec outstripped those in the private sector by 13 per cent while employees enjoyed job security which their private sector counterparts did not share.

Accordingly, the government decided to recapture the \$521 million "conceded" to the unionized public sector in increases during the last six months of 1982 and the first three months of 1983. Beginning in June, public service salaries would be frozen for one year, covering the government, schools, universities and other public agencies. Doctors' fees would also be frozen. A hiring freeze in the public service was levied and no increases within salary scales would be accorded to public servants.

Parizeau made some adjustments to tax rates to increase revenue. He asked the Société des alcools du Québec to increase its "dividend" to the province by \$50 million; the tobacco tax was raised five per cent to 50 per cent to raise \$30 million. The retail sales tax was increased for ten months to nine per cent from eight per cent, and the telecommunications tax was raised by one per cent. These measures were estimated to bring in a total of \$270 million. The finance minister also announced that he would match the changes made to the income taxation system made in the federal November 1981 budget which tightened tax "loopholes." This move, which Parizeau said would prevent a "tax jungle," was estimated to gain \$150-200 million in revenue for the province.

The other provincial governments — Ontario, Manitoba and Newfoundland — adopted a combination of fiscal approaches. Taxes were raised or broadened, public sector wages were restrained, job creation and housing construction were stimulated and incentives were provided for capital investment.

In his May 13 budget, Ontario Treasurer Frank Miller saw his immediate responsibility as short term job creation. Fifteen million dollars was

provided for a Cooperative Projects Employment Fund by which workers who had been laid off and were receiving unemployment insurance benefits would receive a provincial supplement for working on temporary projects. Provincial capital projects would be accelerated with the addition of \$133 million. Extra money was allotted for youth and agricultural employment. In all, Miller saw 31,000 temporary jobs being created in 1982 with a total of \$171 million in public funds.

Ontario chose to stimulate housing construction by offering interest-free loans rather than mortgage subsidies; loans of up to \$5000 would be provided to renters or first-time home buyers who bought new homes. The Treasurer predicted that 38,000 man-years of employment would be generated.

Although Miller agreed with the principle that expenditures should be cut before taxes were raised when faced with a mounting deficit, he argued that further expenditure cuts would carve too deeply into social and economic programs. The reduction in federal transfer payments exacerbated this problem and Miller concluded his only choice was to raise taxes.

The Ontario government objected strongly to the federal government's move to tighten tax loopholes in its November 1981 budget. The provincial government felt that corporate and personal investment was needlessly dampened and so, the province could not damage investor confidence further by raising income taxes. Consequently, the retail sales tax was broadened to include household pets and plants, personal hygiene products, fabric and clothing patterns, magazines and all take-out food. These changes would yield \$340 million. Miller also raised OHIP premiums, alcohol and tobacco prices, and motor vehicle fees.

Miller expounded on the need for public sector restraint and served notice to all provincially funded organizations that government contributions would be held below the rate of inflation. He called for voluntary restraint by all sectors as preferable to wage and price controls. To lead the way, the provincial government decided to cut senior civil service salary increases to six per cent as well as legislators' salaries. Miller asked all municipal councils, school boards, universities, colleges and hospitals to review their compensation programs.

Manitoba adopted a combination of expanded public sector capital expenditures, short term job creation, investment stimulation and expenditure relief for individuals to:

help sustain our economy during one of the most difficult periods Manitoba and Canada have faced in decades — to underpin our economic foundations, to make certain we can take

early advantage of a national recovery when it takes place, and... to provide as much protection and assistance as we can to relieve Manitobans of the worst effects of national conditions and national policies. (Manitoba, Budget 1982-83, p. 1)

Finance Minister Vic Schroeder, in his May 11 budget, announced a public sector capital expenditure program of \$700 million, an increase of 40 per cent, designed to stimulate employment and protect jobs. Ten million dollars was set aside for short term job creation, directed largely at students. The Department of Economic Development was given a start-up fund of \$1 million to mobilize venture capital for "promising and innovative" firms in the manufacturing and processing sector.

To ease financial pressure on individuals, the Manitoba government announced an interest rate relief program for homeowners, farmers and small businesses. Residential rent controls were introduced, the hydro rate was extended and tuition fees for universities and colleges were frozen.

Taxes were reduced for small business and the retail sales tax exemptions were broadened.

Manitoba raised some taxes to cover the \$828 million expected loss in federal transfers. A payroll tax of 1.5 per cent on all employers was imposed to finance health and post-secondary education and was expected to yield \$110 million per year. A surtax was imposed on taxable incomes greater than \$25,000 which would generate \$16.2 million in 1982-83. Manitoba followed B.C. in applying a special two per cent tax on banks under the corporation capital tax. The province also followed other provinces in raising its rate on general insurance premiums to three per cent.

The Newfoundland budget, tabled on May 27 by Finance Minister John Collins, projected a current account surplus while taxes were raised and senior civil service and legislative salaries were restrained. The public sector capital investment program was expanded by 28 per cent. Collins noted a "troublesome growth in the volume of deficit financing" by governments and pointed out that the Newfoundland government had committed itself to live within its means.

Newfoundland joined Nova Scotia as the only provinces to raise personal and corporate income taxes. The personal income tax rate rose by two per cent to 60 per cent of the basic federal tax; the general corporate tax went to 16 per cent from 15 per cent. The government also introduced a new capital tax of 1.5 per cent on banks, loan and trust companies. Tobacco and liquor prices were raised and fees for government services increased.

Collins noted that public services salaries and benefits accounted for almost 50 per cent of current account expenditures as annual increases, increments, new positions and benefits compounded. Consequently, salary increases for senior public servants would be held at five per cent for 1982-83. A salary freeze for Members of the House of Assembly was recommended.

Provincial Budget Revisions

By autumn, several provinces made revisions to their budgetary plans, either by increasing borrowing requirements, cutting internal expenditures or, in Newfoundland's case, by raising taxes. Even the cautious assessments of future economic prospects in the spring budgets had proven too sanguine.

In British Columbia, the government proceeded to issue tax-free bonds and devote the proceeds to economic development. Premier Bennett had broached the idea at the first ministers' conference in February and asked for federal cooperation. When none was forthcoming, the province went ahead on its own. In June, legislation was introduced allowing the government to issue up to \$250 million worth of bonds which would be exempt from provincial tax. Ottawa would not agree to forego its tax on interest but it did agree to administer the program under the federal-provincial tax collection agreement. Revenues from bond sales would be used for housing and employment projects chosen by the special cabinet committee on employment and economic development.

Despite its confident assertion in the budget about "borrowing to buy groceries," the British Columbia government was forced to raise between \$500 and \$750 million by issuing short term treasury bills beginning in late November. The province's revenues had declined by approximately \$670 million due primarily to falling corporate revenues. Finance Minister Hugh Curtis defended his spring budget by declaring that "any forecast of that magnitude, even if we had felt it was appropriate, could very well have triggered an economic collapse of even greater magnitude" (Ottawa Citizen, November 12, 1982, p. 41).

The government of Alberta was also forced into the short term money market to finance its \$2.4 billion deficit. It too began to sell treasury bills and negotiated a \$1.5 billion short term line of credit with five Canadian chartered banks. In May, the government discontinued its practice of making loans to other provinces from the Heritage Fund, deciding that the money should be diverted to investments within the province.

Alberta also decided to open up the Heritage Fund to benefit Albertans. The accumulation of billions of dollars in the Fund had generated some public resentment as the people of the province felt they were not

benefitting from the province's wealth. In a television appearance in early September, Premier Lougheed announced that \$750 million from the Fund would be used to subsidize first mortgages up to \$60,000 by bringing effective rates down to 12.5 per cent for two years. As well, loan interest subsidies to small business and farmers were provided. Lougheed also announced that the share of resource revenues deposited in the Heritage Fund would be cut in half to 15 per cent with the extra used for general revenues.

As governments coped with extraordinary expenditures arising from the recession, several provincial governments made expenditure cuts in the middle of the fiscal year. As part of its "repriorization" of expenditures, Manitoba cut travel costs, the size of the provincial auto fleet and froze the remuneration of members of all provincial boards and commissions for 1982-83. Nova Scotia also reduced advertising expenditures, government publications, outside consultants, contracts and travel costs in late summer as part of its "economic review." Ontario suffered an unexpected drop in revenues in 1982 and was forced to meet some unplanned expenditures. First priority for cuts in each department were travel costs, advertising and outside consultants.

In New Brunswick, Finance Minister Dubé announced in his first quarter report that the province's ordinary account deficit had risen about 37 per cent due to a drop in revenues, primarily in corporate income taxes, and an unexpected increase in expenditures. Premier Hatfield, in his annual state of the province address, argued that the 1982-83 expansionary budget had been appropriate for the times but in future, spending cuts would have to be made in lieu of raising taxes. While major social programs would be saved, Hatfield felt that items such as provincial low interest loans, government aircraft, historic villages and energy conservation demonstrations might have to be cut (Financial Post, December 11, 1982, p. 9).

In planning its expenditure estimates for 1983-84, the government of Québec announced that it could no longer pursue expenditure cuts "at large" and up to 50 programs could be eliminated because increased taxes were inconceivable. Expenditure cuts of \$400 million were contemplated for 1983-84 while increased public sector productivity would save \$250 million.

The Newfoundland government was forced to introduce a "mini-budget" in late November. That province had suffered a substantial decline in revenues as equalization payments and revenues fell. Overall, the government faced a deficit of almost \$70 million compared to a surplus of \$5 million projected in the budget. On November 18, Finance Minister John Collins announced a wide ranging program of expenditure cutbacks and increased taxes. Government costs were cut by \$19.25 million as both

operating and program expenditures were affected. The retail sales tax, already the highest in Canada, was raised to 12 per cent from 11 per cent and the application of the tax was broadened. Liquor and tobacco prices were increased. These changes would add \$16.3 million in revenues. Collins also announced that the province would borrow \$30 million to cover the rest of the deficit.

Thus, events in 1982 supported Ontario Treasurer Frank Miller's contention that "restraint is in." Program expenses were cut and provinces contemplated eliminating some government services. But given the federal government's "6 and 5" program, much public attention was turned to public sector wage and price restraint as one way of limiting government expenditures.

FEDERAL FISCAL POLICY

The federal government acknowledged some jarring economic truths and realities in 1982, brought home by the severity of the country's recession. The state of the economy belied economists' assertions that high inflation and high unemployment could not co-exist. As Finance Minister Allan MacEachen concluded, "Experience has proven that inflation and unemployment are directly rather than inversely related. Indeed, inflation is the true enemy of sustained growth and lasting improvements in employment" ("Notes for an Address to the 1982 Financial Outlook Conference," New York City, February 24, 1982, p. 3).

Along with many western nations, the federal government admitted that, while economic stimulus was required to pull the country out of a recession and reduce unemployment, the size of government deficits precluded that option:

Many governments now find their room to manoeuvre restricted by deficits resulting from attempts to counteract the recessions of the past decade. These deficits were often considered temporary; it was felt that a recovery would generate sufficient tax revenues to reduce or eliminate them. But growth did not resume in line with historical experience, and gains in employment and growth through persistent stimulus have consistently proven to be temporary. (ibid.)

Thus, the federal government's choices were severely limited.

Ottawa was forced to defend its anti-inflation policy from persistent attacks from business, labour, the media and the public. The 1981 budget, which tried to reduce the federal deficit by eliminating tax expenditures, was denounced for stifling investment and choking economic stimulus. The

Bank of Canada seemed incapable of reducing inflation through a tight money policy; the rate of inflation in the U.S. had fallen to below nine per cent under a similar policy while the Canadian consumer price index was running at approximately 12 per cent. The Liberals were faced with opposition from their own caucus as a committee of 10 Québec MPs sent a letter to the Prime Minister asking for more action on job creation for young people and stimulus for housing construction.

The possibility of wage and price controls as weapons for fighting inflation was raised at the first ministers' conference in February when Ottawa urged the provinces to implement public sector controls. By rejecting national guidelines for public sector restraint, the premiers had condemned Canada to a "high-cost economy which will be incompetitive (sic) and will continue to have high unemployment," charged Prime Minister Trudeau (quoted in *Montreal Gazette*, March 27, 1982, p. A6). Finance Minister Allan MacEachen issued repeated warnings that unions in both the private and public sectors must restrain their wage demands and pointed to wage settlements in the U.S. which ran below the consumer price index (see interview in *Le Devoir*, February 1, 1982, p. 1 for an example).

The federal government also attempted to salvage relations with business and labour which had deteriorated significantly since the 1981 budget. Shortly after his meeting with the premiers in Ottawa in February, Prime Minister Trudeau met with business leaders in Toronto. His message was that:

jobs are created in this type of market economy essentially by private capital, investing, leading in the future, and creating jobs around that investment... the government can marginally create jobs by printing money or by increasing the national debt, but unless we depart very much from the market economy — and that isn't the intention of the government — jobs mainly must come from the private sector. ("Transcript of the Prime Minister's News Conference," Toronto, February 12, 1982, p. 2-3)

In a speech to the founding convention of the Canadian Federation of Labour, the Prime Minister declared that the complexity of the country and its economic problems warranted the cooperation of governments, business and labour to ensure economic recovery and development (see "Transcript of the Prime Minister's Remarks," Ottawa, March 31, 1982). Finance Minister MacEachen followed on the Prime Minister's heels by conducting a two month tour of the country to consult business on economic prospects. These consultations fulfilled the government's promise in the 1981 budget to seek the views of business and labour on economic policy.

The federal government waited until the 1982 international economic summit at Versailles before changing its economic course. MacEachen had promised to deliver a "report" on the economy shortly after the Versailles summit. That report became a budget as the dollar dipped to 76 cents U.S., inflation stood at 11.8 per cent and 10.2 per cent of the labour force was out of work.

June 28 Budget

In presenting his budget on June 28, Finance Minister MacEachen was unrelentingly realistic in his assessment of the economic situation of the country and the government. He warned that Canada's "slow progress" in reducing inflation could seriously damage the country's international competitive position. The impact of the recession on the government deficit and spending was also delineated. Revenues were down by \$4.5 billion; the cost of serving the public debt had risen by \$1.1 billion; higher unemployment insurance payments incurred an extra \$2 billion expenditure. The federal deficit had escalated to \$19.6 billion, an increase of 87 per cent over projections for 1982-83.

Despite the "onslaught of recession" and demands for a "fundamental reappraisal of our economic policies," the government stuck to its broad policy approach. As MacEachen stated:

We have rejected massive fiscal stimulus and the abandonment of monetary restraint because this would only worsen inflation and aggravate unemployment. We have rejected broad mandatory controls of prices and incomes... Controls would merely postpone the basic shift in economic behaviour that is needed — a shift to discipline and restraint, self-willed and self-imposed. It is to that basic change rather than to massive government intervention, that the government has decided to devote its energies. (Government of Canada, The Budget, June 28, 1982, p. 3)

The budget was presented as an "action plan" to bring the country out of recession; wage and price restraint was one element in that strategy. Three goals were identified in the budget: reduced inflation, restored investor confidence, and job creation and support for sectors hit hard by the recession.

The centrepiece of the federal government's approach to fighting inflation was the policy which came to be known as "6 and 5." MacEachen called on Canadians to limit their demands for wage increases to six per cent in the 12 months to July 1983 and five per cent in the following 12 months. Businesses were urged to lower prices as profit margins increased. It was imperative that Canada make "the difficult transition from the

12-per-cent world that has mired us in recession to the 6-per-cent world that will bring recovery" (ibid., p. 4).

To demonstrate leadership, the government limited pay increases for cabinet ministers, MPs, Senators, the public service, the RCMP, Armed Forces and Crown corporation employees to six per cent in the first year of the program and five per cent in the second year. This would save \$800 million over two years. As well, indexation of income tax exemptions, public service pensions, family allowances and old age security would be limited to six and five per cent.

The government also extended restraint to prices regulated by federal agencies in public transportation, communications and foodstuffs. Agencies were asked to adhere to the 6 and 5 per cent guidelines and "depart from them only in exceptional circumstances."

The provinces were urged to adopt similar guidelines.

To restore investor confidence, some tax expenditures eliminated in the 1981 budget were restored, the scrutiny of foreign investment by FIRA was relaxed, and proposals for reduced investment taxation and lower interest rates were sent to a public consultative committee.

Several programs were combined in the effort to create jobs. Direct employment was accorded \$200 million, an extra \$150 million was assigned for increased capital works spending and \$300 million was added to economic development programs to create permanent jobs in the private sector through "levered investment incentives."

Incentives for housing construction were also introduced to stimulate investment and provide jobs. Purchasers of new houses built in 1982 and first-time house buyers became eligible for a \$3000 grant. The Home Renovation Plan was enriched as was support for construction of rental housing. Further assistance was announced for small businesses, farmers and fishermen suffering from high interest rates.

Most of the provinces felt the federal budget would not stimulate economic recovery. Premiers Buchanan, Hatfield, Peckford and Pawley denounced the government for failing to alter its fiscal policy and deal with high interest rates. As Premier Pawley declared, "without tackling the poisonous policies of tight money and high interest rates, Mr. MacEachen had tied his hands before he began" (quoted in *Globe and Mail*, June 30, 1982, p. 4). New Brunswick and Nova Scotia felt that the federal government should have done more to attract foreign investment. The provinces were also concerned about the size of the federal deficit; they were afraid that increased federal borrowing would sustain high

interest rates. Measures to assist job creation and housing construction, it was felt, did not go far enough.

The premiers met with the Prime Minister at 24 Sussex Drive on June 30 to discuss the possibility of coordinated action on wage and price restraint in the public sector. This will be discussed in the next major section.

The Prime Minister's Broadcasts on the Economy, October 19, 20, 21, 1982

By autumn, unemployment had risen to over 12 per cent and the government was forced to reexamine its job creation efforts and the allocation of existing funds. Because the government's "margin of manoeuvre" was so slim, the cabinet, at a Meech Lake meeting in early October, discussed the elimination of some universal social programs. Apparently, there was a split in the cabinet which precluded any definitive decision. However, the fact that the topic was being discussed raised fears among the Canadian public that their family allowances or old age pensions would be revoked. It was conceded that according to economic analyses, massive funds would be required to "make a dent" in the unemployment rate; instead, the government looked for money to create temporary jobs over the winter.

In three 15-minute televised broadcasts on consecutive evenings, Prime Minister Trudeau chose to explain to the nation his government's policies and the constraints on them. The format angered the opposition leaders who charged that the Prime Minister was trying to manipulate the news and the Canadian public.

There was some hope that new economic measures would be announced by Trudeau. Instead, he spoke of principles which he felt should guide the conduct of Canadian's lives in the difficult economic climate.

In his first talk on October 19, Trudeau discussed what he considered to be Canada's biggest challenge. Using Darwinian phraseology, he declared that the challenge was "to restore Canada's fitness to survive economically in a world where the survival of the fittest nations has become the rule of life" (Prime Minister's Office, "The Prime Minister's Broadcasts to the Nation on the Economy," Ottawa, October 19, 20, 21, 1982, p. 3). The Prime Minister stressed that the international recession had created a "harder leaner world, hungrier for customers, for investment and for advantage." Canadian products faced competition at home and abroad, Canadian investment was declining and Canadian workers and manufacturers had failed to adjust to this "tough new world."

What was required to meet this challenge? This was the basic thrust of the October 20 broadcast. Trudeau argued that the government could do only

so much to streamline costs and enhance productivity. What was required of Canadians was the will to act together and confront this competition from "the Japanese, the Germans and the Americans." And the fundamental element in forging that national will was trust between and among Canadians. As the Prime Minister declared:

It is not a question of whether Canadians trust this or that government. Do we trust each other?

It is not a question of whether Canadians believe what I say. Do we believe that other Canadians will work with us to achieve something that is in everybody's interest? ("The Prime Minister's Broadcasts to the Nation on the Economy," p. 9)

He argued that inflation had created a "poisonous distrust of each other, (a) pervasive disbelief that we are getting our fair share, (a) debilitating suspicion that everybody else is ripping us off" (p. 10). The Prime Minister stated that the "6 and 5" program of wage and price restraint had been chosen over wage and price controls or drastic reductions in government spending because it was built on trust. In his final speech Trudeau congratulated Canadians for pulling together to face the economic challenge.

October 27 Economic and Financial Statement

The Prime Minister's exhortations to the country were followed shortly by a statement by Finance Minister Marc Lalonde to the House of Commons on the economic outlook for Canada and the federal government's financial position. The depth of the recession had confounded policy-makers even in the short period since the budget in June and Lalonde announced another 20 per cent increase in the budget deficit and more employment measures.

It was estimated that the Gross National Product (GNP) had declined by 7.2 per cent over five quarters. However, inflation was receding and interest rates had been falling for several months. Lalonde was confident that economic recovery would begin in the final quarter of 1982. For 1983, the finance minister predicted 3 per cent growth in GNP, an average consumer price index of 7.5 per cent and lower interest rates.

The labour market was pinpointed as the most troublesome economic spot for 1983. With economic recovery, it was expected that the labour force would grow strongly as new entrants and the unemployed sought jobs in a stronger economy. But, the rate of job creation would not keep pace with this growth and therefore unemployment would decline only slightly.

The government's fiscal position continued to be buffeted by the recession. The federal deficit had swollen to \$23.6 billion; forecast

expenditures were \$1.1 billion higher than estimated in June as the government was forced to pay out greater amounts for unemployment insurance, welfare and equalization. While expenditures had increased by approximately \$1 billion since the budget, revenues were down \$3 billion.

Lalonde developed more employment assistance measures, extended incentives for housing construction and introduced new measures for economic stimulus. A program called New Employment Expansion and Development (NEED) was announced and accorded \$500 million. It was expected that this would produce 60,000 jobs over 18 months for those whose unemployment insurance entitlements had lapsed. Implementation was left to the provincial governments. An additional \$150 million was allocated to the home renovation and home ownership stimulation programs.

New measures to stimulate the economy by improving infrastructure were included in Lalonde's statement. It was felt that immediate railway expansion and modernization was critical if Canada were to benefit from exports of coal, potash, sulphur and grain and economic diversification in the west. The government allocated \$400 million to speed up railway modernization and a resolution of the Crow Rate issue. Additional funds would be sought from railway companies in return for tax breaks.

Several taxation changes were announced by Lalonde. Increases in unemployment insurance premiums paid by employees and employers would be held below the level required to balance the fund in 1983. The finance minister also attempted to end the debate over the elimination of tax expenditures in the 1981 budget so that the country could "move on to the many pressing economic conditions that face us." The proposal to tax employee health and dental benefits was dropped and exemptions for employees working in the north were extended for one year. Several other measures applying to businesses were delayed or put under study.

THE WORLD OF "6 AND 5"

The federal government devoted the summer and early fall to selling the "6 and 5" restraint program introduced in the June budget. The Prime Minister and cabinet members met with business groups and labour unions to convince them that voluntary embracing of "6 and 5" would help fight inflation. The program was recited at every available opportunity by government members and private sector adoptions of the scheme were touted by the government. By October, when the Prime Minister appeared on television and Finance Minister Marc Lalonde briefed the House of Commons on the country's financial state, the government felt that the scheme was sufficiently entrenched in the public consciousness that it could turn its attention away from fighting inflation toward galvanizing economic recovery and job creation. As inflation had abated by the end of the year, Ottawa could proclaim that the "6 and 5" program had been effective in

defeating inflation. However, the causal relationship between the federal guidelines and the rate of inflation had not been determined.

The Selling of "6 and 5"

The federal campaign to sell voluntary restraint to businesses and unions in the private sector was a graduated one. Throughout July, the Prime Minister and economic ministers met with prominent business leaders and representatives of Canada's largest unions. After one such meeting with approximately 40 major business representatives shortly after the budget was released, the Private Sector 6/5 Committee was formed, chaired by Ian Sinclair, chairman of Canadian Pacific Enterprises Ltd. The committee's job was to sell voluntary wage and price restraint to the rest of the private sector. The government hoped that prices would be restrained as profit margins were restored.

The government had less success in convincing labour unions of the utility of "6 and 5". The federal public service unions were adamantly opposed to the idea. In meetings with the government, the Canadian Labour Congress tried to obtain assurances that action would be taken against interest rates. President Dennis McDermott felt that "6 and 5" was "a political gimmick to get people's minds off of high interest rates and onto this whole fixation about inflation and who is responsible for it" (CTV, "Question Period," transcript, July 9, 1982, p. 2).

By late July the government revealed another tactic in the campaign. Grants and subsidies offered to companies or contracts to government suppliers would be tied to some commitment to "6 and 5." In a news conference on July 23, the Prime Minister expressed the hope that "every grant and every accord and every subsidy that the government is paying out of taxpayers' money would be negotiated with this in mind, that it be used as leverage" (quoted in *Globe and Mail*, July 24, 1982, p. 1). This policy was further elaborated by Economic Development Minister Bud Olson. Companies seeking grants and subsidies would be asked to adhere to the 6 and 5 per cent guidelines in their non-union wage and salary settlements, collective agreements and prices. Special assistance to help companies modernize and rationalize operations or adjust to more fruitful markets would be given in return for observation of 6 and 5 per cent as maximum increases in all wages and salaries (see Ministry of State for Economic Development, News Release, August 11, 1982). Supply and Services Minister Jean-Jacques Blais informed government suppliers that they should include details of proposed compliance with the restraint guidelines when bidding on contracts.

The government had some difficulty applying strict six per cent limits on price increases requested by federal agencies. Sharp rises in the price of oil and postage, for example, had pushed the public sector inflation

rate to 18 per cent according to a study by Statistics Canada (Ottawa Citizen, July 15, 1982, p. 8). The government asked federal agencies which controlled prices for transportation, communications and foodstuffs to adhere to the guidelines unless "exceptional circumstances" prevailed. Each cabinet minister was made responsible for overseeing application of the "6 and 5" program to prices falling under his/her responsibilities. A special committee of the Priorities and Planning Committee would decide when exceptional circumstances warranted greater increases. Federally regulated prices for milk and rents were held to 6 per cent but Trans Canada Pipelines was accorded a 16 per cent increase in rates. The media, industry, and consumers also questioned the credibility of the program when excise taxes for liquor, wine, beer and tobacco rose by 15 per cent at the beginning of September.

There was no doubt about the political rationale behind Ottawa's campaign to convince the private sector to adopt voluntary wage and price restraint. The government was suffering badly in public opinion polls and business confidence in federal policy had been severely damaged by the 1981 budget. The government was determined to show the Canadian public that it was serious about managing the economy, that it was in "the driver's seat," that there was a "firm hand on the tiller." Senator Keith Davey, chief strategist for the Liberal Party, orchestrated a saturation campaign by the cabinet and MPs on the merits of "6 and 5." In September, the government launched an advertising blitz with stickers, posters and promotional lists sent to companies adhering to "6 and 5" to be used in their own promotion campaigns. According to one official, companies would be able to indicate that they were participating in the program and doing their part to reduce inflation.

Selling "6 and 5" to the Provinces

Any national attempt to restrain public sector wages would require strong provincial support. Accordingly, the Prime Minister invited the premiers to a private meeting at 24 Sussex Drive on June 30. The provincial leaders were skeptical about the utility of a post-budget meeting; Premier Pawley of Manitoba complained that it was "like being invited to a party after the celebration is over." This predisposition was reinforced when the finance minister brought down the budget on June 28. Most provinces felt Ottawa had failed to take any decisive steps to solve the economy's problems, nor did they embrace the "6 and 5" policy. British Columbia, New Brunswick and Newfoundland pointed to wage restraint measures already instituted in their jurisdictions. Premier Pawley felt applying restraint to all civil servants, rather than just highly paid officials, was "unjust and unproductive."

Although the federal government had been badly burned by its experience at the February first ministers' conference — even to the point of

declaring the death of cooperative federalism — Prime Minister Trudeau saw the June 30 meeting as a potential beginning for "intensive consultations on the prospects for concerted action to solve the country's economic problems." He cited wage restraint, capping administered prices, and coordinating federal and provincial housing, job creation and tax measures as items for discussion.

But Trudeau warned the premiers that the economic situation and Canadians' disenchantment with federal-provincial conflict made it imperative that the meeting produce results. As he wrote to the premiers:

...it is critical that we be able to demonstrate to the country that we are prepared to work closely together to solve our economic problems and to make the necessary decisions, however difficult they might be. In a federation like Canada there will always be a natural and often constructive tension between levels of government. In these trying economic circumstances, however, we cannot afford to let our differences, as legitimate as they may be, paralyze us into division and inaction.

Canadians expect much of us as their elected leaders. They were disappointed in our failure in February. I look forward to meeting with you on Wednesday to begin a new partnership in search of the prosperity Canadians deserve. (Office of the Prime Minister, Release, June 29, 1982, p. 3)

The meeting was described as "civilized" and "unusually constructive and cooperative." The premiers agreed that public sector restraint was desirable but stressed that the provinces should be left free to pursue it in their own diverse ways. No figures were discussed but Premier Peckford indicated that each province would aim for a figure below 10 per cent. The provinces also pointed out some difficulties with capping provincially regulated prices. For instance, restraining rates charged by public utilities would be only "robbing Peter to pay Paul" according to Brian Peckford because utilities were already subsidized by provincial governments. The first ministers did agree that their housing and employment ministers should meet quickly to "dovetail" federal and provincial programs in those areas.

A common criticism of the budget from the provinces was that the "6 and 5" program on its own would not bring about economic recovery. On this point, they reiterated positions taken at the February first ministers' conference. In particular, several premiers, largely representing provinces with a present or future stake in oil production, argued that scrutiny of foreign investment should be relaxed. In all its discussions on wage and price restraint with business, labour or the provinces, Ottawa was unwilling to link voluntary compliance with "6 and 5" to

changes in federal policies, such as interest rates or foreign investment. Trudeau claimed that he "threw the ball" back to the provinces, asking them whether they would be willing to sell out Canadians' birthright, to see their manufacturing industries taken over by foreign investors (see "Transcript of the Prime Minister's News Conference," Ottawa, June 30, 1982, p. 10-12).

Just before the Premiers' conference in August, Prime Minister Trudeau stepped up the pressure on the provinces to follow "6 and 5." In a letter to the premiers issued shortly before their Halifax conference, Trudeau set the terms of the debate:

It would be tragic if this national campaign (of voluntary restraint), upon which economic recovery hinges, were to falter for lack of timely support from any province.

It is therefore vital that each Premier make known as soon as possible what actions his government will be taking to ensure that increases in the earnings of employees in the provincial and local public sectors are effectively restrained to 6 per cent in the twelve-month period. (Office of the Prime Minister, Release, August 6, 1982, p. 3)

The Prime Minister went on to say that he was not asking for strict compliance with the program outlined in the budget but did stress that provincial wage and price restraint policies should apply to the whole public and para-public sectors.

Premier Lougheed responded sharply to Trudeau's implication that the provinces had agreed to conform to the federal guidelines for controlling public sector salaries and prices. The Alberta premier insisted, rather, that there had been a "general consensus that each of the eleven governments would continue with their own particular approaches to accomplish a reduction in the rate of increases in government expenditures in Canada" (letter from Lougheed to Trudeau, August 19, 1982, p. 1, released at Premiers' Conference).

Consequently, the premiers termed public sector restraint as necessary but insufficient in guaranteeing economic recovery. At the conference, they formulated a "comprehensive plan of action" which called for changes in federal monetary policy, foreign investment policy, fiscal arrangements and federal-provincial cooperation on international trade and mega-projects.

By setting up a full-scale economic management and development policy in contradistinction to the federal "6 and 5" program of fighting inflation, the premiers tried to avoid helping the federal government gain

political credibility. One western official at the conference was quoted as saying: "The premiers see 6% - 5% as primarily a Liberal tool designed more for political than economic salvation, and that makes them leery and skeptical" (Financial Post, September 4, 1982, p. 4).

In turn, the federal government accused the provinces of shirking the fight against inflation. Finance Minister MacEachen's response to the premiers' communiqué revealed Ottawa's unwillingness to link issues:

It seems to me unappealing to trade a stand-alone program like "6 and 5" against other concessions. Is "6 and 5" good for the country? Is it good for the economy? If it is then it ought to be supported... I don't think we ought to bargain at this stage because it stands on its own feet. (quoted in Globe and Mail, August 28, 1982, p. 1)

Although Ottawa professed reluctance to link compliance with "6 and 5" with changes to other federal policies, there was some indication that it considered reducing federal investment in provinces which were not prepared to adopt federal wage and price guidelines. During the summer there was a skirmish between Lloyd Axworthy, Minister of Employment and Immigration and the federal minister responsible for Manitoba, and Premier Howard Pawley who was one of the most adamant opponents of public sector controls. Axworthy had speculated that Ottawa would consider the willingness of provincial and municipal governments to comply with federal guidelines when granting money but apparently did not carry out the threat.

Provincial Wage and Price Restraint Programs

Despite their reservations about "6 and 5" in general, nine provincial governments had adopted some form of wage restraint by the end of 1982. P.E.I. was the exception. Limits on provincially regulated prices were also in place in a majority of the provinces. But the programs varied considerably in form and extent. Some adopted "6 and 5" as guidelines for bargaining rather than as legislated limits. Some adopted a broader range of limits to ease the impact of restraint on lower paid workers. Some applied limits only to non-unionized civil servants while others covered the whole public sector. Some adopted price restraint although there were major exceptions to capped prices. In general, the provinces took pains to differentiate their programs from the "6 and 5" scheme, claiming that they had been more flexible, harder hitting, more progressive or less heavy-handed. In turn, the federal government claimed that:

Given the adversarial aspects of federal-provincial relations, one can understand the provinces' lack of enthusiasm for being seen to worship at the federal "6 and 5" shrine. However, the fact is that in many respects, the provincial approach is

parallel to ours. (Treasury Board President Donald Johnston, "Notes for an Address to the Financial Post Conference," Toronto, September 28, 1982, p. 2)

The British Columbia and Ontario restraint programs were the most extensive. The government of British Columbia had made an early start on its efforts to restrain government expenditures. On February 18, Premier Bennett went on television to announce the Compensation Stabilization Program which would restrain overall government expenditure to 12 per cent and limit salary increases to 10 per cent for the first year of the two year program. The program applied to 200,000 public sector employees, covering workers in government, Crown corporations, school boards, hospitals, municipal and local government and "private societies performing public functions."

While the basic income increase was limited to 10 per cent, the government allowed for upward and downward adjustments of up to four per cent which would take experience, productivity and "special circumstances" into account. In the second year of the program, increases would be limited to the lesser of 8 per cent or the cost of living. The 10 per cent guideline was voluntary rather than legally enforceable. However, if negotiated contracts exceeded the guidelines, mandatory regulations setting out allowable limits and permitting rollbacks would come into effect.

Over the spring and summer, as British Columbia's fiscal health deteriorated rapidly, changes were made to the Compensation Stabilization Program. As the government admitted, "the restraint program which was right for February, today is felt by many to be too generous" (quoted in Vancouver Sun, July 10, 1982, p. A13). On July 27, the basic increase was limited to six per cent the first year and five per cent the second year. The adjustment factors were retained which meant that increases could range from 0-10 per cent in 1982-83 and 0-9 per cent in 1983-84. As well, legislation was introduced to cap electricity, provincial insurance, transit and ferry rates at six per cent. Prices set by marketing boards were not affected.

In late summer, the 40,000 member British Columbia Government Employees' Union tested the compensation program. After striking for one week in August, the union and the government agreed on a contract which fell within the general guidelines. Increases ranged from three per cent for the highest paid employees to 13 per cent for the lowest paid, for an average of 6.5 per cent.

Over the summer, the government of Ontario studied various options for restraint. Premier Davis had often criticized the federal program for isolating the public sector. But his government had reached the conclusion

that controlling the private and public sectors in Ontario would have more advantages than disadvantages. In his speech to the legislature on September 21, Premier Davis stated:

Across-the-board wage controls only in Ontario would severely restrict the mobility of workers... Comprehensive price controls in a single province within a common market which should and does presently guarantee free interprovincial trade would also create enormous monitoring and enforcement problems...

Reluctantly, therefore and with our own position clearly and unequivocally stated, we have decided to join with those who ask that the private sector should be given an opportunity to respond on its own to the need for restraint. However, should the private sector fail to voluntarily comply with these demands, we believe that the federal government, in concert with the provinces, should act to put a national programme of comprehensive controls in place. ("Statement by the Hon. William G. Davis," September 21, 1982, p. 10-12)

The government introduced legislation which suspended the right to strike in the public sector and imposed a five per cent wage increase on 500,000 people working in the public sector with contracts expiring after October 1, including judges, Children's Aid and Red Cross employees and university professors. Those contracts which had expired but had not been renegotiated would be extended for one year at nine per cent and limited to five per cent for the next year. Certain government fees, such as those for tuition, license plates, and park admission, were held at five per cent. Prices not affected were OHIP premiums, milk, rents or prices set by schools, hospitals or municipalities. Utilities, such as Ontario Hydro, would be allowed only to pass on increased costs in their rates.

The Ontario government pointed out that its program was superior to Ottawa's as it restrained increases more tightly, was more flexible as merit increases were allowed for lower income workers, and was shorter in duration, lasting only a year.

Québec's wage restraint program was shaped by its severe financial difficulties rather than Ottawa's "6 and 5" program. Finance Minister Parizeau warned in his May 25 budget that the government needed to fill a \$700 million hole; rather than cut more away from programs or raise taxes, the government decided to trim public service salaries and benefits which accounted for 52 per cent of the province's budget.

In June, royal assent was given to legislation which would fix the amount of public sector salaries for 1983, if no satisfactory collective

agreements were reached with the common front of unions representing more than 300,000 public sector employees. The legislation extended collective agreements expiring between the end of May and December 31, 1982 until April 1, 1983. The wage increases of 18.89 per cent which would have been accorded in those three months were rescinded. This move would save the government \$521 million.

The two sides opened negotiations in mid-October. The government offered increases of 5 per cent and 3.27 per cent in 1984 and 1985 respectively but blue collar workers would receive a 2 per cent increase on April 1, 1983 with slight cost of living increase attached to the general increase thereafter. The salaries for 1983 would be frozen at the June 1982 level. In negotiations, the three month rollback proved to be the most contentious point; the government agreed to relax the extent of the cuts for lower paid workers and to set the maximum rollback raised to 19.45 per cent. In December, the National Assembly passed Bill 105 which set out the conditions of public service employment until 1985 despite discontent in the PQ caucus. In summary, the bill imposed a salary freeze from April 1 — December 31, 1983 with blue collar workers accorded two per cent. From January 1984 to January 1985, salaries would be adjusted by a slight cost of living increase while the same 1.5 per cent increase would be added to 1984-85 salaries for the following year. In all, the government would save \$406 million.

In October, Finance Minister Parizeau announced a voluntary two year program to keep provincially regulated prices below the rate of inflation. Many of these prices were established by quasi-independent agencies which were asked to abide by the government's decision. Rents and electricity prices were specifically exempted from the program.

Other provincial programs were much less comprehensive or obligatory. Immediately after meeting with the Prime Minister on June 30, Premier Buchanan of Nova Scotia announced the imposition of the 6 per cent and 5 per cent guidelines on the province's 3500 non-unionized civil servants. Buchanan claimed that the "bleak and gloomy" picture of the economy painted by the Prime Minister warranted such a move. In addition, the province scrutinized its expenditures for further cutbacks and planned to lay off some government employees. Later in the year, the Nova Scotia government announced guidelines for bargaining with unionized employees. A six per cent limit on salaries and benefits was imposed for one year; greater increases for lower paid workers would be allowed if lower increases were granted at the upper end of the wage scale and they averaged six per cent. This would apply to all contracts expiring after September 15 and settled before the end of February 1983. Outstanding contracts would then be settled by legislation.

In New Brunswick, Premier Hatfield said the government would aim for increases of five per cent in contracts negotiated until July 1, 1984. He rejected legislated salary levels in favour of free collective bargaining. Many public servants, he noted, had volunteered to restrain or roll back their salaries.

On August 31, Premier Peckford of Newfoundland announced a two year wage restraint program applying to all provincial employees. It set out the maximum guidelines which would be allowed by the government while collective bargaining continued. Those earning under \$13,000 would get a maximum increase of 7 per cent and 6 per cent — those in the \$13,000 - 18,000 range would get 6 per cent and 5 per cent and those earning over \$18,000 would be restrained to 5 per cent and 4 per cent in 1983 and 1984 respectively.

Manitoba and Saskatchewan were two of the most outspoken opponents of the "6 and 5" program. However, the worsening deficit positions of those provinces dictated action on wage restraint too. In a "repriorization" of expenditures undertaken in the summer, Manitoba announced a 13.5 per cent average increase for its 17,500 civil servants. As in Newfoundland, increases were progressive with those earning over \$35,000 granted only 8 per cent while those making under \$10,000 would get 15 per cent.

Saskatchewan's program was unique in tying wage increases to the inflation rate. Announced in August as part of the province's Economic Recovery Program, increases for 75,000 public sector employees would be limited to the province's inflation rate minus one per cent; transfers to municipalities, schools and hospitals would be similarly restrained. Premier Devine stressed that this was a bargaining position for those contracts which expired after June 30. After their election in April, the Conservatives had frozen electricity, gas and telephone rates and eliminated the provincial gasoline tax. No further action was taken on provincially set prices as the government was not prepared "to impose arbitrary price ceilings that could contribute to ballooning public sector deficits and a further erosion of business confidence."

Alberta had a program of public service salary restraint in place before the June budget and no further changes were made. Its 3300 non-unionized civil servants would be accorded a 6 per cent limit with some receiving a 2 per cent merit increase. The province hoped that union settlements could be kept below 10 per cent.

While the federal government's "6 and 5" program of wage and price restraint was not wholly embraced by provincial governments because of the political exigencies of federal-provincial relations, by the end of the year, each province except P.E.I. had some public sector restraint

124/Year in Review 1982

guidelines in place. Both levels of government were also discussing complementary ways of stimulating the economy in 1983 and had dovetailed their employment creation and housing construction programs. Federal-provincial reconciliation on economic matters had surfaced in the face of strong economic problems.

6 ECONOMIC AND FISCAL FEDERALISM

In 1982, a new set of federal-provincial fiscal arrangements came into effect, introducing a new equalization formula. Major changes to Established Programs Financing (EPF) may come after federal and provincial ministers responsible for health, post-secondary education and manpower have discussed new financial arrangements and policy objectives. The changes to fiscal arrangements were passed in the absence of a full agreement with the provinces, a dramatic shift from previous sets of negotiations.

Protecting and enhancing the "economic union" is a more recent problem in Canadian federalism, particularly from the viewpoint of the federal government. While it figured prominently in the round of constitutional negotiations held in 1980, it remains an important federal objective pursued in other ways.

FISCAL ARRANGEMENTS

Bill C-97, an act to amend the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977 and to provide for payments to certain provinces, which was given royal assent on April 7, was largely the product of the federal government's desire to extricate itself from the bonds of executive federalism, to limit the total amount of transfer payments to the provinces, and to establish greater federal policy presence in post-secondary education and health care.

While Ottawa's dissatisfaction with "cheque book federalism" strongly influenced the federal government's position on the set of fiscal arrangements which would apply from 1982 to 1987, Ottawa's mounting deficit meant that intergovernmental transfers would no longer be immune from budgetary restraint. Thus, there were two thrusts behind the proposals tabled in the November 1981 federal budget for changes to equalization and Established Programs Financing — restraint and visibility. Ottawa modified the traditional process of negotiating fiscal arrangements as much as it could to meet these objectives.

The federal government first announced its general intention of reducing the amount of money transferred to the provinces in the October 1980 budget. A year of extensive scrutiny of fiscal arrangements by the provinces, Parliament and the public followed. But the specific federal proposals were not released until less than five months remained before the equalization provisions in the current legislation expired. Ottawa made it clear that it would discuss the proposals with the provinces but there was no requirement for formal negotiations; fiscal arrangements were the creature of federal legislation and therefore, could be amended or eliminated almost at will. Finance Minister Allan MacEachen indicated that he would proceed with amendments to the act even in the absence of federal-provincial agreement. The provinces, used to lengthy negotiations through which they had successfully achieved many of their policy preferences, accused the federal government of abandoning the established process of cooperative federalism and chafed under what they saw as an unreasonable deadline.

As discussed in the 1981 Year in Review, the federal government proposed a radical change to the equalization formula. It decided to replace the national average per capita yield from a variety of tax sources as the yardstick for calculating which provinces received equalization; instead, Ontario's yield under an enlarged representative tax system would become the standard. Ontario's tax revenues were regarded as more stable because they were not influenced by short term fluctuations in natural resource revenues; rapid increases in provincial revenues from natural resources, particularly in Alberta, had caused the federal government to amend the formula several times. Furthermore, Ottawa proposed to limit future increases in equalization payments at the rate of increase in the GNP.

In addition to these moves designed to stabilize and reduce federal equalization payments, Ottawa also proposed to eliminate the "revenue guarantee" compensation provided to the provinces, in the form of one personal income tax point and its cash equivalent, for the elimination of the revenue guarantee in 1977. This was a prominent feature of the common front position put forth by the provinces in the 1976 negotiations and was conceded by Ottawa. In 1981, however, the federal government felt the compensation had fulfilled its purpose and acknowledged that it had "yielded too easily" to provincial demands in 1976.

No immediate plans were made for altering the federal financial contributions to hospital and medical insurance and post-secondary education other than ensuring that all provincial receipts under EPF were equal on a per capita basis. Rather, Ottawa wanted health ministers from both levels of government to meet and clarify national policy standards for medical and health insurance by March 31, 1983 which would then be included in a new Canada Health Act. Similar discussions among education

and manpower ministers were proposed for post-secondary education with the threat that if no agreement on policy objectives were reached by 1983, EPF contributions in respect of post-secondary education would be frozen. (See Chapter 8 for a discussion of negotiations on medicare and post-secondary education.)

The provinces, particularly those which received equalization, objected strongly to the plans for changing the equalization formula. They argued that it tied their fortunes too closely to the economic performance of Ontario. If the manufacturing base of that province suffered a setback, the "have-not" provinces, already suffering from under-developed economies, would be further penalized. Québec Finance Minister Jacques Parizeau commented ironically that his government would be better off investing in Ontario to ensure that that provincial economy performed well. The reverse side of the coin provided no satisfaction for the provinces either. New Brunswick's Minister of Finance, Fernand Dubé, pointed out that the GNP cap would limit any benefit recipient provinces would receive if Ontario's economy prospered.

On Established Programs Financing, all the provinces objected to any financial changes to the formula before discussions among health and post-secondary education ministers were completed. They argued that the compensation for the revenue guarantee was an integral part of the EPF formula which should not be eliminated.

The federal and provincial finance ministers met several times in late 1981 and early 1982 as the provinces tried to convince Ottawa to give up its proposals for change and ease the financial strain which the provinces would feel. In the meetings of federal and provincial finance ministers, Ottawa made some concessions on the equalization formula but refused to change its plans for EPF. At their January 22 meeting in Ottawa, MacEachen proposed several changes in response to provincial concerns. A floor on equalization payments would ensure that no province would receive less than 85 per cent of its equalization receipts for the previous year. The base year for calculating the GNP cap would be moved up one year to 1982-83. A transitional payment guaranteeing an annual increase equal at least to the average dollar increase between 1977-75 and 1981-82 was included in response to Manitoba's concerns (see Office of Hon. Allan J. MacEachen, Release, January 22, 1982). However, the federal government refused to consider the joint provincial demand that the equalization and EPF provisions be extended for one year until further study and discussion had taken place.

Another meeting of finance ministers took place during the first ministers' conference and another day was set aside for the premiers and Prime Minister to discuss the issue. The provinces presented Ottawa with a common front proposal, a strategy they had used successfully in 1976.

They suggested that the current system be extended for one year and were willing to have transfers capped at 12 per cent as acknowledgement of Ottawa's financial straits. As a way of holding the common front together and preventing federal "divide and conquer" tactics, Alberta and British Columbia offered to forego the "fiscal dividend" they made on the EPF tax transfer in 1982-83 and apply that money to provinces facing reductions in equalization due to census adjustments. (The "fiscal dividend" arises because the value of the tax room transferred exceeds the cash payment.)

The federal government made dramatic new offers at the conference on both equalization and EPF. A new "five-province" standard (Ontario, British Columbia, Manitoba, Québec and Saskatchewan) was proposed as the yardstick for calculating equalization; this would mean an extra one billion dollars for recipient provinces, it was argued. The EPF offer was sketched in greater detail by the Prime Minister. The proposal centred on post-secondary education and was contingent on the provinces' endorsement of the other elements of the federal proposal. Trudeau offered to extend the EPF arrangements for post-secondary education until 1983-84 (rather than freezing contributions), if the provinces agreed to:

- match the almost 12 per cent increase in EPF funding for the next two years;
- discuss federal objectives for post-secondary education with the Secretary of State. These included mobility, accessibility, accountability, minority language education and joint planning;
- conclude agreements on training programs by manpower ministers by August 1982; and
- undertake discussions with the federal health minister on health care standards and implementation mechanisms to be included in new legislation by April 1, 1983.

Accountability of the provinces to Ottawa for expenditures of transfers and visibility of federal contributions would be discussed by health, manpower and post-secondary education ministers.

By the end of the conference, neither federal proposal was accepted by the provinces. Ottawa worked out the details of the five-province standard for equalization over the next week and presented it again to the provincial finance ministers at a meeting in Toronto on February 22. They were given 48 hours to accept or reject the offer. As well, Secretary of State Gerald Regan gave the provinces until March to decide on the Prime

Minister's EPF proposal. Collective bargaining was over and the provinces relayed their answers separately to Ottawa.

On March 19, the House of Commons gave first reading to Bill C-97 which was introduced in the absence of a collective federal-provincial agreement. All the provinces objected strongly to the "cutbacks" implied in the elimination of the compensation of the revenue guarantee but partial support for the changes to the equalization system was offered by the Atlantic provinces; the other recipient provinces, Québec and Manitoba, maintained that they would still lose substantial amounts of money under the new system. Discussions about Established Programs Financing were still going on among departmental Ministers but the Prime Minister's February 4 proposal was rejected by the provinces.

Part I of Bill-C97 amended the fiscal equalization system. It provided that the representative average standard based on the tax yields of five provinces would be used to calculate equalization entitlements. In his speech to the House of Commons, Finance Minister MacEachen explained that the federal government had abandoned the Ontario standard in face of many provincial objections. He stated, "I was confident that we were hitching our wagon, so to speak, to a rising star in the case of the province of Ontario, and that its economic future was bright and prosperous. But others were less confident; they felt they would be more at ease if we could broaden the base" (House of Commons, Debates, March 22, 1982, p. 15679). He told the Commons that four of the recipient provinces had indicated in writing that they found the new system "conceptually superior" to the Ontario standard and therefore, were prepared to support it.

In addition, the Bill provided for a broadening of the representative tax system to include all provincial revenues from natural resources, taxes levied for municipal purposes, and receipts from the sales of goods and services by local governments, and a floor on the amount of equalization a province would receive. Provinces with 70 per cent or less of the national average per capita fiscal capacity would be guaranteed 95 per cent of its entitlement from the previous year; provinces with between 71 - 75 per cent would be guaranteed 90 per cent. In other words, the minimum payment would be higher for provinces with a weaker fiscal capacity. In his original offer to the provinces, MacEachen had offered to guarantee 85 per cent but raised the floor in response to the objections of the Atlantic provinces. As well, the Gross National Product cap would be calculated with 1983-84 as the base year.

The transitional arrangement, whereby provinces were guaranteed an increase in annual equalization payments equal at least to its average

annual increase in dollar terms between 1977-78 and 1981-82, was also included.

MacEachen calculated that \$29.3 billion would be transferred to the provinces over the next five years under the equalization system with an average rate of increase of 11.2 per cent.

The changes originally proposed to the financing of established programs were included in the Bill. Federal contributions to EPF would be calculated to ensure that provincial receipts were equal per capita and the compensation for the deletion of the revenue guarantee was eliminated. MacEachen maintained that the federal government was not cutting back its contributions to the provincial programs nor was it denying the provinces any annual increases. The provinces however, saw the EPF payments and revenue guarantee as a single pool.

Other parts of the Bill allowed for the federal government to make stabilization payments to the provinces if their revenues suffer severe losses; the revenue guarantee payments, authorized if provinces suffer financial losses from federal tax policy changes, were extended for another five years; the provincial share of the oil export charge would be turned over; and the federal government would reimburse certain provinces the amount equal to recoveries captured from the provinces under the equalization system due to census adjustments.

There were several common themes in the opposition speeches made on Bill C-97. Both Conservative and NDP members argued that the government was, in fact, cutting back on its transfers to the provinces, causing taxes to go up and the quality of health services and post-secondary education to decline. The cuts, they argued, undermined Ottawa's own stated objectives of improving national standards in health and post secondary education. They railed against the government's "unilateral" action and called on the Liberals to take up the mantle of cooperative federalism and seek a comprehensive agreement with the provinces. They also dismissed the government's argument about fiscal imbalance, seeing instead in the government's moves a desire to exert control over the provinces.

The set of fiscal arrangements which prevailed from 1977 to 1982 was the result of interprovincial bargaining and federal-provincial negotiations. In 1981, however, the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements enhanced the role of Parliament in an important area of federalism and their recommendations were examined closely by the federal and provincial governments, the media and interest groups. But, in 1982 both the provincial governments and Parliament were presented with a fait accompli as the federal government decided that it needed more control over its expenditures, not only for budgetary reasons but for the

greater public presence it would generate by spending money directly rather than channelling it through provincial governments.

The provinces did succeed in having the federal government abandon the Ontario standard for equalization and substitute a formula which was to the financial benefit of the recipient provinces. However, Ottawa stood firm on its intention to eliminate any vestiges of the revenue guarantee, which the provinces said amounted to cutting back its contributions to health services and post-secondary education. The provinces did not object to discussing national standards for health care with the federal Minister of National Health and Welfare but were wary of discussing priorities for post-secondary education as long as the federal government threatened to freeze EPF contributions in this area if no agreement were forthcoming.

All ten provincial budgets tabled in the period from the end of March to May included reaction to the new set of fiscal arrangements. Opinion among the provinces which currently receive equalization payments on the worth of the new five province standard was mixed. The Atlantic provinces expressed varying degrees of support for the change, primarily because they gained more under the new formula than the Ontario standard and, in some cases, more when compared to the national average system. The Minister of Finance of Prince Edward Island, Lloyd MacPhail, found the "representative average" formula satisfied the federal government's objective of predictability and equity among recipient provinces, "a much needed reassurance that ... it is recognizing and trying to alleviate the greater fiscal need of poorer provinces." Manitoba, however, was opposed to the representative average standard based on five provinces. Despite the transitional adjustments which were provided as a result of Manitoba's concerns, Finance Minister Vic Schroeder found that his province fared the worst of all the recipient provinces under the new scheme, facing losses of approximately \$600 million compared to the old system. He argued that this represented a denial of the principle of equalization which was enshrined in the Constitution Act, 1982. Québec, too, was opposed to the new system because of the financial losses, calculated at \$262 million, which it faced.

There was a solid front of opposition to the government's changes to Established Programs Financing in the provincial budgets. Several themes echoed in the provincial statements. Behind the amendments to the legislation lay an attempt to save money and thereby shift the federal deficit to the provinces as well as a desire to exert more control in areas of provincial jurisdiction. The 1977 EPF arrangement had worked well, argued the provinces, and the changes to the scheme were motivated by the realization by federal politicians that "they had forfeited the right to dictate how these grants ... were to be spent, and because they felt that they were receiving too little credit for the federal expenditures involved" (New Brunswick budget, p. 6).

Comments on the process which had been followed by the federal government in amending the set of intergovernmental fiscal arrangements was another common theme in the provincial budgets, especially in Ontario. The provinces accused the federal government of abandoning the "traditional" approach of cooperative federalism by which "provincial concurrence, if not full agreement" was sought for new sets of fiscal arrangements. Furthermore, in releasing proposals for changes at the "last minute", imposing an "unrealistic" deadline and refusing to entertain modifications to its position on EPF, the federal government had not conducted "genuine negotiations in any sense of the word." The provinces conceded that there had been "hasty" concessions made to the equalization proposals. This style of amending fiscal arrangements was a "worrisome" indicator of a new "aggressive" approach by the federal government in its dealings with the provinces which was motivated by a desire to exercise more influence, either directly or indirectly, in areas of provincial policy.

As the new fiscal arrangements took effect at the end of March, there were several outstanding issues. In addition to the discussions on EPF, the tax harmonization and tax collection systems which were designed to achieve uniformity in tax definitions and administration were threatened.

Ontario, in 1982, explored provincial administration of its personal income tax as a way of expressing its dissatisfaction with the changes made to corporate and personal income taxes made in the November 1981 budget. In a background paper to its budget, Ontario's Tax Structure: Options for Change, the Ontario government reiterated its opposition to the tightening of tax "loopholes." It was felt that this move was poorly timed for the economy needed investment and stimulus at a time when interest rates were high and business conditions already unsettled. Administering its own income tax system would give the province flexibility in adopting tax incentives better suited for provincial needs. The government asked the Ontario Economic Council to examine whether the province should implement its own income taxes.

ECONOMIC UNION

The "economic union," a concept which the federal government championed in the constitutional talks, lay behind two developments in 1982. On the one hand, Ottawa was interested in strengthening and affirming the common markets provisions in s. 121 of the Constitution Act, 1867 and reducing barriers to the mobility of goods, capital, services and labour erected by government policy. This was the notion which underpinned the appointment by the federal government of a Royal Commission on the Economic Union and Development Prospects for Canada. On the other hand, in 1982, the federal government tried to exercise and fortify its own integrative economic powers with Bill S-31.

Table 6.1:

Estimated Federal Transfers to the Provinces, Territories and Municipalities
Fiscal Year 1983-84
(\$ millions)

Economic and Fiscal Federalism/133

Program	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	N.W.T.	Yukon	Total
Statutory Subsidies	9.7	.7	2.3	1.8	4.7	6.0	2.2	2.2	3.6	2.5	-	-	35.7
Fiscal Equalization	554.0	124.0	618.0	524.0	2,810.0	-	455.0	-	-	-	-	-	5,085.0
Reciprocal Taxation	10.5	4.1	23.9	12.5	47.0	64.5	-	-	-	-	-	-	162.5
Public Utilities Income Tax Transfer	15.7	1.0	-	-	1.7	-9.7	.3	*	116.6	3.3	-1	-3	128.5
Youth Allowances Recovery	-	-	-	-	-234.4	-	-	-	-	-	-	-	-234.4
Prior Year Adjustments**	-	-	-	-	-	-	-	-	-	-	-	-	150.0
Total Fiscal Transfer Cash Payments	589.9	129.8	644.2	538.3	2,629.0	60.8	457.5	2.2	120.2	5.8	-1	-3	5,327.3
Hospital Insurance	79.5	17.0	118.7	97.5	559.6	1,146.6	143.9	136.2	241.5	346.0	6.7	2.4	2,895.6
Medicare	27.4	5.9	40.9	33.6	192.7	394.7	49.5	46.9	83.2	119.1	2.3	.8	997.0
Post-Secondary Education	50.6	10.8	75.5	62.1	356.1	729.5	91.5	86.6	153.7	220.1	4.3	1.5	1,842.3
Extended Health Care	20.7	4.4	30.9	25.4	234.7	315.7	37.5	35.7	85.9	102.2	1.7	.9	895.7
Established Programs Financing Cash Payments	178.2	38.1	266.0	218.6	1,343.1	2,586.5	322.4	305.4	564.3	787.4	15.0	5.6	6,630.6
Canada Assistance Plan	71.4	19.7	93.2	119.2	909.4	848.1	99.3	125.5	343.6	496.8	11.2	2.8	3,140.2
Other Health and Welfare	1.0	.2	3.0	3.1	-	37.4	4.5	3.4	9.3	6.8	.2	1.2	70.1
Bilingualism in Education	2.0	1.1	3.4	18.8	92.6	44.6	5.2	2.4	5.5	6.3	.1	.2	182.2
Crop Insurance	*	1.2	.2	5.8	5.8	22.3	14.2	59.3	38.8	2.7	-	-	145.0
Territorial Financial Agreements	-	-	-	-	-	-	-	-	-	-	-	-	445.6
Municipal Grants	1.9	.7	12.2	10.4	51.3	102.1	11.6	5.5	13.2	19.6	1.6	.9	231.0
All Others**	-	-	-	-	-	-	-	-	-	-	-	-	364.0
Total Other Cash Payments	76.3	22.9	112.0	152.0	1,059.1	1,054.5	134.8	196.1	410.4	532.2	359.1	104.7	4,578.1
TOTAL CASH TRANSFERS	844.4	190.8	1,022.2	908.9	5,031.2	3,701.8	914.7	503.7	1,094.9	1,325.4	374.0	110.0	16,536.0
Established Programs Financing Tax Transfer	66.2	13.3	121.9	90.1	1,184.6	1,982.4	179.3	197.9	652.8	707.4	10.0	7.3	5,213.2
13.5 Personal Income Tax Points	3.1	.6	4.2	3.7	50.2	93.1	7.7	8.8	63.0	28.9	.5	.3	264.1
1.0 Corporate Income Tax Transfer	-	-	-	-	-	-	-	-	-	-	-	-	-
Contracting-Out Tax Transfer	-	-	-	-	-	-	-	-	-	-	-	-	-
8.5 Personal Income Tax Points for EPF	-	-	-	-	677.7	-	-	-	-	-	-	-	677.7
5.0 Personal Income Tax Points for CAP	-	-	-	-	422.6	-	-	-	-	-	-	-	422.6
3.0 Personal Income Tax Points for Youth Allowance	-	-	-	-	234.4	-	-	-	-	-	-	-	234.4
TOTAL TAX TRANSFERS	69.3	13.9	126.1	93.8	2,569.5	2,075.5	187.0	206.7	715.8	736.3	10.5	7.6	6,812.0
TOTAL CASH PLUS TAX TRANSFERS	913.7	204.7	1,148.3	1,002.7	7,600.7	5,777.3	1,101.7	710.4	1,810.7	2,061.7	384.5	117.6	23,348.0
Fiscal Equalization - Dollars per capita	965	1,007	721	744	432	-	438	-	-	-	-	-	-

* Amount too small to be expressed

** Distribution not available

Source: Canada, Department of Finance

Bill S-31

On November 2, the Government House Leader in the Senate, Senator H.A. Olson, introduced for first reading Bill S-31, an Act to limit shareholding in certain corporations. Essentially, the Act prohibited any provincial government from holding or owning through any other intermediary ten per cent of the shares of a corporation engaged in interprovincial or international transportation. Air, water, rail, motor vehicle transportation and pipelines were covered. The Bill applied as of November 3. The Governor-in-Council would be allowed to exempt any government from the application of the Act.

When questioned in the House of Commons about the government's motives in introducing the legislation, Consumer and Corporate Affairs Minister André Ouellet maintained that it was a pre-emptive measure to affirm federal authority in the area of interprovincial and international transportation. Ouellet argued that it was better to act immediately "while the situation is relatively calm and it is easier to intervene since there are no structures to dismantle" (House of Commons, Debates, November 4, 1982, p. 20391). It was in the interests of avoiding conflict with the provinces that the legislation was introduced, the minister claimed.

The Prime Minister fleshed out the motivations behind the move. He said the Bill was designed to prevent "provincial extra-territoriality," or the ability of one province to influence economic developments in another province. He felt that provincial governments should not be allowed to control national, trans-provincial transportation enterprises which fell outside their jurisdiction.

Il n'est pas de la juridiction des provinces de pouvoir dominer, contrôler ou imposer des politiques à des entreprises qui ne sont pas de leur juridiction, qui sont transcanadiennes, ou qui sont de juridiction fédérale. (quoted in *Le Devoir*, December 1, 1982, p. 1)

At the time, the Caisse de dépôt et placement du Québec was about to acquire a greater share in Canadian Pacific. It already held close to 10 per cent. The Prime Minister contended that if the Caisse, which controls the investment of Québec pension funds, were to gain control of Canadian Pacific, it could direct that corporation's activities to the benefit of Québec and neglect other provinces. He used the Alberta Heritage Fund as another example:

The province of Alberta should not be able to buy the CPR and say: 'Well, we will build the tunnels through the Rockies and

we will double-track out here, but the heck with the lines going to the Maritimes.' (quoted in Winnipeg Free Press, December 14, 1982, p. 7)

While preserving the integrity of federal jurisdiction in the transportation sector was advanced as one justification for the legislation, another theme emerged in testimony to the Senate Committee on Legal and Constitutional Affairs which examined the Bill before referring it back to the Senate for second reading. The other concern behind Bill S-31 was the growing influence of pools of capital controlled by provincial governments on the Canadian financial system and the private sector.

The chairman of Canadian Pacific Limited, F.S. Burbidge, appeared before the Committee on December 2. The Caisse de dépôt et placement du Québec owned 9.9 per cent of Canadian Pacific shares and Mr. Burbidge had been approached by the chairman of the Caisse, Jean Campeau, to ask for representation on the board of directors by virtue of its ownership. Mr. Burbidge refused. He then consulted with a number of chief executive officers of other national, publicly traded corporations about restricting provincial government control or influence through share ownership in such companies. He also sent a letter to the Prime Minister and spoke with two cabinet ministers about the matter.

It was Mr. Burbidge's view that provincial governments could essentially nationalize private sector companies through share ownership without any public debate; provincial governments' interests would be pursued in the private sector as well as the public sector. Speaking about Canadian Pacific's situation, he stated:

For many years, the Caisse was looked upon as a typical pension investor concerned with growth, earnings and reasonable risk, that is one content to acquire modest equity positions in private sector corporations which could be readily disposed of... However, it now seems apparent that this approach is at an end. The Québec government appears to hold the view today that the pool of pension contributions... should be used in part to convert private sector corporations into instruments that will serve the collective interest or will of Québec ... (Senate, Standing Committee on Legal and Constitutional Affairs, Proceedings, Issue No. 33, December 2, 1982, p. 6)

Mr. Burbidge felt that any accumulation of provincial capital, such as the heritage funds of western provinces, could produce the same result.

Mr. Ouellet, who appeared on November 17 before Mr. Burbidge's testimony, expressed the same concern. He argued that the investment of

provincial funds should be limited to a fiduciary role rather than a risk taking role. He asked the senators:

Are you going to tell me that a company such as the Caisse de dépôt which basically has a mandate to invest pension funds and to play a role of trustee, is justified in changing its mandate into that of a shareholder? In taking control by purchasing major shares in certain companies? In making capital risk investments? In changing over from trustee to shareholder? In taking the place of the private sector? In upsetting the private sector's economy by indirectly practising socialism? (Proceedings, Issue No. 28, November 17, 1982, p. 15)

The chairman of the Committee issued invitations to all the premiers, inviting them to appear before the committee to relay any concerns the provinces had about the Bill. Only Québec accepted the invitation, the first time in at least 30 years that a representative of the province of Québec testified before a parliamentary committee. Saskatchewan, Ontario, and Newfoundland argued that the Bill should be withdrawn and discussions conducted with the provinces. Alberta and British Columbia sent formal comments to the Committee. In his letter to Ouellet, the Intergovernmental Affairs Minister of Alberta, Jim Horsman, pointed out that his province had invested significant amounts in air, rail and grain transportation which benefitted the whole country. He also objected to Ottawa's implication that provincial investment was insidious:

... the federal government is prejudging provincial policies and objectives and placing a negative interpretation on provincial action. Instead of encouraging and promoting interprovincial co-operation the Bill impedes provincial ability to take action to strengthen regional economies and thereby strengthen the economic union as a whole. Thus, while the bill is an attempt to prevent perceived future conflict, it creates a more general and potentially more serious strain on the economic union. (Proceedings, Issue No. 34, December 7, 1982, Appendix 34-B, p. 9)

In his testimony, Québec Finance Minister Jacques Parizeau made it clear that Bill S-31 was more important to his province than any other because of the network of public corporations which had built up in Québec. The \$16 billion Caisse was established primarily to invest funds from the Québec Pension Plan but it also loaned money to municipalities and other public sector organizations as did the Canada Pension Plan. Parizeau and Jean Campeau argued that both the Caisse and other public corporations were necessary to develop Québec. The investment policy of the Caisse guaranteed better returns for the people of Québec than "passive investments in bonds."

The legal and Constitutional Affairs Committee reported some reservations about Bill S-31 to the Senate on December 16. The senators felt that, as drafted, the Bill extended to the total range of activities of any federally or provincially incorporated company engaged in extra-provincial transportation. This, they claimed, was legislation in relation to company law and might be unconstitutional in relation to provincially incorporated companies. Furthermore, the committee questioned whether the Bill should apply to companies whose transportation activities were only a minor part of its operation. They suggested a clearer definition of application (see Senate, Debates, December 16, 1982, Appendix, p. 5201).

The motivations of the federal government in introducing Bill S-31 underline the increasing tension between provincial economic activities and federal economic powers, and the role of federal and provincial crown corporations in the economy and Canadian federalism.

Royal Commission on the Economic Union and Development Prospects for Canada

On November 5, the Prime Minister appointed the Hon. Donald Macdonald, a former Liberal cabinet minister, to head a royal commission to inquire into Canada's economic development prospects and the economic union. One commentator described it as a combination of the 1955 Gordon Commission and the Rowell-Sirois Commission which reported in 1940. The move was criticized by some provinces because it did not address the short term effects of the recession but Trudeau argued that it was necessary to determine what structural and policy changes were necessary to guarantee future prosperity. In particular, the Prime Minister felt less federal-provincial conflict was an essential requirement:

If we are to prosper, we must find ways to lessen the clamour of federal-provincial argument, and to reach consensus with far less pain. But if this is to be achieved, we must ensure that national policies are designed so that all parts of Canada can benefit from them and that national institutions are truly reflective of regional needs. (Office of the Prime Minister, Release, November 5, 1982, p. 2)

As noted, one aspect of the Commission's terms of reference was to examine long term economic development policies and goals. This included studying trends in labour markets, the supply of raw materials, capital requirements, productivity, industrial adjustment, regional economic development and the "integrity of the Canadian economic union."

Secondly, the Commission was asked to consider institutional and constitutional arrangements, including:

- means of improving relations among governments, business, labour and other groups;
- the division of fiscal and economic powers, instruments and resources between levels of government; and
- changes to central government institutions to better reflect regional and national needs and views and to encourage the further development of the economic union.

The terms of reference explicitly presumed that the Canadian federal structure would not change significantly from its current form.

Twelve commissioners were appointed representing different political parties, interests and regions. They were: Jean Casselman Wadds, former High Commissioner in London; Gerard Docquier, Vice-president of the Canadian Labour Congress; Angela Cantwell Peters, a Retail Council of Canada director; Michel Robert, a constitutional lawyer who had represented the federal government in court during the patriation struggle; Catherine Wallace, former head of the Maritime Provinces Higher Education Commission; Daryl Seaman, President of Bow Valley Resources Ltd.; Clarence Barber, an economist with the University of Manitoba; William Hamilton, president of the British Columbia Employer's Council; Albert Breton, an economist at the University of Toronto; Laurent Picard former President of the CBC; Jack Messer, former Saskatchewan Minister of Energy and Resources; and Thomas Shoyama, former federal Deputy Minister of Finance.

Mr. Macdonald made it clear that he considered the second thrust of his terms of reference — institutional and constitutional arrangements — very important (see *Le Devoir*, November 26, 1982, p. 1). He felt that the economic union would be served better by a "harmonization" of federal and provincial powers rather than any fundamental re-allocation of powers. Since the room for dividing powers was small, the Commission would probably concentrate on institutional changes at the federal level.

The provinces were wary of the Commission and its mandate. Premier Buchanan of Nova Scotia, chairman of the Premiers' Conference, felt it was "ludicrous" to spend \$3 million when the economy demanded immediate attention. Macdonald met with some of the provincial finance ministers at their meeting with federal Finance Minister Marc Lalonde at Meech Lake in December. Macdonald stated that he had received assurances of cooperation from Ontario and Alberta at that time (*Le Devoir*, January 17, 1983, p. 12) and planned to meet individually with the premiers.

7 ECONOMIC DEVELOPMENT

In 1982, the interdependence of short term fiscal policy and economic development policy was quite apparent. Long term plans for developing the economy were put on hold or adjusted to fiscal exigencies which afflicted governments and the private sector. High interest rates gripped small and large businesses -- traditional and modern, profitable and faltering. As businesses cut back production, closed down or declared bankruptcy, governments were called upon to ease the resulting unemployment, assist industries and stimulate the economy. But most of all, lower interest rates were demanded. In their attempts to inject adrenalin into the economy, many governments stepped up their capital works programs. But public investment was not enough. The provinces called for the suspension or abolition of the Foreign Investment Review Agency (FIRA), arguing that investment should not be scared off in a recession. Ottawa did relax FIRA's regulations and made it known that "Canadianization" would not be extended to sectors other than the oil and gas industry. Alberta and Ottawa both adjusted their taxation and royalty systems for oil and gas exploration and development to stimulate faltering investment in a leading sector of the Canadian economy. The impact of high interest rates on mega-projects meant that some were stalled or cancelled. With world oil prices falling by the end of the year, Ottawa's economic development strategy of 1981 was battered.

Several provincial governments released long term plans for economic development. Québec moved beyond capitalizing on its natural resources, the policy featured in *Batir le Québec* (1979), to pinning its hopes on high technology as outlined in *Le Virage Technologique*. The Saskatchewan government also reoriented that province's economic development strategy. The Conservatives under Premier Grant Devine declared the province "Open for Business" and rejected the NDP government's policy of utilizing Crown corporations to develop the provincial economy. The New Brunswick government tabled a comprehensive strategy for developing the province's natural resources and rectifying gaps in its industrial base.

The hopes pinned on mega-projects illustrated the regional interdependence of the Canadian economy. Developing large scale projects in any one province was seen to have beneficial spin-offs for others. This thinking attempted to refute the conception that developing any one province would be at the expense of the other provinces.

The federal government adopted this kind of "positive sum" thinking in its policy document, *Economic Development for Canada in the 1980s*, released in November 1981. In it, and in the subsequent departmental reorganization which took place in January 1982, Ottawa tried to fuse economic development policy with regional economic development. By disbanding the Department of Regional Economic Expansion (DREE), it was trying to eliminate the "charity" notion of regional economic development or, as one commentator described it: "the major problem with the DREE approach is its selective centralization: autonomy for the have provinces, centralization for the have-nots" (David Cameron, "Regional Economic Disparities: The Challenge to Federalism and Public Policy," *Canadian Public Policy*, Autumn 1981, p. 505).

But eleven governments chasing eleven economic development policies cannot avoid competition, especially as many of these policies are based on targetted "winners" such as the high technology industry. As one observer has noted,

the decentralization of powers, unless actions are coordinated, poses two major difficulties. With respect to "target-specific" measures it leads to conflicting and competitive policy actions... target-neutral measures, such as technical and scientific training, (raise) problems of costly duplication and threats to the quality of the programs. For example, three provinces are promoting petrochemical complexes, three have steel facilities and others have indicated they wish to develop them. Two have been bidding to attract auto engine and parts plants while programs to attract high technology industry are emerging in several provinces. Four want major deep water port facilities, and a number of provinces wish to develop competing energy resources -- oil, gas, coal, nuclear and hydro. All are trying to bring their educational systems into harmony with exploding technology... and most have inward-looking procurement policies. The list could go on and on. (Edward P. Neufeld, "Industrial Policy in Canada in the 1980s," *Western Economic Review*, January 1983, p. 19)

Not only do industrial policy measures conflict, but Neufeld points out that many economic objectives pursued by governments contradict each other, such as economic efficiency and protection of traditional industries.

FEDERAL ECONOMIC DEVELOPMENT POLICY

Ottawa's economic development policy was elaborated further in January 1982 when the Prime Minister announced a major change in the organization of the federal government. Trudeau declared that the reorganization was designed to make each economic department "more sensitive and responsive to regional economic development issues, concerns and opportunities." In short, the regional impact and importance of each new economic proposal would be a central concern, incorporated into decision-making at an early stage. The Prime Minister argued that the existing departmental structure treated regional development as a policy issue parallel to other economic policies, rather than a horizontal concern cutting across policy areas. In his words:

DREE... over the years has done a very credible job, but it did have the one defect of centralizing the pre-occupation regarding regional disparities in one department and in a sense had the by-product of absolving other departments to be very concerned with regional disparities. ("Transcript of the Prime Minister's News Conference," January 12, 1982, p. 1)

Under the organizational changes announced on January 12 by the Prime Minister, the Department of Regional Economic Expansion was amalgamated with the industry, small business and tourism programs of Industry, Trade and Commerce to form a new Department of Regional Industrial Expansion (DRIE). This department would be responsible for operating industrial policies and programs designed for regional development. The Ministry of State for Economic Development (MSED) was renamed the Ministry of State for Economic and Regional Development (MSERD). As a central agency, it was assigned responsibility for regional policy-making and coordination. As well, MSERD would also act as secretariat to the newly named Cabinet Committee on Economic and Regional Development. This Committee was given control of the economic development envelope, the energy envelope and a new Regional Fund, which incorporated the Western Development Fund. To enhance MSERD's knowledge of regional issues and concerns and its ability to implement policy, economic development coordinators would be assigned to each provincial capital to:

ensure coordination of Federal departments on the ground, and to give Cabinet direct and immediate access to information on regional needs and opportunities... to cut red tape on mega-projects and avoid undue delay in project planning, approval and completion. (Office of the Prime Minister, Release, January 12, 1982, p. 2)

Ottawa announced that existing General Development Agreements (GDAs) and subsidiary agreements with the provinces would not be renewed after

their expiry. In their place, "new and simpler sets of agreements with the provinces, involving a wider range of federal departments, will be subsequently developed." Money from these programs would be channelled through the new Regional Fund.

Ottawa's new organization for regional development unfolded slowly in 1982. Coordinators for each province were appointed gradually; many were very experienced federal civil servants with previous ties to the province where they were assigned while the government also convinced, in some cases, provincial civil servants to take the post. Coordinators settled into their jobs of overseeing all federal economic activity in the provinces, dealing with provincial governments and smoothing the way for the private sector. Efforts to attain visibility for federal contributions to development projects in the provinces were seen in greater publicity through advertising and press releases.

Reactions to the changes were voiced largely by the Atlantic provinces where DREE expenditures were necessary because of slim provincial fiscal resources. Although they welcomed the emphasis on regional development, provincial governments were unhappy that they were to be circumvented in the new process of delivering development programs. P.E.I. Premier James Lee denounced Ottawa for setting up a "parallel government" with "provincial head offices." Premiers warned of duplication and ineffectiveness if federal and provincial economic development efforts were not coordinated. The government of Newfoundland and Labrador chafed under the new methods used by Ottawa for evaluating and delivering projects. Newfoundland had been waiting for approval of over eight proposals for joint action since 1981 and felt Ottawa was giving them short shrift by dealing with proposals individually, rather than en bloc as the province preferred, or not at all. The province also objected to public statements or announcements which the federal government made about its direct delivery projects being carried on in the province. The provincial government charged that the federal government was actually reducing expenditures in the province at a time when the economy needed stimulus. Moreover, in formulating its own programs, sometimes implemented jointly with municipalities, Ottawa was using divide and conquer tactics. Was the province being punished for its tough stand on the offshore and Labrador hydro, mused the government of Newfoundland in a newspaper advertisement: "Are we being punished for standing up for our rights?" (St. John's Evening Telegram, August 27, 1982, p. 7).

The federal government's policy and bureaucratic reorganization was criticized from other quarters. Generally, it was felt that, while DREE was not a total success, at least it had been devoted explicitly to reducing regional disparities, a goal which was not acknowledged in the new thrust, which to some appeared to represent a reorientation of regional development to western concerns.

In September, the Senate National Finance Committee issued a report, *Government Policy and Regional Development*, a topic it had been examining since the late 1970s. The Committee criticized the government for failing to assign explicit responsibility for regional disparities to any of the new government structures. It felt that, in the effort to develop the economy, attention would be focussed on the "main chance" and underdeveloped regions would fall further behind. As the senators pointed out:

Governments tend to prefer the safe to the risky; the greater the probable rate of return, the more likely governments are to be interested. Investment in the least developed regions is a risky business; past failures bear bitter witness to this fact... We suspect that without constant reminders of their importance, the least developed regions will be left in just that condition. (*Government Policy and Regional Development*, September 1982, p. 71-72)

The Committee recommended that underdeveloped regions be designated as such and that the new central agency, MSERD, and the new department, DRIE, be given explicit responsibility for eliminating regional disparities.

The Senators sympathized with the federal government's concern about lack of recognition. However, they felt direct program delivery as a solution would only cause duplication, competition and ineffectiveness as both levels of government strove to implement projects "most likely to be politically rewarding." The committee recommended that the GDA approach be retained with some allowance for direct delivery by the federal government.

The Atlantic Provinces Economic Council (APEC) also issued an evaluation of the government's reorganization, *An Analysis of the Reorganization for Economic Development: Background and Policy Directions* (October, 1982). APEC noted that limited federal programs of assistance could not fully eradicate regional disparities because of the depth and scope of those disparities. This was one reason why DREE had been ineffective and why the new structures would be no more competent to battle the problem. In addition, national economic policies could have a negative impact on underdeveloped regions and APEC felt that that compensating fiscal policy was required.

Given these limitations, APEC felt the new structures would provide badly needed coordination for programs of assistance to the Atlantic provinces. For this reason, the report approved of the appointment of economic development coordinators for each province.

APEC warned that federal-provincial conflict engendered by the reorganization might hamper efforts to reduce regional disparities. It was important that provincial needs, concerns and priorities be channelled upward to the cabinet to avoid the "danger in the new system of decreased responsiveness to... specific provincial needs." There was also a fear that the new structures might cause more centralization, although that could not be stated with certainty because of the lack of information.

By the end of the year, the reorganization process was not yet completed and legislation to amalgamate DREE and TTC had not been passed.

The worsening economic situation played havoc with Ottawa's general development strategy. Even as the first ministers' conference wound up, whether the Alsands heavy oil project at Fort McMurray would go ahead was problematic. The \$13 billion project — the cornerstone of the mega-projects strategy — was put on hold while the Alberta and federal governments were at loggerheads during 1981. Dropping world oil prices and the 75 per cent cap on domestic prices, which was a feature of the Alberta-Ottawa September 1981 agreement, meant that potential revenues were squeezed against escalating costs. Private sector sponsors of Alsands sought government assurances of a guaranteed rate of return, while Alberta and Ottawa offered tax concessions. But the project appeared too unstable and risky. In early February, two sponsors holding 18 per cent abandoned Alsands; later in the month, two more participants with 37 per cent left. Of the remaining three sponsors, Petro-Canada held the second largest share. One possibility was for both governments to invest directly in the project or offer substantial loan guarantees. Neither approach worked. In early May, Alsands collapsed, joining the list of stalled mega-projects — the Alaska gas pipeline, Cold Lake heavy oil and the Judy Creek light tertiary project. As well, promising prospects from Hibernia and the Beaufort Sea were not being fulfilled.

In an emergency debate in the House of Commons, the opposition criticized Ottawa for relying excessively on mega-projects to fuel economic development. Government spokesmen pointed out that there were other mega-projects and other investments taking place, such as B.C. coal and the Port Ridley development, although Alsands was psychologically important. Economic Development Minister Olson admitted that investment confidence needed to be restored but it would only come with falling interest rates which in turn was prevented by a "stubborn inflation rate" (CBC TV, "The Journal," transcript, May 5, 1982, p. 3).

As the recession deepened and unemployment rose dramatically, the government needed immediate economic stimulus. Rail modernization and expansion was seen as one solution. In his October economic and fiscal statement to the House of Commons, Finance Minister Marc Lalonde set aside \$400 million to be matched by private sector investment for this

purpose and argued for a quick resolution of the ongoing debate over the Crow's Nest Pass freight rate.

ECONOMIC DEVELOPMENT AND INTERGOVERNMENTAL RELATIONS

When the Prime Minister and premiers gathered for the First Ministers' Conference on the Economy, the federal government's plans and structures were naturally the focus of discussions on medium-term economic development prospects, held on the second day of the conference. Several points of dispute emerged in discussions among federal and provincial politicians, dividing the federal government from the provinces and splitting the provinces among themselves.

The provinces' support for relying on mega-projects to drive the economy was directly contingent on the location of such projects. In this respect, the west and east fared better than the central provinces. Ottawa maintained that the manufacturing industries of Ontario and Québec would benefit from spin-offs generated by mega-projects. Ontario was skeptical about these assurances and sought aid for its manufacturing sector, particularly the auto industry. As Premier Davis stated just prior to the conference:

the government of this country has been far too slow in attaching significant priority to the question of re-industrialization... — new industry and development and the retooling of our existing manufacturing complex. ("Notes for an Address to the Brampton Board of Trade," January 29, 1982.)

Davis argued that nothing in the proposals sketched by the federal ministers would alleviate the "bread and butter" problems encountered by many people in Ontario because of the recession.

The government of Alberta criticized Ottawa at the conference for down-playing or displacing the private sector as the leading agent of economic development. Premier Lougheed felt that:

It's the jobs created in the private sector that have the multiplier effect. I believe that there's a limitation to what government can do in terms of actually (creating) jobs, that the government role is to create an atmosphere for the risk-taker. Obviously we are, Mr. Prime Minister, you and I at least are in very sharp disagreement apparently on that point... (First Ministers' Conference on the Economy, Verbatim Record, February 4, 1982, p. 11.)

Premier Allan Blakeney of Saskatchewan disagreed with Lougheed and argued in favour of increased government intervention in mega-projects. In

particular, Blakeney felt governments could act to make capital financing more available at lower interest rates. He claimed governments were "dreaming if we think some of these projects are going ahead with 18 and 20 per cent interest rates." He suggested that both levels of government set up a Canadian Public Investment Fund which would be used to stimulate mega-project development.

The provinces chafed at the reluctance of federal economic ministers to discuss specific mega-projects. The federal representatives maintained that they would not negotiate specific projects in front of all the provinces; rather, Industry, Trade and Commerce Minister Herb Gray would visit the provinces after the conference to discuss details of projects slated for each province. The premiers were concerned that no progress had been made in bringing mega-projects on stream since the 1978 economic conferences when a long list of such projects had been drawn up. Premier Blakeney felt "it's all very well to talk in broad terms about a hydro project in Newfoundland but we were talking in broad terms three years ago about the same hydro project..." Premier Davis echoed this sentiment, warning that people in Ontario could no longer afford to wait for eventualities.

Provinces which relied heavily on DREE programs and expenditures directed most of their comments on economic development to the departmental reorganization and its implications. As Premier Peckford said, "I consider the terms economic development and regional development to mean the same thing." The premier echoed APEC's observation that the province suffered adversely from macro-economic policies "implemented to serve the interests of the more dominant sectors of the Canadian economy," and therefore, regional development was needed both to develop the province's potential and to offset the impact of other national policies (Federal-Provincial Conference of First Ministers, Joint Statement by the Hon. Brian Peckford and Hon. Neil Windsor, February 3, 1982).

The eastern provinces noted that federal assurances of cooperation and consultation under the new regime were "praise-worthy," but they had reservations. Premier Buchanan worried about duplication and negation of efforts, and wasting money. Premier Lee of Prince Edward Island claimed that Ottawa had already broken its promise of cooperation, for a federal minister had visited the Island to announce some direct programs without informing the provincial government. Lee argued that Ottawa would benefit by taking account of his government's expertise and appreciation of Islanders' needs.

The most serious criticism of the federal policy and bureaucratic structure came from the government of Québec. It acknowledged that the federal government had responsibility for alleviating regional disparities across provinces but maintained that provincial governments were

responsible for developing regions within their own provinces. Québec claimed Ottawa was deliberately perpetrating an ambiguity in its definition of "region" to "justify its direct intervention in all sectors... while disregarding provincial jurisdiction."

This ambiguity, plus the "decentralized" structure which placed an economic development coordinator in each province told Québec that the policy was motivated more by the federal government's "current offensive to establish in a new and partisan manner, a new division of responsibilities within the Canadian federation." Even worse, Ottawa was trying to reduce the provinces to "simple federal agencies." Québec concluded:

This "short-circuiting" of Québec, or this administrative supervision by the federal government, whatever you wish to call it, will never be tolerated by Québec. If, in this aging regime, Ottawa has lost sight of the fundamental principles of the federalism of yesteryear (which is) certainly not very attractive, but at least (is) based on a certain respect for the two orders of government, and if the foundation for cooperative or viable federalism, which led to a general agreement in 1974 and to a series of subsidiary agreements is completely non-existent among our federal friends, then Québec has only one option; to demand amounts that it is entitled to for this purpose in the form of fiscal transfers or unconditional financial transfers. (Gouvernement du Québec, Regional Development Background Paper, January 28, 1982, p. 2.)

"Visibility," a catchword of the "new federalism" (see Chapter 1 for a fuller discussion) ran throughout the discussions on both economic development and fiscal arrangements at the first ministers' conference. The provinces complained that Ottawa was preoccupied with receiving credit for its economic development dollars. Premier Blakeney of Saskatchewan felt such an attitude would prevent necessary cooperation on mega-projects. Federal ministers acknowledged the government's intention to enhance its public presence. Industry, Trade and Commerce Minister Herb Gray admitted that "federal contributions to major economic developments should be more visibly accountable to the Canadian population" (quoted in *Ottawa Citizen*, February 4, 1982, p. 47). Direct program delivery was one way of promoting this goal; joint programs were not ruled out but it was clear that they would be an exception not the rule (see "Notes for an Address by the Hon. Donald Johnston to the Canadian Club of Toronto," November 8, 1982, p. 4).

Thus, there were several interesting cross-currents at play during the conference. An economic development strategy based on mega-projects pitted

centre against periphery as the central provinces would benefit indirectly rather than directly. The eastern provinces, who were the main clients of DREE, wanted to ensure continued federal expenditures for regional economic development but felt that cooperation and joint program delivery were most efficient for pursuing this goal. There was also a link developed between the discussions on fiscal policy and economic development policy. Premier Blakeney argued that when it became obvious that Ottawa would not lower interest rates, it was necessary for governments to offer low interest loans to stimulate mega-projects.

Québec maintained that the province's major economic problem was not inflation but maintaining and creating jobs as Québec industry suffered from high interest rates. The provincial government asked the federal government to participate in an economic emergency fund — "un plan d'urgence" — which would sustain employment by preventing plant closings and create jobs. Financing would be offered to ordinarily profitable firms suffering from high interest rates to forestall shutdowns and a venture capital program would also be set up to match capital invested by workers in their firms. The government calculated that \$130 million for capital financing over two years was required. The other thrust of the plan — job creation — would require about \$75 million from governments. Québec felt that a 75/25 per cent federal-provincial participation rate was reasonable as it was federal monetary policies which were responsible for the situation and Ottawa also had more fiscal room than the province.

At the 1978 economic conferences, the provinces called for a role in the formulation of Canada's position on international trade as expressed in the General Agreement on Tariffs and Trade (GATT). By 1982, several provinces had designated ministers responsible for international trade who travelled abroad seeking markets for provincial resources and goods. The first federal-provincial meeting of trade ministers was held in June. The provinces asked Ottawa to overhaul or suspend FIRA so that foreign investment would not be scared away at a time when the economy needed investment stimulation because of high interest rates. Ottawa did present the provinces with a draft of its GATT policy at a second meeting in September and both sides agreed that there was a need to resist protectionism while allowing for flexibility. The provinces pressed for the right to appoint members of the GATT delegation; in the end, the two levels of government agreed to set up a committee of deputy ministers to meet regularly to discuss international economic issues.

Even in their demands to Ottawa, the provinces reflected the diversity in their economic bases. Newfoundland and Nova Scotia pressed for expanded markets for fish. The central provinces wanted protection for their traditional industries while B.C. was anxious to develop trade links with the Pacific Rim. The customs delay imposed on Japanese autos by Ottawa as a tactic to force reduced imports angered the B.C.

government which felt that Ontario's auto industry would benefit while B.C.'s trade interests would suffer.

PROVINCIAL ECONOMIC DEVELOPMENT POLICIES

Among the provinces, several governments continued to follow their established economic development policies. Ontario had its Board of Industrial Leadership and Development (BILD) program; Nova Scotia, after signing an agreement with Ottawa on offshore mineral resources, pinned its hopes on successful exploration and development, and the spinoff benefits. Alberta was forced to respond to the pressures on oil and gas development wrought by high interest rates by liberating its taxation and royalty schemes. The major projects in B.C. proceeded slowly; the northeast coal project and B.C. Place suffered from the adverse economic climate. Newfoundland continued to pin its hopes on the offshore and it battled for jurisdiction with Ottawa in the courts and in political negotiations. Its other economic base, the fishery, was the subject of the federal task force headed by Michael Kirby, and policy developments awaited Kirby's report which was postponed until 1983.

In the discussion which follows, only those provinces which released policy documents or reoriented their economic development policies are covered.

Manitoba

In Manitoba, the new NDP government under Premier Howard Pawley faced a deficit even larger than anticipated, partly as a result of restrained transfers from Ottawa. The three mega-projects — the western power grid, the Alcan smelter and a potash development on which the Conservative government had hung its hopes — were in various stages of collapse. While public opinion polls showed the mega-projects were popular with the public, the government was wary of a "singlehanded" approach to economic development.

The new government, in negotiations with Alberta and Saskatchewan that opened in January on the western power grid, wanted the other provinces to contribute to the project financing. It also wanted a contract that would recognize changing circumstances, to avoid a "Churchill Falls syndrome." Prospects for completion of the Limestone Dam on the Nelson River seemed brighter when federal Energy Minister Marc Lalonde agreed to consider Manitoba's request for federal loans and loan guarantees to cover the province's \$2.8 billion share of the costs. However, in mid-July, representatives of the three provinces suspended discussions, blaming the economic situation for the two year suspension of the project. A month later, the government received word that the potash mine planned by International Minerals and Chemicals Ltd. at McAuley would be shelved.

With an economic development strategy based on mega-projects in shreds, the Pawley government asked business and labour for help in designing an "adequate vision and blueprint for economic development in Manitoba." On November 8 and 9, an economic summit conference was held in Portage La Prairie with 60 participants from government, business and labour. In its background paper, the Manitoba government noted the rationale for the summit:

Increasingly, governments in Canada and elsewhere are recognizing the importance of consultation and cooperation among the major sectors of the economy. A government which is isolated or over-reliant on its bureaucracy for program planning cannot provide effective leadership. Nor can effective action be taken by any one sector... all must share responsibility.

In a relatively small province such as Manitoba — where the economy is open and diverse, and where the provincial government is severely constrained by financial and jurisdictional limits — consultation and cooperation among business, labour and government are nothing less than a prerequisite for successful long-term development. (Background Papers, Manitoba Economic Summit Conference, Government of Manitoba, p. 2-3)

There were four items on the conference agenda: identifying economic problems and opportunities; pinpointing the sources of economic problems; formulating a consensus on problems and solutions; and identifying means of future consultation. In addressing each of these topics, the background papers prepared by the government, the Manitoba Chamber of Commerce and the Manitoba Federation of Labour reflected their different ideological stances. All three agreed that government, business and labour should be involved in decision-making on the economy. As the Manitoba Chamber of Commerce pointed out:

The importance of governments as actors in economic decision-making has become obvious to most in the last decades. In one role, governments act to create the legislative, regulatory, taxation and other policies that form the framework within which businesses make decisions. In another role, governments also act directly... as owners ... and as regulators of economic activity.

Business retains its traditional economic role as an assembler of capital and skills to provide goods and services to the public. In its role, business is a creator of wealth and a major creator of employment opportunities.

Labour is the source of the skills and activities that are so important to the successful accomplishment of economic activities. (Background Papers, Manitoba Chamber of Commerce, Manitoba Economic Summit Conference, p. 2)

The Manitoba Federation of Labour was blunt about conditions for cooperation:

These days it is popular for government, business and media spokespersons to wring their hands and express a wish for a greater degree of economic cooperation and understanding. Our answer is simple, when government and business recognize that workers have the right to organize and freely collective bargain, then a much larger degree of cooperation will be possible. (Background Paper, Manitoba Federation of Labour, Manitoba Economic Summit Conference, p. 2)

The government's brief emphasized two points: the need to recognize the role of the public sector in the economy and the need to integrate all economic groups (particularly labour) into decision-making. On the former point, the brief noted:

The scale and mixed nature of Manitoba's economy, coupled with our relatively isolated location, have long dictated the need for a more creative public sector in our province than has evolved in some other provinces in the past — such as those dominated by large-scale industries. (Government of Manitoba, p. 10-11)

The government's social democratic impulse was evident in its concern for worker participation in management, a fairer tax system and the fragility of the ecology. As well, the government's policy of consulting with other major actors was prompted by:

the emergence, nationally, of groups with legitimate aspirations for a more equitable role in decision-making within Canada. Many such groups have felt "underrepresented," not so much politically or electorally but in economic decision-making and decisions affecting social affairs. (ibid., p. 7)

The Manitoba Chamber of Commerce recommended that any economic development thrust for Manitoba be based on an open provincial economy "with emphasis on economic performance, including growth, profit and survival" rather than on a view of a closed economy which emphasized income redistribution. The business brief also suggested that any attempt to identify sectors as "winners" and "losers" would pose difficult questions.

For the Manitoba Federation of Labour, the most important issue was the "equitable distribution of existing wealth and the creation of new wealth — by whom or for whom?" The unions agreed with the government that the public sector should play a prominent role in the economy as "only the naivest of economic optimists living in the make-believe world of "perfect competition," will argue that private profit-seeking will somehow guarantee that all social goals are met" (op. cit. p. 8). They called on government to direct the flow of capital to ensure balanced and equitable growth.

After two days of discussion, government, business and labour agreed on several areas where joint action could improve the provincial economy: economic planning, manpower training, capital formation, consultation about major projects investment, collective bargaining and labour-management relations, development of secondary industry and encouragement of a "buy Manitoba" program. The conference steering committee planned to carry on and develop an economic strategy. All participants were pleased with the outcome of the conference but were anxious to avoid any notion that centralized economic planning was favoured.

New Brunswick

In 1979, the government of New Brunswick began a review of its economic development policy to take account of changes in the international economic environment and the national economic policies of the federal government. While the government felt its policy had been successful throughout the 1970s, the "development challenge" of providing employment, incomes and public services at levels comparable to other provinces still existed.

The economic development policy outlined in Meeting the Challenge of the Eighties, tabled in the New Brunswick legislature in late March, combined specific strategies for various sectors with more general strategies such as taxation, energy, manpower, land use and intergovernmental relations. Eight policy thrusts were identified:

- development of human resources by increasing the number of permanent jobs, increasing productivity and developing a skilled and versatile labour force;
- strengthening the existing economic base by increasing output and productivity and enhancing the value added by more processing;
- careful resource management for forestry, fishing and agriculture;

- stimulating high technology industries and encouraging spinoffs from mega-projects;
- developing industrial innovation through research and development;
- ensuring regionally balanced development;
- continuing support for public services and infrastructure;
- adapting to new energy sources.

In the March 23 Speech from the Throne, several specific policies were outlined. The government announced an industrial benefits strategy which would try to increase the contribution of New Brunswick manufacturers and suppliers to mega-projects. As well, manpower planning agreements would be planned with private sponsors of mega-projects and directed toward sustaining permanent jobs in the province once projects were operational.

Several constraints on making economic development policy in the 1980s were identified in the document. The forecast decrease in public revenues meant that programs would have to be continually evaluated and priorities carefully assigned. The cooperation of the federal government was also important but it should reinforce and assist the provincial approach rather than work at cross-purposes to it or impose Ottawa's own views. As the document stated:

To implement this strategy, governments must cooperate through joint planning and coordination of programming. Efforts must not be duplicated simply because there is a lack of clear definition of roles or concerns over visibility. In some cases, it may be necessary to divide responsibilities and jointly consolidate the many aid programs to business if efforts to stimulate the economy are to be maximized to the benefit of all New Brunswickers.

Given the current federal orientation towards unilateral initiatives, this will require a new institutional framework for economic development. The province believes that it is possible to build on the cooperative federal-provincial approach which developed in the seventies. At the very least, it may be desirable to develop a more structured federal/provincial decision-making process based on written principles and procedures — a code of conduct for Economic Development — to ensure that all decisions relate to agreed upon objectives. (Meeting the Challenge of the Eighties, p. 41-42)

Québec

Québec's attempt early in the year to negotiate a short term economic scheme in conjunction with Ottawa was unsuccessful. At the first ministers' conference in February, Premier Lévesque and his economic ministers presented a plan for a \$200 million emergency fund which would assist small and medium businesses hit by high interest rates and create short term jobs.

When Ottawa refused to participate in a joint program, Québec proceeded alone. In March, the government introduced a loan guarantee program for normally profitable industries suffering temporary difficulties. According to Industry, Commerce and Tourism Minister Rodrigue Biron, the government hoped the plan would have a psychological impact in convincing people that the recession could be fought (*Le Devoir*, March 16, 1982, p. 9).

In addition to this short term response to the recession, the government was also working toward a longer term economic development policy. While the April 5-7 economic summit held in Québec City with government, business and labour representatives was part of the government's strategy to "open its books" and show its case for restraining public sector wages, the participants also discussed short and medium term ways of stimulating the economy.

There was an inevitable clash of philosophies among the participants during the first day of the summit. The government was trying to justify a rollback of almost 20 per cent in public service salaries, given a \$3 billion deficit. Unions argued for higher wages and more government spending. Business called for less government intervention and lower taxes.

However, by the end of the conference, the participants had agreed on several points:

- a task force, representing government, business, labour, credit unions and municipalities would be set up to establish a program to stimulate housing construction. This developed into "Corvée Habitation" (Building Bee) which provided low interest loans for residential construction;
- another task force would study the feasibility of an Economic and Social Council which would try to achieve a consensus on economic and social goals;
- the \$200 million emergency stimulation program was endorsed;

- promoting worker participation in management and laws governing unionization would be studied;
- pension funds would have to be rationalized; and
- the proposal for making Montreal an international banking centre was endorsed.

Despite the difference of interests at the conference, it was generally regarded as a success.

A month after the conference, the government released its White Paper on economic development, *Le Virage Technologique*, the successor to the 1979 document, *Bâtir le Québec*. The policy was premised on the need to make the "technological conversion" so that Québec industries would be more productive and competitive.

In *Bâtir le Québec*, the government had addressed the traditional sectors of the Québec economy - textiles, pulp and paper, clothing, shoes and furniture. With modernization and streamlining programs in place, policy planners turned their attention to mega-projects, high technology and the services sector as the new industrial and developmental priorities. To take advantage of the spin-off benefits from mega-projects, the government decided to establish a *Bureau des grands projets* which would distribute information to businesses on the goods and services required by mega-projects, and to help suppliers penetrate this market. The government also planned to provide technical and financial support to consultants operating in the engineering and high technology fields. To assist the development of high technology fields, the government planned more expenditures on research and development, manpower training and start-up assistance especially in the bio-technology field.

Throughout the document, it was recognized that federal policies would be necessary to supplement Québec's efforts, and that federal-provincial cooperation was essential in economic development.

Saskatchewan

During the spring election campaign in Saskatchewan, Conservative Leader Grant Devine argued that the NDP's "family of Crown corporations" had deprived farmers and businessmen of land, investment and attention. Once elected, the Conservatives launched an intensive study of the many provincially owned corporations, and made some adjustments in management, structure and ownership.

The government also moved quickly to fulfill campaign promises designed to stimulate consumer investment. A mortgage interest reduction plan which

brought effective mortgage rates to 13.25 per cent was introduced and the 20 cent provincial tax on gasoline was repealed.

At the August Premiers' Conference, Premier Grant Devine outlined both the philosophy and the details of a general economic recovery plan for the province. In his words,

our general approach will continue to be aimed at the removal of unnecessary barriers to growth. We are prepared to intervene in the economy, but only in ways that will assist the private sector, not replace it. Business will "know the rules" in effect in Saskatchewan with as much certainty as is possible in today's economic climate. ("Opening Statement by the Hon. Grant Devine," 23rd Annual Premiers' Conference, Halifax, N.S., August 24-28, 1982, p. 3).

Several elements of the recovery program were already in place. To promote private investment in areas where it was felt Saskatchewan had a comparative advantage, the government increased incentives for oil and gas exploration and development, introduced a low interest farm purchase program and planned to release an industrial strategy.

At a conference held in Regina in October with the theme "Saskatchewan: Open for Business," the Premier and his economic ministers unveiled the government's industrial strategy. Underlying plans to reduce red tape and government intervention, to encourage cooperation among government, business, labour and educators and to advance the province's new technology base, was the selling of a new psychology. Devine stressed the virtues of Saskatchewan and its mentality - confidence, competition, diligence, common sense, and an "inherent will to win." These values matched neatly with those associated with the private sector as government spokesmen devoted themselves to making business feel at home in the province. One of the most notable features of the government's policy was its involvement in attracting business to Saskatchewan and securing markets for provincial products. A department was given responsibility for international trade and trade offices were planned for the U.S., Europe and the Pacific Rim. Devine himself was regarded as the foremost spokesman for the province, and as he travelled abroad, businessmen were invited to accompany the premier in his marketing efforts.

ECONOMIC POLICY AREAS

Policy developments in various economic sectors manifest federal-provincial or interprovincial tensions. In some cases, disputes are entirely between governments and the private sector and labour are caught in the middle; the lingering Ottawa-Newfoundland dispute over offshore resources was one example. But there were examples of conflicts

over policy where the provinces were only one of many vocal groups expressing different policy interests. The battle over the Crow's Nest Pass rate for grain transportation, the agricultural export marketing agency, Canagrex, and fisheries were instances of this pattern of interests.

Agriculture

The subjects discussed at the 32nd annual federal-provincial conference of agriculture ministers held in Halifax on July 13-14 reveals the range of subjects in the area affecting both levels of government and the inevitability of conflicting interests, both philosophical and pragmatic. On the first day, ministers discussed agricultural development agreements (contained largely in DREE subsidiary agreements), income stabilization programs, the provincial response to the Gilson report on grain transportation, and agricultural credit. The next day, food inspection, Ottawa's agri-food strategy, national marketing boards, the federal red meat strategy, national dairy policy and the Eastern Canada Potato Agency were discussed. Provincial responses to the plans for the Crow Rate and Canagrex will be discussed shortly.

On other matters, some provinces objected to Ottawa's new policy of direct delivery of development programs. They argued that provincial priorities would be distorted and efforts duplicated. Federal Agriculture Minister Eugene Whelan rebuffed the provinces' criticisms that the federal government wanted more credit and a greater public identity. He apparently raised the possibility of Ottawa's setting up agricultural offices in each province to coordinate federal and provincial agricultural assistance programs (Halifax Chronicle Herald, July 14, 1982, p. 1).

The harmonization of stabilization plans was also raised as a provincial concern. Ontario Agriculture Minister Dennis Timbrell, in particular, argued that the provinces were forced into providing their own stabilization programs because Ottawa's coverage was inadequate. He was reacting to Whelan's threat to cut off farmers benefitting from provincial programs which "top loaded" federal assistance. The federal minister claimed that "top loading" created an unfair advantage for farmers in the wealthier provinces (Globe and Mail, May 5, 1982, p. B7). At a meeting in Regina in November, the provincial ministers and producers' groups "overwhelmingly" supported the establishment of voluntary tripartite stabilization plans for commodities not under a supply management scheme. Given this consensus, the conference participants hoped that the federal government would agree to discuss national plans.

Throughout the year, some provinces voiced opposition to Ottawa's Bill C-85, an act which provided for the establishment of an agricultural export corporation, Canagrex. However, ideological opposition to the

corporation was more prevalent than federal-provincial conflict. The federal Progressive Conservative caucus and agricultural exporters in particular felt the plan was a step toward nationalization; Canagrex was referred to as the "Petrocan of agriculture." The government stressed that the corporation would assist the private sector in expanding markets for Canadian agricultural products through financial assistance, promotional activities, market identification, and product development. But opponents of the Bill focussed on a clause which would allow the government to set up a trading house to purchase, process, package and sell agricultural foodstuffs in areas where the private sector had not fulfilled these roles.

Alberta Agriculture Minister Dallas Schmidt was afraid that Canagrex could eventually control total export markets for agricultural products. But other western provincial ministers supported the Bill. Some agreed that the corporation should assist the private sector in marketing; the NDP Manitoba government supported any competition with private exporters which Canagrex might provide (Calgary Herald, June 4, 1982, p. B12). Consideration of the Bill dragged on through 1982 without being passed in the House of Commons. The government made some changes to accommodate the concerns of the opposition, producers' groups and exporters.

Railway modernization was one of the goals of Ottawa's economic development policy released in 1981. It was closely linked to the federal determination to abandon the Crow's Nest Pass rate. This policy set the cost to farmers of shipping their grain and flour to terminals at 1/2 cent a mile per tonne — a rate set by statute in 1925 — resulting in a gap reaching \$400 million between revenues earned by railways for transporting grain and the actual cost of transportation. Farmers were bearing an ever decreasing percentage of the cost of transportation, argued the government, and some equality had to be restored. But others, particularly the Saskatchewan government, claimed that the principle of equal rate for equal distance should be retained as it helped sustain the social structure of the prairies. The railways claimed they lacked funds for upgrading tracks or purchasing railway cars to increase capacity. The federal government was determined to alter the Crow Rate but wanted a consensus among the disparate groups before making any changes. The cabinet itself was split between those favouring radical alterations to the rate structure to stimulate activity and those who argued for increasing capacity by double-tracking or purchasing more hopper cars and retention of the Crow rate.

On February 8, in a speech in Winnipeg, federal Transport Minister Jean-Luc Pepin announced that the Crow's Nest Pass rate would be abolished. He commissioned agricultural economist Clay Gilson to "identify and enhance" a consensus on a new tariff schedule to be negotiated by producers, consumers, the railways and government. Gilson

was restricted in his terms of reference by the government's financial position and its planned \$3.2 billion investment for railways. The government made it clear that farmers must bear an increased share of costs and that they would no longer be guaranteed a fixed rate. However, in return, railways would have to provide service guarantees to farmers and a commitment to Ottawa that they would increase capacity in the west.

Of the opponents to changing the Crow rate, the Saskatchewan NDP government was the most vocal and organized. Prior to Pepin's announcement, Saskatchewan had planned a "grain summit" to which the other western governments, the federal government and the Canadian Wheat Board (CWB) were invited. Saskatchewan wanted participants to match CWB market projections against forecast production, prices and transportation capacity. However, the summit was cancelled when the federal government refused the invitation and the Canadian Wheat Board withdrew. Even so, prairie governments were divided on the issue. The NDP Saskatchewan government felt the answer to the issue was more public investment in infrastructure rather than increased revenues for the railway; it was supported by its fellow NDP government in Manitoba. In Alberta, the government's position reflected the fact that Alberta farmers were less dependent on grain, and cattle and hog producers felt the rates were too low.

The Saskatchewan government launched a "Save the Crow" campaign which disputed Ottawa's contention that the rate was the main obstacle to increased capacity and that farmers were not bearing a fair share of transportation costs. The "Pepin plan" would destroy a way of life centred on the family farm guaranteed by Parliament, Saskatchewan contended. Instead of farmers being protected from the railways, the railways would be protected from farmers.

Saskatchewan employed several tactics in its campaign. Meetings across the province were conducted by cabinet ministers with concerned groups. Farmers were urged to mail their comments to Pepin. The impact of a new rate on the farmers' pocketbook was calculated and distributed widely. The NDP called an election with its opposition to Ottawa's plan as the central feature of its campaign. Ottawa, in turn, launched its cabinet ministers on a tour of the west to create support for the proposal. It also sent out letters to Saskatchewan farmers disputing what it saw as inaccuracies in the Saskatchewan literature.

As Gilson travelled across the country, the diversity of views among affected organizations was readily apparent. With the Saskatchewan government defeated in the election, it appeared that only the Manitoba government stood out against changing the Crow rate. Newspapers reported

an emerging consensus among groups consulted by Gilson. When his report was released in June recommending that an annual subsidy be paid by Ottawa to farmers and the railways with the farmers' proportion increasing over time and transitional payments to farmers, it was received as a "useful compromise." Changes to the rate were delayed until 1983 as the realization that the Crow rate would be abolished took hold.

Fisheries

The federal government's Task Force on Atlantic Fisheries, headed by former Secretary to the Cabinet for Federal-Provincial Relations, Michael Kirby, was the main feature in fisheries policy development in 1982. The Task Force faced an ongoing debate over economic efficiency versus social regulation, inshore versus offshore, fishermen versus processors, federal jurisdiction versus provincial responsibilities. But two areas where there seemed to be agreement on the need for change were product quality and marketing.

The Task Force's final report was delayed until 1983 as the federal representatives consulted the industry, fishermen and governments several times. It was also sidetracked by the immediate economic crisis in the Atlantic coast fishery as the largest processing firms faced some financial difficulties.

In July, the Task Force issued a paper outlining the various issues and policy options facing the fishery which was used as a basis for a second round of consultations. Processing was not addressed because a survey on costs and revenues had not yet been completed. The issues outlined were:

- international issues, such as the use of foreign vessels, reliance on fish allocations for foreign market access and joint ventures;
- harvesting capacity, or the status of fishermen and property rights;
- restructuring the offshore fleet;
- utilization of the northern cod stock and its relationship to seasonal and foreign vessel processing;
- northern fisheries (north of 50 degrees latitude);
- quality improvement;
- marketing planning, coordination and promotion;

- fishermen's incomes and unemployment insurance; and
- the size of the herring seiner fleet.

Provincial governments in the Atlantic provinces made representations similar to those of other affected groups. There were a few distinctive concerns expressed largely by the government of Newfoundland and Labrador. In the 1978-80 constitutional discussions, Newfoundland pressed for concurrent jurisdiction over coastal fisheries on the grounds that that resource was fundamental to the province's economic and social development. Lacking jurisdiction over fisheries was analogous to a prairie province without jurisdiction in agriculture, the government argued. In addition to this objective, the province, in its presentation to the Kirby Task Force, pressed for an allocation of fish stocks to regions historically dependent on the stocks, a reduction in seasonality, the development in Newfoundland of a fisheries technology, better training facilities and a comprehensive marketing strategy.

Hydro-electricity

In 1982, the struggle between Newfoundland and Québec over the Upper Churchill contract, ongoing since the 1970s, was fought in the courts and federal Parliament where the federal government found itself aligned with Newfoundland.

On March 5, the Newfoundland Court of Appeal upheld the validity of the Upper Churchill Water Rights Diversion Act which had been challenged by Québec (see Chapter 4 for greater detail). Québec appealed to the Supreme Court where Ottawa intervened to support Québec. Newfoundland was shocked by the move, claiming that the federal government was trying to "curry favour" with Québec on other issues.

The Newfoundland-Québec dispute was also played out in Parliament. Part of the government's massive energy security bill, which was split into eight pieces of legislation after the Conservatives mounted a two-week boycott of the House of Commons in March, would allow the National Energy Board to grant permission for expropriation of land in Québec for the construction of a transmission line for Newfoundland hydro. Québec vigorously opposed the move, saying it affected the province's environmental protection and agricultural zoning laws and the export potential of Hydro-Québec. The PQ caucus lobbied the Québec Liberal caucus in Ottawa, believing that the five Liberal MPs from Newfoundland had gained the upper hand.

In the end, the government and opposition parties agreed to a six-month hoist suggested by Québec to the application of the expropriation powers in Bill C-108; Ottawa hoped this would provide time for the two provinces

to reach a negotiated settlement. But the Newfoundland government condemned the delay. In a letter to Energy, Mines and Resources Minister Marc Lalonde, Newfoundland Minister Bill Marshall declared:

the right of the people of Newfoundland and Labrador to transmit hydro power across provinces is an inherent right which they possess as citizens of Canada. It is not dependent or contingent upon negotiations with the Province of Québec. (Newfoundland Information Services, Press Release, June 14, p. 1)

Settlement of the issue by judicial decision or a political arrangement was left to 1983.

Manpower

By 1982, many studies had identified manpower training as crucial for Canada's future economic prosperity. Thus, it was important to review the institutions and mechanisms of manpower training.

In planning for the future needs of the economy, Ottawa announced that it would let the Adult Occupational Training Act expire in March 1982 and replace it with legislation allowing it more flexibility in developing training agreements with the private sector, organizations and institutions. Under the Adult Occupational Training Act, Ottawa "bought" training places at community colleges or other vocational institutes from the provinces. Several labour market studies concluded that this system was not flexible enough to respond to immediate national training needs and recommended more direct arrangements with business, labour, natives, women's groups, organizations for the disabled and specific industries. Ottawa also felt that institutional training provided by the provinces did nothing to highlight its "visibility."

The provinces generally agreed with the federal government's objectives in the field: training more highly skilled workers, ensuring job mobility, providing better opportunities for women, natives and the disabled, and integrating universities and colleges into labour market development. However, they were concerned that the methods Ottawa proposed would circumvent their jurisdiction over education and lead to duplication, insensitivity to local needs and lack of recognition for mechanisms already in place.

Federal and provincial manpower ministers met on January 11 in Vancouver to discuss a draft federal occupational skill development policy. The policy was broken into several elements: an occupational projections system which would identify future needs and designate "national" occupations, industrial training, institutional training, and

an employment growth and adjustment fund which would provide start-up capital for skills training. Comments on each of these areas from the provinces echoed several common concerns. They were worried that Ottawa was encroaching on provincial jurisdiction and that the federal government was reducing funds committed to skills training. On institutional training, the provincial spokesmen objected to federal Minister Lloyd Axworthy's statement that the current system was training people for "dead-end" jobs or no jobs at all. Saskatchewan Minister of Education Doug McArthur stressed that there had to be a balance between job opportunities and citizen demand, economic needs and social requirements.

The federal government also proposed a "voucher" system, whereby a trainee would receive direct notice of the Ottawa's contribution to his institutional training. McArthur objected to this plan, not necessarily as a "visibility" measure, but because he felt it might coerce a trainee into certain choices of programs or institutions.

The meeting concluded with a request from the provinces that Ottawa delay its plans for new legislation until the provinces had had a chance to react to firmer federal proposals.

The federal government went ahead with its plans. Bill C-115, the National Training Act, was tabled on May 21 and received quick consideration by Parliament. The purpose of the Act was "to establish a national program to provide occupational training for the labour force and thereby to better meet the need for skills created by a changing economy and to increase the earning and employment potential of workers."

The Act gave the Canada Employment and Immigration Commission (CEIC) the ability to enter into agreements with the provinces, employers and other groups, and to provide financial assistance for training programs. Several amendments were made at the various legislative stages to ensure more provincial participation and consultation. For example, the CEIC was authorized to set up joint committees with the provinces most affected in deciding whether an occupation should be declared of national importance.

Throughout the year, training agreements were signed with several provinces. Ottawa was careful to point out that training would be tailored to skills needed in a particular region, such as advanced food technology in agricultural areas. There was some concern that Québec would not agree to any arrangement because it wanted to protect its jurisdiction. However, Axworthy and Québec Manpower Minister Pierre Marois signed an agreement worth \$745 million in late October.

While Ottawa pursued a revised manpower training policy as part of its broader economic development strategy, governments were also forced into

short term job creation programs as unemployment levels rose to unprecedented heights. With limited funds and an economic recession, policy-makers looked for projects which would make a lasting contribution, such as building up infrastructure or establishing businesses which would eventually stand on their own. As well, projects were targetted at various categories of unemployed — the chronically unemployed, youth, women, natives, or those who had exhausted their UI payments (James Bagnall "How much can we afford for jobs?" Financial Post, January 15, 1983, p. 2).

Given these factors, Ottawa was spending close to \$1 billion per year on direct job creation and had 13 separate programs in place. Many projects were conducted jointly with the provinces which contributed both funds and ideas for projects. The Employment-Bridging Assistance Program (EBAP) began in early 1982 with both governments "topping up" UI payments for those employed on community or public service jobs such as trail blazing or reforestation. The Industrial Labour Assistance Program (ILAP) was part of a larger industrial adjustment policy which helped workers in traditional industries hit hard by competition to upgrade skills, retire early or move to other jobs. The permanently unemployed were the target of the Local Employment Assistance Program (LEAP) while women, youth and natives benefitted from the Canada Community Development Program (CCDP).

MacEachen's successor, Marc Lalonde, introduced another job creation program in his October 27 statement to the House of Commons. He set aside \$500 million for the New Employment Expansion and Development (NEED) program designed for those who had exhausted their unemployment insurance benefits. The provinces were asked to implement the program and contribute to it. As agreements were signed over the winter, it was clear that Ottawa was using the program to deliver some jobs directly, thereby enhancing its visibility; other jobs were funded solely by the province or jointly with Ottawa. These programs were criticized by some as inadequate in battling unemployment as money and ideas ran out before making a dent in the unemployment rate.

Offshore Mineral Resources

In early March, Ottawa and Nova Scotia signed an offshore management agreement after years of negotiations. The question of ownership was set aside and both governments agreed to honour the arrangement despite any eventual court decision.

Under the 42 year agreement, a Canada-Nova Scotia Offshore Oil and Gas Board would be set up with three federal and two provincial representatives to make management decisions and advise the federal minister. The province was given the right to delay decisions but the

federal minister had ultimate decision-making authority. On the important issue of revenue-sharing, Nova Scotia would receive "all provincial-type resource revenues," such as a royalty on gross production revenue, a progressive incremental royalty on net revenue, retail taxes, corporate taxes and rentals and license fees. When the province reached a fiscal and economic capacity above the national average, the provincial share of revenues would gradually decrease and Ottawa's would rise. The federal government agreed to advance the province \$200 million from 1984 to 1987 for new infrastructure which would be reimbursed from provincial offshore revenues. The provincial government was given the right to acquire a 50 per cent portion of the Crown share of offshore gas fields and 25 per cent of offshore oil fields as well as a 50 per cent interest in any oil or gas trunkline from the offshore. Authority over Sable Island, which is granted to the province under the Constitution Act, 1867, would be exercised by the Nova Scotia minister and all "provincial type" revenues would go to the province for the duration of the agreement.

Nova Scotia added a rider that if any richer provincial share were negotiated with another province, the same provisions would then apply to Nova Scotia.

The 1982 Ottawa-Newfoundland negotiations on offshore resources were the stuff of high drama, filled with action and emotion. The legal and the political intertwined as tactic and strategy. The public, media and other political bodies were called upon by each side as they tried to pressure the other through advocacy advertising and public appeals. Two conflicting themes were played out: the need to protect Canada's energy security and develop the economy versus the protection of Newfoundland's environment, economy and way of life.

Newfoundland cast itself as the provincial David fighting the federal Goliath in the dispute. In a statement issued after Ottawa referred a question on ownership of offshore mineral resources to the Supreme Court, Premier Peckford delivered this testament:

Small and large societies in this country are not being treated equally. Small is weak, large is all-powerful and in control. When you are small, it becomes easy to sacrifice a bit of fair play on the almighty altar of economic necessity and national interest. The tyranny of the majority and the economically powerful rule the few, and thus the weak, just as sure as night follows day!

The Federal Government adamantly maintains that Newfoundland and Labrador has no rights at all to offshore oil and gas, that we must be satisfied to take what they are willing to give, subservient ever to their every whim ... We are the

treasurehouse of resources which must and will be used to feed the strong and powerful so that they can perpetuate this position while we are left to pick up the scraps, eternally grateful for such generosity and while we steadfastly maintain our position of second-class status. (Newfoundland Information Service, Press Release, June 4, 1982)

In 1982, there were three phases in the contest: negotiations were conducted until mid-February when Newfoundland withdrew because Ottawa continued to intervene in a court case; then the question of ownership was referred by both parties to the Supreme Court of Newfoundland and the Supreme Court of Canada; finally negotiations appeared tantalizingly close to resolution at the end of the year but then fell apart once more in mutual recrimination.

The scene was set in May 1981 when Prime Minister Trudeau, in a speech in St. John's, indicated that his government was willing to negotiate an agreement on shared management of the offshore. The important issue was not ownership, the Prime Minister declared; that question could be set aside while negotiations took their course. Elaborating on the federal position in July, Trudeau suggested that if the issue had not been resolved by political means by February 1982, the legal process would be allowed to take its course.

In his reply, Premier Peckford argued that no legal action should be taken by either side on any aspect of the offshore question while negotiations were underway. This was a reference to Ottawa's intervention in an application to the Federal Court of Appeal by the Seafarer's International Union (SIU) on a Canada Labour Relations Board decision concerning the SIU's ability to represent workers on offshore rigs. The SIU case played an important cameo role in the federal-provincial dispute.

Throughout the negotiations, Newfoundland maintained that the legal question of ownership should be permanently set aside; a negotiated agreement would be subject to periodic review to take account of circumstances but would be entrenched in the constitution. The province also argued for equal representation in any joint management system. On the central issue of revenue sharing, Newfoundland insisted that offshore revenues be treated as though they were derived from land based resources; it was vital that the notion that "one party is giving something to the other" be dismissed.

In November 1981, Newfoundland issued A Framework for Agreement which set out these and other principles for agreement. The principles were outlined in a "compromise" proposal tabled on January 25 in a negotiating session in Montreal. It included details of establishing a

"true partnership," a permanent, constitutionally entrenched arrangement, a major economic benefits package for the province and a "fair split" of offshore revenues.

In early February, Newfoundland issued warning signals to Ottawa about the federal government's continued intervention in the SIU case. The province felt this was a violation of its understanding that no legal action would be conducted during negotiations. When Newfoundland's motion for adjournment of the SIU case was denied by the court, Peckford wrote to the Prime Minister asking for a confirmation that the government of Canada was prepared to shelve permanently the legal route. Otherwise, Peckford cautioned

it is impossible to have a permanent joint management revenue sharing agreement since at any time in the future any party found by the court to own it can elect to exercise their rights of ownership and destroy the agreement. (Newfoundland Information Service, Press Release, February 10, 1982)

Newfoundland was afraid that there could be a repetition of the Australian experience where a ten year old joint agreement was retracted by the federal government after a successful court case. When Trudeau reiterated the federal line that the courts should be allowed to resolve the issue if and when the politicians failed, Newfoundland itself went to court, negotiations broke off and the curtain fell on the first act.

The next act was dominated by legal manoeuvres. To counter the consideration of the ownership issue in the federal courts, Newfoundland referred the following question to the Appeal Court of the Supreme Court of Newfoundland on February 12:

Do the lands, mines, minerals, royalties or other rights including the right to explore and exploit and the right to legislate, with respect to the mineral and other natural resources of the seabed and sub-soil from the ordinary low-water mark of the Province of Newfoundland to the Seaward unit of the continental shelf or any part thereof belong or otherwise appertain to the Province of Newfoundland?

Premier Peckford argued that if the ownership question were referred to the Supreme Court as part of the SIU case, it was the "duty" of the provincial government to protect the interests of Newfoundlanders by ensuring that the Supreme Court of Canada had the "benefit of the opinion on ownership of the judges of the highest court" of Newfoundland. The government wanted a negotiated settlement, Peckford stressed, but it had been "forced" to the courts by the federal government .

As the legal moves developed, the political theme played on. The February 28 deadline imposed by Ottawa was extended for two weeks because of the Ocean Ranger disaster. Then Ottawa and Nova Scotia signed an agreement on joint management and revenue sharing which was held up by the federal government as an example of cooperative federalism. Newfoundland rejected the Nova Scotia model because it was a guise for federal benefit and control, totally unsuitable to Newfoundland's needs and demands.

The legal theme became stronger. Federal Justice Minister Jean Chrétien offered to refer jointly the question put before the Newfoundland court directly to the Supreme Court of Canada to facilitate an early decision. The province rejected the offer, stating that it preferred to have the provincial court pronounce on the issue.

On March 8, the Federal Court of Canada rejected Ottawa's attempt to have it declare offshore undertakings as the exclusive jurisdiction of Parliament (see Chapter 4 for a discussion of the SIU decision).

Newfoundland's position on the offshore and negotiations with Ottawa was a prominent feature of the March 11 Throne Speech which foreshadowed the election called by Premier Peckford for April 6. The premier sought support for his government's position on the offshore, fisheries and Churchill Falls from the electorate. The sound majority gained by the Conservatives in the election was interpreted by the government as a mandate to pursue its strategy (see Chapter 2 for a discussion of the election).

On May 19, the federal government moved boldly. Concerned that the Newfoundland reference might not be settled by the courts for some time, Ottawa referred its own question to the Supreme Court. The federal government argued that the legal and political dispute was holding up development of the Hibernia field, the most promising of the offshore sites. After pinpointing an area of the offshore by longitude and latitude for the Supreme Court, Ottawa then asked it to consider

Has Canada or Newfoundland 1) the right to explore and exploit the said mineral and other natural resources, and 2) legislative authority to make laws in relation to the exploration and exploitation of the said mineral and other natural resources?

Peckford was shocked "beyond comprehension by this arrogant and cowardly act," a move expected only by a "foreign, hostile power." The House of Assembly condemned the move; ceremonies planned to celebrate the patriated constitution were cancelled and a day of mourning declared by the premier.

The province claimed that to refer a matter directly to the Supreme Court while it was being considered at a lower level was contrary to Canadian judicial practice. When asked for his opinion by Newfoundland, constitutional expert Eugene Forsey claimed that Ottawa's move "interferes with the normal judicial procedure by virtually removing from the Newfoundland Court of Appeal an essential part of the questions placed before it. This is highly improper" (quoted in Newfoundland Information Service, Press Release, May 25, 1982, p. 1). Premier Lougheed of Alberta lent his support to this argument, adding that "in the past it was implicitly accepted that bypassing the Court of Appeal in references would only be done with the concurrence of all governments involved" (ibid.).

Ottawa argued that the question referred only to the Hibernia field, but Premier Peckford declared that the area pinpointed in the federal reference contained other promising oil and gas fields and Hibernia accounted for only 4.25 per cent of the area. The "use of the 'Hibernia only' concept" was a "subterfuge" to "mislead" the Canadian public into thinking the question was different from the Newfoundland reference, the premier charged.

When the Supreme Court of Canada set November 29 as the date for hearing the federal reference, Newfoundland saw this as applying a "stopwatch and deadline" to the Newfoundland court which might not have time to deliver a considered opinion before that time. The Supreme Court later set the date back until February 1983.

Over the summer, support for Newfoundland's position came from Ontario Premier Davis, a group of Newfoundland clerics, and the federal Progressive Conservative and New Democratic Party caucuses. For its part, Ottawa placed advertisements in Newfoundland papers claiming the reference would allow fast resolution of the issue and development of the offshore. Referring to the day of mourning, the ads proclaimed "that's nothing to lower flags to half-mast about, that's common sense" (see ad in St. John's Evening Telegram, June 1, 1982, p. 44). Agreements reached with exploration companies under the Canada/Nova Scotia arrangement were well publicized.

By September, tentative moves to resume negotiations were made. The two energy ministers met for the first time since May to smooth the way for a meeting between Trudeau and Peckford. The Prime Minister bristled at the premier's request that the meeting be an early one:

...the urgency you attach to a quick meeting ... suggest(s) that you may be continuing to follow the basic strategy which you have followed on this issue for several years - a strategy designed to prevent a resolution of the purely legal issue of offshore resource ownership by the courts. (Office of the Prime Minister, Release, September 25, 1982, p. 1)

Trudeau specified that the "law of the land" should be understood and accepted while a negotiated settlement would take care of the non-legal issues.

However, the October 1 meeting between the two first ministers was fruitless. Both Trudeau and Peckford attributed the failure to a difference of opinion on fundamental principles of management and revenue sharing and decided to let the courts settle the issue.

When Jean Chrétien became federal energy minister in October, he hinted that he might consider a different arrangement than that proposed by his predecessor. Negotiations began again with Newfoundland Energy Minister Bill Marshall and were intensively conducted to the end of the year. Just when it appeared that an agreement was imminent, Newfoundland rejected the federal proposal as simply a restatement of the Nova Scotia agreement and broke off negotiations.

Throughout the negotiations, Newfoundland insisted on equal representations on a management board with Ottawa along with an independent chairman. The authority given to the federal minister under the Nova Scotia agreement was rejected as amounting to de facto federal control. The province was also opposed to the "trigger" mechanism by which it would cease to receive 100 per cent of all provincial revenues once it lost its status as a recipient of equalization payments. While there was some movement on both sides on these and other issues, it seemed that Ottawa and Newfoundland were playing a game of "chicken." Although they had agreed to set aside the legal issue, the question of ultimate ownership hung over the negotiations, neither side was willing to concede power it might possess.

Oil and Gas

Much of Alberta's economic policy in 1982 was directed at easing the path of the oil and gas industry through the post-NEP period and the recession. In the March 4 Speech from the Throne, the government announced that the oil and gas system would be revised and a "multi-faceted" attack on natural gas marketing, focussing on exports to the United States, would be launched.

In early April, federal Energy Minister Marc Lalonde asked oil companies to forego lower priced foreign oil in favour of domestic oil, as one way of easing the amount of shut-in oil in Canada. Shortly after, the Alberta government announced a \$5.4 billion incentives package to stimulate production as the major part of the Alberta Economic Resurgence Plan. The September 1, 1981 energy agreement had not anticipated an international recession, falling demand and high interest rates which squeezed available financing for the oil and gas industry. Thus, royalties on conventional

oil were reduced, benefitting especially producers of oil, or those whose oil was shut-in. Royalties were also reduced for natural gas and the government promised to examine the feasibility of a gas storage facility and new markets. Several short term measures — tax credits and grants for services and maintenance work — were introduced to stimulate activity throughout 1982 and 1983.

In July, the new Conservative Mineral Resources Minister in Saskatchewan, Colin Thatcher, announced a one year oil recovery program which attempted to alleviate the impact of "an onerous federal tax system," high interest rates, unexpectedly low world oil prices and the recession. Royalty and tax holidays were introduced for "new oil;" royalties and taxes were reduced for "old oil," heavy oil and enhanced oil recovery projects. But Thatcher pointed out that the success of the provincial program in stimulating investment was impeded by "the crude oil marketing problems plaguing the Saskatchewan oil industry." He called on Ottawa to act to reduce the amount of shut-in oil and increase exports for heavy oil.

By year-end, further declines in international prices were placing increasing strain on the energy agreement, as the Canadian price neared 75 per cent of the world oil price. Both levels of governments faced major revenue losses. The agreement was unclear as to whether the schedule of price increases it set out would continue, even if that meant breaking the ceiling, or whether Canadian prices would need to follow the world price downward. Conceived on the assumption of continued escalation of prices, the energy agreement would need major rethinking. The politics of oil and gas which so shaped federal-provincial conflict in the 70's would continue.

8 SOCIAL AND CULTURAL POLICY

Federal-provincial relations in social and cultural policy areas in 1982 illustrate the diverse styles of interactions between the two levels of government. Ottawa and the provinces discussed policy and financial changes to Established Programs Financing by which the federal government transfers money to the provinces for the delivery of health care and post-secondary education. While the provinces have clear constitutional authority, Ottawa has exercised its spending power in these policy areas and federal-provincial cooperation is mandatory. In other instances, federal legislation dealing with an exclusive federal jurisdiction can create federal-provincial fallout. This was the case with the Young Offenders Act which, by introducing new means of handling juvenile delinquents, imposed new demands on the provincial penal systems; provincial governments in turn sought compensation. Federal and provincial governments are still skirmishing over jurisdiction in telecommunications as new technologies pose challenges to the division of powers.

While the style of federal-provincial relations differs across policy areas, Québec's traditional concerns with the federal system are consistently expressed by ministers in their different policy discussions with other governments. At the first federal-provincial-territorial conference of ministers responsible for the status of women held in May, where women's groups and government representatives spoke about day care, equal pay for work of equal value and the impact of new technology on women in the work force, the Québec Minister Pauline Marois voiced a different concern:

...no one will be surprised when I say that, despite what I would call a "theoretical" division of powers, the overlapping of jurisdictions has taken on such proportions that it has become difficult for us in Québec to take effective steps to implement our overall policy in the sectors where the lives of women are affected, that is, education, health, vocational training and employment...this overlapping often leads to

incoherency, inconsistency, overdiversification of efforts and differences in priorities... Must the progress made by Québec women be slowed down by a division of powers? (Federal-Provincial-Territorial Conference of Ministers Responsible for the Status of Women, "Opening Speech by Mrs. Pauline Marois", Ottawa, May 10-11, 1982, p. 2-3)

Marois argued that the needs of women were not identical across the provinces and that the Québec government could best satisfy the needs and concerns of Québec women. She stressed that, to fulfill this responsibility, the Québec government needed the proper instruments and listed jurisdiction over divorce and more spending power as examples.

This same theme was apparent at a federal-provincial meeting of ministers of cultural affairs and historical resources held in early May in Regina. Most of the provincial representatives called for Ottawa to consult with the provinces before any recommendations of the Applebaum-Hébert Committee on Federal Cultural Policy Review were implemented. Federal Communications Minister Francis Fox promised prior consultation where recommendations were of interest to both levels of government. But the Québec Minister, Clement Richard, had earlier condemned the federal committee as "open aggression" against Québec. He saw it as an "incursion" into the province's cultural life and policy. Richard undertook a tour of the province to "sensitize" the people of Québec to Ottawa's "invasion" of the cultural domain (*La Presse*, January 27, 1982, p. A9).

This example illustrates the extent of Québec's pursuit of a federalism unfettered by overlapping responsibilities and one offering more fiscal freedom. The concerns of the other provinces were more limited. Their demands for consultation and for greater attention to the impact of federal policy on provincial priorities were seen in a number of policy areas.

COMMUNICATIONS

The jurisdictional dispute between the federal government and the provinces, in the past, centred on cable distribution of satellite signals. In 1982, it focussed on pay television. The Canadian Radio-television and Telecommunications Commission (CRTC) awarded six national and regional licenses for pay TV in March. Québec and British Columbia immediately demanded that the licensees apply for provincial authorization of local exhibition. As well, Québec Communications Minister Jean-François Bertrand suggested that the government might establish French language programming requirements for pay television in the province. Federal licensees generally tried to avoid the

jurisdictional wrangle. Federal Communications Minister Francis Fox dismissed the provincial assertion of jurisdiction over pay television in a statement to the House of Commons:

it is rather difficult to interpret pay TV as being a matter of local or provincial interest or jurisdiction when we are talking about a national signal being sent up to a satellite sitting 23,000 kilometres above the equator and then distributing the signal across the country. I have some difficulty in understanding how this could be a matter of purely local nature. (House of Commons, Debates, March 23, 1982, p. 15723)

Even before the CRTC handed down its decision on pay TV, B.C. Universities, Science and Communications Minister Pat McGeer convinced the cabinet to order the B.C. Utilities Commission to hold hearings for the licensing of pay television and non-broadcast operations in the province. As long as the provincial operation did not include broadcasting, or the use of airwaves, B.C. argued that provincial jurisdiction would be upheld. For example, taped movies would be classified as "narrowcasting" and therefore, within provincial jurisdiction.

Pay television was hotly debated by the federal and provincial communications ministers at their Calgary meeting in May. At their Winnipeg meeting, held in October 1981, a task force of deputy ministers was set up to "harmonize" positions on the subject. But the federal government had refused to discuss jurisdiction, asserting that its authority covered the whole field. As federal Communications Minister Francis Fox declared in a statement prior to the 1982 conference:

It is the federal government's position that it has jurisdiction over any services carried by a broadcasting receiving undertaking, including all forms of pay television. I recognize that the provinces do not share the federal view of jurisdiction. During the course of this federal-provincial conference, I would hope that our discussions would avoid dwelling on differences in interpretation over jurisdictional claims. ("Pre-Conference Statement by Hon. Francis Fox," Calgary, May 21, 1982, p. 8)

Québec condemned this attitude, claiming that the provincial common front on pay television had met a "brick wall" of federal intransigence when the task force met to harmonize positions on the matter. Québec and B.C. both made it clear that they intended to exercise jurisdiction over pay television which they regarded as a closed-circuit operation, but had not licensed intraprovincial systems by the close of 1982.

Alberta's position was more limited. The government conceded federal jurisdiction over broadcasting and interprovincial pay television networks but held that satellite signals distributed by cable within the province did not constitute broadcasting. Alberta, in 1981, passed legislation which gave the Alberta Public Utilities Board the ability to license provincial pay TV operations.

Provincial spokesmen stressed that they preferred a political settlement of the jurisdictional issue. Fox's unrelenting refusal to discuss jurisdiction was called a "declaration of war" by provincial ministers after the May conference. Fox had indicated to the provinces that he was willing to take the matter to court if the provinces pushed the issue.

In mid-July, B.C.'s Attorney-General filed a writ in the B.C. Supreme Court asking for a declaration that the federal Parliament had no constitutional authority to let the CRTC license or regulate pay television or the non-broadcasting aspects of cable television (see Chapter 4 for details of B.C.'s case).

Later in the year, other provinces asserted their jurisdiction in the communications field. In Saskatchewan, Cablecom Corporation, which was 60 per cent owned by the Saskatchewan government, withdrew its application to the CRTC for the Saskatchewan pay TV license. The Conservative Minister of Intergovernmental Affairs, Gary Lane, stated that the province must move immediately

to exercise its jurisdiction over intra-provincial communications, including pay TV, with the objectives of protecting local ownership and investment whether private or public in nature, ensuring local influence on program content and availability and stimulating opportunities locally for private business expansion and profitability. (Saskatchewan Information Services, News Release, October 26, 1982, p. 1)

In the fall, the Newfoundland government introduced legislation which would give the Public Utilities Board authority to regulate some aspects of communications. The first amendment to the act would allow the board to consider the interconnection of privately owned terminal devices with telephone company lines. The second amendment would expand the Board's mandate to cover:

the conveyance of any services by telecommunications where the service is offered for compensation and the definition of telecommunications would be changed to include transmission, emission or reception of signs, signals, writing, images, sounds, data, messages or intelligence of any kind by wire, radio-communication, cable, waves or any electronic,

electromagnetic or optical means. (Newfoundland Information Service, Press Release, August 13, 1982)

Newfoundland disputed Ottawa's contention that the federal government's control of broadcasting, which covered the radio and television aspects of cable operations, extended to all aspects of that operation. Rather, the province, as well as B.C., Alberta and Saskatchewan which had similar legislation, asserted provincial jurisdiction over the intraprovincial and some interprovincial aspects of non-broadcast services offered by cable undertakings.

Another amendment to the Newfoundland legislation would allow the cabinet to hand policy directives to the Public Utilities Board for implementation.

In May, Nova Scotia released a discussion paper on telecommunications legislation for the province. Existing legislation dated from 1909 and dealt mainly with telephone service rather than with other uses of the telephone network. The discussion paper recommended that the definition of telecommunications be expanded to cover the transmission, emission and reception of signals of any nature relayed by wire, radio, visual or other electromagnetic systems or any optical or technical systems. While new legislation was designed primarily to enhance competition in the sector, the province asserted jurisdiction over closed circuit services offered by broadcast receiving undertakings such as closed circuit pay TV, real estate listings, meter reading and burglar and fire alarms. The act would also set out a statement of government policy which the Public Utilities Board would follow.

Ontario also planned to introduce similar legislation. The total number of provinces with existing or intended regulatory instruments for new information services, increased to eight.

EDUCATION

As the federal-provincial fiscal arrangements approached their renewal in 1982, the federal government's displeasure with Established Programs Financing (EPF) was apparent.

It had several complaints about the system in relation to post-secondary education. First, when Ottawa matched its notional contributions to post-secondary education against provincial expenditures in the area and the federal transfer accounted for more than 50 per cent in some provinces, Ottawa claimed that it was funding more than its share and that the provinces were shirking their responsibilities. Second, the provinces had not involved the federal government in policy discussions about post-secondary education, despite the intentions of the 1976

agreement on EPF. Third, post-secondary education and the role of universities and community colleges were important to the federal government as manpower training was a central part of its economic development strategy.

In its proposals for changes to the fiscal arrangements, tabled with the November 1981 budget, Ottawa proposed that the federal and provincial ministers responsible for post-secondary education and manpower meet to devise new financing arrangements to replace the post-secondary education component of EPF by March 31, 1983. If no agreement were reached by then, Ottawa threatened to freeze EPF cash transfers for post-secondary education at the 1982-83 level. The provinces' immediate interest was to protect the value of federal transfers under EPF and equalization, a concern which was voiced by provincial finance ministers in their several meetings with federal Finance Minister Allan MacEachen.

The premiers managed to have fiscal arrangements added to the agenda of the First Ministers' Conference on the Economy held in February. While the provincial finance ministers asked Ottawa to withhold any changes for a year while the implications of the proposals were examined, Prime Minister Trudeau made a last minute offer on EPF to the premiers -- an offer which centred on federal aid to post-secondary education. Trudeau offered to extend existing funding levels to 1983-84 and continue ministerial discussions for another year. In return, he asked for the provinces' support for Ottawa's proposed equalization formula and a guarantee that they would match federal contributions for post-secondary education. But the premiers rebuffed the offer and negotiations were carried on by ministers of education and the federal Secretary of State.

The provinces were given until the end of March to accept the offer made at the conference of first ministers. Secretary of State Gerald Regan warned that if the proposals were rejected, Ottawa would move unilaterally. The provincial education ministers, meeting as the Council of Education Ministers Canada (CMEC), gathered in Toronto on February 24 to discuss the federal "ultimatum." They felt the offer was vague and invaded provincial jurisdiction. The chairman of the CMEC, Doug McArthur of Saskatchewan, saw the proposal as another thrust in Ottawa's policy of "competitive federalism."

Rather than accepting or rejecting the offer, the ministers asked to meet with Regan, Employment Minister Lloyd Axworthy, Communications Minister Francis Fox, and John Roberts, the federal minister responsible for science and technology, to discuss the implications of the federal plans for education and manpower training. The deadline passed but the provincial ministers met with Regan and again with his successor, Serge Joyal. Negotiations continued into 1983.

Perhaps as a device to prod the provinces into agreement, federal ministers announced that Ottawa was considering direct grants to students and universities in lieu of transfers to provinces. The provincial governments were strongly opposed to the concept of direct federal funding on several grounds. First and foremost, they argued it would be an invasion of an exclusive provincial jurisdiction. But, the provinces were also afraid that institutions might be enticed to set up programs to fulfill short-term needs and that provincial and regional priorities would be subordinated to the federal government's priorities. The provinces were also opposed to any federal strings attached to its transfers to provincial governments. Newfoundland Finance Minister John Collins argued that targetting would not only interfere with curriculum decisions but would be "unpredictable, short-term and subject to arbitrary change... if one is to judge by the provincial government's experience of other targetted federal transfers, such as DREE" (St. John's Evening Telegram, March 25, 1982, p. 2).

The provincial education ministers were also irritated by Ottawa's linking post-secondary education and manpower training. They felt this policy was fundamentally "anti-intellectual" and reduced universities to an occupational training system rather than places to expand the minds and imaginations of Canadians. They also took issue with the implication of federal spokesmen that the high unemployment rate was due partly to inappropriate provincial educational policies which did not recognize the demands of the future.

JUSTICE

In the justice field, federal-provincial relations centred on Ottawa's Bill C-61 which repealed the Juvenile Delinquents Act and replaced it with the Young Offenders Act. It is another illustration of the complexities arising out of federal jurisdiction over criminal law, and provincial control over the administration of justice, and, in this case, social welfare. Basically, the Act raised to 18 the age limit for young offenders across the country and put in place procedural safeguards for young offenders which were found in the adult criminal justice system. It allowed three years for the standardization of the age limit.

Previously, the age of juvenile delinquents varied across the provinces. The provinces argued that this flexibility should be retained, to give them the ability to match services with their resources. Under Bill C-61, more young people would have to be handled by the juvenile correctional system rather than the adult system. This, according to the provinces, would create financial burdens which some could not bear. They argued that new facilities would have to be built and operating costs would escalate. Thus, the provinces pushed for a shared-cost arrangement with Ottawa to cover new and ongoing expenditures.

Although the Act was given royal assent in July, proclamation was delayed until October 1983 to allow the provinces more time to overhaul their justice systems, but no federal financial assistance was forthcoming.

MEDICARE

With the renegotiation of federal-provincial fiscal arrangements in 1981-82, the health care system was subjected to much scrutiny by Parliament, the media and health care consumers and providers. Hostile labour negotiations, understaffing, user fees and health care premiums were all evidence that the system was suffering a severe financial crisis. The provinces faced substantial fee and wage demands from doctors and hospital workers, and were criticized by Ottawa and consumers for violating the spirit of health and medical insurance by imposing extra fees and allowing extra-billing. The federal government was anxious to see its objectives incorporated into new legislation which would replace the existing Medical Care Act and Health Insurance and Diagnostic Services Act.

The federal Minister of Health and Welfare, Monique Bégin, was quite vocal in her opposition to extra-billing and user fees. She claimed that extra-billing was being sanctioned by provinces by keeping doctors' fee settlements low. User fees and health care premiums were seen as forms of regressive taxation by the federal minister. However, she admitted that she lacked the "cards" to solve the situation unilaterally.

The general provincial view on "patient participation" in paying for health care was expressed well by B.C. Health Minister Jim Neilson:

I believe that in a time of declining revenues and soaring health care costs, there is additional room for individuals to contribute directly to their health care... both to ensure British Columbians fully understand the enormous cost of health care in this province and to ensure that we make the best and most appropriate use of those services. (Vancouver Sun, March 9, 1982, p. 1)

Québec had banned extra-billing since the inception of medical insurance in that province. B.C. also imposed a ban on the practice after an acrimonious fee dispute with doctors early in 1982. Only Ontario, Alberta and British Columbia levied premiums on individuals to assist in financing health care. Five provinces — Québec, Ontario, Alberta, British Columbia and Newfoundland — imposed extra charges on beds and long term care.

The federal and provincial ministers met in Ottawa on May 26 to begin an examination of the principles and objectives of the national health care system. In her speech to the conference, Bégin outlined the federal government's proposals for national standards in health and medical insurance. The results of federal-provincial discussions on standards would be incorporated into a new Canada Health Act to replace existing legislation.

The federal minister presented detailed definitions for universality, comprehensiveness of coverage, accessibility and portability and suggested potential mechanisms for ensuring that those standards were met.

Bégin's definition of accessibility was the most controversial because it addressed the issue of extra-billing. Extra-billing and user charges, according to the federal proposal, would violate the definition of "reasonable accessibility." Bégin's position drew fire from most of the provinces, especially those where extra-billing was significant. They argued that the elimination of "patient participation" would impose an intolerable financial burden on provincial revenues and the costs of providing "reasonable compensation" to doctors would be too high. In a frank and heated meeting, the federal and provincial ministers finally agreed that the Canada Health Act should be directed at controlling, rather than prohibiting user charges and extra-billing. Bégin admitted that she had had to retreat from her position on extra-billing since she lacked the authority to quash the practice, and cutting off funds to provinces which permitted extra-billing was seen as too drastic.

The matter was referred to senior officials who met twice before the provincial ministers of health convened in Vancouver on September 30. At that meeting, a second draft of the Canada Health Act was examined. The new definition of accessibility stated that reasonable access to insured services required adequate quantity, quality and distribution of service on a prepaid basis "unimpeded by financial barriers." Because Ottawa had been unsuccessful in eliminating extra charges, it was necessary to determine when such charges amounted to a "financial barrier" and then ensure that they never reached such proportions. Ottawa suggested various means which the federal and provincial governments could adopt to "control" extra-billing and user fees in the hopes that the practices would be eliminated. Ottawa could make it mandatory that all amounts billed directly to patients would be reported to provincial plans and the total amount deducted from federal cash payments. The federal government suggested that the provinces could make it difficult for doctors to opt-out by requiring them to bill only the provincial plan or the patient, to give advance notice of extra-billing or to establish quasi-judicial appeal boards to act on the patient's behalf in any dispute. On user fees,

Ottawa considered deducting the value of such charges from federal cash payments or ensuring that fees did not exceed certain limits.

The provinces felt these proposals, and the powers retained for the federal government, stretched far beyond its competence. The Nova Scotia Minister of Health, Dr. Gerald Sheehy, chairman of the provincial and territorial health ministers, argued that the federal proposals were based on the premise that the health care system was in a state of crisis. He disputed the notion that problems in the area had reached the proportions "which would require the type of federal intervention which is decidedly questionable from a constitutional standpoint" (Nova Scotia, press release, November 19, 1982, p. 2).

If the federal government did not abandon its proposals, the provinces announced that they would consider challenging the new legislation in the courts. In their statement, the ministers declared that "the expanded conditions set down by the Government of Canada in the new Act alter the federal-provincial relationship and present a grave threat to the ability of the provinces to meet our constitutional responsibilities" (quoted in *Globe and Mail*, October 2, 1982, p. 5).

The Canadian Medical Association (CMA) was also a strong opponent of the draft legislation. Dr. Marc Baltzen, president of the CMA, declared that the draft legislation, which went far beyond hospital and medical insurance, "ventures so far into provincial sovereignty in health care that the provinces would become mere lackeys of the federal government" (quoted in *Halifax Chronicle-Herald*, November 24, 1982, p. 7). Baltzen argued that those who could afford it should pay extra for health care while those on limited incomes should be protected.

INDEX

- Aboriginal Peoples' Party (APP), 13, 21
- Aboriginal rights, 50. See also Natives; Constitutional Conference on Aboriginal Matters
- Advertising (government), on constitution, 41-42
- Agriculture, 157-160
- Ahenakew, David, 51
- Alberta: election, 30-33; fiscal policy, 99, 106-107; public sector wage restraint, 123
- Alberta Heritage Savings Trust Fund, 31, 32, 106-107
- Alberta Reform Movement, 13, 32
- Amending formula, 35, 52. See also Québec veto
- Andrew, Robert, 95, 98, 102
- Assembly of First Nations (AFN), 50, 51
- Atkins, Humphrey, 40
- Atlantic provinces, reaction to federal reorganization, 142, 146
- Atlantic Provinces Economic Council (APEC), 143-144
- Axworthy, Lloyd, 163, 178

- Bailey, Ray, 21
- Baltzen, Marc, 182
- Beatty, Perrin, 42
- Bédard, Marc-André, 45
- Bégin, Monique, 180-181
- Bennett, William, 3, 34, 92
- Bertrand, Jean-François, 174
- Bill 62 (Québec), 45
- Bill 101 (Québec), constitutionality, 65-69
- Bill S-31, 134-137
- Biron, Rodrique, 154
- Blais, Jean-Jacques, 115
- Blakeney, Allan, 3, 16, 19, 20, 21, 94, 146
- Blanchard, Louise, 26
- Bosa, Peter, 54

184/Year in Review 1982

- Bouey, Gerald, 93
British Columbia: and property rights, 52-53; fiscal policy, 101, 106;
public wage and price restraint, 120
Broadbent, Ed, 43
Broadcasting. See Communications, judicial review
Buchanan, John, 97, 122
Buck, Walter, 32, 33
Budgets. See Fiscal policy, federal; Fiscal policy, provincial
Burbidge, F.S., 135
Burke, David, 23
- Caisse de dépôt et placement du Québec, 134-136
Cameron, David, 140
Campeau, Jean, 135, 136
Canada Act: and Québec, 8, 37-39; and natives, 36-37; and British
Parliament, 39-41
Canadian Radio-television and Telecommunications Commission (CRTC),
69-71, 175
Canadian Unity Information Office (CUIO), 41
Canadian Wheat Board, 159
Canagrex, 157-158
Cape Breton Labour Party, 13
Charter of Rights and Freedoms, Canadian, 59-60, 65-69
Churchill Falls hydro, 161-162
Clark, Barry, 25
Clark, Robert, 30
Collins, John, 105, 107-108, 179
Committee for Original Peoples Entitlement (COPE), 56
Common Market. See Economic Federalism; Economic Union
Communications, 174-177; judicial review, 69-71
Constitution Act (1982), 1, 8; proclamation, 41-44
Constitutional Alliance of the Northwest Territories, 56
Constitutional Conference on Aboriginal Matters (s. 37 Conference), 50-52.
See also Aboriginal Rights
Conventions, constitutional, 60-63
Council of Ministers of Education Canada (CMEC), 178
Criminal Law, judicial review, 71-75
Crow's Nest Pass freight rates, 19, 21, 114, 158-160
Curtis, Hugh, 95, 101
- Davey, Keith, 116
Davis, William, 3, 7, 88-89, 97, 120-121, 145, 146
De Bané, Pierre, 47
Deficits. See Fiscal policy, federal; Fiscal policy, provincial
Denedeh, 55
Dene Nation, 55, 56
Denning, Lord, 36, 37

- Deschênes, Judge Jules, 46-60, 65-69
 Devine, Grant, 20, 155, 156
 Dorion, John, 21
 Dubé, Fernand, 99-100, 107
- Economic association (Québec), 49. See also Sovereignty (Québec)
 Economic development policy, federal, 139, 141-148
 Economic development policy, provincial, 138-139, 149-156
 Economic federalism, 125, 134-138
 Economic management, 1; and federalism; 2-5, 87-98
 Economic union, 132-138
 Elections, provincial: Newfoundland, 16-19; Saskatchewan, 19-22; Prince Edward Island, 23-25; New Brunswick, 25-30; Alberta, 30-33
 Electricity, hydro, 161-162
 Equalization, 125-133
 Established Programs Financing, 125-133, 177-179
 Executive federalism, 7. See also New Federalism
 Extra-billing. See Medicare
- Fenwick, Peter, 17
 First Ministers' Conferences: federal view: 2, 4; provincial view: 3, 5, 90. See also First Ministers' Conference on the Economy; Constitutional Conference on Aboriginal Matters; New Federalism
 First Ministers' Conference on the Economy, 2-5, 6, 7, 87, 88-95
 Fiscal arrangements, 2, 3, 125-133
 Fiscal compensation. See Opting-out
 Fiscal policy, federal, 108-114
 Fiscal policy, provincial, 98-108. See also Wage and price restraint, provincial
 Fisheries, 160-161
 Foreign investment review, 92, 95-96, 111, 139
 Fox, Francis, 174-175
- "Gang of Eight", 9
 General Agreement on Tariffs and Trade (GATT), 148-149
 Ghiz, Joe, 23, 24, 25
 Gilson, Clay, 158-159
 Goodale, Ralph, 20
 Government Policy and Regional Development, 143
 Gray, Herb, 146, 147
- Hatfield, Richard, 7, 16, 25, 26, 27, 29, 30, 90, 93, 123
 Healey, Denis, 40
 High technology industry. See Economic development policy, federal; Economic development policy, provincial
 Horsman, James, 48, 136
 House of Commons Foreign Affairs Committee, 36, 39-40
 Hydro-Québec, 161-162
 Hyndman, Lou, 99

186/Year in Review 1982

Indians, and Canada Act, 1982, 36-37. See also Assembly of First Nations
Inflation, 4, 87-88, 90-98, 108-109

Interest rates, 1, 87-98

Inuit Committee on National Issues (ICNI), 51

Inuit Tapirisat of Canada (ITC), 51, 55, 56

Ittinuar, Peter, 58

Job creation, 4, 164

Joyal, Serge, 46

Jull, Peter, 56

Justice, administration of, 179-180

Kershaw Committee. See House of Commons Foreign Affairs Committee

Kershaw, Sir Anthony, 40. See also House of Commons Foreign Affairs
Committee

Kesler, Gordon, 11, 12, 19, 30, 31, 33

Kirby, Michael, 160

Laberge, Louis, 43

Labour relations, judicial review, 76-78

Lalonde, Marc, 97, 98, 113, 114

Lamontagne, Gilles, 28

Land claims (Native), 55

Lane, Gary, 176

Laurin, Camille, 46

Lee, James, 16, 23, 24

Lévesque, René, 3, 8, 10, 38, 43, 44, 47, 48, 49, 51, 92

Little, George, 26

Loiselle, Gilles, 39

Lougheed, Peter, 3, 16, 30, 31, 33, 90, 92, 95, 107, 118, 145

Macdonald, Donald, 137-138

MacEachen, Allan, 3, 93, 96, 108, 109, 110, 119, 126

MacPhail, Lloyd, 101, 131

Manitoba: fiscal policy, 104-105; public sector wage restraint, 123;
economic development, 149-152

Manpower, 162-164. See also Post-secondary education

Marois, Pauline, 173-174

Marois, Pierre, 163

Matheson, Joel, 100

McArthur, Doug, 163, 178

McDermott, Dennis, 115

McGeer, Pat, 175

Medicare, 180-182

Mega-projects, 144-146, 149, 152-153, 155

Megarry, Vice-Chancellor, 37

Mercier, Gerry, 53

Métis National Council, 51

Miller, Frank, 98, 103-104

- Milner, Henry, 42
- Ministry of State for Regional and Economic Development (MSERD), 141
- Minority language education rights, 65-69
- Monetary policy. See Economic management
- Morin, Claude, 9
- Morin, Jacques-Yvan, 9-10, 43, 47, 48
- Munro, John, 57-58

- Narcotics, jurisdiction over, 79-80. See also Criminal Law
- National Indian Brotherhood, 44
- Native Council of Canada (NCC), 50-51
- Natives, 35. See also Aboriginal Rights; First Ministers' Conference on
Aboriginal Matters
- Neilson, Jim, 180
- Neufeld, Ed, 140
- New Brunswick: fiscal policy, 99-100, 107; wage restraint, 123; economic
development policy, 152-153
- New federalism, 5-8. See also Established Programs Financing; Economic
development policy, federal
- Newfoundland: election, 16-19; fiscal policy, 105-106, 107-108; offshore
resources, 165-170
- Non obstante clause. See "Notwithstanding" clause
- Northern Party, 13
- Northwest Territories, 44, 51; division, 55-58
- Notley, Grant, 16, 32
- "Notwithstanding" clause, and Québec, 9, 44, 60
- Nova Scotia: fiscal policy, 100, 107; wage restraint, 122; offshore
resources, 164-165
- Nunavut, 58
- Nunavut Constitutional Forum, 57

- Occupational health and safety, jurisdiction over. See Labour relations
- Offshore mineral resources, 164-170
- Oil and gas, 170-171
- Olson, H.A., 54, 115, 134, 144
- Ontario: fiscal policy, 103-104; wage and price restraint, 120-121
- Opting-out, 35, 44, 48
- Ouellet, André, 134, 135-136

- Paramountcy, 78-79
- Parizeau, Jacques, 95, 98, 102-103, 121, 122, 127, 136
- Parliament, British, 36, 37, 39
- Parti Acadien, 26, 28
- Parti Québécois, federal wing, 44, 50
- Patriation (British North America Act), 1, 36-44
- Pawley, Howard, 90, 92, 96, 111, 116, 119
- Pay TV, 174-176
- Peace, order and good government power, 73-74

- Peacock, David, 42
Peckford, Brian, 1, 3, 16, 18, 91, 96, 117, 165-170
Pepin, Jean-Luc, 19, 158
Post-secondary education, federal aid to, 125-133, 177-179
Premiers' Conference, 10, 96-97
Prince Edward Island: election, 23-25; fiscal policy, 101
Property rights, 52-53
Prostitution, jurisdiction over. See Criminal law
Provincial Rights Association, 32
A Provincially-Appointed Senate: A New Federalism for Canada (Alberta), 54-55
Public sector restraint, 4, 88, 92-93, 94-95, 109, 116-119. See also Wage and price guidelines, federal; Wage and price guidelines, provincial
Québec: and federal-provincial relations, 8-11, 147, 173-174; veto, 35, 46-49; and Canada Act, 1982, 37-39; objections to Constitution Act, 1982, 44-48; fiscal policy, 102-103; wage and price restraint, 121-122; economic development, 148, 154-155
Québec Association of Protestant School Boards, 46, 65
Québec Pension Plan (QPP). See Caisse de dépôt et placement du Québec
Queen Elizabeth II, 1, 35, 41, 42, 43
Recession. See Economic management; First Ministers' Conference on The Economy
Referendum, on division of NWT, 56-57
Regan, Gerald, 178
Regional discontent, 11-13
Regional economic development, 140, 141, 147
Regional Economic Expansion, Department of (DREE), 140, 141-145
Regional Industrial Expansion, Dept. of (DRIE), 141
Representation, 11, 13
Representation, proportional, 13
Representation, regional, 1. See also Senate, reform of
Restraint. See Wage and price guidelines, federal; Wage and price guidelines, provincial; Public sector restraint
Richard, Clement, 174
Roberts, John, 178
Robinson, Svend, 42
Roblin, Duff, 53-54
Romanow, Roy, 9
Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission), 35, 137-138
Ryan, Claude, 46
Saskatchewan: election, 19-22; fiscal policy, 100, 101, 102; public sector wage restraint, 123; economic development 155-156
Schmidt, Dallas, 158
Schroeder, Victor, 105, 131

- Senate, reform of, 1, 13, 35, 53-55
- Sheehy, Gerald, 182
- Sinclair, Ian, 115
- Sindlinger, Thomas, 32
- Sovereignty (Québec), 49. See also Economic association (Québec)
- Speaker, Ray, 32, 33
- Stabilization Plans (agricultural). See Agriculture
- Stirling, Len, 17, 18

- Taxation, judicial review, 80-85. See also Fiscal policy, federal; Fiscal policy, provincial
- Thatcher, Colin, 171
- Thatcher, Margaret, 38
- Timbrell, Dennis, 157
- Toole, Barry, 48
- Trade, international. See General Agreement on Tariffs and Trade
- Trade and commerce power, 73-74, 75
- Tribunals, provincial, constitutionality, 63-64
- Trudeau, Pierre, 4, 5, 6, 12-13, 42, 43, 47, 48, 51, 60, 88-89, 90, 93, 109, 112-113, 116-117, 118, 134-135, 165-170

- Unemployment, 4. See also Economic management; First Ministers' Conference on the Economy
- Unfinished Business: Aboriginal Peoples and the 1983 Constitutional Conference, 37, 52
- Upper Churchill Falls water rights, judicial review, 75-76

- Veto, Québec, 8, 46-48, 60-63
- Visibility. See New Federalism

- Wage and price guidelines, federal, 4, 88, 110-111, 114-116. See also Public sector restraint
- Wage and price guidelines, provincial, 4, 88, 118-124. See also individual provinces, fiscal policy
- Wells, Thomas, 48
- Western Canada Concept, 1, 11-12, 13, 21, 30, 31
- Western Constitutional Forum, 57
- Western Separatism, 11-12, 15-16

- Young, Doug, 26, 28, 29, 30
- Yukon, 51

- Zlotkin, Norman, 37, 52

LIST OF PUBLICATIONS

The Court and the Constitution: Comments on the Supreme Court Reference on Constitutional Amendment, 1982

A Citizens' Guide to the Constitutional Question/Guide du Citoyen sur la question constitutionnelle. Published in English by Gage, 1981.

Douglas Brown and Julia Eastman, with Ian Robinson, The Limits of Consultation: A Debate Among Ottawa, the Provinces and the Private Sector on Industrial Strategy. Published jointly by the Institute and the Science Council of Canada, 1981.

YEAR IN REVIEW

D. Brown, Intergovernmental Relations in Canada: The Year in Review 1979.

R.J. Zukowsky, Intergovernmental Relations in Canada: The Year in Review 1980, Volume I: Politics and Policy.

R.J. Zukowsky, Intergovernmental Relations in Canada: The Year in Review 1980, Volume II: Struggle over the Constitution From the Quebec Referendum to the Supreme Court.

S.M. Dunn, The Year in Review 1981: Intergovernmental Relations in Canada.

S.M. Dunn, The Year in Review 1982: Intergovernmental Relations in Canada.

QUEEN'S STUDIES ON THE FUTURE OF THE CANADIAN COMMUNITIES

William P. Irvine, Does Canada Need a New Electoral System?, 1979.

Herman Bakvis, Federalism and the Organization of Political Life: Canada in Comparative Perspective, 1981.

Keith Banting, The Welfare State and Canadian Federalism. Published jointly by the Institute and McGill-Queen's University Press, 1982.

Allan Tupper, Public Money in the Private Sector: Industrial Assistance Policy and Canadian Federalism. 1982.

DISCUSSION PAPER SERIES

Timothy Woolstencroft, Organizing Intergovernmental Relations, 1982.

Jack Mintz and Richard Simeon, Conflict of Taste and Conflict of Claim in the Federal System, 1982.

John Whyte, The Constitution and Natural Resource Revenues, 1982.

Norman K. Zlotkin, Unfinished Business: Aboriginal Peoples and the 1983 Constitutional Conference, 1983.

BIBLIOGRAPHIES AND REVIEWS

Federalism and Intergovernmental Relations in Australia, Canada, the United States and Other Countries: A Bibliography, 1967.

A Supplementary Bibliography, 1975.

A Supplementary Bibliography, September, 1979.

R. Reynolds and N. Sidor, Research in Progress on Canadian Federalism and Intergovernmental Relations, September 1979.

Institute titles may be ordered from:

P. D. Meany Co. Inc.
Box 534, Port Credit
Ontario L5G 4M2

The Welfare State and Canadian Federalism is available through:

McGill-Queen's University Press
c/o University of Toronto Press
63A St. George Street
Toronto, Ontario
M5S 1A6