

**THE YEAR IN REVIEW 1981:  
INTERGOVERNMENTAL RELATIONS  
IN CANADA**

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## PREFACE

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The Year in Review 1981: Intergovernmental Relations in Canada is a freeze-frame portrait of a system in constant movement. It was a year in which some old questions were, at least for the moment, laid to rest; they will take on new dimensions in the years to come. It was also a year in which old questions reemerged in new forms: fiscal arrangements, economic strategies, and the debates about centralization, decentralization and the prospects for intergovernmental harmony. Many forces shape the context of intergovernmental relations — from world economic conditions to the results of elections. And the federal-provincial relationship takes form in a multitude of arenas: not only in the intergovernmental conference, but also in legislatures, courts, and in the actions and reactions of citizen groups. All of these, therefore must be touched on in the Year in Review.

To capture this kaleidoscopic system in one short volume, and to do so without the tools and long perspective of the historian is a complex and daunting task. This is the fifth annual review of the federal year, and each successive edition has striven to be more complete and more authoritative: to provide a guide to the system which will be of value to both those in government who operate, and those outside who observe, and perhaps even sometimes try to influence it. This volume would not be possible without the hard work of numerous individuals within the Institute: Sheilagh Dunn, who has woven it all together; Keith Banting and Rosemary Chambers helped write particular sections; Mary Beth Currie is author of Chapter 8 and the analysis of the Supreme Court judgment on the constitution; Anne Raizenne and Gerry Ketchum, Institute librarians, helped marshall the information required; Virginia Lyons and Lilian Newkirk under considerable pressure, typed the various drafts and prepared camera ready copy; Mary Pearson assisted in design and provided final editing. It is an able team.

Richard Simeon

1981  
CHRONOLOGY

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January

- 27 Ontario Premier Davis announced new economic development program (BILD)
- 30 Kershaw Report released (First Report from the Foreign Affairs Committee, 1980-1981 Session, British North America Act: The Role of Parliament)

February

- 3 Manitoba Court of Appeal upholds the constitutionality of the Joint Resolution by a vote of 3-2
- 13 Final report of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada
- 17 Constitutional Resolution returned to the House of Commons
- 23-24 Meeting of the Council of Maritime Premiers in Charlottetown.

March

- 1 Alberta implemented the first stage of cutbacks in production of oil by 60,000 barrels a day
- 5 Saskatchewan budget tabled
- 9 B.C. budget tabled



- 10 Québec budget tabled
- 12 P.E.I. budget tabled
- 19 Ontario provincial election
- 25 National Pensions Conference
- 31 The Newfoundland Court of Appeal ruled against the federal government's Joint Resolution by a vote of 3-0

#### April

- The federal and Alberta governments agree to resume energy negotiations
- 7 New Brunswick budget tabled
- 10 Nova Scotia budget tabled
- 13 Québec Provincial election
- Two federal by-elections in London West and Cardigan
- 14 Newfoundland and Manitoba budgets tabled
- 15 The Québec court upheld the federal power to amend unilaterally the constitution, even while unanimously arguing that the Resolution infringed on provincial jurisdiction
- 16 Eight Premiers agreed on a Constitutional Accord: Canadian Patriation Plan
- 23 Final votes on amendments to the Constitutional Resolution taken
- 28-29 Western Premiers' Conference in Thompson, Manitoba

#### May

- 4 Federal by-election in Lévis
- 19 Ontario budget tabled

**June**

Release of the report of the Major Projects Task Force, Major Canadian Projects/ Major Canadian Opportunities

1

Meeting of Council of Maritime Premiers in Fredericton

Alberta implements second stage of cutbacks of oil by 60,000 barrels a day

25-26

Ninth Annual Conference of Eastern Canadian Premiers and New England Governors in St. John's

**July**

Employment and Immigration Task Force Report: Labour Market Development in the 1980's

**August**

Report of the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements: Fiscal Federalism in Canada

11-15

22nd annual Premiers' Conference held in Victoria

17

Two federal by-elections in Spadina and Joliette

**September**

1

Alberta and federal government signed an energy pricing and taxation agreement in effect until 1986

28

Supreme Court decision on the Constitution

**October**

2

Negotiations underway between federal government and Newfoundland concerning offshore resources.

6

Nova Scotia Provincial Election

26

Revenue-sharing agreement reached between Saskatchewan and the federal government

**November**

- 2-5 First Minister's Conference on the Constitution
- 10 Meeting of the Council of Maritime Premiers in Halifax
- 12 Federal budget Tabled
- 17 Québec releases supplementary budget
- 17 Manitoba Provincial Election
- 20 Justice Minister Jean Chrétien introduced the Joint Resolution to the House of Commons
- 25 Lévesque sent Trudeau an official notice of Québec's exercise of its "formal right of veto" on the constitution

**December**

- 2 House of Commons voted 264-24 in favour of the Joint Resolution
- 8 Resolution approved by the Senate by a vote of 59-23
- 14-19 Final 1981 meeting of the Council of Maritime Premiers, Charlottetown

## 1 TRENDS IN CANADIAN FEDERALISM

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In many ways, 1981 was a watershed year for Canadian federalism. Two of the major issues of the federal-provincial agenda which had been outstanding for several years – the constitution and energy – were settled at least temporarily and at least to the satisfaction of the signatories. But neither agreement was a full resolution of the underlying issues. By the end of the year, the oil and gas industry had not been rejuvenated as was expected and international forces were eroding many of the bases of the energy agreements. The constitutional settlement was marred by the exclusion of the government of Québec. The agenda of constitutional change established in the 1978-80 round of negotiations – the division of powers and central and federal institutions – was left aside and it is unclear how or where these issues will be addressed in the future. To this agenda of governmental concerns is joined the interests and objectives which natives will bring to the constitutional process as aboriginal rights are defined in the near future. But at the same time, fiscal arrangements emerged as a contentious federal-provincial issue as the federal government proposed major alterations and limits to the transfers to the provinces under equalization and Established Programs Financing.

The constitution, energy and fiscal arrangements have tended to be the sole preserve of the highly politicized process of executive federalism. The hearings of the Joint Committee on the Constitution made a wedge in that process as groups and individuals expressed their concerns about the federal resolution to patriate the constitution. In 1981, the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements provided an opportunity for people to speak about how they were affected by intergovernmental transfers – a subject which had been previously discussed only by governments and cast primarily in terms of governmental interests and objectives. Events after the constitutional settlement of November 5 appeared to confirm this trend toward "participatory" federalism. Where previously group and individual participation had been mobilized by committees set up by the federal government, the reaction of women's and native groups was more spontaneous and intensive. People no

longer appear to be willing to settle for the results of intergovernmental agreements if such accords are regarded as detrimental to their interests.

While pressure from citizens and groups posed a challenge to executive federalism, the process was also questioned by one of the participants – the federal government. Executive federalism had become so politicized that summits of federal and provincial first ministers became its hallmark. At these conferences, the provinces were often pitted collectively against Ottawa. Each side developed techniques to maximize its bargaining position; the provinces sought common fronts almost as a matter of course while the federal government honed its ability to set or influence the agendas, timing and location of such meetings.

Perhaps because "summit federalism" had been cultivated so intensively, we saw the federal government in 1981 trying to extricate itself from the process. Repeated requests from the provinces for a first ministers' conference on the economy were rebuffed for over a year. Ottawa put off meeting the provinces on fiscal arrangements until the agenda was determined and only a short time was left for intergovernmental negotiation before the legislation expired.

At the heart of federal disengagement from the process of "summit federalism" was the perception that Ottawa gained nothing and in fact, lost public credibility when provinces were given a well-publicized forum to criticize federal policy. Furthermore, it was felt that federal policy preferences were lost in the federal-provincial shuffle over negotiations and agreements and Ottawa's contribution to various programs and services was masked by provincial administration. Added to this was the "dangerous" level of decentralization in the federation's balance of power, caused by burgeoning economies and treasuries in the west and in part, to financially generous federal policies. The federal government now appears firmly committed to reversing what it sees as this decentralist trend, and to asserting its presence and visibility wherever it can.

These concerns were the theme of a speech given by Prime Minister Trudeau late in the year to Liberal Party members in B.C. In his words,

No matter how much more money comes from Ottawa, the provincial response, and I have heard it time and time again, at federal-provincial conferences on the economy, that the provincial response is always that it's too little. It's not enough. It's too late. You're strangling the provinces. And the reality of politics is that the transfer of spending power doesn't produce gratitude. It doesn't even produce acknowledgement. It just whets the appetite for even more. ("Transcript of the Prime Minister's Speech" .... Vancouver, November 24, 1981, p. 11)

Trudeau went on to explain that there had been almost as many first ministers' conferences in the 14 years of his tenure as Prime Minister as there had been from Confederation to 1968. He linked this evidence of executive federalism to the notion, which he saw the premiers as holding, that "Canada's national government would be a council of first ministers, ... that federalism demanded that the federal government give in whenever the provinces reach a unanimous position" (ibid., p. 12).

He too pinpointed 1981 as a critical point in Canadian federalism as the Liberal Party in office in Ottawa put a stop to the momentum which "could have, in everything but name, turned Canada into ten countries." Trudeau cited the federal share of energy resources — through agreements with the western provinces and Nova Scotia — and plans for fiscal arrangements as proof that Ottawa was holding fast to those resources which would enable it to pursue national policies, goals and interests.

In order to restore federal legitimacy in the eyes of the public, we saw Ottawa begin to deliver programs and services directly to the public rather than through federal-provincial agreements. This was especially notable in regional economic development (see Chapter 3). The use of the direct delivery mechanism was seen by the provinces as the death-knell of "cooperative federalism" and the growth of a "unilateral" or "parallel" federalism in which each level of government would serve the same clientele independently of the other. Joint agreements will not disappear entirely, but will be negotiated bilaterally with provinces rather than collectively. Cooperative federalism, in the sense of large scale, national programs administered by the provinces with large chunks of federal money, has been rejected by Ottawa.

Thus, in 1981, there were pressures to have the process of intergovernmental relations opened up to the public but Ottawa was, at the same time, trying to reduce the amount of federal-provincial interaction to which the public wanted access. But whether federalism does become more participatory, or if Ottawa manages to raise its public profile, governments will be increasingly called to account for their conduct of intergovernmental relations.

This growth of public knowledge of and desire to participate in the process of intergovernmental relations raises questions about the claims of governments to represent the interests of the provincial or national communities. On one hand, governments were seen to be too preoccupied with the esoteric concerns of the constitution and were criticized for not paying attention to the economy. As well, while provincial governments were often criticized for being too "regionalist" and confrontationist, there was criticism from the other direction too. One factor in the

#### 4/Year in Review 1981

Alberta, a long-time adversary of the Prime Minister, was regarded by the western separatist movement as "too cozy" with Ottawa.

The constitutional settlement, which grew out of an attempt to accommodate Québec after the referendum, seemed actually to satisfy another agenda – defined primarily by Ottawa but shaped later by the Premiers' Accord of April. Québec's concerns with the division of powers were put aside, along with those of the other provinces. But Québec felt that this sacrifice called for recognition of the province's preferences on the amending formula, minority language rights and the charter of rights. Where these were not met Québec was isolated, bitter and angry. Late in the year we saw the PQ become more militant and more determined to achieve independence. Clearly, the "Québec" agenda is not settled and will remain a challenge to Canadian federalism.

Thus, there are several contending forces at work in Canadian federalism. At the governmental level, Ottawa is clearly asserting its authority and wielding its resources in a way designed to enhance its public visibility and perhaps build a national basis of support, either electorally or attitudinally. The Québec government is also intent on leading the province to a situation where it would be less vulnerable to the actions and policies of other governments.

Less clear is the future of "provincialism." State-building by provincial governments, through constitutional demands and aggressive economic strategies which seemed to be a hallmark of the late 1970s, may suffer as governments are forced to respond incrementally to faltering economies. However, the western separatist movement has revealed the strength of regional antipathy to Ottawa at the attitudinal level, which may point out the existence of another, more popular form of regionalism which may have been caused by the intergovernmental process. As mentioned above, another force in Canadian federalism is the involvement of interest groups and citizens; their participation though is to a certain extent conditioned by the willingness of governments to allow it. How these forces evolve will be the subject of future editions of the Year in Review.

## 2 THE CONSTITUTION

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Events in the constitutional arena from January 1980 to June 1981 were covered in *Struggle Over The Constitution* by Ronald J. Zukowsky (Kingston, Institute of Intergovernmental Relations, 1981). This chapter continues that coverage of federal-provincial relations and the constitution. The intensity of the constitutional debate died down over the summer as the Supreme Court considered the reference on the federal government's resolution to patriate the BNA Act with a Charter of Rights and Freedoms and a domestic amending formula. However, as the date for the court's judgment drew closer, governments – individually and collectively – drew together to decide how they would respond given several possible decisions by the court.

Late in the summer, Québec launched Phase I of a publicity campaign against the federal government's unilateral initiative. Billboards, pamphlets and TV advertising showed a hand restraining a fist clenching the Québec flag superimposed on the Union Jack. A booklet, titled *Minute Ottawa!* was designed to show the people of Québec how the federal government's constitutional "coup de force" affected their daily lives. It argued that the Charter of Rights would "homogenize" Canadian society by attacking the two distinct characteristics of Québec – its language and its civil law tradition. The Charter was seen also as limiting the powers of the provincial legislature and therefore, limiting Québec's ability to direct its own development. The pamphlet concluded by asking the people of Québec to "stop and think" of the effect of the federal government's actions on Québec's economic development and cultural and linguistic security.

On another front, the "Gang of Eight" had commissioned Canadian Gallup Poll Ltd. to undertake a survey of attitudes toward the Canadian constitution. The survey was presented to the premiers in August; it consisted of the replies of 1064 adults to seven questions posed over the telephone.



In answer to a question probing the respondents' familiarity with the constitutional discussions, 54.1 per cent responded they had followed the discussions "not closely at all"; 44.8 per cent had followed "somewhat" or "fairly" closely. Québécois had followed the discussions most while people in the Atlantic provinces appeared least interested.

The second question asked whether the respondent agreed or disagreed that the Prime Minister and premiers should meet to reach an agreement on the constitution. The answer was overwhelmingly positive with 88.3 per cent of the national sample agreeing. Interestingly, the highest percentage of disagreement came from Ontario and the least in Saskatchewan.

The third question — asking whether changes to the constitution except for an amending formula should be made in Canada — gained an equally positive reply with 89.5 per cent agreement. Again Ontario showed the highest percentage of disagreement.

Respondents were then asked whether the provinces' consent should be required for changes affecting provincial powers. Of the national sample, 77.3 per cent replied "yes", 12.1 per cent "no" and 10.6 per cent did not answer. Ontario and Manitoba returned the highest "no" votes while the three western-most provinces replied most positively.

Another question probed respondents' view on the degree of provincial consent required for constitutional change. Majority consent was favoured by a national plurality with percentages over 50 per cent in Québec, Saskatchewan and Alberta. There were almost equal numbers declaring that provincial consent should not be required or that unanimous consent should be required. The former option gained the support of 22.7 per cent of the national sample, with percentages highest in Ontario and Manitoba. Unanimous consent was supported nationally by 21.3 per cent, favoured most in the Atlantic provinces, Québec, Alberta and B.C.

In a question of obvious concern to Saskatchewan — whether the senate should have a veto — two-thirds of the respondents opted for a power of delay rather than a veto. However, 15.7 per cent of the sample did not reply. Percentages against the veto were highest in the West.

Asked to decide whether the federal government's actions on the constitution without provincial agreement was dividing or uniting the country, 59.8 per cent of the national sample saw it as divisive; again the western provinces turned in the highest scores on this reply. More people in the Atlantic provinces and Québec saw the action as unifying with Ontario representing the mean at 25.9 per cent.

The final question asked whether respondents favoured a unitary state or a federal state. Over 20 per cent of those in provinces east of

Saskatchewan favoured a unitary state with lower returns in the west. Federalism gained the most support in the west and least in Québec. Quebecers turned in the highest "can't say" score.

Although each side in the constitutional struggle publicly upheld its arguments and hoped for unqualified support from the Supreme Court, there was the realization that the Supreme Court's decision could be vague or ambiguous or even refuse to address the issues and throw them back into the political arena. On this basis, the Prime Minister and Premier Bennett of B.C., as chairman of the Premiers' Conference, met at 24 Sussex Drive on September 24 to discuss how the issue could be resolved if the court's judgment were not clear.

#### THE SUPREME COURT DECISION

Expectations were high on September 28 as the Supreme Court handed down its decision. Both sides were looking for vindications of their arguments. Everyone was wondering whether the judgment would be definitive or equivocal. The announcement of the decision was given live television coverage and the day was filled with comment and reportage reminiscent of election coverage.

The Court ruled on two main principles. The first dealt with strict constitutional law. It considered whether, as a matter of law, there was a requirement that the Parliament of Canada obtain provincial consent before proceeding to the United Kingdom with an amendment to the constitution which affected federal-provincial relationships. By a majority of seven to two, the Court ruled that a unilateral request by the Parliament of Canada was legal.

The second principle considered was whether a constitutional convention, separate from law had developed, which required that there be provincial consent to a constitutional amendment which affected federal-provincial relations before the amendment could be sent to Great Britain. A majority of six to three held that such a convention had developed but that a "substantial measure" of provincial consent rather than unanimous consent was required. The court did not specify what was meant by a "substantial measure."

Thus, the Court ruled that the federal government could legally proceed with its Resolution through the Parliament of Canada and send it to London. However, to do so without achieving a substantial measure of provincial consent would be unconstitutional since it would be a breach of an established convention. It would be "offensive", but it would be legal.

The three questions asked in the Manitoba and Newfoundland References were put to the Supreme Court, while a fourth question from the Newfoundland Reference asked the Supreme Court whether the Terms of

Union could be amended without the consent of the Newfoundland government. Two questions were asked in the Québec Reference. Those two, like the second and third in the Manitoba Reference, dealt with questions of law and convention, while the first Manitoba question asked whether provincial powers would be affected. The questions cited are those from the Manitoba Reference. All questions and page numbers are from (1982) 125 Dominion Law Reports.

#### Effect on Federal-Provincial Relations

This principle was drawn from Question 1 which read:

If the amendments to the Constitution of Canada sought in the "Proposed Resolution for a Joint Address to her Majesty the Queen respecting the Constitution of Canada," or any of them, were enacted, would federal-provincial relationships or the powers, rights or privileges granted or secured by the Constitution of Canada to the provinces their legislatures or governments be affected and if so, in what respect or respects?

There was no disagreement on this question, either by the parties involved or the Court. The federal government agreed that the question should be answered affirmatively and the Court supported this view unanimously. The judges said it was "plain" that the legislative powers of the provinces would be affected and even limited by the charter of rights. The court did not comment on which powers would be affected as both sides agreed it would be very complicated and perhaps diversionary.

#### Legality

Is the agreement of the provinces of Canada constitutionally required for amendment to the constitution of Canada where such amendment affects federal-provincial relationships or alters the powers, rights or privileges granted or secured by the constitution of Canada to the provinces, their legislatures or governments?

Since "constitutionally required" in Question 2 implied both conventional and legal issues and because Question 3 addressed the constitutional convention issue explicitly, a majority of judges chose to address only the legal side of Question 2. The Court held in a 7 - 2 decision that there was no legal requirement to consult the provinces on constitutional amendments. The Chief Justice Bora Laskin and Justices Dickson, Beetz, Estey, McIntyre, Chouinard and Lamer formed the majority; Justices Martland and Ritchie dissented.

The majority suggested that there were two broad aspects to this question. They considered first whether Parliament had the power to

proceed alone with a resolution which affected federal-provincial relationships. Second, if the Resolution were sent to the Imperial Parliament without the consent of the provinces, would the British Parliament have the power to act on it? Overall, the Court held that there was no legal limit on the power of the two federal houses to pass any resolution they chose. Furthermore, since the BNA Act was a legislative act of the British Parliament, it could be amended by another legislative act of that body.

On the first aspect, Manitoba had argued that Parliament did not have the power to proceed alone because provincial consent for constitutional amendment was a convention that had "crystallized into law." After considering a number of cases cited by Manitoba's counsel purporting to show that legal force had been given to conventions, the majority ruled that "no instance of an explicit recognition of a convention as having matured into a rule of law was produced" (p. 22). The judges pointed out that conventions are "political in inception" and are enforced politically. The majority dismissed any link between conventions and common law as "misconceived."

Other provincial arguments on the legality of provincial consent fared no better. The next issue the Court was asked to consider was whether the two Canadian Houses could ask Britain for a constitutional amendment through a parliamentary resolution. The majority determined that there was "no limit anywhere in law... to the power of the Houses to pass resolutions" (p. 29). Legislative procedure was seen to be beyond the purview of the courts: "It would be incompatible with the self-regulating - "inherent" is as apt a word - authority of Houses of Parliament to deny their capacity to pass any kind of Resolution"(p. 30).

Another legal issue on which the majority pronounced, before proceeding with a complicated discussion of sovereignty, was the principle of unanimity for constitutional amendment. Apart from Saskatchewan, which argued that "substantial" provincial consent was necessary, the opposing provinces had argued that unanimous provincial consent was required. The majority saw this as asking the court to enact by "judicial legislation" a unanimity formula to initiate the amending procedure. They rejected the legal status of unanimity deciding it would be "anomalous indeed... for this court to say retroactively that in law we have had an amending formula all along, even if we have not hitherto known it..."(p.34).

The provinces argued that Westminster could only act in relation to Canada if the request was made "by the proper authorities." If the proposed amendment affected federal-provincial powers, then, they argued, those proper authorities must include the provinces. The provincial argument was based on their interpretations of the Balfour Declaration, the Imperial Conferences of 1926 and 1930, and in particular on the Statute of Westminster. As well, the provinces rooted their arguments in

their concept of sovereignty and what they considered to be "basic presuppositions and constitutional underpinnings of Canadian federalism."

The Court first replied to the historical analysis of Canadian constitutional development. It did not mince words.

Nothing in the language of the Statute of Westminster supports the provincial position, yet it is on this interpretation that it is contended that the Parliament of the United Kingdom has relinquished or yielded its previous omnipotent legal authority in relation to the British North America Act, one of its own statutes ... The short answer to this ramified submission is that it distorts both history and ordinary principles of statutory or constitutional interpretation. (p. 39)

The majority held that the Statute of Westminster conferred the power to initiate Resolutions only on the federal Parliament of Canada. The Court quoted, with approval, from Constitutional Amendment in Canada (1950) by G  rin-Lajoie

... the only competent voice in Canada for (requesting a constitutional amendment) is that of the federal power. The provincial authorities - either executive or legislative - have no locus standi to move the British Parliament or Government with a view to securing an amendment to the federal constitution. (p. 42)

The majority decided that the challenge to Parliament's ability to pursue constitutional amendment was based on

the recognized supremacy of provincial legislatures in relation to the powers conferred upon them under the British North America Act a supremacy vis-  -vis the federal Parliament. Reinforcement, or perhaps the foundation of this supremacy is said to lie in the nature or character of Canadian federalism. (p. 43)

In this respect, the Court looked at arguments that the two levels of government were equal. The majority rejected a full or modified compact theory as operating in the realm of political science. They also rejected interpretations of federalism in case law and the preamble of the BNA Act as having no enacting force.

The eight provinces had argued that the ability of the British Parliament to act on a resolution from the Canadian Parliament was qualified by the 1931 Statute of Westminster in that provincial consent was required where provincial powers and interests were affected. The majority ruled that there was no limit on the power of the British

Parliament to act on a resolution once it had received it, regardless of any strictures advanced in Canada. The judges rejected any interpretation of Balfour Declaration of 1926 which asserted that the provinces were "autonomous communities" and therefore equal in status to the federal government.

In conclusion, a majority of the Court ruled

The law knows nothing of any requirement of provincial consent, either to a resolution of the federal Houses or as a condition of the exercise of United Kingdom legislative power. (p. 47)

The Martland-Ritchie dissent began by holding that if a constitutional convention in favour of provincial consent existed – as was determined by a majority of the Court – then provincial consent was "constitutionally required" as asked in Question 2.

But in choosing to address the question of legality, the minority found that Question B of the Québec Reference, which asked whether Parliament was empowered by the constitution "whether by statute, convention or otherwise" to amend the constitution, raised the legal issue more clearly. Therefore, they sought to find in the constitution the power granted to Parliament to amend the constitution unilaterally.

The minority decision on law started from the premise that "the dominant principle of Canadian constitutional law is federalism." This implied that neither level of government should be able to "encroach on the other, either directly or indirectly." Furthermore, the courts had a role to play in preserving the integrity of the federal structure; in cases where the BNA Act was silent, the minority found the court had denied the assertion of any power which would "offend against the basic principles of the constitution." They found the federal attempt to proceed unilaterally to amend the constitution would upset the federal balance and therefore was illegal and unconstitutional. The minority dismissed the argument that Parliament could proceed with any resolution it chose because the effect on the federal system was a prior consideration. They found no statutory basis for the power to curtail the powers of another level of government and therefore, declared no power existed.

In reaching their conclusions, the majority accepted the narrow, legalistic argument that, in law, Canada was not yet a fully sovereign nation because Westminster retained the ultimate legal authority to amend the Canadian constitution. The minority adopted the view that the political reality of Canadian sovereignty must be given legal recognition and so based their decision on their interpretation of the status of the province in Canadian federalism.

Another point on which the majority and minority diverged sharply was their consideration of the written part of the Canadian constitution. Commentators have suggested that this brought up the question of the "incompleteness" of the Constitution in that not all powers of governments are defined by statutes or written in the constitution. As Professor Noel Lyon summarizes:

The basic difference between the two opinions can be stated briefly: the majority thought the appropriate question was "what limits the power of the Parliament of Canada to do anything it likes outside the field of legislative enactment?"; the dissenting judges considered that just the opposite formulation was appropriate, that is, "what law authorizes the Parliament of Canada to adopt the 1981 Joint Resolution?" ("Constitutional Theory and the Martland-Ritchie Dissent", in *The Court and the Constitution*, Kingston, Institute of Intergovernmental Relations, 1982, p. 57)

#### Conventionality

Is it a constitutional convention that the House of Commons and Senate of Canada will not request Her Majesty the Queen to lay before the Parliament of the United Kingdom of Great Britain and Northern Ireland a measure to amend the Constitution of Canada affecting federal-provincial relationships or the powers, rights or privileges granted or secured by the Constitution of Canada to the provinces, their legislatures or governments without first obtaining the agreement of the provinces?

According to the majority – Justices Martland, Ritchie, Dickson, Beetz, Chouinard and Lamer – the thrust of the question was whether or not there exists a constitutional convention requiring provincial agreement for constitutional amendment, not on whether the agreement should be unanimous, if it is required.

The minority, composed of the Chief Justice, and Justices Estey and McIntyre, strongly disagreed on this point. The dissenters felt that "from the wording of the questions and from the course of argument it is clear that the questions mean the consent of all the provinces" (p. 108). They saw only two possible answers to the question posed. An affirmative response would require total provincial agreement while a negative answer would deny the existence of a convention. They did not believe that there could be any middle ground.

The minority agreed that "courts may recognize the existence of conventions in their proper sphere." However, in this particular case,

they held the Court may only provide an answer to the specific question asked, thus recognizing or denying the existence of the particular convention asserted. To find anything else would mean rewriting the reference question.

For the Court to postulate some other convention requiring less than unanimous provincial consent to constitutional amendments would be to go beyond the terms of the References and in so doing to answer a question not posed in the References. It would amount, in effect, to an attempt by judicial pronouncement to create an amending formula for the Canadian Constitution .... (p. 113)

The majority began by outlining the nature of constitutional conventions, describing them as "essential rules of the Constitution" which are usually unwritten but cannot be said to be the law of the constitution. The principles and rules of responsible government which regulate the relations between the Crown, Prime Minister, the Cabinet and the two Houses of Parliament would be conventions in this sense. Conventions have developed by custom and usage in the political sphere and are generally regarded as obligatory. The essential factor for recognition must be that the parties concerned regard the convention as binding upon them. No matter how binding though, breaches of conventions cannot be enforced by the Courts because

they are not judge-made rules. They are not based on judicial precedents but on precedents established by institutions of governments themselves. Nor are they in the nature of statutory commands which it is the function and duty of the courts to obey and enforce ... Perhaps the main reason why conventional rules cannot be enforced by the courts is that they are generally in conflict with the legal rules which they postulate and the courts are bound to enforce the legal rules. ... (the conflict) results from the fact that legal rules create wide powers, discretions and rights which conventions prescribe should be exercised only in a certain limited manner, if at all. (p. 85)

In the view of the majority, conventions restrict the authority of the Parliament and the Crown because they impose ethical, if not legal, limitations on the legal powers of an institution. Yet they did reiterate their conclusion that conventions do not crystallize into laws unless adopted by statute.

In order to determine whether or not a convention exists requiring provincial consent for constitutional amendments, the Court followed a test set down by Sir Ivor W. Jennings in *The Law and the Constitution*:



We have to ask ourselves three questions: first, what are the precedents; secondly did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? (p. 90)

Both the majority and minority accepted the threefold test of convention – precedents, attitudes of political actors and reason – but they came to different conclusions.

For the majority, the relevant precedents were those involving amendments which "directly affected federal-provincial relationships in the sense of changing provincial legislative powers." Using this criterion, the majority found only five previous amendments, all of which had been approved by the provinces whose powers were affected. As well, they determined that since Confederation no amendment had been made when agreement had been withheld by the province whose power would be affected. Although the majority did not claim that precedents alone established a convention, it was held that they "unmistakably" pointed in that direction.

The dissenters, on the other hand, considered all amendments which affected federal-provincial relationships including those which did not alter the distribution of powers (such as federal subsidies to the provinces). Using that broader test of relevancy, the minority found that of the 22 amendments it considered, unanimous provincial consent was sought or obtained in only four cases. This led them to conclude that "it is unrealistic in the extreme to say that a convention has emerged" (p. 123).

The Court moved from considering the precedents to the second step of considering whether the actors treat the rule as binding. They canvassed a number of political statements, documents and events such as first ministers' conferences, the 1965 Favreau White Paper, Amendment of the Constitution of Canada, and statements made by Prime Ministers King, Bennett, St. Laurent and Diefenbaker. As a result of that study, the majority held that the actors involved did recognize that provincial consent was required but not everyone agreed there had to be unanimity. However "this lack of precision (is not sufficient) to prevent the principle from acquiring the constitutional status of a conventional rule" (p. 103, their emphasis). The majority added that the quantification of provincial consent had been on the agendas of every federal-provincial conference since 1927. Although the governments had reached no decision about the level of agreement required, it did illustrate that there was a clear recognition by all governments concerned of the principle that a substantial degree of provincial consent is required.

The statements of political actors provided the basis for the majority's finding that the convention does not require unanimous provincial consent.

However, the majority did not believe it was appropriate for the Court to determine what level of consensus would constitute a substantial measure of consent. That, it ruled, was the job of political actors. The majority declared it need only determine that a substantial measure of provincial consent was required and then decide whether the situation before it met this requirement. It concluded that the agreement of only two provinces "by no conceivable standard" was sufficient, but refused to elaborate.

The minority canvassed the same historical statements as the majority, but after analysis dismissed their importance in demonstrating the existence of a convention:

the debate on this question has been long and drawn out, but ... has never been resolved in favour of the existence of convention. The continuation of controversy on the subject among political and academic figures only adds additional weight to the contention that no convention of provincial consent has achieved constitutional recognition to this day.  
(p. 121)

Finally, the Court considered the third step of the test – is there a reason for the rule?

The majority based their reasoning on the model of federalism which saw federalism as an equal partnership between the provinces and the Parliament of Canada. For them, a convention requiring provincial consent was necessary to protect the structure of the federal system. According to this model it is crucial that the provinces retain their autonomy in the areas assigned to them by the BNA Act. The majority saw such a convention as limiting the powers of the federal government:

The purpose of this conventional rule is to protect the federal character of the Canadian Constitution and prevent the anomaly that the House and Commons and Senate could obtain by simple resolutions what they could not validly accomplish by statute .... It is true that Canada would remain a federation if the proposed amendments became law. But it would be a different federation made different at the instance of a majority in the Houses of the federal Parliament acting alone. It is this process itself which offends the federal principle. (p. 106)

The majority concluded with the determination that the agreement of the provinces is constitutionally required for the passing of the Resolution and that unilateral action by the Parliament of Canada would be "unconstitutional in the conventional sense" (p. 107).

In their discussion, the minority recognized "at once" that "in a federal union the powers and rights of each of the two levels of government must be protected from the assault of the other" (p. 125).

However they argued that "if the convention requires only partial consent ... it is difficult to see how the federal concept is thereby protected for, while those provinces favouring the amendment would be pleased, those refusing could claim coercion" (p. 125). As well, the minority in stating that "the BNA Act has not created a perfect or ideal state" suggested that the constitution is only partially federal and had included from the beginning elements of a unitary state that gave some overriding powers to the Parliament of Canada, such as the power of reservation and disallowance of provincial enactments. The claim that "this special nature of federalism ... deprives the federalism argument ... of its force" (p. 125) led the minority to "reject the argument that the preservation of the principles of Canadian federalism requires the recognition of the convention" (p. 126).

By basing their reasoning on the "classic" federal model, the majority determined that a convention requiring provincial consent for amendments directly affecting federal-provincial powers did exist. They provided an equation for the formulation of the constitution: "constitutional conventions plus constitutional law equal the total Constitution of the country" (p. 87). Following this equation, they found that some conventions may be more important than laws. That, they claimed, was why it is perfectly appropriate to say that to violate a convention is to do something which is unconstitutional although not illegal.

The minority took a more restricted view of the law and the constitution and a more centralized view of the federal structure. They held that legality and constitutionality were synonymous. As one author suggested, "if the dissenters were required to put their views in an equation, it would have amounted to: the law is the constitution" (David Milne, *The New Canadian Constitution*, Toronto: James Lorimer and Company, Chapter 4, 1982). They disagreed with the majority that a breach of a constitutional convention was "unconstitutional" since that could only refer to a violation of powers of the BNA Act.

This has been a brief factual recounting of the Supreme Court's decision. For a fuller analysis of the decision, see *The Court and the Constitution*, essays by Peter Russell, Robert Décary, William Lederman, Noel Lyon and Dan Soberman, (Kingston: Institute of Intergovernmental Relations, 1982).

#### Response to the Decision

In deciding that the federal government's plans for patriating the constitution were legal but unconstitutional, the Supreme Court offered justification for each side. But it also issued a warning to Ottawa that provincial consent was a political necessity; the message to the provinces was that unilateral action would be legally valid if further provincial consent were not forthcoming. Thus, there were incentives to agree for

both sides. Furthermore, by calling for "substantial" provincial consent, the Court's decision implied that the fixed alliances of the "Gang of Eight" and "Gang of Three" would have to break. On hearing the decisions, both the federal government and its supporters, and the opposing provinces claimed vindication. Ottawa argued that it could push on with its parliamentary resolution with no further ado; the provinces argued that a political consensus was morally and constitutionally required. Clearly, the political debate had not ended.

With the Prime Minister in Korea en route to a meeting of Commonwealth Prime Ministers in Australia, Justice Minister Jean Chrétien spoke for the federal government. Speaking immediately after the Chief Justice's rendering of the Court's decision, Chrétien stressed the decision of seven judges that the government was proceeding legally and declared that the final two days of debate on the resolution would be held shortly after Parliament convened on October 14. Chrétien argued that the federal government had tried to meet the political convention of provincial consent but concluded after 54 years that agreement was not possible. "So we decided to proceed the way we have proceeded, and we intend to finish that job." (Quoted in *Globe and Mail*, September 29, 1981, p. D1).

Immediate support for the federal position came from its provincial allies. Attorney-General Roy McMurtry of Ontario pointed out that the provinces had challenged the legal validity of the federal government actions but the legality had been upheld by the Court. He stressed that the judgment was "not a matter for debate." Speaking from Washington, Premier Hatfield of New Brunswick, agreed with Ontario's position:

They made a choice to use a legal process as opposed to the political process and they have lost .... When you choose the legal course, you must accept it as a legal decision. (Quoted in *Globe and Mail*, September 29, 1981, p. D3)

Hatfield also called for speedy consideration of the resolution in Parliament so it could be dispatched quickly to Britain. These confident statements were an immediate response to the decisions; later comments took account of political shifts.

After a caucus meeting, the NDP qualified its support for the federal position, saying it would vote against the resolution if brought before Parliament prior to a federal-provincial meeting. The party had been badly split when four members from Saskatchewan voted against the resolution and the rest of the NDP caucus on second reading.

The Prime Minister's response came from the press theatre of the Korean Broadcasting Corporation in Seoul on the evening of September 28, Eastern Standard Time. By then, Trudeau had discussed the decision with Chrétien

and Michael Kirby in Ottawa, and with Michael Pitfield who accompanied him. If Chrétien had stuck to a hard line, the Prime Minister was seen to offer an "olive branch." He stressed that he would go ahead unilaterally if the provinces linked patriation to "giving some more power to the provinces" or if further talks would delay consensus indefinitely. Otherwise, Trudeau stated he was willing to listen to the provinces, especially if a consensus were to develop shortly. He also indicated, very briefly, that he would be willing to consider some changes to the resolution ("Transcript of the Prime Minister's News Conference," September 29, 1981, p. 8-9).

Just as the federal government and its supporters based their arguments on the Supreme Court's judgment on legality, the opposing provinces used the judgment on convention as support for their position. Newfoundland Premier Brian Peckford found the Supreme Court had "elevated our constitutional conventions and traditions to be the prime focus of our federal system." He warned Ottawa not to choose the narrow, technical, legal loophole to justify proceeding but instead to use "the Canadian way" and negotiate with the provinces (Newfoundland Information Service, Press Release, September 28, 1981). Nova Scotia Premier John Buchanan said the Supreme Court had created "even more gray areas" and a first ministers' conference should be held to clear them up. Outgoing chairman of the Premiers' Conference, Sterling Lyon, said the federal government could not proceed unilaterally and "call that acting prudently." In calling for a resumption of federal-provincial negotiations, Lyon indicated any flexibility would have to come from the federal side. "When you are right, you don't change your mind. The one who has to change is the Prime Minister" (Quoted in *Financial Post*, October 3, 1981, p. 4). Saskatchewan Premier Allan Blakeney focussed his comments on the Court's support for the Saskatchewan argument that substantial provincial consent rather than unanimity was required.

Premier René Lévesque's initial comments were made before the Prime minister's statement from Seoul. He criticized Justice Minister Chrétien for using a narrow legal loophole to justify pursuing unilateral action and accused the federal government of "irresponsibility" and "contempt for one of the most fundamental requirements of political democracy" (*Montreal Gazette*, September 29, 1981, p. 1). Joining Premier Lyon of Manitoba, Lévesque stated Trudeau must be ready to modify certain parts of the Charter (*Montreal Gazette*, September 30, 1981, p. 1). After hearing Trudeau's remarks, he dismissed the "olive branch" extended by the Prime Minister as "sterilized" by his "vitriolic" attitude to the provinces (*ibid.*).

Lévesque spoke of using "all legitimate means of resistance" to block further unilateral action. After a cabinet meeting, it was decided to recall the National Assembly immediately for an emergency session. The

legislature was recalled the afternoon of September 30 and a resolution condemning the federal government's move was tabled. Stating that the Supreme Court had decided unilateral action was unconstitutional, although legal, the resolution demanded that the federal government abandon its course of action and requested, at the insistence of the Liberal opposition, that both levels of government immediately resume negotiations "with full respect for the principles and conventions that must apply to any modification of the Canadian federal system" (MacLean's, October 12, 1981, p. 31). The Liberals joined with the PQ to support the resolution against further unilateral action. In his speech on the resolution, Claude Ryan stated that the circumstances demanded that partisan interests give way to "l'intérêt supérieur de la communauté." However, Ryan was unable to convince nine of his caucus members representing mainly anglophone constituencies, of this wisdom. They broke with their party and the PQ and voted against the resolution.

The chairman of the Premiers' Conference, Bill Bennett, waited to respond to the Supreme Court decision until the Prime Minister had commented from Seoul. Bennett immediately seized the "olive branch" offered by the Prime Minister and declared he would set off instantly and consult the premiers to see if some sort of federal-provincial accommodation were possible.

As Bennett set down after his whirlwind tour of the provinces, a round of federal-provincial jockeying took place on when and where a first ministers' meeting would be held. Throughout the negotiations, Trudeau reiterated this would be a last chance for agreement; Bennett claimed it was only the beginning. Trudeau issued the first offer from Fiji, suggesting he meet Bennett on Thanksgiving Monday and the premiers the next day for "one last meeting." Bennett offered to meet the Prime Minister instead on October 13, but suggested that any meeting of first ministers take place after the premiers had met in Montreal on October 19. Several more offers and counter offers were made. The federal strategy was apparently to force a change in the provincial position by keeping up the pressure for a meeting (see quotation by a federal official in *Globe and Mail*, October 7, 1981, p. 1). The provinces, meanwhile, were asserting their independence, countering every move Ottawa made. This strategy may also have gained time for the conciliatory provinces - commonly regarded as B.C., Saskatchewan and Ontario - to seek an agreement among all the provinces, or for the "Gang of Eight" to determine whether there was any leeway in its position. Informal discussions among federal and provincial ministers and officials appear to have begun virtually from the moment the judgment was handed down.

The ten premiers met in Montreal on October 19 and 20; the "Gang of Eight" stayed on for a third day. The talks were reportedly tense, as some

provinces, notably Québec and Manitoba, wanted the Prime Minister to reveal first where he was willing to compromise before any meeting of first ministers was held (*Globe and Mail*, October 20, 1981, p. 1). At the end of their meeting, the eight premiers issued a communique calling for a first ministers' conference the first week of November but only after the ministers responsible for constitutional affairs had discussed the form and agenda of the conference and areas of possible agreement. Trudeau's reply to the premiers' proposal was prefaced by a lengthy recitation of the extent and consequences of the delay in reaching agreement on dates. The Prime Minister pointed out the federal budget and federal-provincial meetings on fiscal arrangements would have to be delayed. However, he reluctantly agreed to meet the premiers beginning November 2, continuing "for as many hours or days as necessary until either we have reached a consensus on constitutional reform or until it has become clear that such a consensus is not possible" (*Globe and Mail*, October 22, 1981, p. 9). The dates were acceptable to the premiers and Premier Bennett booked the National Conference Centre for November 2-4 despite Trudeau's apparent preference for a private session away from Ottawa.

Meanwhile, B.C., Saskatchewan and Ontario were trying to forge a common position of all provinces which would see Ontario forego its permanent veto and require Ottawa to adjust the timing of provisions of the Charter or allow an override clause (*Globe and Mail*, October 27, 1981, p. 1). However, the attempt suffered because no one was "willing to make the first move" (*ibid.*) and on the eve of the conference, the three participants dismissed the existence of any common position and stuck to their respective camps.

Shortly before the conference began, Prime Minister Trudeau indicated that he was willing to be flexible on the language and timing of the Charter, and might be amenable to changes in the amending formula. But he rejected any notion of allowing provinces to "opt-in" to a charter claiming "I get soft once in a while. Maybe I'll get soft next week."

#### FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION, OTTAWA, NOVEMBER 2-5, 1981

Several factors combined to make the atmosphere of this conference different from its unsuccessful predecessors. First, the Supreme Court's decision had dissipated "the tyranny of unanimity" which had hung over previous efforts to reform the constitution. Second, the agenda was limited. The federal government had effectively severed "the people's package" from the "powers package" with its resolution and put patriation, the Victoria amending formula and a charter of rights forward as its preferred package. The eight opposing premiers chose to forego the division of powers in this round of constitutional reform but limited

their preferred option to patriation with the Vancouver amending formula. Third, public opinion was seen by the participants as demanding an immediate resolution to the constitutional debate, especially as the economy was seen to be deteriorating rapidly. Fourth, there was dissension within the common front as Québec and Manitoba held fast to the April Accord as their "bottom line" while other premiers displayed a willingness to compromise. Thus, positions were not carved in stone and cards were played close to the chest. Finally, the signing of energy agreements with Alberta, B.C. and Saskatchewan had lightened the atmosphere of federal-provincial relations by showing each side that agreement was possible. A more immediate factor also affected the tone of the conference. The premiers and the Prime Minister compromised by deciding to hold only the opening and closing sessions in public; the hard bargaining would take place behind closed doors where grandstanding would not be a factor. As no official record of the private conference proceedings exists, the following account is drawn from media reports.

#### Day One

Monday, November 2. The eleven first ministers and their delegates gathered in the National Conference Centre for their opening statements. The Prime Minister opened the session.

Notable by its absence in the Prime Minister's remarks was any mention of the Supreme Court decision. Rather, Trudeau remarked that the first ministers were gathered together because most felt it was time to compromise; he, too, was prepared to compromise his position. He set out the issues: patriation, an amending formula and a charter of rights. His first indication of where he was willing to compromise was in reference to the amending formula.

I will say outright, on behalf of the federal government, that we are not wedded to the Victoria formula. We are prepared to look at any other number of formulas .... There is no desire on our part, and I state it unequivocally, to impose an amending formula on Canadians. (Verbatim Transcript, Federal-Provincial Conference of First Ministers on the Constitution, November 2-5, 1981, p. 5)

On the Charter of Rights, Trudeau reiterated his readiness to be flexible on the timing and substance but noted that he could not be flexible on the principle of a charter itself.

Declaring he had not felt "totally comfortable" with having been in the federalist camp against most of his counterparts for the last year, Premier Davis of Ontario offered a solution to bridge the gap between the two sides. He expressed his willingness to consider an amending formula



which did not give his province a veto; Ontario's veto was a large source of provincial objection to the Victoria formula. Davis stated his support for the principle of the Charter but did say the province would consider modifications. He urged his fellow first ministers to reach a speedy conclusion to the constitutional struggle as he doubted whether "we will have any greater wisdom ... six months from now or a year from now than we presently bring to this discussion" (ibid. p. 12).

Premier Hatfield put the final touches on an apparently orchestrated federal compromise position. Where Davis had given way on the amending formula, Hatfield offered an elaborate compromise on the Charter. He proposed that only certain provisions of the charter come into effect immediately – the guarantee of rights and freedoms, fundamental freedoms and democratic, mobility, language and general rights. The other rights, which the opposing provinces felt would restrict provincial rights, powers and privileges, would come into force after three years. After that period, the enactment of these deferred provisions – legal and equality rights and enforcement and general matters – could be prevented by the concerted action of six provinces.

There were several distinct lines of approach in the opening statements of the "Gang of Eight". The "L's" – Lévesque, Lyon and Lougheed – attacked Ottawa for acting unilaterally. The "B's" – Bennett, Blakeney and, to a lesser extent, Buchanan were conciliatory. Most stuck to the Premiers' Accord of April, choosing to dismiss or ignore the Charter. Much reference was made to the Supreme Court's judgment and how the same judges placed the principle of federalism at the heart of constitution-making.

René Lévesque expressed his fundamental objection to the Charter of Rights because it limited the powers of provincial legislatures. He stressed that the eight opposing provinces had already made a big compromise by dissociating patriation and the division of powers. He felt Ottawa should meet the provinces half way and separate patriation and the amending formula because the latter affected the division of powers. As a result, Lévesque concluded, the compromise Trudeau had mentioned was already on the table in the Premiers' Accord of April 16. Lévesque concluded by challenging Trudeau to present his plan for constitutional reform to the people before proceeding to London.

Premier Lyon of Manitoba accused Ottawa of "constitution-making by confrontation" which had rendered the country less unified and governments less able to meet their responsibilities. He called for an agreement on those areas where there already existed a consensus, leaving contentious areas – presumably the Charter – until later. Such an agreement, he said, would "revitalize the federal principle which has been pretty badly battered about in the last eighteen months."

Premier Lougheed of Alberta compared the constitutional battle to the struggle over energy revenues and concluded that disagreement had been settled only when Ottawa realized unilateral action would not work. He hoped the federal government would give up its unilateral intentions because agreement was not possible if "arbitrary deadlines are imposed and an atmosphere of, yes, threat sustained to the effect of 'either agree with us or else'" (ibid. p. 69). He warned Ottawa that unilateral action was "offensive," "wrong," "divisive" and "a flagrant disregard of our nation's history, traditions, principles and institutions." He indicated no areas of compromise and reiterated that the amending formula must be based on provincial equality to offset the popular perception that the central provinces were unfairly weighted in representation.

Premiers Bennett and Blakeney -- well-known "doves" in the constitutional arena -- were conciliatory in their opening remarks. Bennett cited public opinion and the Supreme Court decision as two factors prompting governments to "return to dialogue and compromise and ... [end] division and unilateral action." The B.C. premier stressed the importance of taking up the Court's challenge to seek "substantial provincial consent" and not to "point fingers and assess blame." Bennett accepted the Prime Minister's offer to compromise and indicated he was prepared to examine any new proposals that might lead to agreement.

Premier Blakeney began by commenting that suggestions about compromise were encouraging and stressed that "a whole new set of rules" presented an unparalleled opportunity for agreement. "The 'tyranny of unanimity' is but a ghost of conferences past," he declared. Blakeney's willingness to compromise was more qualified than Bennett's. At the outset, he expressed his dislike of having certain rights handled by a judicial, rather than political process; he was willing to allow judges to oversee the protection of individual freedoms. On the amending formula, Blakeney said he would be willing to look at alternatives but stressed his fundamental objection to allowing the Senate to maintain its present veto. He was also prepared to discuss and be flexible on the equalization and resources provisions and language and democratic rights.

Nova Scotia Premier John Buchanan stuck closely to the Premiers' Accord, asking for patriation with an amending formula. He was prepared, however, to look at other formulas agreeable to a majority of the eleven governments. He urged his fellow first ministers to reach a "Canadian solution ... in a Canadian way."

Outgoing Premier Angus MacLean of P.E.I. remarked that he was prepared to consider any modifications to "individual or collective positions" as long as the convention of substantial provincial consent were respected. MacLean departed from the common front for a moment by

stating his province's interest in maintaining a strong central government but not at the expense of the provinces. He warned Ottawa not to inflict "permanent scars" on the nation's growth by further unilateral action.

Brian Peckford, the Newfoundland Premier, spoke of his province's objection to the federal constitutional resolution in terms of "sadness" and reluctance. He expressed a "moral obligation" to protect the province's Terms of Union which the Supreme Court had decided would be affected by the resolution. Peckford said he was approaching the negotiations with an "openness of mind," hoping the other participants held the same view. However, he stuck closely to the contents of the Premiers' Accord.

The Prime Minister concluded the opening session by remarking there seemed to be "good cause to adjourn ... with some hope of progress being possible."

After lunch with their delegations, the first ministers gathered in closed session at 2:30 p.m. Apparently, they spent most of the four-hour meeting discussing Premier Davis' offer to forego Ontario's veto in the amending formula. Although more detailed than Davis' proposal, Premier Hatfield's offer was discussed only briefly, with Trudeau and Hatfield explaining the proposal.

Assessments of the afternoon session were, for the most part, cautiously optimistic. When asked if there were a "realistic" chance of consensus, Trudeau replied, "There's a chance. I don't know what odds I would give, but there's a chance." Brian Peckford called it "one of the better meetings;" Bill Davis felt there had been "a fairly good tone." Other premiers were less sanguine. René Lévesque said no conclusion was reached, as expected, but the situation wasn't desperate. Sterling Lyon said he hadn't seen much flexibility on the part of the federal government.

## Day Two

Tuesday, November 3. The day began with both sides still holding to their stated positions. René Lévesque called the eight opposing premiers together for breakfast, normally the prerogative of the chairman of the Premiers' Conference. They apparently worked on a compromise proposal including the Vancouver formula plus a partial charter with opting-in on the language of education, postponement of some provisions for three years and referral of other parts to a federal-provincial commission. It was evident that the premiers had received the Prime Minister's message that a deal must include a charter of rights. But the extent and form of such a charter was yet to be determined.

The eleven first ministers met in closed session at 9:30 a.m. Much of the first half of the meeting was reportedly spent in a bitter exchange

between Trudeau and Lévesque. After exhorting his fellow premiers to show some flexibility and trust, Premier Davis put forth a basic compromise — the Vancouver formula in exchange for a charter of rights. Unfortunately, the proposal was not detailed and it gave rise to considerable confusion about the extent of the charter Davis had in mind. The "Gang of Eight", especially Premier Lévesque, claimed Davis had meant only a partial charter and welcomed Davis to their side. Federal officials, however, insisted that Davis had referred to a "straight-up swap" — the Vancouver formula for the whole charter as in the federal Resolution.

A full closed session had been planned for the afternoon but never materialized. Instead, each camp met separately and overtures were made. While the "Gang of Eight" was meeting at the Chateau Laurier, Ontario Attorney-General Roy McMurtry broached the idea of a non obstante or "notwithstanding" clause to the federal delegation at the conference centre. The idea of allowing provincial legislatures to override parts of the Charter was apparently not rebuffed by the federal team. Davis went across the street to join the eight premiers to explain his proposition of that morning. After he had left, Premiers Lougheed, Buchanan and Bennett were delegated to carry their counter-proposition, which included a diluted charter, to the Prime Minister. But it was rejected angrily by the Prime Minister because it allowed opting-in on language rights. Clearly, entrenched protection of minority language rights was Trudeau's "bottom line."

### Day Three

Wednesday, November 4 was the last planned day of the conference. Once again, each side drew together at breakfast to assess its position. But the premiers' common front was crumbling. Both Bennett and Blakeney revealed they were planning to put individual compromises on the table, a move which angered Premier Lévesque.

At the opening of the first ministers' session, Blakeney presented a full, legally drafted proposal. His charter would consist of fundamental freedoms and democratic, mobility and language rights fully binding on both levels of government; legal and equality rights would be binding only on the federal government with the provinces able to opt-in on these rights. The principle of minority language education rights would be entrenched but no legal enforcement was included. Under Blakeney's amending formula, no province would have an automatic veto. Aboriginal rights would also be enshrined. Premiers Lévesque and Lougheed were reported to be opposed to the Saskatchewan proposal.

The B.C. offer was that put to the Prime Minister the day before and was apparently supported by "an unspecified consensus." It called for the entrenchment of democratic rights; fundamental rights would be subject to a provincial override clause. Provinces would be able to opt-in on

minority language rights which would be binding on the federal government. Other rights would be referred to a special federal-provincial commission appointed by all eleven governments. The package included equalization and resources clauses.

Thus, a flurry of pared-down charters had emerged. But it was the Prime Minister who put "the cat among the pigeons" and created the mood of desperation necessary for a deal.

Late in the morning, Trudeau took a calculated risk which proved to shatter the common front. If no agreement were reached, he suggested, the constitution should be patriated and, after two years of discussion, if there were still no agreement, a referendum would be held on the amending formula and Charter of Rights. A majority vote in four regions – the east, west, Ontario and Québec – would be required for any proposal to be approved. Premiers Lougheed and Blakeney jumped on the suggestion as "divisive." Lougheed found the proposal offended his view of the country as he declared "It's not a nation of regions, it's a nation of provinces" (quoted in Montreal Gazette, November 5, 1981, p. 1). But Premier Lévesque immediately embraced the idea, calling it "the honourable way out," seemingly calculating that any proposal would lose in Québec and therefore the country. Trudeau declared wryly that a "Canada-Québec alliance" was developing, and "the cat is among the pigeons." On breaking for lunch, the common front had appeared to dissolve and the referendum proposal was on everyone's mind. It was commonly felt that Lévesque felt betrayed by Bennett and Blakeney, leading him to welcome the referendum proposal dismissed by other members of the "Gang of Eight." The other dissenting Premiers, for their part, felt that Levesque had betrayed them by embracing the referendum idea.

After lunch, Trudeau produced a written version of the referendum proposal which appeared to be substantially different than his verbal offer. According to Premier Lévesque

What Mr. Trudeau said ... was very simple. But later, when we saw it written down it became very complicated and perhaps even bizarre and worrisome .... It was almost as if it was written in Chinese. (quoted in Montreal Gazette, November 5, 1981, p. 7)

Lévesque rapidly retracted his support for the idea.

As the brief "historic" alliance between Canada and Québec rapidly dissolved, discussion of the referendum idea dominated the afternoon meeting of the first ministers. Jean Chrétien, Roy McMurtry and Roy Romanow met in the kitchen just off the meeting room on the fifth floor of the conference centre to see if a deal could be pulled off. Three options were canvassed as they sought a compromise which could be sold to both

sides. One was chosen. As the three ministers were exchanging handwritten notes on the substance of the possible deal, Premier Peckford told the conference he had an offer he wished to discuss the next day. By the time the meeting adjourned for the day, Chrétien had indicated the federal government was prepared to buy a modified Vancouver formula. Once it was realized the trade-off had to be "a substantial measure of their charter," Allan Blakeney said, "then the whole thing began to be possible" (Montreal Gazette, November 7, 1981, p. 1).

That night, the dam broke. The referendum proposal was still on everyone's mind and the fear of losing or antipathy to the principle of the device seemed to spark the drive for a deal. Davis and Blakeney emerged as the key actors as both had lines of communications to Trudeau — Davis directly to the Prime Minister and Romanow through Chrétien. Blakeney was the link to the rest of the "Gang of Eight" and Peter Lougheed played a crucial role in getting Sterling Lyon on side.

At Blakeney's hotel suite, officials from Saskatchewan, Alberta and Newfoundland began drafting a deal. They were joined later by Premiers Peckford, Buchanan and MacLean along with officials from B.C. At the same time, the Ontario team — Davis, McMurtry, Intergovernmental Affairs Minister Thomas Wells and political advisor Hugh Segal — were meeting with Michael Kirby and Roy Romanow in Davis' suite. The discussions in both locations apparently turned around the "notwithstanding clause." Meanwhile, Trudeau had called together several of his top cabinet ministers and officials. Blakeney kept in touch with Davis by phone, who in turn kept Trudeau advised of events. Early in the morning of November 5, a draft was sent to Davis and approved. The deal was offered to Hatfield shortly thereafter and accepted. Peter Lougheed managed to get Sterling Lyon's approval by phone, stressing the Manitoba premier would be isolated if he did not give up his objection to the charter. Lyon had returned to Manitoba to fight the final few days of the provincial election campaign.

#### Day Four

Thursday, November 5. Chrétien informed the Prime Minister early that there was an almost certain deal. The "Gang of Eight" met, as usual, for breakfast with René Lévesque in attendance. His delegation had stayed at a hotel across the river in Hull and had not been privy to the night's events. When the offer was shown to Lévesque, he angrily refused to endorse it. Since the deal was apparently very close to that which Premier Peckford had prepared, he was chosen to present the deal to the federal side. Peckford was also seen as one not burdened with old federal-provincial grievances.

The first ministers gathered shortly after 9:00 a.m. The referendum idea had not completely died away and there was some initial discussion of the

topic. Finally, attention turned to the Peckford proposal. It was essentially the "Vancouver formula for the Charter" trade-off first introduced by Davis but included a "notwithstanding" clause to alleviate provincial concerns about intrusion on provincial jurisdiction.

One modification was made to the Vancouver formula as set out in the April Accord. The clause for fiscal compensation to a province opting out of any amendment which diminished its rights, powers or privileges was dropped, reportedly at Ontario's insistence (*Globe and Mail*, November 5, 1981, p. 10). Part B of the Accord, which dealt with the delegation of legislative authority, was deleted. The premiers accepted the Charter of Rights and Freedoms as before Parliament with the following changes. A "notwithstanding" clause would be included covering fundamental freedoms, legal and equality rights. The mobility rights clause would be qualified by the right of a province to undertake affirmative action programs if its employment rate were lower than the national average. As their most important concession to the federal side, the premiers agreed to be bound by s. 23 on minority language education rights. The section guaranteeing aboriginal rights was deleted, apparently at the insistence of B.C. and Alberta.

When presented with the proposal, the Prime Minister appeared ready to strike a deal but insisted on several changes. He asked that a "sunset" provision apply to the "notwithstanding" clause by which provinces would have to review their overrides on parts of the Charter every five years. He asked that a new clause be added inviting native leaders to the next round of constitutional talks to make up for the deletion of aboriginal rights.

Premier Lévesque was embittered by his isolation by the other premiers and declared that he would not sign the agreement if the mobility clause were not changed and fiscal compensation reinstated. He argued that Québec has had a traditional veto in constitutional amendment and fiscal compensation was his quid pro quo for accepting the Vancouver formula. Lévesque challenged the Prime Minister to submit the Charter and amending formula to the people of Québec in a referendum but the idea was rejected out of hand. After three and one half hours, the first ministers emerged to go before the television cameras and announce that ten first ministers had agreed to the package. Québec had not.

The Prime Minister spoke first in a rather resigned manner. He announced there was an agreement on patriation, an amending formula and a Charter of Rights. He commented that after 114 years, Canada would finally become an independent country in the legal, technical sense with patriation. Trudeau felt the important point about the amending formula was the fact that there would finally be one. On the Charter of Rights, he stated, "We have a charter. It is not the charter ... but (one) of which

Canadians can be proud" (Verbatim Transcript, p. 90). He gave credit to the provincial ministers and premiers conceding that the final compromises were "not of my making."

Trudeau went on to detail two concerns. The first was his "regret" that there was no provision in the amending formula for a referendum as a test of "the ultimate sovereignty of the people." The other concern was addressed to Québec. Trudeau expressed a willingness to examine the question of fiscal compensation immediately and declared that the door was not closed on discussion of the mobility clause. Trudeau offered to discuss the wording of the language of education provisions which Québec feared would be imposed on the province.

In the comments of the nine agreeing premiers, expressions like "the Canadian way," "there are no winners and losers," "compromise," and "give and take" resounded. The premiers acknowledged the agreement represented a common interest which underlay the diversity of the country while the process had respected that diversity. There were also expressions of regret that the Premier of Québec could not join in the agreement. Finally, many spokesmen urged that the eleven governments collectively turn their attention to the economy in a spirit of cooperation.

René Lévesque's was the one discordant voice in the "hymn of harmony." In a bitter attack on the other ten governments, he spoke of three related themes - Québec's "traditional" isolation, the effect of the agreement on Québec's powers and Trudeau's referendum offer. Once again, Lévesque stated, Québec found itself in its traditional position of being alone and this signified a further tightening of the "choker" of federalism. Never would Québec submit to a reduction of its traditional and fundamental powers without its consent and Lévesque declared that Québec would use every available means to resist the constitutional agreement. He again challenged Trudeau to submit the agreement to a referendum, arguing that the accord lacked the requirements Trudeau put forth in the referendum proposal of the day before.

On adjourning the conference, Trudeau commented ruefully, "We had better grab the signatures, this piece of paper, and run before anyone changes his mind."

After the conference, there was much speculation about what lay behind the fracture of the common front. René Lévesque charged that he and Québec had been unceremoniously abandoned by the other seven members of the "Gang of Eight" and the beginning of the end had come at the breakfast meeting on Wednesday morning. Lévesque claimed that the premiers' offer of the day before was supposed to be tabled at the conference but Bennett had decided against it; it was then that Québec determined "we might as well get out of here." That evening, Lévesque continued, the premiers tore up



the April accord "in the dark of night somewhere" and kept Québec "completely isolated" (Transcript, CTV Question Period, November 28, 1981, p. 3).

But Premier Blakeney of Saskatchewan expressed reservations about the chances for survival of the "Gang of Eight" as they went into the conference. In his analysis, the eight premiers were united on only two points – opposition to unilateral action and preference for the Vancouver formula (Transcript, CTV Question Period, November 7, 1981, p. 2). Blakeney made the distinction between a defensive alliance, which he characterized the "Gang of Eight" as, and an offensive alliance which was Lévesque's interpretation of the "Gang of Eight" and one which implied that the Accord was an all-or-nothing proposition. Therefore, in Blakeney's view, once the conference was called, the alliance had succeeded in preventing unilateral action and "all were free to advance our preferred options."

The "historic" accord was a brief, three page document, covering the major elements of the compromise (see box). The technical drafting process had been hurried and the swift succession of political compromises made that day and the previous evening left many questions about the actual thrust of the agreement.

#### REACTION: THE MOBILIZATION OF WOMEN'S AND NATIVES' GROUPS

Despite the euphoria of the ten signatories and the generally favourable reception of the agreement by the country, it quickly became apparent that two significant groups were dismayed with the contents of the agreement. Many women's organizations objected to the application of the "notwithstanding" clause to sexual equality rights, while natives found their guarantee of aboriginal rights – the object of much emotion during the Joint Committee on the Constitution's hearings – had been eliminated, replaced by a future constitutional conference to identify and define aboriginal rights.

The Ad Hoc Committee of Canadian Women, organized in 1980 and a central voice for women in the constitutional debate, spear-headed an intensive lobbying campaign in the wake of the agreement. They phoned, sent telegrams, and made representations to MPs and provincial politicians demanding that the "notwithstanding" clause not apply to s. 15(1) and (2) and s. 28 of the constitutional resolution, the areas of greatest importance to women. Several participants at the federal-provincial conference explained that the effect on s. 28 – which guarantees rights and freedoms equally to men and women – was unintended; rather, the "notwithstanding" clause was intended to apply only to s. 15, the more general equality clause and one felt very limiting to provincial powers.

First Ministers' Agreement on the Constitution  
November 5, 1981

In an effort to reach an acceptable consensus on the constitutional issue which meets the concerns of the federal government and a substantial number of provincial governments, the undersigned governments have agreed to the following:

(1) Patriation

(2) Amending Formula:

- Acceptance of the April Accord Amending Formula with the deletion of Section 3 which provides for fiscal compensation to a province which opts out of a constitutional amendment.
- The Delegation of Legislative Authority from the April Accord is deleted.

(3) Charter of Rights and Freedoms:

- The entrenchment of the full Charter of Rights and Freedoms now before Parliament with the following changes:
  - (a) With respect to Mobility Rights the inclusion of the right of a province to undertake affirmative action programs for socially and economically disadvantaged individuals as long as a province's employment rate was below the National average.
  - (b) A "notwithstanding" clause covering sections dealing with Fundamental Freedoms, Legal Rights and Equality Rights. Each "notwithstanding" provision would require reenactment not less frequently than once every five years.
  - (c) We have agreed that the provisions of Section 23 in respect of Minority Language Rights will apply to our provinces.

(4) The provisions of the Act now before Parliament relating to Equalization and Regional Disparities, and Non Renewable Natural Resources, Forestry Resources and Electrical Energy would be included.

- (5) A constitutional conference as provided for in clause 36 of the Resolution, including in its agenda an item respecting constitutional matters that directly affect the Aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, shall be provided for in the Resolution. The Prime Minister of Canada shall invite representatives of the Aboriginal peoples of Canada to participate in the discussion of that item.

### Fact Sheet

#### The notwithstanding or override clause as applied to the Charter of Rights & Freedoms

A notwithstanding clause is one which enables a legislative body (federal and provincial) to enact expressly that a particular provision of an Act will be valid, notwithstanding the fact that it conflicts with specific provision of the Charter of Rights and Freedoms. The notwithstanding principle has been recognized and is contained in a number of bills of rights, including the Canadian Bill of Rights (1960), the Alberta Bill of Rights (1972), the Québec Charter of Rights and Freedoms (1975), the Saskatchewan Human Rights Code (1979), and Ontario's Bill 7 to Amend its Human Rights Code (1981).

#### How it would be applied

Any enactment overriding any specific provisions of the Charter would contain a clause expressly declaring that a specific provision of the proposed enactment shall operate, notwithstanding a specific provision of the Charter of Rights and Freedoms.

Any notwithstanding enactment would have to be reviewed and renewed every five years by the enacting legislature if it were to remain in force.

(Appendix A, Federal-Provincial Conference of First Ministers on the Constitution, Verbatim Transcript, Ottawa, November 2-5, 1981).

Under pressure from the well-organized lobbying effort by women, new federal-provincial negotiations were undertaken to clarify the intent of the accord. But there was no settlement by the time the resolution was introduced for its final debate in the House of Commons on November 20. At that time, Justice Minister Chrétien said that "the ball is now squarely in the court of Premier Blakeney" who appeared to be the last premier whose consent was needed. Section 28 of the resolution then read "Notwithstanding anything in this charter except section 33, the rights and freedoms referred to in it are guaranteed equally to male and female persons." Four days later, the signatories to the accord had agreed that s. 28 not be qualified by the "notwithstanding" clause in s. 33.

In the resolution sent to the Supreme Court, s. 34 recognized and affirmed the aboriginal and treaty rights of the Indian, Inuit and Métis peoples. However, in the resolution reflecting the November 5 agreement, s. 34 was dropped in favour of clause 36(2) inviting aboriginal peoples to a constitutional conference where aboriginal rights would be identified and defined. Native groups responded angrily to the agreement, saying they had been "sold out." The deletion was made in the Peckford proposal before presentation to the federal side on the last day of the conference, apparently at the instigation of B.C. and Alberta who felt that such rights were insufficiently defined to know what the provinces' responsibilities might be. Trudeau and Chrétien asserted that they had questioned the deletion at the conference but were assured it was intentional.

Native groups launched an intensive lobbying campaign in Ottawa which saw the entire legislative assembly of the Northwest Territories appeal to MPs and cabinet ministers. However, the federal government argued the accord could not be changed unilaterally despite exclusive federal jurisdiction in native affairs, and urged native groups to contact the premiers.

Premier Lougheed was the only premier publicly opposed to entrenchment of native rights. In the legislature, he stated that his government could not agree to the reinstatement of treaty and aboriginal rights because it was "not aware of what rights are in fact to be recognized" (Alberta Hansard, November 10, 1981, p. 1564). However it was reported that Ontario objected to the provision because of its potential effect on property rights (Financial Post, December 5, 1981, p. 8).

Lougheed was under considerable pressure from the Métis Association of Alberta and on November 20 after a large demonstration in front of the Alberta Legislature, suggested that the word "existing" be added to s. 34 to qualify treaty and aboriginal rights. The same day, facing hundreds of natives demonstrating at a Social Credit Party convention, B.C. Premier

#### 34/Year in Review 1981

Bill Bennett agreed to reinstate s. 34 provided the federal government assume the full financial consequences and that a conference be held to define the meaning of such rights.

Premier Blakeney of Saskatchewan chose to link his support for a change to s. 28 to a reinstatement of s. 34. He felt that the thrust of changes to the equality rights clause shifted in mid-stream from a clarification of the intent of first ministers to a substantive change which would see s. 28 become a free-standing clause, not subject to the override. If s. 28 were to be substantially altered, Blakeney argued, there should be an opportunity to reinstate aboriginal rights. In a telex to Justice Minister Chrétien on November 19, the Saskatchewan government tied its support for a free-standing s. 28 to a reinstatement of s. 34. The rationale for this proposition was "simple" in Blakeney's words.

If the accord is to be reopened we would place first priority on protecting the interests of Canadians of native origin. Few groups, if any in our society possess less economic and political power, and therefore, has ability to press their claims for Constitutional protection. (Saskatchewan Information Services, News Release, November 19, 1981, p. 3)

On November 24, Indian Affairs and Northern Development Minister John Munro rose in the House of Commons to move that a new clause, s. 35 recognize and affirm existing aboriginal and treaty rights. Justice Minister Jean Chrétien argued that his legal counsel assured him that the new s. 35 had the same meaning as the original s. 34.

Despite the reinstatement of unqualified sexual equality rights and a recognition, though restricted, of aboriginal rights, a sense of mistrust lingered among women's and natives' groups. They felt they had been the pawns in an intergovernmental chess game and could not trust governments to protect their interests. This wariness of the constitutional process may carry over when the next constitutional conferences are held with native participation.

The anger of women and natives was the most visible public reaction to the accord. More general public and media reaction was mixed. There was, on one hand, relief and even pride that an agreement had been reached, putting an end to the confrontation. On the other hand, many observers were critical of the process and the way the Charter of Rights had been watered down by the "notwithstanding" clause. Some worried about giving the Courts such a powerful new role in delimiting rights. Others pointed out that other outstanding issues, such as the division of powers and structure of federal institutions, had not been resolved. There were also a number of specific objections. For instance the governments of Yukon and Northwest Territories criticized the provision that required the consent of existing provinces for the creation of new ones.

## REACTION: QUEBEC

In the weeks following the conference, the Québec government recited the events of November 2-5 and characterized them as "intense manipulation and blackmail" and "nocturnal machination." In the inaugural speech to the opening of the National Assembly on November 9, Lévesque accused the other members of the "Gang of Eight" of "caving in" "to get back at once into the good old sheepfold of the National Consensus under the Shepherd's crook of the National Government" (Montreal Gazette, November 14, 1981, p. 22). He argued that the April Accord was the "limit of acceptable concessions" for Québec and an almost sacred deal, a perception not shared by the other opposing provinces.

For us the rules of a democratic society are an obligation, not a rug-peddler's deal; our undertakings, and above all our signature, are for us things that are absolutely sacred, which are to be respected at all costs. Until now we had thought the same went for the others. (Montreal Gazette, November 14, 1981, p. 22)

The PQ government put forth three arguments against the agreement. First, it argued that the province's powers would be considerably constrained by the language of education provision, and the right to determine the language of education was essential for the protection of "the only French island in the English-speaking sea that is the North American continent." Second, the mobility clause would check the government's "already inadequate power" to direct economic development by "butchering and paralyzing" programs designed to stimulate business and jobs in Québec. Third, the amending formula renounced Québec's traditional right of veto which was evident in history and precedent. Moreover, the formula was seen to penalize a province if it decided to opt out of an amendment because those provincial taxpayers would continue to be taxed to pay for services it chose not to receive.

In the same speech, the Lévesque government, announced several measures to fight the constitutional settlement. The government decided to end its participation "until further notice" in all federal-provincial and interprovincial meetings except those dealing with economic or fiscal matters. Another resolution would be introduced in the National Assembly to "reaffirm our rights and essential requirements as a distinct national society." A publicity campaign would be launched to counter "federal propaganda, that brainwashing inflicted exclusively on Québécois." Finally, a court challenge, seeking affirmation of Québec's traditional veto in constitutional amendment would be launched.

In the resolution tabled in the National Assembly on November 13, the Lévesque government put forth its conditions for acceptance of the patriation plan. First, it demanded recognition of the equality of the two

founding peoples in Canada and of the position that Québec formed a distinct national community within the Canadian federation. Second, the amending formula must either recognize Québec's veto or allow fiscal compensation for opting-out. Third, the Charter of Rights must include only democratic rights, official bilingualism at the federal level, fundamental freedoms, (as long as the National Assembly retained the power to override these in areas of provincial competence) and Québec must be free to adhere voluntarily to the language of education provision. These were identified as the "extreme limit" of what the government would accept. It was offered to, what was characterized as, an "anglophone" federal government supported by nine anglophone provinces who were asking an anglophone government in London to pass a resolution which would reduce Québec's powers.

The main thrust, however, of Québec's strategy was its assertion of the province's traditional right of veto as evidenced by previous efforts to obtain an amending formula in 1965 and 1971 which failed when Québec withheld its agreement. On November 25, Lévesque sent Trudeau an official notice of Québec's exercise of its "formal right of veto" against the patriation resolution. He stressed that opting-out with fiscal compensation was the only alternative to a veto. Therefore, he asked that Trudeau act as he had in 1971 and suspend the patriation plan, stating he was prepared to sign an accord which met Québec's conditions regarded as vital in protecting the province's uniqueness and historic rights.

The Prime Minister dismissed the argument claiming that Québec's "alleged" right of veto was neither substantiated by law nor constitutional convention given the Supreme Court decision. Trudeau recited the federal government's history of preferring a formula which would give Québec a veto and blamed successive Québec governments for refusing to support federal intentions. Furthermore, he argued that Québec had abandoned the principle of a veto by agreeing to the Vancouver formula even when fiscal compensation was not to be constitutionally entrenched. Trudeau concluded by saying

Whether we are talking of patriation or of the amending formula, it is hard to understand how — by order in council or otherwise — you can maintain that a Québec veto exists by law or custom. (Office of the Prime Minister, Release, December 1, 1981, p. 8)

In his reply, in which he refused to correct the Prime Minister on his "many inaccuracies," Levesque pointed out that the Supreme Court had expressly reserved opinion on the degree of provincial consent required. Since Ottawa would not respect Québec's veto, Lévesque declared the only alternative was an appeal to the courts. Thus, on December 9, the Québec Cabinet approved an Order-in-Council which asked the provincial Court of Appeal to consider

Le consentement du Québec est-il, par convention, constitutionnellement nécessaire à l'adoption par le Sénat et la Chambre des Communes du Canada d'une résolution ayant pour objet de faire modifier la constitution canadienne de façon à porter atteinte:

- i) à l'autorité législative de la législature du Québec en vertu de la constitution canadienne;
- ii) au statut ou rôle de la législature ou du gouvernement du Québec au sein de la fédération canadienne;

et, l'objection du Québec rend-elle l'adoption d'une telle résolution inconstitutionnelle du sens conventionnel?

Premier Lévesque also sent a letter to Prime Minister Margaret Thatcher of Britain asking that she not proceed with the resolution.

#### FINAL DEBATE IN PARLIAMENT

In his speech introducing the resolution which reflected the intergovernmental agreement to the House of Commons on November 20, Justice Minister Jean Chrétien took pains to assure members that the "notwithstanding" clause was only a "safety valve" expected to be used only in non-controversial circumstances, and would provide flexibility for legislatures to respond to important matters of public policy. In speaking of and to Québec, Chrétien stressed the distinction between the interests of the people of Quebec and the interests of the Parti Québécois. The federal government introduced an amendment to the resolution, suggested by Claude Ryan and "apparently supported and imposed on cabinet by the Québec caucus" of the Liberal government which allowed fiscal compensation to a province which opted out where the amendment transferred provincial educational or cultural powers to Parliament (see s. 39). He concluded by urging the Québec government to meet with him to discuss the three outstanding issues.

Apart from chiding the Justice Minister on the "acrobatics" he had had to perform in speaking favourably of the Vancouver formula, conservative leader Joe Clark stressed the role of the opposition in final reading. Rather than being a "rubber stamp," he argued, Parliament had an obligation to deliberate and legislate especially in areas where Parliament "is the sole or crucial custodian of vital national interests." To this end, the party introduced amendments to reinstate the equality of women and aboriginal rights. Clark was particularly worried about the gap between the federal government and nine anglophone provinces where francophones were a minority, and the province of Québec where francophones were a majority. It was a situation "of which separatists



have dreamed" and he felt Parliament was the only agency which would bridge that gap.

In order to force the PQ government to decide whether it favoured renewed federalism, and to ensure that a province would not incur a financial penalty by opting out, the Conservatives moved an amendment that a province dissenting from an amendment receive reasonable compensation from the federal government. The motion was defeated.

The Tories also made efforts to modify the language of education clause in such a way that Québec's consent would finally be obtained. In a letter to Lévesque, Clark proposed that if the PQ would accept the "Canada clause" – thereby adhering voluntarily to the minority language education rights in the charter – he would move for "pure and simple" opting-in for Québec. Lévesque welcomed Clark's "constructive and sincere" effort to meet one of Quebec's conditions for signing but felt that the "where numbers warrant" provision of the clause meant that Québec would have to rely on the "generous" disposition of the other provinces in interpreting the charter. He proposed instead that the effort of modifying Bill 101 would be undertaken only once this generosity was displayed towards francophones outside Québec. Because the two positions could not be bridged, the Conservatives let the matter lapse.

The leader of the NDP, Ed Broadbent, noted it was unfortunate that Québec was not a signatory to the agreement but felt Québec's distinctiveness was partially confirmed by the resolution. He rejected Clark's amendment on fiscal compensation as one which would create a "checkerboard Canada" as the richer provinces would tend to opt-out of social programs. The NDP did move that fiscal compensation be extended in all categories to Québec in recognition of its special status. The amendment was defeated also. Broadbent derided the effect of the intergovernmental agreement on sexual equality saying "would we want children anywhere in Canada to read a document which says 'men and women are equal except when a group of politicians say they are not'?" (House of Commons, Debates, November 20, 1981, p. 13055). He gave his support for the Tory amendment reinstating s. 28. Later, after Indian Affairs Minister John Munro moved that the word "existing" be added to the original aboriginal rights clause after extensive federal-provincial negotiations, NDP member Jim Fulton argued for his party that the qualification be deleted, calling it a "weasel word." He claimed that seven provinces and much public and aboriginal support in favour of the original s. 34 had been swept away by the insistence of Alberta and the accommodation of the federal Liberals to the Alberta position. He disputed Chretien's claim that the word "existing" did not affect the meaning of the section, saying he was advised that the qualification "tainted" the thrust of s. 34. Another NDP amendment was defeated which moved that native peoples be given a veto over future constitutional changes.

The House was debating the ninth amendment introduced – one which would have retained Parliament's authority to legislate on abortion – when the

Prime Minister rose to speak generally on amendments introduced at that stage in the resolution's parliamentary passage. He admitted there was room for improvement in the Charter but argued that the opposition amendments were a "threat" to the November 5 accord. He stressed that his government was bound by the Accord "imperfect as it was" and was committed not to make "end runs" to improve it. To support his argument, Trudeau read a telegram from Premier Bennett "which was not solicited" which stated that the Accord should be approved by Parliament as it stood and sent to Britain without further delay (House of Commons, Debates, November 27, 1981, p. 13440).

After nine days of debate, rather than the two days previously agreed to, the resolution was put to a final vote. On December 2, the House voted 246-24 in favour of the resolution, then breaking into a rendition of "O Canada." Several Liberal members broke from their party and voted against the motion but for different reasons. Warren Allmand objected to the lack of protection afforded to the English-speaking minority in Québec while Louis Duclos and Jean-Robert Gauthier were protesting the absence of Québec's agreement. Seventeen Conservatives voted against the motion. Roch LaSalle, the only Conservative MP from Québec, too felt Québec was not adequately protected; the other dissenting Tories opposed the motion mainly because of the Charter's effect on the right to life and property rights. Three NDP members opposed the resolution; Svend Robinson felt the Charter's protection was inadequate; Robert Ogle objected to the lack of protection for the unborn, and Jim Manly found the guarantee of aboriginal rights unsatisfactory.

The resolution was then sent to the Senate where it was approved by a vote of 59-23 on December 8. The Conservatives continued to fight in the Senate for amendments which would win the support of Québec. Senator Jacques Flynn, Justice Minister in the former Conservative government, fought to allow Québec to opt-in to minority language guarantees and to extend fiscal compensation to all programs, rather than those which are social and cultural. Both amendments were defeated by the Liberal majority because they were not endorsed by the nine provinces who signed the November 5 agreement. The Conservatives also tried to move amendments on abortion and the retention of the Senate veto on constitutional change.

Five Liberal senators voted against the resolution; 16 of the 25 Conservatives dissented as did one independent senator and the lone Social Credit senator.

On the evening of December 8, after the Senate vote, a special ceremony was held at Government House at which two leather bound copies of the resolution, specially scripted on parchment, were presented to Governor-General Ed Schreyer by the Speaker of the House of Commons, Jeanne Sauvé and the Speaker of the Senate, Jean Marchand. The documents

were then handed over to the Governor-General's secretary, Esmond Butler, for transmittal to the Queen. He left that evening for London with Justice Minister Jean Chrétien and his wife.

#### HIGHLIGHTS OF THE CONSTITUTION ACT, 1981

The final thrust and substance of the Constitution Act was a combination of the original resolution tabled in October 1980, the resolution sent to the Supreme Court after parliamentary scrutiny, the Premiers' Accord of April and the results of the bargaining at the November conference of first ministers.

The Constitution Act is the legislation passed by the British Parliament to patriate the British North America Act and amending the Canadian constitution to include a domestic amending formula and Charter of Rights.

Part I of the Act sets out the entrenched Charter of Rights and Freedoms. It embodies guarantees of

- Fundamental freedoms such as the freedom of thought, conscience, religion and association (s. 2).
- Democratic rights or the right to vote and run for office (s. 3).
- Mobility rights or the right to reside and work in any province (s. 6).

These rights cannot be qualified by any provincial laws or practices which discriminate on the basis of residency. However, a province with an unemployment rate higher than the national average may undertake laws, programs or activities to ameliorate the condition of socially or economically disadvantaged individuals (s. 6 [4]).

- Legal rights or the right to life, liberty and security, security against unreasonable search and seizure, protection against unreasonable detention, and the right to a fair trial (s. 7-14).
- Equality rights or the guarantee that every individual is equal before and under the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disability (s. 15).

The right of a government to undertake affirmative action programs to better the condition of disadvantaged groups is guaranteed (s. 15 [2]).

- Language rights

- Official languages or the recognition of English and French as the official language in the legislatures, governments and courts of Canada and New Brunswick (s. 16-22). (Similar obligations on the governments of Québec and Manitoba contained in the BNA Act remain in force.)
- Minority language education rights:  
Citizens of Canada whose first language learned or who have received primary school instruction in a language which is spoken by a linguistic minority in a province have the right to receive primary and secondary education in that language (s. 23).

This right is qualified by the obligation of the provinces to provide instruction out of public funds only "where numbers warrant" (s. 23[3]).

- Sexual equality rights or the guarantee of the rights and freedoms in the Charter apply equally to male and female persons (s. 28).

There were several restrictions on the application of the charter which are detailed below

- Section 15 on equality rights will not apply for three years to allow governments to alter their legislation (s. 32 [2]).
- A "notwithstanding" clause allows Parliament or the provincial legislatures to declare in an Act that fundamental freedoms, legal rights and equality rights may be overridden by the Act or parts thereof (s. 33[1]). A government cannot opt-out of democratic rights, mobility rights, sexual equality rights or minority educational rights.
- The effect of such declarations lapse after five years and may be renewed (s. 33[9-4]).

Part II of the resolution affirmed and recognized existing aboriginal and treaty rights. Aboriginal peoples were defined as Indian, Inuit and Métis peoples (s. 35).

Part III was a constitutional entrenchment of a commitment to promote equal opportunities for Canadians, reduce regional disparities in economic development and provide essential public services of reasonable quality to all Canadians (s. 36[1]). The federal Parliament and government are

committed to the principle of equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonable, comparable levels of taxation (s. 36[2]).

Part IV of the resolution is a provision that the first ministers meet within one year after patriation at a constitutional conference. On the agenda will be constitutional matters "directly affecting" the aboriginal peoples of Canada including the definition of aboriginal and treaty rights. Representatives of native groups will be invited and the governments of Yukon and the Northwest Territories may be invited (s. 36[1-3]).

Part V contained the procedure for amending the new constitution. Most amendments dealing with the division of powers and federal institutions require

- Affirming resolutions of Parliament and at least two-thirds of the provinces representing at least 50 per cent of the population (s. 38[1]).
- Any amendment that derogates from the legislative powers proprietary rights any other provincial rights and privileges must obtain the majority consent of The House of Commons, Senate and consenting provincial legislature (s. 38[2]).
- A province may opt out of any amendment which does derogate from its power by passing a resolution supported by a majority (s. 38[3]).
- If an amendment is made which derogates from provincial legislative powers by transferring powers over education, or other cultural matters to Parliament, reasonable compensation will be made to a province which chooses to opt out (s. 40).

This process can be authorized by either Parliament or provincial legislatures. The Senate has a suspensive veto of six months.

Several constitutional items require unanimous consent for change. These relate to the monarchy, parliamentary representation, official languages and the Supreme Court (s. 41).

After 15 years, the amending procedure is to be reviewed by the first ministers at a constitutional conference (s. 49).

Other provisions allowed for a strengthening of provincial control over natural resources (s. 50-51).

## CONCLUSION

As Premier Blakeney of Saskatchewan observed at the closing of the September 1980 conference on the constitution,

there were two agendas before us, one constitutional renewal for Canada and the other the continuing contest for the hearts and minds of the people of Québec. In that latter contest, it seemed to some of us that nothing offered was enough and everything being demanded was too much. (Verbatim Transcript, p. 1045)

The 1981 constitutional settlement appeared to settle, at least temporarily, the dispute over the substance and extent of constitutional change. But the struggle over Québec's place in Confederation, which has been a preoccupation of the federal government since the election of the Parti Québécois in 1976, continues. Neither the referendum on sovereignty-association nor the November 5 agreement proved to satisfy the goals of the Québec government. As internal PQ policy becomes more militant (see Chapter 9), the "Québec" agenda remains unresolved.

In addition, the constitutional settlement raised many other questions. In what way will natives be allowed to participate in the constitutional process? How will the Charter of Rights be interpreted by the courts? Will the "notwithstanding" clause actually be used only in "non-controversial" situations? Will governments strive for a *de facto* unanimity formula for future amendments to avoid isolation and bitterness? Will there be a "Phase 2" in constitutional reform and what issues will be addressed? The provision on the resolution for constitutional conferences guarantees that constitutional reform will remain on the federal-provincial agenda.

### 3 ECONOMIC AND FISCAL POLICY

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In the first half of 1981, the Canadian economy was buoyant, riding on a trend which began in mid-1980. However, in late summer, interest rates rose to unprecedented heights as the government moved to protect the Canadian dollar which was faltering in a crisis of confidence. At the same time, the economy moved into a recession as productivity declined and the demand for labour subsided.

The Canadian population began to experience more bankruptcies, work lay-offs and defaulted mortgages; as public discontent mounted, governments were forced to react. The federal government bore most of the responsibility as macro-economic management fell primarily within its jurisdiction. Once the constitutional and energy disputes were settled with the provincial governments, Ottawa turned its attention to the economy with its November budget.

As the year drew to a close, interest rates declined somewhat but the economy was not recovering. Unemployment increased and the inflation rate – where Canada used to lag behind most major industrial countries – rose to over 12 per cent. The government and the Bank of Canada admitted that economic forecasting was a far from precise practice and were forced to adjust their economic predictions every few months. These developments provided the context for federal-provincial interaction on economic matters in 1981.

#### FEDERAL GOVERNMENT

Efforts to enhance federal visibility and reduce the federal deficit dominated federal fiscal and economic policy in 1981.

#### Fiscal and Budgetary Policy

As interest rates and the rate of inflation crept up over the summer, unemployment rose, housing starts were down, and consumer confidence, as measured by declining retail sales, was in tatters.

This was the situation which faced the federal government before a new session of Parliament began in October. The federal Liberals received a jolting message in the Spadina and Joliette by-elections held in August. In both ridings, strong Liberal candidates – most notably Jim Coutts in the Toronto riding – were the victims of an electorate which perceived the federal government to be overly preoccupied with the constitution while the economy deteriorated. Prime Minister Trudeau attributed the defeats to "an anxiety, perhaps even an anguish, among the Canadian electorate" about the state of the economy. The by-election results, public opinion polls and the Liberal caucus itself brought home the message that the economy needed immediate attention.

The Priorities and Planning Committee of Cabinet met several times in late August and early September to devise an economic strategy. Inflation was targetted as the fundamental problem; all other problems, such as high interest rates and the threat of a recession, were determined to flow from inflation. At the same time, Ottawa concluded an energy agreement with Alberta which settled how much the federal treasury would receive in oil and gas revenues over the next five years. It was in this context that Finance Minister Allan MacEachen rose on the evening of November 12 to read his budget speech.

Beginning with the Conservative government in 1979, federal budgets have been presented in a five year fiscal framework. But the budget documents revealed the uncertainty and imprecision which afflict the assumptions on which short and medium term economic projections are made. "Unanticipated movements" in GNP, inflation and interest rates in 1981 had rendered the 1980 budget provisions ineffectual. Furthermore, it was admitted that the performance of the Canadian economy is "critically dependent" on the outlook for the U.S. economy and international oil prices, both of which faced indeterminate futures. (See Canada, Department of Finance, *The Current Economic Situation and Prospects for the Canadian Economy in the Short and Medium Term*, November 1981.)

The 1981 economy was characterized as one of unexpected strong growth which combined with an inflation rate higher than projected to put upward pressure on interest rates. Because it was felt that high interest rates flow from high inflation, the anti-inflationary stance of the 1980 budget was reinforced.

... experience has shown that the inflation problem is more severe than earlier anticipated and must be given priority if the basis for sustained economic growth, financial stability, and continued social progress is to be preserved and strengthened. (Canada, Department of Finance, *The Budget in More Detail*, November, 1981, p. 4)



Restraint on the part of the government and Canadians was the major plank of the budget. Reduction of the federal deficit by keeping government expenditures below GNP growth and eliminating costly tax expenditures was put forth as one means of reducing inflation, but Mr. MacEachen also called on all Canadians to restrain wage demands and accept the costs of inflation. It was also clear that intergovernmental transfers would not be immune from restraint measures. "Equity" was another theme of the budget, as short-term measures to assist those unduly affected by interest rates were introduced and many tax loopholes benefitting higher income earners were swept away. Economic renewal was the third theme of the budget; it will be dealt with in the next section.

#### Fiscal Framework

Through its restraint measures, the federal government expected to reduce its budgetary deficit to \$10.5 billion in 1982-83 from \$13.3 billion in 1981-82. Budgetary revenues were predicted to be \$54.3 billion in 1982-83 of which \$900 million was accounted for by oil and gas revenues not included in the 1980 budget. Cutbacks in tax expenditures would produce \$1.4 billion in extra revenue for 1982-83. Total government outlays for the fiscal year were predicted to amount to \$68.3 billion. The largest chunk, 39.5 per cent or \$30.2 billion, was assigned to the Social Affairs envelope to cover a wide range of shared-cost and block-funded programs with the provinces, income maintenance plans, and assistance for labour, natives, culture, housing, environmental protection and sports. The Economic Development envelope contained 9.9 per cent of the total, or \$7.6 billion. It is used in aiding primary and secondary industry, agriculture, regional development, transportation, communications and research and development. It is growing more rapidly than other envelopes in the short run because energy revenues have been assigned to it to pay for large scale projects, such as western transportation. The Defence envelope was increased to 9.2 per cent of the whole while equalization and other fiscal transfers to governments accounted for 6.5 per cent.

#### Interest Rates

The government did introduce short term measures of assistance for specified groups who faced financial difficulty because of high interest rates. Because inflation was expected to decline, thereby relieving pressure on the Bank of Canada and interest rates, these measures were designed for a transitional period. In total, \$200 million was allocated for 1981-82 and 1982-83, with a matching amount to be held in reserve if needed after 1983.

Farmers who would otherwise lose their businesses by borrowing at current rates were eligible for an interest rebate of five percentage

points payable up to two years on loans from the Farm Credit Corporation. Fifty million dollars was put aside for this purpose.

Those homeowners facing mortgage renewals in the last four months of 1981 and until November 1982 whose payments would exceed 30 per cent of gross household income became eligible for assistance. For those who wished to use the equity in their homes to defer higher payments until they could afford them, the government offered to guarantee repayment of deferred interest up to \$3,000. Homeowners with little or no equity had the option of having the government write off up to 100 per cent of deferred interest. In order to stimulate the rental market, interest free loans of up to \$7,500 per rental unit were made available to builders for the construction of 15,000 units in tight rental markets. These housing provisions were allocated \$150 million for 1982-83.

Small businesses facing the interest rate crunch were given a tax break rather than financial assistance. The Small Business Development Bond program, which was due to expire, was extended for a year. Firms in financial difficulty became eligible for preferred tax treatment on that portion of the interest rate greater than six per cent. Unincorporated businesses, such as farms, were made eligible for small business bonds.

#### Taxation Measures

The federal government chose in this budget to act on the complex network of tax loopholes which swelled in the 1970s, especially in the wake of tax reform. By eliminating many of these costly and regressive tax expenditures, the government felt it would achieve a simpler and fairer tax system and less distortion of the economy.

Tax rates on personal income were reduced for 1982 on all taxable income over \$11,120. The federal tax cut was changed to a flat rate of \$200 for all taxpayers to reduce the benefit to high income earners. Indexation, which applies to the basic personal exemption, spouse's and children's exemption, exemptions for the aged and disabled, and the child tax credit, brought the rate up to 12.2 per cent.

On corporate tax, the five per cent surtax was retained for 1982 and will be reduced to 2.5 per cent in 1983. Small businesses were exempted from the corporate surtax until 1983 on that portion of income eligible for the small business tax rate. The annual income limit for eligibility was raised to \$200,000 and the cumulative total to \$1 million.

Employee and employer contributions for unemployment insurance were reduced in the budget. Employees would pay \$1.65 per \$100 weekly of insurable earnings instead of \$1.80; employers' contributions were reduced to \$2.31 from \$2.52 per week.

The federal sales tax imposed at the manufacturers' level had been found to place domestic manufacturers at a competitive disadvantage with importers. Therefore, the tax was shifted to the wholesale level and reduced to eight per cent from nine per cent.

Taxes on oil and gas production constituted a major portion of federal government revenues and following the energy agreements with the producing provinces, several changes were made to the taxation structure. The 25 per cent resource allowance was changed to allow the application of production profits before deduction of royalties. Earned depletion for exploration expenditures in the Canada Lands would be phased out by 1984.

The petroleum and gas revenue tax (PGRT) was doubled effective January 1, 1982 to 16 per cent. A new tax, the result of the Canada-Alberta agreement, called the incremental oil revenue tax (IORT) was introduced. It applied to additional revenues received by the industry on old oil sold at prices higher than those set out by the National Energy Program. The rate was set at 50 per cent.

The natural gas and gas liquids tax (NGGLT) was also affected by the energy agreements. This excise tax was reduced to zero on exports of gas produced elsewhere than in the Canada Lands. The tax on domestic sales was set at 65 per cent of the domestic crude oil price which is based on the blended price of oil and thus international prices. Effective February 1, 1982, the tax was set at \$.65 per gigajoule.

As mentioned, the elimination of many costly tax expenditures allowed the government to reduce tax rates and spread the tax burden more evenly. The special income averaging provisions which allowed individuals to defer tax by such devices as annuities were discontinued or changed to ensure taxes were paid eventually. The provisions allowing deferral of tax on investment income on life insurance savings, deductibility of interest and accrued interest were also changed.

Special types of employee remuneration or "perks" also came under fire. Subsidies on loans, company cars, supplementary health and dental insurance, and transportation passes became taxable. The government decided not to tax employment benefits available to those working in northern or isolated posts but is studying the issue.

Some tax expenditures were retained and expanded. It became easier to withdraw savings from registered retirement savings plans (RRSPs), and the tax exemption for those who maintain a residence at a worksite other than a principal residence was extended to all workers.

Various forms of capital cost allowances by which corporations write off assets, such as multiple unit residential buildings (MURBs), were modified to ensure costs were written off as the investment proceeded.

## Reaction

Reaction to the budget was universally negative. But attention was addressed more to the taxation measures than to the government's anti-inflationary policy. Business in general felt that the investment climate in Canada had been endangered by the elimination of many tax loopholes which it saw as a disincentive to savings and investment. Specific business groups, such as insurance companies and real estate developers, railed against changes which affected their sectors. Labour, farmers and mortgage holders felt the interest rate assistance was too little and not of the right sort. The provinces focussed on the federal proposals for amending fiscal arrangements, and to a lesser extent, the economic assumptions behind the budget. The protests did result in MacEachen's altering some contentious proposals but he changed the timing rather than the nature of the budget provisions.

Big business was particularly upset with the changes to cut back the rate at which capital cost allowances could be written off, and the limit on the amount of interest deductible on money borrowed for investment. It was felt that these changes would inhibit investment at a time when economic stimulus and job creation was needed. The real estate industry felt an immediate impact; it was reported that the construction of 3,000 rental units would be scrapped immediately because the rules for MURBs were changed in mid-stream. The Canadian Life and Health Insurance Association was concerned about the taxation of investment income from life insurance policies, arguing that individual Canadians would have to bear financial losses.

John Bulloch of the Canadian Federation of Independent Business (CFIB) was particularly vocal. Bulloch termed the budget "a bag of snakes" and "a disaster," saying it would inhibit savings and investment. The CFIB joined a coalition with over 20 groups representing business, agriculture, and finance to convince MacEachen to allow a parliamentary committee to review the whole budget and hear witnesses from all sectors. The Conservatives pushed the same point.

Labour chose another tactic. CLC president Dennis McDermott termed the budget a "non-event that does nothing for Canadians hoping for a real break." He called the aid for homeowners "a mortgage shell-game where the deferred mortgage interest will eventually end up tacked onto the principal." He went on to say that since the government had not addressed the serious economic situation, "Canadians must use other means to bring home their frustration." The Canadian Labour Congress organized a rally on Parliament Hill on November 21, 1981 which attracted an estimated 100,000 people. Union members, consumers, farmers, pensioners and homeowners made up the largest demonstration ever held on Parliament Hill. But this show of support did not translate into influence with MacEachen. The CLC

asked for a meeting with the finance minister but met instead with eight other cabinet ministers whom McDermott termed "lightweights."

Reaction from the official opposition, the Progressive Conservatives, took two forms. The leader, Mr. Clark, emphasized the impact of the budget on ordinary Canadians. The assistance for homeowners was termed a "bank protection plan," provisions for farmers and small business not a helping hand but rather "a sock in the face," and ordinary workers would have to pay tax on their health and dental plans and day care. Mr. Clark stated that only the federal government, the wealthy, the banks and tax experts benefitted from the budget. In all, the document was "tricky," "untrustworthy," "dishonest" and "deceitful."

The Conservative finance critic, Michael Wilson, chose to address the macro-economic strategy which lay behind the budget. He felt that it failed to address the serious problems of interest rates, inflation and unemployment. Rather, he argued the government was fuelling inflation by increasing spending by 22 per cent. The finance critic recommended a "productive economics" strategy which would increase incentives for investment, strengthen the private sector and reduce the influence of government.

After Christmas the Conservatives began a series of public hearings across the country on the budget. Groups and individuals were given the opportunity of voicing their displeasure which, even almost two months after the budget, was still substantial.

Ed Broadbent, leader of the NDP, said the budget "is one without help, without heart and without hope for the people of Canada." He declared people would be forced to become tenants in their own homes or permanent debtors while the banks were guaranteed profits. Broadbent found the economic strategy based on interest rates "arid, intellectual, academic and devoid of thought" since it ignored the experience of the United States and Britain. The NDP finance critic, Bob Rae, presented an emotional speech which stressed the hopes and aspirations of ordinary Canadians and the impact of the current economic situation and budget on them. He felt the government was overdoing its fight against inflation which would reduce the economy to a "desert" and squeeze out jobs. Rae called the interest rate deferral system "a con," "a fraud" and "a system of permanent debt."

Shortly after the budget was brought down, the NDP established a task force to hold hearings in 11 cities across the country. After listening to consumers, homeowners and tenants, unions and even businessmen, Broadbent summarized the task force experience by saying "there's a mood of frustration and anger out there at all levels of society."

Reaction in the English language newspaper editorials was muted compared to the other responses. Generally, the budget was seen as "unexciting," "neither adventurous nor particularly pleasant," "intricate" and with some limited positive aspects. Opinion was divided on the overall economic strategy. The Montreal Gazette and Ottawa Citizen felt that restraint would only fuel a recession while two western papers, the Winnipeg Free Press and Vancouver Sun found it "sensible" and "a step in the right direction." Opinion on assistance for homeowners, where mentioned in detail, was very negative. The Montreal Gazette described the plan as "indescribably stingy" and "help of a breath-takingly cynical nature." It was described elsewhere as "patchwork" and "derisory." It was generally felt that the government was on the right track in eliminating tax expenditures but hadn't gone far enough.

In Québec, Le Devoir found a lack of willingness and imagination in the budget to address the real economic problems of Canadians. Inaction on unemployment, a problem in Québec, and interest rates was hidden by fine words and acts of faith. It was felt that the government was more concerned about patriating the constitution than pulling the country out of economic stagnation. La Presse termed the budget "ni mauvais ni vraiment bon" and commented on the political astuteness behind the document. But it did find the economic strategy to be at odds with events in the U.S. and predictions for the future, concluding "cet exercice ... donne l'impression d'un gouvernement dépassé par les événements et qui, ne sachant quelle direction prendre, fait du surplace" (November 14, 1981, p. A6). Le Soleil complimented MacEachen only on his measures to redistribute the fiscal burden. It found the anti-inflationary strategy rigid and costly in social terms.

#### Changes To The Budget

After several weeks of representations by business and labour to the finance minister, MacEachen rose in the House of Commons on December 18 to announce several "transitional" adjustments to the budget. For the most part, changes were made in the timing of budget provisions to allow investments to carry through or allow individuals and businesses time to adjust to the new rules. This kind of move applied to such items as capital cost allowances, income averaging, annuity contracts, and "soft costs" on real estate investment. Elsewhere, the potential tax on severance pay received by retiring employees was averted by allowing them to transfer such funds to an RRSP. The six per cent threshold on small business development bonds was removed and the restriction on deductibility of interest was eased to allow Canadians to deduct interest on loans taken out to buy shares in Canadian companies.

The calls for referring the budget to a parliamentary committee were partially met. Provisions regarding corporate reorganizations, taxation of

life insurance, charitable foundations, and severance pay were referred to the House of Commons Standing Committee on Finance, Trade and Economic Affairs.

### Economic Development

Although the federal government appeared preoccupied with the constitution for most of 1981, there was much work being done by ministers and officials on a new economic development policy, sometimes known as a national industrial policy. There appeared to be two competing approaches. The more interventionist, sectoral and status quo approach of Industry, Trade and Commerce Minister Herb Gray was seen to be pitted against that of Minister of Economic Development Bud Olson which emphasized the opportunities offered by the development of natural resources and high technology industries. This latter approach was premised on the need for change in labour skills, market orientations, productivity and regional distribution. However, a general concern with increasing federal visibility with business and the general public cut across any competition between approaches.

An economic development framework was devised by Olson and his officials as a guide to government expenditures and policies early in the year. (See "Notes for Remarks by the Honourable Senator H. A. Bud Olson to the Québec Chamber of Commerce," Montreal, January 22, 1981.) It had eight components:

- Human resources: Ensuring that manpower training is directed to the future and immediate needs of the market.
- Capital investment: Stimulating private investment in modernizing traditional sectors and encouraging investment in mega-projects of the future.
- Energy: Obtaining a secure supply and stable prices while encouraging conservation and substitution.
- Natural Resources: Increasing processing of natural resources before export, and developing export markets.
- Technology: Increasing federal expenditures on research and development encouraging increased private sector spending.
- Infrastructure: Improving port, rail and other transportation means to facilitate efficient exportation.
- Market development: Developing foreign markets for high-technology areas and maintaining the domestic market free from barriers.

- Institutional Streamlining: Eliminating red tape and encouraging discussions among federal and provincial governments, business and labour.

Throughout the first half of the year, Olson held a series of bilateral meetings with provincial ministers responsible for economic development, and at one time, suggested he might call a federal-provincial meeting to discuss his economic development framework (*Globe and Mail*, January 20, 1981, p. B11). An unidentified Ontario cabinet minister commented after a meeting with Olson that his policy entailed a definite spending tilt to the west: "The impression we get is that Ottawa is feeling about the West these days the way it used to feel about Quebec, that is, the need to deliver" (*Financial Post*, May 23, 1981, p. 6). At the time, Ontario was trying to get federal financial support for its BILD program.

Although Canadians have become accustomed to advertising by government departments, 1981 saw the first publicity campaign by a cabinet committee. In November, the Cabinet Committee on Economic Development took out full page ads in both English and French language daily newspapers listing projects undertaken by the federal government. Initiatives by DREE, Agriculture Canada and other federal departments, agencies and Crown corporations were drawn together in the advertisement under the cabinet committee's economic development framework. The advertisement stated that, because of the broad scope of economic development – "everything from airport construction to fish marketing, from tourism to textiles and clothing policy" – efforts must be made to increase the awareness of Canadians about the impact of federal policy on individuals, business and the country. (These initiatives were also published in a public document titled *Decisions: The Cabinet Committee on Economic Development March 1980–September 1981*, released in November 1981.)

While Olson's view did not completely win out, several premises of his approach were adopted as bases of a new federal economic development policy. It was determined that patterns of international supply and demand were shifting Canada's comparative advantage away from industries employing unskilled labour toward higher technology and resource-based industries. Second, it was argued that higher energy costs will be a permanent feature of the Canadian economy and industry must adjust to that. Third, it was predicted that a shortage of skilled labour will be a problem in the near future.

Each of these factors have important implications for the regions of Canada. Ontario and Québec are largely dependent on the traditional manufacturing industries, such as autos and textiles whose productivity ratio is low because they are labour-intensive and are suffering from competition with cheaper imports. This industrial decline is exacerbated by the increasing costs of energy. The shortage of skilled labour is



predicted to affect Ontario – although it may have a surplus of unskilled labour – and the west.

But balanced against these problems were opportunities for long-term, sustained economic development in all the regions of Canada. The Olson strategy was based on a belief that there was opportunity for developing natural resources, traditional industries and higher technology industries in all regions. The deputy minister of DREE suggested that a national industrial strategy may be actually an amalgam of regional industrial strategies. R.C. Montreuil stated in a speech in Halifax that

... in the period since the Second World War, industrial strategy in Canada has largely been a central Canada strategy ... The regional aspects of this strategy have often been "add ons," a kind of tinkering at the periphery ... I think we may now be entering a period in our history when the opposite approach to economic development may be more fruitful. ("Notes for Remarks by R.C. Montreuil to the Canadian Regional Science Association," Halifax, May 22, 1981, p. 3)

The potential in the west was obvious, based largely on the exploitation of non-renewable and renewable resources. Ontario could benefit from the manufacturing of equipment to supply mega-projects in the west and the processing of those resources. However, it was felt that its "overmature industrial structure" had to restructure to meet changing demand patterns and international competition. Despite the decline in Québec in the labour-intensive, low technology industries, the federal government felt the province could capitalize on the manufacturing of high technology goods and provision of services in that sector. The Atlantic provinces would benefit from increased labour and investment opportunities while the benefits of offshore resources beckon.

Federal government policy to prod the private sector into taking advantage of these opportunities and soften the blow on regions and industries suffering decline trickled down throughout the year. These initiatives were brought together in an economic development policy tabled with the November budget.

#### Economic Development for Canada in the 1980s

This document was the product of an ad hoc ministerial committee established at a meeting of the federal cabinet at Meach Lake in June. The committee was chaired by Finance Minister Alan MacEachen; members were Vice-Chairman Bud Olson (Minister of State for Economic Development), Herb Gray (Industry, Trade and Commerce), John Roberts (Environment), Pierre de Bané (DREE), Ed Lumley (Minister of State for Trade) and

Lloyd Axworthy (Employment and Immigration). The Cabinet Committee on Economic Development was consulted in drafting the policy document.

The policy was criticized by the media, provinces and opposition as a sham because it was, self-admittedly, a compilation of programs already announced or underway. However, its importance lay in the framework within which present and future government initiatives were assessed.

Neither Olson's mega-projects strategy nor Gray's industrial support approaches were accepted wholeheartedly. Each was included in the strategy with a healthy dose of emphasis on the potential offered by the high-technology sector.

Three areas of development potential were identified: natural resources, the manufacturing and processing of equipment and resources, and the development of high technology goods and services. These priorities were a response to patterns in international supply and demand. However, they did mean that the manufacturing sector would have to restructure and specialize. The government was keen on implementing the "world product mandate" approach based on manufacturing a few products for a large international market. This would reduce the problem of industries having to locate centrally if they served a small domestic market. Since Ottawa was intent on ensuring that economic development was well distributed among the regions, it planned to play "an even more active role in supporting investment and development activities which strengthen the economic base and the links between all areas of the country" (Economic Development for Canada in the 1980s, November 1981, p. 11). But the necessary "adjustment" to new conditions may well have some wrenching regional effects.

Five priority areas of government action were identified and recent initiatives outlined.

- Industrial development.  
This covered both those industries suffering decline and those offering development prospects. The Industry and Labour Adjustment Program (ILAP) and the Canadian Industrial Renewal Board (CIRB) were examples of action in the former area. The Office of Industrial and Regional Benefits, a result of the recommendations of the Major Projects Task Force and a new Industrial Opportunities Program (IOP) to direct government support to "promising areas" were actions taken in the latter area.
- Natural resources.  
The NEP, a new agricultural export-oriented strategy and efforts to promote the fisheries, forestry and mining sector were cited.

- **Transportation.**

The government was in the process of developing ports to handle exports and plans were underway for a five year rail capacity expansion program in the west.

- **Export development.**

The government began offering "crédit mixte" through the Export Development Corporation which would enable selected firms to match the subsidized financing offered competitors by foreign governments. The need to strengthen the commercial representation role of the foreign service and to link economic policy more directly with foreign policy was mentioned.

- **"Human resources".**

This area has been under study and involves a long-term strategy to train workers for skilled jobs.

Several interesting sidelights were found in Economic Development for Canada in the 1980s. One of the most notable was the government's rejection of further Canadianization for industrial sectors. It stated:

The special measures being employed to achieve more Canadian ownership and control of the oil and gas industry are not, in the Government of Canada's view, appropriate for other sectors ... In the Speech from the Throne in the spring of 1980, reference was made to ... changes to the Foreign Investment Review Act. For the time being, no legislative action is intended on these measures until progress on the major initiative already undertaken by the government has been assessed (p. 12-13).

This was the main point picked up by most commentators who, depending on their point of view, lamented or praised the government's decision to halt the Canadianization drive.

On federal-provincial relations and economic development, the document acknowledged that both levels of government have responsibilities in the area but downplayed the desirability of joint implementation of economic development programs (p. 11). Rather, federal policy will be implemented in consultation with business, labour and provincial governments.

#### **Western Development Fund**

The birth of the Western Development Fund was announced in the October 1980 federal budget. Finance Minister MacEachen stated that \$4 billion of new federal revenues from the oil and gas pricing policy, revenue sharing and taxation schemes would be allocated to a Western Development Fund; \$2

billion would be spent by 1983-84. It seemed to be an attempt to assure westerners that dollars flowing from resource production in the west would return to the region. The National Energy Program elaborated on the proposal, stating that the fund would be used to finance a series of economic development initiatives in the Western provinces "to be chosen jointly by the two levels of government" (emphasis added, National Energy Program, p. 79).

However, early in 1981, Senator Hazen Argue, Minister of State responsible for the Wheat Board, stated that provincial governments had no superior status to other groups in the west who would be consulted on how the money would be spent (Western Producer, January 15, 1981, p. 3). Transportation, natives, and economic diversification were three broad areas of potential investment identified by the federal government (Western Producer, April 23, 1981, p. 1). However, as the year wore on, investment of the Fund and indeed its actual existence came into doubt. Amounts flowing to the Fund depended on oil and gas pricing and taxation regimes which were not settled with the producing provinces until September. No firm announcements of investment were made. A \$60 million contribution to Vancouver's Light Rapid Transit project was made but it was not clear at the time whether this money came from the Fund.

The nature, amount and intended uses of the Fund were clarified somewhat in the November budget. In actual practice, it is difficult if not impossible to separate oil and gas revenues which are used for projects and purposes in the western provinces. The Western Development Fund seemed to be the sum of monies flowing out of the Economic Development envelope and Social Affairs envelope for specific purposes. Formerly, the Fund was part of the Economic Development envelope.

The amount of money allotted for Western development was considerably reduced in the budget from initial announcements. As Finance Minister MacEachen explained:

A review of these plans (for the Fund), given the larger sums now flowing directly to the producing provinces as a result of the energy agreements, the need for increased fiscal restraint and some reassessment of priorities, had led to a re-profiling and reallocation of the Fund. (The Budget in More Detail, p. 20)

Instead of spending \$2 billion over three years, as announced in the October 1980 budget, the Fund would amount to \$1.8 billion over five years. The Economic Development envelope was allotted \$1.52 billion to 1986 for improvements in rail transportation; tax expenditures accounted for \$27 million of this amount. The Social Affairs envelope was given \$345 million over four years (1982-86) to fund housing and economic development programs for natives.

Under the previous budget, \$350 million was to be spent in 1981-82. This figure was reduced to \$148 million; \$6 million was accounted for by tax expenditures related to railways. Subsidies to farmers in the West and Ontario for losses accruing from the Soviet grain embargo accounted for \$82 million and \$60 million was allotted for the Light Rapid Transit System in Vancouver (Toronto Star, November 23, 1981, p. A12). Lloyd Axworthy, chairman of the Western Affairs Committee of cabinet admitted that the first year's investment of the Fund did not represent "a clear developmental approach" (ibid.).

Table 3:2

Western Development Fund (millions of dollars)

	October 1980 Budget Economic Development	November 1981 Budget Economic Development	Budget Social Affairs	Difference
1981-82	\$350	\$148		\$-202
1982-83	750	182	\$ 75	\$-493
1983-84	<u>900</u>	<u>375</u>	<u>80</u>	<u>\$-445</u>
SUB TOTAL	\$2,000	\$705	\$155	\$-1,140
1984-85	\$2,000			
1985-86	Unspecified	\$415	\$ 90	
		<u>\$1,520</u>	<u>\$345</u>	
TOTAL	\$4,000	\$1,865		

(Drawn from 1980 and 1981 federal budgets)

#### Industrial Adjustment

Industrial adjustment policy refers to government programs or activities which assist sectors suffering from international competition or declining domestic markets to modernize and restructure, and assists workers through retraining, relocation, early retirement and attracting new employers to a region.

In 1981, the clothing and textile sector was the object of government actions to help industries adjust to foreign competition. Since 1970, various clothing and textile items produced in Canada have been protected by the federal government from competition from imports. However, in a time of gradual liberalization of world trade, sectoral restructuring was required but the same number of workers could no longer be supported. In

June, a \$250 million new program was announced to assist firms to modernize but, more importantly, to attract new industries to areas dependent on the clothing and textile industry, assist laid-off workers to retrain, relocate, retire early or find new jobs.

A new agency, the Canadian Industrial Renewal Board (CIRB) was established to implement this policy. Paul Desmarais, President of Power Corporation, was named as chairman. A majority of the board will be business representatives with government and labour making up the remainder.

The federal government was less tender with the footwear industry. In December, import quotas were removed on leather footwear since it was felt that the Canadian industry was healthy enough to compete with foreign manufacturers. Some assistance for industrial rationalization in this sector was offered but its \$17 million allocation was far less than that accorded to the clothing and textile sector. It was felt in some quarters that the greater concentration of the clothing and textile industry in Québec and its extensive employment warranted special consideration (Financial Post, January 2, 1982, p. 6).

A more general program of assistance directed at communities and regions rather than particular sectors was announced early in 1981. The special Industry and Labour Adjustment Program (ILAP), a three year, \$350 million plan was the response to the government's promise in the 1980 budget to support industrial restructuring, and manpower retraining and mobility in areas of need.

Assistance under the program became available to communities which experienced "large-scale industry dislocation directly resulting in a significant increase in the level of community unemployment." Communities were to be designated by cabinet and eligible for up to two years' assistance. Money would be available for industrial restructuring in such communities under the Enterprise Development Program (EDP) of Industry, Trade and Commerce. Workers would receive training allowances, moving assistance and a portable wage subsidy; older workers would be eligible for early retirement. The program would be managed on a community level by an adjustment committee and at the federal level by Industry, Trade and Commerce, Employment and Immigration, Labour, DREE and Finance.

The Canadian Labour Congress responded negatively to the program, calling it "merely a small death benefit rather than comprehensive medicare for Canadian jobs" (Canadian Labour, March 1981, p. 5). The organization objected to the ex post facto nature of the program, favouring instead an industrial strategy and active labour market policy. It also pointed out the probable regional bias in assistance, given the

predominant representation of Ontario and Québec in the federal cabinet (ibid.).

By March, several communities had been designated by the federal cabinet for assistance under ILAP. Windsor, Ontario, Sydney, N.S., Port-Cartier/Sept-Iles/Schefferville and Tracy/Sorel in Québec were chosen because their unemployment rates were between 10-16 per cent.

#### Major Projects Task Force

The Consultative Task Force on Industrial and Regional Benefits from Major Canadian Projects was a product of the extensive debate in 1978 among Ottawa, the provinces and the private sector on industrial strategy. It was set up by the federal Department of Industry, Trade and Commerce after consultation with provincial industry ministers (Major Canadian Projects/Major Canadian Opportunities, June 1981, p. 13). It was composed solely of business and labour members. The provinces acted as observers; only Alberta refused to send an observer, citing the Task Force as "a federal initiative to justify their involvement in mega-project purchasing" (Economic Development Minister Hugh Planche, quoted in Edmonton Journal editorial, March 26, 1981). The Department of Industry, Trade and Commerce provided secretariat support. Shirley Carr, Executive Vice-President of the Canadian Labour Congress and Robert Blair, President and Chief Executive Officer of NOVA, An Alberta Corporation, served as co-chairpersons.

The Task Force was set up on the assumption that the major projects anticipated especially in the energy sector in the next twenty years could significantly benefit Canadians if proper policies are instituted. Therefore, it established as its objectives

- identifying major projects to be carried out by 1999 and the economic, industrial, technological and employment opportunities presented;
- assessing the maximum benefits flowing to Canadian business and labour;
- recommending new policies and practices for increasing the industrial and regional benefits from major projects;
- recommending ways by which the private sector can assist in developing legislation flowing from the Task Force report;
- examining and recommending ways of encouraging and strengthening the participation of Canadian owned and controlled firms in major projects (p. 67).

The report of the Task Force, **Major Canadian Projects/Major Canadian Opportunities**, was presented to Industry, Trade and Commerce Minister Herb Gray in June and delivered simultaneously to the provincial ministers of industry. The report outlined \$438 billion worth of major projects in conventional and heavy oil development, pipelines, processing and petrochemicals, electrical generation and transmission, forest products, mining and mineral processing, transportation, manufacturing and defence (see Table 4-1 in the report for a detailed regional and sectoral breakdown). Thirty per cent of total expenditures would take place in Ontario and Québec, 50 per cent in the Western provinces and the territories and less than 10 per cent in the Atlantic provinces. The other 10 per cent would be spent in several provinces or was undetermined.

The Task Force's major recommendations were as follows.

- A Major Projects Assessment Agency should be established to gather and disseminate information on the demands for capital, goods, services and labour and the ability of the Canadian market to meet these needs. It would require both public and private project participants to submit information and would be able to recommend policy changes to increase the benefits to Canada from major projects. The agency would monitor projects and "widely publicize" supply opportunities, potential problems, policy alternatives and participants' performance. The Agency would also formulate "a clear set of guidelines with respect to expected behaviour in the area of Canadian industrial and regional benefits;" all key actors would have to outline in written form how they proposed to conform to the guidelines. The board of directors would be composed of equal numbers of business and labour representatives; federal and provincial governments would sit as non-voting members. It was proposed that funding come from both levels of government.
- Canadian-owned firms should be given first preference in sponsoring, financing or supplying major projects. Canadian-based firms would be given second preference. In addition, "every reasonable effort" was advised to open up all managerial, professional and labour positions to Canadians.
- Preference should be given first to Canadian-owned supply firms and secondly to Canadian-based firms in procurement policy. Project sponsors and owners should have to establish written procurement policies which detailed how their procurements would maximize the benefit to Canada. The business and labour representatives split on whether firms



should be encouraged or required to pay a premium of up to three per cent of total project costs to develop a competitive Canadian supply industry. Premiums would be allocated to Canadian firms which are deemed to contribute most to a long-term competitive industrial capability.

The report contained five dissenting views by business members of the Task Force. They felt in general that domestic and international market forces would ensure economic efficiency in scheduling and supplying major projects. In this respect, the proposed Major Projects Assessment Agency was regarded as interventionist and counter-productive. The emphasis on developing and using Canadian goods and services was seen as possibly endangering international trading relationships. Finally, they all agreed that the preference for Canadian-owned firms over Canadian-based firms was discriminatory and ignored the positive contribution the latter firms had made to Canada.

Perhaps because the provinces were not involved in the discussions and recommendations, their reactions were "unenthusiastic." An Ontario official was quoted as saying, "The business/labour consensus is not sufficient to pre-empt government;" feeling that governments could represent unorganized groups and minorities. Alberta Economic Development Minister Hugh Planche felt the three per cent purchasing premium was "a flagrant violation of provinces' rights" (Financial Post, June 27, 1981, p. 1). This reaction underlined the tensions between a consultative process predicated on intergovernmental discussion, and one based on federal consultation with the private sector.

The Office of Industrial and Regional Benefits was set up in August as "an initial response" to the Major Projects Task Force report. As announced by Industry Minister Herb Gray, the Office will monitor Canadian involvement in developing the Canada Lands. A committee will develop guidelines for maximizing the industrial and regional benefits to Canada from major projects and will require owners and sponsors to submit manpower and procurement policies to the committee before implementation. Major participants will also deal with the committee to find Canadian suppliers and ensure suppliers are informed of opportunities. The committee will consist solely of government representatives from several federal departments and provincial and territorial governments (Globe and Mail, August 28, 1981, p. 1).

#### Aid To Manufacturers

Buffetted by high interest rates which reduced sales and increased inventory financing costs, several major Canadian manufacturers were rescued by the federal and provincial governments in 1981.

In addition to the \$200 million in loan guarantees extended to Chrysler Canada in 1980, the federal government extended, in February 1981, another \$150 million in loan guarantees to become effective in 1983-84. In return, Chrysler promised to build two new fuel efficient models in Canada and invest at least \$681 million from 1980-85. The company also agreed that none of its plants would be closed without federal approval, that any layoffs would be shared proportionately between Canada and the United States, and that the employment ratio between the two countries will move towards the sales ratio.

Farm implements manufacturers also felt the crunch. In putting together a \$700 million equity refinancing plan, Massey-Ferguson convinced the federal and Ontario governments to guarantee the capital risk of new equity investment in the company. The federal limit was \$125 million and the provincial limit \$75 million. The company gave a commitment to establish an engineering and R&D base for new North American manufacturing in Canada (Industry, Trade and Commerce, News Release, February 6, 1981).

Also in 1981, Canadian Co-operative Implements Ltd. of Winnipeg, owned and operated by farmers, sought government assistance for a refinancing plan. After months of negotiations, a five year package was put together; a group of western co-operatives offered \$9.5 million, the company \$5 million and the three prairie provinces \$7 million. The federal government made an offer of \$14 million to make up the \$35.5 million total.

But the provincial contribution, and apparently that of the private companies, was conditional upon "satisfactory participation" by Ottawa. Although Ottawa met the 2-1 matching criterion of the provinces, provincial spokesmen were dissatisfied with the form of the federal offer. Ottawa offered \$6.44 million in new funding and \$7.56 million in forgiven loans; an \$8 million loan made to the company in 1978 in an earlier refinancing effort by the federal government had not been paid (Globe and Mail, December 5, 1981, p. B7). But the provinces felt that Ottawa should contribute \$14 million in new money. Saskatchewan Cooperatives Minister Don Cody described the federal offer as "too little, almost too late and a band-aid approach" and accused the federal government of trying to take credit twice for the same money (Saskatchewan Information Services, News Release, December 4, 1981). Cody and members of the other two provincial governments pointed to federal assistance to eastern based manufacturers such as Michelin, Chrysler and Massey-Ferguson and accused Ottawa of unfair treatment toward the west.

In March, the federal and Nova Scotia governments announced a financial assistance plan for the Sydney Steel Corporation (SYSCO). Ottawa agreed to contribute 80% of a \$96.2 million capital program to modernize blast

furnaces and rolling mills over two years. The Nova Scotia government agreed to absorb SYSCO's \$100 million deficit.

### Regional Economic Development

As reported in the 1980 Year in Review, the federal Department of Regional Economic Expansion (DREE) has been undergoing an internal policy review. Although the review was not yet complete in 1981, several elements of a new policy thrust were evident. These included:

- "increased targetting of regional development toward Canada's needier areas, with increasing emphasis on local participation in program development;
- development of direct federal program delivery systems, by DREE alone or in cooperation with other federal departments;
- emphasis on industrial support directly related to continuing employment opportunities; and
- devising of programs aimed at specific communities or areas rather than industrial sectors".

(Government of Canada, Regional Economic Expansion, Annual Report 1980-81, p. 4.)

This approach was confirmed as several direct delivery programs were instituted in the provinces in lieu of subsidiary agreements to the various provincial General Development Agreements (GDA). The direct delivery mechanism was seen as one means of reinforcing federal "presence" or "visibility" with the general public and also ensured that federal, rather than provincial, priorities were addressed.

Since 1969 DREE operated the major federal-provincial regional development program. General Development Agreements were signed with the provinces on a shared-cost basis for developing specific sectors. In 1974, 10-year GDAs were signed with all the provinces except P.E.I., which came under a 15 year Comprehensive Development Plan signed in 1969 under the Fund for Rural Economic Development (FRED). Five-year agreements have been developed for Yukon and the Northwest Territories, signed in 1977 and 1979 respectively.

The General Development Agreements set out the broad goals and areas of development for each province which were then realized through subsidiary agreements. When subsidiary agreements were negotiated, a financial limit was set and a fixed shared-cost arrangement established. In 1981, the

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maximum federal share was: Newfoundland 90%; Nova Scotia and New Brunswick 80%; Québec, Manitoba, Saskatchewan, Yukon and Northwest Territories 60%; Ontario, Alberta and B.C. 50%.

In 1981, the provinces complained that the federal government was dragging its heels on renewing active subsidiary agreements or ignoring provincial suggestions for new agreements. But the assistant deputy minister responsible for Atlantic Canada in DREE countered this, saying the provinces have "automatically assumed that we would go on and on with third and fourth generation agreements in areas of provincial jurisdiction" ("Get Ready for the Equalization Pinch", Atlantic Insight, June 1981, p. 53).

Table 3:2

New Subsidiary Agreements and Major Amendments\* Signed in 1981  
(millions of dollars)

	Signed	Terminating	Total	Federal Share	Provincial Share
<b>Newfoundland</b>					
Forestry 1981-86	09/01/81	31/03/85	\$52.1	\$46.9	\$5.2
Community Development for Coastal Labrador	29/05/81	31/03/87	39.0	33.8	5.2
Pulp and Paper Modernization	01/06/81	31/03/85	33.0	30.0	3.0
<b>P.E.I.</b>					
Phase III Comprehensive Development Plan	07/10/81	31/03/84	53.2	41.0	12.2
<b>Nova Scotia</b>					
Pulp and Paper Modernization	23/05/81	31/03/84	21.25	17.0	4.25
Modernization of Facilities at the Sydney Steel Corp.	02/06/81	31/03/84	96.25	77.0	19.25
Ocean Industry Development	24/07/81	24/07/86	35.0	29.95	12.05
Halifax Panamax Dry Dock (Amend.1)	30/09/81	31/03/85	14.1	9.1	5.0
<b>New Brunswick</b>					
Forestry 1981-84	13/03/81	31/03/84	37.5	30.0	7.5

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## Québec

Transport Development  
(Amend. 4)

20/06/81	31/03/82	6.0	3.6	2.4
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Societe Inter-Port du  
Quebec

03/07/81	31/03/84	9.25	5.55	3.7
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## Ontario

Northern Rural Development  
Pulp and Paper Industry  
Facilities Improvement  
(Amend. 2)

02/03/81	31/03/84	18.5	10.0	8.5
05/02/81	31/03/84	30.0	10.0	20.0

## Manitoba

Winnipeg Core Area  
Agreement

04/09/81	31/03/86	96.0	32.0	32.0	32.0**
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Manitoba Northlands  
(Amend. 4)

18/12/81	31/03/83	7.5	4.5	3.0
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## Alberta

Nutritive Processing  
Assistance II

19/08/81	31/03/84	28.0	14.0	14.0
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(Taken from DREE Development Agreements, 1981 plus addendum, Decisions: the Cabinet Committee on Economic Development, November 1981, and information from DREE Program Analysis and Liaison Division)

\*Major amendments are defined as those involving injections of new money.

\*\*Municipal share.

In October 1981, the third phase of P.E.I.'s Comprehensive Development Plan was signed. The federal contribution over three years will be \$41 million of the \$53.2 million package. But the strategy also allowed for \$39 million to be spent directly by the federal departments of DREE, Agriculture, Fisheries and Oceans, Industry, Trade and Commerce, Energy, Mines and Resources and Transport. A federal document explained that this new approach of joint and direct funding "is intended to bring more fully to bear the diverse expertise and resources of the Federal Government" in combatting regional disparities (Decisions of the Cabinet Committee on Economic Development, p. 5). In P.E.I., this funding shift meant that 138 new jobs were lost in those parts of the provincial bureaucracy which administered the development plan. The federal government announced it would pick up approximately 30 jobs for the administration of the direct federal programs.

This strategy was also applied in Newfoundland. A special fisheries program was introduced for coastal Labrador with the new subsidiary

agreement signed with Newfoundland on community development for coastal Labrador. The \$13.5 million fisheries program, to be administered jointly by DREE and Fisheries and Oceans, was designed to increase the share of benefits flowing to Labrador from the northern fish stocks which are predicted to increase rapidly over the next few years.

Table 3:2

## Subsidiary Agreements Expired in 1981

	Signed	Terminated
<b>Newfoundland</b>		
Highways 1976-81	22/06/76	31/03/81
Inshore Fisheries Development	22/06/76	31/03/81
Stephenville Mill Conversion and Reactivation	11/06/79	31/03/81
<b>New Brunswick</b>		
Kent Region Pilot Project	17/02/75	31/03/81
Highways 1977-81	11/02/77	31/03/81
<b>British Columbia</b>		
Evaluate Northeast Coal and Related Developments 1977-81	10/05/77	31/03/81

Amended from Annex 1, DREE Development Agreements, 1981, p. 215.

In Manitoba, the Conservative government under Sterling Lyon pushed hard for a renewal of the Manitoba Northlands subsidiary agreement which was due to expire March 31, 1982. The federal government refused to renew it, saying money had been wasted (Winnipeg Free Press, June 30, 1981, p. 8) and that Ottawa had not received enough credit for its contributions. As Pierre de Bané stated in a telex to Manitoba Finance Minister Brian Ransom, "The major concern with the initiative as developed is that it does not accommodate current federal concerns about federal presence and identity in program delivery" (Globe and Mail, August 10, 1981, p. 1). Ottawa did offer a one year extension which would allow time to study "the kind of mechanism that should be used to continue development of the northlands" (Winnipeg Free Press, June 30, 1981, p. 8). In the end, a one year agreement was signed with the new NDP government in Manitoba on December 18. It allocated an additional \$7.5 million to the Northlands

Agreement where the Conservatives had pressed for \$26 million. Premier Howard Pawley stated that the agreement reflected his government's policy in favour of constructive federal-provincial relations. He felt it was better to settle for less money than nothing and Ottawa was welcome to all the credit it wanted for its contributions (*Globe and Mail*, December 31, p. 10).

## THE PROVINCES

Provincial fiscal and economic development policies in 1981 reflected the difficulties of fiscal forecasting in a time of economic uncertainty. Unsettled oil prices and fluctuating interest rates added to the problems of declining economic growth. The federal government was blamed for adding to the difficulty by contemplating cutbacks in transfer payments, reinforced by federal cuts on other fronts. The federal government's decision to end the Community Services Contribution Program (CSCP) which channelled funds through the provinces to the municipalities for various types of capital works projects, the rumoured cuts in the budget of the Department of Regional Economic Expansion, and the rising costs of RCMP services to the provinces were singled out as evidence of Ottawa's plans to shift the burden of funding to the provinces in many areas, regardless of their fiscal position.

Tax changes to stimulate the economy or raise revenue were typical. Corporate tax rates rose in British Columbia and Alberta and decreased in Québec, although the latter province increased employer contributions to health care. Québec established a new policy whereby the financially stable provincial Crown corporations are required to pay a dividend of their profits to the provincial treasury. British Columbia and Saskatchewan lowered small business tax rates, while this sector received a tax credit in Québec. The trend toward ad valorem taxes, based on a percentage of the selling price, for tobacco, gasoline and other fuels continued.

There are difficulties in comparing provincial financial situations across Canada on the basis of the budgets. For instance, some provinces include different variables when calculating expenditures and revenues, the Alberta and Saskatchewan Heritage Funds are based on very different principles, and the provinces have different regulations affecting Crown corporations. (For one interprovincial comparison of current and capital accounts, revenue sources, expenditures and financial requirements see *Fiscal Position of the Provinces: The 1981 Budgets* by Marie Burrows, published by the Conference Board in Canada).

Resource development, ongoing or anticipated, proved to be the cornerstone of economic development in the provinces, with emphasis on the prospects for agriculture, forestry, oil, natural gas, electricity,

potash, coal and the fishing industry. Many provinces have pinned their hopes to the development of high technology industries as they seek to diversify their economic bases and take advantage of the opportunities offered by this sector.

### Alberta

In early 1981, when Alberta was locked in a battle with Ottawa over energy revenues and the oil and gas industry was faltering, Treasurer Lou Hyndman saw momentum slowing down, saying "The edge was off the boom." But with the September energy agreement, he was confident that the Alberta economy would proceed at "a good fast clip" and equal the real growth rates (average 4.5 per cent) of the 1970s. Cabinet ministers admitted that the temporary downturn in the economy due to reduction in oil and gas activity, was beneficial because it allowed the government to focus on other sectors, such as forestry and agriculture (Globe and Mail, September 21, 1981, p. B19). By year end, however, failure of the energy sector to rebound was becoming a major concern.

The April 14, 1981 budget was seen as a "doom and gloom" document, predicting declining economic growth for 1981-82 and planning a budgetary deficit. The tone of the budget was called "largely political" by observers who felt its overall gloomy economic picture was a way of drawing attention to the detrimental effect of federal energy policies and high interest rates on the Alberta economy (Financial Post, April 25, 1981, p. 7).

### Fiscal and Budgetary Policy

Following a record high level of activity in 1980, Treasurer Hyndman predicted that oil and gas drilling would decline in 1981 by 25 per cent from the level estimated prior to the federal government's energy proposals. Strength in other sectors of the economy was expected to somewhat offset this decline and the Alberta government concluded there was no need for stimulative fiscal policies. It was felt that the economy would expand sufficiently to increase employment by four per cent and gross provincial product by three per cent.

Total budgetary expenditures for 1981-82 were expected to reach \$6.7 billion, up 17.8 per cent from the previous year. Capital expenditures would rise by 48.2 per cent to \$1.6 billion. Revenue was forecast at approximately \$6.4 billion, leaving a planned budgetary deficit of \$336 million after transfers were made to the Heritage Fund. The deficit would be covered by a shrinking accumulated surplus, causing surplus revenues to decline by 40 per cent. In 1981, the Heritage Fund would grow by an estimated \$2.3 billion to almost \$10.9 billion. One half of the money channelled into the Fund in 1981 was allocated for housing programs, and another quarter to help meet the capital needs of municipal governments.



Seventy-five per cent of expenditures forecast for 1981-82 went to finance ongoing programs in health care, hospital, education and social services. To handle the influx of new residents into the province and the increased demand for government services, child welfare programs, day care, and family and community support services were strengthened. Benefits for senior citizens were raised from \$75 to \$85 a month.

In 1981 Alberta had the lowest overall provincial income tax rates in Canada and the budget left personal or corporate income tax rates untouched. The strength of the Alberta economy was expected to generate an increase of 17 per cent in net personal income tax revenue in 1981-82, while net corporate income tax revenue was expected to decline slightly. Health premiums were increased by 9.8 per cent to \$9.50 a month for single persons and \$19 a month for families.

The province undertook a review of its corporate tax system with a view to introducing tax incentives in 1982 as a way of expanding "home-grown industry". Hyndman pointed out that it would not be a way of luring manufacturing activity away from central Canada but rather, a means of encouraging small and medium-sized Alberta companies to process and upgrade natural resources in the province. Possible changes could include lowering the corporate tax rate, introducing write-offs for R&D expenditures and implementing corporate incentives to attract skilled workers (Globe and Mail, April 24, 1981, p. B1).

#### Economic Development

The Alberta government's economic development priority has been to build on the province's strengths in natural resources such as agriculture, forestry, coal, oil and gas and encourage the development of a more diversified economy. The petrochemical industry was a major example of this diversification strategy.

In the budget, the agricultural outlook was described as "encouraging;" 1980 farm cash receipts from crops rose dramatically and net farm income was also expected to increase in 1981. A \$7.7 million Food Processing Development Centre was underway near Leduc to assist the industry to upgrade processing by developing new products, improving and expanding product lines, developing better packaging techniques and applying new technology.

Major coal developments were planned for 1981, including the Gregg River mine and a new thermal coal project near Hinton. Forestry was also an important part of economic diversification, and the government was promoting commercial utilization of Alberta's sizeable poplar resource.

Gains were also being made in manufacturing and processing. Six major petrochemical projects, costing over one billion dollars were underway and

a dozen others involving over five billion dollars of new investment over the next five years were in the planning stage.

The budget predicted that construction would be an area of major strength in 1981. The eastern leg of the Alaska pipeline "pre-build" section, scheduled to begin in 1981 was expected to have a spin-off effect for the construction industry in the province. Government stimulus to construction would come from the substantial capital expenditures necessary to meet the infrastructural demands created by the province's economic boom and population growth.

Several references were made in the budget to national economic policies which have "shaken our steady pattern of economic growth." Ottawa's energy policies were criticized for fixing prices for oil and gas at less than one-half of their fair value and for devising a tax system which infringed on the resource ownership rights of Albertans. In response to these policies, the provincial government decided to reduce further conventional crude oil production.

**Foster Research Report on Economic Development** – In early 1979, the government of Alberta commissioned Foster Research to prepare a study of the Alberta economy's prospects from 1980 to 1995 as a background to the government's appraisal of its economic strategy. This study was made public in 1981 as **A Re-Assessment of the Elements of an Economic Strategy for the Province of Alberta, Volume I: Conclusions and Recommendations**, September, 1980.

The study noted that Alberta could continue to rely on its natural resources to drive its economy and a healthy, even robust economy would be sustained. However, it stressed the dangers inherent in this strategy of dependence; real energy prices must increase and unconventional oil projects must not be delayed. Hence, the strategy of diversification, government policy since 1971, was still valid, despite the political dangers.

Such a program requires a significant degree of political courage because, to be successful, it involves major re-deployment of assets and efforts in a time of prosperity, to prepare for a perceived problem well into the future. (p. 2)

The study pointed out that Alberta's dependence on the energy industries sector (oil and gas and coal) is increasing due to better prices and the development of, and spinoffs from oil sands projects. This sector was predicted to account for 33-36 per cent in nominal dollars of the gross provincial product in the period 1980-1995, despite the expected 50 per cent decline in conventional crude productive capacity. Furthermore, over

50 per cent of capital investment in that time was expected to be pumped into the energy sector.

Foster Research recommended policy stances the government could adopt to manage and develop natural resources in the province, including agriculture, coal, forestry and tourism. In reference to the oil and gas sector, it was recommended that tertiary production must be implemented but that it required a positive investment climate and favourable prices. Future oil sands development was termed crucial to the future of the economy.

Any major delay in oil sands development would undoubtedly slow the rate of overall long-term economic growth and specific industries dependent upon such activity would either not develop, or would experience limited growth. (p. 19)

However, certain constraints stood in the way of oil sands development. A settled tax and royalty arrangement between the federal and provincial governments was lacking, a shortage of skilled labour existed as well as technological barriers and the need for massive capital commitments. On the first point, it was recommended that a standard fiscal regime be established for all oil sands projects to avoid the delays and uncertainty of the federal and provincial governments and private sponsors negotiating on a plant by plant basis. By early 1982, high costs and an uncertain rate of return left the future of the Alsands project very much in doubt.

The report favoured the continuation of a diversification strategy for Alberta and pointed out the advantages for the Canadian economy and nation as a whole of the development of Albertan industries, especially in areas where Canada's competitive advantage is weak. High technology industries were identified as the heart of a diversification strategy, and pharmaceuticals, the manufacturing of telecommunications equipment and microelectronics were pinpointed as specific industries with potential for growth.

Part of the attractiveness of the high technology sector is its export potential and the Alberta government began to stress access to foreign markets. A minister of state responsible for economic development and international trade was appointed. Economic Development Minister Hugh Planche put Alberta's case before the Senate Foreign Affairs Committee in Ottawa, saying that petrochemicals, construction, agriculture and telecommunications equipment in Alberta would benefit from freer Canada-U.S. trade (Globe and Mail, March 27, 1981, p. B4). Premier Lougheed travelled to the United States in October in an attempt to keep Americans mindful of Alberta's petrochemicals, natural gas and other commodities and assure them that Alberta continued to be "an appropriate

place for foreign risk investment." The provincial government found the Canada-U.S. tension evident in 1981 over nationalistic trade and investment policies detrimental to its interests (Globe and Mail, October 24, 1981, p. 12).

**Alberta Heritage Savings Trust Fund** – In 1981, the Heritage Fund was the subject of a political battle in the Alberta legislature. The six member opposition (later reduced to five when Social Credit leader Robert Clark resigned) worked together to hold up the approval of the Fund's appropriations for over a month. Their basic concerns were the secrecy surrounding management of the Fund (decisions are made by the cabinet) and the "timid investment policy" followed by the government. The opposition mounted a campaign to have the government release a number of confidential reports made by the Auditor-General which apparently pointed out investment losses. They also criticized the predicted 11.6 per cent return on investments as paltry compared to Canada Savings Bonds or bank certificates. The filibuster was also the focus for a re-statement of other concerns about the Fund such as the lack of legislative control and the sense that Alberta itself has not felt the benefits of the Fund.

In 1981, Alberta modified its investment policy for the Canada Investment section of the Fund which provides loans to other governments. Treasurer Lou Hyndman announced that less money would be set aside for this purpose so that more capital projects, such as housing, could be supported within the province (Globe and Mail, July 23, 1981, p. 4).

Loans may be made to either the federal or provincial governments, or any person if repayment of the loan and payment of the interest is guaranteed by one of these governments. The attractiveness of the Fund to the poorer, less endowed provinces was due to the preferential lending rate. Loans were extended at a rate which a province with a triple A credit rating could obtain on the public bond market. In 1981, seven loans were made to provincial governments or provincial crown corporations.

Through its Capital Projects Division, Alberta also made a couple of controversial investments in the grain transportation system. The Alberta government bought 1,000 new rail hopper cars from Ontario and Nova Scotia manufacturers and put them on the rails emblazoned with the Heritage Fund logo in blue and gold. Furthermore, through the Heritage Fund and general revenues, Alberta offered to finance 75 per cent of the \$260 million Prince Rupert grain terminal. Of that amount, \$106.25 million would come from the Heritage Fund. The Financial Post asserted that these investments, in addition to the three inland grain terminals owned by the province, meant that the Alberta government owned "sufficient physical assets ... that it could successfully run its own closed grain transportation system" (March 14, 1981, p. 6).

Table 3:4

Loans Made to Provincial Governments and Provincial Crown Corporations in 1981

Date	Government or Agency	Amount (millions)	Coupon Rate (%)
January 15	P.E.I.	\$ 20	13.175
January 30	Newfoundland and Labrador Hydro	\$ 75	13.375
January 30	Newfoundland Municipal Financing Corporation	\$ 35	13.375
March 31	Manitoba	\$110	13.75
April 23	P.E.I.	\$ 20	13.875
September 30	New Brunswick	\$ 75	17.75
(approved in December)	Hydro-Québec	\$ 75	15.00

(Information obtained from Alberta Treasury)

Table 3:5

Accumulated Loans to Provincial Governments and Provincial Crown Corporations, 1976-1981

Province or Agency	Loan	Provincial Total
Manitoba	\$183,016,000	\$183,016,000
New Brunswick	243,707,000	
New Brunswick Power Commission	132,807,000	376,514,000
Newfoundland	98,813,000	
Newfoundland and Labrador Hydro	147,650,000	
Newfoundland Municipal Financing Corporation	59,184,000	305,647,000
Nova Scotia	206,378,000	
Nova Scotia Municipal Financing Corporation	48,357,000	
Nova Scotia Power Corporation	98,530,000	353,265,000

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P.E.I.	67,534,000	67,534,000
Hydro-Québec	375,290,000	375,290,000

(Information obtained from Alberta Treasury)

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### British Columbia

The overall long term economic outlook for British Columbia was "excellent," according to the March 9, 1981 budget of Finance Minister Hugh Curtis. Although the immediate financial situation of the province had been seriously affected by poor markets for export commodities, it was expected that the decline in forestry and natural gas revenues would be offset by increased revenue from other sources, and a generally strong economic performance was expected for 1981-82.

#### Fiscal and Budgetary Policy

Real growth in Gross Provincial Product in 1981 was expected to be approximately 3.5 per cent. Employment was forecast to increase by three per cent and unemployment by less than one per cent.

The British Columbia government ruled out the possibility of running an operating deficit in the 1981-82 fiscal year and chose to increase taxes by \$625 million to meet overall expenditures of \$6.64 billion. Unlike previous years, the government could not fall back on the Revenue Surplus Fund to cover the gap between revenues and expenditures, because lower than forecast 1980 revenues left the fund with a low contingency balance for 1981-82. Cash contributions from the federal government were expected to reach \$1.2 billion in 1981-82, accounting for 18 per cent of provincial revenues.

The Ministries of Health, Education and Human Resources together accounted for an estimated 60 per cent of operating expenditures. A dental care program designed to help the young and those least able to afford dental care entered its first full year of operation in 1981 and was expected to cost \$76 million. Efforts were underway to reduce the costs of institutional care and less costly alternatives to active hospital care were sought.

Services to children and adolescents were emphasized in 1981 as funds were made available to help more than 10,000 parents in British Columbia meet the costs of day care services. Provision was made for the construction of five intensive child care resource units for emotionally disturbed adolescents who were not able to receive care within the existing institutional framework, and additional staff was hired for

social service positions to cope with the effects of rapid social and economic change.

Measures introduced to increase government revenues included an increase in gasoline tax from 3.74 cents a litre to 5.32 cents a litre; the gasoline tax was shifted to an ad valorem rate which will be adjusted every three months to stay at 20 per cent of the pre-tax pump price. Health care premiums rose in correspondence with costs to cover 35 per cent of medical care expenditures; the other 65 per cent is financed by general taxation. Taxes on cigarettes and hotel rooms increased and liquor prices rose.

Provincial energy strategy in 1981 continued to emphasize energy conservation and reduced consumption of imported oil. New cars were taxed at differential rates to provide greater incentive to purchase fuel-efficient cars, and the tax was removed from kits for the conversion of motor vehicles from gasoline to diesel or compressed natural gas, and from weather stripping, caulking and other materials designed to prevent loss of heat.

The corporate income tax rate was increased by one percentage point to 16 per cent, while the income tax rate on small business was reduced from 10 per cent to eight per cent. A 10 per cent surtax was imposed on all provincial personal income tax otherwise payable in excess of \$3,500, a measure designed to affect top income earners. To lessen the impact of the tax increases on people in lower income brackets, the government introduced a Personal Income Tax Credit.

According to the background papers to the budget, British Columbia's revenue instability reflects its dependence on natural resource revenues. Plans to create a special fund to buffer the province's operating budget from resource revenue fluctuations were included in the budget. Surpluses have been channelled into the Revenue Surplus Account, a contingency fund drawn upon when revenues were lower than expenditures, as they were in the 1980-81 fiscal year. The proposed Revenue Stabilization Fund, which the government hopes to make a part of its 1982 budget, would consist of all resource revenues. In any given year, the government would transfer from the fund the money necessary for the year's operating budget. Unlike the Alberta Heritage Fund, there will be no long term accumulation of resource revenues.

Concern was expressed over the "turbulent" and "uncertain" state of federal-provincial relations and over the potential impact the outcome of the fiscal negotiations could have on British Columbia. The budget speech was critical of the anticipated cutbacks in federal funding for health care, post-secondary education and policing, and of the "distressingly

clear" tendency of the federal government to put the burden of national fiscal restraint on the provinces, especially on the western provinces. If Ottawa chose to impose new fiscal arrangements without adequate consultation with the provinces, the budget speech predicted the consequences would be financially disastrous and would further erode the Canadian tradition of cooperative federalism.

The budget summarized the province's position on federal-provincial fiscal arrangements. The long-standing British Columbia position that existing cash transfers to the provinces should be replaced by a transfer of tax room, with special consideration for less fortunate provinces was reiterated. Another recommendation called for modification of the equalization system to avoid situations where a province of Ontario's wealth qualifies for equalization, while ensuring a secure source of fiscal resources for the less prosperous provinces.

Proposals for restructuring the tax collection agreements between Ottawa and the provinces were also outlined. The British Columbia government was dissatisfied with the current agreement because the federal government has refused to administer certain British Columbia tax initiatives on the grounds that they "create barriers to the free movement of capital among the regions of Canada" and because of arrangements whereby the federal government initiated tax expenditures to give benefits to certain groups and then forced the provinces to provide a major share of the funding. Unless changes were forthcoming, the British Columbia government gave notice that it would withdraw from the tax collection agreements and administer its own tax system, which could be used as an instrument of provincial social and economic policy.

#### Economic Development

The British Columbia government's development priority has been to encourage and promote growth in the private sector. Government involvement in the northeast coal project was designed to create the necessary infrastructure for private sector development of the resource. Approximately \$48.2 million of provincial revenues were appropriated for the project in 1981-82. A further \$70 million would cover interest costs and partially relieve the debt of the British Columbia Railway. The total provincial bill was predicted to be \$483 million, most of which would go to B.C. Railway's construction of a spur line. This activity was the result of a \$2.5 billion coal deal forged between Teck Corporation, Denison Mines Ltd., and a consortium of 12 Japanese steelmills signed in January 1981. The provincial revenues will come from a 15 per cent minings profit tax, corporate taxes and royalties.

The energy taxes in the October 1980 federal budget were criticized in the B.C. budget for lowering incentives to explore for and develop new



oil and gas fields in British Columbia. Although several factors accounted for the sharp decline in natural gas exports, the federal government's energy pricing policy was blamed for making British Columbia natural gas uncompetitive with alternative fuels.

Major construction began in 1981 on British Columbia Place, a redevelopment plan for the downtown core of Vancouver. The project was expected to cost \$250 million over five years, and once completed could become the focal point for cultural and sports events as well as the setting for the international transportation exposition, Transpo '86.

Another major construction project for Vancouver fell by the wayside in 1981. Pier B-C, a \$200 million trade and convention centre was postponed indefinitely in December by the provincial government, apparently when the federal National Harbours Board failed to come forth with an additional \$14.3 million for the cruise ship docking terminal. The whole project had been afflicted with escalating costs. When he made the announcement of delay, Premier Bennett remarked "If the province of British Columbia had had control of port development in 1976 when this project was first initiated, then today it would be up ... creating a lot of economic activity when we need it" (Vancouver Sun, December 9, 1981, p. 1).

## Manitoba

The cautious tone of the April 14, 1981 budget of Manitoba Finance Minister Brian Ransom reflected the Conservative government's determination to maintain existing services, yet limit expenditures on new programs. Measures to stimulate economic development through government initiatives were few; the budget reaffirmed the Manitoba government's confidence in the competitive market system as the fundamental mechanism for economic decision-making and in the private sector as the primary engine of economic growth. With the election of Howard Pawley's NDP government in November, it was revealed that Manitoba's deficit was larger than previously acknowledged and Pawley made it his first priority "to turn the economy around."

## Fiscal and Budgetary Policy

Total expenditures increased by 15 per cent over the previous year to \$2.38 billion and revenues rose by 10 per cent to \$2.16 billion. Finance Minister Brian Ransom viewed the \$219.8 million deficit this year as "the most appropriate budgetary response" feeling it would enable the government to respond to the need for improved services without imposing a significant additional tax burden on Manitobans. The government expected economic expansion and the resulting increase in revenue to bring it closer to its goal of a balanced budget.

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Taxes on cigarettes and tobacco products were increased, yielding an estimated five million dollars. Liquor Commission mark-ups were also increased to raise an additional four million dollars of revenue.

A new taxation proposal changed the calculation of the cost-of-living tax credits to ensure married couples with two incomes do not receive lower tax credits than couples with similar incomes where only one spouse works. The general maximum property tax credit was raised from \$475 to \$525 and the maximum property tax credit for senior citizens was increased from \$525 to \$625. Both of these measures were intended to benefit Manitobans in lower income tax brackets.

Expenditures on social programs were directed toward an expansion of existing services; few new programs were outlined. CRISP, the Child Related Income Support Program announced in the 1980 budget took on effect January 1, 1981. Designed to meet the needs of low income families with children and the needs of single parents, CRISP provides a maximum \$30 a month payment per child for families which are eligible.

A \$2.2 million two-year Hog Producer's Insurance Plan was announced. A \$200,000 new program of incentives for energy efficient housing was designed to support and stimulate the application of energy-saving technology.

In 1981, approximately 40 per cent of Manitoba's revenues came through federal government transfer payments, and the Manitoba government expressed its concern that even a minimal cutback in payments in the 1982-83 fiscal year would cost the province \$60 to \$75 million. Although the government expected these cutbacks to come in Established Programs Financing, the budget concluded that possible cuts in all major transfers could not be discounted, noting that cuts had already been made in the Community Services Contribution Program and in federal funding for RCMP services. The federal government's decision to delay any federal-provincial review of fiscal arrangements until the Parliamentary Task Force has reported was also criticized in the budget. Manitoba feared this delay would not leave adequate time for federal-provincial consultation.

## Economic Development

The "linch pin" of the Lyon government's strategy for economic growth was the development of northern hydro resources, based on assured markets.

In 1981, negotiations were underway among the Conservative government, the private sector and other provincial governments on three mega-projects in which Manitoba's substantial hydro-electrical potential figured as "the sweetener." In order to develop the potash industry, the government was trying to complete a deal with International Minerals and Chemicals Corp.

(Canada) in which the government proposed to take a 25 per cent interest, with an option to increase it to 40 per cent. Negotiations were also pursued with the Aluminum Co. of Canada (Alcan) on a proposed refinery at Rockwood for which the province offered Alcan a 50 per cent equity position in a hydro generating station. Finally, Manitoba was trying to convince Saskatchewan and Alberta of the worth of a western power grid, through which hydro electricity produced in Manitoba would be sold to the other two provinces. Grid sales plus power needed for the Alcan smelter were felt to be sufficient to enable Manitoba Hydro to resume construction of the Limestone dam on the Nelson River.

These deals were in different stages of progress prior to the Manitoba election in November. Letters of intent had been signed on the Alcan project and a feasibility study was underway on the western power grid. But with the defeat of Sterling Lyon's Conservatives, the future of the mega-projects was in some doubt. Howard Pawley and the NDP did not reject the value of these developments but chose rather to disagree with the deals offered by the Conservatives. Pawley agreed that hydro electricity was Manitoba's "ace" in economic development and announced that construction would go ahead next year on the Limestone dam (Vancouver Sun, November 26, 1981, p. A9).

#### New Brunswick

According to the April 7, 1981 budget of Finance Minister Fernand Dubé, New Brunswick's challenge in 1981-82 was to respond to the demands for services without compromising the province's financial position. Given the economic outlook for 1981, the government decided to develop an expansive fiscal policy to bolster New Brunswick's economy through a year of slow growth. A significant slowdown in the forestry sector seemed to be offset by several industrial investment projects which pointed to diversification.

#### Fiscal and Budgetary Policy

Gross Provincial Product for 1981-82 was expected to increase only slightly by 0.7 per cent and unemployment was predicted to rise to 11.5 per cent. Ordinary account spending was estimated at \$1.75 billion and revenues were to reach \$1.74 billion, leaving a \$10 million deficit. The government opted to borrow the amount necessary to maintain adequate services thereby avoiding tax increases.

Approximately 36.6 per cent of New Brunswick's revenue comes from federal conditional and unconditional transfers. Concern was expressed in the budget over the restraint context of upcoming federal-provincial fiscal arrangements, for federal funds were crucial if New Brunswick were to succeed in providing services comparable to other provinces.

The budget announced a pilot project to test a new approach to health care. The "Extra Mural Hospital Program" provided medical, nursing and rehabilitation services in a person's home, and was designed to reduce the cost of institutional care. If the program proves to be successful, it will become part of the province's health care system.

Other initiatives included an Optometrical Services Program which would provide one free eye examination a year to those under 18 and an Energy Conservation Grant Program for the construction of new single detached housing units.

Several taxation changes were announced in the budget. Wood stoves, wood furnaces, mobile homes and prepared meals costing less than three dollars became tax exempt. The standard corporate income tax rate increased from 12 per cent to 14 per cent, but the rate for a small corporation eligible for the federal small business rate remained at nine per cent. Taxes on tobacco increased, and a quarterly adjusted ad valorem tax was added to gasoline, changing the tax to a percentage of the selling price from a fixed tax per litre.

#### Economic Development

New Brunswick's economic strategy, as discussed in the budget, continued to emphasize sectoral development programs and totalled \$401.9 million, with an additional \$174.9 million for capital loans and advances.

Funding to the Fisheries Development Board for vessel construction and aquaculture increased and money was made available for further training of both fishermen and fish plant employees; measures were initiated to upgrade vessels in order to maintain fish quality while bringing the catch to shore.

New Brunswick enjoys substantial mineral deposits and steps were taken in 1981 to develop these natural resources and offset the slump in forestry. With the financial assistance of the federal government, a \$360 million zinc smelter at Belledune, to be operated by Brunswick Mining and Smelting, would begin construction in 1982 and production by 1984. The Potash Company of America and the provincial government announced the opening of a \$370 million potash mine at Sussex and other companies are exploring for potash in the area. An \$80 million tungsten-molybdenum mine was underway at Mount Pleasant.

Other developments included an electronics components manufacturing plant to be built by Mitel at Buctouche with assistance from DREE. Twenty-one million dollars is being put into expansion of the Saint John Shipyard and DryDock Co. Ltd. which captured a drilling rig construction and frigate design contract. Finally, the natural gas pipeline from

Montreal through New Brunswick to Sydney and Halifax was expected to generate \$750 million in investment.

#### Newfoundland

Newfoundland's economic performance in 1981 was somewhat better than the previous year but Finance Minister John Collins pointed out that 1980 was a year of significant decline in economic growth because of labour strikes and a downturn in the iron ore industry (*Globe and Mail*, January 23, 1981, p. B1). Newfoundland's Gross Provincial Product was expected to grow by 3 per cent in 1981 but Collins revised his estimates in November, predicting 2 per cent growth because of the impact of high interest rates (*St. John's Evening Telegram*, November 20, 1981, p. A1). At the same time, Collins revealed that the province would incur a deficit of \$6 million rather than the \$10.4 million surplus predicted in the April budget. This was attributed to decreased retail sales tax revenue which reflected lower consumer confidence, public wage settlements and high interest rates.

The anticipated boom in economic activity expected from offshore oil had not yet materialized in Newfoundland. Collins warned that development of the offshore oil would not be "the cure-all as everyone seems to think" (*Globe and Mail*, January 23, 1981, p. B1). Indeed, the finance minister felt that the Newfoundland economy was "in desperate need of stimulus." High interest rates had dampened investment and construction while the perennial marketing and financing problems which afflicted the fishery resulted in substantial lay-offs. Federal dollars were seen as crucial to Newfoundland's development.

#### Fiscal and Budgetary Policy

In the April 14, 1981 budget, expenditures were up 11.8 per cent from 1980 and revenues only increased by 8.5 per cent, but the Newfoundland government successfully balanced the budget at \$1.52 billion.

To increase provincial revenues, several tax changes were proposed. Taxes on gasoline and diesel fuel were converted to ad valorem rates of 22 per cent and 26 per cent respectively. The tobacco tax increased by one half cent per cigarette and would be adjusted quarterly. Fees for drivers' licences rose by two dollars a year and registration fees for motor vehicles also increased. The government requested that the Newfoundland Liquor Corporation generate an additional four million dollars. Together, these measures would raise \$23 million in provincial revenue. There was no increase in either the retail sales tax, personal income taxes or corporate taxes.

Education, health and social welfare accounted for 57.8 per cent of total expenditures. Five million dollars was allocated for the

reorganization of the Newfoundland high school program, which was expected to cost \$20 million over three years, and included making Grade 12 the graduating year for all high school students. Another \$10.8 million was set aside to fund ongoing school construction needs. To ensure there are sufficient numbers of highly trained Newfoundlanders to meet the challenges of future development, funds to update and improve manpower training programs were included in the budget.

Medicare coverage was extended to include optometry services for the general population and will cover one payment for each individual per annum so that no individual requiring eye examinations will be prevented from access to such examinations for financial reasons.

#### Economic Development

The Newfoundland government's ability to manage the province's hydroelectric resources was viewed as critical in the budget. Although prospects for a hydro project on Gull Island and Muskrat Falls are uncertain, the budget announced that the Newfoundland government is cooperating with the Government of Canada in proceeding with a \$12 million capital program relating to hydro development in the province. Newfoundland continued to deal with the federal government in an effort to attain a power corridor through Québec with the revenue from the corridor being used to finance the Lower Churchill hydro projects.

There was an acceleration in the tempo of offshore oil and gas activities in 1980, largely due to discoveries at the Hibernia structure. Twelve rigs were expected to be drilling off the coast of Newfoundland and Labrador in 1981, but the budget speech predicted this number would decline to six as a result of the economic uncertainty created for the oil companies by the National Energy Program.

Forestry is also an important resource for Newfoundland, and the budget outlined steps taken by the government to establish 20 year forest management agreements which are designed to make private companies responsible for proper management of the forest resources assigned to them. Funds from DREE under the Forest Subsidiary Agreement signed early in 1981 were slated for reforestation and silviculture activities. Capital expenditures of \$50 million were allocated to upgrade and modernize the province's pulp and paper industry.

To ensure the province has the marine servicing capability to meet demands of both the fishing and the offshore oil and gas industry, the Newfoundland dockyard in St. John's and the Marystown shipyard will be strengthened. A new facility, the Synchro lift, will enable the Newfoundland dockyard to increase its ship repair capacity.

With the oil boom still in the offing and the mainstay fishery undergoing a recurrent economic crisis, the Newfoundland government pointed to the importance of federal dollars in pursuing economic development. However, it was felt that Ottawa was downgrading its commitment to alleviating regional disparities, a trend which was apparent in several ways. Finance Minister Collins noted that DREE spending in the province had dropped from \$70 million in the 1979-80 fiscal year to \$40 million in 1980-81 and he expected levels to decline further (Globe and Mail, January 23, 1981, p. B1). The province was also encountering delay in signing a general transportation agreement with Transport Canada.

### Nova Scotia

While some provinces sought to balance their dependence on natural resources with industrial diversification, the Nova Scotia government pinned its future economic health firmly to energy. Nova Scotia experienced some economic stimulus as development of natural gas off Sable Island became likely and coal production and use enjoyed revitalization.

### Fiscal and Budgetary Policy

In the April 10, 1981 budget of Finance Minister Joel Matheson, government revenues were expected to reach \$1.71 billion, \$423 million less than estimated expenditures. Expenditures of \$2.1 billion included \$245 million for capital expenditures. Claiming a deficit was the only "responsible" alternative at the time, the government decided there would be no personal, corporate, health services or gasoline tax changes in the 1981-82 fiscal year.

Approximately 40 per cent of total provincial revenues in Nova Scotia came from federal funding, 13.4 per cent through EPF and 25.5 per cent through equalization payments. Ottawa was criticized for attempting to shift its large annual deficits on to the backs of the provinces through cutbacks in transfers, regardless of the inability of some provinces to cope with this additional burden. This "abrogation of responsibility" was viewed as the worst of "any government in the history of Canada." Cutbacks in community services contributions and perceived proposed cuts for health, welfare and education were seen as confirmation that the federal government was abandoning the principle behind cost-sharing arrangements and block-funding. Matheson pointed out that equalization payments had declined in real terms and were contributing substantially less to budgetary revenues.

A new program was initiated to provide monthly rent subsidies to senior citizens who receive the Guaranteed Annual Income. The property tax rebate from 1980 for this group will be increased by 80 per cent and improved

special care for the aged will be available through the provision of an additional 460 hospital beds.

The health services tax rebate for new homes was increased from \$250 to \$750. Exemptions under the health services tax were expanded to cover purchases of a wide range of energy conserving items, including storm windows and doors, heat pumps and time-controlled thermostats.

A further expenditure of \$55 million was announced to subsidize customers of the Nova Scotia Power Corporation by continuing the government policy of freezing electricity rates.

#### Economic Development

The Nova Scotia government's optimism about future economic expansion lies in the development of the province's indigenous energy resources. The use of coal resources for electric power generation was expected to increase, as the shift from oil-fired to coal-produced electricity took place. The Lingan II electrical plant in Cape Breton was producing power, Lingan III was under construction and Lingan IV was slated to come on-stream for 1984.

Plans were announced in the budget for the establishment of the Heritage Fund of Nova Scotia, which would enable the province to participate in an equity position in all major energy and resource activities in the province.

Expected future industrial developments included the liquified natural gas (LNG) facility for the Strait of Canso which was competing with Gros Cacouna in Quebec. Plans were in the making for the Annapolis Pilot Tidal Power Project, and for the construction of the \$10 billion Fundy Tidal Facility, to be owned by the provincial government.

Modernization of facilities at Sydney Steel (SYSCO) began in 1981 with the successful negotiation of a federal-provincial cost-sharing agreement. The province agreed to cover the interest costs of SYSCO's debenture debt and contributed \$48 million in capital for debt retirement. These measures, combined with the conversion of equity of some \$52 million in provincial loans, resulted in SYSCO's being relieved of \$100 million in debt in 1981-82.

Aid to private enterprise consisted of \$15 million to go toward establishing a Small Business Development Corporation and to provide financing at preferred interest rates to small business to a maximum of \$25,000 per project. Another \$10.4 million was designated to aid specific industrial projects showing potential as a basis for new or expanding industries.



## Ontario

For the Ontario economy, 1981 was the year of coming to terms with "de-industrialization." Liberal leader Stuart Smith received much criticism in the March election for pointing out that Ontario lagged almost last in economic growth in the 1970s compared to the other provinces. With an energy settlement with Alberta, higher energy prices were determined for the next five years and Ontario had to face up to its energy dependence. Although the province enjoyed a diversified manufacturing base, substantial labour supply, capital resources and infrastructure, its automotive and machinery manufacturing sectors were hit hard by interest rates, resulting in plant shutdowns and layoffs. Other sectors were affected by international competition and labour strikes. But these economic disruptions pointed to the long-term structural fault in the Ontario economy - its dependence on foreign controlled branch plants which produced too many products for too few customers on a small scale.

Both the federal and Ontario governments tried to address this problem, the former with its shift away from support for declining sectors toward capital and labour adjustment, recognizing that Ontario has much to gain from mega-project developments in the west and east. Ontario decided to pursue an economic development strategy based on high technology industry and the exploitation of the province's substantial electrical potential.

### Fiscal and Budgetary Policy

The May 19, 1981 budget of Treasurer Frank Miller acknowledged Ontario's poor economic performance during the past few years but remained optimistic about the province's long-term economic outlook. To keep pace with rising expenditures, personal income taxes were increased and ad valorem rates introduced for certain products. Economic development incentives centred around the Board of Industrial Leadership and Development (BILD), first announced in November of 1980.

Miller forecast a 2.4 per cent real increase in Gross Provincial Product for Ontario in 1981. The unemployment rate was expected to drop from 6.9 per cent to 6.6 per cent and 106,000 new jobs were to be created. Expenditures were expected to reach \$18.4 billion leaving a deficit of approximately one billion dollars, despite the Conservatives' 1977 pledge to balance the budget by 1983. Frank Miller reaffirmed the commitment to balancing the budget, but stated that progress toward this goal must recognize the needs of the economy and of Ontario residents.

Health care expenditures were allocated 28.7 per cent of total budgetary expenditures. Chronic care and extended care beds would be expanded, a telemedicine service and a northern air ambulance service introduced,

provisions for computerized axial tomography (CAT) scanners increased and prenatal services improved. Funding for the disabled rose from \$499 million to \$593 million, with \$28 million designated to aid the developmentally handicapped.

Increased support also went toward subsidized day care nurseries, the renovation and expansion of homes for the aged and toward better training and employment opportunities for youth. Over three million dollars was allotted to the Ontario Provincial Police and municipal police forces to purchase bullet-proof vests. Assistance was provided for the construction of 15,000 new rental units to be built under the Ontario Rental Construction program.

Federal government contributions to Ontario for the 1981-82 fiscal year totalled \$3.3 billion, 18.9 per cent of provincial revenues. Taxation changes to raise an additional \$613 million were proposed in the budget. The rate of personal income tax in Ontario increased from 44 per cent of the basic federal tax to 48 per cent, generating \$235 million. Tax relief for an additional 60,000 Ontario taxpayers with taxable incomes of less than \$2,058 was also increased. Corporate income tax rates and the capital tax rate remained unchanged in order to maintain an attractive investment climate.

Ontario Hospital Insurance premiums were raised to a monthly rate of \$23 for a single person and \$46 for a family, an increase of 15 per cent. Individuals earning a gross annual income of less than \$8,200 and families of four with an income of up to \$14,000 were eligible for assistance. Pensioners and recipients of social assistance continued to pay no premiums.

Several tax rates were converted from the current volume tax basis to an ad valorem basis. The new ad valorem rate was set to incorporate an average increase of one cent per litre on gasoline and 1.1 cents per litre on diesel fuel, adding \$135 million to provincial coffers in 1981-82. Ad valorem taxes were applied to other products, including cigarettes, cut tobacco, railway and aviation fuel, and domestic beer.

Equalization came under scrutiny in the budget. The government called for "imaginative new approaches to inter-provincial sharing," and concluded that if these approaches are not devised, Ontario expected to receive the yearly \$1.3 billion equalization payment to which it had been entitled under existing arrangements, but so far has been prepared to forego.

The Established Program Financing (EPF) regime was commended as being "fundamentally sound" and no alteration was felt necessary. According to the provincial government, the provinces had not made unwarranted gains

under EPF, nor was there "any ground for believing Ottawa has paid more than its fair share." It was argued that EPF is, by its very nature, a long-term arrangement and it was therefore inappropriate to attach a great deal of significance to the movement of federal and provincial shares over the short run. Ottawa was also charged with misinterpreting block-funding, as the federal government's division of EPF into three components was seen to deny its character as a block-funding arrangement.

### Economic Development

On January 27, Premier William Davis held a press conference to announce Ontario's new economic development program, thus fuelling talk of an imminent election. In "Building Ontario in the 1980s," six major development opportunities were identified.

- **Electrical generation.**  
Nuclear power would constitute a large part of future electrical production as the government felt "it is generally accepted by most of our citizens as a safe and reliable source of electrical power." Use of this electricity in home heating and public transit would be encouraged by government measures.
- **Transportation.**  
The government committed itself to increasing investment in the Urban Transportation Development Corporation (UTDC).
- **Natural resources.**  
Farmland expansion and improvement, upgrading food processing and marketing and increased Canadian investment in resource machinery and equipment industries would be pursued.
- **High technology.**  
The government would fund more research and development and market expansion for high technology products. A new organization, the IDEA Corporation, would co ordinate the government's activity in promoting new technologies, skilled manpower supply and innovation. Financing for a "world-scale" auto parts technology centre was included.
- **Human resources**  
The government would increase support for training programs in the private sector and educational institutions.
- **Development of the infrastructure, commercial, recreational and tourism potential of local communities.**

Government initiatives under the program would be managed by a cabinet committee, the Board of Industrial Leadership and Development (BILD). It was expected that \$1.5 billion would be required over the next five years, 50 per cent of which was expected to come from other governments and the private sector.

Towards the end of the year, the BILD program ran into media and opposition criticism. It was contended that the program existed only on paper or that efforts to pursue economic development remained uncoordinated. Treasurer Frank Miller replied, announcing that the provincial government was committed to spending \$614 million over the next five years, the federal government \$31.9 million, private industry \$210 million and municipal governments \$33.2 million (*Globe and Mail*, November 10, 1981, p. 3). Support for subsidized rural electrical rates, road improvements, food processing and storage facilities, forest improvement, mining incentives, a biotechnology company, export financing and the Toronto convention centre was announced at the same time.

The Board of Industrial Leadership and Development required \$250 million in 1981-82 to finance various development projects. Approximately \$150 million of this amount came from BILD's central pool of funds, with the remainder from a redirection of internal funds of ministries and from participation of the private sector and other levels of government. Thirty-two projects were detailed in February and March and 50 were expected to be underway by the end of 1981. BILD projects have led to the acceleration of the deadline for the completion of the Darlington nuclear generating station and to the construction of the first stage of the steam supply system at the Bruce nuclear power development. Road improvements were made in the Toronto-Niagara corridor to cope with traffic congestion and \$30 million was allocated to the Ontario Urban Transportation Development Corporation (UTDC) to create production facilities in Ontario for UTDC's higher technology transit systems.

Improvements to the Small Business Development Corporation, which provides access to risk capital and managerial expertise, were proposed. Equity capital requirements were increased, and the definition of eligible tourist activities was expanded to include recreational facilities. The Ontario government announced that it would parallel the federal government's treatment of small business development bonds to help small business deal with high interest rates.

In line with the federal government's interest in developing industries supplying a limited product line to a world market, the Ontario government received a report from an advisory committee on "global product mandating" in 1981. The study, undertaken by business executives, pointed out that tariff reductions and the concomitant increase in international competition meant that businesses located in Canada must restructure their production towards a world product mandate which required economies of

scale, more expertise and greater risk. Industry and Tourism Minister Larry Grossman agreed to set up two committees to develop ideas in the report. One committee would examine how government can encourage such specialization and the other would look at how multinational corporations can be encouraged to purchase more goods from Canadian businesses (Ontario Ministry of Intergovernmental Affairs, Background, May 4, 1981, p. 5).

In line with its intention to play a more positive role in energy policy, the Ontario government announced in October its intention to gain "a window on the industry" through its purchase of 25 per cent of Suncor Inc. The acquisition took place through the Ontario Energy Corporation (OEC) and the American parent of Suncor at a cost of \$650 million. Half the amount was taken from the government's cash reserves; the other half was to be borrowed from Suncor at an undisclosed interest rate (Le Devoir, October 14, 1981, p. 1). The OEC will try to find Canadian buyers for the other 26 per cent required for control over the next five years. If unsuccessful, OEC has the option to buy the controlling shares.

#### Prince Edward Island

The Prince Edward Island government was not optimistic about the prospects for an early cure to the province's economic ills. Finance Minister Lloyd MacPhail's March 12, 1981 budget was bleak in tone and spoke of the need for a "defensive strategy intended to increase financial flexibility." Even without further federal government cutbacks in funding to the provinces, Prince Edward Island found itself "a prisoner of events" and a victim of its dependent status.

#### Fiscal and Budgetary Policy

Gross Provincial Product in Prince Edward Island was expected to decline in 1981-82 due partly to high interest rates and inflation which also had a negative impact on housing construction and retail trade. Revenues of \$352 million were expected for the current year, and expenditures of \$351 million left a surplus in the current account of just over one million dollars. The province will however continue to pay interest on an overall budgetary deficit of more than \$7 million.

Direct and indirect transfer payments from the federal government to Prince Edward Island for equalization, post-secondary education, hospital insurance and medicare accounted for an estimated 53 per cent of provincial revenues. Equalization revenues were not increasing at their former pace, and MacPhail attributed these low growth rates to the negative impact of declining provincial revenues, increasing unemployment, high interest rates and the National Energy Program.

The exceptionally slow growth of the province's population created further complications, for federal transfer payments were tied to

population figures. While this factor, combined with a decline in numbers of the school aged population has lowered the need for some government services, many fixed costs for services remained constant.

MacPhail noted that the provinces with the highest tax rates tended to receive the largest equalization payments. Thus it was difficult for Prince Edward Island, with its limited tax base, to raise the extra revenue necessary to cope with slow economic growth, the need for services and declining transfer payments. Expenditure restraint became the provincial government's only alternative. Future savings were expected to be achieved through a reduction in the level of existing services, and a decrease in government employees through attrition.

Measures to increase revenues included raising the provincial general sales tax rate by one per cent to 10 per cent, making it the second highest in Canada, taxing long distance telephone calls which were formerly tax exempt, and raising the tax rate on liquor by 15 percentage points to 25 per cent, making liquor prices in the province the highest in the country (Globe and Mail, March 28, 1981, p. 8).

New program initiatives announced in the budget were the building of 24 new senior citizen housing units, a special school program for children with learning disabilities, funds for research into the area of occupational health and safety in Prince Edward Island and new community based services for the elderly.

#### Economic Development

The 1981-82 economic outlook for Prince Edward Island was mixed. Reasonably good expectations for farming, fishing and tourism were countered by a "restrained hope for improvement" in housing construction and retail activity. Prospects were even poorer when unemployment and out-migration of young adults were taken into consideration.

An extensive effort in the 1970s to induce structural change to strengthen the Prince Edward Island economy had less impact than originally expected. Despite the increase in planning and funds, the Island had not substantially reduced its dependence on federal government transfer payments.

Provincial government stimulus to the economy was conducted through expenditures on economic support and development, and on industry, agriculture, fisheries and tourism; these are regarded as the areas which must be emphasized if the province's economic situation is to improve.

#### Québec

In 1981, the precarious state of Québec's finances became apparent. The province laboured under a \$3 billion deficit as tax increases had been

withheld and generous benefits given to public servants. Finance Minister Jacques Parizeau made it clear that the people of Québec would have to start "tightening their belts."

#### Fiscal and Budgetary Policy

Mr. Parizeau's March 10, 1981 budget was best characterized by one word - restraint. The negative influences of high interest rates, climbing oil prices and caution on the part of business and consumers led to a pessimistic outlook for the Québec economy.

The Finance Minister's budget was designed to keep the deficit from increasing while reducing the government's net borrowings on the financial markets and to retain the policy of reducing personal income tax each year.

Two major changes in revenue-raising measures were announced, one involving government corporations, and the other the taxation of Québec businesses. Most Québec government corporations, with the exception of SIDBEC, were profitable and thus became subject to a dividend policy. Firms such as REXFOR, SOQUEM and SOQUIP will be required to pay annual dividends of 20 per cent of ordinary earnings.

As of 1981, Hydro-Québec, which did not pay tax on its earnings will pay the government a royalty. A portion would be earmarked for private enterprise modernization programs and another for contributions to the capital stock of government corporations as development plans progress.

As of April 1, 1981, employer contributions for financing health programs was raised from 1.5 per cent to 3 per cent of the payroll. This sum went toward a "health services fund" and would partially pay for health and hospital insurance.

Capital tax for most businesses rose from three per cent to 4.5 per cent and from .6 per cent to .9 per cent for most financial institutions. Tax on the earnings of all small and medium-sized businesses was reduced by 10 per cent. Large firms received a five per cent tax credit which would increase to 15 per cent in 1983. With these new taxation measures, tax on corporate profits in Québec would be the lowest of all the provinces.

Taking into account Québec's \$3 billion deficit, the government concluded a 12.5 to 13 per cent increase in the expenditure rate was "reasonable." But, \$1 billion was cut from overall expenditures. Education and social affairs, the two departments with the largest expenditures, experienced combined cuts of \$500 million. Twelve out of 24 government departments agreed to accept a growth rate of less than five per cent, despite an inflation rate of more than 12 per cent. The budget also insisted that health and educational institutions tighten their rules

regarding hiring and posting of employees; other personnel cuts would be made through attrition.

Parizeau called the rapid and continuous rise in pension liabilities "disturbing" and put into effect measures to arrest this upward trend. As of January 1, 1982, pensions for those entering the public and parapublic sectors would be indexed at approximately three per cent, rather than to the full increase in the cost of living.

Québec was still burdened with the debt from the 1976 Olympic games. The budget noted that Loto Canada yielded \$175 million less than expected in 1980 and the special tax on tobacco brought in \$880 million less than expected. A further increase in tobacco taxes from 40 to 45 per cent was introduced, and 30 per cent of the proceeds of this tax went towards the debt.

Individual income tax exemptions were changed to reduce the tax burden on people in lower and middle income brackets. Family taxation changes included a provision that family allowance recipients with children under six could claim the available allowance in lieu of a tax credit. The change was intended to help women who work outside the home, as the money could be used to help cover child care expenses.

The Québec government opted to continue the selective reduction policy in sales taxes, and extended the exemption from sales tax on furniture to cover refrigerators and stoves. The tax exemption on boots and shoes was raised to purchases over \$125.

In 1981, 30 per cent of Québec's budgetary revenue came from the federal government. The budget was critical of Ottawa's decision to increase contributions to the provinces at only one third of the inflation rate, while the cost of collective agreements, health care and other social programs were directly tied to inflation. On the renegotiation of fiscal arrangements, the Québec government expressed a desire for improvements which would guarantee that the province would be better able to benefit from its economic growth than is now the case. According to Parizeau, Québec's successful initiatives in economic development to date have worked in favour of the federal government, for they have reduced the amount of federal equalization payments to Québec.

**Supplementary Budget, November 17, 1981** — Citing the recent federal budget and rapid economic change over the last six months, Finance Minister Jacques Parizeau presented a supplementary budget to the National Assembly on November 17. Despite budgetary cutbacks, Parizeau stated that a dangerous decline in revenues was signalled. He accused Ottawa of trying to "destabilize" Québec's financial state by proposing to reduce transfer payments which had not even kept up with inflation since 1977. Parizeau also outlined the adverse effect of unprecedented interest rates,



inflation, and declining GNP on the revenues of the government and quasi-public organizations such as Crown corporations and school boards. Therefore, he felt it was necessary to raise taxes temporarily after five years of no outright tax increases.

Parizeau announced that the gasoline and diesel tax would be doubled, from 20 to 40 per cent to remain in effect until March 31, 1983. It was expected that this measure would bring in \$238 million in additional revenue. Beer taxes were rationalized; beer sold in grocery stores became subject to the general sales tax of 8 per cent while beer sold in other places, such as bars and restaurants, would be taxed at 13.4 per cent, as were wines and other spirits. This would add \$22 million. Parizeau announced that the reduction of two per cent on personal income tax planned to take effect on January 1, 1982 was suspended. This move would save \$25 million in 1981-82 and \$135 million the following year.

The Finance Minister also pointed out certain factors which could have significant financial implications for the rest of the fiscal year. Upcoming negotiations with public and para-public sector employees were predicted to be difficult since their wages and benefits have in the past been protected from economic decline. He felt that Ottawa's policies have worked against Confederation since it has been taxing more and giving less to Québec, especially since the oft-cited benefit of lower oil prices had been eliminated in the wake of the Ottawa-Alberta agreement.

#### Economic Development

Plans for a successor to the Québec government's economic development strategy, published in 1979 as *Bâtir le Québec*, were underway in 1981. Publication of the document was slated for spring of 1982.

Indications were that the government would move away from its emphasis on aid to the pulp and paper, textiles and agricultural sectors. It was felt that these industries have regained their footing due to upgrading and modernization programs financed partly by the federal and provincial governments (*Globe and Mail*, June 22, 1981, p. B19). The provincial government was looking at specific programs to develop high technology industries, such as biotechnology and information processing, to obtain benefits for Québec from mega-projects throughout the country, to develop the goods and services sector supplying especially high technology, and to finance exports. The organization of government services to industry would also be addressed.

Québec also wanted to obtain a larger share of the automotive industry but lost out to Ontario in an attempt to lure a \$111.4 million Volkswagen parts plant to the province. Québec's Industry and Tourism Minister Rodrigue Biron regretted the decision, stating that the federal government should intervene "in the national interest" to reduce the concentration of

the auto assembly and parts manufacturing industry in Ontario (Globe and Mail, November 21, 1981, p. 20).

### Saskatchewan

Assuming normal crop production, healthy investment in potash and uranium and a steady demand for exports, economic growth in Saskatchewan in 1981 was expected to be above the Canadian average. The March 5, 1981 budget of Saskatchewan Finance Minister Ed Tchorzewski attributed the good health of the provincial economy to success at economic diversification, while at the same time maintaining a strong agricultural sector.

### Fiscal and Budgetary Policy

Of the \$2.3 billion in revenues generated for the province's Consolidated Fund in 1981, 24 per cent was a dividend from the Heritage Fund and 20 per cent was from Established Programs Financing and other federal programs, with the remaining 56 per cent coming from taxation revenues. Oil and gas revenues accounted for 60 per cent of the Heritage Fund's total revenue, potash for 29 per cent and another five per cent was a dividend from the Potash Corporation of Saskatchewan. Other resources accounted for four per cent and interest for two per cent of Heritage Fund revenues. In addition to the 55 per cent dividend paid to the Consolidated Fund, expenditures from the Heritage Fund covered measures to ensure energy security for the province in the future. These included grants for petroleum and natural gas exploration and development, grants for capital projects and money for loans and investment in the province's Crown corporations.

Substantial tax cuts were introduced in the budget. The corporate income tax rate for small business was reduced from 11 per cent to 10 per cent, and the personal income tax rate dropped from 53 to 51 per cent of the basic federal tax. To ensure that this decrease was distributed equitably, the high income surtax rate was increased from 10 to 12 per cent of provincial tax payable in excess of \$4,000, affecting only those who earned over \$33,000 a year. Taxes on cigarettes and tobacco were also raised.

The budget reaffirmed Saskatchewan's commitment to the basic principles of the Canadian health care system, retaining a premium-free system and stressing the importance of universal accessibility. Monies in 1981 went towards cancer research, hospital grants and capital projects and toward the building of a new chronic-care facility in Saskatoon. Coverage under the Saskatchewan Dental Plan was extended to include those aged four to fifteen.

Day care funding was doubled in 1981 from \$3.7 million to \$7.5 million, and the income asset and exemption levels were increased to broaden

eligibility. Special programs for the disabled, to coincide with the International Year of the Disabled, were expected to cost \$3 million.

Funds for the province's Outreach Training Program, designed to make manpower training more accessible to those living outside major centres, were increased by 70 per cent and a fourth technical institute was to be built in Prince Albert.

The budget also introduced a voluntary beef stabilization program, to be administered by a beef stabilization board. The program would cover 200,000 slaughter cattle in the province.

Decreased federal involvement in jointly funded programs such as DREE and the RCMP was deemed unacceptable to Saskatchewan. The budget stated that forcing the provincial governments, with their unequal resources, to increase funding for these programs would lead to "a regressive and chaotic distribution of tax increases at the provincial level."

#### Economic Development

Although agriculture remained the backbone of the province's economy and the government's first economic priority, government policy had allocated an important role to Crown corporations in developing the province's economic potential.

Capital investment in Saskatchewan Crown corporations in 1981 increased by 46 per cent, to over one billion dollars. The Potash Corporation of Saskatchewan, which more than doubled its profits in 1980 and was expected to do equally well in 1981, was undertaking a \$2.5 billion expansion program, including construction of a \$600 million mine at Bredenburg. Saskoil was participating in drilling over 90 exploratory and 180 developing wells in heavy oil regions in 1981 and would also take part in a recently announced heavy oil upgrading consortium. Exploration and mining of uranium in northern Saskatchewan was to be carried out at Key Lake by the Saskatchewan Mines and Development Corporation.

Other economic stimulus would result from the Saskatchewan Power Corporation's expansion of electrical generating capacity at Poplar River; a recently announced \$500 million hydro-electric plant for Nipawin; Saskatchewan Telephone's plans to install the largest fibre optics system in the world; and aid to small business from the Saskatchewan Economic Development Corporation.

Plans were announced in the budget for the construction of a \$7.1 million pilot ethanol plant to produce fuel and to conduct research into ethanol and diesanol usage. The government was considering building the plant as a joint venture with a private corporation. The project would be funded by the Energy Security Division of the Heritage Fund.

A cooperative research and demonstration program involving the University of Saskatchewan, the Department of Agriculture and Saskatchewan's farmers was to be established. Twenty-five million dollars over five years would be put toward research emphasizing soil salinity, moisture conservation, optimum crop rotations and weed control.

Saskatchewan recognized the development potential of high technology industry and saw the establishment of a Northern Telecom Ltd. optical systems division in Saskatoon as a foot in the door.

The budget expressed concern over worsening relations between federal and provincial governments. Criticisms were voiced over unilateral federal action in the areas of constitutional review, federal-provincial fiscal arrangements and energy security. The National Energy Program was referred to as "unjust, unfair and damaging to our economy", while the petroleum and natural gas revenue tax was termed "unacceptable and unconstitutional" in its application to Saskatchewan Crown corporations.

#### ECONOMIC FEDERALISM

We saw in the intensive round of negotiations on the constitution in 1980 a federal determination of "improve and protect" the Canadian economic union. There were two facets to this goal; one was a limitation on the ability of governments to erect barriers to the interprovincial flow of goods, labour, services and capital, while the other was a more positive emphasis on intergovernmental economic cooperation. Both these aspects of the Canadian economic union were vigorously pursued in 1981 by Larry Grossman, Ontario Minister of Industry and Tourism.

#### Ontario and Interprovincial Economic Cooperation

In January, the Ontario government released a document titled *Interprovincial Economic Co-operation: Towards the Development of a Canadian Common Market*. Its premise was that the issue of barriers to trade was really only a manifestation of a larger problem — the lack of coordinated regional economic development strategies.

... it is the development of competitive rather than complementary regional economic development strategies that is threatening the very economic framework that is necessary to sustain us as a nation (p. 6)

Thus, the emphasis was not on prohibiting further barriers or the outright elimination of impediments to trade but the fostering of strong interdependent economic relationships among provinces and governments. Implicit in the document was the notion that economic restructuring and diversification would be taking place in the west and east and Ontario's

manufacturing base would provide the basic goods and services which would be needed.

Grossman made several suggestions for interprovincial cooperation on economic development.

- Government procurement should be coordinated to enhance the benefit to Canadian suppliers and achieve economies of scale. Associated with this was a proposed import replacement program for goods purchased in large quantities by governments such as communications equipment, pharmaceutical supplies and educational material.
- Governments should coordinate their research and development efforts towards technologies with potential for export, enhancing productivity, or expanding jobs and product lines. Microelectronics, biotechnology and fibre optics were areas in which knowledge needed to be pooled for maximum benefit.
- Governments should cooperate on equipment procurement, forecasting equipment needs and developing Canadian suppliers to mega-projects.
- A Canadian Domestic Market Development Agency would serve as a "catalyst for new jobs ... and to enhance the quality of life of all Canadians by building interprovincial economic linkages." It would be a business and government joint venture financed by the federal and provincial governments which would act in the area of procurement policy, especially for the mega-projects and examine and report on specific items for cooperation and the extent of complementarity among economic development strategies.

After the release of the document, Grossman travelled to the provinces to present his ideas to his provincial counterparts. He called for a meeting of provincial industry ministers to be held before the first ministers' conference on the economy to hammer out a common position on import replacement and procurement (*Financial Post*, August 1, 1981, p. 9). Reaction to Ontario's suggestions was not highly publicized; there seemed to be general agreement that interprovincial economic cooperation was "both possible and essential" but consensus fell down on specific items, such as having to forego provincial or regional procurement policies.

#### First Ministers' Conference on the Economy

Since the two first ministers' conferences on the economy in 1978, there have been recurrent calls for another economic summit. A meeting with the premiers to discuss the economy had been planned by Joe Clark when he was

in power, for November 1979, and was then postponed to January 1980 but the federal election intervened. At their annual conference in Winnipeg in 1980, the premiers called for another full-scale first ministers' conference on the economy. According to the communique,

The Premiers recalled the valuable results of the 1978 First Ministers' Conferences on the Economy, including the set of fiscal and economic policy guidelines which had been agreed to by all eleven governments. They stated that it was essential to re-establish the kind of effective, ongoing consultative process which was required to refine and strengthen those guidelines. (Twenty-first Annual Premiers' Conference, Communique No. 2, "The Economy," p. 2).

The premiers suggested an agenda and stressed that such a conference "should be preceded by substantial joint preparation."

Throughout the first nine months of 1981, a flurry of letters passed between the premiers, especially Bill Davis of Ontario, and the Prime Minister. Davis urged the Prime Minister to reconsider the government's anti-inflationary stance and monetary policy. Cooperative federalism was hailed as the only solution to the economic malaise which afflicted the country and individual Canadians. In Davis' words, "cooperation is not an option, it is imperative." Trudeau replied that a first ministers' conference should only be held after "an adequate foundation has been laid at both the ministerial and official levels." At that time, several meetings of ministers of finance were planned.

At the 22nd annual Premiers' Conference held in Victoria, B.C. in August, the Premiers presented a nine point program for economic recovery (see Chapter 7). Interest rates had peaked and politicians felt pressured by popular discontent with the state of the economy. They called attention to a lack of international confidence in the Canadian economy which was attributed to federal energy, economic and budgetary policy.

When approached by B.C. Premier William Bennett, chairman of the Premiers' Conference, to discuss the timing, format and substance of the meeting, Trudeau felt the conference should be delayed until after the budget. But conflict erupted over the format of the summit. The premiers wanted all the sessions to be open to the public; the Prime Minister felt only the opening and closing sessions should be open, with the working sessions closed to the public. At the heart of the controversy lay a fundamental disagreement about the purpose and worth of such first ministers' conferences. The provincial view, perhaps best expressed by Premier Davis was

meetings between the federal government and individual provinces on national issues can never be as effective as

federal-provincial meetings involving all governments. If we are to find acceptable solutions for the national issues that face our country, then we must share all of the diverse and complex concerns of every region with each other and with your government. (Office of the Premier, News Release, August 10, 1981, p. 2)

The federal government, on the other hand, did not want to give the premiers a national forum from which they could criticize publicly the government's handling of the economy. Prime Minister Trudeau stated he wanted the conference to be "useful and workmanlike and not an exercise in fed-bashing" (Globe and Mail, September 25, 1981, p. 1).

Bennett and Trudeau also disagreed on the question of substance. The premiers wanted to discuss fiscal arrangements with the Prime Minister if the finance ministers had not reached a prior agreement. But Trudeau expected the fiscal negotiations to be completed before the first ministers' conference (Vancouver Sun, December 31, 1981, p. A16). The dates were finally set for February 2-4, 1982 at the National Conference Centre in Ottawa.

There appeared to be a crack in the interprovincial solidarity which had developed through the Premiers' Conference. Recently, the chairman of the conference has acted as the spokesman for other premiers at important federal-provincial gatherings. But given Québec's interpretation of events at the November 1981 constitutional conference, Premier Lévesque dissociated himself from that arrangement. As Lévesque wrote to Bennett:

J'ai noté que vous vous inscriviez dans la tradition suivant laquelle l'hôte de la dernière conférence des premiers ministres des provinces agit comme porteparole de ses collègues, après avoir obtenu leur accord, et que vous aviez aussi épousé la tendance récente suivant laquelle les silences pouvaient être perçus comme des consentements.

Vous comprendrez qu'il m'est difficile d'accepter qu'il en soit ainsi pour le Québec, particulièrement à la lumière des événements des derniers mois.

Je ne conteste en aucune façon votre possibilité de vous exprimer au nom de nos collègues, s'ils continuent à souhaiter qu'il en soit ainsi, mais vous comprendrez qu'à moins d'un accord explicite du Québec, il ne serait pas opportun que vous puissiez vous exprimer en son nom. (Le Devoir, January 11, 1982, p. 11)

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Lévesque also wrote independently to Trudeau stating that he disagreed with the federal preoccupation with inflation and felt that unemployment and under-utilization of productivity capacity should be a priority at the conference (Montreal Gazette, January 9, 1982, p. 7).



#### 4 FISCAL FEDERALISM

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For most of 1981, the federal-provincial agenda was dominated by conflict over the constitution and by the stalemate on energy prices and revenue sharing. Given this acrimonious context, journalists and provincial politicians saw the forthcoming renegotiation of fiscal arrangements as the "third front" in a federal assault on the powers and resources of the provincial governments. Even when settlements were reached with the provinces on energy in September and the constitution in November, predictions of hostile negotiations persisted because of Ottawa's intention to reduce transfers and its unwillingness to begin formal negotiations before the budget in November.

Negotiations have traditionally been held every five years between the federal and provincial governments on fiscal arrangements. Over the years, fiscal arrangements have taken different forms; in the 1940s and 1950s, tax sharing – in one form or another – was the main item on the agenda. As equalization and major national shared-cost programs were introduced, the issues and concerns with fiscal arrangements ranged beyond the purely fiscal into questions of social policy and redistribution.

The Established Programs Financing arrangement, which was the result of federal-provincial negotiations in 1976, was widely hailed as a response to the concerns of both levels of government. Health care costs had escalated rapidly in the early 1970s and under the shared-cost arrangement for hospital and medical insurance, there was no limit on Ottawa's contributions to provincial health care plans. This made budget planning and fiscal restraint difficult for the federal government. The provinces had a host of objections to shared-cost programs in general. They were seen as inflexible and administratively complex; they distorted provincial priorities and contained no incentive to contain costs.

In response to both sets of concerns, the federal government proposed that federal aid for post-secondary education, hospital and medical insurance be merged and funded through a combination of tax transfers and

an unconditional block grant. Federal contributions would be divided from program costs and escalated instead by the rate of growth of the GNP. This arrangement was implemented for post-secondary education in 1967 and was regarded as one which respected the jurisdiction of the provinces. Thus, there was considerably less federal control and more provincial discretion to spend the cash grants as seen fit.

The provinces accepted the offer and asked that the federal contribution be divided equally into tax points and cash payments. The basic funding for the three 'established' programs was enriched by compensation for the elimination of the revenue guarantee and an extra per capita grant for the purpose of encouraging provinces to implement less expensive forms of health care. This Established Programs Financing arrangement was praised as an example of "cooperative federalism."

Over the five years of the agreement, 1977 to 1982, Ottawa transferred \$44.7 billion to the provinces under EPF (Table 10, Fiscal Arrangements in the Eighties - Proposals of the Government of Canada, November 1981, p. 51).

In 1977, less dramatic changes were made to the equalization formula. The oil and gas boom of the early 1970s in the western provinces had had an unsettling effect on the equalization formula. Since energy revenues were included in the formula, Ottawa was committed to equalizing provinces with below average fiscal yield in this category up to the national average. As provincial energy revenues increased, Ottawa was forced to pay out more in equalization. In the federal-provincial negotiations, it was decided that only 50 per cent of oil and gas revenues would be equalized; Ottawa also imposed a cap so that no more than 33 per cent of total equalization payments would be paid in respect to such avenues.

By 1981, a number of pressures emerged which pointed to a need for clarification or restructuring of fiscal arrangements. Budgetary constraints in the health field due to rising costs led to fear of declining services and user fees. The growing trend to "direct billing" by doctors raised fears that accessibility to medicare was being eroded. These factors combined with a sense in Ottawa that the federal government was not receiving enough credit for its contribution to post-secondary education and hospital and medical insurance; furthermore, federal goals in these areas were not being met. The federal government assumed there had been a "gentlemen's agreement" that provincial funding would match federal contributions for each of the three programs. But they claimed the provinces had reneged on the commitment, reducing provincial support in the name of restraint. The need to control its deficit was the final factor which led Ottawa to propose substantial revisions.

Another surge of oil and gas revenues accruing to provincial governments in the west led to more pressure on the equalization system. The federal government passed legislation which excluded certain types of non-renewable resources revenues from the formula. At the same time, Ontario was barred from receiving equalization by a stipulation that no payment would be made to a province with a per capita income higher than the national average.

Economists and the government of Ontario argued that the equalization system needed revamping. The linkage between the method of calculating payments and the purpose of the program – allowing provinces with fiscal fields lower than the national average to provide public services at a comparable level without burdensome taxation – was seen to be lacking. Increased payments were not due to increased fiscal need but rather to windfall revenues of a few provincial governments. These arguments gave rise to proposals for an interprovincial or "two tier" system of equalization to redistribute non-renewable resources revenues.

Thus, in 1981, a number of contentious issues and questions were on the agenda of fiscal arrangements. Should federal contributions to EPF be tied to stricter program conditions? Could Ottawa reduce its funding for post-secondary education, hospital and medical insurance? Should the representative tax system be retained as the basis for equalization? Could equalization payments be controlled? What standard of equalization should be used? Would a "two tier" system of equalization be appropriate?

Questions were also raised about the life expectancy of the tax collection agreements by which Ottawa enters an agreement with a province to collect its corporate and/or personal income tax. Such agreements are regarded as very useful because they reduce the complexity of the tax system for citizens and businesses and maintain a degree of tax harmonization among governments. However, some provincial governments chafed at the restrictions imposed by Ottawa on their ability to implement tax incentives and credits for various social and economic purposes. Thus, an issue to be addressed in 1981 was the conflict between provincial desires for flexibility in their use of the tax system and the federal concern for preventing barriers to the free flow of goods, capital and people across provinces.

Transfers to the provinces are of considerable importance to both federal and provincial budgets. Cash transfers to other levels of government accounted for about 20 per cent of total federal expenditures in 1980-81, a figure which has remained fairly constant over the last decade. The federal government also calculated that tax transfers to the provinces accounted for approximately seven per cent in foregone revenues. As a percentage of provincial revenues, federal cash and tax transfer

ranged from 55.9 per cent in P.E.I. to 11.8 per cent in Alberta in 1980-81. The difference among provinces in the amount of provincial revenues accounted for by tax transfers points out the weakness of the tax bases in several provinces.

Table 4:1

Federal Cash and Tax Transfers as Percentage of Provincial Revenues and Per Capita, 1980-81

	Cash	Cash + Tax	Per Capita
Newfoundland	47.7	51.2	\$1,298
P.E.I.	52.8	55.9	1,379
Nova Scotia	45.8	52.8	1,156
New Brunswick	43.9	50.9	1,140
Québec	22.0	35.2	899
Ontario	17.3	25.8	812
Manitoba	37.6	41.1	892
Saskatchewan	16.9	20.6	557
Alberta	7.7	11.8	541
B.C.	16.1	24.4	586

(Source: Government of Canada, Federal-Provincial Arrangements in the Eighties, April 23, 1981, p. 35 and Canadian Tax Foundation, Provincial and Municipal Finances 1981, p. 46.)

#### THE PARLIAMENTARY TASK FORCE ON FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS

Until 1981, the negotiation of fiscal arrangements had been a quintessential example of "executive federalism." But public interest in the issue was sparked this year for several reasons. General public awareness of federal-provincial relations was heightened because of the lengthy, highly publicized constitutional and energy battles. Public interest was also mobilized by the Parliamentary Task Force on Fiscal Arrangements which travelled across the country and listened to groups grateful for the opportunity to express how federal-provincial relations and fiscal arrangements affected them. In setting up the committee, albeit under pressure, the federal government applied the lessons of the Joint Committee on the Constitution which focussed public support for Ottawa's constitutional resolution and brought a perspective very different from that of governments to bear on the issues.

The Task Force was set up in February, apparently as the quid pro quo for NDP support of Bill C-24 which gave retroactive enactment to several amendments to the equalization system. The committee was empowered to examine equalization, the tax collection agreements, the Canada Assistance Plan (which is not normally discussed in the context of fiscal arrangements), and Established Programs Financing. The government placed the Task Force's terms of reference in the context of its budgetary restraint program by which \$1.5 billion in transfers to the provinces falling within the social affairs envelope was to be saved over five years. Finance Minister MacEachen also announced to the provinces that intergovernmental negotiations would not begin until he had received the report of the Task Force.

The seven member committee – chaired by New Brunswick Liberal Herb Breau – met with representatives of the federal and all the provincial governments. But it also met with 112 organizations representing the health care field, post-secondary education, welfare, natives, unions, legal associations, the disabled, women and municipalities.

In contrast to the jurisdictional and financial concerns normally voiced by governments about fiscal arrangements, these groups emphasized the policy content of the issues. They were overwhelmingly concerned about program quality, accessibility and need. They were more concerned about the total funding available for social programs than with which level of government provided it, and emphasized that more money, not less, is required to sustain Canada's health, education and welfare systems. They argued that both levels of government should put their differences aside in the interests of the welfare of individual Canadians and the social fabric of the country. A strong national focus emerged from the testimony; groups were divided on the policy lines, not regional lines. Doctors argued for "patient participation" in health care through direct-billing while consumer groups felt the practice of billing patients would impede accessibility. Nurses and public health associations stressed the need to move from the dominance of physicians and hospitals towards a community delivery, health promotion and prevention approach. Where there was a regional issue, such as the institutionalized disparities suffered by the Atlantic provinces in the provision of social services, there was a consensus that something had to be done; there was no countervailing regional interest.

The Task Force summarized the sentiments of witnesses towards the federal system by noting

Canadian citizens are more sensitive to what unites them than to what separates them. They are more concerned with a workable federal system than with fine points of jurisdiction ... we

found that individual Canadians still seem to have little difficulty wearing two hats, as federal taxpayers and voters and as provincial taxpayers and voters ... In short, Canadians are more united than their governments sometimes seem to be ... Canadians demand an effective co-operative federalism. Witnesses representing legions of citizens ... made it clear they would not long tolerate intergovernmental rivalry as a reason for denying the provision of essential services or the resources necessary to assure all Canadians access to them. (Fiscal Federalism in Canada, August 1981, p. 6)

In terms of jurisdiction, the foremost concern of groups was that social policy not be subordinated to a battle for power between levels of government. As the spokesperson for the Newfoundland Community Services Council stressed

There is a very great risk of trade-offs in the area of funding for social programs. One of my gravest concerns is that this current review of fiscal arrangements is more focussed on the complicated problem of jurisdictional and financial management ... (Minutes and Proceedings, Issue No. 5, p. 6)

The Catholic Family Services Bureau of P.E.I. put it more bluntly:

The poor of this province are tired of hearing the federal and provincial governments blaming each other for not providing adequate social programs. (Minutes and Proceedings, Issue No. 6, p. 59)

Where groups did address specifically the question of jurisdiction, they rejected the principle of exclusivity and argued for a strong provincial and federal role in social policy-making, implementation and funding. There were several arguments advanced for the necessity of federal involvement in the field. One was based primarily on the limited financial resources available to the poorer provinces. A representative of the Social Planning Council of Winnipeg stated

I simply do not understand how you can say that provinces could maintain human services, given the regional disparities and a relative poverty of some provinces compared to others and still have a system across Canada. (Minutes and Proceedings, Issue No. 14, p. 27)

Some groups did not trust the provincial governments to recognize social services as a priority for financial assistance and felt the federal government should define and guide development of social services. These views were most apparent in the social services and welfare field.

In health care and post-secondary education, the need to set and maintain national standards was seen as the reason for federal involvement. The national dimension of health care and health problems made federal involvement essential in maintaining a national perspective and adequate standards of health care on a nation-wide basis. The National Union of Students represented the general consensus in the post-secondary field when it stated:

Federal involvement is important because it is only the federal government that is charged with the present direction for the economy and the maintenance of Canadian culture. The federal role is essential if we are to ensure development in all areas of the country and an accessible quality educational system in this country that will meet both the needs of individuals and society at large. (Minutes and Proceedings Issue No. 3, p. 55)

Group views on funding arrangements revealed a fundamental disagreement with many provincial governments. Many groups argued for a return to cost-sharing; it was felt that the flexibility and autonomy bestowed on the provinces by EPF worked against universal health standards. Provinces had been given, and had taken, the incentive to reduce costs; the opinion was that funding would be more secure if federal transfers were earmarked and provincial governments more accountable. As the P.E.I. Council of the Disabled remarked

We prefer cost-sharing arrangements whereby we can see and put the provincial people on stand for where these dollars are going. (Minutes and Proceedings, Issue No. 6, p. 32)

In its report, the Task Force balanced the federal government's intention to cut back transfers and aim for more visibility with the provincial concerns for maintaining funding and respecting jurisdiction together with the group interests in program quality and increased funding. It rejected the government's call for overall cuts, and generally absolved the provinces from blame for "underfunding," misdirection of transfers and responsibility for "fiscal imbalance."

The Task Force rejected the model of classical federalism with watertight compartments and strict fiscal responsibility; it also opposed "a degree of centralization that forces provinces to adhere unswervingly to federal priorities or imposes a heavy uniformity on diverse cultural or regional traditions" (Fiscal Federalism in Canada, p. 4). They opted instead for cooperative federalism but with clearer accountability to Parliament for funds transferred to the provinces, and a greater federal role in setting program standards.

Given that the committee was composed of representatives of the national legislature and that an impressive number of groups argued for a

continued and enhanced federal role in social programs, it is not surprising that the Task Force concluded

there is an overriding national interest in the operations of health insurance plans and in the effectiveness of health care delivery, and that the proper role for the federal government is the formulation, monitoring and enforcement of conditions on its financial support of provincial programs. (ibid., p. xiii)

Despite the urgings of some groups, the Task Force was well aware that direct federal initiatives in the post-secondary education field would be politically unwise, especially given Québec's traditional concerns about "intrusions" in this area. In fact, it rejected outright as "unacceptable" any federal attempt to legislate national standards for the field. Therefore, the Task Force cautiously stated that it "believed" there should be an effective consultative mechanism and "suggested" that governments meet to define the purposes of post-secondary education.

The financial recommendations of the Task Force revealed an attempt to reconcile divergent demands. The committee chose to ignore the federal government's dictum about conducting its study in the context of the budget strategy because a number of unacceptable assumptions lay behind it. It also rejected MacEachen's argument about "fiscal imbalance," stating "It cannot be claimed that the capacity of the federal government to raise revenues has reached a structural (as opposed to a political or discretionary) ceiling" (ibid., p. 33). The Task Force recommended that federal transfers be held at current levels without the transfer of further tax room. In order to give the federal government more leverage with EPF, it recommended that the transfers for health and post-secondary education be separated and earmarked by the federal government. Block-funding would be retained for health care "with stricter conditions, monitoring and enforcement mechanisms." It would also be retained for post-secondary education because "this method of providing general support to the provinces best accords with the primary responsibility of the provinces for education."

The committee recommended the existing representative tax system for equalization be maintained with several modifications, and include property taxes for municipal revenues. It chose not to decide how natural resource revenues should be treated because future revenue flows to both levels of government were unknown. It did feel, however, that those natural resource revenues used for budgetary purposes (rather than put in heritage funds) should be equalized, that all such revenues should be treated alike and recommended that the formula apply uniformly to all provinces.



## Reaction to Fiscal Federalism in Canada

The provinces were suspicious of the federal government's motives in establishing the Task Force. They felt it was a stalling tactic to avoid meeting the provinces directly on the issues. Nova Scotia Finance Minister Joel Matheson represented this view when he stated

The Task Force circumvents the provinces and delays the process. This group is taking up time when we should be negotiating. (Halifax Chronicle-Herald, May 4, 1981, p. 1)

All the provinces welcomed the Task Force's recommendation that federal transfers not be cut, but opinion was divided on other issues. Saskatchewan, a long time advocate of federal involvement in health care, welcomed the emphasis on national programs and standards. Premier Blakeney stated "The alternative of ten provincial plans has been clearly rejected." The Maritime provinces objected to the separation of health care financing from aid to post-secondary education; Premier Angus MacLean of P.E.I. based his reservations on the potential mismatch between the federal allocation and provincial needs. Concerns were also expressed by the Atlantic provinces about the recommendation that funding for post-secondary education be transferred to the Economic Development envelope and treated as an economic program. It was felt that federal economic objectives might then override provincial education goals (Halifax Chronicle-Herald, September 1, 1981, p. 17).

While the Task Force Report was hailed as a "balanced" and independent review, its influence on the federal position, especially since it rejected the fiscal and budgetary arguments of the government, was not expected to be great. But the report provides an excellent introduction to the issues, and the public testimony lent the report a fresh perspective.

## FEDERAL-PROVINCIAL NEGOTIATIONS

### Federal Interests and Objectives

While "negotiations" is the common term applied to federal-provincial discussions over the renewal of fiscal arrangements, the term dates from the 1940s and 1950s when shares of tax fields were divided between the two levels of government. But as fiscal arrangements have come to refer to federal programs — either spending or administrative programs — there is technically nothing to prevent Ottawa from amending or even eliminating such programs unilaterally. However, there is a strong informal requirement that consultations be held with provincial governments, especially as the major components of fiscal arrangements represent use of

the federal spending power in areas of provincial jurisdiction. In successive sets of negotiations held every five years, the provinces have been successful in bargaining for increased shares of tax revenues, enriched equalization and less conditional forms of federal contributions to shared-cost programs.

But the federal government has the upper hand in determining the agenda and timing of negotiations. The provinces are forced to react to federal proposals and tend to prefer a lengthy negotiation period. In the 1976 round of negotiations, the provinces formed a "common front" to maximize their bargaining leverage.

In his presentation to the Parliamentary Task Force, Finance Minister MacEachen laid out the federal government's goals and concerns for the 1981-82 round of negotiations. For him, the fundamental issue in fiscal arrangements was "fiscal balance." The fact that Ottawa's share of total government revenues has declined and that the federal government laboured under a deficit while the provinces enjoyed a growing share of revenues and a collective surplus was seen as evidence of fiscal imbalance.

Another general problem according to MacEachen was the related issue of "political balance." Revenue and spending shares are central to the ability of the federal government to act in the interests of all citizens. This was linked to the questions of governmental accountability and visibility or ensuring that the federal government received acknowledgement of its contributions to general public services and is held accountable for its expenditures in these areas.

These concerns took the form of several goals and policy preferences the federal government carried into the negotiations.

- First, Ottawa was determined to reduce its deficit and transfers to the provinces were not immune to cutbacks, especially since economic development had assumed a pre-eminent position in federal policy.
- Second, Ottawa felt it necessary to find some way of "limiting actions by all governments that weaken the economic union." In this respect, MacEachen favoured the idea of "a code of conduct."
- Third, on equalization, it was felt that the problem of resource revenues, Ontario's status and the treatment of municipal revenues had to be addressed. An associated issue which federal officials considered was a "second tier" method of equalization to reduce interprovincial disparities in fiscal capacity.

- Fourth, in reference to health care, MacEachen stated

the important policy objectives of the federal government ... might be to confirm explicit acceptance by provinces of the national standards embodied in existing or new federal legislation, and to develop an effective mechanism to ensure that they are complied with. (Hon. Allan J. MacEachen, *Federal-Provincial Fiscal Arrangements in the Eighties*, April 23, 1981, p. 18).

- Fifth, aid to post-secondary education has come to be seen by the federal government in the context of long term economic development rather than social policy. Given its economic development, policy which stresses resource development and high technology industries, Ottawa found a need for highly trained managers, professionals and technicians as well as research. But, as MacEachen stated "the program as it exists provides no link between these obvious federal policy interests and provincial outlays financed by these transfers" (ibid.).

#### Provincial Interests and Objectives

In 1981, the provinces were generally in favour of the status quo. They were limited in their opposition to federal attempts to cut transfers or alter the structure of programs. They argued that the federal deficit was due to indexation, tax expenditures, subsidized oil and gas prices and interest rates policies rather than transfers to the provinces. In their view, any overall provincial surplus was the result of the favourable location of a few provinces, and so they rejected the concept of "fiscal imbalance." The provinces were supported in this view by the Economic Council of Canada. In its report, *Financing Confederation Today and Tomorrow*, the Council found there was no structural imbalance between revenues and responsibilities, and

The mere existence of deficits at one level of government does not indicate the existence of such a structural imbalance nor does it mean that such deficits have to be rectified at the expense of another level of government. (p. 21)

In fact the Council claimed Ottawa's budgetary situation had improved because of increased revenues flowing from energy agreements. Provincial governments felt EPF had fulfilled its purpose although the Atlantic provinces argued that they needed some form of "catch-up mechanism" to allow them to implement services offered in other provinces which they couldn't afford. The differing fiscal circumstances among the provinces

led to some divergent views. The "have not" provinces were most concerned with the future of equalization as it is an unconditional cash grant which can be used for any service. The wealthier provinces were concerned with protecting their EPF receipts and ensuring the tax collection arrangements worked to their advantage. The smaller provinces worried that withdrawal of the fiscal "heavyweights" from the tax collection agreements would signal their death and the provinces would have to assume the costs of collection. Ontario's position was strongly affected by its nominal status as a "have not" province which led it to fight for changes to the equalization system.

The "two tier" system of equalization was advanced in the 1980 Ontario budget. There it was argued that recipient provinces received more in equalization payments throughout the 1970s than warranted by the cost of providing a basic level of services without unduly high taxes. Ontario felt the equalization system dealt the province a double blow. On one hand, legislation excluded Ontario from receiving payments, while Ontario taxpayers and the provincial economy were "called upon to finance increased equalization to the traditional recipient provinces caused by increased oil and gas revenues in the producing provinces" (Budget, 1981, p. 18). Therefore, Ontario again suggested the idea of an interprovincial equalization scheme funded in part by provincial revenues from natural resources which was presented first in its 1980 budget. Provincial Treasurer Frank Miller stressed the point in the following way:

This government cannot accept the continuation of the program in its current form, nor can we accept Ontario's exclusion from entitlements without a fundamental solution to the problem of regional fiscal disparities. These disparities are so large that normally healthy interprovincial competition could deteriorate and lead to destructive protectionism and loss of national economic strength." (ibid., p. 13-14)

Alberta was adamantly opposed to the concept of interprovincial equalization based on the sharing of resource revenues. In Hyndman's words

While we are in favour of equalization, the suggestions from Queen's Park and Ottawa have nothing whatever to do with equalization but essentially relate to a scheme to siphon off temporary revenues from non-renewable resources, which belong to Alberta and the west, and move them to a central part of the country. (Alberta Hansard, May 28, 1981, p. 1021)

He went on to call the idea a "non-starter" and "prima facie unacceptable."

The two-tier equalization scheme was also attacked by Finance Minister Joel Matheson of Nova Scotia. He accused Ontario of perpetuating the "myth of over-equalization," claiming that recipient provinces actually received fewer equalization payments due to natural resource revenues because producing provinces were able to lower their taxes, which reduced the national average revenue yield (Halifax Chronicle-Herald, June 10, 1981, p. 7).

There was a general agreement that the issue of tax harmonization should be discussed and principles of tax consistency examined. B.C. was most outspoken on the tax collection agreements, arguing that the network of federal tax expenditures had resulted in foregone provincial revenues. Finance Minister Hugh Curtis gave notice of B.C.'s intention to withdraw from the agreements.

#### Interprovincial Coordination

The October 1980 budget of the federal government sent the message to the provinces that Ottawa was intent on cutting back the rate of growth in transfers for social programs. This was the first time in the 40 year history of fiscal arrangements that the federal government was openly on the offensive, refusing to give in to provincial demands for more money either in cash or through tax transfers. Thus, the provinces were aware that the negotiations would be difficult; as time wore on and the direct negotiations were stalled, they fretted at the delay.

A precedent for a provincial common front which had been reasonably successful in gaining concessions from the federal government lay in the 1976 round of negotiations. With the common front on the constitution and the expectation that the negotiations would be difficult, groundwork was laid for a united provincial voice on fiscal arrangements.

The first steps were taken by the western provinces, following the example of 1976. At the December 1980 meeting of finance ministers of both levels of government, a "consensus statement" on behalf of B.C., Alberta, Saskatchewan and Manitoba was presented. Essentially, the statement favoured the status quo, arguing there was no need for large scale policy changes or financial reductions. In fact, it was felt that federal funding levels were proving to be inadequate under pressure from inflation. It rejected federal plans to achieve "significant savings" as only shifting the tax burden to the provinces. The provinces felt a deeper motivation lay behind federal planning.

The Western provinces are concerned that federal proposals for restructuring fiscal arrangements ... may be motivated not by a desire to improve program quality but a desire to increase the intrusions of the federal government in other areas of

provincial affairs. (The Fiscal Arrangements: The General Concerns of the Western Provinces, Federal-Provincial Conference of Ministers of Finance and Treasurers, Ottawa: December 17, 1980, p. 4)

The provinces requested that negotiations begin "no later than mid-February" on specific federal proposals.

The western position was developed further at the Western Premiers' Conference in Thompson, Manitoba in April 1981. Six principles were expressed as guidelines for assessing proposals for change:

- Stability and predictability of EPF transfers.
- Flexibility and balance in fiscal capacity.
- Rationalization and simplification: Avoidance of federal intrusion into provincial jurisdiction through "direct delivery programs".
- Clarity of jurisdictional responsibilities.
- Fiscal responsibility.
- Co-operation and genuine federal-provincial consultation.

(Communique No. 3, "The Federal-Provincial Fiscal Arrangements," Western Premiers' Conference, 1981, Thompson, Manitoba, p. 2-3).

The western finance ministers met in May and June and made their concerns more explicit. On tax and fiscal harmonization, they expressed discontent with "the unilateral introduction of federal tax expenditures which provinces must cost-share" and the unwillingness of Ottawa to administer certain provincial tax programs. They did agree to begin work on developing a code of taxation conduct. The ministers expressed a willingness to discuss program conditions and visibility in reference to EPF, but noted that cutbacks would lead to deterioration in program quality. They stated that the equalization system was working satisfactorily and rejected a two tier system as "ill-conceived" and "an abrogation of the federal government's responsibility."

All the provincial finance ministers met in late June after much urging from Ontario Treasurer Frank Miller. The work on achieving a common, provincial position was presented at the Premiers' Conference in Victoria in August.

Other than affirming their support for the current equalization system and decrying the threat of federal cutbacks, the provinces stressed the future of EPF. A report on EPF noted that federal transfers to the provinces had grown less than federal budgetary spending and thus that the deficit was not due to an explosion in federal transfers. It went on to show that average federal contributions as a percentage of health and post-secondary education never exceeded 50 per cent of program costs. The Premiers did express a willingness to discuss federal visibility and program conditions.

### Federal Proposals

The federal proposals for alterations to the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act were tabled with the November budget. In the introduction of Fiscal Arrangements in the Eighties, the context of the government's proposals was recounted. It was stated that two "imperatives" lay behind the proposals. The first was the pursuit of the "national goals" embodied in fiscal arrangements - equalization, the maintenance of national social programs and tax harmonization. The second imperative was budgetary, meaning that intergovernmental transfers would not be immune to the government's restraint policy.

### Equalization

Ottawa proposed several major changes to the equalization formula:

- Ontario would become the "reference province" replacing the national average fiscal yield as the standard for calculating equalization.
- Natural resource revenues would be fully equalized.
- All taxes levied for municipal purposes would be included.
- The rate of growth in equalization payments would be held at growth in the GNP rate.

Substituting Ontario as the yardstick for calculating equalization payments fulfilled two purposes; it would permanently exclude Ontario from entitlement and would limit the effect of natural resource revenues because Ontario does not yield much revenue in this category. The federal government argued that the change was justified because Ontario was able to provide an adequate level of services without burdensome taxation or equalization and because its revenue structure resembled more closely that of recipient provinces.

Under the new formula, Ottawa estimated that total equalization payments would rise from almost \$4 billion in 1981-82 to \$7 billion in 1986-87, for a total of \$29 billion over the five years.

#### Established Programs Financing

On EPF, the federal government's concerns were both substantive and financial. It proposed that:

- The compensation for the revenue guarantee be eliminated on the grounds that

"In retrospect, the federal government may have yielded too easily to provincial requests for compensation following termination of the 1972 revenue guarantee ... Should the provinces continue to be compensated for the 1972 tax reform, 10 years after it has come to pass?" (p. 29).

- Federal cash contributions to all provinces would be equalized on a per capita basis.
- Federal-provincial consultations among health ministers be held with a view to clarifying national standards and developing an effective mechanism for the maintenance, for incorporation in new legislation by March 31, 1983.
- New financing arrangements for post-secondary education and human resources development be discussed by federal and provincial ministers responsible for education and manpower, for incorporation in new legislation by March 31, 1983. If no "satisfactory progress were made by then, Ottawa suggested that EPF cash transfers for post-secondary education would be frozen at the 1982-83 level.

Arguing that the revenue guarantee compensation was never part of EPF and citing provincial calculations which did not include the compensation in EPF, allowed the federal government to claim that it was not cutting its support for basic social programs. But it also allowed Ottawa to realize its goal of restraint. There appeared to be confidence at the federal level that federal-provincial agreement would be forthcoming on health care objectives; the same optimism did not appear to extend to post-secondary education.

According to federal calculations, EPF transfers would rise from \$11.1 billion in 1981-82 to \$19 billion in 1986-87, totalling 75.3 billion in five years.



## Fiscal and Tax Harmonization

The federal government felt that the issues of fiscal and tax harmonization were so numerous and complex that no immediate action would be effective. It suggested that consultations with the provinces be held to examine these and related issues such as the taxation of Crown corporations and the use of industrial subsidies, and to develop mechanisms such as a code of tax conduct. It was felt that agreeing to greater provincial variation within the agreements would impede the goal of harmonization while tightening the conditions could drive even more provinces out of the agreements. Therefore, no substantial changes were proposed.

## Financial Implications

MacEachen stated that fiscal transfers would grow by approximately 12 per cent a year, the rate of inflation in 1981. The financial value of the transfers under the federal proposals was also tied to tightening up tax

Table 4:2

Estimated Impact of Proposed Federal Changes on Provincial Revenues  
1982 - 1986 (millions of dollars)

	Estimated Revenues Increases from Budget Tax Changes	Impact of Proposed Federal Savings on Provincial Revenues	Net Effect of Budget Changes and Proposed Federal Savings
Newfoundland	61.6	- 126.6	- 77.2
P.E.I.	10.0	- 26.5	- 16.5
Nova Scotia	114.0	- 186.2	- 72.2
New Brunswick	57.8	- 154.1	- 96.3
Québec	1,528.6	- 1,363.7	+ 164.9
Ontario	741.4	- 1,868.6	- 1,225.0
Manitoba	262.6	- 219.4	- 75.8
Saskatchewan	162.8	- 214.4	- 51.6
Alberta	477.9	- 870.1	- 392.2
B.C.	452.2	- 637.3	- 143.2
All Provinces	3,737.8	- 5,666.9	- 2,015.1

(Amended from Tables A1-3, Fiscal Arrangements in the Eighties, p. 54-5)

loopholes, which was a feature of the 1981 budget. The federal government estimated that the provinces would receive more in tax revenues from a broader tax base and thus, more in associated revenue, partially off-setting reductions in cash transfers.

The federal government did not provide any figures comparing what provinces would have received under the 1977-82 arrangements if carried through to 1987 and the proposed changes. Therefore it was difficult, if not impossible, to determine how much difference there would be in receipts flowing from the two equalization formulae.

Overall, the federal government calculated the effect of the tax changes and proposed savings (which do not include equalization, expected to grow at 11.4 per cent annually). As the chart below shows, only Québec gains from the federal proposals.

#### The Negotiating Process

Several meetings of federal and provincial finance ministers followed the budget before the issue of fiscal arrangements was referred to the first ministers at their economic summit in 1982.

Several themes emerged from the negotiations. At the meeting of finance ministers in Halifax, "une bataille de chiffres" emerged between Ottawa and Québec, reminiscent of the "battle of the balance sheets" which characterized the pre-referendum period. Federal calculations were thrown into question by census adjustment figures because the populations of several provinces had been overestimated or underestimated. The provinces were also uncomfortable with the linkage the federal government had made between transfers and tax loopholes. They voiced complaints about the process of negotiations. Prior to the budget, they worried about delay; while negotiations were actually underway, the provinces chafed under an "unrealistic" deadline imposed by MacEachen. Concerns were expressed about the "split system" of negotiations. The provinces objected to the implication that they had to agree to cutbacks and then discuss program quality. It was felt the order should be reversed.

The most vociferous opposition to the federal equalization proposals came, obviously, from the recipient provinces. There were four main objections to the proposal. The major problem in using Ontario as the standard was the linkage of a province's entitlement to Ontario's economic performance. If Ontario's economy were to decline, it was argued, provinces would lose equalization payments. Conversely, if Ontario's economic performance exceeded the national standard, the provinces would not benefit because of the GNP cap. As Québec Finance Minister Parizeau noted, his province would be better off investing in Ontario in order to ensure Québec benefitted from equalization. The second objection rose from

the GNP cap on equalization payments. New Brunswick Finance Minister Fernand Dubé protested that there was "no conceptual or logical basis" for the cap. He felt if Ontario managed to outstrip the national average economic performance, it should be allowed to benefit the "have not" provinces. The provinces suggested that if there were to be a ceiling, there should also be a floor on payments. MacEachen indicated he was willing to consider that suggestion.

The provinces also challenged Ottawa's notion that Ontario's fiscal and economic structure more closely equated those of recipient provinces. They argued that almost all provinces received more (or would receive more) in natural resource revenues than Ontario. Manitoba and Québec were seen to be the big losers under this change because their economic and fiscal structures more closely resembled that of Ontario than the other recipient provinces (Winnipeg Free Press, December 12, 1981, p. 7). There was also a dispute over population figures used in calculating payments with the provinces arguing that the federal government had underestimated provinces' populations and therefore, their entitlements. Finally, Newfoundland and Nova Scotia were particularly concerned that under the formula they could lose a dollar in equalization payments for every dollar they gained in potential offshore oil and gas revenues.

Alternative formulae were proposed by New Brunswick, Québec and Saskatchewan. Québec suggested that the current formula be extended for one year with the GNP cap. Saskatchewan offered two choices; one would retain the representative tax system including new revenues such as potash revenues, and count natural resource revenues at 20 per cent of their value. The other formula would calculate entitlements according to a macro-economic measure of fiscal capacity and an improved representative tax system.

Federal Finance Minister Alan MacEachen responded to provincial objections, stressing the "budgetary imperative" of controlling federal spending. He stated that full equalization of natural resource revenues was financially impossible under the representative tax system so a new standard had to be found. He was "skeptical" of the argument that the Ontario standard contained an implicit disincentive to development of natural resources, arguing it ignored the impact of private investment. He rejected as a "perversion" the argument of those provinces looking to offshore oil and gas wealth that their potential revenues be discounted in calculating entitlements.

A common front did form among the provinces against federal changes in the EPF arrangement. As we have seen, the federal government argued that its contributions to medical and hospital insurance and post-secondary education were unaffected by the elimination of the revenue guarantee, although the total amount of federal transfers would decrease. The

provinces argued the guarantee had been the critical factor in sealing the agreement on EPF in 1976. Here the differing perceptions of EPF transfers by the federal and provincial governments were critical. Generally, the provinces regarded the cash contribution as an unconditional block grant deposited in provincial consolidated Revenue Funds without specific ties to any programs. They protested against any federal effort to break EPF transfers into program allotments. Now they stressed that the revenue guarantee was an integral part of the total package of federal programs slated for specific social programs.

The provinces proposed that the review of program conditions and standards for health care and human resources development proceed but financial arrangements be left untouched until the review had finished. However, the year's delay would cost the federal government an estimated \$1.5 billion and, given MacEachen's repeated pronouncements that no more money was available, the provincial proposal met with little success.

The issue remained unresolved in 1981. Federal action on fiscal arrangements, as on the constitution and energy, showed how determined Ottawa was to pursue its own priorities. In this sense, the federal government was the aggressor, seeking to redress the balance of power in its favour. The provinces were in a reactive position but tried to consolidate their influence by forming a common front against the federal proposals and putting forth their own suggestions. The style of negotiations in 1981 contrasted starkly with that in 1976, when the federal government was quite accommodating to provincial concerns and all sides were reasonably pleased with the outcome. In 1981, it appeared that the federal government was prepared to go ahead without provincial consent thus departing from the norms of cooperative federalism. Actions in early 1982 proved this true. Federal legislation was passed in March after some adjustments were made to the equalization formula in response to provincial concerns.

## 5 ENERGY

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The oil and gas industry of the energy sector dominated developments in 1981. As the National Energy Program passed into its first year of existence, it underwent a significant metamorphosis – the result both of federal-provincial agreements and federal responses to industry concerns. After almost a year of acrimony, highlighted by Alberta's production cutbacks and substantial pressure from the industry, the federal and provincial governments were finally able to reach pricing, taxation and revenue-sharing agreements. This removed one of the most contentious issues from the federal-provincial agenda, at least temporarily. The oil pricing and revenue-sharing agreements reached with the producing provinces in the fall set the foundation for renewed discussions with Nova Scotia and Newfoundland on the management and control of offshore resources. Pipeline proposals – a key to the federal government's goal of energy self-sufficiency by 1990 – were modified in response to provincial concerns. Meanwhile, the hydro dispute between Québec and Newfoundland remained unresolved but Ottawa did appear to step in on the side of Newfoundland. Hydro electricity seemed to be in abundance as Manitoba sought sales from its western neighbours and Ontario, Québec, New Brunswick and Nova Scotia pursued export contracts in the United States. Nuclear energy continued to be controversial and the federal government undertook a nuclear policy review.

### THE NATIONAL ENERGY PROGRAM – YEAR 1

For the first few months of the year, criticisms of the NEP abounded as the industry and producing provinces vociferously protested the federal government's attempt to restructure the location of and participants in oil and gas exploration. The federal government held firm to the precepts of the program and went ahead with implementing the Canadianization and "off-oil" thrusts of the program. Many alterations were eventually made to the technical details of the various programs but as one commentary observed

Most of these changes to the NEP do not involve the replacement of proposed rules with new ones. Rather they represent added layers of new provisions to an already complicated set of rules. The result is a highly complex program, with a vast array of different rules for taxes and prices for different sources of oil and gas under different circumstances, and with a scattering of different effective dates within a period ranging from 1981 to 1986. (Price Waterhouse, *The National Energy Program*, 2nd ed., p. 2)

Throughout the year, the Canadianization drive of the NEP appeared to take effect. Petro-Canada assumed control of Petrofina, the Ontario Energy Corporation took controlling interest in Suncor, and Dome Petroleum, which was drilling in the Beaufort Sea, announced the formation of a 75 per cent Canadian-owned affiliate to take maximum advantage of the exploration and development grants available to those engaged in activity in the Canada Lands. The substantial financial clout of western Canadian owned co-operatives was brought to bear in the oil and gas industry as they formed an oil and gas exploration company with Ottawa's active encouragement. Conversion grants to those switching away from reliance on oil – either for heating or transportation – began to be administered as part of the NEP's "off-oil" thrust.

Despite these gains in extending the "opportunity" to engage in oil and gas development, progress in attaining security of supply and fairness of price – the other two principles of the National Energy Program – was problematic. Immediate doubts were raised about the prospect of energy self-sufficiency by 1990 as the producing provinces and the industry argued that the federal government was overly sanguine. With the Alberta government stalling development of the oil sands projects until an energy agreement was reached, this goal seemed even more doubtful. The NEP was the subject of considerable criticism from the U.S. and Europe where it was felt that the NEP was a violation of GATT agreements; the Americans seriously considered the imposition of retaliatory measures. The Canadian oil and gas industry cut back severely on its exploration and development plans as changes to the taxation and incentive regimes reduced their cash flows. This left the oil services industry without a market and there were many reports that drilling rigs and personnel were leaving the West in droves to take up production in the States.

The producing provinces reacted in their own way. The B.C. government ordered two of its Crown corporations engaged in the distribution of natural gas to withhold payment of the natural gas and gas liquids tax (NGGLT) on the grounds that the federal government could not tax a provincial Crown corporation. The Alberta government challenged the validity of the tax as applied to exports produced from a provincially-owned well and distributed to the U.S. through a

hypothetical provincially-owned pipeline. The court upheld the provincial argument (see Chapter 7). On March 1, the Alberta government implemented the first stage of cutbacks in production – 60,000 barrels a day – which had been announced in 1980. Premier Lougheed urged Albertans to support him in the fight, declaring the province was prepared to "suffer and bleed" for the long-term good of the province. He lashed out at an "inner elite" in Ottawa which wanted to impose a "centralist, statist view of Canada" and a federal government which couldn't tolerate any province becoming "moderately independent." Federal Energy, Mines and Resources Minister Marc Lalonde replied in equally expressive terms

What really worries me is that we have reached the point at which an issue that is paramount to the future security of an entire nation has been reduced to a simplistic war of slogans and catchphrases. It has become a shoot-out between the good guys and the bad guys; a struggle between the powers of darkness and light; a battle between right and wrong. It's almost like watching a Grade B movie. ("Notes for an Address to the Canadian Institute of Public Real Estate Companies," Calgary, March 3, 1981, p. 2)

Ottawa responded to the March 1 cutbacks by imposing a half-a-cent per litre increase on the price of gasoline and home heating oil, which was immediately dubbed the "Lougheed levy" or "Lalonde levy" depending on the location. In passing on the cost of importing additional oil to the consumer, it was felt that Lalonde was relying on public opinion to force an agreement or settlement of the issue.

#### The Ottawa-Alberta Talks

Prior to the re-election of the Liberals in 1980, both the Liberal and Conservative federal governments attempted to resolve the question of setting oil prices through discussions with all the provinces. At least three full scale first ministers' conferences were held between 1974 and 1979 to consider the issue. On their re-election, the Liberals abandoned this multilateral approach, given the intrinsic conflict of interest between consuming and producing provinces, and pursued bilateral negotiations with Alberta. When these failed to resolve the issue, Ottawa acted unilaterally by imposing a price schedule, distribution of revenues and a taxation regime under the NEP.

The federal and Alberta governments agreed to resume negotiations in April. The provincial government was buoyed by the Alberta Court of Appeal decision and had proceeded with its threat of cutbacks without serious retaliatory action from the federal government. The federal strategy in the negotiations, obviously, was to retain as much of the philosophy and details of the National Energy Program but, just as obviously, it was

necessary to make concessions on price schedules, revenue-sharing and taxation.

Premier Lougheed outlined his government's strategy in the negotiations to the Alberta legislature. In the view of the provincial government, it was necessary not to fall into a federal trap of

either overreacting to create a public backlash in the rest of the country, which would justify their coming in under other provisions of the constitution and finishing the job, or capitulating as a result of pressure due to disruptions within the Alberta economy. (State of the Province Address, Alberta Hansard, October 14, 1981, p. 1093)

Therefore, Alberta had to force the government back to the negotiating table but ensure that it minimized adverse public reaction and retained support (*ibid.*).

In addition to the well-known tactics of production cutbacks, holding up development of the oil sands and challenging the validity of the natural gas tax, Lougheed specified the other tactics employed.

(These) involved making time work for us in building pressure on the federal government, and also having liaison and support of the other producing provinces ... It involved maximum communication with Albertans to sustain both awareness and support. It involved the development of a bottom-line position, developed by a task force back about May 1 last year, to avoid making unnecessary last-minute concessions and to give the principal negotiator for the government of Alberta room in fact to negotiate ... (*ibid.*)

What was this bottom line position? First, given Alberta's interest in exporting gas to the U.S., the provincial government wanted no export tax on natural gas in return for lower gas prices. Second, Alberta wanted to administer and fund the incentive payments itself because they were seen as an infringement on the province's control over resource management and development. Third, the government felt the petroleum and gas revenue tax (PGRT) was really a wellhead tax and therefore a royalty, which detracted from provincial royalties. Alberta favoured moving the tax away from the wellhead by some means. Finally, Alberta refused to negotiate on anything other than an "industry-wide basis," meaning that conventional and unconventional oil prices and taxation would have to be discussed jointly (*ibid.*, p. 1093-4).

The federal and provincial energy ministers, Marc Lalonde and Merv Leitch, met for the first time (since the introduction of the NEP) on



April 13 in Winnipeg. It apparently was an information sharing session with the federal government relaying its objectives and proposals to the Alberta delegation. A significant departure from its previous position was Ottawa's acceptance of a "two tier" pricing schedule for "new" and "old" oil; Lalonde also indicated a willingness to consider higher prices for oil in return for Alberta's restraining its royalty levels. No bargaining was actually undertaken.

Meetings of ministers were usually preceded and followed by meetings of officials who were responsible for "clearing away the statistical underbrush" and working out the financial implications of proposals. There were reports that the deputy ministers of energy, Mickey Cohen from Ottawa and Barry Mellon from Alberta, as well as the ministers themselves, developed a mutual respect which may have contributed to the willingness to proceed with negotiations despite no immediate tangible progress.

The energy ministers met again in Banff on June 10 when Alberta responded to Ottawa's April proposals. Alberta accepted the distinction between "new" and "old" oil but came out strongly against the export levy on natural gas. The province insisted that the PGRT be restructured as some form of corporate tax, and argued for provincial administration of incentive payments (Globe and Mail, June 6, 1981, p. B1).

The federal government countered Alberta's proposals at another ministerial meeting on June 29 in Toronto. Ottawa put forth a pricing schedule for "old" oil and apparently gave way on the natural gas export levy and revenue tax while acceding to provincial desires to assume control of incentive grants. While the meeting was termed "constructive," the all important issue of revenue-sharing was not discussed because price levels had not been settled.

During the next month, officials met while political pressures began to mount; the public, premiers and the industry exhorted both sides to reach an agreement. The ministers met briefly early in August but the final marathon negotiating session began on August 26 in Montreal after the stunning defeat of the Liberals in two by-elections. This was the "homestretch"; only revenue-sharing remained unresolved. As the negotiations stretched out day after day, hopes rose that an agreement was imminent. Just as Alberta was set to implement the third stage of cutbacks on September 1, Premier Lougheed flew to Ottawa to sign an energy pricing and taxation agreement lasting until 1986. (Alberta apparently wanted a long-term agreement which would remain in force after the next federal election.)

Under the agreement between Ottawa and Alberta, a two tier price system for new and old oil was instituted. A ceiling of 75 per cent of the international price was put on old oil and annual wellhead price increases

in 1981 and 1982 were limited to \$4.50 per barrel as promised by the Liberals in the 1980 election campaign. Old oil was defined as that discovered prior to January 1, 1981. The federal government abandoned its objection to linking Canadian prices to world prices which, in the National Energy Program, had been characterized as "arbitrary and artificial." The difference between the NEP price schedule for conventional oil and the agreement on old oil amounted to \$19.00 by 1986.

New oil was defined as that conventional, synthetic and Canada Lands oil produced after December 31, 1980. This type of oil would be priced according to a New Oil Reference Price (NORP) which consisted of a fixed price schedule to 1986 but included further increases after 1984 if the base price was lower than a phased-in moving average of approximately 85 per cent of the international price.

Table 5:1

Wellhead Oil Prices at Year End  
Under Canada-Alberta Agreement (\$ per barrel)

	Old Oil	New Oil
1981	\$21.25	\$21.25
1982	25.75	49.22
1983	33.75	57.06
1984	41.75	63.48
1985	49.75	70.23
1986	57.75	77.48

(Taken from Summary-Canada/Alberta Memorandum of Agreement on Energy Pricing and Taxation, and Price Waterhouse, The National Energy Program, 2nd edition, November, 1981.)

Natural gas, because of its plentitude, was a central feature of the NEP's "off-oil" goal. The NEP set gas prices at city-gates and set annual price increases of \$.45 per thousand cubic feet (mcf). Under the agreement, prices will be set at the Alberta border and will increase \$.50 per year until 1986. Alberta agreed to discount new sales by 30 per cent to fund federal efforts to expand the natural gas transmission and distribution system as a means of ensuring new domestic markets are opened up. In return, the federal government agreed to authorize additional gas exports where the National Energy Board identified a surplus.

The controversial natural gas and gas liquids tax was modified in response to Alberta's adamant opposition to an export levy on the product.

The excise tax remained in effect for domestic sales but was reduced to zero per cent on exports of natural gas, to last until 1986. Thus, the federal right to impose the tax was not resolved, but there was assurance it would not be imposed in the life of the agreement. A levy equal to the domestic rate was applied to exports of propane and butane.

The equally controversial petroleum and gas revenue tax was also amended in recognition of Alberta's charge that it was effectively a wellhead tax. The tax was set at 16 per cent but was reduced to an effective rate of 12 per cent through a resource allowance; 25 per cent of production revenue before deducting crown charges and royalties could be deducted, thereby relieving some of Alberta's concern that revenues on which provincial royalties were levied would be unduly diminished. The tax as applied to oil sands projects would be phased in until they began producing profitably.

A few federal tax was introduced under the agreement. The incremental oil revenue tax (IORT) was set at 50 per cent on the difference in revenue earned by producers on old oil under the new agreement compared to the NEP schedule. This was essentially a windfall profits tax.

Alberta gained administrative and financial responsibility for the Petroleum Incentives Program (PIP) in the province but Ottawa continued to set incentive levels, Canadian ownership rules and other policies. Alberta would control administrative details. Alberta also agreed to provide "expeditious" approval for the Alsands and Cold Lake oil sands projects.

On the fundamental issue of revenue-sharing, the shares broke down into 25.5 per cent for the federal government, 30.2 per cent for Alberta and 44.3 per cent for the industry. Federal revenues were derived from the Canadian ownership tax, the natural gas and gas liquids tax, the oil export tax, the incremental oil revenue tax, the petroleum and gas revenue tax, corporate income tax and surplus petroleum compensation charges. The Alberta government got revenue from royalties and freehold tax, the oil export tax and corporate income tax.

In his statement after the signing of the agreement, Prime Minister Trudeau called it a victory for Canada, the economy and federal-provincial relations. For his part, he said "We've bargained hard and we've compromised." Alberta Premier Lougheed welcomed the agreement as affirmation of the province's ownership rights, just as the production cutbacks had demonstrated Alberta's ability to control the rate of production. In reference to the natural gas export tax, Lougheed commented the province had "won in the political arena ... It makes for difficult to subsequent governments to bring it forward." Other premiers

welcomed the agreement, seeing it as bolstering and stabilizing the Canadian economy. Premier Peckford saw it as proof that "co-operative federalism can work."

Industry reaction was less sanguine although the industry was generally pleased there was an agreement. Those companies drilling for "new oil," such as Dome and Nova, were pleased with the price schedule. But the Canadian Petroleum Association chairman Clem Dumett claimed that financial returns to producers of established oil and gas reserves showed no improvement over those provided for in the NEP. He argued that this would mean the goal of self-sufficiency would be delayed because current revenue "must pay the bills for replacement supplies." But satisfactory prices alone could not induce the rapid recovery of the oil and gas industry after the intergovernmental impasse. As Bob Brown, president of the Independent Petroleum Association of Canada pointed out, high interest rates, an over-supply of gas and less capital available for borrowing made the prospects for recovery less bright than in 1974 and would further delay the prospect of self-sufficiency.

Table 5:2

## Revenue Sharing Estimates 1981-86

Under Canada-Alberta Agreement (billions of dollars)

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Government of Canada	54.3
Government of Alberta	64.3
Industry	<u>94.2</u>
 TOTAL	 212.8

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(Taken from Summary-Canada/Alberta Memorandum of Agreement on Energy Pricing and Taxation, p. 6)

## Negotiations with B.C. and Saskatchewan

With an agreement forged with Alberta, the parameters were established for deals with the other two producing provinces, B.C. and Saskatchewan. As displayed by its withholding of tax revenues from the natural gas tax and Canadian ownership charge, B.C. objected strongly to the natural gas tax. The province was also interested in ensuring natural gas exports to the United States. In an agreement signed on September 24, a five year revenue-sharing split was determined. Ottawa would get \$3.2 billion or 26 per cent, B.C. would get \$4.6 billion or 37.4 per cent and the industry would receive \$4.5 billion or 36.6 per cent out of total revenues of \$12.3 billion. The federal government agreed to pay for and administer petroleum incentive payments in that province. B.C. agreed to return all withheld

revenues plus interest, and agreements were made on coordinating tax and royalty levels for the benefit of the industry. The zero rate on natural gas exports applied as well as the levy on gas liquids exports included in the Alberta agreement. The two governments agreed to pursue discussions on the control of offshore petroleum and mineral development.

Negotiations were conducted with Saskatchewan in October. The province was particularly concerned about heavy oil upgrading since oil in Saskatchewan is not as light and pure as that in Alberta. The provincial government was also firmly of the view that the federal government could not tax provincial Crown corporations. The provincial government was prepared to take a case to the Saskatchewan Court of Appeal testing the validity of federal taxation against the province and crown corporations, given the provisions of s. 125 of the BNA Act.

In addition to sharing taxation and pricing elements with the Alberta agreement, there were several special features of the Saskatchewan agreement. The memorandum set out a fundamental legal difference of opinion on the taxation of government property.

The Government of Saskatchewan takes the position that the Crown in right of Saskatchewan ... (is) not liable to pay taxes under the NGGLT and COSC (Canadian Ownership Special Charge) and the Government of Canada takes the position that it has the right to levy such taxes on the Crown in right of Saskatchewan ... (they) have agreed however to set aside those differences of position without prejudice to them ... (Appendix to the letter of understanding between the Government of Canada and the Government of Saskatchewan relating to Energy Pricing and Taxation, October 26, 1981, p. 3)

Therefore, Ottawa agreed to remit the amount payable by the Crown in right of Saskatchewan under these two taxes in return for grants from the provincial government in lieu of tax charges. The same arrangement applied to the petroleum and gas revenue tax and incremental oil revenue tax. In turn, Saskatchewan agreed to drop its court case on oil and gas taxes for the duration of the agreement. The governments also agreed to construct a heavy oil upgrading facility in the province and Ottawa approved the export of surplus heavy oil.

The revenue sharing split was as follows: Government of Canada \$3.5 billion or 22.7 per cent, the Government of Saskatchewan \$5.8 billion or 37.7 per cent and \$6.1 billion or 39.6 per cent for the industry.

#### OFFSHORE RESOURCES

Given the failure of the constitutional talks in 1980 to reach an agreement on jurisdiction over offshore resources and the difficulty of

concluding satisfactory administrative arrangements, the federal government argued that any legal uncertainty about jurisdiction should not impede "rapid development" of the region's oil and gas potential. With Bill C-48, the Canada Oil and Gas Act, the federal government moved to establish the regulatory powers and structure to accelerate development in the Canada Lands — those lying off the east and west coasts and Yukon and the Northwest Territories. This act was seen by Nova Scotia and Newfoundland, the two provinces disputing the ownership issue, as beyond federal authority.

In a speech made in St. John's on May 5, Prime Minister Trudeau made it known that the federal government was willing to negotiate a settlement on shared management of the offshore resources, setting aside for the moment the jurisdictional issue. Trudeau felt it was crucial to decide immediately whether the issue would be settled legally or politically because of the amount of activity offshore. He reiterated the federal proposal that a province would receive 100 per cent of the revenues to which it would be entitled if the oil were located on land, as long as the province qualified for equalization. Once a province joined the ranks of the "haves," the federal government would begin receiving a "fair share" of the benefits.

Premier Peckford was reluctant to accept the Prime Minister's words at face value since "any flexibility implicit in the Prime Minister's remarks seems contradicted by other initiatives." But in accepting the federal offer to negotiate, Peckford imposed a condition to the effect that Ottawa and St. John's declare a moratorium on all calls for exploration and drilling rights until negotiations were concluded. The federal government eventually agreed to withhold any activity until February 28, 1982.

In Newfoundland's view, the clarity of the federal offer was also lessened by the intervention of Ottawa before the Supreme Court on a case concerning jurisdiction over workers on offshore rigs. Ottawa had asked the court to consider the larger question of jurisdiction over offshore resources. Peckford assumed this intervention would be dropped as negotiations were undertaken. However, in his reply to Premier Buchanan's statement of willingness to undertake negotiations, Trudeau stated:

Present divergence of views regarding ownership has introduced an element of uncertainty which would eventually impinge adversely on an orderly development of the offshore hydrocarbon potential. This issue cannot remain unresolved much longer. It is therefore the intention of the federal government to see the matter resolved through the legal process while federal-provincial discussions concentrate on the more germane aspects of administrative mechanisms and revenue-sharing. (emphasis added, Nova Scotia press release, July 31, 1981, p. 3)

He proposed that negotiations begin on this basis but imposed a deadline of February 1982 for political resolution of the issue after which any legal decision would prevail.

Justice Minister Jean Chrétien wrote to the B.C. Minister of Intergovernmental Relations, Garde Gardom in the same vein. The federal government's claim to jurisdiction over the offshore resources was based on a 1967 Supreme Court decision which held that the mines and minerals off the coast of B.C. belonged to the federal government. In 1976, B.C. chose another tack, arguing in the B.C. Court of Appeal that the province owned the bed of the Strait of Georgia and those of the Strait of Juan de Fuca, Johnstone Strait and the Queen Charlotte Strait. The court upheld the province's argument, deciding that B.C. at the time of Confederation included all lands east of the Pacific Ocean. Therefore, the waters referred to were internal waters of the province. Chrétien informed Gardom that the federal government would appeal the B.C. Court of Appeal's decision to the Supreme Court, on the basis that the present legal and jurisdictional uncertainties could not continue. The Justice Minister offered to begin negotiations on revenue-sharing and administration, but imposed the same February deadline and claimed that a legal decision should prevail if a negotiated settlement were not forthcoming.

Prior to negotiations, Newfoundland underwent an internal shake-up over who was to negotiate with Ottawa. Mines and Energy Minister Leo Barry wanted to deal directly with Lalonde and resigned in protest when Peckford placed a six member interdepartmental team reporting to the priorities and planning committee of cabinet in charge of negotiations. The Newfoundland team was headed by Cyril Abery, the deputy minister of intergovernmental affairs and included representatives from the Premier's office, the Cabinet secretariat, the petroleum directorate and finance and justice departments. The Nova Scotia team was made of officials from the mines and energy, finance, intergovernmental affairs and attorney-general's departments.

Negotiations began on October 2 with Newfoundland and October 30 with Nova Scotia.

At a negotiating session in Montreal on November 12, Newfoundland tabled a document titled *A Framework for Agreement*

in the confident expectation that the spirit of compromise and consensus evident in the successful conclusion of the recent constitutional conference will permit a similarly successful resolution to the long-standing differences between Canada and Newfoundland on the question of offshore mineral resources (foreword).

Newfoundland's major points were:

- any federal-provincial agreement should be permanent, entrenched in the constitution and provide for periodic review;
- a joint management system should be established with both parties acting as equals;
- the provincial economy should be given full opportunity to capture maximum economic spinoffs from activity offshore;
- the resource commodities produced offshore should attract international prices; and
- the governmental revenues flowing from offshore development should be divided between them "on a traditional and equitable basis" as if the resources were located on land within that province.

There was some hope that the goodwill and cooperation displayed in the oil pricing negotiations would carry over into the settlement of this long-standing issue but events in 1982 belied that optimism in reference to the Ottawa-Newfoundland negotiations.

#### ELECTRICITY

In efforts to reduce the consumption of oil, provincial electrical utilities looked away from oil-fired generating plants and back to coal or hydro generation as well as to nuclear generated electricity. However, markets had to be sought for the substantial electrical potential. Manitoba actively pursued the construction of a western power grid, through which Saskatchewan and Alberta would receive electricity from Manitoba's considerable hydro capacity. But the provincial markets in the east were not big enough to employ the potential of Ontario's coal, nuclear and hydro stations, Québec's James Bay, Newfoundland's Churchill Falls and New Brunswick's nuclear facility at Point Lepreau. New Brunswick's efforts to sell interprovincially failed as P.E.I. and Nova Scotia declined to buy into Point Lepreau. Consequently, several provincial governments actively sought markets in the United States, especially in the northeastern states.

Meanwhile, the Newfoundland-Québec hydro dispute escalated. In 1976, Newfoundland initiated a court action which asked the court to order the Churchill Falls (Labrador) Corporation Ltd., of which Newfoundland owned two-thirds, to hand over 800 megawatts of power to the province. The



terms of the contract with Québec, which owned the other one-third of the corporation, allowed a recall of only 300 megawatts. Newfoundland wanted access to Churchill Falls power because it was the cheapest power available and most easily transported to the island (Government of Newfoundland and Labrador, *Managing All Our Resources*, October 1980), p. 78). The extra power was needed to make a transmission line economically feasible. In 1981, the case was before the Newfoundland Supreme Court.

Another part of Newfoundland's strategy to regain control of the Upper Churchill was the Upper Churchill Water Rights Diversion Act of 1980. It was referred to the Newfoundland Supreme Court to test its constitutionality and was still being considered in 1981. If upheld, the act would return control of the Upper Churchill water rights which had been leased to the corporation to Newfoundland.

The federal government entered the fray in June when it released a draft of its omnibus Energy Security Bill, a portion of which would broaden the National Energy Board's powers to allow land expropriation for interprovincial and international power lines. Newfoundland had been asking the federal government for several years to assert its authority in this area, arguing that transmission of hydro electricity across interprovincial lines should be conducted without interference as are other commodities. The province wanted to develop the Lower Churchill hydro potential and transmit power to markets outside Newfoundland and Québec. Québec, however, insisted that any Newfoundland power had to be sold to the province or its agents at the border. The federal bill would allow the NEB to permit the construction of an electrical transmission system by Newfoundland through Québec for the export of Lower Churchill power to the U.S.

The federal initiative met with cautious approval from Newfoundland and indignation from Québec. Premier Peckford found the federal proposal a "very useful first step" but argued that it covered only one of the province's two transmission preferences. The federal amendment would potentially allow the construction of a power corridor through Québec but, in the event that Québec blocked construction of such a corridor, Newfoundland wanted to "wheel" power through the Hydro-Québec system (Newfoundland Information Service, Press Release, June 23, 1981).

Premier René Lévesque described the federal move as "stark madness" saying it was "a direct attack on the territorial rights and integrity of Québec" and "part of a systematic offensive aimed at taking away Québec's power" (Montreal Gazette, June 26, 1981, p. 1; Globe and Mail, June 24, 1981, p. 1). Federal Energy, Mines and Resources Minister Marc Lalonde replied that the legislation was not necessarily a response to Newfoundland's concerns, saying he preferred that the two provinces negotiate a solution.

In addition to its regulatory role in nuclear development, the federal government has played an active role in promoting the use of nuclear power in Canada. It has undertaken equity financing in Ontario's nuclear facility at Pickering, Québec's Gentilly I and Point Lepreau in New Brunswick. It also supported the construction of heavy water plants in Port Hawkesbury, Glace Bay and the Laprade plant in Québec.

However, the Québec moratorium on nuclear development, decreased load forecasts and a surplus of heavy water caused Ottawa to look seriously at its support for domestic nuclear power as part of a nuclear policy review. In an effort to bolster the nuclear industry and boost the government's "off-oil" program, Ottawa remained committed to nuclear electrical generation, particularly east of Manitoba. However, Finance Minister MacEachen warned that the "beneficiaries" of nuclear power — utilities, provinces, consumers and the industry — would have to bear a greater share of the costs of future development, especially since the benefits were not shared equally by all regions ("Notes for an Address to the Canadian Nuclear Association," Ottawa, June 9, 1981).

#### PIPELINES

Natural gas was placed at the centre of the National Energy Program's "off-oil" thrust. Favourable prices were established under the federal-provincial energy agreements and revenues provided for federal incentives to distributors. All that remained was ensuring transmission of natural gas to those areas without access to the fuel. Thus, Ottawa decided the natural gas pipeline system should be extended from Montreal to Québec City and the Maritimes as proposed by the Trans Québec and Maritimes Pipeline Inc. The NEB approved the extension to Québec City in 1980 but held hearings in 1981 on the environmental effects and impact of possible offshore gas on the Maritimes leg.

The Nova Scotia government urged the NEB to approve a reversible pipeline to the Maritimes so that surplus offshore gas could be marketed outside the region. However, in its decision in August, the federal agency rejected the provincial argument and approved only a one-way extension. But Québec saw the decision as thwarting Québec's efforts to have a liquified natural gas (LNG) plant established at Gros Cacouna in the Gaspé. Energy and Resources Minister Yves Duhaime warned that if there were no gas line to Matane, Rimouski and Rivière du Loup (which would go through Gros Cacouna), "there will be no gas line at all" (Financial Post, October 10, 1981, p. 14). He threatened a "legal guerrilla war" to prevent the pipeline from linking with the Maritimes until Québec's conditions were met.

In November, TQ&M announced that the route of the pipeline extension would be changed to pass through Montmagny, La Pocatière and Rivière du

Loup, then turning southeast toward Edmundston, adding \$22 million to the total cost. The cabinet approved the plan late in the year.

The Norman Wells pipeline through the Mackenzie Valley, which was the subject of Justice Thomas Berger's 1977 study, was given a conditional go-ahead in July by the Cabinet. But the government requested a two year delay in construction to allow more time to reach an agreement in principle on native land claims.

By the end of 1981, high interest rates, declining markets and rapidly falling world oil prices were placing new strains on the energy agreements and raising serious questions about the revenue splits between industry and governments and the future prospects of major projects such as Alsands and the Alaska gas pipeline. Thus energy, in a somewhat revised context, would remain on the federal-provincial agenda.

## 6 POLICY FEDERALISM

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In the late 1970s and 1980, conflicts over jurisdiction were common in various policy areas as the constitutional talks addressed provincial proposals for changes in the division of powers. In 1981, however, the adverse economic climate was a greater contributor to federal-provincial conflict as the federal government sought to restrain its contributions to jointly funded programs. Jurisdiction did remain a live issue in some areas such as communications and education. But the economic situation also created pressures for intergovernmental cooperation as means were sought to alleviate the burden of farmers, homeowners, and fishermen suffering from the effects of high interest rates and depressed markets.

A common theme in many policy areas where there was substantial federal-provincial involvement in 1981 was the federal government's attempt to increase its presence with the public by arranging joint programs in such a way that Ottawa's contributions were made more visible. In general, the provinces resisted any federal attempts to reduce its level of funding for various programs since the burden of financing would fall to provincial treasuries, many of which were financially strapped. The provinces were not averse to advertising federal participation in joint projects but they objected to federal attempts to circumvent the provinces through direct delivery programs.

The chapter which follows cannot claim to be a comprehensive coverage of federal-provincial relations in all policy areas, nor does it deal fully with interprovincial relations as conducted on a functional level. Rather, it is intended to highlight certain areas which displayed different patterns of intergovernmental relations - jurisdictional disputes in communications or administrative concerns in justice. It is also designed to discuss certain simmering federal-provincial issues ready to burst into full fledged federal-provincial conflict such as pensions and the Crow's Nest Pass freight rate. Natives and northern development is included to flag those areas as an emerging arena of federal-provincial interaction in the 1980s.

## AGRICULTURE

In a year when marketing boards were increasingly criticized by economists for their inherent economic inefficiency in contributing to higher prices by subsidizing through quotas, moves were made by both federal and provincial governments to establish even more marketing boards or stabilization plans. While it appeared that the federal government was in favour of extending regulatory schemes to more agricultural areas, some provinces, particularly Alberta, argued for no more than price support programs and even for de-regulation. Another persistent problem in agriculture which showed up in 1981 was the relationship between federal and provincial stabilization plans. The complex array of payments and requirements caught farmers in the middle. Eugene Whelan, the federal agriculture minister and the Saskatchewan Minister, Gordon MacMurchy argued that this situation pointed up the need for coordinated national programs. The issue of federal "visibility" was also brought up in this context as Whelan complained that the provinces took all the credit for shared-cost programs. But agriculture also involved many other important issues discussed in the year such as grain transportation and shipping facilities.

An issue which affected every Canadian but fell particularly hard on farmers was interest rates. In May, the federal and provincial agriculture ministers met to discuss the effect of high interest rates on farmers. The provincial ministers made several suggestions:

- Farm Credit Corporation financing should be expanded.
- Debt refinancing should be included in farm improvement loans.
- Small Business Development Bonds should be extended to non-incorporated farms.
- Federal stabilization plans should be improved.
- Tax incentives for investment in agriculture were needed.
- Increased investment in the transportation system was necessary.

(Interprovincial Conference of Agriculture Ministers, Press Release, Lethbridge, July 13, 1981)

These items were discussed at a later federal-provincial conference.

One day prior to the federal-provincial conference, held in Lethbridge in July, the provincial ministers met to discuss "a number of national

issues" such as income stabilization, marketing plans, federal taxation policy, initial payments for grain, livestock transportation and energy policy. They called on the federal government to lower interest rates, not only for the benefit of farmers, but also for consumers.

One of the most important issues at the two day federal-provincial meeting was national marketing boards, and specifically the Economic Council of Canada's report on these agencies which was done as part of the regulation reference of 1978. Dr. David Slater, chairman of the ECC, appeared before the ministers. He stated that the Council did not object to price or income stabilization plans but found supply management agencies to be the equivalent of "domestic cartels" leading to higher prices for consumers.

The ministers also discussed use of pesticides in agriculture, the federal strategy for agricultural development to the year 2000, and dairy policy in addition to interest rates, taxation, fiscal and energy policy. Whelan also announced that he was initiating the formation of a national hog stabilization plan.

#### COMMUNICATIONS

Perhaps because the division of powers has not been able to cope with the implications of increasingly complex and innovative technology, jurisdiction over communications has remained a lively issue. Charges of intrusion were made by both levels of government against each other, and a judicial decision effectively narrowed the scope of federal jurisdiction. These jurisdictional difficulties have led to regulatory complications, as federal and provincial agencies operated in a field where jurisdiction was unsettled. Despite pressure, the federal government refused to discuss jurisdiction at the ministerial and official levels, arguing it was being handled by first ministers in their constitutional discussions.

#### Interprovincial

The provinces attempted to convene a federal-provincial conference of communications ministers in February which would have been the first since 1979. However, Secretary of State Francis Fox refused to attend, saying the agenda was premature as it dealt with items already on the constitutional agenda. The conference then became an interprovincial meeting held in Québec City on February 11-12.

In his opening statement, host Clément Richard, Québec's Minister of Communications, reviewed the history of interprovincial cooperation in communications. He found the first phase, leading up to the common front on jurisdiction in the mid-1970s, had given way to a period of federal assertiveness and bilateral exchanges. The 1981 meeting was seen as an affirmation of the revival of interprovincial cooperation which, according

to Richard, was regarded in Ottawa "as a pincer movement intended to isolate it."

The agenda covered the TransCanada Telephone System (TCTS), satellites and satellite reception, the licensing of urban cable TV networks and proposals put forth by Québec and Ontario for a national educational television system distributed by satellite. On the latter two issues, task forces were established to look into the matter with representatives of the Council of Ministers of Education Canada participating on educational television.

In their discussion of the telephone system, the provinces challenged federal actions and initiatives. Don Cody, Saskatchewan's Minister of Telephones, stated that all the provinces were concerned about "unilateral federal moves to interfere with the operation of the system."

The CRTC had been inquiring into the rates and facilities offered by members of the TransCanada Telephone System which is composed of provincially and federally incorporated telephone companies. Because these companies provide long distance service across the country, their facilities are interconnected and arrangements made to set the rates and divide the revenues from the service. The settlement of revenues arrangement made in 1976 was called the Revenue Settlement Plan (RSP). Saskatchewan argued that the CRTC

cannot ... impose specific arrangements or terms on the parties to the connecting agreement who are also participants in the RSP. To do so would involve, in effect, an attempt to regulate Sask Tel and other provincially regulated carriers. Such an attempt is patently outside the commission's statutory mandate. (Quoted in CRTC, Telecom Decision CRTC 81-13, July 1981, p. 27-8)

Cody stressed the point at the conference, charging that provincially regulated telephone companies would be affected by the CRTC's decision.

The other issue on which the provinces challenged federal policy was the reception of satellite signals. The Therrien Committee which enquired into the extension of services to northern communities recommended that Canadian satellites be used to deliver services to remote and underserved areas. In April, the CRTC licensed a consortium, Canadian Satellite Communications Inc. (CANCOM), to provide television service to underserved areas via satellite. But only certain signals would be allowed, in order to prevent an influx of American programming.

However, the federal government had difficulty in controlling the use of unlicensed earth stations or dishes which received and distributed

satellite signals, many originating in the U.S. and carrying signals from "superstations." Led by Pat McGeer, B.C.'s Communications Minister, the provinces formulated a common position on the reception of satellite signals:

All residents of Canada have the right to receive for their own use foreign signals intended for direct reception by the general public (broadcast). (Interprovincial conference of Ministers of Communications, "Provincial Principles on the Reception of Satellite Signals", Québec City, February 11-12, 1981, p. 1)

While B.C.'s McGeer was an ardent supporter of an "open skies" policy – allowing anyone with a dish to receive any satellite signal – the common front was qualified in that it would prevent dish operators from distributing signals to others and implied that American pay-TV, which is not intended for direct reception by the general public, would not be available under this policy.

The ministers decided to hold regular annual meetings and a federal-provincial conference was planned for the spring in Winnipeg.

#### Federal-Provincial

A meeting with Francis Fox was finally arranged for September 9-10 but in the interim, the federal government's policies on satellite reception and cable TV were challenged in the courts and by the provinces. The federal government had attempted to crack down on operators of unlicensed satellite dishes by prosecuting them, but the B.C. Court of Appeal rejected the federal case, saying Ottawa had failed to show that satellite equipment fell within the definition of broadcasting in the Broadcasting Act (see Chapter 7). This decision threw the integrity of the federal regulatory structure into doubt, with the industry arguing for de-regulation and Francis Fox countering that an "open skies" policy would damage the Canadian production and broadcast system (Globe and Mail, May 13, 1981, p. 15). CRTC Chairman John Meisel found importers of illegal signals were undermining "the essential trust between the industry and the regulator" and stressed that the industry "must accept the need for the public interest to be asserted" (Globe and Mail, May 14, 1981, p. 17).

In the cable television field, several provinces moved to assert control over the local distribution of cable television. Alberta introduced a bill amending the Alberta Public Utilities Act to allow the province to regulate cable and pay TV services while Nova Scotia drafted legislation designed to control local non-broadcast signals. Similar legislation was expected in Ontario and Québec. The president of the Canadian Association of Broadcasters (CAB) stated that Francis Fox had asked the CAB to



resist provincial jurisdictional encroachments, a position which it supported.

This is a good cause, and even if we are not satisfied with CRTC performance and suspicious of Department of Communications goals, we should all recognize the sense of not inviting another jurisdiction into further muddy waters. (Quoted in Regina Leader-Post, May 27, 1981, p. A11)

In a statement prior to the September conference, Fox made it clear that the federal government was still unwilling to discuss jurisdictional issues with the provinces. Instead, he stressed how federal-provincial cooperation was essential to develop advanced technological industry for the Canadian communications sector.

The new Québec Communications Minister, Jean-François Bertrand, responded to Fox, saying "The development of communications has suffered far too much as a result of these quid pro quo's, these grey areas, and the government's wait-and-see attitudes" (Federal-Provincial Conference of Ministers of Communications, "Opening Address by Mr. Jean-François Bertrand," Winnipeg, September 9-10, 1981, p. 2). He urged that action be taken quickly on several fronts to ensure the industrial development of the field.

The final agenda of the conference indicated the complexity and diversity of the issues which faced the ministers. They received reports from three working groups on the structure and competition of the industry, the industrial impacts of communications policies, and delegation of responsibility for cable. The ministers reviewed the ownership policy on earth stations, the transborder use of satellites, communications services to the disabled and microwave policy. But the most contentious issues were the CRTC's decision on telephone rates, pay television and cable delegation, along with satellite policy and extension of services.

James Snow, Ontario's Minister of Transportation and Communications, expressed dissatisfaction with the CANCOM arrangement and protested against federal unwillingness to permit the reception and delivery of U.S. satellite signals.

Saskatchewan led the opposition to federal regulatory actions on the telephone system. Roy Romanow said the CRTC decision 81-13 in July which directed the federally regulated B.C. Tel and Bell Canada to renegotiate their agreements with provincially regulated companies "sets region against region and government against government." He went on to argue for a joint regulatory structure in this area. The ministers established a task force to study the need for such a structure.

Québec led the charge of the provinces on pay TV. Mr. Bertrand criticized the federal request which asked the CRTC to hold hearings into the issue. The provinces consider pay TV as an aspect of closed circuit television and therefore under provincial jurisdiction. The Québec minister stated he had asked for the item to be included on the agenda because "a real debate has not taken place at the political level and must take place before the CRTC decides in the place of those politically elected to do so" (Federal-Provincial Conference of Ministers of Communications, "Pay TV: A Preliminary Statement," p. 3). Because both levels of government had expressed their intention to exercise jurisdiction in the pay TV area, the ministers requested their deputy ministers to meet and report on the matter by December. Roy Romanow of Saskatchewan suggested that a system of dual regulation be established, with the provinces authorizing the local exhibition of pay TV and the CRTC continuing to license national pay TV networks.

The ministers received the report of a working group on cable delegation which had been set up following the 1979 federal-provincial ministerial conference. (See Document 830-130/005, Federal-Provincial Conference of Ministers of Communications, Winnipeg, September 9-10, 1981). The provinces argued that in 1979, the federal government agreed that responsibility for cable distribution should be delegated to those provinces which wanted control in that area. The federal government claimed that delegation of responsibility from the provincial to the federal level, such as regulatory authority over closed circuit programming, should be included on the agenda. This difference of opinion on basic principles was the first of many found in the report. Basically, both sides agreed to disagree on the issue, with the federal government finding that the joint provincial proposal would impede its ability to realize the objectives of its communications policy. Québec declined to participate in the working group. The group's report was not discussed at the conference because Fox refused to discuss jurisdictional issues.

Communications will likely remain a contentious issue as provinces seek to satisfy community and consumer needs, provide educational television and encourage regional cultural expression, while the federal government tries to protect and enhance Canadian culture. The communications industry is also singled out for profitable expansion and both levels of government would like to be able to guide this development. Clarification of jurisdiction in this area may be seen in the near future either through judicial review or constitutional reform.

#### CONSUMER AND CORPORATE AFFAIRS

Federal plans to reform competition law sparked divided provincial reaction in 1981. Ottawa had been trying to reform its competition law, under which business mergers and takeovers operate, since 1971, but had

run into well-organized and persuasive opposition from the private sector. In 1981, several events combined to make competition policy reform a priority. The government saw oil companies merging at a time when Canadianization in that sector was a central policy goal; the anti-combines branch of the federal Department of Consumer and Corporate Affairs released the results of an eight year investigation into the petroleum industry which charged oil companies with conspiring to fix prices; the current combines law had been ineffective in recent years in breaking up the K.C. Irving monopoly on English language newspapers in New Brunswick and a monopoly on sugar refining in western Canada by B.C. firms; and several corporate mergers took place which were felt to be undesirable by Ottawa but could not be prevented under existing rules.

In April, Consumer and Corporate Affairs Minister André Ouellet circulated a document, *A Framework for Discussion*, to the private sector for comment leading up to expected legislation in the fall. The document proposed that competition offences be dealt with in civil courts, thereby loosening the requirements for the federal government to prove competition had been lessened. Much stricter standards for criminal law evidence applied under the current legislation. Ottawa also proposed that a monopoly be defined as the dominance of up to four companies in any one market (*Globe and Mail*, September 22, 1981, p. B15). As expected, the business community was adamantly opposed to changes, seeing the proposals as further government intervention in the marketplace.

At a meeting of federal and provincial consumer affairs ministers in Québec City in September, Ontario made its opposition to federal plans very clear. The Ontario minister, Gordon Walker, lashed out at Ottawa saying the proposals were "arbitrary, artificial, unnecessarily interventionist" and an example of "regressive parochialism" (*Globe and Mail*, September 3, 1981, p. B3). Walker's basic philosophy was that consumer protection policies hindered private initiative, shifted responsibility to governments and courts and added costs to goods and services "without significantly off-setting social benefits" (Federal-Provincial Conference of Ministers of Consumer Affairs, "Opening Remarks by the Hon. Gord Walker," Québec, September 3-4, 1981, p. 1). He declared federal proposals to be a "political over-reaction" to recent high profile mergers and not a sound response to economic needs. Walker called the policy statement a "political document" which revealed a "disturbing commitment to expanding government control over the private sector."

The co-chairman of the conference, Québec Minister of Housing and Consumer Affairs Guy Tardif, also expressed opposition, but on jurisdictional rather than philosophical grounds. Shifting prosecution of offences to civil law was seen as an intrusion on provincial jurisdiction. He noted

Québec intends to remain master of its economic policy in the area of competition. It is out of the question for us that the economic profile of Québec can be modified or modelled by a legislature other than its own. (Globe and Mail, September 5, 1981, p. B6)

But the federal government was supported by at least two western provinces. Saskatchewan felt the legislation was out of date and ineffective and therefore needed modernization; B.C. supported the need to take "a modern look" at the area.

In the communique from the conference, it was indicated that most provincial ministers would take a final position only after further study, but further consultation with the provinces would take place after the introduction of legislation.

#### EDUCATION

Because education is within exclusive provincial jurisdiction, most federal-provincial relations in the field are conducted at arm's length. With the re-negotiation of fiscal arrangements and inferences that cuts would be made in federal support for post-secondary education, the respective roles of both levels of government in post-secondary education were aired in 1981. Secretary of State Francis Fox made it known that the federal government intended to seek accountability from the provinces for the use of funds transferred to them for use in post-secondary education to acquire more federal visibility, and to pursue national objectives such as the encouragement of a national identity and a national manpower training strategy. While the provinces were intent on keeping the field free of federal policy involvement, the poorer provinces walked a fine line in arguing for continued federal financial involvement as long as it were not used as justification for increased federal authority or control. Québec and Alberta were reportedly most adamantly opposed to the federal ambitions (Le Devoir, February 14, 1981, p. 12).

By the time the Council of Education Ministers Canada (CMEC) met in September, they saw a broad federal strategy emerging in relation to post-secondary education. In his testimony to the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements, Secretary of State Francis Fox noted that, in the 1980s, there would be a likely "blurring of the lines between education and work, between education and training and between education and culture and communications." Because the federal government was responsible for manpower training and operation of the labour market as well as culture and communications, he saw these trends as calling for a strengthening of federal involvement in post-secondary education.

The Task Force report, *Fiscal Federalism in Canada*, and much of the testimony received by the committee, expressed and supported arguments for a stronger federal role in post-secondary education. While acknowledging the need for sufficient funding to ensure the pursuit of spiritual and intellectual goals, the Task Force pointed out that the federal government had specific responsibilities

not for reflective scholarship, but for mission-oriented enquiry, not for curiosity-oriented research, but for applied research and development, not for general knowledge, but for skills in demand in the economy. (*Fiscal Federalism in Canada*, p. 122)

In addition, the Employment and Immigration Canada task force report, *Labour Market Development in the 1980s* (July 1981), concluded that "general institutional base support" through EPF should be reduced in favour of more "flexible" funding mechanisms which could respond to labour market needs, such as direct grants to employers or students, incentives to institutions to set up affirmative action programs for natives and women and thrust funds to facilitate the expansion of engineering, science, technologies and business training (*Labour Market Development in the 1980s*, p. 177).

The Council of Education Ministers saw these statements as indicative of a clear federal intent "... to shape or create programs over the heads of the provincial authorities, with one of the prime objectives being, quite simply, increased public visibility for federal spending" rather than any desire to improve the education and training needs of individuals (CMEC, *Liaison*, October 1981, p. 3). The ministers felt that direct grants to institutions would be a violation of provincial jurisdiction.

The federal government had charged that the provinces had been unwilling to let Ottawa into discussions of education policy, which had been one of the broad conditions of the EPF arrangement. One provincial minister made a point of saying

there is no intention on the part of any of the ministers here present to withhold the possibility of communications, consultation, cooperative action with the federal government in terms of meeting what is determined on a cooperative basis, as the national needs as far as education goes. But we would insist that it be done on a cooperative basis, that it not be done unilaterally, which seems to be the kind of direction the federal government is considering taking. (*Liaison*, October 1981, p. 3)

As discussed in Chapter 4, Finance Minister Allan MacEachen announced that the federal Secretary of State and Minister of Employment and Immigration would be meeting with their provincial counterparts to discuss "human resources development" in the context of federal funding for post-secondary education. Gerald Regan, Fox's successor as Secretary of State, and the provincial ministers met in early December to discuss the issue. The Québec Minister of Education, Camille Laurin, did not attend, following his government's policy of non-participation in most federal-provincial meetings in response to the constitutional accord.

Federal and provincial ministers responsible for education met several times over the year to discuss the Bilingualism in Education Program. The last five year agreement expired in March 1979 and was financed on an interim basis until a new agreement could be reached. The provincial ministers met with Francis Fox in January and Gerald Regan in December to discuss the issue.

The provinces had four concerns about the program. They stressed the need for a long-term agreement to make planning more feasible. They said that funding had declined in 1979-80 from the previous year and argued for an increase over the 1979-80 level to reflect inflation and growth in demand. The ministers also wanted a guarantee that provincial receipts would not decline further. Finally, they assured the federal minister that funds would be used to support the program's objectives (*Liaison*, October 1981, p. 11). Regan replied that the federal government also had a set of principles which it felt should guide a long-term agreement and agreed to provide the provinces with a statement of these principles and a policy framework.

Another federal-provincial issue with which education ministers dealt in 1981 was financial assistance for post-secondary education students. In January, the Report of the Federal-Provincial Task Force on Student Assistance was released by both levels of government. It examined the adequacy and appropriateness of government funding policies and presented several policy alternatives which the ministers discussed.

A final issue on the agenda of the CMEC was the educational use of satellites. A federal-provincial task force was set up to look into the issue in 1979. The ANIK-B satellite has channels which have been assigned for educational use and a provincial "users' group" was formed to provide input to the federal Department of Communications as it planned the allocation of satellite channels. The ANIK-B extension ends in mid-1982 and the provinces wanted to ensure that satellite facilities for educational purposes were reserved on ANIK-C and that access would be available at a preferred rate (*Liaison*, March 1981, p. 3).

## FISHERIES

Since the proclamation of the 200-mile limit in 1977, the coastal fisheries of Canada enjoyed larger catches and greater financial returns. However, in 1981, the "boom and bust" cycle of the fisheries was repeated as catches declined, prices plummeted and markets were depressed late in the year. Claims to jurisdiction over fisheries, a hotly contested topic during the constitutional negotiations of the late 1970s and 1980, were cast aside in favour of joint action by both levels of government, to address the seemingly intractable problems of the fisheries.

The 200-mile limit policy was designed to increase the amount of fish available for Canadians to catch. But this did not solve the problems of over-capacity at the harvesting and processing levels, poor quality and inadequate markets. In response to these persistent problems, the federal government - which has exclusive jurisdiction over coastal fisheries - announced a major shift in policy away from the "expansionist" tendencies of the 1970s towards an emphasis on "competitiveness, efficiency and extracting more value domestically from a limited resource" (Fisheries and Oceans Canada, *Policy for Canada's Atlantic Fisheries in the 1980s*, 1981, p. v). The federal government's policy review had concluded

Yesterday's problem was one of insufficient volume; today's problem is one of insufficient discipline: expectations and appetites must be tailored to the resource available. (*Policy for Canada's Atlantic Fisheries in the 1980's*, foreword)

Two themes were evident in federal proposals for an Atlantic fisheries policy - licensing and marketing. Licensing of "full-time" fishermen is designed to control the amount of harvesting by reducing the number of fishermen. Harvesting control has been the target of many other forms of regulation which have failed to prevent over-fishing and stock depletion. Marketing has been relatively neglected as Ottawa strove to cope with other problems but the federal government served notice that marketing and quality improvement will be a policy priority.

### Public Inquiries

The spate of public inquiries into the fisheries which took place in 1981 - one royal commission, two commissions of inquiry, the announcement of a federal task force and several economic analyses - indicated that there were serious structural problems which the 200-mile limit had not addressed or perhaps had even exacerbated.

In August 1980, Newfoundland appointed a three member Royal Commission to Inquire into the Inshore Fishery of Newfoundland and

Labrador. The study was a direct response to the Newfoundland Fishermen, Food and Allied Workers' Union (NFFAWU) strike held that summer to protest the low prices offered by the processors to fishermen. Phase I of the Commission's report concluded that returns were such that the processors could not afford to increase inshore fish prices. Phases II and III of the report, released in October 1981, were much more substantial and addressed the economic requirements of inshore fishermen, processing, fish stocks, seasonal fluctuations in the inshore fishery, the geographical distribution of processing plants, collective bargaining, the role of the Canadian Saffish Corporation, unemployment insurance and marketing.

Many of the Commission's conclusions were consistent with federal thinking and indeed many other policy analyses. The Commissioners stressed that production must be upgraded if further market penetration were to take place. This would require the processing of fish into fillets rather than blocks and would necessitate strict quality control. The Commission found the marketing efforts of processors were fragmented and uncoordinated which led to damaging price competition. It recommended that export coordination must be exercised, even if "coercion" from both levels of government were necessary.

The Commission questioned the economic arguments behind limited entry at the harvesting level, arguing that it is not known for certain whether licensing enhances the economic situation of fishermen. It went on to say that licensing - or allowing only a selected few to participate in the fishery - could have an adverse psychological and social impact.

To forbid entry to the inshore fishery in regions where there are no other employment opportunities is to destroy for the non-entrants the meaning of their society ... and self respect for themselves. (Newfoundland, Royal Commission to Inquire into the Inshore Fishery, Report: Phase II and III, 1981, p. 394)

The Commission favoured licensing part-time and full-time fishermen but would not limit their numbers.

Prince Edward Island also set up a commission of inquiry to investigate the main issues in the Prince Edward Island Fishery in October 1980. The first part of the report dealt with marketing at the level of fishermen selling their catches to processors. This issue was eventually cast as a discussion of the merits of collective bargaining.

In P.E.I., as in Nova Scotia and New Brunswick, fishermen are not organized to sell their fish to the processors collectively, although there are several vertically integrated co-operatives. Fishermen are



regarded as independent entrepreneurs or "co-adventurers" who exploit a common resource and use their own gear and vessels. The Commission found that fishermen were dissatisfied with the prices they received at the wharf and

feel that this is not entirely due to the position on the final markets. They feel that they are losing financially because of lack of bargaining power in the face of the larger companies, which they consider to be directly, or indirectly, in control of prices and prejudiced against the inshore fishermen. (Report of The Commission of Enquiry into the P.E.I. Fishery, Part I, January 16, 1981, p. 12)

Commissioner Ernest Weeks recommended that collective bargaining legislation be introduced to provide fishermen with greater influence in dealing with buyers and processors.

The P.E.I. government greeted the report warily, pointing out that not all fishermen favoured collective bargaining but ensured that further discussions would be held on the matter (Island Information Service, News Release, February 16, 1981).

In January 1981, the federal Minister of Fisheries and Oceans appointed Professor Peter Pearce, a resource economist at the University of British Columbia, to head an inquiry into the conditions, use and management of the Pacific coast fisheries. The B.C. fishery is dominated by the salmon and herring stocks and had been plagued by instability.

In his preliminary report released in October titled **Conflict and Opportunity: Toward a New Policy for Canada's Pacific Fisheries**, Pearce addressed policies and procedures for regulating access to the fisheries and development of the commercial fleet. Licensing of fishermen and vessels was the main thrust of the report.

In a general assessment of fisheries policy, Pearce found the complex array of laws, regulations, institutions and administrative procedures to be in "disarray" and ineffective.

Our present fisheries policy is a legacy of history. The present complex regulations, governing virtually every fishing activity, have resulted from a long succession of governmental responses to particular problems at particular times. Regardless of the efficiency of the individual measures in serving their intended purposes, the aggregate result of this piecemeal process ... is that the policy is neither coherent nor well suited to modern needs.

Related difficulties have resulted from the necessity of adopting national fisheries policies to deal with widely differing regional circumstances in Canada. (p. 10)

Pearse also characterized the fisheries as fraught with conflict. The common property nature of the resource, which results in "all groups drawing from the same pool of resources and competing to protect and increase their shares," had prompted governments to intervene and protect groups from each other at the expense of the resource (p. 3). He identified several other sources of conflict - overlapping constitutional jurisdictions, the impact of industrial pollution international considerations and the characteristic "low incomes and recurrent economic stress (which) focus conflict."

Pearse identified the central problem of the commercial fisheries as the "chronic over capacity" of the fleets. Excessive inputs of capital and labour in relation to the available catch had fostered inefficiency and thus, low financial returns to individuals. In order to achieve some rationalization, Pearse recommended certain immediate changes to licensing of the halibut, food-herring and abalone fisheries while advising a longer term rationalization of the salmon and roe-herring fisheries.

#### Policy Responses

In the late summer, the east coast fishing industry suffered a rapid downturn, afflicted by low catches (mostly in Newfoundland), and poor markets which caused high inventory costs exacerbated by high interest rates. Inshore catches were down 50 per cent in Newfoundland, apparently because the cod did not migrate inshore as usual. Although the offshore cod quota had been filled, companies pressed the federal government to transfer some of the inshore quota to the offshore fleet (APEC Newsletter, September 1981, p. 4).

During August and September, approximately 15 fish processing plants were shut down and close to 5,000 workers were laid off in both Nova Scotia and Newfoundland. The depression brought out all the conflicts inherent in the industry. The companies blamed the federal government for favouring the inshore fishery; federal Fisheries and Oceans Minister Romeo LeBlanc blamed the companies for not "using more adept" marketing strategies and not planning a more orderly use of the offshore fleet so that the offshore quota would not be filled in a very short time; unions blamed companies for laying off workers as a bargaining tactic to pressure Ottawa into increasing the offshore quota; and the Newfoundland government accused the federal government of insensitivity to the needs of an economy based on the fishery. As a St. John's editorial stated,

All of this helps to emphasize the feeling that the government in Ottawa is not really in touch with what's going on in the country as a whole, especially in the perimeter regions. They are still basically oriented to the Ontario-Québec industrial heartland, and the rest of the country exists by sufferance. Ottawa has never really had a national fisheries policy ... It's about time they produced one. (St. John's Evening Telegram, August 13, 1981, p. 6)

In September, Newfoundland's largest fish processor, Lake Group, proposed a merger with the Nova Scotia-based H.B. Nickerson & Sons Ltd. and National Sea Products Ltd., and asked for \$40 million investment from the provincial government. Premier Peckford turned down the offer, saying he did not want to see "that much power concentrated in one huge company" (Globe and Mail, December 5, 1981, p. 1). The Newfoundland government did suggest that Lake Group drop the merger idea and seek financial assistance from both levels of government.

In early December, federal Fisheries Minister Romeo LeBlanc met with his counterparts from the Atlantic provinces (the Québec Minister did not attend) to discuss the industry's situation. Later in the month, the federal minister announced several short-term decisions. Fifteen million dollars was put aside for price support to processors, an unspecified amount of assistance was announced for Lake Group and a request for assistance from Nickersons and National Sea was being studied. It was also decided that the 1982 Atlantic Groundfish Plan would divide the offshore quota into company quotas so companies would decide among themselves when and where to harvest the offshore catch. A federal task force to study the questions of harvesting, processing and marketing was established, headed by Michael Kirby, then Secretary to the Cabinet for Federal-Provincial Relations, who would become deputy minister of Fisheries and Oceans on completion of the task force report.

#### HEALTH AND SOCIAL SERVICES

In the past few years, the state of medicare has become a serious concern of governments, consumers, and practitioners, as the practice of extra-billing has grown and health care costs have escalated. These concerns mounted in the years before renegotiation of federal-provincial fiscal arrangements, and the federal government was under growing pressure to act to prevent the "erosion" of health care. There were concerns that the EPF arrangement of 1977 had failed to protect the "integrity" of medicare as provided for in the conditions of the Medical Care Act because the relationship between program standards and financing was effectively severed. But with the introduction of the federal government's proposals for changing fiscal arrangements, as discussed in Chapter 4, Ottawa proposed to develop a more effective link between federal policy concerns and federal contributions.

Another federal-provincial issue which was considerably discussed but left unresolved in the year was pensions. Here the split appeared to lie on an ideological plane between those who favoured expanding the public pension system, led by federal Health and Welfare Minister Monique Bégin, and those who felt that the private pension system should be enlarged. Ontario Treasurer Frank Miller led the charge in the latter cause.

## Health

In 1981, provincial governments were caught in a spiralling cost/price squeeze. As health care costs escalated and doctors demanded greater salary increases, governments considered user fees and restrained wage settlements as possible solutions, or at least band-aids. But as governments could not afford to meet the demands of doctors, extra or balance-billing and withdrawal of services became realities rather than threats in some provinces.

Monique Bégin made known her adamant opposition to extra-billing and was supported by Saskatchewan's Minister Herman Rolfes, the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements and Justice Emmett Hall, the "father" of medicare. Those provinces which allowed extra-billing, notably Ontario, were ranged against the federal government on the issue and on Ottawa's attempts to protect the health care system from discriminating practices. The medical associations meanwhile actively promoted the idea of "patient participation" or extra-billing in funding health care since the government's "monopoly" had led only to underfunding.

Ontario and Québec chose to increase the cost of services to patients and put a greater burden on hospitals to raise their own revenue. Québec Finance Minister Jacques Parizeau raised a trial balloon about imposing user fees but the cabinet later rejected the idea and decided instead to double the cost of semi-private and private rooms, to average the cost of drugs available to senior citizens and eliminate certain non-essential drugs (*Globe and Mail*, July 23, 1981, p. 10). The user fee approach was discarded because it was felt that only very prohibitive fees would reduce consumer use when the real problem was rising costs due to inflation (*ibid.*).

Late in the year, Ontario Health Minister Dennis Timbrell announced that hospitals in that province would be free to set rates for semi-private and private rooms. The government made it clear that it would no longer come to the aid of hospitals who ran up annual deficits, and encouraged hospitals to employ "private sector thinking" to cope with the problem.

Collectively, the provinces were united in their opposition to possible cuts in Ottawa's funding for health care. Early in the year, the health

ministers from the Atlantic provinces met with B  gin to request an additional \$150 million in federal funding to bring the level of health care in the region up to that in central or western Canada. They wanted to use the extra funds to fund services not covered under provincial medicare plans such as pharmacare, dental care and psychiatric treatment which were offered by other provinces (Halifax Chronical-Herald, January 28, 1981, p. 3).

All the provincial health ministers met in St. John's in late September to discuss a broad range of health issues. They expressed discontent with the lack of a clear federal position on the issue of health care financing and asked to meet with B  gin to clear up the situation. The ministers also discussed blood fractionation, the health of Indians, urea formaldehyde foam insulation, medical manpower and pesticide control.

In November, the federal government announced it would delay for a year any changes in the health financing component of Established Programs Financing as federal and provincial health ministers undertook discussion on the health care standards and enforcement.

#### Social Services

While the pension issue operated in a larger context, involving financial questions of capital formation and budgetary policy, many smaller issues in social services combined to exacerbate the federal-provincial relationship.

At their October meeting in Qu  bec City, provincial social services ministers discussed many issues which overlapped other policy areas - housing, natives, manpower and unemployment insurance and juvenile delinquents. That meeting opened with a strong statement by the Qu  bec Minister, Denis Lazure who stated that certain federal attitudes forced the provinces to react collectively. He cited Ottawa's inclination to disregard provincial consensus on various issues even when there was unanimous agreement, such as calls for changes to the Canada Assistance Plan (CAP) or the vocational rehabilitation of disabled persons. He charged Ottawa with cutting expenditures and shifting the financial burden of financing programs to the provinces; amendments to the unemployment insurance program were mentioned in this regard. Lazure also denounced the federal tendency to alter financial arrangements "by changing or re-interpreting legislation by means of administrative directives." This attitude was seen to apply to CAP, native social services and temporary job creation programs.

Lazure felt the provinces should ask the federal government whether it was prepared to block-fund social services as considered in 1978, or to

amend CAP and the act providing vocational rehabilitation to disabled persons in order to allow recipients to enter the labour market. He also wanted the federal government to assume full financial responsibility for the delivery of social services to natives. The Québec Minister regarded the national conference on pensions which the federal government held in March as almost illegitimate since the provinces, who have jurisdiction in this area, were regarded as only another interest group. He urged the ministers to hold a conference on the matter before any further meeting with Ottawa.

### Pensions

Pensions emerged clearly in 1981 as an arena of developing federal-provincial conflict. Demands for reform of both public pensions and employer-sponsored private pensions had been growing steadily, and Prime Minister Trudeau announced that a major revision of the entire retirement income system was a top priority of his government ("Speech to the National Pensions Conference," March 25, 1981). The division of authority over pensions, however, is extremely complex, even by Canadian standards, and the Prime Minister's goal of pension reform would require elaborate federal-provincial consensus.

In the first place, the regulation of private pensions is primarily a provincial matter. In 1981, six provinces administered pension standards acts; New Brunswick was considering similar legislation. But the federal government also has an important role in this area. Its Pension Benefits Standards Act governs pensions in sectors of the economy subject to direct federal jurisdiction and Revenue Canada establishes guidelines for all private plans seeking deduction of contributions under the federal Income Tax Act. Reform of private pensions therefore requires coordinated changes at both levels.

Authority over public pensions is also divided. Both levels of government operate noncontributory programs, such as Old Age Security, the Guaranteed Income Supplement, and the various provincial income supplements for the elderly. But power over contributory pensions is shared much more tortuously. In return for provincial consent to the 19645 amendment to the BNA Act, which preceded the establishment of the Canada Pension Plan (CPP), the federal government agreed to write explicit provincial rights into the new pension legislation. Accordingly, the Canada Pension Plan Act states that any province may opt out and establish its own plan, in which case the CPP ceases to operate generally in that province. This provision was exercised at the outset by Québec, but it remains an option for other provinces in the future. In addition, the Act provides that amendments to the Canada Pension Plan must be approved by provinces accounting for two-thirds of the population.

Divided authority has created a set of constraints over changes in contributory pensions. First, to avoid the administrative and political headaches that would emerge if the two plans diverged sharply, pension planners in both Ottawa and Québec City accept that the Canada and Québec plans should remain broadly parallel, with neither side making significant changes unilaterally. Second, the formula requiring provincial assent to changes in the Canada Pension Plan means that the largest province, Ontario, has an effective veto, and that a variety of possible combinations of other provinces can also block changes approved by the federal Parliament. The importance of these provisions became clear in 1977 when Ontario vetoed a benefit liberalization proposal.

During 1981 the key issues in pensions reform were clarified. The first broad issue was whether existing gaps in the pension system should be filled by expanding public programs, especially the Canada and Québec Pension Plans, or by enriching private plans, or both. The second broad issue was whether the financing of the CPP should be changed, which could postpone repayment of the several billion dollars in loans that have been made from the CPP Investment Fund to the provincial governments. New financing procedures could be developed to divert at least some of any increased contribution flows away from provincial bonds toward investment in major economic development projects. Both levels of government could be expected to have strong opinions in both of these broad issues.

The political battlelines in the pensions field also began to emerge in 1981. The Canadian Labour Congress, pensioner groups, welfare organizations and women's rights groups increasingly demanded expansion of the Canada and Québec Pension Plans, while the private pension industry and business associations uniformly rejected such a course, advocating improvement of private pensions instead. A similar division began to develop among governments. Saskatchewan announced its firm support for expansion of the CPP and Québec's Minister of Social Development declared his government's resolve to expand the QPP. Ontario, on the other hand, repeatedly rejected expansion of the CPP and argued for reform of private plans. Nova Scotia established a royal commission on pensions; other provinces were still considering their positions. At the urging of Ontario, the Premiers' Conference held in August agreed to establish an interprovincial working party to study the financing of the CPP and the wider issues of pension reform. There appeared to be a clear intention to solidify the provincial position to avoid a "divide and conquer" strategy by Ottawa.

The federal position remained unclear throughout the year, although the Minister of National Health and Welfare continued to campaign ardently for major pension reform. At the end of March, the federal government hosted a National Pensions Conference to which representatives of all groups with an interest in pensions were invited. The provinces were invited to

participate with the same status as other interest groups. A federal Green Paper, setting out the various reform options without committing the government to any particular policy, was promised for the fall but was repeatedly delayed. Because of the intergovernmental sensitivity of the issue, the interdepartmental group supervising the drafting of the paper, which was chaired by the head of the Federal-Provincial Relations Office and included representatives from the Ministry of State for Social Development, Finance, and National Health and Welfare, initiated bilateral private consultations with individual provinces later in the year. The Green Paper was slated for release in the spring of 1982. However, there appeared to be interdepartmental tensions which slowed the process. Health and Welfare, as represented by Monique Bégin, favoured expansion of CPP, while Finance was seen to favour improved private coverage with the Ministry of State for Social Development holding an intermediate position.

In the pensions field, 1981 was therefore a year of preparing for battle. Clearly this field was expected to become the next big social issue on the federal-provincial agenda.

#### HOUSING

Housing proved a contentious area of public policy in 1981 and not just in federal-provincial terms. Mortgage rates rose as the Bank of Canada rate increased steadily in the first nine months of the year while inflation and recession bit into the construction trade leading to fewer housing starts and higher unemployment.

Early in the year, provincial ministers of housing protested the "unilateral and non-consultative" character of federal housing policy and programs. At their meeting in St. John's in late February, ministers stated that the cancellation of the Community Services Contribution program under which the federal government had contributed to the construction of municipal services, had left the provinces with incomplete projects and substantial financial obligations. They criticized federal spending cuts for urban rehabilitation projects and pointed out that joint administration of such projects was replaced with sole CMHC administration. The ministers feared another unilateral federal move in the field, citing rumours of an independent federal shelter allowance program "that may duplicate provincial efforts." They sought consultation on these matters and requested a commitment from Ottawa that funding be continued in housing programs but with the provinces left free to identify spending priorities (Interprovincial Housing Ministers' Conference, "Joint Communiqué," February 26, 1981, p. 1-3).

Under pressure from the opposition on the government's housing policies, federal Housing Minister Paul Cosgrove agreed to meet the provincial



ministers in June in Ottawa. In his opening remarks, Cosgrove pointed to two general federal concerns with provincial housing policy - the imbalance among provinces in resources directed to the field, and the "alarming" lack of federal visibility and accountability. The federal minister stated no change should be expected in monetary policy because most homeowners would be able to meet increased monthly payments since their disposable incomes had risen. Therefore, new forms of homeowner subsidies were rejected as "inflationary" and counter-productive. Cosgrove announced that the rental sector was in the most need of assistance but it required adjustment to "normal market forces" and therefore only shelter allowances for extreme cases were called for.

The provincial ministers released a communique after the conference which stated they were "concerned and disappointed with the lack of clearly defined future federal housing policies and programs." They called on Ottawa to take immediate action to respond to the impact of unprecedented mortgage rates and called for an immediate review of the rates of the Bank of Canada and the chartered banks.

## JUSTICE

By definition, federal-provincial relations in the justice field are concerned with the details of the administration of justice. In 1981, several important issues arose at the federal level which had implications for the provincial administration of justice.

### Freedom of Information

Since the Clark government, freedom of information has been high on the list of federal priorities. In July 1980, Bill C-43, the Access to Information Act was given first reading and encountered a tortuous legislative history throughout 1981 - part of which was due to provincial objections.

The crucial section of the bill relating to federal-provincial relations reads as follows:

14. The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing,

(a) information on federal-provincial consultations or deliberations; and

(b) information on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial affairs. (House of Commons, Bill C-43, July 17, 1980, p. 11)

Early in the year, Saskatchewan Attorney-General Roy Romanow wrote on behalf of all the provincial attorneys-general to Secretary of State Francis Fox who was responsible for the legislation. The provincial view was that only the level of government having jurisdiction over a certain area should be able to release documents relating to that area and that law enforcement information gathered by the RCMP under provincial contract should be released only with provincial permission.

Ontario Attorney-General Roy McMurtry sent a lengthy letter to Fox and his provincial counterparts listing his complaints with Bill C-43. He argued that provincial responsibility for the day-to-day administration of justice meant that substantial weight should be given to provincial concerns.

McMurtry stressed the issue of which level of government should have the right of disclosure. He stated

The legislation should make it clear that responsibility to disclose lies with the provinces in those areas where the exclusive constitutional responsibility is provincial. This principle must hold whether the information is in the hands of the Federal or the Provincial agency. (Federal-Provincial Conference of Deputy Ministers Responsible for Criminal Justice, "Access to Information Act and Privacy Act - Communication to Hon. F. Fox from Hon. R. McMurtry," Mont Ste-Anne, June 22-23, 1981, p. 3)

McMurtry went on to list his concerns with the law enforcement exemption stating the administration of justice is a provincial responsibility and should be exempted from the scope of the federal legislation (ibid. p. 5). Thus, provincial pressures sought to limit the effects of new federal disclosure rules on their activities. But at the same time, the federal government was under considerable parliamentary and public pressure to reduce the range of exclusions from freedom of information provisions. In June, Fox tabled amendments to the bill that would loosen the controversial provision - regarded at least in the public eye as too restrictive - and allow disclosure of documents relating to federal-provincial relations unless their disclosure could be proven harmful (Globe and Mail, June 3, 1981, p. 8).

Throughout the rest of the year, provincial objections and parliamentary considerations ran in different directions. MPs, especially Svend Robinson of the NDP, who were pressing for other changes, were accused by Fox of deliberate delay; MPs countered that Fox was using provincial objections to stall the bill's progress. In December, the provincial attorneys-general issued a communique asking Fox to suspend consideration of the bill until they had had a chance to question Fox and his officials. Fox conceded to the provincial demands, reportedly on instruction from the cabinet (*Globe and Mail*, February 3, 1982, p. 8). A crack did appear in the provincial common front when the newly elected Manitoba NDP Attorney-General Roland Penner — a well-known civil libertarian — expressed support for the bill (*ibid.*)

#### Royal Canadian Mounted Police

In 1981, the federal government and the provinces negotiated new shared-cost arrangements for RCMP services but several other issues arose relating to the federal agency.

At their meeting in St. John's in October, the provincial attorneys-general and justice ministers expressed a desire to be consulted on the formation of a new civilian security agency, flowing from the recommendations of the McDonald Commission. Most of the meeting was occupied with an examination of the McDonald Commission's report which examined illegal RCMP activities. The provinces emphasized provincial accountability and responsibility for law enforcement, police practices and accountability of the national security agency to the provinces with respect to breaches of the law in individual provinces (*St. John's Evening Telegram*, October 3, 1981, p. 1). Québec had asked that the provincial ministers consider the transfer of responsibility for investigating illegal RCMP activities to the provinces (*Globe and Mail*, August 28, 1981, p. 1).

The theme of greater accountability of the RCMP to the provinces, which came up in the Supreme Court's consideration of the *Attorney General of Alberta & Law Enforcement Appeal Board v. Putnam & Cramer* (see Chapter 7) ran throughout the lengthy negotiations on RCMP contracts.

Under the five year contract which expired March 31, 1981, the provinces were responsible for 56 per cent of RCMP costs (their share increased by one per cent for each year); municipalities bore 52 per cent of the cost for the first five policemen and 77 per cent for each additional policeman, rising to 56 and 81 per cent respectively by 1980-81 (*Federal-Provincial Programs and Activities 1979*, p. 228). In October 1980, Solicitor General Robert Kaplan told the provinces that Ottawa

intended to increase the provincial share to 75 per cent and that of the municipalities to 90 per cent; the federal share would be reduced to 25 per cent and 10 per cent. Early in the year, the eight provinces who used the RCMP as a provincial police force formed a common front rejecting federal plans and asking for more RCMP accountability to the provinces (Ottawa Citizen, January 4, 1981, p. 12). One lever the provinces had was the threat of withdrawing from the service. In turn, Kaplan threatened to reduce services if no agreement was reached (Montreal Gazette, April 7, 1981, p. 16).

Negotiations dragged on sporadically past the expiry date. Rather than gradually moving towards the middle, both sides apparently expressed ever more extreme positions; Ottawa felt it should pay no more than 22 per cent of costs while the provinces argued federal support for municipal costs should increase to 40 per cent from 19 per cent. An agreement was finally reached in August.

Under the new 10 year arrangement, the provincial and municipal share increases will be phased in, rising to 70 per cent and 90 per cent respectively by 1991. The agreement also gave the province a greater say in RCMP activities; it was reported that provincial attorneys-general will have a formal consultative role in the appointment of the officer in charge of the RCMP in the individual provinces and will be able to see that provincial priorities are considered (Globe and Mail, September 4, 1981, p. 3).

#### Other Justice Matters

At the federal-provincial meeting of justice ministers held in Vancouver in early December, the agenda listed provincial concerns about the decriminalization of marijuana, the civilian security agency, young offenders legislation, enforcement of maintenance and child custody orders, child abduction, assistance for crime victims and the McDonald report (Vancouver Sun, December 10, 1981, p. 3).

#### MANPOWER

Labour market policy, or providing a good fit between the requirements of the labour market and the skills of the available labour supply, is generally considered to fall within the federal government's responsibility for the national economy. Ottawa has used programs such as unemployment insurance, training and mobility allowances, immigration and adjustment assistance to enable the labour supply to adjust to geographical and occupational demands. The federal government attempts to stimulate labour demand indirectly through tariffs, quotas and industrial incentives and directly through job creation programs (see Employment and Immigration Canada, Labour Market Development in the 1980s, July 1981).

Since 1960, manpower training has been pursued in cooperation with the provinces because it overlaps greatly with provincial responsibility for education. Under the federal Adult Occupational Training Act, the provincial governments are reimbursed for providing job-related training courses, facilities and instructors on a fee for service basis. Administrative costs are also covered. Under the arrangement, the provinces decided what courses were to be provided, set the curricula and schedules for training. In 1981, federal dissatisfaction with this arrangement — seen as another example of "blank cheque federalism" — was evident.

Out of the extensive consultations among business, labour and government, reinforced by the Major Projects Task Force, the standard thinking is that Canada will suffer a shortage of skilled trades workers in the 1980s, especially in the manufacturing and construction trades because of the impact of mega-projects development. Therefore, current arrangements for manpower training were questioned. Federal studies found policies and programs uncoordinated and potentially working at cross-purposes. Consequently, integration of federal support for post-secondary education, manpower training and unemployment insurance into a larger labour market policy was pursued.

In examining the post-secondary system strictly from the training viewpoint, the task force report on labour market development found that a "significant reallocation of resources is required." It recommended that engineering — especially those fields relevant to primary industry development, heavy construction, electronics and biotechnology — should be emphasized; general arts, teaching, education and public administration were discouraged and selective expansion in pure science (for R & D purposes) and business courses was recommended (Labour Market Development, p. 157). The task force found that policy should be structured to encourage universities and colleges to adapt to changing labour conditions and suggested several direct student, administration or private sector schemes.

On federal-provincial cooperation on manpower training, the task force found the "current methods of seat purchase for institutional training ... make it difficult at best for the system to be responsive to labour market needs" (ibid., p. 173). It recommended that conditions be attached to institutional funding so that occupations in high demand with an existing or potential shortage are emphasized, which could mean decreased support in low demand areas (ibid.).

The Parliamentary Task Force on Employment Opportunities for the '80s offered more support for the federal position. The MPs and the majority of witnesses they heard felt more emphasis was required on "on the job training" with continued support for institutional training. This implied

greater linkages between the federal government and private sector or labour and perhaps less, or more conditional, federal-provincial interaction. The Task Force recommended that the federal government should ensure that its funding for post-secondary education is "used for the purposes intended and, in particular, that priority is given to the shortage of skills which exists now and will continue into the next decade" (Work for Tomorrow, p. 85).

In addition to institutional manpower training, another aspect of the federal government's labour market policy which concerns the provinces is unemployment insurance. Although s. 91 (2A) of the BNA Act accords exclusive jurisdiction over unemployment insurance to the federal government, the interdependence and overlapping of federal and provincial governments serving the same clientele causes tensions. Throughout the 1970s, Ottawa pursued changes which reduced its program costs and streamlined requirements. In 1981, one concern was the shifting of emphasis from income support to positive job creation using UI funds (Employment and Immigration Canada, Unemployment Insurance in the 1980s, July 1981, p. 101). The provinces have traditionally been concerned that federal changes to unemployment insurance are done without consultation and the provinces have to bear increased social assistance costs as UI requirements are tightened and eligibility reduced. As an interprovincial report on income security noted

In this period of restraint the provinces have become increasingly vulnerable to unilateral federal initiatives, reductions in federal programs have increased provincial social assistance expenditures; the federal government's sense of urgency in adopting changes in its programs has been heightened; and co-operation between levels of government has become much more difficult than in periods of economic boom. (Interprovincial Conference of Ministers Responsible for Social Services, The Income Security System in Canada, September 1980, p. 28-29)

In mid-1981, the federal government began consideration of a bill to amend the Adult Occupational Training Act (No. 2). The act would make the funding arrangement with the provinces for the provision of occupational training courses more flexible. But more significantly, it would extend federal authority to negotiate industrial training contracts to non-employers, such as unions or native peoples, rather than limiting training to institutions or on-the-job experience provided by individual employers (House of Commons, Debates, July 6, 1981, p. 11240).

Throughout the year, the provinces met to discuss the implications of possible federal changes to their responsibilities. The ministers responsible for manpower from the four western provinces and two

territories met in June and asked to meet with Lloyd Axworthy before any changes were made to unemployment insurance or manpower training. They argued that the federal government was intruding into the provincial fields of education and training (House of Commons, Debates, July 6, 1981, p. 11243). The ministers also set up advisory committees on manpower and immigration which reported that there was a need for regional and provincial planning for manpower training, and provincial consultation on immigration matters (Government of Saskatchewan, News Release, November 10, 1981). The ministers of labour and manpower from the Atlantic provinces met in late March to discuss a coordinated approach to manpower matters with the federal government (Nova Scotia Information Service, March 23, 1981). They later developed a common position on adult occupational training issues which was based on the provinces' continuing to play a major role (St. John's Evening Telegram, August 14, 1981, p. 2). The ministers from all the provinces met in Québec City in September.

#### NATIVES AND NORTHERN DEVELOPMENT

"...while the government of Canada is officially committed to the wellbeing of northern native people - and to the protection of the northern environment - and some federal officials sincerely seek these ends, the balance of power and opinion in Ottawa favours non-renewable resource development ..." (Gurston Dacks, *A Choice of Futures*, Methuen: 1981, p. 26)

As the quotation above indicates, the settlement of native land claims and the economic development of the north according to a national policy are in conflict. Development of northern non-renewable resources is potentially a solution to many economic problems: unemployment, balance of payments, energy supply and inflation. For the federal government, the attractive feature in developing the Canada Lands is its exclusive jurisdiction in that area. The federal government would have sole access to royalties and exclusive control of management, development and exploitation policies. These pressures run counter to native claims for land settlement, protection of the environment and self-government. In 1981, these issues were focussed on Bill C-48, the Canada Oil and Gas Act.

#### Federal Policy

Bill C-48 was introduced in the House of Commons shortly after the announcement of the National Energy Program. The Liberals were intent on seeing the bill passed as quickly as possible but ran into a wall of opposition from the Conservatives, oil companies and natives. The bill excluded natives from any share in royalties and conferred broad powers on the Minister of Energy, Mines and Resources to approve oil and gas development projects (Dacks, *op. cit.*, p. 28). Natives argued that aboriginal rights and native claims for participation in resource

management were ignored. Ottawa responded that native land claims would be dealt with separately and in fact, it was argued that the development of the north would put pressure on for the settlement of claims (Globe and Mail, May 5, 1981, p. 9). Opposition to Bill C-48 was made more intense by the report that Petro-Canada had acquired the exploration rights to several million acres of land in the north without public discussion. Natives feared that these exploration agreements would reduce the rights and resources negotiated in land claims but Indian and Northern Affairs Minister John Munro argued that Petro-Canada had not acquired ownership, and subsurface rights were still negotiable (Globe and Mail, May 18, 1981, p. 10).

Later in the year, several items relating to federal land claims policy were made public. In the fall, the media reported the contents of a cabinet discussion paper which discussed the potential costs of settling land claims and put forth a possible federal strategy for handling negotiations. It was found that settling comprehensive land claims could amount to \$4.1 billion over 15 years plus another \$500 million for specific claims (Globe and Mail, September 14, 1981, p. 10). As well, the document argued that the federal government should refuse to discuss native self-government along with land claims. The Dene Nation of the Northwest Territories, the Inuit Tapirisat of the Eastern Arctic and the Council for Yukon Indians have all made native sovereignty part of the agenda for negotiation.

In a policy statement released in 1981, *In all Fairness: A Native Claims Policy*, the government affirmed its commitment to settle land claims based on "aboriginal title," or comprehensive claims. ("Specific" claims are based on historic grievances and will be addressed in another government statement.) The thrust of the policy was defined as the exchange of "undefined aboriginal land rights for concrete rights and benefits" (emphasis added, *In All Fairness*, Supply and Services Canada, 1981, p. 19). These rights and benefits included land, preferential rights to wildlife, monetary compensation and in some cases, subsurface rights on the reasoning that "granting such rights (will) provide Native people with the opportunity and the incentive to participate in resource development" (ibid., p. 24).

#### Federal-Provincial

As has been seen in almost every other policy area, the involvement of the federal and provincial governments in native affairs has become increasingly interdependent and confused, leaving natives caught in the middle. The central issue is the provision and funding of services to natives, and the quality and accessibility of programs. The federal government under s. 91 (24) of the BNA Act has responsibility for "Indians, and lands reserved for the Indians;" the provincial position is



reported to be that this includes responsibility for Indians on and off reserves and therefore, that Ottawa should cover 100 per cent of the costs of services provided by the provinces to natives (Indian and Northern Affairs Canada, *Indian Conditions: A Survey*, 1980, p. 104). In the 1960s and 70s, attempts were made to reach a sharing agreement with the provinces under the Canada Assistance Plan with no success. The lack of progress in resolving the confusion over the respective roles of the two levels of government is seen to be increasingly dangerous because of the growing number of off-reserve Indians (*ibid.*, p. 106).

### Interprovincial

In 1981, the provincial ministers responsible for native affairs met twice. The provision and funding of services to natives provided the focus for interprovincial discussions but other issues were also dealt with. In March, the provincial and territorial ministers met in Edmonton as the result of a 1980 meeting of ministers responsible for social services to share information on how land claims affect the delivery of services. The native affairs ministers met again in September in Montreal to discuss the delivery of programs and services, land claims and native self-government. The provinces were concerned that the federal government was cutting back its expenditures on native programs, thus shifting the delivery burden to the provinces (Interprovincial Conference of Ministers Responsible for Native People, "Communique", Montreal, September 21, 1981, p. 2). Apparently, a consensus was reached on three items. On the issue of local self-government, the provinces agreed that native groups should be given the most local power possible short of sovereignty. They felt that funds for services and programs should be channelled to local communities and the provinces and argued that the provinces must be consulted on land claims (*Le Devoir*, September 22, 1981, p. 2). Although John Munro refused an invitation to attend the meeting, federal and provincial officials began looking into the possibility of a federal-provincial conference of ministers.

In September, the provincial ministers responsible for northern development met in Happy Valley/Goose Bay for their fourth annual conference. Ministers discussed provincial initiatives in native and northern manpower training and housing, and the processes used to establish the relationship between northern economic development and the environment. But federal policy towards regional development came in for criticism from the ministers. They protested Ottawa's "unilateral intervention" and the by-passing of the provinces in establishing links with local bodies and groups and pressed for the merits of the GDA approach as a "flexible and effective approach to bilateral co-ordination of public investment in the north" (Fourth Annual Interprovincial Conference of Ministers with Responsibility for Northern Development, "Communique", Happy Valley/Goose Bay, September 15, 1981, p. 5).

## SPORTS AND RECREATION

Once again, lotteries emerged on the federal-provincial scene. The federal Conservative government in 1979 pulled out of the lottery business and left the field to provincial lotteries in return for an annual contribution from the remaining programs. In September, Gerald Regan, the federal minister responsible for sports, announced plans for a national sports wagering pool where people could win cash prizes for correctly predicting the scores of professional sports games. Regan argued the program was not a lottery because it required the application of skill. A new Crown corporation would be established and revenues would be used for amateur sports, cultural programs, medical research and special sports projects (Globe and Mail, September 15, 1981, p. 1).

The provinces, led by Ontario, strongly protested Ottawa's "unilateral" move, saying it was a violation of the 1979 agreement and no consultation had been held. They argued it would create duplication, the temptation to fix games and would require changes to the Criminal Code.

The day after Ottawa's announcement, Québec Finance Minister Jacques Parizeau declared his province would set up a competing wagering pool and might withhold its annual contribution to Ottawa. He rejected Regan's distinction between lotteries and betting pools as "Byzantine."

Alberta was the most conciliatory of the provinces, probably due to the fact that proceeds of the pool would be used to support Calgary's bid to host the 1988 Winter Olympics. Alberta Recreation Minister Peter Trynchy did not seem concerned about the lack of consultation because "it did not appear to intrude into provincial affairs" (Globe and Mail, September 16, 1981, p. 1).

But earlier in the year, the federal government declined to contribute to support of the 1983 Western Canada Games to be held in Calgary. This provoked angry responses from the four western provinces, especially Trynchy who called the move a "get Alberta" tactic (Alberta Report, June 12, 1981, p. 48). A federal spokesman argued previous federal contributions were seed money and once the games were off the ground, were no longer necessary especially since they were "not really tied into national programs" (Globe and Mail, May 27, 1981, p. 9).

## TRANSPORTATION

Transportation is seen as a vital part of economic development, both regionally and nationally. The vulnerability of a region's economy to a particular mode of transportation was highlighted by the decision of Dart Containerline Company in 1981 to stop shipping through the port of Halifax, causing a 25 per cent reduction in port traffic and affecting

about 15 per cent of longshoremen in Halifax. Nova Scotia Transportation Minister Tom McInnis called for a comprehensive examination of the relationship between transportation policy and regional growth, arguing that federal transportation decisions militated against attempts to eliminate regional disparity (Nova Scotia, Press Release, April 9, 1981).

As in other fields, attempts to reduce the federal deficit dominated federal-provincial negotiations over assistance for transportation. In this field, the federal government was seen to be applying an "envelope" approach to transfers by which a set amount of money would be transferred to a province and the provincial government would then decide how much each transportation mode would receive. This was especially the case in negotiations over highway strengthening programs in the Atlantic Provinces (House of Commons, Debates, July 3, 1981, p. 11169).

Newfoundland was most vocal in protesting the federal approach, arguing that the federal government should be assisting each transportation mode on the basis of need, not as the result of tradeoffs. The provinces were reluctant to accept a global funding arrangement because they saw it as a means of reducing federal transfers and also, perhaps, because they would have to accept the political credit or blame for the allocations.

Throughout the year, there were intimations that the federal government would reform the Crow's Nest Pass freight rates, given Ottawa's intentions for the Western Development Fund. While farmers' groups, livestock groups and producers' organizations debated the issue extensively in the west, the federal government held off in initiating changes. Different signals came from federal cabinet ministers with Transport Minister Jean-Luc Pépin favouring fundamental change and Hazen Argue, the minister responsible for the Wheat Board, on the side of retention. Both sides wanted to use the \$1.3 billion allocated in the budget for western development but for different purposes; the retentionists favoured the purchase of improved rolling stock, double tracking and rail improvement while those favouring change would use the funds to compensate the railways fully for moving grain (Regina Leader-Post, December 1, 1981, p. A6).

Perhaps to cover this internal discord, the Prime Minister announced there would be no reform until a stronger consensus emerged from the west on desired changes, adding the provinces must be part of that consensus. Saskatchewan was seen as opposing any change while Alberta and Manitoba were regarded as favouring reform. However, the heavy agenda of major federal initiatives also played a part in delaying reform until 1982. In April, Pépin noted

In the present circumstances the Prime Minister thinks that in view of what is already on the table of a confrontational

nature ... this normal process (of action on the Crow Rate) cannot take place. (Western Producer, April 9, 1981, p. 3)

But the issue was not long to be delayed; the new federal policy was proposed early in 1982 and immediately provoked a bitter debate.

## 7 INTERPROVINCIAL RELATIONS

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This chapter looks at interprovincial relations as they are conducted at annual meetings of premiers, either on a national or regional basis. These meetings have become increasingly institutionalized as the need or desire for interprovincial coordination has grown. At the same time, interprovincial cooperation has increasingly taken on an "anti-Ottawa" character as provincial ministers and premiers form joint positions to combat federal initiatives. The common front strategy appears to be used more and more as the provinces point to their success in 1976 on fiscal arrangements and more recently on the constitution.

The oldest institution in this area is the annual Premiers' Conference, first held in modern times in Québec City in 1960. In its early years, premiers discussed matters of strictly provincial concern, implicitly or explicitly avoiding matters which involved the federal government. In fact, Ottawa was invited to send observers to the meetings. However, by the mid-1970s, whether because of growing policy interdependence or an aggressive stance on the part of the premiers, the agenda listed topics normally considered part of the federal government's bailiwick, such as the economy, and became a forum for extensive discussion of current federal-provincial issues. The premiers also formulated one of their first joint positions on the constitution, a tactic which was used later in other areas. At this time, federal observers were excluded from the Premiers' Conferences. In the early 1980s, Premiers' Conferences have been used to develop common positions against federal initiatives or to initiate joint policy statements on which the federal government was urged to act. This tendency to unite was designed to minimize a possible federal "divide and conquer" approach but it also tended to heat up the climate of federal-provincial relations.

As the Premiers' Conference has become more important, so has the role of the chairman of the Conference. He has tended to become the organizer of and spokesman for the provinces throughout the year, and can do much to set the tone of the intergovernmental relationship. In 1980-81, Premier

Lyon of Manitoba was chairman, playing an important role in developing the provincial accord of April on the constitution. Manitoba was also the first province to take its constitutional challenge to the courts, and its counsel led off the provinces' position in the Supreme Court hearings. Lyon's successor was Premier William Bennett of British Columbia, who appeared to take a more compromising approach. He played a major role in discussions between the Supreme Court decision and the November constitutional conference, and later spoke for the provinces in setting the ground rules for the economic summit of February 1982.

The Council of Maritime Premiers celebrated its tenth anniversary in 1981. The Council meets quarterly and discusses such diverse issues as coastal erosion, education, regional economic development, research and development and the constitution and national unity. While common positions on federal-provincial issues which affect all provinces tend to develop at Premiers' Conferences, the Council of Maritime Premiers does formulate joint positions on specifically regional matters such as offshore mineral rights and air routes (Council of Maritime Premiers, Annual Report 1980-81, p. 4). Institutionalized regional cooperation has been implemented in land registration, higher education, municipal training and development, and resource management.

The western premiers began holding annual spring meetings in the early 1970s and in their work have often signalled issues and positions developed later at Premiers' Conferences.

Interprovincial relations in specific policy areas are also common. Education, communications, social services and health — areas solely or largely within provincial jurisdiction — have seen substantial interprovincial discussion and cooperation as Chapter 6 reveals. Nor are bilateral relations between provinces non-existent. While the hydro dispute between Newfoundland and Québec shows neighbours may not always co-exist peacefully, Newfoundland and P.E.I. signed a "unique" interprovincial accord in 1981 which will see expertise from the two provinces in small scale renewable resource development pooled. Such cooperation was based on a sense that "small scale renewable resource development is essential to the preservation of the cultural, social and economic fabric of both of our provinces" (St. John's Evening Telegram, February 17, 1981, p. 5).

#### PREMIERS' CONFERENCE

The 22nd annual meeting of premiers was held in Victoria, B.C. on August 11-15. Chairman William Bennett of B.C. had come to the stewardship of the Premiers' Conference as a relative "dove" on relations with Ottawa. However, his attempts to contain hostility and advance reasonableness were confounded by a more aggressive stance of some premiers, especially on the constitution.

Federal-provincial relations dominated the agenda. A general review of the economy and a response to Prime Minister Trudeau's suggestions for a first ministers' conference on the economy was the first order of business. Fiscal arrangements were also discussed and, under agenda item 3, "Federal-Provincial Relations," were listed trends in federal-provincial relations, shared-cost programs, DREE, pensions, transportation and grain handling, and the constitution. Interprovincial cooperation in school curriculum and labour market development was the only other agenda item.

Premier Davis of Ontario led off the discussion on the economy, advancing an anti-inflationary argument on the grounds that inflation was Canada's biggest problem and could be fought by increasing productivity. In urging all governments to work collectively to combat a national problem, Davis warned that the freedom and incentive of private enterprise should not be constrained. He placed full responsibility for interest rates, exchange rates and incomes policies on the federal government and advocated an immediate review of federal foreign investment policies as a means of restoring confidence in the dollar. However, favourable reception of Ontario's ideas was hindered by the province's position on the constitution and energy which deviated from the provincial norm. A B.C. official was quoted as saying "A lot of provinces appear to be refusing to allow Ontario to play a leadership role, no matter how good the idea might be. There is resentment at the idea of Ontario getting any credit" (Financial Post, August 22, 1981, p. 9).

After a "long and arduous debate," the premiers produced a nine point plan for economic recovery. Divisions of opinion were evident on foreign investment, where Premier Blakeney of Saskatchewan departed from the general position, feeling that foreign investment had inhibited indigenous research and development and entrepreneurship (Financial Post, August 13, 1981, p. A4). Premier René Lévesque denounced Ottawa for "virtually turning matters over to the technocrats at a time when we face galloping inflation and a weakened dollar and heart-breaking interest rates" (Globe and Mail, August 14, 1981, p. 1). As Bennett explained, the provinces were also unwilling to take a very active position on economic reform lest Ottawa "divert part of the blame to the provinces" (quoted in Globe and Mail, August 15, 1981, p. 1).

In their communique on the economy, the premiers blamed the lack of international confidence in the Canadian economy on the absence of an energy agreement, the National Energy Program, the constitutional dispute, the federal deficit, uncertainty about federal intentions regarding the regulation of industry and the economy and a "negative federal attitude toward investment" ("Final Communique: Review of the Economy", p. 2). They put forth a number of proposals for joint economic action by governments to reverse the "unacceptable and totally unnecessary" economic situation. They called for

- The conclusion of a "fair and equitable" energy agreement.
- A "realistic" approach to the export of commodities such as coal and natural gas.
- The encouragement of research and development.
- Recognition of the "fundamental role of investment."
- Strengthening of the transportation system.
- Careful consideration of the pace and scale of Canadianization efforts.
- A joint approach to regional economic development.
- Control of government deficits.
- Maximization of resource upgrading and development of labour skills.

The premiers ended by noting that "a positive consultative approach" was necessary if Canada's economy were to be revitalized and urged the Prime Minister to hold a first ministers' conference on the economy.

Just prior to the Premiers' Conference, the provincial finance ministers met for the third time since June to discuss a common position on fiscal arrangements. In their report on Established Programs Financing, the finance ministers argued that intergovernmental transfers were not responsible for the federal deficit and went on to conclude that the federal government's contribution to EPF accounted for a maximum of 45 per cent of contributions and had actually begun to decline. The federal government had argued it was funding over 50 per cent of some provincial programs. The ministers expressed a willingness to discuss program conditions and visibility but urged the federal government to begin negotiations at once.

Perhaps the strongest statements were expressed on the state of federal-provincial relations. Here, federal initiatives on DREE, shared-cost programs, the constitution and energy were seen to amount to a global federal strategy. P.E.I. Premier Angus Maclean described the new approach to federal-provincial relations as "unilateralism." This was seen to entail Ottawa's deciding the substance and timing of federal activity in the provinces "in a manner calculated to obtain the greatest visibility possible." He contrasted the new style of conducting federal-provincial relations with the manner of "cooperative federalism."



Where before there would have been a joint determining of objectives, there is now a simple exchange of statements; where before the scheduling of initiatives was a matter of negotiation, it is now common to read first in the newspaper of the most recent effort of the federal government; and where before there was consultation on adapting national initiatives to local conditions, there are now simply national initiatives. ("Notes for Remarks by the Hon. J. Angus Maclean: Cost-shared Programs," August 12, 1981, p. 2)

MacLean attributed the new approach to Ottawa's perception that the federal government had suffered a "steady loss of eminence" and saw it as an attempt to overcome the Liberals' lack of national representation. While the P.E.I. premier saw Ottawa's moves as "a retrograde step," he felt the provinces had to adjust to a new reality. The implications for the provinces were clear; less money would be channelled to provincial governments through shared-cost programs and

administrative/procedural arrangements will be such that the federal government will deal directly with citizens, agencies and institutions within a province and will feel no compulsion to have the provincial government involved. (ibid., p. 3)

In recommending a provincial response to Ottawa's new strategy, MacLean warned against "a posture of mere contrariness", urging the provinces instead to continue to express the regional diversity of the country.

Premier René Lévesque characterized the federal attitude to federal-provincial relations as one of "quite extraordinary arrogance and scorn." Citing federal actions on offshore resources, energy transmission, the constitution, reform of central institutions and fiscal arrangements, Lévesque spoke of a "reality" encountered almost daily:

Ottawa is determined to impose at whatever cost its view of Canada, even if that means the end of the "cooperative" federalism we have been forced to swallow in certain areas. Ultimatums, arrogance and contempt are ever more characteristic of the Trudeau government's attitude in its relations with provincial governments. (Notes for Remarks by the Premier of Québec, "The State of Federal-Provincial Relations," p. 2)

Lévesque went on to describe the federal attitude as "haughty and contemptuous," one based on "divide and conquer" and one which reflected a "deliberate and measured" attempt to "draw a net around the provinces." Unlike MacLean, Lévesque did not suggest any provincial option for countering the effects of the federal strategy, calling instead on Ottawa

to give up "its contemptuous attitude toward the provinces and its unhealthy taste for unilateral action."

Held during the constitutional impasse, the Premiers' Conference could not avoid discussion of the issue. Holding publicly to their position that the constitutional debate must be resolved through federal-provincial negotiations, the eight dissenting premiers considered various options if the Supreme Court ruled against the provincial position. They reportedly discussed several options: petitioning the British Parliament, conducting a public opinion poll or referendum, a publicity campaign, or emergency debates in legislatures. However, the provincial response was not determined at the conference since it depended on the Court's decision. The "Gang of Eight" had commissioned Gallup to conduct a public opinion poll on the constitution which was presented to the premiers in August (see Chapter 2 for details).

The premiers issued communiques on several specific items. They expressed concern about the VIA Rail cutbacks and directed their ministers to plan a National Conference on Transportation which would review needed improvements in Canada's transportation system. The premiers requested the provincial working group on pensions to broaden its study emphasizing "a provincial analysis of options for reforming public and private pension programs." Finally, on education, they asked the provincial ministers of education to speed up efforts in formulating a core curriculum, to report on minority language education and look into educational publishing.

#### WESTERN PREMIERS' CONFERENCE

The four western premiers met in Thompson, Manitoba on April 28 and 29. Included under the first agenda item - "National Concerns" - were the state of federal-provincial relations, including fiscal arrangements and the constitution, grain handling and transportation and national and regional economic matters. Under "Regional Concerns," the premiers discussed a western power grid and the Health Manpower Training study. They also received a report on regional cooperation. Following in the wake of the Premiers' constitutional accord, the constitution was also a topic of discussion.

As in 1976, the meeting of the western premiers was a prelude to the formulation of a joint provincial position on fiscal arrangements. The premiers expressed the opinion that the 1977 set of arrangements had worked well and deplored Ottawa's intention to cut back its funding. They put forth six guiding principles for any new set of arrangements (see Chapter 4) and suggested that all provincial finance ministers meet to formulate a joint position.

Transportation was deemed vital not only for grain handling but also for the mining and forestry industries. The premiers called for "immediate action" by the federal government to increase rail capacity to prevent stagnation of the regional economy. The salt water port at Churchill was regarded as an underutilized mode of western transportation and the premiers suggested that the federal government ensure that at least three per cent of all grain exports pass through Churchill, that rail lines to the port were upgraded, that the port's shipping season be extended and that winter loading at the terminal be studied (Western Producer, May 14, 1981, p. A12). On other transportation issues, the premiers discussed the Prince Rupert terminal, the Great Lakes navigation system, the need for more branch rail lines and compensation for rail line abandonment.

Agriculture is a perennial concern of the western provinces. At their meeting, the premiers called for improved cooperation on national stabilization programs, standardization of assistance programs and better federal-provincial cooperation on shared-cost drought relief in the event of persistent drought conditions.

No decision was taken at the conference on a western power grid despite Manitoba's and Alberta's desire to settle the issue quickly. Saskatchewan appeared to be preventing an agreement, citing technical and financial complexities as factors needing study.

The chairman of the conference, Manitoba Premier Sterling Lyon who was also chairman of the Premiers' Conference, took the opportunity to discuss the constitution. At the time of the Thompson meeting, the federal constitutional resolution had been referred to the Supreme Court but Lyon stressed the constitution was still a "political and moral" issue, not just a legal one (Toronto Star, April 29, 1981, p. A26). The premiers discussed privately means of waging the political battle and called on the Prime Minister to return to negotiations before the Supreme Court decision.

#### COUNCIL OF MARITIME PREMIERS

The Council of Maritime Premiers met four times in 1981. At their Charlottetown meeting on February 23-24, the thorny issue of the location of an Atlantic Veterinary College was discussed privately in the absence of Premier Buchanan of Nova Scotia. Buchanan favoured Truro as the site but Premier Hatfield supported P.E.I.'s bid to have the college in Charlottetown. The premiers agreed to extend the agreement setting up the Maritime Municipal Training and Development Board and accepted the recommendations of the Maritime Provinces Higher Education Commission on funding levels.

The June 1-2 meeting, held in Fredericton, celebrated on the 10th anniversary of the Council with the Prime Minister as guest speaker. Pointing to the Council of Maritime Premiers as an example of "a willingness to pool resources" and "regional consensus," the Prime Minister addressed the need for a national consensus and national cooperation. He suggested that the time could be ripe for regional representation as a means of strengthening national decision-making.

I think all of us in this room would agree that the national interest is more than the mere collection of provincial interests. There is an authentic national outlook which is not always adequately reflected in the combined views of individual provincial governments ... The role of the national government is precisely to make decisions which serve the best interests of the whole country - and thus to make the difficult trade-offs and adjustments which provincial representatives, by virtue of their very mandates, cannot make. ("Notes for Remarks by the Prime Minister on the Tenth Anniversary of the Council of Maritime Premiers," Fredericton, June 1, 1981, p. 18)

Premier Hatfield of New Brunswick opened the session by noting

Regionalism is not simply a slogan in the Maritimes. It is, and has been, a real fact of our life, even before we helped form Canada ... (Council of Maritime Premiers, "Press Communique", 44th Session, June 1-2, 1981)

He went on to term the council a "remarkable achievement" and expected even better results in the next ten years.

The premiers discussed a number of subjects of regional cooperation such as public school education, manufacturing of marine supplies, farm training and a coastal resource information centre. They also compared positions on fiscal arrangements.

At their third meeting in 1981, held on November 10 in Halifax, retiring P.E.I. Premier Angus MacLean was honoured. The premiers announced a Program for Regional Cooperation in Education which will develop resource materials for schools in the three provinces. They also received a report on technological innovation which was termed "an industrial imperative." The Council established a Maritime Remote Sensing Committee to look into using airborne and satellite remote sensing facilities to gather information. The Committee of Environment Ministers, which works with the Newfoundland Minister, reported on their work dealing with air pollution, hazardous waste disposal, coastal zone erosion and offshore development.

In addition to the topics cited above, at their final 1981 meeting in Charlottetown on December 14-15, the premiers discussed the problems of small and medium-sized business with its Voluntary Advisory Committee on Regional Economic Development. The committee recommended that governments collect information on the requirements for goods and services in the region and distribute that information to secondary industry. It also stressed the importance of availability of equity financing.

#### CONFERENCE OF EASTERN CANADIAN PREMIERS AND NEW ENGLAND GOVERNORS

The premiers from the five eastern Canadian provinces and governors from Vermont, Maine, Massachusetts, Connecticut, Rhode Island and New Hampshire met for their ninth annual conference in St. John's on June 25-26. The meeting was co-chaired by Newfoundland Premier Brian Peckford and New Hampshire Governor Hugh Galen.

The atmosphere of the conference was marred by the absence of Québec Premier René Lévesque who boycotted the meeting as a protest against the federal government's draft energy security bill and Newfoundland's support for the federal initiative (see Chapter 5).

The premiers and governors discussed energy matters, tourism promotion and transportation. All the eastern Canadian provinces have substantial electricity resources, with the exception of P.E.I., and are interested in exporting their surpluses to the northeastern United States. While there was competition among producers, an apparent producer-consumer split emerged at the conference as the Americans called for a regional authority to handle transmission grids and pipelines and no agreement was reached on energy (Globe and Mail, June 26, 1981, p. 8).

## 8 JUDICIAL REVIEW

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The Supreme Court of Canada made perhaps the most important decision in its history when it brought down its judgment of the constitutional reference case (see Chapter 2). The Court's decisions in other cases dealing with federal-provincial relations may not have generated as much publicity but they are, nevertheless, important. This chapter will canvass decisions of the Supreme Court in 1981 which affected federal-provincial relationships. As well, a few important decisions of lower courts will be examined especially in the fields of broadcasting and criminal law.

### ADMINISTRATION OF JUSTICE

James MacPherson has pointed out that one of the more interesting political developments of the last few years has been the increased use by governments of inquiries and commissions to investigate aspects of the administration of justice in a particular province or the country as a whole ("Developments in Constitutional Law: The 1978-79 Term", *Supreme Court Law Review*, Vol. 1, 1980, p. 89). Two well known examples are the McDonald Royal Commission investigating illegal RCMP activities and the Keable Commission which looked into police operations in Québec.

S. 92(14) of the BNA Act gives the provinces exclusive jurisdiction over the administration of justice which, MacPherson argued, gives the provinces jurisdiction to investigate criminal activity within their boundaries.

The question raised in *The Solicitor-General of Canada & the RCMP and Heaton & Spooner v. The Royal Commission of Inquiry into the Confidentiality of Health Records in Ontario & The Civil Liberties Association and Attorney General for Ontario et. al.* (unreported, October 20, 1981) addressed the determination of the scope of a major provincial inquiry. The issue was whether RCMP officers who had obtained information in hospital records without the knowledge or consent of patients could be compelled to tell the provincial inquiry the names of

the people who had given them the information. The RCMP argued that they were acting in the course of their duties in connection with the investigation of crime or national security and had granted the informers assurance of confidentiality.

Concluding that the protection given police informers was a rule of law, the Court held that doctors and hospital employees had done nothing wrong because they are not specifically forbidden from giving the police information about patients. Therefore, if they had been promised confidentiality in return for information, that assurance should be observed. The tribunal's provincial status did not confer any more powers on the commission than those which could be exercised by a judge in judicial proceedings. In other words, the fact that the provincial tribunal was seeking information from federal officers did not affect the rule of law that guarantees immunity to police informers. This case strengthens the principle that while provinces have a broad scope in establishing royal commissions, those commissions may not inquire into the activities and procedures of the federal police force.

The second case determined by the Supreme Court of Canada which dealt with the accountability of the RCMP to a province was *Attorney-General of Alberta & Law Enforcement Appeal Board v. Putnam & Cramer* (May 28, 1981). It considered whether the federal police force, under contract to a province to provide policing services, was responsible to its own federal administration or to the provincial Attorney-General.

A complaint of harassment during a narcotics investigation was lodged against Putnam and Cramer, two RCMP officers. It was first referred by the Attorney-General of Alberta to the commanding officer of the Alberta RCMP, who, upon investigation, found the complaint to be unjustified. The complainant then appealed to the Alberta Law Enforcement Appeal Board, a provincially constituted body set up to deal with complaints made by citizens regarding police behaviour. The province contended that while it had no authority to discipline officers of the RCMP, it was entitled to authorize an inquiry into a citizen's complaint against RCMP officers under contract to the province. The Supreme Court did not agree. It ruled that the province could not extend its jurisdiction into the administration or management of the federal police force. The majority recognized that because the two parties had signed a policing agreement, the province had a valid concern about the efficacy of the arrangement. However, the Court concluded "this is a far cry from the right of one contracting party to invade the organization adopted by the other contracting party in the delivery of the services contracted for under the arrangement." The RCMP, then, retained control of all disciplinary proceedings launched against its officers. This decision follows the line developed in *Attorney-General (Québec) & Keable v. Attorney-General (Canada)* (1979) 90 D.L.R. (3d) 161, that a provincial body may not

investigate or interfere with the internal functioning of a federal agency.

Putnam & Cramer was a strong statement by the Court against any encroachment by the provinces into the areas of management or administration of a federal body. However, at the same time it restricted the power given to a province to administer justice under s. 92(14). In Alberta (as in seven other provinces) much of the policing done in the province and its municipalities is contracted out to the RCMP. According to this decision, those RCMP officers are not accountable to the province for their actions.

#### APPOINTMENT OF JUDGES: CASES INVOLVING SECTION 96 OF THE BNA ACT

Section 96 of the BNA Act grants the federal government the power to appoint judges to superior, district and county courts while s. 92(14) of the BNA Act grants the provinces the power to establish and maintain provincial courts. Provinces have created expert tribunals to deal with many issues of provincial concern (for example, labour relations or landlord and tenant disputes), allowing the parties to by-pass the traditional court system. However, if a province establishes a tribunal with the powers normally vested in a superior, district or county court, regardless of the name given to the tribunal, it is for all intents and purposes a superior, district or county court, and must satisfy all the requirements of ss. 96-101 of the BNA Act. Unless members are appointed by the federal government, drawn from the bar of the province and receive salaries which are fixed and provided by Parliament, the tribunal is invalidly constituted.

The Reference Re Residential Tenancies Act (May 28, 1981) mentioned in the 1980 Year in Review, dealt with the question of whether an administrative tribunal set up by the province of Ontario had the power to order the eviction of tenants or require landlords and tenants to comply with obligations imposed under the Act.

The Supreme Court of Canada upheld the Ontario Court of Appeal's decision that the province could not invest its tribunal with such powers because they are normally exercised by s. 96 courts. Justice Dickson, writing for the majority in a comprehensive decision, outlined a new three-step test to determine whether or not a provincial tribunal is analogous to a s. 96 court. First, he wrote, it is necessary to determine whether the power under consideration was exercised by s. 96 courts at the time of Confederation. If not, then the power can be validly conferred on a provincial tribunal. However, if the power was exercised by s. 96 courts at Confederation, it is necessary to proceed to the second step. It asks: What is the function of the provincial tribunal as implied by the



question the tribunal is called upon to decide? If it is an administrative rather than a judicial power, the tribunal may stand since it does not exercise a function of a s. 96 court. If however, the power is exercised in a judicial manner, it is necessary to consider the tribunal's entire institutional context, the third step. If the judicial power is just one of many purposes of the tribunal, which otherwise is within provincial legislative competence, then the tribunal is valid. If, however, that judicial power is the central function of the tribunal, it is invalidly constituted since the provincial body can be said to be operating like a s. 96 court.

The new three-step test was applied by the Supreme Court in *Massey-Ferguson et al. v. Attorney-General of Saskatchewan and Attorney-General of Canada* [1981] 6 W.W.R. 596. In Saskatchewan, the purpose of the Farm Implements Act (1915), the predecessor of the Agricultural Implements Act, was to provide some control over contracts for the purchase of farm implements to protect the purchaser. The current Act provides for an Agricultural Implements Board, a tribunal set up by the province with powers to make regulations and award compensation. The case arose when Massey-Ferguson argued that because a farmer had the option of going to court to sue a farm implements dealer or to claim compensation from the Board, the Board was no different from a court in determining whether compensation should be granted, which is analogous to a s. 96 court function.

Using Dickson's new three-step test, the Supreme Court held the Board was not equivalent to a s. 96 court. It is useful to outline how the Court was able to distinguish this case from the Residential Tenancies case to better understand the nature of a s. 96 court. The Chief Justice, writing for the majority, held that he did not believe the powers of the Agricultural Implements Board were comparable to those exercised by superior, district or county courts at Confederation. But even if one assumed them to be so (step 1) and even if there were a judicial component in the manner in which the power was exercised (step 2), the institutional setting in which the Board operated distinguished it from a s. 96 court (step 3). In proceedings before the Agricultural Implements Board, the Court found that there were no legal limitations to consider in fixing compensation, no action between parties in the traditional sense (the farmer submits a claim to the Board as opposed to meeting his adversary directly in court), and that the Board has a clear investigative function to search out facts on its own initiative, independently of what may be brought before it by others, unlike the neutral process of a court. The power to award compensation is just one of many functions of the tribunal, so Laskin concluded, "the Board's authority is integrated into a regulatory scheme, itself beyond constitutional challenge, and under it offers limited protection to farmers through what is essentially an insurance fund."

The Court further distinguished this case from *Reference Re Residential Tenancies Act, 1979*, pointing out that the Attorney-General of Ontario had conceded that the Residential Tenancies Board's powers did not differ from those exercised by the courts when dealing with landlord and tenant disputes. As well, the chief role of the Board was to adjudicate disputes between landlords and tenants, not to carry out a policy or discharge an administrative function, as was the purpose of the Agricultural Implements Board. In the Residential Tenancies case, there was "merely a transfer to a tribunal of the same powers that had previously been exercised by s. 96 courts."

This case demonstrates that an administrative tribunal may utilize powers formerly exercised by s. 96 courts, so long as those powers are ancillary to a broader administrative or regulatory structure. If the impugned power forms a dominant aspect of the function of the tribunal so that the tribunal must be considered to be acting "like a court", then the conferral of power is *ultra vires*.

In *Crevier v. Attorney-General for Québec* (unreported, October 20, 1981), the Supreme Court declared that the provinces lack the constitutional authority to protect a tribunal of their creation from judicial review in questions of jurisdiction. At the same time, it did not disturb an earlier decision which allowed the provinces to bar judicial review on questions of law. This means that unless it is badly drafted, any standard privative clause will prevent judicial review on questions of law, but no matter how strong the wording, such a clause will never affect questions of jurisdiction. The important issue then becomes how the courts will distinguish the two different kinds of questions.

#### COMMUNICATIONS

In 1981, two cases concerning the control of Canada's broadcasting system were brought before courts in B.C. and Newfoundland.

The federal government has sole authority to issue broadcast licences in Canada. In these two cases, it was argued that the licensing of earth stations or dishes receiving satellite signals must be included in that authority. Ottawa said it would not take legal action against individuals who erect earth stations for personal use, but, if anyone pulls in signals for retransmission to others, that person or body becomes a broadcaster and must be licensed by the CRTC.

In *R. v. Loughheed Village Holdings* (unreported, B.C. Provincial Court, May 8, 1981), the owner of a group of apartments in Burnaby was charged with three violations of the Broadcasting Act, arising from the operation of a satellite earth station and the retransmission of U.S. signals to tenants. The case revolved around the issue of whether Loughheed Village

Holdings was actually broadcasting. The Court held that the Crown did not present enough evidence to prove that the signals received constituted radiocommunications within the meaning of the Radio Act and the Broadcasting Act. In a press release dated October 26, 1981, the Minister of Communications, Francis Fox, announced that the government would not appeal this decision since "There are other cases presently before the Courts in which the substantial issues raised in the Loughheed Village case will be dealt with."

Fox was referring to the Newfoundland case, *Canadian Radio Television Commission v. Shellbird Cable Ltd.* (unreported, Newfoundland Provincial Court, October 29, 1981). This case arose when Shellbird Cable was charged with receiving and transmitting the American Public Broadcasting Service (PBS) signal, contrary to its licence authorization. The two issues to be determined were: Did the delivery of the PBS signal to subscribers constitute broadcasting as defined by the Broadcasting Act, and if so did the CRTC have the jurisdiction to regulate it?

The Broadcasting Act defines broadcasting as "any radiocommunications in which the transmissions are intended for direct reception by the general public." The definition of broadcasting then is linked firmly with the definition of radiocommunications. Unless all conditions in both definitions are met, "broadcasting" does not take place. The Act defines radiocommunications as:

- 1) transmission, emission or reception of
- 2) signs, signals, writings, images, sounds or intelligence of any nature
- 3) by means of electromagnetic waves
- 4) of frequencies lower than 3,000 gigacycles per second
- 5) propagated in space
- 6) without an artificial guide

Justice Seabright held that since the earth station was an "artificial" guide, the definition of radiocommunications had not been met, and therefore Shellbird Cable Limited was not broadcasting the PBS signal. As a result, the Court held that the CRTC has no jurisdiction to regulate this activity. This decision is under appeal.

These cases illustrate that the jurisdictional lines set out in the Broadcasting Act have not kept up with rapid technological advances in the

communications field. As Seabright stated, "the scientific and technical advances have arrived without the provision of law to provide for this supervision" (p. 6). He pointed out that there is nothing in the Broadcasting Act which suggests that the CRTC has jurisdiction to control satellites. Until there is a "proper law" in place, it is the responsibility of the courts to continue to interpret the present Broadcasting Act to determine the limits of the authority of the CRTC.

#### CRIMINAL LAW

In Canada, the federal government legislates criminal law but the responsibility for enforcing it is within provincial jurisdiction.

The decision in *R. v. Hauser* (98 D.L.R. (3d) 193) extended federal control into the sphere of the administration of justice. In *Hauser*, the Supreme Court of Canada held that the federal legislative power in relation to the control of narcotic drugs was derived from the general or residuary power conferred on Parliament by the opening words of s. 91 of the BNA Act. The Court determined that narcotics was a problem which did not exist in 1867, and was therefore within Parliament's power to make laws for Peace, Order and Good Government. As a result of this reasoning, the Court determined it was lawful for the Attorney-General of Canada to lay charges under the Narcotic Control Act since there is unrestricted federal authority over prosecutions for violations of federal enactments not founded on the criminal law power.

Since the decision in *Hauser*, there have been two cases which have not settled the confusion in this area. The conflicting cases both deal with the ability of the federal government to prosecute under the Food and Drug Act.

The first case, *R. v. Kripps* [1981] 1 W.W.R. 753 was a B.C. Supreme Court decision. Kripps and Kripps Pharmacy were charged with seven counts of violations of the Food and Drug Act and the Food and Drug Regulations. In defense, they raised an array of constitutional challenges, both to the validity of the legislation and to the validity of the prosecution being carried out by an agent of the Attorney-General of Canada.

Justice Berger held that the question of whether the Food and Drug Act was *intra vires* had already been decided by the B.C. Court of Appeal in *Standard Sausage Co. and Lee* [1933] 4 D.L.R. 501. He was bound by that earlier decision which held that the entire Act was *intra vires*, as an exercise of federal legislative power under s. 91(27) of the BNA Act. Because the Food and Drug Act was based on the criminal law power and not the Peace, Order and Good Government power, Berger held the decision in *Hauser* did not apply.

Berger then proceeded to discuss the extent of the federal government's authority in relation to prosecutions for violations of enactments founded on the criminal law power. He concluded that the BNA Act "in the plainest language" separates the power to legislate on criminal matters from the power to enforce those matters. The federal government has the sole right to pass legislation dealing with criminal matters, but only the provinces have the jurisdiction to enforce the criminal law. Berger concluded that it was up to the Attorney-General of the province to prefer an indictment under the Food and Drug Act, and to the extent that s. 2 of the Criminal Code purports to confer such authority on the Attorney-General of Canada, it is *ultra vires*.

*R. v. Kripps* [1982] 1 W.W.R. 487 was appealed to the B.C. Court of Appeal late in 1981 by the Attorney-General of Canada. The appeal was dismissed on the basis that s. 8 and 9 of the Food and Drug Act were based on the criminal law power (s. 91(27)) and not on the Peace, Order and Good Government power. The Court upheld Berger's ruling that such legislation as s. 2 of the Criminal Code is *ultra vires*.

The second case, *Walstrom v. R.* [1981] 5 W.W.R. 121, reached the opposite conclusion. In that case the defendants were charged, by an agent of the Attorney-General of Canada, with trafficking and possession of LSD. In the Alberta Queen's Bench Court, Justice Rowbotham held that s. 2 of the Criminal Code was *intra vires* the Parliament of Canada, so that the Attorney-General of Canada could lay charges under the Food and Drug Act.

In his decision, Rowbotham pointed out that the constitutional validity of legislation may be supported by more than one head of power in the BNA Act. Quoting Justice Pigeon in the *Hauser* decision, he stated

... there can be no doubt as to the existence of federal power to provide for the imposition of penalties, for the violation of any federal legislation, entirely apart from the authority over criminal law.

The judge then set out to prove that Part IV of the Act was based on more than just "criminal law in the narrow sense." He pointed out that like the Narcotic Control Act, the Food and Drug Act is based on the Peace, Order and Good Government power since it deals with a problem which was unforeseen at the time of Confederation. Secondly, he suggested that Part IV of the Act is valid as legislation enacted under s. 91 (2), the regulation of trade and commerce. This, he suggested, is so since "the Act aims at abuses that occur in the manufacture and use of articles, the subjects of commerce" (his emphasis).

Since he found that the legislation rested on heads of power other than the criminal law, and thus, federal action would not usurp provincial

power to enforce criminal law, Rowbotham held that Parliament can exercise its power to enforce the provisions of federal statutes. In other words, the Attorney-General of Canada has the power to prefer indictments for violations of Part IV of the Food and Drug Act and to conduct proceedings on those indictments.

As a result of *R. v. Kripps*, in B.C. an agent of the Attorney-General of Canada cannot lay charges or prosecute offenders under the Food and Drug Act, yet in Alberta, as a result of *Walstrom v. R.*, the Attorney-General of Canada may do just that. This anomaly will remain until the Supreme Court of Canada pronounces judgment on this matter. Until then, the other provinces are left in limbo as to whether the Food and Drug Act is based on the criminal law power, so that only the provinces can enforce offences, or based upon other heads of power which would allow the federal government to lay charges and prosecute offenders.

Two other cases considered by Canadian courts dealt with the ability of different jurisdictions to legislate for criminal law or the administration of justice.

In the first case, *Boggs v. R.* [1981] 1 S.C.R. 49, the extent of the criminal power was considered. The issue was whether the federal government has the power to add a criminal consequence to a provincial licence suspension, regardless of the reason for that suspension. Boggs had originally been charged with driving while impaired and failing to take a breath test, both infractions of the Criminal Code. As a result of those convictions, his licence was automatically suspended pursuant to s. 20 (1) of the Ontario Highway Traffic Act. Sometime later Boggs was charged with driving an automobile while disqualified by reason of the suspension of his driver's licence contrary to s. 238 (3) of the Criminal Code. Both the Provincial Court and the Court of Appeal held that s. 238 (3) was *intra vires* the Parliament of Canada.

The Supreme Court of Canada did not agree and overturned the conviction. They held that to allow Parliament to exercise its criminal power under s. 91 (27) by attaching penal consequences to a breach of an order made for administrative purposes under a valid provincial statute, without regard to the relationship of the conduct that led to such an order, could lead to an encroachment of the subject classes enumerated in s. 92.

Originally licences were cancelled to protect other drivers from unfit motorists. Now, however, licences may be automatically suspended for administrative purposes such as nonpayment of fines, or failure to make payments to motor vehicle compensation funds or, even in some provinces, for nonpayment of a bill for domestic heating oil. The suspension of a licence for such reasons has nothing to do with the safety of the highways, but rather is to compel payment of the fee.

The Court then considered whether the subject matter in question could be "in relation to criminal law." It concluded that the Code does not differentiate between suspending the licence for unsafe driving, which would be a proper exercise of the criminal law power, and suspending the licence for a purely administrative reason. Exercising the power in the latter sense would be to allow the Parliament of Canada to usurp functions enumerated in s. 92. Since the Court found "there is nothing to sever so as to preserve that which may be constitutionally proper", it struck down s. 238 (3) of the Criminal Code as being *ultra vires* Parliament.

A second case, *R. v. Westendorp* [1981] 6 W.W.R. 527, focussed on the power to draft legislation under the criminal law head. *Westendorp* concerned the creation of a new criminal offence, but in this case the Court determined that only Parliament has the power to create such an offence. The City of Calgary enacted a by-law, s. 6 (1) of which made it an offence to be, or to remain, on the street for the purposes of prostitution. The Alberta Provincial Court looked at the "pith and substance" of the by-law and concluded that it was not, as the preamble suggested, to control the streets, but to prohibit prostitutes from working the streets. The city therefore was effectively creating a new criminal offence.

The Court concluded if, as the preamble to the by-law indicated, the activities of prostitutes had reached such proportions as to be of concern to the city as a whole, it could be dealt with under s. 171 of the Criminal Code which granted powers to control disturbances. But, the Court decided, a municipality's power to control city streets cannot be used to prohibit particular classes of people from using the streets by the enactment of what is essentially criminal law. Only Parliament has such authority. Thus the Court held s. 61 of the by-law *ultra vires* the city and the province.

#### INTERPROVINCIAL CONNECTION

The case of *Fulton et. al. v. Energy Resources Conservation Board and Calgary Power Ltd. and the Attorney-General of Alberta et. al.* [1981] 1 S.C.R. 153 illustrates that unexercised federal authority can give way to provincial control even when the BNA Act excludes such matters from provincial jurisdiction.

Section 92(10)(a) of the BNA Act excludes from provincial authority such local works and undertakings, such things as

lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any

other or others of the Provinces or extending beyond the limits of the province.

Section 91(29) gives control of such matters to the Parliament of Canada.

In this case, Calgary Power applied to the Alberta Energy Resources Conservation Board for permission to construct an electrical transmission line which would connect with a transmission line built by B.C. Hydro and Power Authority at the provincial border. The application of Calgary Power was contested by farmers and landowners in the area whose land was to be expropriated. They argued that a provincial board was being asked to consider an application to approve and permit an undertaking which is within exclusive federal legislative authority because it contemplated interprovincial connection.

Chief Justice Laskin, writing for a unanimous court, held that the provincial board did have the jurisdiction to act on the application. Three factors were important in reaching that decision. First, there was no existing federal regulatory authority which could deal with the application. Second, Calgary Power was not challenging the regulatory power of Parliament to act in relation to the interprovincial connection if Parliament should choose to act. Finally, the Energy Resources Conservation Board was not purporting to regulate the relationship between B.C. Hydro and Calgary Power; it was only authorizing the building of the interconnecting line.

Since there was no superseding federal legislation in this field and since the province had empowered the provincial board only to authorize the connection of the transmission lines without presuming to regulate the interconnection, the Court held that a request for permission to build fell within provincial jurisdiction in relation to local works and undertakings.

#### LABOUR

In the past several years, decisions in the field of labour relations have tended to expand the powers of the provinces, enabling them to control labour relations in areas previously considered the sole responsibility of the federal government.

Until the 1979 decision of *Construction Montcalm Inc. v. Minimum Wage Commission* (1979) 93 D.L.R. (3d) 461, any mention of an airport, airplane or something even tangentially connected with aviation triggered an automatic judicial decision excluding provincial legislation, since aviation is a federal power. The Supreme Court, in this landmark decision, determined that in the field of labour relations, "exclusive



provincial competence is the rule." Parliament could assert its exclusive jurisdiction only "if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject."

In 1980, two more cases further developed the trend towards provincial supremacy in the labour relations field. In *Four B Manufacturing Ltd. v. United Garment Workers of Ontario & Ontario Labour Relations Board* 30 N.R. 421, the issue was whether the Ontario Labour Relations Act applied to a privately owned company operating on an Indian reserve. The dispute was centred around the province's jurisdiction over labour relations and Parliament's jurisdiction over Indians and lands reserved for Indians.

The majority of the Court applied the "functional" test, and held that sewing uppers for a shoe company was not a federal undertaking or business, even though the business was owned and primarily staffed by Indians. Since this was an "ordinary industrial activity," the province had the jurisdiction to implement its labour legislation.

The second case was *Canadian Pioneer Management Ltd. v. Labour Relations Board of Saskatchewan* 31 N.R. 361. The trust company claimed that because its business was identical to that of a chartered bank, it was subject to the federal banking jurisdiction under s. 91(15) of the BNA Act and therefore the Canada Labour Relations Board (CLRB) should have jurisdiction over its labour relations. Justice Beetz, the author of all three majority opinions, found the "functional test" lacking since it was impossible "to define banking in purely functional terms." He turned to the institutional test, which asks whether the institution holds itself out as a bank or has a reputation in the community as a bank. Since Pioneer Trust had been created under the Trust Companies Act and not the Bank Act, Beetz held it was not in the business of banking, and so s. 91(15) of the BNA Act and the Canada Labour Relations Act did not apply, giving the provincial labour board jurisdiction to hear the case.

In 1981, no cases dealing with the question of federal-provincial jurisdiction in the field of labour relations reached the Supreme Court. However three cases heard in different courts further defined the trend in this area.

In *Henuset Rentals Ltd. v. United Association of Journeymen & Apprentices of Plumbing & Pipefitting* [1981] 1 W.W.R. 748, the employer argued that since the employees were building a pipeline from Saskatchewan to Alberta, they were covered by the Canada Labour Relations Act. The Saskatchewan Court of Appeal suggested that federal authority exists where labour and labour relations

- a) are necessarily incidental to or an integral part of headings enumerated under s. 91;

- b) are in respect to Dominion employees, and
- c) are in respect to works and undertakings under s. 91(29) and 92(10), i.e., works within one province declared to be for the general advantage of two or more provinces.

The Court determined that the construction of a pipeline did not form an integral part nor was it necessarily incidental to the operation and control of the pipeline. Since the actual construction was not found to be a federal work or undertaking, the Court held that the provincial labour laws should govern the building of the pipeline.

In *Re Communications Workers of Canada et. al. and Northern Telecom Ltd.* (unreported, May 12, 1981), the Federal Court of Appeal was asked if the CLRB had jurisdiction to certify a union of employees of Northern Telecom. The Court recognized the concept, cited by Dickson, that there is a

need to look to continuity and regularity of the connection and not be influenced by exceptional or causal factors. Mere involvement of the employees in a federal work or undertaking does not automatically import federal jurisdiction.

It concluded that 80 per cent of the work done by Telecom Canada was for Bell Canada. The Court ruled that "it is common ground that Bell Canada operates a telecommunications system in Ontario and Québec and that the operation is a federal undertaking." The fact that 80 per cent of the employees' time was spent carrying out a federal undertaking was sufficient to allow the CLRB jurisdiction over the labour relations of the company.

A third case in this field was *St. Hubert Base Teachers' Association v. Procureur-Général du Canada* (April 8, 1981, Que. C.A.). This Court held that even though employees were teachers at a school on a military base, established under the National Defence Act, they did not come within the ambit of the Canada Labour Code. The Court reasoned that a school on a military base was not necessary to the functioning of the armed forces; that the education of children of military personnel was still education; and labour relations between teachers and their employer was a matter within provincial competence. The fact that the teachers worked on land belonging to the federal Crown alone should not affect provincial competence in the field of labour relations.

These cases serve to reinforce Beetz's statement in *Four B* that:

With respect to labour relations, exclusive provincial legislative competence is the rule, exclusive federal

competence is the exception. The exception comprises, in the main of labour relations in undertakings, services and business which, having regard to the functional test of the nature of their operations and their normal activities, can be characterized as federal undertakings services or businesses...

#### LANGUAGE

The 1980 Year in Review reported that Attorney General of the Province of Québec v. Blaikie et al. [1981] 1 S.C.R. 312 had been sent to the Supreme Court of Canada to determine whether s. 133 of the BNA Act applies to orders, regulations and by-laws of municipalities, school boards and statutory bodies.

The findings in the original Blaikie and Forest cases held that the use of both French and English in the provincial legislatures and courts was guaranteed by s. 133, and could not be abolished by the provinces. However, the Supreme Court held that s. 133 did not apply to municipalities or school boards. Although these bodies existed prior to Confederation, the founding fathers deliberately did not include municipalities or boards in the listing of institutions which, under s. 133 either "shall" or "may" use both official languages. The Court concluded that this "purposeful silence" could not be viewed as a mere oversight. By providing an historical overview, they illustrated that before as well as immediately after Confederation and later, official bilingualism was not practiced with respect to municipal by-laws. Those who had been involved in the writing of the BNA Act knew this and did not protest. This was used as further proof that municipalities and school boards were never intended to have bilingual by-laws, orders and regulations.

As a result of the original Blaikie and Forest decisions, two other cases concerning the use of the two official languages arose in 1981.

The first, Walsh v. City of Montreal 55 C.C.C. (2d) 299, is currently under appeal to the Supreme Court of Canada. Walsh received a summons which was in French, except for the outline of the offence which was in both French and English. This, he claimed, was illegal since the summons was primarily in one language. Chief Justice Hugesson of the Québec Superior Court held that s. 133 of the BNA Act is clear. In certain cases, for example legislative statutes, records and journals, the section says the use of French and English is obligatory. But in other cases, such as debates in Parliament or proceedings in federal and Québec courts, there is a choice of language. The Court concluded that if there was a right to use either language, there was no obligation to use both. Consequently, it held that the language of a summons may either be in English or French.

This holding was followed in *Bilodeau v. The Attorney General of Manitoba* [1981] 5 W.W.R. 393. Bilodeau, who received a summons printed in English for speeding, argued the summons should have been written in both French and English. He also contended the two statutes on which his conviction was based, the Summary Convictions Act and the Highway Traffic Act, were invalid and inoperative since they had been printed and published only in English. The question facing the Manitoba Court of Appeal was, if Bilodeau's contentions were correct, were all the statutes enacted in the province since 1870 invalid? The Court looked to s. 23 of the Manitoba Act, the equivalent to s. 133 of the BNA act, which outlines when both official languages are to be used in the province, to determine the answer. The majority held that s. 23 was directory legislation only, not mandatory or obligatory.

The Court discussed the difference between the two terms, deciding that if s. 23 were declared mandatory, then the proceedings that follow upon it would be void. Where legislation is directory, they suggested that although the provision may not have been complied with, the subsequent proceedings do not fail. One test for determining whether a statute is mandatory or directory is the degree of hardship, difficulty or public inconvenience which could result from treating the legislation as mandatory. The rationale for this approach is that the legislature could not have intended the widespread chaos which surely would result if the legislation were found to be mandatory. To avoid the chaotic state which would ensue should all provincial statutes passed since 1890 be declared invalid, the legislature was imputed to have intended to make the legislation solely directory.

As a result, the majority held that s. 23 was valid but only directory. Hence, either official language may be used in a court process. Justice Monnin, who dissented in part added, citing *Walsh*, that the initiator of the proceedings also has linguistic rights and he may initiate the proceedings in the language of his choice.

#### NATIVE RIGHTS

This section canvasses only the cases which dealt with hunting and fishing rights.

The one case decided in 1981 at the Supreme Court level was *Walter Moosehunter v. R. & Attorney-General of Canada* [1981] 1 S.C.R. 282. Moosehunter, a treaty Indian, killed a moose in a Crown wildlife unit at a time when hunting was prohibited. He was convicted under s. 96 of Saskatchewan's Game Act which states that

no person shall hunt ... in a game preserve, bird sanctuary, or any other designated area established pursuant to this Act.

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Moosehunter challenged his conviction arguing that he was exempt from provincial game laws as a result of s. 12 of the 1930 Saskatchewan Natural Resources Agreement. In that agreement, Saskatchewan and Canada agreed that the laws in force

respecting game shall apply to the Indians, provided, however, that the said Indians shall have the right, which the province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have right of access.

The effect of this clause is to restrict provincial authority to regulate Indians' right to hunt and fish. While the right of native people to hunt for sport or commercially was to be governed by provincial legislation, the right to hunt for food was to remain under federal jurisdiction.

The decision in *Moosehunter* was based in large part on a very similar Supreme Court case, *R. v. Sutherland & Wilson*, which arose in Manitoba in 1980. There, the Court held that wildlife units were unoccupied Crown land to which Indians had a right of access. In *Moosehunter*, it was determined that the right of access could be denied to all Indians and non-Indians, but once any hunting was permitted in that area, Indians had a right of access to the land to hunt generally, which the Court defined as the right to hunt at any time for any species. Any attempt to alter the right of access would be an attempt to limit the rights of Indians to hunt food as defined by the Saskatchewan Natural Resources Agreement which could be changed only by joint amendment. As well, *Moosehunter* was a treaty Indian, and only the federal government has the power to amend rights granted under treaties. The provinces can not usurp that power, so s. 12 of the Natural Resources Agreement exempted all Indians hunting or fishing for food from the provisions of the provincial Game Act.

In Ontario, provisions of the Game and Fish Act were held to be invalid because the terms of a treaty were deemed to supersede the provincial law. In *R. v. Taylor & Williams* 34 O.R. (2d) 360, the two accused, members of the Chippewa Nation Indian tribes, were charged with taking 65 bullfrogs from unoccupied Crown land during a prohibited period contrary to the Game and Fish Act.

The defendants argued that they were able to hunt bullfrogs for the purpose of providing food for their families regardless of the provincial Game and Fish Act as the result of a treaty entered into between the Chippewa Nations and the Crown in 1838. During a meeting held the same day as the signing of the treaty, the Indians were promised that "the rivers are open to all and you have an equal right to hunt and fish on them." This guarantee was received prior to the signing of the treaty, but

was not included in it. The Crown argued that because of the silence, the treaty did not preserve the right to hunt and fish on Crown land, and therefore the surrender of the lands included a surrender of aboriginal hunting and fishing rights. The Court of Appeal held that the treaty actually included the oral terms recorded in the minutes of the meeting held the same day and thus preserved the historic right of the Indians to hunt and fish on Crown lands.

Because the treaty guarantees members of the Chippewa Nations the right to hunt and fish, then by virtue of s. 88 of the Indian Act, the provincial legislation does not apply to them. Section 88 states:

Subject to the terms of any treaty and any other Act of Parliament of Canada all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act ... and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

Leave to appeal to the Supreme Court of Canada was dismissed in December 1981.

There were several other cases reported in 1981 which considered the hunting and fishing rights of native people.

In Saskatchewan, other judgments further defined the *Moosehunter* decision. *R. v. Tobacco* [1981] 1 W.W.R. 545 held that by virtue of the Saskatchewan Natural Resources Agreement, Indians are exempt from provincial game laws. In *R. v. Settee* [1981] 2 W.W.R. 85, the Saskatchewan District Court ruled that although Indians have a right to hunt for food on unoccupied Crown land, or lands to which they have a right of access (i.e., permission of the owner), that right is subject to the prohibitions contained in the federal Migratory Birds Convention Act.

In *R. v. Standingwater* (1981) 7 Sask. R. 279, the Saskatchewan District Court ruled that if Indians hunted from the road, they were not protected by the Saskatchewan Natural Resources Agreement. Although Indians and the public have a right of access to roads, that access is for the purpose of movement or travel. If there is no right of access for the purpose of hunting, then Indians cannot be exempted from provincial game laws.

The cases cited above have all held that provincial game laws cannot be applied to Indians when they are protected by treaty provisions or federal legislation. However, if such factors are not present, the courts may, notwithstanding s. 91(24) of the BNA Act which gives the federal

government the power to make laws in relation to "Indians and lands reserved for the Indians," apply the principle that provincial laws of general application extend to Indians on reserves. This was the result in *R. v. Perley* (1981) 85 A.P.R. 632. The accused argued that the fish preservation and management sections of the Indian Act took fishing on the reserve outside the application of the provincial Fisheries Act. The Trial Division of the New Brunswick court of Queen's Bench held that in the absence of any inconsistent regulations or by-laws passed under those two enabling sections of the Indian Act, the provincial Fisheries Act did apply to Indian reserves in New Brunswick.

#### TAXATION

As reported in the 1980 Year in Review, Alberta challenged the constitutionality of one of the taxes proposed by the National Energy Program. The Alberta Court of Appeal decided in *A Reference concerning a tax proposed by the parliament of Canada on exported natural gas* [1981] 3 W.W.R. 408 that gas owned and exported by the province was immune from federal taxation, according to s. 125 of the BNA Act.

In this case, the federal government attempted to prove that the power to levy the tax did not stem from s. 91(3) of the BNA Act (the raising of money by any mode or system of taxation) for then the immunity granted by s. 125 of the BNA Act would not apply and the tax would be *intra vires*. The Court of Appeal rejected the argument.

The federal government began by arguing that the purpose of the tax was to provide it with legislative authority to implement the National Energy Program, but the Court found the true purpose was to raise revenue. The federal government continued by arguing that the money raised would be used to fund the NEP, but the court rejected this idea as well, holding that the revenue from the tax would not be dedicated solely to the NEP and stated this argument confused the raising of money with the object of a separate legislative program on which it would be spent.

The federal government then argued the tax was a regulating mechanism of the oil and gas industry and therefore within the federal trade and commerce power. The Court rejected this argument since they could see no mechanism of regulation in the tax and held that the power to levy the tax came not from s. 91(2), the trade and commerce power, but from s. 91(3).

The federal government also claimed that the tax should be characterized as an export tax and so could validly affect property otherwise immune from taxation under s. 125. The Court concluded this could not be an export tax for two reasons. In the outline of the National Energy Program, the government specifically stated that the tax was not imposed as an export tax. Secondly, it is the receipt of the gas by a distributor rather than its exports which is the triggering mechanism for taxation.

The Court concluded that in "pith and substance" this was taxing legislation, not the regulation of trade and commerce. As taxing legislation, s. 125 (no lands or property belonging to Canada or any province shall be liable to taxation) applies. After a discussion on the extent of s. 125, the Court ruled that Alberta has acquired every property right and every security with respect to those rights which were derived from Part VIII of the BNA Act by the original provinces. Therefore the immunity from taxation by another government provided by s. 125 applies to property belonging to the province.

The Court of Appeal concluded its judgment by ruling that

- 1) if the tax on exported gas is *intra vires*, the gas owned by the government of Alberta and exported to the U.S. is not liable to taxation, and
- 2) that the proposed tax on the exported natural gas specifically cited in the Reference is *ultra vires* the Parliament of Canada.

This case was appealed to the Supreme Court in June of 1981. While an agreement was reached between Alberta and the federal government in September which reduced the export tax to zero for five years, it is expected that the Supreme Court will still render a decision, although it had not done so by the end of 1981.

The other decision relating to taxation which was released by the Supreme Court in 1981 was *Massey-Ferguson Industries et. al. v. Attorney-General of Saskatchewan & Attorney-General of Canada* previously discussed under the s. 96 heading.

Section 92(2) provides the provinces with the power to make laws in relation to "direct taxation within the province in order to the raising of revenue for provincial purposes." A provincial tax must be direct, it must be levied within the province and must be to raise revenue for provincial purposes. Because there are so many programs requiring an increasing amount of provincial expenditures, the provinces have attempted to meet the increased costs by imposing new types of taxes, or old types of taxes on new people. These attempts have led to a number of court challenges, which MacPherson explains can be grouped into two categories: Challenges that allege the provincial tax is not "direct" and challenges that claim the tax is not "levied within the province" ("Developments in Constitutional Law: The 1979-80 Term", *Supreme Court Law Review*, 1981, Volume 2, p. 95). The *Massey-Ferguson* case fits into the former category.

The taxation aspect of this case, as mentioned in the 1980 Year in Review considered whether the formula for determining the levy to be paid



by the machinery distributors constituted an indirect tax, which is beyond the competence of a province.

There were two issues involved in this question. First, was the levy within s. 92(2) of the BNA Act, and second, if it were a tax, was it indirect? Chief Justice Laskin, writing for the unanimous court was "not persuaded that the assessments to create and maintain a compensation fund should be characterized as taxes within s. 92(2) of the BNA Act." The Court concluded that the chief purpose of the levies imposed on the dealers was to create a limited compensation fund for users of agricultural implements. Since the Court held that this levy was not a tax, but contributions to an insurance scheme, and since it followed that if it were not a tax, it could not be an indirect tax, then the answers to the two questions considered were negative.

## 9 A YEAR AT THE POLLS

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General elections were held in four provinces in 1981. Incumbent governments were returned with substantial majorities in Québec, Nova Scotia and Ontario where Premier William Davis had been leading a minority government. In Manitoba, the Conservatives under Sterling Lyon were defeated by the New Democrats.

Federal-provincial relations figured most prominently in the Nova Scotia and Québec elections. Premier Buchanan in Nova Scotia sought a mandate to pursue effective and aggressive negotiations with Ottawa on management of offshore resources and fiscal arrangements. On winning, he said he would lead the fight to pressure Ottawa for an economic recovery plan.

In the Québec election, the question was whether the PQ would retain their electoral majority once their platform of sovereignty-association had been defeated in the referendum. Language policy and Québec's place in Canada were election issues debated between parties rather than pitched against federal stands. The overwhelming victory for Premier Lévesque was a dramatic turnabout from the referendum and caused observers to wonder about the PQ's future course of action toward the federation. Just after the election, Lévesque forged an alliance with other premiers opposing the federal government's constitutional plans. This sparked optimism about Lévesque's willingness to work within the federal system, given the PQ's promise not to hold another referendum on sovereignty-association. Later in the year, however, the PQ party declared its intention to pursue unhyphenated sovereignty.

### PROVINCIAL ELECTION CAMPAIGNS

#### Ontario

Buoyed by party polls indicating the Conservatives could win a majority, Ontario Premier William Davis called an election for March 19, thus ending speculation that his minority government might be defeated in the

legislature over the course of the spring session. For the most part, it was as though Ontario merely went through the motions of an election campaign. The prevailing public attitude seemed to be that the Conservatives would win their desired majority.

Although the election presented Ontario voters with the opportunity to voice their opinions on Premier Davis' positions on two major federal-provincial issues — the National Energy Program and the constitution — neither issue was prominent in the campaign, largely because all three parties supported Trudeau's initiatives. Leadership was the issue which dominated the campaign. Polls indicated that Premier Davis' personal popularity surpassed the popularity of his party and was greater than that of the other two party leaders combined.

Both the Liberals and the New Democrats attempted to make the economy a major issue in the campaign, but the majority of Ontario voters seemed unconvinced that a change in government would better the province's economic situation. Other campaign issues which arose frequently were energy policy, medicare, rent control, social welfare policies and bilingualism.

Apart from leadership, the other theme of the Conservatives' campaign was the Board of Industrial Leadership and Development (BILD) and its \$1.5 billion economic blueprint for Ontario. The Conservative strategy of "something for everyone" meant target ridings were identified and the BILD projects for each of these ridings were announced along the campaign trail. Forty million dollars worth of incentives to the northern mining industry, \$50 million to help develop small business export markets, \$20 million for fruit processing in the Niagara Peninsula, \$300 million for equity investment in high technology venture companies, and funds for the development of a world class ski resort at King Mountain near Sault Ste. Marie were made public.

As part of their energy policy to shift from reliance on imported fuel to the increased use of indigenous electrical power and nuclear technology, the Conservatives promised to speed up the completion of the Darlington nuclear station. Four hundred million dollars was designated for the development of energy efficient high technology transit.

The Conservatives held fast to their position against entrenching official bilingualism for Ontario in the constitution, stating that each province should be free to make its own decisions about the provision of services to francophones.

Responding to NDP accusations that a re-elected Conservative government would end rent controls, Davis promised controls would be kept in place as

long as he was Premier. He also countered NDP attacks on the state of the province's health care system, maintaining there was no need to panic because 17 per cent of Ontario physicians had opted out of OHIP.

Early Liberal party strategy tried to convince the electorate that Ontario was not as prosperous as it could be. Liberal leader Stuart Smith's statement that Ontario's economic performance for 1980 ranked tenth among the provinces led Davis to label him "Dr. Negative." Later in the campaign, Smith tried a more positive approach to economic issues, stressing that a Liberal government would develop Ontario's "boundless economic potential."

The cornerstone of the Liberal platform was a \$2 billion government investment in fuel alcohol production over the next ten years, designed to lower Ontario's gasoline consumption by 74 per cent by 1990. Other economic incentives included a 200 per cent tax rebate for research and development expenditures by Canadian-controlled companies and a 150 per cent tax write-off for firms offering apprenticeship programs.

As part of their energy policy, the Liberals promised to close the gap between rural and urban hydro rates, to postpone the construction of the Darlington Nuclear Station until there is a market for its power, and to provide a discount for off-peak use of electricity.

Dr. Smith made several statements along the campaign about improvements in the province's education system. He advocated abolishing the teachers' right to strike, eliminating Grade 13, raising provincial contributions to education to lighten the load on local property owners and freezing university tuition fees, pending a study on their effect on access to post-secondary education. To restore excellence in secondary education, the Liberals supported a return to a core curriculum and standardized examinations.

Like the Conservatives, the provincial Liberals were opposed to the constitutional entrenchment of official bilingualism for Ontario. However, the Liberals did propose that the provision of services to Franco-Ontarians should be guaranteed under the law where numbers warrant; a provincial commission would be established to decide when this provision would apply.

A higher and thus "more realistic" fee schedule for doctors was promised as a way to lure doctors back into the health care plan and to ensure the universality of health care.

Michael Cassidy entered his first election campaign as NDP leader hoping to strengthen party support in areas where the NDP has done well,

such as Northern Ontario and ridings with high union membership. A record \$1 million in party coffers made organizers optimistic about election prospects.

Despite NDP efforts to run an issue-oriented campaign, no issue caught the public's attention in quite the way the party had hoped. Cassidy concentrated on economic matters, calling for increased government involvement in the economy and greater government control over private industry. The NDP platform included low cost loans to small business, an increase in resource company taxes and in provincial control over resource industries, and the replacement of a large quantity of imported products with Canadian-made goods and processing. The NDP would also create a network of Crown corporations, including "AutoCan," a PetroCan of the auto parts industry. The "Northern Ontario Tomorrow Fund" was proposed to finance a range of economic and social programs in the North.

"Warm up Ontario" was the theme of the NDP's energy proposals. Cassidy advocated mothballing the Darlington Nuclear Station, expanding Ontario Hydro into other areas of energy such as gasohol, and making low cost loans available to homeowners for insulation and other home improvements necessary for energy conservation.

The NDP was the only party to favour the application of Section 133 of the BNA Act to Ontario.

Other issues raised by the NDP during the campaign were limiting doctors' fees and eliminating OHIP premiums, abolishing tuition fees in post-secondary education, providing assistance to homeowners renewing their mortgages at current high interest rates, a reduction of the interest costs for small businesses and farmers and the extension of rent controls.

Cassidy also spoke frequently of the need for economic equality for women through equal pay, skills training, and the provision of quality day care. Noting the numerous plant closings in the province in recent months, the NDP leader called for public justification of the closings, longer advance notice for employees, legislated severance pay and protection for workers' pensions.

The results were crucial for the leadership of the three parties. Although he had been at the head of the Conservatives for over 10 years, Premier Davis seemed solidly entrenched as leader. Dr. Stuart Smith decided to resign from the Liberal leadership despite his party's having held its own in the election. Michael Cassidy as leader of the NDP felt personally responsible for his party's substantial losses and he too resigned. Leadership conventions were called for early 1982 in both parties.

Table 9:1

## Results of March 19 Election

	Standings at Dissolution	Results of 1981 Election
Conservatives	58	70
Liberals	34	34
NDP	<u>33</u>	<u>21</u>
TOTAL	125	125

## Québec

Throughout the fall of 1980, Québec journalists were preoccupied with two questions. When would Premier René Lévesque call a provincial election? Would the Parti Québécois be returned to power? The Liberals, fresh from winning the referendum campaign, were ready to take to the campaign trail the moment the Premier gave the word. But Lévesque chose to postpone the election call until 1981, contending a delay until the Spring would give his government time to forge a common front with the other provinces against Prime Minister Trudeau's constitutional proposals (*Le Devoir*, October 17, 1980, p. 1). An election date of April 13th was finally set.

In 1976 the Parti Québécois had promised "good government;" in their first bid for re-election, the promise was for "better government." Although the election took place less than a year after the PQ loss in the referendum campaign, PQ strategists gambled that the NON vote would have little bearing on the results. They speculated that, in the minds of most Québécois, there was likely to be a clear separation between the PQ as a government and the political option of sovereignty-association.

On the other hand, the Liberals felt the referendum had not resolved the issue and undertook to stress a link between the PQ, sovereignty-association and separatism. After winning the leadership, Claude Ryan spent three years thoroughly reorganizing the party to prepare the Liberals first for the referendum campaign and then for the election. Ryan shaped the Liberal party from the ground up, initiating the party's first grass roots fund-raising drive, holding executive elections in every riding association and increasing party membership (*Globe and Mail*, December 4, 1978, p. 2). Liberal strategists hoped the momentum of the referendum win would carry through into the spring of 1981, but the Québec

public seemed content to consider the issue of sovereignty-association at least temporarily resolved.

The Union Nationale drafted the lone Québec federal Conservative member, Roch LaSalle, as party leader. For years the UN and the Liberals were Québec's two major parties, but the ascendancy of the PQ in the 1970s left the UN in a state of decline. Never considered a significant factor in the 1981 campaign, the Union Nationale failed to elect a single representative.

The federal constitutional package never really became an issue as neither of the major party leaders appeared comfortable discussing the topic. Ryan, a supporter of federalism, was unhappy with many of Trudeau's proposals, yet many of his provincial followers were staunch Trudeau backers. And Lévesque, who at one point in the campaign described himself as "not the best of federalists," had to commit himself to work to better the federal system if the PQ were re-elected.

There was a marked difference in style between the campaigns of Rene Lévesque and Claude Ryan. PQ organizers staged events to facilitate television coverage of Lévesque's public appearances while Ryan deliberately avoided catering to television reporters. The PQ held large rallies but the Liberals concentrated on Ryan's direct contact with voters and opted for riding events.

Perhaps the most strategic move of the entire PQ campaign took place in October of 1980. At a meeting of the party's National Council, delegates opted to put sovereignty-association aside for the upcoming election campaign, but to keep the option as a fundamental long-term objective. Thus, Lévesque could promise during the campaign that another referendum on the question would not be held during the party's second mandate. Instead, the PQ asked for a mandate to defend Québec's independence against Ottawa. As Lévesque told the Montreal Gazette,

We might as well commit ourselves to doing everything else that can be done as a government - not leaving our convictions aside but not forcing them upon people. They don't change their ideas on things like that like they change their shirts. (April 6, 1981, p. 18)

The PQ centred its campaign on three issues: economic development, new social policies, and the defense of the interests of Québec within Canada. The main planks of the PQ's economic strategy were the consolidation of traditional sectors, continued modernization of the economy, and encouragement of research and development. This included an effort to open up more foreign markets for Québec industry, measures favouring the development of sectors of the economy susceptible to international market

fluctuations, and plans to improve production in natural resource industries, particularly forestry, asbestos and aluminum.

In the energy field, the PQ proposed expansion of Hydro-Québec's activities, energy conservation measures, exploitation of alternative energy sources, such as methanol, and the postponement of nuclear development in the province.

A series of social policies designed to assist families in Québec was outlined, including an extension of day care services, increases in allowable deductions for child care expenses, a ten per cent tax cut for single income parents, financial aid to younger families attempting to buy homes and payments to homemakers raising children in the home. The PQ also promised to make more part-time jobs available in government to accommodate those with time-consuming responsibilities in the home.

The PQ stressed its record as a government, listing agricultural zoning, automobile insurance, free drugs for the elderly, anti-strike breaking legislation, a record export of Québec products, and health and safety legislation as the major accomplishments since 1976. Lévesque was quick to defend Bill 101 during the campaign, contending that English minorities in Québec were better off than francophone minorities anywhere else in the country.

Although the Liberals said they would keep most of Bill 101 if elected to office, they did propose two major changes to the language legislation. The first would modify the clause pertaining to eligibility for attendance in English schools. Ryan pressed for a "universal clause" which would permit any children coming to the province who had at least one parent educated in English to attend an English language school. Other party members argued for a "Canada clause," reserving the right of attendance to English schools for children whose parents moved to Québec from other provinces. They feared application of the Canada clause to English-speaking immigrants from outside Canada would be a threat to the development of French culture in Québec. Ryan countered that the numbers of children who would be involved did not warrant their fears. An internal debate within the party resulted in the adoption of the "Canada clause," although the question is likely to cause more internal dissension.

The Liberals' policy on language rights was attacked by the PQ as a defence of "les autres," claiming PQ loyalties lay with Québécois. Rather than mount consistent attacks on the PQ government's performance, Ryan was forced to react continually to such accusations and to be constantly on the defensive.

Other Liberal language proposals involved changing Bill 101's provisions on public and commercial signs and advertising. The Liberals were prepared



to allow the use of a language other than French, as long as French occupied an equal or superior place to the other language.

To bolster the provincial economy, the Liberals promised to reactivate residential construction and to allocate \$200 million of public funds for this purpose over a four year period. A grant would be given to lower income families purchasing a new housing unit and in the first year of the plan's operation, the Liberals expected the construction of 8,000 to 10,000 homes and the creation of up to 25,000 jobs.

Ryan stated that one of his priorities as premier would be the gradual decentralization of the Québec government. Under a Liberal administration, regional and local institutions would be expanded and responsibility channelled downward to put people and government more in touch with each other.

The Liberals promised special financial assistance for pregnant women, and for single persons age 60-65 (mostly women) without an income equal to that provided to those age 65 and over by the federal government's supplementary income programs.

Table 9:2

Results of the April 13 election

	Standings at Dissolution	Results of 1981 Election
Parti Québécois	71	80
Parti Libéral du Québec	34	42
Union Nationale	5	0
TOTAL	110	122*

(\*Extra seats are due to redistribution.)

As in Ontario, the leadership of the defeated parties after the election was questioned. Roch LaSalle regained his seat in the House of Commons and gave up his association with the Union Nationale. But the big question was whether Claude Ryan would fight a second campaign as leader. Certain elements of the Liberal party refused to hide their dissatisfaction with his performance during the campaign. A June 1981 report by members of eleven Québec Liberal riding associations blamed Ryan's leadership and the party's ambiguous constitutional stand for the election defeat. The report

did not ask Ryan to step down, but strongly suggested he change his solo campaigning and "dictatorial personal style."

Shortly after the election, Lévesque gave notice that the PQ was not "going soft" on federalism. Rather, he indicated that the PQ should strengthen its commitment to sovereignty alone. Economic association with Canada was seen to be "outdated" and a continental economic relationship regarded as more appropriate (Montreal Gazette, June 15, 1981, p. 1). Militants in the party saw the referendum defeat as a denial of the *étapiste* strategy and pushed for other means of achieving sovereignty.

Having promised not to hold another referendum on the issue, the party leaders proposed that a mandate to pursue sovereignty-association be sought in the next election. However in a party convention in December, the convention delegates rebuffed the wishes of party leaders and Premier Lévesque. They decided that the next general election should be fought solely on the issue of sovereignty and that a majority of seats – rather than a majority of votes – would be considered a mandate for sovereignty. Economic association was divorced from sovereignty but could be offered to Canada once Québec was sovereign.

Lévesque, his cabinet ministers and caucus prevailed on party delegates to moderate their positions, claiming that economic association with Canada was a fact of life. Lévesque was so upset with the results – arguing they had been provoked by "agents provocateurs" – that he threatened to resign his post as party president. Later he decided to delay that decision until an internal party referendum had been held in early 1982. The questions asked party members to accept that Québec's accession to sovereignty should occur through democratic means based on the majority agreement of citizens, that sovereignty should be accompanied by an economic association, although it would not be obligatory, and that the party respect the cultural and ethnic origins of all Québécois, and especially the right of the English-speaking minority to its own institutions.

Thus, the next Québec election may be a decisive step in determining Québec's relations with Canada. The frustration of party militants with the gradualist approach of the government and the government's own administrative difficulties have created internal party dissension which can no longer be contained.

#### Nova Scotia

On August 28, Premier John Buchanan called a general election for October 6, stating that it was "an appropriate time to ask for a new mandate" despite the fact that only three years had elapsed since the last election. Buchanan stressed his government's accomplishments since 1978

but noted that a strong mandate was necessary for Nova Scotia to "speak with a strong and effective voice" in forthcoming negotiations over the offshore and fiscal arrangements (Nova Scotia press release, August 28, 1981). Apparently, the Premier had an opinion poll which showed that Tory support stood at 45 per cent of the electorate while Liberal support had declined over ten per cent to 35 per cent in less than a year. The NDP had gained slightly to stand at 20 per cent. The poll also showed that Buchanan outstripped his counterparts in leadership preference (Globe and Mail, August 15, 1981, p. 8).

The provincial Liberals entered the campaign with a new leader, (A.M.) Sandy Cameron, who took over from Gerald Regan when he resigned to run for the House of Commons. Cameron was Minister of Fisheries in the Regan government. The NDP at the time of the election call was suffering internal dissension as Paul MacEwan, a radical member from Cape Breton, had been ousted from the party. The NDP also had a new leader. Alexa McDonough won the leadership of the party when former leader Jeremy Akerman resigned to take a government job as executive director of inter-governmental affairs. Both opposition parties criticized the election call, saying it wasn't necessary and only a cover-up for the Tories' economic mismanagement.

The Conservatives' electoral strategy was based on its economic achievements - past and future. The government firmly tied Nova Scotia's economic future to "existing, available and virtually untapped" energy resources. Offshore oil and gas promised revenues, cheaper fuel, employment and industrial spinoffs. Coal was being developed which would provide jobs in mining, steel manufacturing and is being used for electrical generation. Buchanan offered up a picture of a self-reliant Nova Scotia based on this potential and the government's past record.

In contrast to the Conservatives' rosy picture, Sandy Cameron and the Liberals accused the government of having created unemployment, a huge debt and no plan for economic recovery. They proposed a mortgage renewal assistance plan, a property tax assistance plan, frozen electrical rates, a resources development program to create jobs, and government restraint. The Liberals concentrated their economic development strategy on natural resources, but agriculture, mining, forestry and fishing were stressed rather than energy resources.

Of the three parties, the NDP had the most comprehensive platform. Unfortunately, this did not always turn to the party's advantage. McDonough attacked the government for not controlling unemployment and the debt, claiming that an NDP government would create jobs and improve social programs. The party emphasized "buy local" and "hire local" programs to stimulate development. Crown corporations for fisheries and energy were proposed but when pressed, McDonough was unable to give

figures on potential costs. New labour policies were promised, guaranteeing collective bargaining rights to certain workers, raising the minimum wage and outlawing strikebreaking. The NDP too had a policy on power rates, favouring higher rates for big consumers.

The press felt that the Conservatives had no platform or chose to hide it, the Liberals relied on a series of ad hoc announcements while the NDP was forced to defend its platform instead of scoring political points.

Table 9:3

## Results of the October 6 Election

	Standings at Dissolution	Results of 1981 Election
Conservatives	34	37
Liberals	15	13
NDP	2	1
Independent	<u>1</u>	<u>1</u>
TOTAL	52	52

Buchanan was joyful with his victory, exclaiming "Today we beat the provincial Liberals; tomorrow we take on the federal Grits" (Globe and Mail, October 8, 1981, p. 8). Sandy Cameron was re-elected but his party lost two seats and his leadership was cast in doubt. The NDP lost both their seats in their traditional Cape Breton base but this was offset by McDonough's victory in Halifax, thus gaining the party's first seat on the mainland. The Tory victory was commonly attributed to Buchanan's personal popularity, the negative strategy adopted by the Liberals and the unpopularity of the federal Liberals (La Presse, October 8, 1981, p. A6).

## Manitoba

In early fall, Manitoba was buzzing with talks of an early election. Speculation was sparked largely by an \$150,000 advertising campaign undertaken by the government reciting its achievements since 1977. As well, Premier Sterling Lyon appeared in a series of television spots likened to "fireside chats" in which he discussed the three mega-projects which his government saw as the key to Manitoba's future.

Apparently buoyed by favourable polls, Lyon called an election for November 17, saying he needed "a new and stronger mandate" to pursue

negotiations on the Alcan smelter, potash mine and western power grid. He stressed the "prudent", "competent" and "workmanlike" government he had led over the past four years and promised to continue in this manner.

Going into the election, Manitoba had four competing parties. The NDP, led by Howard Pawley, was the official opposition, while three breakaway NDP members, all ex-cabinet ministers from the Schreyer government, had formed the Progressive Party. The leader of the Progressives, Sidney Green, stated that his party favoured a stronger socialist philosophy than did the NDP, one advocating freedom of collective bargaining, full employment, an excess profits tax and publicly financed and directed industrial development (*Globe and Mail*, March 4, 1981, p. 8). The Liberal party held only one seat at dissolution and leader Doug Lauchlan was fighting to hold that riding.

For most of the campaign, the Conservatives talked only about the mega-projects and their importance to Manitoba's economic development. It was thought that Lyon had put behind him his tendency for "socialist bashing" and attacking the record of the Schreyer government. But in the last weeks of the campaign, Lyon began to attack the NDP, calling it the "No Damn Progress party" clinging to nineteenth century doctrine. This tactic shifted the focus to Lyon as a leader.

At the beginning of the campaign, it was felt that the NDP-Progressive lineup could split the left wing vote and reduce the NDP's chance of winning. However, the Progressives did not figure prominently in the campaign. The NDP employed a well-organized grass roots strategy. It promised to establish a Crown corporation to explore for oil and gas, and to expand an existing Crown corporation so that northern resources could be developed through joint ventures with the private sector. Pawley also promised to re-introduce rent controls and aid farmers, small businessmen and homeowners labouring under high interest rates. The NDP did not dispute the value of the three mega-projects but felt that the Conservatives were giving away Manitoba's resources without reserving any benefit for the people of the province.

The results were conclusive. The NDP had soundly defeated the Conservatives to become a majority government. The defeat of Sterling Lyon's government was attributed to disgruntlement about the abolition of rent controls, his negative position on the charter of rights and a public perception that Lyon was harsh and unfeeling. In turn, the NDP's well-run campaign proved successful.

With the elimination of the Progressives and the sole Liberal member, Manitoba appeared to fall into the two party system which characterized the western provinces' electoral lineup. Furthermore the Manitoba election signified the virtual death of provincial Liberals in the West, as the last Liberal was removed from a legislature west of Ontario.

Table 9:4

## Results of the November 17 Election

	Standings at Dissolution	Results of November 17 Election
Conservatives	32	23
NDP	20	34
Progressives	3	-
Liberals	1	-
Vacant	<u>1</u>	<u>-</u>
TOTAL	37	37

The defeat of the Lyon Conservatives had a profound effect on the style of federal-provincial relations conducted between the province and Ottawa. In contrast to Lyon's outspoken opposition to Ottawa's constitutional proposals, Premier Pawley ushered in a policy of friendly, cooperative dealings with Ottawa.

## FEDERAL BY-ELECTIONS

There were five federal by-elections in 1981 but those held on August 17 in Spadina and Joliette had the most political significance. The Liberals maintained their seats in London West and Cardigan when Jack Burghardt and former P.E.I. Premier Bennett Campbell were elected on April 13. In Lévis, Gaston Gourde defeated the Conservatives' "star" candidate Richard Janelle on May 4.

On July 2, a seat was opened up for Jim Coutts, the Prime Minister's principal assistant, by the appointment of MP Peter Stollery to the Senate. Stollery's constituency, Spadina, was considered a very safe Liberal seat, due in part to the large ethnic population in the riding. An election was called at the same time for Joliette, the riding left vacant in March when Roch LaSalle resigned to lead the Union Nationale in the April Québec election. The press and opposition denounced the Spadina election as cynical and unnecessary, claiming it was a way of getting Coutts into the cabinet and anointing him as the Prime Minister's successor. The Joliette election was also important for the Liberals. It was a chance to eliminate the last Tory MP in Québec and scoop the only non-Liberal Québec seat into the government caucus.

In Spadina, Coutts was up against Laura Sabia, a former open line host and head of the Ontario Advisory Council on the Status of Women,

representing the Conservatives. Dan Heap, a Toronto alderman, ran for the NDP. Prominent party members pounded the streets for each candidate.

Roch LaSalle's main opponent in Joliette was the Liberal candidate, Michel Denis, a local mayor and former MNA. A flood of cabinet ministers campaigning in Joliette showered grants to local industry, arts and senior citizen's groups. The Liberals felt they could also capitalize on a potential antipathy towards LaSalle for having dropped the riding to run provincially. The Conservatives felt it was important to retain the riding and the only opposition voice from Québec. LaSalle stressed the dangers of unilateral patriation and high interest rates while Denis concentrated on local issues (Globe and Mail, August 15, 1981, p. 1).

When the results were counted, Coutts had lost in Spadina by 175 votes to Dan Heap while Sabia ran a strong third. The popular vote reflected the close race; the NDP gained 34 per cent, the Liberals 33 per cent and the Conservatives 30 per cent. In Joliette, where Roch LaSalle won by only 389 votes in 1980, he built up a 14,000 vote margin over Denis. Voter turnout was down in both ridings.

The Liberals attributed their defeat in Québec to LaSalle's personal popularity and voter dissatisfaction with the state of the economy, but the Spadina defeat came as a crushing blow. The local organization was faulted for not having flushed out the Liberal faithful in a summer election; the local organization felt left out of a campaign run by Ottawa Liberals. At a more general level, with a postal strike and interest rates at a record high, the voters' message was interpreted as a rejection of the Liberal government's handling of the economy. This message plus those heard by the liberal caucus contributed to a renewed emphasis on the economy by the Liberals in the fall of 1981.

## ELECTORAL REFORM

### Federal Government

For a while in 1981, electoral reform seemed to be high on the agenda of the Liberal government. Seen in relation to the constitutional resolution, it was regarded as a part of a "Stage 2" in constitutional reform to increase regional representation at the centre.

The subject was introduced as the theme of a major speech given by the Prime Minister at the tenth anniversary of the Council of Maritime Premiers on June 1. In speaking about intergovernmental co-operation, Trudeau noted that the complexities of modern government which dictated co-ordination among governments had been pursued through federal-provincial conferences. But was this the best means of attaining a national consensus, he pondered.

The question which now faces us is whether this form of national co-ordination and decision-making has gone about as far as it can go. It has many successes ... but in some areas, especially the thorny ones of economic policy and economic development, the record is less encouraging. ("Notes for Remarks by the Prime Minister" ..., p. 9)

The Prime Minister went on to say that the use of the intergovernmental arena for accommodation was a partial response to "the apparent lack of effective regional representation in the national parliament and government." The Senate had not acted as a regional broker; the "first past the post" electoral system exaggerated regional voting preferences. Thus, dealings with provincial governments were substituted as a means of bringing regional concerns to bear on the national government.

Trudeau rejected the notion that "one group of elected officials speaks for the people with more authority than another" as a "betrayal of the Canadian spirit of multiple loyalties." Instead, he suggested that the issue of regional representation in national institutions be addressed once again. In addition to discussing reform of the Senate in Parliament and with provincial governments, Trudeau noted that a parliamentary committee might be established to study the electoral system, and implicitly, proportional representation.

Premier Lougheed of Alberta replied quickly to the Prime Minister, stating

The system does work and can be made to work provided the people involved are prepared to approach it on a basis of co-operation and not confrontation. (Excerpts of Premier Lougheed's Address to the Institute of Chartered Accountants, St. John's, June 2, 1981, p. 4)

Lougheed explained that provincial governments were closer to the diverse aspirations of the Canadian people while decisions made in Ottawa tended to favour the large population centres. He reiterated his notion that the provincial governments act as the only check and balance to a Prime Minister with a parliamentary majority to ensure that decisions are made with regional interests in mind.

Despite publicity received on the issue, no action was taken by the federal government in 1981. Early in 1982, the *Globe and Mail* reported that electoral reform had been shelved, at least temporarily. Sources reported that most of the Liberal Caucus, drawn from Ontario and Québec, were opposed to the idea because it would dilute their influence (January 7, 1982, p. 8).



## Québec

Prior to the opening of the National Assembly in November, the PQ cabinet met in Drummondville to draw up a list of priorities for the next legislative session. At that time, Justice Minister Marc-André Bédard, who was responsible for electoral reform, put a proposal before the cabinet for the adoption of some form of proportional representation before the end of 1982.

Proportional representation had been a plank of the PQ platform since 1973 when the party received 30 per cent of the popular vote but only 5.5 per cent of the seats and had received detailed study in a legislative committee.

Apparently, two different formulae were presented to the cabinet. The first was one presented in the 1979 PQ green paper on the subject and developed by Vincent Lemieux, a Laval University political scientist. Under this arrangement, the province would be divided into 30 regional ridings, each having 3-5 elected members, depending on the number of voters. Voters would choose from a list of candidates submitted by the parties and members would be elected according to the percentage gained by their parties (*Le Devoir*, September 9, 1981, p. 1). The second formula would be a modification of the first by which voters would vote from a candidates' list as well as a party list (*ibid.*).

In his inaugural speech to the National Assembly on November 9, Premier Lévesque announced that a bill would be introduced to reform the electoral system. He felt that reform would give to each member

une plus grande marge d'autonomie et d'initiative et aussi des moyens de contrôle qui répondent plus adéquatement à la complexité sans cesse croissante de la responsabilité de élus face à l'administration publique. (*Assemblée nationale, Journal des Debats*, 9 novembre 1981, p. 9)

By the end of the year, no legislation had been introduced.

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