# THE YEAR IN REVIEW 1983: 

 INTERGOVERNMENTAL RELATIONS IN CANADABruce G. Pollard
Institute of Intergovernmental Relations Queen's University
Kingston, Ontario
Copyright © 1984
ISSN-0825-1207
ISBN-0-88911-416-1

LIST OF APPENDICES v
PREFACE ..... vii
1 THE STATE OF FEDERAL-PROVINCIAL RELATIONS 1983 ..... 1
New Federalism ..... 2
Decline in Federal-Provincial Conflict ..... 7
Persistence of Regionalism ..... 14
Summary ..... 16
2 THE CONSTITUTION ..... 17
Introduction ..... 17
Analysis at Year One ..... 19
Québec and Confederation ..... 19
The Canadian Charter of Rights and Freedoms ..... 22
The First Phase Continued ..... 24
Aboriginal Matters ..... 24
Entrenchment of Property Rights ..... 29
Minority Language Rights ..... 32
Québec ..... 32
Manitoba ..... 34
Ontario ..... 39
The Second Phase ..... 41
The Macdonald Commission ..... 42
Special Joint Committee on Senate Reform ..... 43
3 INTERGOVERNMENTAL RELATIONS: THE 1983 POLICY AGENDA ..... 45
Introduction ..... 45
Energy ..... 47
011 and Gas Pricing ..... 47
Hydro Electricity ..... 49
Offshore Oil ..... 50
Justice ..... 55
Implementation of the Young Offenders Act ..... 55
Civilian Security Intelligence Service ..... 57
Economic Development ..... 62
Regional Development ..... 62
Rural Development ..... 64
Municipal Funding ..... 65
Trade ..... 66
Agriculture ..... 69
Corporate Affairs ..... 71
4 MEDICARE AND FISCAL FEDERALISM ..... 75
Background ..... 75
The Federal Initiatives of 1983 ..... 78
Provincial Reaction ..... 81
Federal Funding ..... 82
Developments in the Canadian Health Care System ..... 84
Federal-Provincial Interaction ..... 84
5 RESTRUCTURING THE ATLANTIC FISHERIES ..... 87
Background ..... 87
The Report of the Task Force ..... 90
Newfoundland ..... 91
Nova Scotia ..... 97
Québec ..... 99
Atlantic Fisheries Restructuring Act ..... 102
6 THE WESTERN GRAIN TRANSPORTATION SYSTEM ..... 105
The Problems ..... 106
The Proposals ..... 107
The Issues ..... 109
Reaction to the Federal Proposals ..... 113
The Western Grain Transportation Act ..... 120
APPENDICES ..... 123
BIBLIOGRAPHY ..... 147
INDEX ..... 149

A Bank of Canada Lending Rate
B Rate of Unemployment
C Rate of Inflation
D Provincial Gross Domestic Products

E Government Deficits

F Government Expenditures: Interprovincial Comparison
G Provincial Employees Per Thousand Population
H Results of British Columbia General Election

I Composition of Provincial Legislatures and House of Commons
J Dates of 1983 Budgets
K Overview of Provincial Budgets
L Comparative Provincial Tax Rates
M A Summary of Provincial Public Sector Wage Restraint Programs
N Resolution to Amend the Constitution with respect to Aboriginal Matters
0 House of Commons Proposed Resolution to Amend the Constitution to Include Property Rights

P House of Commons Resolution on French Language Rights in Manitoba
Q Estimated•Federal Transfers to the Provinces, 1983-84

## Preface

It is now a well-established tradition at the Institute of Intergovernmental Relations to publish an annual review of developments in the Canadian federal system and related policy issues. This, the seventh edition, has been written by Bruce Pollard. His labours have been supported by almost the entire Institute staff.

The 1983 edition of The Year in Review is more concerned with policy issues than was the case with previous volumes. As questions of constitutional renewal and institutional change have receded somewhat from the public agenda, intergovernmental cooperation and conflict in the formulation of public policy became the main focus of attention for students of Canadian federalism. Correspondingly, the organization of The Year in Review for 1983 differs slightly from its predecessors.

The first chapter provides an overview of intergovernmental relations in 1983. It identifies important trends in federal-provincial interaction and examines various elements in the political and economic environment which have helped shape these developments. Chapter 2 reviews progress on the constitutional issues which were not resolved during the 1981 negotiations and surveys the tentative steps that were taken towards a "second phase" of constitutional reform. The remaining chapters examine intergovernmental relations in various key policy sectors. Since many of the issues which dominated the political agenda had a federal-provincial dimension, these chapters are concerned as much with the general political evolution of Canada as with matters specifically related to federalism, the working of the constitution, and the conduct of intergovernmental relations. Finally, some features of the economic and political environment, which shapes the character of governmental interaction, have been surveyed in a series of appendices which follows Chapter 6. A list of these appendices is on page v.

For most of the people involved in the massive task of preparing the 1983 Year in Review, including Bruce Pollard, this was a first-time experience.

I should particularly like to mention David Hawkes, Associate Director of the Institute, who critically reviewed various drafts and co-wrote the chapter on the medicare debate; Valerie Mayman, our Librarian, for her excellent editing skills; and Lillan Newkirk and Andrea Purvis, who helped prepare the manuscript for publication. I am grateful to them all for their contribution to this year's edition.

Peter M. Leslie

Various trends in the economic and political environment helped to fashion the evolving state of intergovernmental relations in Canada during 1983. Perhaps foremost was the economic recession which had severely affected the nation during the previous two years. Although signs of a shaky recovery in 1983 were reason for guarded optimism, much of Canadian society had been awakened to a new awareness of the fragility of the economy. The constitutional front was relatively quiet, a resolution of sorts having been reached in 1982 with the patriation of the constitution. That emotional and stressful period was complete and, in 1983, battles for further and perhaps more fundamental reform had not yet begun. Speculation throughout the year concerning the retirement of Prime Minister Trudeau signalled the imminent end of an era which he had dominated for fifteen years. Although separatist elements in both Quebec and the western provinces were subdued in 1983, evidence of a persistent regionalism in Canada remained.

In 1983, federal-provincial interaction was characterized by a number of developments of which two predominated. First, there persisted an approach which has permeated intergovernmental relations since the return to power of Pierre Trudeau in 1980. Referred to as the "New Federalism," it was based on a desire by the federal government to strengthen its position and to thwart provincial decentralizing tendencies which had developed during the previous two decades. This force continued, to some extent, to motivate the federal government in 1983. Many of the elements which characterized the New Federalism and were directed toward enhancing the position of the federal government -- such as unilateral action, an emphasis on visibility and greater control over funds -- dominated relations in a number of policy sectors.

A second important feature of federal-provincial relations in 1983 was a relative decline in the level of conflict. There was no battle comparable to those which had occurred in recent years over issues such as the constitution and energy policy. Although intergovernmental friction over
some specific issues did persist, in other policy areas relations had clearly thawed. In the economic sphere, there was evidence of increased cooperation. Overall, the level of tension and conflict had been reduced.

## NEW FEDERALISM

The "New Federalism" approach to intergovernmental relations began with the re-election of the Trudeau government in February of 1980, following the nine month interregnum of Joe Clark. The New Federalism was grounded in the belief that provincial governments had become too powerful and the federation too decentralized during the growth decades of the 1960s and 1970s. What was required now was a reassertion of the power of the federal government -- at stake was nothing less than the unity of Canada. In a reference to certain provincial governments which were seen as too wealthy, too greedy and too self-seeking, the Prime Minister spoke of fighting "the enemy within" (House of Commons Debates, April 15, 1980, p. 33).

Trudeau acknowledged in 1983 that his government had taken a new direction in dealing with the provinces since his return to power in 1980. He asserted that since that time, he had been saying to the provinces:
> [W]e are going to do what is good for the people, and if you don't like it, take us to the Courts or take us to the people.... Our view of federalism was being eroded because we were trying to be...cooperative during most of the sixties and seventies and thinking that we could build and fortify a national will by never fighting with the provinces. (Meeting with Western News Media representatives, July 8, p. 15).

The initial battleground for the New Federalism was the issue of Quebec independence. Buoyed by the "defeat" of the forces of separatism in 1980, the Trudeau government marched forward to attack on other fronts. A unilateral initiative to amend and patriate the constitution was launched in 1981, together with the National Energy Program on the resource management/taxation front. The spirit of the New Federalism was captured at the 1982 First Minsters' Conference on the Economy when the Prime Minister announced that "...co-operative federalism is dead."

Although much of the initial rhetoric of the New Federalism had diminished by 1983, the basis of this approach remained. For Prime Minister Trudeau, there persisted the need for the federal government to assert itself as the protector of the national will against the strong "regional" tendencies of the provinces. In a meeting with Western News Media representatives in Ottawa on July 8, 1983, Trudeau stated:

I think there has been an attempt to weaken the right and the duty of the national government to speak for all of Canada, as it must, since it is the only government which, territorially,

[^0]The New Federalism has been characterized by a number of elements which have sought to strengthen the role of the federal government, to shift the balance of power back to the centre. These were present in 1983 in various policy areas affecting both orders of government.

A key element of the New Federalism was the replacement of consultation and joint federal-provincial programming with unilateral action. This gave to one government a tactical advantage by forcing the other government to react to a fait accompli. In many sectors of policy, intergovernmental relations were characterized by provincial reaction to federal unilateral action. On some important issues, federal initiatives were announced without prior consultation with the provincial governments. At times, these were in areas of policy in which the federal action had important ramifications for the provinces.

The federal government amended the legislation governing the Established Programs Financing (EPF) arrangements in both 1982 and 1983, even though there had not been any negotiations since 1981. In December 1983, the federal Minister of Health unveiled a new Canada Health Act, establishing financial penalties for provinces with health insurance programs which failed to meet federally established criteria. Even though health care is entirely within the purview of the provincial governments, no consultation took place prior to the drafting of the Bill.

In May, the federal government tabled Bill $C-155$, which provided for major changes to the western grain transportation system, including the abandonment of the statutory "Crow rate." Although the federal government was acting within its own jurisdiction, the impact of this legislation had significant implications for provincial economies. The provincial governments were not part of the consultative process undertaken by a federally-appointed task force, established to examine the grain transportation system. Endorsing much of the task force report, the federal government proceeded to act on its own.

In the justice sector, the federal government introduced legislation which provided for the creation of a civilian security intelligence
service: Again, this was done without prior consultation with the provincial governments, even though the latter have primary responsibility for the administration of justice. The federal government undertook a review of the Maritime freight rate transportation subsidy program without involving the provinces in the process. In the wake of a favourable Newfoundland Supreme Court decision regarding offshore oil, the federal Energy Minister announced a multi-million dollar drilling program off the coast of Newfoundland.

The threat of unilateral action was a weapon in the federal government's arsenal which was occasionally employed to force the provinces to engage in serious negotiations and to seek genuine compromise. Prime Minister Trudeau argued that if the federal government could not proceed without the consensus of the provinces, the provinces would never agree to anything until all their demands had been met (News Conference, July 8, p. 15). Unilateral action as a last resort enhanced the bargaining position of the federal government.

The 1981 negotiations over the constitution, in the shadow of the federal threat to patriate it unilaterally, provide the textbook example of this strategy. It has been repeated, in varying degrees, in other policy sectors. In 1983, the threat to impose a federal restructuring plan on the Atlantic fisheries overshadowed the bilateral negotiations with the provinces of Newfoundland, Nova Scotia and Quebec. When the negotiations with Newfoundland failed, the federal government decided to restructure the industry on its own. The message from Ottawa was clear: it could not always afford the luxury of a consensus prior to taking action. It was only because of substantial opposition to the federal proposal, coupled with a renewed effort by the Newfoundland government, that an agreement was reached. In the absence of support from the province, the federal government was also working to restructure the fishery sector in quebec. Only in Nova Scotia were restructuring efforts undertaken with provincial agreement and support.

A second element of the New Federalism concerned the federal attitude toward payments transferred to the provinces. The Trudeau government was unhappy with the lack of visibility and accountability it received for its contributions to health and post-secondary education through the 1977 Established Program Financing (EPF) arrangements. Greater visibility of its contributions to provincially-administered programs was sought in order to enhance its presence with the electorate. It became important for the federal government to receive recognition for its contribution to these programs, many of which were clearly within provincial jurisdiction. Prime Minister Trudeau asserted to reporters that "when the federal government was giving taxpayers' money to assist the provinces on some project, it was essential that the taxpayers realize the use and employment of the funds" (Toronto, September 27). "Appropriate recognition" of federal funding for provincial health insurance programs was required under the terms of the proposed Canada Health Act (section 13).

More than simply wanting visibility, the federal government sought greater provincial accountability for its transferred funds. Trudeau reaffirmed in 1983 that, "cooperative federalism is dead...in the sense that the federal government is expected to hand money over to the provinces for them to spend in any which way" (Toronto, September 27). The proposed Canada Health Act required that the provinces supply to the federal government information concerning the operation of their programs.

Moreover, an amendment was introduced in April (Bill C-150) to the 1977 Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, which attempted to give the federal government greater control over funds transferred to the provinces. According to the terms of the EPF arrangements, the provinces could divide the federal transfer payment as they wished between the health and the post-secondary components or, indeed, they could spend it wherever they chose. Bill C-150 contravened this principle, effectively separating ottawa's contribution into health and post-secondary education components instead of lumping them together. The proposed legislation arbitrarily assumed a division between the two components and then determined the federal contribution, subjecting each component to a different percentage increase. This undermined the EPF principle of "unseverable block funding."

General dissatisfaction with the lack of visibility and accountability in shared-cost programs led to a third characteristic of the New Federalism. The federal government tended to promote the direct delivery of its own programs rather than developing joint programs with the provincial governments. It emphasized each order of government working within its own realm. It attempted to bypass provincial governments, even though they may have been affected by a particular federal policy decision. Effectively, the federal government sought to expand its jurisdiction as far as was constitutionally possible and to narrow the areas in which the provinces had played a role.

Underlying this approach was the assumption that each government could best determine the policies which fell within its jurisdiction. This was a very legalistic approach in that the main concern was whether a particular action by a government was intra vires, or within that government's competence. This was a far cry from the philosophy which led to the Western Economic Opportunities Conference of 1973. Initiated by the federal government, that conference provided a forum for the premiers of the western provinces to comment on the impact of federal policies on provincial governments and policies.

In his brief to the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission), Minister of State for Economic Development Donald Johnston spoke of refining the relationship between the two levels of government in matters of economic development. Acknowledging that they have different responsibilities in
this field under the constitution, he asserted that it was logical for there to be "direct" or "parallel" delivery of programs (Submission presented on September 21, St. John's, Newfoundland, p. 11). In 1983 there was a greater tendency than in the past for the federal government to fund projects directly and on its own, bypassing the provincial government.

This philosophy was inherent in the Economic and Regional Development Agreements (ERDAs) which were to replace the ten-year umbrella General Development Agreements (GDAs) signed in 1974 with each of the ten provinces. Whereas the GDAs emphasized joint federal-provincial delivery of economic development programs, the emphasis within the ERDAs was to be coordinated planning between the two levels of government, but parallel delivery of services. In November 1983, the federal government signed an ERDA with the Province of Manitoba. Discussions were in progress during the year with several of the other provinces.

This emphasis on each government acting strictly within its own jurisdictional boundaries did not emanate solely from ottawa. Historically, the provinces have jealously guarded their areas of competence. In 1983, the Quebec government tried to pass legislation (Bill 38) which sought to protect the province's exclusive jurisdiction over the affairs of municipalities. Bill 38, had it passed, would have penalized any Quebec municipality which accepted funds from the federal government.

A fourth element of the New Federalism was federal disenchantment with multilateralism in federal-provincial relations. In recent years, the federal government had become sceptical of first ministers' conferences. Often these had resulted in few substantive policy decisions and they had been marked by acrimony and provincial criticism of federal policies. Moreover, there had developed a tendency for provinces to "gang up" on Ottawa. The federal government was able to maintain a better negotiating position through bilateral encounters. As a result, the federal government tended to avoid the multilateral type of "executive federalism."

There was only one meeting of first ministers in 1983. It was held in March and was concerned with aboriginal constitutional matters. The constitution of Canada, given royal assent in April 1982, required that such a conference be convened within one year. No first ministers' conferences on the economy have been held since early 1982, and that had been a clear failure. Prime Minister Trudeau rejected a call from the premiers for a first ministers' conference on the economy following the conference on aboriginal matters in March.

At times, bilateral meetings of federal and provincial leaders were preferred by provincial governments. In August, the Annual Premiers' Conference defeated a motion of Premier Bill Davis from Ontario to invite the Prime Minister to convene a first ministers' conference on the economy. The premiers were wary that such a conference could be used by the federal


#### Abstract

government to launch an election campaign. Instead, the premiers advocated one-on-one encounters to be held with the Prime Minister in the various


 provincial capitals.The persistence of these elements during 1983 ensured the continuation of the federal government's goals as contained in the New Federalism. In a rather subtle fashion, federal initiatives aimed at curbing the growing power of the provinces may have been enhanced by the pervasive economic recession of the previous two years. The stalled economy and the accompanying need for restraint may have compelled the federal government to assert greater control over its funds, to define its area of responsibility and to restrict its funding of provincial programs, while trying to shift more responsibility to the provincial governments.

Unilateral cutbacks in transfer payments, and a greater emphasis on accountability of funds spent, either by direct delivery of programs or by establishing greater control over transfer payments, were obvious steps for a government operating in an economic downturn. There was a tendency to shift the burden to the other level of government. On the issue of Medicare, for example, the federal government set the level of its contribution to the provinces -- in accordance with its need for restraint rather than related to the rising cost of health care. At the same time, it created new legislation to ensure that provincial programs met certain national standards. Problems such as the rising costs of services and the increased militancy of physicians were shifted to the provincial governments, which now had both limited funds and limited administrative autonomy. In a sense, the driving force of the New Federalism had shifted from political to economic. The consequences of the recession and the politics of restraint provided a new impetus for the elements of the New Federalism.

The economic recession may also have enhanced the position of the federal government by producing a general "looking to the centre" for leadership to enable economic recovery. Compared to the "growth decades" of the 1960s and 1970s, when the provinces had popular support for the pendulum of power to swing in their direction, the recession of the 1980s may have helped to assure the political ascendancy of the federal government. This was specifically manifested in popular support for the federal position on a number of key issues where it established "national" programs or "national" standards. Early reports from the Macdonald Commission hearings suggested that there was wide support in Canada for the federal government to assume a leadership role in the management of the economy.

## DECLINE IN FEDERAL-PROVINCIAL CONFLICT

In addition to possibly reinforcing elements of the New Federalism, the economic recession may, rather paradoxically, have been one factor responsible for a reduction in the level of intergovernmental conflict.

This was the second distinctive feature of federal-provincial relations during 1983. More than just a decline in the level of conflict and the absence of major battles, such as those which had existed in previous years, there was, in some specific policy sectors, evidence of genuine efforts to achieve cooperation.

Many of the issues which were on the intergovernmental agenda during the year were conducive to cooperation. These were primarily economic issues in which both orders of government could benefit from common or coordinated policies. There was an apparent realization among all governments that coordinated policies were essential to instilling consumer and investor confidence in the Canadian economy. Moreover, from a political perspective, governments were better able to justify policies of restraint if similar policies were being pursued by other governments.

Various governments in Canada made appeals to work together, especially with respect to economic policy. Whereas requests from the provincial premiers for the federal government's cooperation have been rather common, appeals by the Prime Minister to the premiers have been much less frequent. In a letter to Premier Bill Davis of Ontario, Chairman of the Annual Premiers' Conference, Prime Minister Trudeau emphasized the importance of cooperation between the governments and the need for everyone to work together to improve economic conditions. He wrote:

The government of Canada is determined to pursue its search for a more effective mix of economic policies and to do so in close co-operation with provincial governments as well as business and labor organizations.... We do not think that we have all the answers (August 3, P. 4).

Although condemned by some of the premiers as "mere politicking", others felt that the Prime Minister was genuinely interested in the views of the provincial governments concerning economic policy.

An important appeal for improved federal-provincial relations came from the Council of Maritime Premiers (CMP). Members of the House of Commons representing constituencies in the Atlantic provinces were invited to a CMP meeting held in ottawa in November. The Atlantic region is the most dependent upon federal transfers and has the most to lose from conflict between the two orders of government. The purpose of the meeting, according to a communique released November 29, was to present the common views of the Maritime governments on emerging trends for the next decade. These governments feared that the social and economic equality of individual Canadians living in the Maritimes was being threatened. Although the meeting was boycotted by Liberal Members of Parliament, it was deemed to have been a valuable experience.

Evidence of efforts to work together to achieve compatible economic policies came from various forums during the year. Following a one-day
meeting on February 2, western premiers expressed pleasure with a new willingness on the part of the federal government to work with the provinces (Edmonton Journal, February 3, p. A2). During the fiscal year 1982-83, the Ministers of Finance from all provinces and the federal government held three meetings. Many of the participants felt that these were much more concilitory than previous encounters and that everyone recognized the need to work together. This suggests that multilateral meetings could be successful if conducted in private and if they were centred on policy areas in which there was some incentive to cooperate. In describing the meetings which were held during the 1982-83 fiscal year, the 1983 Prince Edward Island budget stated that,

The atmosphere of these meetings has been much less tense than those of the preceding year and a significant degree of consensus has emerged on many of the economic and financial issues which were discussed (p. 12).

In his 1983 budget, Ontario Treasurer Frank Miller asserted that, "recently, the federal government has been somewhat more willing to discuss tax changes with the provinces". (p. 4). He also stated that he was encouraged by certain taxation and economic policies adopted by the federal government, including an economic stimulation program oriented to the private sector in the April 1983 budget.

An examination of the budgets and fiscal policies of the various governments in Canada reveals substantial congruence of policy measures. This may have simply been a result of all governments facing similar problems in the wake of the recession. All chose a similar solution based upon a policy of restraint.
"Restraint". became the catchword of government policy-makers. Cutting back increases in government spending and reducing the size of the public sector were universal antidotes in the face of huge government deficits and a serious downturn in the economy. (See Appendices A to D for a summary of economic indicators and Appendix $E$ for a comparison of provincial deficits.) A survey of spending patterns reveals that some governments were more effective than others in controlling their expenditures and curbing the size of their bureaucracies. (See Appendices $F$ and $G$ for tables which compare provincial expenditures and number of public employees per capita.)

The issue of economic restraint was a major element in the political arena. It figured prominently in the only general election held in Canada in 1983. That took place on May 5 in the Province of British Columbia. Having announced at the beginning of the year that he intended to reduce the civil service by 25 per cent, Premier William Bennett campaigned on the need for short-term restraint in order to improve the provincial economy. By stating that he would abandon the government's wage restraint program, New Democratic Party (NDP) leader Dave Barrett was portrayed by the government as a "free spender."

It would appear that the voters of British Columbia accepted the accusations made by the government that the NDP would spend the province into even greater recession. Despite a worsening economy under four years of Social Credit rule, the electorate returned William Bennett and his party to govern the province with an even greater majority than that held during the previous term (See Appendix H). The Social Credit Party had picked up three additional seats and had nearly a five-per cent lead in popular support. The results of this election underlined what many governments had refused to believe: policies of restraint did have public support.

Restraint was an integral part of all government budgets in 1983. The federal budget was brought down by Finance Minister Marc Lalonde on April 19. Although the expressed dominant concern of the Finance Minister was to help the one-and-a-half million unemployed Canadians, the budget was supply-side oriented and contained tax breaks for business to enhance capital investment and recovery. Moreover, the federal government outlook predicted that unemployment would fall to only about 11.4 per cent in 1984. It was clear that help for the unemployed was expected to come primarily from the private sector. Greater importance was placed in 1983 on stimulating business than on job creation programs. In his budget, Lalonde stated:

I am relying primarily on the dynamism and creativity of the private sector to bring about durable recovery.

All provincial governments, with the exception of British Columbia, delivered budgets between the latter part of February and the middle of May (See Appendix J). British Columbia's budget was presented on July 7, following the re-election of the Social Credit government.

Most of the budgets provided incentives or tax breaks to corporations, although Manitoba and Ontario did increase corporate income tax rates. Virtually all provinces increased individual taxes, primarily on items such as alcohol, tobacco, and health care. Three provinces increased the retail sales tax rate. (See Appendix $K$ for a summary of the provincial budgets and Appendix $L$ for a table comparing the various taxes levied by provincial governments.)

Although the main elements of the federal budget were corporate tax credits and rebates, the federal government also provided some incentives to increase consumer spending, especially on major expenditures. These included temporary changes to the regulations governing Registered Home Ownership Savings Plans (RHOSPs), such that greater tax savings could be attained for new home purchases in 1983 and 1984. Moreover, RHOSP funds could be withdrawn tax-free if used for qualified home furnishings purchased in 1983.

Similar incentives were included in some of the provincial budgets. For example, Saskatchewan extended its 3000 dollar grants to new home purchasers to August 1, and Québec introduced a 2000 dollar grant for houses bought before the end of the year. Ontario removed the retail sales tax for 90 days on furnishings and major appliances.

Despite growing deficits, some attention was paid to economic development and job creation. The federal budget included a four-year Special Recovery Program, providing 4.8 billion dollars of investment support "to spur recovery and restore as quickly as possible the economy's capacity to generate the new jobs Canadians need" (p. 3). Half of these funds were for more than 100 public capital projects to be put in place over the next four years in all regions of the country. The other half was "aimed at accelerating productive investment and job creation in the private sector" (Special Recovery Incentives for Private Investment).

Although most provinces reserved some funds for jobs, Manitoba was the only province to establish a major job creation scheme. It created a 200 million dollar job fund. Finance Minister Vic Schroeder asserted that "...expanding job opportunities and securing existing jobs must be our most urgent budgetary priorities" (p. 4). The money for this fund was to come from three specific tax adjustments.

Public sector wages were a common target for government restraint. In June 1982, the federal government introduced a two-year program of wage restraints, providing for annual increases of six per cent and five per cent, for federal civil servants. The federal government then attempted to "sell" this program to the provincial governments and to the Canadian private sector. Whereas none of the provinces embraced "6 and 5", they nevertheless felt similar effects from the recession and the need for restraint. As a result, public sector wage restraints were implemented in all provinces during 1982 or 1983. There was substantial variation in the eleven government programs. The limits placed on annual wage increases were, in most provinces, in the 4 to 6 per cent range. There were exceptions, though, as New Brunswick imposed a freeze on wages and Québec cut the salaries of over half of its public employees in its controversial Bill 105.

All programs were implemented for periods of either one or two years. Some of the governments provided for wage restraints to take effect upon the expiration of current contracts, whereas other provinces imposed contracts which superseded those which had been negotiated through the process of collective bargaining. In some provinces, collective bargaining was suspended altogether. However, a Supreme Court of Ontario decision in October determined that parts of that province's 1982 Inflation Restraint Act violated the Canadian Charter of Rights and Freedoms because it
restricted bargaining on non-monetary issues. This spawned a challenge to Alberta's 1977 Employee Relations Act, which banned strikes by civil servants and subjected contracts to binding arbitration. That case will be heard in 1984. (See Appendix $M$ for a summary of the wage restraint programs in each of the provinces.)

In his letter of August 3, Prime Minister Trudeau acknowledged the success of coordinated public sector wage restraint policies. "The 6 and 5 program... could not have worked without the broad support of all Canadians and the complementary restraint measures introduced by most provincial governments" (p. 3).

Other areas of economic policy were conducive to cooperation and a general feeling of conciliation surrounded federal-provincial interaction in these sectors. Generally, cooperation was possible where the issue was not viewed as a "zero-sum" game but, rather, where both orders of government could benefit from working together. In the area of trade, the federal government made a determined effort to hear the views of the provinces and to integrate them into federal trade policy. New agreements on oil pricing were reached between the federal government and the provinces of Alberta and Saskatchewan. Negotiations were generally amicable and agreement was reached largely because natural gas pricing was worked into the accord. This enabled a tradeoff between these two components, such that both orders of government were able to benefit.

The significant federal-provincial agreements, providing for the restructuring of the Atlantic fisheries, were reached in an atmosphere of urgency. The desperate state of the industry dictated the need for some immediate restructuring and infusion of capital. The poor financial position of the Atlantic provinces, especially Newfoundland, was a major incentive to reach an agreement with the federal government. It is possible that some of the "cooperation" evident in 1983 was more a matter of "compliance", resulting perhaps from the realization by some of the provinces that they could not afford not to reach a settlement. This may have been one way in which the recession helped to facilitate "cooperation."

Not only were many of the issues which were high on the intergovernmental agenda in 1983 conducive to cooperation (partly due to the economic situation), many of the issues which had been the source of considerable conflict in past years were no longer on the agenda. The debates over energy policy and the constitution had, at least temporarily, been resolved. The economy dominated the public agenda and the resources of all governments generally focussed on combatting the recession. This shift in the public agenda helped dampen federal-provincial conflict. Economic problems so preoccupied all governments that there was little time or energy to fight jurisdictional crusades. The governments were drained of much of their fighting spirit.

Another factor in explaining the change in the political agenda was a shift in the priorities of the federal government. The predominant issue for Prime Minister Trudeau in 1983 was the cause of international peace. This was not a federal-provincial issue and its high profile position on the public agenda for much of the year meant that many domestic issues, including many intergovernmental concerns, were not treated with any sense of immediacy.

The shift in the public agenda was equally apparent on the constitutional front. Having consumed enormous amounts of energy in the federal-provincial realm in recent years, the debate over the constitution was not high on the agenda in 1983. This was largely due to the first phase of constitutional reform -- the patriation of the constitution, complete with Charter of Rights and an amending formula -- having been completed in 1982. Much of the constitutional debate of 1983 concerned the "unfinished business" of the previous two years. The issue of aboriginal rights and the entrenchment of property rights had not been resolved in 1981 and, as such, continued to spark some debate in 1983.

Some of the activity on the constitutional front in 1983 was futureoriented. Although not at the centre of the public agenda, a second phase of constitutional reform was under way. The federal government had, in 1982, established two bodies which were to examine Canadian political and economic structures. Both the Special Joint Committee on Senate Reform and the Royal Commission on the Economic Union and Development Prospects provided forus in 1983 for the dissemination of ideas on reform -- reform of the basic political and economic structures of Canadian society. While both Prime Minister Trudeau and his predecessor, Lester Pearson, had envisioned this as the second stage after constitutional patriation and an entrenched charter of rights, the recession had made reform a matter of greater urgency. For many Canadians, the recession of the early 1980s was a catharsis, leading them to seriously consider major institutional changes.

Another factor contributing to a decline in the level of intergovernmental conflict was the apparent realization that the Canadian electorate was weary of federal-provincial conflict. As Premier Davis of Ontario asserted: "the public is a little tired of confrontation" (quoted in Macleans, August 22, p. 12). It was generally acknowledged that Canadians wanted the two levels of government to cooperate and work together. Most premiers apparently considered that "fed-bashing" no longer gained political mileage. Care was taken at the Annual Premiers' Conference to not be strongly critical of the federal government. Conference statements focussed on common concerns and ideas for improving the economy. The more contentious issues in federal-provincial relations were largely downplayed.

Throughout the year, the feeling that a federal election would soon be held, probably in 1984, became more prevalent. There was evidence that in some policy areas, the provinces had adopted a "wait out the present government" stance. The federal opposition party, the Progressive Conservative (PC) Party, held a substantial lead in popular opinion polls throughout the year and, to many, a change in government was inevitable. It was generally recognized that most of the provincial premiers preferred to deal with a federal PC government. This was partly because seven of the ten provincial governments wore the Progressive Conservative Party stripe (plus an eighth was Social Credit) and partly because intergovernmental relations had worsened during the turbulent Trudeau years.

This stance by the provinces was enhanced by the election of Brian Mulroney in June as the leader of the federal PC party. Many of the provincial premiers seemed to think they could strike better deals with Mulroney than they could get under the present Liberal government. This belief was fostered by the position of the federal PC party in the past on matters such as offshore oil and transfer payments. As well, statements by Mulroney concerning federal-provincial relations were encouraging to the provinces.

I am telling you that co-operative federalism is alive and well in this country. It is alive and well in the Progressive Conservative Party and our principal obligation is going to be to resurrect it in Ottawa and put an end, once and for all, to confrontational federalism that kills Canadian initiatives. (Mulroney, speech September 1983, reported in PC Journal, vol. 2:5, 1983).

## PERSISTENCE OF REGIONALISM

Another force which had an impact on some aspects of the intergovernmental realm in 1983 was the persistence of regionalism, such that policies benefitting one region were perceived as detrimental to another. The primary example from this year concerned the debate over the Crow rate. Provinces with different economic bases were affected differently by the federal policy proposals regarding the transportation of western grain. The cleavages in this debate tended to reinforce provincial boundaries. A consensus was unattainable and any policy decision taken by the federal government would have alienated some region or province. In the end, despite enormous opposition, the federal government did abandon the historic statutory Crow rate.

Regional tensions were manifest, as well, in the internal politics of two of the national political parties in Canada. The Progressive Conservative Party had a strong political presence at both levels of government: it was the official opposition at the federal level and the governing party in seven of the ten provinces. There were some key policy issues in 1983
which created friction between provincial factions and the federal wing of the PC party. These issues affected various provinces differently; as a result, provincial wings of the PC party were, at times, on opposite sides of a particular debate.

In the debate over the "Crow", for example, the PC governments of Alberta and Saskatchewan held differing positions and these were both significantly different from that adopted by the federal party. The PC opposition party in Manitoba bitterly opposed the provincial New Democratic government's efforts to entrench in the constitution minority French language rights in the province. The federal party, however, under the leadership of Brian Mulroney, strongly supported the resolution of the Manitoba government.

There was a regional element introduced into the PC leadership convention held in June. Early in the contest, both the premiers of Alberta and Ontario were being considered as potential candidates for the leadership of the federal party. William Davis of Ontario was generally perceived within the party as being too much of a "central Canadian", largely because of his support of the federal government on the constitution and the National Energy Program. It was reported that Peter Lougheed of Alberta was prepared to throw his hat into the ring simply to oppose Davis. Davis acknowledged at the time of his decision not to run that his entry could have been a divisive force in the party.

There was some internal dissension within the New Democratic Party (NDP), as well. Some leading members of the Saskatchewan NDP -- who were defeated at the polls in 1982 - accused the federal party of serving central Canadian interests and the large industrial unions of ontario, while ignoring its base in western Canada.

Since 1979, the western NDP factions had questioned a number of policies adopted by the federal party. Specifically, they questioned the decisions to support the Liberals in 1979 in defeating the PC Clark government, to side with the Liberal Party on the constitutional issue, and to support elements of the National Energy Program. There lingered a feeling that the policies of the federal party, under the leadership of Ed Broadbent, contributed to the defeat of the Saskatchewan NDP government in 1982.

On June 22, the western wing of the party released a statement of principles as a response to a draft statement issued by the party during the winter. Written by Grant Notley and former Saskatchewan Premier Alan Blakeney, the western statement urged the party to adopt more flexible policies on the various regions of Canada, including Québec's democratic right to secede. It also called for a new "social contract", involving government, labour and business, and the declaration of Canada as a "nuclear-free" zone. The proposal was drafted without the knowledge of the federal leader, and some of the western federal MPs reportedly contributed to it.

The authors of the report had hoped that their statement of principles would be discussed at the party's annual convention held from June 30 to July 3. The federal council, however, would only agree to a compromise that incorporated some of the western concerns, specifically those dealing with Canada's regional nature, into the official statement.

The continuing importance of regionalism was also manifest in 1983 in the discussions surrounding the reform of the Senate. A federal government discussion paper, which was presented to the Special Joint Committee on Senate Reform, recognized that the role of the Senate which needed the most attention related to regional representation. This seemed to be the predominant concern of most Canadians who made presentations to this Committee. Regionalism in Canada persisted and the need to accommodate it remained.

## SUMMARY

In any given year, federal-provincial relations in Canada are marked by both high and low points, by failure and acrimony in some sectors and by compromise and cooperation in others. To gauge the direction of relations generally, it is necessary to go beyond specific failures or successes and look at the broader picture, at the entire breadth of interface between federal and provincial governments.

1983 was perhaps unusual in that two distinct trends were evident. The New Federalism which had characterized relations during much of the previous three years -- often resulting in acrimony and mistrust -persisted. On the other hand, intergovernmental relations in 1983 were distinct from those of recent years in that the level of conflict had noticeably diminished.

Federal-provincial relations cannot usefully be examined in isolation from the environmental factors which shape them. A number of forces influenced the state of intergovernmental relations in 1983. The impact of the economic recession and the subsequent policy of restraint was perhaps the most profound. Although the elements of the New Federalism did not arise from the recession, these were to some extent nurtured by it, such that the driving force behind this approach was shifted from the political to the economic.

## 2 THE CONSTITUTION

## INYRODUCTION

With the bulk of their energy invested in economic and social policy fields, the federal and provincial governments had less time in 1983 for matters constitutional. When compared to the hectic days of 1981 , which culminated in the November accord, and the celebration of the patriation of the constitution the following spring, 1983 was more of a reprieve.

It was a time for reflection and analysis. In this, the year following the proclamation of the Canadian constitution, several books and articles were written, each trying to assess the impact and consequences of the events of the previous two years. In particular, the reaction of the Quebec government -- the one province which had not signed the Constitutional accord -- and the feelings within Quebec society were the subject of much analysis. Renewed talk of independence coincided in 1983 with discussions of possible plans to accommodate Quebec in the Canadian constitution.

An analysis of the effect of the 1982 Constitution Act suggests that its most significant immediate impact was related to the new Canadian Charter of Rights and Freedoms. Several hundred Charter-related cases were heard in Canadian courts during the first year that the Charter was in effect. Although the Supreme Court of Canada had not yet ruled on any of these cases by the end of 1983, decisions in some of the lower courts suggested that the Charter would have a significant impact on Canadian society.

There was some political activity on the constitutional front in 1983. Much of it was "unfinished business" from the busy 1981 constitutional agenda, a continuation of what Prime Minister Trudeau called "Phase One" of the constitutional amendment process. Some elements which had been on that agenda during the 1981 negotiations leading to the Canadian Charter of Rights and Freedoms, but were excluded from the final package, resurfaced in 1983. Aboriginal rights and the right to property were prominent issues
in various jurisdictions during the year. Efforts were made to entrench elements of these in the constitution.

Concerning aboriginal rights, there was some success, although that must be deemed moderate. A first ministers' conference with leaders of the aboriginal peoples was held in March to fulfill the constitutional requirement that such a meeting be convened within one year of the proclamation of the Canadian constitution. This was the only first ministers' conference held during 1983. The most concrete result of the conference was a proposal, endorsed by the Prime Minister of Canada and nine of the ten provincial premiers, to amend the new constitution, enunciating principles of aboriginal rights and providing for further conferences on this matter.

The issue of entrenched property rights was on the agenda in 1983, a resolution having been passed by the British Columbia legislature in September 1982. Although debated in a number of the provincial legislatures and the House of Commons, little progress was made toward attaining the support necessary for constitutional entrenchment.

Minority language rights were important in 1983 in three Canadian provinces. Efforts by the Manitoba government to entrench French language rights immersed the province in bitter and controversial debate for much of the year. By the end of the year, the Manitoba government was having difficulty getting a twice-modified resolution passed by the provincial legislature.

In 1983, there was renewed pressure for Ontario to become officially bilingual. The Ontario government refused to yield to the pressure, although some significant advances were made to improve the status of minority French language rights in the province.

The Québec Court of Appeal upheld a 1982 Superior Court decision which had found parts of Québec's French-1anguage Charter (Bill 101) to be inconsistent with the Canadian Charter of Rights and Freedoms. The Parti Québécois government amended the legislation, removing many of the irritating aspects of the Act, while keeping the spirit and intent of Bill 101. Also in Québec, two contentious labour relations bills were ruled unconstitutional, contravening Section 133 of the Constitution Act, 1867 (formerly the British North America Act) because the statutes and their regulations were published in French only.

One consequence of the patriation of the Canadian constitution, complete with amending formula and Charter, was that attention could now be focussed on more substantive structural and institutional changes. This second phase of constitution-building was just beginning in 1983. Two important activities were nevertheless apparent on this front.

First, the Royal Commission on the Economic Union and Development Prospects for Canada, established in November 1982, travelled across the country, receiving briefs and presentations from all segments of society. It was generally thought that the final report of the Commission, due in 1985, would contain recommendations which could radically alter the institutional framework of Canadian politics and possibly the distribution of legislative powers. Second, a joint parliamentary task force, with a much narrower mandate, was established to study the idea of Senate reform. Although no formal reports were issued in 1983, both bodies provided forms for a wide spectrum of ideas on the future of the Canadian polity.

## ANALYSIS AT YEAR ONE

## Québec and Confederation

Although 1983 was a relatively quiet year on the constitutional front, in Québec there were some significant trends and events which served to remind Canadians that things had not been completely settled. The constitutional activities of 1981 and 1982 may have even exacerbated the uncertainty which had, since 1976, surrounded the future of Québec in Canada.

## The Constitution

The Québec Government made an important shift in strategy in 1983 in its interaction with the other provinces. It had objected to the amending formula agreed to by the other ten governments in Canada in 1981. In 1982, in a decision of the Supreme Court of Canada, it lost an appeal for a constitutional right to a veto. In March 1983, it abandoned its efforts to try to persuade the other provinces to accept a veto power for Québec. After meeting with his counterparts from the other provinces on March 1, in preparation for the upcoming First Ministers' Conference on Aboriginal Matters, Québec Intergovernmental Affairs Minister Jacques-Yvan Morin announced that Québec would embark on a course aimed at obtaining support for the right to opt out of any further constitutional changes with full financial compensation. He indicated that he would probably be able to get the support of all but two of the other provinces. New Brunswick was identified as one of these.

Prime Minister Trudeau had indicated in a letter to René Lévesque, sent in December 1982, that he was willing to work with Québec to give it the right to a veto if Québec were to adhere to the new constitutional accord (Le Devoir, January 27, p. 3). Trudeau had, in the past, flatly rejected the general idea of full financial compensation to provinces opting out. He had characterized this as leading to the balkanization of the country and "incremental separatism."

According to the 1981 amending formula, three provinces are allowed to opt out of a constitutional amendment agreed to by Ottawa and seven provinces having at least fifty per cent of the population of Canada. Moreover, a province opting out of a constitutional amendment that reduces provincial authority in educational and cultural matters is eligible for financial compensation from Ottawa. Essentially, Québec wanted this concession extended to cover all constitutional amendments.

The future of quebec with respect to the Canadian constitution was seen to be largely dependent on two men who were on the sidelines of power in 1983, but, given the trends in the public opinion polls, were likely to assume power within the following two years. These two men were Brian Mulroney and Robert Bourassa.

During his campaign for the leadership of the federal Progressive Conservative party, Brian Mulroney had criticized former Prime Minister Joe Clark for his position of offering full compensation to Quebec, asserting that he would not "give a plugged nickel of the taxpayers' money to Rene Lévesque until he [said] what he would do for Canada" (quoted in Martin et al., 1983, p. 93). There was some evidence that the new leader has backed down from such a hardline position. At his September 3 speech in Joliette, Québec, Mulroney promised to work to win Québec's support for the constitution:

I intend to work relentlessly so that a formula may be struck which someday will enable the Québec National Assembly to give its enthusiastic assent to a Canadian constitutional accord (translation) (quoted in Le Devoir, September 7, p. 7).

Robert Bourassa, newly re-elected leader of the Liberal Party in Quebec, made a number of references to establishing a new era of collaboration with Ottawa. More specifically, he expressed his desire to reach an agreement on the constitution. Clearly, though, he recognized certain minimum concessions that must be made before Quebec would enter the accord. Quebec Intergovernmental Affairs Minister Jacques-Yvan Morin, in a speech on October 27, warned that Bourassa may have no greater chance than the Parti Quebecois of reaching an acceptable arrangement with the rest of the country (Speech given "on the occasion of the visit to Québec of a Group of Harvard Fellows", pp. 9-10). Bourassa, however, felt that the federal government had made "some important constitutional overtures" in 1980 and he expected these concessions to be made again in some future negotiations. In an interview with Macleans, Bourassa cited the need for: recognition of Quebec as a distinct society; veto power with regard to immigration; a reorganization of the Supreme Court; and recognition of Québec jurisdiction in the area of family law (p. 19). Morin believed that these demands would not necessarily be met, thereby making agreement difficult.

## Independence

Although there was some discussion in 1983 of accommodating Quebec in the Canadian constitution, talk of independence had not disappeared. Early in the year, Premier Lévesque, as well as some of his cabinet ministers, made statements that the next Quebec election would be fought on the issue of independence. Moreover, Lévesque said that if the Parti Quebécois were to receive fifty per cent of the popular vote, it would be a mandate to declare independence (The Gazette, March 17, p. 1). Later, in an interview with La Presse on May 22, the premier reiterated that the question of independence would be a central subject, although perhaps not the only one, in the next provincial election.
*
There was a growing division within the Parti québecois over the question of independence. A strong segment preferred to downplay its importance in the next election. At its meeting in December, though, the $P Q$ National Council insisted that the party retain the program clause pledging that the next election be fought on the issue of independence (The Gazette, December 13, p. B2).

A revealing opinion poll taken by CROP Incorporated of Montreal for the Council for Canadian Unity in April found that only 23 per cent of Québecers would support sovereignty-association if a referendum were held (reported in The Gazette, April 30, p. 1). This figure was significantly lower than the 40.4 per cent support in May 1980.

Independence and the Economy
In his October 27 speech, Intergovernmental Affairs Minister Jacques-Yvan Morin asserted that economic progress and independence were intertwined ( $p$. 10). He argued that Quebec's economic development was largely dependent on possession of its financial and constitutional resources. This same message was expressed by Quebec External Trade Minister Bernard Landry when he addressed the Macdonald Commission on December 13 on behalf of the Parti Québécois: both the Québec and the Canadian economies would worsen unless Quebec were to gain its independence (The Gazette, December 14, p. B1).

In September, the premier appointed two task forces headed by himself and each comprising about six cabinet ministers. One was concerned with economic development and the other with the PQ's plans for Québec's political status. The latter included the ministers of intergovernmental affairs, education, external trade, justice, transport, and agriculture. It was seeking a way to tie the promotion of independence to a plan for economic recovery.

A poll commissioned in November by Le Conseil du Patronat and undertaken by CROP Incorporated found that, of seven possible alternatives for
improving the economic situation, 82 per cent of Québecers believed that better relations between the federal and the Québec governments was the most important. The recurring prospect of Québec independence was considered to be the second largest obstacle to improved economic growth in the province (from Bulletin sur les Relations du Travail, December 1983).

## The Canadian Charter of Rights and Freedoms

An analysis of the impact of the Canadian Charter of Rights and Freedoms after one year revealed a revolution of sorts ocurring in the judicial system. More than 500 Charter-related cases were put before lower Canadian courts during the first year following the proclamation of the constitution in April 1982. The Supreme Court of Canada had, by the end of 1983, not yet ruled on any of these cases. As a result, there was some inconsistency in the way various courts had been interpreting the Charter. Despite this absence of a clear direction, some important developments were occurring in the lower courts.

Although the majority of the cases arguing an infringement of the Charter were struck down, some cases did succeed in having parts of government legislation ruled invalid. Moreover, the Charter was having an impact on the way in which judges were determining the constitutionality of a piece of legislation. Civil rights lawyer Clayton Ruby observed that, for the first time, courts were judging the wisdom of government legislation and determining whether it was achieving its stated objectives. (Globe and Mail, April 18, p. 7). In determining the validity of legislation, the courts were now considering its content as well as its jurisdictional basis.

Reverse Onus
One important consequence of the Charter concerned the notion of "reverse onus." Appeal courts, first in Ontario and subsequently in several of the other provinces, struck down a section of the federal Narcotics Control Act, which required a suspect to prove he was not trafficking. In a similar type of case, a section of British Columbia's Motor Vehicle Act was ruled inconsistent with the Charter. This section had made it illegal for motorists to drive while their licenses were suspended -- even if they were unaware of it. These decisions suggested that the Charter was being used by the judiciary to reaffirm the principle of the "presumption of innocence."

## Section One

The paramount importance of Section 1 of the Charter was quickly becoming apparent. According to this section, the rights and freedoms contained in the Charter were guaranteed,
subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Laws ruled to be inconsistent with the Charter were struck down generally because they were deemed to contravene Section 1. Either the restrictions they imposed were not "reasonable limits" or they were not "demonstrably justified in a free and democratic society."

Significant decisions by Chief Justice Jules Deschênes of the Québec Superior Court and Chief Justice Gregory Evans of the Supreme Court of Ontario held that the onus of demonstrating that a limitation was justified and that the extent of it was reasonable was on the one who was arguing in favour of the limitation. Deschênes ruled in 1982 that the Quebec government failed to show that Bill 10I's restrictions on English-1anguage education were justified and reasonable. In Ontario, Evans held that the government of the Federal Republic of Germany met the onus of proving that extradition was a reasonable and justifiable restriction of the Section 6 right of a Canadian to "remain" in Canada (see Ottawa Citizen, April 16, p. 19). Section 1 of the Charter was interpreted to mean that once a prima facie case had been made that one of the guaranteed rights or freedoms had been restricted, the Court must be persuaded of the necessity of the legislation and convinced that the government did not go overboard to reach its objective.

Doctrine of Legislative Supremacy
A federal court decision to allow an anti-nuclear group to challenge the government's decision to test the cruise missile on the grounds that it violated a basic right was appealed by the federal government. The appeal questioned whether courts had the right to review "political" decisions made by cabinet or Parliament. Mr. Justice Alex Cattanach of the Federal Court of Canada, in permitting the challenge to the legislation, asserted that the doctrine of Parliamentary supremacy had been eroded by the Charter and diluted to the extent that it could not breach the rights and freedoms protected by it (October 6).

This consequence of the Charter seemed to move Canada a further step away from the British tradition of legislative supremacy. Underlying this was the belief that human rights were better protected by judges than by politicians. Further, it suggested that minority rights were not well enough protected by the democratic process.

Opponents of an entrenched Charter bemoaned this step away from the British form of justice. It was argued that the Canadian system was being "Americanized" with the Charter being comparable to the American Bill of Rights. A set of inalienable rights was replacing a code of ethics. It was argued that the Charter increased the number of legal loopholes, such that a criminal could be freed because the police violated one of his basic rights in gathering evidence. Nova Scotia Attorney-General Harry How held this view, arguing that the legal system should be "guided by principles, not dictated by them" (quoted in Halifax Chronicle Herald, April 9, p. 1).

Section 33
Section 33 of the Canadian Charter of Rights and Freedoms permits any legislature to enact laws to operate "notwithstanding" the fundamental freedoms and legal and equality rights contained therein. It has been argued that this provision seriously undermines the strength of the Charter's guarantees. If a government were to resort to this whenever a guaranteed right or freedom stood in its way, the Charter could be reduced to a sham.

The provincial government of Quebec enacted legislation on June 23, 1982, which expressly overrode Charter provisions throughout Quebec's civil law system (Bill 62). This bill retroactively added "notwithstanding" clauses to every existing provincial law. Furthermore, every law which has been passed since the adoption of the constitution has contained a similar clause.

Among these were three highly contentious laws, passed during the winter of 1983, affecting teachers and other public sector workers. Bills 70, 105, and 111 provided for the fixing of salaries, the decreeing of new public service contracts, and back-to-work legislation, respectively. These laws were challenged in the courts on the basis of Quebec's routine use of the Article 33 of the Charter.

Federal lawyer, Gaspard Cote, argued that the "override clause" was intended to be used on an exceptional basis. Côté asserted that each time it was used, the government must specify which rights were being set aside. He argued that Québec was using Section 33 in an abusive and unconstitutional way (Globe and Mail, April 21, p. 4).

Chief Justice Jules Deschênes of the Québec Superior Court handed down his ruling on April 28. The provincial government was ruled to be within its rights in routinely invoking Section 33 of the Charter. Deschênes stated that if a legislature fulfilled all the conditions set out in this section, it retained its sovereign power in the field of its jurisdiction and its legislation escaped the control of the courts. The condition of "exceptional use" was not included in Section 33. Deschênes made it clear that the only recourse was to the people. If there had been abuse, it was abuse of parliamentary sovereignty. It was up to the electors to denounce it.

## THE FIRST PBASE CONTINUED

## Aboriginal Matters

Perhaps the most significant constitutional development of 1983 was a proposed first amendment to the new constitution. This amendment related
to aboriginal matters; it was the result of a first ministers' conference held in Ottawa on March 17 and 18.

During 1980 and 1981, the guarantee of aboriginal rights had been an fmportant element in federal-provincial discussions leading to the entrenchment of a charter of human rights. The entrenchment of aboriginal rights was vigorously opposed by some provincial governments. As a result, in an effort to attain the largest possible consensus, native rights were omitted from the November accord.

For those fighting for the entrenchment of aboriginal rights, the days immediately following the partial constitutional agreement of November 1981 were no less hectic than the days preceding it. Substantial public pressure, aimed primarily at provincial governments, forced an amendment to the constitutional accord which gave some recognition to aboriginal rights. (See Zlotkin, 1983.) This was incorporated into the Constitution Act which received royal assent on Apri1 17, 1982.

## First Ministers' Conference

The new constitution provided for a first ministers' meeting to be convened by the Prime Minister within one year (Section 37(1)). Part 2 of this section of the Constitution Act, 1982 required that this conference include 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 people to be included in the Constitution of Canada.

Representatives of the aboriginal peoples and of the governments of the northern territories were to be invited to participate in the conference. The second week in March 1983 was the time chosen by the Prime Minister to fulfill this constitutional requirement.

Several meetings of the various native groups were held. There were also preparatory meetings of federal and provincial representatives with native and territorial leaders. The sixth and final such meeting, and the second involving senior cabinet ministers, was held February 28 in Ottawa.

There were three major native organizations, two of which were suffering from internal dissension in the early months of 1983. The one unified group was the Inuit Committee on National Issues (ICNI), representing the northern Inuit peoples. The Assembly of First Nations (AFN) was the largest association of status Indians. Its leader, David Ahenakew, was facing a revolt from the powerful Alberta and Saskatchewan factions. The third group, the Native Council of Canada (NCC), was established in 1970 to represent the Métis and non-status Indians in Canada. The NCC was split,
though, in January when the strong Metis organizations on the Prairies formed their own organization, the Métis National Council (MNC).

The Prairie Métis were shut out from the February discussions. Their representatives subsequently sought a court injunction to block the constitutional conference. A telex on their behalf, from Premier Lougheed of Alberta to Prime Minister Trudeau, requested that the Prairie Metis be given separate representation at the constitutional talks (telex sent March 10). This was granted and the Métis National Council was given its own seat at the conference.

On March 14, the eve of the conference, a group calling itself the Coalition of First Nations and claiming to represent 70,000 of the 300,000 status Indians, broke away from the AFN. This group boycotted the conference, claiming that the Indian people should be dealing only with the federal government, the one level of government which was constitutionally responsible for status Indians. Although the leaders of the AFN shared this sentiment, they felt that native interests would be better served by participating at the conference. They considered the provincial spokesmen at the table to be "advisors" to the federal government.

The first constitutional conference since the November 1981 accord placed Quebec in rather an awkward position. Premier Rene Lévesque stated that Quebec would not actively participate "in a constitutional process which we view as illegitimate and which we do not recognize" (translation) (Le Devoir, February 11, p. 3). In his opening statement at the conference, Levesque asserted that:

The one and only reason for our presence is the respect we have for the native people and...the support we decided to show them after their elected representatives had strongly urged that we attend (translation) (Verbatim transcript, p. 44).

The conference lasted for two days and, in the end, an accord was signed by the prime minister, nine provincial premiers (all except René Lévesque) and the leaders of the four national organizations representing aboriginal peoples. The Quebec government stated that it was unable to sign the agreement because it did not accept the original constitutional accord which this was proposing to amend.

The Accord
The agreement proposed four amendments to be made to the constitution of Canada. These provided for:

1. three more first minister/Native leaders conferences to be held during the subsequent four years, at which a more precise definition of aboriginal rights would be sought;
2. affirmation of the constitutional equality of Native women and men;
3. a guarantee that no constitutional amendments directly affecting aboriginal peoples would be made without prior discussion at a constitutional conference involving the first ministers and the Native leaders; and
4. the constitutional protection of existing and future land claims settlements.

The issue of sexual equality arose because of provisions in the federal government Indian Act which discriminate against native women, who lose their Indian status if they marry a non-Indian. The same provision does not apply to Indian men. After the completion of the conference, a furor arose over the wording of the sexual equality clause in the agreement. Some of the native leaders charged that the clause which was agreed to by all parties behind closed doors had been changed in the final draft (The Gazette, March 22, p. BI). They asserted that the original version stated:

Notwithstanding anything in this part, the rights of the aboriginal peoples of Canada are guaranteed equally to male and female persons.

The clause in the signed accord, however, read thus:
Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in Subsection (1) are guaranteed equally to male and female persons.

The concern of the native leaders was that the clause in the accord tied the rights to another subsection of the Constitution Act, 1982 which affirmed "existing aboriginal and treaty rights.". Native leaders charged that the federal government changed the wording of the text when they realized that the clause which was originally accepted could restore federal benefits for thousands of non-status Indians (Globe and Mail, March 23, p. 4). The federal government denied that the wording had been changed.

For the accord to become the first amendment to the new constitution of Canada, a resolution endorsing the accord had to be passed by the House of Commons and the Senate, as well as seven of the ten provincial legislatures in provinces having at least fifty per cent of the national population. The March conference imposed a deadline of December 31, 1983 for the resolution to be laid before the appropriate number of legislative bodies. All provincial legislatures, with the exception of Québec, subsequently endorsed this resolution. (The resolution is reprinted in Appendix N.)

On June 29, this same resolution was passed by the House of Commons after the Standing Committee on Indian and Northern Affairs examined it for two days. The Senate, however, refused to pass the resolution with the same haste, arguing that public hearings should be held to clarify what the proposals actually meant. The matter was referred to the Legal and Constitutional Affairs Committee of the Senate, which was instructed to report back in September.

Public hearings were held by the Senate committee in September and the committee made its report on October 13. It recommended that the Senate approve the resolution. The Upper House concurred on November 3. Having been passed by more than the minimum required number of legislatures for a constitutional amendment to be enacted, this first amendment to the Canadian constitution was scheduled to be proclaimed in the spring of 1984.

Following the Conference on Aboriginal Constitutional Matters in March 1983, the Prime Minister announced the creation of an Office of Aboriginal Constitutional Affairs (Office of the Prime Minister, Release, March 17). This office was to report through the Secretary to the Cabinet for Federal-Provincial Relations. It was to co-ordinate all activities within the federal government related to the ongoing constitutional process. Among its terms of reference was responsibility for the preparations for future constitutional conferences of First Ministers on aboriginal matters.

## Special Parliamentary Committee Report

A Special Committee on Indian Self-Government, chaired by Member of Parliament Keith Penner, was established on December 22, 1982. Its mandate was to review all legal and related institutional factors affecting the status, development, and responsibilities of band governments on Indian reserves. The scope of the Committee's mandate was limited to status Indians. The Committee held 60 public hearings and heard 215 oral presentations involving 567 witnesses. The Committee hoped that its report, submitted to the House of Commons on October 20 , would be of assistance to those participating in the 1984 Conference on Aboriginal Constitutional Matters; the subject of self-government was slated to be on the agenda.

The report of the Special Committee, entitled Indian Self-Government in Canada, recommended a major change in the relationship between the federal government and the Indian First Nations. An essential element of the new relationship was the recognition of Indian self-government. The Committee supported the constitutional entrenchment of the right to self-government. The report of the Committee suggested that in the short-term, the federal government pass legislation confirming its "willingness to recognize the maximum amount of self-government now possible under the Constitution" (p. 143).

The concept of self-government, according to the Penner Report, meant that the Indian people themselves would determine their own form of government. They would be free to make policies and set their own priorities. The only major requirement was that they be accountable to their people. The Special Committee recommended that Indian First Nation governments exercise powers over a wide range of subject matters. The report recommended that the Indian governments be given federal grants, negotiated in much the same fashion as federal-provincial fiscal arrangements, and that they have complete control over Indian lands and resources, education, social development, taxation, and making and enforcing laws applicable to all people on reserves.

The report of the Special Committee included some major recommendations which would radically alter the administration of Indian affairs in Canada. The report urged that programs of the Department of Indian Affairs and Northern Development relating to Indian people be phased out within five years. It recommended that a Ministry of State for Indian First Nations Relations be established to manage and co-ordinate the federal government's relations with Indian First Nations governments. The Committee also supported the principle of establishing an independent officer to monitor official actions affecting Indian First Nations.

## Entrenchment of Property Rights

In the turbulent months preceding the November 1981 constitutional accord, various rights were traded and bartered in an effort to obtain the widest possible consensus on an entrenched Charter. Among those rights discussed but eventually excluded from the Canadian Charter of Rights and Freedoms was the right to private property.

Those governments which opposed its exclusion were not content to let the matter lie dormant. A move to amend the Charter, so that it guaranteed the right to property, was initiated on September 21, 1982, when the British Columbia Legislature passed a resolution seeking to amend Section 7 to read:

Everyone has the right to life, liberty, security of the person and enjoyment of property.

As a result of the British Columbia initiative in 1982, this issue re-emerged on the 1983 agenda of various legislatures across the country.

The situation looked promising for the British Columbia proposal in February, as it was announced that the entrenchment of property rights would be discussed in March when the eleven first ministers convened in Ottawa for the Conference on Aboriginal Constitutional Matters. The topic was discussed only fleetingly, however, toward the end of an evening at the residence of the Prime Minister and nothing ensued. The subsequent
treatment of this issue in the federal Parliament, as well as in several of the provincial legislatures, meant that it would not be an easy task to get property rights guaranteed in the Canadian constitution.

## Federal Parliament

All three federal parties professed some support for the entrenchment of property rights. In the spring of 1983, it appeared as if such a resolution would be passed by the House of Commons. On April 18, the Prime Minister surprised the House by offering to introduce a resolution endorsing the entrenchment of property rights if the opposition parties would agree to pass it within 24 hours. Two days later, Eric Neilson indicated that the Progressive Conservative caucus, although it did not like the 24 -hour limitation, accepted the offer if the resolution were introduced before the end of June.

On April 29, Conservative Member of Parliament Jake Epp introduced a resolution identical to the one that the government had drafted (See Appendix 0). The Liberal government had been waiting to confirm that the New Democratic Party (NDP) would allow the motion to be passed quickly, but the Conservatives accused them of stalling.

Complicating the issue, the motion was introduced as a vote of non-confidence in the Government. As such, the governing Liberal Party could not support it. The NDP was not directly opposed to the principle of entrenched property rights, but rather preferred to see it referred to a committee for more discussion. An amendment to this end was ruled out of order.

In backroom negotiations, all three parties agreed to refer the proposal to the House of Commons Justice and Legal Affairs Committee, which would be required to submit its report by June 30. For this agreement to be passed in the House of Commons, though, it required unanimous consent. One negative vote by a member for the NDP removed this option. As a result, the resolution to entrench property rights was introduced on May 2 as a vote of non-confidence and, hence, was defeated. The NDP voted with the Conservatives in support of the resolution. Parliamentary rules forbade the reintroduction of the resolution during the same session unless unanimous consent could be secured.

## Provincial Legislatures

The fate of the resolution to entrench property rights received mixed reactions from various provincial governments. Premier William Davis of Ontario advised the Ontario Legislature on April 21 that his government would introduce a resolution to entrench property rights. He noted that some of the other provinces opposed this entrenchment because of the "perceived limitations such an entrenched guarantee would place on
provincial responsibilities such as agricultural lands policy, and expropriation...." The Ontario government, however, believed there was still room for such important legislation. On June 28, the New Brunswick legislature passed a resolution in support of entrenching these rights.

Prince Edward Island was unequivocally opposed to the entrenchment of property rights. On May 19, the members of the PEI legislature unanimously rejected the entrenchment proposal. It was believed that the constitutional guarantee of such a right would threaten the Island way of life, giving non-Islanders control of their land. Premier Jim Lee asserted:

Our lifestyle is what attracts people here; if we don't control the land, we don't control our destiny, and we will not control our lifestyle in a very short time (quoted in Charlottetown Guardian, May 20, p. 1).

The Alberta government believed that property rights were adequately guaranteed in its provincial Charter of Rights. Jim Horsman, Minister of Federal and Intergovernmental Affairs, asserted that provincial governments were endowed with the responsibility of administering property and civil rights according to section 92 of the Constitution Act, 1867 and that it was neither necessary nor desirable to involve the federal government in this area (Edmonton Journal, February 26, p. D1).

This view was shared by the Saskatchewan government. Provincial Justice Minister Gary Lane, in a speech to the Real Estate Institute of Saskatchewan on September 15, asserted that protection of property rights should be located in provincial statutes, not in the Constitution. The real question was not whether property rights should be protected, but who should have the final say about balancing property rights with other rights in society: the courts or the legislatures?

Some of the provincial reservations about the proposal were linked to the notion of uncertainty about how the courts might interpret such a phrase. Laws to keep land and resources under the control of provincial governments could be challenged and, if the courts interpreted the proposed amendment broadly, some provincial legislation could be struck down. Others were troubled by implications of the proposal which could affect rights for native peoples, prevent provinces from passing laws to preserve recreational land for residents, or infringe on other human rights. Prime Minister Trudeau, in a letter written August 3 to real estate boards and associations, argued that the inclusion of property rights in the Charter would provide an additional safeguard, not a means of denying "the further evolution of this right in favour of aboriginal title or the rights of women in the case of marital breakdown or the rights of tenants to security of tenure."

## MINORITY LANGUAGE RIGHTS

## Québec

The Charter of the French Language
The Charter of the French Language (Bill 101) continued to be a controversial element in Québec politics in 1983 -- as it had been since it was introduced in 1977. A decision from the Quebec Court of Appeal on June 23 upheld a September 1982 ruling of Québec Superior Court Justice Jules Deschênes. Both of these courts found sections of the Québec law to be inconsistent with Section 23 of the Canadian Charter of Rights and Frèedoms. The relevant sections of the Québec legislation (Sections 72 et seq.) set restrictions on access to English language education; these were found to conflict with the entrenched minority language education rights of the Canadian Charter.

The Quebec government reacted with an avowal to keep fighting for its essential jurisdiction over education. Premier Rene Levesque told the National Assembly on June 10 that the Charter,
> unilaterally adopted by the same federal government that has seen fit to grab part of a jurisdiction which has always been essential for Quebec...that is, its exclusive competence in the field of education (translation) (Debbats de l'Assemblé nationale, p. 2147).

The Supreme Court of Canada agreed on September 21 to hear Québec's appeal of the decision. There were three central arguments to the Quebec government's appeal: the right to English-speaking education was not denied by Bill 101; the Charter did not distinguish between a restriction on a right and a negation of this right; and the restrictions in Bill 101 were reasonable in a free and democratic society.

The Québec government did acquiesce, to some extent, to repeated calls for changes in the six-year old language legislation. Three weeks of public hearings by a legislative committee were held in October and November.

Amendments to the French-language Charter were subsequently announced on November 17; these were contained in the proposed Bill 57. These addressed three of the most contentious issues in the French Language Charter. The first concerned access to English schools. Although not totally compatible with Section 23 of the Canadian Charter of Rights and Freedoms, the amendment did broaden the access from that provided in the original legislation. According to Bill 57, children of people educated in English elsewhere in Canada would be henceforth allowed to enter Québec's English school system, provided the province where the parents were
educated offered services in French comparable to the educational services available to anglophones in quebec. A second amendment provided for bilingual signs outside stores that specialized in selling products typical of a foreign country or particular ethnic group.

A third major change in policy concerned bilingualism in institutions. The proposed legislation attempted to exclude English-1anguage institutions, such as hospitals, school boards, and municipalities from being required to have all employees be bilingual so long as services in French could be provided. After some revisions, Bill 57 allowed all English institutions to be exempt from Article 20 of Bill 101, which required every person hired or promoted in the civil administration to prove an appropriate knowledge of French. The revised bill guaranteed institutional bilingualism with the onus to provide French services placed on the institution, not the individual. Bill 57 was passed by the National Assembly in December 1983.

Bills 70 and 105
Section 133 of the Constitution Act, 1867 (formerly the British North America Act of 1867) requires all laws and other judicial measures in Quebec to be adopted in both French and English. In 1983, the constitutionality of two controversial Quebec laws was challenged on the basis that they contravened this section. Bill 70, passed in June 1982, provided for a reduction in the salaries of Quebec public servants. Bill 105, passed in December of the same year, went even further in that it imposed three-year contracts on the public sector unions, rolling back the wages of more than half the employees and prohibiting strikes. It was this bill which sparked massive teachers strikes during the winter of 1983.

Twelve professors, who had been charged with striking illegally after having their contracts imposed, fought their case on the grounds that Bill 105 was unconstitutional. Québec Sessions Court Judge Gerald Girouard, in his decision of March 17, rendered Bill 105 to be unconstitutional because it had been tabled only in French. In light of a previous ruling on the meaning of Section 133 by the Supreme Court of Canada, B111 105 was found to be a "flagrant contradiction" of this section. Although the Québec government appealed this decision, the judgement of the lower court was upheld by Judge Jules Deschenes of the Quebec Superior Court (May 30 decision).

In a challenge to the constitutionality of both Bills 70 and 105, Sessions Court Judge Jean Dutil ruled, in a decision handed down March 24, that both contravened Section 133. Dutil observed that the documents attached to the bills were in French only. As the laws had no meaning without these sessional documents, this was sufficient reason to rule these laws inoperative.

## Manitoba

When the province of Manitoba was created in 1870, both French and English languages were constitutionally guaranteed. According to Section 23 of the Manitoba Act of 1870 , which is an official part of Canada's constitution as per Section 52 (2)(b) of the Constitution Act, 1982, either the English or French language may be used in the debates of the legislature and in any of the courts of the province. Moreover, the records and journals from the the Legislature as well as all statutes were to be published in both languages. Manitoba and Quebec are the only two provinces required by the original constitution to provide services in both official languages in their courts and legislatures.

Twenty years later, in 1890, the Manitoba Legislature passed legislation which purported to abolish French-language rights. The validity of the 1890 law was challenged in 1979 by Georges Forest, who contested a parking ticket on the grounds that it was issued in English only. The Supreme Court of Canada held that the 1890 Official Language Act was unconstitutional and that Manitoba must respect Section 23 of the Manitoba Act. The Progressive Conservative government of the day formally repealed the 1890 act and set out a system for translating future statutes. The status of all Manitoba laws passed in English only, in accordance with the 1890 law, was not directly addressed. Legal confusion surrounded the validity of these.

The issue resurfaced in 1982 when Roger Bilodeau challenged the constitutionality of a speeding ticket, on the grounds that it was in Eng1ish only. At issue was the validity of all Manitoba statutes which had been enacted only in the English language. The Manitoba Court of Appeal, in a split decision, rejected Bilodeau's claim. This case was scheduled to be heard by the Supreme Court of Canada at the end of May 1983.

The Provisional Agreement
Anxious to avoid the possible repercussions of a negative decision, the Manitoba government sought a compromise. It faced the risk of having all its unilingual laws deemed invalid or of receiving a remedy to complete the translation of the provincial statutes within an period of time with which it would be difficult and expensive to comply. Both the current New Democratic government, led by Howard Pawley, and previous Conservative government of Sterling Lyon, had been phasing in some services for francophones, as well as undergoing the arduous task, since 1979, of translating the provincial statutes into French. Even a positive ruling in the Bilodeau case would not have been relished by the government. The credibility of the constitutional guarantees of the French language would have been seriously undermined if the Supreme Court were to rule against Bilodeau.

On May 20, 1983, a provisional agreement was reached among the New Democratic provincial government, the federal government and La Societé Franco-Manitobaine. As a result of this breakthrough, all parties agreed to an adjournment of the Bilodeau case, which was subsequently granted by the Supreme Court of Canada.

Accordingly, the agreement provided for significant constitutional amendments to be made to the Manitoba Act of 1870. Federal Justice Minister Mark MacGuigan announced that the,

> the agreement is a compromise which will clarify those language rights and, at the same time, permit the Government of Manitoba to fulfill the constitutional obligations of an officially bilingual province in an orderly way (Minister of Justice, News Release, May 20, p. 1 ).

Under the terms of the provisional agreement, both English and French would have been confirmed as official languages of Manitoba. Statutes and regulations enacted in English only before the end of 1985 would be valid. Any laws and regulations enacted from that time on would have to be published in both official languages. Existing public statutes would be published in the two languages before the end of 1993. As well, certain language of service provisions would be included in the Manitoba Act. By January 1, 1987, Franco-Manitobans would have the constitutional right to communicate with and receive services in French from all head or central offices of provincial government departments, certain other provincial agencies and other offices where there existed a significant demand for bilingual services.

The federal government played a leadership role in negotiating the settlement. It promised an estimated contribution of 2.35 million dollars. This included funds for the cost of developing French versions of the provincial statutes and for the cost of enhancing services in both official languages in municipalities having a substantial French-speaking population.

## Reaction

There was an immediate negative reaction in Manitoba to the provisional agreement. It was led by the opposition Progressive Conservative Party. Opposition leader Sterling Lyon argued that the government was attempting to "irreversibly entrench" French language services out of the reach of the Manitoba legislature. He stated that this was something which did not need to be done as this guarantee had never previously existed (Debates of the Legislative Assembly of Manitoba, July 12, pp. 4284-7). The 1870 Manitoba Act had not stated that English and French were the official languages of Manitoba. Rather, Section 23 of the Act had given French official status only for the purposes of the courts and the Legislature and for the
printing of the Statutes. Moreover, Lyon did not see the Bilodeau case as a serious threat to the validity of Manitoba laws. He argued that no court in Canada would subject a province to the chaos that the government was claiming could result if the case were allowed to proceed.

Criticism grew, largely fuelled by municipal leaders who feared that they would be required to offer bilingual services, and by government employee unions who were afraid that an increase in bilingual positions would be required, thereby threatening many of the current unilingual positions. The Manitoba government tried to alleviate these fears by assuring the unions that there would only be very few bilingual civil servants required (less than 3 per cent) and that the resolution would not be applicable to municipal governments.

A document was issued in July 1983 by the office of the Attorney-General Roland Penner with the purpose of explaining the resolution and, more important, to calm many of the fears that had arisen. Entitled, "Constitutionally Speaking," it sought to reassure the citizens of Manitoba that the province "is not going bilingual" and that non-governmental bodies were not affected in any way. Moreover, it attempted to illustrate the benefits of the proposed constitutional amendment for the Province of Manitoba. It pointed out that only 500 out of 4500 statutes would need to be translated, that the time frame was lenient and that a substantial portion of the cost was to be borne by the federal government. Moreover, a negative court ruling, if the Bilodeau case were to proceed, could mean more stringent demands would be placed on the Manitoba government.

It has been suggested that the way in which the constitutional resolution was initially presented was a major reason for its unpopularity. The announcement was first made by Prime Minister Trudeau at a Liberal gathering in French only. When Premier Pawley made his announcement, it was a fait accompli and there was no public debate on the issue. Moreover, it was perceived that a small cultural organization, the Société Franco-Manitobaine (SFM), held a privileged place in the process; some anglophones may have found this offensive.

Turmoil raged in the Manitoba Legislature during the ensuing months. In August, after pressure from the Opposition, the issue was referred to a standing committee of the Legislature and public hearings were held in September. During the month of hearings, which concluded October 4, more than 400 people expressed their concerns to the committee (Globe and Mail, October 6, p. 8).

## Revised Resolution

Before the standing committee, on Penner, in an effort to placate

September 6, Attorney-General Roland the critics, announced a series of
amendments to the proposed resolution. These changes significantly altered the May 20 provisional agreement, yet seemed to please no one. The proposed declaration of English and French as the official languages of Manitoba was diluted to mean that both were official only with regard to the services mentioned in the Manitoba Act. The provision requiring all provincial government "head offices and central offices" to provide French-language services was changed to only "head offices." Moreover, the new proposals provided that all Government offices not specifically set up under an Act of the Legislature were to be exempted from offering services in French. The exclusion of municipalities and school boards was explicitly stated in the amended proposals.

The proposed changes did not mitigate the criticism from those who had been opposed to the original resolution. Moreover, the Société Franco-Manitobaine (SFM) reacted with bitterness and anger to the announcement. The SFM was worried that the new resolution would enable future governments to restructure in order to avoid complying with the intent of the initial agreement.

## Reaction Outside Manitoba

The Manitoba language issue had an important impact on other jurisdictions. On October 6, the House of Commons passed a unanimous resolution endorsing the "essence" of the March agreement to entrench the language rights in the Constitution and inviting the Manitoba legislature to act "expeditiously" to protect French language rights by constitutional amendment. This came after three weeks of delicate negotiations among the three parties in the House of Commons. The three leaders were unanimous in their support of the resolution. The issue created some difficulties for the Progressive Conservative caucus, though, as it was the Conservative Party in Manitoba which was leading the opposition to the proposed legislation. Certain Conservative MPs from Manitoba did not support the federal government resolution. Accused of using this issue simply to embarrass the new leader of the Opposition, Brian Mulroney, Prime Minister Trudeau agreed to a one-day discussion of the resolution whereby only the three party leaders would speak and the resolution would be passed without a vote.

The federal resolution included nine clauses which very carefully explained the reasons for the Parliament of Canada involving itself in this debate (See Appendix P). Essentially, the resolution stated that this was a constitutional issue and Parliament was obliged to defend all provisions of the constitution. Two of the clauses appealed to the inherent national interest as grounds for the involvement of the federal government.

The leaders of both the governing New Democratic Party and the opposition Conservative Party in Manitoba were in agreement concerning the role of the
federal government in this matter. Premier Howard Pawley told reporters on September 21 that his government did not require help from outside. Sterling Lyon made it clear in a news conference on October 5 that he objected to federal involvement (The Gazette, September 22, p. Bl and October 6, p. A1).

Reaction to the situation in Manitoba came from all parts of the country. Perhaps the most interesting came from within the province of quebec, the only stronghold of the French language in North America. Quebec Minister of Immigration Gerald Godin criticized the federal government for reinforcing French where it was in a terminal phase, remaining passive where it had a real chance to affirm itself, and weakening it where it was strong. He said the federal government should concentrate its efforts on helping the francophone communities which were still thriving, such as in Ontario (The Gazette, September 21, p. B1). Godin said that the Manitoba government's attempt to expand French language rights was a lost cause unless the Franco-Manitobans were guaranteed the same kinds of institutions that anglophones had in Québec (Globe and Mail, September 22, p. 5). Québec Minister for Intergovernmental Affairs Jacques-Yvan Morin did not agree that the fate of francophones in Manitoba was a lost cause. He stated, though, that the Parti Québécois government could not actively support Franco-Manitobans in their struggle, but would, instead, maintain a policy of non-interference (The Gazette, September 30, p. A5).

## Municipal Plebiscites

During their October 26 municipal elections, twenty-three communities, including the city of Winnipeg, held non-binding plebiscites on the issue of entrenching French-language rights. The results of the plebiscites, although not unexpected, were another blow to the NDP government. About 76 per cent of the voters rejected the government plan to entrench French-language rights in the province. Following this outcome, Premier Pawley announced a cabinet shuffle on November 4, which saw responsibility for the contentious language legislation pass to newly-appointed Government House Leader Andy Anstett.

## Further Revisions

Despite assertions from Roland Penner that he remained committed to his government's proposals and statements that the Manitoba government would not be bound by the results of the municipal plebiscites, another set of revisions was announced on December 15. According to the new proposal, certain French-language services were to be guaranteed through an act of the provincial legislature rather than by constitutional amendment. A clause declaring English and French to be the official languages of the province was still to be constitutionally entrenched, although municipalities and school districts were to be specifically excluded.

The NDP government had hoped that newly-elected leader of the Progressive Conservative opposition, Gary Filmon, would accept the new proposals. Filmon and the Tory caucus, however, rejected the reforms. They claimed that entrenching the declatory clause could be interpreted at a later date by a court to mean that other levels of government, such as municipalities and school boards, would be required to provide services in French. They opposed the entrenchment of a statement which they claimed would turn Manitoba into a bilingual province.

The Manitoba legislature was to resume sitting on January 5, 1984, to deal with the proposed resolution. Roger Bilodeau extended the deadline to January 15, 1984, by which time the resolution must be passed to avoid having his case go to the Supreme Court of Canada.

## Ontario

The status of the minority French language in the country's most populous province was a source of considerable debate in 1983. By the end of the year, Ontario had rejected renewed calls for official bilingualism, but had proposed significant French education rights and had introduced bilingualism officially into its court system. In 1983, there were an estimated 475,000 French-speaking residents in Ontario, comprising about six per cent of the population.

French in the schools

Education Minister Bette Stephenson proposed on March 23 to grant every French-speaking child in Ontario the right to an education in his own language. If implemented, this would be a significant elevation of the status of French in the schools and a move which went well beyond the requirements of the Canadian Charter of Rights and Freedoms.

The proposal would remove from the Education Act, the condition that guaranteed the provision of education in the French-language to where 25 francophone elementary school students or 20 francophone secondary school students requested it. Under the proposed legislation, upon the request of any francophone student or parent, every school board in Ontario would be required to either provide French-language instruction in its own schools or to enter into agreements with other boards to supply this. The minister estimated that about 1,000 students who were not currently receiving instruction in their mother tongue, would be affected. The cost of such a proposal was estimated to be about one million dollars. The proposal also provided for a minimum of four French-speaking school trustees on boards representing at least 500 francophone students or where francophones comprised at least ten per cent of the enrolment.

The Ontario Public School Trustees Association objected to the proposal giving francophones the right to a French-language education because of the financial burden it would place on school boards (Globe and Mail, September 29, p. 1). The Association also opposed the plans for increased francophone representation on public school boards, arguing that the majority of French-language students were from homes assessed as separate school supporters.

## Official Bilingualism

In the wake of the Manitoba French-language debate, there were renewed calls for Ontario to establish itself as an officially bilingual province, as is the case in New Brunswick. That province passed the official Languages of New Brunswick Act in 1969, recognizing both French and English as official languages. Moreover, since 1982, the equal status of the two languages in this province has been entrenched in the Canadian constitution (as per Sections 16 et seq. of the Canadian Charter of Rights and Freedoms).

In a private meeting on September 27, Prime Minister Trudeau urged Premier Bill Davis to make Ontario bilingual prior to the next Quebec election, expected in 1986. It was implied that such a move would have great symbolic importance and could help sway Québecers away from supporting "sovereignty association" in some future referendum. This call was repeated by others in the federal liberal party and by many in the media, including the influential Toronto press (for example, Globe and Mail editorial, September 29, p. 6).

Davis rejected the idea, warning that it might create an anti-French backlash. He asserted that Ontario had chosen to gradually extend French-language services at its own pace. As a result of this process over the past several years, Ontario had adopted de facto something very close to official bilingualism. Ontario residents had the right to choose criminal proceedings and other court services in either English or French. Political parties in the provincial Legislature permitted the use of either official language in debates. Ontario government offices provided bilingual services in 16 designated areas of the province. 1982 amendments to the Ontario Municipal Act allowed municipal councils to operate and communicate with the provincial government in either of the two languages. Furthermore, the proposed changes announced in March would have given French-speaking children the right to a French-language education anywhere in Ontario.

Ironically, this argument which was used to illustrate that official bilingualism was unnecessary because the same objectives were being attained without it, was also used by those appealing for its entrenchment to point out that official bilingualism would mean no real change for the province.

Language in the courts
On October 27, the Government of Ontario introduced legislation that would make French an official language in the courts. This unexpected announcement came amidst the renewed calls to make Ontario an officially bilingual province. The Courts of Justice Act 1983 (Bil1 100) was a revision and consolidation of all the court Acts and related legislation. Section 13.5 of Bill 100 stated that, "the official languages of the courts of Ontario are English and French."

Although the proposed Act would change little in the operation of the courts, it recognized the fact that extensive French-language services were already being offered. Attorney-General of Ontario Roy McMurtry asserted that the legislation was of great symbolic value. The bill received first and second reading in the fall of 1983 , and was to be carried over to a new legislative session in 1984.

THE SECOND PHASE
Once the Canadian constitution had been proclaimed by Her Majesty Queen Elizabeth II on a rainy afternoon in April 1982, the path was opened for a second phase of constitutional reform. This stage would involve the task of institutional reform and possibly the redistribution of powers within the Canadian political system. Minister of Justice Mark MacGuigan, in the introduction to the federal government's 1983 discussion paper on Senate reform, stated:

Now that the Constitution has been patriated, and the means to amend it is in our hands, we must turn to the reform of our national political institutions to ensure that Canadians from all regions feel fully and adequately represented in them, and that Parliament can speak and act with the fullest possible authority on behalf of the whole country (from the "Preface" to Reform of the Senate: A Discussion Paper).

Consensus in this phase may prove to be even more elusive than it was in the first stage of constitution-building.

Two steps were initiated in the latter part of 1982 which were to serve as preliminary stages in redesigning the Canadian constitution. The first was the establishment in September of the Royal Commission on the Economic Union and Development Prospects for Canada, chaired by Donald Stovel Macdonald. The second step was the creation in December of a Special Joint Committee of the Senate and the House of Commons on Senate Reform. Each of these bodies provided a forum for individuals and groups to present their views on both the inherent problems and possible solutions to Canadian political and economic structures.

## The Macdonald Commission

The Royal Commission on the Economic Union and Development Prospects for Canada is essentially "a Commission on Canada's future." The principal instruction given to the Commission in its terms of reference was:
to inquire into and report upon the long-term economic potential, prospects and challenges facing the Canadian federation and its respective regions, as well as the implications that such prospects and challenges have for Canada's economic and governmental institutions and for the management of Canada's economic affairs ("A Commission on Canada's Future", p. 4).

The Commission was asked to recommend:
the appropriate national goals and policies for economic development [and] the appropriate institutional and constitutional arrangements to promote the liberty and well-being of individual Canadians and the maintenance of a strong competitive economy ("A Comission on Canada's Future", p. 4).

The thirteen-person Macdonald commission spent fifty-four days in 1983 on its first round of public hearings, which were held in 27 cities across Canada. During the public hearings, more than 700 people appeared before the Commission and 928 briefs were received from the voluntary sector, municipalities, unions, private firms, industry associations and private individuals (Macdonald Commission. Bulletin, 1:3, p. 3).

The purpose of this first round of hearings was "to define the problems we face, the challenges to be met and the choices we have among realistic goals and among means to achieve those goals" ("Commission on Canada's Future", p. 2). The Commission expected to publish in the spring of 1984 a summary of these hearings and to set out its initial views about the challenges and choices Canadians face. This publication would form the basis for the second set of hearings scheduled for later in 1984.

A complex research arm of the Commission was preparing what would be perhaps the most comprehensive body of research ever gathered in Canada. This aspect of the Commission's work was divided into three general sections, each headed by a director: legal/constitutional, economics, and institutions. These sections were subdivided into either five or seven categories, each headed by a coordinator. Within each of these areas, several studies were being prepared.

The following questions were being explored by the Macdonald Commission: What are the economic development prospects for Canada? What are the
forces affecting adaptability of the Canadian system and how does it respond? How do the constitutional legal aspects and government institutions affect adaptability? (The Financial Post. "Report of the Nation. Canada: The New Realities." Winter 1983/84, p. 19).

In an interview with Le Devoir, Prime Minister Trudeau asserted the view that the Royal Commission was part of a second phase of constitutional reform (June 18, p. 1). He reiterated the declaration of Prime Minister Pearson in 1968 who saw reform in three stages: charter of rights; institutional reform; and division of powers. Referring to the Macdonald Commission, Trudeau said, "In addition to considering the economic institutions, I have given it the mandate to examine political institutions and the division of powers" (translation) (p. 1). Clearly, constitutional reform did not end in April 1982; rather patriation, the entrenchment of a charter of rights and an amending formula were but the first steps.

Donald Macdonald, chairman of the Royal Commission, envisioned institutional reform, rather than a profound change in the division of powers, as a solution to the country's problems. In an interview with Le Devoir, published January 17, Macdonald asserted that he had come to believe that the integrity of the Canadian economic union would be best ensured by "a harmonization of policies rather than by a change of jurisdictions" (translation) (p. 1). Macdonald continued:
if we are serious about building a federation while at the same time heeding the principle of regional autonomy, it is preferable to achieve a better harmonization of policies than to change our system of government, in order that we not bring ourselves closer to the creation of a unitary state (translation) (p. 1).

In a year--end assessment, Macdonald noted that the federal-provincial relations system and the Senate were top priorities for reform (Ottawa Citizen, December 14, p. 5). The second of these was the focus of another committee, which also provided a public forum during 1983.

## Special Joint Committee on Senate Reform

Since the 1960 s , a variety of proposals for reform of the Senate had been put forward. In an effort to synthesize these and to gauge the opinion of the country, a Special Joint Committee was established on December 20, 1982. Its mandate was "to consider and report upon ways by which the Senate of Canada could be reformed in order to strengthen its role in representing people from all regions of Canada and to enhance the authority of Parliament to speak and act on behalf of Canadians in all parts of the country."

Throughout 1983, this Committee served as a forum for individuals and groups to submit their ideas on Senate reform. The joint committee held
public hearings in May and June in Ottawa, and in September and October in locations across the country. During these two stages, presentations were made by 119 witnesses and 280 Canadians submitted written briefs. Two of the provincial governments (New Brunswick and Prince Edward Island) made presentations before the Committee and six (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Prince Edward Island) submitted written briefs.

Federal Minister of Justice Mark MacGuigan presented a discussion paper to the Special Joint Committee on June 16. Entitled, Reform of the Senate: A Discussion Paper, this document presented a number of considerations and observations concerning Senate reform which were designed to assist the Committee in its task. A discussion paper rather than a position paper, it summarized several of the various ideas which have circulated in the past and listed some of the advantages and problems associated with each.

For the federal government, "the role which needs the most attention at this time is the role of regional representation" (p.35). It suggested that there existed three general means by which the regions could be represented in the Senate. Members of the Upper House could be chosen directly by the people, by the provincial and federal governments or through some sort of indirect election involving the House of Commons and the provincial legislatures. The federal paper did not endorse any specific proposal but, rather, offered a note of caution:
[A]lmost all the issues on the Joint Committee's agenda seem to raise the question of balance in a variety of different ways; balance between the House of Commons and the Senate, balance in representation among the regions of Canada within the Senate and within Parliament as a whole,...[and] balance between the powers of the Senate and its method of selection (p.36).

The report from the Special Joint Committee was expected to be released early in 1984.

## 3 INTERGOVERRMRNTAL RELATIONS: THE 1983 POLICY AGENDA

## INTRODUCTION

The scope of federal-provincial relations in Canada encompasses a wide range of policy sectors, including some which do not have an explicit intergovernmental or regional aspect. The following areas of policy were prominent on the federal-provincial agenda in 1983 and merit consideration in this and subsequent chapters.


#### Abstract

- Energy. An oil and gas-pricing agreement was reached between the federal government and the provinces of Alberta and Saskatchewan. Conflict continued between the governments of Newfoundland and Quebec over a 1969 contract expiring in 2034 and giving Hydro-Quebec rights to hydro-electric power from Churchill Falls in Labrador. A battle between Newfoundland and the federal government over the ownership of offshore resources continued in both the courts and the political arena. These last two issues remained unresolved at the end of the year. - Justice. Failure to reach a federal-provincial agreement over the sharing of costs inherent in the provisions of the Young Offenders Act, passed by the federal government in 1982, meant a delay in its implementation. The federal government introduced legislation creating a civilian security intelligence force. This bill was heavily criticized by the provinces, largely because of the impact it would have on the administration of justice.


- Bconomic Development. The federal government signed an Economic and Regional Development Agreement (ERDA) with Manitoba and initiated negotiations with several of the other provinces to establish similar umbrella-type agreements. The ERDAs were to replace the ten-year General Development Agreements which had been signed with each of the provinces in 1974. The new agreements would be marked by a shift in emphasis from joint federal-provincial projects to parallel delivery of services. In Newfoundland, a five-year joint program for rural development was, to the
dismay of the provincial government, replaced by a strictly federal program. The Québec government objected to federal wishes to oversee municipal employment-generating profects, jointly funded by the two governments. The provincial government introduced legislation penalizing municipalities which received money directly from the federal government. In the area of trade, there was significant cooperation between the two levels of government as the federal policy sought to integrate the views of the provinces.
- Agriculture. An agreement was reached between the federal government and four of the provinces concerning the establishment of an income stabilization program for the livestock industry. The absence of some of the key producing provinces coupled with a lack of commitment to the program by the federal Minister of Agriculture meant that the issue had not been fully resolved.
- Corporate Affairs. A bill introduced in the Senate in November 1982, prohibiting provincial governments and agencies from owning more than ten per cent of the shares in national transportation companies, created friction with a number of the provinces. Although Bill S-31 was never passed, the federal Minister of Consumer and Corporate Affairs promised the introduction of similar legislation in 1984.

[^1]- Atlantic fisheries. The federal government initiated action to restructure the Atlantic fisheries. A unilateral plan for the Newfoundland industry was superseded by a joint federal-provincial restructuring agreement two months later. An agreement-in-principle for the Nova Scotia fishery was reached between the federal and provincial governments. Unilateral action by the federal government to reassume administrative control over the Quebec fishery (which had been delegated to the province in 1922) met provincial resistance. See Chapter Five.
- Western Grain Transportation. As part of a grand plan to upgrade the rail freight system in Western Canada, and to enhance and diversify the western economy generally, the federal government ended the statutory "Crow rate" for export-bound grain. This move took place despite opposition from several producer organizations and some of the provincial governments. The ensuing debate highlighted the regional nature of Canadian society. See Chapter Six.

This list of policy sectors does not attempt to encompass the entire scope of federal-provincial interaction. Rather than providing a
comprehensive survey, this chapter and the subsequent three seek to capture the significant developments in intergovernmental relations in 1983 by highlighting some of the important issues.

## ENERGY

## Oil and Gas Pricing

When Ottawa and Alberta signed an oil-pricing agreement in 1981, thereby ending one of the longest and most bitter of Canada's intergovernmental disputes, it was generally expected that there would be relative peace on this front for several years to come. The issue was re-opened, however, in the winter of 1983.

There were two different interpretations of the impact of the decline in the world price of oil on the federal-provincial agreement. As this phenomenon had not been anticipated when the 1981 accord was reached, the agreement did not specify how the Canadian price would be affected. The federal government asserted that the accord limited the price of most Canadian crude oil to 75 per cent of the world price. This implied that if the world price dropped substantially, the Canadian price would also drop.

The alternate view in what Prime Minister Trudeau termed "an honest disagreement" saw no provision in the accord for a roll-back of Canadian prices (House of Commons Debates, March 1, p. 23328). According1y, the rationale behind the 75 per cent rule was to protect the Canadian consumer against ever-increasing prices of world energy.

In March 1983, it was reported that federal Energy Minister Jean Chrétien threatened to unilaterally roll back the price of oil. According to The Gazette, he asserted that:

I don't want to roll it back unilaterally, [but] I have the power to do that.... This [1981] agreement is not legally binding. It is an agreement between two levels of government and each government has its own power (March 17, p. Al).

Later in the month, Alberta Premier Peter Lougheed announced that the two governments had agreed to cancel a 4 dollar a barrel increase scheduled for July 1, 1983, because the international price of oil had fallen to less than 30 dollars (US) a barrel.

In early April, Jean Chrétien presented to the federal cabinet a paper which illustrated the devastating effects of lower-than-forecast world oil prices on the 1981 federal-provincial accord. The federal government desired new pricing terms and four pricing alternatives were listed (Globe and Mail, April 15, p. B5):

1. Domestic prices to be rolled back and capped at 75 per cent of the world price.
2. Elimination of the 75 per cent ceiling on Canadian oil.
3. Extension of world oil price to more categories of oil, while maintaining a redefined old oil category at 75 per cent of the world price.
4. Deregulation of prices on all categories of crude oil, allowing them to float up to the world level

The oil-producing provinces and the producers supported the deregulation option, arguing that Canadian prices should move to the world level while the prices were soft.

On a related front, the price of natural gas was scheduled to rise in August 1983. Ottawa had reduced the export price, however, in response to pressure from the Government of the United States and the gas industry. Moreover, the federal government had promised, as a spur to consumers, to hold domestic gas prices in eastern Canada to 65 per cent of the price of oil. If the August increase were implemented, the federal government would be unable to maintain this policy.

It was the coincidence of these two trends in the prices of oil and natural gas which opened the way for a a new agreement between Alberta and Ottawa. The announcement was made by Jean Chrétien and his provincial counterpart, John Zaozirny, on June 30. The agreement provided for the amendment of the September 1, 1981 agreement covering petroleum pricing through 1986. According to the new accord, the July increase was not to take place and increases in 1984 would be subject to trends in world oil prices. This meant that there would be no change for at least eighteen months unless there were major fluctuations in the world price. Furthermore, the Canadian price would not be capped at 75 per cent of the world price unless there were a sharp increase in the latter.

Through reclassification of oil categories, about 30 per cent of Canada's oil production subsequently qualified for the world price. It was estimated that this would inject about 250 million dollars into the oil industry's cash flow over the next eighteen months. As well, the price change would result in about 161 million dollars of extra revenue for the federal government and about 205 million dollars for Alberta.

With respect to the price of natural gas, the Alberta gas producers were to receive the scheduled August increase in the Alberta border price less 25 cents, plus part of the increase scheduled for 1984. The price to consumers, however, was to be capped at 65 per cent of the price of oil, with the federal government bearing the cost of the difference.

In his accompanying statement, Chretien praised the spirit of cooperation in which the agreement had been reached, asserting that it was,
proof once again that it is possible for the Federal and Provincial Governments to work together in the best interest of all Canadians (p. 1).

On August 23, a similar agreement was reached between Saskatchewan and the federal government and signed by their respective Ministers of Energy, Paul Schoenhals and Jean Chrétien. The accord, which was almost identical to the Alberta-Ottawa agreement, meant that about 50 per cent of the province's oil production would be sold at the world price. The Saskatchewan petroleum industry would get a 52 million dollar cash flow boost (Calgary Herald, August 24, p. C1).

## Hydro Electricity

The battle between Newfoundland and Quebec over hydro-electricity from Churchill Falls continued throughout 1983, shifting between the judicial and the political arenas. The year ended on an optimistic note as negotiations had recommenced in the fall. Any resolution of the dispute, either political or judicial, was put forward to another year.

The source of contention was a sixty-five year contract that the Churchill Falls Labrador Corporation Limited (CFLCL) signed in 1969 with Hydro-Quebec, giving the latter the right to almost all the power produced from the falls at prices that were set in 1969. There was no price-escalation provision. As a result, after purchasing the electricity at prices significantly below the market value, the Quebec utility has resold it at a substantial profit. The Newfoundland government estimated that Hydro-Quebec resold for 600 million dollars electricity which it had purchased from Newfoundland for 10 million dollars.

In 1974, the Newfoundland government bought out one of the major interests in CFLCL (Brinco), giving the province two-thirds of the company while Hydro-Quebec retained one-third ownership. Discussions continued between the two provinces over raising the price of the energy and gaining access to some of the power, but the Quebec government was not prepared to cancel the terms of the 1969 agreement.

The Newfoundland government complained of the "hands off" attitude of the federal government which, according to Newfoundland Energy Minister William Marshall, had the paramount power to intervene (Atlantic Insight, September 1983, p. 23). Newly-elected federal opposition leader Brian Mulroney lent some encouragement to the Newfoundland government when he publicly asserted at an August 30 news conference that the contract was inequitable and should be renegotiated (reported in The Gazette, August 31, p. B1).

On August 6, 1976, a Newfoundland order-in-council requested the CFLCL to supply Newfoundland Hydro with 800 megawatts of electrical power. HydroQuebec objected and the question was forced into the courts. Newfoundland's position was based on a clause in a 1961 lease between the government and CFLCL that provided, upon request of the province, for consumers of electricity in the province to be given priority when it was feasible and economic.

On June 13, 1983, the Newfoundland Supreme Court ruled that Newfoundland did not have the right to recall 800 megawatts of electricity from the Churchill Falls station. Justice Noel Goodridge argued that this right to recall power was concerned only with power in excess of that already committed, of which there was very little. A similar decision from the Quebec Superior Court on August 6 ruled that Newfoundland was dodging an agreement with Hydro-Québec.

A second strategy of the Newfoundland government was initiated in 1980 when the province passed the Opper Churchill Water Rights Reversion Act. This legislation gave the provincial government the right to expropriate the water rights held jointly through the CFLCL. If proclaimed, it would. repeal the 1961 lease legislation and cause all rights leased or granted to the CFLCL to revert to the province. The constitutionality of this Act was upheld in 1982 by a unanimous decision of the Newfoundland Court of Appeal. This case was subsequently heard by the Supreme Court of Canada late in 1982. A ruling was expected in 1983.

In the latter part of August, rumours circulated that representatives of the two provincial governments had begun negotiations again. This was confirmed by Marshall in a statement on September 7. He announced that his government had requested the Supreme Court of Canada to postpone its decision on this case pending a negotiated settlement. The Court complied and agreed to delay a judgment until December 31, 1983. This was later postponed until 1984.

## Offshore $0 i 1$

The dispute between Newfoundland and Ottawa over the ownership of offshore resources has been smouldering since 1979. An unusual air of optimism surrounded the talks between federal Minister of Energy Jean Chrétien and his Newfoundland counterpart, William Marshall, during the early part of 1983. On January 12, Marshall reported that "an agreement of sorts" had been reached. Jean Chrétien stated that,

The crucial obstacle to a firm agreement is resource management. Newfoundland wants to exercise real control over the pace of development of the oil-rich Hibernia field off the province's shore. But Ottawa wants to ensure that any mechanism to manage resource development, such as a joint board, is still
accountable to the federal government because it says the oil resources belong to all Canadians (quoted in Globe and Mail, January 13, p. 1).

By January 26, however, talks had broken down and each of the two parties accused the other of bargaining without a mandate to conclude an agreement.

Marshall asserted that the federal offer was no better than the agreement signed with Nova Scotia in 1982. According to the terms of that deal, Nova Scotia will get 75 per cent of government revenues until the provincial government's fiscal capacity reaches a certain point. As well, the agreement gave the federal government the majority on an offshore resources administration board.

The Newfoundland Supreme Court Case
The breakdown in the Ottawa-Newfoundland talks was followed on February 17 by the decision of the Newfoundland Supreme Court concerning the ownership of the offshore resources. The hearings for this case had been held in October 1982 (See St. John's Evening Telegram, February 28, p. 7). Essentially, four arguments had been presented by the Newfoundland government:

1. At the time of union (1949), international law conceded to the coastal states sovereign rights to explore and exploit their continental shelves.
2. On that date Newfoundland possessed sufficient international status to be endowed with this sovereignty.
3. The sovereignty to explore and exploit the continental shelf gave rise to proprietary rights in municipal law.
4. Term 37 of the Terms of Union reserves to Newfoundland proprietary rights in the continental shelf and such rights give the province legislative and executive competence whether or not the territorial sea and continental shelf are within Newfoundland's boundaries.

The position of Newfoundland was supported by the governments of British Columbia and Alberta.

The federal government presented four propositions in support of its claim to ownership:

1. Newfoundland's territory extended only to the low water mark when it entered Confederation, and no legislative act has extended that territory.
2. Prior to 1949, international law had not conferred on Newfoundland proprietary or other rights over the continental shelf because international law on this was embryonic at the time; a threshold requirement for international acceptance of these rights was the assertion of them either by Great Britain or Newfoundland, which was not done.
3. Even if such rights had existed in international law, Newfoundland did not have sufficient status to avail itself of them.
4. Even if Newfoundland had the status, a reading of the Terms of Union showed that it did not have greater rights than other provinces.

In its decision, the Newfoundland Supreme Court asserted that Newfoundland had attained the status of a full-fledged Dominion, through the Balfour Declaration of the British government in 1926. Moreover, the court rejected the argument that Newfoundland entered Confederation on the same footing as the other provinces with regard to its natural resources. Term 37 of the Terms of Union reserved to Newfoundland proprietary rights to resources outside, as well as within, its boundaries, as described in Term 2.

The Court accepted the provincial argument that in 1949 there were rights to continental shelf resources by coastal states, including Newfoundland. It rejected the submission, though, that these rights gave rise in municipal law to proprietary rights therein. In the British Columbia reference case, the Supreme Court of Canada determined that international law cannot, of itself, endow a state with additional rights or territories therein. The acquisition of such rights is a matter of municipal law and must be accomplished by some constitutional act.

The Court concluded that under international law, Newfoundland could have exercised its rights over the continental shelf resources before joining Canada in 1949, but failed to make such a declaration. The rights with regard to continental shelf resources had not been adopted into municipal law so as to vest proprietary rights in the Crown in Right of Newfoundland. As a result, the resources in question did not fall within the meaning of Term 37 of the Terms of Union which stated that all lands, mines and resources belonging to Newfoundland prior to Confederation would belong to the province after union.

Reaction of Newfoundland Government
The reaction of the Newfoundland government was predictable. At a February 17 news conference, William Marshall asserted:


#### Abstract

What it comes down to is this, that because...the Government of the United Kingdom did not pass a law or Order in Council exercising Newfoundland's right to claim ownership, the people of Newfoundland must be denied forever the rights which accrue there from. Remember that the Commission of Government was not elected by the people of Newfoundland nor accountable to them (p. 1).


Premier Peckford expressed surprise that it was such a minor point that resulted in a negative decision by the Court.

> We are not going to back down from our position, despite this fluke of history, this lack of a piece of paper, this technicality. Fairness and equity is what we'll settle for and nothing less (quoted in The Gazette, February 18, p. BI).

Marshall concluded at his February 17 news conference that the issue was not one of ownership but rather,
whether the people of Newfoundland and Labrador who brought this resource with them into Confederation, are to be treated fairly and equitably by their fellow Canadians with respect to the management and sharing of revenues of this resource (p. 2).

The issue of ownership of offshore resources had been referred to the Supreme Court of Canada, although the question to be answered there was more narrowly focussed than that addressed by the Newfoundland Supreme Court. Whereas the Newfoundland court dealt with offshore resources generally, the highest court in Canada was asked to determine who owns and directs the development of the Hibernia oil field. Hearings for this case began on February 22, 1983. The ruling on this case was expected early in 1984. In a year-end interview, Brian Peckford admitted that, given the ruling of the Newfoundland Supreme Court, it was more probable that the federal government would win. He asserted that the majority of the Supreme Court judges have "a Canadian conception of resource development, not the global one" (Macleans, November 28, p. 13). If that were the outcome, Newfoundland was not prepared to give up its fight, but would argue from a "strict moral equality point of view."

The Political Arena
Following the Newfoundland court ruling, the intergovernmental dispute shifted back to the political arena. On February 23, William Marshall, in his role as Minister responsible for the Petroleum Directorate, ordered Mobil Oil to halt drilling operations in the Hibernia, ostensibly because of poor weather and heavy ice conditions. Jean Chretien responded: "The provincial government is trying to obtain under the guise of a safety precaution what it could not achieve in the Newfoundland Court of Appeal --
jurisdiction over offshore resources" (Energy, Mines and Resources Canada. Communique, February 25, p.1). He criticized the Newfoundland government for acting unilaterally and, after consulting with experts from Mobil oil and the federal government, ordered drilling to resume.

Marshall maintained that his decision had been made entirely out of safety reasons and that Chretien did not appreciate the gravity of the situation. His response to the accusations of his federal counterpart was to suggest that there was reason to question whether Chrétien's motives were based upon his "perceived position of power" (telex from Marshall to Chrétien, March 1). After a further exchange of accusations, the issue subsided.

Friction between the two governments again erupted, on July 8, when Jean Chrétien unveiled a billion dollar offshore exploration development program for Newfoundland. The federal minister announced that sixteen exploration agreements, nine of them with Mobil Oil, would create a peak total of 1200 jobs and put ten rigs off Newfoundland by the end of the year and five more by 1985. Moreover, one of the companies involved, Petro Canada, would commence drilling without a permit from the Newfoundland Petroleum Directorate. This was to be the first time that a company would begin drilling solely on the strength of a federal permit. Marshall complained that this was "completely unacceptable" and suggested that Chrétien regarded himself as the "original political macho man" (quoted in Globe and Mail, July 9, p. 1).

In addition to overriding the authority of the Newfoundland Petroleum Directorate, Chrétien's announcement brought to the surface a critical difference in the attitudes of the two governments toward offshore development. Throughout the debate, Newfoundland had argued against rapid development of resources because of the threat to the province's traditional lifestyle and the danger of overheating the local economy. However, Chrétien asserted on July 9 that Hibernia must be " developed as rapidly as possible" (Globe and Mail, July 9, p. 1).

A year-end examination of the industry revealed that the federal promises made during the summer of 1983 had been postponed (Atlantic Insight, December 1983, p. 12) The oil business was not the bonanza that Ottawa expected. The total number of rigs working offshore had not increased since the summer, nor was it expected to in 1984. On December 8, the federal government unilaterally announced revised guidelines for emergencies on oil rigs. Earlier, Newfoundland Energy Minister William Marshall had expressed hope for a federal-provincial approach to winter drilling to avoid the situation of the previous winter.

Nova Scotia
An agreement was reached between Ottawa and Nova Scotia in December 1983 which would make it difficult for either level of government to
subsequently alter the terms of the offshore oil and gas agreement reached in March 1982. The main element of the accord concerned the timing of a 25 per cent carried-interest or "back-in" provision which had been an integral part of the federal government's National Energy Program (NEP). According to this principle, a 25 per cent interest in every right on Canadian Lands was to be reserved to the Crown. When work on any Canadian field moved into the production and developmental phase, the Crown could claim a 25 per cent share in the project. From that point on, Petro Canada or some other federal agency would pay its share of development costs.

Under the terms of the offshore agreement signed in 1982 between Nova Scotia and Government of Canada, the provincial government had the right to acquire one-half of the 25 per cent Crown share for any offshore natural gas field in Nova Scotia waters, and one-quarter of the Crown share for an offshore oil field (See Financial Post, December 17, p. 1 and Halifax Chronicle-Herald, December 20, p. 1). The Nova Scotia government was eager to secure its share of the "back-in" primarily because it would provide an additional source of revenue. Moreover, the future of this element of the NEP was in doubt, as federal Progressive Conservative leader Brian Mulroney has publicly criticized the back-in principle of the National Energy Program.

## JUSTICE

In the area of justice, there were primarily two issues which received special attention on federal-provincial agendas in 1983. Both generated some debate and both were spawned by federal initiatives which affected provincial jurisdiction. The first issue concerned the implementation of the Young Offenders Act, which had received royal assent in July 1982. Second, the introduction in the House of Commons of Bill C-157, creating a civilian security force, generated a strong tide of opposition led primarily by some provincial governments.

Implementation of the Young Offenders Act
The Young offenders Act of 1982 replaced the 75 -year old Juvenile Delinquents Act. It provided for changes in the administration of juvenile justice in several ways by:

- raising the age of criminal responsibility for juveniles from 7 to 12 and setting the maximum at 18 ;
- opening youth hearings to the public;
- guaranteeing juveniles the right to retain legal counsel separate from that of their parents if necessary;
- providing detention facilities separate from adult offenders;
- destroying court records two years after completion of sentences for summary convictions and five years after for indictable offences, if no further offences were committed;
- removing from judges the authority to sentence youths for indefinite periods of time or to recall youths to court after their sentences have been served.

Implementation of the Act would have a significant impact on the provincial governments, who would have the primary responsibility for the development and delivery of the new programs. It was argued that implementation of the legislation would require retraining personnel, developing new procedures, building new facilities, hiring court personnel, Crown attorneys and legal aid staff, and in some cases, passing provincial legislation to cover the seven-to-12-year-olds who were no longer under federal law (Ottawa Citizen, May 25, p. 42).

In 1983, the federal government and the provinces were unable to reach an agreement on a cost-sharing formula; this resulted in a delay in the implementation of the Act. Initially scheduled for April 1, 1983, it was postponed until October 1,1983 and again until April 1, 1984. Both delays came at the request of the provincial governments, which wanted to ensure that the federal government bore its share of the financial burden.

There was also, to some extent, a philosophical tension here between rehabilatative and punitive approaches to the treatment of youth offenders. The provisions of the new Act would prove more costly to a province devoted to the penal system because of the need to construct detention centres separate from those in use for adult offenders. The federal government, whose philosophical bent favours rehabiliation with less reliance on the prison system, has been able to shift this issue to the provinces. Moreover, it has set certain limitations by which provincial governments must abide.

A letter from federal Solicitor-General Robert Kaplan to the provincial Attorneys-General on March 30 examined cost-sharing proposals. The federal government was prepared to discuss a block grant for provincial care and after-care programs; financial assistance for training officials, developing record-keeping systems and research programs; and increased assistance for legal aid. No federal assistance was offered, though, for policing, prosecution, court costs, or construction of new facilities. No funds or shares were mentioned in the letter.

The position of the provincial governments was delineated in a communique from the Conference of the Provincial Council of Attorneys-General and Ministers of Justice held in May in Charlottetown. The provincial ministers noted that the new legislation would place a serious financial burden on provincial taxpayers. They complained that Kaplan's letter of

March 30 was vague and unsatisfactory. As well, they urged that a transition period be agreed upon to implement the 18 year old maximum age limit, and requested that the Act not be proclaimed "until after an equitable cost-sharing agreement had been achieved."

An accompanying "Statement of Provincial Negotiating Principles" asserted that:

Cost-sharing must respect the constitutional right of each province...to administer justice for young persons in accordance with provincial needs and priorities. Cost-sharing must not attempt to direct provincial program choices, but instead must follow and support provincial program objectives ( $p$. 1).

Other principles included the need for cost-sharing to recognize existing costs of providing justice for juveniles and the increased costs imposed on the provinces by the new Act; the continuation of existing cost-sharing arrangements in some provinces for services under the Act; and the need for the federal government to share in the financial risks created by the Act.

The choice of cost-sharing vehicle must take into account the extent of coverage, administrative structures, procedures, timing of recoveries, policy implications and impact on other programs and agreements ("Statement of Provincial Negotiating Principles" May 27, p. 2).

The second provincial request for a delay in the implementation of the Act came in September following the Annual Premiers' Conference. As chairman of the Conference, Ontario Premier Bill Davis made the request in a letter sent to Prime Minister Trudeau on September 19. Davis reiterated the concerns of the provinces with regard to the increased costs and new procedures which would be required. Special concern was raised over the transition from the current maximum age of 15 to the new maximum of 17 years to be completed by April 1985. The letter also expressed the opinion that the federal government should adopt a flexible cost-sharing approach that provided for full sharing of the financial risks.

## Civilian Security Intelligence Service

A bill creating a civilian security intelligence force in Canada (Bill C-157) was introduced in the House of Commons on May 18, 1983 by Robert Kaplan. This initiative was recommended in two separate task force reports, the most recent being the MacDonald Commission investigating alleged illegal acts by the Royal Canadian Mounted Police (RCMP).

Bill C-157 provided for the creation of a civilian force, separate from the RCMP, to handle Canada's security intelligence. The Bill was divided into five parts. The first provided for the establishment of a Canadian

Security Intelligence Service (CSIS). It outlined the management and the functions of the service. Part II dealt with judicial control or the procedures related to obtaining warrants from judges. The third part of the Act was concerned with review and accountability of the service. It provided for the establishment of a Security Intelligence Review Committee, comprised of three members of the Queen's Privy Council for Canada, who were not sitting members of either the House of Commons or the Senate.

The fourth part was actually a separate piece of legislation, entitled "An Act Respecting Enforcement in Relation to Certain Security and Related Offences." This part of the Bill gave power to the Attorney-General of Canada concerning offences arising out of conduct constituting a threat to the security of Canada. The fifth and final part of the Bill concerned transitional provisions regarding the establishment of the new force.

There was considerable opposition to the proposed legislation. The criticism was essentially along two lines. The first was captured in a special communiqué issued by the Conference of the Provincial Council of Attorneys-General and Ministers of Justice who were meeting in Charlottetown on May 26 and 27:

The provincial Attorneys-General...deplore the massive threat to the rights and freedoms of all Canadians posed by the federal government's proposed new security force ( $\mathrm{p}, \mathrm{1}$ ).

The provincial governments were in the forefront of a large contingent of organizations opposed to the legislation on civil rights grounds, such as the infringement of rights, lack of accountability and excessive secrecy. Included in this group were: civil rights groups, the Canadian Bar Association, the federal New Democratic Party and, after considerable internal discussion, the federal Progressive Conservative Party.

The second line of argument against the proposed legislation, advanced primarily by the provincial governments, was that it encroached upon their jurisdiction. As such, the provinces questioned the constitutionality of the Bill.

The various organizations and individuals concerned about the proposed legislation were given a public forum when a Special Committee of the Senate was appointed on June 29 to examine and consider the subject-matter of Bill C-157. The Committee was chaired by Senator Michael Pitfield and heard over thirty witnesses during eighteen meetings held from July 7 through October 13.

The two general lines of argument, each comprising a number of elements, were advanced in presentations made to the Special Senate Committee. On August 24, the Attorney-General of Ontario, Roy McMurtry, made a key appearance before the Committee. His presentation included most of the fundamental objections to the Bill. The following is a summary.

## Objections based on Civil Rights Arguments

First, it was argued that Bill C-157's definition of a threat to national security was vague and expansive and the mandate of the proposed agency was unjustifiably wide. Roy McMurtry argued that the function of the service to remain "informed about political, economic and social environment" in Canada gave the service a clear mandate to "snoop into every activity in this country." Moreover, the agency would have the ability to "target" any individual or group it wished.

The Canadian Bar Association was especially critical of section 18 of the proposed Bill, a vaguely-worded provision for the new agency to report on the capabilities, activities or intentions of any foreign state that related to the conduct of the international affairs of Canada or to national defence (The Gazette, September 7, p. A9). This power was not contingent upon there being any threat to national security. Futhermore, the definition of subversion in the act made no mention of violence and, hence, could conceivably apply to those who were legally trying to change Canada's system of government. This was a major objection of representatives of the Parti Quebecois, who appeared before the Committee on September 29 (Globe and Mail, September 30, p. 1).

Second, the proposed agency had extradordinary powers without the ordinary safeguards of the criminal justice system. Under the terms of the Bill, once a federal court judge had signed a warrant, agents would be allowed to tap phones, break into homes and examine files in public institutions. Futhermore, the confidentiality guaranteed in the Income Tax Act and the Statistics Act, concerning income and census information, would be undermined.

A third argument was that the proposed agency had no effective accountability. The director of the security sevice would have the final say on groups and individuals to be targetted. There was to be no political control as the agency would not be responsible to any cabinet minister. Rather, it was to report to an inspector general and a board of three people who were not sitting Members of Parliament or of the Senate.

Fourth, the legislation provided for excessive secrecy. If it were thought that national security would be threatened, the facts surrounding serious crimes could be withheld with no criminal prosecution resulting. A fifth argument concerned provisions in the Bill to allow agents to break the law; these were confusing and dangerous. Civil rights advocates argued that the security force would be given a "carte blanche" to break any law. Kaplan countered by arguing that agents would be punished by the federal justice minister if it were not possible for their cases to be taken to court by an Attorney-General because of national security reasons (The Gazette, June 1, p. B1).

The separation of the new agency from the Royal Canadian Mounted Police (RCMP) caused concern for some. Many of those opposed to the bill, including some of the provincial Attorneys-General, favoured the retention of security services within the RCMP. Attorney-General Gary Lane of Saskatchewan supported this idea in his presentation to the Special Senate Committee. His brief included the following arguments: a civilian agency would be subject to the risk of penetration by the agents of hostile foreign countries; a civilian force would not enjoy the same public confidence and respect as the RCMP; and there was a greater danger that such a force could be manipulated by its political masters. Lane considered strong leadership and appropriate direction in the RCMP force to be a better solution. "Let us not substitute a new and unproven plan when in fact any problem can easily be corrected by proper administration and leadership at the ministerial level" (Saskatchewan News Release, May 31).

A final argument against Bill C-157 was that it infringed upon the Canadian Charter of Rights and Freedoms. This complaint was speculative as the direction taken by the Supreme Court of Canada with regard to the interpretation of the Charter was not yet known. Roy McMurtry asserted that provisions of the Bill could likely be challenged under the Charter on a number of grounds. One example concerned the extremely wide powers of search, seizure and wiretapping vis a vis section 8 of the Charter, which protects individuals from unreasonable search or seizure. McMurtry also questioned whether,
the unlimited mandate of the service to target individuals who engage in lawful activity [is] capable under some circumstances of violating the fundamental freedoms of conscience, religion, thought, belief, opinion and expression, including freedom of the press, peaceable assembly, and freedom of association (Charter s. 2) (Proceedings, Special Senate Committee, August 23, p. 25).

## Provincial Jurisdiction Arguments

Roy McMurtry also raised the argument that the proposed Bill interfered with the provincial jurisdiction over the administration of justice. Attorney General Brian Smith of British Columbia stated that it would be a "blatant intrusion of the federal government into provincial administration of justice" (quoted in Ottawa Citizen, September 22, p. 14). In the May 26 communiqué of the provincial Attorneys-General, it was asserted that the proposals,
seriously attack the traditional constitutional role of provincial Attorneys-General by giving primary policing responsibility to the RCMP and by, for the first time, giving overriding prosecutorial responsibility to the federal AttorneyGeneral in general Criminal Code matters. The duty of


#### Abstract

provincial Attorneys-General to examine alleged breaches of the law, to decide whether there should be a prosecution and if so for what offence, and to prosecute vigorously and fairly where the public interest so requires, is one of the fundamental cornerstones of the administration of justice in the country. These new proposals utterly destroy this critical responsibility of the provincial Attorney-General by giving the federal Attorney-General and Solicitor-General wide, sweeping and ill-defined powers to block the proper enforcement of the criminal law (p.4).


According to the proposed Act, only the federal Attorney-General could decide whether to prosecute agents who broke the law (Section 21). Moreover, Part IV of the Bill created a special type of crime essentially a "national security crime" -- giving the federal government total control when it believed national security would be endangered by a prosecution. Federal Justice Minister Mark MacGuigan stated:

Part four of the legislation would reserve to the AttorneyGeneral of Canada the right to decide how an offence against an internationally protected person or in the security area would be treated (quoted in Ottawa Citizen, July 16, p. 19).

Senate Committee Report
The report of the Special Senate Committee, entitled, Delicate Balance: A Security Intelligence Service in a Democratic Society, was issued November 3, 1983. Generally applauded, this report accepted the basic thrust of Bill C-157, but recommended several amendments to correct some inherent problems. In all, twenty major changes were proposed in the report. Most of the criticism dealt with vague wording that could be loosely interpreted, thereby infringing upon civil liberties. The report also objected to the absence of ministerial responsibility.

Another aspect of the bill which was heavily criticized by the Senate Committee was that dealing with the issuance of judicial warrants for intrusive techniques. The report deemed the standards whereby a judge could issue such a warrant to be unreasonably low (p.25).

The Committee disagreed with those who asserted that a bill establishing a security intelligence agency was fundamentally incompatible with the Charter. It was believed that a bill amended according to the recommendations contained in the report would be consistent with the provisions of the Charter. According to Section 1 of the Canadian Charter of Rights and Freedoms, reasonable limits on the freedoms and rights of the Charter were acceptable if they could be demonstrably justified in a free and democratic society.

The Committee rejected the complaint of the provincial governments that Part IV of Bill C-157 was an intrusion into their jurisdiction. A recent Supreme Court decision had made it clear that provincial competence over criminal prosecution was neither comprehensive nor exclusive. Hence, Part IV was deemed to be within federal jurisdiction. The Committee nevertheless felt that this section was
too broadly framed and that it should not so radically disrupt the traditional system of criminal prosecution by the provinces. It should not be necessary for provincial authorities to have federal consent to prosecute security offences (p.36).

Despite these criticisms, the report accepted the basic principles underlying Bill $\mathrm{C}-157$. In the summary of its report, the Special Committee argued that the legislation should contain, at the very least,
a defined mandate and statement of functions of the agency; judicial control of the use of intrusive investigative techniques; and a system of external monitoring and review of security operations (p. 37).

Bill C-157 died with the longest Parliamentary session in Canadian history on November 30. Solicitor-General Robert Kaplan announced his intention to introduce a revised bill creating the CSIS in January 1984. A preview of this legislation was contained in a two-page report submitted to the Liberal caucus on December 21 and subsequently leaked to the media (Toronto Star, December 22, p. 1). The purported changes in the new bill included: limiting the definition of "subversion" by including a reference to violence; enabling the Solicitor-General to override the decisions of the service's director concerning who could be investigated as a security threat; making it more difficult for civilian agents to obtain warrants to use intrusive investigative methods. According to the report, new legislation was to specifically require that the Solicitor-General approve applications for warrants to engage in clandestine activity.

## ECONOMIC DEVELOPMENT

## Regional Development

The General Development Agreements (GDAs) which had been signed in 1974 between the federal government and the provinces were to expire March 31, 1984. The federal government had announced that efforts would be made to reach Economic and Regional Development Agreements (ERDAs) with each of the provinces to succeed the previous umbrella arrangements.

The philosophy behind the creation of ERDAs was significantly different from that beneath the creation of the GDAs in the early 1970s. There was a shift away from the federal policy of the late 1960s, which emphasized
regional development through significant decentralization of power to the provincial offices of a separate Department of Regional and Economic Expansion (DREE). This approach was replaced by a new emphasis on the need for all government policies to be seen through a regional development filter. This shift in emphasis was most clearly evident in the government restructuring legislation of 1982 (Bill 123) which was to dismantle DREE and create in its place a Ministry of State for Economic [and Regional] Development and a Department of Regional and Industrial Expansion (DRIE). Although this bill was never passed, a subsequent Government Organization bill (Bill C-152) was introduced on May 5, 1983 and passed by the House of Commons on October 25. This legislation contained many of the provisions contained in Bill C-123, especially as it related to the establishment of DRIE.

The federal government argued that, as a result of this reorganization, all departments would henceforth be concerned with regional development. "The agreements are designed to spur regional program initiatives and policy development in all economic development departments" (Annual Report of the Ministry of State for Economic Development 1982-83, p. 8). It would be necessary for regional policies to be coordinated with other economic development policies. Whereas the GDAs and their subsidiary agreements had been negotiated and administered through the federal government's Department of Regional and Economic Development, the subsidiary agreements of the ERDAs were to be administered through the sectoral department most closely associated with the subject matter.

In the initial years of the GDAs, DREE dispensed significant sums, largely through its provincial offices and mostly for projects jointly funded with the provincial governments. From about 1979, there was a decline in the role of DREE and the funds it controlled.

The elimination of DREE meant that there were no longer large regions of the country that were in a preferred position to receive regional development aid. This was of particular concern to the Atlantic provinces, which lagged behind the rest of the country on most economic indicators. The whole country could now potentially receive regional development aid, albeit differentiated according to need.

The federal government felt that it was not getting enough credit or appropriate visibility for its contributions to jointly-funded programs and, hence, was less interested in the arrangements practiced under the GDAs. As a result, there was an increased emphasis on parallel programs and direct delivery of services. Whereas the GDAs were predominantly joint federal-provincial programs, the emphasis of the ERDAs was to be on cooperative and coordinated planning, but independent action. These were to be agreements
that would allow economic development programs and projects to be cooperatively planned, but separately delivered, where
> appropriate. This new approach will respect the jurisdiction of each level of government and, at the same time, clarify in the public mind which level of government is responsible for a program or policy (Annual Report of the Ministry of State for Economic Development 1982-83, pp. 8-9).

In its December 7th Speech from the Throne, the federal Liberal government suggested that a new era of federal-provincial planning and consultation was being launched. For the federal government, this new era was to be marked by a reduction in joint action with the provinces. The 1982-83 Annual Report of the Ministry of State for Economic Development stated that the ERDAs,
are intended to usher in a new era of cooperative federal-provincial relations based on a clearer definition of the responsibilities and priorities of each level of government (p. 8).

By the end of 1983, an Economic and Regional Development Agreement had been signed between the federal government and the Government of Manitoba.

## Rural Development

In the province of Newfoundland, federal-provincial relations were strained over the issue of rural development. A five-year intergovernmental agreement for rural development funding expired at the end of March 1983, but was extended for a further six months. Under the joint agreement, the federal government paid 90 per cent of the costs and the province 10 per cent.

Newfoundland was anxious to conclude another long-term joint agreement, but was unable to convince the federal authorities. Ottawa unilaterally chose a direct financial take-over of the province's rural development program. It argued that there was no need to continue working through an intermediary, that is, the province (St. John's Evening Telegram, August 27, p. 3).

Ed Lumley, federal Minister of Industry, Trade and Commerce, announced on October 2, that his government would give direct financial support for rural development to the Newfoundland and Labrador Rural Development Council, wherein development associations could directly apply for federal grants. (St. John's Evening Telegram, October 3, p. 1). Premier Peckford was very upset at the federal government's unflateral action. He noted that although the recently signed fishery agreement was an optimistic note, "the Rural Development situation shows that all is not well in Federal/Provincial relations yet" (Statement, October 17).

According to the Newfoundland government, under the new arrangement, the federal government alone would administer rural development programs (Joint

Statement by Premier Peckford and Joseph Goudie, Minister of Rural, Agriculture and Northern Development, October 21). The province would be permitted a liaison committee which would have an advisory role, but no decision-making authority. Peckford accused the federal government of trying to forcefit the rural development movement into a national program.

## Municipal Funding

A major source of friction between Ottawa and the government of Quebec concerned the funding of municipal projects. A December 23, 1982 agreement between the two governments concerning the New Employment Expansion and Development (NEED) Program was scrapped on March 24, 1983; at that time, each government announced that it was proceeding to fund separate projects.

Under the initial agreement, the federal government was to provide 170 million dollars and Québec 50 million dollars for municipalities, public agencies and private businesses which helped to create jobs for those whose unemployment insurance benefits had expired. According to representatives of both governments, under the new arrangements each would still spend the same amount of money on projects in Quebec as would have occurred under the terms of the joint agreement. Federal funding, however, would be directed entirely toward non-municipal projects.

The central point of contention was the insistence by the federal government of supervising municipal projects. The Québec government argued that this was an invasion of the province's exclusive jurisdiction over the affairs of municipalities. It asserted that a dual system of administration would be chaotic. The federal government emphasized its need to remain accountable for the spending of its money.

A letter sent by Quebec Premier René Lévesque to Prime Minister Pierre Trudeau on May 26 insisted that the federal government go through the province when it dealt with municipalities. Levesque asserted that federal interference went against Quebec's policy of increasing municipal autonomy and its decision to have provincial properties pay municipal taxes. Levesque suggested that an agreement similar to the EPF arrangements for the funding of health care, whereby the program was administered by the provinces, be established (Le Devoir, September 9, p. 2).

On June 21, the Quebec government introduced Bill 38 in the National Assembly. The purpose of the proposed legislation was to reaffirm that an arrangement between the federal and the Quebec governments was the only framework through which a municipality could receive a federal subsidy. Under the terms of Bill 38, any municipality which received, in any form, a subsidy from the federal government, would forfeit its right to receive that amount from the provincial government.

In a reply to Premier Lévesque on August 11, Prime Minister Trudeau stated that he was willing to open negotiations with the province. He
wrote that the federal government did not wish to meddle in municipal affairs but reaffirmed that Québec must respect "the financial accountability of the federal government to Parliament and recognize that municipal taxpayers should be well informed as to the source of the funds from which they benefit" (translation) (quoted in Le Devoir, September 9, p. 2).

Negotiations commenced between the officials of the federal Employment and Immigration department and Québec's Ministry of Municipal Affairs in early October. Although optimism surrounded both camps at one point, talks were deadlocked in December.

The federal position, as expressed by Employment Minister John Roberts, favoured a tripartite contract covering each federally-funded municipal project and the right of federal staff to visit the projects. A proposition submitted by Roberts to Québec Minister of Municipal Affairs Jacques Leonard conceded to the province the right to veto federal government job creation projects (Letter made public December 6, Le Devoir, December 7, p. 10). This was still not acceptable to the Québec government.

The National Assembly began debating Bill 38 in mid-December. Opposition to the Bill was carried by the Quebec Liberal Party and bolstered by the support of Québec municipalities and a variety of organizations including la Chambre de commerce de Montréal and le Conseil du patronat. The Parti Québécois government agreed to submit the Bill to a standing parliamentary committee but restricted it to three days of deliberation.

On December 15, Jacques Léonard introduced amendments to the contentious Bill. The discretionary power originally granted to the Minister was to be replaced by clearly defined rules outlining which federal grants could incur provincial penalties. Furthermore, the changes would have given municipalities the right to appeal provincial sanctions and suspend such cuts in funds pending court decisions.

These amendments did little to change the tone of the criticism. Two all-night debating sessions were endured in the National Assembly. On December 20, the provincial Liberal Party threatened to block the passage of nine other outstanding bills if the government insisted on passing bill 38. The Parti Québécois government withdrew the Bill, but promised to introduce similar legislation in the new session of the National Assembly in 1984.

Trade
There was a greater provincial governments
effort in 1983 than in previous years by the to become involved in the formulation of Canadian trade policy. In the first month of the year, the premiers published a


#### Abstract

46-page document entitled, Canada's Trade Policy for the 1980s: The Views of the Provinces. The thrust of this presentation was that the current approach to trade policy was not satisfactory, and that for national leadership to be effective it must involve close collaboration and coordination between federal and provincial governments. It was stressed that national trade and economic policies must reflect the regional realities of Canada and balance the various priorities and interests of the different provinces. The upgrading of resources was seen as the primary economic development priority. On the international level, the provinces emphasized the need to improve Canada's economic relationship with the United States. At the same time, they also advocated a long-term policy of reducing Canada's dependency on the United States and of diversifying Canadian markets.


The road toward greater federal-provincial cooperation in the development of trade policy was not smooth. At the first intergovernmental conference of trade ministers, held in June 1982, federal Minister Ed Lumley pledged to seek provincial views on a trade policy paper. Four months later, the provincial deputy trade ministers agreed to prepare a composite document for Gerald Regan, who had since replaced Lumley in the Trade portfolio. At the same time, however, the federal government was preparing a paper on Canada-United States trade policy.

A federal-provincial meeting of deputy trade ministers on February 20, 1983 was disrupted when the provincial representatives learned of the federal paper. Accusations were made that the federal document was prepared without the knowledge or the contribution of the provinces, and that it had superseded the trade strategy paper that federal and provincial officials had been jointly preparing. The federal government countered by insisting that the Canada-U.S.A. document was an internal cabinet paper.

A one-day, closed-door meeting of federal and provincial trade ministers on April 25 was more conciliatory. Gerald Regan opened the conference with an apology for not consulting more with the provinces (reported in Toronto Star, April 26, p. D3). Only Gordon Walker of Ontario continued to be upset over the federal document which had disrupted the February meeting of deputy ministers. The ministers met in April for the purpose of completing the trade policy paper which was being jointly prepared. The provincial view was largely accepted by Ottawa and was being melded into the federal policy. This was the last formal consultation on the policy paper before it went to the federal cabinet.

Evidence of the federal government's desire for more consultation with the provinces was the announcement by Gerald Regan, following the April meeting, of the creation of a federal-provincial committee on national trade issues. Provincial deputy industry and trade ministers were to be part of this committee (Toronto Star, April 26, p. D-3).

The provincial ministers later acknowledged that they believed the federal government was more prepared than in the past to listen to their views on trade matters. In a speech given at the Annual Premiers' Conference in August, Ontario Minister of Industry and Trade Frank Miller asserted: "Federal-provincial trade officials and ministers have in the past year usefully improved the process of consultation" (p. 4). Miller noted, however, that no national trade policy had yet been announced by the federal department.

The communique from the Premiers' Conference included the following:
The Provinces are developing a comprehensive trade policy for the 1980s which would call for immediate and decisive action to spearhead Canada's drive for a larger and more competitive role in the world economy ( $p$. 4).

To accomplish this, the Premiers listed some specific points to be explored. These included:

- removing unnecessary impediments to foreign investment;
- the need for more competitive world export financing arrangements;
- interprovincial collaboration in the formation of export consortia;
- the need for determined efforts to remove non-tariff barriers by major trading partners;
- assisting the private sector to collaborate in international bids;
- collaborating on methods of increasing export of services and provincial expertise; and
- sharing of information of marketing opportunities.

In the fall of 1983, the federal government's position was published in a discussion paper, entitled Canadian Trade Policy for the 1980s. Accompanying this was a background document, A Review of Canadian Trade Policy. The discussion paper outlined an important role for the provinces in the formulation and implementation of trade policy.

Through regular contact at the Ministerial and Deputy Ministerial levels...and through federal-provincial committees, a more structured framework for consultations on international trade matters now exists.... These now play a useful role in the effective management of Canada's trading
interests, and will contribute to greater coordination and harmony between federal and provincial programmes and activities (p. 51).

The background document recommended ongoing consulation with the provinces, business community and other groups. This would enhance, among other objectives, the awareness and sensitivity of Canadian policies to regional and sectoral priorities and concerns, and enable the provinces to take into account the impact of international trade developments.

In his reaction to the federal government's discussion paper, Alberta Premier Peter Lougheed acknowledged a number of positive features, emphasizing its recognition of the need to build a national consensus for trade policy ("Speech at Canadian Pacific Rim Opportunities Conference", Calgary, October 7, p. 7). However, the Alberta premier pointed out a number of weaknesses or gaps in the presentation. He felt the paper did not give enough emphasis to the danger of losing traditional markets.

## AGRICULTURE

## Income Stabilization Plan for Livestock Industry

An issue which dominated the meetings of federal and provincial Ministers of Agriculture throughout 1983 concerned the development of a national income stabilization plan for the livestock industry. Stabilization is a form of income insurance and is one method of moderating income cycles which can be very damaging to producers. It is based on the creation of an insurance fund, into which farmers would pay in years when they get good prices, and out of which they would receive payments in bad years. It is an alternative to the use of marketing boards.

All provincial ministers of agriculture felt that a national stabilization program was preferable to the plethora of farm subsidies which currently existed across the nation. However, this was the only point upon which all provinces agreed. Although federal Minister Eugene Whelan preferred a system which focussed upon supply management, such as marketing boards, he was willing to consider any proposal upon which the provinces agreed.

An interprovincial conference of agriculture ministers was held in Toronto on March 1, 1983. All provinces, with the exception of Newfoundland, as well as five national producer groups, were represented at the conference. The latter included: the Canadian Federation of Agriculture, the Canadian Cattlemen's Association, the Canadian Pork Council, the Canada Sheep Council, and the National Farmers Union.

The conference established a tripartite (federal-provincial-producer) task force with a mandate to develop a national stabilization plan. The
task force was to submit its proposal to the July meeting of provincial ministers. It was unable, however, to arrive at a proposal which had the consensus of all of the provinces.

A number of issues were divisive -- but the central one concerned "top-loading," a term used to describe provincial subsidies added to those available nationally. Ontario, the Prairie provinces and the cattle producers wanted farmers in all provinces to receive the same subsidy. They argued that market forces, not provincial subsidies, ought to determine where farming takes place. Québec and British Columbia, however, were intent upon becoming self-sufficient and were determined to subsidize commodities which were not economically viable (Globe and Mail, July 17, p. B7). Hence, top-loading was practiced in these provinces.

On July 18; a proposal designed by Ontario Agriculture Minister Dennis Timbrell received the support of four of the provinces: Ontario, Alberta, Saskatchewan and Manitoba. The plan was to be voluntary and would provide a floor price for producers. No top-loading was to be permitted. The cost of stabilization would be shared equally by the federal Government, the provinces and the producers.

On October 31, an agreement was reached among three of these provinces and the federal government. Even though the plan was very similar to the July 20 proposal, Manitoba withdrew its support. According to the terms of the agreement, the stabilization program would be administered by the federal Agriculture Stabilization Board, advised by a committee of federal, provincial and producer representatives.

The most important addition to the October accord was a restriction limiting the combined government contribution to the scheme to six per cent of market returns, in order to control overproduction. Any costs associated with unnecessary overproduction beyond the six per cent limit would be borne by the industry (Western Producer, November 10, p. 1). This was a compromise between Eugene Whelan's position, which favoured more extensive production controls, and that of the provinces which objected to any program that interfered with producer decisions. The proposed scheme was to be comprised of four separate programs: cow-calf operations, feedlots, slaughter hogs and slaughter sheep.

The success of the accord was clearly muted by the exclusion of seven of the provinces. The three provinces which were party to the agreement produced about eighty per cent of Canadian beef. However, they produced only about fifty per cent of the hogs in Canada: Quebec alone accounted for thirty-seven per cent.

The major reason for Québec and British Columbia remaining outside the agreement was the lack of a top-loading allowance. The New Democratic government in Manitoba was primarily concerned with the fact that the plan was based not on a cost-of-production formula, but rather on market price.

Although he was a signatory to the agreement, federal Minister of Agriculture Eugene Whelan remained lukewarm to the proposed scheme. He had initially rejected the plan because of its cost, and because it did not confront the basic livestock industry problem of over-production and inadequate marketing. (Western Producer, November 24, p. Al). The federal minister had been threatening to establish a program based on a combination of stabilization and production controls, so that stabilization protection would be eliminated on production over target levels.

A report published in November 1983 proposed an alternative system which was favoured by the federal minister (prepared by Henri Vandermeulen and Sonny Anderson, Western Producer, November 24, p. A33). Based on supply management objectives, this proposal provided for the creation of a board, having the power to set prices, issue quotas, control imports, register all beef producers and charge levies to cover operating costs and surplus disposal. According to this report, the federal government could circumvent the constitutional obstacle, created by the fact that control of local industries was within the purview of the provinces, by declaring the industry to be "works for the general advantage of Canada", as was done in 1935 when the Canadian Wheat Board was created. The critical difference is that in 1935, this was done at the request of the provinces.

CORPORATE AFFAIRS
Bill S-31 was introduced in the Senate on November 2, 1982. Under the terms of this Bill, the Corporate Shareholding Limitation Act, provincial government bodies were prohibited from owning more than 10 per cent of voting shares in designated businesses under federal jurisdiction, or voting any shares acquired after November 2, 1982.

The Bill was primarily aimed at the transportation sector. Because of the "uniquely national" character of interprovincial and international transportation, the federal government felt that it must preserve its control in this sector. The introduction of Bill s-31 was an attempt by the federal government to protect its own jurisdiction from the perceived encroachment by provincial governments or their agencies. As Allan Tupper (1983) has observed, the federal government's initiative was largely based on "a fear that provincial governments might employ their ownership prerogatives to discriminate against other provinces or to evade federal regulatory authority" (p. 10).

Furthermore, the introduction of this legislation illustrated an attempt by an aggressive federal government to enhance its potential economic role and influence. Despite having significant implications for the provinces, especially Quebec, this Bill was introduced without any prior consultation.

Bill S-31 sought to curb provincial government investment strategies, enhance federal control over such strategies, and strengthen federal
jurisdiction over transportation. It created, for the federal government, an alliance with major corporations, for whom "the Bill provided a bulwark against provincial government influence in profitable, nationally significant firms" (Tupper, p. 19).

It was generally acknowledged that the central purpose of the Bill was to curb the Québec crown corporation, the Caisse de dépôt et placement du Quebec, which already owned 9.4 per cent of Canadian Pacific Limited, from increasing its share of the giant corporation. The Caisse, established in 1965 to invest and administer the assets of the Québec Pension Plan, was one of several public corporations created by the provincial government to act as a vehicle for economic development and to promote the interests of francophone businessmen. Bill s-31 was perceived by the Québec government, as well as several other of the provinces, as an attempt by Ottawa to limit their economic options and curtail their investment strategies.

In 1983, the Bill was sent to the Senate Committee on Legal and Constitutional Affairs. In the spring of the year, this committee heard the views of numerous groups and individuals. On November 3, Minister of Consumer and Corporate Affairs Judy Erola announced a series of amendments to the Bill. She asserted:

Consultations were undertaken with provincial governments, Members of Parliament, private individuals and private sector representatives. These discussions have served to improve several aspects of the bill (translation) (Le Devoir, November 4, p. 1).

The amendments to the Bill included a clause specifying that the purpose of the proposed legislation was to protect federal jurisdiction over transportation. Moreover, the Bill aimed to limit its application to the transportation sector. Under the amendments, provincial governments and provincial agencies would be able to purchase as many shares as they wished in a company covered by the legislation, provided they held less than 10 per cent of the "voting" shares.

Another amendment -- and the only one of any significance, according to the Caisse -- exempted from the force of the proposed legislation, small interprovincial trucking companies with assets of less than 20 million dollars. This change was included so that provincial investment funds would not, for example, be prevented from buying more than 10 per cent of the shares of a manufacturing firm or conglomerate that happened to own a small interprovincial trucking company as a subsidiary.

The amendments were not greeted with enthusiasm, especially in Québec. A contentious clause, providing for the measures contained in the legislation to be retroactive to the date at which the Bill was introduced (that is, November 2, 1982), remained. Critics felt that the most serious flaws in
the original Bill had not been removed as a result of the amendments announced in November 1983.

Opposition to the Bill, primarily from Québec, swelled in the latter part of 1983. Spokesmen from the Caisse de dépôt et placement argued that the Canadian Transport Commission had the power to ensure the protection of the national interest. It could disallow any change of control, mergers, acquisitions and other modifications in the status of transportation corporations if justified in the public interest.

Several of the provinces, as well as the federal Progressive Conservative Party, criticized the federal government's lack of consultation, its centralizing tendencies, and the fact that the Bill was unnecessary. Some of the Progressive Conservative provincial governments downplayed Bill S-31's implications for the relationship between the private and public sectors.

Ironically, the federal Progressive Conservative Party, which is committed to reducing the position and influence of Crown Corporations, assumed the role of defending the interests of Quebec and the Caisse in the House of Commons. Opposition leader Brian Mulroney stressed to his caucus that the Bill was seen in Quebec as a direct attack on the Caisse, something which had the same cultural importance there as did the Crow's Nest Pass rate in the West (The Gazette, December 16, p. B3).

Bill S-31 died on the Order Paper in November 1983 at the end of the Parliamentary session. Judy Erola implied in a statement to the House of Commons that a similar Bill would be introduced in a new session in 1984. (House of Commons Debates, November 23, p. 29116).

## 4. MEDICARE AND FISCAL FEDERALISM

> One of the principal federal-provincial debates of 1983 was over Medicare. This debate was spawned by two initiatives of the federal government. First was a unilateral amendment to the 1977 legislation creating the Established Programs Financing (EPF) arrangements for federal financing of health and post-secondary education. Second was the introduction of a new Canada Health Act in December. These two initiatives signalled an attempt by the federal government to attain greater control over provincial health care programs, while limiting its own level of contributions.

## BACKGROUND

The basis for the Canadian system of medical insurance is primarily contained in two pieces of federal legislation: the Hospital Insurance and Diagnostic Services Act (HIDSA), passed in 1957 and the Medical Care Act of 1966. Rather than a beginning though, the passage of these acts signified a culmination of many years of activity on both federal and several provincial fronts, and a new era of interaction between the two levels of government.

The idea of a national scheme of health insurance was introduced in 1945 at the Dominion-Provincial Conference on Reconstruction. As part of its "Green Book" proposals for restructuring the federal system, the federal government offered to pay to each provincial government sixty per cent of the costs of a comprehensive health insurance program that was nationwide in scope. The offer, however, was inextricably bound up with proposals for the transfer of major tax fields from the provinces to the federal treasury. Since the provinces were unwilling to give up a significant portion of their fiscal power, the proposal was not accepted. Because the matter of hospitals and health care is constitutionally within the purview of provincial jurisdiction, provincial governments had the option to accept or refuse the federal offer.

The next important development took place in the Province of Saskatchewan, where a compulsory, universal hospital insurance system was in place by 1947. Three other provinces subsequently introduced systems with varying degrees of coverage. A major step toward a national system of hospital insurance came at a federal-provincial conference in 1955. Ontario Premier Leslie Frost asked that the issue of health insurance be discussed at the conference with a view to producing a national plan, involving both federal and provincial participation. This move was supported by the four provinces with public health insurance plans, as the cost of funding these schemes was becoming onerous.

In 1956, the federal government placed a proposal before the provinces to inaugurate a national health insurance program giving priority to hospital insurance and diagnostic services. The following year, the Hospital Insurance Diagnostic Services Act was proclaimed and the program was implemented on July 1, 1958.

Federal contributions were made through a conditional grant-in-aid, with funds available only to provincial programs which were universally available. The HIDSA outlined specific services which were considered as insured services. Funding was based on an equal sharing of costs between federal and provincial governments.

Faced with the offer of federal cost-sharing, the six provinces which had not previously been involved in hospital insurance launched programs. By 1961, almost the whole population of Canada was entitled to comprehensive hospital care benefits.

It was at another federal-provincial meeting, the 1965 Conference of First Ministers, that a truly national, universal scheme of medical insurance -- the second phase in the development of the Canadian system -began to take shape. This time, the federal government took the initiative. Prime Minister Lester Pearson asserted that it was the responsibility of the federal government to cooperate with the provinces in making Medicare financially possible for all Canadians. The federal government was prepared to contribute to the provinces one-half of the national cost of insured medical services. The funds were conditional upon the provincial medical insurance plans being consistent with four principles:

1. The scope of the benefits was to include all the services provided by physicians.
2. The plan was to be universal, covering all eligible residents on uniform terms. ("Universal" was subsequently defined as 95 per cent of a province's residents.)
3. The plan was to be publicly administered.

## 4. Each provincial plan was to provide full transferability of benefits, allowing continuous coverage for persons moving from one province to another.

Only Saskatchewan and British Columbia qualified when the legislation initially came into effect on July 1, 1968. By December 1970, though, all ten provinces had comprehensive medical insurance programs qualified to receive fifty per cent federal funding.

Despite Pearson's efforts in 1965 to cooperate with the provinces and in spite of much intergovernmental consultation, these developments had somewhat damaged federal-provincial relations. Many of the provinces felt coerced into joining the program. Even though the federal government was contributing 50 per cent of the costs, most provincial governments were forced to allocate large portions of their budgets to Medicare which, accordingly, had a major impact on provincial priorities.

The magnitude of the federal grants being offered and the high level of public support for Medicare meant that the provinces had no real choice but to accept. As Malcolm Taylor (1978) has observed: "Such is the power of the federal purse even in areas outside its constitutional jurisdiction" (p. 375). Some provinces viewed this as "political blackmail."

The shared-cost arrangements created a number of problems as Medicare expenditures grew substantially during the 1970s. By the middle of the decade, most governments were prepared to abandon these in favour of some new funding arrangement. The provincial governments complained of rigidity in the system and lack of flexibility concerning spending priorities. They opposed the detailed controls exercised by Ottawa. The federal government was unhappy with the open-endedness of the system and wished to be able to predict cost increases.

Because federal funding covered only certain medical services, another problem developed. There was an incentive to emphasize the more costly curative health care services eligible for federal dollars, often at the expense of preventative and rehabilative medicine. Such features created cost inefficiencies and an imbalance in the overall health service system. They also had undesirable steering effects upon provincial priorities in the health policy field.

A desire for changes in the funding arrangements led to a series of intergovernmental meetings in the mid-1970s. The result was a complicated formula encompassed in the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act of 1977.

According to the 1977 legislation, each provincial government was to receive a "block fund" from the federal government in the form of a transfer of tax points and a cash payment. Each of these two parts was to
yield, after a phase-in period of five years, fifty per cent of the transfer payment. The initial amount was based on the federal government's actual contribution in 1975, and this was to be increased annually according to population and per capita increases in the Gross National Product (GNP). Henceforth, federal contributions for health insurance and post-secondary education would not be related to actual program costs.

This arrangement enabled the federal government to limit and to predict its expenditures. Moreover, it provided the provincial governments with greater flexibility since they could allocate the federal contribution as they wished between the health insurance and the post-secondary education components. Indeed, since payments were made to the provincial treasuries and were not tied to program costs, there was no longer any direct link between the federal transfer and provincial spending on health and post-secondary education. The 1977 arrangements also provided for a transitional adjustment payment if tax revenues lagged behind the growth in GNP.

When the original agreement expired after five years, Ottawa and the provinces were unable to agree on a subsequent fiscal arrangement. In 1981 the federal government announced its intentions to introduce new health legislation which would clarify the principles of Medicare and would come to terms with some of the purported abuses. Negotiations broke off in 1981. In April of the following year, the federal government passed Bill C-97, the first of two unilateral amendments to the 1977 legislation which had created the Established Programs Financing (EPF) arrangements. While the provinces were satisfied with the arrangements made in 1977, the federal government disliked its lack of control over spending and its lack of visibility. Moreover, in this period of restraint, the federal government had become increasingly upset with the large payments it was obligated to transfer to the provinces. Bill c-97 set the level of the federal contribution for a one-year period.

THE FEDERAL INITIATIVES OF 1983
EPF Amendment
One of the two important federal initiatives of 1983 which related to Medicare was a second amendment to the EPF legislation; this was introduced in the House of Commons on May 2. According to Bill C-150, the federal government unilaterally allocated its EPF funds between the health care and post-secondary education components, and then set the level of its contributions for each of these. It capped increases in the education portion of the EPF block fund. Clause 6 of Bill C-150 provided for changes in the method of calculating the escalator for the 1983-84 and 1984-85 fiscal years, so that it imposed six per cent and five per cent limitations respectively in the growth of the per capita entitlement applicable in respect of the education program. This corresponded to the federal government's own restraint program of "6 and 5."

This 1983 amendment had three important consequences. First, it reduced the amount of revenue the provinces would receive in the area of social programming. Second, and perhaps more important in the long term, it suggested that the federal government was retreating from the principle of block funding. The "targetting" of federal funds was designed to strengthen provincial accountability for the expenditure of federal funds. A third consequence of the 1982 and 1983 amendments was the removal of predictability that accompanied the establishment of EPF financing in 1977. The provinces now live from "year to year" under the threat of financial cutbacks imposed by the federal government.

Bill C-150 was permitted to die on the Order Paper, having only received first reading by the time the parliamentary session ended in November 1983. The provisions of the bill, however, were to be reintroduced in the House of Commons in 1984. Also introduced in the new session of Parliament, which commenced in December 1983, was legislation providing for a new Canada Health Act.

## Canada Health Act

A new Canada Health Act was first proposed by the federal government on May 26, 1982. It was to serve the purpose of "consolidating existing legislation and clarifying the national standards for insured medical and hospital services" (Health and Welfare Canada. News Release). The legislation was eventually introduced in the House of Commons on December 12, 1983 and tabled as Bill c-3.

The federal government was concerned that the principles underlying Medicare were being eroded by certain practices within some of the provinces. These practices included extra- or direct-billing and the charging of hospital user fees.

Extra-billing occurs when a physician bills for his services an amount in addition to that paid by the health care insurance plan of a province; the patient is responsible for the difference. User fees are charges for insured medical services which must be borne by the patient. These practices had increased significantly in recent years. According to federal Health and Welfare Minister Monique Bégin, the annual cost of these practices to patients nearly doubled in Canada between 1978 and 1983 (Statement, December 12). Moreover, the practice of extra-billing tended to be concentrated in certain communities and was most widespread in some of the specialized medical fields, so that it was difficult to obtain services without paying a portion of the doctor's fee.

According to the federal government, extra-billing and user fees were eroding the principle of "universal accessibility." Federal Health Minister Monique Bégin argued that some individuals were being denied access to insured services. Implicit in the federal argument was the notion that
user fee revenues contributed little to provincial health care funding, yet these charges imposed a serious barrier to some individual Canadians, especially those in lower income brackets.

Even greater concern was expressed by the federal government about the continued growth of these practices in the future. If not curbed, a two-tlered system of health care could be the result: one for the rich and one for the poor. For the federal government, this would have contravened the spirit of Medicare, the preservation of which required that the same level of service be available to all Canadians.

The provinces varied considerably with respect to user fees and extra-billing, as well as on the issue of hospital premiums. Only three provinces charged health care premiums: Ontario, Alberta and British Columbia. Québec levied a three per cent tax on employers. The practice of extra-billing was prevalent in eight of the provinces. Only Quebec had made it nearly impossible for physicians to extra-bill by forbidding patients to seek reimbursement from the government plan. In British Columbia, doctors had voluntarily agreed not to engage in this practice. Hospital user fees, other than charges for prolonged care, were levied by four of the provinces.

The proliferation of these practices brought out two weaknesses in the existing legislation. It was not clear how widespread and how large extra-billing and hospital fees must be before they constituted barriers to universal access. Second, the federal government could impose no sanctions other than a complete withholding of transfer payments. The proposed legislation was designed to overcome both these inadequacies.

In a Government of Canada position paper entitled Preserving Universal Medicare, published in July 1983, the basis for the federal government's position was expressed:

We can only preserve Medicare by ensuring its basic principles.... But the erosion of Medicare is sufficiently widespread to constitute a national problem.... Existing legislation is not adequate to deal with the problem because it does not clearly tell the provinces, health care providers and the public that direct charges for health services will not be supported (p. 33).

The proposed legislation was to replace the Hospital Insurance and Diagnostic Services Act and the Medical Care Act. The new Act reaffirmed the principles upon which Medicare was founded. Moreover, it defined "universality" as one hundred per cent of the residents of a province. More important, the Canada Health Act specified practices which were deemed to be inconsistent with these principles. Extra-billing and the charging of user fees were both cited. The new legislation provided for appropriate
sanctions which the federal government could impose on an errant province. Federal payments, equivalent to the amount that was extra-billed or raised through user charges, could be withheld.

With these measures, the federal government had ostensibly tried to combat the practices which it had claimed were eroding the principles of Medicare. Beyond this, however, these provisions indicated an attempt to shift the balance of power toward the centre. The proposed Canada Health Act enabled the federal government to exert greater control over provincially-delivered Medicare programs, giving it some leverage over which mechanisms provincial governments could use to raise revenues for financing health care.

Two provisions in the proposed legislation sought to meet the objective of attaining greater accountability and visibility for federal funds. One required that "reasonable information on the operation of the program" be supplied by the provinces to the federal Minister of Health (Canada Health Act, Sumary, p.2). The other stipulated that federal contributions to Medicare be given "appropriate recognition" (Bill C-3, Section 13).

## PROVINCIAL REACTION

Three general lines of argument can be discerned in the provinces' reaction to the federal initiatives. First, they objected to the federal government's characterization of the situation in "crisis" terms. They asserted that neither the health care system nor the principles upon which it was based were being eroded. As evidence, they cited the small percentage of health costs that were actually being paid by the patient. They pledged their commitment to the principles of Medicare.

Premier Bill Davis of Ontario, in his capacity as chairman of the Annual Premiers' Conference, wrote a letter to Prime Minister Trudeau on August 26, affirming that all the provinces,
...no less than the federal government, are committed to maintaining the basic principles of our health insurance system.

Davis stated that the federal position paper did not clarify the steps that the government may take to correct the problems it perceived in the health care system. Nor did it deal with the question of financing health care. Davis concluded that the provinces were unable to assess how the proposed federal legislation would affect their programs.

Some provinces tried to make a case for a limited amount of extra-billing. They argued that extra-billing enabled physicians to maintain the spirit of free enterprise and competition, which resulted in better service.

Second, the provinces claimed the federal government was intruding into provincial jurisdiction. Charles Gallagher, New Brunswick Minister of Health, expressed a view shared by his counterparts in the other provinces. In a speech to the New Brunswick Hospital Association, he stated that he did "not agree that the federal government has the right to determine the service or method of delivery of service in the provinces" (quoted in St. John Telegraph Journal, June 27, p. 7). Although it was questionable that the Canada Health Act was actually doing this by clarifying the definition of the Medicare principles and by penalizing certain revenue-raising practices, this line of argument often figured prominently in provincial responses to federal initiatives.

Third, the provinces felt that the federal government's focus on user fees and extra-billing missed the crux of the problem in the health care system: inadequate federal funding. In fact, it was argued that a major reason behind the existence of the so-called erosions of Medicare was the lack of adequate funding. It was asserted that extra-billing enabled the provinces to keep the physicians' fee schedule lower than it would otherwise be. The charging of user fees had been implemented in some provinces in order to raise extra revenue and to cut costs by reducing some of the purported abuses of the system.

## FEDERAL FUNDING

For the provincial governments, the main issue concerned federal government funding. They asserted that the underlying cause of the problems within the health care system was a lack of money. The costs of health care had risen more rapidly than the revenue flowing from the federal government. Their solution was either to have the federal government increase its transfer payments to the provinces, or to be forced to shift the financial burden, at least partly, to the patient.

The provinces acknowledged that federal contributions, as a proportion of health care costs, rose immediately after the implementation of the EPF program. This was due both to a high GNP escalator incorporating the inflationary growth of the mid-1970s, and to a slowing of the rate of provincial spending on health insurance programs as a result of the greater flexibility allowed by block funding. The federal share peaked in 1979-80, and has been declining since. Unfortunately for the provinces, this decline has coincided with a rapid increase in costs.

According to the provincial governments, Ottawa's support of total health spending peaked at 47.8 per cent in 1979-80 but by 1982-83 had fallen below 40 per cent ("Federal Proposal to Reduce Health and Post-Secondary Education Financing." Statement by Provincial Ministers of Finance and Treasurers, April 1983, Table 3). In her statement to the Conference of Provincial Ministers of Health on September 7, federal Health Minister Monique Bégin asserted that the federal government has always paid and was
still paying around 50 per cent of the cost of "Medicare." Only when including all additional health care services offered by some of the provinces, did the federal share become 40 per cent, but this had always been the situation.

This semantic distinction between "Medicare" and "health care" is one factor which may partly explain the different assertions. While the federal government may have continued to pay 50 per cent of the costs of those services eligible for federal funding under the HIDS and Medical Care legislation, its contribution had dropped to below forty per cent of the total cost of "health care."

A second factor which may help explain the different estimates of the federal government's share relates to the division of the federal contribution between the two components under the EPF arrangements. In 1977, Ottawa assumed that 32.1 per cent of its transfer was for post-secondary education, even though actual provincial spending on this component accounted for only 27.2 per cent of the EPF funds. According to the document issued by the provinces in April, this percentage has since been reduced, on average, to under 25 per cent, although it varies according to province (Statement by Provincial Ministers of Finance and Treasurers, Table 4).

During the first five years under the block funding arrangement, the split assumed by ottawa made no difference to the provinces because they were able to allocate the funds as they wished. However, the 1983 amendments, as contained in Bill $\mathrm{C}-150$, made certain assumptions about this division. The Bill subjected the transfer payment for the post-secondary education component to its " 6 and 5 " restraint program. Increases would be restricted to six per cent and five per cent in the subsequent two fiscal years. Although, as the federal government itself announced, "the health part of the block fund is specifically not subjected to the restraint program", (Preserving Universal Medicare, July 1983, pp. 29-30), the contribution to health care was affected. Because the federal formula was based on the assumption that about one-third of its EPF transfer payment was spent on post-secondary education, rather than the more accurate fraction of one-quarter, the capping of increases to this sector effectively reduced the funds for health care.

It was primarily the question of federal funding which created a stalemate in the intergovernmental debate over Medicare. Begin, in her statement at the September federal-provincial meeting in Halifax, said that the federal position "categorically rejects the view that our problems are due to cuts in the transfer of funds on the part of the Government of Canada" (p. 5). Prince Edward Island Health and Social Services Minister Albert Fogarty summed up the provinces' position: "There is no solution until the federal government admits and recognizes that its contribution to
health care is not keeping up with provincial expenditures" (quoted in Charlottetown Guardian, September 16, p. 5).

## dEVELOPMENTS IN THE CANADIAN HEALTH CARE SYSTEM

The Medicare debate of 1983 included another element which was not directly addressed by the new Canada Health Act, but which also had a federal-provincial dimension. Apart from the purported obstacles to universal accessibility, a more troubling set of problems seemed to have permeated the Canadian health care system in recent years. Escalating costs tended to be accompanied by a decline in the quality of service. Longer delays for elective surgery, budget cutbacks and the closing of hospital beds, and the use of outdated equipment in some hospitals, were causing concern among Canadians. Questions had been raised about the future. In light of the changing demographic characteristics of society, would the present system be able to handle the increased demands of an aging population?

Implicit in the position of the provincial governments was the idea that any problem which may have developed within the health care system was due to inadequate funding and, as such, could be rectified by appropriate changes in fiscal financing arrangements. The federal government rejected this notion. Monique Begin stated that for most of these problems, "additional resources would yield only marginal improvements in health" ("Address at 5th Biennial Northeast Canadian/American Health Conference", Halifax, September 15, p. 8).

The allocation of the limited funds available for health care had become increasingly important. The overall orientation of the system was being questioned. Some groups advocated that a shift in emphasis be made toward preventative and rehabilitative care and away from the more expensive curative approach.

Questions had also been raised about the allocation of resources within the present system. It was suggested that better service could be attained without a substantial increase in cost. The health care system tended to use more expensive personnel and facilities to perform services that could be handled less expensively outside hospitals and by health personnel other than physicians.

## FEDERAL-PROVINCIAL INTERACTION

The introduction of new health legislation, enforcing the principles of Medicare, had been anticipated since 1981. At the EPF negotiations of that year, the federal government had announced plans for new legislation to regain some control over health insurance programs. The position of the federal government was hardened by a number of provincial initiatives in 1983.

It was the issue of hospital user fees which had the highest profile on the federal-provincial agenda. At the beginning of the year, only British Columbia had a general system of user charges. On March 29, the Government of Alberta announced a scheme to charge hospital user fees commencing October 1, 1983. Begin responded by suggesting that the federal government could withhold its transfer payment to Alberta for health care (totalling 244 million dollars) (Globe and Mail, March 30, p. 1).

The situation was aggravated when, on May 6, the New Brunswick government announced that it was planning to impose hospital user fees to commence the first of July. Sensing that this practice was becoming too widespread, Begin criticized British Columbia's scheme of user fees; this was the first public denouncement of the western province's program, even though it had been in practice for several years (Toronto Star, June 25, p. A13).

The federal government was further incensed when the Government of Alberta decided to crack down on those who were three months or more in arrears on their medical premiums as of october lst. This spawned an angry reaction from Begin who asserted that under the terms of the new legislation, removing medical insurance coverage would violate the principle of accessibility.

The provinces and the federal government viewed the health care issue from radically different perspectives. Useful dialogue between the two on this issue was nearly absent in 1983. The two sides were unable to agree on either the nature or the source of the problem.

The Ministers responsible for health care in each of the provinces and in the federal cabinet met, at the invitation of the provinces, in Halifax on September 7. This was the first formal meeting to discuss Medicare since May 1982, although there had been bilateral meetings of ministers and two full federal-provincial meetings at the officials level in the interim.

The meeting was unsuccessful. According to Bégin, it was "quite a waste of time" because the provinces did not make any proposals (House of Commons Debates, September 12, p. 26993). Provincial spokesmen complained that although the federal minister had been invited specifically to talk about financial problems facing Medicare, she had claimed that these issues were the responsibility of the finance minister (The Gazette, September 13, p. B1). The positions of the two sides were hardened and the federal and provincial governments remained far apart.

Ontario Premier Bill Davis, as chairman of the Annual Premiers' Conference, wrote to Prime Minister Trudeau on October 21, requesting a joint meeting of federal and provincial ministers of health and finance "to discuss the financing of our health care system." Prime Minister Trudeau responded on November 16 by questioning the need for a meeting on the financing aspects of health care at this time. He reiterated the position
of his health minister that "the issue is one dealing with the very integrity of a universal medicare system, not one of financing." He considered the system to be adequately funded and the size of the federal contribution to be consistent with the EPF arrangements established in 1977. Moreover, Trudeau criticized the provinces for failing to address the basic issues facing Medicare. Davis expressed disppointment at the "failure of the federal government to consult adequately with the provinces on the Canada Health Act prior to its anticipated introduction in the House of Commons" (Reply, November 29).

The actions of governments with respect to the Medicare debate exhibit some of the "classic" elements of New Federalism in Canada -- unilateral action, lack of consultation, concern for "visibility" and "getting the credit", and attempts at enforcing greater accountability. They also exemplify the impact of the recession, through cutbacks in federal funding of a provincial program, and through a general attempt to shift the "problem" from the federal to the provincial level.

No consultation occurred prior to federal government announcements regarding changes to federal-provincial fiscal arrangements. Unlike the 1960s, when the federal government used its spending power to entice provincial governments to enter into universal social programs such as Medicare, the federal government was changing the rules in a manner which shifted the problem of controlling costs to the provinces, while cutting back on transfer payments to provincial governments for cost-shared universal social programs.

Provincial initiatives taken in the face of the anticipated federal legislation suggest that the politics of the New Federalism were not entirely one-way. These actions, such as the imposition of user fees, were taken unilaterally, without consultation and, perhaps to some extent, in defiance of the federal proposals. They may be viewed as an assertion of provincial authority in reaction to federal initiatives which the provinces saw as encroaching upon their jurisidiction.

## 5 RESTRUCTURING THE ATLANTIC FISHERIES

1983 was an important year for the Atlantic fishing industry. Seriously damaged by the economic recession, major restructuring was considered to be the only means of achieving long-term stability. The federal government and three of the eastern provincial governments directed substantial energy in 1983 toward solving the problem of the fisheries. Federal-provincial relations in this sector vascillated between the extremes of bitter acrimony and unilateralism on one hand, and compromise and the signing of two very significant agreements on the other.

There were a number of competing tensions in the battle over the restructuring of the Atlantic fisheries. These were generally manifest as federal-provincial conflict. There was tension between the federal government and the Government of Newfoundland concerning the primary objective of restructuring -- maximum employment versus economic rationalization. This philosophical debate took place, to a large extent, in the context of the fate of two or three small. Newfoundland fish processing plants. Governments held differing views concerning the extent of public investment which was deemed acceptable. This tension between public and private capital was central to the Ottawa-Nova Scotia negotiations. There was also intergovernmental conflict over jurisdictions; this has traditionally been a policy area where such boundaries have been unclear. Caught in the midst of these various struggles was the future of the fishery sector and, possibly, Atlantic Canada itself.

## BACKGROUND

An overview of the economy of the Atlantic provinces reveals the central importance of the fishing industry to this region. More than one-quarter of the population of the Atlantic provinces lives in small fishing communities. At least one-half of these communities have essentially single-sector economies, with fishing and fish-processing employing 30 per cent or more of the labour force (Report of the Kirby Task Force, 1982, p. 23).

Constitutionally, both federal and provincial governments have claims on certain aspects of the fishing industry. Although the federal government has primary responsibility for the fishing sector, having been given exclusive jurisdiction under Section 91 of the Constitution Act, 1867 for "both the Sea Coast and Inland Fisheries", the provincial governments have some jurisdiction resulting from their power over "property and civil rights of the province" (Section 92). Responsibilities of the federal government include the establishment of quotas, by species, on the total allowable harvest of fish; the allocation of quotas (who may catch how many of which species, and where); inspection; licensing of fishermen and vessels; and the construction and upkeep of harbours. The provinces have control over the processing activities related to the fishery resource once that resource is harvested (Weeks and Summerville, 1982, p. 16).

In 1921, the federal government delegated to the Quebec government the administration of that province's fisheries in tidal waters and in those waters navigable from the sea. Responsibility for quota allocations still rested exclusively with the federal government.

Problems in the Atlantic Fisheries
The Atlantic fisheries industry has been in a state of economic crisis for several years. Most problems are complex and deeply rooted, influenced by both the internal structure of the industry and external economic phenomena.

Over-capacity in both the harvesting and the processing sectors has been a major issue. This is an inherent problem in any common property resource industry, where the incentive is for any individual to bring in as much as he can (Weeks and Mazany, 1983, p. 25). Although the fishing industry is heavily regulated by government, it is impossible to control it completely.

The seeds of the 1983 crisis were sown in 1977 when jurisdictional limits were extended to 200 miles. The number of fishing licenses greatly increased at that time. Optimism and great expectations in the Canadian industry led to a general financial over-extension, which exacerbated the effects of the subsequent recession.

It has also been suggested that federal government policies to alleviate unemployment in the Atlantic region, and to subsidize fishermen and the industry, have had the twin effects of encouraging new people to enter the sector (giving the appearance of a healthy industry), and of discouraging people from leaving the industry (Weeks and Mazany, 1983, pp. 28-9).

Over-capacity exists in the processing industry, in terms of both the number and the capacity of plants. Because of the seasonal nature of the fishing industry, however, there are peak periods during the year when this abundant capacity in the processing sector is necessary. The problem of
over-capacity is complicated by social factors. Processing plants are; as previously noted, the major employer in many small Atlantic communities. The closing of some plants to enhance the economic viability of the industry could have serious social ramifications.

Other problems in the Atlantic fishing industry relate to the quality of the product and marketing. Many of the processes commonly used by Canadian fishermen result in the production of a lower quality commodity, which dictates a lower price on the world market. Furthermore, the industry has been hurt by the absence of a concerted marketing effort.

These problems in the Atlantic fishing sector have coincided, in recent years, with a number of trends in the world economy which have led to further problems for the Canadian industry. World demand for fish decreased after 1973. At the same time, there was an increase in supply on the world market, leading to a reduction in price. This coincided with an increase in production costs, primarily due to increased energy and interest costs resulting from the oil crisis and escalating inflation of the mid-1970s.

These factors resulted in financial trouble for most fish processing firms and the subsequent closing of several plants. During the summer of 1983 eleven plants in the Atlantic region were shut down (Charlottetown Guardian, August 18, p. 1). The roots of the current crisis in the industry can be summarized thus:

1. Optimism following the 1977 extension of the fisheries jurisdictional limits led to financial over-extension. The negative effects of this were exacerbated by the subsequent recession.
2. There has been a resistance to change and adjustment in this "tradition-bound industry." The traditional volumeorientation of fishermen, processors, and governments has been slow to change toward a market-driven approach.
3. The "politics" of the fishery have inhibited change, sheltered the less efficient, and created a combative or conflictual atmosphere for the various participants.
(from Michael Kirby, "Statement on the Release of the Report of the Task Force on Atlantic Fisheries", February 17, p. 2)

In November 1981, two of the four major fish processing firms on the east coast applied to the federal government for financial assistance. These were The Lake Group Limited of St. John's, Newfoundland and H.B. Nickerson and Sons Limited of North Sydney, Nova Scotia. Since this was a recurring problem, the government felt compelled to seek a long-term solution. A
task force, chaired by Michael Kirby, was established by the federal government in January 1982. It was given a dual mandate: first, to advise the government on long-term policies to be implemented which would promote a healthy fishery; and second, to deal with the specific 1981 requests for financial assistance. These two mandates were closely linked, the second to ensure that any decision on financial assistance would be consistent with the long-term policy view.

Kirby's report, presented to the federal cabinet in December 1982, fulfilled the first of these mandates. The 1983 saga of the Atlantic fishery began with the public release of that report on February 17.
the report of the task force
Entitled Navigating Troubled Waters, A New Policy for the Atlantic Fisheries, the task force report contained 21 chapters. The first eight comprised a profile of the fishery sector and the industrial environment of the Atlantic region generally. Included were three policy objectives which provided the rationale for the 57 recommendations embodied in the final 13 chapters. These objectives were subsequently endorsed by the federal government. In order of priority, these were as follows:

1. The Atlantic fishing industry should be economically viable on an ongoing basis, where to be viable implies an ability to survive downturns with only a normal business failure rate and without government assistance.
2. Employment in the Atlantic fishing industry should be maximized subject to the constraint that those employed receive a reasonable income as a result of fishery-related activities, including fishery-related income transfer payments.
3. Fish within the 200 -mile Canadian zone should be harvested and processed by Canadians in firms owned by Canadians wherever this is consistent with the first two objectives and with Canada's international treaty obligations.

Each of chapters 9 to 21 was centred on a specific issue or problem as perceived by the task force and each was accompanied by recommendations aimed at correcting that problem. Covered in these chapters was a wide range of matters from the general "International issues" and "Marketing" to specific issues such as "The Northern Fisheries" (dealing with one grossly underdeveloped area), and "The Harvesting Sector."

In his separate statement, Micheal Kirby gave his rationale for the plethora of recommendations contained in the report (February 17, pp. 4-11). He argued that to ensure economic viability for the industry,


#### Abstract

improved marketing efforts, improved fish quality, and more efficient production must all be achieved. Only then would the industry be able to sell its products at profitable prices. It was also necessary to improve resource allocation in a way that would be of greatest benefit to the industry as a whole, and to address the situation of the fishermen, focussing on the stabilization and supplementation of their incomes. The various recommendations together were designed to enhance these goals. Kirby concluded by emphasizing that the industry must be seen as a complete system of harvesting, processing and marketing.


The Federal Proposals
With the release of the task force report on February 17, federal Minister of Fisheries and Oceans Pierre De Bane announced that the federal government accepted the policy objectives and most of the recommendations found in the report (Fisheries and Oceans, News Release). In the ensuing months, all but one of the 57 recommendations were endorsed by the federal government (Globe and Mail, July 5, p. 1).

De Bane estimated the cost of implementing the Kirby recommendations at 198 million dollars over the next five years. of this, 120 million dollars was for total annual operating expenditures and the balance for spending on capital grants and contributions. The latter included 28 million dollars for generic promotion of fish products and 20 million for a program for export market development.

In his February 17 announcement, the federal minister referred to the second mandate of the task force. De Bane announced that substantial restructuring of the processing sector would be required to solve the immediate financial crisis of the two companies requesting assistance in 1981. The situation had been complicated in November 1982 by a request for financial assistance from a third company, Fishery Products Limited of St. John's, Newfoundland. Negotiations for restructuring had been under way for several months, with the Kirby task force bargaining on behalf of the federal government. Talks were conducted on a bilateral basis with the Governments of Newfoundland, Nova Scotia and Quebec. The situation, and hence the solution, was unique in each of these provinces. The Bank of Nova Scotia was party to both the Nova Scotia and the Newfoundland negotiations because of large loans owed it by the financially-troubled companies in these two provinces.

## NEWFOUNDLAND

Position of the Provincial Government
On March 23, 1983, a "Presentation by the Government of Newfoundland and Labrador to the Federal Cabinet Committee on Fisheries Restructuring" was submitted. This document asserted $\because$ that the primary objective of
restructuring ought to be the maximization of the benefits to the residents of the Province from the development of this industry, as opposed to a profit-maximization objective. The Newfoundland government did not see a corporate reorganization in itself as a solution; this must be combined with fundamental structural changes in the industry.

The Newfoundland position was summarized into twelve points at the end of the document. Among these were:

- the maintenance of the existing corporate structure within the processing sector;
- a recapitalization plan to be negotiated jointly by the two governments;
- a social contract between the unions and the companies involving a program of restraint and productivity enhancement;
- a program allowing members of the Fishermen's Union to acquire shares in the recapitalized plants;
- a rejection of proposed closures of various plants (with a review to be held after three years); and
- the upgrading of several of the plants, including those at Burin, Fermeuse, Grand Bank and Gaultois.

An essential difference between the proposals of the Newfoundland government and the position of the Kirby task force was whether the restructured company should be more of a "social fishery" or a business endeavour. Premier Brian Peckford of Newfoundland emphasized the social element arguing, above all, for the industry to maintain as much employment as possible and to allow all plants the opportunity to remain in operation. Kirby asserted the view that the first priority must be for the industry to become economically viable. His report stated:

If preserving jobs in rural communities is of fundamental importance, but permanent public subsidies are not available to preserve every job in every community that is now dependent on the fishery, then an economically viable industry in both the harvesting and processing sectors must be the first priority objective; otherwise, employment in the fishery will be forever insecure and unstable ( p . 65).

During an April 8 news conference, Peckford criticized the five Liberal Members of Parliament in the House of Commons from Newfoundland for not supporting the position of the Newfoundland government. He accused them of
either remaining silent or refusing to take a firm stand. Reports circulated that the proposals of the Newfoundland Government had created divisions among the members of a federal Cabinet committee on the corporate restructuring, with its chairman, Pierre De Bané, apparently siding with some of the Premier's ideas (Globe and Mail, April 8, p. B1).

## Negotiations

Negotiations between representatives of the two governments had continued throughout the winter of 1983. These focussed on the restructuring of the three largest Newfoundland processing companies, including the two which had applied for federal assistance. Discussions in the latter stages centred upon the creation of a single large company built upon the assets of the three.

The most contentious issue of the negotiations illuminated the philosophical difference between the two governments. It concerned the fate of unprofitable plants generally and three plants specifically those at Burin, Grand Bank and St. Lawrence. The federal government took the firm position that the new company must have the right to close plants which were not economicially viable. The federal Cabinet had a report which showed that the new company would lose 50 million dollars over a period of five years if it had to operate the plants at Burin and Grand Bank (reported in Globe and Mail, November 5, p. 10). Moreover, it was believed that if affected workers were willing to commute to neighbouring villages, the communities in question would be able to survive.

A successful agreement seemed imminent in May when Pierre De Bane and his Newfoundland counterpart, James Morgan, twice reached tentative agreements. According to the federal minister, a May 17 proposal, signed by both men, provided for the merging of the plants at Burin and Grand Bank with neighbouring plants, and for the closing of operations at St. Lawrence (Statement by De Bane, July 4). Although this arrangement was to be financed entirely by the federal government, it was rejected by Newfoundland Premier Brian Peckford. A second agreement was reached the next day between Morgan and De Bané. It provided for the fate of these plants to be determined by the management of the new company. This proposal was also unacceptable to Peckford. The Newfoundland premier insisted that a three-year moratorium be placed on the proposed closing of the plants at Burin and Grand Bank. The rejection of these two tentative accords soured relations between the two sides at the bargaining table.

Negotiations over the restructuring of the Newfoundland fishery continued until June 30 when, to the apparent surprise of the federal government, Premier Brian Peckford announced that talks had reached an impasse. Specifically, he claimed that agreement could not be reached concerning the closing of the plants at Grand Bank and Burin. Newfoundland spokesmen stated that the federal government had refused to negotiate, except on the
condition that these plants remain closed in the short-term and that their future be determined in the long-term by the management of the restructured company (reported in St. John's Evening Telegram, July 2, p. 1).

## Federal Action

The federal government considered further negotiations with the Newfoundland government to be fruitless. Hence, on July 4, the federal Minister of Fisheries and Oceans announced in St. John's, Newfoundland that the Government of Canada had no choice but to proceed to restructure the industry on its own and to pay the full cost of doing so. De Bané acknowledged that fish processing was a matter of provincial responsibility and that the federal government could just walk away from the problem. In a subsequent newspaper advertisement, the Department of Fisheries and Oceans asserted that Ottawa had no intention of taking over the province's clear jurisdiction in fish processing and hoped that the federal shares in the new company would soon be able to be sold back to the private sector (in St. John's Evening Telegram, August 8, p. 15). The main elements of the federal package included:

- the creation of a new Newfoundland-based deep sea company to be formed around a merger of the Fishery Products, The Lake Group and John Penny and Sons companies with the assistance of the Bank of Nova Scotia, with whom the federal government had signed an agreement;
- funding for the new company to be through an injection of more than 75 million dollars by the federal government and a substantial conversion of debt to equity by the Bank of Nova Scotia (The federal government was to be the major shareholder in the new company);
- the future of the plants at Grand Bank, Burin and St. Lawrence to be decided by the new management; and
- the guaranteed reopening of three other plants. (In its August 8 newspaper advertisement, the federal Department of Fisheries and Oceans explained that the survival of the communities at Ramea, Gaultois, and Harbour Breton depended on this guarantee and that this was the only reason decisions relating to these plants were not being left to the new management.)

Opposition to the federal plan was widespread throughout Newfoundland society. In a rather conciliatory telex to Prime Minister Trudeau, Premier Brian Peckford stated that the federal initiative was taking place in an area of provincial jurisdiction, "where joint federal-provincial co-operation on such an important issue would be the most desirable
approach" (August 9). He called for the establishment of a joint federal-provincial resource utilization task force. As well, he renewed his call for a social contract to be established for at least two years, and his plea for plants at Grand Bank and Burin to remain open for a three year assessment period, with the two governments sharing operating costs. On August 18, Peckford claimed that he had repeatedly asked the federal government to re-open negotiations but these attempts had been either refused or ignored.

The province had two weapons at its disposal. First, it could refuse to issue processing licenses to the new federal company. Second, it could choose not to convert into equity in the new enterprise its more than 30 million dollars of loans to one of the repossessed companies --Fishery Products Limited. Another problem for the federal government concerned the major shareholder of Fishery Products Limited --the Canada Development Corporation (CDC). This federal Crown corporation and the federal negotiators were unable to agree on a value for its assets.

On August 24, John Penny and Sons Limited of Newfoundland went into voluntary receivership. During the next two days, the Bank of Nova Scotia placed the other two major fish processing companies in the province into receivership. Fishery Products Limited was put in this position after an unsuccessful attempt by the federal government to strike a deal with the CDC. Subsequently, the federal government, in concert with the Bank of Nova Scotia, managed to acquire all the shares of the other two Newfoundland companies.

Premier Brian Peckford stated on August 26 that it would be constitutionally impossible for the federal government to take over the entire industry. His finance minister, J.F. Collins, echoed this sentiment in a letter to the Globe and Mail, September 9.

The De Bane initiative was a naked intrusion into an area of provincial constitutional jurisdiction, which is intolerable for any province ( p .7 ).

The fishing industry was in a chaotic state at the end of the summer of 1983. There was evidence that the receivers of the three troubled Newfoundland companies were dumping their products onto the American market to reduce inventories and build up cash reserves. Premier Peckford suggested that the fate of these companies was the direct consequence of the federal unilateral action (St. John's Evening Telegram, September 14, p. 1). Prime Minister Trudeau asserted in the House of Commons that the Newfoundland premier must share the blame for the disaster in the fisheries industry (Debates, September 12, p. 26991).

There was a prevalent feeling in Atlantic Canada that what was happening was somehow planned by the federal government. James Morgan accused Ottawa
of trying to take over the province's resource at "bargain basement prices" (St. John's Evening Telegram, September 7, p. 3). Some observers suggested that if there were enough chaos, a short-term solution like a federal takeover might be politically acceptable (Halifax Chronicle-Herald, September 3, p. 1).

On September 7, the Government of Newfoundland recalled its 31.8 million dollars in loans to Fishery Products Limited. This made it necessary for the provincial government to be consulted before the assets of that company could be sold. The province agreed to give day-to-day extensions of its credit to the receivers.

The Federal-Provincial Agreement
By early September, it had become apparent within the federal cabinet that Ottawa could not reorganize the Newfoundland fishery alone. A new cabinet committee was created and secret negotiations recommenced between Michael Kirby and his Newfoundland counterparts. After two weeks of negotiations, culminating in a meeting between Brian Peckford and Pierre De Bané, an agreement was signed on September 26. The federal minister described it thus:
[W]e believe that it marks the start of a new day in relations between our two governments.... The agreement we have signed today is, without doubt, the most important bilateral agreement the Federal and Newfoundland Governments have signed since Newfoundland joined Canada in 1949 (from "Joint statement to the press", p. 1).

The Newfoundland premier shared in the feeling of conciliation, asserting that "both governments are pledged to work together to forge a new working relationship" (p. 5).

The agreement committed the two governments and the Bank of Nova Scotia to jointly spending 150.9 million dollars, combining the assets of seven troubled firms into one big company. The new corporation was to operate 33 fish plants generating more than 300 million dollars in annual sales. It was to be managed by an eleven-member board with the federal government nominating five people, the Newfoundland government three, the union and bank one each, and the two governments jointly choosing an independent chairman. The 27,000 member union was to be asked to participate in a "social compact", earning equity and decision-making power in the company in exchange for wage concessions and guarantees of labour peace.

The agreement was in many ways a compromise between the Newfoundland proposal and the federal plan announced in July. In a clear concession to Peckford, all three plants whose futures had been uncertain were to be re-opened in some capacity. Grand Bank was to open for an eighteen-month
trial period; the St. Lawrence plant was to re-open as an inshore feeder plant; and Burin was to become a fish-cooking plant. For the federal government, the plan remained similar to the one it had unveiled in July. Under the terms of the joint agreement, the federal government had the greatest representation of the board of directors of the new company.

Chief negotiator for the federal government, Michael Kirby, stated that, "in a dynamic negotiation like the one we've just gone through, which by the way was much more difficult than the constitutional stuff, you've got to deal in the real world. I think we've done that" (quoted in the Globe and Mail, November 7, p. 7).

Meetings were held in Ottawa in October between James Morgan and Pierre De Bane to discuss many aspects of the fishing industry, including the agreement to restructure the deep sea fishery. It was agreed that officials of the two governments would work together to implement the details of the accord. Generally, the meetings went well and Morgan asserted that they signalled a "new era of cooperation between the two levels of Government" (Government of Newfoundland, Statement, October 14).

An agreement was reached with Canada Development Corporation on October 26 for the new company to acquire all of CDC's equity in Fishery Products Limited (FPL), 49 per cent of the shares. None of the former shareholders of FPL would retain any equity in the new company. Although a number of complex financial and legal steps remained before the new company would be formally in place, the major obstacles had been overcome.

NOVA SCOTIA
Following the historic agreement between Newfoundland and the federal government, the attention of the fishing industry shifted to Nova Scotia where lengthy bargaining sessions were in progress. These culminated in an agreement-in-principle being reached between Plerre De Bane and Premier John Buchanan of Nova Scotia on September 30. According to the proposed deal, H.B. Nickerson Company was to be dismantled with two of its plants and sixteen vessels to go to its sister company, National Sea Products Limited. This would make National Sea Products Limited (NSP) the largest fish processing company in the world. A joint statement to the press asserted that,
the two governments have agreed to cooperate to facilitate the restructuring of the companies, with the aim of creating a commercially viable, privately-owned fishery (p. 1).

The restructured company was to be financed through equity conversion by both the provincial government and the Bank of Nova Scotia, plus an injection of new cash equity by the Government of Canada. It was later announced that the federal government agreed to pay 70 per cent and the

Nova Scotia government 30 per cent of the redevelopment costs, estimated at 50 million dollars (Halifax Chronicle-Herald, October 3, p. 1). The Nova Scotia government decided to convert 50 per cent of the 51 million dollar National Sea debt to equity in the restructured company. The injected funds were to be used primarily for upgrading facilities and equipment aimed at improving the quality of fish.

A proposal, presented to the Board of Directors of National Sea Products on October 17, provided for approximately 90 million dollars of common share equity to restructure the balance sheet of NSP. A consortium of the federal and Nova Scotia governments and the Bank of Nova Scotia would, as a result of this proposal, own in excess of 75 per cent of the common shares of the restructured NSP.

In November and December, officials and ministers from Ottawa and Nova Scotia tried to arrive at an agreement concerning the restructuring of the fishery. A number of outstanding issues remained. One point of contention concerned twelve scallop vessels which were owned by the Nova Scotia firm, H.B. Nickerson and Sons Limited. In its deal with Newfoundland, the federal government had conceded that these would be sold to the new Newfoundland corporation, although they would continue to operate out of Nova Scotia. The Nova Scotia government opposed this plan.

The province also expressed concern about the corporate structure of the new fish processing company. Nova Scotia insisted that the federal government not have majority control and wanted assurance that it would be returned to the private sector within five years. The federal government accepted this principle but was unwilling to set a time limit.

An issue which was resolved between the two governments concerned the question of access to the Gulf of St. Lawrence's redfish for Nova Scotia's offshore fleet. The federal government announced a three hundred per cent increase in the allocation of Gulf redfish to offshore fishing fleets, including a twenty per cent allowance to the government-owned fleet. In the agreement, the federal government guaranteed Nova Scotian companies individual allocations of Newfoundland northern cod (agreed to by Newfoundland in its recent accord) and Gulf of St. Lawrence redfish.

By early December, the federal government and the Bank of Nova Scotia had gained control of the province's two largest fish processing firms. Together, they controlled 56.5 per cent of the shares of National Sea Products (Halifax Chronicle-Herald, December 17, p. 1). There remained a public float of 12 per cent, while minority shareholders owned thirty per cent of the shares.

Seventy-five per cent approval from National Sea shareholders was required for a restructuring proposal to be accepted. In late December 1983, there were reports that a private proposal had been put together by a
group of minority shareholders. The viability of that proposal would be tested in 1984.

QUEBEC
The ninth recommendation of the Kirby task force report read as follows:
Consolidate federal management of the fisheries in the Gulf of St. Lawrence by resumption of full federal responsibility for licensing and other aspects of marine fisheries management in Quebec (p. 77).

When the report was released in February, the federal government announced that it was reserving judgment on this recommendation, pending discussion with the Quebec government and fishermen.

## Background

A special relationship between the Québec and the federal governments concerning the fisheries sector dates back to 1898. At that time, the two governments agreed that the fisheries could be managed by the province. Twenty-four years later, in 1922, "it was agreed that the administration of the fisheries in tidal waters be delegated to the Province in order to avoid double licensing and over lapping administration" (letter from Pierre De Bané to his Québec counterpart, Jean Garon, July 11, p. 2). According to federal Minister of Fisheries and Oceans Pierre De Bane, the provincial government was able to assume this responsibility because almost all the fishermen were using gear fixed to shore. "This meant that the Provincial Government could issue permits controlling the right of access while the Federal Government had the constitutional responsibility for all regulation respecting the exploitation and conservation of the resource" (p. 2). It was therefore possible to delegate the administration of federal regulations to provincial authorities.

During the 1960s, Quebec fishermen had begun to acquire increasing1y mobile vessels, thereby enabling them to operate in fishing zones which were equally accessible to fishermen from other provinces. Such was the situation in 1983 when the Kirby task force recommended that the federal government reassume the administrative authority it had delegated to the Province of Québec in 1922.

The first shot in the 1983 battle between Quebec and the federal government over jurisdiction in the fisheries sector came in April. on April 27, the Quebec government seized six fishing trawlers from Madelipêche Incorporated for default on mortgage payments. The Québec United Fishermen's Cooperative (UFC), which owned 51 per cent of the company, owed 2.7 million dollars in mortgage payments. The provincial
government, through the Societé de Développement Industriel, owned 49 per cent of Madelipêche Incorporated.

On May 3, the company's seven fish processing plants were seized by the Quebec Revenue Department. Four of these plants were allowed to resume operations on May 17, after the company's debt had been paid. The company received a 3 million dollar loan guarantee from the federal government. This was made available to enable the opening of plants, pending the results of the Kirby long-term study. Ottawa was offering an interim arrangement to keep operations going for two months, at which time it hoped to have definite plans on reorganizing and refinancing. Federal minister Pierre De Bane also expressed the hope that the province would release the six trawlers and rent them back to the company for a nominal sum.

The Quebec government introduced legislation in the National Assembly on May 19 which would place Madelipêche Incorporated in receivership. According to Bill 23, the powers of the board of directors were suspended and put into the hands of a three-member board appointed by the provincial Minister of Fisheries. Once accomplished, the company would be eligible for provincial government loans of up to 2 million dollars. Bill 23 was passed on May 25. Some observers felt that the actions of the provincial government were taken to prevent the federal government from gaining control of the industry.

The federal Department of Fisheries and Oceans initially refused to issue fishing permits for the six idle vessels, now in the hands of SOQUIA, a provincial crown corporation. A compromise was reached on June 2 between De Bane and Garon, whereby the federal minister would be able to name one of the three members on the board of directors of Madelipêche Incorporated. In return, federal permits were issued to the new owners, enabling the company to recommence full operations.

The Federal Plan
On July 11, the federal government announced its own development plans for the Québec fishery. The key element of the plan was the reassumption of responsibility for the management of all Quebec marine fisheries (except for two species of fish). The process was to be completed by April 1, 1984. Québec's status was to be elevated within the federal department to that of a full "Region", with its own Director General reporting to an Assistant Deputy Minister in Ottawa.

Pierre De Bané asserted that the increasing use by Québec fishermen of mobile vessels, enabling them to fish in areas accessible to fishermen from other provinces, led to the need for a cohesive administration of Atlantic fisheries.

The reassumption of federal responsibility underlines the government's commitment to the concept of managing the entire

Gulf fisheries as a cohesive unit (Fisheries and Oceans. News Release, July 11, p. 2).

De Bané wrote to his Québec counterpart to inform him of the decision taken by the federal government, and to propose that the "two Governments work together to ensure that it be carried out under the most favourable conditions" (p. 1). The federal government announced as well that 160 million dollars would be spent during the next five years on major development initiatives to broaden and strengthen the base of Québec's fishing industry and marine science.

De Bané's plan for the Québec fishery was to create a large corporation, with or without the participation of the Quebec government. In the House of Commons, on November 14, the federal minister announced that his government had struck a deal with the United Fishermen's Co-operative, the largest fish processing organization in the province, representing about fifty per cent of Quebec's fish plant workers. De Bane asserted that the Quebec government, which had passed legislation to take over the assets of the UFC, had even threatened the fishermen and plant workers with retaliation if they accepted the federal government's offer.

## The Provincial Reaction

The Quebec government reacted angrily to the federal initiative. Jean Garon asserted that Quebec would occupy its jurisdiction to the maximum, refusing to negotiate with Ottawa (quoted in Globe and Mail, July 12, p. 1). The provincial government opposed the concept of one large company in the province. Instead, it preferred a restructuring plan that varied from region to region. Jean Garon hoped to reorganize the fishery into three regional cooperatives (The Gazette, May 20, p. A-5).

The province's "official" response to the federal initiatives came with the introduction of Bills 48 and 49 in the National Assembly on November 16. These sought to reaffirm Quebec's jurisdiction in the fisheries sector. Whereas the federal government has control over fishing, the waterbed and shore were within the purview of the province. This enabled the Quebec government to require fishermen who laid gear on the waterbed to have provincial permits.

Bill 48 gave Quebec the power to grant commercial fishing rights in tideless waters, as well as the right to use shore or bed of tidal waters to affix or set up fishing gear and installations intended for commercial purposes. Essentially, this gave the province authority over the lobster and crab fisheries. In practice, this reinstated a system of double permits for all fishermen who work with gear fixed to the shore or who were involved in the lobster and crab industries. Bill 48 was opposed by fishermen in other provinces, because it would give Quebec the right to determine territorial waters, thus forcing fishermen to obtain a permit or
"concession" to fish those waters (St. John's Telegraph Journal, December 17, p. 1). The government was unable to pass Bill 48 through the National Assembly before the session ended in December.

Jean Garon announced that the Quebec government intended to replace federal fish inspectors in the province with its own (The Gazette, November 17, p. A4). Bill 49, which amended the Agricultural Products, Marine Products and Food Act, enlarged the powers of the province in the matter of inspection. It enabled the government to require certain processing operations to submit to a quality control inspection in accordance with conditions established by the provincial Minister of Agriculture, Fisheries and Food. Bill 49 received royal assent on December 22.

THE ATLANTIC FISHERIES RESTRUCTURING ACT
Bill C-170, authorizing the financial participation of the federal government in restructuring of the Atlantic fishing industry, was introduced in the House of Commons on October 31. After receiving second reading on November 18 , it was submitted to the Standing Committee on Fisheries and Forestry. Essentially, the Bill sought Parliamentary approval for the restructuring plans that had been negotiated in the three provinces. The Bill provided for an immediate appropriation of 138 million dollars to finance the federal contribution. As well, the legislation gave the federal minister the right to acquire shares in any Atlantic fishing enterprise.

A degree of accountability was included in the proposed Atlantic Fisheries Restructuring Act, compelling the Minister of Fisheries and Oceans to report annually to the House of Commons on the new companies. The Bill also included a commitment to return the companies to the private sector in the future, but was vague concerning the date and method of achieving that goal. Bill c-170 received royal assent on November 30.

The Progressive Conservative Opposition, which had labelled the process as a major "bailout," ended up supporting the Bill. As De Bane later said, the restructuring plan was far from ideal, but it was the only viable option the government had ("Speech to the New Brunswick Fish Packers Association," December 1, p. 1). Even some who had been very critical of the measures voted in favour of them. An individually recorded vote was not held after the third reading; it was suspected that several Liberal MPs would not support the Bill. The New Democratic Party voted against the measures because the government had agreed to pay the Bank of Nova Scotia 26 million dollars on the 276 million owed to it. The NDP viewed this as a partial bailout of the bank (Halifax Chronicle-Herald, November 30, p. 1).

By the end of 1983, there remained much uncertainty and unfinished business. In Nova Scotia, a firm agreement creating a restructured corporation had not yet been signed, and the possibility remained of a
solution generated by the private sector. In Quebec, acrimony between the federal and provincial governments was high, jurisdictional battle lines were being drawn, and the future of the fishing industry was anything but clear. Even in Newfoundland, where a federal-provincial agreement had been reached, many legal and administrative steps needed to be taken before the newly restructured fish processing company would be operational.

## 6 THE WESTERN GRAIN TRANSPORTATION SYSTEM

1983 will be remembered by many as the year in which the historic Crow's Nest Pass rate ended. The months leading up to the passing of the legislation, which abolished the 86 year old statutory rate for transporting western grain for export, were turbulent and acrimonious. Virtually everyone in the prairie provinces, as well as several groups in eastern Canada, had become involved in the debate. Battle scars remain in western Canadian society as a result.

The "Crow rate" dates back to 1897 when the Canadian Pacific Railway Company, in exchange for a subsidy to build a rail line through the Crow's Nest Pass in the Rockies, agreed to lower, by 1899, eastbound rates on grain and flour and westbound rates on various commodities, generally referred to as "settlers" effects". Although these rates were raised in 1918 to allow for wartime cost increases, they were partially reimposed four years later and, in 1925, were enshrined in statute by an Act of Parliament.

The Crow's Nest Pass rate is a major element of prairie political culture. It has enormous historical and emotional significance within Western Canada. As Minister of Transport Lloyd Axworthy noted: "It touches upon many aspects of the historical relationships between the prairie grain producers, the railways and the Government of Canada" (Statement, November 23, p. 2). The Crow rate was seen in the West as the region's benefit from Confederation. It was essentially the West's tradeoff for protective manufacturing tariffs in the East.

The Crow rate was at the centre of a controversy concerning the solution to a number of problems in the western grain transportation system. These problems were, with each passing year, taking more of a toll on the western economy. That problems existed was uncontested. The effort to find a solution, though, sparked controversy and debate. In 1983, the federal government initiated a course of action designed to correct some of the deficiencies in the system. The first step was the abolition of the "Crow."

The ensuing debate was long and arduous. Few issues so clearly reflected the "provincial" nature of the Canadian economy. Although not a federal-provincial conflict as such, several of the provincial governments became embroiled in the debate. Nor was the conflict primarily rooted in ideology, as governments with the same party label ended up on opposite sides of the issue. Provincial economies were affected differently by the proposed solutions; these differences formed the basis of the debate concerning what ought be done, and the basis of the alliances which emerged on the issue.

## THE PROBLEMS

Although the problems in the western grain transportation system were complex and deeply-rooted, primarily three can be identified. The first was a crisis in rail capacity. Rising shipments of bulk commodities coupled with a lack of railway investments rendered the western rail system less able to handle the demands placed upon it. Inefficiency and delays were hampering the export ability of Canadian products. In 1971, for example, the system was unable to handle the large demand for Canadian grain abroad, and it is estimated that several million dollars in sales were lost.

The second problem was that the actual cost of shipping grain was significantly higher than the statutory freight rate (the Crow rate). The revenue received by the railways was estimated to be 38 per cent of variable costs in 1974 and would be 18 per cent by 1987 (Report of the Snavely Commission on the Costs of Transporting Grain by Rail, October 1976). The railways were losing money on each tonne of grain they carried. There was therefore little incentive to invest in new facilities or even to maintain old ones used primarily for the grain trade. This led to deterioration of branch lines and equipment and the subsequent loss of grain sales. By the 1970s, the entire grain handing and distribution system was in a state of disrepair. The government had responded with a series of ad hoc measures to offset the railway losses and to upgrade the system. These included hopper car purchases and branchline rehabilitation. All measures were designed to alleviate the short-term situation, but were inefficient in the long run.

Third, there existed problems of economic distortion. There was a distortion related to the choice of transportation mode for moving grain from the farm gate to collection points. Because rail was subsidized, there was a bias in favour of it as opposed to trucking, thereby maintaining many railway collection points (Norrie, p. 436). Generally, these collection points were small prairie communities.

Distortion resulted, as well, from the fact that freight rates below cost meant producers were paid more than under a system of unsubsidized rates. With the freight rates significantly below cost, prices paid to the
producers were artificially high, since the price of grain is set outside of Canada (that is, Canada is a price-taker). Therefore, the inflated returns maintained some farmland in production which would have been uneconomical otherwise. Moreover, because the statutory rate only applied to certain export grains, there was a bias toward the production of grains eligible for the Crow rate. As a result, the system discouraged both crop diversification and the processing of crop and livestock products.

There was a distortion between primary versus processing activities. For industries such as feedlots and meat packing, western Canada's natural advantage of having feed grain geographically at hand was lost. Whereas the rate of shipping grain was artificially low, the rates on the finished products were unregulated.

The result is a sub-optimal location for Canada's feedlots and meat packing industry and fewer industrial jobs in the West than economic calculations alone suggest (Norrie, p. 437).

## THE PROPOSALS

The issue of transportation policy in Western Canada has been the subject of numerous commissions and studies during the past two decades. The 1983 policy, which included the abolition of the historic Crow rate, had its origins in the report of a task force on western grain transportation established in February 1982 and chaired by J. C. Gilson.

The Gilson proposals, contained in Western Grain Transportation: Report on Consultations and Recommendations, were unveiled in June 1982. The author found the western grain transportation problem to be very serious. Although numerous ad hoc programs and structures had been created, major structural changes were required.

The system was no longer responsive to the needs of the grain industry and generally lacked incentives for improvement. It had become excessively bureaucratized and was failing to adjust, improve and modernize (Task force report, p. II-10).

At the heart of the Gilson recommendations was the elimination of the Crow rate. The report stated:

That the rate has benefitted western farmers in protecting their incomes is accepted. Whether that same statutory rate may have hindered economic development and diversification in western Canada is now being debated (from "Forward").

It was thought that the elimination of the Crow rate would directly help:

1. to offset railway grain transportation losses;
```
2. to Increase railway capacity;
3. to encourage a more efficient grain transportation system;
and
4. to reduce the distortions inhibiting agricultural diversification and processing in Western Canada.
```

(from Government of Canada, Western Transportation Initiatives, "Background Note: Reasons for Change in the Crow", February 1.)

There were primarily five elements contained in the recommendations of the task force. First, there was a commitment by the federal government to an annual payment in perpetuity of an amount equivalent to the 1981-82 railway revenue shortfall (hereafter, referred to as the "Crow benefit"). Gilson recommended that bulk of this be paid to the producers in an effort to reduce some of the distortions in the western economy. To compensate those producers who would not benefit from this payment, a temporary "Agricultural Adjustment Fund" was recommended. Second, to further reduce distortion, Gilson recommended an increase in the variety of crops eligible for the subsidized rate.

A third element concerned future increases in the cost of shipping grain. The thrust of the task force's position was that the producers should share in these increases and that this share should increase over time. Gilson introduced a formula incorporating cost increases as well as the concept of a volume cap, limiting the amount of grain eligible for the subsidized rates.

Fourth, the task force recommended continued federal financial commitment for branch line rehabilitation, coupled with guarantees from the railways of increased investment and improved performance and service. Provisions for administration and review formed the fifth important element of the Gilson recommendations.

Two other elements became important issues in the debate over the change in freight rates. One was the concept of a "safety net" -- an assurance that freight costs would not exceed a certain percentage of the export price of grain. Variable freight rates also became an issue. While some groups in the West supported the concept of variable rate scales based on quantity, others defended the maintenance of strictly distance-related rates.

The report of the Gilson task force formed the basis of the federal government's "Western Transportation and Complementary Initiatives," released on February 1, 1983 by Transport Minister Jean-Luc Pepin. Several of the proposals recommended in the Gilson report, and subsequently advanced by the federal government, were heavily debated in the months that
followed. As a result of pressure from key sectors in both Western Canada and Quebec, changes were made to the federal plan during the subsequent months. These were inherent in the proposed Western Transportation Act (Bill C-155), unveiled in the House of Commons on May 10.

After receiving second reading, Bill C-155 was submitted to the House of Commons Standing Committee on Transport. From July 26 through the month of August, this Committee held public hearings in various centres across the country. In all, 240 presentations were made to the Committee. After a clause-by-clause examination of the legislation, the Committee submitted its amended Bill to the House of Commons in September.

THE ISSUES
Following is a summary of the central arguments and amendments related to each of the major issues of the "Crow debate."

## The Crow Benefit

The most important issue in the debate was the question of the method of payment of the railway revenue shortfall, or the Crow benefit (the difference between the actual cost in the 1981-82 crop year of moving export grain and the amount the producers paid under the Crow rate). The Crow benefit was eventually estimated at 651 million dollars for 31.1 million tonnes, using a cost of capital of 20.5 per cent and a contribution to railway overhead costs of 20 per cent of volume-related variable costs.

The Crow benefit was essentially a transportation subsidy to prairie farmers. The federal government assumed from the outset that this Crow benefit ought to paid in perpetuity. Perhaps it accepted the idea that such a subsidy formed part of the historical pact made with the West. The only real question concerned how the Crow benefit ought to be paid. That question promoted substantial debate.

Controversy arose as to whether this sum should be paid directly to the railways or whether part should be paid to the producers. Gilson recommended that the total amount be paid initially to the railways, but that it be partitioned thereafter until 1989-90. At that time, the railways would be paid only 19 per cent and the balance would go directly to the producers. Rates would be adjusted upwards until they reached the compensatory level, the level at which all variable costs are recovered.

The Gilson report recommended that 81 per cent of the Crow benefit eventually go to the producers, because it would remove some of the distortions which had become part of the western economy as a result of the low statutory grain rates. This would enable farmers to choose, on the basis of economic reasoning, what to produce and where to sell it.

Moreover, western livestock and producing industries would no longer have prices tied to export grain prices. Railways could, over time, charge more market-related prices for all their services.

When the government proposed its "Western Transportation Initiatives" in February 1983, it provided for a method of payment comparable to the Gilson recommendation until approximately a $50-50$ split in the payment to producers and the railways was achieved in 1985-86; at that time, a thorough review would be undertaken. This was construed as a compromise between the task force proposal and the demands for the full amount to be paid to the railways.

The proposal contained a possible "diluting effect" since grain would have been eligible for the benefit, thereby reducing the share available to producers shipping grain under the statutory rate. To offset the loss to the producers of statutory grain for that part of the Crow benefit paid to other grain producers, a temporary "Agricultural Adjustment Fund" was to be included in the annual federal payment. 204 million dollars were to be made available from 1983-84 through 1985-86.

Even the federal proposal to create a $50-50 \mathrm{split}$ in the payment of the Crow benefit -- a compromise of the Gilson position-- was unpalatable to many Quebec and western groups. As a result, Bill C-155, which was introduced in May, provided for the entire sum to be paid to the railways. As a result, the Agricultural Adjustment Fund was not included in the provisions of the proposed legislation.

Direct payments of the Crow benefit to the railways meant a continuation of low rates relative to actual transportation costs. As long as this subsidy was paid entirely to the railways, the Crow rate would be maintained except for increases due to increases in the cost of shipping grain. A heavily subsidized, government-determined rate would continue to be in effect. This meant a continuation of a subsidy on grain produced for export, thereby discriminating against the production of other agricultural products, the domestic feed grain industry, and the western agricultural processing industry.

## Range of Eligible Crops

Both the Gilson report and the federal government proposals advocated some expansion in the number of crops eligible for the statutory rate. The report of the task force recommended that
anomalies relating to the exclusion from statutory rates of canola and linseed meal moving to the west coast, as well as canola oil and linseed ofl, be removed by including these products under the new statutory rate structure (p. VI-8).

This proposal was generally accepted by western interests, but was rejected by Quebec groups, who wanted the rate structure brought closer to "economic reality" -- that is, to the point where rates are determined in the market place.

Future Cost Increases
A major point of debate concerned the burden of future increases in transportation costs: should the producer absorb these (in terms of higher freight rates) or should the government assume the risk? Complying with the Gilson recommendations, the federal government proposed that from 1983-84 to 1985-6 the producers assume the first 3 percentage points of increase. Thereafter, the federal initiative provided for the producer to assume the first six percentage points of cost increase.

In order to limit its financial commitment, the federal government placed a cap on the amount of grain eligible for the subsidized rate. The Gilson report recommended that "the cost of transporting future volume increases beyond the 1981-82 base amount...be borne by the producers of the commodities concerned" ( $p$ VI-7). This principle was endorsed by the federal government which set its volume cap at 31.1 million tonnes (representing the record 1981-82 crop year production including canola and linseed products). Most western groups opposed the concept of a volume cap, arguing that it was a disincentive to increase production.

## Railway Compensation and Guarantees

The federal government proposals included a mechanism which would phase in full compensation to the railways of long-run variable costs with a 20 per cent contribution to overhead costs. (This contribution was to be phased in over a period of four years, at five per cent per year.) As well, it agreed to begin compensating the railways, through interim payments for the crop year 1982-83, for grain losses dating from August 1982. Concern was expressed by some -- primarily the New Democratic Party and the federal Progressive Conservative Party -- about the large sums of money being guaranteed to the railways.

For their part, the railways committed themselves to some specific investment expenditures. These included: an increase in capital investments in 1983 from about 530 million to over 800 million dollars; implementation of long-term expenditure plans of 16.5 billion dollars; and a requirement to meet specific grain transportation performance and branch line maintenance obligations (Government of Canada, Western Transportation Initiatives, "The Policy Decisions", p. 13). Some concern was expressed over the ability of the government to enforce the statutory obligations which the railways were required to meet.

Administration and Review
In his February initiatives, Jean-Luc Pepin proposed a Grain Transportation Agency to supersede the office of the Grain Transportation Co-ordinator. Provision for a Senior Grain Transportation Committee, comprised of 21 members, was included in Bill C-155. Its task was to oversee the technical aspects of the system and to consider broader policy questions regarding grain transportation. The most contentious aspect of this proposal concerned the composition of the Committee. Westerners objected to three of the places being reserved for feed grain users from Eastern Canada. Notably absent in the proposed membership was any representation from western livestock interests.

Review was to be an integral part of the new legislation and provisions were made for a full-scale review of the system in 1985-86. Furthermore, a late amendment to Bill C-155 provided for the establishment of a committee to study the method of payment question.

## Safety Net

Absent from the Gilson recommendations and the Pepin proposals was the provision for a "safety net" -- an assurance that transportation costs would not exceed a certain percentage of the export price of grain. Demands for such a guarantee arose out of fears that the legislation did not adequately protect farmers from inflationary increases in transportation costs. A safety net would also ensure that freight rates would drop corresponding to any reductions in the price of grain.

In a final amendment made to the bill after it had returned to the House of Commons in September, a safety net provision was included. It initially limited transportation costs to four per cent of the price of grain, but was scheduled to rise to ten per cent by 1988.

## Variable Rates

A minor debate arose over the question of permitting a product-initiated variation in the shipping rates for grain moved in bulk from certain geographical points. Proponents of variable rates argued that this would create greater efficiency in the transportation system. The prairie wheat pools, however, felt that variable rates would undermine the existing transportation network and result in the demise of many smaller agricultural centres.

Both the Gilson report and the February proposals of the federal government supported the principle that grain freight rates continue to be "generally distance-related." This principle was maintained in the final legislation.

## REACTION TO THE FEDERAL PROPOSALS

The federal government's Western Transportation Initiative was a bold and ambitious attempt to correct some serious problems in the western grain transportation system. It exemplified the New Federalism, in that it was undertaken unilaterally and without consultation with the provincial governments. Unlike some other battlegrounds of New Federalism, there is no inherent federal-provincial element here. The federal government was acting within its own jurisdiction, although the significant impact of this initiative on the economies of the prairie provinces would necessarily have implications for the provincial governments. The Saskatchewan government stated in its brief to the House of Commons Standing Committee on Transport:

As a provincial government we are particularly concerned about any changes to the statutory grain rates because our economy is significantly affected by our agricultural sector (August 10).

The provincial governments were not part of the consultative process undertaken by the Gilson task force prior to the drafting of its report. This assumed a concept of Canada that was implicit in the New Federalism -that the provincial governments were not the best representatives of regional opinion. The task force consulted directly with the various organizations and individuals in the West and, after deciding upon its course of action, the federal government acted unilaterally.

Although the Gilson task force sought a consensus among western interests, none was found. This division was reflected in the reactions of various groups and provincial governments to the federal proposals. The Western Transportation Initiatives of the federal government spawned significant discussion and lobbying efforts. A number of alternative proposals were put forward and a plethora of groups from Eastern as well as Western Canada presented their positions, illustrating a wide divergence of opinion on the issue of the "Crow."

With the proposed legislation providing for part of the future increases in freight costs (beginning as early as January 1984) to be assumed by the producer, it meant the end of the statutory Crow's Nest Pass rate. Its abolition sparked emotion-charged reaction, primarily from the Prairie rural communities, where it had attained enormous social and cultural significance. The family farm, small rural communities, the network of grain elevators, and the Prairie way of life were all linked to the Crow rate. Its abolition threatened the end of these traditions and values which formed the foundation of Western Canadian society.

Western opposition to the abolition of the "Crow" was based on the belief that although the statutory rate may have been a subsidy to the Prairie farmer, it was justified. It was justified by Western Canada's landlocked
position. It was necessary for Canadian grain farmers to compete in the international market. It was part of an unwritten compact made at Confederation. The Crow rate was a part of Western Canadian society. Its removal was a betrayal.

Generally, governments in provinces which were affected by the proposed legislation adopted positions held by one or more of the major economic interests in the province. The reactions from the provinces are interesting for primarily two reasons. First, the prairie provincial governments were divided on this issue and, second, major western and Québec groups, including some governments, became temporary allies.

Certain of the federal proposals were criticized by most western groups and the two federal opposition parties. These included the concept of a volume cap, the lack of a safety net, as well as concerns about the strength of railway investment guarantees. Most reaction and debate, however, centred around the method of payment question. On this issue, there was a wide spectrum of opinion and a variety of proposals put forth. Following is a summary of the positions held by some of the key provincial governments and political parties.

## Saskatchewan and Manitoba

The provincial governments of Saskatchewan and Manitoba reacted swiftly and emphatically to the federal government's resolutions. On February 23, 1983, the Saskatchewan Legislature voted unanimously in support of a resolution condemning the federal plan. This was followed by a nationwide tour by Saskatchewan Transport Minister Eric Berntson to obtain support from his provincial counterparts.

The Saskatchewan resolution argued that the proposed legislation:

- did not recognize the principle of setting the grain rate in statute;
- would not provide cost protection for farmers;
- did not recognize that grain must be sold at competitive prices in the world market;
- did not remove the existing distortions in the rates by including all prairie crops and their products;
- did not deal with high taxation levels charged to farmers on items such as fuel;
- prescribed an unacceptably low limit of 31.1 million tonnes annually for subsidized shipments;
- provided central Canada with further processing and livestock incentives; and
- was not supported by a consensus of Western Canadians.

The position of the Saskatchewan government concerning the statutory rate and the payment of the Crow benefit was somewhat ambivalent. Foremost, the province opposed the removal of the Crow rate. In his August 10 appearance before the Standing Committee on Transport, Berntson stated that his government has "always advocated that there should be no change in the statutory rate" (p. 100). The Saskatchewan government assumed, however, that this was an untenable position and that the abolition of the Crow rate was inevitable. The government, therefore, addressed some of the specific elements of the federal bill, arguing for what it believed was the best deal for the province.

Concerning the payment of the Crow benefit, the position of the Saskatchewan government, perhaps surprisingly, concurred with that adopted by the federal government in its February initiatives. The brief of the Saskatchewan government to the House of Commons Committee stated:

Faced with the absence of any real consensus on the method of payment question the government of Saskatchewan is of the opinion that a reasonable compromise would be a $50 / 50$ split of the Crow benefit payment between the producers and railways until the 1985-86 review (August 10, p. 115A-109).

Yet the Saskatchewan government was one of the leaders in the attack on the federal initiatives which had been unveiled by Jean-Luc Pepin in February. It was the first Legislature to pass a resolution condemning the plan. When the proposed $50 / 50$ split in the payment of the Crow benefit was abandoned by the federal government in its Bill C-155, however, the Saskatchewan government attacked the idea of paying the entire subsidy to the railways.

On this issue, the position of the Saskatchewan government differed greatly from that of the Saskatchewan and Manitoba Wheat Pools. These prairie pools objected to any portion of the Crow benefit going directly to the producers and, along with Québec interests, were instrumental in convincing the federal government to abandon its plan to split the subsidy.

One of the central arguments advanced by the Wheat Pools, in opposition to payments made directly to the producers, was that many of the small grain elevators would be put out of business because it would be cheaper for farmers to ship their grain from the larger centres. This would signal the end of several small prairie communities.

The Manitoba Legislature unanimously passed a motion, identical to that passed in Saskatchewan, opposing the federal plans. Although both
governments preferred that the statutory rate stay in effect, they differed on the method of payment question, given that the federal legislation would pass. The Manitoba government concurred with the position of the Wheat Pools by supporting the payment of the entire subsidy to the railways.

There were farm groups in the West, however, that accepted Gilson's argument and complained that the government's initial proposal of a 50-50 split did not go far enough in removing the distortion in the western economy. The Palliser Wheat Growers, the Prairie Farm Commodity Coalition and the United Grain Growers all adopted this position. These groups also supported the concept of variable rates because these would help to remove some of the economic distortion.

## Alberta

The Alberta government held a position significantly different from that of its prairie neighbours. Agricultural Minister Leroy Fjordbotten in a March 14 statement, noted some key issues which needed to be resolved. He objected to the stipulation that the producers be responsible for the first six per cent increase in costs in future years. Fjordbotten also questioned the logic of limiting the tonnage of grain shipments eligible for the Crow benefit, when the expressed objective of the federal government had been to increase exports. Moreover, he underlined the importance of securing railway obligations to invest in sufficient rail capacity.

The primary concern of the Alberta government, however, was that the original intent of the Gilson recommendations be carried out. On the question of the payment of the Crow benefit, the Alberta government strongly supported the livestock producers of Western Canada, most notably in Alberta, who opposed the idea of the entire subsidy being paid to the railways. It was argued that if that were the case, it would be cheaper to ship grain east to fatten cattle in Quebec than to raise and slaughter them in Alberta. If the farmers were to receive part of the subsidy, the railways would be forced to keep their grain freight rates more in line with the costs of shipping meat products. Unlike Manitoba and Saskatchewan, Alberta did not want the plan to be abandoned; rather, it was anxious to ensure that any change in policy would be effective in meeting the objective of reducing economic distortion in the West.

The Alberta government objected to the change in federal policy on the method of payment question, rejecting Bill c-155 which provided for the entire sum to be paid to the railways. It argued that,
the federal government has abandoned its objectives to reduce existing economic distortions and to improve growth and efficiency in the grain transportation system (Submission to the Standing Comittee on Transport, August 2, p. 108A-7).

An alternate proposal was put forward by a coalition of Alberta groups, including the provincial government. A press release from Fjordbotten on July 4 announced that a consensus had been reached with representatives of the Alberta Wheat Pool, Unifarm, Alberta Cattle Commission, Pork Producers Marketing Board, and United Grain Growers. These groups endorsed a plan which sought to reduce domestic grain pricing distortion and the dilution of the benefit. Known as the "double eighty" proposal, it was one of a number of "freedom of choice" options which had been advanced.

The double eighty proposal provided for the federal government to make either a direct payment to the railways or a direct payment to the producer, at his choice. The temporary Agricultural Adjustment Fund, which had been included in the federal government's original plan, was also part of this proposal.

According to the double eighty option, 20 per cent of the Crow benefit would be paid directly to the railways. The balance, plus the federal government's share of cost increases, would be funds the producers could choose to either assign directly to the railways or have paid directly to themselves. If a producer chose to receive the payment directly, he would be obliged to pay the higher freight rate at the elevator. An individual farmer's entitlement would be the greater of two calculations: either 80 per cent of production or 80 per cent of acreage with a production factor included (Alberta government brief to the Standing Committee on Transport, August 2, p. 108A:10).

The Saskatchewan and Manitoba Wheat Pools remained opposed to any proposal which provided for part of the Crow benefit to be paid to the producers. It was argued that the Alberta proposal would have the same effect as the Gilson proposals, in that it would endanger the network of rural elevators on the Prairies. "At the core of the freedom of choice argument is the idea that there are probably more efficient ways of moving grain to main line terminals than the network of money-losing railway branch lines" (Globe and Mail, July 29, p. B1).

## British Columbia

The position of the British Columbia government was generally in favour of changing the Crow rate. While the government pointed out many problems with the proposed legislation, it was in the interests of the province to have it passed quickly. The main impact of the legislation for British Columbia lay in the benefits accrued from an improved rail system, which would enhance movement of the province's bulk commodities, such as lumber, coal, and other natural resource products. On August 11, the provincial Legislature passed a motion, which included the following:

This House is of the opinion that changes in the historic Crow's Nest Pass grain freight rate will substantially benefit the


#### Abstract

economic development and employment opportunities of Canada and of British Columbia. This House expresses its support for action by the Parliament of Canada to deal expeditiously with the issue of the statutory freight rate for export grain by passing the required legislation.


Québec
The Manitoba and Saskatchewan Wheat Pools and a coalition of Québec livestock producers and farm groups made strange bedfellows, representing quite different regions and economic interests. Yet they were joined together in their defence of the Crow rate and, barring their inability to have the federal proposal shelved, in their opposition to any proposal which provided for payment of any of the Crow Benefit to the producers.

The Quebec interests, which initially included the provincial government, argued that payment to the prairie farmers would become a production subsidy unavailable to eastern farmers. Quebec livestock producers argued, as well, that they would lose a competitive edge because higher freight rates on the Prairies would mean lower feed grain costs there, and Prairie livestock would be able to undersell Quebec livestock in foreign and domestic markets. This perspective was well represented by Quebec Members of Parliament in the Liberal caucus. A presentation to the Commons Standing Committee on Transport on August 16, by a coalition of farmers, agribusiness and political interests formed in 1982, and endorsed by the Quebec government, stated that the major complaint had been addressed when the federal government chose to pay the entire Crow subsidy to the railways (La Coalition pour la survie de 1'agro-alimentaire).

There is evidence that the Quebec government later adopted a position distinct from that of the coalition. A brief from the Quebec government, although not officially presented to the Standing Committee, called for the legislation to be completely withdrawn and the Crow rate left in place (reported in Western Producer, August 25, p. 23). It asserted that the proposals of Bill C-155 would create an unfair advantage for prairie farmers, offering them cheaper feed grain and an improved rail system at the expense of the rest of the country. The brief stated that by 1990, a tonne of feed grain would cost significantly more in Quebec than in Saskatchewan (that is, it would reflect the real costs of transportation).

The Quebec government was unable to accept that the shift in federal policy to pay the entire Crow benefit to the railways was sufficient to preserve Québec interests. Québec Minister of Agriculture Jean Garon, in an address to a conference of the Canadian Agricultural Chemicals Association on September 13, asserted that the federal government should not advocate any policy which would encourage western farmers to vary from their traditional grain production emphasis. Increased prairie livestock
production would lead to overproduction in Canada (Western Producer, October 6, p, 34).

## New Democratic Party

The position of the New Democratic Party (NDP) remained virtually unchanged throughout the debate. At a news conference held in Winnipeg on March 4, the federal leader, Ed Broadbent, and his counterparts from the three Prairie provinces, announced an alternate proposal to the resolutions of the federal government (Globe and Mail, March 5, p. 14). The NDP opposed the abolition of the Crow rate. It proposed that the 930 million dollars being offered by Ottawa be divided as follows: 380 million to the railways to cover the cost of shipping grain and 550 million dollars in the form of direct public investment in branch lines, hopper cars, and general capacity improvement. The NDP also proposed that, by 1986, the federal government own 15 to 20 per cent (and, therefore, controlling interest) of Canadian Pacific Limited.

## Progressive Conservative Party

Once Bill C-155 was introduced in the House of Commons, the opposition Progressive Conservative Party announced its position. Transport critic Dan Mazankowski stated that the Crow's Nest Pass freight rate
should remain in statute form for the grain producers of Canada, but that adequate compensation commensurate with the cost of moving grain should be provided to the railways (House of Commons Debates, May 12, p. 25384).

Mazankowski argued that most western producers accepted that they should pay more than the statutory freight rate. Nevertheless, the rate had to be tied to their ability to pay. The Conservatives felt that the present was not a good time to increase costs to the producers. Input costs to the farmers had risen dramatically, while the price of wheat had dropped to 1973 levels.

The Conservative Party asserted that the railways and the Canadian government had a continuing obligation to provide a special low rate for the movement of grain. Mazankowski criticized Bill C-155 on several other fronts, including the volume cap of 31.1 million tonnes, the burden imposed on farmers for increased transportation costs, and the absence of a "safety net" provision.

The position of the Progressive Conservative Party was unclear in the months that followed. While critical of many aspects of the proposed legislation, it had been assumed by both the media and the governing Liberal Party that the Conservatives supported the general idea of abandoning the Crow rate. On September 13, Dan Mazankowski clarified his
party's stance. Mazankowski announced to the Standing Committee on Transport that the statutory Crow rate should be guaranteed to producers until 1985-86. He argued that too little was known about the impact that higher rates would have on farmers (p. 12). Moreover, he proposed that no contributions be made to the constant costs of railways until a review is done.

Spokesmen from some of the provincial governments objected to the Conservative position because they feared that the 16 billion dollar, 10 -year improvement plans of the railways would be aborted. The federal opposition party countered that its proposal to delay freight rate increases to the producers would not have a significant impact on the railways' revenues, but could be a major benefit for individual farmers.

The Progressive Conservative plan meant that the railways would not receive about 216 million dollars of the 3.1 billion dollars arising from the proposed legislation. That represented the federal contribution, phased in over the next three years, to the railways' constant costs. Coincidently, this figure was approximately equal to the increased amount that producers would have to pay in the same period as a result of the increased freight rates which would accrue from the proposed legislation. By omitting the contribution to overhead costs while picking up the tab for the additional charges to the producers, the federal contribution would remain the same. Mazankowski claimed that the railways would still receive full cost recovery, including its return on investment and allowance for depreciation (CTV, "Question Period," transcript, October 7, p. 7).

## THE WESTERN GRAIN TRANSPORTATION ACT

Debate on the amended legislation began in the House of Commons on September 29. Stalling tactics by both opposition parties resulted in several delays to the passage of the Bill. More than 170 amendments were put forward, most of them by the opposition parties with the sole purpose of delaying passage. Nearly half were ruled out of order. It took a quick move by the Liberal party, catching the other parties off-guard, to enable them to invoke closure, calling for a limit to the debate.

The main elements of the new legislation included a commitment by the federal government to spend 659 million dollars per year plus a share of increased costs for railway grain transportation losses (the Crow benefit). As this fund was paid directly to the railways, the rates paid by producers would continue to be substantially below actual costs. The list of crops and their immediate products which may be shipped under the statutory freight rate was expanded under the Act. Future freight rate increases were to be shared by the producers and the federal government, the producers paying the first three percentage points of annual increases until 1986, and the first six percentage points of increases thereafter.

According to federal Transport Minister Lloyd Axworthy, who had since replaced Jean-Luc Pepin, there existed a clear statutory obligation on the part of the railways to expand and upgrade existing facilities (Minister of Transport. Information, November 23). The Act provided for the withholding of funds from the railways if sufficient expenditures were not made. It was estimated that the railways would spend 16.5 billion dollars over ten years in a rail expansion program.

A "safety net" provision was included such that freight rates would not be allowed to exceed a specified percentage of the price of grain. Initially this was four per cent, but was scheduled to rise to ten per cent by 1988. Freight rates would continue to be generally distance-related and the rate scale would be determined by the Canadian Transport Commission each year.

The Act provided for a comprehensive review in 1985-86 to determine whether any adjustment to the system might be required. It also provided for the establishment of a committee before April 1984 to study the method of payment question and to report to Parliament in 1985. It guaranteed that at least one day would be spent in the House of Commons debating that report.

A Senior Grain Transportation Committee was to be established, consisting of representatives of grain producers, feed grain users, elevator companies, the Canadian Wheat Board, the Canadian Grain Commission, labour, and transportation carriers. This committee was to "advise and make recommendations...on any matter affecting the transportation, shipping or handling of grain" (Section 12 of the Act).

After being passed by the House of Commons, Bill C-155 was sent to the Senate on November 17, where it was passed by a vote of 27 to 12. Farmers were to feel the first impact January 1, 1984, when the freight rates would increase an average of 2.5 cents a bushel -- the first increase since 1924.

The removal of the statutory Crow rate was clearly only a first, albeit a major step toward the improvement of the western grain transportation system. An examination of the impact of this policy decision reveals two groups of winners and of losers. There were those who were destined to either win or lose by the initial decision simply to abandon the statutory Crow rate. The winners included, primarily, the railways who stood to substantially increase their income as a result of the federal decision. On the losing side were the producers, who would have to pay a higher freight rate to transport their grain.

A second group of winners and losers also emerged as a result of the decision by the federal government to change its original proposals, abandoning many of the recommendations of the Gilson report. The decision to pay the entire Crow benefit to the railways signalled that existing distortions in the western agricultural economy would be perpetuated.

The primary winners here were the Québec farming and livestock industry, the Prairie Wheat Pools and small prairie communities along rural branch lines. Both the Wheat Pools and the Quebec interests had vehemently opposed all proposals which provided for part of the Crow benefit to be paid to the producers. On the losing side were those groups that would have gained under the original federal proposals, such as the western livestock industry.

The federal government determined that it was attempting to move too quickly - to make too major a change at one time. As a result, it decided to take only the first step in restructuring the Western economy: the abandonment of the Crow rate. In a sense, this move was as much symbolic as economic. Major distortions continued to exist as a result of subsidized freight rates for some products. The question of method of payment of the federal subsidies has yet to be fought. This will be at the centre of the second round of debate, where the main combatants will be the livestock producers in both the West and East, as well as the prairie Wheat Pools. Although the Crow rate was abandoned in 1983, only the first battle had been fought in western grain transportation reform.

APPENDICES

## APPENDIX A

## BANK OF CANADA LENDING RATE

| YEAR | LOW | HIGH |
| :---: | :---: | :---: |
| 1983 | 9.27 | 10.06 |
| 1982 | 10.05 | 16.59 |
| 1981 | 14.66 | 20.69 |
| Source: Ottawa Letter, Ottawa: |  |  |

APPENDIX B
RATE OF UNEMPLOYMENT

Annual Averages

|  | 1975 | 1977 | 1979 | 1980 | 1981 | 1982 | 1983 |
| :--- | ---: | ---: | ---: | ---: | ---: | ---: | ---: |
|  | 14.0 | 15.5 | 15.1 | 13.3 | 13.9 | 16.8 | 18.8 |
| Nf1d. | 8.0 | 9.8 | 11.2 | 10.6 | 11.2 | 12.9 | 12.2 |
| N.S. | 7.7 | 10.6 | 10.1 | 9.7 | 10.2 | 13.2 | 13.2 |
| N.B. | 9.8 | 13.2 | 11.1 | 11.0 | 11.5 | 14.0 | 14.8 |
| Québec | 8.1 | 10.3 | 9.6 | 9.8 | 10.3 | 13.8 | 13.9 |
| Ontario | 6.3 | 7.0 | 6.5 | 6.8 | 6.6 | 9.8 | 10.4 |
| Man. | 4.5 | 5.9 | 5.3 | 5.5 | 5.9 | 8.5 | 9.4 |
| Sask. | 2.9 | 4.5 | 4.2 | 4.4 | 4.7 | 6.2 | 7.4 |
| Alta. | 4.1 | 4.5 | 3.9 | 3.7 | 3.8 | 7.7 | 10.8 |
| B.C. | 8.5 | 8.5 | 7.6 | 6.8 | 6.7 | 12.1 | 13.8 |
| Canada | 6.9 | 8.1 | 7.4 | 7.5 | 7.5 | 11.0 | 11.9 |

Source: Statistics Canada. Labour Force Annual Averages, 1975-1983. Ottawa: Minister of Supply and Services, 1984.

APPENDIX C
RATE OF INFLATION

| Seasonally adjusted current annual rate of change (Consumer Price Index) |  |  |  |  |
| :--- | :---: | :---: | :---: | :---: |
|  | 1980 | 1981 | 1982 | 1983 |
|  | 10.6 | 15.2 | 9.6 | 3.2 |
| January | 9.4 | 13.1 | 11.6 | 2.1 |
| February | 8.3 | 13.4 | 11.1 | 2.8 |
| March | 9.3 | 12.3 | 11.8 | 5.3 |
| April | 9.7 | 10.4 | 11.3 | 3.5 |
| May | 11.1 | 12.5 | 10.8 | 4.2 |
| June | 11.0 | 11.5 | 9.9 | 5.3 |
| July | 11.9 | 13.7 | 8.2 | 8.5 |
| August | 12.3 | 11.3 | 8.2 | 5.6 |
| September | 12.7 | 12.1 | 8.1 | 5.9 |
| October | 14.0 | 11.1 | 8.1 | 2.7 |
| November | 12.9 | 11.4 | 7.3 | 5.5 |
| December |  |  |  |  |

Source: Statistics Canada. Consumer Prices and Price Indexes, OctoberDecember 1983. Ottawa: Minister of Supply and Services, 1984.

APPENDIX D
PROVINCIAL GROSS DOMESTIC PRODUCTS

| $\begin{gathered} \text { (at market prices) } \\ \text { (billion } \$ \text { ) } \end{gathered}$ |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: |
| Newfoundland | 3.74 | 4.26 | 4.70 | 4.7 |
| P.E.I. | . 79 | . 88 | . 99 | 1.0 |
| Nova Scotia | 6.52 | 7.33 | 8.30 | 8.3 |
| New Brunswick | 5.24 | 6.07 | 6.63 | 6.7 |
| Québec | 70.25 | 79.99 | 83.24 | 76.5 |
| Ontario | 114.06 | 131.63 | 137.18 | 129.5 |
| Manitoba | 11.36 | 13.10 | 13.93 | 13.6 |
| Saskatchewan | 13.25 | 15.41 | 15.70 | 15.8 |
| Alberta | 42.13 | 48.81 | 53.06 | 49.4 |
| British Columbia | 37.32 | 43.15 | 44.71 | 42.8 |
| Source:1980-8 <br>  <br> $\vdots$ <br> Experi <br> Servi | Statistics Canada. Data, 1967-82. 983. |  | incial Mini | onic of |
|  | Financial <br> es." Wint | t. "Rep <br> 983/84. | the Na | Can | New Realities." Winter 1983/84.

APPENDIX E
GOVERNMENT DEFICITS

|  | $\begin{gathered} \text { 1982-83 } \\ \text { (Revised) } \end{gathered}$ | (million \$) $\begin{array}{r}\text { 1983-84 } \\ \text { Budget }\end{array}$ |
| :---: | :---: | :---: |
| Newfoundland | 219.5 | 203.7 |
| P.E.I. | 25.2 | 18.2 |
| Nova Scotia | 487.6 | 449.4 |
| New Brunswick | 511.5 | 391.8 |
| Québec | 3,135.0 | 3,185.0 |
| Ontario | 3,236.0 | 3,398.0 |
| Manitoba | 495.5 | 578.9 |
| Saskatchewan | 312.1 | 341.9 |
| Sask. (Heritage Fund) | (+92.6) | (+25.0) |
| Alberta | 2,395.0 | 845.5 |
| Alberta (Heritage Fund) | (+1,406.0) | (+262.5) |
| British Columbia | 1,038.0 | 1,603.0 ${ }^{1}$ |
| Federal | 25,300.0 ${ }^{2}$ | 31,300.0 ${ }^{2}$ |

Source: Conference Board of Canada. "Fiscal Position of the Provinces The 1983 Budgets." Ottawa, 1983. Except where noted:

1. "Provincial Budget Roundup - 1983." Canadian Tax Journal, Vol. 31:4 (July-August, 1983).
2. Government of Canada, Department of Finance. Budget Speech, Apri1 19, 1983.

APPENDIX F
GOVERNMENT EXPENDITURES: INTERPROVINCIAL COMPARISON

## Per Capita Expenditure <br> (\$ Thousands)*

British Columbia ..... 2.7
A1berta ..... 4.1
Saskatchewan ..... 3.0
Manitoba ..... 2.8
Ontario ..... 2.6
Québec ..... 3.5
New Brunswick ..... 3.5
Nova Scotia ..... 3.1
P.E.I. ..... 3.4
Newfoundland ..... 3.4

* Calculations based on mid-year estimates of 1982-83 expenditures.
Source: Manitoba Budget, 1983, p. A-6.

APPENDIX G
PROVINCIAL EMPLOYEES ${ }^{1}$ PER THOUSAND POPULATION AS AT DECEMBER 31

|  | $\frac{1975}{}$ | 1982 |
| :--- | ---: | :--- |
| British Columbia | N/A | 16 |
| Alberta | 25 | 25 |
| Saskatchewan | 19 | 16 |
| Manitoba | 15 | 14 |
| Ontario ${ }^{2}$ | 13 | 12 |
| Québec | 14 | 14 |
| New Brunswick 3 | 19 | 19 |
| Nova Scotia | 24 | 25 |
| Prince Edward Island | 36 | 34 |
| Newfoundland | 22 | 25 |

1. In general, includes all employees on provincial payrolls and those of agencies, boards and commissions owned by the provinces. Excludes university employees and workers in hospitals not provincially owned.
2. Includes employees of the Alcoholism and Drug Addiction Research Foundation, Niagara Parks Commission, Toronto Area Transit Operating Authority, Ontario Place, Ontario Northland Transportation Commission and subsidiaries, Urban Transportation Development Corporation and subsidiaries, Workers' Compensation Board and Colleges of Applied Arts and Technology.
3. For comparability purposes, primary and secondary school teachers in New Brunswick have been removed from the Statistics Canada data.

Source: 1983 Ontario Budget, p. 48.

```
APPENDIX H
RESULTS OF BRITISH COLUMBIA GENERAL ELECTION
Date: May 5, 1983
```

|  | Seats |  | Popular Vote |  |
| :---: | :---: | :---: | :---: | :---: |
|  | 1979 | 1983 | 1979 | 1983 |
| Social Credit | 31 | 34 | 48\% | 49.7\% |
| New Democratic |  |  |  |  |
| Party | 26 | 23 | 46\% | 44.9\% |

APPENDIX I
COMPOSITION OF PROVINCIAL LEGISLATURES AND HOUSE OF COMMONS (as of December 31, 1983)

|  | Liberal | Progressive Conservative | New Democratic Party | Other | Independent |
| :---: | :---: | :---: | :---: | :---: | :---: |
| House of |  |  |  |  |  |
| Commons | 147 | 103 | 31 | - | -- |
| British Columbia | a -- | - | 23 | $34^{1}$ | -- |
| Alberta | $\cdots$ | 75 | 2 | -- | 2 |
| Saskatchewan | - | 56 | 8 | - | - |
| Manitoba | - | 23 | 33 | -- | 1 |
| Ontario | 33 | 70 | 22 | $\cdots$ | - |
| Quebec | 47 | - | - | $72^{2}$ | 2 |
| New Brunswick | 18 | 39 | 1 | - | $\rightarrow$ |
| Nova Scotia | 12 | 38 | 1 | $1^{3}$ | - |
| Prince Edward <br> Island |  |  |  |  |  |
| Newfoundland | 7 | 45 | - | - | - |
| Yukon | - | 9 | 6 | -- | 1 |
| North West Territories | - | - | - | - | 24 |

1. Social Credit
2. Parti Québécois
3. Cape Breton Labour Party
FederalApril 19
British Columbia ..... July 7
Alberta March 24
Saskatchewan
March 29
Manitoba
February ..... 24
Ontario May 10
Québec ..... May 10
New Brunswick ..... May 6
Nova Scotia ..... April 18
Prince Edward Island ..... April 14
Newfound land ..... March 17
```
APPENDIX K
OVERVIEW OF PROVINCIAL BUDGETS
```

Most of the provincial budgets of 1983 provided incentives or tax breaks to corporations. Manitoba and Ontario were two exceptions. Manitoba increased the corporate income tax rate from 15 to 16 per cent. In Ontario, this rate was also increased by one percentage point (to either 15 or 14 per cent, depending on the industry.)

Virtually all provinces increased taxes on items such as alcohol, tobacco, health care. British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Prince Edward island increased tobacco taxes. Alberta and Ontario raised the cost of health care premiums and British Columbia increased its hospital charges. New Brunswick charged hospital out-patient user-fees. Liquor prices were raised in Manitoba, New Brunswick and Newfoundland, and alcohol taxes increased in Ontario.

The retail sales tax was increased in Manitoba, British Columbia and New Brunswick. Ontario introduced a temporary 18 month 5 per cent surcharge on taxable income. Québec put a tax on video cassettes, Newfoundland increased a number of government fees and New Brunswick increased the rate of several taxes, including the personal income tax rate, rural property taxes, and the property transfer tax. Nova Scotia subjected cable television to an amusement tax. Previously, Nova Scotia was the only province which did not have a tax on cable television.

APPENDIX L

## APPENDIX L (continued)

1. British Columbia has a 10 per cent surtax on provincial tax in excess of $\$ 3,500$. Saskatchewan has a 12 per cent surtax on provincial tax in excess of $\$ 4,000$. Manitoba has a 20 per cent surtax on provincial tax in excess of $\$ 2,657$. Ontario has a 5 per cent surtax on provincial tax in excess of $\$ 110.80$.
2. Quebec levies its own personal income tax which has an approximate range of 50 to 60 per cent of federal tax.
3. In Ontario, a 14 per cent corporation income tax rate applies to taxable income derived from manufacturing and processing, mining, logging, farming and fishing operations. Small businesses are exempt from taxation until January 1, 1985.
4. A11 insurance companies in Saskatchewan are exempt from corporation capital tax.
5. Tax is payable by insurer. Saskatchewan, Ontario, Quebec, New Brunswick and Nova Scotia tax life, sickness and accident insurance premiums at two per cent and all other premiums at three per cent. In Newfoundland, an additional 12 per cent tax on premiums is payable by the insured. Most provinces levy an additional tax of one per cent or less on fire insurance premiums to fund the office of the provincial fire commissioner.
6. Fuel taxes and tobacco tax in Ontario and fuel taxes in New Brunswick are valid until June 30, 1983. Adjustments effective July 1 not available at time of publication.
7. In British Columbia, the tax rate on diesel fuel is equal to the tax rate on gasoline plus 0.44 cents. Manitoba has suspended all ad-valorem adjustments on fuel taxes.
8. A 1 per cent increase in Quebec retail sales tax from 8 per cent to 9 per cent is temporarily in effect until at least the 1984 Quebec budget.
9. In Prince Edward Island, liquor is taxed under the Health Tax Act at 25 per cent and under the Retail Sales Act at 10 per cent resulting in a compound tax rate of 37.5 per cent.
10. Applies to individual meals (including non-alcoholic beverages) served on the premises, priced at $\$ 7$ or more. Meals less than $\$ 7$ per person exempt.

## APPENDIX L (continued)

11. In British Columbia, rooms costing $\$ 50$ or more per night are taxed at 8 per cent.
12. In British Columbia, the tax on cigarettes is indexed to reflect changes in the retail price. In Ontario, Quebec, New Brunswick and Newfoundland tax rates of 45, 50, 50, 76.1 per cent respectively are applied to a determined retail price. The other provinces tax cigarettes by a set amount which cannot be adjusted without a legislative amendment. In Prince Edward Island, Newfoundland and Ontario, tobacco products are also subject to retail sales tax.

Source: 1983 British Columbia Budget, pp. 76-7.

## APPENDIX M

A SUMMARY OF PROVINCIAL PUBLIC SECTOR WAGE RESTRAINT PROGRAMS

1. Newfoundland -- A two-year program was announced in October 1982 which provided for sliding scale ceilings on public service salary increases. These were limited to between four and seven per cent. Collective bargaining remained possible for non-monetary provisions.
2. Prince Edward Island -- After unsuccessfully trying to negotiate a "0 and 6" solution with the public sector unions, the government introduced a program limiting increases to five per cent over two years. Existing contracts were honoured, though, and the two-year restraint progam became effective when these expired. Collective bargaining was continued and a Compensation Review Board was established to oversee all negotiated settlements.
3. Nova Scotia -- New contracts were imposed, suspending collective bargaining rights and limiting wage increases to six per cent for one year. The six per cent limit was to be lifted once the current contracts expired.
4. New Brunswick -- A one-year wage freeze was imposed taking effect at the end of existing contracts, and effective immediately for those not under the terms of a collective agreement.
5. Québec -- Bill 105, introduced in December 1982, provided for three-year contracts to be imposed on civil service unions. Wages were rolled back for more than half the employees and strikes were prohibited.
6. Ontario -- In November 1983, the government announced a maximum increase of five per cent would be permitted in the second year of its restraint program. Whereas strikes had been prohibited during the first year of the program, the government announced that collective bargaining was being restored. This followed a Supreme Court of Ontario decision which determined that Ontario's Inflation Restraint Act violated the Charter of Rights and Freedoms by restricting bargaining on non-monetary issues. (Oct. 24)
7. Manitoba -- In February, the Manitoba Government Employees Association agreed to a three month delay in the implementation of their negotiated 10.3 per cent pay hike in exchange for a promise not to lay off workers nor to roll back wages for the remaining period of the contract (until September 28, 1984). Salary increases of senior civil servants were limited to two percent.

## APPENDIX M (continued)

8. Saskatchewan -- A two-year program, effective September 30, 1982, limited average wage increases in the public sector to one per cent below the Consumer Price Index.
9. Alberta -- Since 1977, strikes by civil servants have been banned and contract settlement have been determined by binding arbitration. The wage increases being awarded by the arbitrators in 1982 and 1983 averages 20 per cent. In an effort to curb its public sector wage bill, the government introduced a clause to the legislation governing civil service contracts which required arbitration boards to follow government guidelines when awarding contracts. The Alberta government expected salary increases to be funded within an overall five per cent increase in basic grants to hospitals, schools, and other government institutions.
10. British Columbia -- A two-year wage restraint program was instituted in July as part of the government's austerity measures. It provided for a maximum increase of five per cent if productivity increased.

## APPENDIX N

RESOLUTION TO AMEND THE CONSTITUTION WITH RESPECT TO ABORIGINAL MATTERS

1. Paragraph 25 (b) of the Constitution Act, 1982 is repealed and the following substituted therefor:
"(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."
2. Section 35 of the Constitution Act, 1982 is amended by adding thereto the following subsections:
"(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."
3. The said Act is further amended by adding thereto, immediately after section 35 thereof, the following section:
"35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the Constitution Act, 1867, to section 25 of this Act or to this Part,
(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item."
4. The said Act is further amended by adding thereto, immediately after section 37 thereof, the following Part:

## APPENDIX N (continued)

"PART IV. 1 CONSTITUTIONAL CONFERENCES
37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.
(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.
(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.
(4) Nothing in this section shall be construed so as to derogate from subsection 35 (1)."
5. The said Act is further amended by adding thereto, immediately after section 54 thereof, the following section:
"54.1 Part IV. 1 and this section are repealed on April 18, 1987."
6. The said Act is further amended by adding thereto the following section:
"61 A reference to the Constitution Acts, 1867 to 1982 shall be deemed to include a reference to the Constitution Amendment Proclamation, 1983."
7. The Proclamation may be cited as the Constitution Amendment Proclamation, 1983.

Source: Minutes of the Proceedings of the Senate, June 29, 1983.

## APPENDIX N (continued)

dates when resolution was passed

## Provincial Legislatures

| Nova Scotia | May 31 |
| :--- | :---: |
| Alberta | June 3 |
| Prince Edward Island | June 16 |
| New Brunswick | June 28 |
| Manitoba | August 18 |
| Ontario | October 18 |
| British Columbia | October 21 |
| Saskatchewan | November 30 |
| Newfoundland | December 2 |

Federal Parliament

## House of Commons <br> June 29

Senate
November 3

```
APPENDIX O
HOUSE OF COMMONS PROPOSED RESOLUTION TO AMEND THE CONSTITUTION
TO INCLUDE PROPERTY RIGHTS
```

1. Section 7 of the Constitution Act, 1982 is repealed and the following substituted therefor:
"7. Everyone has the right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except in accordance with the principles of fundamental justice."
2. The said Act is further amended by adding thereto the following section:
"60.1 A reference to the Constitution Acts, 1867 to 1982 shall be deemed to include a reference to the Constitution Amendment Proclamation, 1983 (property rights)."
3. This Proclamation may be cited as the Constitution Amendment Proclamation, 1983 (property rights).

Source: House of Commons Debates, April 29, 1983, p. 24996.

```
APPENDIX P
HOUSE OF COMMONS RESOLUTION ON FRENCH LANGUAGE RIGHTS IN MANITOBA
```

Whereas a fundamental purpose of the Constitution of Canada is to protect the basic rights of all Canadians, including Aboriginal peoples, English-speaking and French-speaking minorities, religious, ethnic and other minority groups;

Whereas the Constitution contains provisions respecting the status and use of the English and French languages in Canada;

Whereas in 1870 Parliament provided special protection for the use of the Eng1ish and French languages in Manitoba under section 23 of that Act;

Whereas the Supreme Court of Canada, on December 13, 1979, reaffirmed this constitutional protection under section 23 of the Manitoba Act, 1870;

Whereas the Constitution is the supreme law of Canada and is binding upon Parliament and the Legislatures of all provinces;

Whereas it is in the national interest that the language rights of the English-speaking and French-speaking minorities in Canada be respected and protected in a spirit of tolerance and civility, amity and generosity;

Whereas an agreement was reached on May 16, 1983 by the Government of Canada and the Government of Manitoba, with the participation of the Sociéte Franco-Manitobaine, to modify the Manitoba Act, 1870, so that the Government and Legislative Assembly of Manitoba can fulfill effectively their constitutional obligations under section 23 of that Act;

Whereas it is in the national interest to support continued efforts by the Government and Legislative Assembly of Manitoba to fulfill effectively their constitutional obligations and protect the rights of the French-speaking minority of the province;
(1) the House endorses, on behalf of all Canadians, the essence of the agreement reached by the Government of Canada and the Government of Manitoba, with the participation of the Societe Franco-Manitobaine, on May 16,1983 , to modify the Manitoba Act, 1870;

## APPENDIX P (continued)

(2) the House invites the Government and Legislative Assembly of Manitoba to take action as expeditiously as possible in order to fulfill their constitutional obligations and protect effectively the rights of the French-speaking minority of the province.

Source: House of Commons Debates, October 6, 1983, p. 27816.
APPENDIX Q
 (s millions)

| Program | Nfid. | P.E.I. | N.S. | N. 8. | Que. | Ont. | Man. | Sask. | Alta. | B.C. | N.W.T. | Yukon | Total |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Statutory Subsidies | 9.7 | . 7 | 2.3 | 1.8 | 4.7 | 6.0 | 2.2 | 2.2 | 3.6 | 2.5 | - | - | 35.7 |
| Fiscal Equalization | 554.0 | 124.0 | 618.0 | 524.0 | 2,810.0 | 6. | 455.0 | . | 3. | 2. | - | - | 5,085.0 |
| Reciprocal Taxation | 10.5 | 4.1 | 23.9 | 12.5 | 47.0 | 64.5 | - | - | - | - | - |  | 5,085.0 |
| Public Utilities Income Tax Transfer | 35.7 | 1.0 | - | - | 1.7 | -9.7 | . 3 | * | 116.6 | 3.3 . | -. 1 | $-.3$ | 128.5 |
| Youth Allowances Recovery | - | - | - | - | -234.4 | - | - | - | - | $\bigcirc$ | - | . | -234.4 |
| Prior Year Adjustments** |  |  |  |  |  |  |  |  |  |  |  |  | $150.0$ |
| Total fiscal Transfer Cash Payments | 589.9 | 129.8 | 644.2 | 538.3 | 2,629.0 | 60.6 | 457.5 | 2.2 | 120.2 | 5.8 | -. 1 | -. 3 | 5,327.3 |
| Hospital Insurance | 79.5 | 17.0 | 118.7 | 97.5 | 559.6 | 1,146.6 | 143.9 | 136.2 | 241.5 | 346.0 | 6.7 | 2.4 | 2,895.6 |
| Medicare | 27.4 | 5.9 | 40.9 | 33.6 | 192.7 | 394.7 | 49.5 | 46.9 | 83.2 | 119.1 | 2.3 | . 8 | 2,997.0 |
| Post-Secondary Education | 50.6 | 10.8 | 75.5 | 62.1 | 356.1 | 729.5 | 91.5 | 86.6 | 153.7 | 220.1 | 4.3 | 1.5 | 1,842.3 |
| Extended Health Care | 20.7 | 4.4 | 30.9 | 25.4 | 234.7 | 315.7 | 37.5 | 35.7 | 85.9 | 102.2 | 1.7 | . 9 | +895.7 |
| Established Programs Financing, Cash Payments | 178.2 | 38.1 | 266.0 | 218.6 | 1,343.1 | 2,586.5 | 322.4 | 305.4 | 564.3 | 787.4 | 15.0 | 5.6 | 6,630.6 |
| Canada Assistance Plan | 71.4 | 19.7 | 93.2 | 119.2 | 909.4 | 848.1 | 99.3 | 125.5 | 343.6 | 496.8 | 11.2 | 2.8 | 3,140.2 |
| Other Health and Welfare | 1.0 | . 2 | 3.0 | 3.1 | - | 37.4 | 4.5 | 3.4 | 9.3 | 6.8 | . 2 | 1.2 | + 70.1 |
| Bilingualism in Education | 2.0 | 1.1 | 3.4 | 18.8 | 92.6 | 44.6 | 5.2 | 2.4 | 5.5 | 6.3 | . 1 | . 2 | 182.2 |
| Crop Insurance | * | 1.2 | $\cdot .2$ | 5.8 | 5.8 | 22.3 | 14.2 | 59.3 | 38.8 | 2.7 | - | - | 145.0 |
| Territorial Financial Agreements | - | - 7 | - | - | - | - | - | -. |  | . | 346.0 | 99.6 | 445.6 |
| Municipal Crants | 1.9 | . 7 | 12.2 | 10.4 | 51.3 | 102.1 | 11.6 | 5.5 | 13.2 | 19.6 | 1.6 | . 9 | 231.0 |
| All Others** |  |  |  |  |  | . |  |  |  |  |  |  | 364.0 |





[^2]BIBLIOGRAPHY
"Canada's Trade Policy for the 1980 s . The Views of the Provinces." a
consensus document prepared by the provincial Ministers of Trade, January
1983.
"Federal Proposal to Reduce Health and Post-Secondary Education Financing." Statement by Provincial Ministers of Finance and Treasurers, April 1983.

Gilson. J.C. Western Grain Transportation: Report on Consultations and Recommendations. Ottawa: Minister of Supply and Services Canada, 1982.

Government of Alberta. Alberta in Canada: Strength in Diversity. A Government of Alberta Discussion Paper. October 1983.

Government of Canada, Department of External Affairs. Canadian Trade Policy for the 1980s: A Discussion Paper. Ottawa: Minister of Supply and Services Canada, 1983.

Government of Canada, Department of External Affairs. A Review of Canadian Trade Policy: A Background Document to Canadian Trade Policy for the 1980s. Ottawa: Minister of Supply and Services Canada, 1983.

Government of Canada. Preserving Universal Medicare. A Government of Canada Position Paper. Ottawa: Minister of Supply and Services, 1983.

Government of Canada. Reform of the Senate: A Discussion Paper. Presentation to the Special Joint Committee on Senate Reform, June 16, 1983.

Government of Newfoundland. "Restructuring the Fishery. A Detailed Presentation by the Government of Newfoundland and Labrador to the Government of Canada." May 6, 1983.

Hawkes, David C. and Bruce G. Pollard. "The Medicare Debate in Canada: The Politics of the New Federalism." Publius (forthcoming, 1984).

Martin, Patrick, Allan Gregg, and George Perlin. Contenders. The Tory Quest for Power. Scarborough: Prentice-Hall Canada Incorporated, 1983.

Norrie, Kenneth. "Not Much to Crow About: A Primer on the Statutory Grain Freight Rate Issue." Canadian Public Policy. IX:4, December 1983, 434-45.

Report of the Task Force on Atlantic Fisheries. Navigating Troubled Waters: A New Policy for the Atlantic Fisheries. Ottawa: Minister of Supply and Services, December 1982.

Royal Commission on the Economic Union and Development Prospects for Canada. A Commission on Canada's Future. Ottawa: Minister of Supply and Services, 1983.

Taylor, Malcolm G. Health Insurance and Canadian Public Policy. Montreal: McGil1-Queen's University Press, 1979.

Tupper, Allan. Bill S-31 and the Federalism of State Capitalism. Kingston: Institute of Intergovernmental Relations, 1983.

Weeks, E.P. and Sommerville, Anne. The Future of the Atlantic Fisheries. An interim report. Montreal: The Institute for Research on Public Policy, 1982.

Weeks, Ernie and Mazany, Leigh. The Future of the Atlantic Fisheries. Montreal: The Institute for Research on Public Policy, 1983.

Zlotkin, Norman K. Unfinished Business: Aboriginal Peoples and the 1983 Constitutional Conference. Kingston: Institute of Intergovernmental Relations, 1983.

## INDEX

Aboriginal rights, 18, 25-8
Agriculture, 46, 69-71
Agricultural Adjustment Fund, 110, 117
Ahenakew, David, 25
Alberta: property rights, 31; oil and gas pricing, 47-49; user fees, 85;
health care premiums, 85; Crow rate, 116-7
Amending formula, 20, 27
Annual Premiers' Conference, 6, 8, 68, 81, ..... 85
Anstett, Andy, ..... 38
Assembly of First Nations, ..... 25
Atlantic Fisheries Restructuring Act, 102-3
Axworthy, Lloyd, 105, 121
"Back in" provision. See National Energy Program
Bank of Nova Scotia, 91, 94-5, ..... 97
Begin, Monique, 79, 82-3, ..... 85
Bennett, William, 9-10
Berntson, Eric, 114, 115
Bilateralism, 6-7
Bill 38 (Québec), 6, 65-6
Bills 48 and 49 (Québec), 101-2
Bill 57 (Québec), 32-3
Bill 62 (Québec), ..... 24
Bills 70 and 105 (Québec), ..... 33
Bill 101 (Quebec). See Charter of the French Language
Bill C-150. See Established Programs Financing
Bil1 C-155. See Western Grain Transportation Act
Bil1 C-157. See Civilian Security Intelligence Service
Bil1 C-170. See Atlantic Fisheries Restructuring Act
Bil1 S-31. See Corporate Shareholding Limitation Act
Bilodeau, Roger, 34, 39
Blakeney, Allan, 15
Bourassa, Robert, 20
British Columbia: election, 9-10; property rights, 29; livestock incomestabilization plan, 70; extra billing, 80; user fees, 85;
Crow Rate, 117-18
Broadbent, Ed, 15, ..... 119
Buchanan, John, 97
Budgets. See fiscal policies
Caisse de dépôt et placement du Québec, ..... 72-3
Canada Development Corporation, 95, 97
Canada Health Act, 4, 5, 46, 75, 79-81, 82, ..... 86
Canadian Bar Association, 59
Canadian Charter of Rights and Freedoms, 11, 17, 18, 22-4, 32, 39, 60-1
Canadian Pacific Limited, 72, 119
Canadian Transport Commission, ..... 73
Canadian Wheat Board, 71, 121
Cattanach, Justice Alex, 23
Charter of the French Language, 18, 23, 32
Chrétien, Jean, 47-9, 50-1, 53-4
Churchill Falls hydro, 45, 49-50
Churchill Falls Labrador Corporation Limited, 49-50
Civilian Security Intelligence Service, 3, 45, 57-62
Coalition of First Nations, 26
Conference of the Provincial Council of Attorneys-General and
Ministers of Justice, 56, 58, 60-1
Conference on Aboriginal Constitutional Matters, 6, 25-7, 28
Conference of Provincial Ministers of Health, 82, 85
Constitution Act, 1867 (formerly, British North America Act), 18, 31, 33,88
Constitution Act, 1982, 17, 25, 27, ..... 34
Cooperative federalism, 12-14
Corporate Shareholding Limitation Act, 46, 71-3
Côté, Gaspard, 24
Council of Maritime Premiers, 8
Crow Benefit, $109-10,115,116-17,118,120,121$
Crow's Nest Pass rate, $3,14-15,46,73,105,107,113-14,115,117,118$,119, 120, 121, 122
Davis, William, 6, 8, 15, 40, 57, 81, 85
De Bané, Pierre, 91, 93, 95-7, 99, 101, 102
Deschênes, Judge Jules, 23, 24, 33
"Double 80 " proposal, 117
Dutil, Judge Jean, 33Economic and Regional Development Agreements (ERDAs), 6, 45, 62-4
Economic development policy, ..... 11
Elections: British Columbia, ..... 9-10
Electricity, hydro, 49-50
Epp, Jake, 30
Erola, Judy, 72-3
Established Programs Financing, 4, 5, 77-9, 82-3
Evans, Chief Justice Gregory, ..... 23
Executive federalism, ..... 6-7
Extra-billing, 97-81
Federal-Provincial Fiscal Arrangements and Established Programs Financing Act (1977), 5, 77-9
Filman, Gary, 39
Finance Ministers' meetings, 9
First Ministers' Conferences, 6-7, 25-7
Fiscal arrangements, 77-9, 82-3
Fiscal policies, 10-11
Fisheries, Atlantic, 4, 12, 46, 87-103
Fishery Products Limited, 91, 97
Fjordbotten, Leroy, 11
Fogarty, Albert, 84-5
Forest, Georges, ..... 34
Gallagher, Charles, ..... 82
Garon, Jean, 99, 100-2, ..... 118
General Development Agreements (GDAs), 6, 45, ..... 62
Gilson, J.C., 11, 107-8, 109, 110, 112, 113
Girouard, Justice Gerald, 33
Godin, Gerald, ..... 38
Goudie, Joseph, ..... 35
H.B. Nickerson Company, ..... 89, 97
Health care premiums, ..... 80
Health care system, 8
Hibernia, 53
Horsman, Jim, 31
House of Commons Standing Committee on Fisheries and Forestry, 102
House of Commons Standing Committee on Indian and Northern Affairs ..... 28
House of Commons Standing Committee on Justice and Legal Affairs, 30
House of Commons Standing Committee on Transport, 115, 116-7, 118
How, Harry, 23
Hydro-Québec, 45, 49-50
Independence, Québec, ..... 21-2
Indian Affairs and Northern Development, Department of, ..... 29
Indians, and sexuality clause, 27; See Aboriginal rights
Inuit Council on National Issues, 25
Job-creation programs, 11
John Penny and Sons Limited, 94, ..... 95
Johnston, Donald, 5
Joint programming, 5,6. See ERDAs
Juvenile Delinquents Act, ..... 55
Kaplan, Robert, 56, 57, ..... 59
Kirby, Michael, 89, 90, 91, 92, 96-7
Lake Group Limited, ..... 89
Lalonde, Marc, ..... 10
Landry, Bertrand, ..... 21
Lane, Gary, 31, 6
Lee, Jim, 31
Legislative supremacy, ..... 23
Leonard, Jacques, ..... 66
Lévesque, René, 19, 20, 21, 26, 32, ..... 65
Livestock industry, 46, 69-71
Lougheed, Peter, 15, 26, 47, 69
Lumley, Ed, 64, 67
Lyon, Ster1ing, 34, 35, 36
Macdonald, Donald Stovel, 41, ..... 43
Macdonald Commission. See Royal Commission on the Economic Union andDevelopment Prospects for Canada
MacGuigan, Mark, 35, 41, 44, 61
Madelipêche Incorporated, 99, 100
Manitoba: job creation policy,11; minority language rights, 34-9; ERDA, 64;
Crow rate, 114-6
Maritime freight rates, 4
Marketing boards, 69
Marshall, William, 49, 50-4
Martin, Gregg and Perlin, 20
Mazankowski, Dan, 119-20
McMurtry, Roy, 41, 58-60
Medicare, 5, 46, 76, 77-86
Metis National Council, 26
Ministry of State for Economic Development, ..... 63-4
Minority language rights, 32-3, 34-9, 40-1
Miller, Frank, 9, 68
Mobil 0il, 54
Morgan, James, 93, 95-6, ..... 97
Morin, Jacques-Yvan, 19, ..... 20
Mulroney, Brian, 15, 20, 37, 49, ..... 55
Municipalities: Manitoba, 38; Quebec, 46, 65-6
National Energy Program, 2, 15, ..... 55
National Sea Products Limited, ..... 97-8
National security, 58-60
Native Council of Canada, ..... 25
Natural gas pricing, ..... 48
Neilson, Eric, 30
New Employment Expansion and Development (NEED) Program, 65
New Brunswick: property rights, 31; bilingualism, 40; hospital user fees, ..... 85
New Democratic Party, 15-16, 102, 111, 119
New Federalism, 1-6, 86, 113
Newfoundland: hydro electricity, 49-50; fisheries, 87, 91-7, 103; rural
development 64-5; offshore resources, 50-4
Norrie, Kenneth, 106-7
Notley, Grant, 15
"Notwithstanding" clause. See Section 33 (of Charter).
Nova Scotia: fisheries, 97-9, 102; offshore oil, 54-5
Official languages: Ontario, 40; Manitoba, 34-40; New Brunswick, ..... 40
Offshore resources, 4, 45, 50-3, 55
011 pricing, 45, 47-9
Ontario: property rights, 30-1; minority language rights, 39-41; 1ivestock
income stabilization plan, 70-1
Ontario Public School Trustees Association, 40
Opting out, 19-20
Parti Québécois, 21, 38, 59, 66
Pawley, Howard, 36, 38
Pecheurs-Unis du Québec. See United Fishermen's Cooperative
Peckford, Brian, 53, 64-5, 92-3, 94, 95, 96-7
Penner, Keith, 28
Penner, Roland, 36
Pepin, Jean-Luc, 108, 112
Pitfield, Michael, 58
Post-secondary Education, 5, 78, ..... 83
Prince Edward Island, property rights, 31
Progressive Conservative Party, 14-15, 73, 111, 119-20
Property rights, 18, 29-31
Public sector wage restraint, $11-12$
Québec: veto, 19; independence, 21-2; language, 31-3; Churchill Fallsagreements, 49-50; municipal funding, 65-6; livestock incomestabilization plan, 70; Bill S-31, 72; fisheries, 46, 99-102, 103;Crow rate, 118-19
Quebec Liberal Party, 20, ..... 66

Railway revenue, 106
Regan, Gerald, 67
Regional Economic Expansion, Department of, 63
Regional Industrial Expansion, Department of, 63
Restraint, 9-11
Reverse onus, 22
Roberts, John, 66
Royal Canadian Mounted Police, 57, 60
Royal Commission on the Economic Union and Development Prospects
for Canada, 5, 7, 13, 19, 42-4
Ruby, Clayton, 22
Rural development, Newfoundland, 45-6, 64-5
"Safety net", 108, 112, 119, 121
Saskatchewan: NDP, 15; property rights, 31 ; oil pricing, 49; Crow rate, 114-5
Schoenhals, Paul, 49
Section 1 (of Charter), 22-3
Section 33 (of Charter), 24
Section 133 (of Constitution Act, 1867), 33
Security Intelligence Review Committee, 58
Self-government, 28-9
Senate reform, 41, 43-4
Senate Special Committee on the Canadian Security Intelligence. Service, 58, 61-2
Senate Standing Committee on Legal and Constitutional Affairs, 72
"Six and five", 11, 12
Smith, Brian, 60
Snavely Commission on the Costs of Transporting Grain by Rail, 106
"Social contract", 15, 92, 96
Société Franco-manitobaine, 35, 36, 37
Sovereignty-association, 40
Special Committee on Indian Self-Government, 28-9
Special Joint Committee of the Senate and the House of Commons on
Senate Reform, 13, 43-4
Special Recovery Program, 11
Stephenson, Bette, 39
Supreme Court of Canada, 22, 32, 33, 34, 50, 52, 53
Task Force on Atlantic Fisheries, 90-1, 99
Taylor, Malcolm, 77
Timbrell, Dennis, 70
Trade policy, 46, 66-9
Trudeau Pierre: New Federalism, 1-6; veto for Quebec, 19; property
rights, 31; Macdonald Commission, 43; municipal funding, ..... 65;
Medicare, 85-6; Atlantic Fisheries, 95
Tupper, Allan, 71, ..... 72
United Fishermen's Cooperative, ..... 99, 101
User charges, ..... 79-81
Variable freight rates, 108 , ..... 112
Veto, Québec, 19, 2
Visibility, 4-5, ..... 86
Walker, Gordon, ..... 67
Weeks and Mazany, ..... 88
Weeks and Summerville, ..... 88
Western Grain Transportation Act, 3, ..... 109, 120-1
Wheat pools, 115-17, ..... 118
Whelan, Eugene, 70-1
Young Offenders Act, 45, 55-7
Zaozirny, John, ..... 48
Zlotkin, Norman, ..... 25


[^0]:    encompasses all Canada. Executive Federalism, therefore, cannot be substituted for what $I$ hold to be a basic principle of federalism: that when the national will can be demonstrated to be superior over a regional will, the national will must prevail.... [T]o me the Canadian national good is more important than a provincial national good, and therefore there should be a national will expressed by Canadians through their government when such conflicts arise, and they should be settled, if necessary, by election or by referenda and not by a sort of weighing of persons as Executive Federalism (pp. 11-12).

[^1]:    - Medicare. The federal government introduced a Canada Health Act, affirming the principles of Medicare and providing for the withdrawal of transfer payments from provinces which failed to meet federally-determined "national standards." Moreover, the federal government unilaterally amended the 1977 legislation establishing the arrangements for the funding of health and post-secondary education. See Chapter Four.

[^2]:    * Amount too small to be expressed * Distribution not available

