

~~2 HR 6078~~

THE FEDERAL YEAR IN REVIEW : 1977-78

Douglas Brown
Research Associate

Institute of Intergovernmental Relations
Queen's University, Kingston, Ontario,
Richard Simeon, Director.

INSTITUTE OF
INTERGOVERNMENTAL RELATIONS
QUEEN'S UNIVERSITY
KINGSTON, ONTARIO
CANADA K7L 3N6

FOREWORD

The complex and ever-changing field of federal-provincial relations lies at the heart of the Canadian political and policy process. Few issues of contemporary public concern long remain outside the intergovernmental debate. Today, the future of the federal system itself is at issue - and the debate is being carried out largely through the mechanisms of intergovernmental discussion.

The Federal Year in Review, 1977-78 is designed to summarize and assess the major events in federal-provincial and intergovernmental relations during the year, and to place these events in the context of the evolution of the federal system and of the wider political and economic climate. It is aimed primarily at students and practitioners of federal-provincial relations, but we expect it also to be useful for groups and individuals in many other settings whose interests and concerns are affected by the manifold interactions of federal and provincial governments.

This Review is the second in what is to be an annual series. The first edition was well received, and in preparing the second, we have benefitted from many suggestions from readers. We trust they will see their ideas reflected in the revised format.

The Review could not have been written without the generous cooperation of a great many officials in the eleven governments, or without the constant flow of speeches, statements and reports which provide much of its raw material. We are most grateful for this assistance.

The most obvious difference between last year's edition and this one is the greater length. Indeed, as we contemplated the mass of material, we more than once felt that perhaps we had created an insatiable monster. The field of intergovernmental relations has few boundaries, and there were always more figures to collect, more issues to discuss. One cannot be an expert on every policy field. So we have had to set limits, and no doubt specialists in several areas will feel we have not given their concerns the prominence they

deserve. Nevertheless we believe the Review does convey the essence of a very important year for Canadian federalism.

Unfortunately the world does not stop for its picture to be taken. Many issues we examine were under discussion before our year began; many more would continue into the future. The Review takes some glances backwards and forwards, but its focus is the year from the fall of 1977 to the fall of 1978. The February, 1979, First Ministers' Conference on the Constitution, and the Report of the Task Force on Canadian Unity must await the next review for full discussion.

The Review was prepared and written by Douglas M. Brown, but it was very much a team effort drawing on the assistance of all the Institute Staff, with special thanks to Dorothy Holman for trying to keep us to deadlines. Special thanks are also due to Professor Noel Lyon, Faculty of Law, Queen's University, for reviewing the section on the courts, written by Julia Eastman, and to the Staff of the Federal-Provincial Relations Division, Department of Finance, Ottawa, for setting us right on some fiscal and economic matters. They are, of course, not responsible for any of our subsequent errors.

Marshalling material for the 1978-79 edition is now underway. Comments and suggestions will be much appreciated.

Richard Simeon,
February, 1979.

TABLE OF CONTENTS

	<u>Page</u>
Foreword	
I : Introduction: An Overview of the Year	1
II : The Economy and Fiscal Federalism	
A. Managing the Economy in a Federal State	6
B. Current Fiscal Relationships	28
C. Provincial Budgets	38
III : The Constitutional Debate	47
The Quebec Debate	48
The Ottawa Response	55
The Opposition Response	63
The Other Nine : Provincial Responses	65
Private Sector Responses	73
IV : Federal-Provincial Relations - General Policy Areas	77
V : Inter-provincial Relations	99
VI : Judicial Review: Recent Cases of Significance to Federalism	105
VII : Notes on the Intergovernmental Bureaucracy	113

INTRODUCTION : AN OVERVIEW OF THE YEAR

A foreign political observer visiting Canada last year would have been struck by a dominant theme running through every facet of our public affairs: a debate about federalism. First, the federal state itself was at issue. While interest in the constitution may have diminished since the first anniversary of the Parti Québécois victory, the debate moved through a variety of phases, coming to rest in the intergovernmental arena. Second, federal-provincial relationships were central to the policy-making on numerous other issues, as Canadian leaders came to grips with economic problems and other policy decisions.

It was a busy year for students of federalism. There were three highly-publicized meetings of the eleven first ministers in ten months, and federal-provincial issues crowded the political agenda; joint fiscal policy, industrial development strategies, oil and gas pricing, public sector restraint, grain transportation, fisheries expansion - all were issues dominated or affected by the nature of the federal relationship. And while the federal aspects of the state impinged upon public affairs, the political, and economic climate in turn affected intergovernmental relations.

First there were electoral constraints. The Liberal government of Prime Minister Pierre Trudeau continued to delay the federal general election. The national political parties and the press were waiting all year for an election to be called, adding tension and wariness to federal-provincial relations. Conversely, the provincial premiers were increasingly aggressive and assertive, sensing the weakness of a federal government nearing the end of its five-year mandate, and trailing the Conservative Opposition in opinion polls. The impending election influenced each of the three First Ministers' Conferences, limiting the possibility of agreement as each participant weighed the political advantages or disadvantages.

While not as imminent as the federal election, the proposed Quebec referendum hung over discussions of the constitutional issues in particular, as Premier Lévesque tried to demonstrate that federalism couldn't work, and federalists the opposite.

There were electoral cross-winds from other provinces too. The Liberal government of Premier Gerald Regan of Nova Scotia was defeated in September, and Alex Campbell's Liberal government on Prince Edward Island just barely won their election in April. Another close race took place in New Brunswick in October, when Richard Hatfield's Conservative government was narrowly returned to power. In the West, elections in Manitoba and Saskatchewan, almost a year apart, gave radically different messages to political analysts. Sterling Lyon's Conservative party, on a platform of public sector restraint, defeated the New Democratic government of Ed Shreyer in Manitoba; but in Saskatchewan, Allan Blakeney's N.D.P. government, campaigning on continuing government involvement in provincial development, was re-elected for a third term. In British Columbia, Alberta and Newfoundland elections expected in the next year also coloured the political climate.

A second main influence on federal-provincial relations was the economic context. Continued high levels of inflation and unemployment constrained policy options, as the economy managed only sluggish growth through most of the year. This rendered decisions on other policy worries, such as reducing the trade deficit, effecting structural changes to improve productivity, the sharp decline in the value of the Canadian dollar, and growing government deficits, much more difficult. Indeed, economic issues displaced "national unity" as the most prominent political concern of the year. And yet the deeply-rooted constitutional problems, reflecting regional and linguistic tensions, contributed to the economic malaise in part simply by undermining confidence and clouding the future.

To return to specific events, some significant developments occurred in federal-provincial relations. The process of federal-provincial consultation begun with the First Ministers' Conference on the Economy in February may well prove to herald a new era in joint decision-making, particularly for medium and long-term economic development strategy. The governments are experimenting with new methods and mechanisms of consultation. The results are not yet

conclusive, but it appears that regular first ministers' conferences on the economy, together with the meeting of finance ministers - and all the preparatory work by officials that this entails - will become a permanent feature of the federal landscape. Whether we are genuinely moving towards a model of policy-making which might be called collaborative federalism, is still in question. Have we reached the stage where the federal government considers the provincial governments as partners in developing national economic policies? And if that is the case, do we have intergovernmental machinery adequate to the task?

Thus Canadian leaders appear to be moving slowly towards a more cooperative federalism - at least in some areas of economic policy. However, in the question of more substantial change to the federal system itself, the constitutional debate, fundamental differences remain and agreement on a new constitution seems far away. The challenge to Confederation of the P.Q. election in November, 1976, to mention only the most serious strain on the federal state, has not yet been met. Nonetheless, the debate progressed through a number of distinct stages.

First, there were numerous sets of constitutional proposals put forward by private groups, opposition parties, provincial governments and advisory committees. The process was most recently capped by the release of the Report of the Task Force on Canadian Unity. But as the latest events have proved, few political forces, outside Quebec, have embraced the Pepin-Robarts recommendations, nor has consensus formed around any other particular set of constitutional proposals. There is as yet, no authoritative blueprint for the "third option" between the present federalism and the Parti Québécois' sovereignty-association.

Instead, the process of constitutional reform has proceeded slowly. If there is any lesson to be gained from 1978, it is that reform will take place only through the hard slogging of intergovernmental bargaining. The convening of the First Ministers' Conference on the Constitution, in October, 1978, signals the return of the issue to the intergovernmental arena. The heads of the eleven governments who alone have the power to proceed, have once again

begun to debate the constitution in the only forum they know: the federal-provincial conference.

Whether their attempts will succeed, or fail like the Victoria Charter, is for the future to decide. However, there are some conditions which must be met before a renewed federalism can be constituted. There is the obvious need for a federal election to clarify Ottawa's mandate regarding constitutional change. Second, the Quebec referendum-campaign, run on a fair basis and addressed to a clear and conclusive question, must be held before negotiations can begin again in earnest. This assumes that sovereignty-association will be more clearly defined, and that Claude Ryan's Liberal party will shortly define its option, preferably with the approval of political leaders in English Canada. The federal-provincial conferences which resume must then address themselves to the entirety of the Quebec position, and must reach final agreement on the more crucial of the other provinces' concerns, particularly Alberta's position on natural resources. Finally, there must be agreement on how to agree: must there be unanimity on all issues, can there not be a reasonable formula for dealing with, and setting aside separate items - or must reform proceed as a package?

It is possible that all these considerations may be met by this time next year, but it is more likely to take longer. What will happen in the next year is the federal election. This will probably be preceded by a redrafted federal constitutional amendment bill in which Ottawa will enact those changes to the constitution on which it can act alone, including the entrenchment of linguistic and civil rights for federal purposes. The federal government may move to patriate the B.N.A. Act unilaterally, though this would provoke strong opposition from some provinces. Depending on when Quebec holds its referendum, talks with the provinces should resume after the federal election, to reach final agreement on the package of items discussed at the February, 1979, constitutional conference. Most observers predict the referendum will be held in the fall of 1979 or early in 1980. Meanwhile, the Quebec government

will continue to balance the delicate line between participating fully as a government within the federal system, including the constitutional discussions, and using that participation to demonstrate the disadvantages of that system itself, and the virtues of its sovereignty-association option. As is illustrated below, the Quebec government had indeed found many areas of agreement within the federal sphere, but on other matters has registered profound disagreement.

To return to the original point: federalism itself dominates the political agenda in Canada. The federal state is still in question, and the ways and means of federal-provincial consultation are an important feature of general policy-making. The Year in Review which follows is an attempt to describe the substance of these debates, and to inform the public on the operation of the Canadian federal state.

II

THE ECONOMY AND FISCAL FEDERALISM

A. MANAGING THE ECONOMY IN A FEDERAL STATE

Introduction

The general economic outlook in 1977-78 gave Canadians little cause to rejoice as high levels of inflation and unemployment constrained the policy options of federal and provincial governments. In general, the "economy" supplanted "national unity" as the most prominent issue of the day. The consistent refusal of economic trends to swing out of their recessionary troughs in response to simple Keynesian policies continued to baffle private sector and government economists alike. Growth continued to be sluggish. The rate of increase in the GNP hovered between 4 and 4.5%. Inflation was still over 9% and the unemployment rate approached 9 per cent.

In the fall of 1977 analysts were cautiously optimistic that the Canadian economy would recover in 1978. The federal budget and most of last year's provincial budgets were predicated on that forecast, and reaped the consequences by the end of the fiscal year. Since then the short term goals of reducing unemployment and controlling inflation have been complicated by the end of wage and price controls. Other long-term goals, such as reducing the trade deficit, effecting structural changes to improve productivity in a competitive world, and gradual restraint in public sector growth, were also rendered difficult by the sluggish growth and the continued decline of the Canadian dollar in international currency markets.

These developments provided a challenging context for the intensive series of intergovernmental discussions on the economy. The significance and long-term consequences of several of the initiatives will only become apparent in future years.

Even assessments of 1977-78 can differ. Was it a year in which the range of policy decisions became more restricted and friction increased? Or was it instead a year in which, despite the difficult economic circumstances, federal and provincial governments recognized the need for genuine consultation, were able to discuss economic problems openly, and to attain new levels of cooperation? It was a mixture of both, and reactions depended greatly on expectations. Some stressed how far there is to go; others how much had been achieved.

Federal-provincial relations naturally dealt with the bread and butter issues of each government's taxing and spending decisions. But several other issues dominated intergovernmental meetings on the economy. They were:

- the dismantling of wage and price controls
- efforts to coordinate short-run demand management policies
- the search for medium term, or structural, economic policies, often referred to as "industrial strategy"
- federal-provincial consultation on international trade relations, especially in the GATT discussions
- impact of government responses to the emphasis on public sector restraint.

Decontrols

Consideration of the best means to dismantle wage and price controls was a lively issue at meetings of business and labour representatives with the federal government in the past year, but it figured in federal-provincial relations as well. In its "Agenda for Cooperation" published in May, 1977, the federal government recommended close cooperation with the provinces on orderly and rapid decontrol, to be announced, it hoped, by midsummer.

Most provincial governments were willing to concede that the AIB program had been relatively ineffectual and wanted an early end. For the federal government, however, the advantages of waiting out the worst effects of decontrols until after a federal election seemed to weigh more heavily in their decision. Finally, with his "mini-budget"

released in the Commons in October, the new finance minister, Jean Chrétien, announced that controls would begin to come off on April 14, 1978, so that "15% of companies will be free of controls by the end of June, 1978, a further 10% by the end of September, and the remaining 75% by the end of December,"

This schedule left controls on most firms and employees for most of 1978. Following considerable discussion between federal and provincial finance ministers, Ottawa indicated that post-controls progress would be monitored by a successor agency to the Anti-Inflation Board. The agency, known as the Centre for the Study of Inflation and Productivity, and based in the Economic Council of Canada, was approved by the First Ministers' meeting in February, and its first report was received by them at the November Conference. (1)

While the decision for a later rather than earlier phase-out no doubt gave the federal government some time to mend relations with labour and business, and to get some kind of a multi-partite consultative forum off the ground, some provinces' patience had clearly run out. In Quebec, the Parti Québécois government had pulled its public sector employees out of controls shortly after its election in 1976. Saskatchewan decided to pull out after October 13th, 1977, and Alberta by the end of December. Meanwhile on September 30, 1977, the Supreme Court of Canada ruled in a 5-4 decision, against the Government of Manitoba's order-in-council establishing its Anti-Inflation agreement with Ottawa. In the midst of the election campaign and in the impending decontrol climate, the Manitoba government failed to enact the necessary legislation to impose the controls. With the federal and Ontario governments still in the program, however, these defections had only a limited effect on the public sector.

In summary, the controls issue helps demonstrate the transition in economic policy at the federal level - from the federally

(1) Chairman, Economic Council of Canada, Report to First Ministers November 27-29, 1978, Centre for the Study of Inflation and Productivity

initiated and run Anti-Inflation Program, to the rigorous federal-provincial discussions which have been a feature of the decontrols period.

Short-term Economic Policy

With the domestic economy continuing its sluggish growth in late 1977 and into 1978, government fiscal policies focussed on stimulation of domestic demand. However with the prevailing mood of restraint in government spending, prompted too by what many perceived as an unwieldy federal deficit, the consensus turned to tax cuts as the most popular fiscal measure of the year. The following account of the federal budgets demonstrates some of the problems in setting short-term economic policy in a federal state.

The Budgets

Federal Finance Minister, Jean Chrétien, had little room to manoeuvre when he presented his first major financial statement in the House of Commons on October 20, 1977. Given the promise to begin "de-controls" and the \$1 billion tax cuts of the previous budget, Chrétien chose what he thought was the "responsible" route of offering minor tax cuts - up to \$100 of personal income tax for some - and added another \$150 million to round out a billion-dollar job-creation program.

The dilemma facing Mr. Chrétien in the spring budget was not much different. He was torn between conflicting economic advice: on the one hand to exercise restraint, in some circles there were even calls for a balanced budget, or at least a much reduced deficit, and, on the other hand, advisors called for tax cuts and other economic stimulants to prod recovery. Add to this the political considerations of an expected spring election - there was wide speculation of generous measures for the taxpayers.

Chrétien chose something of a middle road: "Tonight despite the prospect of an early election, I have refused to make irresponsible promises to the people of Canada ...", he announced to the House of Commons on April 10th. With a projected deficit of \$11.5 billion, he could hardly claim to have satisfied the more conservative

economic critics, but his stimulative measures were modest. Also, in an effort to "proceed immediately with major structural changes" promised at the First Ministers' Conference, the federal budget took steps to encourage investment - mainly through credits - in industrial research and development, railway equipment and improvements and certain types of energy investment.

The most important and most popular measure in the statement, however, was the proposed cut in provincial retail sales taxes. Advocated by business groups, the C.D. Howe Institute, the Economic Council and others, the cuts were designed as an immediate encouragement to consumer spending, "not more spending by government", and to "offset some of the temporary factors which are pushing up prices".

The Finance Minister proposed a novel "intergovernmental" instrument for reducing taxes. He agreed with observers that the most effective stimulative measure would be a reduction in retail sales taxes, which are, of course, in provincial hands. Therefore he proposed that the provinces reduce their sales taxes by three per cent for a six-month period. In return, Ottawa would compensate the provinces for the loss of revenue from two of the points. Alternatively, compensation would be paid if instead of a three per-cent cut, the provinces wished to make a two per cent cut, but extend it a further six months.

In his speech Chrétien reported that "the four Atlantic Provinces, Ontario and Manitoba all propose to reduce their sales tax by three percentage points for six months. The provinces of British Columbia and Saskatchewan ... a two-point reduction for the first six months and to make their own contributions over subsequent periods ... Quebec is still considering the federal offer," Alberta, with no retail sales tax, would not benefit from the cut.

The initial reaction to the budget was, apart from opposition critics in Parliament, largely favourable. Business critics, in particular, seemed relieved that the government had resisted the temptation to make large tax concessions. The budget was "not a crassly political document", wrote the Ottawa Journal; "it was a remarkable effort" praised the Vancouver Sun. It went on, "The

ingenuity lay in how far Mr. Chrétien managed to make this extra \$500 million go. With it, he managed to induce the provinces into some \$1.1 billion in provincial sales tax cuts." This praise for passing the cuts on to the provinces was echoed in an editorial in the Montreal Star, which contended that the budget "put the tax saving where it will do the most good for those who need it. And it marks the best example to date of the ripening cooperation between Ottawa and the provinces on economic and fiscal matters." Finally, the Halifax Chronicle-Herald was pleased that the federal government's promise to pay the full three percentage points of lost tax revenue to the Atlantic Provinces had provided "some recognition of the adverse economic conditions facing this region."

There was no initial indication in the press that the measures wouldn't wash with some provinces but this is understandable. It seemed for the moment that agreement of the provinces had either been secured or was imminent. Certainly a statement by Darcy McKeough, released simultaneously with the federal budget, did not indicate dissension: "This short-term and shared-cost action represents a significant first in fiscal policy coordination in Canada. Ontario has played an important role in the design, development and implementation of this proposal."⁽¹⁾ McKeough admitted "some personal satisfaction" with the federal measure - as well he should, it seemed to be almost all his idea.

Before long, however, the apparent agreement was being criticized. The first hint of dissent came from a familiar quarter. Rising in the Quebec National Assembly, the day after the budget, Premier René Levesque charged that : "M. Chrétien s'est permis de violer sans vergogne, de prétendre littéralement s'annexer pour six mois un secteur stratégique de la fiscalité dont on reconnaît qu'il appartient strictement aux provinces." Not only was the proposed sales tax cut

 (1) W. Darcy McKeough, Treasurer of Ontario, Statement on Complementary Action Coincident with the Federal Budget, April 10, 1978.

an intrusion by the federal government into the provincial jurisdiction, he charged, but it would also do little to help Quebec. Ontario, where automobiles, refrigerators, and T.V's were made, would be the main benefactor of the measure.

The next day Quebec Finance Minister, Jacques Parizeau, announced a further retreat from the apparent 'agreement' claimed by the federal government. Because a "bon nombre des produits sur lesquels les reductions s'appliquent ... sont peu ou pas fabriqués au Québec" the Quebec government decided instead to eliminate until the end of March, 1979, the complete retail sales tax on all clothing, textiles, shoes and furniture sold in Quebec - four sectors dominated by Quebec manufacturers.

By April 14, the Western premiers joined their voices to protest the federal initiative. Meeting in Yorkton, Saskatchewan, the four premiers, of Manitoba, Saskatchewan, Alberta and British Columbia issued a statement:

saying they were not debating the principle of the sales tax cut as a fiscal measure but that they were 'sharply critical of the unilateral and intrusive way in which it had been put forward'. The emphasis was on consultation and co-operation. The premiers said the federal budget which hit them as they completed new budgets or were in the process of completing budgets, 'contradicts the spirit of federal-provincial co-operation and consultation, which the February Conference had been intended to foster.' (1)

In response to Quebec's objections, Ottawa eventually came back with an offer to finance an across-the-board sales tax cut of 2% for six months. When Quebec refused this counter-proposal, the federal finance minister announced, on May 15th, that the Government, rather than pay the \$186 million compensation to the Quebec government, would pay it directly to the Quebec taxpayers in the form of cheques worth as much as \$85. After further recriminatory exchanges with Chrétien, Parizeau finally consented to the basics of the federal proposal.

The sales tax issue was a particularly confusing and ramorous dispute. Despite the political manoeuvring, it seems to have

(1) Western Producer, 20th April, 1978

been a reasonably successful economic measure, and it was a unique, if not entirely successful effort at joint fiscal policy. As Jeffrey Simpson pointed out:

For the first time, Ottawa took the provinces into its confidence in budget preparations. An exhaustive series of meetings and conversations were held between federal and provincial officials from March 23rd to budget day, April 10th. (Globe and Mail, May 15, 1978).

The provinces were neither experienced in this process, nor used to the constraints placed on them by the suddenness of the measure. While some commentators found the after-the-fact complaints of the provinces "somewhat tiresome", their objections point to the continuing difficulties of setting short-term economic policy in a federal state.

Provincial agreement was essential if the federal fiscal policy was to work and federal compensation to a province which chose not to go along (Quebec) has become a well understood principle of federal-provincial relations. Quebec's decision to apply sales tax cuts not across the board but to a selective list of provincial products, raised another important issue in the economics of federalism. In applying its sales tax cuts primarily to benefit provincial industry, there was the possibility that provincial measures would be discriminatory and another form of erosion of the Canadian common market. The Parizeau move was enormously popular at home, where arguments that federal stimulus of the economy always helps Ontario most have great appeal.

The aftermath of the April budget of 1978 demonstrates the difficulties of demand management, given the present fiscal bind of the federal government. It is likely that in the future it will be more and more necessary for the federal government to cooperate with the provinces over specific fiscal measures. The sales tax dispute shows there are as yet some bugs in the processes of intergovernmental collaboration. Unfortunately, the federal government will probably think twice before attempting fiscal measures which require close provincial cooperation in the year to come.

Longer-Term Economic Policy

If wage and price controls had waned as a serious issue in intergovernmental affairs by mid-1978, another long-term economic problem had taken its place. In the business community, in the labour movement, in the economics fraternity, and in government circles, the terms "industrial strategy" and "structural change" are repeated as often as "cost-push inflation" and "economic nationalism" were a few years ago. As the C.D. Howe Institute's A Time for Realism put it early in 1978, Canada is "at a turning point in economic history". The great structural changes of the past decade - the OPEC oil crisis, the export competition of "third-world" countries, the imminent liberalization of the Tokyo round of multi-lateral trade negotiations - all are external forces impinging on the export-dependent Canadian economy. The protective tariff structure surrounding such weak sisters of the manufacturing sector as the textiles and shoe industries has come under attack as Canadians struggle to remain competitive in world markets. As the Howe Institute explained it:

... the essence of the structural problem lies in the resistance to change, in the inability of the economy to adapt to changing circumstances. The major symptoms of this resistance to change are inflation and unemployment. Inflation is aggravated because both people and firms try to protect themselves against income losses. Unemployment increases because chronic unemployment emerges in some industries, while job creation fails to take place in other industries. Meanwhile public discontent tends to focus on the continuing inflation and unemployment, rather than on the underlying structural problems. (1)

The need to develop more comprehensive economic strategies aimed at correcting structural weaknesses in the economy, had finally made itself felt at the political level. In its Fourteenth Annual Review, last fall, the Economic Council of Canada recommended to the federal government that it, "together with representative organizations establish appropriate advisory and consultative mechanisms to examine serious long-term structural issues". The Science Council

(1) C.D. Howe Institute, A Time For Realism, Montreal, 1978.

of Canada has also made an alarming case that the country's economy is becoming rapidly "de-industrialized." Its report called for highly interventionist industrial strategy designed to support industries with growth potential, and to provide greater aid to technological development.

By December, 1977, the federal government brought the debate into the intergovernmental arena by initiating a series of meetings between federal and provincial ministers of finance and industrial development to discuss long-term economic strategies on a sector-by-sector basis. This contributed to and coincided with the demand for concerted political action on the part of governments to deal with the national economy, leading to the First Ministers' Conference in February, and a series of intergovernmental and industry meetings on structural problems that continued into the fall of 1978. Two sets of events, the First Ministers' Conferences on the economy in February and November, and the GATT negotiations, demonstrate that federal-provincial cooperation is an essential component in the development of long-term economic policy.

The First Ministers' Conference on the Economy

The First Ministers' conferences on the economy, held in Ottawa on February 13-15 and November 27-29, 1978, were the most highly publicized events in federal-provincial relations during this year in review,

The decision to hold the meeting in February arose out of a variety of considerations. The Canadian economy was not recovering quickly enough. Unemployment and inflation became, by late 1977, the most pressing national concerns in public opinion polls, and there was the collective recognition that, given the existing distribution of taxing and spending powers between the federal and provincial governments, the development of industrial strategies would require a coordinated approach.

In the months preceding the conference, each government

prepared proposals with the stated objective of the conference in mind: the development of a medium-term economic strategy. The federal department of finance prepared its paper, "Canada's Economy - Medium-term Projections and Targets" and the Prime Minister met privately with each provincial premier.

Ministers and officials of departments such as fisheries, tourism, economic development, mining, forestry and energy met in the weeks before the conference to work out joint positions for the first ministers' approval. This preparation process was notable for at least two innovations. First were joint federal-provincial studies of each major sector of the economy. Second was to have premiers, rather than federal spokesmen, lead the discussions and present reports at the Conference.

Because the previous first ministers' conference, held almost entirely in camera, had drawn such criticism from the press, the politicians had guaranteed the public's view to the February summit. The attendant media build-up lifted expectations, and conversely, the political goals and stakes of the meeting. The Trudeau government was expected to go to the polls later that spring - as were at least two provincial governments. These considerations strongly coloured public and media commentary on the conference. Nonetheless, many observers were optimistic at the opening of the three-day meeting. As a Le Devoir editorial commented, on February 15, Canadians looked to the conference "à rétablir la confiance et à marquer un nouveau départ". By November the expectations had diminished somewhat, but there was, perhaps, greater focus on more concrete objectives.

The Agenda

As is so often the case at first ministers' conferences, the agenda in February was over-burdened with many diverse topics - too many for significant progress to be made on them all. The sessions began with each prime minister making a general address on economic policy, stressing common themes of public sector restraint, private-sector led growth, and the problems of unemployment. These opening statements were followed by discussions about public sector involvement: growth and cost of government

expenditures and regulation, public sector wages, labour relations and post-control monitoring mechanisms. This was followed by consideration of commercial policy focusing on the GATT negotiations in Geneva; by discussion of energy projects and needs, regional development policy, a study of sectoral industrial policy in agriculture, fisheries, forestry, mining, tourism and manufacturing, and by a concluding session on mechanisms of continued federal-provincial consultation.

Such a plethora of complex issues made consensus difficult if not impossible. There was too, from the beginning, a divergence of views on the ultimate focus of decision-making. According to the federal strategy, the Conference was to dwell on the "medium-term" problems of the Canadian economy with a view to the development, in concert with the provinces, business and labour, of a national economic plan. This goal was shared fully by such provincial governments as that of British Columbia, which, with its bundle of pamphlets entitled "Towards an Economic Strategy for Canada", tabled what the Globe and Mail called "one of the most precise and detailed economic proposals that the political world of Canada has ever seen". (February 14, 1978). Others, such as Ontario and Quebec, were more expressly concerned with the short-term. Premier Davis drew large press coverage with his "Immediate actions for Job Creation" - a set of specific proposals to reduce unemployment, and received quick support from Premier Levesque, among others. Clearly all governments wished to be seen as doing something to address both medium and short-term problems.

Another undercurrent at the Conference was the prevailing conservatism respecting government's influence on the economy. Heading the agenda was a discussion of ways and means to reduce government spending and regulation - almost every first minister advocated restraint. As Premier Bennett of British Columbia told the conference: "... Growth of government has been a major contributor to current problems of inflation and unemployment and one which we have tended to ignore most obviously in the current Anti-Inflation Program." Concurring in this diagnosis, the leaders also agreed on the prescription. According to the Prime

Minister: "Our aim must be to constrain the growth of our governments. We must reduce our share of gross national product. But even more important, we must reduce the intrusion of bureaucracy in the daily lives of Canadians". On the degree of public restraint, however, there was not unanimous agreement. While Saskatchewan's Premier Blakeney recognized the need for some restraint in government spending on services and "reasonable rates of growth" in transfer payments, he steadfastly insisted on the importance of public investment in public works and other major projects to stimulate the economy. "... the simple-minded assertion that anything is good which limits government spending or intervention in the economy, simply does not reflect Saskatchewan's concept of the duties and responsibilities of government, nor is it in keeping with a compassionate and forward-looking society", the premier told the conference.

If there was dissension on the question of the public sector's role in the economy, there was much wider disagreement over various strategies for national economic policy - particularly over the role of provinces in trade negotiation. Ontario's Premier Davis led off the discussion of commercial policy by stressing the need for trade arrangements which, while increasing Canadian exports, "obtain trade concessions for all regions of the country". He also expressed the need to be "cautious in adopting sharp changes in the tariff environment", calling for extensive adjustment policies to make our trade more competitive and to soften the blow to weaker sectors. The premiers entered a heated exchange with the Prime Minister over provincial consultation and participation at the trade negotiations, where it is feared they will once again fail to gain liberalization in such areas as agricultural produce, as the federal government moves to protect central Canadian manufacturing. (Le Devoir, 15 February, 1978).

Conclusions

As could be expected, the final communiqué could only offer the most tentative and general of statements. The leaders agreed on the need to encourage private sector led economic recovery by maintaining price stability, to accept the Bank of Canada's tight monetary policy, to keep the growth of public expenditures to less than the growth of the gross national or provincial product, to ensure that public sector wages do not lead the private sector, and to reduce jurisdictional overlapping in economic regulation. The communiqué contained resolutions regarding trade and industrial policy in a number of areas; but the only tangible boost to the economy came with the agreement between the federal government and the provinces concerned to proceed immediately with the development of two large energy projects - the Gull Island hydro-electric development in Labrador, and a heavy oil project in north-western Saskatchewan.

Perhaps the most significant aspect of the communiqué was its tone - under practically every heading there was mention of the need to continue the valuable consultations that this conference had initiated. The need to consult with the provinces in the development of a national economic strategy had become the new federal gospel; "... the time when 'the ship of state had watertight compartments' is long past", federal-provincial relations minister, Marc Lalonde, said in his statement on consultative mechanisms. Paraphrasing the Prime Minister, he said "the real condition for the success of this Conference in leading the way towards a better economic future is that it mark the beginning of a process of more complete and purposeful inter-governmental consultation." Noting that both tripartite and federal-provincial discussion on sectoral policies had already been achieving results in the past two months, he proposed their continuation - to culminate in another first ministers' meeting in November, 1978, to "provide a final elaboration of the national economic strategy." The possibility of the establishment of a National Industrial Council was also raised, as was Ontario's suggestion for a National Council of the Economy.

Despite this approach, there was some public disappointment with what many viewed as the inconclusive results of the conference. Perhaps the expectations were too high. Certainly no observer could have realistically expected the emergence of a new industrial strategy from the public three-day meeting. What the Conference did accomplish, however, was to bring structural industrial problems, and other medium-term policy considerations into full public view. The need for a coordinated consensus on economic strategy was placed at the top of the national agenda, and Canadians caught a glimpse of the difficult but ultimately indispensable intergovernmental process.

The debate also illustrated the interplay between two major arenas of debate on economic strategies. On one hand is the process arising out of federalism itself, reflecting the regional differences in the provincial economies, the sometimes conflicting development strategies of federal and provincial governments, and the extent to which the public policy levers necessary for economic policy-making are shared among the governments. All these factors generate the need for federal-provincial collaboration and underlay the discussion during 1978.

On the other hand, policy-making in this field also involves consultation between governments and major groups in the private sector. Only tentative steps have been made in this direction in Canada, but, since the AIB program of 1975, there has been increasing talk of the need for "tripartism." One question which arises, then, is how such a process would be related to the federal-provincial process. A tentative step towards integrating the two branches of the debate was made at the February Conference. The First Ministers agreed "to seek out the active involvement of the private sector (including business and labour) in federal-provincial discussions on specific development programs tailored to the particular requirements of each of the manufacturing sectors." The Conference then authorized the establishment of 23 industry consultative task forces, made up of representatives of business, labour and academia, and chaired by a non-government person. The individual sectoral studies were completed in the summer of 1978, and summarized in a report by the "Second Tier Committee", which

reported to the federal government and the First Ministers. The reports contained much diagnosis of the problems facing Canadian industry, and a great many recommendations, along with a call for continuation of consultative activities.

By asserting that economic policy could be made only jointly, the conferences have come full circle from the economic strategy represented by the 1975 anti-inflation program. While there were to be a number of subsequent events (the federal spring budget and the August restraint announcement being among the more important) that called into question the federal promise to consult, the conference confirmed the importance of the First Ministers' meeting to Canadian decision-making.

The experience of 1978 offers some grounds for cautious optimism for the future: much research was conducted, much mutual education occurred. But the steps taken so far are tentative and fragile. Some observers were concerned that such conferences could only result in agreement on platitudes or on lowest common denominators. Moreover, some observers questioned the degree of provincial involvement in federal fields of activity that the Conferences implied. They suggested there was a danger that federal authority would be undermined, even in its own jurisdictions, and that the collaborative process would involve even greater blurring of federal and provincial responsibilities than now exists. Nevertheless, the process is continuing, and in November 1978, the First Ministers agreed to repeat the experience in 1979.

Multilateral Trade Negotiations

As events such as the First Ministers' Conference on the economy proved, some significant economic policies usually considered exclusively within federal jurisdiction are to be found on the agenda for federal-provincial relations. In 1977-78 one of the more important of such issues was intergovernmental consultation on Canada's position at the multilateral trade negotiations in Geneva. The tariff has long been an issue in inter-regional conflict in Canada - and the outcome

of the Geneva talks was likely to have important effects on the economic welfare of different parts of the country.

The renegotiation of the General Agreement on Trade and Tariffs (GATT), now in its final phase, was the topic of a federal-provincial conference of finance and industry ministers at Ottawa in October 1977. According to federal finance minister Chrétien, Ottawa was "open to suggestions from the provinces on how to conduct itself in the trade talks and what assistance programs are needed to help private industry bear the coming tariff reductions."

This apparently unprecedented federal openness in commercial policy may be noted with two general comments. First, the federal government continues to consider itself alone as the director of the Canadian trade delegation, and second, the various provincial positions on general tariff policy were not as divided as they had been in the past.

Provincial officials are nearly unanimous on the general need for reduced Canadian tariffs in exchange for concessions for our exports abroad. "McKeough's Tariff line sounds Western" went one headline in the Winnipeg Free Press (October 11, 1977) - in an article which outlined the Ontario treasurer's recognition of the need for trade liberalization. Therefore most provincial and federal observers agree on some basic objectives - better access for important resource items, such as processed forest products and non-ferrous minerals, fish and agricultural produce. (1) As the talks approach their critical stage in late 1978, and the Canadian delegation will have to make trade-offs to reach agreement - the crunch will come as the provinces watch closely to see which industrial sectors are favoured.

To ensure that their positions were taken into consideration, at least three provinces - Quebec, Ontario and Alberta, sent separate delegations to Geneva to see the negotiation process at close hand and to brief the Canadian delegation on their positions. The federal government, however, continued to refuse direct provincial input into the negotiation sessions, maintaining that negotiating leverage demanded a united front.

(1) For a brief account of Canada's positions in Geneva see News Release, January 24, 1978, "Canadian Participation in the Multilateral Trade Negotiations", Government of Canada, Office of the Coordinator, Multilateral Trade Negotiations.

In the year ahead continued federal-provincial attention must be given to the development of adjustment policies for industries expected to lose tariff protection. In particular Ontario and Quebec will seek to cushion the blow to their weak textile, clothing, shoe and furniture manufacturers. Quebec Finance Minister, Jacques Parizeau, for example, wants a five-year interim period of "increased protection" for these sectors, after which he is willing to see the tariff policy take its course. Whether such concessions can or will be made depends not only upon federal-provincial consultation, but also on the progress of the Geneva talks.

Restraint

A major preoccupation of financial policy makers during the year was the general philosophy of restraint in the public sector. The main elements are the call for reduced government spending including public sector wages and growth in the civil service, "deregulation" or less government intervention in the economy, and fiscal conservatism, tending towards the advocacy of reduced budgetary deficits or balanced accounts. Public spending and large deficits were felt to be responsible for a large part of inflation. In a time of slower than expected growth in the GNP, economists - particularly from the private sector - have blamed the often faster growth of public spending for being inflationary. At the same time, critics - either left of centre, or left-over Keynesians - argue that reduced public spending would restrict the economy, leading to higher unemployment, reduced growth, and even another recession. As Don McGillvray wrote in the Financial Times "the governments are caught between the theory of restraint - which calls for a tighter squeeze on spending - and the belief ... that this would weaken the economy ..."

Despite the economic debate, the political centre of gravity has been moving decisively to the right - and to restraint. "Proposition 13" in the California elections of 1978 signalled the

beginning of the so-called middle class tax revolt in the United States and since then a number of Canadian business and political leaders have taken up the crusade. It is unclear, however, how much this mood has penetrated Canada. The re-election of the N.D.P. government in Saskatchewan, to cite just one example, suggests caution in assuming that the American developments will automatically be adopted in Canada.

A main proponent of restraint in Canada has been Manitoba Premier, Sterling Lyon, whose Conservative party upset the incumbent New Democratic government in the October, 1977, election. Within weeks of the election the new government delivered its promised tax cuts and launched a detailed study of government organization and expenditures. The Task Force on Government Organization and Economy presented its two-volume Report in April, 1978. Headed by former Conservative leader Sidney Spivak, and assisted by volunteers from various economic sectors, the Task Force produced a series of recommendations for "changes in the structure of government to tighten controls, cuts in staff and programs and the shifting of costs of a number of programs from the government directly to the users." The government, however, did not wait for the Task Force Report to begin its spending cuts in the fall of 1977; laying off public servants, freezing construction contracts, and cutting back increases in a whole range of government services, including education and health, the largest consumers of provincial taxes.

One of the more articulate spokesmen of fiscal restraint has been Ontario Treasurer, D'Arcy McKeough. Since 1975 he has been advocating the "maintenance of public sector discipline" in his own medium-term attempt to "balance" the provincial budget - and called upon the federal government and other provincial governments to do the same. As the federal-provincial conference in February, the tenor of many of the spring budgets, Conservative party statements throughout the year, and, finally, the federal government's initiatives in August 1978, all prove, this was a good year for McKeough's and Lyon's fiscal conservatism.

The August Program

"Restraint" measures do not take place within jurisdictional vacuums. The efforts of various governments to cut costs, or to pass expenditure cuts to another level, make for contentious relations. This was well illustrated by the package of expenditure cuts announced by the federal government in August.

In an unexpected national address on August 1st, Prime Minister Trudeau told the country that "we must have a major re-ordering of government priorities". In accordance with an agreement at the summit of western leaders in Bonn to achieve economic growth of 5% in Canada during 1978, the Prime Minister announced a series of measures designed to restore confidence in the Canadian economy. Intended to "reduce the size of government" and thereby free resources to sustain economic growth, the government proposed to cut \$2 billion from current and planned expenditures, end the growth in the public service, get tough on public sector wage negotiations, reduce the amount of regulation of the private sector and create a crown corporation out of the ailing post office.

By August 17, President of the Treasury Board, Robert Andras, was able to announce the details of the cut-backs. The Cabinet had approved \$1.5 billion to add to \$965 million in cut-off planned expenditures since April, 1978, Andras claimed, with another \$1 billion more in cuts to come. While each federal department would suffer reduced expenditures, the biggest losers seemed to be Defence, the Canadian International Development Agency, the C.B.C., cultural grants and large ventures such as the "Canfarm" program in agriculture, and the LaPrade nuclear plant being built in Quebec.

On August 24, Finance Minister Chrétien announced further complementary measures to limit energy price increases by cushioning the increase in crude oil prices and reducing the excise tax on gasoline; to add \$20 to the monthly Guaranteed Annual Supplement

for senior citizens; and to introduce "more selective" tax credits for children by increasing the child tax credit and reducing the range of family allowances. These measures, however, only served to sweeten slightly the more important announcement of the total amounts cut from expenditures. To come were changes in the unemployment insurance program, to produce further savings, which, with \$500 million in reduced transfers to the provinces and the cuts in family allowances, would make a total of \$4.2 billion.⁽¹⁾

The reactions to these measures were decidedly mixed. Presented in a rather dramatic fashion, they were universally perceived as an attempt to restore credibility to the Liberal government's management of the economy. Many of the measures were bound to be popular in the face of a surly public mood: cuts in unemployment insurance, changes in the post office, zero growth in the public service. And the thrust of the measures was aimed at stealing the thunder of the official opposition party which called for \$2.8 billion expenditure cuts and of other economic observers who called for control of the "runaway" federal deficit. As Le Devoir said, the federal government seemed stricken with "le virus californien et manitobain" in its restraint program, and it pointed out both the selective nature of the cuts - in areas of small public concern, such as defence, international development and Canada Council Grants, while not affecting such "curious exceptions as the national unity information campaign," (August 18, 1978). However, while opposition critics continued to dismiss the measures as an electoral ploy, most editorialists recognized the "necessity" of keeping the federal deficit within reasonable limits.

Despite the more immediate political considerations, the August program had far-reaching implications, both for public policy process, and for federal-provincial relations. The provinces met the announced cuts with scepticism and dismay. The Prime Minister had "telexed" the premiers that "we will undertake to fully discuss with you before deciding to make changes to federal-provincial contractual or legislative arrangements presently in effect."⁽²⁾

(1) For more detailed account see Releases, Dept. of Finance, Sept. 8, 1978, Documents 1-3, & August 24, 1978. For the impact on federal-provincial fiscal relations see below pp.28-37.

(2) Telex to Premiers, 18th Aug. 1978

And, in any case, the federal government could and did argue that the restraint measures were in keeping with pledges made at the February First Ministers' Conference.

Nonetheless, the provinces were still unhappy with the cuts, showing how vulnerable they are to even the most obvious retreat in federal "intrusions" when it entails lost revenue. There were both direct and indirect effects upon provincial finances. In a direct way, the proposed reduction of transfer payments by half a billion dollars affects provincial revenues. This provoked angry response from Premier Bennett of B.C. that "this unilateral action by a lame-duck government is the type of action we attempted to eliminate at the federal-provincial conference last February". As Jeffrey Simpson pointed out in the Globe and Mail, the restraint measures could well test the effectiveness of the 1977 fiscal arrangements legislation. (September 12, 1978). Other programs involving much smaller sums will also receive the axe, and also directly affect provincial revenue. The bilingualism development program, Central Mortgage and Housing Programs, water management grants and assistance to veterinary colleges are a few examples.

The indirect effects of the federal cuts constitute what some premiers have termed "passing expenditure cuts onto the provinces". Into this category would fall such items as the proposed cuts in the unemployment insurance qualifications - which could increase provincial welfare costs substantially, though by how much appears to be in considerable doubt,

To conclude, the federal government's budgetary announcements, like the "sales tax debate" preceding it, demonstrate the interdependence of government fiscal policy. The problems of federal-provincial fiscal relations in an era of restraint are no less difficult than the problems posed earlier in the period of rapid public sector growth.

B. CURRENT FISCAL RELATIONSHIPS

1. The 1977 Fiscal Arrangements and Established Programs Financing Act - One Year After.

Given Royal Assent on March 31, 1977, the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act has now been in effect for over a year, and the results of this significant change in federal-provincial fiscal relations are more evident. Estimates for federal and provincial budgets in 1977 have been revised as the regulations were worked out, and relative stability seemed to return to the fiscal transfers field by spring, 1978. The past year has also allowed the complex provisions of Bill C-37 to bear the scrutiny of non-governmental analysis, and there have been a number of insightful comments made by tax experts and economists.⁽¹⁾ This section examines how in a few key areas the new arrangements are working out.

Equalization

Observers of changes to the equalization entitlement formula emphasized that the new arrangements only "fine-tuned" the principles developed in the 1967 fiscal agreements. Nonetheless, in terms of over-all transfers, the new formula, including a finer breakdown of revenue sources than that of the previous arrangement, provided increased payments to most eligible provinces. The total bill for the federal treasury in 1977-78 was estimated to be \$2,467,000 a figure which some estimate will exceed \$3 billion next year.

(1) See David B. Perry, "The Federal-Provincial Fiscal Arrangements Introduced in 1977", Canadian Tax Journal 25, No. 4 July-August, 1977; George E. Carter, "Financing Health and Post-Secondary Education: a New and Complex Fiscal Arrangement", Canadian Tax Journal 25, No.5 September-October, 1977; Bank of Nova Scotia "The New Federal-Provincial Fiscal Arrangements", Monthly Review, March-April, 1977; and Thomas J. Courchene, "The New Fiscal Arrangement and the Economics of Federalism" a paper presented to the Conference on the Future of the Canadian Federation, Toronto, Oct. 14-15, 1977 (to be expanded in his forthcoming publication Refinancing the Canadian Federation: the 1977 Fiscal Arrangements Act (Montreal: C.D. Howe Research Institute) L. Kom, The Federal Year in Review, 1976-77, pp.17-22.

Despite the 1977 amendments to cut in half the amount of oil and gas revenues used to calculate provincial entitlements, the growth of the payments is still of increasing concern to federal officials. This rise of oil and gas revenue has been especially significant, so much so, that left unchanged, the equalization formula would entitle payments to Ontario for the first time. Indeed, according to some estimates Ontario is already perilously close (within \$4 - \$6 million) to qualifying. The political, let alone fiscal ramifications of a province such as Ontario, which enjoys among the highest per capita income in Canada, of becoming a "have-not" province could well be more than the equalization principle could bear.

It was, perhaps, with such considerations in mind, that the federal government has attempted to renew negotiations with the provinces over equalization, and other major transfer payments, as part of the August restraint program. Subsequently, Finance Minister Jean Chrétien announced to the Finance Ministers' meeting on November 2, 1978, that the federal government intended to phase out, after the next two years, the inclusion of provincial revenues from the sale of crown leases for oil and gas exploration as part of the equalization calculations. Revenues from this source had increased from \$150 million in 1976-77 to \$950 million in 1977-78. The other important measure was another proposed amendment to the equalization legislation to exclude from equalization payments a province in which the personal income per capita had been above the national average in that, and the previous two fiscal years.⁽¹⁾ This should effectively keep Ontario from qualifying next year. Both measures were included in Bill C-26, introduced to Parliament on December 11, 1978. These changes were a reminder that despite close federal-provincial cooperation on equalization, it remains a purely federal program, subject to its budgetary decisions.

(1) See Statement by Finance Minister Jean Chrétien to the federal-provincial conference of Finance Ministers and Treasurers, November 2nd, 1978; House of Commons Bill C-26, "An Act to amend laws relating to fiscal transfers to the provinces," December 11, 1978.

Established Programs

The provisions of Part VI of the 1977 fiscal arrangements legislation represented, in David Perry's words, "The most radical departure in federal-provincial relations and it (was) on this issue that the provinces were divided most deeply." The new arrangements ended the shared-cost conditional grants in hospital insurance, medicare and post-secondary education and replaced them with a roughly equal combination of transferred tax points, and an unconditional per capita grant. Ontario seemed most satisfied at the time, particularly with the additional tax room. B.C. and Ontario alone stood to gain financially from the tax component of the established programs funding. Quebec, Manitoba and Saskatchewan, in particular, were vocal in their dissatisfaction with the size of tax transfer. Other provinces voiced objections to the formula for equalizing the cash grant portion of the arrangements, and B.C. continued in its objection to the end of cost-sharing altogether. According to federal projections in 1977 - "every province will register significant gains under the new system. Not only are per capita contributions more generous, but much greater interprovincial uniformity is attained." At first blush, this seems to have been borne out by initial budgetary estimates, and indeed in Nova Scotia and in Ontario in particular, budget addresses pointed out that unexpected increases in the established programs grant helped compensate for the federal "error" in over-estimating personal income tax revenue. This was due to the provision of the EPF program, in which lower tax revenues automatically raise taxation payments.

(See Table III)

Fiscal balances aside, non-government observers in the past year have all pointed to what they considered were the more important aspects of the EPF changes. The federal government would regain control over growth in its share of three of the fastest growing expenditures in the public sector: post-secondary education, medicare and hospital insurance, once the transition was over and pre-1977 accounts finalized. Provinces, freer to exercise their own

controls, could provide more efficient services, and the equal per capita transfer portion of the new arrangements will help to increase revenues in the "have-not" provinces. Whether, as some have contended the tax abatement portion of the EPF would lead to greater rather than lesser disparities in provincial revenues, is debatable. The equalization provisions of the formula may continue to even out the windfalls - and it may be some time before economic conditions allow the value of the tax component to outstrip the grant portion - even for the richest of provinces.

As for the effects of the restraint measures in the fall of 1978, the federal government has notified the provinces that it would prefer to cut the growth of the EPF payments. Chrétien has suggested the reduction of the GNP-based escalator by two per centage points, a move which would still mean an increase of \$600 million or 14.1% for 1979-80's payments. ⁽¹⁾

Reciprocal tax agreements

Under Part VIII of the Fiscal Arrangements Act, provision was made for reciprocal taxation agreements between the federal and provincial governments in lieu of taxes for the consumption of goods or services. Subsequently agreements came into effect on October 1, 1977, with the six eastern provinces: Ontario, Quebec, and the 4 Atlantic Provinces. The Western Provinces remained opposed to the agreements on principle.

Public Utilities Tax Transfer

As part of its efforts to reduce the growth of transfers to the provinces, the federal government has introduced (with Bill C-26) amendments to the Public Utilities Income Tax Transfer Act. As agreed at the finance ministers' meeting in November, 1978, the new arrangement will pay provinces 50% of the share of income tax paid by privately owned companies on income from distribution of electricity or gas, whereas previously they received 95%. ⁽²⁾

(1) See Department of Finance Release, November 24, 1978.

(2) Table I summarises the full extent of federal transfers to the provinces in 1977-78.

2. Social Services Funding - Agreement Twice Scuttled?

With the agreement on new fiscal arrangements for the transfer of federal revenues to the provinces in the areas of health and post-secondary education, in 1977, the most important outstanding area left for renegotiation was funding for social assistance and services. Since 1966, under the Canada Assistance Plan, the federal government has paid half the costs, in the form of a conditional grant, to the provinces to finance social assistance and to provide certain services. Most observers in the spring of 1977 were predicting an imminent conclusion of the difficult four years of review of this arrangement, the only surviving element of the Social Security Review, to round out a new era in fiscal relations. Such agreement seemed likely in June 1977 when federal health minister, Marc Lalonde, introduced the Social Services Act to the House of Commons. Reflecting the consensus of June, 1976, federal-provincial conference of welfare ministers, the new legislation affected a separation of federal contributions for social services from its contributions towards social assistance (welfare). The Bill provided for continued shared-cost conditional grants, covering an extended list of provincial social services, among which the most important were to provide various services without the requirement to demonstrate financial need.

Over the summer of 1977, however, provincial governments voiced second thoughts. The issue of constitutional division of powers was raised, and the Bill was criticized as an unwarranted intrusion by the federal government,⁽¹⁾ Quebec and Ontario in particular led the criticism. In the light of the more recent breakthrough towards unconditional funding in health and education transfers, it seems that most provinces were viewing cost-shared formulas - particularly for the social services part of the arrangements - as passé. Administrative difficulties also emerged as provincial and

(1) For a useful summary of the whole process of the social services review from 1974 through to March, 1978, see "The Federal Government and Social Services". National Council of Welfare, March, 1978.

federal officials alike recognized problems in defining shared cost and unshared social service categories, particularly in the grey areas surrounding health services, adult education, recreation and so on.

Finally, in a unilateral, unexpected, but welcome move, the federal government announced in September, 1977, that it had scrapped the Social Services Act. Instead, it proposed a simple block-funding arrangement, whereby provinces would receive an unconditional cash transfer calculated on a national average per capita basis.

Block funding would cover the social services included in the aborted Social Services Act, while the cost-sharing agreement for welfare as provided in the Canada Assistance Plan would continue as before.

With the final agreement worked out at a federal-provincial meeting in March, 1978, the provinces accepted virtually unaltered the federal offer, with the new arrangements designed to take effect on April 1, 1978. The block transfer would amount to a per capita cash payment based on the national average federal contribution from existing legislation in the 'base year' of 1977-78, plus an 'enrichment factor' of \$5 per capita to be paid beginning in 1979, to provide for the costs of further development of services. The payment would increase thereafter by the rate of change in the G.N.P. and would also include a 'levelling' adjustment to gradually eliminate provincial differences above or below the national average.

Provincial satisfaction with the compromise was mixed. Some ministers, like Saskatchewan's Herman Rolfes, publicly regretted the end to "federal leadership in encouraging national standards" in social services, but most provincial observers welcomed the significant increase in autonomy inherent in the virtually unconditional nature of the services funding agreement. As for the fiscal implications, the arrangement will mean "a sudden loss of revenue for provinces spending above the average (with the possibility of a resulting deterioration in services) and a windfall 'profit' to provinces spending below the average".⁽¹⁾ Because their program spending was well below average

(1) National Council of Welfare Paper, p.13,

Alberta and Ontario were both due for substantial increases in their federal transfers. The latter province's Minister, Keith Norton, commented that "The block funding approach did not meet Ontario's stated preference for a tax point transfer. However, it was an extremely positive step on the part of the federal government".

Despite the fiscal adjustments, especially the long-term implications for have-not provinces which have social service costs above the national average, an editorialist in Le Devoir singled out the 'true winner' in the agreement. "Le véritable gagnant dans tout cela? Un principe, bien sûr, mais aussi le fait que les normes dites universelles, déterminées à partir d'Ottawa, ne conviennent pas nécessairement à toutes les régions et à leur situation propre. Les gouvernements provinciaux sont au fait des besoins régionaux. Le pacte conclu cette semaine le reconnaît." (9 Mars 1978). The federal government had finally decided to trust the provinces with the responsibility of adjusting social services to diverse local needs. The National Council of Welfare and other social service interest groups expressed reservations at the end of an era of strictly enforced national standards, but the agreement seems appropriate in the late 1970's trend towards jurisdictional disentanglement and expenditure control.

* * *

The new agreement on block-funding was to be implemented by the passage of the "Social Services Financing Act" introduced to Parliament on May 12, 1978. However, by October, 1978, and a new session of parliament, Health and Welfare Minister, Monique Begin, declined to reintroduce the legislation. At the root of the delay, if not the total demise of the new program, is the federal government's fiscal restraint measures since August, 1978. The new arrangement, according to one Health and Welfare estimate, would have increased federal spending from 1977-78 by \$61 million, and, by another \$132 million in 1979. Faced with the growth of other large transfers, the federal government is, no doubt, hesitant to commit itself on social services funding. (1)

(1) See Chrétien's Statement to Finance Ministers, November 2, 1978

Estimated Federal Transfers to the Provinces, Territories and Municipalities
Fiscal Year 1978-79
(\$ millions)

	Unconditional Cash Payments ²	Established Programs Financing Cash Payments	Total Other Cash Payments ³	Total Tax Transfers ⁴	Total Cash Plus Tax Transfers	Equalization- Dollars per capita
Nfld.	319.7	115.2	109.1	39.1	583.1	532
PEI	81.1	24.3	40.5	7.5	153.4	633
N.S.	410.3	175.6	113.6	70.4	769.9	462
N.B.	319.8	143.8	156.9	54.4	674.9	444
Que.	1,277.6	994.2	644.6	1,432.7	4,349.1	214
Ont.	99.2	1,672.8	593.3	1,196.1	3,561.4	-
Man.	239.9	216.9	112.5	106.9	676.2	223
Sask.	34.0	197.8	114.9	100.0	446.7	30
Alta.	29.0	381.8	178.9	284.5	874.2	-
B.C.	12.6	489.1	240.0	366.6	1,108.3	-
N.W.T.	0.1	9.6	190.8	6.3	206.8	-
Yukon	0.2	4.2	50.4	3.6	58.4	-
Total	2,903.5	4,583.4	2,545.5	3,668.1	13,700.5	-

1. Source: "How Your Dollar Is Spent 1978-79," Table 22.

2. Includes Equalization payments, revenue guarantees, public utilities tax transfers and others.

3. Largest of this category are payments under Canada Assistance Program, or under D.R.E.E. programs.

4. Includes tax portion of EPF arrangements, plus earlier contracting out formula for Quebec.

TABLE II¹

Equalization Entitlements by Province, 1975-76 to 1978-79
(in thousands of dollars)

	Nfld.	P.E.I.	N.S.	N.B.	QUE.	MAN	SASK.	ALTA.	B.C.	TOTAL
1975-76	189,071	47,694	252,050	187,423	1,049,421	150,793	-	-	-	1,876,452
1976-77	229,158	54,430	298,120	232,441	1,062,881	153,291	10,421	-	-	2,040,742
1977-78 (interim)	285,560	64,680	353,023	287,300	1,265,863	204,879	29,650	-	-	2,490,955
1978-79 (interim)	313,392	70,847	374,484	311,938	1,325,762	226,610	41,115	-	-	2,664,148

1. Source: Department of Finance, Dec. 29th, 1978

TABLE III¹Federal Contributions
1978-79
(\$ millions)

	Shared-Cost Arrangements	EPF Arrangements
Hospital Insurance	3,314	3,734
Medicare	1,233	1,324
Post-Secondary Education	2,049	2,421
Total	6,596	7,479

1. Source: Department of Finance

C THE PROVINCIAL BUDGETS⁽¹⁾

Newfoundland

Finance Minister Alex Hickman presented his budget on March 17, 1978, in a mood of "cautious optimism" for the year ahead. With a provincial economy that in the past year had actually decreased in its domestic product, he forecast a modest increase of 1.0% G.P.P. The aim of his budget was to "combine resource revitalization with social services restraint". It was hoped to have a small increase of current account expenditures (9.6%) with a larger increase (11%) in revenues, to end in a smaller combined deficit of \$84 million. Education was to bear the brunt of the restraint, and retail sales and liquor and tobacco taxes were expected to provide most of the increased revenue. Accompanying the budget address and estimates was a 24-page supplement entitled "Into the Eighties ... A Blueprint for Development", outlining job creation and capital investment over the next five to ten years in such resource areas as fishing, oil and gas, and forestry - with the over-all target of reducing unemployment by 10%, increasing the economy by an average of 6% growth in G.P.P. and increasing per capita income by over 20% within five years,

-
- (1) Highlights as presented are compiled from budget addresses, press reports and with the help of the Canadian Tax Foundation's Tax Memo (No. 60), June 1978, "Provincial Finances, 1978",

In most cases the figures for deficits, revenues, etc., will have been revised because of the federal initiative to reduce sales taxes, and recent changes in transfer payments.

In any case, the reader is advised to consult provincial financial statements for a more accurate account,

Nova Scotia

A "finely balanced budget" was delivered to Nova Scotians on March 3rd, 1978, by the Hon. Peter Nicholson. Due to an increase of \$15.6 million in Established Programs Financing and another \$7.3 million from a reciprocal taxation agreement with the federal government, the Nova Scotian government was able to offset a serious miscalculation of original projections in federal transfer payments. Current revenues and expenditures were both estimated to grow by about 10% - continuing Nicholson's goal of a balanced budget. With no tax changes and projected growth in the gross provincial product hoped to be between 4 and 4.5%, the budget was a conservative one - designed to follow, rather than lead an up-swing in the provincial economy.

Prince Edward Island

The Prince Edward Island budget was delivered by finance minister Bennett Campbell on March 28, 1978, as the precursor of an immediate election call. Considering that the incumbent Liberal government was only returned by the narrowest of margins, it could not have done the trick. The current account deficit for 1977-78 had increased substantially from the initial forecast of \$100,000 to \$2.3 million. The total deficit for 1978-79 was estimated at \$4.4 million, however, with the June budget address, the returned government was able to announce a downward revision of \$3.3 million. Current account expenditures were expected to increase by about 10%. There were no major tax changes. Prince Edward Island should continue to enjoy the largest increase in gross provincial product among the Atlantic Provinces - expected to be over 5% in 1978-79.

New Brunswick

The New Brunswick budget address, delivered to the legislature on April 4th, 1978, was an illuminating document in federal-provincial fiscal arrangements. The speech detailed better than most the vulnerability of provincial budgeting to the most minor changes in the federal transfer payment structure. Shortfalls in estimated federal tax revenue cost the province \$50 million; revised population estimates by Statistics Canada, used to determine the 1977-78 equalization entitlement, reduced payments by \$11.5 million - for a total of \$33 million in such adjustments since 1972; and Finance Minister Fernant Dubé revealed the substance of the agreements completed in the past year including the Canada-New Brunswick Reciprocal

Taxation Agreement (expected to grant the province a net increase in revenues of \$2 million in 1978-79) and the expected revenue from the federal transfer of block funding for social services (estimated at \$13.2 million for 1978-79). (See also Section B above)

In summary, the New Brunswick economy in 1977 was as sluggish as the national scene - and produced a revenue shortfall of about \$74 million, increasing the overall deficit to \$145 million. Restraint of government expenditures was expected to decrease the deficit to about \$95 million in 1978-79 - "restraint" would mean holding the cost increase to 11.8%. According to some sources the promised tax cuts of the previous year were more than offset by tax increases in other areas in this budget. The province expects an improved economic performance in 1978-79 - hoping to raise the 2% growth in G.P.P. to at least 4%.

Quebec

Jacques Parizeau's financial statement, the only one brought down after the federal spring budget, was one of the few provincial budgets which took significant measures to stimulate the local economy. He took an avowedly expansionary fiscal policy in cutting personal income taxes by \$313 million in 1978 and \$500 million in 1979. The deficit will be increased accordingly, from \$955 million in 1977-78 to \$1.03 billion in 1978-79. At the same time the Quebec finance minister expected to keep expenditures at a modest increase of 10.5% - planning that a hoped-for recovery in the gross provincial product to a growth rate of 4% (from 2.6% last year) will not also be accompanied by inflationary pressure.

The gamble to increase consumer confidence and spending, combined with generous tax cuts, and major changes in the provincial tax structure "providing for a significant shift in the income tax burden from the low income to the high income groups" all are timed to have their greatest effect in the latter half of 1979, when the P.Q. government is expected to hold its referendum on independence. (1)

(1) Tax Memo, p.18

Ontario

Ontario Treasurer, Darcy McKeough, continued his determined move towards a budgetary balance and conservative fiscal policy in the budget presented on March 7, 1978. "Expenditure growth is down for the fourth successive year, and we are holding to our plan to balance the budget by 1981" the speech announced. Spending was to grow only by 7% to \$14.5 billion and revenues were forecast to increase by 12.6% to \$13.5 billion - for a deficit of \$1.05 billion - such figures were predicated on a growth rate in the 1978 gross provincial product of 4.3% - with the 1979 rate at 5.5%. Within this general policy of holding down spending and steadily reducing the deficit, the Ontario treasury found room for a few, modestly "selective" stimulants to the economy in the form of increased funding to the Ontario Youth Employment Program, tax concessions and exemptions for the mining industry, and suspension of retail sales tax on taxable accommodation to spur the tourist industry. The main revenue changes to finance these measures were a proposed increase in Ontario Health Insurance premiums by 37.5% and increased taxes on alcohol and tobacco. The minority Conservative government faced vigorous opposition to the OHIP premium increase and was eventually forced to reduce it by half, meeting costs instead by further expenditure cuts and increased corporation income tax.

Of particular interest to federal-provincial relations was McKeough's reference to the consensus of the February first ministers' meeting - and its apparent endorsement of Ontario budgetary policy:

The First Ministers and Ministers of Finance agreed that general stimulation in the form of increased spending by governments would be counter-productive. It is desirable to hold the trend growth in government spending below the trend growth in the economy. There also was a clear recognition that large-scale tax cuts could not be afforded because government deficits are already too large.

The treasurer went on to praise the "substantial progress in the (federal-provincial) consultative process", but he did add a note of warning to federal officials. Revenue shortfalls due to over-estimated federal income taxes hurt Ontario, as other provinces, in the past year - and the treasurer gave brief notice that:

Ontario intends to seek amendment to its Tax Collection agreement with the federal government - amendments which will ensure direct provincial participation in the preparation of annual income tax estimates and payment flows, and guarantee our access to the necessary tax data.

Food for discussion, no doubt.

Manitoba

Following the post-election financial statement last November, with its promised tax cuts and initiation of a government expenditures and organization review, the Manitoba budget presented on April 10, 1978, was an opportunity for the new Lyon government to consolidate its conservative fiscal and economic policy. With "restoration of the principle of fiscal responsibility" as its avowed goal, finance minister Donald Craik's first budget revealed the extent of public sector restraint. Reduced spending since coming into office, and increased federal transfer payments were claimed for reducing the 1977-78 deficit to about \$80 million on the government's old current account basis. Under a revised system of accounting (one which combined both current and direct budgetary capital expenditures, which were calculated separately before) the deficit would be close to \$181 million. Total expenditures would appear to have increased by about 3% - major increases being an increased property tax credit to the elderly, and a private sector youth employment credit; revenues to increase by less than 2% from the previous year's estimates - or 4.4% from the actual levels. The budget confirmed income tax reductions, and the elimination of gift, succession and mineral acreage taxes. The only significant tax increase was on tobacco. The economy was expected to recover modestly, but growth was estimated to fall short of the national average.

Finally, Manitoba was the only province which made an explicit comment in its budget speech on the federal sales tax proposal. They were sparing in their praise, to say the least. The finance minister noted that the negotiations had been "intense" and that he "would have preferred more time to negotiate possible variations in the size, term and selective application of the abatement." He further argued that the federal government ought to have found more room for the tax cut by exercising more spending and deficit control:

This nation has been too long subjected to such intrusive and sometimes ill-conceived impositions of federal political priorities on programs and budgetary processes of the provinces.

Saskatchewan

Designed, as were a number of provincial budgets in 1978, to pave the road to electoral victory, the Saskatchewan budget of March 7th had more leeway than most to offer good news to taxpayers. One of the few budgets which introduced stimulative measures to offset an anticipated slow-down in the provincial economy, particularly in agriculture, (real growth for 1978 was predicted by one source to be only .9% of the G.P.P.) - the finance minister, Walter Smishek, announced lower personal income taxes (by 9.5%), more tax exemptions and credits, and raised the Property Improvement Grant. This was partially offset by increases in alcohol and tobacco taxes, but on the whole the measures would represent a saving of \$52 million to Saskatchewan taxpayers. Estimated revenues for 1978-79 will amount to \$1,651 million - expenditures will be \$1,695 million - an increase of 12% over 1977-78.

The budget deficit of \$44 million should, however, be placed next to an overall surplus of \$116 million from the Saskatchewan Heritage Fund - the repository of all non-renewable natural resource revenue. The Fund, in which all energy and resources development programs will be consolidated, will make both ordinary expenditures on items such as resource development and conservation and dividends to the consolidated fund of provincial revenues, and will make special capital expenditures on projects "of a social or economic development nature", which in 1978-79 include a veterinary college, hospital, and northern airport improvements. In conclusion the budget was illustrative of the windfall of uranium, potash and oil and gas revenues, which has changed the provincial fiscal situation so dramatically over the past few years.

Alberta

The general economic outlook in 1977-78 and for 1978-79 in Alberta is unrelentingly optimistic and, of course, the budget presented on March 17th by Merv Leitch would be the envy of provincial treasurers. As the speech detailed - Alberta "is in the unique and enviable position of having the financial flexibility to reduce taxes, to adjust the distribution of the tax burden ... or to alter the mix of taxes". It chose, therefore, to cut total tax income by \$124 million, including the elimination of the fuel oil tax, continued decrease in property tax, especially for senior citizens, and an

increased farm fuel distribution allowance. However, the budget also included an 8.5% increase in Health Care Insurance premiums.

Revenues for 1978-79 are estimated "at a record of \$4,557.6 million, an increase of 9.2% over 77-78, of which an incredible 53.6% derives from non-renewable resource revenue. (This represents 70% of that revenue, the rest going to the Alberta Heritage Saving Trust Fund). Expenditure increase at 12.2% compared to last year's 14%, brings the total to \$3,778 million estimated for 78-79 with a budgetary surplus of \$769 million. At the same time the AHST Fund produced a "Surplus available for Investment" of \$1099 million. Over-all expenditure increases are largely for social services - improved assistance to low-income families, day-care and education, increased capital funds for new schools, hospitals, roads and other public works. "Continued high levels of investment", "rapid job creation" and the "lowest unemployment rate in Canada" means continuation of a strong provincial economy, at a growth rate estimated to be about 5.5% of the G.P.P. And while a stated objective of the Alberta budget was to "ensure that the operations of the government sector complement, rather than detract from, the initiatives of the private sector", there is none of the soul-searching over the effects of budgetary deficits so evident in other places.

British Columbia

Presented on April 10th a few hours before the federal budget, the B.C. budget address of Finance Minister, Evan Wolfe, bore some resemblance to its federal counterpart. A sales tax cut of 2% (not including the federal proposal) was one of a number of measures designed to stimulate an expected recovery to over 5% growth in the provincial economy. The nearly balanced accounts, however, differed from the large federal deficit. As the Tax Memo (p.44) put it:

The Minister presented a balanced budget for 1978-79, which he felt would be the most appropriate course ... because provincial deficits are not as effective in an exporting provinces as in a closed economy, and because the restraint was necessary to achieve the long-run aim of dropping provincial spending to 12% of Gross provincial product.

The increase in expenditures will be, then, only 9.8% over 1977-78.

Specific "job stimulation" measures to reduce a high unemployment rate were aimed at small business and included: the elimination of a social service tax on machinery, an increase in corporate tax exemptions, and a new program for small business training. The budget also referred to a number of "accelerated" programs in industrial development, reforestation, mining, highways and so on, which will spend the surplus of fiscal 76-77 on job creation. In general the B.C. economy was seen as operating at a better-than-average level, with accelerated recovery in the coming year.

Summary

A comparison of the various provincial budgets delivered in the spring of 1978 illustrates some trends and differences which, while obvious, might bear repeating here. Most of the provinces, indeed virtually every province except for Alberta, were budgeting to compensate for a past year of poor economic performance and a coming year of needed recovery. Shortfalls in revenue were serious in a number of cases - especially in the Atlantic provinces where federal transfers were smaller than predicted due to the sluggish national economy. One of the most pervasive of budgetary trends seemed to have been the perceived importance of reducing expenditure growth, as every single province reduced the rate of growth, ranging from Manitoba's slashing 3% after an increase of 9% the previous year, to Alberta which reduced increase from 14% to 12%. Most of the estimated accounts for 1978-79 predicted deficits - the exception being again Alberta, and, if one includes special heritage funds, Saskatchewan. In most provinces, however, it was hoped that deficits would be smaller than in the previous year - Newfoundland, New Brunswick, Nova Scotia, Ontario, Manitoba and British Columbia all managed to reduce expenditures while staying away from major stimulative measures.

Quebec and Saskatchewan alone chose to make significant tax cuts designed to stimulate a sluggish provincial economy. In Quebec this meant increasing the deficit by half a billion dollars; Saskatchewan was luckier, resource revenues had increased enough to shield it from an unwieldy deficit.

There are hundreds of comparisons - types of revenues, relative size of federal transfers, share and growth of gross national product - which would reveal in this past year, no different than many before, the extent of

disparity from province to province. Not only are the sizes of budgets between, say, Ontario and Prince Edward Island caricatured by comparison, the relative tax burdens, per capita incomes and level of services vary greatly as well. A province like Alberta has plenty of room to be flexible in its accounts - federal transfers are at a minimum, and the recent sales tax measures will not affect it at all. However, the federal sales tax initiative and, again, the federal government's restraint program announced in August, 1978 (see above) will have an important constraining effect on most provinces, the "have-not" ones in particular. The conclusion again is obvious - although the provincial budgets, in aggregate, have an enormous influence on the Canadian economy, take for example Ontario's \$14.5 billion budget and Quebec's \$12.8 billion, the effects of the federal budget and economic policy in general can be critical. Even as government's share of the G.N.P. levels off in the late 70's, the need for fiscal cooperation and coordination becomes more acute than ever before.

III

THE CONSTITUTIONAL DEBATE

From the fall of 1976 to the fall of 1977, the newly-elected Parti Québécois government had seized the initiative. Ottawa and the rest of Canada were slow to develop responses. But in 1977-78 the debate took on a completely different tone. Events in Quebec continued to demand national attention and to have impact on the constitutional debate - the introduction and debate of referendum legislation in the Quebec National Assembly, the rejuvenation of the Liberal Party under Claude Ryan, implementation of Bill 101. However, many significant developments came from the other nine provinces and from the federal government - as a coherent response to the Parti Québécois constitutional challenge began to take shape.

The PQ government continued its internal debate over the precise meaning of "sovereignty-association", the timing and nature of the referendum, and launched a series of detailed studies on the ills of federalism and on the various alternatives of associate statehood. Meanwhile, however, other provincial governments initiated constitutional review through advisory councils and study groups, conferences and speeches. Private "unity" groups, regional and professional associations, and provincial governments generated an avalanche of competing constitutional reform formulas. The most dramatic initiative was the federal government's publication of the White Paper "A Time for Action" and Bill C-60, the Constitutional Amendment Bill in June. The provincial response to this initiative took form at the Premiers' Conference in Regina in August, and by October the direct federal-provincial debate was rejoined at the First Ministers' Constitutional Conference. The discussion seemed to enter a new phase in which the federal agenda for change - emphasizing patriation, civil and linguistic rights, and, to a lesser extent, central institutions, was married to the provincial agenda which stressed the division of powers. This opened the possibility of a compromise package in which all sides could make trades. A continuing committee of officials and ministers met

through the fall to work something out, in preparation for a second conference to be held in February, 1979.

Let us then examine the salient features of the constitutional debate under four headings:

- 1) the political and economic context in Quebec
- 2) the federal response
- 3) the "other nine" provinces and
- 4) the private sector role

The Debate in Quebec

Political developments in Quebec in the past year were dominated by two somewhat paradoxical trends: the continued effective performance and sustained popularity of the Parti Québécois government and the rejuvenation of the Liberal party under new leadership. The Lévesque government guided a heavy load of legislation, including the controversial referendum bill (see below), through the National Assembly. Under the conservative stewardship of Finance Minister, Jacques Parizeau, it maintained a respectable fiscal position (see Chapter II). The legislative program included electoral reform, new agricultural zoning law, urban planning, a housing code, consumer protection law, an automobile insurance program, and measures for cultural, industry and labour relations.

By September 1978, the majority of Québécois remained satisfied with their government and indeed with their premier, whose personal popularity (according to the polls) even surpassed that of Prime Minister Trudeau. (La Presse, November 16-18, 1978).

In the domestic realm, then, the Parti Québécois government continued in its relatively progressive and efficient stance in most social and economic policies, providing much-needed credibility for its more difficult tasks - further implementation of cultural and language policies, and developing its referendum campaign for sovereignty-association.

The political opposition to the P.Q. government, found in post-election disarray last year, was renewed by the election of Claude Ryan to the Liberal party leadership in April, 1978. After nine months of hesitation, the former Le Devoir editor finally entered the race against

former finance minister, Raymond Garneau. Despite his promise of strong economic leadership, Garneau had too much of the "ancien regime" weighing his record to appeal to the Liberal party which was anxious for a leader of sufficient status and novelty to oppose Lévesque. The overwhelming choice of Ryan offered Québécois not only a change of style, but one of substance. Ryan's leadership promised "la garantie d'un parti net, honnête, démocratique, transparent" to replace the scandal-ridden Bourassa regime. (Le Devoir, 17 April, 1978). He brought to the party the strength of a conservative intellectual and moral force honed by years of involvement in Catholic social action and by his position as Quebec's "éminence gris" at Le Devoir. He has also brought to the Liberal party an uncompromising Quebec nationalism, which while federalist in allegiance is firmly attached to "statut particulier" - a special constitutional status for Quebec within a renewed federal state.

Ryan's election was hailed across Canada, especially in English Canada, as a sign of hope for the federalist cause, a third protagonist between Lévesque and Trudeau. Indeed many political analysts predicted an erosion of Trudeau's support in the wake of a supposed usurping of the leadership of the "anti-separatist" fight. However, while the federal Liberals have in fact slipped badly in the national polls over the past year, Ryan has not necessarily filled the gap. Still without a seat in the National Assembly, the Liberal leader has concentrated on the thorough reorganization of the party - and has yet to fill in the blanks of his constitutional position. In short, Ryan may not have lived up to the expectations but will play a formidable role in the year to come.

Policies of Language and Culture

Quebec's charter of the French Language (more popularly known as Bill 101) continued to take the centre-stage of public affairs in the province during 1977-78. With the trauma of the assembly debates concluded, there remained the more difficult implementation of the Charter, which met a series of challenges, largely from the anglophone minority.

One of the first, and more successful challenges, came to the legal status of some sections of the charter dealing with language in the courts and the legislature. In late September, 1977, a group of Montreal lawyers argued before Quebec Superior Court Justice, Jules Deschênes, that Chapter 3 of the Charter contravened section 133 of the British North America Act, by violating the provisions for bilingualism in Quebec's courts and provincial legislature. By the end of January, 1978, Judge Deschênes found for the plaintiff, declaring the Charter chapter ultra vires. The Quebec government has since launched an appeal. In the ensuing comment on the decision, not only was Bill 101 discussed, but the Manitoba Official Languages Act of 1890 (which had abolished bilingual institutions in the province established by the Manitoba Act of 1870) was also considered open to question.

As Michel Roy of Le Devoir pointed out in January, 1978, the most potent and negative reaction to Bill 101 has focused on the language of education and the work-place. A long and acrimonious dispute between the PQ government and the Protestant School Board of Greater Montreal over the latter's "illegal" entry of immigrant students, has only recently been settled.⁽¹⁾ The Protestant School Board had been suffering from a \$3 million deficit before making what it termed a "painful decision" in August, 1978, to no longer flout the language charter by independently supporting students designated for French schools. Restrictions on the English-speaking school boards remain a bitter pill for Montreal's diverse anglophone community to swallow, and while a Montreal Star editorial could not condone indefinite civil disobedience, it contended that freedom of choice in education had "died only in the minds of the political leaders and in the statutes they write". (28th, March, 1978). The comment seems to underscore the growing alienation of the community from the political process in Quebec.

Language in the work-place, and especially in corporations, was another source of considerable friction. The main event, of course, was the decision in January, 1978, of Sun Life Assurance Company to move its head office operations to Toronto. It created a crisis of confidence in relations between the P.Q. government and big business in Montreal. While Sun Life gave language provisions of Bill 101 as its

(1) In December, 1978, another suit was launched against the Charter, this time by the Quebec Federation of Home and School Associations and a group of businesses and individuals.

reason for leaving, it was clear that much more was involved, particularly the corporation's perspective on the investment "climate" in the province, and its disenchantment with the PQ social and economic policy. It should be noted that Sun Life chose to go out publicly "with all guns blazing". It was not the first nor the last major investor to leave the province - the Royal Bank investment branch, Northern Telecom's investment branch, and the C.P. pension fund all preceded it in the past two years - but other firms have gone out more gradually and more quietly.

Some members of the business community applauded Sun Life's action with sympathy; others deplored what they termed a premature, even traitorous move. In retrospect, the Sun Life affair may have been the turning point in the business climate; investor confidence may well have bottomed out, as those corporations deciding to stay have reached a happier relationship.

Part of such better relations has been the working out of "lenient and generous" head office language regulations between the Office de la Langue Française and business groups such as the Conseil du Patronat, announced in July, 1978. The new provisions recognize the need of head offices, and of research and technical staff, to conduct affairs in English, and pleases corporate personnel with assurances of generous "temporary" permits for their children to attend English schools.

The Referendum Debate

The central political issue of the year, over and above language and cultural policy, continued to be "questions about the question". The Quebec government moved towards the referendum on Quebec's political future on two fronts. It introduced and passed legislation to enable Quebecers to decide on their constitutional options; and it progressed towards a definition, however hidden from public scrutiny, of its option of sovereignty-association.

The National Assembly passed Bill 92, "Loi sur la consultation populaire" in June, 1978. "For the first time in their history, we have given Quebecers an instrument to decide their future" Premier Lévesque

said. The law allows the National Assembly to consult the electorate on any question it chooses - from capital punishment to fluoridation - and, in accordance with British parliamentary tradition, it would not be legally bound by the outcome. This differs substantially, as Opposition critics continued to point out, from the United Kingdom model for its referendum on entry into the European Economic Community - in which the exact wording of the question and the date of the vote were included in the bill.

The wording on a future referendum ballot will instead be proposed by the government and approved by the National Assembly - and the date set with 30 to 60 days' notice. Ballots would be printed in French, English, and, where applicable, Inuit and Indian languages.

Probably the most contested aspects of the legislation were not so much the form and date of the ballot, but the limitations that the law places on a referendum campaign. Depending on the nature of the question (and all observers expect it will be "yes" or "no" to some option regarding sovereignty-association) the campaigning must be undertaken under the auspices of two pre-referendum committees, "umbrella" groups which co-ordinate the public funds allotted and which administer the limited (\$3,000 per individual) private contributions. Thus all the "federalists" must submit their efforts to the authority of one committee, and those preferring the P.Q. option to another single committee. Some observers suggested it was a provision designed to highlight the diversion and dissension in federalist ranks.

Despite opposition objections, and press reaction which charged the bill with infringing upon "freedom of association and expression" (see Montreal Star, 13 June, 1978) the compulsory umbrella committees were enacted and efforts to set up a federalist "pre-referendum committee" began. Starting in December, 1977, with a "Symposium on National Unity" attended by eight political parties and numerous private groups, the federalists have formed an uneasy coalition to define their options. The Liberal party, especially after its leadership convention, has gradually taken on the main task of articulating the federalist response in the coming campaign. In January, 1978, prominent Quebec businessman and ex-cabinet minister, Claude Castonguay, gave the committee much credibility with his election as chairman, and by April it had flexed

its muscles enough to force a member group, the business-backed "Quebec-Canada Movement", to return a contribution of \$265,000 from the federal Secretary of State, underlining the desire of leading Quebec federalists to keep their distance from Ottawa.

By August, 1978, however, and the succession of a new chairman, Michel Robert, the committee had, according to Le Devoir assumed the more "technical" role as treasurer of funds, leaving the tactics and substance of the federalist strategy to the Liberal party. This left the Union Nationale party, in particular, in a very vulnerable position with little input into the mainstream federalist campaign. Indeed, not until July, 1978, had their leader Rodrigue Biron committed his party to a "no" vote, before seeing the question. Clearly the party, steadily losing ground in opinion polls, was caught in the polarization of the constitutional debate.

Defining Sovereignty-Association

Of the many public opinion polls which have swamped Quebec in the past two years or so, one of the most illuminating was a Radio-Canada poll released on June 22, 1978. Asked about the P.Q. option of sovereignty-association, two-thirds of those polled answered that they did not understand what the term meant, or by the answers they gave proved that their definition differed from that of the P.Q. (see LaPresse, 22 June, 1978; Montréal Matin, 23 June, 1978). Premier Lévesque claims he was "stunned" by the results, but, of course, his government must bear the brunt of the blame for the confusion. Ministerial statements, speeches and independent studies have given conflicting impressions of the extent of sovereignty and the nature of association in the PQ's option. One moment Finance Minister Jacques Parizeau was claiming that monetary union was not an essential part of an associate status, another time arguing the opposite. Traditional PQ policy contends that Québécois would not send representatives to the Canadian Parliament, yet Intergovernmental Affairs Minister, Claude Morin, continues to refer to a Canada-Quebec "Parlement central". Such conflicting statements both weakened the credibility of the sovereignty-association option and demonstrated the difficulty of the PQ position.

In November, 1977, polls indicated that 15% of Quebecers were in favour of outright independence, and 26% for sovereignty-association - another poll in March, 1978, showed little difference. By June, 1978, when pollsters began to ask if Quebecers would give the PQ a "mandate to negotiate sovereignty-association", they got 38% in favour, and, when the question was a "mandate to negotiate new constitutional arrangements" those in favour leaped to 56%. So as the polls clearly demonstrated, the farther from independence the option became, the greater public support it received. Indeed many observers predict that, given an ambiguously mild referendum question such as "Will you give the government of Quebec a mandate to negotiate a new constitutional arrangement?", Quebecers would grant the PQ the majority it needs in order to bargain with the rest of Canada. Such an eventuality has given rise to two sorts of concerns. On one hand, federalists worry that such a result would be simply another step in the "épatisme" strategy of the PQ: independence by stages. On the other hand, independantistes in the PQ worry that the government is diluting its option to make it more palatable to Quebec voters. Neither concern can be completely discounted at least until the government announces the wording of its question or delineates its option further. Finally following a cabinet meeting held in August, 1978, during which members emerged with what they termed "un consensus renouvelé, solide et inébranable" on sovereignty-association, Premier Lévesque reiterated the expected: complete definition of the option will not be made public until after the federal election.

Meanwhile, the government's internal work on the option continues. In December, 1977, Intergovernmental Affairs Minister, Claude Morin, released the first of several studies being prepared on various aspects of association by a group of Quebec academics and specialists headed by economist, Bernard Bonin. Several of the studies have been made public⁽¹⁾ but despite the objections of opposition leader, Claude

 (1) published under the Ministère des Affaires Intergouvernementales to date: Expériences étrangères d'intégration économique; B. Fortin, Les avantages et les coût des différentes options monétaires d'une petite économie ouverte: un cadre analytique; G. L'Ecuyer, La Cour Suprême du Canada, et le partage des compétences, 1949-1978; V. Leroy, La question monétaire en rapport avec le Québec; H.P. Rousseau, Unions monétaires et monnaies nationales: une étude économique de quelques cas historiques; Also published under the auspices of or subsidized by the Ministère: Les dispositions constitutionnelles de 131 états en matière de formule d'amendement constitutionnel; and G. Julien et M. Proulx, The Consequences of Overlapping in federal and Quebec programs, Ecole National d'administration publiques, June, 1978

Ryan to the "secrecy" of the undertaking, most of the work has been for government consumption only, to be released when and if needed.

OTTAWA'S RESPONSE

The federal initiative in the constitutional debate took many forms: a) the "unity campaign" under the Federal-Provincial Relations Office, b) language legislation and discussion with the provinces, c) a referendum bill, d) the White Paper and Constitutional Amendment Bill, and, e) the alternatives put forward by the Opposition parties.

The Unity Information Campaign

In September, 1977, Prime Minister Trudeau appointed Marc Lalonde, former Minister of Health and Welfare, to a new portfolio as Minister of State for Federal-Provincial Relations. A close and trusted adviser to the Prime Minister, and until recently, head of the Quebec Liberal Caucus, Lalonde coordinated various unity campaign efforts, in particular the group under Paul Tellier. Opposition critics deplored what they considered to be Lalonde's inflexibility in constitutional matters but most saw the move as evidence of the Liberal government girding itself for the coming battle.

The Canadian Unity Information Office (with branches across the country and a budget of \$9 million) was established in the Department of the Secretary of State, though it reported to Lalonde. Its job is to provide support to "unity" organisations and to develop several formats of information for the federalist cause. Chief among these have been Information Kits provided free from the Information Office and the preparation of the "Understanding Canada Series". The latter is designed to put forward the case for federalism and to demonstrate the folly of sovereignty-association, primarily by analysis of the economics of Confederation. Four reports have appeared in print: Trade Realities in Canada and the Issue of 'sovereignty-association', Sovereignty-association-the contradictions, Transportation - a unifying link, and The Textile Industry - a Canadian Challenge. (1)

(1) Available from Canadian Unity Office, Ottawa.

The studies have not as yet made a terrific impact, but do provide fodder for what has been called the "battle of the balance sheets", waged between Quebec City and Ottawa. We cannot here get into a detailed analysis of the economic and, in particular, econometric arguments put forward. There will continue to be much debate on the number of jobs won or lost, the balance of payments, fiscal transfers and monetary regimes which would be affected by change such as sovereignty-association. One might, however, note that at least some independent observers question the contribution of economic forecasts to what is essentially a political and constitutional issue.(1) At a recent conference of the Economic Council of Canada, for example, the consensus appeared to be that the "numbers" involved in tariff and monetary changes can be relatively small, and that it is the more political decisions regarding the movement of capital and labour, that would have the greater effect in future Quebec-Canada relations.

Language Policy

While the most important initiatives of the federal government with respect to language are dealt with elsewhere (see discussion of constitutional amendment bill below), the federal policy of bilingualism was still unfolding. In early September, 1977, shortly after the Premiers' meeting in St. Andrew's, New Brunswick, Prime Minister Trudeau wrote to Premier Lévesque on September 2, to propose entrenchment of language rights in the constitution. Following the Premiers' resolution to guarantee education rights in English and French "wherever numbers warrant" the Prime Minister proposed that the nine predominantly English-speaking provinces bind themselves to a constitutional guarantee of such, and that Quebec would at least provide reciprocal choice for English-speaking residents moving into Quebec. Premier Lévesque replied that in essence "Quebec will never agree to let its complete sovereignty over such a vital matter be replaced by a restricted jurisdiction which is subject to judicial interpretation", (9 September, 1977), claiming that reciprocal agreements with other provinces would better safeguard Quebec's language policies. The Prime Minister replied in yet another letter,

(1) See Globe and Mail, 11 November, 1978, Edmonton Journal, Dec. 2nd, 1978, and Richard Lipsey in Financial Post, January 6th, 1979, for discussion of Economic Council of Canada findings and debate on this matter.

giving a detailed exposition of his view on the importance of constitutionally entrenched language rights, and his reiteration that such guarantees would, in effect, be modified to permit Quebec to "opt in" when and as it wished. With this statement, released simultaneously with the federal government's decision not to challenge directly Quebec's Bill 101, the federal government demonstrated some adaptability. However, its solution of constitutional entrenchment will likely be opposed indefinitely by the Parti Québécois government, leaving immediate progress on language rights to the decisions of the premiers. Several other provinces also continued to resist constitutional entrenchment of linguistic obligations on the provinces.

Meanwhile, federal legislation in June, 1978, provided guarantees of bilingualism in the courts. The administrative details are to be worked out with the provinces. Seven of them - Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Alberta and British Columbia have already agreed in principle. Framed as an amendment to the criminal code, the new legislation could be imposed upon the provinces within two years if agreement is not reached. Elsewhere in the federal government the practice of bilingualism did not fare well. In his annual report released in March, 1978, the Commissioner of Official Languages, Max Yalden, claimed that practical use of French in the civil service was still too limited, that language training was not achieving its aims and that the bureaucracy was not placing high enough priorities on implementation of bilingual reform. Some programs, such as the expensive language training courses, are victims of budget restraint, and are to be wound up completely by 1983. In the wake of such decisions, some observers worry that the gains of the federal bilingualism program since 1966 could be negated.

The Federal Referendum Bill

More than a year after the federal government announced its intention, in October, 1977, to draft legislation to enable it to hold its own referendum on constitutional questions, it tabled the "Canada Referendum Act" in December, 1978. The referendum bill may be seen as an essential, if latent, part of the Liberal government's constitutional tactics. While the government has not, like the P.Q. Government, promised to hold a referendum on constitutional options, it will use the

legislation as an "insurance measure". The bill is designed in the first instance to keep the PQ honest, ensuring that its referendum question not be biased or its referendum delayed indefinitely. There is also the possibility that the referendum could be used to appeal directly to the people in the event of perceived intransigence by the provinces. The Bill limits federal referenda to constitutional questions - but these are defined very broadly.

The provisions of the Bill clearly reflect Ottawa's desire that its referendum would be seen as a fairer version than the P.Q.'s. The government would allow 40 parliamentary days of debate on the question (cf. P.Q.'s 30 days), the writs would be issued 45 days after the question was settled (cf. P.Q.'s 20 days) and allowable individual contributions could be as high as \$5,000 (cf. P.Q.'s \$3,000). Furthermore, under the federal bill there would be no "umbrella committees" channelling and controlling the groups participating in the referendum campaign. The bill also allows provincial parties to take part in a campaign, whereas federal parties are barred from participation in Quebec's legislation.

Used widely elsewhere, referenda have not found wide acceptance in Canada. There are many political difficulties inherent in holding a vote, not least of which is the earlier experience of a country split badly over national votes on conscription. Nonetheless, all parties in the federal parliament support the principle of a federal referendum as a check on the P.Q. The Conservatives and the Social Credit party, however, oppose the federal bill as too sweeping. Conservative critic Flora MacDonald called the bill "a blatant attempt to subvert and undermine the responsibilities and duties of the Canadian system of responsible government". (Hansard, December 12, 1978, p.2039). Miss MacDonald's criticisms were aimed at the potential use of a referendum to appeal to the public over the heads of provincial governments. Government spokesmen replied by stressing that referenda would be clearly consultative, that Parliament would debate the question, that procedures were democratic and that referenda would be sparingly used.

The White Paper and Constitutional Amendment Bill, June, 1978,

Throughout late 1977 and in 1978, various private groups, provincial governments and academic reformists produced their blueprints for a new constitution, but the measures presented by the federal government in June had the most significant impact. The government had promised a detailed constitutional amendment bill in the speech from the throne in October, 1977. When it was published in June, 1978, probably not even the most pessimistic of the federal draftsmen expected the storm of protest from so many different quarters. Despite the critics, the Bill served a vital purpose: it helped to accelerate the process of constitutional review, leading to the resumption, after eight years, of federal-provincial constitutional discussions, in October, 1978.

The debate began with the publication of the White Paper A Time for Action. The 26-page document was a lyrical attempt to educate the public on the reasons for the government's "renewal of the Canadian Federation". The paper enunciated several principles guiding this renewal and proposed a two-phase process of review. The first phase, to be completed by July 1, 1979, would review and reform those items on the constitutional agenda for which, according to Ottawa, "there is full capacity for Parliament to act," Phase II, to be finished by July 1, 1981, would cover sections of the constitution, such as the division of powers, that require provincial consent to amend,

Thus the government's Constitutional Amendment Bill (Bill C-60), as introduced in late June, 1978, addressed itself to phase I of the planned renewal. Framed as a constitutional document, the Bill left intact those sections of the B.N.A. Act to be renewed later, but redrafted entire sections for a proposed new constitution. The highlights of some of the various sections are as follows;

Section II. Preamble and Statements of Aims - a symbolic introduction which would enunciate such aims of the constitution as to protect fundamental rights, establish rule by law and protect Canadian diversity of language and culture.

Section III. Charter of Rights and Freedoms - the centre-piece of the Trudeau proposals, this section would entrench most political and civil rights including the right of citizens to move or to hold property

throughout the country. More importantly, it would enshrine the equality of both official languages in the courts, Parliament and the provincial Houses, provide for institutional bilingualism in central offices of the federal government and guarantee education in the language of the French-speaking minority outside Quebec and the English minority in Quebec.

Section VI. (a) Governor-General - section updates the B.N.A. Act by recognising the transformation of the office from one of a representative exercising power at the Queen's prerogative to one in which the power of the sovereign is exercised in his or her own right, except when the monarch is in the country.

Section VI.(c) House of the Federation - this section would replace the senate by a new upper chamber of Parliament with 118 seats. Members would be appointed half by the federal and half by the provincial governments, on the basis of proportional party representation. The new House would have veto over the House of Commons on bills affecting the relations between the federal government and the provinces, and for "matters of special linguistic significance." In the latter category votes would require a "double majority" of the House's English-speaking and French-speaking members before passing.

The House of Commons, and the section entitled Provincial Authority, leave virtually unaltered the provisions of the B.N.A. Act.

Section VII - Distribution of Powers - awaiting Phase II.

Section IX - Regional Disparities - commits the federation to the reduction of regional disparities in social and economic well-being.

Section X - Federal-Provincial Relations - provides for mandatory annual conferences of the Prime Minister and provincial premiers for consultations with affected provinces before federal use of the declaratory power and for other mandatory federal-provincial consultation.

Section XI - The Supreme Court - entrenches the position of the Supreme Court as the final court of appeal. The number of Justices would be increased from nine to eleven, at least four from Quebec and one each from the four regions of the Atlantic, Ontario, the Prairies and British Columbia,

The reactions to the White Paper and Bill C-60 illustrated both the priorities and perceptions of the constitutional debate. Throughout Quebec editorials praised the language of "Le Temps d'agir", the French version of the White Paper, but in the English Press the poetry went largely unappreciated. What really caught the eye of the press throughout the country were the more radical and novel features of the Constitutional Amendment Bill. The section introducing a House of Federation provoked most response, as it added such relatively unfamiliar concepts to the public debate as proportional representation and "double majority", not to mention the abolition of the Senate, an old but controversial chestnut. Other critics questioned the wisdom of entrenching rights, or regionalising the membership of the Supreme Court, or of "needless" tampering with the symbols and offices of the constitutional monarchy.

Most significant were the criticisms of federal Opposition and provincial spokesmen regarding the procedure and timing of the proposed "renewal". Federal leaders pointed out that certain reforms outlined in Bill C-60 would require provincial consent before entrenchment - the Charter of Rights and Section on Regional Disparity for example - but contended that under the authority of Section 91(1) of the B.N.A. Act, the federal Parliament could act alone in reforming the Senate and the Supreme Court. Not only did the provinces disagree with this claim on the grounds that these central institutions played a role in federal-provincial relations, but they made another, more fundamental, criticism of the federal proposals. They argued that the timing (completion of Phase I by July 1, 1979) was unrealistic and arbitrary, and, more importantly, that the very division of the constitutional agenda into two phases was unacceptable. Since their consensus of 1976 at least, the Premiers had contended that their priority for constitutional reform was in a

redefined distribution of powers. As the premiers exchanged comments with Prime Minister Trudeau in July 1978, it became clear that they would not consider discussing the federal proposals without the powers issue also being on the table.

Both federal Opposition and provincial criticism focused on "unilateralism": what could Ottawa do alone under section 91(1) and what required provincial consent. Moreover, in the absence of a formal constitutional amendment procedure, what was the lesson of past practice; is provincial unanimity required? Could Parliament even send an address to Westminster without any provincial consent? Federal spokesmen reiterated that Bill C-60 was "for discussion purposes only", but under the attack they also made stronger claims for the federal power to act alone.

The debate over unilateralism crystallized in the hearings of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, established in late June to examine and report upon the government's proposals. Committee hearings began in mid-August, and a final Report was submitted on October 10, 1978. The Committee provided a valuable forum both for parliamentary input into the debate - something almost non-existent since the last joint Constitutional Committee in 1972 - and for public reaction to the Bill. Its well-publicized meetings gave federal spokesmen an opportunity to clarify aspects of their reforms, gave constitutional experts a forum for their critiques and heard the views of such diverse groups as the Inuit Tapirisat, the Monarchist League of Canada, Canada West Foundation, and several provincial governments.

The Committee Report reflected the view that the federal government should not attempt to proceed unilaterally to reform the Senate, Supreme Court or sections dealing with the Crown and Governor General under Section 91(1) of the B.N.A. Act. It urged the government to refer the section on the House of Federation to the Supreme Court for advice on its constitutional legality. The Report made a number of concrete suggestions to improve the provisions of the Charter of Rights and Freedoms, and said that sections dealing with the

monarchy have led to needless confusion and consternation.

But attention soon turned to the preparations for the First Ministers' Conference on the Constitution. The provincial Premiers' meeting in August, in Regina (see below) had urged the federal government to place on the agenda not only Bill C-60, but also the Premiers' consensus of October, 1976, and other individual provincial proposals. Prime Minister Trudeau accepted this request and thus effectively scrapped the Phase I-II approach. The initiation of an intensive new round of federal-provincial negotiations on the constitution married the two separate strands: the Premiers' agenda with its emphasis on powers - and the federal proposals with their emphasis on rights and institutions. A "package" became possible. It did not fully materialize in October, 1978, or even in February, 1979. But significant movement did occur and some agreement was reached. So the underbrush was being cleared away. One could not seriously expect significant progress before the next federal election or the Quebec referendum, but the parameters of the debate are finally being narrowed, terms are being defined and positions developed.

THE OPPOSITION RESPONSE

Not since 1968 have either of the two major Opposition parties, the Progressive Conservatives or the New Democratic Party (N.D.P.) formulated a global constitutional policy to compete with that of the Liberal government. In latter years in particular, as the public mood in much of English-Canada has soured towards the Liberals' perceived pre-occupation with "national unity" the Opposition's strategy has been to stress economic issues. Nonetheless, as the election approached, and the federal government elaborated its constitutional options, the Opposition, especially the Conservatives, began to pay more attention to their constitutional policies.

The most important Conservative initiative was the publication of a Discussion Paper on "The Constitution and National Unity" in April, 1978. Promising to release subsequent papers dealing with rights and the division of powers, the Tory paper concentrated on making the central

government more responsive to the needs of the provinces. Their proposals would:

- Make annual first ministers' conferences mandatory, and commit the federal government to reporting to Parliament on the agenda and progress of these meetings.
- Create a House of the Provinces to replace the Senate. Members would be appointed mostly by the Provinces, and would have a special role in reviewing federal-provincial agreements, constitutional questions and nominations to the Supreme Court.
- provide for provincial consultation in appointments to the Supreme Court.
- give formal recognition to the principle of equalization payments.

The party has not yet released its position on other issues of reform, but has maintained a consistent thread through its criticisms of the Liberal government, taking a more decentralist, conciliatory line in debates on federal-provincial relations. The party's criticisms of Bill C-60 focused on the unilateral nature of the measures, and largely through the party's efforts, the Joint Committee recommended the reference to the Supreme Court of certain sections of the government's Bill C-60. Meanwhile, Conservative leader, Joe Clark, has had some difficulty in clarifying his party's strategy towards the P.Q., but continues to cite his "Kingston Communique" (the result of a meeting held in September, 1977, between Clark and five Conservative provincial premiers) as evidence of his ability to cooperate with the provinces. At that meeting consensus was reached on the following issues regarding division of powers: a constitutional limitation on the use of the federal spending power in areas of provincial jurisdiction, shared jurisdiction in culture, enshrined principle of equalization and recognition of provincial ownership of offshore mineral rights,

The N.D.P.'s positions on the constitution have been even more general than those of the Conservatives. On most issues, particularly in the division of powers, they have not given any evidence of diverging from the government's position, and indeed, in terms of economic policies, have traditionally supported a strong central government. The one major contribution of the party to the debate thus far has been in leader

Ed Broadbent's proposal for House of Commons reform, The suggestion was made by way of their objection to Bill C-60's House of Federation. The party, which has for years advocated the abolition of the Senate, claims the proposed House of Federation would be even more dangerously undemocratic than the present upper Chamber, and deplores the potential for frustration and obstruction in the proposed new House. Instead, Broadbent proposes to reform the Commons by adding 100 new seats, elected on a regional basis (20 per economic region) by proportional representation of party support. Such reform would strengthen the regional representation of all national parties, and, more importantly, strengthen the democratic process.

THE OTHER NINE : PROVINCIAL RESPONSES.

Over the past year the ten provincial governments (and the nine outside Quebec in particular) continued to work closely together in the constitutional debate. Meeting in Montreal in February, 1978, to work out a consensus on minority language education, and again in August for the annual premiers' conference, the provincial governments pursued a common approach to federal constitutional proposals.

While anxious to place their collective concerns on the constitutional agenda, the nine premiers from "English" Canada have also been trying, apart from seeking agreement with Quebec in the short-term, to contribute to the federalist response to the P.Q. option. There have been a variety of forums for the premiers to do so. While the most obvious was the constitutional conference in October, throughout the year there were other more individual efforts. The hearings of the Task Force on Canadian Unity, conferences such as "Options Canada" in Toronto, "Alternatives Canada" in Banff, and individual speeches by Premiers across the country were opportunities for the provincial leaders to articulate their positions. Some provincial governments contributed to the constitutional review by appointing special advisory groups and by publishing reports and position papers. The following is a brief summary of such activity in the "other nine" provinces.

British Columbia - With the advice of a select "advisory group" on the constitution, chaired by former Director of the Institute of Intergovernmental Relations, Ron Burns, the B.C. government in the spring of 1978 released a detailed package of proposals for reform. The province's

initatives have been well received. In the light of the traditional insularity of the Pacific province, these proposals, like their detailed recommendations for industrial strategy released in February, are evidence of an effort by B.C. to take a greater role in debate over national issues.

The basic thrust of the B.C. proposals is to gain recognition of the province as the "fifth" region of Canada. With this perspective it proposes: 1) an amending formula which would alter the Victoria formula by treating B.C. separately, like Ontario and Quebec; 2) a regionally-appointed 10-member Supreme Court, with one seat to B.C., 3) a House of the Provinces to replace the senate, with members appointed by the Provinces, having veto over constitutional amendments affecting the provinces, and a role in appointing Supreme Court judges and regional members to federal regulatory agencies,⁽¹⁾

Alberta - "We want to be part of the mainstream, a full partner in Confederation", Premier Lougheed told the "Think West" Conference in September, 1977. Alberta's constitutional positions are unequivocally aimed at increasing the power of the provinces: "... let us not shed too many tears for a weakening of a central government". Among its recommendations Alberta wants the provincial jurisdiction over resources strengthened, and conversely the federal Trade and Commerce power limited. Provinces should be given a "legitimate role" in certain areas of international relations. Transportation and culture should be concurrent jurisdictions; there should be a constitutional court separate from the appeals section of the Supreme Court, and an amending formula to reflect "the principle that existing rights, proprietary interests and jurisdiction of a province cannot be diminished without the consent of that province."⁽²⁾

Saskatchewan - Premier Allan Blakeney has not put forward any complete blueprint for reform, but has in numerous speeches made plain his province's goal of a "new bargain for Canada". "Western Canada has been in the position of a worker in a company town, where Ontario and Quebec owned the store", Blakeney told the "Alternatives Canada" Conference in March, 1978. And while the Saskatchewan government will

(1) British Columbia's Constitutional Proposals, 9 Booklets, September, 1978.

(2) Harmony in Diversity: A New Federalism for Canada, October, 1978

press strongly for western demands, Premier Blakeney, (especially in his role as chairman of the Premiers' August meeting) plays the role of conciliator, and has been a prime advocate of the "package" approach to constitutional reform.

Manitoba - Premier Sterling Lyon's speech to the Progressive Conservative party's convention in Quebec City in November, 1977, roused party members with its denunciation of "programs of rigid institutional bilingualism" which he says has highlighted the Trudeau years in power. The Manitoba position in the constitutional debate, made clear in this and other addresses, appears to focus on the redressing of Western economic grievances. As with other western premiers, Lyon supports the conclusions of the "Intrusions" Report and the consensus to declare sovereignty-association as a 'non-starter' option for Western Canada. Manitoba has also been one of the staunchest opponents of entrenching legal and political rights in the Constitution.

Ontario - With few pressing constitutional reforms to place on the agenda, this central province has been playing a role both as a moderator in the debate and as a watchdog over the forces of decentralization. The outcome of constitutional reform must be a "more effective federal parliament and government, capable of providing national leadership on a clearly defined list of national issues", Premier Davis told the Task Force on Canadian Unity in November, 1977. Ontario's priorities for change were for greater mechanisms for economic consultation - ensuring that the federal role in maintaining a strong national economy is not eroded, for the "practical reforms" of disentanglement of jurisdictions in many areas, and specific constitutional reforms including a reformed Senate and entrenched linguistic guarantees.

While not representing the official government position, the Ontario Advisory Committee on the Constitution's first Report, released in April, 1978, was one of the earliest of concrete proposals in the debate. With recommendations on the division of powers the subject of further work, the committee's recommendations centred on its concept of a House of the Provinces. The Report⁽¹⁾ advocated 1) a provincially-

1) First Report of the Advisory Committee on Confederation, April, 1978

appointed upper Chamber with powers to review legislation, delay bills for a limited period, approve Supreme Court and regulatory agency appointments; 2) Supreme Court appointments to be made with formal provincial consultation, only Quebec judges to hear civil law cases, and provinces would appoint all other judges to courts except the federal court; 3) entrenchment of a Charter of basic and linguistic rights and, 4) an amending formula along the lines of the Victoria Charter.

New Brunswick - Like some of the other Premiers, New Brunswick's Richard Hatfield has not put forward a detailed blue-print for change. However, he has had no hesitation about taking an active political role in the referendum debate in Quebec. Preaching the gospel of French-English accommodation, and able to point to tangible progress in New Brunswick in the past decade, Hatfield has taken his campaign to Quebec several times. His position on language rights in particular has made him one of the leading defenders of bilingualism among the provincial premiers; his efforts were partly rewarded in the language agreements made by the Premiers in St. Andrew's and Montreal in 1977-78, (see below). On other issues, such as the strength of the central government and nature of central institutions, Hatfield has reflected more traditional New Brunswick positions.

Nova Scotia - Speaking to the Dartmouth Chamber of Commerce in November, 1977, Nova Scotia Premier Gerald Regan was one of the first to put an end to what the Globe and Mail referred to as the "passive role" of the anglophone premiers since November, 1976. He gave the country a "useful push toward a bargaining process" (editorial November 15, 1977), with his address calling for a thorough reform of constitutional arrangements. In this and other addresses, Nova Scotia has been promoting its claims to a provincial jurisdiction over fisheries, entrenchment of the equalization principle and provincial input into Supreme Court appointments, among other items. The provincial government also served notice of its flexibility on "special status":

... we should examine what is demanded by way of special status before dismissing it out of hand. I want to make it quite clear that if special status gives unfair economic rights to the people of my province, and in other provinces, then I am against it; but it may well be that they are merely provisions that meet special needs in exactly the same way other provinces may have special needs.

Prince Edward Island - Again, with no specific recommendations for change, the P.E.I. government can nonetheless be expected to support the maintenance of a federal government with enough effectiveness to fight regional disparities: "Ask any Maritimer what the greatest cause of disunity is and it will not be long before you are drawn into a debate about regional disparity", Premier Alex Campbell told the Options-Canada Conference in Toronto in October, 1977. At the same time, however, Campbell stressed the disintegrative effects of centralized decision-making for the traditional communities in eastern Canada - so P.E.I. has placed itself within the many calls for regionally-sensitive decision-making in a new constitutional regime.

Newfoundland - During the past year Premier Frank Moores has developed an aggressive position for Newfoundland in the constitutional debate. Based on the premise that the province has the potential for great wealth from resources, Moores' positions have been to protect that potential from the encroachment of the federal government. The provincial government continues to complain about Quebec's reluctance to renegotiate the Churchill Falls Hydro agreement, a refusal which Moores has called "the greatest violation of the spirit of Confederation that we have ever witnessed". Despite such disputes, however, Newfoundland has stepped up its constitutional demands for provincial jurisdiction over fisheries and off-shore mineral resources. Arguing that the fishery and offshore oil and gas are as important to Newfoundland's economy as oil and gas is to Alberta, the province is determined to control the exploitation of these resources for local development priorities. Coupled with its traditional stand of entrenching equalization in the constitution, the province has taken a forceful role in the national debate.

Minority Language Agreements

Related to the constitutional debate has been the discussion of linguistic rights. While the federal government is determined to entrench language guarantees in the constitution, provincial leaders, in particular René Lévesque of Quebec, attempted to find a provincial consensus on issues such as education, in order to avoid or circumvent a federal role. These considerations were raised at the Premiers' 18th Annual Meeting in St. Andrew's, New Brunswick, in August, 1977. At that meeting the premiers rejected Lévesque's proposal for reciprocal agreements on minority language education rights. Instead the nine anglophone premiers agreed in principle that "they will make their best efforts to provide instruction in English and French wherever numbers warrant" and directed the Council of Education Ministers to review the state of minority language education in each province.

Subsequently Premier Hatfield, then chairman of the premiers' conference, convened a meeting on February 23, 1978, in Montreal to receive and discuss the Report of the Council of Education Ministers.⁽¹⁾ In their communiqué the Premiers (this time, unanimous) reaffirmed the St. Andrew's intention, and enunciated two principles to govern the availability and accessibility of minority education:

- (i) Each child of the English-speaking or French-speaking minority is entitled to an education in his or her language in the primary or the secondary schools in each province wherever numbers warrant,
- (ii) It is understood, due to exclusive jurisdiction of provincial governments in the field of education, and due also to wide cultural and demographic differences, that the implementation of the foregoing principle would be as defined by each province.

The provincial agreement does not, of course, preclude provinces from supporting the federal government's intention of entrenching such a guarantee in the constitution; and indeed, the extent to which the agreement is legally binding on the provinces is entirely up to the provinces themselves.

 (1) The State of Minority Language Education in the Ten Provinces of Canada, Council of Education Ministers, January, 1978.

The Regina Conference

The 19th Annual Premiers' Conference, held in Regina on August 9, 1978, provided the most coherent and united response yet from the ten premiers on the constitutional issue. In retrospect, it represents a highwater mark for the "common front" approach to constitutional reform, and was an important event in the development of the debate. The premiers addressed themselves to two related issues - measures to reduce the duplication of services by the federal and provincial governments, and a response to the federal government's initiative of Bill C-60.

Drawing upon the findings of various studies including the recently released Second Report of the Western Premiers' Task Force on Constitutional Trends⁽¹⁾ and a Quebec Report, The Overlapping of federal and Quebec programs,⁽²⁾ the premiers drew up a list of priority items for early action to reduce duplication. The nine items listed were: 1) consumer and corporate affairs, 2) environmental protection, 3) agricultural research, 4) offshore mineral resources, 5) regulation of uranium mining and the nuclear industry, 6) housing and urban affairs, 7) administration of justice, 8) correctional services, and, 9) post-secondary education. In their short communiqué the premiers added "It was noted that the delineation of jurisdictional responsibilities may require the transfer of appropriate financial resources."

The premiers' consensus on constitutional reform came under two headings: process and substance. The thrust of their communiqué was to express their unanimous rejection of the order and timetable of constitutional reform proposed by the federal government in June. The premiers were unanimous in recognising the need for reform, but stressed that division of powers, left in the federal proposals for "phase II" should be discussed concurrently with Bill C-60's reforms.

(1) The so-called "Intrusions Report", April, 1978

(2) Germain Julien and Marcel Proulx, Ecole Nationale d'administration Publique, June, 1978.

Indeed they wanted not only to discuss the federal proposals at a First Ministers' conference but to add to the agenda the 1976 Premiers' consensus on the division of powers, other provincial or federal positions and, if ready, the Report of the Task Force on Canadian Unity. The premiers made a forceful point of rejecting any federal claims to proceed unilaterally with their proposed changes to the Senate and the role of the monarchy and asserted the need for joint federal-provincial agreement on all the issues for reform. Neither "compartmentalizing" the debate, nor imposing arbitrary deadlines was seen as promoting such agreement.

As for the substance of their constitutional demands the Premiers' Conference went just a bit farther than the Toronto meeting in October, 1976. Quebec, of course, indicated that it intended to proceed with its option for sovereignty-association, but would support the provincial consensus as it would fall "within the mandate of the Quebec government to reinforce provincial rights". The premiers advanced the 1976 "list" of areas of substantial provincial agreement, i.e. immigration, language rights, resource taxation, federal declaratory power, annual Conference of First Ministers, creation of new provinces, culture, communications, Supreme Court, federal spending power, and regional disparities and equalization. To add to that, the premiers found five other topics of consensus: 1) abolition of federal powers of reserving or disallowing provincial legislation, 2) clear limits to federal treaty-making power, 3) a provincial jurisdiction in fisheries, 4) confirmation and strengthening of provincial control over natural resources, 5) provincial consultation in appointments to lower courts in the provinces and the Supreme Court of Canada. Finally, the premiers, while not unanimous on the substance of change, agreed to add five more items to the constitutional agenda: 1) federal emergency power, 2) provincial access to indirect taxation, 3) federal residual power, 4) an amending formula and patriation, and, 5) the delegation of legislative powers between governments.

As for Bill C-60, the premiers were not as unanimous about its various sections. All were wary of proposed changes to the role of the Governor-General, and said that the House of Federation would

prove unworkable. They were, however, divided on the value of an entrenched Charter of Rights,

Thus this "gathering of noblemen with rebellious hearts" (Wm. Johnson, Globe and Mail, August 7th, 1978) made their united stand for a provincial role in the constitutional debate. As is argued elsewhere, the premiers' action helped to join two strands of the debate: the federal initiatives with its emphasis on a Charter of Rights and reformed central institutions and the provincial lists dwelling on division of powers. The premiers' August communiqué no doubt finalized Prime Minister Trudeau's decision to drop further mention of the Phase I - Phase II approach, at least for the time being, and to welcome the airing of provincial concerns at the constitutional conference in October. As that conference and subsequent meetings demonstrated, the provinces are by no means unanimous on the substance of the various issues. They were, however, able to agree on the process, which has contributed to the acceleration of the constitutional debate.

PRIVATE SECTOR RESPONSES

Since the election of the PQ in November, 1976, "national unity" has kept busy dozens of discussion groups, conferences and T.V. and radio shows.⁽¹⁾ Those familiar with the debate often (rather cynically) refer to it as the "national unity industry" - and there have been many ways for the citizen to be informed of the issues. The effect of all these forums is unclear. The flurry of concern following the Parti Québécois victory has now turned into widespread apathy over the "unity" issue. In contrast to the institutional

(1) Although the media in general has been paying close attention to the issues and events in the constitutional debate, one new publication in particular has been a very welcome addition. Report on Confederation, published in Montreal, under the editorship of Tim Creery, has become a lively and informative collection of public affairs commentaries - and a reliable source for tracing the contours of the unity issue.

and legal nitty-gritty of the constitutional bargaining of the various governments, the debate in the private sector has been most often at the level of attitudes and perceptions. In the process, the unity discussion group has become a hybrid of consciousness raising for the general public and a platform for leaders seeking support.

Nonetheless during the year, a number of developments have had an important influence on the mood and substance of the debate. The main "full-dress" conferences of delegates from across the country were the "Options Canada" Conference at the University of Toronto in October, 1977⁽¹⁾, and the "Alternatives Canada" Conference, organized by the Canada West Foundation at Banff in March, 1978. The meetings provided an airing of many old and some new ideas, but the most concrete result was a report entitled Alternatives: Toward the Development of an effective federal system for Canada⁽²⁾ prepared for the "Alternatives" Conference. An independent group of prominent Canadians from the four western provinces and the territories, the Canada West Foundation appointed three political scientists to report to the conference. The more important recommendations were to:

- . replace the Senate with a House of the Provinces, with members acting as instructed delegates of provincial governments and with duties akin to a permanent intergovernmental conference.
- . appoint a 15-member split-body Supreme Court, including an eight-member appeals Court, a six-member constitutional court with the Chief Justice on both benches.
- . Appoint a Governor-General only after a vote in Parliament
- . Redraw the division of powers to stress concurrent jurisdictions in transportation, communications, banking, education and health and social welfare.
- . use an amending formula along lines of Victoria Charter except for provincial veto on changes which would diminish that province's existing rights and assets, and provision for regional referenda in the case of provincial government rejection.

With the main exception of the proposal for a House of the Provinces, Canada West's recommendations are very close to the later Alberta Government position.

(1) Options Canada (Proceedings of the Conference on the Future of Canadian Federation, University of Toronto, Oct. 14-15, 1977)

(2) David Elton, F.C. Engelman, Peter McCormick, Canada West Foundation March, 1978.

The other major set of non-government constitutional proposals came from the Canadian Bar Association. In August, 1978, the Bar Association's Committee on the Constitution presented a report at its meeting in Halifax. The lengthy document, Towards a New Canada, presented what is still the most comprehensive public set of proposals on the distribution of powers. Unfortunately its 120 recommendations got rather lost in a debate over a single proposal to make the Governor-General the Head of State, recognising the Queen only as Head of the Commonwealth. The Report advocated, among other things, these constitutional changes:

- . an inspirational preamble to a new Constitution
- . entrenchment of a Charter of basic rights
- . language guarantees for use of French and English in the federal government, the Courts and in the schools where numbers warrant.
- . more regionally sensitive economic policy and a commitment to alleviate disparities.
- . a House of the Provinces, with veto over a list of federal-provincial issues.
- . enshrinement of an independent judiciary.
- . new division of powers to enhance independence of the two spheres of jurisdiction with prime authority for culture going to provinces, and for the economy to the federal government.

Apart from specific sets of constitutional proposals and unity discussion events, research in fields touching on the national question has been stepped up in Canada's academic and applied research communities. Among the most notable was a series of studies launched in December, 1977, by the Economic Council of Canada. The Council hoped to provide a relatively detached economic analysis of the Confederation arrangement as well as to project different economic scenarios given constitutional changes such as Quebec's secession. While not as comprehensive as the "Bonin" studies commissioned by the Quebec government (see above, section 1), the Council's work should complement them. The Council presented the first results of its work to a workshop held jointly with the Institute of Intergovernmental

Relations in November, 1978.⁽¹⁾ The latter group is also coordinating a series of projects entitled "Queen's Studies in the Future of the Canadian Communities". Finally, the C.D. Howe Research Institute had much success with its "Accent Québec" series of monographs on economic issues related to that province and the constitutional debate.⁽²⁾

Thus both experts and ordinary citizens have been articulating their response to the Canadian constitutional "crisis". This inevitably raises larger questions about the citizen's role in the constitutional debate. Some critics, notably Léon Dion, political scientist at Laval University, and Denis Smith, editor of the Canadian Forum, have been advocates of a constituent assembly, which they hope would have the political legitimacy and sovereignty to rewrite our constitution.⁽³⁾ The proposal is unrealistic. None of the federal or provincial governments, or the parties in their legislatures, are willing to relinquish their role to such a new body. At least for the time being it appears as if the citizen's role will be best expressed at the polls - where indeed, they should have considerable impact in the year ahead.

(1) Workshop on the Political Economy of Confederation, Proceedings to be published in 1979.

(2) Of the 16 monographs planned in the Accent Québec" series, the following eight have been published to date:
Staff, Why Do the Balances Differ on Federal Receipts and Expenditure in Quebec?

C.E. Beigie and J. Maxwell, Quebec's Vulnerability in Energy.

R. Dehem, On the Meaning of 'Economic Association'

A. Breton, Bilingualism: An Economic Approach

C. Pestieau, The Quebec Textile Industry in Canada

R.J. Joy, Canada's Official-Language Minorities

C. Nappi, The Structure of Quebec's Exports

J. Maxwell and G. Bélanger, Taxes and Expenditures in Quebec and Ontario: A Comparison

(3) See Dion's comments to the Joint Parliamentary Committee on the Constitution, Proceedings, Issue No.16, September 20, 1978; and Smith's editorial in the Canadian Forum, March, 1977.

IV

FEDERAL-PROVINCIAL RELATIONS : GENERAL POLICY AREAS

Economics and the constitution were the most prominent items on the federal-provincial agenda in 1977-78, but they were by no means the only ones. Federal-provincial interaction continued on a wide range of other matters. They all reflect the interdependence and interpenetration of governments in almost every area which is one of the primary characteristics of contemporary federal countries. Some of these other issues are briefly summarized in this section. The agreements and discussions we cite are a useful counterpoint to the economic and constitutional issues: if the latter can be seen to represent the "high politics" of Canadian federalism, many of those examined here represent the on-going intergovernmental cooperation which is often conducted far from the glaring publicity of other events.

Agriculture

The most important development in federal-provincial relations in agriculture during the past year was the "sectoral discussions" preceding and following the First Ministers' Conference on the Economy in February. In the case of agriculture the development of a sectoral strategy coincided with a continuing effort, since 1974, to work out a national food policy - with farmers, fishermen, producers, retailers, consumers - and federal and provincial officials involved. These talks culminated with the federal White Paper "A Food Strategy for Canada", in June, 1977.

Following the annual agricultural outlook conference of December, 1977, provincial and federal ministers met in January to work out a consensus to present to the first ministers the next month. In that meeting the provinces presented a priority list of policy areas which they had previously agreed required "immediate attention", including transportation, price and income stabilization, tariffs and trade, market incentives, and "new priorities on which to base federal-provincial agreement for agriculture development". The provincial

paper went on to outline their wide agreement on agricultural stabilization policy, leading towards the harmonization of federal and provincial programs, on trade, including the need for provinces to continue their international marketing efforts until federal policies were developed, and on the coordination of federal and provincial research. In terms of guidelines for federal-provincial agreements, the provinces in their eventual joint statement with the federal government, agreed on three broad points: 1) to let Agriculture Canada take "the leadership role" in coordinating development programs with other federal agencies such as DREE or Manpower, 2) to develop agriculture development "philosophy consistent with the regional development criteria", and, 3) long-term agreements must be flexible enough to respond to changing regional conditions.⁽¹⁾

Apart from the apparent progress in these meetings towards an agricultural development strategy, there were the following issues and events.

Grain marketing.

Addressing the provincial legislature on May 8, 1978, Alberta Premier, Peter Lougheed, announced the establishment of a Task Force, chaired by himself, "to seek changes in Canada's grain marketing procedures for the 1980's." The move follows an exchange of letters between Lougheed and Prime Minister Trudeau, since November 1977, in which Trudeau refused to follow Lougheed's nine-point "plan towards a more stable marketing policy". Lougheed charged that the Prime Minister was being "defensive and complacent" about future grain sales.

Federal cut-back

Toward the end of the year in review the federal decision to cut its funding of "Canfarm", a computerized farm record service, had agriculture spokesmen and provincial officials howling. The federal government has remained determined to drop the service. Provinces and the Canadian Federation of Agriculture have negotiated to keep it in operation after the end of this year.

(1) See Agriculture Sectoral Paper for the Conference, February, 1978, Canadian Intergovernmental Conference Secretariat document 800-7/015, with appendices A-D, for one of the better and more complete examples of the federal-provincial process at work in these sectoral discussions.

General agreements.

A cross section of some of the recent federal-provincial agreements in the agricultural sector:

February 17, 1978 - Canada-Quebec, four programs to promote on-farm feed grain production and storage. The federal contribution of \$33 million is to be administered by Quebec.

There was some disagreement over where equipment is to be purchased (in Quebec or where farmers choose);

March, 1978 - Saskatchewan and Alberta extend agreement with Ottawa in forage transportation assistance programme;

July, 1978 - A 5-year Canada-Newfoundland agriculture development subsidiary agreement was signed. It included a wide range of programs to increase productivity and improve operations in the Province. The federal contribution was \$16.3 million.

Communications

The field of communications has been, in recent years, the scene of some of the most acrimonious jurisdictional disputes in federal-provincial relations. While during the past year the bitterness has been slightly reduced, the issues and differences remain.

One of the most significant developments came on November 30, 1977, when the Supreme Court of Canada delivered its decision on the Dionne vs. the Province of Quebec case, that cable T.V. regulation lies wholly within the federal legislative jurisdiction.⁽¹⁾ Following this, the federal minister, Jeanne Sauvé, and provincial counterparts (in particular Quebec communications minister, Louis O'Neill) have been negotiating towards "administrative arrangements" in at least this one area of the wide communications field.

Conducting what Le Devoir termed "un duel epistolaire", Sauvé and O'Neill exchanged a series of letters between December, 1977 and February, 1978, culminating in the latter's agreement to attend a federal-provincial meeting of communications ministers in Charlottetown at the end of March. O'Neill had boycotted the previous year's meeting.

(1) See Federal Year in Review, 1976-1977, pp.26-27.

While the conference was generally conciliatory, it may have been too optimistic for Madame Sauvé jubilantly to pronounce the meeting an "historic breakthrough"; "... en attendant qu'on entente fondamentale se dégage ... les conférence n'aurons d'historique que le sourire résigné de M. O'Neil" (Le Devoir, 31 March, 1978).

The provinces did agree unanimously to support the new federal telecommunications bill which was introduced to Parliament in the spring, Bill C-24, (but it died on the order paper after first reading). The bill would allow Ottawa to negotiate agreements with the provinces, giving provincial regulatory agencies power now exercised by the CRTC. However, such powers would not include cable or broadcasting regulation. The ministers also agreed to establish a working committee to study competition among telecommunications carriers.

The issues of delegation of administrative power over cable T.V., and of the means of introducing "Pay T.V." into Canada remained basically unresolved. Quebec minister O'Neill proposed a formula for delegating power similar to that used under the federal Motor Vehicle Transport Act of 1953, in which the provincial regulation organizations were recognized and essentially legitimized in their authority to regulate the trucking industry. Madame Sauvé was "cool to the idea, saying the intellectual and moral content of trucking was hardly similar to broadcasting". (Montreal Star, 1 April, 1978). The ministers' consensus to delay the introduction of pay T.V. into Canada until jurisdictional authority is established reflects recent C.R.T.C. decisions. Meanwhile, the federal government was charged with developing a "model policy" which would attempt to accommodate both federal and provincial interests. As long as Quebec, in particular, continues to demand greater jurisdiction over communications - as a prerequisite to cultural sovereignty - in the province, the cable and T.V. issues will remain on the constitutional rather than administrative agenda. (1)

(1) In a related issue of content of broadcast advertising, see Chapter VI (below) for the decision on the "Attorney-General of the Province of Quebec vs. Kellogg's Company of Canada" case.

Consumer and Corporate Affairs

In consumer and corporate policy, the past year was highlighted by some genuine agreement and much discussion of proposed federal legislation. The Permanent Committee of Deputy Ministers of Consumer and Corporate Affairs held a meeting in December which featured a discussion of a vehicle corrosion prevention agreement, consumer credit and warranties, food policy, home insulation, consumer advocacy programs and Bank Act revisions. By January 19, the ministers were able to jointly announce the final agreement on a "three-part anti-rust program" worked out by a federal-provincial task force. The agreement consists of a uniform code of minimum corrosion resistance standards for all automobiles made or imported in Canada, beginning in 1978.

Throughout the year competition policy - as outlined in proposed federal legislation (Bill C-13 as introduced in the spring session, 1978) and banking policy as proposed in the revised banking act, were the topic of on-going federal-provincial consultation. On the latter legislation one provincial spokesman, Walter Smishek, Saskatchewan finance minister, noted with approval that "Ottawa had accepted much of the advice offered by the provincial ministers of finance in its new Bill." Such approval was not forthcoming on the competition bill, however, which some provinces found to represent a regression in terms of protection of consumers' interests.

Economic Development - DREE and the Provinces

Throughout 1977-78 the federal Department of Regional Economic Expansion (DREE) continued its extensive consultation and funding arrangements with the provinces under the umbrella of General Development agreements. Regional development policy remains a major topic, particularly during the present economic planning and industrial strategy review. At one point federal spokesmen raised doubts about the effectiveness of the development programs, hinting that they might even be scrapped, thus provoking the anticipated provincial demonstration of approval of both the regional industrial incentives program and the general development agreements. The general effectiveness of the various programs cannot, however, be adequately assessed

here. Nonetheless, the number of subsidiary agreements renewed, and initiated, during 1977-78 at least attests to the importance placed by governments on this joint approach to economic development.

The following are highlights of just a few of the agreements initiated during the past year: Newfoundland:- Labrador Interim Agreement provides for \$7.8 million over two years to upgrade health services; New Brunswick:- forest subsidiary agreement signed to improve the forest resource potential over the next four years at a total cost of \$12.6 million; Quebec:- Water Treatment Facilities for the Montreal Area Agreement, provides for DREE to pay 60% of a \$200 million grant; Manitoba:- Industrial Development Subsidiary Agreement, to be called "Enterprise Manitoba", is to cover development of industrial infra-structure, community commercial development and rural small enterprise, at a cost of \$44 million, British Columbia:- Travel Industry Subsidiary Agreement for five years, will spend \$50 million on tourism development outside of the southern end of Vancouver Island and the lower mainland.

Energy Policy

In 1977-78 energy policy continued to be of vital concern to both federal and provincial governments. The joint effort towards Canadian self-sufficiency in energy within the next decade focused upon considerations such as conservation, research and development and the financing of major new energy projects. Indeed the developments such as the Alcan pipeline, Labrador hydro-electric project and heavy oil in the West, figured prominently in medium-term discussions of economic development. As the first ministers' conference in February demonstrated, such undertakings are of immense importance to a healthy Canadian economy.

Until the fall of 1978, agreements on oil prices made in May, 1977, were still in effect. Under that accord the barrel price for oil was to increase by \$1 on July 1, 1978 and January 1, 1979. The federal cabinet, however, had been tempted to unilaterally delay the July increase, and did manage to renegotiate their agreement with

Alberta on the January increase just prior to the first ministers' conference on the economy in November. Alberta and Ottawa agreed to delay the increase of a dollar a barrel until July 1, 1979, with another increase on January 1, 1980. The announcement was met with dismay by some consumer provinces: they were concerned with the "breaking" of a federal-provincial agreement, over the impact the delay of the price increase would have on equalization payments, and not least of their considerations, allowing the federal Liberals to go to the polls without the extra inflation of the price increase.

Other large issues, reviewed below, were natural gas policy, conservation, and various joint energy projects ranging from heavy oil to nuclear power.

Federal Initiatives.

The federal government continued to take a leadership role in energy policy. Since its publication of An Energy Strategy for Canada: Policies for Self-Reliance in 1976, Ottawa has been attempting to prod provincial conservation programs where they've existed into a coordinated effort. For example, after initial home insulation grant programs signed with Prince Edward Island and Nova Scotia, the federal government completed agreements with all ten provinces by late 1977 - inducing them to "adopt new speed limits, to implement improved building standards, to remove taxes on insulation materials or to ban the use of bulk metering in apartment buildings."⁽¹⁾ As one federal official put it, however:

It remains to be seen whether the energy conservation laws which each province strikes ... will, when combined with those of other provinces and the federal government, result in a satisfactory reduction in energy demand for the country as a whole.⁽²⁾

The federal government also announced increased spending in research and development for alternative sources of energy from the sun, garbage or forest products. Federal spending increased by 94% in these areas in 1977-78, and a program announced in June will provide

(1) Charles H. Smith, Federal Department of Energy, Mines and Resources, in an address to 1978 International Conference on Energy Conservation, February 28th, 1978, Washington, D.C.

(2) *ibid.*, p.6.

for \$380 million in funds over the next five years.

Also in the federal arena was the Alaska Highway natural gas pipeline, the product of an American-Canadian agreement reached in the fall of 1977 and since ratified by the U.S. Congress and the Canadian Parliament. The debate on the "Northern Pipeline Act" (Bill C-25), held in the House of Commons during the spring of 1978, was remarkably quiet, particularly considering its infamous 1955 predecessor. The Pipeline Act provides for a "Federal-Provincial Consultative Council" composed of representatives of the federal government, Yukon territory, and of British Columbia, Alberta and Saskatchewan. At least one provincial minister complained about the membership of the Council. Ontario Energy Minister, Reuben Baetz, told the House committee "Ontario consumers already account for almost 50 per cent of the natural gas used in Canada ... (and) provide the largest potential market for supplemental supplies of frontier natural gas". He thought Ontario should therefore have a seat on the Consultative Council.

Joint Ventures.

As mentioned, large energy projects were prominent on the agenda of February's First Ministers' Conference. Premier Allen Blakeney of Saskatchewan tabled a "Statement on National Energy Opportunities" on behalf of the federal and provincial energy ministers, and federal minister, Alistair Gillespie, gave a brief outline of forty different energy projects in the works or planning stages. Blakeney mentioned that completion of a "national coal policy" and more vigorous marketing of natural gas in eastern Canada were two important items for immediate attention, and stressed, as did Gillespie, the potential for economic growth and jobs in development of some of the larger projects. In a separate provincial paper Blakeney put forward for discussion items which could not gain ready federal-provincial consensus - such as the establishment of a Canada Energy Security Fund to which all of the increased gas and oil revenue would go for development of future energy development and conservation.(1)

(1) A Saskatchewan proposal since 1975, see "Energy Resource Management in Saskatchewan", November, 1977.

He also proposed constitutional clarification of the provinces' right to tax mineral production, and the scrapping of the "non-deductibility rule" in federal taxes on energy corporations.

Apart from the decision of the first ministers to proceed immediately with two specific projects - the "Gull Island" hydro development in Labrador and a heavy oil upgrading facility in North-Western Saskatchewan, there was no significant new agreement on outstanding issues. However, the following are the highlights of recent events in various energy sectors:

Oil and Gas: On August 16th, 1978, the federal government and Saskatchewan announced a pilot project to test heavy oil recovery near Lloydminster. Under the terms of a 1976 agreement, the project costs of \$4 million will be shared equally.

Ontario and Alberta reached agreement in November, 1977, for the marketing of Ontario's 5% share of Syncrude production, which began later in 1972.

On May 18, 1978, the government of Newfoundland and Labrador approved forty-eight first round exploratory permits for the Eastcan group of petroleum corporations. Following difficult negotiations with Eastcan and the federal government over the company's acceptance of the provincial regulations, the issuance of the permits was hailed by Newfoundland Minister, Brian Peckford, as a "milestone in the long struggle by the government to protect the ownership rights of the people of this province to their offshore mineral resources against Ottawa's unfounded and unwarranted claim to them." The provincial government looks forward to an eventual "victory" in the Supreme Court of Canada to establish its ownership of offshore mineral resources. This issue is also on the constitutional agenda.

Just as Alberta and the federal government had completed a natural gas pricing agreement that would maintain gas prices at present levels roughly equivalent to oil prices, federal finance minister, Chrétien, announced a new "deregulation" policy on August

24th. Part of three measures in the federal government's August fiscal-economic policy package related to oil and gas (the other two were reductions of 3 cents in the federal excise tax on gasoline, and holding off the planned \$1 increase on crude oil prices for January 1, 1979), the gas price deregulation was an attempt to deal with the increasing problem of surplus natural gas supply. Designed to lower gas prices for consumers in eastern Canada, "deregulation" is part of the federal energy plan to eventually displace imported oil with western natural gas - particularly in Quebec and the Maritimes where only a small market now exists. As our year in review drew to a close, gas pricing and marketing policy promised to become a significant source of friction between Alberta and Ottawa. Many Albertan industry and government spokesmen were not only skeptical of the effects such deregulation of gas prices would have, but also had been advocating for some time that excess Albertan gas be sold in the U.S. market instead of pushing cheaper gas on eastern consumers. The U.S. option has received the approval of at least one other provincial government.⁽¹⁾

Hydro: Agreement in principle was reached at the February first ministers' conference to establish the Lower Churchill Development Corporation. Negotiations on funding, marketing and other project details continue.

On March 15, 1978, the Governments of Canada, Nova Scotia and New Brunswick released a report from the Bay of Fundy Tidal Power Review Board entitled "Reassessment of Fundy Tidal Power". Subsequently the three governments have decided to go ahead with the Report's recommended pre-investment design program for a prototype tidal plant on Cumberland Basin, at a cost of \$33 million over three years. The program will be funded on the basis of 50% from Canada and 25% each from New Brunswick and Nova Scotia. Meanwhile negotiations continue over the establishment of the Maritime Energy

(1) See news release, Government of Newfoundland and Labrador, 11th April, 1978.

Corporation, intended to create a single body for federal and provincial joint financing of large energy projects - with Fundy Power presumably at the top of the list. New Brunswick, in particular, hopes to include generation, and of course, costs, of its Point Lepreau nuclear power plant in the M.E.C. To date such competing provincial power priorities have delayed agreement.

Nuclear: On June 5, 1978, the governments of Ontario and Canada announced a joint agreement on nuclear waste management which includes research, disposal facilities, and consultation in international waste agreements.

The on-again-off-again La Prade heavy-water plant at Gentilly, Quebec, was once again put in doubt with federal expenditure cuts in August. The federal department of energy hopes to save \$150 million by "mothballing" the costly plant, which, with surplus supply and an uncertain future for nuclear power in Quebec, was becoming a considerable liability. Quebec energy minister, Guy Joron, anxious to save the 1500 jobs involved, has said there would be "no question" of renegotiating the agreement made in 1977 to go ahead with the heavy water plant.

Environment

Environmental policies impinge upon federal-provincial relations in a variety of continuing programs ranging from weather forecasting in the Atmospheric Environment Service to helping provinces with spruce budworm spraying costs. During the past year there have been two notable developments: first, the announcement by the federal government of a coordinated inland waters policy, and second, cooperation between federal and provincial governments in international environmental agreements.

The federal environment minister, Len Marchand, issued a policy statement on inland waters in April, 1978. Stressing the importance of the "cooperative approach" with the provinces in policies concerning water systems crossing provincial and international boundaries, the statement outlined a number of joint programs. Shared-cost "comprehensive river basin studies" - such

as the Souris River Basin Study completed by the federal department and Manitoba in August, 1978 - were given salient treatment.

With this and other such jointly-funded programs, the federal policy restated the strictly conditional nature of federal involvement: "The federal government will not provide funds for the implementation of programs unless it has first participated in the planning of these programs or has satisfied itself that the national aspects have been given full consideration." One assumes that this condition was met with in the two examples of programs initiated in the past year; a flood reduction program for Nova Scotia, signed on June 22, 1978, and one for the Montreal area signed with Quebec on May 16, 1978.

Two international issues which required the joint attention of federal and provincial governments were the Garrison Diversion Project and the Great Lakes pollution agreement. In the former case, the proposed project in the mid-west U.S.A. could have "spelt ecological disaster" for Manitoban lakes and rivers. In March, 1978, Manitoban and federal officials met to draw up a joint statement to the U.S. State department, and subsequently the U.S. Senate, in approving funding of the project, stipulated conditions more favourable to the Canadian environment. The second major development was the signing, in the fall of 1978, of a Canada-U.S.A. Great Lakes Water Quality Agreement to renew and improve the original 1972 pact. After a year of negotiations the new agreement will entail what one account calls "significant bureaucratic change" on the part of the Ontario Environment ministry's monitoring and regulation of Canadian shores on the lakes. The negotiations required close coordination of Ontarian and federal officials.

Health and Welfare Policy

The most significant federal-provincial issue in the past year was the negotiations over social service funding. See above "Current Fiscal Relationships".

Housing

The year 1978 may well be seen as a significant watershed in federal-provincial relations in housing policy. Generally considered to have been the federal department hardest hit by the August 1978 restraint measures, the Ministry of State for Urban Affairs is well on its way to extinction. Most programs will have been terminated by the end of 1979. Furthermore, through a series of intergovernmental meetings, and at first ministers' conferences, housing policy has become a prime target for the "disentanglement" of jurisdictions.

While the federal housing ministry continued to enter into bilateral agreements, for example the proposed joint program for urban development in St. John, New Brunswick, announced in April, 1978, and to take significant initiatives on its own, such as developing the "Old Port" areas of Montreal and Quebec, the most important highlights of the year revolved around the disentangling issue.

The question came into public prominence during the February First Ministers' Conference. During one of the sessions, Urban Affairs Minister, André Ouellet, and Quebec Premier René Levesque engaged in some rather bitter debate over housing policy in Quebec. Although their comments could be fairly interpreted as the bickering of implacable political opponents, there existed some substantive issues beneath the exchange. As pointed out in the Quebec government's "dossier noir", "L'Evolution et les Conséquences de l'intervention federale dans le domaine des affaires municipales et urbaines", (released shortly after the conference debate), Quebec was not the only province which resented federal intrusions into provincial policy-making, particularly the federal government's direct dealings with municipalities. At issue here were apparent delays in federal Central Mortgage and Housing Corporation funding of public housing in Quebec - delays which the P.Q. government claimed were costing the province as much as \$149 million in unspent grants. The federal government in turn charged the Quebec Housing Corporation with incompetence, a claim corroborated by many press

comments.

By March 15, 1978, federal minister Ouellet had released a somewhat muted statement refuting the "black book", but by then the political heat had subsided. One development which perhaps mellowed the atmosphere was a federal-provincial meeting between the provincial housing ministers and Mr. Ouellet, held in Edmonton in late February. The main highlight of that meeting was a draft agreement on global funding for federal-provincial programs "in order to improve the efficiency of the supply and program utilization ... (and) with respect to federal grants to municipalities, it was unanimously agreed that federal assistance to municipalities should only be given with the approval and concurrence of the provinces and their appropriate agencies".⁽¹⁾ The new agreement would re-define federal and provincial roles, formalizing mechanisms for federal funding and providing for further consultation and coordination. A committee of officials is continuing to work out the details of the "global funding, disentanglement, and a review of the existing shared-cost programs."

Immigration and Employment

In February, 1978, a new era in joint responsibility for immigration policy was launched with a three-year agreement between Quebec and the federal government. The new arrangement supersedes a 1975 agreement providing for provincial consultation in the entry of immigrants to Quebec, by granting the province substantial new "decisive powers" over the selection of independent (non-sponsored) immigrants to the province. Quebec officials in the ten-year-old Ministère de l'immigration are now in the process of formulating their own priority point system for immigrant selection.

Under the authority of the federal Immigration Act, passed by Parliament in August, 1977, the Quebec-Canada agreement is one of five negotiated in the past year. Quebec and Nova Scotia signed agreements on February 21, 1978, Saskatchewan entered into an agreement on February

(1) Quoted in Ontario, Ministry of Treasury, Economics and Intergovernmental Affairs, "Background", No. 78/18, p.8

23, 1978, Prince Edward Island on July 14th and New Brunswick on September 1st, 1978. While all five agreements come under the auspices of Section 109(2) of the Immigration Act, authorizing the federal government to consult with the provinces on the "formulation, coordination and implementation of immigration policy and programs", the Quebec agreement differs substantially from the other four, which go no further than establishing joint consultative committees with varying mandates. Indeed, as one press report concluded, the agreements with Nova Scotia, Saskatchewan, Prince Edward Island and New Brunswick, "merely formalized the federal government's statutory requirements ... to consult regularly with the provinces". (Globe and Mail, 21st February, 1978).

In the new arrangement Quebec will be able both to recruit and select independent immigrants, and will give prior approval to refugees, students or temporary foreign workers. While the Canadian government will continue to have an ultimate veto over the entry of foreign nationals, the agreement meets long-standing demands from the Quebec government for considerable autonomy in its immigration policy, with ability to place greater emphasis on francophone content and fulfilling the constitutional concurrency of immigration, as stipulated by the B.N.A. Act. Indeed the agreement was hailed by Le Devoir as "Progrès remarquable, dont l'application concrète peut être déterminante dans nos politiques futures, et progrès réalisé à l'intérieur du régime fédéral". While there was some concern expressed over the de facto "special status" of the arrangements⁽¹⁾, most commentators praised the flexibility both in Ottawa's interpretation of the constitution and in its relations with Quebec.

In employment policy, 1978 witnessed the renegotiation of the adult occupational training programs by the federal government and many provinces. In most cases the agreements signed extended for further three-year periods the federal funding for students in provincially coordinated vocational training courses, usually held in community

(1) John Harney, "Special Status in Immigration", Canadian Forum, May, 1978.

colleges or other provincial educational institutions. Most provinces also are negotiating or have signed agreements that will provide industrial on-the-job training grants. The round of agreements comes in the wake of increased provincial consultation and flexibility of the manpower programs to local employment conditions and labour requirements.

Lottery Policy

In early June, 1978, provincial ministers in charge of lotteries and the federal minister of Fitness and Amateur Sport, Iona Campagnolo, met in an attempt to reconcile a highly competitive battle between federal and provincial lottery schemes. The discussions served to underlie the importance of lottery revenue to Canadian governments, as the "regressive tax" continued to reap increased profits. Provincial spokesmen were hoping that with the termination, at the end of 1979, of the present Loto-Canada agreement, whereby 82.50% of the countrywide lottery's proceeds goes towards retiring the Olympics debt, the federal government would vacate the field - ending the strong competition with provincial games such as "the Provincial", "Atlantic Loto", "the Western Express" and "Loto-Québec".

At the meeting in June all provincial ministers, except Nova Scotia's, called for the end to Loto-Canada, but met with stiff opposition from the federal minister. Indeed the federal government had in the spring and summer of 1978, gone ahead with plans to develop their new "Game", Loto-Select, to be ready by the end of the year. In the face of federal refusal to withdraw, most provinces decided to join forces, and strengthen their own vending system. Quebec, New Brunswick, Prince Edward Island and Newfoundland joined with Ontario and the western provinces to create the "Provincial Super-Loto", to place their game in a better competitive position with Loto-Canada.

The "battle" ensued on a variety of fronts - advertising, distribution and technological as Quebec and British Columbia moved to cut Loto Canada from their distribution network of kiosks and corner stores. Finally, on November 21, 1978, the federal and provincial governments reached a substantial new agreement. Ottawa agreed that it would operate all games with tickets valued at \$10 or more, dropping

its proposed Loto-Select; the provinces will market games with tickets of \$9 or less. The governments also agreed on various deadlines for revenue and promotion, including shared revenues from Loto Canada, but distribution problems for lottery tickets in western Canada were still being worked out. In conclusion it was a reasonable division of spoils; as one lyrical federal spokesman once commented: "Les loteries sont un immense shortcake où il y a dizaines de fraises. Nous avons l'intention d'en prendre plusieurs." (Le Devoir, 24 July, 1978).

Resources

Forestry

The federal-provincial meetings of ministers and officials responsible for forestry policy in early 1978 were part of other sectoral group discussions leading up to the first ministers' conference in February. While high level intergovernmental meetings may have been common in the other sectors, the forestry meetings were the first since 1966 and probably have set the pattern for renewed consultation in the years ahead. The ministers brought to the meeting a wide range of concerns, but most centred on creating long-term stability in the industry through better forest management, and in creating a climate for what was recognized as "Canada's largest resource sector", to restore some of its lost competitiveness in international markets.

In the sectoral discussion paper, prepared by Newfoundland minister, Ed. Maynard, the agenda focussed on wood costs and supply, industry modernization and productivity, transportation problems, taxation, and forest management. Their conclusions included the call for immediate action on transportation systems, substantially increased expenditure in longer-term forest management, greater emphasis on federal research and development, reallocation of Canada Works funds to forestry employment programs, and increased federal participation in joint productivity programs. In separate interventions at the first ministers' conference, both Quebec and Ontario forestry ministers, in particular, repeated the call for a greater federal role in the long-term development of resources.

While there was no significant agreement emerging from the first ministers conference, discussions continue, at least on the

bilateral level. For example, a Canada-Nova Scotia-New Brunswick agreement was signed in early February to coordinate studies in controlling the spruce bud worm damage in eastern forests, and two new forestry subsidiary agreements were signed by Nova Scotia and New Brunswick with the Department of Regional Economic Expansion in June and August, 1978, respectively.

Mining

As another of the sectoral groups holding discussions leading to the first ministers' conference in February, federal and provincial mines ministers met in Toronto on January 20th, 1978. As the governments were faced with an industry in "serious economic difficulty", most of their discussion and eventual recommendations were addressed to short-term problems. In particular the fiscal regime was given considerable review. The ministers were unanimous on the need for a tax review to stimulate mining exploration and development, and to ensure long-term return on investment during a period of low world demand and increasing international competition. Some specific recommendations outlined in the conference communiqué were: elimination of capital gains tax for junior and exploration companies, elimination of tax on windfall gains by prospectors from the sale of mineral properties and the ease of certain underwriting restrictions at provincial securities commissions.

Where federal and provincial governments continued to differ was on the deductibility of provincial royalties from the calculation of corporate income for federal tax purposes. The provinces argued that non-deductibility "constituted an unwarranted federal interference with the provincial right to manage natural resources." There was also debate on duplication of pollution control guidelines, with the Ministers hoping to find agreement in this area soon. The topics of trade, transportation and processing of mineral products were also discussed.

Although the elements of any federal-provincial consensus on mining policy were not included in the final communiqué of the first ministers conference, the ministers at the January meeting hoped to establish a "continuing federal-provincial conference of mines ministers".

Fisheries

The fishery industry, particularly on the Atlantic coast, has been the subject of intensifying federal-provincial dispute over the past few years. Since January 1st, 1977, and the extension of Canadian sovereignty to the 200-mile limit, bringing control over almost all of the banks on the continental shelf, the Atlantic fishery has received a new lease of life. The extension, coupled with strict conservation measures, should double Canadian fish landings by 1985, mostly to Nova Scotia and Newfoundland fishermen.

This windfall opportunity is being grasped eagerly by the unemployment-ridden and underdeveloped economy of the Atlantic region. However, the proper development of the renewed east coast industry has been the subject of much debate. The federal Department of Fisheries, under Minister Romeo Leblanc has pursued an aggressive and, to the Atlantic region, often controversial policy determined to restore the long-languishing industry to some stability and prosperity. Differences with provincial and industry officials have usually been ones of emphasis.

The federal government would prefer to see the inshore fleet, labour intensive and spread over numerous small communities along the coast, get the priority for increased fish landings. The effect would be to restore health to an underutilized labour force and inject some life into smaller Atlantic towns. Only when the inshore fleet has all the fish it can handle, says Leblanc, should a more capital-intensive technologically-advanced offshore fleet be developed to replace the foreign fleet.

Provincial spokesmen, in particular Newfoundland Fisheries Minister, Walter Carter, have been arguing for immediate investment, up to \$900 million, to equip a Canadian offshore fleet, providing immediate benefits for processing plant production and jobs. Until Canadians have the fleet capacity, the Newfoundlanders argue, Canada should charter foreign vessels. In late August, 1977, both Newfoundland and Nova Scotia announced intentions of seeking joint ventures with the European industry,

giving them access to markets and technology. Subsequently, the Newfoundland government has announced a scheme for West German giant Nordzee to enter into a joint venture operation out of Harbour Grace, Newfoundland.

Federal-provincial negotiations continue in efforts to reconcile the different development objectives. In the sectoral paper presented by Prince Edward Island Premier, Alex Campbell, at the first ministers' conference in February, some consensus was evident. All provinces agreed that the federal government should take the leading role in stock controls and research, with adequate provincial consultation, and they agreed to avoid any system approaching provincial quotas. However, as became clear in recent constitutional discussion, the governments of Newfoundland and Nova Scotia, in particular, will not be content to leave leadership wholly to the federal Fisheries Department.

To conclude, the fishery, to Atlantic Canada, is analogous to oil and gas for Alberta, and the provinces wish to assure that it is they who will shape the policy and reap the rewards. Jurisdiction over fisheries is thus an important issue in the constitutional discussions. Nevertheless there is good reason to expect that ongoing federal-provincial fisheries consultations will iron out many remaining differences, including the "joint-venture" issue. In the meantime, fishermen on the east coast are enjoying the largest catches and the highest prices in a decade.

Transportation

Although there is a transportation component to policy decisions in many other areas of federal-provincial relations - such as economic development, agriculture, communications and resource management - the following are highlights of major events during the past year in strictly transportation issues:

Grain-handling

With record grain exports by the Canadian Wheat Board, western elevator, railway and port facilities were under unusually heavy strain. Serious delays in grain handling were rendered particularly visible by

the number of grain vessels lying idle in Vancouver harbour, as western agricultural and political spokesmen alike called for relief. An inadequate quantity of railway stock and over-taxed port facilities were singled out as critical problems. Towards the year's end, Transport Minister, Otto Lang, promised to seek \$200 million for more grain cars, and negotiations were underway to upgrade elevators and ship-handling capacity in Prince Rupert, British Columbia.

Meanwhile, the federal Royal Commission on Grain Handling and Transportation, better known as the Hall Commission, continued to be a lively federal-provincial issue in 1977-78. In particular, federal implementation of the Hall recommendations respecting prairie rail lines came under fire from the provincial governments. In a meeting with western grain representatives in July, 1978, federal Minister Lang discussed three "follow-up" topics: a proposal for a western arm of the Canadian Transport Commission, appointment of consultants to further study the grain handling and transportation system, and the work to date of the Prairie Rail Action Committee.

The question of a western branch of the CTC follows from provincial suggestions for a regional structure for federal transport regulatory policy. In June, 1978, Alberta's Transport Minister, Dr. Hugh Horner, released an independent study of the CTC advocating both a greater role for the federal transport ministry in policy decisions, and for expanded regional representation.

Nordair.

The relative merits of competition and monopoly in the airline industry came into the federal-provincial purview during the late summer of 1978, following the Canadian Transport Commission's decision to allow Air Canada to purchase the regional carrier, Nordair. The decision provoked statements from Ontario Premier, Bill Davis, as well as the governments of Quebec and Manitoba. All objected to the merger's potential for eliminating competition in central Canada, affecting routes from Winnipeg, throughout Ontario and as far as Montreal. Ontario would be the only Canadian province with no viable alternative to Air Canada. The federal cabinet finally decided to let Air Canada keep Nordair for one year, while a buyer in the private sector was found.

Sullivan Report - Newfoundland

Yet another Royal Commission presented part of its findings in July. The federal commission of inquiry into Newfoundland transportation, chaired by Dr. Arthur Sullivan of Memorial University, released Volume I of its report calling for wide-ranging improvements to transportation facilities in the province. Many less controversial recommendations seemed buried for the moment under the public outcry at the recommendation to phase out rail service completely over the next ten years.

In a press release on August 22nd, Premier Moores, however, praised the commission's advocacy of the upgrading of the Trans-Canada Highway, holding fare increases for CN's cross province bus service, pending improved facilities, and major investments to reach isolated Labrador through a Strait of Belle Isle tunnel, and a year-round sea port. The Newfoundland government would not, however, agree "under any circumstances" to allowing the federal government to renege on its "constitutional obligation" to provide rail service. "We do not find it acceptable that CN can down grade the rail service and then use this as an excuse for its abandonment", the Premier stated.

INTER-PROVINCIAL RELATIONS

Inter-provincial relations in Canada's federal state may not be as prominent as federal-provincial affairs, but they do constitute a significant field of government activity. Much of the intergovernmental activity is confined to long established meetings of ministers and officials such as the Canadian Council of Resource and Environment Ministers or the Council of Education Ministers, some of which play an important research and harmonization role. In recent years regional groupings of provinces have also become important, the Western Premiers' Conference and the Council of Maritime Premiers being the most prominent. The meetings of these two groups and a review of recent developments in Ontario-Quebec relations offers a sampling of interprovincial issues and trends. Inter-provincial coordination on major federal-provincial issues has been discussed elsewhere.

The Council of Maritime Premiers

The Council meets on a quarterly basis, and has met in five different cities throughout the Maritimes since September, 1977. The November, 1978, meeting was particularly "historic" in that two of the three premiers present were newcomers, breaking for the first time the "charter group" of Premiers Regan, Hatfield, and (Alex) Campbell who formed the Council in 1971. As the November communiqué stated, "Premier John Buchanan of Nova Scotia and Premier Bennett Campbell of Prince Edward Island were definite in their support of effective cooperation between their governments with New Brunswick." Buchanan, however, did serve notice of his government's intention to review all the Council's expenditures, and the Council Secretariat is now in the process of evaluating all programs as well as personnel and accounting policies.

Council meeting agendas may be divided into two sets of concerns: 1) the operation of the growing number of joint CMP ventures and 2) working out common positions on regional or other intergovernmental problems. In the former category are several well established regional institutions such as the Maritime Provinces Higher Education

Commission, Maritime Resource Management Service and the Maritime Municipal Training and Development Board.⁽¹⁾ In December 1977, the Premiers renewed the mandate of the Municipal Training Board for another three years, but are still negotiating with the federal government over the future of the Land Registration and Information Service funded jointly with the federal government. The Department of Regional Economic Expansion's grant to L.R.I.S. was another victim of Ottawa's August austerity program. The Council of Premiers argues that \$40 million must be added to the \$41 million already invested in the project, designed to modernize and integrate land titles and survey data, if it is to be completed.

Another joint Council-federal initiative is the Maritime Energy Corporation, established in principle in January, 1978. The organization and financing of the new corporation has not, however, been completed, partly due to disputes between the governments of Nova Scotia and New Brunswick over whether the latter's Point Lepreau Nuclear project is to be included as a joint venture. The only energy project confirmed for the M.E.C. is the second stage of the Fundy Tidal Power project.

Meanwhile, however, regional cooperation continues in a wide variety of areas. The Council has been meeting with a voluntary advisory task force on economic development - and has met with the Atlantic Provinces Economic Council and the Atlantic Development Council to consider regional development strategies. In May, 1978, the Council announced a wide measure of agreement on uniform trucking regulations, and reciprocal registration and taxation agreements. It has instructed a committee to develop a joint purchasing policy and has given support to a campaign to boost local consumer goods called "Atlantic Canada Plus". And, in November, 1978, the Council noted that the recently established Maritime Transportation Committee (of ministers and officials) is working on a "draft regional transportation policy",

(1) See Council of Maritime Premiers, Sixth Annual Report.

Despite an earlier intention to develop a regional position on constitutional review (Communiqué, September, 1977) the three Premiers have been pursuing separate strategies. Nonetheless, on issues of regional concern such as fisheries, offshore resources and equalization, the Maritime government positions should not differ substantially between themselves or with Newfoundland.

Western Premiers' Conference

The Western Conference differs substantially from the Council of Maritime Premiers; it has little life of its own apart from the annual meeting of Premiers. As yet there is no regional bureaucracy answerable to the conference, as is the case down east. Nonetheless, the conference has become an effective voice of regional consensus, and with its Task Force on Constitutional Trends, it has had significant impact on federal-provincial relations.

The Western Premiers met this year in Yorkton, Saskatchewan on April 13 and 14, 1978. Their agenda included a general review of the economy and discussion of issues in agriculture, trade and transportation. They were to receive the report of the Task Force on Constitutional Trends, and review possibilities for regional energy cooperation and in policy planning and research.

Among the more concrete achievements of the meeting were decisions to establish a western power grid (a technical review team was appointed following the meeting) and to endorse the expansion of the Western College of Veterinary Medicine. The balance of the Premiers' communiqué, however, constituted a western front on federal-provincial issues. Their sharpest comments came in criticizing the recent sales tax reduction of the federal budget, but there were also calls on the federal government to move quickly on implementation of the Hall Report recommendations, and on improving grain handling facilities in Prince Rupert and Churchill, to cite just two examples.

The most significant development of the conference was the approval of the Second Report of the Task Force on Constitutional Trends. Popularly called the "Intrusions" Report, the first volume was released on May, 1977, with 61 itemized "intrusions" by the federal

government into provincial jurisdictions in the four western provinces. The second report noted the progress in federal-provincial consultation over these issues, and added nine more intrusions to the list. The latest examples were: 1) proposed federal Transportation of Dangerous Goods Act, 2) proposed Canadian Transportation Accident Investigation Commission, 3) amendments to the federal Fisheries Act, 4) the Nuclear Control and Administration Act (Bill C-14), 5) the Canadian Home insulation Program, 6) proposed federal-provincial Community Services Program 7) abandoned rail rights-of-way, 8) the Trans-Canada Telephone System and 9) Video T.V. games. Finally the report includes a draft of "Possible Consultative Mechanisms with the Western Provinces to Improve Federal-Provincial Relations," which mainly entail greater vigilance by the Federal-Provincial Relations Office over proposed federal legislation and more meetings of officials to work out existing grievances.

Despite what some observers noted as the "ludicrous" nature of some of the Report's grievances, (editorial, Edmonton Journal, April 8th, 1978), the Task Force findings represent as good an illustration as any of the nature of conflict in contemporary federal-provincial relations. Furthermore, the Second Report shows significant progress in only a year since the first intrusions count.

Ontario-Quebec Relations

Premiers Davis of Ontario and Lévesque of Quebec met in Toronto on May 23rd, 1978, "to consider a number of matters of common concern". Their agenda listed economic objectives and priorities, government purchasing policy, tourism promotion, automobile insurance, taxation, transportation, construction labour, cultural matters, Ottawa River pollution control, health care and Quebec-Ontario boundary as topics discussed. Of these, their communiqué mentioned progress in a few areas: the Premiers endorsed a three-year joint tourism marketing program, an extension of a reciprocal agreement regarding interprovincial trucking and a number of cultural exchange programs. Where the communiqué was notably silent was in two areas of more difficult negotiation in the past year: automobile insurance and construction labour.

Ontario has been one of many provinces and states which have complained about Quebec's public automobile insurance legislation, passed in December, 1977. The bone of contention has been the plan's provisions by which non-resident motorists were not eligible for full compensation for injury incurred in an accident in Quebec. After agreeing in principle in early July, Ontario and Quebec officials took several months to work out a final agreement on reciprocal insurance rights. Quebec Consumer Affairs Minister, Lise Payette and Ontario Minister, Frank Drea, signed a reciprocity arrangement on December 27th, 1978.

Compared with the positive negotiations in the insurance field a dispute over the mobility of construction labour has been much more difficult. Quebec legislation taking effect on the first of July, 1978, created thirteen separate regions for the construction industry in Quebec, with a priority system for hiring full-time labour in each region. Following the findings of the Cliche Commission, the legislation was designed to bring order to the industry, but it has acted as an impediment to the movement of Ontario labourers into Quebec, especially in the busy Ottawa-Hull area. Beginning in the late spring, the new rules were protested by the Ontario government and Ontario labour groups who threatened to retaliate by closing Ontario borders to Quebec labour. Provisions of the Quebec act gave temporary relief to non-resident labour already engaged in construction projects, but successive efforts by provincial labour officials and ministers have not brought an end to the dispute. In the light of recent constitutional discussions about the need to avoid barriers to inter-provincial movement of goods, labour and capital, the construction labour mobility issue gained much attention.⁽¹⁾ Talks aimed at a compromise solution involving the creation of Ottawa-Hull as a separate region for the purpose of the act broke down in August, 1978. The Ontario government has since given second reading at Queen's Park to legislation restricting the employment of Quebec labourers in Ontario, but Labour Minister Elgie said in December, 1978, that he was willing to meet again with Quebec officials to settle the dispute in the new year.

(1) For a discussion of the constitutional issues involved, see Ivan Bernier, Le Devoir, 29 August, 1978.

A final note: the issue clearly illustrates how actions of one government have spill-over effects on others. Quebec was not setting out to discriminate against Ontario workers, it was trying to deal with a domestic problem: but its method for doing so did affect workers in other provinces.

VI

JUDICIAL REVIEW : RECENT CASES OF SIGNIFICANCE TO FEDERALISM

The following is a brief review of five cases before the Supreme Court of Canada in 1977-78, which had a bearing on federal-provincial relations. Two dealt with provincial powers in areas analagous to criminal law, one case dealt with communications, one with resources and one with administration of justice.

Provincial Powers in areas analagous to criminal law

Case: Dupond v. City of Montreal

a) issues : At issue in this case was the constitutional validity of Ordinance 1, passed on November 12, 1969, under By-law 3926, by the Executive Committee of the City of Montreal which temporarily prohibited the holding of assemblies, parades or gatherings. By-law 3026 authorizes such bans "when there are reasonable grounds to believe that the holding of assemblies, parades or gatherings will cause tumult, endanger safety, peace or public order or give rise to such acts".

The Ordinance and the By-law were challenged on the grounds that they were in relation to criminal law and hence ultra vires the provincial legislature (and therefore necessarily ultra vires the Montreal City Council, which derives all of its powers from that legislature) and that they were in conflict with the fundamental freedoms of speech, of assembly and association, of the press and religion which are made part of the Constitution by the preamble of the B.N.A. Act and which come under federal jurisdiction and are protected by the Canadian Bill of Rights.

The Attorneys-General for Quebec and for Canada were impleaded as third parties: the former supporting the validity of the measures, and the latter opposing. The Attorney-General for Alberta intervened to support the validity of the by-law.

b) Ruling: On January 19th, 1978, with three judges out of nine dissenting, the Supreme Court ruled in favour of the City of Montreal.

It was considered that the enactments were intra vires the province in that they related to a merely local matter within the meaning of section 92-16 of the B.N.A. Act and in that they were preventive measures falling within provincial competence to suppress conditions likely to favour the commission of crimes.

In his judgement, Judge Beetz refuted the allegation that the By-law and Ordinance were in conflict with fundamental freedoms on six grounds. Most importantly he argued that such freedoms are not enshrined in the Constitution so as to be above the reach of competent legislation, that the Bill of Rights does not apply to provincial and municipal legislation, and that none of the fundamental freedoms is a single matter coming within exclusive federal or provincial competence.

Chief Justice Bora Laskin, writing the Dissenting reasons, argued that the enactment did constitute an intrusion into criminal law in that they sought to prohibit activities which were already the subject of prohibitions under the Criminal Code of Canada,

Case: McNeil v. Nova Scotia Board of Censors and Attorney-General of Nova Scotia.

a) issues: At issue in this case were the statutory provisions purporting to authorize the provincial Board of Censors to regulate and control the film industry according to standards fixed by it. The question was raised of whether a province has authority under S.92 of the B.N.A. Act to regulate the exhibition and distribution of films within its own boundaries which are considered unsuitable for local viewing by a local Board on grounds of morality or whether this is a matter of criminal law reserved to Parliament under S.91(27).

The Attorneys-General of Ontario, Quebec, British Columbia, P.E.I. and Alberta intervened in support of the validity of the statutory positions, and the Attorney-General of Canada and the Canadian Civil Liberties Association intervened to oppose it.

b) Ruling: In a 5 to 4 decision, the Supreme Court upheld, on January 19, 1978, the Censor Board's powers but found one severable regulation (regulation 32 of the Theatres and Amusements Act) to be invalid since it duplicated a provision of the Criminal Code,

The Criminal Code and the Theatres and Amusement Act were held to be operating in essentially different areas. The former was concerned with the definition and punishment of crime, whereas the latter was directed toward regulating a trade or business. The former was regarded as penal, whereas the latter was preventive, and thus came under the provincial power to pass legislation directed toward prevention of crime.

In explaining the basis for his decision, Judge Ritchie wrote:

I take the view that the legislation here in question is in pith and substance directed to property and civil rights and therefore valid under section 92(13) of the B.N.A. Act, but there is a further and different ground on which its validity might be sustained. In a country as vast and diverse as Canada, where tastes and standards may vary from one area to another, the determinant of what is and what is not acceptable for public exhibition on moral grounds may be viewed as a matter of a "local and private nature in the Province" within the meaning of S.92(16) of the B.N.A. Act, and as it is not a matter coming within any of the classes of subject enumerated in S.91, this is a field in which the legislature is free to act.

Chief Justice Laskin, in writing the Dissenting reasons, argued that in deciding what was decent or indecent in conduct, publication or for public exhibition, the Board of Censors was intruding upon the powers of Parliament to legislate in relation to the criminal law.

The effect of the majority decision is that a person acquitted of a charge under an obscenity provision of the Criminal Code may be subject, for the same conduct, to penalties under provincial legislation for violating local standards of morality. This adds to the catalogue of federal forms of double jeopardy in Canada.

c) Significance: Both the Dupond and the McNeil cases came as a surprise to many lawyers who had expected that both the Montreal By-law 3926 and the provisions of the Theatres and Amusement Act should be declared invalid as intruding upon the powers of Parliament in the field of criminal law.

The cases seemed to reverse a general trend going back to the famous civil rights cases of the 1950's, whereby the Supreme Court

regarded federal criminal law as the exclusive legislative power for the purpose of defining the outer limits of the basic freedoms of speech, religion, assembly and association.

It is significant that both decisions were justified in relation to S.92(16) of the B.N.A. Act, which allows provinces to act in matters of purely local interest, for this wider interpretation of this provision enlarged the provincial sphere of authority.

2) Communications

Case: Attorney General of the Province of Quebec v. Kellogg's Company of Canada and Kellogg's of Canada Limited

a) Issues: This case concerned an injunction sought by the Attorney General of Quebec to prevent Kellogg's from using cartoons in its television advertising. This was in violation of Section 102 of the Quebec Consumer Protection Act which prohibits the use of cartoons in any advertising directed toward children. At issue was whether this would be an infringement of the C.R.T.C's power to regulate the content of television broadcasting.

The Attorneys General for Ontario, British Columbia, Nova Scotia, Saskatchewan and Alberta intervened in support of the Attorney-General of Quebec. The Attorney-General for Canada intervened to oppose the validity of the injunction.

b) Ruling: In a judgement rendered on January 19th, 1978, the Supreme Court, with three judges out of nine dissenting, upheld the injunction on the grounds that the latter, which was filed against Kellogg's rather than the television station which broadcast the advertisement came under the power of a provincial legislature to regulate and control the conduct of commercial enterprise with respect to its business activities within the province. The fact that the injunction concerned the content of television broadcasting was regarded as incidental. The dissenting judges, on the other hand, regarded the injunction as a clear case of provincial intrusion into the federal power to regulate television broadcasting.

c) Significance: The significance of the Kellogg's case was that a provincial injunction concerning the content of broadcasting was upheld on the grounds that the intended object of the injunction fell within

provincial jurisdiction. As Laskin wrote in the Dissenting reasons:

The principle espoused by the appellant in this case amounts to an assertion of some sort of ancillary power in the Provinces, an assertion that if the Province has a legislative power base in relation to some activity or trade in the Province it may constitutionally extend its authority to embrace objects which, strictly, are outside its competence. The argument would have the Court determine the aim or purpose of the provincial legislation and, finding valid from a provincial point of view, would have the Court permit an extension into an otherwise forbidden field. This is not and has never been part of our constitutional prescriptions. Provincial powers are limited, and it has always been a canon of construction to interpret and confine provincial legislation to matters within its specified powers where its terms would, in their generality, support a wider compass. Had the dissenting view prevailed in this case it would have been possible to escape provincial regulation (of advertising or films, for example) by using the medium of television.

3) Resources

Case: Central Canada Potash Company et al v. Government of Saskatchewan,

a) Issue: At issue was whether the potash prorationing scheme established by the Government of Saskatchewan in 1969 pursuant to the Mineral Resources Act, R.S.S. 1965 C.S.O., whereby a minimum price was fixed to apply to authorized production quotas, was ultra vires the Province of Saskatchewan. Also in question was a claim by Central Canada Potash Company for damages against the Government of Saskatchewan in connection with threats to withdraw the Company's licence unless it reduced its production to fall into line with the production quotas authorized for it.

The Attorneys-General of Quebec, New Brunswick, Manitoba, Alberta and Newfoundland intervened to support the validity of the challenged legislation. The Attorney-General of Canada was a complainant in respect of the constitutional question.

b) Ruling: The Supreme Court, in a unanimous judgement pronounced on October 3rd, 1978, ruled that the prorationing scheme was ultra vires the Province of Saskatchewan but that no damages were to be awarded to Central Canada Potash Company.

Although the Court acknowledged that Saskatchewan's power under the Mineral Resources Act to provide for the management, utilization and conservation of mineral resources embraced not only their physical management but also economic considerations regarding the health of resource industries, it found that the only market for which the prorationing scheme

had any significance was the export market, and as was stated in the majority judgement in *Canadian Industrial Gas and Oil v. Government of Saskatchewan* (1977) that "provincial legislative authority does not extend to fixing the price to be charged or received in respect of the sale of goods in the export market." The Government of Saskatchewan was not guilty of intimidation since the threat to withdraw the Company's mining licence was made under the prorationing legislation before the latter was found to be invalid.

c) Significance: Although this case may be regarded as limiting provincial authority over resources in cases where they are produced primarily for markets outside the province, it leaves open the question of whether a Province might achieve the same end by means other than price-fixing (for example, by establishing a Crown Corporation to purchase and market all potash produced by the province). It should also be noted that, although this decision, like that in *CIGOL v. Government of Saskatchewan* (1977) was regarded as centralist, it might equally well be regarded as indicating an aversion to government regulation of industry on the part of the Supreme Court.

The Government of Saskatchewan strongly opposed both the *CIGOL* and *Potash* decisions as limiting the province's ability to manage its most important natural resources. The decisions were an issue in the 1978 provincial election campaign. One of the highest priorities for Alberta and Saskatchewan is the constitutional negotiations to find a formula stating provincial jurisdiction over natural resources in such a way as to prevent challenges of the sort found in these two cases. The federal government has been very concerned to safeguard its rights in Trade and Commerce.

Administration of Justice

Case: John Keable v. R.C.M.P. and Attorney-General of Canada and Solicitor General of Canada.

a) Issues: The Quebec Court of Appeal had ordered Jean Keable to suspend all proceedings of his inquiry into the activities of the RCMP in Quebec. This decision was appealed by Keable to the Supreme Court.

The question was whether a commission appointed under provincial legislation had the power to inquire into the operation, policies and management of the RCMP: whether the Solicitor-General of Canada or any other Minister could be compelled to appear, testify and produce documents by a commissioner appointed pursuant to provincial legislation; and whether a Minister had the constitutional power to prevent the production of documents demanded by a commissioner appointed pursuant to provincial legislation for the purpose of inquiry into matters concerning the administration of justice in the province, when such documents might concern the commission of criminal acts.

Interventions were filed on behalf of the Attorneys-General of Ontario, New Brunswick, Manitoba, British Columbia, Saskatchewan and Alberta supporting the appeal in varying degrees.

b) Ruling: In a judgement pronounced on October 31, 1978, the Supreme Court ruled with all judges concurring in the decision, that the Keable inquiry should be suspended in relation to matters which were found to be ultra vires the Province.

Firstly, it was found that the Keable Commission did not have the authority to investigate the operation of the RCMP, for, "a provincial statute setting up a commission of inquiry cannot be effective beyond the constitutional limits of a provincial legislation's authority". However, since it was decided in *Di Iorio v. Warden of the Montreal Jail* (1978), that the province is empowered to hold public inquests into criminal activity in the interest of the administration of justice, the Keable Commission did have authority to investigate specific acts by members of the RCMP which were alleged to be criminal in nature.

The Keable inquiry was regarded as being in the nature of a discovery, and, since "The Crown enjoys a prerogative against being compelled to submit to discovery," it was ruled that the federal Solicitor-General could not be compelled to appear, testify or produce a document before the Commission.

Thirdly, it was found that (under Section 41 of the Federal Court Act) a Minister of the Crown could withhold documents from a court

or from any official invested with the powers of a court for the production of documents, if their production would be injurious to national security.

c) Significance: The Keable case had more political than constitutional significance. Constitutionally it simply confirmed the immunity of the federal government from actions of a province. Given the implications of the controversy over RCMP powers, the decision did avoid embarrassment for the federal government and placed an even heavier burden on the work of the federal government's MacDonald Commission.

Conclusion

The Supreme Court thus continued to make decisions which significantly affect the future of the federal system, at the same time as the constitutional documents it interprets are themselves under discussion. Moreover the composition and role of the Court is itself on the constitutional agenda.

In all five of the cases reviewed here, federal and provincial governments lined up on opposite sides. This suggests that, on one hand, the Court cannot remain outside the "political thicket" and that, on the other hand, the courts are becoming an increasingly important arena for federal-provincial conflict.

VII

NOTES ON THE INTERGOVERNMENTAL BUREAUCRACY

The following is a brief summary of changes in the organisation of intergovernmental affairs in the federal and provincial governments, with a list of ministers and senior officials:

Federal government - On November 24th, 1978, John Reid was sworn in as Minister of State for Federal-Provincial Relations, to replace Marc Lalonde, who moved to the Justice Portfolio. There were no major changes to the Federal-Provincial Relations Office.

Minister: John Reid, Minister of State.

Senior Official: Gordon Robertson, Secretary to the Cabinet for Federal-Provincial Relations.

British Columbia - Following the cabinet shuffle of December, 1978, Rafe Mair became Minister of Environment but retained his position as Chairman of the Cabinet Committee on Confederation. The Office of Intergovernmental Relations is still a branch of the Premier's Office.

Minister: Premier Bill Bennett

Senior Officials: Dan Campbell, Executive Director, Intergovernmental Relations, Office of the Premier, and Mel Smith, Deputy-Minister to the Premier for Constitutional Affairs.

Alberta- no changes.

Minister: Lou Hyndman, Minister of Federal and Intergovernmental Affairs.

Senior Official: J. P. Meekison, Deputy Minister

Saskatchewan - Following its re-election in October, 1978, the government of Premier Allan Blakeney is in the process of creating a separate department of intergovernmental affairs. Until then, it is still a branch of the Premier's Office.

Minister: Premier Allan Blakeney

Senior Officials: Howard Leeson, Deputy-Minister to the Premier
Robert Weese, Executive Director, Office of Intergovernmental Affairs.

Manitoba - no changes

Minister: Premier Sterling Lyon

Senior Official: Derek Bedson, Clerk of the Executive Council

Ontario - In August, 1978, the Ministry of Treasury, Economics and Intergovernmental Affairs was split, with a separate Ministry of Intergovernmental Affairs created.

Minister: Thomas Wells, Minister of Intergovernmental Affairs

Senior Official: Don Stevenson, Deputy Minister

Quebec - no changes

Minister: Claude Morin, Ministère des Affaires Intergouvernementales

Senior Official: Robert Normand, Sous-ministre

New Brunswick - no changes

Minister: Premier Richard Hatfield

Senior Official: Barry Toole, Director, Intergovernmental Affairs,
Cabinet Secretariat.

Nova Scotia - The new Conservative government under Premier John Buchanan, elected on September 20th, 1978, is still re-organizing its administration of intergovernmental affairs, which in the previous government was handled through the Premier's Office.

Minister: Roland J. Thornhill

Prince Edward Island - no changes

Minister: Premier Bennett Campbell

Senior Official: Douglas Boylon, Secretary to the Cabinet

Newfoundland - no changes

Minister: William Doody, Minister of Intergovernmental Affairs

Senior Official: Cyril Abery, Executive Director, Intergovernmental
Affairs Secretariat, Executive Council.