

INTERGOVERNMENTAL RELATIONS IN CANADA:

THE YEAR IN REVIEW 1979

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FOREWORD

This is the third annual Year in Review, published by the Institute of Intergovernmental Relations. It is designed to provide a record of important 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 the wider economic and political climate. We trust that it will be a useful tool for students, for practitioners of federalism, and for other groups and individuals, for whom intergovernmental relations have such important - if little understood - implications.

This edition of the Review covers the period from the fall of 1978 to the fall of 1979. We have, however, tried to take into account events to the end of 1979, and plan in subsequent years to tie the Review to the calendar year. Unfortunately, lines must be drawn somewhere, so that we had to restrain our desire to include a detailed summary of the constitutional proposals of the Quebec Liberal Party, published in January 1980, and the federal budget of December 1979. This edition ranges more widely over different policy areas that did previous ones, but once again we must apologise to those specialists who will feel their prime area of concern is not as fully covered as they would like.

Douglas M. Brown prepared and wrote this edition in his capacity as senior research associate in the Institute. My own thanks to him for what has turned out to be a massive effort must be recorded. Special mention is due to Mr Albert Macdonald who spent two months preparing and writing preliminary drafts for several sections. In addition, Julia Eastman and Mary Louise McAllister, responsible for our library and clippings, provided considerable support work. Professor Noel Lyon, Faculty of Law, once again helpfully reviewed the section on the courts. Dorothy Holman, Patti Candido, Bette Withnell and Terry Lynn Gratto were responsible for typing and editing successive drafts.

Once again we remain much indebted to the many public and private agencies which have supplied material, and to many officials, especially the members of the Institute's Advisory Council, who have patiently answered our questions.

Suggestions for additions and changes in future editions are most welcome.

Richard Simeon

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CHAPTER I

INTRODUCTION

AN OVERVIEW OF THE YEAR

1979 was one of those few years that seem so packed with significance that we are astounded to recall that it was in fact only twelve months long. Critical national and international events followed one another in rapid succession, and indeed, the state of affairs in intergovernmental relations that prevailed in January 1979, as with other aspects of public life, seems far away from present realities. The political and economic climate, prompted by momentous international developments, is becoming daily more uncertain. On the domestic scene we have seen two general federal elections in the space of a few months, increased east-west regional tensions and the constitutional debate in Quebec about to reach a climax.

This Year in Review details the web of intergovernmental contact that characterizes one of the most intriguing federal states in the world. The relationship between the central government and the provincial governments continues to change with little agreement on the eventual outcome and many cross-currents at work. 1979 was a year of political campaigning. The rhetoric and issues of the election contests for the federal parliament and several provincial legislatures dealt extensively with intergovernmental and constitutional issues. In many respects the solution of these difficult questions must await the calmer days of post-election stability. Nevertheless, the elections themselves significantly shape and modify the context of federal-provincial interaction. There are ample examples in the review below.

As our section "A Year at the Polls" shows, intergovernmental relations joined the economy and leadership as general campaign themes. In the federal campaign, Prime Minister Trudeau advocated a strong central government and leadership to hold back regional decentralization of power. Clark and the Conservatives stressed the need to be more conciliatory towards the provinces and took issue with the Liberals' aggressive stance towards the government in Quebec. While there were many substantive differences on issues, the conflict between the two main protagonists seemed to turn more on aspects of style than substance. However, the defeat of the new government in December meant that the Conservatives were not in power long enough to make a lasting impact on federal-provincial relations. As for the provincial elections, strong regionalist governments were returned to office, providing a challenge to any federal government in the decade ahead.

On the constitutional front, Canadians are not much closer to the dénouement many expected before the end of the seventies. Most observers thought that the Parti Québécois government would have held their referendum by now, although the timetable is finally established, and the question has been

submitted to the National Assembly. With the recent release of the Quebec Liberal party's "A New Canadian Federation", however, Quebecers are now faced with a clear choice between the sovereignty proposals of the PQ and the federalist option of the Liberals. Whether the Quebec populace is ready to make the final choice, and whether the results of the referendum are conclusive remains to be seen. Also in doubt is the response of English Canadian political leaders to Liberal leader Ryan's proposals. In the past, provincial and federal politicians have discounted the consequences of their failure to agree on a new constitution - now they must realise that this may be their last opportunity.

The federal-provincial exercise in constitutional review highlighted by the two first ministers conferences represent the most significant attempt yet to meet the challenge of reform - but further discussions now await the outcome of the referendum and perhaps of another election before continuing in earnest. The political challenges of the post-referendum period, whatever the results, will require extraordinary diligence and moderation on the part of all the Confederation partners.

In the wake of the federal election being rerun this winter, the federal government will be faced with much the same economic problems that haunted it in 1979. Partly as a result of the uncertainties of election politics, this past year did not witness the wholesale attempts at federal-provincial collaboration over economic and fiscal policy that characterized 1978. In fact, there was more evidence of the increasing tendency for provincial governments to go their own way with industrial strategies based largely on their resource bases. The most newly-aggressive government in this respect during 1979 was perhaps Newfoundland, but it is joined by the strongly regionalist positions of the governments of Quebec, Alberta and Saskatchewan.

On no issue was interregional and federal-provincial differences so evident as for energy pricing. Indeed the dispute over oil and gas pricing and the sharing of revenues from these non-renewable resources was easily the most serious internal conflict of the Canadian federation in 1979, and promises to be a difficult issue for years to come. It is significant that on this issue the Ontario government has clearly been on the defensive, taking an increasingly centralist stance in the face of western economic influence, in order to protect the industrial base of the central region. Ontario does not ordinarily consider itself to be a "region" in the same way as the more peripheral areas of the country; in the future the equation of national and Ontario interest may not be so easy. In such circumstances the role of the central government as interregional broker becomes more critical, if more difficult.

Those are the more public and more political issues of Canadian federalism. The Review also presents a great deal of the mundane administrative side of intergovernmental relations, areas in which the division of labour between governments is fairly settled, cooperation is well-established and the dramatic politics of federal and provincial power are absent or muted. The ways and means of federal-provincial consultation are an important feature of general policy-making. Interprovincial consultation and joint policy-making are examined separately, though they are in reality closely linked, especially as provinces work together on regional positions or prepare a united case for the federal government to consider. And as the judicial review shows, the courts

continue to play a significant role in arbitrating federal-provincial disputes. In the main, the review which follows exposes what Jeffrey Simpson of the Globe and Mail called the "hidden web" of intergovernmental relations. We've found the web to be no less sticky and intricate, but, we hope this Review illuminates it more clearly.

CHAPTER II

A YEAR AT THE POLLS

Introduction

Elections can have a dramatic effect on intergovernmental relations. They can transform the issues that divide governments, and through changes in governments or party alignments, elections can alter the entire character of federal-provincial relations. The evolution of our federalism has at times taken a decisive turn on the results of the polls; but perhaps more often, the issues that divide governments remain the same, regardless of their political labels.

Elections certainly affect the more mundane, day to day conduct of public affairs. The federal election effectively suspended federal-provincial relations for the duration of the campaign - and for weeks afterwards. Single provincial elections are less disruptive, but as the review below indicates, there were seven provincial elections in nine months. Both the pre-electoral and campaign climate tend to politicize federal-provincial issues. In the view of the public servants who are responsible for ongoing intergovernmental relations, elections may be seen as distorting the priorities of public business, of simplifying complex issues, or conversely, of complicating already difficult policy questions with partisan or parochial concerns. However, as every wise public servant knows, the political will of their masters must ultimately prevail and intergovernmental relations in a political vacuum may be useless or illusory.

In the federal election campaign reviewed below, federal-provincial relations became a campaign issue as such, for the first time. Issues which in previous campaigns were addressed in terms of French-English relations or "national unity", became referred to as "federal-provincial" questions - and the contenders' conceptions of federalism and of the conduct of intergovernmental relations, were a central campaign theme. Relations with the federal government were also significant factors in elections in almost all the provinces - ranging from Alberta Premier Peter Lougheed's successful re-election based on a strong stand for provincial ownership and control of its resources to the New Brunswick election where the Task Force on Canadian Unity and equalization payments were campaign issues. In no campaign did the intergovernmental dimension predominate, but it continues to be a critical factor in Canadian electoral politics.

The Federal Election, May 1979

The Campaign

Prime Minister Trudeau made his long-awaited election call in March 1979, ending at least eighteen months of speculation. He set the date for May 22, three months short of the constitutional limit. By March, the Liberals led the opposition Progressive Conservative party by 10% in public opinion polls - a much reduced margin than in the year or so before, but as good as could have been expected following a winter of sluggish economic growth, a stand-off with the provinces on constitutional reform (see below, Chapter III) and a bitter Parliamentary session. The surly Opposition had bolstered its strength with October 15 by-elections. Only two Liberals, both from Quebec, were returned, while the Conservatives won four seats from the Liberals in Metropolitan Toronto, thus reinforcing Conservative and NDP strength in the east and west. The Liberals, then, faced the election campaign knowing that their strength outside the Quebec "fortress" was on the wane - in particular in the critical battleground of southern Ontario.

The Liberals began and sustained their campaign with an aggressive centralist tone. Prime Minister Trudeau put aside his more conciliatory positions on the constitution that had prevailed during the First Ministers Conference in February, and promised more immediate and unilateral federal action. Speaking in Toronto on May 9, Trudeau pledged once again to patriate the constitution: "We are asking for a mandate ... from the Canadian people in every part of Canada to take action, to meet the premiers one more time, to seek consent of the premiers to bring the constitution back with an amending formula. And failing that, we will bring it back and consult the Canadian people in a referendum."¹ The Liberals repeated their intention to enshrine minority language rights in the constitution and spoke of the need for a strong, central government to protect the energy needs of Canadians: "too vital a matter to be left in the hands of the Exxon Corporation of New York or the provincial government of Alberta." In particular Trudeau criticized the "egotism and selfishness prevalent in many provinces", and he advocated the enshrining of freedom of movement for capital and labour in the constitution - citing provincial barriers to the common market as varied as Prince Edward Island's non-resident land ownership laws to British Columbia's threat to stop the takeover of MacMillan-Bloedel by CP Investments.²

An integral part of the Liberals' electoral strategy was to attack Opposition leader Joe Clark's more conciliatory attitude towards the provinces as an indication of the Conservatives' inability to provide strong leadership for the tough decisions ahead. Trudeau was fond of caricaturing Clark as the "head waiter" who would take orders from the Conservative premiers of Ontario and Alberta, and who could not see beyond the "smokescreen of separatism in Quebec". Clark, he said, would "give away the store" to aggressive and selfish provinces.

1. Montreal Star, May 10, 1979

2. Montreal Star, March 29, 1979; Le Devoir 30 mars 1979

Clark and the Conservatives attacked the Liberal government record on federal-provincial relations as part of their appeal to a public disenchanted with a multitude of small grievances. The attacks on Trudeau's confrontationist style in dealings with the provinces met favour with those who disliked what they considered to be Trudeau's arrogance and authoritarian manner. While never as explicit about their constitutional policies as the Liberal government had been, the Conservatives did enunciate a few promises and policy statements which gave an indication of the substance of their approach to federal-provincial relations. On the question of language rights, they favoured leaving such provisions to the provinces, except for Quebec where English-language minority rights should be retained in the constitution.³ The Conservatives promised not to use a national referendum to circumvent provincial agreement on constitutional reform, and promised to restrict the proposed federal referendum legislation to specific rather than general use. If these promises were meant to conciliate Quebec, Clark angered many in the province however with his refusal to recognize Quebec's unilateral right to self-determination.

Other specific promises included the complete withdrawal of the federal government from the lottery business, a transfer of ownership and management of off-shore resources to the adjacent provinces, a consideration of joint jurisdiction with the provinces over fisheries and the establishment of Yukon as a province.

The nub of Clark's campaign however centred on his claim that his government would be somehow more consensus-oriented and cooperative than the Liberal regime. Clark continued to cite the rather unspectacular "Kingston communiqué" of 1977 as evidence of the ability of the Conservative leader and four Conservative premiers to get along, and reiterated that a less confrontationist stance with the Parti Québécois would be more conducive to a renewed federalism.

The New Democratic Party did not place much stress on federal-provincial issues - and, of course, it should be noted that, in any case, economic issues dominated its campaign. While the two broad sets of policy issues are indeed related, they were seldom linked during the campaign. On constitutional reform the NDP leader Ed Broadbent warned Prime Minister Trudeau that "no party has a monopoly on concern for national unity" - but was not impressed with the Liberals' promise to unilaterally repatriate the constitution. On other issues the NDP proved fairly centralist, as in their demands for a return to conditional grants for medicare to end provincial deviations from national standards. At one point, however, Broadbent did say that an NDP government would not nationalize Imperial Oil "because resources are under provincial jurisdiction."⁴

Finally, one should mention the cross-current of the Social Credit (Créditiste) party. Under the new leadership of an ex-member of the Quebec National Assembly, Fabien Roy, the Créditistes took on a distinctly nationalist flavour in what may have been their last hurrah. Concentrated wholly in Quebec,

3. Globe and Mail, March 28, 1979

4. Globe and Mail, May 4, 1979, p. 9

the party posed a threat to several Liberal seats, especially in the rural areas. Their campaign was given unofficial support by the Parti Québécois and stressed three themes: "le droit du Québec à l'autodétermination, la nécessité d'envoyer à Ottawa un bloc de députés 'vraiment québécois', et la réforme du système monétaire."⁵

Any party-by-party recitation of campaign planks belies a sense of the campaign as a whole. Federal-provincial relations in all their complexity were not really addressed - perhaps it is not the stuff that campaigns were made of. Leadership, the style of government, eroding national standards, economic malaise, petrocan - those were issues. Had the Liberals orchestrated the campaign the way they wanted, unity themes, language policies, "a strong federal government" would have been foremost in the voter's mind - issues that were tailor-made for Trudeau's leadership. That such topics as "mortgage deductability," "stimulative deficit" and tax cuts were equally salient in the campaign testifies to the Conservatives' ability to mould the debate to their liking as well. Neither party was entirely successful in reducing the campaign to its preferred themes, but it was the success of the Conservative issues in urban southern Ontario that was the key to their eventual victory.

Finally, one should note that this campaign provided several insights into the relative independence of the provincial and federal party systems. The New Democratic Party and the Progressive Conservatives are generally considered to have the most unified party structures at both levels of government. The NDP usually draws upon the same workers for provincial and federal election campaigns - and this can work to its advantage, as it did in British Columbia in the spring of 1979, when one election follows the other party workers double their efforts. The BC provincial election did not bring such happy results for the provincial Conservative party, however. The federal Conservatives, anxious to sweep BC of all its Liberal seats needed provincial Social Credit party workers to do it, and Clark was accused by the leader of the provincial Tories of ignoring them for fear of alienating Premier Bennett and his party. Elsewhere Clark's Conservatives got support where they needed it - in Ontario - from Premier William Davis' "Big Blue Machine" - and to a lesser extent in the Atlantic Provinces and on the prairies where the PCs did not expect to change their vote dramatically. As noted, the NDP counts heavily on the support of provincial party workers. The Liberals, however, do not normally expect much help from provincial parties - particularly in Ontario and Quebec - and have little or no provincial base in the West to draw upon. Only in Atlantic Canada do provincial and federal parties really dove-tail, but having no provincial party in power on May 22 did not help.

Finally, Provincial parties without federal counterparts have in the past given significant support to federal parties (eg Duplessis' Union Nationale support of the Diefenbaker Conservatives in 1958). In the 1979 campaign this could be unofficially the case with Social Credit in BC supporting the Conservatives, and the Parti Québécois supporting the Créditistes in Quebec, but in neither case was it a decisive factor in changing voting patterns.

The Results - and Reactions

The results of the election: *Conservatives 136, Liberals 114, NDP 26 and Cr ditiste 6 - gave Canadians a minority government, as most commentators had predicted. The Conservatives came just short of a majority, however, and were the clear winners of the campaign. Prime Minister Trudeau recognized this by resigning and making way for Joe Clark to form a new government.

The overwhelming first reaction of many editorialists across the country focussed on the linguistic cleavage between Conservative and Liberal seats. The Conservatives won an overwhelming majority of the seats outside Quebec, but only two in the province. The Liberals increased their vote, and the seat total in Quebec, but lost badly in the west and dropped twenty-three seats in Ontario since 1974. (The NDP regained most of their 1974 losses and the Cr ditistes continued their decline). As William Johnson predicted in the *Globe and Mail*: "It will be one of those very rare occasions in Canadian history when the two language communities moved in opposite directions in the same election." "English" Canada - or more precisely Canada outside Quebec - swung decisively towards the Tories. Quebec embraced the Liberals even more; they gained 7% in the popular vote in Quebec to 62% (to the PC's 13.7% - down from 21.2% in 1974). Partly as a result of this massive support in Quebec, the Liberals' national popular vote was 40%, to the Conservatives' 36% (compared to Liberals' 31.5% and Conservatives' 44.8% outside Quebec).⁶

The reaction of the press in Quebec to these ominous results was remarkably restrained - perhaps the obvious needed no further elucidation. Nonetheless, a "wait and see" attitude prevailed, as Quebecers watched for what the new Conservative government would do and wondered what the huge Liberal vote meant for Levesque's Parti Qu b cois government. In the wake of the polarized results - the Liberal demise in the West can be viewed as seriously as the Conservatives' rout in Quebec - calls for reform to the single constituency electoral system will gain more credence than ever.⁷

As for the Conservatives' success in the rest of the country, in British Columbia and southern Ontario where voters swung to them from the Liberals, but more generally in the West as a whole, there seemed a general satisfaction with the change in power. As many commentators noted, however, the vote was as much a rejection of a tired Liberal government as an endorsement of Conservative policy and leadership. As Walter Stewart wrote of the fickle Ontario voters: "the door that swung open for the Conservatives here in 1979 is on a spring, and may come slapping back again whenever another election is called."⁸

* See Table 2.1

6. See Rodolphe Morissette, "Le v ritable polarisation du scrutin", *Le Devoir*, 26 mai 1979

7. See W. P. Irvine, Does Canada Need a New Electoral System? Kingston: Institute of Intergovernmental Relations 1979

8. Report: The Magazine of Public Affairs, July/August, 1979, p. 17

The Conservative Government and Federal-Provincial Relations

The Conservatives in power faced both a great challenge and opportunity in federal-provincial relations. The challenge has been to overcome their serious lack of representation from Quebec and to be responsive to Quebec's needs in the critical period leading up to the referendum in that province. The opportunity was that, on the face of it, the Tories seemed committed to end years of antagonistic relations between Ottawa and the provinces as a whole. Clark campaigned, with the help of seven Conservative premiers, on a more conciliatory attitude to regional and provincial power. And unlike the Trudeau government, Clark was not tied to any specific blueprint for constitutional reform, and was better placed to secure English-Canadian consent for reforms to meet the demands of Quebec. How, then, did the new government fare in its professed goal of a new era in cooperative federalism?

The new government proceeded quickly on a few of the more explicit promises to ease relations with the provinces. It appointed a special grain coordinator to help settle transportation problems in the west, made administrative concessions to provincial demands in the east coast fisheries, and abdicated entirely from the lotteries. And while it was too early to render judgement, smoother relations appeared to be in the works in such fields as communications and economic development.

One of the most significant initiatives of the new government was to honour its commitment to concede the ownership of offshore mineral resources to the provinces. Prime Minister Clark released on October 3, 1979, an exchange of correspondence with the Premier of Newfoundland¹ in which an agreement on the principles for the eventual transfer of jurisdiction was worked out. The letters acknowledged that the change would require constitutional amendment and considerable regulatory and legislative elaboration before it could take effect. However, Newfoundland Premier Peckford has at least suspended preparation of a reference case to the Supreme Court of Canada on the ownership question. The four principles agreed to were that: 1) the province should own the mineral resources of the "continental margin", with ownership "of the same nature as if these resources were located within the boundaries of the Province," 2) ownership shall be consistent with and subject to the division of powers between the federal Parliament and provincial legislatures, 3) federal jurisdiction over such things as environment, customs, trade and pipelines would continue, and 4) these principles were to be confirmed and implemented by an agreement between the province and the government of Canada, and by "appropriate legislative and constitutional change".

Other than for offshore resources, the Clark government did not come up with any other substantial constitutional reforms. There are small things in the works, such as the de facto delegation of power from the territorial commissioner in the Yukon to the chairman of the elected territorial council (now designated "premier"), and the promise to Indian and Inuit leaders of a role in the constitutional reform process. Nonetheless, it was clear from government statements that the Conservatives did not intend to take a global approach to constitutional revision, at least until the aftermath of the

1. Prime Minister's Office, release, October 3, 1979

referendum in Quebec.² The Clark government tended instead to place importance on the style and tone of continuing intergovernmental relations. Nowhere has this been so evident as in its relations towards the Quebec government and the debate in Quebec in general.

The newly-elected government was faced with a serious shortage of representatives from Quebec which has not since been significantly remedied. It has not been able to attract prominent Quebecers into the cabinet, and except for one defection from the Cr ditistes, has not increased its elected members from the province. This chronic lack of representation has been perhaps the key factor in the Clark government's decision to reverse the federal government's strategy for the referendum campaign. By late August, 1979, the cabinet rejected plans to reintroduce the Trudeau government's referendum bill. And by the end of October, Prime Minister Clark announced his decision not to intervene in the referendum campaign at all. This has meant the dismantling of an aggressive advertising campaign and a significant alteration of the propagandist intelligence groups within the federal-provincial relations office. The key to the Conservatives strategy has been to remain low-key and conciliatory in its relations with the Quebec government in particular, depriving the Parti Qu b cois of a target during the referendum campaign, and, in essence, leaving the leadership of the "federalist" forces up to Claude Ryan and the Quebec Liberal Party. Other initiatives, such as the immediate endorsement of the recommendations of the commission of inquiry into bilingual air traffic control, helped to create a favourable image of the new government in Quebec.

Elsewhere, however, the Conservatives' professed desire to play a mediating and conciliatory role in federal-provincial relations met with some formidable obstacles. Perhaps the most significant (reviewed below) was its inability to renegotiate a new oil pricing and revenue sharing agreement with Alberta before the release of its December budget. The much-touted ability of the Conservative prime minister to get along better than his predecessor with his Conservative counterparts in Toronto and Edmonton seems to disintegrate in the face of increased regional and federal-provincial tensions over energy policy. In several of the policy areas explored in the review that follows, there was the promise of a more decentralist attitude by the new government. How long this would have prevailed is hard to judge, but it is perhaps safe to predict that the devolutionary thrust declines with the length of time in office as the government faces the demands of nationally-oriented interest groups and of the federal civil service, and as ministers become committed to an activist role in their new portfolios. It is perhaps significant that at year-end Prime Minister Clark was suggesting that Ottawa perhaps needed greater fiscal and policy powers to perform its roles as national economic policy manager and agent of redistribution.

2. See for example, interview of Hon. William Jarvis, Minister of State for Federal-Provincial Relations, Le Devoir, October 30, 1979

TABLE 2.1 FEDERAL GENERAL ELECTION RESULTS1974

	S E A T S			POPULAR VOTE(%)		
	Liberals	Conservatives	NDP	L	C	NDP
Newfoundland (7)	4	3	-	47	44	10
Nova Scotia (11)	2	8	1	41	48	11
New Brunswick (10)	6	3	*-	47	33	9
Prince Edward I. (4)	1	3	-	46	49	2
Quebec (74)	60	3	*	54	21	7 (17-S.C.)
Ontario (88)	55	25	8	45	35	19
Manitoba (13)	2	9	2	27	48	24
Saskatchewan (13)	3	8	2	31	36	32
Alberta (19)	-	19	-	25	61	11
British Columbia (23)	8	13	2	33	42	23
CANADA (264)	141	95	16	43	35	15

* Quebec: 11 Creditiste New Brunswick: 1 independent
 North-West Territories: 1 NDP Yukon: 1 Conservative

1979

Newfoundland (7)	4	2	1	41	29	29
Nova Scotia (11)	2	8	1	35	45	19
Prince Edward I. (4)	-	4	-	44	53	6
New Brunswick (10)	6	4	-	45	40	5
Quebec (75)	67	2	*-	62	13	5
Ontario (95)	32	57	6	36	42	21
Manitoba (14)	2	7	5	23	43	33
Saskatchewan (14)	-	10	4	22	41	36
Alberta (21)	-	21	-	22	66	10
British Columbia (28)	1	19	8	23	44	32
TOTAL (282)*	114	136	26	40	36	18

* Totals include - North-West Territories: 1 Conservative, 1 NDP
 Yukon: 1 Conservative Quebec: 6 Creditistes

Provincial Elections

Introduction

From September 1978 to June 1979 seven provincial governments went to the polls - the four Atlantic provinces and the three western-most provinces. It is difficult if not misleading to attempt to draw trends from contests which are essentially local affairs, but there are nonetheless some interesting developments.

In the Atlantic provinces all four political regimes are pre-dominantly two-party systems, and have been so for over a hundred years. In Nova Scotia alone there has been a resurgence, in the past ten years, of third-party support, with the New Democratic Party taking up to four seats on Cape Breton Island. Third party support in New Brunswick and Newfoundland, however, has been insignificant until now, and while neither the NDP nor the Parti Acadien elected a member (both came close) in New Brunswick, their electoral support more than doubled since 1974. In Newfoundland, substantial gains for the NDP in the federal election did not translate into seats in the provincial election, but the prospects are better there for the NDP than ever before. The next round of elections may well witness minority governments and a gradual erosion of "old-line" politics in the region. Finally one should notice the coincidence of four Conservative provincial governments in office at the same time - a phenomenon which has not, however, noticeably increased interprovincial cooperation, or delivered substantially more federal seats to the Conservatives, but which may have an effect on federal-provincial relations.

In the west it would appear to be a good time to be the incumbent party, as the British Columbian Social Credit government, Saskatchewan's New Democratic government (at opposite ends of the ideological spectrum), and the Conservatives in Alberta all managed to get re-elected. In the two former provinces certain trends in the realignment of political parties have been reinforced. In the 1975 election in British Columbia, the Social Credit party received massive support from traditional Liberal and Conservative voters in a successful bid to dump the Barrett government. In 1979 the collapse to a two-party system seems complete, with the NDP gathering an extra 7% of the popular vote - presumably at the expense of the Liberals. The demise of provincial Liberal parties west of Ontario during the past decade was dramatically underscored in this round of elections, which together with the Manitoba election of 1977 confirms a trend towards two-party systems of the NDP versus either the Conservatives or Social Credit. Only in Alberta is there doubt about how far the NDP's rising fortunes can go.

In terms of federal-provincial relations the most significant election was perhaps that of Premier Brian Peckford of Newfoundland - on an aggressive platform of protecting provincial ownership of natural resources. Peckford will be a much-needed eastern ally to Premiers Lougheed and Blakeney in the continuing debate with the federal government over resource issues.

British Columbia

William Bennett's Social Credit party was returned to power with a reduced majority in the May 10, 1979 election in British Columbia. Reverting to familiar tactics of the socialist scare and championing BC's rights, Bennett was able to fend off a surprisingly strong rally by the NDP. The Conservatives who had to mount a strong campaign without the aid of the Federal party, edged up to 5% of the popular vote. The Liberals did not even get 1% of the vote.

Early in the campaign, the Socreds were presented with a prize plum: "the BC is not for sale" statement when Bennett threatened action if MacMillan-Bloedel were sold to controlling interests outside the province. The Socred promised "responsible government" and defense of free enterprise. They also introduced a budget with \$400 million in tax cuts and held the highly successful share give-away whereby each British Columbia resident received five free shares of the BC Resources Investment Corporation. They also took control of municipal property taxes and by reducing the rates, effectively diffused the Conservatives' "property tax revolt." One unnecessary faux-pas by the Socreds was Bennett's allusion to the NDP as a "National Socialist" party.

The NDP ran a well orchestrated campaign with the new improved "moderate" Barrett. Criticising the Socreds for the 8.5% unemployment, a lack of concern for social issues and the Socred assault on organized labour, the NDP promised a better administration of the British Columbian government but were vulnerable to Socred criticism of their 1972-1975 term in office.

Some pundits predicted a return of significant third party support, but in fact votes to the Liberals and Conservatives dropped and neither party managed to elect a single member. British Columbia has appeared to have settled on a two-party system.

TABLE 2.2 BRITISH COLUMBIA ELECTION RESULTS

	1975		1979	
	Popular Vote	Seats	Popular Vote	Seats
SC	49%	35	48%	31
NDP	39%	18	46%	26
PC	4%	1	5%	-
Liberal	7%	1	-	-

Alberta

As expected the Lougheed Conservatives were re-elected with a smashing majority on March 14, 1979. Not only did they retain the sixty-nine seats they had held, they picked up the four new seats created through redistribution plus a seat held formerly by an independent for a remarkable 74 of 79 possible seats.

The Conservatives emphasized their record, their leader and the need for continued strong leadership to protect Alberta's right to its resources. They promised a billion dollar Municipal debt reduction plan, \$750 million for urban transportation, \$500 million for schools and \$500 million on new housing programs. Lougheed also defended his Heritage Fund.

The Social Credit found it difficult to distinguish themselves from the PC's platform. They too would defend the provinces' interests, improve housing, medical services and education and they too would introduce tax cuts. However, Lougheed's fierce espousal of provincial rights defined the issues in the campaign, making it difficult for the opposition to make headway on other topics.

The NDP proposed the provincial ownership of utilities, government auto insurance, elimination of medicare premiums and would spend \$5.6 billion on development in Alberta. For their pains they only barely managed to retain their single seat.

Arguing for more emphasis on agriculture rather than petro-chemicals and a halt in the use of crown corporations in developing the economy, the Liberal party continued its decline, being replaced by the NDP as the third most popular party in the overall vote. This election of the Conservatives to their third term has tended to reinforce Alberta's tradition of almost one-party politics for at least a generation at a time.

TABLE 2.3 ALBERTA ELECTION RESULTS

	1975		1979	
	Popular Vote	Seats	Popular Vote	Seats
PC	63%	69	57%	74
SC	18%	4	20%	4
NDP	5%	1	15%	1
Liberal	13%	-	5%	-
		1 Ind.		

Saskatchewan

The NDP under Allan Blakeney were returned with a comfortable majority in the October 18, 1978 election. As was expected the Conservatives increased their seats, but it came as somewhat more of a surprise to witness the Liberal party's rapid descent from Official Opposition to its complete eradication in the legislature.

The NDP fought the campaign on resource policy, and the government's record. Blakeney asked for a mandate to press for clarification of the provinces right to control resources in light of the recent Supreme Court decisions which had gone against the province. The NDP attacked the Conservative party as one that would "tax the sick" by bringing in user pay charges to medicare. They also attacked the Conservatives' leadership - pointing to Tory leader Dick Collivers' maze of business dealings and at law suits in which he was involved. The NDP ignored the Liberals, other than to ridicule their "referendum democracy."

For their part Conservatives' criticism centred on NDP "socialist bungling." They claimed they would fight for provincial control over resources, but that they would not engage in "ruinous" court battles. The Conservatives attacked the NDP for its big government policies and excessive interventionism.

The Liberals under Ted Malone were in a futile race from the beginning. The defection of two Liberals to the PCs, the loss of two by-elections to the PCs and being tarnished by the Trudeau brush made things difficult. Having moved to the right in an attempt to catch the mood of the electorate, the Liberals were outflanked by the Tories who managed to hold centre-right. Finally the proposal of run-off elections for those who did not get 50% of the vote never really caught fire.

TABLE 2.4 SASKATCHEWAN ELECTION RESULTS

	1975		1978	
	Popular Vote	Seats	Popular Vote	Seats
NDP	40%	39	48%	44
PC	28%	7	38%	17
Liberal	32%	15	15%	-

New Brunswick

The Progressive Conservatives squeezed out a narrow election victory in the October 23, 1978 contest, and by so doing Premier Hatfield became the first Conservative leader ever to win three consecutive elections in the province.

The Conservatives in a hotly contested battle, defended their record by pointing to external influences beyond their control and defended their leader as a "national statesman." The Conservatives promised greater emphasis on New Brunswick's resources and government restraint.

The Liberals under a new leader Joseph Daigle drew attention to the negative aspects of the government's record - on unemployment, electricity rates, record public servant growth and irresponsibility in management, citing the Bricklin fiasco, and cost overruns on the Point Lepreau nuclear power plant.

The NDP and the Parti Acadien both fielded a larger number of candidates and increased their share of the popular vote. Together they garnered over 10% of the vote, which suggests a degree of dissatisfaction with the two major parties.

The election in New Brunswick was the first to be held under the new Political Process Financing Act. In a province famous for patronage practices, the legislation which is considered the strictest in Canada, contributed to the decline of charges of vote-buying or fraudulent voting practices.

TABLE 2.5 NEW BRUNSWICK ELECTION RESULTS

	1974		1978	
	Popular Vote	Seats	Popular Vote	Seats
PC	46.9%	33	44.5%	30
Liberal	47.5%	25	44.4%	28
NDP	2.9%	-	6.5%	-
Parti Acadien	1.2%	-	4.0%	-

Prince Edward Island

The PEI election saw the end of thirteen years of Liberal rule in the province and the fall of the last provincial Liberal government in Canada. The second election in as many years was brought on by the retirement of Premier Alex Campbell who was appointed to the Bench. Rather than face the House with the precarious majority of one, new Premier Bennett Campbell called an election for April 23, 1979.

Few contentious issues surfaced in the campaign, but underlying much of the rhetoric was a call to preserve the "Island way of Life." The newly rejuvenated Conservative party, was also under new leadership - Angus MacLean, a 25-year veteran of the federal House of Commons.

The Conservatives ran the same "no promises" campaign that had worked so well in 1978, stressing the use of Island resources and rejecting the recent nuclear power agreement with New Brunswick. They also proposed a moratorium on the construction of large shopping malls, which were threatening the livelihood of small Island businesses.

The Liberals attempted the "no promises" strategy but it was perceived as second hand. Their goal of open government was ridiculed on the basis of the lack of public consultation with respect to the aforementioned nuclear power agreement. Lastly being identified with the federal Liberals and Pierre Trudeau did not help either.

The NDP who had recently come through rather messy leadership difficulties were not expected to do well; they performed according to expectations.

TABLE 2.6 PRINCE EDWARD ISLAND ELECTION RESULTS

	1978	1979
	Seats	Seats
Liberals	17	11
PC	15	21
NDP	-	-

Nova Scotia

The decisive defeat of Gerry Regan's Liberal government was the most surprising upset of any of the elections of the past year. While many political observers had predicted a close election with the return of the Liberals, John Buchanan's Conservatives captured 31 of the 52 seats on September 19, 1978.

The campaign focussed on the economy. A ten percent unemployment rate, a record deficit of \$75 million, in a province accustomed to balanced budgets, and a 47% increase in electricity rates with more increases forecast, all spelled problems for Regan. It was only late in the campaign that Regan was able to shift the focus slightly to leadership, where doubts existed about Buchanan's capabilities. Finally, in light of the gloomy prospects, the Liberal campaign slogan "Be Positive" was to say the least unfortunate - as the populace was not!

The Conservatives ran an aggressive campaign, attacking the Liberals for their record. They promised a new strong approach to Ottawa, especially in the area of fisheries and off-shore resources. They also promised to establish a new department of intergovernmental affairs to ensure the best use of federal monies and to develop Nova Scotia's position on resources in light of natural gas finds. The only disappointment in the campaign for the Conservatives was the fact they were completely shut out in Cape Breton Island.

The NDP increased their representation from 3 to 4 (all on Cape Breton Island) and their percentage of the popular vote from 11 to 15%. They had expected more, but even so, it suggests the NDP are becoming a growing force in Nova Scotian politics.

TABLE 2.7 NOVA SCOTIA ELECTION RESULTS

	1974		1978	
	Popular Vote	Seats	Popular Vote	Seats
Liberal	47%	31	38%	17
PC	39%	12	47%	31
NDP	11%	3	15%	4

Newfoundland

On June 18, 1979 the province of Newfoundland returned the Conservatives to power with an increased majority under new leader Brian Peckford. The calling of the election itself had been both praised and condemned - praised by those who felt Peckford had caught the Liberals off balance and condemned by those who felt Peckford had taken unfair advantage of the fact that the Liberals were in the process of selecting a new leader. The election was a contrast in styles - Peckford, bold, brash and confident promising strong aggressive government, protecting Newfoundland's rights; Jamieson, the old-time loquacious orator from the Smallwood school promising "open" government, and protecting Newfoundland's interests but heeding the province's dependence on Ottawa.

The Conservatives ran an especially aggressive, fast-paced campaign with Peckford averaging at times ten speeches a day. Setting out a vision of a strong Newfoundland, Peckford vowed to make Newfoundland the "Alberta of the East" through its resources. They would renew and strengthen fisheries and they claimed the future was bright in oil and gas. The Conservatives promised to hold the line on taxes and to create 40,000 jobs with their new 5-year job development strategy.

The Liberals who drafted Jamieson as leader 6 weeks before the election, held the line on promises. They would freeze electricity rates, introduce pharma-care and make job creation the top priority. Perhaps the most interesting facet of the Newfoundland campaign by the Liberals was their inability to capitalize on the 16% unemployment rate in the province.

Whatever the reason, be it that Peckford was new, or people felt it was beyond the control of the provincial government - as Jamieson put it "Time ran out for the Liberals."

The NDP who had high hopes after getting over 30% of the vote in the federal election were left high and dry by the Peckford-Jamieson conflict. Promises of a fair prices commission and a six point health care program were to no avail as the fight remained between the two major parties.

TABLE 2.8 NEWFOUNDLAND ELECTION RESULTS

	1975		1979	
	Popular Vote	Seats	Popular Vote	Seats
PC	45%	30	51%	33
Liberal	37%	16	41%	19
Reform Liberal	12%	4	-	-
NDP	4%	-	8%	-
Independent		-	-	-

CHAPTER III

THE CONSTITUTIONAL DEBATE

Introduction

The constitutional debate has been conducted on an incredible variety of fronts, ranging from set-piece federal-provincial conferences to the battle of billboards in Quebec. The issue can be sliced in a number of ways, but the following review distinguishes between (1) the debate in Quebec: the referendum campaign as waged by the main protagonists; (2) the debate in Ottawa: federal initiatives in relation to events in Quebec; (3) the federal-provincial conferences on constitutional reform, and (4) the reports of two government advisory groups on the constitutional issues.

(1) The Debate in Quebec

The PQ's Third Year

The Parti Québécois government passed its third anniversary without holding the referendum on the province's constitutional options - a delay few would have predicted in 1976. As much a result of the delay in the federal general election as to any other factor the later date of the referendum provided both opportunities and liabilities for the PQ and their opposition.

Had the federal Liberal government gone to the polls in the fall of 1978, as expected, the referendum would undoubtedly have been held in the spring of 1979. Faced this past summer with setting a new date, Parti Québécois strategists once again postponed the vote to May or June, 1980. The government was depressed by Liberal opposition victories in the April 30, 1979 by-elections, and was heading into the conclusion of a critical round of public-sector collective bargaining; it thus decided to buy more time, and, in the interval, to pursue other legislative and administrative priorities, all the while fine-tuning the substance and strategy of their constitutional option.

The fall 1978 legislative program of the National Assembly included a mixed bag of measures for agricultural reform, expropriation in the asbestos industry, consumer protection and immigration. The PQ also tabled white papers on freedom of information and industrial health and safety.

At the opening of a new legislative session on March 5th, 1979, Premier Lévesque announced that, mid-way through his government's term of office, the time had come to give priority to economic development programs. The inaugural address outlined a series of measures - most well underway by the fall of 1979 - designed to address the short and longer term problems of the Quebec economy. Apart from the cautiously stimulative budget of Finance Minister Parizeau (see Chap. IV), most of the short-term measures came under the umbrella of "l'Opération Solidarité Economique" - a job creation program aimed at chronic areas of unemployment. A longer-term and, perhaps, more important initiative was for "nouveaux mécanismes de financement pour les projets québécois d'investissement industriel et commercial." Such mechanisms are still the focus of internal government studies, and will inevitably be injected into the referendum debate as the government points out the limitations of present provincial powers in investment control.¹

The province's goals in economic development were set out more fully in a white paper on economic development released in September 1979, entitled Bâtir le Québec, by Minister of State for economic development, Bernard Landry.² The new development policy stresses the long-term enhancement of the comparative advantages afforded the Quebec economy by its natural resources. Despite the boast that the paper is the most elaborate "industrial strategy" for a mixed economy outside Europe, it places emphasis on the private sector as the main actor in the economy. The private enterprise reliance was even more clearly stated during the Montebello grand "sommet" of business, labour and government in March, 1979.

While the PQ's "concertation" at the summits has helped to bridge the gap between government and business, the tensions with certain anglophone and American-owned corporations continued to be felt. For many such companies the acrimonious negotiations over the Quebec government's planned take-over of Asbestos Corporation has been a symbol of what is perceived as the more dangerous aspect of PQ policy. Conversely, the refusal of General Dynamics, the US parent of Asbestos Corporation, to negotiate on a price for the nationalization, and their court challenge to the enabling legislation, has done little to reduce its reputation as the "bête-noir" of Quebec nationalists.

The PQ's relations with business on language issues were, however, better than last year, but the air of uncertainty still hangs over Montreal head offices in particular. As Liberal member Reed Scowen reminded the National Assembly in November, 1978, forty-five head offices had moved from Quebec in the past two years. Since November, greater flexibility in language provisions allowed some firms to make deals with l'Office du langue français; nonetheless, recriminations are still being made about the loss of jobs and economic activity caused by the political climate, including language legislation.³

1. See Chapitre 10, Bâtir le Québec, Enoncé de politique économique, Editeur Officiel du Québec, 1979

2. See below, p. 82

3. For two views on effects of head office departures, see Office de planification et développement du Québec, Les sièges sociaux et l'emploi au Québec, November 1978; and Montreal Star, May 26, 1979

Finally, if there were limits to the PQ's good relations with certain sectors of the populace, the fortunes of their main opposition, the Liberal Party, have risen steadily since the fall of 1978. In what may have been a tactical error, the Lévesque government decided not to let Claude Ryan enter the National Assembly through a by-election until the last possible moment - April 30, 1979. Ryan had all winter to develop his constitutional strategy and to campaign thoroughly in his own by-election riding, Argenteuil, and in the other, Jean Talon. The results of the by-elections were demoralizing for the PQ as the Liberals won both with much increased majorities. It was in the aftermath of this defeat that the resigning minister for parliamentary reform, Robert Burns, confessed his worst fears that the PQ would lose both the referendum and the next provincial election. Burns' statements were in part a denunciation of the government's preoccupation with "good government" rather than its referendum campaign - and a rejection of the gradualist strategy of Claude Morin and others - independence by stages. The Liberal momentum continued into the fall of 1979 as the party swept four more by-elections, winning even such bastions of PQ strength as the Maisonneuve riding, while general opinion polls confirmed the growing Liberal support. Thus the fall of 1979 presented a difficult and depressing time for the governing Parti Québécois.

Towards the Referendum: PQ Strategy

Despite the delay in holding the referendum, the Parti Québécois has finally established the timetable for its campaign. In October, Premier Lévesque announced a refinement of the "étapisme" strategy - to seek only a mandate to negotiate; in February, 1979, the PQ's Conseil Executif released a background pamphlet on sovereignty-association entitled D'Egal à Egal; and in June 1979, the Congrès National of the party set out many of the details of their constitutional option, further elaborated by a white paper, Québec-Canada: A New Deal, released in November, 1979.

In the National Assembly on October 10, 1978, Premier Lévesque delivered an address entitled "La démarche du Gouvernement du Québec d'ici le referendum," detailing for the first time their sovereignty-association option. Upon close questioning in the National Assembly Lévesque revealed a strategy which most polls⁴ were indicating would be the most successful - to ask the people of Quebec in a referendum for a "mandate to negotiate sovereignty-association." This "etapiste" strategy upset militant independentists who questioned the PQ leadership's will to seek true independence and the tactics of seeking a negotiating stage where the federalists could take the initiative. Lévesque's announcement was also met with scepticism by the press, although it is abundantly clear that public opinion in Quebec continues to be more sympathetic to such ambiguous and qualified steps in their constitutional evolution, than they are to either the status quo or full independence.

With the publication of the pamphlet (and the slogan) D'Egal à Egal in February, the PQ gave a better indication of the mandate it is seeking. The

4. See Table 3.1

document reiterated the primacy of the goal of sovereignty, despite the confusions since October, and left no doubt that their notion of sovereignty meant that a Quebec government alone would make laws for Quebec and levy taxes in Quebec. The second part, association, would include among its objectives to "ensure the continuity of exchanges and institutions", presumably commercial, between the rest of Canada and Quebec, through a customs union, a monetary union, specific agreements on transportation links, and, in general, the free movement of goods and capital (with exceptions for agricultural produce, temporary development programs and government purchasing policies). D'Egal à Egal indicated that, should such arrangements prove impossible to negotiate, Quebecers would be asked to declare sovereignty pure and simple.

The Parti Québécois convention in June both endorsed and fleshed out the D'Egal à Egal pamphlet. Party leadership gave even greater indications that they might in fact seek a second mandate by referendum or by general election should negotiations with Canada fail, thus changing the party's position to proceed unilaterally with sovereignty, following a positive referendum vote and, consequently rendering the first referendum much more painless.⁵

As for the positions on sovereignty-association, the key resolutions passed by the convention are as follows.

The Basic goals:

- To demand, when Quebecers have given their mandate by referendum, the repatriation to Quebec of all powers belonging to a sovereign state, and to propose to Canada the creation of an association of sovereign states to replace the existing constitutional arrangements.
- To conduct negotiations to this end ...
- To contribute to assuring the continuity of (commercial and other?) exchanges and of institutions which appear compatible with its (Quebec's) sovereignty and its interests.
- In the eventuality that it seems impossible to arrive at a satisfactory agreement with Canada, to request from the citizens of Quebec a mandate to exercise the powers of a sovereign state without sharing them (with any other state).
- To propose a treaty between Canada and Quebec for:
 - the free movement of goods (to be achieved) through the parties' renunciation of the right to impose

5. See Peter Leslie, Equal to Equal: Economic Association and the Canadian Common Market, Kingston, Institute of Intergovernmental Relations, 1979, p. 5

customs duties of any magnitude, or any form of indirect barriers to trade not explicitly permitted by specific agreement.

- As judged necessary, the establishment in common of protective tariffs in relation to third countries, accounts being taken of the short and the long term interests of each of the parties.

- The mutual recognition by the parties of the right to protect:

their agricultural production, their programs of temporary assistance to (economic development), and their systems of preferential purchasing by the state,

these three fields being the subject of specific agreements.

- with these further qualifications:

- (economic association should cover) the free movement of persons between the two territories, by the parties' renunciation of their right to impose regular border controls by the police, ... (although) Quebec citizens should have their own passports, and ... there should be agreements on immigration and the operation of the labour market.

- the free movement of capital between the two States, subject to each party's right (to enact):

(a) ... an investment code;
(b) (a code) to regulate certain financial institutions;
(c) any other temporary or permanent measures, as judged necessary by one party or the other, all exceptions to the general principle of the free movement of capital necessarily being the subject of a special agreement.

- (the convention declares:) that Quebec should regulate the entry and export of savings and profits, and should require financial institutions and (other) firms to reinvest in Quebec a substantial proportion of these savings and profits.

- It acknowledged that "the reaction of provincial governments has so far on the whole not been encouraging," and it added: "Recent events in this field have shown that the possibility exists meanwhile of difficult and even explosive situations as individual provincial governments

attempt to deal independently with problems which have a bearing on mobility".

- and finally, the resolutions covering the nature of future Quebec-Canada institutional relations included:
 - Arrange to create, jointly with the government of Canada, the institutions necessary to the operation of the Quebec-Canada Association, on the basis of a treaty ... (covering):
 - (a) the powers which the two governments agree to exercise in common.
 - (b) the composition of the institutions and the way in which they will take formal decisions.
 - (c) the manner in which these formal decisions will bind the two governments.
 - See to it that the institutions to be created in order to administer joint activities, as well as the machinery for interpreting and arbitrating agreements, be constituted on the general principle of parity and that the necessary (financial) resources be obtained in a manner to be negotiated between the parties.
 - Create, by the treaty of association, a decision-making organ composed of ministers delegated to it (who will) act on instructions from their respective governments, these decisions to be taken unanimously, each State having a single vote.
 - Create, by the treaty of association, a Court of Justice composed of an equal number of judges appointed by each of the governments, and a president whose appointment will be approved jointly by the two governments. The Court of Justice will have the functions of:
 - (a) resolving any differences arising between the two states, or between one of them and an organ of the Association, relating to the interpretation of treaties;
 - (b) acting as a court superior to the national courts in respect of the interpretation of a formal decision of the Association.

Most of the resolutions passed without significant debate, the major exception being reference to monetary union which engendered fierce and sophisticated debate. Opponents of a monetary union argued that it would greatly restrict Quebec's freedom of action in economic policy. They placed more emphasis on the need for exceptions to a common market than on monetary

policy in order to achieve a sovereign state's aims. On this issue, as others, the institutions of the Quebec-Canada association take on great significance. Under the banner of "d'égal à égal", the convention theme and the battlecry of the referendum campaign, the principal of parity is paramount. The psychological appeal of equal to equal will not, however, soothe the worries of critics and partisans alike confronted with the unequal reality of Quebec's position vis-à-vis the rest of Canada. As Peter Leslie argued:

The parity principle, as spelled out in these resolutions, is understandably of critical importance to the independentist position. Anything less, and sovereignty is a sham. Anything less, and Quebec is relegated to a permanently minority position, much more obviously than at present. This much, Quebec's interlocutors should realize.

But there is another side - in fact several of them.

The PQ leaders must surely realize that acceptance of the parity principle, in the form of bilateral association which they propose, is utterly unrealistic. The Association would have the tasks of setting tariffs and otherwise directing a common commercial policy, controlling the exchange rate, implementing policies on interest rates and credit, and perhaps overseeing the administration of transportation networks. In such matters, why should any one regional interest have a voice equal to that of all the other regions combined, when the population ratio is about 1 to 3?

In Association, Quebec would lose much of its freedom of manoeuvre in economic affairs. It is understandably uneasy about this and has therefore advanced the parity principle so that decisions will not be foisted upon it by its former partners in Confederation. But non-Quebec Canada would lose its freedom of manoeuvre too. In fact, the broader the terms of association, the more likely are the other regions to reject a system which would give Quebec - smaller and weaker - a veto over their economic policy.⁶

With the passing of the resolutions at the party convention, the Lévesque government had jumped a major hurdle and could proceed with its white paper on its constitutional options. The paper, Québec-Canada: A New Deal⁷, released in November 1979, made few changes to the proposals above. It

6. Peter Leslie, Equal to Equal, p. 27

7. (Subtitle): The Québec government proposals for a new partnership between equals: sovereignty-association, Gouvernement du Québec Conseil Exécutif, 1979.

provided a history and an analysis of Quebec in Confederation and spelled out the mechanisms of association in somewhat greater detail. The most significant departure from the party resolutions involves the application of the parity principle. In particular the "monetary authority" as detailed by the white paper would not be based on parity representation but "the number of seats allocated to each party on the board of directors will be proportional to the relative size of each economy."⁸ Whether such a change has resulted in making the proposals more palatable is open to doubt, as reaction from outside Quebec has demonstrated.⁹

The Federalist Strategy

The federalist option in the referendum campaign will, of necessity be presented in a more fragmented form than the singularity of the PQ campaign. Inevitably, however, it is the Liberal party under Claude Ryan which has come to dominate the diverse federalist forces based both in the province, and, since the federal election, based in Ottawa.

One of Ryan's first tasks in the winter of '78-'79 was to wrestle the referendum campaign leadership from the "Pro-Canada Committee" - one of two pre-referendum, umbrella, committees authorised by law to coordinate the competing sides in the referendum debate. The Pro-Canada group, composed of fourteen federalist organisations and political parties only relinquished tactical control to the Liberals after a fight. By late January 1979, however, the committee scrapped plans to organize on a constituency basis and retreated to the role as treasurer of the federalist war chest. The Pro-Canada Foundation, formed shortly afterwards, has given private actors an outlet not afforded by the politician-dominated pre-referendum committee. (The foundation has, since the end of May 1979, sponsored an extensive advertising campaign in Quebec).

As for political leadership, since early 1979 the major federalist parties have confirmed, at least for now, the primacy of Claude Ryan as leader. By July 1979, Rodrigue Biron, leader of the Union Nationale conceded as much, as has former Prime Minister Trudeau (following a meeting of the caucus of the Liberal Party of Canada in August 1979), and Prime Minister Clark.¹⁰

Despite the relatively free hand, the Quebec Liberals must still draw the distinction between their party position on constitutional reform and that of the federalist side in general during the referendum campaign. By September 1979, Ryan stated openly that the party's strategy would be to support the lowest common denominator of the federalist option in the referendum campaign, while leaving the details of their version of "fédéralisme renouvelé" to the next provincial election.¹¹

8. ibid, p. 62

9. See below, pp. 108, 110-111

10. Le Devoir, 15 October 1979

11. See editorial by Michel Roy, Le Devoir, 28 August 1979

A strategy of not revealing details prematurely was also followed in writing the party's "working paper" released in February 1979, Choisir le Québec et le Canada. The thrust of this document was to denounce in detail the PQ option of sovereignty-association while underlining in more general terms their preference for federalism. It was the most complete elaboration of Ryan's constitutional position available. The party's committee charged with designing specific proposals had, by the end of 1979, not yet released them.

To take the first half of that position, the Liberals denounce sovereignty-association, and commit themselves in advance to a "no" position on a PQ referendum, with the qualifications that their option of federalism will not equal the status quo, and that a denial of the PQ's mandate does not imply a denial of Quebec's moral right to self-determination. The paper stresses that sovereignty is the ultimate PQ goal, and rejects the thesis that economic association can be automatically twinned with it.

Among the consequences of sovereignty for Quebec listed in Choisir were: a loss of access to the mineral resources of the Canadian north, an end of equalization payments and other forms of "pooled" wealth, an end to participation in Canadian institutions or the enjoyment of Canada's respected position in the world community, an accelerated decline of Montreal, and an end to bilingualism both inside and outside Quebec. Secondly the document questioned both the validity of a confederal economic association, and the assumption that a sovereign Quebec could negotiate such an arrangement with what remained of Canada. Throughout the paper, sovereignty was, of course, referred to as an irreversible act.

As for the "Choose Canada" section of the paper, the details of the Liberals' renewed federalism were somewhat lost among the catechetics of the "superiority of federalism". However, the following five principles of a renewed Canadian federation were enunciated:

- 1) Grant to the provinces such powers as are needed to enable the Quebec government to reasonably ensure the development of Quebec society in accordance with its particular aptitudes;
- 2) Ensure the effective representation of the viewpoints and interests of the regions and in particular of Quebec, within federal agencies that are summoned to play a key role in various fields;
- 3) Permit constitutional, legislative and administrative arrangements with Quebec in certain fields where other provinces would not have the same reasons as Quebec for wanting to exercise direct authority over government action;

TABLE 3.1 CONSTITUTIONAL OPINION IN QUEBEC

1. Mandate to Negotiate Sovereignty-Association:

If the referendum question is - Will you give the Quebec government a mandate to negotiate sovereignty-association, how would you vote? - (Quebec as a whole)¹

POLL:	Selection/CROP Aug/77	Dimanche-Matin/IQOP Sept/78	La Presse/CROP Nov/78	Radio-Cda/CBC Feb/79	Cloutier/CROP June/79	Cloutier/CROP Sept/79
Oui	50	39	44	50	50	54
Non	34	36	39	31	31	29
Refus/ Ne Sais Pas	16	25	17	18	19	16

.29.

2. Preferred Options: Separate polls are difficult to compare: Those presented below are therefore only a rough indication of preferences; those from August 1977 to February 1979 are based on responses to how favourably each option is perceived - and thus does not exclude preferences for other options - that of September 1979 asks respondents to choose their first option.¹

POLL:	Aug/77	Nov/77	June/78	Sept/78	Feb/79	All Quebec	Francophones	Anglophones
OPTIONS:								
Status Quo					31	15	14	16
Renewed Federalism	67	70	68	56	53	39	34	59
Special Status					44	11	10	14
Sovereignty-Association	40	40	39	35	35	19	24	4
Independence					19	9	11	1
No Answer/Didn't Know						7	6	6

1. Data from Confederation/Referendum, Canadian Broadcasting Corporation, March 1979, p.D 3-4 and Eduard Cloutier, Sondage sur la perception des problèmes constitutionnels, Québec-Canada par la population au Québec, Gouvernement du Québec, September 1979

- 4) Protect the provinces from the excessive use of certain general powers of the federal Parliament that have often served in the past as pretexts for centralizing policies contrary to the spirit of the constitution;
- 5) Recognize the right of Quebec freely to pursue international relations in the fields which lie within its competence, subject to the principle of essential unity in the country's foreign policy.¹²

In sum, Ryan has steered well clear of the specific language of special status, and, except for the occasional statement since February on issues such as oil pricing and revenues and on patriation of the BNA Act, he has by no means fleshed in the details of the vacuous principles quoted above. As Michel Roy has warned in Le Devoir such a strategy of attacking the PQ option rather than elaborating their own, could leave the Liberals open to being perceived as supportive of the more reactionary elements in the federalist camp. It is, however, a calculated gamble that the party seems determined to take. Perhaps the most interesting aspect of Choisir was that, unlike most of the defences of federalism offered by Quebec-based politicians, it argued its case on principled and positive grounds. The defence went far beyond those based on expediency, exemplified by the term "fédéralisme rentable".

Finally, one should note that, in the months leading up to the release of its official proposals, the Liberals have been making a concerted effort to sell their option to governments and parties outside Quebec in a bid to impress upon the Quebec voter that while sovereignty-association may not wash with the rest of Canada, Ryan's version of renewed federalism will. Again, it appears to be a well-calculated gamble.

(2) The Debate in Ottawa

A Review of the constitutional debate as it took place in Ottawa from the fall of 1978 to the fall of 1979 divides very clearly into three phases: the first from the autumn of 1978 to March 1979, represents the last months of the Liberal regime - characterized by a retreat from federal policies and a malaise which rendered new initiatives useless; the second phase encompasses the federal election campaign when the Liberals returned to many of their hard-line positions but were unable to stem the disaffection for their government outside Quebec; and the third phase was the new regime - a Conservative government with its slowly emerging stance towards Quebec and constitutional questions. The latter two phases are dealt with more completely in Chapter II; what follows is a brief record of the initiatives of the federal Liberal government to March 1979.

12. Choose Québec and Canada: A working document for the members of the Québec Liberal Party, February 1979, pp 91-92

The Trudeau government and the "unity campaign"

The most important constitutional initiative of the Liberal government in its last months was the convening of the two First Ministers' Conferences on the Constitution in October 1978 and February 1979 (see below). The progress achieved there with the provincial premiers was a significant, but not the only, response of the federal government to the debate in Quebec and to pressures for constitutional change elsewhere in the country. However, the Liberal's Constitutional Amendment Bill of June 1978 was put on a back-burner pending the decision of the Supreme Court on the reference question regarding the ability of the federal government to act alone on changes to the Senate¹³ and, in any case, the convening of the constitutional conferences was, in part, a recognition of provincial opposition to the Liberals' timetable for reform.¹⁴ There were some observers who predicted a rewritten version of Bill C-60 to appear before the general election, but whether in fact the government had been planning such a move is by now a moot point.

The second, and to many Liberals, more important aspect of the federal government's response was the very active role played by francophone ministers and by central agencies in the referendum debate in Quebec. Apart from Trudeau the two most prominent federal Quebec Ministers, Finance Minister Jean Chrétien, and Justice Minister Marc Lalonde, made several forays into the province attacking the sovereignty-association option and making their case for a renewed federalism.

Part of the Liberal message was hard-line: sovereignty-association is a non-starter, not negotiable in any sense; part of the message was a more detailed attack on the economic and political premises of the economic association. The latter was not as easy for them to do as the Parti Québécois deliberately stalled on the details until after the election. And the a priori refusal to negotiate, drew fire from some quarters.

At the end of October 1978, Marc Lalonde was repeating his refusal to negotiate sovereignty-association, even if the Quebec government was given such a mandate - "Nous n'avons aucun mandat pour négocier", he said. (Le Devoir 31 October 1978). Meanwhile federal opposition leader Joe Clark told a Montreal La Presse interviewer that, given a 60% mandate of Quebec voters to negotiate sovereignty-association, he would talk with the PQ. It was not long, however, before the Conservatives submitted to the Liberal tactic. Clark silenced Tory MP David Crombie when he mused that it was "stupid" not to negotiate with the PQ should it win its referendum: "We do not accept sovereignty-association as a basis for discussion", Clark told an interviewer in January 1979.¹⁶

13. See below, Chapter VII

14. For the details of the debate on the bill, see Federal Year in Review 1978-79, pp. 59-63

15. Globe and Mail, 30 October 1978

16. Progressive Conservative Party, News Release

The Conservative leader is not the only federalist politician to take the Liberal lead in making such statements. In his Choose Quebec and Canada, Claude Ryan referred to statements by Ontario Premier William Davis and by the Western Premiers' Conference on the same theme, by the provincial premiers, excluding Lévesque, at the Premiers' Conference in La Malbaie in August 1979.¹⁷ The "no-negotiation" tactic of politicians outside Quebec has several strands. It is meant, of course, to go hand-in-hand with Ryan's blueprint for renewed federalism, even though the details of that blueprint were not yet known. Second, it is a broad attempt to convince Quebecers that sovereignty-association cannot be achieved, and third, it has become a kind of code-word of politicians nervous of claims that they are not being tough enough on Quebec.

As for the Liberal government, much of its energy was devoted to arguing what it perceived to be the superiority of the status quo - the Canadian Unity Information Office stream of studies in the series "Understanding Canada". It, along with the Lalonde and Chrétien speeches, attempted to demonstrate the folly of separatism and the profitability of federalism.

Another Liberal initiative that died with the election was the Canada Referendum Bill (C-9). The Bill is illustrative of the style of the federalist campaign of the Trudeau government. With the initial intention of passing a bill designed to check an unfair referendum in Quebec, the Liberals expanded their legislation beyond the scope of the Quebec question to include consulting "the entire population ... on future proposals for constitutional change". This would include reforms of any of the "customs, conventions and enactments that comprise the Constitution of Canada".¹⁸ Conservative critics were quick to point out that the wide scope could allow the government to change such customs as cabinet government, the monarchy or the legislative process. The Liberals refused to limit the bill to Quebec's future in the federation, and did not deny Conservative charges that they were planning to use referenda to by-pass provincial refusal to agree to future constitutional amendments.¹⁹

The debate in the House indicated the increasing bitterness of the last weeks of Parliament, and, in particular it demonstrated the aggressive nature of the Conservatives no longer disposed, as was the NDP, to defer wholly to the Trudeau government on questions of national unity.

Finally, the last few months of the Trudeau administration witnessed the rejection, or at least qualification, of the federal government's language policies. In February the Task Force on Canadian Unity released its Report.

17. Choose Quebec and Canada, op cit, pp 86-89. For declarations of refusal to negotiate sovereignty-association see review of Premiers Conference, and Western Premiers Conference, below, pp

18. See Minister of State for Federal-Provincial Relations, Canada Referendum Bill, an explanation, nd

19. See Joe Clark, House of Commons Debates, January 29, 1979, pp. 2654-59

It was critical of federal policies for bilingualism, in particular its goal of entrenching language rights in a new constitution which would override provincial jurisdictions in language policy. (see below). At the same time the Commissioner of Official Languages, Max Yalden, presented his annual report which admitted the failure of certain aspects of the program, for example, the language of work in the civil service and the language training program. The overall restraint in expenditures had forced the government to cut spending on language programs from \$455.4 million to \$349.3 million in the fiscal year ending in March 1980,²⁰ including payments to the provinces for second-language education costs which were cut by approximately 25 per cent.

It would be an over-statement to assert that the federal government was under seige in its decade-long policies on language and the constitution, but the once-conventional wisdom of the Liberal version of national unity was under attack on a number of fronts. Prime Minister Trudeau had made some concessions, not expected from his government before, on the division of powers between the central government and the provinces (see below). And the effectiveness of his language policies was being questioned, as was their underlying philosophy. Their constitutional amendment bill was sent into hiding by challenges from all sides, and they were, at last, unable to pass their referendum bill before adjourning Parliament. In the campaign that followed, Prime Minister Trudeau renewed the rhetoric of the 1968 and 1974 campaigns on preserving the primacy of the central power, on patriating the BNA Act, and on entrenching civil and language rights in a new constitution. It was a vision which, as poll results demonstrated, is still very strong throughout the country, but one which has been pushed out of prominence, arguably for the first time since 1965, by a new perspective on national unity.

(3) The First Ministers' Conferences on the Constitution 1978-79

Prelude

After a recess of seven years since the aborted Victoria Charter of 1971, the federal and provincial governments began in October 1978, another attempt at comprehensive constitutional reform. The first ministers' conference arose out of two events of the preceding months - the introduction to the federal Parliament of the White Paper and Constitutional Amendment Bill in June 1978 and the nineteenth annual Premiers' Conference held in Saskatchewan in August.

As outlined in our last review, the federal government's bill (C-60) proposed a two-phase process to write a new constitution. Phase I to be completed by July 1979, dwelt mainly on amendments to the constitution on

20. Globe and Mail, 20 February 1979

which the federal government claimed it could act unilaterally. This included such amendments as a new Charter of Rights and Freedoms - to entrench most political, civil and language rights, a new Upper House of parliament to replace the Senate (styled the House of Federation), certain changes to the Supreme Court, and new sections respecting federal-provincial relations and regional disparities. To Phase II, to be completed by July 1, 1981, the Liberal government left the remaining sections of the constitution concerning the division of powers which required provincial consent to amend. To this end Prime Minister Trudeau notified the provincial premiers in July that he hoped he could convene a first ministers' conference to discuss the federal initiatives.

The provincial response as detailed in a communiqué from the premiers' conference,²¹ welcomed the federal-provincial meeting but requested that the agenda include the provincial priorities and proposals for change as well as the federal government's proposals. They rejected Prime Minister Trudeau's phased timetable for proceeding, insisting that the division of powers be discussed concurrently with other issues, and, as detailed in last year's review, contested the competence of the federal jurisdiction to unilaterally amend the sections of the constitution dealing with the Senate and the Supreme Court.

The premiers also put forward their comments on the substance of reform. Apart from the government of Quebec's proviso that it was still committed to the sovereignty-association option, all provinces endorsed the list of reforms to the constitution arising from the 1976 consensus position. In that consensus the provinces demanded:

- 1) limited provincial jurisdiction in immigration
- 2) strengthened provincial jurisdiction in resource taxation
- 3) language rights along the lines of the Victoria Charter
- 4) provincial agreement before use of federal declaratory power
- 5) a mandatory annual First Ministers' Conference
- 6) role in the creation of any new provinces
- 7) a concurrent jurisdiction in culture
- 8) greater provincial control in communications
- 9) provincial role in appointments to the Supreme Court
- 10) limits to the use of the federal spending power
- 11) commitments to alleviating regional disparities and to the equalization principle.

To this list the premiers added five areas where they had come to substantial agreement:

- abolition of the now obsolete federal powers to reserve or disallow provincial legislation

21. Nineteenth Annual Premiers' Conference, Regina, 10 August 1978, Communiqué No. 2: Constitutional Reform: the Position of the Provinces

- a clear limitation on the federal power to implement treaties, so that it cannot be used to invade areas of provincial jurisdiction
- the establishment of an appropriate provincial jurisdiction with respect to fisheries
- confirmation and strengthening of provincial powers with respect to natural resources
- full and formal consultation with the provinces in appointments to the Superior, District and County Courts of the provinces as well as to the Supreme Court of Canada

Finally, the premiers added five more areas for "early consideration":

- the federal emergency power
- formal access of the provinces to the field of indirect taxation
- the federal residual power
- amending formula and patriation
- the delegation of legislative powers between governments

In his letter replying to the Premiers on September 13, 1978, Prime Minister Trudeau agreed to begin discussing the "jurisdictional" issues concurrently with institutional issues, and that proposals from all sources could be considered; however he continued to reiterate the federal government's position that it had the authority under Section 91(1) of the BNA Act to proceed unilaterally with the amendments to the Senate and the Supreme Court, although the question was later referred to the Supreme Court.

Thus the stage was set, by October 1978, to bring together two main strands of the constitutional debate: the Liberal government's priorities on language and civil rights, and on reforms to central institutions, and the provinces' priorities in jurisdictional reform. A week before the conference, Premier Blakeney was advocating a package of reform which would meet demands on all sides - his release cited "natural resources, communications and culture, language rights, the Supreme Court, delegation of powers among governments, greater recognition of British Columbia as a fifth region, entrenching the principle of equalization payments to the poorer provinces and agreement on an amending formula"²² as areas where agreement on principle could be reached. While other premiers were less open about the bargaining inherent in such an approach, it is clear that a package was indeed what most had in mind.

Constitutional Conference: October 30 - November 1, 1978

The first of the two first ministers' conferences on the constitution failed to produce any concrete agreements on constitutional change. It was nonetheless an important beginning: it isolated a number of key issues in the debate where positive contributions could be made; it initiated a timetable and apparatus for continuing work of ministers and officials, and it signalled a willingness of the federal government to come part way in meeting provincial grievances. The conference demonstrated the difficulties inherent in achieving movement on the issues involved - and demonstrated to the public through the television broadcast of all the open sessions some of the competing interests and loyalties behind the differing positions.

In their opening statements, the First Ministers were able to put on the table their respective grievances and priorities for debate. For Prime Minister Trudeau the electoral reasons, to be seen as progressing toward resolution of constitutional problems, were particularly obvious. Either dismal failure or spectacular success would have played into the Liberals' election strategy. The Prime Minister used the opportunity to stress the need for reforms along the lines of the constitutional amendment bill and in particular warned the premiers that a stalemate would only increase the pressure on his government to act unilaterally to amend the constitution in those areas affecting its jurisdiction, and to patriate the BNA Act.

For many of the provincial premiers at the Conference, it was their first opportunity to comment on constitutional change since the previous round of talks in 1968-71. The following is a brief summary of the positions each province assumed at the conference.

Newfoundland - The government of Premier Frank Moores stressed the importance of the jurisdictional issues, especially over fisheries and off-shore resources wanting the creation of a provincial jurisdiction in the former and exclusive proprietary rights to the latter. Also priority items: constitutional commitment to reducing regional disparities and strengthening of the federal power over interprovincial trade to allow hydro-electricity to cross provincial boundaries unimpeded.

Prince Edward Island backed strong federal government and endorsed proposed Charter of Rights and Freedoms in Bill C-60; placed emphasis on the ability of central government to redistribute to poorer regions.

Nova Scotia advocated entrenchment of the equalization formula a priority but worried about entrenching language and civil rights in a Charter.

New Brunswick also placed priority on recognition of role of a strong federal government, with constitutional responsibilities for equalization and alleviation of regional disparities; and advocated agreement with principles of federal proposals for preserving language rights.

Quebec - Premier Lévesque indicated that their constitutional position at the conference would be based upon Quebec's Traditional Stands on the Division of Powers (1900-1976)²³. Thus the PQ would defend provincial jurisdiction as a provincial government, while registering its scepticism that the conference could not meet its basic constitutional demands. Indeed it was clear that the PQ option would only appear on the bargaining table if it were to win the referendum.

Ontario called for selective redistribution of powers to allow for greater provincial responsibility without changing the balance between provinces and central government. In particular the Davis government placed priorities on the federal government's continued protection of the economic common market. Also advocated better mechanisms for intergovernmental consultation and provincial input into appointments to the Supreme Court.

Manitoba had no discernible priorities for constitutional change. It was especially critical of federal efforts to entrench rights in the constitution, and emphasized need to negotiate an amending formula concurrent with the other issues.

Saskatchewan - Premier Blakeney stressed the importance of a bargained package of reforms. He placed priority on strengthening provincial jurisdiction over natural resources and advocated immediate movement on a short list of issues including resources and: communications and culture, language rights, delegation powers, the Supreme Court, equalization principle and an amending formula.

Alberta - The government reiterated its positions published prior to the Conference in Harmony in Diversity: A New federalism for Canada. It included strengthening and clarification of provincial resource jurisdiction; transportation and communications should be concurrent jurisdictions; there should be a separate court for constitutional appeals; and the amending formula should be phrased so as to prohibit the removal of proprietary rights of a province without its consent.

British Columbia - With one of the most complete sets of published constitutional proposals,²⁴ the BC government put forward its case for central constitutional reform aimed at the recognition of the province as a "fifth region" - including separate treatment in an amending formula, regional appointments to the Supreme Court and a House of the Provinces to replace the Senate, with its members appointed by the provinces.

When compared to the united front of the premiers' conference in August, the diversity among the provincial positions as publicly presented in October is striking. It is clear that the priorities for change vary: the Atlantic provinces, with the qualified exception of Newfoundland's position on resources, are apprehensive about the erosion of the federal government's control of the economy and its ability to redistribute wealth. Ontario and

23. Tabled at the Conference

24. Province of British Columbia, British Columbia's Constitutional Proposals, September 1978

Manitoba would seem to support the status quo in this regard as well, though perhaps for different reasons. It is primarily from Saskatchewan and, especially, Alberta, that the demand for decentralization of power to the provinces comes most explicitly (and implicitly, of course, from Quebec). As for the federal government's priorities, they received support for reform of central institutions from many sources - BC and Ontario were interested in reforming the Senate. Alberta, Saskatchewan, Ontario and BC all wanted a greater provincial role in appointments to the Supreme Court. As for the federal proposals for entrenching language and other rights in the constitution, unqualified support came only from Prince Edward Island, although New Brunswick was especially in favour of the language provisions.

Nonetheless, the prospects for bargaining were there. The Atlantic provinces were likely to agree to Western provinces' demands for greater power over resources if the West agreed to entrench the principle of equalization - to give only the most simple of possible trade-offs. The greatest need for trade-offs, however, was between the provinces and the federal government. Thus, when Prime Minister Trudeau announced his "Agenda for Change" the second day of the Conference, events took an unexpectedly optimistic turn. Trudeau announced a list of seven priority items which indicated, for the first time in years, that his government would seriously consider the settlement of jurisdictional reform with the provinces. The seven items were:

- 1) limitations to the federal spending power
- 2) make explicit constitutional obligations regarding equalization and regional development
- 3) amend the conditions for use of the federal declaratory power
- 4) allow for provinces to levy indirect taxes
- 5) clarify federal and provincial jurisdictions over natural resources and interprovincial and international trade
- 6) unify family law under provincial jurisdiction
- 7) work towards sorting out jurisdictional disputes over communications.

The Prime Minister had selected the list with a view towards meeting at least one of each of the provinces' main concerns, and indeed, the announcement was met with universal approval, even from Premier Lévesque, who was glad to see that "finally something is happening". The federal proposals were, understandably, full of caveats, and some premiers were anxious to place other questions on the "short-list" agenda. This does not detract from the fact that the initiative was the centre-piece of the Conference, and the prod required to set in motion a detailed examination of concrete items for constitutional reform.

From this discussion of the division of powers, as well as preceding and subsequent discussion of other conference agenda items on rights, on the Supreme Court, the Senate, amending formula and patriation, and on the duplication of services, many observers of the conference expected the announcement of a significant amount of consensus in a concluding document. Such was not the case, however. Indeed federal officials produced a draft communiqué which

was designed to reflect the consensus arising from the discussions, but it was rejected by the first ministers in favour of a shorter version. This simply committed the governments to establishing a "Constitutional Committee" of "designated federal and provincial Ministers, including ministers of inter-governmental affairs, Ministers of Justice and Attorneys General" to work in conjunction with their cabinets on specific proposals for reform to be presented to a second first ministers' conference on the constitution on 5 - 6 February 1979.

The obstacles to quick agreement at the October Conference were many and complex. There was suspicion, even refusal of some provincial premiers to allow the federal Liberals to claim overwhelming success going into an election campaign. The premiers of Alberta, British Columbia and Prince Edward Island were themselves expected to face election campaigns in the near future. Agreement seemed close at times on such items as a Charter of Rights, but again, benefits for provinces which did not object too much may not have been clear. Press accounts seemed to dwell on the refusal of the premiers to agree to patriation and to an amending formula which some suggested was the price of Trudeau's concessions on the division of powers, but it cannot have been so simple. In a perceptive editorial in Le Devoir, Michel Roy concluded that Trudeau and his advisors were reading the premiers' qualified responses and approval in principle to mean that a breakthrough was imminent.²⁵ The Premiers, in their wisdom, took the more prudent route - it was back to committee for detailed examination.

Interlude

The Continuing Committee of Ministers on the Constitution set up by the October Conference was left with the task of refining the constitutional agenda and of better defining the substance of the debate made only vaguely clear to the public at the first ministers' conference. Meeting together on three occasions for at least three days at a time in late November, mid-December and the end of January, the committee of senior bureaucrats and ministers made remarkable progress on a list of fourteen items which included the seven issues which Prime Minister Trudeau had proposed. The seven others arose naturally out of the conference discussions - such as, Senate, Supreme Court, Charter of Rights and "The Amending Formula", Patriation and Delegation of legislative authority - or were there at the insistence of one or more provinces - fisheries and off-shore resources.

The Continuing Committee of Ministers on the Constitution is of itself worthy of note. It consists of the Ministers of Intergovernmental Affairs and the Attorneys-General from the federal and provincial governments. A steering committee composed of two federal and two provincial representatives is

25. Le Devoir, 2 November 1978

responsible for its meeting - the federal members are the Attorney-General of Canada and the Minister of State for Federal-Provincial Relations. The provincial members are the chairman of the Premiers Conference (this year Premier Lévesque) and the chairman of the Conference of Provincial Attorneys-General (this year Hon Roy Romanow of Saskatchewan).

The February Conference

Compared with the previous conference, the February meeting of first ministers was much more of a working session. The first day was closed to the media altogether, which tended to allow a franker and more technical discussion of the agenda. On the second day the first ministers decided to lay bare the state of their consensus (or lack of it) and to see if it could not be increased under the public scrutiny. It may be useful here to detail the substance of agreement or disagreement by agenda item, based upon conference proceedings, press analysis and documentary evidence.*

1. Resource Ownership and Interprovincial Trade

The details of a proposed amendment to Section 92 of the BNA Act was discussed by the committee and included in their "List of 'Best Effort' Draft Proposals".²⁶ The proposal would confirm provincial legislative jurisdiction over natural resources, it would allow for concurrent authority to pass laws regulating export, providing that the law did not allow different prices inside and outside the province and that it concerned resource products up to but not including manufactured materials; provincial laws in this latter respect would have paramountcy over federal power for trade and commerce, except where the federal law "is necessary to serve a compelling national interest that is not merely an aggregate of local interests", or where the law is in relation to the regulation of international trade and commerce. Provincial powers of taxation are increased to include indirect taxes over resources, again providing taxes apply equally across the country. Finally, the draft proposals would amend the present section 109 of the BNA Act regarding the proprietary rights of the provinces to resources - with several optional wordings proposed.

Debate on the draft is essentially on three points: the definition of the kinds of natural resources covered, the limits to interprovincial discrimination and the definition of when the federal trade and commerce power prevails. Alberta wants resources now defined as non-renewable and forestry, to include further all lands, water, flora and fauna, while BC and Quebec want the definition to include "all natural resources". It is especially concerned that the clause "compelling national interest" allowing federal over-rule be changed to "dire national emergency" or some such wording which would more precisely define the emergency nature of any federal dominance, and place the onus on Ottawa to demonstrate that a crisis exists; Quebec appears to agree

* This is a personal view of the consensus and does not necessarily reflect any official government position.

26. Federal-Provincial Conference of the First Ministers on the Constitution, Ottawa, 5-6 February 1979, List of "Best Effort" Draft Proposals with joint government input discussed by First Ministers, pp. 1 - 4

with the Albertan position. Ontario, Saskatchewan and the other provinces, as the federal government, would probably accept the proposed draft with some minor changes, including BC's position that the test of "compelling interest" be determined by a reconstituted Senate.

2. Indirect Taxation

There was unanimous agreement not to proceed with this item at the moment. The "Best Effort" Draft assures provincial taxation by indirect means except where it "constitutes a tax on the entry into or export from the province or otherwise has effect as a barrier or impediment on interprovincial or international trade, or (b) is so imposed that the burden of the tax is passed outside the province". The general impression was that the thrust of this grievance was being dealt with under the resource ownership head. There was also concern about the practical ability to limit indirect taxation within each province.

3. Communications

The Committee discussed constitutional changes considering four aspects of communications policy: radio spectrum management, telecommunications carriers, radio and television broadcasting and cable distribution. They made progress only on the fourth item. The federal government is prepared to offer to the provinces a concurrent jurisdiction over cable distribution, with provincial paramountcy "except in relation to Canadian content, Canadian broadcast programs and services, and technical standards" where federal law would prevail.²⁷ Saskatchewan expressed two related concerns: they wanted a tighter definition of federal paramountcy, and questioned any federal role at all in closed circuit television systems. Premier Blakeney insisted that federal paramountcy not include the content of advertising or moral standards - limiting them to regulating the amount of Canadian programming alone. On the second point, the province resisted any federal attempts to extend their jurisdiction to include closed-circuit systems at all, claiming they were "essentially local undertakings". Communications minister Sauvé disagreed. In sum, Saskatchewan was not completely happy with the draft and in any case the Quebec government was holding out for a more comprehensive settlement - one which would virtually transfer the jurisdiction over communications in Quebec to its hands.

4. Senate

There is wide disagreement on this issue, both as to the desirability and the substance of reform. The constitutional committee came up with some proposals, but the debate during the conference was inconclusive, leaving it for "Phase II" of the review process. British Columbia places considerable priority on reforming the upper chamber to increase provincial representation

27. Federal-Provincial First Ministers Conference on the Constitution,
5 - 6 February 1979, Federal Draft Proposals Discussed by First
Ministers

at the centre,²⁸ a position which is in principle supported at least by Ontario and by the federal government, but which met opposition from Alberta and New Brunswick, does not interest Quebec at all, and got scant attention from the premiers of the other provinces. BC may withhold agreement on other items until it gets more satisfaction on this one.

5. Supreme Court

The constitutional Committee's "best effort" draft²⁹ has come close to meeting the requirements of all jurisdictions except Quebec. The proposal would entrench the provisions for the Supreme Court of Canada and other courts in a new section of the constitution. Among its clauses, it would provide for: a nine-member court of eight judges and a Chief Justice, three of whom must have served at the Quebec bar for at least ten years; appointments to the Court must be made in consultation with the Attorney-General of the province from which persons being considered come; and cases involving only questions concerning the civil law of Quebec would be heard by a panel of five judges at least three originally from the Quebec Bar, or of four judges, at least two of whom would be from Quebec; finally the proposal provides for the federal government to consult the provinces on appointments to the superior, district or county courts in the provinces.

The proposal managed to meet the divergent views of Alberta and British Columbia in October, but did not meet Quebec's continued demands for: 1) a separate court of appeal for constitutional cases, of which the majority of judges would be appointed by the provinces, 2) making the Quebec Superior Court the highest court of appeal for civil law cases in the province, and 3) preferring parity of membership between judges from the civil code and the common law provinces.

6. Family Law

In one of the few areas of virtual unanimous agreement, the federal jurisdiction over marriage and divorce will become a concurrent power with provincial paramountcy on most items. The "Best Effort" Draft would repeal section 91(26) and 91(12) of the BNA Act, regarding laws for marriage and divorce. It would add to Section 95 new clauses providing for: provincial power to make laws in relation to divorce except "in relation to the recognition of divorce decrees granted within or outside Canada" (to ensure portability between provinces). Provinces can establish the grounds for divorce and have exclusive authority over maintenance and custody. Furthermore, under a proposed addition to Section 96, the provincially appointed judges would be given jurisdiction to deal with all family law matters including the granting of divorce decrees.

28. British Columbia's Constitutional Proposals, Paper No. 3 Reform of the Canadian Senate, September 1978

29. pp. 6-8

7. Fisheries

This item was only placed on the list after the insistence of Nova Scotia and Newfoundland. Given the refusal of the federal fisheries minister to agree to any form of legislative jurisdiction for the provinces, any consensus was unlikely. Nova Scotia and Newfoundland propose concurrent jurisdiction with federal paramountcy over conservation and with provincial authority to legislate regarding licensing, marketing and processing. British Columbia called for provincial jurisdiction over aquaculture and all fresh water fish excepting salmon. Quebec also advocated provincial legislative jurisdiction over "inland waters" and for concurrent control of sea-coast fisheries. The federal government came as far as proposing exclusive jurisdiction over inland fisheries, and formal administrative consultation through the establishment of regional councils of fishery ministers for the tidal fishery, but this did not satisfy Premier Moores or Premier Buchanan.

8. Off-shore Resources

The federal government's proposed draft called for "concurrent legislative authority for Parliament and the legislatures of coastal provinces concerning the management of the off-shore resources ... without prejudice to the ownership of the resources in question". Federal paramountcy would prevail in areas such as international trade and environmental control, while provincial paramountcy would concern on-shore development. The federal government would claim paramountcy over the pace of development, although it is unclear as to when this would apply. Joint administrative arrangements would be made to cover all the above areas.

There was little discussion of this proposal in public. The ownership question was still under review, as were the details of administrative control.

9. Equalization and Regional Development

There was almost unanimous agreement on the "Best Effort" draft, which would add a new section to the constitution committing the Parliament of Canada and the provincial legislatures, and their respective governments to:

- a) promoting equal opportunities for the well-being of Canadians
- b) furthering economic development to reduce disparity in opportunities for social and economic well-being; and
- c) providing essential services of reasonable quality to all Canadians.

The section would also commit the federal government to making equalization payments or equivalent arrangements to provinces unable to provide essential services as committed in part (c). Finally the draft proposed a first ministers conference every five years to review equalization and regional development.

British Columbia alone has reserved its decision on this question; it opposes entrenching the subject of equalization in the Constitution.

10. Charter of Rights

The federal government is running into significant barriers in getting any kind of universal agreement on the simultaneous entrenchment of a Charter of Rights in the constitution. The issue can be divided between positions on "fundamental freedoms and democratic rights," "language rights" and other rights.

The basic rights of "fundamental freedoms and democratic rights" as described in a federal Draft Charter of January 1979 includes freedom of: conscience, religion, thought, opinion expression, of the press and of assembly and association. Democratic rights include elections of universal suffrage, annual sessions and so on. During the conference the governments of Quebec, Saskatchewan and Nova Scotia all expressed reservations about the value of leaving individual rights to the interpretation of the courts, but would go along with any consensus on entrenchment. The federal government and all other provinces excepting Manitoba are in favour of entrenchment.

In the category of "other rights", are so-called "legal rights, non-discrimination rights, mobility rights and property rights." The federal government has found few, if any, allies in its hopes of entrenching such categories.

As for language rights, the federal proposal essentially follows those of the June 1978 bill, including the right to use French and English in the debates of the federal Parliament and all provincial legislatures, in the courts, and in communications with the governments on the basis of necessity and practicality, and of education where determined by a provincial legislature that the numbers warrant. It would appear that, besides Ottawa, the provincial governments of New Brunswick, Prince Edward Island, Saskatchewan and Newfoundland find no disagreement with the proposals. Alberta, Manitoba, Quebec and Nova Scotia are opposed. Ontario and British Columbia are still considering.

In sum, the general impression at the conference was that the federal government could be expected to act alone in drafting a Charter of Rights for which it would entrench its jurisdiction, continuing to encourage the provinces to "opt in" when and as they wished.

11. Spending Power

The "Best Effort" draft provides for an amendment to Section 91 of the BNA Act in order to limit the authority of the Parliament of Canada to spend money. Of the various alternatives presented in the draft, these limits would be either in relation to laws outside the exclusive jurisdiction of the federal parliament (including concurrent jurisdiction) or in relation to any jurisdiction.³⁰ The draft would submit spending which concerns payments or benefits

30. See alternatives (2)A and (2)B, Best Effort Draft, p.12

"conditional on expenditures by the provinces or the foregoing of revenue by them", to the agreement of a majority of provinces "that have, according to the latest general census, at least 50% of the population of Canada".³¹ For provinces which do not accept such spending in their territory, the federal law must provide for alternative payments to that province (alternative (4)B) or to individual residents of that province (alternative (4)A). Finally, the draft proposal provides for mandatory consultation with the provinces involved, with a suitable period for consideration of up to ninety days.

It appears that all provinces agree to the basics of one version of the draft, Quebec to another. Premier Lévesque disagreed with the form of compensation to provinces not taking part in a general federal spending programme - objecting to the payments to individuals rather than the provincial government. The Quebec government further objected to the provisions of section (3) of the draft limiting federal action to the agreement of provinces making up 50% of the population - instead it wants a formula which requires the consent of at least seven provinces comprising at least 80% of the population (which would effectively give Quebec a veto). It further supported the limiting of federal spending in any case to areas of exclusive or concurrent federal legislative jurisdiction. The federal government and the other provinces presumably agree to the 50% formula and oppose limiting the federal spending to its areas of jurisdiction. It was recognized that approval by a reformed Upper House could be another alternate formula. As for compensating provinces which opt out, there still seemed to be disagreement as to what form (to provincial governments or to individuals) this should take.

12. Declaratory power

The "Best Effort" Draft of amendments to section 92 (10)C of the BNA Act and for new sub-sections to section 92 would limit the federal power to declare provincial works "to be for the general advantage of Canada or ... of two or more of the provinces". The draft provides for consultation by the federal government with the provincial government(s) concerned. Barring such agreement, the question would be submitted to a first ministers' conference after which the federal government could proceed for a period of only five years. In any case, agreement of the province concerned would be mandatory if the work was for "the primary production of any non-renewable or forestry resource or for the general of electrical energy". British Columbia maintained that such a question would be a proper subject for ratification of a proposed "House of the Provinces" while Manitoba and Nova Scotia preferred retention of the existing declaratory power.

13. Amending Formula and Patriation

Since November, 1978, the Quebec government has refused to discuss these two topics, at least until the full range of their constitutional demands have been addressed. The other nine provinces and Ottawa, however, may be close

31. Subsection (3) p. 13

to a new consensus.³² Certain subjects, such as ownership of natural resources, and items of language and culture, would require unanimous consent of the federal government and all provinces to amend. The rest of the subjects would follow a mathematical formula, similar, but not necessarily identical, to the "Victoria Charter" proposal.

As the main opponent of the Victoria formula for all amendments, the government of Alberta tabled the details of its proposal.³³ Under the general amending formula, Alberta agreed to amendments made on the consent of two-thirds of the provinces, representing the majority of the population. However, this would be supplemented by a provision that: "if the enactment is one taking away a) the powers of the legislature of a province to make laws, b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province, c) the assets or property of a province, or d) the natural resources of a province" for any province not agreeing to that enactment, it would have no force. Alberta continues to reject any general formulas which treat regions rather than provinces as equals, and, despite the claim that its proposals do not constitute a veto, they do ensure that existing provincial power will not be undiminished without its consent. The extent to which provinces or the federal government agree to the Alberta demands is unclear.

As for patriation - the topic of a rigorous public debate in February - Ontario, New Brunswick, Prince Edward Island and the federal government were in favour of immediate patriation of the BNA Act.³⁴ Premier Lévesque of Quebec reiterated his prior refusal - and was given support from Premier Blakeney of Saskatchewan, who stated that agreement to patriate could not come prior to agreement on the rest of the constitutional "package".

Finally, while not discussed in the open sessions, the continuing committee apparently came up with a draft concerning the delegation of legislative authority.³⁵

14. Monarchy

"It was agreed that existing provisions and instruments should continue unaltered". This status quo includes the BNA Act, plus the "Letters of Patent" of 1947.

32. Lise Bissonnette, Le Devoir, 12 février 1979

33. Alberta Proposal, Amending Formula for the Canadian Constitution presented by the Premier, Peter Lougheed, Ottawa, 5-6 February 1979

34. See Ontario's paper "Statement on Patriation" - Premier William Davis, Federal-Provincial Conference of First Ministers on the Constitution, February 1979

35. See Outstanding Issues Among Agenda Items, February 1979

Conclusions

The First Ministers, then, decided unanimously on only two items on the agenda - family law and the monarchy. Agreement was close on some items - limits to the declaratory power, on concurrent jurisdiction over off-shore resources, and on cable television. Progress on other items awaits Phase II - fisheries, the Senate, amending formula and items under the communications category. For still other issues, the opposition of a single government is the major obstacle: Alberta for resources, British Columbia for equalization, Quebec for communications, the supreme court, an amending formula and the spending power.

The results of the conference demonstrate considerable progress, but the following should be noted. There are some very significant hold-outs to agreement on many issues, and in any case, the "hidden agenda" of Quebec's demands - to be defined in part during the coming referendum debate - has yet to be addressed. The apparent willingness of the federal Liberal government to compromise has been heartening to many, but must be tempered by the release of its "second list",³⁶ and by the centralist tones of the election campaign in the spring. In the final analysis, the conference did not produce what many federalists hoped: a reform package to present to the Quebec electorate as a demonstration of the flexibility of federalism. This may not be entirely the fault of the political leaders, although political will is, of course, the principal ingredient of such a constitutional compromise. The February discussions demonstrated once again the difficulties of reaching agreement under present procedures. There are no clear rules for reaching decisions, besides the ever difficult unanimity rule, and there is difficulty in moving beyond the temporary agreement stage in order to settle agenda items one by one. The first ministers are not likely to make another try until after the Quebec referendum. The Continuing Committee of Ministers met in October 1979 and was

36. The second list, tabled at the conference, consists of:

1. Powers in the Economic Field to Fight Inflation, Unemployment and Regional Disparities, and to Protect the Dollar
2. The Question of Non-Tariff Barriers to Interprovincial and International Trade and Investment
3. The Question of Interprovincial and International Movement of Goods and Services Including the Right of Passage of Electricity and Oil, Gas and Other Minerals
4. The Question of Barriers to the Movement of Persons for Employment
5. The Regulation of Competition
6. Regulation of the Canadian Securities Market
7. The Question of Marketing Boards
8. The Problem of Jurisdiction over Minimum Wages
9. Foreign Relations and the Role of Provinces
10. The Question of the Appointment of Superior Court Judges, and of the Setting Up of Federal Courts for the Administration of Federal Laws
11. Canada's Native Peoples and the Constitution

to report to a First Ministers' Conference scheduled for December. The defeat of the federal government has, however, further delayed the progress of the constitutional review.

(4) Other Actors: Report of the Task Force on Canadian Unity

Outside of official government positions at the constitutional conferences and elsewhere, the most important constitutional initiative came in early 1979 with the tabling in the House of Commons of the Report of the Task Force on Canadian Unity. Appointed by Prime Minister Trudeau in July 1977, with Jean-Luc Pepin, former Liberal cabinet minister, and John Robarts, former Conservative premier of Ontario as co-Chairmen, the Task Force was given a broad mandate to "enquire into questions relating to Canadian unity," in particular to meet with the general public and to work with citizen groups on unity matters. After some trouble in establishing its credibility, the Task Force gradually defined its role in more substantial terms: "to assemble concepts and policies which could constitute some of the elements of a third option for Canada," and began to keep some distance from the Trudeau government. Through a series of well-publicized hearings across the country, the Task Force was the brunt of a barrage of diverse and discontented opinion on the unity question. Its work for most of 1978 was, however, closed to public view, as the commissioners sought expert advice and debated their options, and as the constitutional spotlight shone on the federal government's Bill C-60.

By December 1978, as the task force's extended mandate was running out, it had become clear that the members had no intention of supporting the Trudeau government's policies. The results of the eighteen-month study were eagerly awaited but the commissioners were nonetheless caught in the squeeze of events: the constitutional review process by federal-provincial conference was under way, with a First Ministers' Conference scheduled for February, and a general federal election expected to be called soon afterwards. Therefore, in early January, the Task Force members decided to release their recommendations in time for the last of the ministerial meetings leading up to the February conference on the Constitution. By releasing the third volume A Future Together: Observations and Recommendations, first, on 25 January, the Task Force departed from its original intention of building up to its recommendations with the release of its two allied volumes: A Time to Speak, the Views of the Public, and Coming to Terms, the words of the Debate. Consequently the latter two companion pieces were all but forgotten in the attention showered on A Future Together.

A Time to Speak, the largest (310pp) report, constitutes an evocative sampling of the public's views as presented during the hearings. It is a good illustration of the competing visions of the country, the hostilities and ignorance that must be overcome. In short, it demonstrated the significant barriers to unity, as expressed in the language of concerned individuals and lobby groups across the country.

Coming to Terms, a combined glossary and political science primer, is an attempt to clarify the vocabulary of the constitutional debate. Although many of the definitions take on the colourations of the analysis and observations published in the final report, this volume has educative value in clarifying many muddled areas.

It is A Future Together that has had the greatest impact and will have the most significance for the constitutional debate. It provided in a relatively short format (118 pp) a lucid and compact analysis of the present crisis in Confederation and of the roots of intergovernmental conflict. From its analysis it extracted principles by which it simplified and organized the problem, and it presented detailed recommendations for the revision of the constitution and of political life in general, based largely on these principles.

Summary of the Task Force findings and recommendations:

Analysis of the problem - (Chapters 1-3)

The Task Force saw Canada as going through a "crisis of existence", a crisis which came to a head in, but was not originated by, the Parti Québécois victory of 15 November 1976. Quebec's position as the "pillar of the French fact in all of North America" has strained our federal system which, in the Task Force's view, has not accommodated itself to this reality. The crisis is compounded by a widespread disenchantment with the central government and a certain backlash to its language policies in English-speaking Canada, combined with the growing strength of the nine provinces outside Quebec and the regional loyalties that have formed themselves, "primarily within the framework of the provinces". The two central cleavages in Canadian society are thus "dualism and regionalism". Both need to be more fully reflected in Canadian political institutions.

The basis for restoring unity (Chapter 4)

The two features of duality and regionalism must be embraced as a source of strength, not discouraged as a source of our problems. A third guiding principle would be the equitable "sharing" of powers, burdens and benefits of the state. These three principles are put forward as the principal criteria for the recommendations put forward in Chapters 5-8.

Respecting diversity (Chapter 5)

While generally in support of the principles of institutional bilingualism, the Pepin-Robarts report departs from the Trudeau government's language policies to leave to each of the provinces the prime responsibility for minority language rights in their jurisdiction.

It recommends that

- the central government entrench in the constitution the equal status of French and English as official languages for the purposes of the federal Parliament, civil service and central agencies and courts.
- Provinces are to provide for minority language rights in their jurisdiction, to be entrenched in the constitution only if all provinces agree.
- And the provinces are otherwise encouraged to provide minority education along the lines of a premiers' agreement of February 1978, to provide education in the language of the minority "wherever numbers warrant".

(Culture)

- As for culture, the provinces are to assume primary responsibilities for cultural activities including "multiculturalism".
- The central government is to assume primary responsibility for the promotion of native (Indian, Inuit, Métis) language and culture, the provinces are to work with central government agreements to provide essential services and to arrive at a permanent constitutional status for the "First Canadians".

Unity and the health of the Economy (Chapter 6)

The Pepin-Robarts Report departs from its generally "decentralist" thrust in this chapter to recommend a strengthening of the economic integration which they consider to be the greatest benefit of a federal union. They wish, however, to be equitable in distributing the social and political costs of integration. It recommends

- the removal or lessening of present interprovincial barriers to the mobility of labour, goods and capital - such as marketing boards, purchasing policies, non-uniform standards.
- There should be greater coordination of fiscal policy between the two levels of government.
- And it advocates the entrenchment of the principles of equalization in the constitution, and development of a two-tiered equalization formula:- one, a central government program along lines of present payments, excepting resource revenues, the other, an interprovincial transfer which would include only resource revenues.

A Restructured federalism (Chapter 7)

This chapter presents a more detailed discussion of suggested revisions to the constitution - with the objectives of restoring the ability and legitimacy of central institutions, to respond to demands for greater provincial

autonomy and provincial influence on central policy and to provide Quebecers with a federalist response to their desire to maintain their distinctive cultural and social identity. Specific recommendations include provision for equality of status between central and provincial orders of government, and a clarified distribution of powers. The Task Force would leave to the central government primary responsibility for strengthening Canadian identity, for national defence, foreign affairs, and management of "Canada-wide economic policy" including stimulation of regional economies and the redistribution of income. To provinces should go the responsibility for the "social and cultural well-being and development of their communities", "provincial economic development including natural resource exploitation", and property and civil rights. Quebec is to be given a special role for preserving and strengthening its "cultural domain" - but other provinces could exercise the same powers if they chose. Thus the Report is prepared to accept a de facto special status for the province.

Other guidelines for devising a list of powers include the stress on as many exclusive jurisdictions as possible, to avoid overlapping; the residual power should be given to the provinces; the federal emergency power, declaratory power and spending power are to be limited; the federal power of allowance and reservation to be abolished; equal access of both levels of government to all forms of taxation is to be assured. Unfortunately, the Report did not spell out its proposed division of powers in detail.

A Council of the Federation is to replace the Senate as the upper chamber of the Central Parliament. Sixty members appointed as provincial delegates and acting under provincial government instruction would have a suspensive veto over legislation and treaties affecting areas of concurrent jurisdiction with the provinces, federal exercise of the spending power in provincial jurisdiction, authorization of the use of federal emergency powers, ratification of appointments to the Supreme Court and certain central regulatory agencies, and the general scrutiny and review of matters of federal-provincial relations.

A Supreme Court is to be entrenched in the constitution: eleven judges, five of whom would be chosen from among civil law judges and lawyers, with provincial consultation and Council of Federation approval before appointment. It would remain as a general-appellate court over both constitutional and other matters of law - but subdivided into separate benches of provincial and federal jurisdiction - the former with both civil law and common law benches.

A Formula for amending the constitution in areas pertaining to both levels of government which would require 1) passage by the Central Parliament, including the Council of Federation, and 2) ratification by a Canada-wide referendum requiring majority approval in each of four regions: Atlantic, Quebec, Ontario and the Western provinces and territories.

Reform to the electoral system by increasing the members of the House of Commons by sixty, to be selected by proportional representation, and the entrenchment in the constitution of a basic set of rights, including the "usual political, legal, economic and egalitarian rights", to which both the central government and all the provinces would agree.

Finally, the Task Force commissioners addressed themselves to the process of constitutional reform. While not deliberating one way or the other on the legal validity of Quebec's right to secede, they did give the rhetorical question an answer: "If, in the course of the next few years, Quebecers decided, definitely and democratically, to secede, ought that decision to be respected and accepted by the rest of Canada? To that question we answer an unequivocal yes". As for constitutional reform the Task Force warned that piecemeal action of a limited number of matters "unrelated to Canadian duality and regionalism", would not do. The Task Force did not propose any new mechanisms to replace the federal-provincial conference as the primary instrument of constitutional reform.

Reactions to the Report

The reception of the Task Force recommendations was paradoxical. It was favourably received on "both sides of the language divide"³⁷ - praised for its eloquence, its analysis and the breadth and courage of its advocacy for reform. Nonetheless, almost a year after its release, the report is still essentially a political orphan, with no genuine endorsement from any political party.

The initial reaction in the press and from almost all political leaders was of praise for the general analysis and agreement with the urgency of reform.

Prime Minister Trudeau in tabling the Report in the House of Commons said the government "accepts the broad lines of the Task Force's analysis of the problem and endorses the basic principles which it believes should underlie the renewal of the Canadian federation". Opposition leader Clark and NDP leader Broadbent were more fullsome in their praise, Clark in particular claiming that "the report confirms the view that for some time now the constitutional policy of the central government has been dramatically out of step with the reality in this country".

Most provincial premiers, with the exception of New Brunswick's Richard Hatfield, welcomed the report's emphasis on strengthening the provincial role as regional governments. And while Quebec Premier René Lévesque at first said he thought the "semi-special status" the Pepin-Robarts report would grant Quebec would only lead to demands for more - his later statements also praised the report's analysis and its general thrust for reform. Quebec Liberal leader Claude Ryan welcomed the report as evidence of a third way between "l'immobilisme ou de la rupture" but denounced the report's recommendations to leave minority language rights to the decision of individual provinces.

It was on this latter point that the task force report received its most virulent opposition. Premier Hatfield said the whole report was "a mistake" because of its language recommendations - and group of MPs, the Fédération des francophones hors du Québec, and other groups both within the anglophone

37. See Alan Cairns' analysis of constitutional proposals in a forthcoming issue of Canadian Public Policy.

community in Quebec and the francophone community outside were angered and despairing of the task force's conclusions. As for the federal Liberal party, it was quick to distance themselves from specifics such as the language recommendations and, in any case, continued to be tied to the government's official proposals as detailed by Bill C-60 and by the constitutional conferences.

The Progressive Conservative party was not as closely wed to any specifics of reform - and may have been expected to embrace the report as a credible version of the "third option". However, the closeness of the task force provisions to "deux nations" and special status were probably enough to keep the Conservatives at arm's length, given their difficulties in 1968. In retrospect it seems that the Conservative tactic in 1979 of not presenting a detailed constitutional position seemed to work for their electoral purposes.

Conclusions:

Thus, in sum the task force had little initial impact on the constitutional debate. The commissioners were unrealistic if indeed they did expect the federal-provincial process to take up its proposals into their mill - at least in the short run. Nonetheless the report may yet play an influential role. Its analysis of the situation, unlike that of the Report of the Royal Commission on Bilingualism and Biculturalism fifteen years before, is almost universally accepted. The analysis has some controversial aspects. As Alan Cairns has commented, the report "declares a winner in the intense intergovernmental struggle between Quebec and Ottawa which has gone on for a decade and a half over the locus of a homeland for the Francophone community". By siding with the Quebec position and not the Trudeau Liberals' position, however, the Task Force may yet be seen as symptomatic if not catalytic of a critical turning point in Canadian federalism.

In its varied and at times contradictory recommendations the task force tips the present balance more towards the provinces - especially the government of Quebec. It has studiously avoided special status, but as Léon Dion pointed out, the central dilemma of whether a federal balance between the centre and the provinces is to be on an equitable or on an asymmetrical basis still remains.³⁸ The task force gave an indication of the general principles for decentralizing power to the provinces although one might question the point of granting to the provinces (including Quebec) the "responsibility for the social and cultural well-being and development of their communities" while at the same time advocating the destruction of present barriers to economic integration, through strengthening central control over the economy. These points aside, the task force provided a unique service. It has brought into the constitutional debate some practical and imaginative innovations: the endorsement of a measure of proportional representation in the House of Commons, the proposal for an interprovincial transfer of resource revenues, its proposals for the Council of Federation - all would seem to be ideas whose time has almost come. And the

38. Le Devoir, 7 fevrier, 1979

task force has served to drive home some hard facts: that there is little support for a bilingual and bicultural Canada - that Quebec City and not Ottawa is the central government for francophones, and that regionalism and provincial power present real limits to a pan-Canadian society and economy.

Some have argued recently that the Pepin-Robarts report would sacrifice the larger vision to a constitution warped by the demands of Quebec nationalism and east and west regionalism. And perhaps a more positive leadership is required for a federalist campaign or for a renewed federation.

One thing seems certain, however: any leadership will not succeed if it ignores the basic social and psychological undercurrents that the Task Force has so ably laid bare.

Ontario Advisory Committee on Confederation

The Ontario government's advisory committee released its Second Report in March 1979, entitled "The Federal-Provincial Distribution of Powers". The committee's First Report, released in April 1978 met with considerable interest, and controversy. It was one of the first such sets of reform proposals put forward and centred on its recommendation to replace the Senate with a House of the Provinces. The Second Report was overshadowed by the attention paid to the Pepin-Robarts report, and it went largely unnoticed in the press. However, as the committee chairman, Ian MacDonald, mentions in the preface to the report, the members of his committee were "pleased to note the similarity of analysis of the current situation in Canada in the two reports as well as the general compatibility of recommendations". Such a statement perhaps begs a careful comparison, which may be unfair to the Ontario committee which did not have the time and resources of the Task Force. The Ontario report has none of the Task Force report's eloquence - but it does share its concern for maintenance of the central government's ability to control the national economy - while at the same time endorsing greater provincial autonomy over social and cultural policy. It also declines explicitly to endorse a "special status" for Quebec, while trying to build in enough flexibility to permit a variety of relationships between Ottawa and the provinces. What perhaps marks the Ontario report apart from others is the frequency with which it consigns difficult policy areas to the category of concurrent jurisdiction. The report continues to stress the importance of improved mechanisms for intergovernmental cooperation, but one may wonder whether this would go very far in meeting at least one of the committees stated goals for constitutional revision; "reducing the present overlapping and duplication in federal and provincial responsibilities".

The following is a summary of their most important recommendations: In order to protect the national market, the federal government should have primacy (with provincial consultation) over interprovincial transportation and communications and over interprovincial and international trade. The federal government would have exclusive jurisdiction over such things as currency, competition policy, and the capital market (except for securities), and there would

be an entrenched provision to ensure the free movement of goods, persons, capital and information from province to province. The federal power could spend on social programs, but the provinces would have to agree, could opt out, and in any case would have paramountcy over social programs. The equalization principle would be enshrined in the constitution.

Provincial economic powers would include jurisdiction over intra-provincial transportation and trade, land use and regulation, and ownership and management of natural resources, including off-shore. Provinces would have concurrent jurisdiction but with federal paramountcy over: fisheries, consumer protection, and "external and defence" aspects of atomic energy; concurrent but paramount provincial jurisdiction over: water resources, manpower, research and development, environment and agriculture.

CHAPTER IV

THE ECONOMY AND FISCAL FEDERALISM

Introduction

Fiscal and economic management in 1978-1979 might be best characterized as "weathering the storm". This was a time when almost all economic analysts and policy-makers predicted a turn for the worse, and debated the best means of responding to it. Real growth had been expected to decline dramatically in response to a recession in the United States. In fact it did - to somewhere between 2.5 to 3 per cent, but a technical recession had not yet come about by the end of 1979, and was probably only delayed until 1980. Other economic indicators, such as the inflation rate of around 9%, led Canadians to expect to follow the United States into the recession rather than attempt to avoid it.

It has not all been bad news. The unemployment rate dropped from near 8½% to 7½%, and Canada's competitive position vis à vis its trading partners has continued to improve as the Canadian dollar remained between 75 and 87 cents of the US dollar. The overall trade balance, however, did not improve. In fact, on current account it deteriorated to a deficit of over \$6 billion.

Among the most worrisome trends in 1978-79 had been the acceleration of interest rates. The central bank's rate increased, in response to successive increases in the United States - from 9% in September 1978 to a record 14% by September 1979. This essentially external factor had an immediate effect on Canadian fiscal policy. Of longer-term effect will be other international developments in 1979 - the conclusion of the Tokyo Round of negotiations to amend the General Agreement on Trade and Tariffs and the escalation of international oil prices.

Trade liberalization will affect a broad range of Canadian industries over the next five years and more. Trade in agricultural produce, non-ferrous metals, forest products, fish and aerospace manufactures will improve as a result of the new tariff and non-tariff rules, but Canadians were disappointed with the results for electronics, petrochemicals and certain mineral products, and will have to continue to exempt many of its "softer" sectors, such as textiles, from the general trade provisions. Assisting industry to make the necessary adjustments to such structural changes in the world economy continues to be a challenge for federal and provincial governments.

Another daunting challenge comes with the rise in the international costs of energy. Shielding Canadians from the impact of the much higher world prices has become a substantial fiscal burden on the federal government and has contributed to the escalation of tension between producing and consuming provinces in the federation.

Thus the Canadian governments have been faced with a sluggish economy threatening to dip into recession, inflation rates that refuse to decline and significant structural problems in the economy which are only beginning to be tackled. Weathering the storm in 1979 has not been made any easier by the political winds of change. Economic questions such as fighting inflation and unemployment, energy costs and industrial strategy formed the basis of each of the seven provincial election campaigns as well as the federal contest. The following review focusses on the intergovernmental aspects of fiscal and economic policy but must be tempered by the prevailing partisan and ideological debate that has become more salient in this election year.

The organisation of the year's review of fiscal and economic federalism reflects the growing shift of policy concerns away from purely fiscal transfers and coordination to the broader issues of economic development and energy. The sections that follow are: 1) Fiscal Management: a) Federal government fiscal policy, b) provincial budgets, c) Federal-Provincial arrangements; 2) Economic Development: a) First Ministers Conference on the Economy, b) Federal Government Initiatives, c) Federal-Provincial arrangements; and 3) Energy Pricing and Policy.

(1) Fiscal Management

A. Federal Government Fiscal Policy

Sept - May: The fiscal policy of the federal government under the Liberal administration continued to be shaped by two sets of policy initiatives. The August 1978 restraint measures which were refined and revised in conjunction with parliamentary and federal-provincial debate, represented an important policy shift in Ottawa; and the November 1978 budget, which proved to be the only budget delivered during the year in review, reinforced the Liberals' gradualist fiscal and monetary stance.

The restraint program, a total of \$2.5 billion in reduced expenditures by the federal treasury¹ had wide implications for federal-provincial relations, both in the actual reduction of federal contributions to payments to the provinces or joint funding programs, and in the regional incidence of the cutbacks, drawing fire from provincial spokesmen. Among joint programs cancelled or with reduced spending were: reductions of the water management programs of Environment Canada, the termination of the Agricultural Rehabilitation and Development Agency in Ontario, termination of support for the Land Registration and Information Services of the Council of Maritime Premiers, reduction of grants in the Bilingualism Development Program, termination of a road safety program, termination of various Urban Affairs programs, and amendments to the Fiscal Arrangements Act and Public Utilities Income Tax Transfer Act (for latter two see below "Federal-Provincial Fiscal Arrangements"). Cutbacks in programs

1. For more details see Federal Year in Review 1978-79, pp. 25-27

having a specific regional impact include the mothballing of the LaPrade nuclear power facility in Quebec and the reduction in prairie rail branch line rehabilitation, along with proposed changes to the unemployment insurance act.

Provincial and opposition spokesmen alike were successful in convincing the government to relax certain provisions of the unemployment insurance amendments to reflect regional differences. This followed federal-provincial conferences of ministers responsible, and the appearance of the Ontario, New Brunswick and Newfoundland governments before the manpower committee of the House of Commons.² The Federal Minister of Employment and Immigration also consented to establish a federal-provincial working group to assess the impact of the UI changes on provincial welfare costs - costs which in November 1978, according to one estimate, would add \$85 million to provincial expenditures in 1979.³

The restraint measures were nonetheless an inevitable topic at the First Ministers' Conference on the Economy where the eastern premiers in particular complained of the negative impact of the measures on the already depressed economies of Quebec and the Atlantic Provinces. Such sentiments were echoed in provincial budget speeches in the spring of 1979.⁴ The federal government, for its part, could draw upon the consensus of the previous conference of February 1978 which called on all levels of government to exercise spending restraints - and indeed the tacit approval of most of the other provincial governments underlay a general acceptance of the need, if not the means, of the federal cuts.

If the expenditure cuts were meant to curb inflationary pressures and to provide room for private spending expansion, they were only partly successful. Prices continued to rise much faster than Finance Minister Chrétien had predicted and the growth rate of the GNP was significantly lower. Thus the way was paved for another budget in the fall of 1978 amid calls for further stimulation of consumer spending from the opposition parties and from the Economic Council of Canada.⁵ Chrétien chose a middle path between the advice for stimulation and the calls for further reduction of the deficit (or at least a reduction in its growth). Presenting only a "mildly stimulative" budget

2. Globe and Mail, 12 October 1978; 1 December 1978

3. Saskatchewan government News Release, 1 December 1978

4. For the details of provincial grievances see: Gouvernement du Québec "Notes of the Minister of Finance", First Ministers Conference on the Economy, 27 November 1978; and supplementary material; Government of Canada, "Notes by Finance Minister Jean Chrétien on Federal Fiscal Contributions to Quebec ...", "Opening Statement by the Hon Frank Moores, Premier of Newfoundland", 27 November 1978; Province of New Brunswick, Budget 1979-80 pp. 7-13, and Gouvernement du Québec, Budget 1979-80, Discours sur le budget, pp. 7-11

5. See Economic Council of Canada, Fifteenth Annual Review 1978: A Time for Reason, Ottawa, 1978, pp. 129-138

on 16 November, the government's most important initiative was a reduction of 3 percentage points in the federal manufacturer's sales tax (to compensate in part for the end of sales tax reduction arrangements with the provinces). Other measures involved the reduction of unemployment insurance premiums and an increase in the automatic employment expense deductions in wage and salary income. Steps to promote industrial growth involved an increase in the investment tax credit - from 5% to 7%, and from 10% to 20% for investment in the Atlantic Provinces and the Gaspé region of Quebec. Also there were further enticements for mineral exploration and development and a new tax credit for research and development carried out by small Canadian-owned firms.

The November budget clearly demonstrated the difficulties of achieving any rapid success in reducing the deficit. Federal revenue growth was estimated to be 7.2% for 1978-79, down from the April forecast, and expenditures were to rise at 10.3% for a deficit for 1978-79 forecasted to be \$12.1 billion, up almost \$11 billion from the initial estimate. The real benefits would only show up in 1979-80, when the federal government forecasts financial requirements of \$10,750 million.

The New Government

The expenditure cuts and the November budget, together with allied measures such as the Public Service Staff Relations Act, and Bill C-27 to amend the Federal-Provincial Arrangement Act (1977) were the last major fiscal decisions of the Liberal government before the general election. Economic events since then and fiscal announcements of the new Conservative government demonstrated that the fiscal regime is not likely to change very much with the change in political leadership. Economic conditions, if anything, somewhat worsened since the spring of 1979 and the room for maneuver by the new finance minister John Crosbie was not appreciably greater than for his predecessor.

During the election campaign the Conservatives criticized the Liberal government for following the sharp and steady rises in interest rates in the United States, and advocated a "stimulative deficit" and wide-ranging tax cuts to free the economy for the private sector and boost growth to over 5%. However their most popular promise was to provide homeowners with income tax deductions for mortgage interest and property tax payments. Combined with these generally stimulative measures advocated by the Tories was another side of the Conservative fiscal coin - calls for even greater restraint on public expenditures than the Liberals had managed, a decreased role for public enterprise and a tightening of social programs and services.

The Conservatives did not offer the definitive version of their fiscal policy until the budget address of December. (Not released at point of writing). However policy statements throughout the summer months gave some indications of the nature of the new regime.

In July 1979 Finance Minister Crosbie and Treasury Board President Sinclair Stevens released a "Briefing on Federal Expenditures". As part of a broad reappraisal of spending policy inspired by the Lambert Royal Commission on Financial Management and Accountability, the government announced that it was in the process of setting five-year plans for expenditures, and indicated that federal spending would, if unchecked, increase by 46% by 1982-83.

Shortly afterwards, Crosbie released a statement "On the Fiscal and Economic Situation". Reviewing the fiscal year 1978-79, he announced that the budgetary deficit was \$382 million lower than forecast, because of higher revenue growth than expected. "If we are able to contain spending to the \$52.6 billion level, the budgetary deficit for 1979-80 is now expected to be \$11,300 million, \$1,650 million less than the \$12,950 million forecast in the (November) budget"

Crosbie's forecast of revenues was based on an estimated growth in the economy of 3% GNP in 1979 (compared with 4 - 4.5% estimated in the budget). Inflation was predicted to be 9% rise in Consumer Price Index, and an unemployment rate of 8%. The Finance Minister received widespread praise for the "realistic" appraisal, which was considered by many as lacking in previous Finance estimates.

On 17 September 1979 Crosbie announced the details of a federal personal income tax credit for residential mortgage interest payments and homeowners property taxes. To take effect over four years, the tax credit would provide for a flat payment of \$250 per year for property tax, and up to \$1,250 for mortgage interest over four years. (A homeowner would be eligible for up to \$375 in 1979, with similar amounts in the next three years).

Finally, since September the Conservatives have matched each increase in the United States central bank interest rates - to the historically high rate of 14%.

The Conservatives had not yet detailed all of their fiscal plans - nonetheless, it is clear from what is already announced that they hope to implement a greater measure of expenditure restraint than their predecessors - but, apart from the mortgage interest tax credit, few tax breaks can be expected from this. Together with the impact of the higher interest rates, significant stimulus from Crosbie's first budget will not, according to the Conservative parameters, be very likely nor perhaps very desirable.

B. Provincial Budgets

Summary:

Finance Ministers in Canada in 1979 were caught between the Scylla of restraint which would slow down an already sluggish economy and the Charybdis of economic stimulation which would increase already massive deficits.

Navigating these dangerous waters was made all the more difficult with seven provincial elections and a federal one, which delayed the delivery of many of the budget addresses.

While a comparison of the budgets illustrates some general trends, it also reflects some profound differences. Not only are there different solutions to problems, there are different problems and different perceptions of problems.

While all provinces mentioned restraint as a goal, not all provinces seemed able to achieve it and as one review has it, if "restraint was somewhat less obvious this year than last, it is only because the slack had been removed in the first year".⁶ Provinces condemned the federal government for recent reductions in transfers which created an extra burden for the provinces, but many treasurers continued to be critical of the growing federal deficit.

Varying approaches to fiscal policy dove-tailed with varying regional economies to produce a mixed bag of budgetary responses. British Columbia and Manitoba defined the major fiscal problem as too much government activity in the economy. Consequently both budgets were designed to decrease government output as a percentage of GPP and encourage private enterprise.

Alberta, Quebec and Ontario all attempted to stimulate their economies, although in different ways. In Alberta the government promised a major capital works expansion to counter a slight levelling in a booming economy. Quebec provided a stimulus by putting money in the hands of consumers.

Saskatchewan and New Brunswick appeared to desire restraint but were unable to achieve it. Saskatchewan's position was more favourable though, as resource revenues were available to meet increased costs. New Brunswick with a weaker economy had to increase taxes so as not to fall further behind.

Nova Scotia's principal concern was the unwieldy deficit of 1978 in a province accustomed to balanced budgets. Their most drastic of restraint efforts in Canada brought budget cuts and increased taxes.

The overall impact of provincial fiscal policy in the 1979 round of budgets, as with the year before, has been "steady state" rather than stimulative (see Table 4.1). The provincial public sector has apparently decided not to respond in Keynesian fashion to the expected downswing in the economy, leaving it up to the federal government, it would seem, to tip the balance in the overall impact of the state in the Canadian economy.

6. "A Round-Up of Provincial Budgets, Canadian Tax Journal, Vol. 27, No. 4 (July - August 1979)

TABLE 4.1 PROVINCIAL FISCAL HIGHLIGHTS¹

	Estimated Revenues (\$ Millions)	Estimated Expenditures (\$ Millions)	-Deficit or Surplus (\$ Millions)	% Growth rate: real domestic product ² 1979/1980
P.E.I.	277.6	281.8	- 4.2	2.5/4.2
NOVA SCOTIA	1,534.5	1,667.6	- 133.1	3.0/1.1
NEW BRUNSWICK	1,441.4	1,532.8	- 91.4	4.2/2.2
QUEBEC	13,510.0	14,960.0	-1,450.0	3.1/0.8
ONTARIO	13,446.0	15,105.0	-1,659.0	2.7/0.7
MANITOBA	1,710.6	1,833.2	- 122.6	2.0/1.7
SASKATCHEWAN	1,994.2	1,926.4	67.8	3.2/2.4
ALBERTA	5,255.4	5,629.9	- 374.5 ³	5.9/4.6
B.C.	4,567.5	4,567.5	—	2.9/2.6
NFLD.	1,277.3	1,395.9	- 118.5	6.4/2.0

1. Revenue, expenditure and deficit/surplus figures calculated from totals of budget estimates of both current and capital accounts for 1979-80. Source: Canadian Tax Journal (July-Aug. 1979) and provincial budget papers.

2. Conference Board of Canada, 2nd quarterly forecast, 1979 (Globe and Mail Aug. 21, 1979).

3. Includes \$1 billion special grant to municipalities - See highlights.

British Columbia

Finance Minister Evan Wolfe presented a pre-election budget to the British Columbia legislature on 21 April 1979. The provincial treasury benefited from the province's resource-led boom through 1977-78, and with the help of budgetary surpluses from two previous years, the Social Credit government was able to offer a series of tax cuts while balancing the budget.

The \$425 million stimulus to the economy was provided in part by a 1% reduction in retail sales tax, and a 2 percentage point reduction of personal income tax. Other measures included the doubling of corporate capital tax exemptions and increased homeowner grants. Provincial expenditures rose only five per cent to an estimated \$4,567.5 million for 1979-80.

In sum, BC looks forward to continued above average growth and lower unemployment - a goal which by year's end seemed more elusive with the US recession.

Of interest to federal-provincial relations were "two measures aimed specifically at encouraging saving and investment by British Columbia's business".⁷ A five percent special dividend tax credit will go to BC residents receiving dividends from BC public corporations, increasing the existing credit to 16%. This measure will require the agreement of the federal government as tax collector - as would proposed "special tax deductions" for investment on venture capital corporations. Furthermore, in the interests of "providing greater investment and ownership opportunities for the individual in British Columbia", the Social Credit government reiterated its promise to distribute five free shares of the British Columbia Resources Investment Corporation (assets include oil and gas exploration rights, a large scale forest products firms, and two smaller firms, and ten percent of Westcoast Transmission, a major western pipeline operator) to every resident of the province, on 6 August 1979. While not strictly a fiscal measure, the promise helped cement the package of gifts to the electorate on the run-up to the provincial election. All these also demonstrate the range of instruments available to provinces to encourage investment, and raise once again fears of a deterioration in the Canadian common market.

Alberta

Finance Minister Lou Hyndman expects that Alberta "will be catching her breath" in 1979, before another spectacular growth period in the eighties. To ease this moderate downswing, the budget of 8 June 1979 estimated that capital expenditures for 1979-80 will increase by a whopping 41.5% while the overall increase in expenditures will be 18%. A one billion dollar budgetary surplus in 1978 (326 million more than expected) and almost four billion in non-renewable resource revenues, enabled Alberta to cut taxes once again. Changes

7. Canadian Tax Journal, p. 455

include selective personal income tax cuts, small business corporate income tax cuts, new programs to increase income to the handicapped and a six year \$750 million Urban Transportation Development program. The budget does not include the one billion dollar gift to the municipalities, considered an extraordinary expenditure.

In sum, the economy was expected to outperform all others in Canada with growth expected at 4 - 4.5% of the gross provincial product, and the lowest unemployment.

In July 1979 Treasurer Hyndman released the annual report of the Alberta Heritage Savings Trust Fund. Total assets were at \$4,705 million, including an earned net income of investments of \$294 million (yielding 9.5%). Among the three divisions of the fund, "Capital Projects", "Alberta Investment" and "Canada Investment", the annual report listed these new areas of investment:

Capital Projects - (est. 5.4% of Fund): recreation development, a learning resources program, "Farming for the Future" research project, and airport improvements.

Canada Investment - (5.7% as of March): the annual report listed "three new loans" - \$75 million to the province of Manitoba, \$50 million to the province of Nova Scotia, \$50 million to the Nova Scotia Power Corporation. To this should be added a loan of \$200 million to Hydro Quebec, finalized in October 1979.

Alberta Investment - (34.3%): two new investments to the Alberta Agricultural Development Corporation (\$160 million) and to the Alberta Opportunity Company (\$90 million).

Finally, one should note that the balance of the fund (51.9%) goes to "Deposits, Marketable Securities and Portfolio Investments".

Saskatchewan

In contrast to the dramatic transfers to the public in British Columbia and to the municipalities in Alberta, the March 8 Saskatchewan budget contained no major changes. Finance Minister Walter Smishek's "prudent" first budget called for an increase for low and middle income wage earners in the Family Income Plan, increased assistance for senior citizens and students and an increase in Property Improvement Grants. The province also initiated a mortgage interest tax credit - to be administered by the federal government. (Saskatchewan announced by early September that it was going ahead for 1979 regardless of whether the federal government went ahead with its promised plan).

To keep the deficit down and to allow for the 9.5% increase in expenditures, there would be small tax increases on tobacco. The budget address criticized the federal expenditure restraint program for reducing

Saskatchewan's revenues by \$20 million and increasing its expenditures by \$5 million; however, with the addition of the Heritage Fund cash inflow of \$515 million to the consolidated fund, an overall surplus of \$67.8 million was realized in a budget of almost \$2 billion.

The outlook for the economy in 1980 is bright, especially if farm receipts and mining activity remain at high levels. Real growth is expected to be near 3%.

Manitoba

Manitoba's budget, presented on 15 May 1979 by Finance Minister Donald Craik, was another serious attempt at restraint. Aimed at reducing the size of government and encouraging private investment, it allowed for only a 5.6% increase in expenditures. Budget highlights included a five year freeze on electricity rates, selective sales tax cuts, and replacement of incremental royalty rates of 15% and 35% with a flat rate of 15%. The deficit will increase from \$120 million to \$126 million this year, in an overall spending budget of \$1.8 billion.

Manitoba, like other provinces, was very critical of federal government policies in 1978, especially the size of the deficit and the lack of control over spending.

The economic outlook for Manitoba is mixed. Although agricultural prices are strong, spring flooding could seriously affect output. The rate of private investment, which was the highest in Canada in 1978, is now expected to be much lower.⁸ Real growth is expected to be moderate in 1979 to about 2% and unemployment to be below the national average.

Ontario

Ontario treasurer Frank Miller's first budget, brought down on 10 April provided little in the way of dramatic changes. Continuing with the aim of balancing the budget and attempting to stimulate the economy, expenditure increase was 7.4%, with a total spending of \$15 billion expected for 1979-80.

To provide stimulus, the corporate mining tax was reduced, succession duties were eliminated, selective sales tax cuts were introduced, and an Employment Development Fund was established which will provide grants, loans, guarantees, wage subsidies, etc, for new business ventures in the province. To raise revenues, the general corporate income tax rate was to go up 1%, the OHIP premium to increase 5.3% and taxes on gasoline, diesel, cigarettes and alcohol to rise. As a result the deficit this year will fall to \$1.2 billion. The Davis government's goal of a balanced budget, however, has had to be postponed even further and is now estimated for 1984.

By mid-year 1979, the Ontario economy, with considerable strength in the manufacturing sector, was expected to grow at a real rate of near 3.5% of

8. Globe and Mail, 10 July 1979

gross domestic product. Whether the effects of the US recession will bring this growth down (and push up unemployment) is uncertain.

Finally, one should note that among the budget papers attached to the main address this year, the Ontario Treasury included a brief account of "Problems and Progress in Federal-Provincial Fiscal Policy Coordination". The paper is a valuable contribution to any assessment of federal-provincial fiscal relations in the 1970s.

Quebec

In his March 27 budget address, Finance Minister Jacques Parizeau repeated the previous year's innovative performance. Parizeau concentrated on mild stimulus while restraining public expenditures for a combined effect of a \$1.45 billion deficit. Total expenditures for 1979-80 were estimated at \$14.9 billion, an increase of 11% over 77-78. Cuts included a 2.5% reduction in the civil service and a cancellation of the sales tax exemption on furniture. However the sales tax exemption for clothing, footwear and textiles was made permanent, subject to certain limits. The tax regime was reformed to bring maximum deductions for registered retirement plans in line with levels available in other provinces, and the budget provided for 12.5% increase in personal income tax exemptions. This combined two years of indexation which Parizeau claimed had been stalled the previous year by revenue shortfalls due to the sales tax dispute with the federal government.

The most innovative tax measure was described by the Globe and Mail:

Parizeau thinks he has found the way to lighten the tax load on high income earners, develop more risk capital, stop the flight of head offices, get the small investor back into the market, boost Quebec's securities industry and bolster general business confidence, all in a single tax change.⁹

This was the measure to allow Quebec residents to deduct up to \$15,000 from taxable income for the cost of new shares of certain types of firms with headquarters in Quebec. Other budget measures outline extensive reform of municipal-provincial fiscal relations.

In sum, the budget appeared to be a "pre-referendum" address designed to please a wide audience, as the provincial economy faced another year of modest growth (3 - 3.5% in real terms).

New Brunswick

Finance minister, Fernand Dubé echoed the general national trend towards budgetary restraint: while the current account would produce a \$61 million surplus, addition of capital account expenditures led to an overall

deficit of \$153 million. Total ordinary expenditures amounted to \$1.49 billion, an increase of 10.1% over 1978-79 revised estimates. Minor stimulants to the economy included a property tax allowance for small businesses to cost \$1.1 million. Higher taxes on tobacco, diesel fuel and insurance premiums and deterrent fees for a number of health services would raise revenues.

In a special section on "Federal-Provincial Fiscal Relations", Dubé praised two recent examples of federal-provincial cooperation - the sales tax reduction program introduced in the federal budget of April 1978, and the mineral resources taxation review undertaken for the First Ministers' Conference on the Economy in November 1978, both of which were beneficial to the New Brunswick economy. The New Brunswick government was critical of the federal restraint measures which deprived the provincial treasury of \$18 million affecting planned housing and social service expenditures, and, in particular, the bilingualism development program. Dubé also served renewed notice of his dispute with revisions to equalization payments resulting from what NB terms "inaccurate" population estimates.

Nova Scotia

It may be that Premier John Buchanan's retention of the finance portfolio for himself was another of the austerity measures his government is undertaking. Facing what he termed a "critical" situation, the province has limited itself to a 4.7% increase in expenditures, the lowest in Canada. Five departments have had their budgets cut and taxes have been increased on cigarettes, tobacco and alcohol. Corporate registration fees have also been introduced. Total operating expenditures will be \$1.49 billion, and revenues \$1.50 billion, however, this modest surplus becomes a deficit when capital expenditures are calculated - a deficit some \$50 million lower than 1978-79.

Prince Edward Island

In the first budget of the new Conservative government, the Hon Lloyd G MacPhail, Minister of Finance, produced few changes to the Island's fiscal regime in July 1979. Expenditures forecast at \$267 million will be a 10.1% increase over the previous fiscal year. According to MacPhail, "the budgeted current account surplus of \$140,300 is a modest amount, but one which required much effort to achieve". Capital expenditures will reduce this to a deficit of \$4.2 million. Minor tax changes included a new tax on aircraft fuel, higher tobacco taxes and a changed tax regime for mobile homes.

MacPhail took pains to explain the extent and nature of the Island's dependence on federal government transfers in his address: "not easy factors for Islanders to accept", and while he applauded recent measures such as the sales tax reduction of 1978, he served notice to the legislature to pay particular attention to the changing circumstances of fiscal arrangements in the years ahead.

Meanwhile, however, PEI has the happy distinction of being one of the few provinces in Canada which can expect a significant greater growth rate in 1980, due largely to the tourism and construction industries.

Newfoundland

Finance Minister John Collins produced the latest of all the provincial budgets on 19 July 1979, following the re-election of the Conservatives barely a month before. Like so many of his counterparts in other provinces, Collins presented a deficit budget - but with only a modest increase in expenditures from the previous year. A budget of \$1.38 billion of gross expenditures in capital and current accounts provided for increased spending on education and welfare; the overall deficit of \$118.5 million is twice that estimated for 1978-79. Significant tax changes include higher tobacco taxes, and a new tax on aviation fuel and on advertising. Stimulants include a grant of up to \$1,500 for new home buyers.

C. Federal-Provincial Arrangements

Federal government transfers to the provinces in the present year came to approximately 22% of total federal expenditures. The fiscal arrangements covering the bulk of these transfers - equalization, established programs and others - are made on the basis of five-year federal-provincial agreements. The present regime expires in 1982, and is embodied in the federal statute, the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977.

Now mid-way through this five-year agreement, cracks are beginning to appear in what had been hailed as a milestone refinancing of Confederation. The federal government has come to the rather late realisation that the established programs financing (EPF) arrangements, and the equalization payments were rising at a rate wholly incompatible with the federal goals to restrain expenditures. In late 1978 Finance Minister Chrétien announced the government's intention of amending the equalization formula but was unsuccessful in persuading the provinces to re-open negotiations on the EPF agreement as a whole. Other issues such as the effects on equalization of rising energy revenues, the debate over provincial provision of medicare, and of impending pressures on tax collection agreements, are among the year's developments in the fiscal arrangements.

Equalization

Equalization payments, estimated to be slightly under \$3 billion in 1979-80 (see Table 4.2), were the target of specific amendments introduced in the fall of 1978 by Finance Minister Chrétien. The Liberal's Bill C-26, "An Act to amend laws relating to fiscal transfers to the provinces", promised to make the following changes to the equalization formula:

1. phase out the inclusion of revenues from the sales of Crown leases and reservations on oil and natural gas lands from the equalization formula by April 1980

TABLE 4.2 EQUALIZATION PAYMENTS 1977-80¹

By Province
(\$ Millions)

Fiscal year	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC	TOTAL
1977-78 Payments (Oct. 1979 est.)	280	63	341	272	1,332	—	233	66	—	—	2,587
1978-79 Payments (Oct. 1979 est.)	309	71	373	318	1,456	—	264	66	—	—	2,857
1979-80 Payments (June 1979 est.)	333	76	403	346	1,473	—	258	43	—	—	2,933

1. Source: Dept. of Finance.

2. prevents any province whose per capita income is above the national average in the current year and 2 years previous from being eligible for entitlements (of immediate effect to Ontario).
3. Furthermore, under the 1977 Act, a regulation was passed to equalize resource revenues only up to the ceiling of 1/3 of total provincial revenues. This was defined to include only the seven traditional have-not provinces, not Ontario.

Notwithstanding that the two amendments have not yet come into effect (Bill C-26 died on the order paper with the last Parliament) - they address two related problems. First of all, the changes would have probably reduced the expected increase in the equalization payments by over 2 percentage points, and secondly, they represented at least a temporary solution to the problem of Ontario.

Largely because of Ontario's entitlement from the six oil and gas related revenue sources (estimated at \$860 million for 1979-80) the province has, since 1977, joined the "have-not" club. The overall sums entitled to the Ontario treasury, according to the most recent estimates are about \$110 million for 1977-78, \$200 million for 1978-79 and \$105 million for 1979-80.¹⁰ This led Ontario's Liberal opposition leader to ask in the Ontario legislature why, indeed, the province has not yet received payment for its entitlement. One answer is that both Ontario treasury and federal finance officials are acting as if Bill C-26 had passed into law, and that Ontario, as a province with above average income per capita should not qualify for equalization payments. Should the new Conservative government decline to pass identical or similar provisions before the end of this fiscal year, however, Ontario could collect on its equalization. Most observers predict that payments to Ontario would render ludicrous the original principle of the fiscal transfer program, ie to alleviate disparities in the level of public services.¹¹

Even if increasing revenues from "energy sources" (accrued overwhelmingly to the province of Alberta) do not succeed in entitling Ontario to equalization payments, they are still the most significant factor in the escalation of the total transfer. (See Table 4.3). According to one recent estimate, a one-dollar per barrel increase in the price of oil (and a similar increase for natural gas) would add almost \$80 million to the equalization payments.¹²

10. Department of Finance, Provincial Fiscal Equalization Tables: 1977-78 Sixth Estimate, October 1979; 78-79 Fourth Estimate, October 1979; 79-80 Second Estimate, June 1979

11. Tom Courchene's recent analysis begs the question. See his forthcoming paper "Energy and Equalization" in Ontario Economic Council's Energy Conference, September 1979

12. Ibid

TABLE 4.3

ENERGY AND EQUALIZATION: SELECTED DATA FOR 1979/80¹

	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC	TOTAL
Equalization Entitlements, 1979/80 ² (\$ million)	338	77	410	352	1,522	172	266	41	-2,596	-583	3,007 ³
Equalization Entitlements (\$ per capita)	589	626	484	502	241	20	258	42	-1,293	-227	--
Total Provincial Per Capita ⁴ Revenues (1979/80)	2,054	2,179	1,739	1,864	2,220	1,646	1,693	2,098	3,303	2,019	--
Equalization as % of Total Revenue	29%	29%	28%	27%	11%	0	15%	2%	0	0	--
Equalization Entitlements arising from Energy (\$ million)	58	13	86	71	639	860	100	-77	-	-	889 ⁵
Energy Entitlements as % of total equalization entitlements (row 5 ÷ row 1)	17%	17%	21%	20%	42%	500%	38%	-187%	-	-	30%

1. From T.J. Courchene, "Energy and Equalization", Paper prepared for the Ontario Economic Council's Energy Conference, Sept. 27-28, 1979.

2. Source: Provincial Fiscal Equalization Tables, Second Estimate, 1979-80, Dept. of Finance, July, 1979.

3. Total does not include Ontario's entitlement.

4. Source: Statistics Canada.

5. Total excludes Alberta, BC and Ontario.

At what point the one-third resource ceiling for equalization comes into effect is unclear. The proposed regulation not to calculate Ontario's hefty entitlement into this "one-third" was designed to keep payments to the traditionally have-not provinces at current levels.¹³ Even if Ontario is kept indefinitely from receiving equalization, proposed price rises of \$4 per barrel of oil may yet push resource revenues to the one-third limit, not, however, before equalization payments as a whole have risen dramatically.

The upshot of this is that the ensuing debate over oil pricing and the federal-provincial share of "rents" (see below) will have significant effects on the equalization program.

EPF

The Established Programs Financing payments covering hospital insurance, medicare and post-secondary education are the largest single set of federal-provincial transfers. The current estimate for cash grants to the provinces for 1979-80 is \$4,812 million, a growth of over 18% since 1978-79.¹⁴ Federal figures for this transfer also continue to calculate the "tax expenditure" portion of the EPF arrangements since 1977; the tax portion has not grown as much but it is estimated to be \$3.8 billion for 1979-80, for a total provincial entitlement of cash and tax of \$8.6 billion.

The rapid growth of these payments, due to the relatively generous 1977 agreement which pegged the payments to GNP growth with associated equalization factors,¹⁵ has led many observers to worry about the fiscal problems this will cause the federal treasury. Most recently the Economic Council of Canada has observed that, due in part to statutory fixed expenditures like the EPF transfer, the federal government "has assumed virtually sole responsibility for the management and financing of the deficit of the public sector".¹⁶ The Council therefore made this explicit recommendation in its Annual Review:

We recommend that First Ministers carry out, as a matter of urgent priority, a medium-term analysis of the federal-provincial fiscal problems with a view to accelerating the renegotiating of the agreements which terminate in 1982.¹⁷

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13. Courchene calculates the revenues at now approaching 30% of the total, should Ontario's entitlement be considered, it would bounce to 60%; see ibid, p. 15. See Table 4.3
 14. Department of Finance, EPF: First Adjustment to Advance 1979-80. See Table 4.4
 15. See T. Courchene, Refinancing the Canadian Federation: A Survey of the 1977 Fiscal Arrangements Act, Montreal: C D Howe Research Inst, 1979
 16. Economic Council of Canada, Two Cheers for the Eighties, Sixteenth Annual Review 1979, Ottawa, 1979, p. 55
 17. Ibid, pp. 89-90

TABLE 4.4 ESTABLISHED PROGRAMS FINANCING¹

1977-1980 (\$ Millions)

FISCAL YEAR	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC	TOTAL ²
1977-78											
Total Cash Entitlement	85	17	133	104	805	1,308	168	148	261	333	3,375
Total Tax Transfer	65	14	96	80	1,075	1,079	119	108	281	338	3,265
Total Tax & Cash	150	31	229	184	1,880	2,287	287	256	542	672	6,641
1978-79											
Total Cash Entitlement	107	22	163	131	913	1,569	202	182	324	429	4,056
Total Tax Transfer	71	15	105	87	1,169	1,168	129	118	309	368	3,549
Total Tax & Cash	178	37	268	218	2,082	2,737	331	300	633	797	7,605
% GROWTH	18.6	21.4	16.5	18.6	10.7	14.6	15.1	17.2	16.7	18.7	14.5
1979-80											
Total Cash	132	28	196	162	1,048	1,839	238	220	396	538	4,812
Total Tax	77	16	113	94	1,255	1,262	138	128	336	398	3,828
Total Tax & Cash	209	45	309	256	2,304	3,101	376	348	732	936	8,640
% GROWTH	17.3	18.7	15.5	17.0	10.6	13.3	13.5	15.9	15.6	17.4	13.6

1. Source: Estimates of Dept. of Finance, Ottawa, July, 1979.

2. Total includes payments to Yukon and Northwest Territories.

It was just such concerns that led the federal government in the Fall of 1978 to cancel the planned refinancing of fiscal transfers covering the Canada Assistance Plan under a block-funding arrangement.¹⁸ At the federal-provincial meeting of finance ministers in November, 1978, Jean Chrétien also attempted to get provincial agreement to reduce the growth of EPF payments by reducing the escalator by two percentage points. This was not possible, however, and the federal government will likely have to wait for the termination of the present agreement in 1982 before any serious renegotiation takes place.

Finally, the "unconditional" nature of the 1977 arrangements for established programs came under direct political scrutiny in the spring and summer of 1979. Beginning in the Ontario legislature in March, the provincial New Democratic party leader, Michael Cassidy charged the Conservative government with failing to abide by the provisions of the 1966 federal Medical Care Act, still in effect, which established the basic conditions for federal contributions to provincial medicare plans. Because of local problems of physicians "opting-out" of the Ontario Health Insurance Program, provincial and later federal - politicians claimed that the conditions of "reasonable access" of all residents to medicare were being violated.¹⁹ Federal Health and Welfare minister, Monique Bégin, promised to study the changes, and in the ensuing debate some difficult questions about the EPF arrangements were posed. Can or should the federal government continue to insist on uniform standards when, in principle at least, the established programs financing was meant to be "unconditional"? Can or should the federal government withhold the payment of the medicare portion of EPF to recalcitrant provinces (tax plus cash entitlement for Ontario in 1979-80 would come to approximately \$540 million)? By September, 1979, federal and provincial health ministers meeting in Ottawa reaffirmed their commitment to the principles of uniform access for all citizens to health care services. And the new Conservative federal minister, David Crombie, appointed Justice Emmett Hall to conduct "a review of the status of publicly financed health insurance programs in Canada." Nonetheless, given the expenditure restraint programs underway in provinces like Ontario, and by the federal government, it may require a great deal of political will in Ottawa's part to once again extend its ultimate control over the quality of health care services the provinces provide.

Other Developments

It should be noted that among the other effects of federal restraint on transfers to the provinces was a proposed amendment to the Public Utilities Income Tax Transfer Act. As part of the now defunct Bill C-26, provincial shares of that tax would fall to 50% of the total from 95%, for a federal saving of almost \$50 million.

18. For details of the proposal see Federal Year in Review, 1977-78, pp. 32-34.

19. Ontario is not the only province with such problems. Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Alberta all have various numbers of physicians working outside (and charging extra rates) the provincial plans.

The federal administrators of the Tax Collection Agreement of the present fiscal arrangements will be faced with more provincial aberrations to the interprovincial fiscal regime. The British Columbia government has announced its intention of offering residents a special dividend tax credit of 5% on top of the existing federal credit, to apply only to corporations with head offices in the province. They also hope to introduce special tax deductions from BC's personal and corporate income tax for investment in venture capital corporations. Both measures require federal agreement to administer.²⁰

The federal government declined to administer an Ontario Venture Investment Corporation Registration Act introduced in 1977, one reason why the Ontario government scrapped the plan in their most recent budget for a small business development share credit scheme administered by a provincial ministry.

Finally, one might note the Quebec government's income tax deduction for investment in new shares in Quebec corporations²¹ not as a hindrance to tax collection agreement so much as further evidence of the increasing divergence of provincial tax regimes.

20. British Columbia Budget, 1979, pp. 42-44

21. See above "Provincial Budgets".

(2) Economic Development

Compared with the previous year, federal-provincial relations in the field of economic development during 1979 takes on a more mundane appearance. The innovative and comprehensive nature of 1978's two first ministers conferences on the economy, and the bipartite labour-business manufacturing sector task forces set up under the auspices of those conferences put a new face on what may be termed as "collaborative federalism" as regards economic decision-making.²² 1979 was an election year, and many federal and provincial economic development projects and decisions must inevitably be viewed in the context of political promises. Thus this past year projects may have been accelerated by the electoral climate - but this does not, of course, alter the underlying approach of federal and provincial governments to industrial policies and economic framework policies. In most cases these approaches have been developing over the course of the last four or five years, and in particular, from the discussions in 1978 which focussed on policy in the medium-term, and on a structural and sectoral response to Canada's economic problems. The following will review recent developments arising from the last first ministers' conference on the economy in November, 1978. This is followed by a discussion of continuing initiatives of the former and present federal governments in the area of economic development, as well as a review of both unilateral and bilateral developments in the individual provinces.

A. First Ministers' Conference on the Economy, November, 1978.

The November conference followed upon the initiatives of the February 1978 First Ministers Conference on the Economy. However, coming as it did, within a month of the First Ministers Conference on the Constitution and in the context of a more pronounced pre-election atmosphere and recent federal policy initiatives, the motivations and expectations for those attending the conference were diminished since February. The intergovernmental bureaucracy had nonetheless launched an extensive series of mechanisms to monitor the progress of initiatives undertaken in February and in documentary terms, at least, presented a great deal for the first ministers to consider in November. The federal government, in particular took great pains to demonstrate the progress since February, though this enthusiasm was not always reciprocated by the provincial governments.²³ The Quebec government took the opportunity of the conference to complain that federal fiscal and other economic policies were "asphyxiating" the province, and the Ontario government while positive about federal-provincial collaboration on economic policy, took a harder line against regional development policies and on the effects of the loss of petrodollars to Alberta than at the previous conference.

The first ministers reviewed the progress since February in four items on the agenda: agriculture, research and development, government

22. The Institute of Intergovernmental Relations will complete its study of these 1978 events and their impact on Canadian economic decision-making, early in 1980.

23. See, for example, First Ministers' Conference on the Economy, Nov. pp. 27-29, 1978, Progress Report on Commitments undertaken by First Ministers at the February, 1978 Conference on the Economy.

regulations and public sector compensation, and renewed their discussions on industrial development, energy, mining, fisheries, regional development and transportation. As was the case with the February Conference, the communiqué released at the end of the November meeting consisted of tentative and rather general statements. Under the various agenda items the following discussions took place:

- 1) economic overview - despite widespread discontent with recent federal policy, the provinces were willing to agree with the federal government that the basic medium-term objectives should be a sustained growth of output and employment (led by the private sector), a reduction of unemployment and a reduction in the rate of inflation (noting the importance of continued restraint in prices and incomes policy).
- 2) labour market and employment - stress development of labour market to improve Canada's industrial competitive strength; continue use of job creation programs in high unemployment areas.
- 3) agriculture - establishment of a national stabilization program supported by all except BC and Quebec. These two provinces would give priority to existing provincial programs. Further study promised for agricultural marketing especially for grain.
- 4) research and development - some criticism of federal measures in November budget - nothing concrete adopted to further federal-provincial coordination of R&D encouragement.
- 5) government regulation - receipt of the Economic Council of Canada's preliminary report on the Regulation Reference, commissioned by the February Conference. First Ministers endorsed the Council's work, asking them to include the study of the Foreign Investment Review Agency and telecommunications in their final report.
- 6) public sector compensation - general endorsement of principle that public sector compensation "should not lead" the private sector. Disagreement on how this should be measured, and of consequences for public sector collective bargaining.
- 7) industrial development - discussion focussed on the outcome of the multilateral trade negotiations with special attention to continuing efforts to coordinate adjustment assistance policies for industries affected. Debate ensued on the results of the industry-labour consultative sector task forces commissioned by the February conference; the consultative process was endorsed, though with no formal proposals for a continuing forum. Special emphasis placed on needs of small business, and on the coordination of government purchasing policies.
- 8) tourism - the conclusions of the conference noted that discussion has taken place on diverse topics from tourism marketing abroad to airline deregulation to large tourist development projects.

- 9) energy - apart from the oil pricing debate that ensued in private meetings at the Conference, the first ministers discussed various energy projects and oil and gas exploration and development. A federal-Alberta task force was established to discuss expansion of natural gas markets in eastern Canada. Other areas such as regional power grids were advocated, but the discussions did little more than highlight the potential for such development.
- 10) minerals - the first ministers received the commissioned review of taxation in the mining industry, endorsed recent federal tax measures, and agreed to consult before the federal government proceeded with the proposed Nuclear Control and Administration Act and the Uranium and Thorium Mining Review Act.
- 11) fisheries - no movement on the outstanding grievances of the Atlantic provinces on a wide range of administrative issues centering around the extent of the provincial governments' role.
- 12) regional development - essentially a debate over the efficacy of the federal department of regional economic expansion with Ontario questioning some of the regional development objectives in the past and the Atlantic provinces endorsing the present programs. The Quebec government found fault with the funding and the development priorities of DREE in the province. The "conclusions" of the conference mentioned that the first ministers "reaffirmed" their commitment to reducing regional disparities, that they would build upon the bilateral "General Development Agreement" approach, but that economic development should "be based on viable economic opportunities resulting from natural strengths such as fisheries, forestry, agriculture and tourism."
- 13) transportation - apart from discussions on grain handling, this topic did not spark the contentious debate it had at the February Conference. There appeared to be a general endorsement of the federal government's proposed Bill C-20 (amending the National Transportation Act), and first ministers concluded that "transportation should be used as a tool for regional economic and social development." The federal government promised to meet soon with representatives of the Western provinces and the railways to discuss the grain handling and transportation system.

The linkages between discussions and decisions (if any) taken at a conference of first ministers with such a broad agenda, and the character of on-going federal-provincial relations are often difficult to trace. There would appear to be a growing recognition of conference communiqués as a guideline for activity between conferences, but this is by no means universal. The temptations and imperatives on individual governments to go their own way regardless of principles and commitments made at the conference table is still great, as events in 1978 demonstrated.²⁴

One way of measuring the continuing effects of federal-provincial collaboration on economic development is to examine their impact on the policy initiatives of the federal government, and in the individual provinces. Highlights of these developments are presented below. We will also have to await further economic conferences - one scheduled for December 1979 was cancelled as a result of the election call.

B. Federal Government Initiatives

The Liberal Government - In November, 1978, just prior to the First Ministers Conference, Prime Minister Trudeau announced the creation of a new Board of Economic Development Ministers (BEDM). According to the news release, the formation of the Board "represents a major change in Cabinet organization designed to focus and strengthen efforts to promote Canadian economic development." While the board had only six months to influence economic development policy in the Liberal government, it demonstrated a significant response to the exercises of 1978, both the first ministers conferences and the industry sector task forces. The Board recognized the widespread perception that the federal government itself required a much greater degree of coordination and cohesion in the making of development policy.

Formerly the president of the Treasury Board, Robert Andras was appointed as the president of the new board; the other members were the ministers for: Industry, Trade and Commerce, Employment and Immigration, Regional Economic Expansion, Energy, Mines and Resources, Labour, Small Business, Revenue, and Science and Technology. The minister of Finance and the president of the Treasury Board sat as ex-officio members.

According to one press analysis, "about the most BEDM (could) do between now and an election call ... is to coordinate and mount a public relations campaign extolling Ottawa's economic policies to date."²⁵ With relatively few funds to disperse, the board concentrated on specific troubled sectors, and on certain inexpensive policy responses. Drawing on a secretariat which in turn consisted largely of the policy group of the Department of Industry Trade and Commerce involved with organising the industry consultative task forces, one of the board's first tasks was to produce a detailed response to each of the twenty-three manufacturing sectors involved, as well as to the Second Tier Committee on Canadian Competitiveness. In its papers Action for Industrial Growth: A First Response, and Continuing the Dialogue,²⁶ and the 23 sector responses, all released by February 1, 1979, the board gave a detailed account of its initiatives since the 1978 consultative process.

As these reports pointed out, a large part of the federal government's response was to set up the board itself, in order to assign priorities to the differing recommendations from the private sector, and to better coordinate (and inform the private sector of) existing government programs

25. Financial Post, 13 January 1979.

26. November 1978, February 1979, Government of Canada.

to assist economic development.²⁷

As announced in its budget restraint policies in August, 1978, the federal government had only \$300 million allocated for extra spending for economic development in 1978-79.²⁸ By November, funding to the shipbuilding and fisheries industries, to the Enterprise Development Program and general allocation to regional development incentive grants, among others, amounted to \$173 million. In the few months during which the Board coordinated development policy it concentrated its efforts on a few critical industries, and on policies relating to government purchasing policies and small business. Among the measures was the announcement of a support program for the forest products industry, in conjunction with DREE, estimated spending of \$235 million over next 5-7 years for the modernization of pulp and paper mills; and a continued support program for the shipbuilding industry, by announcing extension to the end of 1979 of the 20% subsidy to the industry and an acceleration of government ship procurement orders.

The government announced its willingness to consider "special federal aid" to the automotive industry, particularly for provinces without the financial capacity to offset incentives offered in the US. (In July, 1979, Department of Regional Economic Expansion offered an incentive grant of \$82.5 million to General Motors to establish an aluminum casting facility in Quebec, but the corporation has declined). Finally assistance has been given to the electronics industry in the form of \$50 million over three years through avenues such as the Enterprise Development Program, in particular to encourage Canadian development in micro-electronics.

In 1979 without some sort of short-term assistance each of these industries were faced with serious economic problems. The electronics and automotive industries are particularly important employers in southern Ontario, and both are vulnerable to recent trade developments. The pulp and paper mills with employment concentrated in Quebec, Ontario and New Brunswick were in dire need of modernization. While shipbuilding does not employ comparable members, it does occur in areas where opportunities for alternative employment are few.

The New Government - Since the election of the Conservative government in May, 1979, the federal government's policies for economic development have not been fully revealed. The key member of the cabinet is of course the Hon. Senator Robert R. de Cotret, Minister of State for Economic Development and Minister of Industry, Trade and Commerce, who is also chairman of the Economic Development Committee, and sits in the "inner cabinet." De Cotret, along with the new minister for Regional Economic Expansion, Elmer MacKay, have since the election, toured the provincial capitals and are in the process of reviewing the range of development policies.

27. For one estimate of federal government expenditures for business enterprise and labour market support schemes in 1977-78, see O.E.C.D. Economic Surveys: Canada, June, 1979.

28. Globe and Mail, April 18, 1979.

The new Cabinet committee is potentially much stronger than the former Board of Economic Development Ministers, mainly because it has direct control over the spending of each of its constituent departments (and has fourteen ministers to BEDM's eight). One of de Cotret's first priorities was to organize a National Economic Development Conference for late 1979 (cancelled due to the election). With the onerous task of developing an industrial strategy for the 1980's, the conference would have included representatives from business, labour and the provincial governments.

C. Federal-Provincial Arrangements

The following are highlights of the year in federal-provincial relations in the general field of economic development, with mention of unilateral provincial initiatives where applicable.

Newfoundland - With the throne speech of the new Conservative government under Premier Brian Peckford on July 12, 1979, the Newfoundland government underlined its present renegotiation with Ottawa of several of the five-year development plans under the General Development Agreement. Fisheries development, development of the lower Churchill hydroelectric project, further forestry development, marine research and development and an improved technical training program - were the main elements of the proposed plan - all designed for a resource-led path to end economic dependence in the 1980's.

Two new agreements signed between the province and DREE cover the conversion and reactification of the Stephenville Linerboard Mill at a combined cost of \$15 million, and \$26.6 million for industrial development infrastructure such as parks and access roads.

Prince Edward Island - No changes were made to the Prince Edward Island Comprehensive Development Plan, due to expire in 1984, which provides the Island with approximately \$20 million each year (77-78, 78-79).

Nova Scotia - The new Conservative government in Halifax was hoping its similarly situated counterpart in Ottawa would be sympathetic to demands for more development money to upgrade the Sydney Steel complex, for fisheries development and for energy conversion programs, three priorities of Nova Scotia's industrial policies. A DREE/NS agreement covering \$50 million assistance to Sysco (the Sydney Steel Mill) was signed in April 1979. However, Premier Buchanan has recently pointed out that the provincially-owned facility should have ²⁹\$500 million more invested for upgrading and to write off its past losses. No other new agreements have been initiated under the General Development Agreement during 1979, however, of the nine subsidiary agreements, two of the most costly (those directed at metropolitan Halifax-Dartmouth, and at the Strait of Canso area) are due to expire in 1980.

29. Globe and Mail, 15, Sept., 1979.

New Brunswick - In the budget address of March, 1979, Finance Minister Fernand Dubé referred directly to the province's development efforts, most of which is tied to the GDA with DREE. The eleven subsidiary agreements now in place entail over \$400 million in joint federal-provincial expenditures, over varying 5-year periods. As over half of the subsidies expire in 1980, the New Brunswick government will be busy renegotiating new five-year agreements in the coming year. During 1979, only one entirely new agreement was finalized - the "Developing Regions" subsidiary agreement, designed to improve employment and growth potential in four different corners of the province not previously covered by development assistance; it will cost a total of \$26 million over four years, with the federal share of \$20 million.

The New Brunswick government has also been in the process of negotiating matching funds for pulp and paper modernization; urban renewal in Saint John, and an expansion of shipbuilding facilities in Saint John as well. On its own, the government has been applying tax incentives and reductions to help the small business sector (90% of the private sector) in the province.³⁰

Quebec - The Quebec government has been anxious, to go its own way with economic development projects. In September, 1979, the minister of state for Economic Development, Bernard Landry released the green paper Bâtir le Québec³¹ billed as the most comprehensive economic development blueprint ever written in Quebec. The thrust of the paper was to develop the provincial economy according to its comparative advantages within the North American economy - massive hydroelectric resources, mineral resources, and forests. While significant emphasis was placed on the private sector as the engine of growth, Bâtir le Québec made it clear that the government would use the resource riches of Quebec to entice more investment in related secondary industry. The paper covers practically every sector of the economy, but is noticeably more elaborate on the economy outside of Montreal and western Quebec in general. And while the "soft" sectors such as furniture, textiles, clothing and footwear are not ignored, it seems evident that the Quebec government does not look to those areas for growth.

Many of the conclusions of the paper arise, at least in their general tenor if not the specifics, from an elaborate "concertation" process of meetings with labour, business and cooperatives since 1977. In March 1979, about 50 of these (almost exclusively francophone) economic leaders of Quebec met for a grand sommet at Montebello.³² The Quebec government is, of course, a major recipient of federal DREE funding under

30. New Brunswick, Budget Address, 1979, pp. 17-20.

31. Le ministère d'Etat au Développement économique, Gouvernement du Québec, Bâtir le Québec: Enoncé de politique économique, Editeur officiel, Québec, 1979.

32. See Le Secrétariat permanent des conférences socio-économiques, Conference au Sommet de Montebello, Rapport, (Quebec, 1979).

its General Development Agreement, and earlier in 1979 Ottawa signed a new subsidiary agreement for the modernization of the pulp and paper industry, to provide \$150 million over the next five years.

With the change in the federal government, the Quebec government has renewed earlier demands for significant decentralization of economic development policy. At a meeting of federal and provincial ministers in November, 1979, the federal government considered provincial requests to enlarge and continue the "special zone" status of Montreal for industrial incentive purposes, and for a further "dossier" of outstanding issues including industrial development at Mirabel, suburban trains, an office complex in Montreal and the question of salt mines on Les Iles de la Madeleine.³³ The Quebec minister responsible for the l'Office du planification et de développement du Quebec, (OPDQ), M. Jacques Léonard also served notice to federal minister for DREE, Elmer MacKay, of Quebec's preference for total devolution of the administration of DREE funding in the province to the OPDQ. MacKay said that he would consider the request as part of the Conservative government's overall review of its regional development policies.

Ontario - With so much of the direct assistance to the manufacturing industry provided by the federal government applying to Ontario-based firms, the government of Ontario has not had to spend as much as its eastern neighbours for economic development per se. However, in the 1979 budget the provincial treasurer, Frank Miller, did announce the establishment of a new "Employment Development Fund." The government set aside \$200 million for the fund in 1979-80. In his address Mr. Miller noted that since "many jurisdictions are aggressively competing for new investment," the Ontario government should put aside its apparent distaste for industrial incentive programs. Last year the government made a significant grant to Ford of Canada to locate new production facilities in the Windsor area, and has been under pressure recently from Chrysler Corporation to help it with its difficulties. It will become increasingly difficult for Ontario to resist such expenditures, given the threat of large-scale lay-offs; and it will likely work closely with the federal government to cushion the larger blows to the manufacturing sector.

Meanwhile in February, the provincial government signed a new subsidiary agreement under its General Development Agreement, for a total of five now underway. (The Northwestern Ontario subsidiary agreement expired in 1979). The new agreement, entitled "Pulp and Paper Industry Facilities Improvement", will provide \$100 million of Ontario funds, together with \$50 million from DREE to help the Ontario pulp and paper industry to modernize its equipment, provide pollution abatement and promote forest management.

33. See Le Devoir, Nov. 6, 23, 27, 1979.

Manitoba - While in dollar-terms Manitoba does not receive massive federal funding under its joint development programs, their industrial development program in particular, is one of the most innovative in the country. Under the general title of "Enterprise Manitoba", the joint Manitoba Department of Economic Development and the federal DREE and Department of Industry Trade and Commerce are coordinating, among other programs, a sector development approach to industrial growth. The six sectors "identified as having significant potential for growth" are aerospace, electronics, food and beverage, health care products, light machinery and transportation equipment. In each sector an advisory board of business and labour representatives has been appointed. The total funding for "Enterprise Manitoba" over 5 years is estimated at \$44 million. The government of Manitoba signed in 1979 two new subsidiary agreements to expand production for value-added crops, (\$18 million) and for "destination area" development in the tourism industry (\$20 million), and negotiated an additional \$16.7 million on funds for its Northlands agreement.

Saskatchewan - During 1979 the Saskatchewan government negotiated four new subsidiary agreements under its General Development Agreement with DREE. They cover: forest development, a 50-50 shared cost program to spend \$24 million over the next three years on identifying forest industries potential and improving forest management; a three-year agreement for "productivity enhancement and technological transfer" in agriculture, another roughly 50-50 spending of \$15 million; a program to improve water management in drought areas - \$15 million and a renewed agreement to assist socio-economic planning in Saskatchewan - \$1.5 million over 5 years.

Alberta - The government of Alberta (like Saskatchewan) does not need federal funding as keenly as other provinces in order to meet its economic development objectives. It does qualify for, and receives DREE funding for certain special cases: there are still two subsidiary agreements under its General Development Agreement in effect: one for "nutritive processing assistance" in rural Alberta agriculture, and the "Alberta North" agreement.

In meetings with the new Conservative federal government in September, 1979, the Alberta government called for a reassessment of DREE funding, objecting to what it sees as the subsidization of inefficient industrial activity in the east which could more productively relocate in western Canada.

British Columbia - As with many other provinces, a federal-provincial agreement was signed in 1979 to cover a forest management program. The BC-Canada subsidiary agreement for "Intensive Forest Management" will spend \$50 million shared equally over the next five years. According to BC's budget address, this agreement "represents only one component of a federal-provincial forest industry development program being formulated within the province's economic strategy." The province also has renegotiated its industrial development subsidiary agreement with the federal government.

(3) Energy Pricing and Policy

Any observer of public debate in Canada in late 1979 would have to acknowledge that the "energy crisis" has finally come of age. And most of the issues related to energy found their way into inter-governmental conflict. This was due largely to international forces: the price of oil took its biggest jump since 1973, and Canada, as other western industrial nations, has been forced to curb its demand for the imported resource. Critical questions for public policy are posed by such events: How are alternate energy resources to be developed? What role does the state play in that development? Can we afford to export depleting resources? How do we conserve and how do we avoid hardship and recession with rising energy costs?

In the federal state, the energy issue has also become expressed in a fundamental debate about the nature of the federal system and the conduct of federal-provincial relations. The territorial concentration of oil and gas in Alberta, British Columbia and Saskatchewan - and the provincial ownership and jurisdiction over the management of natural resources, means that questions as to "who gets the rent" centre in the Canadian case, not between public and private sectors of the economy (although there is an element of this in the debate), so much as between competing jurisdictions and competing regions.

The central issue in 1979 has been oil pricing. With the oil pricing agreement between the federal government and the producing provinces running out by the end of the year, the new Conservative government was faced with renegotiating the price of domestic oil in the face of a rapidly changing international climate. Not only have the rate and amount of price increases been at issue, but more important has been the question of who gets the extra revenue - the oil companies, the producing provinces or the federal government? Will consumers be sheltered, will the "windfall" go to the development of energy resources? These are questions which bear directly on the relative roles of the federal and provincial governments. Behind the rhetoric of positions taken by the Ontario and Alberta governments, by the Clark government cast most often in the role of mediator, and by the other provinces, have been differing conceptions of community, over the sharing of the burdens and the wealth of the public domain, and over which political unit should prevail. The oil pricing debate in particular, will not settle any of these questions once and for all, but it may well be a sign-post of significant developments in the federal system, and it will most certainly be a crucial test for the new federal government's professed goal of a more cooperative federalism.

The review below follows the oil pricing debate from November 1978 through to the First Ministers Conference on Energy in November 1979. Related to these developments, but treated separately are federal-provincial relations over such other issues as emergency allocation of supply, non-conventional oil resources, natural gas markets and pipelines, hydroelectric development and conservation measures.

The Oil-Pricing Debate

The domestic oil-pricing regime in place until the end of 1979 was established following a federal-provincial conference in May, 1977. This agreement provided for a \$1 per barrel increase on the wellhead price of crude oil every six months. At that rate it was expected that the domestic price would reach parity with the world price by late 1980 or early 1981. The federal government decided in August, 1978, as part of its restraint package, to delay the price hike scheduled for January 1, 1979, in order to keep down the rate of inflation. Both producing and consuming provinces were upset with the unilateral violation of the agreement, but in a compromise worked out with the Alberta government, it was finally decided to delay the January increase in return for automatic \$1 increases in July 1, 1979 and January 1, 1980.

This arrangement has, since the winter of 1979, become untenable. World prices for oil took a dramatic leap forward during and after the revolution in Iran. "The average cost of imported oil has jumped from \$16.50/barrel, landed in Montreal in October, 1978, to \$25.70/barrel today," while the domestic price as of November, 1979, was only \$15.63, on the average.³⁴

While not directly addressing the oil pricing issue during the election campaign, the new Conservative government had committed itself to a policy of reaching energy "self-sufficiency" by 1990. This goal was reinforced and reiterated following the Tokyo summit meeting of the leaders of the western industrial nations in June. The Clark government committed Canada at that meeting to reducing oil imports to 600,000 barrels per day by 1985, which would entail a reduced annual rate of growth of oil consumption by one per cent - part of an overall effort by the western economies to reduce the impact of the Organisation of Petroleum Exporting Countries (OPEC) on their economic stability.

By the end of June, finance minister John Crosbie announced that the domestic price would have to rise at a faster rate, both to encourage conservation to meet the above commitments, and to reduce the growing demands on the federal treasury of the subsidy on imported oil which maintains a uniform domestic price (estimated at a cost of \$1.1 billion for 1979), (See Table 4.6). Thus the Conservatives decided not to touch the July 1 increase of \$1 per barrel, but planned larger hikes for 1980.

There have been a few Cassandras arguing against accelerated domestic prices, but most policy makers would agree with the arguments put forward recently by the Economic Council of Canada for moving more rapidly to the world price. Current conventional sources of petroleum supplies are being rapidly depleted at "relative low cost" and

34. Background to a new energy strategy, Federal Department of Energy Mines and Resources, Discussion Paper, Nov. 1979, p. 2.

TABLE 4.5 ECONOMIC IMPACT OF OIL/GAS PRICE INCREASES - 1980¹
(ONTARIO)

	<u>Average Oil Price Increase²</u>		
	\$2.	\$5.	\$7.
A. INDICATORS:	(percentage points)		
Inflation - Consumer Price Index	0.8	2.2	3.3
Ontario Real Growth	-0.4	-1.0	-1.5
B. HOUSEHOLD COST INCREASES			
Home Heating	\$48	\$120	\$168
Automobile	\$40	\$100	\$140
TOTAL	\$88	\$220	\$308

1. From Ontario, Oil Pricing and Security: A Policy Framework for Canada, Aug., 1979, Tables 1 and 2.
2. Average domestic price increase per barrel in 1980 over 1979 level with natural gas indexed at 85 percent.

TABLE 4.6 OIL AND GAS CONSUMER SUBSIDIES¹
(\$ BILLIONS)

	OIL IMPORT COMPENSATION	FOREGONE PRODUCTION REVENUES		TOTAL
		OIL	GAS	
1974	1.3	1.7	1.0	3.0
1975	1.5	1.7	1.1	4.3
1976	1.0	1.5	0.9	3.4
1977	1.0	1.8	1.0	3.8
1978	0.5	1.8	0.8	4.1
1979 (est.)	1.1	4.6	2.0	7.6
TOTALS	6.4	13.0	6.8	26.2

1. From Department of Energy, Mines and Resources, Canada, Background For New Energy Strategy, Nov., 1979, Table 4.

"the need to eventually pay much higher prices for either Canadian (non-conventional) or international petroleum products is almost certain." Thus higher prices now will encourage conservation and by making costlier energy projects more viable, ease Canadians into the higher-cost energy environment.³⁵ The Economic Council proposed a \$4 per barrel increase every year, "so as to reach world prices that are expected to prevail around 1985 or 1986."

Thus by late summer the stage was set for a new round of negotiations over the price of oil (and, too, the price of natural gas, since it has been pegged at 85% of the domestic oil price). That prices should increase has not been at issue, but there has been much debate over how much and when (and even more about who).

The main forums for this debate so far, have been the annual premiers Conference at Pointe-au-Pic, Quebec, August 15-18, and the Federal-Provincial First Ministers Conference on Energy, Nov. 12, 1979. In the eyes of the general public the diverging positions have become largely personified in a debate between two provincial premiers: William Davis of Ontario who has taken up the cause of the consumers and Peter Lougheed of Alberta speaking for the producers. In a contrast more apparent than real between the former Liberal government and the present Conservative government, Prime Minister Clark and his cabinet has been seen to take on the role as mediator between the two regional spokesmen. The other provinces, while occasionally siding with one or the other camp, are cast as onlookers. This "drama", played out on the main stage of televised conferences and on the sidelights of speeches in provincial legislatures and to other audiences, obscures the complexities of the issue, despite their value for the political fortunes of the main protagonists. The political stakes are indeed high, particularly for the minority Conservative governments in Toronto and in Ottawa, both faced with Oppositions which demand an even harder line against the producing provinces on oil issues. Nonetheless the basis for a compromise exists.

The following is a brief review of the substance of the positions on oil pricing and related issues as emerged from the premiers and federal-provincial conferences in the past few months.

Ontario - The Ontario government stole a march on the federal government and on the producing provinces by stating its position forcefully at an early date - early enough to have an impact on the premiers' discussion of energy at their conference in Quebec. In his paper, Oil Pricing and Security: A Policy Framework for Canada Premier Davis made the following points: Ontario opposes any immediate price increase beyond the current

35. Two Cheers for the Eighties, p. 79.

TABLE 4.7 OIL REVENUE SHARING, 1966-1978¹
\$ MILLIONS (%)

YEAR:	NET OPERATING INCOME	FEDERAL SHARE	PROVINCIAL ² SHARE	PRODUCER SHARE
66	868	28 (3.2)	343 (39.5)	497 (57.3)
67	985	34 (3.5)	354 (35.9)	597 (60.6)
68	1072	35 (3.3)	383 (35.7)	654 (61.0)
69	1133	30 (2.6)	404 (35.7)	699 (61.7)
70	1277	46 (3.6)	346 (27.1)	885 (69.3)
71	1467	70 (4.7)	406 (27.7)	991 (67.6)
72	1725	91 (5.2)	441 (25.6)	1193 (69.2)
73	2495	182 (7.3)	681 (27.3)	1632 (65.4)
74	4194	417 (9.9)	1601 (38.2)	2176 (51.9)
75	5270	550 (10.4)	1928 (36.6)	2792 (53.0)
76	6311	658 (10.4)	2572 (40.8)	3081 (48.8)
77	8081	941 (11.6)	3802 (47.1)	3358 (41.3)
78	9189	876 (9.5)	4254 (46.3)	4059 (44.2)

1. Dept. of Energy, Mines and Resources, Canada, Taxation and Revenue Sharing, Nov., 1979, Table 3.

2. Includes bonus and rentals.

TABLE 4.8 OIL AND GAS REVENUES, 1980¹

	For Average Price Increase of ²		
	\$2	\$5 (\$ Billion)	\$7
TOTAL REVENUE - CANADIAN PRODUCTION	1.96	4.77	6.55
- Federal Government	.24	.74	1.34
- Producing Provinces	.88	2.20	3.08
- Petroleum Industry ³	.84	1.83	2.13

1. Ontario, Oil Pricing and Security, Table 3.

2. 1980 domestic price increase per barrel over 1979 level. Assumes natural gas indexed at 85 percent and existing tax/royalty regimes.

3. Assumes industry reinvests 80% at \$2 price increase and that proportion declines thereafter.

January, 1980 agreement for \$1/ barrel. Eventual price increases beyond should be implemented only if policies are implemented to pursue oil security through conservation, substitution, and acceleration of unconventional oil supply; this should be combined with temporary tax credits and cuts to sustain economic growth, and a program to accelerate industrial adjustment to higher energy costs. Ontario also proposes a "National Energy and Employment Adjustment Program" to place increased revenues from higher prices in a special fund. New federal revenues would be placed in this fund and not simply placed in general revenues. The producing provinces, too, must give (not loan) some of their 46% take, for "national economic and self-sufficiency objectives." The fund would be spent on oil security objectives outlined above. If provinces were not willing to contribute to the fund, the federal government must use its constitutional authority to redistribute extra revenues.

These positions were reiterated by Premier Davis and other members of the Ontario government on numerous occasions from August to November. Through each statement the same themes have been repeated - a basic concern about the effects on the economy of rapid price increases and a concern over the fiscal imbalance created by the accumulation of oil and gas revenues in Alberta (and to a lesser extent Saskatchewan): "The eventual size of fiscal imbalances created by revenue flows of these orders of magnitude is staggering and represents a significant challenge to the flexibility of the central financial arrangements of Confederation."³⁶ Behind the most vocal concerns is the underlying threat of the loss of comparative advantage of Ontario's manufacturing sector, along with the national economic consequences it feels this would engender, and the implied concept that natural resource revenues for oil and gas are of such a size to have become of national, rather than of solely provincial concern. (See Table 4.5)

Alberta - Both in response to the Ontario position and in the public airing of its case in the negotiation of prices with the federal government, the government of Alberta has stated what it considers to be the appropriate policies from the point of view of the main producer of oil and gas - how to ensure eventual self-sufficiency of supply in a critical international environment, and how to ensure that the producing provinces are compensated fairly for their rapidly depleting resources. Alberta rejects the treatment of oil and gas revenues differently than other resources as an attempt "to change the basic concept and arrangements of Confederation which left the ownership of natural resources to the provinces." In countering Ontario's arguments that Alberta is amassing resources wealth to the detriment of the rest of Canada, the Albertan government points out that since 1974 the province has subsidized the rest of Canada by \$15 billion

in foregone revenues due to the lower domestic price. "A subsidy of that magnitude from one province to the rest of Canada is unprecedented in the history of Confederation."³⁷ In outlining what he wanted to see in a national energy policy, Premier Lougheed told the First Ministers in November that they should, among other initiatives:

- move towards world prices (to a point, "somewhat below a United States composite price") over a reasonably short period.
- cooperate on accelerated development of oil sands and heavy oil projects.
- provide more incentives to industry for recovery techniques, and exploration.
- step up efforts to substitute natural gas for imported oil in eastern Canada and permit export sale of "surplus natural gas."

Other Provinces:³⁸

British Columbia:

- supports raising price towards world levels.
- provisions should be made to cushion effects on low-income families.
- asserts provincial rights to resource ownership and management, and rejects federal suggestions of export taxes.
- does not support other than temporary subsidies to industry, which in any case should relocate closer to the source of energy resources.

Saskatchewan:

- oil prices should move regularly to the Chicago price (US composite price).
- none of the revenues from increased price would go to the multinational oil companies.
- all additional funds should go to finance new energy resources owned by the people of Canada.
- repeats arguments made since 1975 for an Energy Fund and criticizes federal proposals for an Energy Self-Sufficiency Tax as not tied clearly enough to direct energy project spending.

Manitoba:

- supports increases in price towards world price.

37. Opening Statement of Premier Peter Lougheed, Federal-Provincial Conference of First Ministers on Energy, Doc. #800-11/023, Nov. 12, 1979; see also Lougheed's "Statement in Response to Ontario Position Paper, Oil Pricing and Security", August 16, 1979.

38. Based on Premiers' statements at Federal-Provincial Conference, Nov. 12, 1979.

- calls for more favourable incentive pricing for natural gas relative to oil prices; both for 'old' and new gas sales.
- supports general use of federal taxation of revenue from petroleum products "to fulfill national and regional responsibilities".
- asks for measures to cushion effects of higher prices on Canadians living in the north.

Quebec:

- agrees with goal of moving prices close to world price, which will make other energy forms more viable (e.g. hydro).
- supports Alberta in "that the provinces have an exclusive right to ownership of their natural resources".
- wants a tax structure which encourages equally all forms of energy development.

New Brunswick:

- supports others' arguments on need to move towards world price.
- (together with other Maritime premiers) calls for special subsidies on the price of oil used in electrical generation to last "for a short period."

Prince Edward Island:

- supports rise towards world prices.
- advocates greater development of "alternate" energy sources: wind, solar, wood and tidal power.
- wants a "bridging subsidy" for oil used to generate electricity.

Nova Scotia:

- will give way to the "national interest" in raising oil prices to near world levels, providing that equality of energy costs is a goal of a national strategy.
- calls for a freeze in present prices for oil used to generate electricity, equalization of fuel oil costs in line with fuel costs in other provinces (which have access to natural gas supplies), and federal funding for coal and tidal power developments designed to substitute for imported oil.

Newfoundland:

- calls for a "systematic and orderly progression to world prices (and advocates a detailed formula for reaching 90% of Chicago price by 1984).

- supports provincial ownership of resources and the "right to determine the conditions under which their resources shall be sold and to derive from that sale the economic benefits..."
- proposes funding energy projects such as the Lower Churchill Hydro development through the federal government's proposed energy bank, at competitive rates of return.
- argues for special provisions to cushion costs of higher prices on Canadians on low or fixed incomes.

Federal Government -

Prime Minister Clark is in a difficult position. As leader of the federal government he had to enunciate a national energy strategy, and had made commitments to do so during the election campaign and at the Tokyo summit. The federal jurisdiction has the constitutional authority to pursue most of its goals - it could appropriate as much of the revenue arising from the sale of oil and gas for national purposes as it wishes, but not without entering into a fierce political, if not constitutional battle with the producing provinces. And while the federal government need only negotiate with the producing provinces to achieve a new oil pricing regime, it will ignore the demands of consuming provinces like Ontario at its peril. (It need hardly be added that the minority Conservative government has 58 seats in Ontario compared to 21 in Alberta).

At the first ministers conference in November, Prime Minister Clark sketched out the essentials of the Conservatives' energy strategy, and, while leaving the definitive versions to the federal budget in December and subsequent finalization of an oil pricing agreement,³⁹ gave an indication of where it stands on most of the critical issues.

First, Clark outlined the "four essential elements to an effective national energy strategy": 1) the price of oil must be high enough to bring on new sources of supply, 2) we must encourage more conservation, 3) accelerate substitution of other fuels for oil, and 4) increase the proportion of Canadian ownership in the Canadian energy industry.

In order to meet these goals, the federal government has been considering:

- a number of oil pricing options (ranging from present rate of \$2/barrel a year to \$6/year) all of which aim at achieving 90% of the Chicago average price, excluding the "Syn crude levy",

39. Opening Statement of Prime Minister Joe Clark, Federal-Provincial Conference of First Ministers on Energy, Nov. 12, 1979, Doc. #800-11/025.

(non-conventional oil, produced from tar sands for example, is priced at international rates as an incentive for production).

- gas prices would also increase with oil, except that present supplies priced at 85% of the increase for oil, and that "incremental volumes over 1979 levels" be priced at 65%, as an incentive for new markets, chiefly in eastern Canada.
- An "Energy self-sufficiency tax" of 50% of the revenues accruing to producers over and above the already agreed price increases (2\$/barrel/year for oil, 30¢/thousand cubic feet/year for gas).
- an additional excise tax on selected petroleum products (e.g. 25¢ per gallon of gasoline at the pumps).
- establishment of a federal-provincial Canadian Energy Bank to provide equity and loan investments into fund energy projects, "fostering increased private Canadian participation". Provinces would provide both equity and loan capital; the federal government would provide equity funds from 10% of its self-sufficiency tax in the first year, rising to 25% in the fourth year.
- conservation measures which would include transferring responsibility for the Canadian Home Insulation Programs and other federal-provincial agreements, and industrial conservation assistance in the Atlantic region.
- special emphasis on substitution away from oil including support for coal in Atlantic region, for conversion subsidies oil-burning facilities to use gas, and encourage incentive regulation of the gas market.
- use Energy Bank as catalyst for oil sands and heavy oil projects.

Thus on the more critical issues the federal government is committed to a) a much more rapid rise in oil pricing to meet at least US levels, b) appropriating a large proportion of the extra revenues accruing to oil and gas producers for national energy purposes and c) relying on the private sector and market forces for energy development. Apart from the objections of the government of Ontario, it will meet little opposition to its goal of much higher prices among the provinces, and with appropriate cushioning policies, could meet Opposition party objections in the House of Commons. The energy self-sufficiency tax however, will meet with sustained opposition from Alberta. Premier Lougheed is initially opposed to any extra federal revenues on the source of oil and gas resources, preferring instead, that Ottawa gets its share through corporate taxes. The Ontario government will be unhappy with an excise tax, which will mean that Ontario taxpayers will not only suffer higher oil and gas prices, but also bear the burden of special subsidies to eastern Canada financed by the tax. Other provinces will not appreciate federal efforts to use parts (if not the lion's share) of its extra oil and gas revenues for such purposes as reducing the federal deficit and/or stimulating the economy. Finally, some provincial governments, and more importantly, the main opposition parties in the federal Parliament remain opposed to the general thrust of Conservative policies to turn to the

private sector for energy development. In the related debate on the fate of Petrocan (see below), the Clark government has been condemned for reducing the public role in energy supply at such a critical time. On balance, there was hope that the new government could find a policy mix which satisfied, if not all provinces, or all its Opposition, at least a sufficiently large national constituency to allow it to survive what is probably its greatest policy challenge in an uneasy term of office.

OTHER ISSUES

Oil Supply and Development

The federal government has had to be particularly concerned with the imported oil supply since early 1979. The Iranian revolution temporarily cut off a significant portion of imports, raising a number of questions about security of supply: about who buys imported oil for Canada and about what to do in a supply crisis. The Liberal government moved quickly in February to re-establish its Energy Supplies Allocation Board, originally established under the Energy Supplies Emergency Act, 1974, which under its provisions expired in June, 1976. With its Bill C-42, the government put the bill back on the statute books, this time without the "sunset clause." The bill came under attack from the Conservative opposition and from at least the Ontario government for what they considered to be its sweeping powers,⁴⁰ but nonetheless the government is now prepared to implement crude oil allocation, petroleum product allocation and gasoline rationing in the event of a national emergency.

The federal government claimed that Bill C-42 was part of its national responsibilities as a member of the International Energy Agency to provide for potential international shortages, but it was also clearly a response to Imperial Oil's difficulties in receiving its oil imports following the export cessation in Iran. Imperial's parent firm, Exxon Corporation of New York, diverted up to 25,000 barrels/day from supply destined from Venezuela to Imperial in Canada, leading federal Energy Minister Allistair Gillespie to convince the corporation to reduce that diversion by about two-thirds; the minister also mandated the government-owned Petro Canada to replace Exxon as the sole purchaser of Venezuelan crude destined for Canada.

The role of Petrocan in international oil dealing, and in increasing domestic supply through conventional and non-conventional production, and frontier exploration - was a significant part of the debate on energy policy in the last days of the 30th parliament. It was even more so after the Conservatives' election promise to "privatize" all or part of the national oil company. Petrocan had been until June, negotiating on a state oil company-to-company basis with Mexico and Venezuela. Both deals were for up to 100,000 barrels per day in future imports (for a total of nearly 1/3 of present imports). Both deals were delayed, if not cancelled, with the uncertainty of Petrocan's status as the Conservatives groped for ways to implement its election promise, and decide whether, among its many roles, Petrocan will continue making international oil purchases.

40. For editorial opinion opposing the bill and an exchange between Ontario officials and the federal Minister, see Globe and Mail, March: 10, 15, 17, 20, 24, (1979).

Finally, during 1979 significant steps were taken towards much greater production of non-conventional oil through the development of tar sands and of heavy oil deposits in Alberta. In August the Alberta Energy Resources Conservation Board gave its preliminary approval to two projects, both to be in production by 1986 and each producing up to 140,000 barrels per day of crude oil. The first is the "Alsands" project to spend \$5 billion in construction of an oil sands production facility north of Fort McMurray in Alberta; the project is financed by a nine-member private consortium lead by the Shell group. The second project, a \$6 billion-dollar-plus heavy oil extraction and upgrading facility near Cold Lake, Alberta, will be built by Esso Resources. In both cases a federal-provincial modus vivendi over the appropriate taxation regime applied is yet to be finalized, and the governments will be required to cooperate on the substantial infrastructural demands of the construction phase, particularly as it applies to the competing labour needs of the two projects.

In Saskatchewan, government officials have apparently begun negotiations with the federal government on a proposal for the oil industry to develop the heavy oil pool near Lloydminster, but seem no closer to project development than last year.

Natural Gas

Apart from pricing agreements, which are of course, a significant factor, most of the more important decisions regarding natural gas in 1979 and in the near future have and will be made by the National Energy Board. In February the NEB released its report Canadian Natural Gas: Supply and Demand with a relatively conservative estimate of only 2 trillion cubic feet of gas "surplus" available for export. In the interim between this report and the NEB's recommendation and the federal cabinet's subsequent approval, in late 1979, of much greater gas exports, an intensive campaign was launched by the gas industry to prove that a greater surplus existed. The industry claimed it required the extra cash flow provided by export prices to carry on with exploration; and the producing provinces, too, are in favour of the higher revenue yields of the export price compared with the domestic price. By late August provincial regulatory agencies such as the Alberta Energy Resources Conservation Board changed its estimates of gas reserves upward - influencing eventual NEB estimates that there was indeed much more gas available for export.

The NEB continues to assert that there is gas available for the eastern extension of the gas pipeline from Montreal to Halifax, and is presently considering two proposals for its construction. The Quebec government among others has been considering incentive programs to promote the substitution of gas for oil in its energy policies released earlier in the year. Maritime provincial governments have been calling for consideration of possible offshore gas and oil, and of Arctic shipments of liquified natural gas, before approval is given for any proposal.

Hydro

Energy formed through the generation of electricity has been the subject of considerable inter-governmental negotiation in 1979. In most cases the debate has been conducted between provinces rather than between the provincial and federal governments.

In Newfoundland, work is going ahead only slowly with the Lower Churchill Development Corporation, a joint federal-provincial project to develop hydroelectric potential on the Churchill River in Labrador. In November, 1978, the two governments agreed to spend \$5 million in economic, marketing and financial studies of two sites - one at Gull Island, for 1,600 megawatts and one at Muskrat Falls for 600 megawatts. Meanwhile the province's attempts to reopen the Upper Churchill electric power contract with Quebec has been accelerated with the appointment of a legal task force.

In Manitoba, the government has been trying to convince the Western Premiers Conference to invest in a western "power grid" at a cost of \$611 million. The premiers studied a feasibility report at their annual meeting in March, but have not taken any decisions to date. It is perhaps a question of how badly Saskatchewan and Alberta feel they need to substitute oil and coal thermal electricity generation for Manitoba's abundant hydroelectric power.

In the Maritime Provinces the saga of the Maritime Energy Corporation continues. Initially suggested by the federal government as a means of helping the three Maritime provinces to cooperate on regional energy projects, it appeared early in 1979 that the corporation would finally get off the ground. The newly-elected premier of Nova Scotia, put aside the former government's reticence to using the Point Lepreau nuclear power plant in New Brunswick as the first MEC project. In February, Federal Energy Minister Gillespie met the Council of Maritime Premiers and settled on sharing the costs of the 650 megawatt facility - costs estimated at almost \$900 million - to be financed through the federal government's securing of a triple 'A' credit rating for loans in the capital market. Or so it seemed. By the time the May 1 deadline for ratification came along opposition had mounted. The government of Prince Edward Island, scheduled to use only 5% of the plant's generating capacity, had changed hands. The new premier Angus MacLean will not have anything to do with nuclear power, even indirectly, and opposition to nuclear power has also increased in Nova Scotia. The Liberal opposition in the latter province has warned the government of the escalating costs of the almost finished nuclear plant (and the plant has had continuing problems in construction).

Finally, following Council of Maritime Premiers meetings in June and September, negotiations appear to be continuing although the provinces are having difficulty with the federal government over the conditions of

the credit rating. The Nova Scotia government has meanwhile gone ahead with a \$1.2 billion program to substitute coal for oil in thermal generation facilities. The plan calls for 50% increase in generating capacity, and full substitution by coal in 1988. Premier Buchanan wants the federal government to come up with 45% of the costs, an investment he says will be worth it if it means saving federal oil import subsidies to the province which in 1979 amounted to \$350 million. It is not clear that this plan would reduce Nova Scotia's need for at least a third of the Point Lepreau output, but the New Brunswick government, growing impatient with the delays, is considering negotiations with New England customers to export the excess power to the United States.

CHAPTER V

FEDERAL-PROVINCIAL RELATIONS: OTHER POLICY AREAS

As the following brief descriptions show, federal-provincial relations involve a much wider scope of public policy and debate than "constitutional" and "economic" issues. Indeed it seems there are very few aspects of policy-making at either the federal or provincial level that do not involve some intergovernmental contact. The federal-provincial conference has extended in 1979 to cover many areas - such as public works and government procurement policies, which had not previously been felt necessary. The list below reflects some of the more important policy areas where significant intergovernmental activity has taken place, but there are other topics - such as Indian and Inuit affairs, second-language education, tourism and national parks - which are also requiring more attention. Thus this section is designed to be more illustrative than exhaustive.¹ Topics included in this section in last year's Review on regional development and energy, for example, are found in Chapter IV.

Agriculture

Agriculture was the scene of important negotiations in the past year. At the Federal-Provincial Conference of Ministers and Deputy Ministers it was decided that top priority would be placed on developing an aggressive marketing strategy for Canada. While complete agreement was not reached on the proposed changes to the Agricultural Stabilization Act, it was felt that changes could be implemented by the 1980-81 year. Quebec is hesitant to support the amendments as it would involve the phasing out of the provincial stabilization program. Concern was raised that provinces which did not phase out their own plans would not be eligible for federal funds.

Other topics discussed at the conference included "quota values", with a report to be commissioned for the next conference

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1. For a complete inventory of continuing federal-provincial interaction in 1978 see Federal-Provincial Relations Office, Federal-Provincial Programs and Activities: A Descriptive Inventory (Ottawa, 1979)

on that issue, and a federal proposal for a dairy export program, which received agreement in principle.

The most critical issue in agriculture during 1979 was with transportation. With a good crop, good prices and strong markets, Canadian grain farmers lost upwards of two million dollars a day in lost sales because the transportation system could not handle the volumes to be shipped. The new Conservative administration, which pledged to increase grain handling capacity by 50% within five years, leased 2,000 hopper cars at a cost of \$200 million to ease the situation. (See also transportation)

A sample of some recent Federal-Provincial agreements in Agriculture:

- May 1979, - Canada-Saskatchewan. An agreement to begin a series of projects which will encourage crop diversification, productivity improvement and program development. The federal government's share will be \$7.5 million.

- January 1979, - Creation of the National Chicken Marketing Council. Seven provinces have joined while Manitoba and Newfoundland are expected to join within one year. Alberta will remain outside the agency, but will cooperate with it.

- January 1979, - Canada-British Columbia. A 1.09 million dollar program to improve livestock feed use.

Communications

The field of communications continues to be a source of conflict between the federal and provincial governments. While the level of tension has decreased somewhat in the past two years, it appears to be more of an "agree to disagree" approach than progress toward resolution.

Four policy areas were covered at the First Ministers Conference on the Constitution in February: radio spectrum management, telecommunications carriers, radio and TV broadcasting and cable distribution. (See Chapter III, p. 41) As mentioned in the Third Report of the Western Premiers Task Force on Constitutional Trends, significant progress was made on the cable question alone.

These unresolved disputes have made the administrative work more difficult. For example in November 1978 the CRTC called for applications from cable licences to provide communication services of a non-broadcasting nature. With the Western provinces considering that non-broadcasting communications is a provincial area, Alberta announced the establishment of a public enquiry into non-broadcasting communications in December 1978. The announcement by the federal government of its intention to allow privately owned satellite ground stations was criticized by the Western provinces as being detrimental to their best interests and the decision by the CRTC to allow Canadian Pacific Telecommunications to interconnect with Bell was questioned by Saskatchewan on the basis that it could affect the quality of service and the rates in that province.

The situation may have changed with the new federal minister David MacDonald in charge (although it was too early to judge). Prior to the October federal-provincial communications conference, MacDonald wrote to the provincial premiers asking for recommendations for appointments to the Canadian Radio and Television Commission, as a demonstration of his willingness to consult. During the conference MacDonald repeated his hope that communications issues could be settled soon, rather than waiting for the constitutional review. The federal government presented a draft of the proposed amendments to the telecommunications act which provides "the mechanisms whereby delegation agreements and other federal-provincial agreements might be implemented."³ MacDonald indicated that the bill was a priority of the new government.

The new bill would enable, among other things, the delegation of the authority for licensing and regulating cable TV systems to the provinces. Quebec alone refused to establish a federal-provincial committee to implement the change - holding out for complete devolution of the jurisdiction, including control over programming and technical standards. The federal government, in reply to Saskatchewan (and Quebec), said it would consider joint jurisdiction over programming. The conference also discussed a federal discussion paper on ways to improve broadcast services by satellite, and administration of pay TV.

Consumer and Corporate Affairs

Although the past year in Consumer and Corporate Affairs contained no major breakthroughs, steady progress was made on several

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3. Minister of Communications, "Opening Statement," Federal-Provincial Meeting of Ministers Responsible for Communications, Toronto, Ontario, October 16, 1979.
 4. Globe and Mail Oct. 18, 1979.

fronts. The Third "Intrusions" report⁵ cites revisions to the Bankruptcy Act and the Competition Policy bill, and the withdrawal of the Borrower's and Depositor's Protection Act and a proposed trade Practices Act as examples of cooperation between the two levels of government. Discussions are continuing on the Bank Act, the Electronic Payments Act, the Mutual Funds Act and the Securities Act.

Prospects for the year ahead are good. If the Clark government carries through on a program for the elimination of duplication, initiated by the previous government a major cause of complaint in the Consumer and Corporate Affairs field by the provinces would be settled.

Environment

The degree of interaction between the federal and provincial governments was made very clear in the field of Environment in 1978-79. Loggers working with provincial permission were arrested by federal authorities in BC for damaging a habitat necessary for the survival of salmon. Conflict was at first avoided when charges were dropped by the federal government and the loggers agreed to take precautions to protect the salmon,⁶ but by the year's end the issue was on its way to being tested in the courts.

Generally speaking though, the year has been one of genuine cooperation. BC has agreed to become the eighth province to sign an environmental accord with the federal government, outlining the common goals while eliminating duplications. Negotiations continued with Alberta concerning the delegation of the pollution control measure of the Federal Fisheries Act to that province, as well as negotiation with several provinces who wish to gain authority for the Clean Air Act. In the international sphere, Canada and the US began talks on a problem of compelling urgency - acid rain. The federal government has formed a strategy committee including officials from the provinces of Quebec, Ontario and Nova Scotia to report by mid-1980 on how to tackle the problem.

Some agreements signed this year:

- Canada-British Columbia - an agreement to share the 2.6 million acquisition cost of wildlife habitat.
- Canada-Prairie Provinces - a 4.3 million program to be matched by the Prairie Provinces to compensate farmers for Waterfowl crop damage.

5. Western Premiers Task Force on Constitutional Trends, Third Report, March, 1979, p.13-15.
6. For one account see "Ottawa Backs off from Conservation Battle", Montreal Star, March 31, 1979.
7. Globe and Mail, Oct. 12, 1979.

- Canada-Quebec - an agreement to conduct an ecological survey in the Lower North Shore area of Quebec - cost of \$2.44 million shared equally.

Fisheries

A number of significant events occurred in fisheries in the 1978-79 year. At the federal level, "Fisheries" became a department unto itself, as well as bringing the Oceans and Aquatic Sciences sector of Environment Canada into the Ministry.

The year was marked by a number of controversial decisions which in some cases were reversed by the new minister, Hon. James McGrath. In November 1978, a six-month freeze on new entries to the inshore ground fishery in most areas of the Atlantic provinces was announced. In June 1979 the new Minister announced a partial lifting of the freeze. Quotas that had been set for the Atlantic Groundfish Fishing Plan under the former administrator were increased in August 1979. The ban on swordfish fishing was lifted, although the high mercury content which had caused the ban had not declined. The new administration noted that swordfish, a gourmet product, was not eaten in large amounts and could be considered safe. And a relaxation on restrictions on tuna licensing followed a federal-provincial meeting of ministers in August.

The coming year in Fisheries promises to be every bit as interesting as the past year. Newfoundland under Premier Peckford has promised a new aggressive stance while Premier Buchanan of Nova Scotia is making fisheries a major part of the development strategy for that province. Although McGrath appears willing to cooperate, he has maintained that a strong federal presence is needed to act as arbiter in the many sensitive disputes over quotas, boundaries, and various assistance programs.

Recent joint programs include:

- Canada-BC - Salmonid Enhancement Program.
This \$150 million program is designed to double salmon output from 25 to 50 million pounds annually. If the program is successful further expenditures of \$60 million per year are planned. This program is especially interesting as it calls for a cost recovery of 100% to be paid by those who will benefit from the program.
- Canada-Newfoundland.
A half-million dollar agreement 50/50 cost shared which will develop middle distance Scottish seining and Pair Bottom Crawling in the province.
- Canada-US - a permanent fisheries agreement which establishes resource arrangements between Canada and the US over 28 different fish stocks in the Gulf of Maine (Georges Bank).

Housing

This past year saw the demise of the Ministry of State for Urban Affairs, one in a series of steps which could lead to complete "disentanglement" between the two levels of government. Those programmes which were retained were shifted to Central Mortgage and Housing Corporation.

The federal government is moving to global or "block funding" for joint projects such as the Community Services Program and for various housing programs. For example, agreements dealing with low income and senior citizens' housing signed with Ontario, shift responsibility for administration to the province while the federal government shares the cost; and agreements signed with Saskatchewan low-income housing were also designed to eliminate duplication.

Immigration

The massive immigration of Indochinese refugees beginning in 1979 and continuing to 1980 has been a great challenge to federal-provincial cooperation in a variety of areas. Not only does it put to the test the administrative arrangements finalized last year, which give to all provinces, and Quebec in particular, some measure of local control over immigration, but it has required unusual efforts on behalf of the federal department of Employment and Immigration, National Defence, and provincial ministries of social services, health and education.

The influx has not been without its federal-provincial disputes - over who pays for education, language training, job training, extra health costs, and over the health of incoming refugees. Nonetheless, at first glance there appears to have been little dispute over the location and indeed the generous acceptance of refugees across the country. Without rendering a final verdict in this volume the refugee settlement program would probably be an excellent candidate for a case study in federal-provincial administrative cooperation.

Justice

Not normally a policy area of much federal-provincial conflict, the justice field has received more than usual attention in intergovernmental circles in 1979. There have been some rather mundane agreements

8. For a more complete discussion of further provincial grievances, particularly with respect to federal deferred reimbursement of Community Services funding, see Western Premiers Task Force on Constitutional Trends, Third Report, March, 1979, p.23-24.

9. See Federal Year in Review, 1977-78, p.90-91.

providing federal funds for shared-cost programs such as a pilot project unified family court in Newfoundland and a native court-worker programme, in the past. However issues coming to a head recently include: RCMP-provincial attorneys-general relations, particularly in the wake of the Laycraft Inquiry in Alberta, the Keable inquiry in Quebec, and the MacDonald Inquiry in Ottawa; provincial requests for revisions to the Criminal code in matters relating to gaming and betting; provincial concerns over the present Federal Court Act; and the issues arising out of the outcome of the Hauser case before the Supreme Court of Canada, (regarding the responsibility for prosecution).¹⁰

In the wake of these concerns, the new federal minister of Justice, Senator Jacques Flynn announced a federal-provincial meeting of ministers "to discuss issues relating to reform of Canada's criminal justice system." Flynn's letter to provincial attorneys-general and solicitors-general stated that it "may be timely to examine the adequacy of the current arrangements for federal-provincial consultation."

Lotteries

Last year's stand-off between the federal and provincial governments over lottery revenue has been turned on its head since the federal election. Applying one of the Conservative party's promises to pull out of the lottery business and thus avoid federal-provincial confrontation, the new Minister of State for Fitness and Amateur Sport, Hon. Steve Paproski, met with provincial ministers responsible for lotteries on August 21, 1979. Unanimous agreement was reached that Ottawa would get out of the \$250-million-a-year Loto Canada business altogether in return for an annual sum of \$24 million paid from the proceeds of the succeeding interprovincial lotteries. Federal obligations such as promises to improve certain sports facilities would be taken over by the provinces as well.

Mineral Resources

The past year saw a significant improvement in both the health of the mining industry and intergovernmental relations.

After a disastrous year in 1977-78, both levels of government met to consider ways to aid the industry. At the First Ministers' Conference on the Economy it was decided that both levels of government would work toward the creation of stable tax policies. They would also attempt appropriate tax sharing in the resource area.¹¹

10. See Western Premiers Task Force, op. cit., Third Report, p. 39-40. For Hauser case, see Chapter VII.

11. See Federal-Provincial Resource Taxation Review, Joint Report to Finance and Resource Ministers, tabled at the First Ministers Conference on the Economy, Nov. 27-29, 1978; Document No. 800-9/018.

In 1978-79 the federal government, Manitoba, Ontario and Quebec reduced taxes in the mining sector.

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 strictly transportation issues in the past year.

The inability of the grain handling system to move the volumes of grain which could have been sold resulted in losses in grain sales of 2 million dollars a day. The Clark administration has announced the leasing of 2000 hopper cars as the first in a series of steps to ease the bottleneck. Tory MP Jack Murta has been appointed to do a study of the grain transportation system. Former Alberta Minister of Transport, Dr. Hugh Horner has been appointed special grain coordinator, but may have considerable difficulty in coordinating the various unilateral provincial efforts to improve grain movement, particularly in Alberta and Saskatchewan.

The new administration is also faced with a number of other problems in transportation. The Western provinces, especially Saskatchewan, were highly critical of the Prairie Rail Action Committee report which proposed the abandonment of 1416 miles of track. Controversy continued on the "Crow's Nest rates". Discussions were held between the Western provinces on appropriate action in this area, but no agreements were forthcoming.

As for the eastern provinces, the Atlantic Development Council report "The Atlantic Regional Economic Development Strategy for the Eighties" noted that major improvements in the transportation system would be necessary.

Finally, one should note continuing efforts, mainly by provincial transport ministers to come to agreement, expected soon, on reciprocal motor vehicle licensing. The provincial ministers have also called upon the federal minister to extend its urban transportation assistance program for another five years, and served notice of the need for joint funding for the upgrading of the Trans-Canada Highway through several provinces.

CHAPTER VI

INTERPROVINCIAL RELATIONS

Provincial governments do not normally interact with each other nearly as much as with the central government. By definition their territories are exclusive and where interests conflict, the federal government is most often involved as mediator, arbitrator or power broker. There is however, an increasing tendency for provincial governments to meet. They exchange information and advice on the broad range of public policy that comes under provincial jurisdiction: health services, education, highways, municipal affairs, labour laws and so on. The provinces have also been banding together, whether at the annual premiers' conference or at regional groupings, to discuss joint "confederal" approaches to national policies. When the premiers meet to discuss the constitution, the economy or energy, they are most often trying to work out regional and other conflicts among themselves before facing the federal government. In particular, these premiers' conferences are tangible proof of the growing tendency of regional interests to be articulated through provincial leaders rather than through national institutions of the federal government. The first ministers' conferences and meetings reviewed below serve to highlight interprovincial relations in 1979, but are only the tip of the iceberg. According to the Alberta government's tally, they took part in no less than seventy-two interprovincial meetings of a prime ministerial, ministerial or deputy-ministerial level in 1978 - and this figure is conceivably higher for provinces, like the Maritimes, where the pattern of intergovernmental contact are even more a part of the political process.

The 20th Annual Premiers Conference

If one topic dominated the 1978 premiers' conference in Regina, it was constitutional reform. But by 1979 the topic had become energy. The ten premiers met in August 15-18 in LaMalbaie, (Pointe - au-Pic) Quebec to discuss energy and the economy, although they did find some time to consider constitutional issues. The stage had been set for an early confrontation on the oil pricing issue with Ontario's Oil Pricing and Security paper released prior to the conference, and both the Albertan and Nova Scotian governments released public statements on the issue at LaMalBaie.¹ However, if the premiers hoped to

1. See above, Chapter 4, pp. 88-93.

reach an early consensus before meeting with the Clark government in the fall, they were disappointed. The communiqué on energy released at the conclusion of the conference came far from any agreement on the critical issues of oil pricing and revenue sharing, although it did reflect the concern of some provinces that the federal government revise its emergency energy supply allocation act to allow interested provinces to assume responsibilities in that field, and also to allow provinces² to take over the "integrated management" of the home insulation programs.

The premiers found more room for consensus on general economic policy. They reaffirmed commitments made at the 1978 First Ministers' Conference on the Economy regarding the control of government expenditures and reviewed a number of the topics expected to be on the agenda of the next conference. The premiers specifically advocated a detailed review of the effects of recently concluded multilateral trade negotiations, agreed to continue to seek cooperation in applying budgetary economic stimulants and tax incentives (particularly before the next federal budget) and to continue finding funds for job creation aimed at youth, regions of very high unemployment, and hard-hit sectors such as construction and shipyards. There were several references in the conference communiqué to both previous and expected first ministers conferences on the economy, and the premiers served notice to Ottawa that for the next summit, a mutually acceptable agenda should be settled "sufficiently in advance" of the event, that agenda items be prioritized, and that briefing material be circulated with enough time to be digested.

Under the heading of "Constitutional Review Process," the premiers conference discussed the future of the Continuing Committee of Ministers on the Constitution, whose work had been interrupted by the federal election. The premiers requested that the new federal minister for federal-provincial relations, Hon. William Jarvis, be contacted for a proposed resumption of the constitutional review process. While not a part of the official communiqué, the other nine premiers took the opportunity to grill their host, Quebec premier René Levesque, on his constitutional option of sovereignty-association. As expected, neither side succeeded in convincing the other, and the Anglophone premiers used the opportunity of their Quebec location to repeat their a priori rejection of the PQ option.

Finally, in a review of miscellaneous topics left over from last year's conference, the premiers' communiqués gave little indication of significant movement on the themes of "deregulation" and "duplication of services" with the federal government but were encouraged by progress

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2. 20th Annual Premiers Conference, Pointe-au-Pic, Quebec,
Energy: Communiqué No. 2, Aug., 16, 1979.

in the field of standardizing regulations for interprovincial trucking a topic rarely absent from the interprovincial agenda, and looked forward to meetings with Ottawa on lotteries and medicare.

The annual premiers meeting has long ceased to be the purely social event it once was. However, in this year of elections, the cadences of conflict and consensus have changed. Whereas in 1978 the Regina meeting was the stage for a united front against the federal government's constitutional proposals, the 1979 conference revealed a new balance. As an editorialist for the Vancouver Sun put it, the disputes over oil pricing and other energy issues which dominated the conference made it an historic event: "it will be the federal government that will now have to arbitrate between East and West and must provide leadership on the large issues of national interest ..."³ Whether the election of the Clark government had allowed provincial governments to be more open in their conflicts -- without fear of a centralist solution imposed from Ottawa -- may be debatable; certainly regional tensions have become more salient than they have been for some time.

The Western Premiers Conference

The annual meeting of the premiers of the four western provinces took place on March 26 and 27 in Prince George, British Columbia. The agenda covered several topics on the "economy" grain handling and transportation, receipt of the Third Report of the Task Force on Constitutional Trends, response to sovereignty-association for Quebec and a report on a proposed western power grid.

In their general review of economic conditions, the western premiers expressed concern over recent increases in interest rates, and the service account deficit in trade. There were general statements of further commitment to restraint on public sector spending and discussion of mutual fiscal concerns with the federal government. Interest rates were on the list, prompting renewed demands for provincial input into Bank of Canada monetary policy. The premiers requested that their governments meet the federal government to review expenditure plans for 1980-81 and to prepare for the next round of the negotiation of the federal-provincial arrangements. The premiers agreed to activate the "Western Economic Policy Liason Committee" to help coordinate Western positions for such forums as the First Ministers Conference on the Economy and to produce quarterly follow-up reports between conferences.

On the topic of grain handling, the premiers registered their disappointment with the slowness of federal responses to previous demands for the development of a Pacific grain terminal to be built in Prince Rupert.

3. Vancouver Sun, Aug. 20, 1979.

The Third Report of the Western Premiers Task Force on Constitutional Trends (commonly referred to as the 'Intrusions Report') tabled at the Conference, continued the detailed examination of federal provincial disputes in a wide range of policy areas. As Premier Bennett's subsequent letter to Prime Minister Trudeau noted, however, "close to one-half of the concerns raised in the earlier reports have been resolved or at least have become of somewhat less immediate concern." The greatest amount of reduced friction has come in the housing and urban affairs field, and in economic development. Many of the other grievances have been forestalled by federal inaction as on competition policy and revisions to the Nuclear Control and Administration Act. The majority of items included in the first two reports, however, remain in the "continued consultation required" category - especially those concerned with communications. And there are a number of concerns termed as "basic federal-provincial differences", including the nondeductibility of resource royalties from federal taxes, transportation infrastructure and interventions of the federal government at the Supreme Court in cases against the provinces. Finally, one should note the one significant "new" grievance added to the list since 1978: provincial concerns with lack of consultation and the operation of the federal Emergency Supply Allocation Act, reintroduced in February, 1979. (See above p. 95)

Through such projects as this task force, and other initiatives, the western provincial governments have been in the forefront in suggesting, and carrying through, institutionalization of improved mechanisms of federal-provincial coordination. The Third Report presents the details of the second draft of proposed "mechanisms to forestall federal-provincial problems and to resolve problems that arise," being worked out between the task force and the Federal-Provincial Relations Office in Ottawa. The report indicates that both federal capacity and propensity to be more sensitive to provincial government concerns had increased since early 1978 - due in part to the first ministers' conferences held that year. The federal draft of February, 1979 contains such suggested mechanisms as periodic meetings with western officials and of a "ministers' group" to review grievances such as those raised by the intrusions reports, as well as improved internal efforts to monitor provincial attitudes and priorities for the information of policy-makers in various federal departments. The latter improvement was cited by the Third Report, however, as "essentially a unilateral federal government process", and the task force continues to hold out for intergovernmental consultation before the fact, for such things as new bills or policy announcements.

Finally, the Western Premiers' Conference discussed two other items at their March, 1979 meeting: a western power grid for the prairie provinces, and, without a firm commitment, they are going ahead with an evaluation of the idea. As for sovereignty-association, the premiers "reaffirmed the position adopted in Brandon in May, 1977" that they reject both the status quo and the sovereignty-association option offered by the Quebec government, "considering neither to be a viable alternative for solving the problems currently confronting

the federal system," and that the PQ option is not in the economic interests of the West or Canada as a whole. (This position was repeated following the release of the Parti Quebecois White Paper, Québec-Canada: A New Deal, in November, 1979).⁴

The Council of Maritime Premiers

During the past year the Council of Maritime Premiers has been adjusting to its changed membership as Premiers Angus MacLean of PEI and John Buchanan of Nova Scotia, have, in their turn, brought different perspectives to the eight-year old council and its secretariat.

Premier Buchanan came to power in late 1978 promising to assess the financial benefits of membership in the Council. The Council's \$12 million budget (to sustain the Secretariat and five joint agencies) took a beating this year as federal expenditure cuts included \$6 million to the Council's Land Registration and Information Service - requiring a near doubling of provincial contributions to Council revenues. It would appear, however, that to date, the Nova Scotia government has not balked at the increased burden, although it has refused to take the advice of the Maritime Provinces Higher Education Commission in its assessment of the grants for post-secondary institutions, allotting less than requested. As for Premier MacLean, his refusal to share in the costs of the Point Lepreau nuclear power plant in New Brunswick has been part of the problems plaguing the Maritime Energy Corporation. (See above pp.97-98).

The Council of Maritime Premiers usually meets quarterly and this year met in Dartmouth, NS in February, 1979, in Brudenell, PEI in June and Shippegan, NB in September. The agenda has included regional positions on national issues, such as a discussion of oil-pricing policy in June, and of the upcoming First Ministers' conference on the Economy, discussed in September. Most of the Council's business in the past year however, has focussed on joint activities of the Maritime Provinces. Apart from the difficulties with the Maritime Energy Corporation, the premiers have had to help the Land Registration and Information Service cope with the federal cutback and to seek a long-term marketing program for its services; they have revised an agreement covering the operation of the Atlantic Police Academy; they have agreed to proceed with the development of uniform securities legislation for the Maritime Provinces; and they have entered into a joint forestry education complex designed for the University of New Brunswick in Fredericton. Meanwhile, the Council secretariat continues to assist and advise in the operations of the council's joint agencies

4. See Alberta Government Press Release, Nov. 7, 1979.

and in interprovincial committees and task forces on topics such as joint purchasing, communications, transportation, environment (including Newfoundland) economic development and the constitutional review.⁵

Conference of Eastern Canadian Premiers and
New England Governors

The seventh annual conference of five eastern Canadian premiers (the four Atlantic provinces plus Quebec) and the six New England Governors took place this year in Quebec City in June. The inter-governmental group considered an agenda consisting mainly of energy and tourism. Of particular interest to their host, the participants reviewed a report on the possibilities of exporting the excess capacity of Montreal refineries to the US, and another report dealing with the export of hydro-electricity. Furthermore, the premiers and governors agreed to an exchange of information on energy-related research, to a design competition for energy-efficient housing and took interest in a project dealing with solar power.

5. See Council of Maritime Premiers, Annual Report 1978-79.

CHAPTER VII

JUDICIAL REVIEW

Introduction

The following is a brief review of four cases decided by the Supreme Court of Canada in 1979 - all of which are significant for federal-provincial relations. The rulings detailed here are perhaps only the tip of the iceberg in terms of cases before the courts affecting federal-provincial issues, but they are an illustration of the continuing role that the judicial system plays in interpreting and forming the constitution. As in the cases reviewed last year, increasingly we find the federal and provincial attorneys-general lining up on opposite sides of the cases.

Minority Language Rights

case: Attorney-General of the Province of Quebec v. Blaikie et al.

issues

At issue in this case was the constitutional validity of part of the Charter of the French Language passed in 1977 by the Quebec legislature. The Charter, often known in its legislative stages as "Bill 101", declared French to be the only official language of the province. Subsequently three Quebec lawyers, Peter M Blaikie, Roland Durand and Yoine Goldstein, pleaded in the Quebec Superior Court that Chapter III of Title 1 of the Charter be declared ultra vires the Quebec legislature, because, by proclaiming French to be the only official language in the courts and the National Assembly, it violated the provisions of section 133 of the BNA Act which Blaikie et al. contended, was beyond the jurisdictional competence of Quebec to amend unilaterally. They argued that the right to use either French or English in the Assembly and the courts was in fact, entrenched in the law of the constitution by section 133. Chief Justice Deschênes of the Superior Court granted the declaration, as did the Quebec Court of Appeal, with the following question posed in its leave to the Attorney-General of Quebec to appeal the case in the Supreme Court of Canada: "Are the provisions of Chapter III of Title 1 of the Charter of the French Language entitled 'The Language of the Legislature and the Courts' unconstitutional, ultra vires or inoperative to the extent that they violate the provisions of section 133 of the British North America Act (1867)?"

The Attorney-General of Canada intervened on behalf of Blaikie et al in both hearings of the case in Quebec, and before the Supreme Court. The Attorney-General of Manitoba intervened to support the appellant at the Supreme Court and the Attorney-General of New Brunswick and Georges Forest intervened in support of the respondent. The hearing was held on June 11 and 12, 1979 before a full coram of the Court.

ruling

The ruling, pronounced on December 13, 1979, declared for the respondent in dismissing the appeal and upholding the rulings of the Quebec Superior Court and Court of Appeal. In its unanimous decision the Court stressed that it did not wish its declaration of Chapter III, Title 1 of the Charter "to be taken as passing on the validity of any other provisions of the enactment". In supporting the reasons of Deschênes the Court dismissed the appellant's subsidiary contention that the charter did not violate Section 133, since the text of Chapter III, Title 1 of the Charter did not prohibit the "printing and publishing" in English of legislative enactments. However, the Court found that Section 133 implicitly requires that English versions of enactments be official versions as well.

In the more central issue as to whether amending Section 133 is within the legislative competence of the Quebec government, Deschênes had found it not to be within the scope of Section 92(1) of the BNA Act, which provides for provinces to amend their own Constitution of Canada and of Quebec in an indivisible sense - it is "an entrenched provision ... forbidding modification by unilateral action of Parliament or of the Quebec Legislature". The Supreme Court further justified its extension of the linguistic guarantee beyond the "technical" limitation to the Courts as described by Section 96 of the BNA Act, saying that Section 133 referred also to "the modern development of non-curial adjudicative agencies which play an important role in our society". Thus the Supreme Court showed a willingness to expand the literal interpretation of the word "Courts" to include the important administrative network of tribunals and so on ancillary to the judicial process that were not conceived of in 1867.

case: Attorney-General of Manitoba v. Georges Forest

issues

In April 1979, Chief Justice Freedman of the Manitoba Court of Appeal granted an appeal to Georges Forest declaring that the Official Language Act, 1890 was "inoperative in so far as it abrogates rights, including the right to use the French language in the Courts of Manitoba, as conferred by Section 23 of the Manitoba Act, 1870, confirmed by the British North America Act, 1871".

The Attorney-General of

Manitoba appealed to the Supreme Court of Canada which, realising the similarity between the Forest and Blaikie cases, agreed to hear the appeal on October 10, 1979, before a coram of seven justices. In its leave for appeal the Manitoba Court simply framed the question for the Supreme Court's judgement: Are the provisions (of the Official Language Act, 1890)... ultra vires or inoperative in so far as they abrogate the provisions of s.23 of the Manitoba Act, 1970... validated by the BNA Act, 1871...? The Attorneys-General of Canada and of New Brunswick intervened on the respondent's behalf.

ruling

In an unanimous decision delivered on Dec. 13, 1979, the same day as the ruling on the Blaikie case, the Court dismissed the appeal. In its collective reasons, the Court relied heavily upon the Deschênes ruling in the Blaikie case, as had Freedman in his judgement for the Manitoba Court of Appeal. Again the question was considered as to whether the legislature in Manitoba could amend the relevant sections of the Manitoba Act (or render them inoperative by other enactments) - by applying the power to amend the provincial constitution as conferred by Section 92(1) of the BNA Act. For the purposes of the province of Manitoba, the Court drew on previous cases confirming the Manitoba Act as validated by the BNA Act as the constitution of the province, but that "it is apparent that the amending formula conferred by Section 92(1) cannot have been intended to apply to the whole of this statute any more than all the provisions of the BNA Act touching upon the constitution of the provinces in this wide sense can be said to be subject to it." The wording of Section 23 of the Manitoba Act, almost identical to that of Section 133 of the BNA Act, was found to entail the same entrenched language rights as Section 133, and in the final analysis, the Court ruled: "It is unnecessary to consider in the present case whether this enactment implies a restriction of the amending power derived from s.92(1) by virtue of s.2 of The Manitoba Act. It is enough to note that on any view it certainly cannot result in Manitoba's Legislature having towards s.23 of The Manitoba Act an amending power that Quebec does not have towards s.133 (of the BNA Act)."

significance

The rulings in these two cases have been viewed as a victory for entrenched minority language rights. The decision in the Blaikie case, that the reciprocity of language rights between the federal and Quebec governments is an entrenched provision of the BNA Act, as part of the original Confederation bargain, is not surprising. However, in the Forest case, the Court extended this trade-off to include the Manitoba Act. It could easily have argued that Section 133 is peculiar to Quebec, and that the minority language rights of the Manitoba Act were wholly part of the provincial constitution for purposes of amendment. Its implicit ruling that all language rights in constitutional statutes are linked to the federal bargain has great significance for the future of minority rights provisions in all provinces. The Court

might have therefore been more explicit in its reasoning that existing language guarantees, wherever they reside, are to be considered beyond the unilateral competence of any level of government to amend. The practical impact of the rulings varied considerably from Quebec to Manitoba, however. In Quebec, English versions of legislative enactments have been printed since 1977 and require only a bill declaring them to be as official as the French versions -- in Manitoba, French texts have not been drafted since 1890 and translation will take years and millions of dollars to complete. Of more significance of course, is the political importance of the decisions - on the one hand, the Parti Québécois has drawn attention to the alleged injustice of having its Charter ruled unconstitutional after only two years of operation while it took ninety years to challenge the denial of francophone rights in Manitoba. Advocates of further entrenchment of minority language rights in the constitution have been encouraged by the respect shown by the courts towards such provisions, but the political realities of the Manitoba case, in particular demonstrate that until either level of government takes on the protection of rights as an important objective, constitutional entrenchment is rendered useless. As the Court was anxious to point out in the Blaikie case, their decision was not an attempt to invalidate the remaining sections of Quebec's Charter of the French Language; however, this is not likely to prevent the Parti Québécois from adding the decision to its reasons for rejecting the federal system.

Administration of Justice

case: The Queen and Hauser

issues

As Justice Dickson wrote in his dissenting reasons in this case, "the facts are not important." Patrick Arnold Hauser, the respondent, was charged in Red Deer, Alberta with the unlawful possession of narcotics for the purpose of trafficking, contrary to the Narcotic Control Act. When an indictment against Hauser was preferred by the Attorney-General of Canada, Hauser moved to quash the indictment on the grounds that the federal agents did not have the authority to prosecute without the consent of the provincial attorney-general. Provincial Attorneys-General have traditionally been responsible for prosecution of criminal law, and provincial authorities have been concerned with recent assertions by the federal government of its right to prosecute in criminal cases, as well as the range of other federal statutes requiring criminal proceedings for violators. At issue in this case was the constitutional validity of a section of the Criminal Code Act (1969) which empowered the Attorney-General of Canada to prosecute violations of federal laws, other than the criminal code. Equally at

issue was whether offences under the Narcotic Control Act should be considered as criminal law or not.

The Appellate Division of the Supreme Court of Alberta granted a prohibition; and leave to appeal to the Supreme Court of Canada was granted in order to answer the following constitutional issue: Is it within the competence of the Parliament of Canada to enact legislation as in Section 2 of the Criminal Code to authorize the Attorney-General of Canada as his agent: 1) to prefer indictments for an offence under the Narcotic Control Act, (and) 2) to have the conduct of proceedings instituted at the instance of the Government of Canada in respect of a violation...(of) any Act of the Parliament of Canada or regulations made there under other than the Criminal Code?

On May 29-31, 1978, seven justices of the Supreme Court heard the appeal, along with interventions from nine Attorneys-General: Alberta, Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Saskatchewan and Newfoundland. Thus the Hauser case had become a significant test for the jurisdiction over prosecutorial responsibility, and for the administration of justice, generally. The provinces took the position that Section 2 of the criminal code was ultra-vires of the federal jurisdiction to the extent that it defines attorney-general to include the federal attorney-general - contrary to Section 92(14) of the BNA Act, conferring on the provinces the power over the "Administration of Justice." The federal government argued that for matters not falling under head 27 Section 91 (criminal code) but falling under the general residual power of head 29 Section 91, (e.g. narcotics control act) the federal attorney-general could prosecute an indictment.

ruling

In a split decision rendered on May 1, 1977, the Court ruled to allow the appeal, by answering "yes" to the constitutional questions posed. Justice Pigeon, in giving the reasons of the court, said he would "endeavour to express an opinion on the constitutional question without going any further than necessary." -- he would not enter into the issue of responsibility for prosecution of criminal code offences. He thus proceeded to dispose of the issue as to whether violations of the narcotics act constituted criminal law for the purposes of the administration of justice. Pigeon mentioned that the Attorneys-General of Ontario, Quebec and British Columbia all conceded that a distinction should be made between criminal code and non-code offences for determining federal responsibility for prosecutions, but proceeded to classify the

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1. See Report of the Western Premiers Task Force on Constitutional Trends, May, 1977, pp.46-47; Third Report, March, 1979, p.40

Narcotics Control Act, "as legislation enacted under the general residual power, that is, non-code because it is essentially legislation adopted to deal with a genuinely new problem which did not exist at the time of Confederation and clearly cannot be put in the class of 'Matters of a merely local or private nature.'"

In additional concurring reasons, Justice Spence further elaborated on what he considered to be the power of Parliament to enforce its own statutes, drawing on such previous cases as the reference re Dominion Trade and Industry Commission Act, 1936. "It would be a denial of the basic concept of federalism," Spence wrote, "to permit the provincial authorities to have exclusive control of the enforcement of such legislation and the sole determination as to how and when the legislation should be enforced by institution of prosecution or against whom such prosecution should be instituted. If the legislative field is within the enumerated heads of Section 91, then the final decision as to administrative policy, investigation and prosecution must be in federal hands."

In his dissenting reasons, Justice Dickson found fault with the code-non-code distinctions drawn in the concurring and majority reasons. If Section 2 of the criminal code, which grants the attorney-general of Canada the same powers of prosecution as provincial attorneys-general, is upheld as it now stands, Dickson contends, "then it is manifest that there is nothing to stop the federal government from similarly restricting the powers of the provincial Attorney-General within the confines of the Criminal Code itself, or, indeed of stripping provincial attorneys-general or all Code powers." Furthermore, Dickson contends, the Narcotic Control Act "is criminal legislation," and therefore falls under provincial jurisdiction for its enforcement. Dickson would answer 'no' to the first question, 'yes' to the second.

significance

The decision can be seen as a victory for the federal department of Justice in its determination to prosecute cases under the Narcotics Control Act. However, the ruling surprised the legal community by essentially dodging the issue as to whether the federal government can prefer indictments for criminal law. Even more astounding for many observers was the ruling that the Narcotics Control Act, which provides for up to life imprisonment for its offences, should not be considered criminal law. Provincial authorities may also question the lack of reference to provincial responsibilities for public health, if the narcotics act is to be considered as only a regulatory statute. Provinces will have to await a further test of the jurisdiction over prosecutorial responsibility for criminal code offences.

Constitutional Amendment

case: The "Senate" Reference

issues

In November, 1978, the federal cabinet referred two questions to the Supreme Court of Canada: 1) Is it within the legislative authority of the Parliament of Canada to repeal sections 21 to 35 of the BNA Act... and to amend other sections... so as to delete any reference to an Upper House or the Senate? and 2) to enact legislation altering, or providing a replacement for, the Upper House of Parliament, so as to: a) change its name, b) change the numbers and provincial proportions of members, c) change the qualifications of members, d) change their tenure, e) to change the method by which members are chosen and f) to amend the necessity of passing bills through the Upper Chamber before their becoming law.

The need for this reference arose from controversy surrounding the federal government's Constitutional Amendment Bill of June, 1978 (Bill C-60) and its proposal to abolish the Senate and replace it with a "House of Federation." Provincial spokesmen, and other critics of the bill heard by the joint parliamentary committee on the Constitution claimed that reforms to the basic features of the Upper Chamber of Parliament could not be made unilaterally by the federal Parliament while the federal minister of justice contended that the federal government could do so under authority of Section 91(1) of the BNA Act. Subsequently the Joint Committee recommended the reference to the department of Justice.¹

In the reference hearing of March 20-21, 1979, a coram consisting of the Chief Justice and seven justices heard the federal government support the proposed legislation; opposing the proposals were counsel for the Attorneys-General of Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Saskatchewan, Alberta, and Newfoundland.

ruling

In an unanimous ruling reported on December 21, 1979, the Supreme Court answered question 1 in the negative: it is not within the federal legislative authority to repeal Sections 21-36 of the BNA Act in order to abolish the Senate. As for question 2, the Court found that the federal government could not alone amend the provincial or regional proportions of the Senate's members, it could not provide for their direct election to the body, nor could it change the requirements

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1. For the details of the proposed changes, see Hon. Marc Lalonde, Minister of State for Federal-Provincial Relations, Government of Canada, "Constitutional Reform: House of the Federation," August, 1978 and the Constitutional Amendment Bill, June, 1978.

that bills must pass both Houses of Parliament before becoming law. For the remaining parts of question 2, the Court ruled that it had insufficient information to judge.

In its consideration of the first question the Court disposed of the most important issues in the case. The Attorney-General of Canada had argued that reforms to the Upper House, including its abolition, were entirely within the competence of the federal jurisdiction by virtue of section 91(1) of the BNA Act as amended in 1949. In drawing upon a review of the practice of constitutional amendment to the BNA Act since Confederation, the reasons of the Court drew heavily from a federal white paper of 1965 published by the Hon. Guy Favreau, Justice Minister, entitled, "The Amendment of the Constitution of Canada," from which it quoted "four general principles" which have come to govern the custom of constitutional amendment: "The Fourth general principle is that the Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces." The Court further quoted the white paper to the effect that since 1949, no amendments based on Section 91(1) -- the general federal power to amend -- have affected federal-provincial relationships.

In order to demonstrate that the constitution of the Senate has in fact an effect on federal-provincial relationships, the Court quoted Confederation debates of 1864, from which it concluded that "a primary purpose of the creation of the Senate, as a part of the legislative process, was therefore, to afford protection to the various sectional interests in Canada in relation to the enactment of federal legislation." Furthermore, the Court delimited Section 91(10), where Parliament is given the general power to amend the "Constitution of Canada," as referring solely to the "federal juristic unit." Quoting Lord Sankey's reasons in re the Regulation and Control of Aeronautics in Canada (1932), the Court went on to conclude that Section 91(1) could not "be construed as permitting the transfer of legislative powers enumerated in Section 91 to some body or bodies other than those specifically designated to it" -- that is, the Senate as originally constituted, the House of Commons and the Queen, comprising the Parliament of Canada. The 1951 case Attorney-General of Nova Scotia v. Attorney-General of Canada and Lord Nelson Hotel Co. Ltd. and the 1916 case of In re the Initiative and Referendum Act of the Manitoba Court of Appeal were further cited as prohibitions to the unilateral delegation of legislative power from one body to another.

The Court disposed of the subsidiary questions of the second part of the reference in quick succession. Question 2(f) - "to provide that Bills approved by the House of Commons could be given assent and the force of law after the passage of a certain period of time notwithstanding that the Upper House has not approved them?" was answered in the negative. For the reasons cited above, that is, it would impair the Senate's legislative role, amendment of that feature could not be enacted unilaterally by the federal

government. So too for part 2(b) and 2(e)-iv. For the rest, the Court accepted provincial arguments that the reference gave insufficient "factual context" to answer the questions definitively.

significance

The Court's ruling came as a surprise to federal government observers, and may be considered a landmark case in many respects. The reasons are on the one hand, fairly technical and narrow in scope, but on the other lend jurisprudential weight to provincial demands for a full role in the constitutional review process. It may be that the 1949 amendment to the BNA Act establishing Section 91(1) was intended to extend the residual powers of the "peace, order and good government" clause into matters of constitutional amendment. In this ruling the Court has significantly undercut such an interpretation and has demonstrated that the federal nature of the State is protected not only by the distribution of powers between federal and provincial governments, but also by certain features of the central institutions themselves. Such features, therefore, can only be amended by all the Confederation partners, not the central authority alone.

Political events have, since the origination of the reference, quickly surpassed its arguments. The First Ministers Conferences on the Constitution, the defeat of the Liberal government and the apparent abandonment of federal interest in the second chamber reform have for the moment robbed the ruling of any immediate import. Yet in the longer run the decision contributes to the need for the more thorough, and (without an effective federal-provincial amending formula) much more difficult process of reform by constitutional conference and other bargaining forums.

CHAPTER VIII

NOTES ON THE INTERGOVERNMENTAL BUREAUCRACY

The bureaucracy of intergovernmental relations is one of the few remaining areas of significant growth and change in public administration. Taking the lead from Quebec and the federal government, almost all provinces now have separate agencies or ministries with specific responsibilities for federal-provincial and inter-provincial relations. The following notes highlight recent changes to the structure and senior personnel of this bureaucracy.

The Federal Government

William Jarvis was appointed minister of state for federal-provincial relations in the Clark cabinet of June 4, 1979. Although he had no direct experience in this field, he had been caucus committee chairman for environmental policy in 1976 and for solicitor-general policy in 1977. A lawyer by profession, the minister has been the member of Parliament for Perth (Southwestern Ontario) since 1972.

With the change of government, the Federal-Provincial Relations Office has undergone a process of reorganization although some senior appointments have been delayed by the defeat of the government in December. In particular, the organization of the bureaucracy's approach to Quebec has been transformed. The regional analysis group has been disbanded but, the staff of the special coordination group on Quebec remains intact under a new deputy-secretary for Renewed Federalism. Paul Tellier, the group's director under the previous administration has been appointed deputy-minister of the department of Indian and Northern Affairs. The position of deputy-secretary to the cabinet for the Renewal of Federalism is not yet filled but, Nicholas Gwyn is acting deputy. Other senior appointments as of January, 1980 were: deputy-secretary to the cabinet for Federal-Provincial Relations, Clovis Demers (who is also acting secretary to the Cabinet for

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1. Students of the intergovernmental bureaucracy should consult papers given at a recent Institute of Public Administration seminar in 1978 and at the annual conference in August, 1979; see Richard Simeon (ed.) Confrontation and Collaboration Intergovernmental Relations in Canada Today, Institute of Public Administration of Canada, 1979; and forthcoming special issue of Canadian Public Administration.

federal-provincial relations), assistant secretary (operations) William Haney, and assistant secretary (planning analysis and research) Douglas Rowland; and one should note the retirement of Frank Carter as constitutional advisor.

The resignation of Gordon Robertson in December as secretary to the cabinet for federal-provincial relations is more than a simple changing of the guard. During his long public service, Robertson epitomized the strong tradition of public service which helped to make the federal bureaucracy so widely respected. He was one of a group of "mandarins" whose stamp on public policy has lasted more than a generation. Today influence within the federal bureaucracy is now more diffuse and federal leadership over the provinces eroded. Robertson played a critical role in the constitutional debate since the 1960s and was an architect of the Liberal governments proposals of June, 1978. Whether or not one agreed with his constitutional philosophy, one cannot deny the ability and commitment with which it was expressed. He is now attached to the Institute for Research on Public Policy and will be conducting research on the future of federalism.

Finally one should note appointments that will continue to have significance for the federal approach to federal-provincial relations. Marcel Massé, formerly deputy-secretary in the FPRO was appointed Clerk of the Privy Council by Prime Minister Clark in June. And in the Department of Finance, the salience of federal-provincial issues was reinforced with the creation in May 1979 of a separate branch for Federal-Provincial Relations and Social Policy, headed by Assistant Deputy Minister Gérard Veilleux.

British Columbia

Following a cabinet shuffle in November, 1979, the British Columbia government is in the process of reorganizing its approach to intergovernmental relations. The Hon. Garde Gardom has been appointed Minister of Intergovernmental Relations, "whose mandate will be to coordinate and develop policies, strategies and activities for BC's relationship with other governments." The new ministry will assume some administrative duties of the executive council as well. With both control over the administration of cabinet and its committees, and the monitoring of the intergovernmental contacts of the various provincial ministries, the new bureaucracy should be very well placed to play an effective and strong coordinating role. The new minister will guide legislation establishing the department through the next legislative session, but has not finalized all staffing arrangements. However, Melvin Smith has been appointed deputy-minister for constitutional affairs. The former executive-director of intergovernmental relations, Dan Campbell is to head the government's new "BC House" to be established in Ottawa in 1980.

2. See Province of British Columbia "Reorganization Highlights", Nov. 23, 1979.

Alberta

The Alberta Department of Federal and Intergovernmental Affairs is one of the oldest and, by statute, most powerful in the country. Established in 1972, the department has wide responsibilities for advising the minister on the coordination and review of all programs, policies and activities of the Province relating to the federal government, other provincial and territorial governments in Canada, and international relations. In a 1979 cabinet shuffle, Premier Lougheed promoted the former minister, Louis Hyndman, to provincial treasurer, and appointed Dick Johnston as minister of Federal and Intergovernmental Affairs. Johnston has control over one of the largest intergovernmental professional staffs in Canada. The deputy minister is Dr. Peter J. Meekison.

Saskatchewan

The Saskatchewan government established a new Department of Intergovernmental Affairs in 1979. Previously a branch of the Premier's office, the new department will be responsible to the Minister of Intergovernmental Affairs, Roy Romanow, who is also deputy-premier and attorney-general. The government indicated that the new department was necessary in part because of the increased amount of constitutional activity and the need to coordinate provincial policies towards the federal government in particular. The new Act lists as powers and duties of the minister "the coordination of, and making recommendations to the Executive Council on, all policies, programs and activities of the Government of Saskatchewan and its agencies in relation to any other government." The minister is empowered to enter into negotiations and sign agreements for Saskatchewan and the department must be informed of intergovernmental agreements and policies of all other departments. Appointments to the new department included: Howard Leeson, deputy minister, Robert Weese, executive director of constitutional and international affairs and David Hawkes as executive director of inter-governmental coordination.

Manitoba

Intergovernmental relations in Manitoba are handled through the Premier's office, and Premier Sterling Lyon also holds the official title as Minister of Dominion-Provincial Relations. At conferences, the executive council staff is supported by staff from Finance or the Attorney-General's department. The Clerk of the Executive Council, Derek Bedson is considered the chief official.

Ontario

In late 1978 the Ontario government split the Ministry of

Treasury, Economic and Intergovernmental Affairs in two, creating a separate ministry of Intergovernmental Affairs. Upon the second reading of the bill at Queen's Park in November, 1978, the new minister Thomas Wells justified the keeping together of federal-provincial, inter-provincial and provincial-municipal relations in one department. The "orders" of government are so intertwined as to require a coordinated approach, Wells said: relations with the Treasury and Economics ministry would appear to be still very close. The new deputy-minister is Don Stevenson; and senior officials for the federal and interprovincial side of things are: Ed Greathed, executive director, Office of Intergovernmental Affairs and Gary Posen, director, Federal and Intergovernmental Affairs Secretariat.

Quebec

The province of Québec was the first to establish a separate central department of intergovernmental affairs in 1974. Since then under ministers François Cloutier in the Liberal government and Claude Morin, in the Parti Québécois, the Ministère des Affaires Intergouvernementales has assumed a high profile in both domestic and international affairs. Specific responsibilities of the department include overseeing all intergovernmental agreements, recommendations regarding international treaties and policies and to coordinate the activities of other provincial departments in all their dealings outside the province. The ministry maintains special offices in Hull, Toronto and is establishing one in western Canada. The international affairs branch maintains eight offices in the United States and ten in other foreign countries. Chief officials include: Robert Normand, "sous-ministre", and Pierre Lefrançois, "sous-ministre adjoint aux Affaires canadiennes".

New Brunswick

The cabinet secretariat in New Brunswick is responsible for intergovernmental relations, and Premier Richard Hatfield retains responsibility for intergovernmental policy. The senior officials responsible are Barry Toole, deputy-secretary to the cabinet (policies and priorities) and Don Dennison, coordinator of intergovernmental affairs, cabinet secretariat.

Prince Edward Island

With the election of the Conservative government of Premier Angus J. Maclean the Prince Edward Island government has undergone a significant reorganization. The number of government departments has been reduced from sixteen to ten. There is no separate ministry for intergovernmental affairs. However, there is an intergovernmental division of the Executive Council Secretariat. The official in charge

is Arthur Currie, deputy-secretary to the cabinet for intergovernmental relations.

Nova Scotia

The recently-elected Conservative government of Nova Scotia had also promised to reorganize intergovernmental relations in the province, and has appointed R J Thornhill, (who is also Minister of Development) as Minister of Intergovernmental Affairs. While responsible to the minister, the office in charge under Director Zilpha Linkletter, is for budgetary purposes still considered part of the Executive Council secretariat. The size and scope of the new agency has not yet been finalized.

Newfoundland

Since the re-election of the Conservative government in Newfoundland this year, there have been no major changes in its bureaucracy for intergovernmental affairs. The secretariat of intergovernmental affairs is a branch of the executive council office, under Cyril Abery, as deputy-minister. Premier Brian Peckford has retained the portfolio of Minister responsible for Intergovernmental Affairs.

APPENDIX

SELECTED READINGS

The following is a selected list of the most important titles published in 1979. For a more exhaustive list of published material see Federalism and Intergovernmental Relations in Canada and Other Countries: A Supplementary Bibliography, September, 1979, published by the Institute.

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