

INTRODUCTION

Social policy questions just will not go away for the Mulroney Conservative government. During its first term of office, the attempt to de-index Old Age Pensions met with angry resistance, and the suggestion to target Family Allowance benefits was seen as an unforgivable attack on universality, coming as it did after the Prime Minister's characterization of such programs as a sacred trust. Both initiatives were motivated by a desire to trim the deficit. While these two suggestions had expenditure restraint in mind, the federal national day-care policy would have expanded social spending. Yet the National Day Care Strategy fared no better; Bill C-144, the Canada Child Care Act, received third reading in the Commons on 26 September 1988 but died on the Senate order paper. In the first budget after re-election, Minister of Finance Michael Wilson announced that "the government is not in a position to proceed with (the Child Care strategy) at this time."¹ In any case, neither the deficit nor social programs figured prominently when the election was called for 21 November 1988.

The election campaign could not mask altogether the apprehension of Canadians concerning their social programs. Despite a valiant attempt by the Conservatives to persuade the electorate that "managing change" and "leadership" were the prime issues, the Liberals succeeded in focusing attention on the Canada-United States Free Trade Agreement. This was accomplished not by the opposition stating any new findings or arguments about intangible economic benefits; rather it was the spectre of damage or removal of Canada's social programs under the requirement of harmonization that drew even non-partisan judges, artists, writers, and academics into the political fray. Similarly, the Meech Lake Accord was not an election issue; all three political parties believed that opposition to the Accord meant electoral suicide in Quebec. Nonetheless, in addition to the coalescing objections surrounding the "distinct society" clause in the Accord, an equally strong reservation was developing around the spending power interpretation. Specifically, would Canada be able to maintain its national social programs if provinces are able to opt out and still receive "reasonable compensation" for provincial programs which are "compatible with the national objectives"? More to the point, would national programs be possible, or likely, in the future? The favourite example cited was a national child-care program.

This paper considers the rise and stall of the federal national child-care strategy, particularly Bill C-144. The next two sections describe recent events leading up to the introduction of the child care strategy, as well as outlining the major differences of views concerning program delivery. The contents of Bill C-144, the Canada Child Care Act, are then sketched. The final two sections

discuss Bill C-144, and suggest why the federal strategy failed as a compromise response to the different sides.

PRELUDE TO THE NATIONAL CHILD-CARE STRATEGY

Although all major political parties remain committed to promoting better child care for Canadians, the National Child Care Strategy² announced on 3 December 1987 by the Honourable Jake Epp, then Minister of National Health and Welfare, was in large measure, a delayed reaction to the 1986 Report of the Task Force on Child Care (the Cooke Report).³ The Task Force was established by the Federal Liberals in 1984 before their defeat, and when it reported in March, 1986, its recommendations proved unpalatable to many. Fortunately for the Conservatives, a special Committee on Child Care⁴ had been established by the House of Commons in November 1985 to "examine and report on the child care needs of the Canadian family." This committee was chaired by Conservative Member of Parliament Shirley Martin, but included members of the NDP and Liberal parties as well. Its report was released in March 1987. Happily, the Conservative government could safely remain silent on the Cooke Report's recommendations upon its release. By waiting for the House of Commons Committee to conclude its examination of the same questions, the government could chart its course in private while appearing appropriately judicious in public.

What was so disquieting about the Cooke Report? The description of conditions and diagnosis present no difficulties. The Task Force found that most children needing care are looked after in unlicensed spaces; the costs of child care is often prohibitive for low-income earners; parental leave arrangements are inadequate; and there is much variation among provinces in such matters as day-care subsidies for working parents, availability of non-profit spaces, cost of service, and degree of public (non-commercial) provision.

Provinces vary widely in the number of licensed care spaces available (see Table 7.1 for details). For example, the percentage of children under 13 years of age in licensed day care ranges from a paltry 4 per cent in Newfoundland to 20 per cent in Alberta, thus most children are in informal arrangements. Cost of care also differs widely, varying from under \$5000 to provide care for two pre-schoolers in New Brunswick to double that amount in Alberta. A more interesting point is the extent of commercial child-care spaces in the different provinces. Saskatchewan has virtually none (3 per cent of spaces), while Quebec (12 per cent) and Manitoba (20 per cent) have small fractions. On the other hand, Alberta (70 per cent), Ontario (43 per cent), British Columbia (58 per cent) and Newfoundland (64 per cent) have well over half their spaces commercially provided. The reasons for this variety are undoubtedly many and

Table 7.1
 Interprovincial Comparisons of Child-Care Spaces, Costs, Expenditures and Attitudes: Selected Statistics

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Number of Licensed Child-Care Spaces	% Children under 13 in Licensed Day Care	% Commercial Child-Care Spaces	Avg Child-Care cost for 2 pre-schoolers	Income limit for maximum subsidy under CAP, couple with 2 children	% Tax back rate of day-care subsidy	Total gov't per capita expenditures	Federal share (%)	Wants CAP to cost-share commercial day care	NGOs wish day care made universal
1987	1987	1984	1984	1987	1987	1984-85	1984-85	1985	1985
B.C.	18,595	10	58	\$7,190	\$13,512	50	\$80	48	yes
Alberta	43,082	20	70	9,144	17,160	30-90	134	27	yes
Saskatchewan	5,720	7	3	7,580	20,880	25	86	54	no
Manitoba	10,526	14	20	6,869	16,345	25-50	124	43	no
Ontario	94,018	12	43	7,010	23,340/34,164	100	118	47	yes
Quebec	58,425	12	12	6,950	15,550	26	142	29	no
New Brunswick	4,503	10	37	5,236	11,652	50	67	57	no
Nova Scotia	5,397	11	38	6,010	11,960	50	80	58	yes
P.E.I.	1,264	16	47	4,540	12,960	50	60	61	yes
Newfoundland	1,318	4	64	6,380	10,044	50	45	60	no
Yukon	240	--	--	6,600	15,480	50	85	54	no
N.W.T.	475	--	--	10,560	--	100	57	72	no

Sources: Columns (1) and (2), National Council of Welfare (1988), *Child Care: A Better Alternative*, p. 4. Columns (3) (4) (7) and (8), *National Task Force on Child Care* (1986), pp. 50, 192, 199. Columns (5) and (6), *Special Parliamentary Committee on Child Care* (1987), pp. 29, 149. Columns (9) and (10), *Canada Assistance Plan, Task Force on Program Review* (1986), pp. 97-8.

complex. In the case of Manitoba, it was a matter of ideology with the NDP government who, it must be remembered, were in government for all but four of the last nineteen years during which the province's day-care system developed. With the recent election of the Conservatives under Premier Gary Filmon and the strength of the Liberals, day-care policy in Manitoba will undoubtedly move in a new direction.⁵ Ideology, while clearly important in Manitoba, probably has a lot to do with the evolved situation in Quebec as well as Saskatchewan. The same might well be said for provinces having a high percentage of commercial spaces, especially Ontario and Alberta. Both provinces are noted for their greater commitment to private sector delivery, although some have argued that Alberta's stance respecting private delivery has more to do with efficiency and decentralization objectives.⁶ Still, it is hard to ignore ideology since, in the case of Alberta, 70 per cent of day-care agencies are for-profit, even though operating allowances provided to for-profit day-care services are generally not cost-sharable under the Canada Assistance Program (hereafter "CAP"). Given the wide variety of circumstances, it is simply not possible to explain provincial differences easily.

In the face of this variety across provincial boundaries, reflecting differing child-care preferences among Canadians, it should not be surprising that the Cooke Report's policy recommendations were controversial. The Report proposed a long-term strategy involving free, universally-accessible supplementary child care for all children. Specifically, formal child care for all children up to the age of 12 was envisioned both for working and non-working parents. The Report also recommended against allowing further deduction by individuals for child-care expenses in favour of direct payments to service providers.⁷ Finally, it called for a new cost-sharing formula; one whereby the federal government would fund a larger share of total program costs for child care in poorer regions.⁸ The cost to the federal and provincial governments of the Cooke Report proposals was reckoned at \$11.3 billion (in 1984 dollars) when eventually fully-funded in the year 2001. To put this in perspective, federal and provincial governments in fiscal year 1986-87 together spent less than \$0.7 billion for child care through the Canada Assistance Plan and the Child Care Expense Deduction.⁹ Niceties aside about timing, phasing in, and the like, the Cooke Report vision would entail an (eventual) sixteenfold increase in government support for child care. No small change!

In addition to the issue of cost to government of providing support for child care, the government found two other features of the Cooke Report unacceptable. The Cooke Report favoured the provision of child care by professional deliverers in licensed centres, preferably non-commercial. Furthermore, since child care would be freely available, the logic of a child-care expense deduction no longer exists. The underlying model is that of primary

and secondary education, in which parents pay no fees to enroll their children in publicly-funded (non-commercial) schools staffed by professional teachers.

The House of Commons Report on Child Care stands in direct contrast to the Cooke Report and became in reality, the legitimating authority for the government's position. Very explicitly in the first chapter, it asserts that "the primary responsibility for child care must rest with the family. Parents are and will remain the principal givers of care...."¹⁰ Calling this a "mixed approach, involving voluntary, commercial, and public resources...", the Committee unapologetically declares that this view is "reflected in every chapter of [its] report."¹¹ Elsewhere (in Chapter 2), the Committee reaffirms its approval of the principle of tax relief measures to deliver child care benefits to individuals.

The Cooke Report and the House of Commons Special Committee on Child Care Report are, therefore, poles apart. Nonetheless, competing visions are now up for public display, and some of the major policy questions starkly posed. Do we want to spend \$11 billion or more on a child-care delivery system? And do we want to continue with federal and provincial tax offset measures to assist families with child-care needs? These questions are considered next.

MAJOR CONTENDING VIEWPOINTS

The matter of costs is important to any major social program initiative, especially when the federal government faces annual deficits in the order of \$30 billion, growing national debt and a slowing economy. Other issues aside, the projected costs of the Cooke proposals at \$11.3 billion were simply too high. Sticker-price shock was also accompanied by wariness over the soft nature of the calculations done by the Cooke Report and the suspicion that the Cooke numbers could be a lower boundary. Indeed, the Cooke Report's figures assumed that day-care workers' salaries would increase only moderately, and that women, even when given free day care, would not dramatically increase labour force participation rates. More recent and realistic calculations by independent research suggests that the Cooke proposals might actually be in the order of \$20 to \$25 billion, a figure that exceeds the amount spent on the entire elementary and secondary education system.¹² Whatever the "true, realistic" number, neither the economic climate nor government finances would allow the Cooke Report to be taken seriously. Besides, the Conservatives had other reservations concerning such matters as the role of commercial day care and whether or not non-working parents should receive tax assistance, and the like. Therefore the government was fortunate; it could not afford what it did not like, in any event.

The role of commercial child-care provision is principally an ideological debate, some arguing that the care of children, when not done by parents, should be undertaken by well-paid, professionally trained caregivers in centres meet-

ing stipulated standards. For them, market supply is, axiomatically, incompatible with quality care-giving since profit is possible only at the expense of quality. Others, including the federal government, do not accept this. And, as noted, conditions vary greatly among provinces, as well as policy preferences. There is much difference of opinion among the provinces. In its consultations concerning the Canada Assistance Plan (CAP) the Task Force on Program Review¹³ found only Saskatchewan, Manitoba, Quebec and the North West Territories not wanting CAP to cost-share commercial day care. Significantly, all three provinces have the smallest percentage of commercial care spaces—Saskatchewan (3 per cent), Manitoba (20 per cent) and Quebec (12 per cent). Ontario, which has the most licensed spaces of any province, provides 43 per cent on a commercial basis. In short, the federal government did not really need the data on provincial differences to tell them that the Canadian public itself was divided on this matter. Suggested alternatives to the Cooke Report view were being expressed in terms of offering more "parental choice"¹⁴ or accommodating a "mixed market approach."¹⁵ The latter phrase was, as noted, the eventual catch phrase of the Conservative-dominated Special Parliamentary Committee on Child Care.

A similar fate met the Cooke Report suggestion to eliminate child-care expense deductions in the long run. The government would not contemplate removal of child-related tax relief for those parents choosing to stay at home to look after their children or using informal types of child care. In this, the government was again comforted by the Special Parliamentary Committee's recommendations.

The federal national strategy for child care evolved in part as reaction to the Cooke Report. While intuitive in the sense of appreciating that the Cooke Report was neither financially feasible nor politically acceptable, the Conservatives did have the Special Parliamentary Committee's Report as the counter-document. The views of that Report appeared more in tune with the Conservative Party's and Mr. Epp's inclinations. The National Strategy on Child Care that emerged was, therefore, an attempt at compromise.

BILL C-144 (CANADA CHILD CARE ACT)

The Mulroney Government announced its National Strategy on Child Care on 3 December 1987. It was a masterful compromise in the sense that virtually all positions were acknowledged and partially accommodated. By the same token, no single viewpoint prevailed.

The National Strategy on Child Care contained the three following components:

1. Tax assistance to families with young children through more generous deductions for child-care expenses, higher limits, and refundable child credits for parents who care for their children at home.
2. A special Initiatives Fund of \$100 million over seven years to encourage "innovative responses to problems related to child care," including the "development of non-profit community-based child care services."¹⁶
3. A Canada Child Care Act (Bill C-144) to replace certain provisions in the CAP. The new arrangements would cover both non-profit and commercial child-care services, provide expanded cost-sharing for operating costs, and capital funding on an enriched 75 per cent (federal)—25 per cent (provincial) basis but for non-profit centres only.¹⁷

The cost-sharing portion is intended to create an estimated 200,000 new child-care spaces in Canada. The federal government was willing to spend \$5.4 billion on child care over the next seven years. Taking into account the child-care expenses deduction as well as the refundable child-tax credit, the actual total for federal spending over the next seven years could amount to \$8 billion, of which it is estimated that only one-half would be really "new money."¹⁸

A portion of the strategy, namely the increase in the child-care expense deduction and the refundable child-tax credit, was enacted for the 1988 tax year. The Child Care Special Initiatives Fund has been underway since 1 April 1988 and the federal government has so far approved 77 projects.¹⁹ It was Bill C-144, the cost-sharing provisions, which died on the Senate Order Paper. Although the re-elected Mulroney government has pledged to meet its child-care objectives "before the end of its term of office", the Wilson budget of 27 April 1989 announced a deferral of its commitment to create new child-care spaces, with a projected saving to the government of \$175 million in 1989-90 and \$195 million in 1990-91.²⁰

FEDERAL CHILD-CARE POLICY: MIXED OR MIXED UP?

The federal Child Care policy, we suggest, was a compromise aimed at appeasing all possible positions. Less generously, it might be labelled a shotgun approach. By expanding both direct and tax expenditures, the government hoped to signal its concern for social and economic equality even as it must adopt a position of restraint with respect to other programs. By allowing both a refundable tax credit as well as more generous child-care expense deduction provisions, the government granted relief to those who care for children at home, or do not have receipts for informal arrangements, as well as those who use formal child care services; all of this in the name of "recogniz[ing] parental choice." Simply put, Bill C-144 gave something to everyone.

The Bill gave flexibility to the provinces with respect to accommodating non-profit and commercial child-care spaces; but it limited enriched capital funding for non-profit spaces only. It would also remove the entire question of child care from the stigma and welfare structure of the Canada Assistance Plan provisions, enabling future development as an institutional service for parents and children, and not as something to help "those in need or likelihood of need". Finally, the new Child Care Act held out prospects of federal funding for capital costs and innovative experimentation as well as more generous cost-sharing for poorer provinces. On the other hand, while current CAP arrangements are open-ended, Bill C-144 would, for the first time, place a financial ceiling on the federal contribution to child care, and there is no commitment beyond the seven years. By acknowledging the sharp differences of views among Canadians and provincial governments concerning such matters as whether child-care spaces should be provided under commercial or non-profit auspices, whether or not parents employing informal arrangements without receipts or simply choosing to remain at home caring for their children should benefit from tax relief, and whether all of the federal financial eggs should go towards expanding the supply of child-care spaces or, alternatively, to assist demand by lower income families, the federal strategy was truly a "mixed" approach.

This being so, the reflex criticisms from various quarters are predictable. Those wedded in various degrees to the vision of a comprehensive, universally accessible and publicly funded child-care network see the federal response as inadequate, with funds misdirected from creating the much needed child-care spaces. Further, the decision to increase the child care expense deduction in the face of tax reform to replace deductions with credits not only goes against the grain but actually represents logical inconsistency. On the other hand, there are others who see C-144 as limiting in terms of future financing since provinces attempting to expand spaces might find themselves without matching funds. The vexing issue of standards, what they will look like, how they might be established, etc., are all unclear at the moment.²¹

NATURE OF THE COMPROMISE AND REASONS FOR FAILURE

The present stance of the Conservative government towards child care is a compromise to be sure. But it is not entirely a compromise born of a desire merely to please all sides. Mindful of the different provincial positions respecting the role of commercial spaces and their different fiscal capacities, the federal strategy promised flexibility in cost-sharing as well as additional support for poorer provinces. In effect, equalization is built into the funding of child care. But the *quid pro quo* extracted by the federal government was a ceiling on its financial obligations with respect to child care. That is, the open-ended

cost-sharing nature of CAP, as it applies to provincial child care expenditures is no longer totally open-ended, although CAP remains open-ended with respect to other areas. Whether one approves of this attempt to trade more "equalized" federal aid to provincially delivered child spaces, for less assured future cost-sharing, depends upon one's preference for open-ended versus block funding formulas.

A noteworthy feature of the federal child-care strategy is the extent to which it is a harbinger of a post "Meech Lake" Canada. Section 106A of the Accord deals with the right of provincial governments to receive reasonable compensation for opting out of national cost-shared programs if they carry on a program compatible with national objectives. Critics who base their opposition on the decentralizing thrust of the opting out clause often raise the example of child care as one national service which the Meech Lake Accord would make difficult. Even those who see Meech Lake as a potentially centralizing rather than a decentralizing contribution concede that the Accord "will limit the ability of the federal government, present or future, to impose a narrowly-conceived, national, day care program on the provinces."²² And those who view Section 106A as centralizing in the more limited sense of entrenching and legitimating the federal government will seek to "minimize the number of provinces choosing to opt out of a scheme by allowing for considerable regional variation within the national program itself."²³ Both views would seem to suggest that, as Banting puts it, "the Accord would nudge new initiatives towards the model of the Canada Assistance Plan, with a general umbrella program containing relatively few precise conditions at the national level, and the specific form of each province's program being negotiated separately and set out in a subsidiary bilateral agreement."²⁴ Given this analysis it is no surprise that the federal strategy on child care builds upon the CAP model in its orientation of being all things to all provinces.

The federal child-care strategy is not consistent with the spirit of the Meech Lake Accord. Yet it is, at the same time, both more and less than a redesigned flexible CAP. It is more insofar as it removes assistance to parents requiring child-care assistance from the strictures of "welfare services" and the language of "need or likelihood of need". It is also more in its willingness to adopt a funding formula which takes account of the differing fiscal capacities and relative need for services in each province through variable cost-sharing.²⁵ But the national child-care strategy is also less than the CAP in the sense that it imposes funding ceilings. The Senate Subcommittee on Child Care had a curious logic on this point. It approves of the open-ended nature of the CAP. At the same time, it asserts that the aim of the national child-care initiative is to create a child-care system that does not yet exist, and that "this process of building a system is not necessarily inconsistent with funding ceilings."²⁶ Yet,

just as provinces cannot predict the number of their citizens needing income assistance with any accuracy, how can the federal government be certain its funding ceilings are adequate for the pace of provincial development of child-care spaces and provincial requirements for spaces? It seems fair to conclude that the ceiling on federal transfers derive more from a concern to limit federal transfers to the provinces than any required design feature to accommodate either the spirit of the Meech Lake Accord or federal-provincial politics.

Another feature of the federal government's attempt at grand compromise has to do with constituencies other than provincial governments; namely women voters, working mothers, parents who use informal child care, and mothers who choose to remain at home with their children. The government clearly agrees with the Parliamentary Task Force that the prime responsibility for care of children lies with the parents rather than with the government. Health and Welfare Minister Jake Epp was absolutely clear on this position.²⁷ Yet the political momentum and call for national child-care policy is perhaps more driven by the need to accommodate working parents. Consequently, by extending tax assistance through the refundable child-tax credit in the name of a national child-care strategy, the federal government, in effect, is signalling several things. First, it would appear that working parents have no greater claim to consideration than parents in general, including those who choose to stay at home with their children, or those who employ informal day care and do not have receipts. Second, the federal government can remain agnostic on the issue of whether the child-care strategy is to address the needs of the working parent or the custodial requirements of the child. By accommodating all parents without distinction, the strategy is conveniently left standing as a matter of parental choice whether one chooses to work or not, and whether one chooses formal child care or not.

If, then, the federal strategy on child care appears to be the epitome of compromise, why did it have such a rough time? The answers, I believe, have less to do with fiscal restraint or the policy process, but are to be found in the attributes of the main contending stake-holders and the characterization of the policy itself.

There is no denying the Conservative government's resolve to reduce the federal deficit during their first term.²⁸ Child care is perhaps the one area in which spending would return political credit far in excess of any fiscal criticisms. Restraint cannot be the entire answer. As to process, it has been pointed out that "in important ways Canadian policy making consists of high-level negotiations among competing bureaucracies and between federal and provincial authorities. Settlements emerge at this stage, and the public phase of policy debates has little impact on the decisions."²⁹

The circumstances appear to have been different on this occasion. First, during the recent election campaign, almost all debating time and effort, by governments and the public at large, was given over to the Canada-United States Free Trade Agreement and other electoral rhetoric that virtually drowned out child-care matters. Second, government at both levels had had countless task forces, commissions and reports available to help guide policy formation. There was no information vacuum on this issue. Similarly, the public at large, including non-governmental organizations and various advocacy groups, had ample access to the many forums discussing child care. Not much new remained to be said at this stage, as opposed to action. The time for process was over; the moment had come to put money on the table and legislation in the House. It is hard to conclude that the child-care policy failed for want of careful and wide discussion.

What led to the eleventh hour collapse of Bill C-144? The child-care strategy was the product of hours of thought and consideration. The government was certainly not taken by surprise. However, the federal compromise strategy miscalculated the strength of feelings and depth of passion among the combatant stake-holders. Those wanting a quality, universally available, professionally staffed, non-profit delivery network gave little quarter in their opposition to Bill C-144, going so far as to declare a preference for the status quo CAP instead of the new Bill. Nor was there less opposition from those who preferred informal care arrangements, or who believed that parents who remained at home with their children should not be disintitiled to any child-related benefits. Both sides viewed the situation as zero-sum game, and as a result, adopted uncooperative stances towards each other and confrontational tactics towards the government. This, then, was less a federal-provincial conflict than a radical difference of vision about child-care auspices. It is ironic that the Canada Assistance Plan model is, perhaps, the most amenable to further expansion or change. Both sides viewed their opposition's failure as a necessary condition of their own success, making accommodation appear undesirable.

A distinction is possible in characterizing development concerning social reform. The contrast is between the "big bang" or comprehensive reform strategy, and the "incremental" process typified by a steady series of smaller changes. One perceptive commentator, after reviewing income security progress in Canada and the United States during the last two decades, has suggested that Canadians like to debate reform within the big bang format but prefer instead to bring about changes gradually.³⁰ Here then is one possible clue to the failure of the Mulroney government child-care Bill to complete its mission. Gauged against the strong opposing views concerning both principles and delivery design of a national child-care system, Bill C-144 portends too dramatic a change to the status quo, acknowledged as unsatisfactory, but still

preferable to legislation too vague as to standards and too uncertain as to future funding. Add to this the very real apprehension of those unconvinced that a national child care policy is anything but a political response to working women as opposed to a response to a parenting issue, one should not be surprised that national consensus is absent. Since little in the way of new facts or understanding is likely to arise before the end of the second term, the Mulroney government must make good its promise to reintroduce the issue of a national child-care strategy. Passage of a new Bill to create additional child-care spaces is largely a matter of federal will more than any potent blocking coalition. But look for the government to give itself a bigger lead time running up to the next election.

Notes

1. The Budget Speech, document dated 27 April 1989 for delivery in the House of Commons by the Hon. Michael Wilson, Minister of Finance. p.7. Details were made known on national television the evening before.
2. Health and Welfare Canada, *National Strategy on Child Care*, 3 December 1987, including News Release and statements by the Hon. Jake Epp, Minister of National Health and Welfare, the Hon. Benoit Bouchard, Minister of Employment and Immigration, and the Hon. Barbara McDougall, Minister Responsible for the Status of Women.
3. Status of Women Canada, *Report of the Task Force on Child Care* (Ottawa: Supply and Services Canada, 1986), commonly referred to as the Cooke Report.
4. Canada, *Sharing the Responsibility*, Report of the Special Committee on Child Care (Ottawa: Supply and Services Canada, March 1987).
5. D. Bracken, P. Hudson, and G. Selinger, "Day Care in Manitoba and the 1988 Provincial Election: The Potential for Change", *Nouvelle Pratiques Sociales*, 1988, vol. 1, no. 1.
6. J. Hornick, R. Thomlison, and L. Nesbitt, "Alberta", in J. Ismael and Y. Vaillancourt (eds.) *Privatization and Provincial Social Services in Canada* (Edmonton: University of Alberta Press, 1988).
7. The Cooke Report, p. 297.
8. *Ibid.*, p.293.
9. National Council of Welfare, *Child Care: A Better Alternative*, (Ottawa: Supply and Services, 1988) p.6.
10. Canada, *Sharing the Responsibility*, p.9.
11. *Ibid.*, p. 10.
12. M. Krashinsky, "The Cooke Report on Child Care: A Critique", *Canadian Public Policy/ Analyse de Politiques*, vol XIII, no. 3.

13. *Service to the Public: Canada Assistance Plan*, A Study Team Report to the Task Force on Program Review (Ottawa: Minister of Supply and Services, 1986), commonly referred to as the Nielsen Task Force Report.
14. K. Ross, "Parents' Choice", *Policy Options*, 1986, vol. 7, no. 7.
15. H. Stevens, and D. Hum, "Contra Cooke: A Mixed Market Approach to Child Care", *Policy Options*, 1986, Vol. 7 No.9.
16. This flexible fund is available for programs addressing child-care problems related to shift-work, native groups, children with special needs, development of non-profit community-based child-care services, etc. The fund is not part of the Canada Child Care Act. The Act only requires that provinces commit themselves to according special priority to children from "low and modest income families", not necessarily native children or children with special needs.
17. Bill C-144, Canada Child Care Act, as passed by the House of Commons on 26 September 1988, Second Session, Thirty-third Parliament. The Bill received First Reading on 25 July 1988 and Second Reading on 24 August 1988.
18. National Council of Welfare, *Child Care: A Better Alternative*, op. cit., p.15.
19. Budget Papers, Tabled in the House of Commons 27 April 1989. p. 14.
20. Ibid., p. 14.
21. National Council of Welfare, *Child Care*, p.26. The National Council of Welfare goes so far as to recommend that the federal government be empowered to accept or reject the child-care standards of provincial governments and to withhold funds from governments that have unacceptably low standards. The proposed Act merely requires that provinces describe in an appendix to the agreement the Standards established for child-care services by the provincial authority (section 1 (h) iii). The appendix may be amended by the province providing the Minister with the required text changes. (section 2b).
22. T. Courchene, "Meech Lake and Socio-Economic Policy", *Canadian Public Policy/Analyse de Politiques*, XIV Supplement, September 1988. p. s73.
23. K. Banting, "Federalism, Social Reform and the Spending Power", *Canadian Public Policy/Analyse de Politiques*, XIV Supplement, September 1988, p. s87.
24. K. Banting, *The Welfare State and Canadian Federalism*, Second Edition (Kingston and Montreal: McGill-Queen's University Press, 1987) p. 200.
25. I have argued at length for the CAP to incorporate equalization features in cost-sharing for specific services. I will not repeat myself here. See D.

Hum, *Federalism and the Poor: A Review of the Canada Assistance Plan* (Toronto: Ontario Economic Council, 1983).

26. Report of the Subcommittee on Child Care, *Senate Debates*, 12 July 1988. p. 21.
27. "I am enough of a traditionalist to believe that the best people to do it (provide child care) are the parents." Jake Epp in *Winnipeg Free Press*, "Epp rejects view day care centres better for children" 14 January 1987, p. 11.
28. National Council of Welfare, *Social Spending and the next budget*, (Ottawa: Minister of Supply and Services, April 1989).
29. C. Leman, *The Collapse of Welfare Reform: Political Institutions, Policy and the Poor in Canada and the United States* (Cambridge, Mass.: The MIT Press, 1980) p. 199.
30. Ibid.

The New Environmental Law

Alastair R. Lucas

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Au Canada et à l'étranger, la question environnementale s'avère d'ores et déjà incontournable. Dans cette optique A.R. Lucas aborde la facette juridique du dossier, particulièrement au regard du contexte canadien.

Les premières législations adoptées au Canada en matière environnementale remontent au début des années '70. Ces lois, émanant des deux paliers de gouvernement, visaient avant tout au contrôle des déchets dans l'air, l'eau et sur la terre. A la fin de cette décennie émergea une seconde génération de lois qui, dès lors, mirent davantage l'emphase sur la protection de l'environnement. On commença donc à articuler une stratégie à long terme qui puisse tenir compte, tout spécialement, des effets persistants de certaines substances toxiques.

A cet égard, l'escalade mondiale des désastres écologiques justifie la nécessité d'une concertation internationale en vue d'harmoniser l'ensemble des actions engagées par les Etats concernés. En contrepoint s'impose aussi le concept du développement soutenable, tel que prôné par les Nations-Unies et endossé par le Canada, en vertu duquel croissance économique et respect des écosystèmes doivent aller de pair.

Par ailleurs, au Canada, de récentes décisions judiciaires—telle l'affaire Crown Zellerbach—ont amené le gouvernement fédéral à repenser ses politiques d'évaluation environnementale. Il reste à savoir maintenant si la nouvelle loi fédérale sur l'environnement sera le ferment d'une coopération fédérale-provinciale améliorée ou bien le prétexte à d'éventuelles disputes sur le sujet entre Ottawa et les provinces.

En définitive, l'auteur souhaite la création future d'une charte canadienne de l'environnement qui permettrait d'enchâsser l'impératif du développement soutenable au Canada.

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INTRODUCTION

In January 1988 over 250 lawyers and other professionals gathered in Toronto for a conference on environmental law. The previous week a competing commercial conference organizer had drawn double that number to its Toronto environmental law seminar. Similar events have been held in other major

Canadian cities. Law schools have reported unprecedented demand for environmental law courses and published environmental law materials are selling briskly.

As recently as the mid-1980s professional interest in environmental law was largely confined to a few academics, public interest lawyers, and personally committed practitioners. Law professors patiently explained to eager first year students fresh out of environmental management programs that opportunities to practice environmental law were extremely limited. One could teach; one could work for a public interest group; one could work for government in a few roles. As corporate counsel for natural resource development and manufacturing corporations, one could expect to encounter some environmental law issues. But one could not expect to survive as a pin-striped, brief case-toting private practitioner of environmental law. Now, this appears to have changed, or at least there is a very large gleam in the eyes of many Canadian lawyers who consider environmental law to be a major area for new practice development. Similarly, environmental consultants and in house industry and government environmental professionals consider a broader and sounder knowledge of environmental legal principles and trends to be increasingly important in their work.

What is the reason for this sudden, intense interest in environmental law? Is it merely a matter of greater competition in law and related professions so that even small crumbs of potential new business are hotly contested? Or is all of this entrepreneurial heat a consequence of more pervasive, more fundamental developments in environmental law? In this paper it is argued that the latter assessment is correct. Moreover, it is suggested that many signs point to even more significant environmental law reforms, as Canada, along with other nations, comes to grips with legal changes necessary to ensure the environmental sustainability of all economic development decisions and actions.

A SECOND GENERATION OF ENVIRONMENTAL LAWS

A major reason for this burgeoning interest in environmental law is the recent flurry of legislative activity that has produced a new comprehensive federal environmental statute,¹ and new statutes or major environmental statute amendments in many of the provinces.² This legislation is a response to the increasingly apparent inadequacies of the first generation of environmental statutes.

WASTE CONTROL LAWS

This first generation of environmental statutes includes the basic air, water and land pollution statutes enacted by Canada, and by the provinces in the early 1970s.³ One category of these statutes is those that established separate environ-

ment departments for the first time.⁴ The essential object of these Acts was control of waste that was being deposited on land or discharged into water or air. Regulatory systems were established to identify waste sources, to bring these sources under permit, then by means of permit terms or conditions, to control the quality and quantity of waste discharged.⁵ Failure to comply with these requirements was made an offence punishable upon summary conviction by modest fines.⁶ Waste discharge likely to cause harm to human life or health or to the environment upon which human life depends, was often established as a general offence.⁷

These statutes were clean-up laws, designed to minimize discharge of human and industrial waste into the environment. The underlying assumption was that the natural environment, with its air, water and land components, could, through careful management, be used to dispose of, dilute and cleanse the waste produced by human activity. It was a matter of measuring, then carefully and fairly allocating this environmental assimilative capacity.

It was recognized by governments and their advisors that civil legal actions, designed to resolve disputes between private parties and compensate persons damaged, were an ineffective legal tool for general systematic control of environmentally harmful waste discharge.⁸ It was also recognized that existing statute law, such as the common nuisance provision of the Criminal Code,⁹ public health statutes¹⁰ and miscellaneous provisions scattered through natural resource development statutes¹¹ were not equal to the task of comprehensive environmental control.

Waste control statutes include comprehensive environmental statutes such as the Ontario Environmental Protection Act,¹² and the Quebec Environment Quality Act,¹³ which deal with air, water and land pollution from the base of comprehensive definitions of "pollution", "contaminant" and "environment", and single resource statutes such as the Alberta Clean Air,¹⁴ Clean Water,¹⁵ and Land Surface Conservation and Reclamation Acts,¹⁶ which covered much of the same ground but established a separate regulatory system for each environmental medium. Federal first generation environmental statutes include the Clean Air Act,¹⁷ The Canada Water Act,¹⁸ and the Fisheries Act Pollution Amendments and Industry Regulations.¹⁹ Gaps were filled²⁰ and Acts were fine-tuned through development of regulations, policies and procedures during the late 1970s and early 1980s.

These environmental laws were administered by environment departments, that were largely technical agencies, staffed by the scientific and engineering experts necessary to implement the permit schemes and develop "safe" standards for waste discharge. Initially a great deal of effort was expended simply to bring all waste sources under permit.

SECOND GENERATION ENVIRONMENTAL LAWS

A second generation of environmental statutes is now emerging. These laws are a response to overwhelming evidence that the waste control approach, while significant, is only one aspect of an effective environmental protection regime.²¹ A central objective of these new laws is control of persistent toxic substances. These materials either accumulate in the environment to produce conditions dangerous to the natural environment, or are simply so toxic and so persistent that even small amounts create serious danger over large periods of time. Such small dose toxicity and slow decomposition characteristics make the established assimilative waste regulation approach unsuitable for dealing effectively with toxic substances.

The new laws thus recognize that environmental protection is a long term process that must address potential intergenerational effects of environmental damage.²² Because new scientific knowledge about the toxicity of particular substances is continually developing, the laws must be flexible and include the means for identification and effective regulation of new contaminants. The approach is preventive, but also anticipatory.

Also reflected in these second generation statutes is that fact that toxic substances respect no boundaries—provincial or international.²³ The second generation environmental laws are consequently outward looking, and international in their development, implementation and administration. Provincial laws must reflect interprovincial and federal-provincial understandings and commitments, and must also, if they are to contribute to the solution of the global problem, reflect current international conditions and Canada's international obligations. Federal laws such as CEPA must clearly implement specific international environmental commitments and must also be consistent with current international thinking about global environmental protection.

Another characteristic of the new environmental statutes is that enforcement provisions are far more sophisticated than the simple offence sections of the clean-up legislation. There is greater flexibility to permit the regulators a choice of appropriate enforcement tools, ranging from expeditious tickets for minor offenses, to serious indictable criminal offenses for actions that endanger life or health, mandatory administrative orders and civil legal actions.²⁴ Negotiation techniques may be used in appropriate circumstances and provision is made for citizen involvement in regulatory processes, particularly in enforcement.

The serious criminal offenses which carry large fines and even potential imprisonment,²⁵ have caught the attention of the corporate sector. Interest is particularly keen, when these offenses are combined with officer and director liability provisions that may render corporate officials personally liable for environmental offenses and subject to fine or imprisonment even if they merely

acquiesced or failed to make appropriate inquiries into activity that resulted in serious environmental harm.²⁶ The clear message is that environmental offenses are serious crimes, and that nothing short of demonstrating that all reasonable care was taken in the circumstances will excuse corporate employees and even officers and directors. This has provided strong incentives for corporations to review or audit their compliance with environmental requirements, take any necessary corrective action, and prepare and implement environmental protection policies and plans so that environmentally damaging actions can be avoided.²⁷

SOURCES OF LAW REFORM PRESSURE

CANADIAN PUBLIC OPINION

These environmental law developments are by no means a matter of technical law reform. They are propelled by a number of powerful forces that are rippling through Canadian society. The most important factor is a very high level of public consciousness about environmental problems. This public awareness increased through the 1970s and early 1980s so that environmental protection is now consistently rated high in Canadian public opinion polls on priority issues.²⁸

More effective formal and informal environmental education appears to be a contributing factor. A series of regional environmental disasters and controversies ranging from the Chernobyl nuclear plant incident to ozone layer holes, the Saint-Basile-le-Grand PCB fire, the Valdez oil spill, and the Canadian toxic waste-tainted fuel scandal, have kept environment in the public eye. Physical evidence of lake acidification and forest damage that can, with increasing confidence, be attributed to acid rain, is before the public.²⁹ So are the weather conditions that many scientists are now prepared to attribute to global warming caused by a "greenhouse effect" produced by fossil fuel burning and forest clearing.³⁰ Even aboriginal rights issues, that emphasize preservation of land from resource development, have contributed to public awareness of potential environmental damage.³¹

Surveys have shown that members of the public are not only concerned about environmental quality, but that they are willing to pay for environment protection.³² Public interest environmental groups report unprecedented public support for their activities. Even the attitudes of the business community towards environmental protection appear to be changing. The traditional defensive posture, and technical mitigative response to environmental issues is giving way to corporate environmental policies and codes of practice.³³ Business leaders such as Ian Smyth, President of the Canadian Petroleum Association,

and Roy Aiken of Inco Limited have embraced the goal of environmentally sustainable economic development.³⁴

INTERNATIONAL DEVELOPMENTS

Law and policy developments at the international level have also contributed to the pressure for Canadian environmental law reform. Canada has been a leading participant in a number of international initiatives built on the 1972 Stockholm Declaration³⁵ and on earlier precedents for managing global common resources concerning ocean fisheries³⁶ and international rivers.³⁷ These include the Third United Nations Convention on the Law of the Sea,³⁸ the Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention)³⁹ and the 1985 Vienna Convention for the Protection of the Ozone Layer.⁴⁰ The Canadian concept of a 100 mile offshore pollution prevention zone enacted by the 1970 Arctic Waters Pollution Prevention Act⁴¹ has proven significant in the evolution of international marine pollution law. Canadian representatives played an important role in developing positions and negotiating the 1987 Montreal Protocol to the Ozone Layer Convention concerning control of chlorofluorocarbon and halon emissions.⁴²

Development of international legal norms and institutional arrangements has also been assisted by the United Nations Environment Program (UNEP) which was a consequence of the 1972 Stockholm conference. UNEP's first director was a Canadian, Maurice Strong. The International Law Commission has also worked to develop and refine principles to govern the use of shared water resources.⁴³ The United Nations World Commission on Environment and Development,⁴⁴ chaired by Norwegian Prime Minister Gro Harlem Brundtland, has been a particularly powerful influence on Canadian environmental law and policy. The concept of environmentally compatible economic development recommended by the Brundtland Commission has been embraced by Canadian environment ministers and officials, particularly at the federal level.

In the Brundtland Report, sustainable development is defined as, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁴⁵ Though the Commission endorses continued economic growth,⁴⁶ it recognizes the priority of meeting the essential needs of the world's poor, thus implying a massive redistribution of wealth. Another key idea inherent in the sustainable development concept is that the state of technology and social organization imposes real limitations on the environment's ability to meet present and future needs. There will be no easy technological fix.

The Brundtland Report also spells out the institutional and legal system deficiencies that stand in the way of sustainable development. Environmental protection and resource management agencies, says the Commission, have made notable gains in research, in technical definition and understanding of issues and in raising public awareness. Environmental laws have induced the development of new control technologies, processes and products.⁴⁷ But there is a serious deficiency, namely:

*"[M]ost of these agencies have been confined by their own mandates to focusing almost exclusively on the effects. Today, the sources of these effects must be tackled. While these existing environmental protection policies and agencies must be maintained and even strengthened, governments now need to take a much broader view of environmental problems and policies.*⁴⁸

This suggests that:

*"[E]nvironmental regulation must move beyond the usual menu of safety regulations, zoning laws, and pollution control enactments; environmental objectives must be built into taxation, prior approval procedures for investment and technology choice, foreign trade incentives, and all components of development policy.*⁴⁹

Environmental requirements, the Commission concluded, can no longer be left to separate environmental agencies. They must be built into the decisions of central governmental agencies and key sectoral ministries concerned with economic development. These are the agencies in a position to directly influence the nature of the impacts of economic activity on the natural environment.

Following the Brundtland Commission's May 1986 visit to Canada, the Canadian Council of Resource and Environment Ministers established a National Task Force on Environment and Economy with representatives from government, industry and public interest groups. In its September 1987 Report⁵⁰ the Task Force endorsed the Brundtland Commission's sustainable development concept and made a series of 42 recommendations for actions by Canadian governments, industry, trade associations and environmental groups to establish the means for moving towards sustainable development. These include establishment of national and provincial round tables representing the various stake-holders to provide continuing advice and liaison.⁵¹ In June 1988 Canada sponsored a major international conference on the atmosphere,⁵² that produced, among other things, recommendations for development of a law of the atmosphere. Other developments consistent with sustainability include the Department of Energy, Mines and Resources June 1988 "Commitment to the Environment"⁵³ and Environment Canada's proposal to legislate and broaden the Federal Environmental Assessment and Review Process.

LEGAL SYSTEM DEVELOPMENTS

Apart from the second generation environmental legislation, several recent doctrinal developments have considerable potential for increasing the effectiveness of Canadian environmental law. These developments have occurred in the Constitutional law field and in the area of administrative law judicial review principles. In constitutional law, federal jurisdiction over environmental protection appears to have expanded. More generally, the Canadian Charter of Rights and Freedoms has arguably induced the courts to intervene more freely to review environmentally significant government decisions.

In Administrative law, relaxation of common law status to sue requirements has permitted individuals and public interest groups to attack more effectively environmental decisions through judicial review proceedings. Decreased judicial reluctance to review ministerial and even cabinet decisions has increased the potential for setting aside even top level government decisions that adversely affect the environment.

EXTENDED FEDERAL ENVIRONMENTAL JURISDICTION

In *Regina v. Crown Zellerbach*,⁵⁴ the Supreme Court of Canada upheld the application of the dumping at sea prohibitions of the federal Ocean Dumping Control Act⁵⁵ within the boundaries of the province of British Columbia. The significance of the decision lies in the fact that the provisions were held valid, not on the basis of one of the enumerated federal powers, such as Fisheries or Navigation and Shipping, but on the general Peace, Order and Good Government (POGG) power.

The specific issue was the validity of section 4(1) of the Act which prohibited, except in accordance with the terms and conditions of a permit under the Act, the dumping of any substance in the sea. "The sea" was defined in the Act to include the territorial sea and fishing zones of Canada, and "The internal waters of Canada other than inland waters." This latter category included marine waters within provincial boundaries.

Crown Zellerbach was charged under section 4(1) after its employees dredged wood waste from the bed of a coastal cove and deposited the waste further offshore, in order to facilitate log storage in the cove. Though the company held no permit under the Act, there was no evidence to suggest that the wood waste dumped caused harm to marine life or to navigation.

The Supreme Court reversed the lower court decisions and held the provisions valid as dealing with a matter of national concern under the POGG power. Le Dain J. for the majority, in a 4-3 decision, found that marine pollution is a matter of national concern because of its predominantly extra-provincial and international character and implications. It is, he said, a single indivisible matter

distinct from the control of pollution caused by dumping substances in provincial fresh waters, as opposed to marine waters. Marine pollution has been, he noted, treated in international conventions and scientific studies as a distinct form of water pollution with its own characteristics and scientific considerations.⁵⁶ The fact that fresh waters flow into and mix with marine waters was treated as an indication of "provincial inability"⁵⁷—i.e., that the provincial fresh water and federal ocean water aspects of the matter are inextricably interrelated so that federal legislation offers the only realistic possibility for uniform and effective treatment.

The significance of the decision for federal environmental jurisdiction is clearly shown by the minority judgement of La Forest J. He emphasized the interrelatedness of ecological systems and the difficulty of drawing a clean line between salt and fresh waters in marine areas. He also pointed out that contaminants deposited in fresh water, and even air contaminants produced by activities within provinces contribute significantly to marine pollution. Because effective control of marine pollution may include control of these clearly local and provincial contaminant sources, it is difficult to understand how marine pollution can be regarded as a distinct POGG subject. If it is such a pervasive subject that it includes fresh water pollution and even air pollution, it could, according to La Forest J., "completely swallow up provincial power."⁵⁸

The minority also showed convincingly that under a more "traditional approach" there was ample federal constitutional power to regulate, though narrower, more carefully drafted legislation, pollution affecting fisheries, and pollution originating in provinces and causing harm outside provincial boundaries.⁵⁹ A combination of the POGG and criminal law powers could go a long way towards controlling pollution of internal waters as well as territorial marine waters. But the Ocean Dumping Control Act, which covered even dumping that causes no damage, and which could, in the name of marine pollution control, potentially extend to include regulation of local industries and provincial natural resource development, intrudes too much on provincial jurisdiction. It requires, La Forest J. concluded:

"a quantum leap to find constitutional justification for the provision one, it seems to me, that could create considerable stress on Canadian federalism as it has developed over the years."⁶⁰

The practical importance of the *Crown Zellerbach* decision becomes apparent when one looks at the new federal Canadian Environmental Protection Act (CEPA).⁶¹ This is a prime example of second generation legislation, which includes a consolidation of pre-existing federal environmental statutes, and a core purpose of establishing uniform national standards for the life cycle control and management of toxic substances.

First, the case clarifies the validity of the Ocean Dumping Control Act, which has now become Part VI of CEPA. Second, and more significantly, it strengthens the possibility that Part II of CEPA, which establishes a comprehensive regulatory system for the identification, toxicity assessment, and comprehensive regulation and control of toxic substances, will be upheld under the POGG power.

The problem, prior to *Crown Zellerbach*, was that, while the array of offence provisions and the health protection focus of the Act are consistent with a Criminal Law classification, the toxic substance provisions are essentially regulatory, with offence provisions designed to enforce the regulatory scheme. The authorities suggest that such a regulatory measure is not likely to be characterized as a matter of Criminal Law.⁶²

Following the *Crown Zellerbach* reasoning, regulation and control of toxic substances that pose a serious threat to life, health and environmental processes may, like marine pollution, qualify as a POGG subject matter. Such substances are persistent and cross provincial boundaries. Like marine pollution, toxic substance contamination has been treated as a distinct subject matter by reports of international agencies and by international agreements to which Canada is a party.⁶³ This suggests an extra-provincial aspect appropriate for POGG legislation to establish national standards and control extra-provincial damage. Such toxic substance controls would form a category of environmental regulations distinct from the ordinary array of provincial legislation designed to clean up and impose local controls on less persistent waste.

This extended federal environmental protection jurisdiction is likely to have major federal-provincial relations implications. Provinces resisted CEPA, with the result that equivalency provisions were added in committee following second reading of the Bill.⁶⁴ These provide that CEPA regulations do not apply in any province when the provincial and federal ministers agree in writing that provincial environmental laws are equivalent to the particular CEPA regulations. Difficult negotiations on equivalency are now underway. A second major battle is developing over federal jurisdiction to impose environmental impact assessment requirements on developments within provinces.⁶⁵

Provincial officials are concerned that this new federal environmental jurisdiction will provide a handle for federal regulation of the timing and scale of provincial natural resources and energy developments. They worry that the *Crown Zellerbach* approach establishes a back door international treaty power, based on POGG, that could authorize sweeping federal legislation to implement international environmental obligations. The depth of feeling on this issue in provinces such as Alberta and Saskatchewan should not be underestimated. Federal environmental initiatives are seen as a withdrawal from commitments to confirm provincial authority over natural resource development, conserva-

tion and management that were enshrined in the Constitution of Canada by the 1982 Resources Amendment.

ADMINISTRATIVE LAW DEVELOPMENTS

Standing to Sue

Perhaps the most important environmental administrative law development is the result of a social welfare case. The Supreme Court of Canada held⁶⁶ that a welfare recipient under Manitoba legislation had standing to challenge federal decisions concerning transfer of funds under the Canada Assistance Plan Act to provinces for use in provincial welfare assistance programs. The Court confirmed that discretionary standing could be granted to persons or organizations challenging administrative decisions who lack the traditional special (usually economic) damage, on public interest grounds under the criteria developed in a trilogy of constitutional cases ending with *Borowski v. The Queen*.⁶⁷ If, (1) there is a serious legal issue to be determined, (2) the plaintiff has a "genuine interest", that may be the record of a non-economic involvement or action and (3) if there is no other reasonable and effective way of bringing the matter before the court, standing may be granted.

Removal of the special damage requirement has opened the door to public interest judicial review actions to challenge governmental decisions that have serious environmental consequences. The door is not wide open. Narrow interpretations of the "genuine interest" and "no other reasonable and effective method of litigating the issue" criteria have resulted in environmental actions being dismissed on standing grounds.⁶⁸ But the trend of decisions has been in the other direction so that, for example, where action was taken by a public interest group to challenge the validity of water licences for construction by the Alberta government of a major dam on the Oldman River in Southern Alberta, no serious question was raised about the standing of the group to initiate the action.⁶⁹

Judicial Review of Government Decisions

A second administrative law development is also illustrated by the Oldman River Dam litigation. The grant of the water licences was a Ministerial decision taken under an authorized delegation by the Controller of Water Rights, an official of the Department of the Environment. The applicant and dam proponent was also the Department of the Environment.

Approximately 18 months after the application, the Controller (acting for the Minister) decided that, due to the importance of the project, it was appropriate

to waive the Water Resources Act requirements for posting or publishing notice of the application. This decision was taken under s. 19 which provides that:

"The Minister may, if he considers it expedient, fit and proper to do so, waive the requirement for giving public notice of the filing of the application and plans ..."

Chief Justice Moore granted the application by the Friends of the Oldman Society and quashed the water licences. He found that requirements under the Act that specified information to be filed with an application for a water licence are mandatory and had not been followed. These requirements include written permission from municipal authorities having jurisdiction over the site, or if such permission cannot be obtained, written permission of the provincial Public Utilities Board and referral of a copy of the application to the Energy Resources Conservation Board.

The court rejected arguments that the statute gave the minister an unfettered discretionary power to waive the public notice requirements. Chief Justice Moore's approach was that the words "expedient, fit and proper" in section 19 imply some factual basis for the decision. In view of the magnitude of the project and its potential impact on the province, this factual basis must be particularly compelling. His conclusion was that in the circumstances the only purpose behind the Controller's decision must have been to expedite the matter. Waiver of public notice without first obtaining permission of the municipal authorities or the Public Utilities Board and the advice of the ERCB could not be "expedient fit and proper". An argument that Alberta Environment's actions, including staff involvement in the project, provision of information to and solicitation of views of local residents, extensive media coverage of the granting of the licences and establishment of a local project office, provided a sufficient basis for the decision to waive notice, was rejected.

Similarly in *Canadian Wildlife Federation v. Canada (Minister of the Environment)*,⁷⁰ the Federal Court quashed a licence issued by the federal Minister of the Environment to the Saskatchewan Water Corporation authorizing construction of the Rafferty and Alameda Dams on the Souris River system in Southern Saskatchewan. The court agreed with the Wildlife Federation that the Minister had, before granting the licence to the Water Corporation under the International River Improvements Act,⁷¹ failed to require an environmental impact assessment and review as required by the Federal Environmental Assessment and Review Process Guidelines Order.⁷²

The decision came as a surprise to the dam proponents and to Environment Canada officials. Though appeals have not yet been exhausted, it has already had an impact on other environmental controversies. In Alberta, for example, the Friends of the Oldman River Society, in the latest judicial round on the Oldman Dam, has argued, on the authority of the *Canadian Wildlife Federation*

Case, that approvals for the dam under the federal Navigable Waters Protection Act⁷³ are invalid because no environmental impact assessment was required. The same position is being taken by opponents of pulp mills that are under construction or proposed in Northern Alberta as part of a major provincial pulp and paper industry development policy.⁷⁴

The reason the case evoked surprise is that the Federal Environmental Assessment and Review Process (EARP) has never had a distinct statutory basis.⁷⁵ It began as merely a set of guidelines issued under the authority of a cabinet directive. Later it purported to be authorized by a single section of the Department of the Environment Act,⁷⁶ which empowers the minister, with cabinet approval, to establish guidelines for use by federal departments and agencies. Since 1984, the process has operated under a Guidelines Order issued as a formal statutory instrument.⁷⁷ It had generally been assumed that the result was a set of guidelines that were not formal regulations issued under clear statutory authority and consequently not legally binding.

Cullen J. held that the EARP Guidelines Order is an "enactment" or "regulation" as defined by section 2 of the Federal Interpretation Act⁷⁸ because they were issued in the execution of a power—the Department of the Environment Act guidelines power—conferred under the authority of an Act. Consequently, as Cullen J. put it, the Guidelines order is "not a mere description of a policy or program; it may create rights which may be enforceable ..."⁷⁹ He decided further that the Guidelines Order specifies that the Guidelines apply to any proposal that may have an environmental effect on an area of federal responsibility and that the issuing of a licence under the International River Improvements Act is such a federal decision making responsibility.

Both the *Canadian Wildlife Federation Case* and the *Friends of the Oldman River Case* involve judicial refusal to defer to broadly expressed discretionary ministerial powers. Government is not permitted to equivocate on environmental decisions, "enforcing" discretionary requirements when it chooses and pleading lack of legal authority and mouthing informal assurances when it chooses otherwise. Both cases are examples of judicial recognition of statutory "sleepers."⁸⁰ Neither court was deterred by the fact that these were high level ministerial decisions with a heavy political content.⁸¹ They summarily dismissed any suggestion that the statutory provisions were merely "directory" and not mandatory and that the environmental requirements were satisfied by actions taken by government officials in the spirit of the requirements. The result is a ringing reinforcement of government accountability under environmental laws.

THE CHARTER

The Canadian Charter of Rights and Freedoms has had little direct impact on the development of environmental law.⁸² Environmental rights would have to be derived from other Charter protected rights and freedoms, particularly the section 7 right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." It is possible that section 7 rights could be asserted to attack government decisions approving developments that can be shown to be likely to damage health or personal security. There are, however, serious problems of proof, as shown by The Cruise Missile case,⁸³ and the term "security of the person" has so far received a relatively narrow interpretation. In fact, to date the main impact of the Charter in environmental law has been a negative, dampening one as Charter legal rights have been asserted, with occasional success, by those under investigation or charged with environmental offenses.⁸⁴

In a broader sense, however, it is arguable that the Charter has contributed to courts being relatively more receptive to either constitutional or administrative law challenges to government decisions likely to affect adversely the environment. The reason is that the Charter has forced courts not only to consider seriously direct challenges to government action, but to grapple with difficult conceptions of rights and with competing public values.⁸⁵ This increasing judicial comfort with the policy-charged role of measuring government actions against constitutionally protected rights may be seen as one of the factors behind the cases that have held Canadian governments accountable in the administration of their own environmental laws.

LOOKING AHEAD—THIRD GENERATION ENVIRONMENTAL LAWS

A third generation of environmental laws appears likely to follow hard on the heels of the second. These will be the laws that actually implement the concept of sustainable development. Much remains to be done to define further the concept with a view to achieving more than a superficial consensus among interests on its meaning and specific implications. It is clear, however, as Elder and Ross⁸⁶ have pointed out, that sustainable development is a normative and not a technical concept. This implies that sustainability determinations must be politically accountable and not merely technical information gathering processes.

The idea of sustainability determinations as part of private and public sector development decisions suggests some kind of structured assessment process. This immediately spotlights existing environmental impact assessment (CEIA) processes as potential models or starting points. Such a sustainability assess-

ment process, however, must extend beyond the scope of existing EIA processes to include a wider range of decisions. More importantly, environmental sustainability criteria must be included in the substantive decision standards on which each proposed action will be judged. Existing EIA processes merely identify environmental impacts so that this information is available to decision-makers.⁸⁷ Environmental standards must stand on the same plane as economic standards.

Another area of potential legal changes to foster sustainable development involves enhancement of individual environmental rights. This may be done through statutory environmental "Bills of Rights" or even through constitutional amendment to entrench such rights as part of the Canadian Charter of Rights and Freedoms.

Such enhancement of citizen's environmental rights is a legal technique that appears to be highly compatible with the concept of sustainable development. It increases the legal status of environmental rights relative to existing economic rights and it adds legitimacy to broader citizen participation in environmental decisions. In addition, since such rights would be enforced through citizen actions in the courts, from a government perspective, it is self-implementing.

FEDERAL-PROVINCIAL RELATIONS

The new environmental law has significant implications for federal-provincial relations. In the short term, these legal developments have triggered a flurry of analysis, position development, consultation and negotiation. The longer term prospect is a redefinition of the respective federal and provincial roles in environment protection.

THE CONSTITUTIONAL SHIFT

There are clear indications of a shift in the "political constitution" that has guided federal and provincial legislative action in the environmental field.⁸⁸ The idea is that there has been a kind of gloss on the constitutional legalities of federal-provincial relations, based on a range of factors including provincial "sensitivities" and various trade-off considerations. This has resulted in the scope of federal environmental law jurisdiction being perceived by policy-makers and politicians to be somewhat narrower than formal constitutional law would suggest. Thus in the early 1980s a proposed Canada Environment Act aimed at regulation of toxics on a national scale never emerged from Environment Canada largely because it was perceived that raw provincial nerves, resulting from the aftermath of the 1982 Constitution debate and the federal-

provincial energy resources dispute, made such a sweeping federal environmental statute politically unacceptable.

Now, the Canada Environment Act has emerged in the forum of the Canadian Environmental Protection Act. The legal opinions of the early 1980s that suggested that such a statute could be based on the federal peace order and good government power or on a combination of POGG, Criminal Law and Regulation of Trade and Commerce have essentially been dusted off and acted upon. The Supreme Court's decision in the *Crown Zellerbach Case* tends to confirm these opinions and provide the formal constitutional law support for the CEPA initiative. For toxic substances regulation, the political constitution and the legal constitution have now become virtually co-extensive. CEPA's equivalency mechanism under which CEPA regulations do not apply in any province when the federal and provincial ministers agree in writing that provincial environmental laws are equivalent,⁸⁹ may be seen as an acknowledgment of this step towards the legal limits of federal constitutional power.

In the case of federal environmental impact assessment requirements the *Canadian Wildlife Federation* ruling has pushed the application of the Environmental Assessment Review Process (EARP) beyond the perceived limits of federal environmental assessment jurisdiction. While the precise question of constitutional power to impose environmental assessment requirements has not yet been resolved, it is likely that a wide range of developments within provinces that produce interjurisdictional effects may be subjected to some type of federal environmental assessment.⁹⁰

PROVINCIAL CONCERNS

Predictably, this apparent constitutional shift has produced concern bordering on paranoia in many of the provincial administrations. There is dismay about the potential for CEPA provisions duplicating basic provincial, environmental legislation. Notwithstanding the potential for negotiating equivalency agreements to render CEPA regulations inapplicable in provinces, there is concern that such negotiations may be protracted so that potential duplication may continue for long periods or that negotiations may be unsuccessful. There is clear potential for duplication of provincial legislation by the CEPA spills and emergency order provisions⁹¹ that are outside the scope of the equivalency agreement powers. Provincial environmental officials are also unhappy about the requirement that provincial equivalent legislation must include citizen application for investigation provisions similar to those in CEPA⁹²

Provinces are also under pressure from local industrial interests that have adjusted to provincial environmental regulation and fear the additional burdens, or at least the initial uncertainties, of federal regulations. This industry re-

sistance to new federal environmental requirements and encouragement of provincial officials to resist new federal initiatives was apparent in Environment Canada workshops held as part of the development of its CEPA enforcement policy. In Alberta, for example, there was energy industry concern that the expertise, experience and established environmental regulation patterns of the Energy Resources Conservation Board⁹³ would be replaced by remote, technical federal regulators not yet familiar with the day-to-day operations of the industry.

In the western provinces these natural resource and energy industry concerns are taken very seriously. Moreover, provincial governments, with memories of the late 1970s—early 1980s energy wars still fresh, are suspicious about possible environmental regulation back doors to federal control of their natural resource industries. Were the energy wars fought and the Resources Amendment to the Constitution guaranteeing provincial jurisdiction over the development, conservation and management of non-renewable and forestry resources won, only to have these powers eroded by federal environmental regulations that can be used to control effectively the scale and timing of provincial natural resource development?⁹⁴ The answer, implicit in the *Canadian Wildlife Federation* case and its potential use by opponents of northern Alberta pulp developments to delay or stop the projects, is not comforting for provinces whose economic future is closely tied to expanded natural resource development.

The Supreme Court's approach in *Crown Zellerbach* to definition of subjects as matters of national concern and consequently appropriate for federal POGG jurisdiction is cause for serious provincial uncertainty and apprehension. It had been thought that the specificity requirement for POGG subjects effectively excluded environmental protection, the classic example of an aggregate subject that if brought under POGG had the potential to produce a quantum change in Canadian federalism.⁹⁵ Large chunks of the broad "environment" subject now appear to be fair game for federal legislators.

One aspect of this POGG subject characterization was particularly chilling for provincial officials. This was the use by the court of international agreements and studies as evidence to demonstrate the distinctiveness of marine pollution as an appropriate POGG subject.⁹⁶ Canadian international activities and obligations may apparently now be pursued to build the "record" necessary to ensure that particular environmental subjects are sufficiently distinguished as distinct or indivisible to bring them under POGG. Notwithstanding the absence of a federal treaty implementation power,⁹⁷ this kind of "bootstrapping" may be used to accomplish essentially the same federal purpose under POGG.

Nor is the federal government without its share of pressures and uncertainties about its newly defined environment protection role. There are worries about the cost of CEPA implementation and enforcement and about the provincial feathers that will be ruffled in this process. Will the established federal leadership and research role in environment protection⁹⁸ be replaced by a more volatile and decidedly less comfortable role of environmental standard setter, enforcer and frequent adversary of provincial governments and agencies?

There is also pressure on the federal government from another direction. This is the result of Canada putting itself forward as an international environmental protection leader. Canada's leaders have not been short of the latest sustainable development tough enforcement rhetoric whenever international opportunities have arisen.⁹⁹ Now the federal government must deal with these self-generated international expectations that Canada has some of the answers to difficult global environmental problems.

CONCLUSION

There is little doubt that environmental law has risen higher in the Canadian legal firmament. It is a reflection of increased Canadian public concern about environment protection and of high profile international environmental law and policy activity. Also relevant are legal developments that include broadened federal constitutional jurisdiction to enact environmental statutes. Relaxed standing to sue requirements, coupled with increased judicial willingness to review ministerial and even cabinet decisions on jurisdictional grounds have improved the prospects for successful legal actions by individuals and public interest groups to enforce environmental law requirements.

Control and regulation of persistent toxics has emerged as the core subject of federal environmental legislation, with the Canadian Environmental Protection Act as the central statute. Human health and environmental dangers presented by toxics have demanded more serious penalties for environmental infractions and tougher, more consistent enforcement. The serious consequences of enforcement actions are causing Canadian industry to reassess its environmental compliance effort.

Because provinces are more directly involved than the government of Canada in promotion of natural resource and manufacturing developments, provincial governments and regulators are now feeling the pressure of the new federal environmental laws. The broadening of federal jurisdiction to enact environmental statutes is likely to increase this pressure. Federal-provincial conflicts concerning CEPA implementation and jurisdiction over environmental impact assessment have already developed.

The real environmental law challenge for both levels of government is now emerging even as the second generation toxics control statutes are implemented. Achieving environmentally sustainable economic development will require legal changes to ensure that the full range of governmental development decisions are assessed under sustainability criteria. There may also be a role for legally defined environmental rights that can be asserted by individuals and groups to maintain environmental sustainability.

Notes

1. The Canadian Environmental Protection Act (CEPA), S.C. 1988, c. 22 (hereinafter "CEPA").
2. E.g., The Environment Act, S.M. 1987, c. 26; The Environmental Statutes Amendment Act, S.O. 1988, c. 54. Recommended for major amendments to provincial environmental statutes were made by the Alberta Review Panel on Environmental Law Enforcement in its report, *An Action Plan for Environmental Law Enforcement in Alberta*. Edmonton: Alberta Environment, January 1988.
3. See R. Franson and A. Lucas, *Canadian Environmental Law* (Toronto: Butterworths—Continuing Service, 1976). The Concept of this service was to limit the field of environmental law covered by focusing on waste control law and legislation.
4. E.g., Department of the Environment Act, R.S.C. 1985, c. E-10.
5. A. Lucas, "Legal Techniques for Pollution Control: The Role of the Public" (1971) 6 U.B.C. L. Rev., 167.
6. See J. Swaigen and G. Bunt, *Sentencing in Environmental Cases* (Ottawa: Law Reform Commission of Canada, 1985).
7. See G. Morley, "Pollution as a Crime: The Federal Response" (1973) 5 Man. L.J., 297; K. Webb, *Pollution Control in Canada: The Regulatory Approach of the 1980s* (Ottawa: Law Reform Commission of Canada Study Paper, 1988) pp. 12-13.
8. A. Lucas, *supra*, note 5.
9. Criminal Code, R.S.C. 1985, c. C-46, s. 176.
10. See R. Franson and A. Lucas, *supra*, note 3, vol. 1, ch. 4, "Public Health Provisions" sections.
11. *Id.*, "Natural Resource Management and Use" sections.
12. R.S.O. 1980, c. 141 as amended.
13. R.S.Q. 1977, c. Q-2.
14. R.S.A. 1980, c. C-12.
15. R.S.A. 1980, c. C-13.
16. R.S.A. 1980, c. L-3.

17. R.S.C. 1985, c. C-32. Repealed and partially replaced by the Canadian Environmental Protection Act, supra, note 1, Part V, "International Air Pollution".
18. R.S.C. 1985, c. C-11. Partially repealed by the Canadian Environmental Protection Act, supra note 1. See Part III, "Nutrients".
19. R.S.C. 1985, c. F-14, ss. 34-42; Meat and Poultry Products Plant Liquid Effluent Regulations, C.R.C. 1978, c. 818; Metal Mining Liquid Effluent Regulations, C.R.C. 1978, c. 819; Penalties & Forfeitures Proceeds Regulations, C.R.C. 1978, c. 827; Petroleum Refinery Liquid Effluent Regulations, C.R.C. 1978, c. 828; Potato Processing Plant Liquid Effluent Regulations, C.R.C. 1978, c. 829; Pump and Paper Effluent Regulations, C.R.C. 1978, c. 830; Chlor-Alkali Mercury Liquid Effluent Regulations, C.R.C. 1978, c. 811; Fish Toxicant Regulations, SOR/88-258.
20. E.G., Fisheries Act industry regulations, *Ibid.* Clean Air Act National Emission Standards Regulations; National Emission Guidelines, and Ambient Air Quality Objectives. See R. Franson and A. Lucas, supra, note 3, vol. 6, Stats. Fed. [2]-[2S].
21. See e.g., *From Cradle to Grave: A Management Approach to Chemicals*, Report of a task force representing industry, governments, labour, environmental groups and consumers (Ottawa: Environment and Supply and Services Canada, 1986).
22. Section 11 of CEPA defines toxic substances to include substances (a) having or that may have an immediate or *long-term harmful effect on the environment*; [or] (b) constituting or that may constitute a *danger to the environment on which human life depends* (emphasis added).
23. The preamble of CEPA states in part that: "Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries . . . And whereas Canada must be able to fulfill its international obligations in respect of the environment."
24. Such an array of enforcement tools is found in Part VII of CEPA.
25. E.g., CEPA, s. 115 provides that:
 Any person who in contravention of the Act intentionally or recklessly causes damage to the environment or a risk of death or harm to persons is guilty of an indictable offence and liable to a fine or to imprisonment for a term of up to five years.
 See *Crimes Against the Environment*, Working Paper no. 44, (Ottawa: Law Reform Commission of Canada, 1985).
26. CEPA, s. 122; The Environmental Protection Act, R.S.O. 1980, c. 141, am. by S.O. 1988, c. 54, s. 49(3); The Environment Act, S.M., 1987, c. 26, s. 35.

27. See R. McLeod, J.A. Langford and J. Swaigen "Environmental Protection Legislation: Personal Liability of Officers and Directors." In *Western Canadian Environmental Law and Practice at C-1*, proceedings of the Canadian Institute Seminar, Calgary, 31 October—1 November 1988.
28. A recent Gallup Poll showed that Canadians consider the environment to be a more pressing issue than free trade with the U.S. According to an Environics poll, nine out of ten Canadians feel their health has suffered from pollution and 93 per cent fear they are being poisoned by toxins. A majority of respondents in a CROP-Focus poll felt that government does not adequately regulate toxic pollution. See "Public seeks action on the environment" *The Edmonton Journal*, 9 October 1988.
29. Impact Assessment Workgroup I, United States—Canada, *Memorandum of Intent on Transboundary Air Pollution, Final Report* (January 1983); House of Commons Subcommittee on Acid Rain, *Still Waters: The Chilling Reality of Acid Rain* (Ottawa, Supply and Services Canada, 1981).
30. Stephen H. Schneider, "The Greenhouse Effect: Science and Policy" *Science*, 243:771, 10 February 1989; F.K. Hare, "The Global Greenhouse Effect," presentation to the World Conference on the Changing Atmosphere, 27 June 1988 (Environment Canada); J. Janovich, "Is man meddling?" *The Globe and Mail*, 10 January 1989, at A-7.
31. See B. Morse and D. Nahwegahbow, "The Interaction Between Environmental Law Enforcement and Aboriginal and Treaty Rights in Canada," unpublished paper prepared for the Law Reform Commission of Canada, 1985; "Peigans seek Ottawa's help on dam issue" *The Calgary Herald*, 6 October 1988, at B-8.
32. A Southam News—Angus Reid poll showed that almost one quarter of Canadians feel that environment is the most pressing issue facing the country; only 14 per cent considered jobs and unemployment to be the major issue. See "Environment big issue, poll shows" *The Calgary Herald*, 2 February 1989.
33. W.R.O. Aiken, *The Environment and the Economy* (Kingston: Centre for Resource Studies, C.R.S. Special Paper, June 1988); Ian Smyth, "Industry Perspective on Sustainable Development," presentation to Canadian Institute of Resources Law Conference, "The Legal Challenge of Sustainable Development", Ottawa, 10 May 1989 (Proceedings forthcoming from CIRL); Canadian Petroleum Association, *Environmental Code of Practice*, undated.
34. Both were members of the National Task Force on The Environment and Economy, whose Report was published by the Canadian Council of Resource and Environment Ministers in September 1987.

35. Report of the U.N. Conference on Human Environment, New York, 1972, U.N. Doc. A/Conf. 48/14 (1972).
36. E.g., Convention on Fishing and the Conservation of the Living Resources of the High Seas, Geneva, 29 April 1958; International Convention for the High Seas Fisheries of the North Pacific Ocean, Tokyo, 9 May 1952.
37. E.g., Agreement Between the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxemborg, The Kingdom of the Netherlands and the Swiss Confederation concerning the International Commission for the Protection of the Rhine Against Pollution, Bern, 29 April 1963; Agreement Between the U.S. and Canada Concerning the Great Lakes Water Quality, Ottawa, 15 April 1972.
38. United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982 A/Conf. 62/122, (1982).
39. International Maritime Consultative Organization (I.M.C.O.), Inter-governmental Conference on the Convention on the Dumping of Wastes at Sea (London Dumping Convention), London, November 1972.
40. Vienna Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, (1987) 26 *International Legal Materials* 1516; ratified by Canada, June 1986.
41. R.S.C. 1985, c. A-12. See D. Pharand, *The Law of the Sea of the Arctic with Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973), Part VI; J.A. Beasley (1973) 1 *Syracus J. International L. & Comm.*, 226.
42. Montreal Protocol to Control Ozone-modifying Substances, Montreal, 16 September 1987. (1987) 26 *International Legal Materials*, 1541.
43. E.g., Working Group of the International Law Commission, "International Liability for injurious consequences arising out of acts not prohibited by international law," *Year Book of the International Law Commission* 1978, Vol. II, Part II.
44. The World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).
45. *Id.*, at 8.
46. *Id.*, at 50, 89-90.
47. *Id.*, at 311.
48. *Ibid.*, emphasis added.
49. *Id.*, at 64.
50. Report of the National Task Force on Environment and Economy, *supra*, note 34.
51. *Ibid.*; Progress Report of the National Task Force on Environment and Economy, Submitted to the Canadian Council of Resource and Environment Ministers, at p. 3.

52. World Conference on the Changing Atmosphere, Toronto, June 1988. A follow-up meeting of legal experts was held in early 1989.
53. EMR's Commitment to the Environment. Ottawa: Energy, Mines and Resources, Canada, 1988.
54. (1988), 84 N.R. 1 (S.C.C.); A. Lucas, Comment, (1989) 23 U.B.C. L. Rev., 355.
55. S.C. 1974-75-76, c. 55, repealed and substituted by CEPA, Part VI.
56. *Supra*, note 55, at 41.
57. *Id.*, at 38, 41.
58. *Id.*, at 66.
59. *Id.*, at 67.
60. *Id.*, at 58.
61. *Supra*, note 2.
62. *Labatt v. A-G Canada*, [1980] 1 S.C.R. 914; P. Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 2nd ed., 1985), 414-415.
63. E.g., Organization for Economic Co-operation and Development (OECD), Decision of Council (8 December 1982) Concerning the Minimum Pre-Marketing Set of Data in the Assessment of Chemicals, C (82) 196 (Final), (1983) 22 *International Legal Materials*, 909.
64. *Report of the House of Commons Legislative Committee on Bill C-74*, (23 March 1988), and Committee Proceedings, no. 1 (25 November 1987) at 15ff., and no. 12 (26 January 1988) at 4-16.
65. This is a consequence of the Canadian Wildlife Federation case discussed *infra*. See "Environmental battle looms" *The Calgary Herald*, 15 June 1989 at A-1.
66. *Finlay v. Canada* (Minister of Finance) [1987] 1 W.W.R. 603, 71 N.R. 338 (S.C.C.).
67. [1981] 2 S.C.R. 575.
68. *Sheill v. Amok Ltd.* (1988) 58 Sask. R. 141 (Q.B.).
69. *Friends of the Oldman River Society v. Alberta Minister of the Environment* (1987-88) 2 C.E.L.R. 234 (Alta. Q.B.). Cf. *Western Canada Wilderness Committee v. Strachan* (1987-88) 2 C.E.L.R. 234 (B.C.S.C.).
70. *Canadian Wildlife Federation v. Canada* (Minister of the Environment), Unreported Federal Court Trial Division, Action No. T-80-89, 10 April 1989, Cullen J; affirmed, Federal Court of Appeal, Unreported, 22 June 1989.
71. R.S.C. 1985, c. I-20.
72. S.O.R./84-467.
73. R.S.C. 1985, c. N-22.
74. This has raised the possibility of a constitutional challenge to application of federal environmental assessment law to private sector projects within

- provinces. See, "Mills may cause constitutional battle" *The Calgary Herald*, 16 June 1989, at A-1.
75. See D.P. Emond, *Environmental Assessment Law*, (Toronto: Emond-Montgomery, 1978) 227-229; Federal Environmental Assessment Review Office, *National Consultation Workshop on Federal Environmental Assessment Reform, Report of Proceedings* 13 (Ottawa: Supply and Services Canada, 1988).
 76. Department of the Environment Act, *supra*, note 4, s. 6(2).
 77. *Supra*, note 71.
 78. R.S.C. 1985, c. I-21.
 79. *Supra*, note 69 at p. 10.
 80. See W. Rogers, "The Lesson of the Owl and the Crows: The Rule of Deception in the Evaluation of Environmental Statutes" (1989) 4 J. Land Use and Env't L. 377, 380-81.
 81. The cases are consistent with decisions holding that ministerial or even cabinet decisions which purport to override the mandatory duties of administrative tribunals or officials, or to do something for a purpose outside the relevant statutory power, based on irrelevant considerations, or that amounts to failure to exercise the statutory power, may be set aside in judicial review proceedings. See, *Heppner v. Alberta Minister of the Environment* (1977) 6 A.R. 154 (Alta. S.C. App. Div.); *Re Public Utilities Review Commission Act* (1986) 26 Admin. L.R. 216 (Sask. C.A.); *Re Doctors Hospital and Minister of Health* (1976) 12 O.R. (2d) 164 (Ont. Div. Ct.); *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] A.C. 997 (U.K.H.L.). Even *Monsanto Canada Inc. v. Canada (Minister of Agriculture)* (1989) 34 Admin L.R. 277 (F.C.A.), in which the Minister's refusal to accept a recommendation of a Board of review under the Pest Control Products Act, that the cancelled registration of a pesticide be restored, is consistent because the court held that the minister was required to act judicially and to take relevant facts into account, including scientific evidence concerning the relative safety of available alternative products. Ministerial and Cabinet decisions may also be set aside for failure to comply with procedural fairness principles: *Islands Protection Society v. The Queen in Right of British Columbia*, [1979] 4 W.W.R. 35 (Alta. S.C. T.D.); *National Anti-Poverty Organization v. A-G Canada* (1989) 32 Admin. L.R. 1 (F.C.T.D.).
 82. See A. Lucas, "The Impact of the Charter of Rights and Freedoms on Environmental Law" E-1. In Proceedings of the Canadian Institute Seminar on Western Canadian Environmental Law and Practice, Calgary, 31 October—1 November 1988.
 83. *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441.

84. A. Lucas, *supra*, note 81.
85. In considering the availability of procedural rights in Cabinet appeal proceedings, Muldoon J. stated:
"Just 8 short years ago in 1980, the jurisprudential world was not quite the same as it is now. Parliament and elected federal and provincial legislators and legislatures have acted decisively and considerably changed the legal and constitutional basis for the lengthy and didactic explanation by Estey J. [in *Inuit Tapirisat of Can. v. A-G Canada* [1980] 2 S.C.R. 735, 759-760] as to why the Supreme Court of Canada, in 1980, simply, in black-letter way, followed 'this statutory provision in the context of the pattern of the statute in which it is found'.
See *National Anti-Poverty Organization v. A-G Canada*, *supra*, note 80, at 24.
86. P. Elder and W. Ross, "How to Ensure that Development are Environmentally Sustainable," paper presented to Canadian Institute of Resources Law Conference, "The Legal Challenge of Sustainable Development," Ottawa, 10 May 1989 (Proceedings forthcoming from CIRL).
87. *Ibid.*
88. See A.R. Lucas, "Harmonization of Federal and Provincial Environmental Policies" in J.O. Saunders (ed.) *Managing Natural Resources in a Federal State*, (Calgary: Carswell, 1986) pp. 34-35.
89. Provinces resisted CEPA with the result that the equivalency provisions were added in committee following second reading of the Bill; *Report of the House of Commons Legislative Committee on Bill C-72*, (23 March 1988), and Committee Proceedings, No. 1 (25 November 1987) at 15 ff., and no. 12 (26 January 1988) at 4-16.
90. The *Canadian Wildlife Federation Case* has caused federal officials to reconsider the scope of Federal Environmental Assessment legislation, currently under development, intended to give EARP a clear statutory basis. A federal-provincial dispute appears to be developing. See "Environmental battle looms" *The Calgary Herald*, 15 June 1989, at A-1.
91. Canadian Environmental Protection Act, ss. 35 (emergency orders), 36 (release of toxic substances). All but one province sought exemption from the September 1988 P.C.B. storage order, made under CEPA, which by its own terms provided that provinces can request exemptions if they have legally enforceable requirements with comparable effect. See "All provinces but P.E.I. want P.C.B. rule waiver" *The Globe and Mail*, 14 October 1988 at A1.
92. Under sections 108-110 of CEPA, any two persons resident in Canada who are not less than 18 years of age may apply to the Minister for investigation of an alleged offence under the Act. The minister must then acknowledge,

investigate and within 90 days report to the applicants on the progress of the investigation. If the investigation is discontinued, the minister must report in writing on the information obtained during the investigation and the reasons for its discontinuation.

93. The Board has power to regulate the direct environmental effects of oil and gas, coal and hydro electric projects in the province. See Hunt and Lucas, *Canada Energy Law Service*, vol. 3, Energy Resources Conservation Board Commentary (Toronto: Richard De Boo Ltd.—Continuing Service orig. pub. 1980).
94. A.R. Lucas, Comment on *R. v. Crown Zellerbach Ltd.*, (1989) 23 U.B.C. L. Rev. 355, 370.
95. Mr. Justice Gerald LeDain, who wrote the majority judgement in *Crown Zellerbach*, had himself used this example in his article "Sir Lyman Duff and the Constitution" (1974), 12 Osgoode Hall L.J. 261 at 293.
96. See footnote 64, *supra* and accompanying text.
97. Though the Supreme Court has suggested that this doctrine may require review: *MacDonald v. Vapor Canada Ltd.* [1977] 2 S.C.R. 134, 171-72 per Laskin C.J.
98. See A.R. Lucas, *supra*, note 87.
99. See W.E. Rees, "Prosperity, but at what price" *The Globe and Mail*, 9 September 1988 at A7, in which the author quotes from Prime Minister Mulroney's speech to the 1988 Toronto Changing Atmosphere Conference, then points out that less than a month later his government provided over \$2 billion in financial aid to a consortium of companies to develop the Hibernia offshore oil field.

Senate Reform: Always the Bridesmaid, Never the Bride

Roger Gibbins

Projet maintes fois débattu ces vingt dernières années, la réforme du Sénat est devenue progressivement un quasi-symbole des aspirations politiques des Canadiens de l'Ouest. En réaction contre la présumée prépondérance politique et économique du Québec et de l'Ontario au sein de l'ensemble canadien, les Westerners de toutes tendances se sont ralliés au concept d'un Sénat "triple E" (c-a-d, élu, efficace et à représentation provinciale égale).

Dans ce contexte les radicaux de l'Ouest, résolument hostiles au Québec, voient d'un mauvais oeil la possibilité—même ténue—d'une ratification de l'Accord du lac Meech. Selon eux, un Québec satisfait dans ses revendications constitutionnelles serait aisément enclin à rejeter toute réforme de la Chambre haute qui réduirait, de manière appréciable, sa représentation traditionnelle au Sénat—tel qu'exigé par les provinces de l'Ouest et conformément au principe d'égalité provinciale relatif au "triple E".

De son côté, le gouvernement Getty de l'Alberta tient le pari de la modération; partant, il estime indispensable de souscrire d'abord à l'Accord du lac Meech dans la mesure où la règle de consentement unanime comprise dans l'entente constitutionnelle permettrait éventuellement à l'Alberta de bloquer tout projet de réforme du Sénat qui dérogerait à l'esprit du "triple E".

Enfin le gouvernement albertain a décidé d'aller de l'avant au chapitre du Sénat élu; c'est pourquoi, à l'automne '89, les électeurs de cette province devraient normalement se prononcer à propos d'une liste d'aspirants sénateurs, parmi lesquels le gouvernement fédéral désignerait ultimement le ou les sénateur(s) en titre.

L'auteur conclut son article en souhaitant une réforme du Sénat qui emprunterait, autant que possible, au principe de l'égalité provinciale. A défaut de quoi, Gibbins dit pouvoir s'accommoder simplement d'un Sénat élu. De toute façon, d'ajouter l'auteur, le thème de la réforme du Sénat n'aura de cesse désormais de relancer le débat constitutionnel canadien.

INTRODUCTION

Senate reform has been on Canada's active constitutional agenda from the early 1970s through the current debate over the Meech Lake Accord,¹ and if the Accord is ratified one of its provisions will entrench Senate reform on that agenda for the indefinite future. Yet despite the attention that Senate reform has achieved, despite the number of task forces, legislative committees, organized pressure groups and less-organized scholars who have promoted the principles of Senate reform, reform itself has remained elusive. Indeed, as Franks points out, the Senate has undergone less reform than even the House of Commons, in large part because there has been no agreement on the direction of change.² Senate reform has become a staple of Canadian political rhetoric, but not a matter for action. In our long, even prolonged pursuit of constitutional change, Senate reform has been always the bridesmaid but never the bride.

My objective here is *not* to recap the existing models of Senate reform, nor to develop yet another model. I will not extensively review the rationale for Senate reform, a rationale that has remained essentially unchanged over the past decade, nor will I make an impassioned plea for reform.³ Instead, the present discussion will explore the constitutional and political dynamics of Senate reform, with particular attention being paid to four underlying questions. First, what has been the impact of the Meech Lake Accord on the constitutional and political dynamics of Senate reform? Second, why has Senate reform become such an important issue in western Canada, and particularly in Alberta? Third, what is entailed in the recent initiative by the Alberta government to elect the province's next Senator? And fourth, what impact is the Alberta initiative likely to have on the dynamics of Senate reform as we move into the 1990s? To address these questions, we must begin with the 1984 general election.

THE 1984 ELECTION

If there was any logic to the political world, the 1984 election should have put Senate reform to rest as a political issue. In the first place, the election results dealt a damaging blow, indeed what should have been a crippling blow, to the underlying rationale for Senate reform. Canadians came out of the 1984 election with a national government that was broadly representative of every region of the country. Under Brian Mulroney's leadership, the Progressive Conservatives won 25 of 32 seats in Atlantic Canada, 58 of 75 seats in Quebec, 67 of 95 seats in Ontario, and 61 of 80 seats across the western provinces and northern territories. Gone were the days when entire provinces and almost entire regions were without elected representation on the government side of the House and around the cabinet table. Given, then, that Canadians now had a broadly

representative national government, there would seem to have been little compelling need for institutional reform. Here it is of particular importance to note that western Canadians, who had been all but shut out of the recent national Liberal governments of Pierre Trudeau, and who had become enamoured with Senate reform as a consequence, were at the centre of the new Mulroney government. Alberta, which had not elected a Liberal since 1972, was now represented in the federal cabinet by Harvie Andre, Joe Clark and Dan Mazankowski. In the words of the Toyota commercial, who could ask for anything more?

It should also be noted that the federal Progressive Conservatives had never been very enthusiastic about institutional reform in general, or about Senate reform in particular. In 1978 the Conservatives did release a Senate reform proposal, but this should be seen as an obligatory political response to the nature of the times—it was hard to find Canadians without a Senate reform proposal tucked into their briefcase or purse—rather than as concrete evidence of enthusiasm. Prior to the 1984 election, the Conservatives' message to Canadian voters had been very straightforward; existing parliamentary institutions would work fine if Canadians would only elect the right party—the Progressive Conservative party—and support the right leader. There is no indication that the reform of parliamentary institutions per se caught the imagination of Joe Clark or even the attention of Brian Mulroney. While Mr. Mulroney was certainly alert to the opportunity for, and indeed the necessity of bringing Quebec back into the "constitutional family", he also appeared determined to shift Canadian politics onto a new economic agenda, to move away from the constitutional and institutional politics that had become so characteristic of the Trudeau period. Certainly Quebec's withdrawal from constitutional negotiations following the National Assembly's refusal to endorse the 1982 Constitution Act suggested that, in the short run, there was little political mileage to be gained from wading into the swamp of institutional reform. Nor was there any evidence that Canadians at large would welcome such an excursion. If anything, Canadians appeared to welcome a national government which would give priority to economic management.

For all of these reasons, the 1984 election results should have killed the quest for Senate reform. Yet at another level, the results set up an important test for many of the arguments that had been developed to support institutional reform in general, and Senate reform in particular. In essence, those arguments boiled down to the belief that existing parliamentary institutions were incapable of giving adequate expression to the federal character of Canada, that the combination of an appointed and unequal Senate, a first-past-the-post electoral system, and rigid party discipline in the House of Commons meant that regional interests were denied adequate articulation and defence. Thus the root causes

of regional unrest were deemed to be institutional; parties and leaders might well contribute to regional unrest, but Canadians would have to look elsewhere for a cure. However, *what if* Canada had a national government that was truly national, that enjoyed strong support across the country? What if all provinces had powerful, elected spokesmen sitting in the federal cabinet, and Canada had a prime minister committed to national reconciliation? Under these conditions, under the best of conditions rather than under the worst of conditions as Canada had faced during some of the Trudeau governments, would parliamentary institutions be up to the task? In short, could we get by simply by changing parties and leaders, or would more basic institutional reform still be required?⁴ The 1984 election set up the conditions under which this question could be addressed.

THE AFTERMATH OF THE 1984 ELECTION

In retrospect, it is surprising how things turned out. Western alienation proved to be much more resilient than one would have expected given the strength of the West within the Mulroney government, and given a generally favourable policy response by that government to western Canadian concerns.⁵ Admittedly, the government's decision to award the CF-18 maintenance contract to Canadair in Montreal rather than to Bristol Aerospace in Winnipeg,⁶ and Bill C-72's extension of official bilingualism were unpopular. Still, there was every reason to expect that any losses suffered on those fronts would be more than offset by the Western Energy Accord, by generous financial relief for prairie grain farmers, by Ottawa's free trade initiative, and by the 1987 establishment of the Department of Western Economic Diversification, with headquarters in Edmonton and a five-year budget of \$1.2 billion. Although the Conservatives' track record in the West was not unblemished, it met *reasonable* expectations for a national government facing the reality of regional trade-offs.

As it turned out, however, the combination of positive policy and strong representation in the governing caucus and cabinet was not enough to contain a resurgence of western alienation. In the unduly harsh but nevertheless widely shared assessment of McCormick and Elton, "it does not seem to have made any difference whether western MPs sat noisily but impotently on the opposition benches or quietly and impotently on the government benches."⁷ Nothing, it appeared, or at least nothing the Conservative government was able to deliver, would satisfy large numbers of western Canadians. Thus as Mr. Mulroney neared the end of his first term, the Conservatives were experiencing unexpected difficulties in the West: regional alienation had recovered from the blow dealt by the 1984 election results and a radical new regional party, the Reform Party of Canada, had appeared on the scene, a party which danced to the

traditional music of regional discontent and placed Senate reform at the top of its dance card.

Western Canadians appeared to have answered the question posed above in the affirmative; institutional reform was still required despite the efforts of Mazankowski and the Conservative government. Ironically, and somewhat inexplicably, the acquisition of real and effective influence in Ottawa's corridors of power⁸ was coupled with a resurgence of western alienation. Thus the latter part of Mr. Mulroney's first term witnessed the re-emergence of institutional critiques as the Reform Party, the Triple E Senate Committee, the Canada West Foundation and provincial parties sounded the clarion call for Senate reform.

The developments in the West were not the only surprise. With the defeat of the Parti Québécois government in 1985, movement was suddenly possible on the constitutional front. Under specified conditions Premier Robert Bourassa's Liberal government was prepared to bring Quebec back to the constitutional table, and thus events were set in motion that were to culminate in the Meech Lake Constitutional Accord, signed by the 11 first ministers in the spring of 1987. Suddenly Mr. Mulroney and his Progressive Conservative government were thoroughly entangled in the politics of constitutional reform, as Mr. Trudeau and his Liberal governments had been before.

MEECH LAKE AND SENATE REFORM

This is not the place to present a general review or assessment of the Meech Lake Accord.⁹ Rather, the focus here is on the provisions of the Accord which deal with Senate reform, and on the more general impact of the Accord on the dynamics of Senate reform. Although Senate reform is by no means central to the Meech Lake Accord, the Accord touches upon the issue in a number of ways.

First, the Accord alters, or would alter, the amending formula by bringing the powers of the Senate, the method of selecting Senators, the number of Senators by which a province is entitled to be represented, and the residency qualifications of Senators under Section 41 of the Constitution Act, 1982. If the Meech Lake Accord is ratified, any subsequent changes to the above would require the unanimous consent of Parliament and the ten provincial legislative assemblies. This provision of the Accord has been roundly condemned by proponents of Senate reform who argue, understandably, that the need for unanimous consent will make Senate reform even more difficult to achieve. In practice, however, it is not clear that this change will have any great effect. The 1980 Supreme Court decision on the Bill C-60 reference case strongly implies the need for something close to unanimous provincial consent, and Quebec has argued that Section 38 (3) of the 1982 Constitution Act already provides means

by which that province could block Senate reform. Even putting this defence aside, it is unlikely that any federal government would proceed in Parliament with Senate reform until a virtual consensus had been reached on the principles of reform and, more specifically, until *both* Ontario and Quebec were on board.¹⁰ As supporters of Meech Lake also point out, the Accord itself along with prior agreements in 1940, 1951 and 1964 on unemployment insurance and pensions¹¹ demonstrate that unanimous consent is attainable across a fairly broad constitutional front. So, while this provision of the Accord will not facilitate Senate reform, it may not be the deathblow to reform which many western Canadian opponents of the Accord have claimed.¹²

Second, the Meech Lake Accord amends the 1982 Constitution Act to state that a First Ministers' Constitutional Conference will be held annually, and that such conferences shall include on their agenda "Senate reform, including the role and function of the Senate, its powers, the method of selecting Senators and representation in the Senate." This provision has been widely acknowledged as a concession to Alberta's Premier Don Getty; if the Accord was not going to address Senate reform directly, then the price of Mr. Getty's support was the commitment to discuss Senate reform in future constitutional conferences, and to keep on discussing it year after year until some resolution was found. Of course, the agreement to discuss Senate reform falls well short of reform itself, and it does not dictate the direction that any such reform might take. There is no commitment that future reforms to the Senate will follow the trajectory mapped out by the supporters of the Triple E concept, and no commitment that a reformed Senate will be elected, equal and effective. Nonetheless, the provision for ongoing constitutional negotiations should not be dismissed too lightly as it does ensure that Senate reform remains on the nation's constitutional and hence political agenda, assuming of course that the Meech Lake Accord is ratified. Mr. Getty may not have achieved much, but he did achieve something.

Third, and perhaps most important, the preamble to the Accord states that "until the proposed amendment relating to appointments to the Senate comes into force, any person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada." Taken by itself, this is a substantive albeit interim reform as one of the major criticisms leveled in the past has been that Senators are not only appointed, but are appointed by the federal government without even the need to consult with provincial governments. This procedure, it has been argued, effectively emasculates Senators as regional representatives. Now, with the Meech Lake Accord, the federal government has brought the provinces into the appointment process. While the federal government still makes the

appointments, it *shall* make appointments from lists submitted by provincial governments. The Prime Minister can veto but cannot initiate Senate appointments.¹³

There is a certain irony here in that provincial appointment has been steadily losing ground as a reform option. Although many of the "House of Provinces" reform models which appeared in the late 1970s and early 1980s featured provincial appointment, the more recent trend has been towards models featuring the direct popular election of Senators.¹⁴ In the case of Alberta, for example, a 1982 government discussion paper calling for a provincially-appointed Senate has been superseded by the 1985 Report of the Select Special Committee on Upper House Reform, a report calling for a Triple-E Senate.¹⁵ To the extent that the Senate reform issue has been probed by public opinion surveys, virtually no support for provincial appointment has been unearthed. When Canadians are asked, or are forced, to speculate about Senate reform, their preferences in descending order are: an elected Senate, the abolition of the Senate, and the status quo; the reform embedded in the Meech Lake Accord attracts no enthusiasm or support. Somewhat paradoxically, however, and as will be discussed in more detail below, the Accord's appointment provision has been cleverly exploited by the Alberta government as a means by which Senators can be elected even if no further Senate reform is achieved. It is this provision, then, that is likely to keep Senate reform in play as a political and constitutional issue both inside and outside Alberta.

Apart from these three specific provisions, the Meech Lake Accord alters the dynamics of Senate reform in a number of other, albeit somewhat contradictory ways. Ratification of the Accord will bring Quebec back into the constitutional fold and, in so doing, permit ongoing constitutional negotiations. As Jim Horsman, Alberta's Minister of Intergovernmental Affairs, has argued, "the Accord will end the constitutional isolation of Quebec and make no mistake, there will be no senate or any other constitutional reform without Quebec at the table as a full partner in Confederation."¹⁶ In this very important respect, the ratification of the Accord is a necessary precondition for Senate reform to take place. It can be argued, however, that ratification will also reduce if not extinguish Quebec's interest in constitutional change *including Senate Reform*. Bluntly put, it may be very difficult, once Quebec's constitutional aspirations have been met, to convince the Quebec government that Senate reform should proceed. (Given the changes in the amending formula, Quebec's agreement will be essential.) While the Accord's provision calling for an annual constitutional conference was designed to ensure that the Quebec government would not leave the table once the Accord had been ratified,¹⁷ staying at the table does not ensure a sympathetic stance towards Senate reform.

Here it should be noted that the Triple E model of Senate reform emerging from western Canada is inherently inimical to Quebec's interests. After all, the entire rationale of Senate reform is based on the assumption that such reform would entail some real shift in power from the two central Canadian provinces to the eastern and western peripheries. Based on the principle of provincial equality, the Triple E model would require that Quebec's representation in the Senate be reduced from 23 per cent at present to 10 per cent, and indeed even less once representation is provided for the northern territories. However, it is difficult to square the Accord's recognition of Quebec as a distinct society with the principle of equal provincial representation, and it is unlikely that Quebec, after achieving recognition as a distinct society in the Accord, would consent to a reform of parliamentary institutions in which Quebec's status and power would be identical to smaller and less-distinct Canadian provinces. Although Quebec might be content with some form of double senatorial majority whereby "no legislative action could be taken derogating from the province's linguistic, cultural, or other rights without the assent of a majority of Quebec Senators ...,"¹⁸ such a provision would not be an easy sell in the West. Nor, for that matter, would it be an easy sell in Quebec's National Assembly, which would be asked to entrust the defence of Quebec's interests to elected Senators beyond the Assembly's control. A more likely prognosis is that a truly effective Senate in which Quebec's power would equal that of Prince Edward Island or Manitoba is not in the Meech Lake cards.

The dynamics of Senate reform have also been altered in that the federal government has adopted the same procedural approach to Senate reform as was used to achieve the Meech Lake Accord. In the latter case, Ottawa let the Quebec government act as the pointman; Quebec produced its five conditions, and then proceeded to sell the five in a series of bilateral meetings with other provincial governments, and in the multilateral forum provided by the 1986 Premiers' Conference in Edmonton. In a like manner, Ottawa has passed the Senate reform ball back to the Alberta government and its quarterback, Premier Don Getty. The Alberta government in turn has established a Senate Reform Task Force¹⁹ which has gone on the road selling Senate reform to other governments and, where possible, to the media and public. Presumably, if the Alberta government is able to cobble together an intergovernmental consensus, then and only then will the federal government come on board. This abdication of federal leadership, however, does not augur well for the success of any Senate reform initiative. Certainly it places a very heavy load on Mr. Getty's shoulders. It is passing strange, and indeed alarming, to have the federal government adopt a bystander's roll with respect to the reform of the country's central institutions.

MEECH LAKE, SENATE REFORM AND THE CANADIAN WEST

The western Canadian debate over the merits and demerits of the Meech Lake Accord was slow to get underway. The Accord, with little legislative debate and virtually no public debate was quickly ratified by Alberta, British Columbia and Saskatchewan. Then the free trade debate in the 1988 federal election campaign effectively pushed Meech Lake off the political agenda. This debate, incidentally, was especially problematic for the Reform party which opposed the Accord and strongly advocated Senate reform, but which also supported free trade. The party became trapped by a one-issue federal campaign focused on free trade; a party committed to fundamental political and institutional reform found itself agreeing with the government of the day on the most important issue of the day. Furthermore, the free trade issue so dominated the campaign that the Reform party was unable to provoke much debate on its own agenda, including Senate reform and opposition to the Accord. However, after the free trade issue had been laid to rest, the Reform party was able to bring its own agenda items to the fore. Not coincidentally, both Meech Lake and Senate reform climbed back up the western Canadian political agenda, locked arm in arm. When the Meech Lake ratification process ground to a halt in Manitoba, the stage was set for a wide-ranging regional debate.

Two sides to this debate can be readily identified. The first side argues that Meech Lake will kill the chance for Senate reform, that both the need for unanimous consent and Quebec's indifference to further constitutional reform once its aspirations have been met will raise insurmountable barriers to Senate reform. Therefore, the argument goes, Meech Lake must be blocked if Senate reform is to be saved. Unfortunately, simply killing Meech Lake would also kill any immediate prospects for Senate reform, and thus the more pragmatic argument is that western Canadians should insist upon a parallel accord that would bring about Senate reform in conjunction with the ratification of Meech Lake. (At the time of writing, the proposal for a parallel Accord has not evoked any support from the federal or Quebec governments.) Here it should be noted, of course, that the Meech Lake Accord is also opposed on other grounds in the West, and indeed is supported on other grounds quite removed from the issue of Senate reform. Yet the point to be stressed is that the supporters of Senate reform see such reform as being tightly linked to the fate of the Accord; they argue either that passage of the Accord will kill reform, or that Senate reform can only be achieved if it can be presented as a precondition for the Accord's ratification. More rarely one encounters the argument that Quebec's stake in Meech Lake finally gives the West the leverage it needs to achieve Senate reform. In the words of Link Byfield, Publisher of *Alberta Report*, "if Ottawa

and Quebec are so fearfully anxious to get Meech Lake approved, they can be forced to reform the Senate first.²⁰

Conversely, the point is made that if the Accord is ratified without prior or at least concurrent agreement on Senate reform, then western Canadians will have no cards left to play in future rounds of constitutional negotiations. As Peter McCormick and David Elton argue:

if the West meekly acquiesces now, on the grounds that it is selfish and unCanadian to insist on some linkage of issues, it will have nothing to bargain with, nothing to trade off, when discussions on the western agenda finally begin. (The record also suggests that it will be a long time indeed before the issues will be addressed; the meek may inherit the earth, but they won't accomplish much in the way of amendments to the Canadian Constitution.) Only an eccentric labour union negotiator would advise the union to agree to everything management suggested and just hope they felt generous afterward, but this is precisely the behaviour that seems to be expected of western Canadians.²¹

The other side of the debate is most clearly associated with the Alberta government. Here the argument is that the Accord has been good for the West not only because it makes Senate reform possible, by bringing Quebec back to the table, but also because it facilitates Senate reform by entrenching the issue on the nation's constitutional agenda. Put somewhat differently, the Alberta government defends its support of Meech Lake, in the face of growing and increasingly vociferous opposition,²² by arguing that the Accord promotes Senate reform. (Given that Alberta has already ratified the Accord, the provincial government cannot now adopt the strategy of demanding reform per se as a precondition for supporting the Accord.) In a somewhat different argument, the Alberta government also makes the point that the unanimous consent provisions of the Accord will enable Alberta to block Senate reform which is not to its liking, reform that departs too radically from the Triple E model. As Horsman puts it:

It is wrong to impose Senate reform on any partner of confederation without their consent. And Alberta, for one, will not accept a senate with slight adjustments or mere tinkering in the guise of reform! We cannot—and will not—have undesirable or cosmetic changes rammed down our throats.²³

Given that the Alberta government is spearheading the drive for Senate reform, and given that the federal government has abandoned the field, it is not clear that any other government has an alternative model that they would try to ram down anyone's throat, including Alberta's.

The problem, however, is that a commitment to talk is not a commitment to reform, and thus the Alberta government is having some difficulty convincing Albertans that merely having Senate reform on the constitutional agenda

justifies support for Meech Lake. Something more is needed, and something more has been found in the Accord's provision stating that future appointments to the Senate shall be made from lists submitted by the provinces. It is this provision which enables the Alberta government to proceed unilaterally with Senate reform. The Alberta government has proposed that it will turn to the people of Alberta in drawing up its list, that Albertans will vote not to elect their next Senator, but to decide upon the composition of the list that the Alberta government will then submit to Ottawa.

Initially, the federal government reacted with considerable reservation to the Alberta initiative, stating that it would have the final choice regardless and that Alberta would have to submit a list of five names, and not simply the name of the one individual topping the polls. As the Prime Minister observed, a list with only one name would be "incomplete and therefore unacceptable."²⁴ Ottawa's opposition, however, merely strengthened the popularity of the initiative in Alberta; if the federal government was opposed to the idea, then even confirmed sceptics were forced to admit that the Alberta initiative must have some merit. More importantly, Ottawa's opposition cannot be sustained. There is nothing in the Accord which states that a list must have five names, or any set number. Moreover, even if the Alberta government was required to submit five names, it could simply pass along the front page of the *Calgary Herald* or the *Edmonton Journal*, listing the election results. It would take a great deal of courage on the part of the federal government to appoint an individual who had finished second, third, fourth or fifth, and individuals who had not even been candidates could not be appointed for the Accord states that the Senators *shall* be appointed from provincial government lists. Here it should also be noted that this is not a hypothetical exercise; there is an Alberta opening in the Senate now, and the "election" is likely to be held by November 1989. A second Alberta Senator is due to retire in less than two years.

The details of the Alberta initiative first appeared in the draft of Alberta's Senatorial Selection Act, 1989, tabled shortly before Albertans went to the polls in March. Although Bill 1 died when the legislature was prorogued for the election, it was re-introduced when the legislature reconvened, and was passed in August. The Act is a carefully crafted document that tries to avoid any constitutional challenge, even to the extent of referring to the democratic *selection* rather than to the *election* of Senators. The Act states that "persons declared elected under this Act shall have their names submitted by the Government of Alberta to the Queen's Privy Council as persons who may be summoned to the Senate of Canada for the purpose of filling vacancies relating to Alberta."

It also contains the following provisions:

- although senatorial elections will generally be held in conjunction with provincial elections, they may also be held at the same time as munic-

ipal elections or provincial by-elections, or they may be held on their own;

- elections will be held on a province-wide basis;
- voters will have one vote per senatorial vacancy; candidates will be elected on a first-past-the-post, plurality system, and only the name/s of the winning candidate will be submitted to the federal cabinet;
- candidates cannot be members of the House of Commons or the Alberta Legislative Assembly;
- party labels will appear on the ballot, although candidates can also run as independents; in either case, 1500 electors must sign the candidate's nomination papers and a \$4,000 deposit must be posted;
- campaign contributions from federal parties will not be permitted.

It should be noted that the Alberta legislation is constrained by the fact that the actual appointment to the Senate is made by the federal government. Therefore Alberta candidates must conform to the constitutional provisions that Senators be Canadian citizens, be at least 30 years old, hold \$4,000 in real property, and be a resident in the province for which they are appointed. Senators chosen under the Senatorial Selection Act would also have the right to serve until reaching the mandatory retirement age of 75, although considerable moral suasion would be exercised to encourage Senators to seek re-election or, more properly, re-selection.

Alberta's initiative, which owes its genesis to the prior spadework of the Canada West Foundation and the Canadian Committee for a Triple E Senate, draws upon a good deal of regional support for Senate reform. The four western premiers endorsed the Triple E concept at a 1986 meeting in Parksville, British Columbia, and in Manitoba, where the Meech Lake debate is the most intense, all of the contending parties have made Senate reform a necessary albeit not sufficient condition for support of the Accord. Senate reform has also picked up considerable support through the Meech Lake debate outside the West; both New Brunswick Premier Frank McKenna and Newfoundland Premier Clyde Wells have stated that the Accord should not be ratified until Senate reform can be assured.

It is in the West, however, and particularly in Alberta, that the quest for Senate reform finds its greatest political resonance. Senate reform has come to rival the role played by the Crow rate in the more distant past, and by the National Energy Program in the more recent past; it is the new regional issue *and symbol* which anchors political discourse and shapes the partisan contours of political life. Apart from the common assertion that the NEP would never have happened had a Triple E Senate been in place, discussions about Senate reform are not usually linked to specific policy objectives.²⁵ There has been, for example, very

little discussion of how the Conservatives' free trade initiative might have fared in a Triple E Senate, or how such a Senate might promote stronger export markets or economic diversification. Rather, a reformed Senate is seen as an essential symbolic step in recognizing the West's contributions to and aspirations within Confederation. More specifically, if the intent of the Meech Lake Accord is to make Canada whole again by bringing in Quebec, then the argument is made that Senate reform should be pursued for the same reason with respect to the West, and with the same vigour and enthusiasm. In this sense the federal government's passive involvement in Senate reform, its decision to let Alberta carry the ball alone, is a cause of some distress.

It is also in the West that the Senate reform issue is likely to have the greatest impact on the next federal election campaign. The Reform party has nailed its colours to the mast of Senate reform, and has successfully integrated the Senate reform issue into both a broader critique of Canadian political life and a more focused critique of the Meech Lake Accord. Note, for example, the maiden House of Commons speech by Deborah Gray, MP for Beaver River and the first elected member of the Reform party:

Our people are not unsympathetic to constitutional amendments to make Quebec more at home in confederation, but they want concurrent constitutional amendments; namely, meaningful Senate reform to make the West feel at home in confederation. In the past generation, Mr. Speaker, it is the West that has experienced the National Energy Program and the CF-18 decision, not Quebec. It is the West's grievances which the government should be addressing with at least as much fervour as it brings to Quebec's demands.²⁶

The challenge for the traditional parties will be to respond to the Reform party's stance on Senate reform without alienating potential support in Ontario or Quebec, a strategic dilemma that does not confront the regionally-based Reform party. For all three parties, Senate reform promises to be a troublesome issue. Both Brian Mulroney and Joe Clark have positioned the Progressive Conservatives in opposition to Alberta's Reform initiative; and if the Meech Lake Accord has not been ratified by the next federal election, the influential Quebec wing of the party will make it next to impossible for Conservatives to swing behind Senate reform. For the NDP, Senate reform has always posed a problem; on traditional and ideological grounds New Democrats favour abolition rather than reform, but western Canadian New Democrats have recently been much more supportive of the reform option. It is the Liberals, however, who will first confront the Senate reform issue when they hold their June 1990 leadership convention in Calgary. At that time Senate reform, the climax of the Meech Lake debate, the potential for a Liberal resurgence in the West, and the need for the party to recapture lost ground in Quebec should create a fascinating political brew.

IMPACT OF THE ALBERTA INITIATIVE

The Alberta government hopes to accomplish two objectives with the Senatorial Selection Act. First, the Act should provide important political support for the provincial government's continued endorsement of the Meech Lake Accord; the Act demonstrates that Alberta, and by extension the West, achieved something of tangible value from the Accord. Second and undoubtedly more importantly, the Act enables the Alberta government to move Senate reform forward even if further constitutional change is not forthcoming in the near future. The Act will, in effect, keep Senate reform in play. However, the impact of the Act will depend on the extent to which the Alberta initiative is followed by other provinces, for Alberta's action alone will not yield a reformed Senate. In addressing the impact of Alberta's initiative on the other provinces, it is useful to look at each of the Triple Es in turn.

There is no question that the Alberta initiative constitutes a bold and significant step towards an elected Senate. The question to be asked, however, is whether the Alberta Act will create such an important democratic precedent that the other provinces will be forced, willy-nilly, to follow suit. Within the Alberta Senate reform movement, there is considerable optimism that this snowball effect will occur. Repeated reference is made to the American experience where, after Oregon introduced Senate elections in 1904, the other American states quickly followed suit and supported the passage of the Seventeenth Amendment in 1913. (It should be noted that Americans already had a Double-E Senate—equal and effective—and thus had only to reach agreement on the third and least contentious E.) Yet, while Alberta's Senatorial Selection Act creates an important precedent that other provincial governments will be forced to grapple with, there are a number of reasons to expect that they will exercise considerable caution in leaping aboard the Alberta bandwagon.

First, much will depend on the results of the upcoming Alberta Senate election. If the Progressive Conservative candidate loses that election, if Mr. Getty's government finds itself having to cope with an elected Reform or Liberal Senator claiming to speak for the province at large, then there is little doubt that other provincial governments will question the wisdom of electing Senators. Certainly Premiers Vander Zalm and Devine would be leery about providing a senatorial stage for the New Democrats, just as Premier Filmon would be justifiably uneasy about an elected Liberal Senator from Manitoba. It should be stressed, moreover, that such an elected Conservative Senator could challenge Mr. Getty's role as Alberta's spokesman in national affairs. This simply underscores the more general threat that Senate reform poses for provincial premiers, and indeed for MPs. Power shared is power diminished.

Here it should also be noted that Mr. Getty's influence as the national pointman for Senate reform has been damaged by recent electoral setbacks, both personal and partisan. A Conservative loss in the upcoming Senate election would further damage Mr. Getty's credibility, and thus the cause of Senate reform. Second, the interim appointment provision of the Accord gives provincial governments virtual control over the most lucrative patronage plums that Canada has to offer, and there is no reason to expect that provincial governments will be eager to relinquish this control to a fickle electorate, although admittedly Mr. Mulroney relinquished his control to equally fickle premiers. Third, there are important principled grounds for resisting the Alberta initiative. It is unlikely, for example, that either the Quebec government or National Assembly would welcome another tier of elected federal politicians claiming to speak for Quebec, politicians who could well undercut the ability of the Quebec government to speak for Quebec in national affairs. For the same reasons that the Alberta Government opposed an elected Senate in the past,²⁷ Quebec may well be expected to oppose an elected Senate in the future. More generally, provincial premiers have little to gain in surrendering their high-profile role as regional spokesmen to elected Senators. While all of these reasons do not mean that the other provinces will vigorously resist the Alberta bandwagon, greater democracy being difficult to resist at the best of times, they do suggest that rapid endorsement of the Alberta initiative is unlikely.

The Alberta initiative does not and cannot address the powers of the Senate, and thus the extent to which the Senate will be an "effective" chamber of regional representation. It should be noted, however, that the current "ineffective" Senate has virtually unrestricted formal powers, albeit powers that appointed Senators have found difficult to deploy with any legitimacy. Apart from the Senate's inability to initiate money bills or to block constitutional amendments for more than 180 days, and apart from the fact that only the House is a confidence chamber, the Senate's formal powers are equivalent to those of the House. Potentially, the Alberta initiative might begin to unleash those formal powers by strengthening the democratic legitimacy of the Senate. Here it should also be noted that the unanimous consent provision of the Accord would enable Alberta to block any reduction in the Senate's powers. Alberta, then, may be able to trade support for a modest reduction in those powers, a reduction that the federal government would certainly support, for constitutional movement on an elected and equal Senate.

Finally there is the question of the impact of Alberta's initiative on the quest for a Senate based on equal provincial representation. Here the point to stress is that the Alberta initiative *per se* creates no movement with respect to equal provincial representation; an equal Senate can only be attained with the unanimous support of all ten provinces and the federal Parliament. While the

unanimity provision of the Meech Lake Accord may recognize the principle of provincial equality with respect to changes to federal institutions, and while this recognition *might* be extended in discussions of Senate reform,²⁸ the Alberta initiative provides no additional momentum. This in turn raises the question as to whether Alberta and the West would be better off if Canada moved towards an elected Senate with the current distribution of Senate seats. Would Alberta be well served, for example, by six elected Senators facing 24 elected Senators from Ontario? Here it should be noted that at the present time both Alberta and the western Canadian region have fewer Senators than they would be entitled to on population grounds alone. This reality simply underscores the centrality of provincial equality, or at least some rough approximation of that principle, for western Canadian models of Senate reform. An elected Senate alone would be a mixed blessing at best for the West.

Thus the Alberta initiative takes us a step closer to only one of the three Triple Es. As a consequence, it might promote a mishmash of Senate reform—significant movement towards an elected Senate coupled with deadlock on the equality principle and disagreement on the powers of the Senate. At the same time, however, the Alberta initiative does keep Senate reform in play. If the Meech Lake Accord is ratified, its appointment provision, coupled with the Alberta Senatorial Selection Act, will keep the door to Senate reform open. Even if the Accord is not ratified, it seems unlikely that Ottawa will be able to revert to a system of exclusive federal appointment. Alberta, then, has put a small wedge in the door that cannot be easily removed. While the door is not open enough to admit the entire Tripe E model of Senate reform, it is open enough to encourage ongoing public and constitutional debate. Senate reform is no closer to being the bride, but its stranglehold on the role of bridesmaid seems secure.

Notes

1. For some of the earlier reform proposals, see the *Report of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada*, Ottawa, 1972; "Reform of the Canadian Senate", British Columbia's Constitutional Proposals, 1978; *A Future Together: Observations and Recommendations*, The Task Force on National Unity, Ottawa, 1979; *Regional Representation: The Canadian Partnership*, A Task Force Report Prepared by Peter McCormick, Ernest C. Manning and Gordon Gibson, Canada West Foundation, Calgary, 1981; and *Senate Reform*, Report of the Special Joint Committee of the Senate and of the House of Commons, Ottawa, January 1984.
2. C.E.S. Franks, "The Canadian Senate in an Age of Reform", *Queen's Quarterly*, vol. 95, no. 3, Autumn 1988, p. 672.

3. For an article that neatly accomplishes both tasks, see Howard McConnell, "The Case for a "Triple E" Senate" *Queen's Quarterly*, vol. 95, no. 3, Autumn 1988, pp. 683-698.
4. For a useful discussion of "Good Man/Bad Man" explanations of western discontent, see Peter McCormick and David Elton, "The Western Economy and Canadian Unity," *Western Perspectives* (Calgary: The Canada West Foundation, March 1987) p. 6.
5. For empirical evidence, see McCormick and Elton, "The Western Economy."
6. McConnell, "The Case for a "Triple E" Senate," p. 690.
7. McCormick and Elton, "The Western Economy," p. 13.
8. Charlotte Gray, "How the West Won" *Saturday Night*, June 1989, pp. 15-17.
9. For general discussions of the Accord, see: Roger Gibbins, (ed.), *Meech Lake and Canada: Perspectives from the West* (Edmonton: Academic Printing and Publishing, 1988); Donald Johnston, (ed.), *With a Bang, Not a Whimper: Pierre Trudeau Speaks Out* (Toronto: Stoddart, 1988); K. E. Swinton and C. J. Rogerson, (eds.), *Competing Constitutional Visions: The Meech Lake Accord* (Toronto: Carswell, 1988). See also a special edition of *Canadian Public Policy* on the Meech Lake Accord, published in September 1988.
10. J. Peter Meekison, "Meech Lake and the Future of Senate Reform", in K. E. Swinton and C. J. Rogerson, *Competing Constitutional Visions: The Meech Lake Accord* (Toronto: Carswell, 1988), p. 117.
11. Ibid.
12. For more optimistic assessments, see David Elton, "The Enigma of Meech Lake for Senate Reform," and Peter McCormick, "Senate Reform: Forward Step or Dead End?", in Gibbins, *Meech Lake and Canada*, pp. 23-32 and 33-36.
13. Peter Dobell, "The Senate: New-Found Levers of Power?" *Parliamentary Government*, vol. 8, no. 2, p. 16.
14. Franks, "The Canadian Senate", pp. 677-8.
15. See *A Provincially-Appointed Senate: A New Federalism for Canada* (Edmonton: Government of Alberta, 1982); *Strengthening Canada: Reform of Canada's Senate*, Report of the Alberta Select Special Committee on Senate Reform (Edmonton: Plains Publishing, 1985).
16. Hon. Jim Horsman, "Senate Reform and Meech Lake" *Canadian Parliamentary Review*, vol. 12, no. 1, Spring 1989, p. 7.
17. Meekison, "Meech Lake and the Future of Senate Reform", p. 116.
18. McConnell, "The Case for a "Triple E" Senate," p. 695.

19. The Task Force is headed by Jim Horsman, Minister of Intergovernmental Affairs, and includes MLA Stan Schumacher, Bert Brown, chairman of the Canadian Committee for a Triple E Senate, an alternating MLA, and Peter Meekison, Academic Vice-President of the University of Alberta.
20. *Alberta Report*, 23 January 1989, p. 4.
21. McCormick and Elton, "The Western Economy", pp. 5-6.
22. An Environics poll conducted between 12 March and 25 March 1989, showed that there was less support for the Meech Lake Accord in the West than elsewhere in the country. Nationally, 29 per cent of the respondents favoured the Accord while 34 per cent opposed it (36 per cent were undecided). The proportion supporting the Accord ranged from 43 per cent in Quebec to 30 per cent in Atlantic Canada, 24 per cent in Ontario, and only 22 per cent in the West, *Globe and Mail*, 1 April 1989, p. A3.
23. Horsman, "Senate Reform", p. 9.
24. *Alberta Report*, 20 February 1989, p. 10.
25. For an exception, see McCormick and Elton, "The Western Economy."
26. Cited in the *Alberta Report*, 1 May 1989, p. 12.
27. See *A Provincially-Appointed Senate: A New Federalism for Canada*, Government of Alberta, August 1982.
28. Horsman, "Senate Reform and Meech Lake", p. 7.

Canadian Federalism and Trade Policy: The Uruguay Round Agenda

Douglas M. Brown

Jusqu'à quel point les négociations commerciales et multilatérales du GATT se refléteront-elles sur la dynamique interne du Canada, aux plans politique et économique, à l'issue de l'actuel Uruguay Round? Partant de cette réflexion maîtresse, l'auteur examine d'abord un à un les dossiers, prioritaires pour le Canada, du commerce international traités dans le cadre de l'organisme. Il s'agit en l'occurrence de l'accès aux marchés publics, des textiles et des vêtements, de l'agriculture, des subventions et, nouveaux sujets à l'étude, des services et de l'investissement.

Les questions commerciales et multilatérales discutées au GATT ne suscitent pas, et de loin, un engouement auprès de l'opinion publique canadienne, encore moins donnent-elles lieu à une effervescence idéologique comme ce fut le cas précédemment lors des négociations canado-américaines sur le libre-échange.

Par ricochet, cette situation laisse plus ou moins dans l'ombre certains problèmes régionaux canadiens tel, notamment, le contentieux agricole entre les provinces de l'Ouest et celles de l'Est, conditionné en bonne partie par la conjoncture internationale. De fait l'Ouest réclame à cor et à cri la libéralisation commerciale des grains tandis qu'à l'opposé, les provinces de l'Est récusent toutes réformes éventuelles qui porteraient atteinte à l'intégrité des offices de commercialisation des produits de la ferme.

Dans un troisième temps, Brown soulève l'épineux problème des chevauchements juridictionnels au Canada entre le fédéral et les provinces au regard du commerce international. Déjà, il est manifeste que les juridictions provinciales en matière d'agriculture, subventions et services—entre autres domaines—permettront de plus en plus aux provinces d'avoir prise sur des secteurs stratégiques touchant leur économie régionale. Cependant le problème relatif aux responsabilités commerciales et internationales des provinces, à l'intérieur des limites de leurs juridictions, reste toujours entier mais il importe qu'il soit abordé incessamment.

En conclusion, l'auteur estime que le rôle accru des provinces au sein de l'économie internationale s'inscrit à contre-courant de la tendance mondiale actuelle conviant plutôt à une plus grande discipline collective dans l'intervention gouvernementale.

INTRODUCTION

With the great free trade debate of 1988 behind us, the intense public attention on trade policy has abated. However, trade issues may gather attention again as the "Uruguay Round" of multilateral trade negotiations is now, finally down to a hard bargaining stage. By September 1989, three years will have elapsed since the sweeping declaration at Punta Del Este in Uruguay launched a new round of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). The final push to the end of the Round scheduled for late 1990 has now begun. The success or failure of the Uruguay Round will have profound effects for the international trading system in which Canada has a vital stake.

As the globalization of the Canadian economy increases, the trade regime takes on greater importance for our domestic economy. Canada's trade policy must, however, reflect the domestic considerations of a federal constitution and political culture, and a strongly regionalized economy with a long tradition of competing trade interests. Regional conflict and federal-provincial politics may not generate the same degree of public interest and heat in the Uruguay Round as they did in the bilateral negotiations with the United States. Nonetheless, the outcome of the Round will be important to Canada, and there are a number of sensitive trade policy issues which Canada must face.

This paper reviews the negotiating agenda of the Uruguay Round from the perspective of the unique domestic politics imposed by Canada's federal system. The intent is first, to summarize the trade negotiation agenda in terms of its overall impact on Canada's general interests and on the total dynamics of the success or failure of the world trading system and second, to review these issues from the perspective of Canada's internal regional political economy. Third, the intent is to review federal-provincial relations in light of the jurisdictional responsibility for Uruguay Round agenda items. The focus there will be on consultation with provinces on Canada's negotiating position and on the still unresolved problems of reaching agreement on trade policy matters where the provinces are involved.

THE URUGUAY ROUND AGENDA

The Uruguay Round is now widely perceived as the last chance for the ailing GATT. The forty-year old system has fallen into disrepute in many circles as incapable of handling the many stresses upon it, in particular the proliferation of trading agreements and arrangements which have grown outside its disciplines. The grain subsidy war, the growing use of voluntary export restraint agreements and the increased recourse to contingency protection through safeguards, countervail and anti-dumping measures, have all served to reduce

dramatically the effect of the trade liberalization achieved in previous rounds of multilateral trade negotiations. Countries which led in the creation of the multilateral system in the 1940s are now viewed as leading the trend to a new era of protectionism. Nowhere is this more true than in the United States where trade legislation in the past decade has provided the means for the world's largest economy to dictate unilateral terms for solving its trade problems.

This is not the place to review the complex developments that led to the significant trade imbalances of the late 1970s and the 1980s, fueling the new protectionism.¹ Suffice it to say that the most active parties of the GATT have been attempting since 1982 to re-start the trade liberalization momentum by launching a new round of multilateral trade negotiations. Partly because progress in addressing the growing number of trade problems at the multilateral level was slow if not altogether stalled in the mid-1980s, Canada sought out bilateral trade liberalization with the United States. Canada's interests in these negotiations were mainly to get inside the raging U.S. protectionism. For its part, the United States sought to pursue through the bilateral route what it could not yet achieve through the multilateral route, that is, a kick-start to renewed liberalization to forestall the need for even worse protectionism at home and abroad.²

Finally, however, a new multilateral attempt to restore the international trading system began in September, 1986.³ The Ministerial Declaration on the Uruguay Round breaks new ground in a number of areas. As a whole, it reflects the fact that the negotiations involve a much broader club than the earlier Rounds, with a much more varied set of actors, especially from among the developing countries. Issues which set apart the traditional protagonists of the United States, EC, and Japan can be matched with equally important issues which separate the developed countries with developing countries. The role of the developing countries in the "pre-negotiation" of the Punta del Este meetings demonstrates the increasing role and importance attached by them to the international trading system and an increased determination that the system act not only in the interests of the most developed economies.⁴

The ambitious scope of the negotiations is unprecedented. The negotiations encompass the more traditional issues of market access for the trade of goods, including a major attempt to discipline trade distortions in agriculture. They also address for the first time trade in services and trade-related matters involving intellectual property and investment. Equally ambitious are the attempts to improve on trade laws or contingency protection measures including safeguards, subsidies and countervailing measures. The negotiations are also a significant attempt to give more life and clout to the institutions of the GATT to deal with trade disputes, to monitor trade relations, and to generally improve

the linkages between the international trading regime and other international economic organizations.

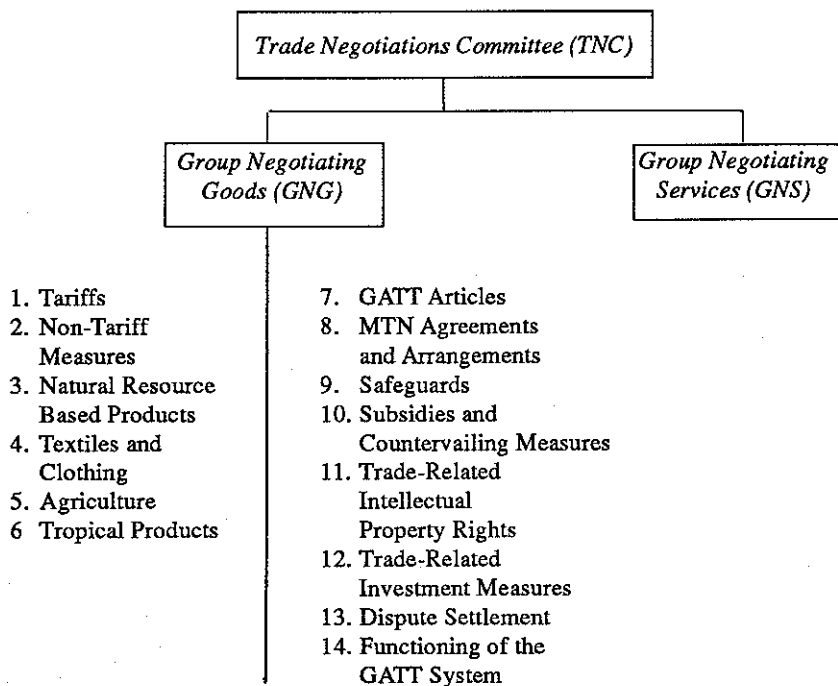
Finally, the agenda demonstrates that the interdependent world economy has gone well beyond trade in goods.⁵ Merchandise trade is increasingly tied to trade in services and to investment. The globalization of financial markets and the development of a global information society makes possible, if not inevitable, conditions whereby labour, technology, market size, and public policy environment are continuously compared in the race for competitive advantage. The Uruguay Round is an attempt to ensure that this competitive process reaps its potential for increased international welfare.

A failure of the Round would be critical to all the players in the trading world, although arguably more so for those smaller trading partners which do not have the ability to manage trade through unilateral measures. As Canada's Minister for International Trade, John Crosbie is fond of saying, "The law of the jungle is all right if you're the King of the Beasts, but if you're not King of the Beasts you don't want the law of the jungle." Despite our more secure relationship with the United States through the FTA, our position as a small open economy makes it in our interests to have a successful outcome to the Uruguay Round. This is true not only for our non-North American trade, but also within our bilateral trading relationship, where many unresolved issues are on the multilateral agenda.

The Uruguay Round, as launched at Punta del Este in September 1986 and as further defined by the establishment of trade negotiations modalities agreed upon in January 1987, comprises 16 separate issues and negotiating fora. In addition to an initial "standstill and rollback" agreement on the imposition of new protectionist measures, the parties to the GATT agreed on a set of negotiations as shown in Figure 10.1.

In practically all of these negotiating issues there is an element of domestic politics which affect the Canadian position, and in many of them there is a strong element of regional politics and provincial jurisdiction. The intent here is not to explore in detail the Uruguay Round agenda.⁶ Rather, in this and succeeding sections of this paper, certain issues have been highlighted which are most likely to indicate the federal-provincial and regional dimensions of Canadian trade policy. These issues are: (1) market access, (2) textiles and clothing, (3) agriculture, (4) subsidies, and (5) the new issues of services and investment.⁷ Before exploring at length the regional political economy of these issues and federal-provincial relations over trade policy, it is important to review briefly these five issues in terms of their overall significance to the Round and to Canada's general interests.

Figure 10.1
Uruguay Round of Multilateral Trade Negotiations



MARKET ACCESS

There are five different negotiating groups that fall under the general category of market access in goods: tariffs, non-tariff measures, natural resource-based products, textiles and clothing, and tropical products. (For our purposes we divide the issues into market access for Canadian exports and treat separately the issue of textiles and clothing, given its overwhelming import sensitivities.)

The *tariff* negotiations will be less prominent in this Round than in previous negotiations, largely because they are not really a priority for the big three industrialized parties, the United States, Japan and the European Community. Nonetheless they are important to a number of countries, including Canada, who have banded together in the "de la Paix" group to push for substantial tariff reductions. The group has succeeded, at least so far, in having this objective

recognized in the negotiating instructions for the remainder of the Round, but there is as yet no commitment to a "formula" approach that would favour smaller parties. The elimination of tariff barriers, especially tariff escalation for finished products as compared with their semi-processed inputs, is a major priority for Canadian resource-based manufacturing.

Non-tariff measures cover a broad range of quantitative restrictions, import restrictions such as licensing and other government measures including procurement and technical standards. While the negotiating instructions are rather vague, this is another area where progress is important to Canada and where lack of progress could stymie substantial movement on tariffs. It is worth noting that one objective is to have non-tariff measures transformed to tariffs in cases where the elimination of such measures is not possible.

The group negotiating market access in *natural resource-based products* is looking primarily at extending the general liberalization of this and previous rounds to forest and fishery products and non-ferrous metals. At least this is the Canadian objective. In some areas, such as fish, Canada may find itself isolated in seeking significant liberalization. Canada's objectives will be met in part by the extent to which the negotiations proceed as if there were no distinctions made between resource and other goods in trade.

TEXTILES AND CLOTHING

Textiles and clothing is one of the "make or break" issues for the developing countries. Their chief objective is to bring the managed trade of the Multi-Fibre Agreement (MFA) and its system of voluntary export restraint arrangements into the discipline of the GATT. At the December 1988 GATT Ministerial meeting in Montreal, the developing countries held back from general agreement on the overall negotiating instructions pending agreement on this item. While the developing countries did not succeed in getting a freeze on measures under the MFA, they did get a commitment to negotiate the terms of its replacement with a new set of rules under a strengthened GATT when the MFA expires in 1991. Canada, as one of the import-sensitive parties to the MFA, may seek to continue to shelter its textiles and clothing industries, in particular the garment sector. However, the developing countries could block the success of the entire Round if substantial liberalization is not achieved in this area. Some of the debate on this issue may arise in the review of GATT rules governing safeguard measures, but the heart of the matter is the attempt to "tame" the MFA. Canada will not be alone among industrialized countries in having acute import sensitivities in this area.

AGRICULTURE

Reform of agricultural trade rules is perhaps the single most difficult issue for the vast majority of participants in the Uruguay Round. Canada is not an exception. A subsidy war in grain and other agricultural commodities led by the United States and the EC has completely disrupted export markets. In the past three years, the Government of Canada has had to increase its fiscal deficit to finance a set of special deficiency payments, mainly to grain farmers, to cover the losses sustained in the dropping prices for export commodities.⁸ This grain subsidy war is a symptom of a larger problem of pervasive agricultural protectionism, where food surpluses created by government support programs have completely distorted world trade in practically all commodities.⁹

Canada's interests in these negotiations have been effectively served to date by its active involvement in the "Cairns" group of agricultural exporters, which has been aggressively pursuing a multilateral commitment to a more liberalized trade. The group has been particularly effective in getting the European Community and the United States to the bargaining table. This objective appeared to be beyond their grasp in December 1988, when the EC continued to balk at the firm U.S. position of the total elimination of all trade distorting agricultural subsidies. By April 1989, however, the GATT Trade Negotiations Committee was able to report that the parties would begin negotiations aimed at "substantial progressive reductions" of trade restrictive practices including measures that control imports, subsidies, and export assistance. They further agreed to begin negotiations towards a new set of GATT rules covering agriculture applicable to all parties, to freeze agricultural support at current levels, and to undertake a roll-back of support by 1991.

As important as the liberalization of agriculture is for Canada, the Round will not be without its costs. There are significant import sensitive agricultural sectors that will seek to limit the impact of the negotiations on their activities. Canada's system of supply management for commodities such as dairy, eggs, and poultry is maintained by import quotas which have long been labelled as protectionist by our trading partners. The Government of Canada has thus far been careful to distinguish between what it terms as trade-distorting and non-trade distorting support programs, defending Canada's marketing boards as belonging in the latter category. This is unlikely to be entirely convincing as a negotiating position.¹⁰ The Canadian government will be forced in the market access part of the agriculture negotiations to make concessions in terms of import access to Canada if it is to make any gains for export access elsewhere. Similarly, in the general rule-making negotiations, any derogation by Canada from the multilateral norms will exact a heavy price. This is complicated by the

large measure of provincial jurisdiction exercised in agricultural support programs. There will be a lively domestic debate on these issues (see below).

SUBSIDIES

The negotiating group on *subsidies and countervail* has a special interest for Canada in this Round in light of the failure to reach immediate agreement on these issues in the FTA. Chapter 19 of the FTA calls for the negotiation of a substitute set of laws affecting subsidies within the next five to seven years. This time frame was chosen at least in part to give the Uruguay Round a chance to work out some of the solutions which eluded Canadian and American negotiators. For the United States agreement on subsidy practice and countervail laws within the broader context of the multilateral trading system would make any change to its own stringent countervail regime more acceptable to Congress. Thus the multilateral negotiations could get to the heart of some of the thornier issues in the bilateral discussions: the definition of a trade distorting subsidy, the concept of when a subsidy is injurious to domestic industry, and the settlement of disputes about the use of trade remedy laws. The December 1988 statement of the GATT indicated that negotiations will attempt to define subsidy practice in terms of three general categories: prohibited practices, practices that are not prohibited but are "actionable" through countervailing measures, and non-actionable subsidies (i.e., not significantly trade distorting). It is of course too early to judge, but progress here could significantly alter the environment for industrial and regional development policy in Canada.¹¹ Other major trading partners, such as the European Community, also have sensitivities in this area for regional development.

THE NEW ISSUES

Three new issues take the Uruguay Round beyond the traditional focus of the GATT system on goods. These are negotiating groups on trade-related intellectual property, trade-related investment measures, and services. While not to denigrate the importance of the debate on intellectual property, the latter two issues are likely to generate more debate in regional/federal terms in Canada.

Canada has already reached agreement with the United States on the issue of *trade related investment measures* through the FTA. Any agreement in the Uruguay Round is not likely to be more extensive. However, any discipline on performance requirements for foreign investment in the GATT will meet with competing interests in Canada, as did the provisions of Chapter 16 of the FTA. Large Canadian-based firms will welcome curbs on such practices, while some

provinces, labour and other interests may not wish to see any further restrictions on the use of a developmental tool of some perceived value.

As with the investment issues, in the negotiations on trade in services, Canada has the benefit of having defined and consolidated its interests through the bilateral process. However, progress in the FTA, as limited as it was, was more easily achieved given the relative similarity of business practice and culture in North America when compared with the many parties to the GATT. Nonetheless, the December 1988 statements of the GATT Ministerial meeting did outline an ambitious framework for negotiation, including the following elements: transparency of regulatory measures, progressive liberalization of restrictive practices, the principle of national treatment, some form of non-discrimination principle, some recourse to safeguard actions, and rules regarding what services would be covered. There is still a very wide gap between the interests of the developed and developing countries in this area. In any case, success in the Uruguay Round may well be marked by bringing services into the trade-rules system by preventing further protectionism and by laying the ground work for future liberalization on a sectoral basis. Canada's interests, especially our potential export interests, are likely to be met by such achievement notwithstanding concern expressed in some quarters about the services chapter of the FTA. Should the services negotiations go beyond the "grandfathering" of all existing measures that occurred in the FTA, more immediate problems of provincial jurisdiction will have to be faced.

Each of the above issues is ambitious, to say the least, and each has its own negotiating complexities and dynamics. However, apart from making work for international bureaucrats, this massive attempt to revitalize the international trading system does have significant domestic consequences not always easily discerned. These negotiations are an attempt to tame the many domestic political responses to a world economy which is surging well ahead of attempts to contain it.

As the GATT regime moves beyond border measures and into integral domestic policies, the traditional divisions between trade policy and domestic economic policy break down. This has consequences for both the Canadian regional political economy and for Canadian federalism, to which we now turn. In this discussion it will become clear that our domestic policy environment is being transformed by international regimes at least as much as our domestic politics is determining our international response.

CONSIDERATIONS OF REGIONAL POLITICAL ECONOMY

The regionalized political economy has dominated domestic consideration of Canada's trade policy throughout most of our history. Canada, as an economic unit, was created in 1867 partly in response to the abrogation of the Reciprocity Treaty with the United States. Free trade or protection was a constant political theme throughout the nineteenth century. With the inauguration of a more comprehensive national tariff structure in 1879 (the National Policy as it would later be called), the stage was set for the integration of an East-West economy behind relatively high tariff walls. The putative effects of the National Policy in determining the regional division of labour within Canada were not necessarily evident in the nineteenth century. Manufacturing only slowly declined in the Maritimes. The West was too busy coping with the settlement boom to notice, especially after 1896. Only in the 1920s and onward has the national tariff become an essentially regional issue. (It had always been a sectoral issue, as the farming community across Canada was in favour of free trade at least until the end of the World War II.)¹²

With the eventual concentration of manufacturing in Ontario and Quebec, especially after 1921, the primary economic activity in the Western and Atlantic provinces has been in the export-oriented resource sectors. The regional alienation fueled by growing disparities in wealth, population, economic growth and diversity, has often focused on the perceived disproportionate benefits and costs of Canada's essentially protectionist trade policy. The policy has been blamed for raising consumer and industrial costs in the resource-producing regions, keeping the Canadian dollar higher than it should be to the detriment of exporters and preventing the diversification of Western and Atlantic industry based on export markets. Such political perceptions are buttressed by economic analyses that support the traditional view of the outlying regions that the National Policy had negative effects on their economies as well as on the country as a whole.¹³

The progressive liberalization of Canada's tariff structure through successive GATT Rounds since 1947 has considerably lessened the overall impact of protection in Canada, but not the political desire in certain regions for more liberalization. Canada as a whole has become more, not less, trade dependent. This has been especially so in the resource-producing provinces. With the rise through the 1970s and 1980s of neo-protectionism in Canada's trading partners, so too has intensified the continuing regional debate about Canada's use of these same neo-protectionist measures and the constraints imposed by them on the export interests of the resource-producing provinces.

The current reality does not only reflect a simplistic dichotomy of resource versus manufacturing regions in Canada. The negotiations and implementation

of the FTA have significantly altered both the dynamics and the relative importance of regional trade issues. The Report of the Macdonald Royal Commission in September 1985 confidently predicted that its proposed freer trade with the United States would not generate the same regional divisions as had traditionally surrounded the National Policy. This was because, in their view, the proposed freer trade would benefit all regions and would indeed "make a major contribution to Canada's regional development and to national competitiveness and overall confidence."¹⁴

The ensuing debate over the free trade agreement illuminated a number of features of a changed Canadian domestic environment for trade policy. First, every province, including Ontario and Quebec, had become dependent on U.S. export markets for employment and economic activity. Indeed the Ontario economy had become overwhelmingly dependent on U.S. exports, largely through the automobile sector. During the Tokyo Round the Quebec government had taken its rather traditional position of seeking protection for its "soft sectors." However, by 1985 it came out firmly in favour of liberalized trade with the United States. Quebec's changed perspective illustrated a new confidence in international business within the province, a growing regional dependence on the U.S. market, and the fact that the United States was not perceived to be the primary threat to its soft sectors.¹⁵

Third, and perhaps most important, the regional debate over free trade was simply not as important as the ideological debate. For much of the period up to and just after the conclusion of the FTA, public controversy had become focused on the premiers as regional spokesman culminating in December 1987, when each provincial government declared itself on the agreement. A clear regional cleavage emerged between the three western-most provinces, Quebec and three of the Atlantic provinces in favour of the agreement and Ontario, Manitoba and Prince Edward Island opposed. The campaign and results of the federal general election of 21 November 1988, however, demonstrated that the ideological debate over free trade was significantly more determining of the issue. Polls showed that support and opposition to the agreement cut across all regional lines.¹⁶ This is not to downplay the regional element, but to make the point that the national party system through the election campaign served to channel the debate into terms that were much less regional than had historically been the case. While the ideological debate was divisive, paradoxically it dampened the potential damage to national unity that a totally regionalized debate would have wrought.

What of the Uruguay Round, will the regional dimension be equally muted as it was in the last stages of the FTA debate, and will the same regional coalitions remain intact? Almost certainly the dynamics will be different. The stakes are different in the Uruguay Round, the issues are more diverse and the

role of multilateral trade in the various regional economies differs from their trade with the United States alone. To the extent to which the Uruguay Round focuses Canada's attentions on trade with countries other than the United States, the MTNs could be said to be of importance to a more select group of provinces. As Table 10.1 shows, only British Columbia, Newfoundland, Saskatchewan, Manitoba, and Prince Edward Island send more than 40 per cent of their exports to countries other than the United States. B.C. and Saskatchewan are the most "multilateral", the former's trade concentrated in the Pacific Rim and the latter with grain exports around the world. And while practically every province felt keenly the threat or actual impact of U.S. protectionist measures in the lead-up to the FTA, only the western grain-producing provinces have the same sense of urgency about the Uruguay Round.

The Uruguay Round will also involve many issues of significance to Canada-U.S. bilateral trade. There is the unfinished business of the FTA, which was put off to the Uruguay Round or after, such as agreement on a substitute set of laws affecting subsidy countervail and anti-dumping and further agreement on agricultural subsidies, services, and intellectual property. Second, many of the general rules and dispute settlement procedures of the GATT integrally affect the operation of the FTA and could, if changed, alter the bilateral relationship accordingly. Finally, concessions to third parties for market access in the Uruguay Round could impair the benefits to either Canada or the U.S. from the FTA. So in all of these ways it is important to bear in mind that while the Uruguay Round is a multilateral negotiation, it also affects trade with the United States and therefore an emphasis only on non-North American trade can be misleading. All of Canada's provinces will be affected by these negotiations, regardless of their dependence on U.S. or non-U.S. trade.

The positions of Ontario and Quebec will be particularly important to the overall Canadian position. Quebec, as a strong supporter of the FTA, played a critical role in its successful negotiation. This time, however, Quebec's import sensitive sectors in agriculture and textiles and clothing may force it to take a more protectionist position than in the bilateral negotiations. Ontario, moreover, is the least dependent of all Canadian provinces on non-North American trade, with only 10 per cent of its exports going to offshore markets in 1986 (although that 10 per cent constituted \$6.3 billion in 1986, or 23 per cent of total Canadian exports to offshore markets). In the debate over the FTA, the Ontario government trumpeted multilateral liberalization over bilateral free trade as the more effective Canadian strategy. Will this rhetoric hold and will the perceived gains from multilateral liberalization for Ontario's more advanced manufacturing and service economy outweigh the perceived costs in terms of its import sensitive sectors?

Table 10.1
International Commodity Trade (Exports) by Province—1986

1. Thousands of current Canadian \$

	<i>United States</i>	<i>Other Countries</i>	<i>Total</i>
British Columbia	6,299,138	7,207,116	13,506,254
Alberta	7,788,233	2,914,044	10,702,277
Saskatchewan	1,797,406	2,523,348	4,320,754
Manitoba	1,429,709	1,119,126	2,548,835
Ontario	56,248,550	6,344,544	62,593,094
Quebec	15,795,225	4,999,500	20,794,725
New Brunswick	1,723,680	905,431	2,629,111
Nova Scotia	1,453,889	666,644	2,120,532
Prince Edward Island	87,794	58,806	146,600
Newfoundland	549,461	468,978	1,018,439
Yukon and NWT	9,170	105,075	114,246
Canada*	93,182,255	27,312,612	120,494,867

2. Percentage

	<i>United States</i>	<i>Other Countries</i>	<i>Total</i>
British Columbia	46.6	53.4	100.0
Alberta	72.8	27.2	100.0
Saskatchewan	41.6	58.4	100.0
Manitoba	56.1	43.9	100.0
Ontario	89.9	10.1	100.0
Quebec	76.0	24.0	100.0
New Brunswick	65.6	34.4	100.0
Nova Scotia	68.6	31.4	100.0
Prince Edward Island	59.9	40.1	100.0
Newfoundland	54.0	46.0	100.0
Yukon and NWT	8.0	92.0	100.0
Canada	77.3	22.7	100.0

* total figures may not be exact due to rounding

Source: External Affairs, "Canada's Trade Statistics", 2nd edition (Ottawa: Supply and Services, 1987).

To answer these questions in even a tentative way one must return to the individual negotiating issues of the Uruguay Round. The overall dynamics of the Round are of course important, but Canada is hardly in a make or break position with respect to the Round's overall success or failure. This contrasts with the negotiations over the FTA. Also unlike the FTA, the Uruguay Round will not top the nation's political agenda. Therefore, it may be argued that individual provinces, sectors and other interests could militate against various aspects of multilateral liberalization without incurring the wrath of a federal government for whom other issues will be more vital. This is not to say, however, that such positions would not be antithetical to Canada's overall interests in the Round, as will be shown.

From the agenda items reviewed above, there are five main issues which can be examined from a regional political economy perspective: market access, textiles and clothing, agriculture, subsidies, and the new issues of trade related investment and services.

As already noted, Canada has taken a strong stand on the importance of *market access* issues by virtue of our overall status as a smaller trading partner with a greater than average dependence on export trade. The Canadian position is also led by the particular demands of the resource and resource-related manufacturing sectors, which are important to every province. Tariff and non-tariff barriers for Canadian exports are significant, especially in terms of further processed resource products. The Western provinces and the Atlantic provinces are particularly concerned that the Uruguay Round will neglect the resource sectors, as they contend has occurred in past rounds.

There is not much controversy in the Canadian position on market access as such: everybody wants the same thing, i.e., expanded export markets. What controversy there is will arise in the real and perceived difficulty in achieving the market access objectives when they must be paid for by concessions from our domestic trade barriers. Here the group negotiating *textiles and clothing* will be a good test of Canada's will for liberalization. The concentration of this sector in Quebec will pose problems given the perceived influence of that province in Ottawa, although the garment sector is also important in British Columbia, Manitoba, and Ontario. This regional effect will influence the Canadian position and may make hollow Canada's more pious objectives with respect to the developing world. On the other hand, the issue is sufficiently central to the overall success of the Round that the federal government may find the will to take on these uncompetitive sectors.

The *agriculture* issues are vital to Saskatchewan and the other grain producing provinces. The Government of Saskatchewan has taken a lead role in calling for liberalization and has followed closely the basic Cairns group line. The general Canadian position is of course constrained by the issue of the marketing

boards. According to some sources, the federal government is prepared to consider replacing the import quotas, which support the marketing board system, with tariffs.¹⁷ In any case, Canada will have to face up to the view held widely among the GATT parties that the system is a protectionist device. How and whether the marketing board ox is gored depends in part on the way in which support programs across all agricultural commodities are calculated and how they are reduced. Almost certainly sector specific support programs will be affected and it seems doubtful that the supply management system as we know it will survive intact.

The agricultural community across Canada is understandably nervous about this issue, but again there are significant concentrations of interest. Farm production in Ontario, Quebec, British Columbia, and the Atlantic provinces is much more subject to the marketing board system, especially the big three of dairy, eggs, and poultry, than are the prairie provinces.¹⁸ Faced with the prospects for progress in market access and subsidy discipline in the export oriented sectors, the Uruguay Round is bound to expose the sharply competing regional interests within Canadian agriculture. Provincial governments such as Saskatchewan will be anxious that Canada do what is necessary to ensure that a freer market prevails in grain.

Under the rubric of trade rules, any tightening of *the subsidies and countervail code* will affect the policies and programs of both the federal and provincial governments in the area of regional and industrial development. Here the urgency of U.S. protectionism has worn off and the political acceptance of disciplining government intervention may also be waning. However, any progress in the Uruguay Round may be the best that can be achieved in terms of our bilateral relations with the United States.

The public debate over these issues is unlikely to be as intense as it was over the FTA, but there is certainly room for anxiety at the regional level. Canada has submitted a proposal to better define trade-distorting subsidies. This proposal would seek to prohibit certain practices, better define the conditions for countervail for other practices, and provide rules on a third category of practices that would be permitted as non-trade distorting.¹⁹ There is considerable public confusion as to what constitutes a trade-distorting industrial or regional development practice, thanks in large measure to the rhetorical debate over the FTA. The new rules may be less constraining of federal and provincial regional and industrial policy than is commonly assumed. Nonetheless, there are bound to be particular sets of regional and sectoral interests affected by the transformation of offending government programs into programs which are consistent with any new GATT obligations.

Finally the new issues of *services and trade related investment* do not as yet seem to have generated the same sort of potential regional controversy as have

the more traditional issues related to trade in goods. This may simply be because the issues are new and extensive adjustment is not expected within Canada this time around. The business community and most of the provinces would appear, however, to recognize the importance to Canada's overall competitiveness of bringing these areas into the trading system.

These issues do involve matters of provincial jurisdiction (see below) and sensitive issues of national sovereignty. At the moment they may be too esoteric and diffuse to generate significant regional debate. Depending on the degree of progress in the Uruguay Round, however, concessions for market access or the discipline of new rules could go well beyond the easy "grandfathering" of existing Canadian measures in the FTA. In such a case, messy jurisdictional problems will arise for Canada, complicating an already complex set of negotiations. So too, the value of existing service and investment measures to specific regions will be tested and could generate debate. For example, access to basic telecommunications markets, access to transportation markets, preferential purchasing, and other performance requirements on investment, access to technology, the subsidization of services and the mobility of labour in the service sector, are all sensitive regional issues.

From this discussion of the regional political economy of Canada's trade-policy environment, it is now appropriate to turn to the federalism dimension. The processes of Canadian federalism pose some specific challenges for Canadian trade policy, not only in terms of how policy is made, but also in terms of sharpening some of the substantive issues which arise from the regional political economy.

FEDERAL-PROVINCIAL RELATIONS

Provinces are involved in Canadian trade policy in two ways. First, they have, by virtue of constitutional jurisdiction, ultimate authority in many matters that arise in international trade including a number of items on the Uruguay Round agenda. Second, through the processes of executive federalism, provincial governments represent the regional interests of their province in numerous intergovernmental interactions with the federal government. These two facts of Canadian political life become intertwined when the jurisdictional support of provinces required to reach international agreements affords the provinces an influential advocacy role in overall policy affecting their regional economies.

The intent of this paper is not to get into the detail of constitutional law respecting international trade²⁰ It is important, however, to review some important long-standing points and some recent developments. Throughout much of the debate over the FTA, the issue of provincial jurisdiction was thoroughly discussed.²¹ The role of provinces in the law of international treaties, as

basically determined by the *Labour Conventions* case in 1937, has not changed. The Government of Canada cannot legislate to implement an international treaty if that legislation intrudes on provincial jurisdiction. Debate during and since the FTA has revolved not around this point, but rather on whether the federal trade and commerce power has sufficient clout to encompass the totality of the FTA, or indeed the Uruguay Round agenda. This proposition has not yet come to a legal test although legal scholars contend that in the light of recent case law there is sufficient evidence to indicate that a new, more centralist definition of the trade and commerce power may be made by the courts.²² The certainty of this position was, nonetheless, in sufficient doubt during the last phase of the Canada-U.S. free trade talks that the federal government did its best to limit the impact of the agreement on provincial jurisdiction. This was to avoid a court challenge from Ontario and possibly the other provinces opposed to the FTA. This did not stop the Ontario government from obtaining legal advice that several areas of provincial jurisdiction were touched by the FTA, beyond the obvious area of alcoholic beverages.²³

To what extent the Uruguay Round results will touch on provincial jurisdiction is, of course, too soon to tell both in terms of substantive provisions and evolving constitutional law. However, an examination of the agenda reviewed above reveals quite a number of provincial measures which could be affected. These include: resource pricing, resource taxation designed to favour local processing, resource export controls, liquor board regulations, government procurement, agricultural support programs, agricultural marketing board legislation, agricultural standards, industrial and regional subsidy practices, investment performance requirements such as local content rules, preferential purchases on mega-projects, local equity requirements and product mandating, and finally, a diverse range of service-sector regulation affecting among other things, establishment, investment, and the mobility of labour.

These provincial measures are well known to our trading partners and many of them will be targeted for removal or modification according to new rules or specific Canadian concessions sought in the Uruguay Round. However, thanks to the recent liquor board case, the parties to the GATT will also be asking for assurances of provincial compliance to the Round agreements. The dismal history of the liquor board dispute has unfortunately demonstrated to the EC and others that not only are the Canadian provinces adept at weaseling out of commitments, but that the federal government is more or less powerless to prevent them from doing so.

The evidence and arguments presented before the GATT panel on this case were especially instructive.²⁴ Article XXIV.12 of the GATT requires each party to "take such reasonable measures as are available to it" to ensure compliance by "regional and local governments." This is the so-called federal state clause.

Canada essentially argued before the panel that "reasonable measures" as required in the GATT did not extend to constitutional *force majeure*, even if such action could be guaranteed of success before the courts. The EC argued that the provinces violated GATT commitments and that the federal government had the power to force the provinces to keep those commitments. Upon hearing both sides, the GATT panel concluded that Canada (plural) did not meet its obligations, but wisely gave Canada a few more months to get its act together, without stipulating how it should do so.

Canada's admission of federal impotence in the face of provincial measures that were inconsistent with the GATT might raise a few questions about the adequacy of the federal state clause of the GATT. To the author's knowledge this issue has not come up in the negotiations to date. Canada's trading partners will probably leave it as a matter for Canadians to sort out in the certain knowledge that we will pay the price if concessions are not delivered or if Canadian national objectives are not met due to provincial blockage.

Thus, the issue of how the provincial governments agree to international trade obligations is a thorny one. It leads to the other aspect of provincial involvement: as trade-policy advocates for their regions. The federal government realizes that the provinces have exercised jurisdiction over a range of non-tariff measures which have become key issues in trade negotiations, at least since the beginning of the Tokyo Round in 1974. Since then Canadian politics has also been marked by the rise of executive federalism.²⁵ These two phenomena combined have led to a significant increase in the scope, depth, and significance of federal-provincial relations over trade policy.

The federal government agreed to an elaborate but workable mechanism for consulting the provinces on the progress of the bilateral trade negotiations with the United States.²⁶ The results of that process have been described by the author elsewhere, but a few important points are of relevance to federal-provincial relations on the Uruguay Round. First, the involvement of the provinces in the FTA has sensitized them to trade policy in all its nuances and complexity. The multilateral negotiations will not have the same profile in the provincial capitals as did the bilateral, but in even the smallest governments there exists an expertise and interest in trade matters, at least in terms of the direct impact on the provincial economies. This means that even if the federal government were not to consult the provinces, the provinces have enough competence to make their views known and to stir up public debate.

Second, however, the politics of the final phase of the FTA negotiations has left more than a few wary players who may be less certain of the intentions of the other side. The federal government in particular may be seeking to limit as much as possible the role of the provinces, given the conflict which arose in late 1987 when federal-provincial consensus on the negotiations broke down.

However much federal trade negotiators may wish not to have provincial colleagues second-guessing their negotiating strategy, federal-provincial dialogue on the Round continues. John Crosbie has met with his provincial counterparts on at least three occasions in the eight months since the general election and a committee of senior federal and provincial officials meets about once every two months to review the negotiating agenda, discuss the Canadian position and exchange data and analysis. Provincial Ministers and officials have been welcomed in Geneva and have been assisted by the Canadian Delegation in making the rounds to other delegations. Provincial representatives were observers at the Montreal Ministerial meeting in December 1988 and at other international trade fora, such as Cairns group meetings.

Apart from this consultative process, the provinces are active in general advocacy: speeches, position papers, missions and briefings, consultations with the private sector, and direct representation to other GATT parties. The impact of this advocacy is difficult to judge, but if all such interventions are of the general quality of the recent Western Premiers Conference Report, *Western Trade Objectives*,²⁷ provincial positions will be influential.

Notwithstanding this advocacy, executive federalism, as it relates to trade policy, is not a decision-making process. The federal-provincial meetings do not have formal procedures, there are no votes and even a unanimous provincial consensus does not preclude federal decisions to the contrary. On the basis of current arrangements, provincial representatives are not members of the Canadian delegation, are not privy to the negotiations and will not be there to take the final Canadian decision. Some of the provinces have been proposing a more elaborate and more formal structure to ensure federal-provincial collaboration in the Uruguay Round. Thus far the federal government has not relented. Difficult issues involving provincial jurisdiction may arise and if Canada is to be a party to agreement which involves provincial jurisdiction more than was the case in the FTA, some means of closing the gap in ways which are final and certain must be found.

This issue has been reviewed by a number of commentators including the Macdonald Commission Report. In a commentary for the C.D. Howe Institute in 1986, Murray Smith outlined four options: (1) the federal government goes it alone; (2) a federal-provincial consensus approach; (3) a "Canadian Fast-Track Process" that would involve constitutional amendment to empower the federal government to impose international economic agreements on all provinces when it has the support of a majority of the provinces; and (4) a series of federal-provincial agreements to implement commitments.²⁸ In the negotiations for the FTA the federal government tried the second option and when that did not work, took the first. The Macdonald Commission Report recommended what is essentially the third option, a constitutional amendment to have inter-

national obligations imposed on provinces across Canada only after the measures are approved by the legislatures of two-thirds of the provinces, having half of the population (i.e., the general amending formula of the Constitution Act of 1982).²⁹ In the prevailing climate over the Meech Lake Accord, it seems unlikely that a constitutional amendment to settle such matters can possibly be passed in time for the conclusion of the Uruguay Round in late 1990.

As noted above, the degree of provincial jurisdiction involved in Uruguay Round commitments is unclear at the moment. Nonetheless, it must be demonstrated to other GATT parties that provincial commitments will meet a better fate than the 1979 Statement of Intent on provincial liquor boards. Whether or not this is demanded by our GATT partners, the federal government itself may seek to have some sort of commitment, even if it is only a political agreement morally binding on the provinces.

If provinces are to be expected to sign, for example, memoranda of agreements on the implementation of Uruguay Round results, then the onus will be on the federal government to ensure that provincial representatives are fully involved and informed of the Geneva negotiations. This will require a more elaborate form of relations than has to this point been implemented. This would include, among others, a way of ensuring provincial cabinet approval. This sort of federal-provincial "concertation" could proceed under the rubric of a new constitutional era inaugurated by the Meech Lake Accord as some prefer.³⁰ Or it could build on the conventional growth of executive federalism in Canada; which will not matter in the short term. However, in the longer term, federal-provincial collaboration must proceed in such a way that at the end of the day, binding decisions can be taken which apply to all jurisdictions. Short of constitutional amendment or jurisprudence to change the current rules, federal and provincial governments might consider some sort of political accord on a process for taking decisions regarding international economic obligations where unanimous consensus is not the only operative rule.

CONCLUSIONS

Canadians may be forgiven if they have not taken much notice of the Uruguay Round of multilateral trade negotiations until now. Just to say the words is to launch into an arcane world of legal and economic jargon largely unintelligible to the average citizen. The general public responded to the complexities of the free trade debate of 1988 largely through a symbolic and emotional campaign. The public may never get the chance to come fully to grips with the Uruguay Round where the issues seem so diffuse and technical. This may present problems if the domestic politics of the Uruguay Round are fought only in terms of special interests and if appeals are not made to the broader national and

consumer interests. There are, nonetheless, some important issues involving regional perspectives and which affect the process of Canadian federalism. These issues may not attract top media billing, but they will significantly affect Canada's overall interests.

The interests of Canada in the Uruguay Round are manifested every day in our domestic economies. No sector of the Canadian economy is untouched by the competitive international environment. The pervasiveness of this economic challenge and its threat to established communities, distributions of income and indeed the entire post-war welfare state, translate into pressure on political institutions. This pressure is not discriminating. It applies with equal force to provincial governments as to the federal government in Canada.

Thus the domestic politics in Canada and its uniquely regional characteristics, as filtered through a decentralized federalism, cannot help but be involved in the broader politics of international trade relations. Provincial governments are taking an increased interest and involvement in the international economy. At the same time, the efforts of the Uruguay Round and other international forces will continue to constrain the ability of all governments to intervene in their local economies. It is, nonetheless, clearly in Canada's interests that the Uruguay Round succeeds because Canada's prospects will steadily shrink in the more protectionist, regionalized world of big power bullies that will displace the GATT system if it fails. This is a conclusion that may not be as widely shared in Canada as one would hope and begs for a broader public debate of the issues.

The Canadian regional issues in the Uruguay Round will be different than in the debate over the FTA. The main indicators of regional and federal-provincial debate in this Round will be in five issues: market access especially for resource products, textile and clothing, agriculture, subsidies and the new issues of services and trade-related investment measures. Debate over these issues may be a throw-back to the older East/West cleavages of previous trade policy debates. Agriculture in particular will expose some sharp regional differences, but so too will the issues of subsidies and textiles and clothing. In a set of negotiations where the overall political stakes may not seem to be as high as in the FTA debate, and where the ideological lines may not be as firmly drawn, the old regional chestnuts could be the most difficult domestic political issues of the Round.

Finally, added to the regional issues, and indeed the chief forum for their expression, is the problem of federal-provincial relations. The role of the provinces, especially their role in implementing Canadian international commitments which fall within provincial jurisdiction, is still not resolved. It presented difficulties in the negotiation of the FTA and it will come back to

haunt Canada in the conclusion of the Uruguay Round. It is an issue that should be resolved sooner rather than later on the Canadian intergovernmental agenda.

Notes

1. For general background to the rise of protectionism and trade imbalances in recent years from a macroeconomic perspective see Lester Thurow "Adjusting the U.S. Trade Imbalance: A Black Hole in the World Economy," *Berkeley Roundtable on the International Economy*, Working Paper No. 24, March 1987; for a more "micro" view, see Stephen S. Cohen and John Zysman, *Manufacturing Matters: The Myth of the Post-Industrial Economy* (New York: Basic Books, 1987). Two recent overviews of the Canadian perspective may be found in Sylvia Ostry, "Global Trends: Global Solutions," paper delivered at Queen's University School of Policy Studies, 13-14 April 1989; and Murray Smith, *Canada's Stake in the Uruguay Round and the GATT System* Discussion Paper 8801 (Ottawa: Institute for Research on Public Policy, October 1988). From a U.S. perspective, see G.C. Hufbauer and Jeffrey J. Schott, *Trading For Growth: The Next Round of Trade Negotiations* (Washington: Institute for International Economics, 1985).
2. The Government of Canada pursues what it has called a "two-track" trade policy of bilateral and multilateral trade liberalization. During the debate over the FTA and since there has been a continuing discussion about the impact of bilateral liberalization on the multilateral system. See, for example, Jeffrey J. Schott, "Implications for the Uruguay Round" in Jeffrey J. Schott and Murray Smith (eds.), *The Canada-United States Free Trade Agreement: The Global Impact* (Washington: Institute for International Economics, 1988). For a good summary of the official view, see Germain Denis in "The FTA and the GATT: The Link," paper delivered at the Inaugural Conference of the Canadian Centre for Trade Policy and Law, Ottawa, 5 May 1989.
3. Ministerial Declaration, Punta del Este, October 1986; and Trade Negotiations Committee: Texts adopted on 28 January 1988, GATT Secretariat, *Basic Instruments and Selected Documents*, published in Kenneth R. Simmonds and Brian H.W. Hill (eds.), *Law and Practice Under the GATT* (New York: Oceana Publications, 1988).
4. See Gilbert Winham, "The prenegotiation phase of the Uruguay Round", *International Journal*, XLIV: 2, Spring, 1989, pp. 285-86.
5. For a good overview of the concept of interdependence see Sylvia Ostry, *Interdependence: Vulnerability and Opportunity* (Washington, D.C.: The Per Jacobsson Foundation, 1987).

6. For a basic introduction to the Uruguay Round issues, see J. Michael Finger and Andrzej Olechowski (eds.), *The Uruguay Round: a Handbook on the Multilateral Trade Negotiations* (Washington D.C.: The World Bank, 1987).
7. Information on the negotiating mandate and agreement reached at the December 1988 Ministerial Meeting and the April 1989 Trade Negotiations Committee meetings has been obtained from the following documents: GATT Secretariat, Multilateral Trade Negotiations, Uruguay Round, Document #MTN.TNC/7 (MIN) 9 December 1988 "Trade Negotiations Committee Meeting at Ministerial level" Montreal, December 1988; Government of Canada, Department of External Affairs, (Multilateral Trade Negotiations Office) "Situation Report" of January 1989 and April 1989; Canada, Minister of International Trade News release and annex, 8 April 1989: "Canada Welcomes Agreement in Geneva Trade Talks". See also *Globe and Mail* for 6, 8, and 10 April, 1989.
8. While it is not always easy to separate out the cause of low grain prices as attributable solely to subsidy escalation by Canada's trade partners, the effect is nonetheless very tangible. The Special Canadian Grains Program of 1986-87 and 1987-88 cost a total of \$1.0 billion and \$1.1 billion respectively. Other major programs which compensated grain farmers for low prices are payments under the Agricultural Stabilization Act and the Western Grain Stabilization Act. Total net direct payments for producers of wheat barley and oats combined were \$1,162 million for 1986-87 and \$997 million for 1987-88. (See Minister for International Trade, Canada, News Release and Backgrounder No. 130, 6 June 1989 "Support Levels Agreed to Under Canada-U.S. Free Trade Agreement").
9. Harry Johnson called this problem "agriculturalism": "the protection of domestic agricultural production by a host of direct and indirect interferences with freedom of trade in agricultural products far transcending in complexities the protectionist measures applied to industrial trade." See Harry G. Johnson, "Mercantilism: Past Present and Future" in Harry G. Johnson (ed.), *The New Mercantilism* (Oxford: Basil Blackwell, 1974) pp. 7 and 15.
10. Canada's insistence in this area may already have produced difficulties within the Cairns group. Canada had to exclude itself from parts of the July 1988 Cairns proposal to the GATT that specified changes to Article XI of the GATT affecting marketing boards. See *Globe and Mail* 6 April 1989.
11. Canada submitted a "comprehensive" proposal on subsidy-countervail rules in June 1989. See Minister for International Trade, News Release no. 158, 28 June 1989.

12. On the legacy of the National Policy see G. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, (3rd ed.) (Toronto: Gage, 1989) pp. 75-81; see also articles by Paul Phillips, David E. Smith and T.W. Acheson in D.J. Bercuson (ed.), *Canada and the Burden of Unity* (Toronto: Macmillan, 1977); see also P.M. Leslie, *Federal State, National Economy* (Toronto: University of Toronto Press, 1987) pp. 4-7; and *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, vol. 1, (Ottawa: Minister of Supply and Services, Canada, 1985) pp. 213-224.
13. See Economic Council of Canada, *Looking Outward: A New Trade Strategy for Canada* (Ottawa: Information Canada, 1974) esp. chap. 4, pp. 39-46; a good summary of the economic literature and an effective presentation of the evidence may be found in Ronald A. Shearer, "Regionalism and International Trade Policy", in J. Whalley (ed.), *Canada-United States Free Trade* vol. 11 of the Research Studies commissioned for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985) pp. 325-366.
14. *Report*, vol. 1, p. 331.
15. For an assessment of the Quebec government's hands off role in industrial adjustment in the textile and clothing sector see Denis Robert, *L'ajustement structurel et le fédéralisme canadien: le cas de l'industrie du textile et du vêtement*, Notes de recherche (Kingston: Institute of Intergovernmental Relations, 1989).
16. See the article in this volume by Darrel Reid on the federal general election campaign of 1988.
17. See *Globe and Mail* of 23 March 1989.
18. The Economic Council of Canada calculated the share of total farm receipts influenced by supply management boards in each province in 1978 as follows: British Columbia 41.7(%); Alberta 8.3; Saskatchewan 2.9; Manitoba 13.1; Ontario 37.7; Quebec 58.1; New Brunswick 38.1; Nova Scotia 53.8; Prince Edward Island 20.8; Newfoundland not available. See Economic Council of Canada, *Reforming Regulation* (Ottawa: Minister of Supply and Services Canada, 1981) p. 57.
19. *Supra*, note 11.
20. For useful summaries, see Ivan Bernier and André Binette, *Les provinces canadiennes et le commerce international: dynamique économique et ajustement juridique* (Québec: Centre québécois de relations internationales, 1988) pp. 115-204; I. Bernier, *International Legal Aspects of Federalism* (London: Longman, 1973); and G.Z. Szablowski, "Treaty-Making Power in the Context of Canadian Politics: An Explanatory and Innovative Approach," in C. Beckton and W. MacKay (eds.), *Recurring Issues in*

- Canadian Federalism*, Macdonald Commission Research Studies, vol. 57 (Toronto: University of Toronto Press, 1985).
21. See "Anonymous," "The Canada-United States Free Trade Agreement: Issues of Constitutional Jurisdiction," in P.M. Leslie and R.L. Watts (eds.), *Canada: The State of the Federation 1987-88* (Kingston: Institute of Intergovernmental Relations, 1988); and contributions by M. Pilkington, I. Vernier, H. Scott Fairley and D. Bigson in Chap. 4 of M. Gold and D. Leyton-Brown (eds.) *Trade-Offs on Free Trade* (Toronto: Carswell, 1988), pp. 89-129.
 22. See J. Whyte, "Federal Powers over the Economy: Finding New Jurisdictional Room," *Canadian Business Law Journal*, vol. 13, (1987) p. 257.
 23. Attorney General for Ontario, *The Impact of the Canada-U.S. Trade Agreement: A Legal Analysis*, May 1988.
 24. GATT Secretariat, Panel on Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies, *Report of the Panel*, 12 October 1987.
 25. For an explanation of the concept of executive federalism, see D.V. Smiley *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987) Chap. 4.
 26. See the author's "The Canada-United States Free Trade Agreement: The Federal-Provincial Consultation Process," in Leslie and Watts, *Canada: The State of the Federation 1987-88*, pp. 77-93.
 27. *Western Trade Objectives: Report of the Western Ministers Responsible for Multilateral Trade Negotiations to the Western Premiers Conference* (Camrose: Alberta, 27-28 June 1989).
 28. M. Smith, "Closing a Trade Deal: The Provinces' Role", C.D. Howe Institute, *Commentary*, no. 11, August 1986.
 29. See *Report*, vol. 1, pp. 368-72; 383-84. See also Sablowski, "Treaty-Making Power in the Context of Canadian Politics".
 30. See Bernier and Binette, *Les provinces canadiennes et le commerce internationale*.



IV

Chronology

Chronology of Events January 1988–June 1989

Darrel R. Reid and Dwight Herperger

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2 January 1988
Free Trade

Prime Minister Brian Mulroney signs the Canada-U.S. Free Trade Agreement, promising to introduce enabling legislation for the agreement into the House of Commons as soon as possible. From his Ottawa office Mr. Mulroney calls the signing ceremony a "note of hope" and confidence for 1988. In a parallel signing ceremony U.S. President Ronald Reagan terms the deal a "win-win situation for both countries" which would create jobs and lower consumer prices.

6 January 1988
*Hydroelectricity—
Exports—Quebec*

Governor Mario Cuomo of New York and Quebec Premier Robert Bourassa sign a memorandum of understanding between Hydro-Québec and the State of New York for the sale, over 21 years, of 1,000 megawatts of hydroelectricity worth \$17 billion beginning in 1995. This is the largest hydroelectricity contract signed in Hydro Québec's 25-year history.

7 January 1988
*Regulation—
Securities*

Securities Commissions from Ontario, Quebec, and British Columbia sign a memorandum of understanding with the U.S. Securities and Exchange Commission calling for closer cooperation between the commissions in the investigation of possible securities violations. The agreement, which still requires enabling legislation to take effect, is to give regulators the authority to pursue information and witnesses in their own country on behalf of the other country, even though no violation of domes-

18 January 1988
Regional Development—Prince Edward Island

tic law has occurred. The agreement also obliges regulators to share information from their own jurisdiction which is required by officials from the other jurisdictions.

Following nearly two months of intense debate, Prince Edward Island voters approve of the building of a 14-kilometre fixed link between the Island and the mainland, by a margin of nearly 60 per cent. Premier Joe Ghiz had called the plebiscite following the federal government's announcement that it was asking seven Canadian firms to submit detailed designs for a bridge or tunnel across the Northumberland Strait. Of the result, Mr. Ghiz notes that "It is a clear mandate to negotiate with the federal government while respecting the concerns of the many Islanders who voted against it."

19 January 1988
Environment—Nuclear Power

The Commons Environment Committee issues a unanimous report on the nuclear power industry in Canada entitled *The Eleventh Hour*, which proposes that the federal government declare a moratorium on the construction of nuclear power plants until an acceptable solution is found to the waste disposal issue. The committee also recommends that the provinces that produce nuclear waste—Ontario, Quebec, and New Brunswick—should bear primary responsibility for storing it.

26 January 1988
Senate Appointments; Meech Lake Accord

The first Senator to be appointed under the new Meech Lake constitutional formula is sworn in. Gerry Ottenheimer, a former Newfoundland cabinet minister, was chosen by Prime Minister Mulroney from a list provided by Newfoundland's Conservative government. Even though the Accord has yet to be ratified by most provinces, the federal government is honoring the agreement to appoint senators from lists provided by provinces with Senate vacancies.

28 January 1988
Supreme Court—Abortion

Citing Section 7 of the Canadian Charter of Rights and Freedoms that guarantees "security of the person," the Supreme Court of Canada rules 5-2 that a British Columbia law restricting access to abortion is unconstitutional, holding the law to be so "manifestly unfair" that it could not be allowed to remain on the books. As a result, the

little-used Criminal Code law, which provided sentences of up to two years for those seeking abortions, is no longer enforceable. Dr. Henry Morgentaler, who had been charged under the law, terms the decision a "vindication of a lifetime of struggle." In Ottawa, federal Justice Minister Ray Hnatyshyn announces that the decision must be studied by the federal government and discussed with the provinces. Provincial responses to the decision differ: both Manitoba Attorney General Vic Shroeder and Ontario Attorney General Ian Scott announce that their provinces would drop all abortion-related charges against Dr. Morgentaler; British Columbia announces that, despite the ruling, public money would not be spent to finance abortion on demand.

28 January 1988
Meech Lake Accord
—Northwest
Territories

An attempt by former N.W.T. government leader Nick Sibbeston to launch a legal attack on the Meech Lake Accord is turned down by the Northwest Territories Court of Appeals, agreeing with a federal government request to dismiss the suit. In seeking a full hearing for his client's case, Sibbeston's lawyer had argued that sections of the Accord violate the Charter of Rights and Freedoms, and that Ottawa had ignored the rights of the Yukon and Northwest Territories in concluding its agreement with the ten provinces. The three judges reject these arguments, holding, among other things, that the Charter of Rights cannot be used to challenge other parts of the Constitution, and that the federal government was not required to make the Territories part of the negotiations leading to the Meech Lake Accord.

4 February 1988
Regional Develop-
ment—ERDA—
British Columbia

British Columbia Finance Minister Mel Couvelier announces the unilateral withdrawal of his province from a \$1 billion federal-provincial Economic and Regional Development Agreement (ERDA), stating his government's concern that the ERDAs offer unfair competition to existing companies and an artificial stimulus to the economy. Though more than 100 ERDA grants worth \$5.2 million had been announced in mid-January, Couvelier said the government had simply "grandfathered" those already in the system, giving them consideration under former terms and conditions. According to Cou-

velier, there are to be no further grants pending the outcome of talks with Ottawa. The suspension of provincial participation in the ERDA comes one year in advance of the agreement's 1989 expiry and is part of a review of all federal-provincial agreements by the Government of British Columbia.

10 February 1988
Budgets—Federal

Federal Finance Minister Michael Wilson delivers his fourth budget in the House of Commons. In what is widely interpreted as an election budget, Mr. Wilson dwells largely upon the Conservative government's achievements since it came to office in 1984. The budget is aimed primarily at continuing the government's deficit-cutting policies, with no new spending initiatives announced.

12 February 1988
*Canadian Radio-
Television and Tele-
communications
Commission (CRTC)*

A federal cabinet decision allows Call-Net Telecommunications Ltd. to continue its long-distance service to its customers for at least six months despite a Canadian Radio-Television and Telecommunications (CRTC) ruling that its service violates federal policy. The Toronto-based firm sells call time to customers over long-distance lines it leases from Bell Canada and CNCP Telecommunications. Manitoba Telephones Minister Gary Doer announces that he plans to organize a multi-province protest of the decision, citing his fears that this service—if allowed to continue—amounts to competition in long-distance service, something the provinces fear will lead to large rate increases in local service for provincial telephone utilities similar to those that occurred in the United States when AT&T's monopoly was dismantled.

15 February 1988
*Regional Develop-
ment—ACOA*

Senator Lowell Murray, the minister responsible for the Atlantic Canada Opportunities Agency, announces cabinet approval authorizing that agency to spend \$1 billion of development money over the next five years, despite the fact that legislation confirming the mandate of ACOA is still before Parliament.

25 February 1988
*Supreme Court—
 Language—
 Saskatchewan*

In a 6-2 ruling, the Supreme Court of Canada holds that Saskatchewan's English-only laws are invalid and that the Saskatchewan government must either translate all laws into French within a reasonable time, or invalidate, as soon as possible, the right to French-language laws. In the ruling the court states that Section 110 of the Northwest Territories Act contains French-language guarantees which are still valid in Saskatchewan and must be either respected or repealed by the province's legislature. In response, Saskatchewan officials request more time to study the ruling. The decision also has implications for Alberta, where the same law was applied when the province was formed 1 September 1905. Francophone spokesmen hail the ruling as a victory and asked for help from the federal government and Quebec in defending French rights in Saskatchewan and Alberta.

29 February 1988
*Council of
 Maritime
 Premiers;
 Regional Develop-
 ment—ACOA*

Following a meeting of the Council of Maritime Premiers, the three Maritime premiers and Newfoundland's premier Brian Peckford request a meeting with Prime Minister Brian Mulroney to obtain details on how Ottawa is going to operate the new Atlantic Canada Opportunities Agency. Premier John Buchanan notes that the premiers are not asking for a say in governing the agency but want to harmonize its operations with that of their provinces.

1 March 1988
*Hydroelectricity—
 Quebec*

Quebec Premier Bourassa announces that his government will go ahead with construction of a second James Bay hydroelectric development. According to Mr. Bourassa, James Bay II is to cost \$7.5 billion over ten years, and will involve the construction of three dams and a transmission line to the U.S. border. The project is to create 40,000 new jobs.

8 March 1988
*Elections—
 Manitoba; New
 Democratic Party—
 Manitoba*

The New Democratic government of Manitoba Premier Howard Pawley falls after an unexpected defeat on a motion of non-confidence following its annual budget. In addition to the combined opposition Conservatives and Liberal leader Sharon Carstairs, NDP backbencher Jim Walding voted for the motion. After announcing a provincial election, to be held 26 April, Mr. Howard

8 March 1988
*French Language
 Education—
 Prince Edward
 Island*

Pawley, Manitoba premier since 1981, stuns observers by announcing his resignation as leader of the Manitoba New Democrats. At dissolution, the party standings are: NDP 29, Conservatives 27 and Liberals 1.

The Supreme Court of Prince Edward Island rules that the province's School Act and certain of its regulations are inconsistent with the Canadian Charter of Rights and Freedoms, in that the Act does not recognize the right of the French language minority to participate in French language program development and its delivery in the province. Among its findings, the court rules that section 5.32(1) of the School Act, which reserves the sole discretion in the regional school board to determine if a sufficient number of students can be assembled for providing French language education, to be inconsistent with the Charter and, therefore, *ultra vires*.

15 March 1988
*Regulation—
 Securities Industry*

Federal Minister of State for Finance Thomas Hockin announces an agreement between Ottawa and Quebec on supervision of the securities industry, a major sore point since financial deregulation last year cleared the way for mergers between federally- and provincially-regulated companies. According to Mr. Hockin, the deal protects Quebec's traditional jurisdiction over the securities industry, even when stock brokerages are taken over by federally-regulated institutions. In return, Quebec will guarantee federal regulators access to information concerning, among other things, the capital adequacy of securities operations owned by banks and federally-regulated financial institutions. A similar agreement has been struck with Ontario. Both provinces agree to notify Ottawa six months ahead of any changes in the rules governing the securities industry.

17 March 1988
*Meech Lake
 Accord; Interprovin-
 cial Energy Rela-
 tions*

Quebec Premier Bourassa and New Brunswick Premier McKenna sign an energy agreement. The six-year, \$650 million agreement will see New Brunswick receive access to cheaper hydroelectricity in return for the province dropping its opposition to a major Hydro-Québec sale of electricity to the New England states.

During discussions the New Brunswick premier also outlines six major changes to the Meech Lake Constitutional Accord before his province can ratify it. These conditions are:

- parliament should be required in the Constitution to "promote" as well as to simply "preserve" bilingualism across the country. The Accord provides that only Quebec would be committed to "preserve and promote" its identity;
- the removal of the stipulation in the Accord that jurisdiction over fisheries be discussed at constitutional conferences every year;
- the Accord must be rewritten to remove any doubt that womens' rights might be affected;
- the section on appointment of Supreme Court appointments should be amended to allow federal-provincial bar committees to make nominations to the Supreme Court;
- the issue of Senate reform must be settled before the Accord is ratified; and
- New Brunswick wants clearer language to ensure that limitations placed by the Accord on federal-provincial shared cost programs will not deprive have-not provinces of badly needed federal assistance.

21 March 1988
*International
Trade—GATT*

Federal Trade Minister Pat Carney announces in the House of Commons that Canada will accept two GATT rulings that call for the elimination of protectionist measures involving alcoholic beverages and Pacific salmon and herring, but that Ottawa will decide how to make the necessary changes. The European Community had launched its GATT case protesting that pricing practices by provincial liquor control boards favoured domestic beverages over foreign ones. Ms. Carney announces she will continue to consult with the provinces on what actions will be taken by the federal government. Canada has until the end of the year to inform GATT how it plans to comply with the rulings.

30 March 1988*Meech Lake
Accord*

Former Prime Minister Pierre Trudeau addresses a Senate Committee of the Whole on the Meech Lake Accord. In his presentation he urges the Senate to block the Accord by amending it, and outlines other possible ways to turn back the agreement: a Supreme Court reference and a federal election. In his address, he portrays Prime Minister Brian Mulroney as a weak leader who bought peace with the provinces at any price: "Mr. Mulroney's government of national reconciliation was able to bring temporary peace to federal-provincial relations by negotiating a sweetheart constitutional deal whereby enormous amounts of power were transferred to the provincial governments and particularly to the premiers." He portrays the Accord as a "Rubicon—once you've crossed it you can't go back."

1 April 1988*Health Policy—
Federal-Provincial
Agreements*

A new federal-provincial agreement on the interprovincial portability of health benefits comes into effect today. Under the agreement, patients from any province or territory—except Quebec, which is not party to the agreement—will be insured for all benefits offered by the province or territory in which they are treated. The agreement on portability of health care insurance gives effect to a principle enshrined in the federal government's Canada Health Act. It makes billing arrangements easier, eliminating any extra costs or the need for special insurance to cover benefits not insured in the province of residence.

4 April 1988*Language Policy—
Saskatchewan*

Saskatchewan Justice Minister Bob Andrew tables Bill 2 in the legislature, to repeal Section 110 of the Northwest Territories Act, 1877. The bill is the government's response to the Supreme Court decision of 25 February that ruled the province's English-only laws to be invalid unless either translated into French or declared to be valid in English alone. Among the bill's provisions are the following:

- Section 110 of the 1885 Northwest Territories Act—which guaranteed the right to French trials, the right to French versions of all laws and the right to speak French in the legislature—will be repealed and replaced;

- validation of past and existing statutes, even if they were passed only in English; and
- validations of future statutes and regulations, even if passed in English only.

In addition, the bill states that bills may still be passed in English only and does not set out a time limit or put onus on the government to translate old laws into French. Response to the bill by federal politicians and minority language groups alike is swift and negative. The bill is passed by the Legislature and becomes law on 25 April.

7 April 1988
*Environment—
 Provincial-Inter-
 national Relations*

The province of Ontario joins with nine U.S. states in a court action to force the United States Environmental Protection Agency to order reductions in emissions that cause acid rain. The province and the states file a petition asking the agency to release two 1981 decisions that determined acid rain was a threat to the environment. Under U.S. procedures, the decisions had to be made public before the agency could order states to reduce emissions of acid-rain producing pollutants.

13 April 1988
Tax Reform

Finance Minister Michael Wilson releases 360 pages of draft legislation on the reform of personal and corporate income taxes; this legislation is meant to give force to the first stage of the government's two-stage tax reform plan.

13 April 1988
*Language Policy—
 Saskatchewan*

In a visit with his Saskatchewan counterpart, Quebec Premier Robert Bourassa voices his support for the controversial Saskatchewan language legislation, Bill 2. Characterizing the bill as a step forward, Mr. Bourassa notes that "I understand the Saskatchewan position. When Premier Devine says this is a delicate and emotional question and we have to apply the law with prudence, I think he's talking common sense." Mr. Bourassa's support for the government of Saskatchewan is criticized by francophone groups living outside Quebec as a betrayal of their minority language rights.

18 April 1988
*Environment—
 Atlantic Ocean*

Citing its concern for the environmental safety of the region's rich fishing grounds, the federal government declares a 12-year moratorium on oil and gas exploration

for the Canadian portion of Georges Bank, off Canada's east coast. The decision is fully supported by Nova Scotia Premier John Buchanan.

19 April 1988
*Provincial-Inter-
national Relations—
Ontario*

Ontario Premier David Peterson and Michigan Governor James Blanchard sign agreements aimed at ensuring the "mutual benefit" of the jurisdictions and establishing new "plateaus of friendship." The agreements include a declaration of partnership which calls for regular meetings between cabinet ministers and senior officials on matters of joint concern; and memoranda of understanding on cooperation in fighting forest fires, the regulation of maritime commerce and communication on accidental pollution discharges.

21 April 1988
*Meech Lake
Accord—Senate*

The Senate passes an amended version of the Meech Lake Accord, sending it back to the Commons for further debate followed by another vote. The Senators propose nine changes to the resolution—in essence the same changes as proposed by the Liberals during the earlier Commons debate. The key amendment would ensure that the clause in the agreement which acknowledges Quebec to be a "distinct society" is subordinate to the Canadian Charter of Rights and Freedoms. Other amendments would expand protection for official-language minorities, toughen provisions allowing provinces to opt out of new national programs, make it easier for the Yukon and Northwest Territories to become provinces, and provide for the election of senators. Senator Lowell Murray, Minister of State for Federal-Provincial Relations, calls the changes "killer amendments" aimed at destroying the Accord.

26 April 1988
*Elections—
Manitoba*

Manitoba voters elect a Progressive Conservative minority government. The Conservatives, led by Gary Filmon, win 26 seats—down from 27 in the last house. The big winners are the provincial Liberals, under Ms. Sharon Carstairs, who become the official opposition, going from one seat in the previous house to 20 in this one. The New Democrats elect 12 members, down from 29 in the previous legislature.

26 April 1988
*Provincial-Inter-
national Relations—
Environment*

The Governments of Quebec and New York State sign a five-year extension of an acid rain control treaty originally concluded in 1982. The treaty requires the sharing of acid rain research, educational material and strategies to lobby for tougher environmental laws. For the first time, the treaty specifies that Quebec and New York will lobby other states to support tougher environmental protection laws.

5 May 1988
Environment

The House of Commons unanimously adopts the government's new Canadian Environmental Protection Act, which the government describes as being the strongest environmental legislation in the western world. The bill consolidates federal environmental laws and creates a new system for regulating the development, production, use and disposal of toxic chemicals. It also creates stiff sanctions for polluters, including unlimited fines and jail terms for the worst offenders. The bill includes provisions for agreements with provinces to allow provincial laws and regulations to stand for federal regulations where such measures are equivalent.

13 May 1988
*Meech Lake Accord
—P.E.I.*

With a single dissenter, the legislature of Prince Edward Island ratifies the Meech Lake Accord, becoming the fourth province to do so.

18-21 May 1988
*Western Premiers'
Conferences*

The Western premiers hold their annual meeting at Parksville, B.C. All four premiers affirm their support for free trade, and criticize Ontario premier David Peterson for his government's opposition to the agreement. On Senate reform, they are unanimous in supporting Premier Getty's call for a "Triple-E" Senate (Effective, Equal and Elected). The premiers call for a meeting of federal and provincial agriculture ministers on how to deal with conditions in the drought-stricken West.

24 May 1988
*Supreme Court—
Appointments*

Prime Minister Brian Mulroney names John Sopinka, a practicing lawyer, to the Supreme Court of Canada, filling the vacancy created by the resignation of J.W. Estey.

24 May 1988
*Free Trade;
Federal-Provincial
Relations*

International Trade Minister John Crosbie introduces his government's free trade legislation to the House of Commons. The bill amends 27 existing statutes to end, among other things, all cross-border tariffs over a ten year period. It will also ensure the compliance of such diverse legislation as the Bank Act, the Meat Import Act, the Income Tax Act and the Canadian Wheat Board Act with the terms of the Free Trade Agreement signed on 2 January 1988. While the legislation promises to trigger a bitter parliamentary debate, much of the attention is focused upon how Ottawa will guarantee to the United States that the provinces will comply with the agreement. Contained in the act are two clauses designed to bring about this effect. The first is Section 6, which states "For greater certainty, nothing in this act, by specific mention or omission, limits in any manner the right of Parliament to enact legislation to implement any provision of the agreement or fulfil any of the obligations of the government of Canada under the Agreement." Under second Section 9, Ottawa reserves the right the bring in further legislation after the deal is in effect to override new provincial legislation that would violate the agreement. Although the premiers of Alberta, Quebec and Nova Scotia indicate their concerns about these provisions, none of them withdraw their support for the agreement.

25 May 1988
Meech Lake Accord

Nova Scotia becomes the fifth province to ratify the Meech Lake Accord; the motion in support of the agreement passes by an overwhelming majority.

26 May 1988
Regional Development—Western Diversification Office

Deputy Prime Minister Donald Mazankowski announces that \$27 million will be allocated from the Western Diversification Fund to help Ontario Hydro afford Western Canadian coal. A 1987 task force report concluded that the Ontario utility could reduce acid rain emissions and create up to 26,000 permanent jobs in Western Canada by switching to western coal. The money will go towards subsidizing the transportation of the coal to Ontario.

2 June 1988
Health Policy—
Ontario

The Ontario government introduces its Independent Health Facilities Act into the Ontario legislature; the legislation could be a direct challenge to the Canada-U.S. Free Trade Agreement. The new law sets rules for the licensing and funding of clinics that provide health services covered by medicare, and appears to contravene the FTA with its assertion that "despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation," preference will be given to proposals for clinics that are to be owned and operated by Canadians. In Ottawa the next day Trade Minister John Crosbie dismisses the Ontario legislation as a "propaganda ploy."

2 June 1988
Supreme Court—
Meech Lake Accord

The Supreme Court of Canada rejects an attempt by the Yukon and Northwest Territories to challenge the constitutionality of the Meech Lake Accord. Without giving reasons, Chief Justice Brian Dickson dismisses a request from these governments for permission to appeal lower court rulings that Ottawa had no obligation to consult them before signing the Accord.

6 June 1988
Regulation—
Financial Institutions

Federal Finance Minister Michael Wilson announces a joint federal-provincial moratorium on the sale and leaseback of libraries and other assets by universities and hospitals. In "sale and leaseback" arrangements, a tax-exempt institution, which cannot benefit from depreciation allowances, sells its assets to a private company that can benefit from tax write-offs. The tax-exempt institution receives some of those benefits in the form of fees or preferential leasing rates. Such arrangements hurt both federal and provincial treasuries, which lose tax revenue from the private company. Ontario had imposed a unilateral moratorium on sale and leasebacks imposed in that province 7 May.

6 June 1988
Health Policy

Federal Health Minister Jake Epp announces a \$40 million joint federal-provincial program to battle the prevalence of family violence. Of this money, \$22.2 million is to go to the federal housing agency to build or acquire the units expected to provide temporary housing for 25,000 abused women a year. According to Mr. Epp, the

provinces are to be responsible for operating expenses for the program, but will be able to draw funds from the Canada Assistance Plan. The federal contribution—paid 50-50 on a matching basis—is expected to be \$3 million annually.

9 June 1988

*Supreme Court—
Hydroelectricity;
Interprovincial
Energy Relations*

In a decision Newfoundland premier Brian Peckford calls "extremely disappointing," the Supreme Court of Canada rejects Newfoundland's battle for a greater share of the hydroelectricity generated by the giant Churchill Falls hydro project. The government of Newfoundland had wanted to renegotiate a 65-year contract between the government of Joseph Smallwood and Hydro-Québec under which Quebec buys Labrador power at low prices and then resells it, as part of its surplus, to the United States at ten times the price. In an unanimous judgement, the Supreme Court judges concur with two previous rulings by senior courts in Quebec and Newfoundland upholding the sanctity of the contract. The decision is the second time in four years that the Court has ruled unanimously against attempts by Newfoundland to alter the Churchill Falls agreement. Later, at a meeting in Newport, R.I., Premiers Peckford and Bourassa announce their willingness to investigate the possibility of further joint hydroelectric developments in Labrador.

9 June 1988

*Regional Develop-
ment—Quebec*

Prime Minister Mulroney announces the conclusion of a 5-year regional development agreement between Ottawa and Quebec. Under the agreement, the two governments will spend \$970 million to help underdeveloped areas revitalize existing industries and attract new ones, to boost tourism and to improve transportation systems. The program is to be jointly managed by both governments.

13 June 1988

*Environment—
Interprovincial
Relations*

Meeting in Montreal, Premiers Bourassa of Quebec and Peterson of Ontario sign an agreement committing their respective provinces to share information with each other both on hazardous shipments passing from one territory to the other and on emerging environmental problems of interest to both provinces.

14-15 June 1988
*Eastern Canadian
Premiers and New
England Governors*

The Eastern Canadian Premiers and New England Governors meet in Newport, R.I. for their annual conference. Atop the agenda for the two-day meeting is the Canada-U.S. Free Trade Agreement, with the participants being briefed by U.S. free trade negotiator Peter Murphy and Canadian Ambassador to the U.S. Alan Gottlieb. A particular point of contention for premiers McKenna, Peckford and Buchanan is the attendance of anti-free trade Ontario premier David Peterson as a guest; according to Premier Peckford "There's no place for Ontario at this conference, geographically or any other way." Also discussed are energy matters and environmental issues—particularly acid rain and the environmental threat posed by oil exploration on the American portion of George's Bank.

15 June 1988
*Language Policy—
Saskatchewan*

Federal Secretary of State Lucien Bouchard and Saskatchewan Education Minister Lorne Hepworth announce that their respective governments have reached an agreement on French-language education in Saskatchewan. Ottawa will pay up to \$56 million over as many as ten years to support francophone school boards, improve French-language education and immersion programs, rebuild the province's only French-language high school which recently burned, and create a language training centre at the University of Regina. Another \$6 million is to be provided for the translation of some of the province's laws into French, establishing a French language coordination and translation office, and increasing the use of French in the provincial legislature.

20 June 1988
*Transportation—
Newfoundland*

The federal and Newfoundland governments announce a 15 year, \$800 million federal-provincial agreement that would close the Newfoundland railway, making Newfoundland the only Canadian province without rail service. Ottawa is to provide a package of highway improvements and benefits for displaced workers. Municipalities hit by the layoffs and loss of related revenue from the railway will also receive compensation in the form of development grants.

22 June 1988

*Language Policy—
Alberta*

Alberta introduces its new language legislation in response to the Supreme Court ruling of 25 February that significant French rights are guaranteed in Saskatchewan and, by implication, in Alberta. Bill 60 will permit Alberta MLAs to speak French in the legislature, and courts will operate in either English or French. It validates all existing provincial laws, even though they exist in English only. The law also invalidates Section 110 of the 1886 Northwest Territories Act which would have meant all laws had to be in both languages. Like the language legislation introduced in Saskatchewan 4 April, the Alberta bill meets with strong criticism from federal politicians and French-language groups.

22 June 1988

Meech Lake Accord

The House of Commons endorses the Meech Lake Constitutional Accord with a 200-7 vote. The Accord, which had been passed by the House in October 1987, required a second vote to override the Senate approved amendments to the Accord. Opposition votes are cast by four Liberals, one Conservative, one New Democrat and one independent.

23 June 1988

*Regional Development—Prince
Edward Island*

Representatives of the federal Government and the Government of Prince Edward Island sign a new five-year forestry development agreement worth \$24.1 million.

24 June 1988

*Aboriginal Self-Government—
British Columbia*

The Sechelt Indian Band of British Columbia officially becomes a self-governing municipality. The Sechelt Indian Government District is the first of its kind in Canada.

27 June 1988

*Council of
Maritime Premiers*

The Council of Maritime Premiers meet for the seventieth session of the Council of Maritime Premiers in Charlottetown. Leaving broader issues such as free trade and Meech Lake—over which there is disagreement within the Council—off the agenda, the premiers discuss the proposed fixed link to Prince Edward Island and the future energy needs of the maritime provinces.

27 June 1988

*Jurisdiction,
Provincial—
Ontario*

The Government of Ontario introduces changes to two pieces of legislation—the Power Corporation Act and Wine Content Act—which appear to go against provisions of the Canada-U.S. Trade Agreement. Changes to

the first would require Ontario Hydro, "notwithstanding anything to the contrary in the trade agreement," to sell energy only if it is surplus to Canadian needs and to charge higher prices for exported energy. Changes to the Wine Content Act set up a timetable for the elimination of markups over 12 years, as opposed to the seven-year schedule under the agreement.

28 June 1988
*Jurisdiction,
Provincial—Water—
Ontario*

The Government of Ontario tables its Water Transfer Control Act, asserting provincial control over any future sales of water from the Great Lakes. The government argues that because water exports are not expressly excluded under the Canada-U.S. Free Trade Agreement, domestic supply would be jeopardized by large-scale water diversion schemes.

29 June 1988
*Meech Lake Accord
—Ontario*

The Ontario Legislature votes 112-8 to ratify the Meech Lake Constitutional Accord. The vote—which makes Ontario the sixth province to endorse Meech Lake—was opposed by three New Democrats and five Conservatives.

29 June 1988
*Meech Lake Accord
—British Columbia*

The British Columbia Legislature becomes the seventh province to ratify the Meech Lake agreement, voting 42-5 in favour of the agreement.

5 July 1988
*Regulation—
Energy—National
Energy Board*

The National Energy Board grants Pan-Alberta Gas Ltd. a 24-year license to sell natural gas it may not yet have to Southern California, while rejecting Ontario concerns that the deal will erode valuable Canadian reserves. The decision marks the first application of the NEB's new policy to eliminate the surplus test, which for decades has required Alberta to stockpile enough gas for up to 30 years future use in Canada before exports were allowed. During the NEB hearings, however, Ontario and its regional fuel buyers were virtually alone in demanding some sort of retention of the surplus test. Quebec, the other major consuming province, had joined forces with Alberta before the NEB hearings on the sale earlier this spring.

7 July 1988
*Environment—
Nova Scotia*

The federal and Nova Scotia governments conclude the Canada-Nova Scotia Sub-agreement on Sustainable Development for Central Nova Scotia, which aims at

ensuring that any economic development in the central part of the province protects the environment. As part of the agreement, a study is launched to identify existing or potential conflicts between economic development in the area and the environment.

7 July 1988
Language Policy

The Commons passes Bill C-72, its proposed bilingualism legislation over the protests of nine Conservative dissidents. The bill, which updates the 19 year-old Official Languages Act allows more public servants to work in the official language of their choice and guarantees the right to trial in either French or English. The bill now moves on to the Senate, where it is passed on July 27.

8 July 1988
Meech Lake Accord
—Newfoundland

Newfoundland becomes the eighth province to ratify the Meech Lake Accord. Twenty-eight voted in favour of the accord, with ten Liberals dissenting.

12 July 1988
National Parks—
British Columbia

The federal and British Columbia governments sign a \$31 million agreement—of which the federal government will provide \$24 million—to establish the South Moresby national park reserve in the Queen Charlotte Islands. Issues left unresolved are compensation for resource companies working in the region and the as yet unresolved land claims of the Haida Indian band.

13 July 1988
Day Care

Health Minister Jake Epp announces in the Commons that the federal government will contribute an additional \$1 billion for day care, raising the cost of its already announced, federal-provincial day-care program to \$6.4 billion over seven years. Although the extra funds will not create any more than the 200,000 new day-care spaces promised under the program announced last December, they will be used largely to cover a shortfall in the original estimated price—\$5.4 billion—of the program.

18 July 1988
Megaprojects—
Newfoundland

The federal and Newfoundland governments, together with a Mobil Oil-led consortium sign a long-awaited agreement to begin construction next year on an \$8.5 billion development of the Hibernia oil field. According to the agreement, Ottawa is to contribute \$2.6 billion towards the project, \$1 billion grant towards pre-production costs and \$1.6 billion in loan guarantees. New-

foundland is to receive the major share of the construction contract for the massive drilling platform that will be built in Come by Chance. The project is to provide 1,000 permanent jobs over its 20 year production life, as well as about 1,400 jobs during six years of construction.

20 July 1988
Free Trade—
Liberal Party

Opposition Leader John Turner announces that he has instructed the Liberal-dominated Senate not to pass legislation to implement the free trade agreement until Prime Minister Brian Mulroney calls a federal election on the issue. "This issue is so fundamental that the people of Canada deserve and must have the right to judge," Mr. Turner says at a news conference. "I think the issue becomes democracy. Let the people decide." Senate leader Alan MacEachen announces that the Liberal majority in the Senate will accede to Mr. Turner's wishes. During Question Period in the Commons Prime Minister Mulroney attacks Mr. Turner's announcement. "In an act of desperation, the leader of the Opposition no longer wants the House of Commons to consider this important matter. He wants to resign his leadership in favour of the Senate, and I say that's not good enough for the people of Canada."

30 July 1988
Elections—
Nova Scotia

Announcing that this election "is about leadership—strong leadership for new ideas," Nova Scotia Conservative Premier John Buchanan calls a provincial election for his province, to be held 6 September. At dissolution, the Conservatives hold 40 seats, the Liberals six and the NDP three.

4 August 1988
Energy Policy

The federal government releases *Energy Options*, a report suggesting possible federal energy policies for the future. Among its significant departures from previous policy would be equal weight given to environmental considerations and to have a non-discriminatory fiscal and expenditure policy.

9 August 1988
Free Trade

The United States House of Representatives gives overwhelming approval to legislation covering the Canada-U.S. Free Trade Agreement, voting 366-40 to implement the trade pact. The agreement still requires the approval

18 August 1988
Regional Development—ACOA

of the U.S. Senate and the Canadian Parliament before it can be implemented.

Parliament passes Bill C-103—the legislation establishing the Atlantic Canada Opportunities Agency—after third and final reading in the Senate.

19 August 1988
Annual Premiers' Conference

Canada's ten premiers meet in Saskatoon for their annual premiers' conference. On the agenda for the meeting is monetary policy, Senate reform and the Meech Lake Accord. Regarding monetary policy, the ten premiers agree unanimously to demand an immediate reduction in interest rates by the Bank of Canada. Saskatchewan Premier Grant Devine is delegated to go to Ottawa to meet Bank of Canada Governor John Crow to make the demand on behalf of the ten premiers. Although Alberta Premier Don Getty pushed for a First Ministers' Conference on Senate reform to be staged before the end of the year, the premiers agree that an Alberta task force, headed by Alberta Intergovernmental Affairs Minister Jim Horsman, will tour the country in the fall to conduct bilateral discussions aimed at developing a plan for Senate reform with Ottawa and the other provinces. Premiers Peterson of Ontario and Bourassa of Quebec make it clear, however, that reform of the Senate cannot be negotiated until the Meech Lake Accord has been ratified by all ten provinces.

25 August 1988
Hydroelectricity—Prince Edward Island

Prince Edward Island signs a six-year agreement with New Brunswick and Quebec to buy as much as \$175 million worth of electricity. Whereas P.E.I. buys 90 per cent of its power from New Brunswick, the deal allows the province to buy power from Quebec to offset interruptions in the New Brunswick supply. Under the agreement, P.E.I. will be allowed to determine how much power it wants to buy from New Brunswick and how much it wants from Quebec to cushion the impact of sharp increases in the price of oil. New Brunswick will then buy the electricity from Quebec and send it on to P.E.I.

25 August 1988
Free Trade—Water Exports

Reacting to concerns that the Canada-U.S. Free Trade Agreement does not protect the country from large-scale diversions of water to the U.S., Environment Minister Tom McMillan introduces a bill in the Commons that would ban outright large-scale projects to divert water across the border and provide million-dollar fines and jail sentences for anyone breaking the law.

31 August 1988
Free Trade

After months of heated exchanges, the government's free trade legislation is passed by the House of Commons by a vote of 177-64. The bill now passes on to the Senate, where the Liberal majority in the upper chamber has said it will delay the legislation until a federal election is held on the issue as demanded by Opposition Leader John Turner.

2 September 1988
Megaprojects—Saskatchewan

The federal government and the governments of Alberta and Saskatchewan announce the construction of a \$1.3 billion Husky oil upgrader plant in Lloydminster, Saskatchewan. The three governments will put up almost 75 per cent of the cash for the project, with Husky Oil Ltd. providing the rest. The federal government will pay \$399 million for 31.67 per cent equity, Alberta about \$300 million for 24.17 per cent equity, and Saskatchewan \$222 million for 17.5 per cent equity. According to Deputy Prime Minister Don Mazankowski, the deal will provide a means of strengthening Canada's energy security while conventional reserves of crude oil continue to dwindle.

5 September 1988
Aboriginal Land Claims—Northwest Territories

Prime Minister Brian Mulroney signs an agreement-in-principle that would make the Dene and Métis the largest non-government landowners in North America. It will give the 15,000 natives in the Northwest Territories \$500 million in cash and ownership, including subsurface rights, to about 10,000 square kilometres of land. The deal splits royalties received from the land between the natives groups and the federal government. The groups also are to receive special rights and interests in a total of 180,000 square kilometres, including a voice in land, wildlife and water management decisions. Left out of the

6 September 1988
Hydroelectricity—
Exports—Regulation

agreement are such contentious issues as aboriginal title and self-government, which are to be negotiated later.

Federal Energy Minister Marcel Masse announces a new policy easing the restrictions on large, long-term exports of Canadian electricity. Under the policy, the National Energy Board will be able to approve electricity exports without a public hearing. Consuming provinces will have to convince the board and federal cabinet that a hearing is necessary to protect the national interest, and will have to demonstrate that they want to purchase the electricity, in order to block exports. For their part, the exporters must show that the power was made available to Canadians first at a price no higher than the export price. "My objective," according to Mr. Masse, "is to streamline the regulation of electricity exports so as to make it easier for exports. At the same time, the powers of the National Energy Board will be retained to guarantee the protection of the Canadian public interest."

6 September 1988
Elections—
Nova Scotia

Nova Scotia Premier John Buchanan leads his Conservative Party to victory in the Nova Scotia election, although with a much-reduced majority. The Conservatives win 28 seats, losing 14 from their pre-election total; the Liberals win 21 seats, up from six; and the New Democrats win two, down from the three they held before the election. One Independent is re-elected.

7 September 1988
Federal-Territorial
Relations—Energy

Prime Minister Brian Mulroney and Northwest Territories Government leader Dennis Patterson sign a tentative northern accord on energy, hailing it as a huge step towards achieving the territory's ambition of provincehood. The agreement-in-principle gives the territory "province-like" legislative and management responsibilities for on-shore oil and gas revenues and a share of all royalties. The management of off-shore royalties is to be negotiated later. Although the deal does not include ownership of the resources, revenues from them are to be shared between the two governments. According to Mr. Patterson, with the energy pact now entering the final negotiation phase only certain federal powers relat-

ing to inland fisheries, labour relations and the attorney general's department prevent the territory from having the same powers as provinces.

15 September 1988
Free Trade

In a 19-0 vote marked by the absence of Liberal Senators, the Canada-U.S. Free Trade Agreement is given approval-in-principle by the Senate, and moves on to the Foreign Affairs Committee, where it is expected to languish until a federal election is called.

19 September 1988
Procurement—Inter-provincial Relations

Meeting in Saint John, N.B., federal and provincial trade ministers from the ten provinces conclude a deal on procurement that participants hail as a first step towards the dismantling of interprovincial trade barriers. The agreement—concluded after ten months of negotiation—would disallow provincial tendering policies that give preference to goods from companies based within the province. Services and public works contracts are not affected by the agreement. Pending final approval from premiers, provinces will adopt non-discriminatory national tendering for contracts to supply goods worth more than \$25,000 by 1 April 1992. The deal also applies to federal government contracts, although Ottawa may continue to use procurement selectively to promote regional development.

19 September 1988
Environment—Federal-Provincial Relations

Invoking special interim powers provided for in the Canadian Environmental Protection Act and in the wake of a toxic chemical fire in Saint-Basile-le-Grand, Quebec, Environment Minister Tom McMillan announces that all depots for PCBs must meet federal or equivalent provincial standards for fire and security measures within 30 days, or the operators will face stiff fines. The special interim order changes existing federal suggestions for safe storage of PCBs into binding requirements. Provinces that fail to show they have standards or permit systems comparable to the federal system will be subject to federal inspection of sites.

22 September 1988
Federal-Territorial Relations—Energy

The federal and Yukon governments sign an agreement-in-principle that gives the territory a role in oil and gas development. According to Yukon Government Leader Tony Penikett, the agreement finally recognizes the

territorial government's stake in energy development. The two governments agree to share the regulation and management of oil and gas in the Beaufort Sea, subject to negotiations with the Northwest Territories. The agreement mirrors Ottawa's deal with the Northwest Territories signed on 6 September.

22 September 1988
*Federal-Provincial
Relations—Energy*

The federal and British Columbia governments announce the construction of a \$485 million natural gas pipeline to connect Vancouver Island with the mainland. The two governments are to fund 50 per cent of the project, with Ottawa providing a \$100 million grant and a \$50 million interest-free loan and British Columbia matching the federal contribution with a \$25 million interest-free loan, \$55 million to help consumers convert from oil to natural gas and \$70 million to cover cost overruns. The project is to begin as early as 1989.

24 September 1988
*Megaprojects—
Alberta*

The federal and Alberta governments announce that they have reached an agreement that will allow a proposed \$4 billion Alberta oil sands project to go ahead. A group of six companies known as the OSLO consortium worked out the \$2 billion package with the two governments, paving the way for a final study of the project. Under the deal, the federal and provincial governments would give the consortium \$850 million in loan guarantees. If the price of oil falls below \$19 U.S. a barrel, the consortium is to receive \$160 million—70 per cent to be paid by Alberta and 30 per cent by Ottawa. If, in turn, oil prices are higher, the two governments will share 16 per cent of operating revenues.

26 September 1988
*Senate—
Appointments*

Prime Minister Mulroney announces the appointment of four new Senators from Quebec. The four named to the upper house are: Solange Chaput-Rolland, a former member of the Pepin-Robarts Task Force and past-member of the Quebec National Assembly; constitutional expert Gerald Beaudoin; Roch Bolduc; and Jean-Marie Poitras. The appointments were made from a nominations list provided by Quebec Premier Bourassa, as stipulated by the Meech Lake Constitutional Accord,

which requires that all new senators be named from lists supplied by the provinces.

28 September 1988
Free Trade—United States

Hailing the agreement as a "landmark," and an "idea whose time has come," United States President Ronald Reagan signs into law the U.S. legislation to enact the Canada-U.S. Free Trade Agreement, ending the American process for approving the agreement.

28 September 1988
Health; Regional Development—Manitoba

Federal Health Minister Jake Epp announces the federal government's decision to locate a new virology laboratory in Winnipeg on a site near Manitoba's largest hospital. Construction is scheduled to start in 1990 at a cost of about \$93 million.

1 October 1988
Elections—Federal

Inviting "the people to judge us," Prime Minister Mulroney dissolves Parliament and calls a federal election to be held on 21 November. At dissolution the Progressive Conservatives hold 211 seats, the Liberals 40, the New Democrats 30, and one Independent. The key issue is expected to be the Canada-U.S. Free Trade Agreement, which has received approval in the U.S. and passed through the Commons, but which has been stalled in the Liberal-dominated Senate since Liberal leader John Turner requested Liberal Senators to delay the bill until after an election on the issue. Among those bills which die on the order paper are the free trade legislation, the government's day-care legislation, the new Broadcasting Act, amendments to the Criminal code defining pornography, conflict of interest legislation and a bill banning large-scale exports of water to the U.S.

17 October 1988
Interprovincial Relations—Energy

In an agreement that may bring an end to the acrimonious battle between the Alberta gas producers and Ontario consumers, Alberta's largest natural gas marketer, Western Gas Marketing Ltd., signs a package of 15-year supply contracts with six central Canadian distributors. The new contracts with gas distributors in Manitoba, Ontario and Quebec are said to be worth roughly \$20 billion over the next 20 years, and may avoid the need for "spot-market" shopping by consumer firms. The deals give "essential service" customers—those who can least tolerate a disruption of service—15 years of firm

- gas supply, with prices to be renegotiated annually after 1990.
- 24, 25 October 1988**
Elections—Federal
- The leaders of the Conservative, Liberal and New Democratic Parties contest two three-hour debates, the first in French and the second in English, broadcast nation-wide. The debates were marked by several angry exchanges between Prime Minister Mulroney and Liberal leader John Turner over the issue of free trade.
- 27 October 1988**
Regulation—Financial Institutions
- Consumer and corporate affairs ministers from the four western provinces sign an agreement in Winnipeg to share information on the economic health of financial institutions to protect consumers and strengthen the industry. The information is to alert provincial governments to potential problems within banks, trust companies and other credit firms so as to avoid problems such as the June 1987 collapse of Principal Group Ltd.
- 2 November 1988**
Sports
- At their annual meeting in Winnipeg, provincial sports ministers from across the country agree to work together to fight the use of drugs in amateur athletics. According to Manitoba Sports Minister Jim Ernst, the ministers "unanimously agreed that our priority must be the development ... of educational programs relating to the use of prohibited substances in sport."
- 8 November 1988**
Interprovincial Relations—Law Enforcement
- The governments of Quebec and Ontario sign an accord in Montreal to share traffic offence information, ensuring that tickets issued to motorists visiting from either province would not be left behind at the border.
- 8 November 1988**
Elections—Federal
- New Democratic Party leader Ed Broadbent rejects a statement made 4 November by a group of Quebec NDP candidates who asserted that only Quebec should have the power to override the Charter of Rights—and only to protect the French language and culture. The position of the Quebec candidates, he asserted "is not the position of the party as a whole." Rather, the notwithstanding clause, inasmuch as it exists in law, should continue to be available to all governments.
- 8 November 1988**
Monetary Policy
- Saskatchewan Premier Grant Devine meets in Ottawa with Finance Minister Michael Wilson and Bank of

Canada governor John Crow in an attempt to convince them to lower the bank's interest rates. Mr. Devine had been delegated by the provincial premiers to carry their concerns about the high interest rate policy to this year's Annual Premiers' Conference. Emerging from the meeting, the Saskatchewan premier tells reporters that he is now more confident that Mr. Crow was looking at a wide range of policy options rather than just resorting to interest rates as the only tool to manage the economy.

8 November 1988
*Aboriginal Land
Claims—Yukon*

An agreement-in-principle is concluded between the federal government and the Yukon Council of Indians that is to give the Council's 6,500 members \$230 million and about nine per cent of Yukon Territory. The deal involves the transfer of about 41,000 square kilometres of land to the territory's 13 Indian bands. In negotiations, the main issue in dispute had been the size of the federal financial compensation package. The Yukon Indians sought \$234 million while Ottawa was offering \$214 million. The two sides reached agreement of \$230 million after the Indians agreed to make some tax concessions. Most of the cash will be used to finance native development corporations.

10 November 1988
*Jurisdiction,
Provincial—Water—
Ontario*

The Ontario government introduces legislation into its legislature banning the transfer of large amounts of water from the province to the United States or any other country. The amendment to the Water Transfer Control Act states that, despite the proposed free trade deal with the United States or any Canadian legislation implementing that agreement, the Ontario government "shall refuse to give approval to a transfer of water out of a provincial drainage basin to a place outside Canada."

21 November 1988
Elections—Federal

The Progressive Conservative Party under Brian Mulroney wins its second consecutive majority government—the first federal government in 35 years and the only Conservative government this century to do so. The Conservatives win 170 seats in the new Parliament, down from 211 in the previous one; the Liberals win 83, up from 40 in 1984; and the New Democrats win 43, up

from 30 previously. Throughout, the election campaign was dominated by the free trade debate, and featured bitter accusations and counter-accusations from those on both sides of the issue. Six cabinet ministers went down to defeat, including Communications Minister Flora MacDonald, Solicitor General James Kelleher, Justice Minister Ray Hnatyshyn, Environment Minister Tom McMillan, Public Works Minister Stewart McInnis and junior transport minister Gerry St. Germain. Given that the election was fought around the free trade issue, the Conservative victory ensures the passage of that agreement.

26 November 1988
Parti Québécois

In a convention in St. Hyacinthe, Quebec, the Parti Québécois adopts a policy to start negotiations to make Quebec independent if the PQ ever forms a government in Quebec. According to party leader Jacques Parizeau, in the next provincial election "a vote for the PQ is a vote for the sovereigntist party."

28 November 1988
*Council of
Maritime Premiers*

The Council of Maritime Premiers meets in Saint John to discuss their concerns over the free trade agreement, and agree to form a united front to press the federal government to help industries that could be weakened by free trade with the United States. According to Premier Frank McKenna, "We have pledged to work together in providing a common voice to Ottawa urging adjustment programs where necessary." All three premiers identified the food processing industry as being in particular need of assistance, with Nova Scotia Premier John Buchanan adding textiles to the list and P.E.I. Premier Joe Ghiz calling for support for family farms and manufacturers of farm implements. They agree, as well, that training, marketing information, access to new technology and exporting skills are all required to help businesses in their region compete. The premiers plan to appoint deputy ministers to a committee which will formulate the region's approach to Ottawa.

6 December 1988
*Education, French
Language—Alberta*

The Conservative government of Alberta Premier Don Getty announces a new policy that recognizes French language rights in education. While the policy empha-

sizes proficiency in English as a major key to success in Alberta, it also commits school boards to guarantee and finance French language education as provided "where numbers warrant" in the Charter of Rights and Freedoms and the new Alberta School Act.

7 December 1988
Fisheries

Federal Fisheries Minister Tom Siddon rejects a request by a Quebec-New Brunswick consortium known as Nova Nord to gain a share of northern cod stocks. Asserting that there had been a rise in cod stocks, Nova Nord had asked Ottawa for 548,000 tonnes of fish over ten years. Mr. Siddon states that he will continue to be guided by the principles of adjacency and historic sharing, after which—if there is a demonstrated increase in the stock—his main objective is to rebuild the inshore fishery on Newfoundland's northeast coast.

9 December 1988
Regulation—Financial Institutions

Provincial ministers responsible for financial institutions agree to work toward harmonizing their laws and regulations governing trust and other financial companies under provincial authority. The protocol affirms that each province has jurisdiction over all financial institutions operating within its borders and has primary responsibility for the companies incorporated under its laws. It calls for the home province of a financial institution to provide information on request to other provinces where it operates and states that provinces will keep one another posted on investigations to avoid duplication of efforts. In addition, the ministers agree to form a committee, chaired by British Columbia Finance Minister Mel Couvelier, to begin exploring areas where they might harmonize laws and regulations governing their financial companies.

15 December 1988
Supreme Court—Language—Quebec

In an unanimous judgement, the Supreme Court of Canada strikes down the French-only sign provisions of Quebec's language law, Bill 101, as an unreasonable violation of freedom of expression, as prohibited by the Quebec Charter of Rights and the Canadian Charter of Rights and Freedoms. Although the five judges recognize the survival of the French language as a "pressing and substantial concern" and strongly endorse Quebec's

right to require the use of French, they hold that Quebec has not proven the need to ban the use of English or other languages. In its ruling, the court indicates that it would accept a law requiring the "markedly predominant" display of the French language as a valid way of promoting the French identity of Quebec. But the court recognizes non-francophones' right to freely express themselves in the language of their choice. "Language is so intimately related to the form and content of expression that there cannot be true expression by means of language if one is prohibited from using the language of one's choice." The ruling carefully examines Quebec's use of the federal "notwithstanding clause" to grant blanket exemption to its statutes in 1982, calling it a valid exercise of the province's power.

18 December 1988
Language Policy—
Quebec

Quebec Premier Bourassa announces that his government will invoke the "notwithstanding" clauses of the Canadian and Quebec Charters of Rights to ensure that French alone will be used on commercial signs outside stores in the province. According to Mr. Bourassa, this is a compromise meant to preserve the French face of Quebec while guaranteeing individual rights to freedom of expression. Noting that his government was following the Supreme Court's suggestion in invoking the notwithstanding clause, he acknowledges that he knows this decision is asking anglophones "to make an enormous concession." Premier Bourassa suggests, as well, that invoking the notwithstanding clause was necessary because the Meech Lake Accord, which gives Quebec extra powers to protect its French language and culture, has not yet been ratified.

19 December 1988
Meech Lake Accord
—Manitoba

Manitoba Premier Gary Filmon, citing his grave concerns over Quebec Premier Bourassa's response to the Supreme Court language ruling, withdraws his government's Meech Lake Accord resolution from its legislative agenda. Only Manitoba and New Brunswick have yet to ratify the Accord. Response to Mr. Filmon's action is swift. Quebec Justice Minister Gil Remillard noted that ten provinces are needed to complete the Accord and that "those responsible for the failure of Meech Lake

must bear the consequences." Mr. Bourassa's response is that "the first loser if Meech Lake is not ratified will be the country, not Quebec."

20 December 1988
Language Policy—
Quebec

Three of Premier Bourassa's four anglophone ministers quit his cabinet saying they cannot support the government's language policies. Environment Minister Clifford Lincoln, Public Security Minister Herbert Marx and Communications Minister Richard French, who represented mainly English ridings, state that they intend to remain in the Liberal caucus and sit as backbenchers in the National Assembly. A fourth anglophone cabinet minister, Energy Minister John Ciaccia, remains in the cabinet, stating that "someone must make the first move to end the language wars. By staying I can do more than by leaving."

23 December 1988
Language Policy

The Department of the Secretary of State announces that the federal government is to contribute \$1.2 billion over the next five years to minority and second-language education across the country. According to a press release, the money is to be used to help develop educational programs for minority languages and for English and French second languages. Priority is to be placed upon improving access to minority-language education, expansion of French in post-secondary schools, expansion of programs for teachers and more opportunities for second-language learning.

30 December 1988
Free Trade

With the Liberal majority abstaining from the vote, the government's free trade legislation passes the Senate and is given royal assent by Supreme Court Justice Antonio Lamer on behalf of Governor General Jeanne Sauvé. The legislation amends 27 Canadian laws to conform with the obligations of the trade agreement. On 31 December Canadian and U.S. representatives exchange diplomatic notes stating that each country is ready to put the treaty into effect. The treaty is to come into effect 1 January.

4 January 1989
Provincial-Inter-
national Relations

British Columbia Premier Bill Vander Zalm and Washington State Governor Booth Gardner sign two cooperation agreements pledging their respective juris-

10 January 1989
Senate—Reform

dictions to knocking down trade barriers and launching joint tourism and business promotions.

Senator Lowell Murray, the minister for federal-provincial relations, begins talks on the next stage of Senate reform with the provinces. Senate reform is scheduled as the first item of a constitutional conference of first ministers to be held after the Meech Lake Accord is ratified by all ten provinces.

16 January 1989
Provincial-International Relations

The Alberta government agrees for the first time to participate in a meeting of the Organization of Petroleum Exporting Countries (OPEC). Neil Webber, provincial Energy Minister, says that Alberta has not agreed to cooperate with production quotas set by OPEC to prop up world oil prices at the London meetings on 25 and 26 January, but will lend "moral support" to the organization's most recent agreement to limit oil production. The federal government was not invited to attend.

17 January 1989
Elections—Yukon

Yukon Government Leader Tony Penikett calls a general election for 20 February. Penikett, leader of the country's only New Democratic Party government, says that the election will be fought on his government's record of creating 3000 new jobs since it was elected in May 1985. At dissolution, the party standings are: NDP—seven; Conservatives—six; Liberals—one; and, one seat is vacant.

21 January 1989
Progressive Conservative Party—Newfoundland

Newfoundland Premier Brian Peckford announces that he will step down from office at the end of January. The fiery orator took office in June 1979 and fought almost continuous battles with the federal government, particularly Prime Minister Pierre Trudeau, over offshore oil and fisheries jurisdictions. At a press conference Peckford says he no longer has the "ruthlessness" to perform the job required as premier and that he is worn down by his partial failure to achieve his dream of making Newfoundland an equal partner in Confederation.

23 January 1989
Supreme Court—Appointments

Prime Minister Brian Mulroney names two appointments to the Supreme Court of Canada. Mr. Justice Charles Joseph Gonthier, a judge of the Quebec Court of Appeal, and Mr. Justice Peter de Carteret Cory of the

Ontario Court of Appeal were named to replace Jean Beetz and Gerald Le Dain, both of whom resigned in November 1988 because of illness. The appointments, effective 1 February, bring the court back to full complement and were welcomed by Chief Justice Brian Dickson, who earlier had delayed four constitutional cases until a full court could hear them. This brings to five the number of appointments that Brian Mulroney has made to the Supreme Court since becoming Prime Minister in 1984.

26 January 1989
Federal-Provincial
Agreements

The Federal Court makes public a ruling that has ordered Ottawa to freeze \$168 million in transfer payments to the province of Manitoba because that provincial government has been deducting 5 per cent of monthly welfare cheques to make up for past overpayment. Mr. Justice Max Teitelbaum says the practice is a violation of a federal-provincial agreement, and until violations stop, Ottawa must halt its transfer payments to Manitoba. The payments amount to \$14 million each month (see entry for 23 February 1989)

7 February 1989
Senate—Reform

Prime Minister Brian Mulroney rejects one-name Senate lists. Speaking to reporters Mulroney says that provinces have the right to nominate whomever they want as potential senators, but a list from any one province with only one name on it will not be accepted. This appears to call to a halt suggestions by Alberta Premier Don Getty that his province will provide only one nominee to the Senate following an election. As part of the Meech Lake Accord it was agreed that provinces with a vacancy in the Senate could submit a list of names to the federal cabinet with Ottawa choosing from the list.

20 February 1989
Elections—Alberta

Alberta Premier Don Getty calls a general provincial election for 20 March. The election call comes two years and 45 weeks after the previous election produced a majority Conservative government. "The people I'll be dealing with—on Senate reform, a Senate election, low interest rates and a fight against the national sales tax—they understand strength" says Getty in justifying the election call.

- 20 February 1989**
Elections—Yukon Yukon Government leader Tony Penikett and his New Democratic Party are returned to power in a general territorial election, keeping in power the only NDP government in Canada. Of the 17 seats, the NDP took nine and the Conservatives, seven.
- 23 February 1989**
Environment Environment ministers from three western provinces agree to improve recycling programs. Paper recycling will be studied in Saskatchewan; oil recycling, in British Columbia; pesticide container recycling in Manitoba; and Alberta is expected to study the recycling of used tires. The ministers also promise to support a ten-year federal program to ban chemicals that harm the ozone layer.
- 23 February 1989**
Federal-Provincial Agreements The federal government appeals a Federal Court ruling that says that Manitoba must change its welfare system or lose millions of dollars a month in federal payments under the Canada Assistance Plan (CAP). Most other provinces have similar agreements and would be affected by the Manitoba ruling. The federal government is also talking with the provinces on a political solution to what has become a national problem (see entry for 26 January 1989).
- 27 February 1989**
Meech Lake Accord—First Ministers' Meeting At a meeting of the Prime Minister and nine of ten provincial premiers (Premier Bill Vander Zalm of British Columbia was ill), no consensus is reached on the constitutional impasse over the Meech Lake Accord. "There are realities ongoing in the province of Quebec and elsewhere that would be ignored only at very considerable risk and peril," Mulroney warned the two premiers, McKenna and Filmon, whose provincial legislatures have yet to ratify the Accord. All the premiers admit that they had made no progress in appeals to Ottawa to do something about rising interest rates.
- 28 February 1989**
International Trade, GATT The Canadian Government and the European Community (EC) sign an agreement to open Canadian markets to beer, wine and spirits. Signed in Brussels, the agreement commits Canada to phase out provincial liquor board regulations that discriminate against EC alcoholic beverages—the liquor board regulations had earlier been

ruled an unfair trading practice by the parties of the General Agreement on Tariffs and Trade (GATT). As well, the provinces must stop putting higher prices on EC wines than on Canadian wines within seven years—the same deal Canada gave the United States under the free trade agreement. Ontario continues to oppose the deal, wanting to extend protection for its wine and grape industry for 12 years.

1 March 1989

*Industrial
Development*

Regional Industrial Expansion Minister Harvie André announces that the new national space agency will be located in Montreal. The agency will coordinate the work of several federal departments and private industry working in the space program. The decision ends three years of lobbying efforts for Quebec Premier Robert Bourassa and Ontario Premier David Peterson who wanted the agency located in Montreal and Ottawa, respectively.

3 March 1989

*Meech Lake Accord
—Manitoba*

Manitoba Premier Gary Filmon announces plans for an all-party committee to hold public hearings across the province on the Meech Lake Accord. Liberals and New Democrats are seeking amendments to the Accord, while Filmon says he might be satisfied with a set of written assurances. The committee will include three MLAs from the governing Conservatives, two Liberals, one New Democrat and a neutral chairman, political scientist Waldron Fox-Decent of the University of Manitoba. Filmon says that his minority Conservative government will not submit an official position on Meech Lake to the committee for the public to comment on. The hearings begin 6 April.

4 March 1989

*New Democratic
Party—Canada*

Federal New Democratic Party leader Ed Broadbent resigns after 14 years and four election campaigns as leader. As leader since 1974, he managed to improve his party's position in the House of Commons in every election but one, although the NDP share of the popular vote varied little. His successor, to be chosen at a convention in Winnipeg on 30 November to 3 December, will be the fourth leader in NDP history since the party was established in 1961.

13 March 1989
Byelection—
Federal; Reform
Party

The Reform Party of Canada wins its first seat in the House of Commons in a byelection in the Alberta riding of Beaver River. Deborah Grey replaces Conservative John Dahmer who died shortly after the November 1988 election. The Reform Party was founded by Preston Manning in 1988 on a platform of western disenchantment with the perceived centrist attitudes of the three traditional federal parties. The Reform Party is on record as opposing the Meech Lake Constitutional Accord and demanding Senate reform.

16 March 1989
Regional Develop-
ment—ERDA

Federal Public Works Minister Elmer MacKay confirms that the federal government has frozen talks with the provinces on regional development agreements. Confirmation of the freeze comes amid widespread talk about severe federal spending cuts anticipated in the upcoming federal budget next month. Sources in several provinces say they are deeply concerned that the federal government will slash its share of economic and regional development agreements (ERDAs), whose total value is roughly \$6 billion. Currently, the federal government pays as much as two-thirds of the costs of ERDAs for poorer provinces, while richer provinces split the costs evenly with the federal government. On 31 March 1989 more than 40 such agreements worth about \$1.5 billion will expire in eight provinces.

16 March 1989
Federal-Territorial
Relations

Pierre Cadieux, Federal Minister of Indian Affairs and Northern Development, announces that the federal government has ratified a November 1988 agreement-in-principle with 13 Indian bands to turn over more than 41,000 square kilometres of Yukon territory and \$232 million in cash. The deal, which includes everything from mineral rights to royalties, has been negotiated over 15 years by Ottawa, the territorial government, and the Indian bands and allows for guaranteed representation on boards involving wildlife management and land-use planning.

20 March 1989
Elections—Alberta

The Alberta Progressive Conservative Party is swept back to power in its sixth straight majority government, but Premier Don Getty loses his own seat to a Liberal.

The Conservatives win 59 seats, the NDP are unchanged at 16 and the Liberals capture eight. The election of 24 NDP and Liberal members marks the first time since 1930 that Albertans have provided a significant opposition to the government in two consecutive elections. Alberta Premier Don Getty later wins a byelection 9 May in the rural riding of Stettler, enabling him to sit in the legislature almost two months later.

21 March 1989

Free Trade

The Ontario government announces that it will comply with GATT and FTA obligations requiring the province to phase out differences in retail prices between U.S. and EC wines and domestic products over a seven year period. For several months prior to the decision, Premier Peterson's Liberal government threatened confrontation or court action with the federal government over the threat to the province's grape and wine industries. Ontario backed down after Ottawa agreed to contribute an extra \$5 million towards the marketing of Canadian wines as part of a \$100 million federal-provincial, 12 year compensation package to help grape growers adjust to changing conditions.

21 March 1989

*Regional
Development—
New Brunswick*

New Brunswick Premier Frank McKenna tells the federal government that his province is willing to pay Ottawa's share of new federal-provincial regional development agreements on an interim basis if the federal government will sign the deals now. "We are interested in making as generous a gesture as we can to demonstrate how important it is to us to get these sub-agreements," says McKenna. The provincial proposal sees New Brunswick "front-ending" Ottawa's share of the agreements' costs until the federal government's financial problems have passed; then, Ottawa would compensate New Brunswick at a later date.

29 March 1989

Free Trade

The Advisory Council on Adjustment, chaired by industrialist Jean de Grandpré, releases its report. Appointed by the Prime Minister in December, 1988 to advise the government on labour adjustments under free trade, the Council rejects specific programs aimed only at workers or businesses hurt by the FTA, saying the

concern is for *all* the unemployed. The report says that businesses which will not train or retrain their workers should pay a special free trade tax that could add up to \$3 billion a year. Also, the Council recommends changes in unemployment insurance to encourage job retraining rather than treat UIC as an economic safety net.

31 March 1989
*Supreme Court—
Appointments*

Beverley McLachlin of the British Columbia Supreme Court is appointed to the Supreme Court of Canada by Prime Minister Mulroney. The appointment of the bilingual McLachlin, who succeeds retiring Justice William McIntyre of British Columbia, brings to three the number of women who now sit on the highest court in the country. The fact that MacLachlin is from British Columbia is significant in that it means Mulroney chose to ignore the tradition of rotating the two western positions on the Court among the four western provinces. Saskatchewan, which has not been represented on the Court since 1973, had been lobbying intensely for the seat.

1 April 1989
Fisheries

Newfoundland's Conservative Premier Thomas Rideout denounces the Canada-France agreement on cod, signed the previous day. Under the agreement, Canada will allow the French to almost double the amount of northern cod they can take from Canadian waters during the next three years while a special five-member independent tribunal settles who owns the waters around Newfoundland and the French islands of St-Pierre and Miquelon. Rideout says Ottawa should not have given the French access to the province's fishery, now suffering from reduced catch limits recently imposed by Ottawa to replenish cod stocks. "This is as totally unacceptable to me as it is to the people of Newfoundland and Labrador," says Rideout, who has been in office only ten days and is beginning a three-week election campaign.

3 April 1989
*Council of
Maritime Premiers*

The three Maritime premiers send a letter to Prime Minister Mulroney expressing concern over the expiry of a number of Economic Regional Development Agreements (ERDAs). The agreements, worth about \$135

million annually to the three provinces, expire in four days. Nova Scotia Premier John Buchanan notes the dependence of the Maritime's economies on the ERDAs, particularly the resource development subsidiary agreements.

10 April 1989
Environment

A Federal Court judge quashes the federal licence for a \$125 million dam project in southeastern Saskatchewan. In his ruling, Mr. Justice Bud Cullen finds that Federal Environment Minister Thomas McMillan "failed to comply with a statutory duty" and "exceeded his jurisdiction" when he failed to hold public hearings or appoint an independent panel to review the dam project. This opens the doors for full environmental hearings on federal projects ranging from oilsands megaprojects to nuclear submarines. The court challenge was seen as a test case because no one was certain whether the federal environmental guidelines were mandatory or voluntary.

11 April 1989
Unemployment Insurance

Federal Employment Minister Barbara McDougall announces proposed changes to the unemployment insurance system. Highlights of the proposed reforms include:

- \$1.3 billion will be cut from payments now made to unemployed workers under the \$13-billion UI program and reallocated to other programs through changes to the qualification rules and benefit periods. Qualifying periods and benefit levels have been made more stringent, but on a sliding scale to reflect regional levels of unemployment.
- An additional \$800-million will be spent on a variety of worker training schemes designed to train an additional 60,000 UI claimants a year, help laid-off older workers and provide financial assistance to those anxious to move to areas of lower unemployment.
- New rules will provide \$500-million more in benefits for maternity and parental leave and sickness benefits, and extend payments to workers over the age of 65.

The changes will be put into legislation to be introduced in Parliament in June, aiming for implementation on 1 January 1990.

18 April 1989
Free Trade; GATT

International Trade Minister John Crosbie suggests that provincial governments will be kept informed, but not asked to participate, in coming negotiations with the United States over the definition of subsidies. "We believe quite clearly that international trade is under federal jurisdiction and falls under the Prime Minister and the Government of Canada, not the prime minister and the premiers," says Mr. Crosbie after a day-long meeting with provincial trade ministers and their officials.

The meeting also reviews the implementation of the Free Trade Agreement and the status of the GATT negotiations in Geneva, and discusses greater federal-provincial cooperation in trade promotion and international marketing in Europe and the Pacific Rim nations. Crosbie suggests that provincial involvement in the GATT negotiations will be in the same manner as with the FTA: during that two-year negotiating process, federal officials met with provincial trade officials to seek their opinions in advance and then reported to them after the meetings.

19 April 1989
Environment

Federal Environment Minister Lucien Bouchard announces that federal and provincial environment ministers have established a five-year, \$250 million fund to clean up hazardous waste sites whose owners are unknown. The fund will give top priority to those sites which pose a serious threat to public health and the environment. The ministers also agree to work together to fight the breakdown of the ozone layer and to control the production, use and elimination of toxic substances. Calling Canada one of the most wasteful nations, the ministers set the year 2000 as a target date to reduce waste by 50 per cent through recycling projects.

20 April 1989
Regulation—Financial Institutions

Ten provincial ministers sign a memorandum of understanding in Vancouver providing for the sharing of information of financial institutions. The provincial effort to

harmonize regulations is designed to avert the need for a federal securities and exchange commission. "We felt it was important that the provinces themselves show some leadership in terms of being willing to work together in the interests of the Canadian consumer," says Mel Couvelier, British Columbia's Minister of Finance and Corporate Relations and spokesperson for the other provincial ministers.

20 April 1989

Elections—Newfoundland; Meech Lake

Liberal leader Clyde Wells leads his party to electoral victory in Newfoundland, ending 17 years of Conservative government. Wells suffers personal defeat in his Humber East riding, but the Liberals take 30 of the 52 seats, leaving former premier Tom Rideout's Conservatives with 22 seats. The NDP, under the leadership of Cle Newhook, loses the only two seats it had held in the legislature before the election. The main issues in the campaign revolved around leadership and the record of the governing Tories. One month later, Premier Wells wins a byelection by acclamation in the riding of Bay of Islands, enabling him to sit in the legislature.

Within hours of his electoral victory, Wells says in an interview that he cannot support the Meech Lake Accord because it confers special status on Quebec, makes reform of the Senate next to impossible and weakens the position of the federal government; however, Wells says that he will not use his objection to the constitutional agreement to wring concessions from Prime Minister Brian Mulroney on issues important to Newfoundland.

26 April 1989

Budgets—Federal; Federal-Provincial Fiscal Relations

Federal Finance Minister Michael Wilson reads a lengthy statement featuring highlights of the federal budget at a news conference following a leak of budget details to Global Television News earlier in the day. The budget is aimed at reducing the growth of the federal deficit, which has increased unexpectedly in recent months due to higher interest rates. Highlights of the tax and expenditure policies include:

- the closing or reduction in size of 14 military bases;

- cuts in subsidies to VIA Rail by \$500 million over four years as well as increasing fares and the closing, sale or transfer of substantial parts of the system;
- deferral of the Conservative government's election campaign pledge to launch a \$6.4 billion day-care program;
- decrease in the transfers to the provinces for health and postsecondary education by one percentage point.
- increase from 3 to 5 per cent for the surtaxes on personal and corporate income tax and an additional 3 per cent surtax on high-income individuals;
- complete withdrawal of the federal government from financing the unemployment insurance program, adding at least \$2 billion to the \$10 billion now paid in Unemployment Insurance premiums by employers and employees.

2 May 1989
Meech Lake Accord
 —Manitoba

The Manitoba government's public hearings on the Meech Lake Accord draw to a close in Winnipeg after a month-long tour of the province by an all-party committee to hear the opinion of Manitobans on the proposed constitutional amendment. The seven-member committee, chaired by University of Manitoba political scientist Waldron Fox-Decent, heard submissions from over 300 people, 25 per cent of whom said they would like the Accord passed without any changes.

2 May 1989
Elections—Prince
Edward Island

Prince Edward Island Premier Joe Ghiz announces a general election for 29 May, seeking a second term in office for the governing Liberal party. At dissolution, the Liberals hold 22 seats, the Conservatives, nine and there is one vacancy.

3 May 1989
Language Policy—
Quebec

Quebec cabinet minister Claude Ryan announces proposed regulations for Quebec's controversial language law (Bill 178), passed in December 1988, which declared that all outdoor signs in Quebec must be in French only. Under the regulations, Quebec stores with fewer than 50 employees will be permitted to post bilingual signs indoors, provided the French lettering is twice as large as the lettering in other languages. Ryan, the min-

ister responsible for the province's language law, says that the public has 60 days to make its views known on the regulations before the cabinet makes a decision.

3 May 1989
*Liberal Party—
Canada*

Leader of the Opposition John Turner announces that he will be stepping down as Liberal leader as soon as a leadership convention to replace him can be held. Turner indicates that he will retain his Vancouver Quadra seat in the meantime.

5 May 1989
Environment

The Saskatchewan Government files an appeal in the Federal Court of Appeal from the 10 April court ruling that halted construction of the Rafferty Dam project (see entry for 10 April 1989). Eric Berntson, the Saskatchewan cabinet minister in charge of the project, says the province is losing \$2 million a month by not proceeding with the dam, which was scheduled for completion by 1990.

15 May 1989
*Regional Develop-
ment—ACOA*

Federal cabinet minister Elmer MacKay tells the House of Commons committee on regional development that funding for the Atlantic Canada Opportunities Agency (ACOA) will be cut by as much as 28 per cent each year under deficit-reducing measures introduced in the federal budget last month. Mackay, the minister responsible for ACOA, says that the agency's original budget of \$1.05 billion over five years will instead be spread over six to seven years, for an average annual payment of \$150 million, down from \$210 million under the old system.

18 May 1989
*Throne Speech—
Manitoba*

Manitoba Government opens a new session of its legislature with a throne speech pledging, among other things, to fight for better relations with Ottawa. This pledge includes the opening of a previously announced office in Ottawa to improve communications with federal officials.

23 May 1989
*Federal-Provincial
Fiscal Relations*

Auditor General Ken Dye, in testimony before the House of Commons public accounts committee, proposes that future spending agreements between Ottawa, the provinces and municipalities should contain provisions to ensure that taxpayers' funds are spent wisely. Dye says that existing agreements are not clear regarding who

25 May 1989
Throne Speech—
Newfoundland;
Meech Lake Accord

audits federal transfer payments, which in 1989-90 involve a total of \$23.9 billion, most of which is received by provincial governments.

A speech from the throne opens the first legislative session of the new government of Newfoundland Premier Clyde Wells pledging to make the province a full, participating member of Canada. Apart from emphasis on the troubled fishery and economic development, the speech stresses health and education, two areas Wells has targeted as major priorities for his month-old government.

The speech also contains a pledge to push for changes to the Meech Lake Accord and to ask the House of Assembly to rescind a resolution ratifying the agreement if such changes are not considered.

29 May 1989
Elections—Prince
Edward Island

Prince Edward Island's Liberal Party is returned to office in a landslide victory, capturing 30 of 32 seats in the province's general election. The majority is the largest in the province since 1935 when the Liberals took all the seats.

1 June 1989
Hydroelectricity;
Environment

Federal Environment Minister Lucien Bouchard tells a House of Commons environment committee that Ottawa has begun talks with the Quebec government and Hydro-Québec on how to ensure federal input into the evaluation of the James Bay II hydroelectric development. The talks are partly in response to a recent Hydro-Québec study which found that fish samples taken from reservoirs in the area contain mercury levels up to nine times higher than the maximum limit recommended by the federal government.

1 June 1989
Environment

Federal Transport Minister Benoit Bouchard and Environment Minister Lucien Bouchard indicate that the legal provisions for the transportation of hazardous goods have been made stronger. The new provisions were developed in cooperation with provincial officials and cover three areas: extension of existing rules governing the transportation of hazardous goods to cover materials destined for recycling; establishment of a uniform

manifest document for shippers; and requirement of 30 day's notice for shipping PCBs between provinces.

3 June 1989
Meech Lake Accord

This marks the second anniversary of the approval in Ottawa by the Prime Minister and all the premiers on 3 June 1987 of the text of the *Constitution Amendment, 1987*. At this point two years later the Meech Lake Constitutional Accord has been ratified by eight provincial legislatures and the House of Commons. The Manitoba and New Brunswick legislatures have yet to ratify the agreement and the newly-elected premier of Newfoundland, Clyde Wells, is threatening to revoke his legislature's support for the Accord unless major changes are introduced. It is generally assumed that under the procedure for constitutional amendment adopted in 1982, the Constitution Amendment 1987 must be ratified by Ottawa and all ten provinces by 23 June 1990 in order to become law.

15 June 1989
Throne Speech—
Prince Edward
Island

Prince Edward Island's Liberal government unleashes a concentrated attack on the federal government in its first throne speech since re-election two weeks ago. One major focus of the province's discontent is the planned closure by Ottawa of Canadian Forces Base Summerside, announced in the 27 April federal budget, which could cost the province about 1300 jobs. Premier Ghiz says that while budget deficits are a concern to all provinces, deficit control can "not justify the government of Canada's attack on our region and our province."

20 June 1989
Regulation—Financial
Services

The Conference Board of Canada releases a report citing a "pressing need" for intergovernmental cooperation in the financial services sector. Guy Glorieux, director of the Conference Board's financial services research program, notes that "while banks are under federal jurisdiction, their securities affiliates are governed by the provinces ... [and] without all of the players' involvement, the industry cannot achieve the necessary level of efficiency required to be competitive in the 1990s."

27 June 1989
Council of Maritime
Premiers

The Council of Maritime Premiers meets in Mont Carmel, Prince Edward Island for its seventy-fourth session. Communiqués are issued on such matters as interprovin-

cial trade barriers, the closure of CFB Summerside and the question of jurisdiction over telephone utilities which is before the Supreme Court of Canada. In responding to questions from the media, the premiers express a general concern that Atlantic Canada is being asked to pay a disproportionate share of federal deficit reduction; as well, they are concerned about the delays in getting new ERDA agreements signed.

Chronology: Index

- Aboriginal Peoples:** 24 June 1988; 5 September 1988; 8 November 1988
- Annual Premiers' Conference:** 19 August 1988
- Budgets (Federal):** 10 February 1988; 26 April 1989
- Council of Maritime Premiers:** 29 February 1988; 27 June 1988; 28 November 1988; 3 April 1989; 27 June 1989
- CRTC:** 12 February 1988
- Day Care:** 13 July 1988
- Eastern Canadian Premiers and New England Governors:** 14-15 June 1988
- Education, French Language:** 8 March 1988; 6 December 1988
- Elections:** 8 March 1988; 26 April 1988; 30 July 1988; 6 September 1988; 1,24,25 October 1988; 8,21 November 1988; 17 January 1989; 20 February 1989; 13,20 March 1989; 20 April 1989; 2,29 May 1989
- Energy Policy:** 5 July 1988; 4 August 1988; 7,22 September 1988
- Environment:** 19 January 1988; 7,18,26 April 1988; 5 May 1988; 13 June 1988; 7 July 1988; 19 September 1988; 23 February 1989; 10,19 April 1989; 5 May 1989; 1 June 1989
- Federal-Provincial Agreements:** 1 April 1988; 26 January 1989; 23 February 1989
- Federal-Provincial Fiscal Relations:** 26 April 1989; 23 May 1989
- Federal-Territorial Relations:** 7,22 September 1988; 16 March 1989
- First Ministers' Meeting:** 27 February 1989
- Fisheries:** 7 December 1988; 1 April 1989
- Free Trade:** 2 January 1988; 24 May 1988; 20 July 1988; 9,25,31 August 1988; 15,28 September 1988; 30 December 1988; 21,29 March 1989; 18 April 1989
- Health Policy:** 1 April 1988; 2,6 June 1988; 28 September 1988
- Hydroelectricity:** 6 January 1988; 1 March 1988; 9 June 1988; 25 August 1988; 6 September 1988; 1 June 1989
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- Jurisdiction, Provincial:** 27,28 June 1988; 10 November 1988
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- Law Enforcement:** 8 November 1988
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Tax Reform: 13 April 1988

Throne Speeches: 18,25 May 1989; 15 June 1989

Transportation: 20 June 1988

Unemployment Insurance: 11 April 1989

Western Premiers' Conference: 18-21 May 1988

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