

December 10, 1969.

CONSTITUTIONAL CONFERENCE

Conclusions of the

Third Meeting

Ottawa, December 1969

1. Progress and Procedure in the Constitutional Review

The Prime Ministers and Premiers noted that progress had been achieved in the course of 1969 in the "comprehensive review of the Constitution of Canada" that had been agreed upon at the Second Meeting. The procedure adopted in February 1969 provided for working by means of "more frequent sessions of the Constitutional Conference", interspersed with "informal working sessions", together with the reference of particular problems to special Committees of Ministers, the Continuing Committee of Officials and Sub-Committees of Officials. The Conference affirmed its intention to continue this procedure in 1970 and agreed, subject to further discussion at the Federal-Provincial Conference of Prime Ministers and Premiers to be held in February, 1970, that a Working Session would be planned for June, 1970, and the Fourth Session of the Conference for the autumn.



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2. Income Security and Social Services

(Agenda Item 1(a))

The Constitutional Conference considered the distribution of powers in relation to the fields of income security and social services to try to determine what would be most appropriate to meet the needs of Canadians in the future.

The Conference recognized that there were many complex considerations arising out of the various proposals for distribution of powers related to income security and social services and that the views of governments were necessarily tentative until these considerations could be fully assessed. While there was not full agreement on the definitions, the discussion was carried out under the following categories suggested in the federal proposal, namely,

- (i) Income Support;
- (ii) Income Insurance;
- (iii) Social Services.

(i) Income Support

Quebec maintained the position that the provinces should have exclusive jurisdiction in the field of income support. Other First Ministers accepted the principle that Parliament and the provincial legislatures have and should continue to have powers to make general income support payments to persons. Some provinces expressed the view generally that the basic income support payments could logically be made by the Federal Government.

(ii) Income Insurance

The Conference considered the Federal proposal that Parliament and provincial legislatures ought to have concurrent powers in respect of income insurance matters, with the exceptions that:

- unemployment insurance should continue to be a matter of exclusive federal jurisdiction;

- workmen's compensation should continue to be a matter of exclusive provincial jurisdiction;
- retirement insurance should continue to be a matter of concurrent jurisdiction, but with federal powers becoming paramount.

Doubt was expressed by some that federal paramountcy in the matter of retirement insurance was required or desirable. It was apparent that there were different views concerning the meaning of paramountcy and the implications of providing for federal paramountcy in the case of retirement insurance. It was agreed that the Continuing Committee of Officials should undertake a detailed examination of the application of the concept of paramountcy, federal or provincial, in the field of public retirement insurance.

(iii) Social Services

It was generally agreed that provincial legislatures ought to continue to have exclusive jurisdiction over social services. Several provinces proposed that concurrent jurisdiction in this field should be considered. It was recognized that the federal government could, for the purpose of achieving national objectives, continue to use its spending power, subject to conditions to be defined, to make conditional grants to provincial governments in respect of those services.

There was a question whether federal manpower programmes had components which were essentially social services. The view was put forward notably by the federal government that manpower services were an essential part of the general economic powers and should be considered further when the subject of economic powers came up. In addition, it was agreed, however, that the appropriate federal and provincial ministers should examine the question whether the needs of the country could be more effectively met if the social aspects of manpower services were carried out by the provinces.

3. The Spending Power: Federal Grants to Provincial Governments

(Agenda Item 1(b))

The Conference considered two questions raised in the federal proposals: the determination as to when there was a sufficient consensus favouring the introduction of new shared-cost programmes in fields of exclusive provincial jurisdiction, and the method which might be adopted for avoiding a fiscal penalty on the people of the provinces which decided not to participate in the programmes.

- (i) Consensus - Most First Ministers agreed that the Constitution ought to require the determination of a consensus, on a regional basis, before the Parliament of Canada could enact new and general shared-cost programmes in areas of provincial jurisdiction. The principal suggestions were that the legislatures of three out of four, or three out of five regions of Canada having a majority of the population, ought to be required to agree to any proposal from Parliament for a new federal-provincial programme before it could become effective. (Where a region contained three or four provinces the approval of two legislatures would be required.)

The governments of Manitoba and New Brunswick were of the view that no formal requirement should exist as to how many provinces must agree before Parliament could undertake a new general shared-cost programme. Rather the Constitution should impose an obligation upon the federal government to consult all provinces before initiating such programmes.

- (ii) Compensation in Non-Participating Provinces - It was recalled that the Constitutional Conference had agreed in June that there should be no fiscal penalty upon the people of the provinces whose

provincial legislatures had decided against participating in a particular federal-provincial programme.

Three views were expressed as to how a fiscal penalty could be avoided. The first was that the people in such provinces themselves ought to be compensated in an amount which in the aggregate would equal the per capita federal payments to participating provinces. The second view was that the governments of the non-participating provinces ought to receive unconditional grants equal to the conditional grants they would have received had they agreed to participate in the federal-provincial programme. The third view was that taxes imposed by the federal government for the purpose of financing a particular shared-cost programme should not be levied in a non-participating province. It was agreed to defer discussion of this question until further aspects of the distribution of powers had been considered.

4. Taxation

(Agenda Item 1 (c))

The Constitutional Conference agreed that the Continuing Committee of Officials and its Sub-Committees should continue with the work in progress on the alternative ways of handling sales taxes and death duties in a new or revised Constitution.

5. Regional Disparities

(Agenda Item 2)

The Conference reiterated the earlier agreement that the objective of reducing disparities across the country should be written into the preamble of a revised Constitution as a basic goal of the Canadian people.

It was recognized that both levels of government had responsibility for the achievement of this goal and that each should have appropriate powers for this purpose. Eight provinces and the federal government agreed that the federal government should have the power to alleviate regional disparities in relation to the income of individuals, inequality of economic development and standards of public services. B.C. and Alberta advanced the view that, instead, a guaranteed annual income would remove disparities between individuals wherever they might be in Canada and therefore the effect would be to lessen regional disparities.

There was some support for the inclusion of a substantive provision in the body of the Constitution which would set forth the obligation, not subject to judicial review, of the federal and provincial governments related to regional disparities.

Because of the significance of the legal questions raised in the discussion, the Conference agreed that the Continuing Committee of Officials should give further study to the implications of placing specific clauses in the Constitution.

6. Reports from Committees of Ministers
(Agenda Item 3)

- (a) The Constitutional Conference received the Progress Report of the Committee of Ministers on Fundamental Rights, and agreed that the Committee should be asked to proceed as quickly as possible with the programme of work proposed in the Report.
- (b) The Constitutional Conference received the Progress Report of the Committee of Ministers on the Judiciary, and requested the Committee to carry out the work programme it had proposed in its Report.
- (c) The Constitutional Conference received the Progress Report of the Committee of Ministers on Official Languages. It was agreed that bilateral discussions should proceed as quickly as possible between the federal government and the provinces concerning the federal proposal for financial and technical co-operation in implementing the recommendations of the Royal Commission on Bilingualism and Biculturalism. It was agreed, also, that the Sub-Committee of Official Languages and, if it were desired, the Committee of Ministers, should meet again after the bilateral consultations had been completed.

7. Future Programme of Work

(Agenda Item 4)

First Ministers agreed to meet in camera in Ottawa on the 16th February to discuss non-constitutional matters, essentially the economic situation, pollution and the report of the Tax Structure Committee.