

FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS

Report of the Continuing Committee of Ministers  
on the Constitution to First Ministers

NEW UPPER HOUSE, INVOLVING THE PROVINCES

## NEW UPPER HOUSE, INVOLVING THE PROVINCES

### Explanatory Note

The following proposal, which is submitted as a preliminary draft, is presented to the First Ministers as a first step towards the broader and urgent question of second chamber reform to which Ministers are committed.

During the course of its discussions on this whole subject, Ministers identified two sets of functions in second chamber reform:

1. The ratifying of federal action on a limited list of specified matters of joint federal-provincial concern; and
2. A general parliamentary review function involving a suspensive veto.

This led to the consideration of such issues as whether a new institution should deal with one or both; the functions of ratification and review; whether these functions would be performed by one combined institution or two separate institutions; the basis of provincial representation and the degree of federal participation; the appropriate voting procedure for each function.

In considering these issues it became clear that a final resolution of all these, because of their complexity rather than because of fundamental disagreements among Ministers, could not be completed in the time available. Ministers were, however, able to explore in detail the ratification function and arrive at specific proposals for that aspect.

The proposal submitted to the First Ministers at this time sets forth an interim institutional framework for dealing with the first of these functions.

There remains for the next stage of constitutional discussions the development of the institutional framework for the second of these functions and their interrelationship.

BEST EFFORTS DRAFT  
Council of the Provinces

- |                              |    |  |
|------------------------------|----|--|
| Council established          | 1. | There shall be a body to be called the Council of the Provinces.   |
| Membership                   | 2. | The Council shall have thirty (30) members.  |
| Appointment                  | 3. | The Lieutenant Governor in Council of each province shall appoint three members to the Council.  |
| Head of delegation.          | 4. | The Lieutenant Governor in Council of each province shall designate one member to be the head of that province's delegation.   |
| Tenure of members            | 5. | Each member holds office at the pleasure of the Lieutenant-Governor in Council of his respective province.   |
| Qualifications               | 6. | (a) A member of a provincial legislative assembly may also be a member of the Council.<br><br>(b) Subject to (a) the legislative assembly of a province may prescribe the qualifications for its members to the Council. |
| Federal government spokesmen | 7. | The federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in and speak to any matter coming before the Council.                                      |
| Votes                        | 8. | (a) Each province shall have one vote on every matter before the Council.  |

- (b) The vote of each province shall be cast by the head of that province's delegation or his designate.

- Ratification 9..
- (a) Unless otherwise specified herein, the ratification of any matter coming before the Council requires a two-thirds majority of the votes cast.
  - (b) Unless otherwise specified herein the failure of legislation or an appointment to receive the required majority means that the legislation or appointment shall not take effect.
  - (c) Legislation on which the Council has made no decision within ninety days from the time of referral shall be deemed to be ratified unless an extension of the time is made by the federal government. Appointments on which the Council has made no decision within thirty days from the time of referral shall be deemed to be ratified.

- Powers
- 10. Matters coming within the following classes shall be referred to the Council for its consideration, debate and disposition according to section 9, namely
    - (a) The exercise by the Parliament of Canada of the declaratory power pursuant to section 92 (10) (c).

Powers

10. (b)

(i) Laws of the Parliament of Canada initiating general conditional grants to the provinces in relation to matters within exclusive<sup>1</sup> provincial jurisdiction<sup>2</sup>

(ii) 3

(c)

(i) Laws of the Parliament of Canada made pursuant to the opening words of Section 91 or actions of the Government of Canada pursuant thereto, which have the effect of suspending in whole or in part the normal distribution of legislative powers between the Parliament of Canada and the legislatures of one or more of the provinces, except in cases where there is a state of real or apprehended war, invasion or insurrection.

(ii) Any measure taken to deal with real or apprehended insurrection will become inoperative fifteen days after having been proclaimed unless it is ratified by the Council.

- 
1. Ministers were unable to conclude whether this provision should be limited to areas of exclusive provincial jurisdiction or made broader.
  2. Ministers recognize the necessity, at some stage, of further ministerial or First Ministerial determination of what if any fiscal equivalent should be available to non-participating provincial governments.
  3. At the request of Quebec the following clause was also considered, but Ministers did not reach a conclusion:

"Laws of the Parliament of Canada initiating payments to classes of individuals or institutions in relation to matters within exclusive provincial jurisdiction."

- (d) Laws of the Parliament of Canada, or sections thereof, which are to be administered by provincial governments.
- (e) Approval of appointments to the managing bodies of such federal boards, commissions or agencies, as are determined from time to time by the Conference of First Ministers, to have significant interest to all or some of the provinces.<sup>4</sup>
- (f) Other matters which have emerged or might emerge in the overall process of constitutional review which Ministers or First Ministers deem appropriate.

Dualism 11. In the case of any matter coming before the Council which is in relation to the French language or French culture the ratification of the Council would require that the two-thirds majority prescribed by section 9 (a) include the affirmative vote of Quebec.<sup>5</sup>

---

- 4. There was some discussion as to whether, as an alternative, a list of specific subject areas such as energy, communications, tariffs, monetary policy and transportation should be specified.
- 5. Ministers also examined the alternative of a weighted vote on this aspect but did not reach a conclusion. Ministers also recognized the fundamental definitional problem attached to the word "culture".

- Procedure 12. (a) The Council shall have power to determine its own procedure.
- (b) A simple majority only shall be necessary for the establishing of any rules of procedure.