

FEDERAL-PROVINCIAL CONFERENCE
OF FIRST MINISTERS ON THE CONSTITUTION

List of "Best Effort" Draft Proposals
with joint government input
discussed by First Ministers

Ottawa
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Draft Proposal Discussed by First Ministers

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

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| (1) (present Section 92) | (1) Carries forward existing Section 92 |
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Resources

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| (2) In each province, the legislature may exclusively make laws in relation to | (2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g. crude oil, copper, iron and nickel), forests and electric energy. This section pertains to <u>legislative jurisdiction</u> and in no way impairs established <u>proprietary</u> rights of province over resources whether these resources are renewable or non-renewable. |
| a) exploration for non-renewable natural resources in the province; | |
| b) development, exploitation, extraction, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production therefrom; and | |
| c) development, exploitation, conservation and management of forestry resources in the province and of sites and facilities in the province for the generation of electrical energy, including laws in relation to the rate of primary production therefrom. | |

Export from the province of resource

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| (3) In each province, the legislature may make laws in relation to the export from the province of the primary production from non-renewable natural resources and forestry | (3) Provincial governments are given concurrent legislative authority to pass laws governing the export of the resources referred to above from the province. This legislative capacity is in |
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resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for prices for production sold for export to another part of Canada that are different from prices authorized or provided for production not sold for export from the province.

the sphere of both inter-provincial and international trade and commerce. Provincial governments are prohibited from price discrimination between resources consumed in the province and those destined for consumption in other provinces. This new provincial legislative capacity applies to these resources in their raw state and to them in their processed state but does not apply to materials manufactured from them.

Relationship to certain laws of Parliament

- (4) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (3) prevails over a law enacted by Parliament in relation to the regulation of trade and commerce except to the extent that the law so enacted by Parliament,
- a) in the case of a law in relation to the regulation of trade and commerce within Canada, is necessary to serve a compelling national interest that is not merely an aggregate of local interests; or
- b) is a law in relation to the regulation of international trade and commerce.
- (4) The effect of this new provincial legislative responsibility over trade and commerce diminishes the scope but does not eliminate the federal government's exclusive authority over trade and commerce. The exercise of the provincial power is subject to two limitations. First, the federal government may legislate for interprovincial trade if there is "compelling national interest". This trigger mechanism may apply to circumstances other than an emergency as established under the peace, order and good government power. Second, federal laws governing international trade prevail over provincial laws in international trade, in effect establishing a concurrent power similar to that for agriculture.

Taxation of resources

- (5) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of
- a) non-renewable natural resources and forestry resources in the province and the primary production therefrom; and
- (5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.

- b) sites and facilities in the province for the generation of electrical energy and the primary production therefrom,

whether or not such production is exported in whole or in part from the province but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Production from resources

- (6) For purposes of this section,
 - a) production from a non-renewable resource is primary production therefrom if
 - i) it is in the form in which it exists upon its recovery or severance from its natural state, or
 - ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil or refining a synthetic equivalent of crude oil; and
 - b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.
- (6) In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, the wording of this subsection is thought to place the appropriate limitations on provincial powers.

Existing Powers

- (7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections.
- (7) This clause ensures that any existing provincial legislative powers found in s.92 are not impaired by the new section.

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LIST OF ALTERNATIVES COVERING THE
DISPOSITIONS OF SECTION 109

Option 1 Maintain the status quo, do not carry forward Section 109.

Option 2 (a)

Property in **123.1 All lands, mines, minerals and royalties belonging to any province immediately before this section comes into effect, and all sums then due or payable in respect of any such lands, mines, minerals and royalties, belong immediately after this section comes into effect to the province or are then due and payable, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 2 (b)

Ownership **123.1 All property of property belonging to any province immediately before this section comes into effect, belongs immediately after this section comes into effect to the province, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 3

Ownership *127.1 Nothing in of property this Act changes the ownership in any property owned by Canada or a province immediately before the coming into force of this Act."

*Note: Numbering is tied in to numbering found in Bill C-60.

Draft Proposal Discussed by First Ministers

INDIRECT TAXATION

Taxation within the province by any mode or system of taxation for provincial purposes, except indirect taxation that a) constitutes a tax on the entry into or export from the province or otherwise has effect as a barrier or impediment on interprovincial or international trade, or b) is so imposed that the burden of the tax is passed outside the province.

Draft Proposal Discussed by First Ministers

SUPREME COURT

The Supreme Court of Canada

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| Supreme Court of Canada Constitution of Supreme Court | 1. There shall be a general court of appeal for Canada called the Supreme Court of Canada. |
| Eligibility for appointment | 2. The Supreme Court of Canada shall consist of a chief justice, to be called the Chief Justice of Canada, and eight other judges, who shall be appointed by the Governor General. |
| Appointment of judges from Quebec | 3 (1) A person is eligible to be appointed as a judge of the Supreme Court if, after having been admitted to the bar of any province, the person has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the bar of any province. |
| Procedure on vacancy | (2) At least three of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of that province or of a court established by Parliament or advocates at the bar of Quebec. |
| Tenure of office of judges of Supreme Court | 4. Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorney General of the province or Attorneys General of the provinces from which the persons being considered for appointment come. |
| Salaries, allowances and pensions of judges of Supreme Court | 5. (1) The judges of the Supreme Court hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons. |
| Ultimate appellate jurisdiction of Supreme Court Appeals with leave of Supreme Court | (2) The salaries, allowances and pensions of the judges of the Supreme Court shall be fixed and provided by Parliament. |
| | 6. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction within and for Canada. |
| | 7. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, where, in the opinion of the Supreme Court, any question involved is one that ought to be decided by it. |

Appeals from references by Lieutenant Governor

8. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any matter referred to it for hearing and consideration by the Lieutenant Governor in Council of that province.

Additional Appeals

9. In addition to any appeal provided for by this division, an appeal to the Supreme Court lies as may be provided by any Act of Parliament.

Laws respecting jurisdiction of Supreme Court; references of questions of Law or fact

10. Parliament may make laws authorizing the reference of questions of law or fact to the Court and requiring the Court to hear and determine such questions.

Questions relating to civil law of Quebec

11. Where any case before the Supreme Court involves a question of law relating to the civil law of Quebec and no other question of law, that case shall be heard by a panel of five judges at least three of whom have the qualifications described in section 3 or, with the consent of the parties, by a panel of four judges at least two of whom have those qualifications.

Organisation, maintenance and operation of Supreme Court

12. Parliament may make laws providing for the organization, maintenance and operation of the Supreme Court, and the effectual execution and working of this division and the attainment of its intention and objects including laws providing for the appointment of such ad hoc judges as may be necessary to ensure quorums.

Courts for Better Administration of Laws of Canada

Constitution of courts for better administration of laws of Canada

13. Parliament may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, organization, maintenance and operation of courts for the better administration of the laws of Canada, but no law providing for the constitution, organization, maintenance or operation of any such court shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

Appointment and Tenure of Office of Judges of Superior, District and County Courts and their Salaries, Allowances and Pensions

Appointment of judges of superior, district and county courts

14. The Governor General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

Procedure on vacancy

15. Where a vacancy occurs in the superior, district or county court of a province, the Minister of Justice of Canada shall consult with the Attorney General of the province as to persons being considered for appointment.

Selection of
judges appointed
by Governor
General

16. The judges of the courts in each province appointed by the Governor General shall be selected from among members of the bar of the province or from among judges who were members of the bar of the province prior to their appointment as judges.

Tenure of
office of
judges of
superior courts

17. The judges of the superior courts of the provinces hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries,
allowances
and pensions
of judges
generally

*18. The salaries, allowances and pensions of the judges of the superior, district and county courts in each province, except the courts of probate in Nova Scotia and New Brunswick, shall be fixed and provided by Parliament.

Deputy judges

19. (1) For the purpose of enabling persons being tried or giving evidence in any superior, district or county court in a province to exercise any right they may have by law to be tried or heard in English or French according to their choice, the Governor in Council may, notwithstanding sections 16 and 17, at the request of the Attorney General and appropriate chief justice of the superior court or chief or senior judge of the district or country courts of that province, appoint any persons who have been judges of a superior, district or country court, of any other province, or any persons who are judges of such a court of any other province with the consent of the Attorney General and appropriate chief justice or chief judge of such province, to be deputy judges of any superior, district or county court in the province on behalf of which the request is made.

Tenure of
office of
deputy judges

(2) A deputy judge may be appointed pursuant to this section for any period of time during which period, he or she shall perform such duties as are assigned by the appropriate chief justice or chief judge, and his or her appointment may be terminated at the pleasure of the Governor in Council.

Interpretation

20. For the purposes of this Division, the term "province" includes the Yukon Territory and the Northwest Territories.

Draft Proposal Discussed by First Ministers

FAMILY LAW

1. Repeal head 26 of section 91 -- "Marriage and divorce".
2. Repeal head 12 of section 92 -- "The solemnization of marriage in the Province" and substitute therefore "Marriage, including the validity of marriage in the Province".
3. Add after section 95 the following section:

95A(1) The Legislature of each Province may make laws in relation to divorce in the Province, except that Parliament has exclusive authority to make laws in relation to the recognition of divorce decrees granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for divorce.

(2) The Parliament of Canada may make laws in relation to divorce, except that the Legislature of each Province has exclusive authority to make laws in relation to alimony, maintenance, custody and any other relief corollary to divorce.

(3) Where the Legislature of a Province enacts a law in respect of any of the matters in which it has concurrent authority with the Parliament of Canada under this section, the Parliament of Canada ceases to have authority [in

respect of that Province] in all concurrent matters under this section while any such law of the Legislature continues in force.

4. Add to section 96 of the B.N.A. Act the following subsection:

"(2) Notwithstanding that the judges are not appointed under subsection 1, the legislature of a province may confer, or authorize the Lieutenant Governor of the province to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Lieutenant Governor of the province, the jurisdiction of a judge of a superior court of the province in any matters arising out of family relationships, including divorce, annulment of marriage, decrees of validity or nullity of marriage, separation, support, maintenance, adoption, custody, access, affiliation, family property, and rights and obligations among members of a family recognized as such in law".

5. Add in the transitional provisions of the Act a provision for the continuation of the application of the Divorce Act (Canada) in respect of corollary relief for a period sufficient to allow Provinces to put their legislation in place.

Draft Proposal discussed by First Ministers

EQUALIZATION AND REGIONAL DEVELOPMENT

"96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

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

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to provinces that are unable to provide essential public services of reasonable quality without imposing an undue burden of taxation, or to the principle of making arrangements equivalent to equalization payments to meet the commitment specified in Section 96(1)(c)."

(3) The Prime Minister of Canada and the First Ministers of the Provinces shall review together the questions of equalization and regional development at least once every five years at a meeting convened pursuant to section 97.

Draft Proposal Discussed by First Ministers

Spending Power

Legislative Text

Renumber section 91 of the B.N.A. Act as subsection 91(1) and add the following:

Alternative (2) A

(2) The Parliament of Canada may make laws for the expenditure of money, or for conferring a benefit equivalent to that which would result from the expenditure of money, in relation to any matter not coming within the legislative jurisdiction of Parliament, and not within the concurrent legislative jurisdiction of Parliament and the legislatures where a law of Parliament has paramountcy, subject to such of the following conditions and restrictions as are applicable in any particular case.

Alternative (2) B

(2) The Parliament of Canada may make laws for the expenditure of money, or for conferring a benefit equivalent to that which would result from the expenditure of money, subject to such of the following conditions and restrictions as are applicable in any particular case.

Legislative Text

(3) A law of Parliament referred to in subsection (2) that provides for payments to all provinces, or for conferring a benefit capable of providing an equivalent to that which would result from payments to them, and that is such that the payments are or the benefit is conditional on expenditures by the provinces or the foregoing of revenue by them, is of no force or effect unless authorized by the governments of a majority of the provinces that have, according to the then latest general census, at least 50% of the population of Canada.

Alternative (4)A

(4) A law of Parliament referred to in subsection (3), notwithstanding that it is authorized as provided in that subsection, is of no force or effect unless it provides for payments or benefits to individuals residing in a province that does not accept payments or benefits thereunder that are in amounts determined by or pursuant to a provision of such law.

Alternative (4)B

(4) A law of Parliament referred to in subsection (3), notwithstanding that it is authorized as provided in that subsection, is of no force or effect unless it provides for payments to a province

Legislative Text

that does not accept payments or benefits in accordance with the general provisions of the law that are equivalent in amount to the payments or benefits that would otherwise have been provided to it under the law.

(5) Subsections (3) and (4) apply whether or not the payments provided or the benefits conferred are provided or conferred on terms or conditions that may vary as between provinces.

(6) A law of Parliament referred to in subsection (2) that provides for payments to individuals or bodies, other than provincial governments, in all provinces and that significantly affects the programs of a province is of no force or effect unless, prior to the enactment thereof, the government of Canada has consulted with the government of each province whose programs would be so affected.

(7) Where the government of Canada is of the opinion that a measure providing for payments as described in subsection (6) that it proposes to introduce for enactment by Parliament will affect the programs of a province, it shall consult with the government of that province before introducing the measure.

Legislative Text

(8) A law referred to in subsection (6) shall be deemed not to have the effect therein referred to unless, prior to the enactment of the law, the government of a province has, in writing, advised the government of Canada that, in its opinion, the law will have such an effect.

(9) Where the government of a province has advised the government of Canada as provided in subsection (8) in relation to a particular measure, a copy of the instrument reflecting such advice shall forthwith be laid before Parliament and thereupon no further consideration shall be given to the measure in Parliament for a period of ninety days or such lesser number of days as is agreed to by the government of the province, during which period the government of Canada shall consult with the government of the province in relation to the measure at a meeting convened for that purpose or in such other manner as is agreed upon.

DECLARATORY POWER

1. Amend head 92. 10(c) to read as follows:

"(c) Such works as, although wholly situate within the province, are before or after their execution declared by Parliament to be for the general advantage of Canada, or for the advantage of two or more provinces, for purposes indicated in the declaration."

2. Add new subsections to section 92 which for the purposes of this draft are numbered as follows:

Requirement to consult with respect to use of declaratory power of Parliament

"92. (2) Before Parliament declares any work to be for the general advantage of Canada or for the advantage of two or more provinces

(a) the government of Canada shall consult with the government of the province or the governments of each of the provinces in which the work is situate; and

(b) if the consultation under paragraph (a) does not result in an agreement that the work be so declared, the Prime Minister of Canada shall consult the first ministers of the provinces about the proposed declaration at a first ministers' conference.

Declaration
on failure on
consultation

(3) Where, after the consultation required by subsection (2), an agreement has not been reached that a work be declared to be for the general advantage of Canada or for the advantage of two or more provinces, a declaration under paragraph 92(1)10(c) shall have effect only for such period not exceeding five years from the effective date of the declaration as is stated in the declaration but nothing in this subsection prohibits Parliament from making a further declaration in respect of the work after the requirements of subsection (2) have again been fulfilled.

Limitation on
declaratory
power with
respect to
resources

(4) No declaration under paragraph 92(1)10(c) shall be made by Parliament without the prior consent of the government of the province in which the work to be so declared is situated if it is a work for

- (a) the primary production or initial processing of any non renewable or forestry resource; or
- (b) the generation of electrical energy.

Revocation or
amendment of
declaration

Parliament may revoke any declaration of a work for the general advantage of Canada or for the advantage of two or more provinces made before or after the coming into force of this section and may limit or, subject to subsections (2) to (4), extend the purposes for which any such declaration had been made."