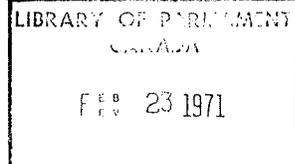


CONSTITUTIONAL CONFERENCE

THIRD WORKING SESSION

FEBRUARY 8 AND 9, 1971

STATEMENT OF CONCLUSIONS



Constitutional Conference

Third Working Session

Ottawa, February 8 and 9, 1971

CONCLUSIONS

PART I

General

1. In accordance with the conclusion of their working session last September, the First Ministers gave priority to the questions of an amending formula and an early patriation of the Canadian Constitution. The Conference agreed that the Government of Canada and the provinces should proceed as quickly as possible to patriate the Constitution, with an appropriate amending formula applicable entirely within Canada, and with such other changes as can be agreed upon quickly. This approach would permit a substantial degree of progress to be made quickly, while work on other aspects of constitutional revision continues. The First Ministers considered that such action might incorporate the elements set forth in the following paragraphs. However, the First Ministers reserved their right to further analyze all the juridical and other implications.

Patriation of the Constitution

2. The Constitutional Conference agreed on a procedure to be undertaken in Canada at a very early date in order to bring home the Constitution and to transfer to the people of Canada, through their elected representatives, the exclusive power to amend and to enact constitutional provisions affecting Canada. This procedure would involve:

- (a) Agreement among the governments as to changes and procedure.
- (b) Approval of a resolution in the usual way, by legislatures plus the two Houses of Parliament, authorizing the issuance of a proclamation by the Governor General to contain the amendment formula and whatever changes are agreed upon.

- (c) Recommendation that the British Parliament legislate to:
  - (i) recognize the legal validity of the Canadian proclamation and its provisions;
  - (ii) provide that no future British law should have application to Canada; and
  - (iii) make any consequential repeal or amendment of British statutes affecting the Canadian Constitution.
- (d) Issuance of the proclamation by the Governor General on a date to coincide with the effective date of the British law.

The Amending Formula

3. The Constitutional Conference has considered the nature of the formula which should be adopted to permit the Canadian Constitution to be amended wholly within Canada. The First Ministers agreed that the following formula was a feasible approach.

I. General Procedure

All constitutional amendments in future, except those covered in II and III, would require a resolution of consent at the federal level plus consent of the legislatures of a majority of the provinces of Canada including:

- (a) the legislature of any province now containing at least 25% of the population of Canada, and of any other province that hereafter contains 25% of the population of Canada; and
- (b) the legislatures of at least two provinces west of Ontario providing that the consenting provinces comprise 50% of the population of the provinces west of Ontario and the legislatures of at least two provinces east of Quebec.

II. Federal and Provincial Constitutions

Sections 91(1) and 92(1) would be repealed and replaced by a section giving the Parliament of Canada and the legislatures of the provinces power to amend their respective Constitutions except with regard to the following matters when the general procedure set out in I would apply:

- (a) the functions of the Queen, Governor General and Lieutenant Governors;
- (b) need for annual sessions;
- (c) maximum period between elections;  
(The above three would apply to the legislatures as well as to Parliament; the following would apply to Parliament only.)
- (d) principle of proportionate and minimum representation of members of Parliament from the provinces in the House of Commons.
- (e) the number and residence qualification of Senators representing each province, and the powers of the Senate.

III. Amendments of Concern to Canada plus One or More but not All Provinces

Such changes would require a resolution of consent at the federal level plus the consent of the legislatures of the provinces concerned.

Fundamental Rights

4. It was agreed to entrench in the Constitution the following basic political rights:

- (a) universal suffrage and free, democratic elections at least every five years;
- (b) freedom of thought, conscience and religion;
- (c) freedom of opinion and expression; and
- (d) freedom of peaceful assembly and association.

The exercise of these freedoms may be subject only to such limitations as are prescribed by law and as are reasonably justifiable in a democratic society in the interests of national security, public safety, health or morals or the fundamental rights and freedoms of others.

Language Rights

5. It was agreed that English and French should be declared the official languages of Canada, with the following provisions that would have equal application in all parts of Canada and to both languages:

- (a) Any person may use English or French:
  - (i) in the Debates of Parliament and, with reservations expressed by some provinces, in the legislatures;
  - (ii) in any pleading or process in federal courts;
  - (iii) in communication with the federal administration.
- (b) Federal statutes and instruments shall be in both languages.
- (c) The individual shall have the right to have English or French as his main language of instruction in publicly supported schools in areas where the language of instruction of his choice is chosen by a sufficient number of persons to justify the provision of the necessary facilities. It was recognized that some further consideration will have to be given by various governments in order to

determine appropriate administrative arrangements to implement the provision, what constitutes a "sufficient number", and what should be the percentage of instruction in the main language. Quebec lodged a general reservation with respect to this sub-paragraph pending an examination of all its implications.

- (d) Parliament or a legislature may accord further recognition to the two languages.

#### Supreme Court

6. It was agreed that the existence and the independence of the Supreme Court of Canada should be entrenched in the Constitution, which should also provide for its basic structure. Its jurisdiction would continue to be that of a court of final appeal for the country. It was also agreed that, while the Federal Government should retain the power of appointment to the court, the Constitution should recognize the importance of provincial participation in the process of selection of suitable candidates for appointment. It was also concluded that study should be given to the means of assuring the availability on the court of civil law judges to hear civil law appeals. It was agreed, in addition, that there should be discussion of the jurisdiction of the Supreme Court to hear appeals in matters of strictly provincial law.

Regional Disparities

7. Recalling their conclusion on the subject of regional disparities at the working session in September, the First Ministers agreed that the Constitution should include a recognition of the importance of equality of opportunity for all Canadians. It was therefore concluded that the reduction of regional disparities should be referred to both in a new preamble and in the body of the Constitution.

- (a) The preamble should state that one objective of Confederation is the social, economic, and cultural development, and the general welfare and equality of opportunity for all citizens in whatever region they may live;
- (b) In the body of the Constitution there should be a statement of obligation on all governments, federal and provincial
  - (i) to promote equality of opportunity and well-being for all individuals;
  - (ii) to ensure, as nearly as possible, that essential public services of reasonable quality will be available to individual citizens.
  - (iii) to promote economic development which will reduce disparities in the social and economic opportunities of individual Canadians in whatever region they may live.

This obligation would not be enforceable by the Courts and would not have the effect of altering the distribution of legislative powers.

Mechanisms of Federal-Provincial Relations

8. It was agreed that the revised Constitution should contain a provision, probably in the preamble, recognizing the important role of intergovernmental consultation and cooperation in the effective working of Canadian federalism. Also, in order to provide for the basic mechanisms of federal-provincial consultation, there should be a specific provision that the Government of Canada shall at least once a year consult with provincial governments about the desirability of holding a Conference of First Ministers.

Modernization of the Constitution

9. Finally, the First Ministers agreed that work will be undertaken between now and the next meeting of the Constitutional Conference in June to propose specific alterations in the Constitution such as a new preamble and the deletion of spent and irrelevant provisions. Specific proposals in this respect will be brought forward for consideration by the Conference in June.

Next Step

10. It was recognized that the next steps would include further bilateral discussions leading up to the next meeting of First Ministers, and in addition as required, the on-going coordinating work of the Continuing Committee of Officials.

PART II

Social Policy

1. The Conference heard the views of the Government of Quebec on social policy in general and income security in particular. Quebec emphasized a broad conception of social policy and the importance of fitting income security measures into a global integrated policy with the objective of meeting effectively the problem of poverty. The Conference expressed its sympathy for this basic social objective. Quebec emphasized the fact that the existing distribution of legislative powers cannot be maintained if it impedes the realization of that objective. In addition, Quebec considers that the question of social policy is a fundamental element of the constitutional revision as a whole.

2. The federal government, for its part, expressed its desire to coordinate its income security measures with the social policies of the provinces, in order that each provincial government as well as the federal government may best realize its social objectives. There is and should continue to be room for different social policies in different provinces.

3. In regard to the Quebec proposals in particular, the federal government noted that what was suggested in regard to family allowances was very similar to the proposed federal Family Income Security Plan. The Quebec statement also indicated that the Old Age Security Pension and Guaranteed Income Supplement would fit into its plans. Similar improvements in the Quebec and Canada Pension Plans have also been proposed.

4. Already decisions have been made to modify certain features of the proposals for amending the Unemployment Insurance Act on the basis of the information and arguments advanced by Quebec Ministers. Only in the case of the General Social Allowance Plan does there appear to be the necessity for further time and study to ascertain what is practicable during the near future.

5. The Conference was informed that bilateral discussions had already been planned between provincial and federal ministers and officials on these matters and their possible constitutional implications, and a further meeting of the Ministers of Welfare on income security was scheduled several months from now. The First Ministers asked that this work be accelerated and that the Ministers of Welfare report to the meeting of the First Ministers in June.

Canadian Interprovincial Marketing

6. Reference was made to current problems being encountered in connection with interprovincial marketing of certain agricultural products. The view was expressed that the problem had still not been solved, since the last discussion in September, and some provinces suggested that the Federal Government should exercise existing constitutional powers to deal with the matter. A further suggestion by some provinces was that provincial marketing boards should retract certain regulations that affect the freedom of movement of goods, but another view was that this could not be done unless other action were taken to replace such regulations and avoid harm to local agricultural industries. In this connection, it was suggested that the Farm Products Marketing Agencies Bill, now before Parliament could facilitate a satisfactory resolution of the problem.

7. It was also observed that the question of interprovincial trade was a fundamental constitutional question which should be examined at a later meeting of the Conference.

Environmental Mangement - Pollution

8. The Constitutional Conference examined proposals for constitutional changes in jurisdiction related to the control of pollution.
  
9. In particular, the First Ministers considered a federal proposal that there should be a new concurrent power for Parliament and the provincial legislatures to make laws in relation to the control of pollution of air and water. Under this proposal, if there were a conflict between a federal law made under this power and a provincial law made under it, the federal law would prevail when it applies to control pollution which has, or if permitted would have, significant international or interprovincial effects, but in other circumstances the provincial law would prevail over the federal law.
  
10. Some First Ministers expressed interest in this proposal. Another view, however, was that new provisions could better be considered after there has been more experience in dealing with pollution; in the meantime, it would be preferable to rely on improved arrangements for coordination and cooperation between governments based upon existing constitutional provisions. A further view was that areas of exclusive federal and provincial jurisdiction would be preferable to the general concurrency which has been proposed.
  
11. It was agreed that the implications of various constitutional approaches should be given further study.

Other Business

12. The Conference received a report from the Continuing Committee of Officials on Paramountcy as Applied to Public Retirement Insurance, and accepted the recommendations regarding additional study.

Next Meeting

13. The Constitutional Conference confirmed that it would meet next on June 14-16 in Victoria and that the meeting would be public, at least in part.

PART III

NON-CONSTITUTIONAL MATTERS

Unemployment

1. The First Ministers discussed the unemployment situation across Canada, and expressed their concern for the problems being encountered by many Canadians this winter. Several First Ministers urged the Government of Canada to take additional action to alleviate the problem.
2. The Minister of Finance of Canada outlined the policies of the Government of Canada to combat unemployment, and stated that present indicators point to increasing economic growth and declining unemployment as the year progresses. He stressed that over-reaction would aggravate the problem by causing a resurgence of the inflationary spiral.
3. It was generally agreed that the federal and provincial governments should consult together concerning any possible additional steps which might be taken to alleviate the present situation.