



From the Office of the Premier

STATEMENT BY THE
HONOURABLE W. BENNETT CAMPBELL
TO THE
CONSTITUTIONAL CONFERENCE
OF
FIRST MINISTERS

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October 30, 1978

Attempts by governments in Canada to re-new and repatriate the Constitution have benefited from general public support. Despite lengthy efforts in the past I do not believe that the majority of Canadians doubt that change is possible. Rather, most are convinced that constitutional change will occur although some may be apprehensive that changes will not be entirely to their liking. A few are concerned that the character of the country will change too much while others strive for substantial and significant changes.

No doubt a majority of those who are observing this process of constitutional review seek greater clarification of where each government stands in order to discern in a broad sense what agreements are possible and what differences remain to be negotiated. This statement summarizes Prince Edward Island's initial opinions on the major issues.

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1. CHARTER OF RIGHTS

In our view it is desirable to have a Charter of Rights and Freedoms included in the Constitution of Canada. Although, the discussion of Rights and Freedoms has not had as much publicity as the proposed House of the Federation or the Monarchy, nevertheless, I am aware, that the inclusion of a Charter of Rights has the potential of changing our system to a greater extent than changes in either of these institutions. I am also aware of the objections by some that the inclusion of a Charter of Rights would challenge the Supremacy of Parliament and the Legislatures, and may increase activities in the courts. Notwithstanding the importance of such objections, I feel that a Charter of Rights is worth these risks in view of the benefits that are possible.

I believe it is a mistake to assume that tradition alone is the best guardian of freedom, especially as our society becomes increasingly de-personalized and adopts more rapidly and completely characteristics of a mass society. With such changes

occurring in the fabric of our country, it is conceivable that as various groups take action to differentiate themselves or to insulate themselves from change, traditional values and ideas associated with justice and fairness may become redefined. We have seen such processes occur around the globe even in countries having a parliamentary tradition and there is no reason to assume that we could not experience a similar phenomenon in Canada.

In fact, there are already several examples in the history of our country wherein basic freedoms have been threatened, if not temporarily lost, by the legislative actions of governments. No doubt each of us here can recall examples of laws passed in our respective jurisdictions which encroached upon basic freedoms. In my opinion, had we been guided by a Charter of Rights and Freedoms there would have been a greater probability that such legislation would not have been conceived nor passed since it is more likely that such would have been recognized from the outset as being unconstitutional.

This observation must never be construed to imply that Canadians have been poorly treated relative to citizens of other countries. On the contrary, Canadians have enjoyed a great amount of personal freedom. I do feel, however, that it is well to remind ourselves that our history is not entirely without blemish. If freedom is the result of eternal vigilance then a Charter of Rights will not only assist us to exercise such vigilance, but it will also serve as a constant reminder that watchfulness is necessary.

A Charter of Rights in our Constitution would be more than a law. It would become a statement of ideals that could influence the development of the thinking of young Canadians and new Canadians. It would be an important source to all who would seek to know Canada and participate in Canadians affairs and it would serve as a guide to all Canadians assisting them in acquiring and maintaining an appreciation for the basic principles upon which a free society operates.

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I acknowledge that a Charter of Rights will not constitute an absolute guarantee of freedom but I am convinced there is a greater likelihood that rights and freedoms will be respected by our institutions and cherished by our people if a Charter of Rights and Freedoms is enshrined in the Constitution.

These are my general views on the principle of including rights in the Constitution. I would like to comment upon a specific aspect of the initial federal proposal, Bill C-60.

Section 8 of the Federal Bill dealt with the equal rights of all Canadians to own property. If a bill such as C-60 were to become law, there is a possibility that Prince Edward Island's legislation regulating the purchase of land by non-residents would be superceded.

Nevertheless, I think it is important to acknowledge, that if Canada is to be more than an association of individual provinces then all Canadians must share equal rights regardless of where they are born or reside and all must be able to move freely

throughout their country without any difference being made because of their origin. Therefore, Prince Edward Island is prepared to consider the proposal that property rights be protected by the constitution.

I hasten to point out that Prince Edward Island will not abandon the control of its physical resource base. Farmland, shore frontage, and the unique landscape of the Island are main stays of the provincial economy and are part of the natural heritage of Islanders and other Canadians. There is no question that such a limited national resource must be protected. Consequently, Prince Edward Island would definitely maintain powers to control the use of its resources but all relevant legislation and regulations, such as those covering the use of land, would be applied to all Canadians equally.

I want the record to be clear on a further point. Consideration of such a proposal is contingent upon our being convinced that the people of Prince Edward Island will not experience restrictions in any other province other than those laws which are generally applied to all other citizens of Canada.

2. DISTRIBUTION OF POWERS

Prince Edward Island has consistently advocated that Canada requires a strong central government if it is to overcome the natural tendency toward fragmentation caused by such a relatively small population dispersed throughout such a huge area. A strong central government and a strong Canadian identity are necessary if this country is to avoid perpetually categorizing some of its citizens as being less advantaged than others.

There are compelling historical reasons why we cannot, and clear political reasons why we should not attempt to redesign the country into units of homogenous size. Although some are smaller, all provinces should be equal and their people have a right to be treated equally in every respect throughout the Nation. Differences in the history of our people and in the scale of our jurisdictions adds a diversity to federal-provincial relations and to the development of points of view in this country that are as equally important as cultural diversity or any other kind of diversity. (Despite claims by some, the smaller

provinces are not over-governed and, indeed, they do work together to take full advantage of economics of scale wherever practical).

But smaller provinces are less likely to have access to great amounts of natural resources and as long as Canadian wealth is largely generated by selling natural resources, then they can never hope to generate as much wealth as jurisdictions with large land areas. This phase of Canada's development may subside; wealth and power may shift to other areas of the country. But because we are so diverse there will never be a time when all provinces will have equal wealth.

If nationhood means anything, Canadians must have equal access to opportunities and enjoy national standards for basic services regardless of the rising or falling of the fortunes of individual provinces. This should be the common birthright of all Canadians and a fundamental principle of the country.

If we are to maintain a strong country and avoid becoming merely an association of provinces, the federal government must have the necessary power to enable it to develop and implement national policies. The Government of Canada must have a distinct presence at home and abroad and all Canadians should, to some extent, feel this presence as well as share a common identity and bond that is characteristically found in any healthy community.

But, we recognize that some segments of Canadian society require special consideration in order to effect changes that more accurately reflect their needs as they mature and develop within the country. Therefore, although Prince Edward Island, with few exceptions, is basically satisfied with the present division of powers, this province is certainly prepared to discuss the concept of the federal government

to the provinces whenever it is thought to be necessary or desirable. There are already many precedents for delegating powers; the criminal justice field, the new citizenship act and the Maritime Off-Shore Resources Agreement are but a few examples.

From the point of view of Prince Edward Island most of the recent jurisdictional disagreements are more administrative than constitutional in nature and it is doubtful that problems could be solved by constitutional or other legislative amendments. Regardless of whatever constitutional agreements are negotiated or however clearly respective powers are delineated, there will never be a substitute for full consultation and extensive cooperation between levels of government.

3. INSTITUTIONS

The Monarchy is greatly respected on Prince Edward Island and many Islanders feel a personal loyalty and affection towards Her Majesty. Few in Prince Edward Island perceive the Monarchy as inhibiting Canadians to develop and grow. Therefore, it is the position of our government to support the existing role of the Monarchy.

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The Senate

Our government is pleased to discuss
alternative proposals if it is thought that the Upper
House can be made more effective.

I would like to observe, however, that since
we feel most difficulties between ourselves and the
Government of Canada are administrative rather than
legislative, it would seem unlikely that an Upper
House of Parliament would be more effective in resolving
differences than would the Lower House. Frankly, from
our point of view it is doubtful that any substitute
can be found that will be more efficient in solving
problems, recently referred to as "intrusions", than
face to face consultation between ministers from both
levels of government.

If Canada is to retain an Upper House, Prince
Edward Island would not be adverse to modifying the
Senate in order to overcome some of the criticisms that
have been identified during its past century of service.

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We would agree that the primary role of the Senate should be to continue to provide a thoughtful second look at legislation developed in the Commons. This is a useful function and, according to its own testimony, the Senate's influence has resulted in a large number of beneficial revisions to proposed legislation.

The Senate has also distinguished itself by conducting important and beneficial enquiries which have influenced the attitudes of a large number of Canadians beyond the fields of politics and law. Canada would benefit from continuing to have men of stature who are legally a part of the Parliament of Canada perform such work.

And the Senate acts as a "lobby from within" in a positive sense, although perhaps accomplishments are not well publicized. Senators, together with members of the Commons, can do a great deal to make the views of their constituents and the interest of their provinces more widely known throughout Parliament.

Given these basic activities, Prince Edward Island would find it acceptable if:

- all Senators were appointed by resolutions of the Provincial Legislatures
- the length of terms were set at five years and each member were limited to two terms

Prince Edward Island feels that such a procedure would tend to select high quality individuals who would be intent upon achieving significant accomplishments during their terms of office, and that legislative appointments would tend to select members with a greater devotion to their native Province than to a specific political philosophy or party.

Notwithstanding these observations, our province is quite open to other proposals and suggestions for revising the Upper House.

Supreme Court

Most proposals for the Supreme Court that are described in the federal bill are generally acceptable to us. We support regional representation and agree with increasing the numbers. It is reasonable from our point of view that judges experienced with the Civil Code should be the ones primarily involved in the decisions

respecting the Civil Code. However, we should like to raise a question regarding the Civil Code: Since judges having a background in the Civil Code would take part in decisions of cases based on Common Law, would it not be equally wise to have some judges versed in Common Law participate in Civil Law cases? Even though the latter would constitute a minority on such cases, their presence may have an important integrating effect in preventing two bodies of law in this country from becoming increasingly isolated from each other.

My only remaining comment on the Supreme Court is that we do not favour some aspects of the appointment procedure as outlined in the federal bill C-60. We would propose that if all agreed that changes in the appointment procedure are desirable, then we consider referring this matter to a federal-provincial committee of Attorneys General.

THE PROCESS OF CONSTITUTIONAL REVIEW

The process of constitutional review has permitted an examination of differences of opinion between provinces and the federal government as well as among the provinces themselves. I think it is fair to say that although most differences appear to be federal-provincial in nature, there are occasions when provinces differ more substantially among themselves. I personally would feel distressed if public and honest discussion of these differences were to be interpreted as evidence that our Canadian system were overburdened. On the contrary, it should be clear in the public mind that inability to expose differences would constitute more convincing evidence that our system was not functioning well.

In view of the nature of the differences to which I have just referred, and, since resolution of these differences cannot avoid having a substantial impact on both levels of government, we in Prince Edward Island are of the opinion that future discussions ought

to be primarily federal-provincial ones and any mechanism that is devised to continue this process should include both levels of government throughout all stages of the process.

The process of constitutional review involves substantial long term and short term considerations. It is our hope that the long term perspective may remind us that for a great many people the concept of Canada is much more than a tangible entity, and it is much more than a solution to an economic problem. There are other kinds of union that offer greater economic advantage.

For many Canadians, the concept "Canada" is an ideal that embodies a way of life, an identity, and a camaraderie that cannot be found anywhere else. Such perceptions go far beyond aims of economic advantage; indeed they may compel economic sacrifice.

I believe that the people who founded this country were moved by such a spirit. It is my feeling, and the feeling of many people in Prince Edward Island, that if we possess this spirit in the forefront of our minds and hearts, then the agreements we forge during the process of constitutional reform are certain to be lasting ones.