

CONFIDENTIAL

Second Working Session, Constitutional Conference

September, 1970

BRIEFING PAPER

September 9, 1970

Report from the Continuing Committee of Officials

Paramountcy as Applied to Public Retirement Insurance

A. Federal Objectives in the Discussion of this Subject

1. To have the report of the CCO approved, with further consideration to be given the subject in the CCO.
2. To seek a consensus that the protection of portability of entitlement to benefits in public retirement insurance plans should be a constitutional goal.

B. Discussion Guide

Federal position - While the CCO report should be approved and further study undertaken of the means to ensure portability, the Conference might at this session record agreement on the desirability of the constitution assuring portability of entitlement to benefits.

Provincial position - Many, if not most, will probably support this proposal. Probably Ontario and Quebec will argue that even without any constitutional provisions re portability, it can be adequately provided for by intergovernmental agreement, or by the influence of the federal government because of its concurrent power in the field.

Comment - Should Canadians have to rely on the possibility of intergovernmental agreement, when they have at stake perhaps their major life savings? And may there not be conflicts of interest between provinces of emigration and immigration which will inhibit agreement? (See also Income Security and Social Services, pp. 86-90).

C. Background

1. CCO Report - The Continuing Committee of Officials is still engaged in examining this subject, as directed by the Constitutional Conference in December 1969. Its progress report to the Conference is attached. The report outlines the nature of the CCO's study of the problem and the approaches which it has identified. The CCO proposes, subject to direction from the Conference, to continue its work with a view to reporting more extensively to the next

meeting of the Conference. Because the CCO is not yet ready with a final report, it is suggested that the second working session would not want to enter into substantive consideration of the paramountcy problem.

As the CCO Report indicates, there has been general agreement on the desirability of ensuring, as far as it is possible to do so in the constitution, the portability of entitlement to benefits in public retirement insurance plans. The difference of opinion has been only with respect to the best means for achieving this end.

2. Federal Proposal - Also attached is a copy of a memorandum submitted by the federal delegation to the CCO and considered at the recent CCO meeting.

This memorandum emphasizes that the main concern of the federal government in advancing the proposal for federal paramountcy last December, was, and remains, to ensure portability in the transfer of benefit rights under public retirement insurance plans.

The memorandum reviews the possible means of achieving portability which have been examined by the CCO.

The federal memorandum also proposed for consideration a further means of ensuring portability: a constitutional provision (perhaps attached as a condition to the grant of concurrent federal and provincial powers over public retirement insurance) requiring that such powers be used in a manner that would ensure portability of entitlement to benefits. The federal delegation considered that this further proposal would avoid the problems associated with paramountcy, and would avoid the setting out of detailed criteria in the Constitution.

This proposal was put forth by federal officials for discussion purposes only. The CCO expressed interest in it, but considered that further study should be given in relation to the others under examination. Some governments, notably Quebec, wanted further opportunity to consider the latest suggestion. As it appears to be of some interest to provincial governments, we will also require more time in order for Cabinet to consider this alternative.