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CONSTITUTIONAL CONFERENCE

A CONSTITUTIONAL OBLIGATION TO REDUCE  
REGIONAL DISPARITIES

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CONSTITUTIONAL OBLIGATION TO REDUCE REGIONAL  
DISPARITIES

A. Introduction

At the December 1969 session of the Constitutional Conference the following conclusion was reached:

"The Conference reiterated the earlier agreement that the objective of reducing disparities across the country should be written into the preamble of a revised Constitution as a basic goal of the Canadian people.

It was recognized that both levels of government had responsibility for the achievement of this goal and that each should have appropriate powers for this purpose. Eight provinces and the federal government agreed that the federal government should have the power to alleviate regional disparities in relation to the income of individuals, inequality of economic development and standards of public services. British Columbia and Alberta advanced the view that, instead, a guaranteed annual income would remove disparities between individuals wherever they might be in Canada and therefore the effect would be to lessen regional disparities.

There was some support for the inclusion of a substantive provision in the body of the Constitution which would set forth the obligation, not subject to judicial review, of the federal and provincial governments related to regional disparities.

Because of the significance of the legal questions raised in the discussion, the Conference agreed that the Continuing Committee of Officials should give further study to the implications of placing specific clauses in the Constitution."

The inclusion of such clauses in the constitution creating an obligation on the federal and provincial governments, not subject to judicial review, may be seen as having both legal and political implications. In accordance with the December 1969 conclusions, the legal implications have been examined by the Continuing Committee of Officials.

B. Legal Implications

It has been suggested at various times that the responsibilities of governments to reduce regional disparities might be expressed in the preamble to the constitution, or in provisions in the body of the constitution variously described as "non-enforceable obligations", "purposes and principles", or "directive principles".

1. Preamble

All governments have expressed agreement (as recorded in the December 1969 conclusions) that the objective of reducing disparities across the country should be written into the preamble. Clearly, such a statement would not be regarded as directly enforceable: that is, it would not create legal rights or duties which would enable parties

to bring actions in court for its enforcement. However, the courts might have resort to the preamble occasionally as an aid to interpreting other provisions of the constitution whose meaning was ambiguous.

## 2. Other Provisions of Principle or Obligation

With respect to such statements in the body of the constitution itself, it appeared to the Continuing Committee that there would be little difference in legal effect as between "non-enforceable obligations", "purposes and principles", "directive principles", or any other such formulation, provided that the constitution made clear with respect to any of them that they were not intended to create any judicially enforceable rights or duties. However they might be described, such provisions would differ from the preamble mainly in the degree to which they could appear to impose obligations on governments rather than simply state objectives, and the greater degree of detail in which they might be expressed. This greater detail might give them a stronger political effect than a more general statement in the preamble. However, their legal effect would be essentially the same as that of the preamble, except that the courts might more readily resort to them rather than to the preamble for the purpose of clarifying ambiguities because they would be part of the constitution proper rather than preambular in nature. But it was also recognized that nothing could be asserted with complete assurance on this point as there is little in Canadian constitutional experience to indicate precisely what the judicial approach might be. It is probable, however, that the effect of such constitutional provisions would not in principle be significantly different from that of the objective stated in the preamble, on which an agreement has already been recorded in the conclusions of the December 1969 meeting of the Constitutional Conference.

This view of the effects of a statement of principles in the constitution assumes, as noted above, that the constitution would make clear that such principles were not to be judicially enforceable. If this is not made clear, there would be a possibility of attempts to invoke the aid of the courts to require legislative bodies to enact laws to comply with these constitutional principles. It was the view of some delegates that the intent that such principles are not to be judicially enforceable should be expressly stated in the constitution. Other delegations thought this intent might be implied in the wording of the principles themselves.

It was also noted by some delegations that a statement of obligations on all governments to reduce regional disparities might have the effect of enhancing legislative powers of those governments which take action for this purpose: that is, they might contend that their action was justified, even though not clearly within the scope of their normal legislative ambit, on the grounds that they were meeting a general constitutional obligation to reduce regional disparities.

Some delegations did not consider this possibility to be a significant problem; on the other hand, some suggested that it might be desirable to include in the constitution a provision that nothing in the statement of principles is to confer on any legislative body any power that it would not otherwise enjoy.

C. Conclusion concerning Legal Effects

The Continuing Committee is therefore of the view that responsibilities of governments to reduce regional disparities could be stated in both the preamble and the body of the constitution with a legal effect which would be similar in kind in each case and would be limited. The extent of the use of such provisions by the courts as aids to interpretation of the constitution would depend not only on the choice to be made, as noted above, of the degree to which such use is expressly limited by the constitution, but also on the degree of particularity with which they are stated. Their political effect as criteria for governmental action will also depend on the particularity of their expression. This raises the question of precisely what is meant by "regional disparities" and of the extent to which the means for their reduction should be indicated in the constitution.

D. Definition of Regional Disparities

Various discussions during the course of the constitutional review suggest that the term "regional disparities" is taken to embrace a variety of differences which may exist from one region to another across the country, including the following:

- differences in the quantity and quality of public services,
- differences in the average per capita personal income,
- differences in the relative rates of economic growth and development,
- differences in social and cultural development,
- differences in the degree of "opportunity" available to individual Canadians (which could be attributed to the other differences identified).

As an illustration, a broad definition such as this seems to have been implied in the wording of the objective which was suggested by the Government of Canada in the working paper "The Constitution and the People of Canada":

"To promote national economic, social and cultural development, and the general welfare and equality of opportunity for all Canadians in whatever region they may live, including the opportunity for gainful work, for just conditions of employment, for an adequate standard of living, for security, for education, and for rest and leisure."

One point which has been consistently stressed by some delegations during the Continuing Committee's discussions is that a clear distinction should be made between equalization payments and other measures to alleviate regional disparities. Equalization payments are made to ensure that a reasonably comparable level of public services can be offered by all provincial governments across the country without the imposition of unduly high levels of taxation on the citizens of those provinces whose economic situation is relatively weaker. Such payments will not necessarily get at the root causes of the disparity, although they may assist some provinces in providing certain services which are necessary for economic development. Measures to alleviate the basic economic and social differences, such as economic development programmes, are in a different

category. If such measures, or other developments with important economic consequences, were to result in the elimination of the differences that now exist between regions, these could eventually end the requirement for equalization payments. In short, the equalization payments are a partial offset to some of the effects of regional disparity; other programmes and other actions are also required to reduce or eliminate it.

The point has also been made that disparities are discernible at different levels. At the national level, there may be disparities in the economic situation of one or more provinces, relative to other provinces. At the same time, there may be disparities between one or more areas within a province and other parts of the province. Recognition of these factors leads to the conclusion that both the federal and provincial governments should have responsibilities, along with appropriate powers, to alleviate disparities.

Some provinces have taken the view that the stress should be placed on the concept of general economic disparities between individuals. It has been proposed that steps should be taken to alleviate such disparity through the device of a guaranteed minimum annual income, and it has been argued that regional disparities would then be alleviated automatically because of the better income position of individual citizens in each region. Other delegations have expressed the view, however, that the guaranteed minimum income would have to be set at an unattainably high level, before this could have an appreciable effect on the tax base available to provincial governments in the less prosperous provinces.

#### E. General Conclusion

The above paragraphs have attempted to identify the main considerations which appear to be involved when the subject of the constitutional aspects of regional disparities is being dealt with. It seems clear that final conclusions on the constitutional treatment of this subject can only be reached in the light of the outcome of other aspects of the constitutional review.

It has already been accepted by the First Ministers (see the conclusions of December 1969) that both levels of government have a responsibility for the achievement of the goal of reducing disparities, and that each government should have appropriate powers to carry out its responsibilities in this regard. Conclusions concerning the allocation and statement of powers in a new or revised constitution will therefore have a bearing on the nature of constitutional provisions dealing specifically with regional disparities. For example, one delegation has indicated that it could find a statement of purpose and principle regarding regional disparities to be sufficient, assuming an appropriate distribution of powers, if there were a firm provision concerning federal equalization responsibilities in the substantive part of the constitution.

It would seem also that the inclusion of a statement of purposes and principles in the Constitution could depend, in the last analysis, on what else might be proposed to go into such a statement.

In view of such considerations, the Continuing Committee suggests that further examination of the constitutional aspects of regional disparities should proceed at a later stage of the constitutional review, when actual drafting of provisions may be considered in the light of the outcome of other parts of the review.