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CONSTITUTIONAL CONFERENCE
CONTINUING COMMITTEE OF OFFICIALS

Paramount and Public
Retirement Insurance

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Paramountcy and Public Retirement Insurance

A. Introduction

At the last session of the Constitutional Conference, held in December, 1969, it was agreed that the Continuing Committee of Officials "should undertake a detailed examination of the application of the concepts of paramountcy, federal or provincial, in the field of public retirement insurance".

The Continuing Committee of Officials has explored the question of paramountcy and some alternatives. Federal officials, at the end of the 11th meeting of the Continuing Committee, expressed the hope that they would be able to circulate a paper for discussion at the next meeting.

As in the past, federal officials wish to emphasize that in advancing the proposal last December for federal paramountcy, the main concern of the Government of Canada was, and remains, to ensure portability in the transfer of benefit rights under public retirement insurance plans. Federal officials have therefore been interested in exploring not only federal paramountcy but other means by which this objective could be achieved. It may be helpful first to review briefly the possibilities which have been considered in the Continuing Committee to date.

B. Means for Ensuring Portability Considered by C.C.O.

1. Federal Paramountcy - either

(a) over all aspects of public retirement insurance; or

(b) as applied only to:

(i) federal enactments of criteria for public retirement insurance plans for the purpose of ensuring portability, which enactments would render invalid inconsistent provincial laws which did not meet these criteria; or

(ii) federal remedial legislation changing provincial laws which did not make adequate provision for portability, if the legislatures themselves failed to make such changes.

These possibilities have been canvassed at some length in the C.C.O.

2. Provincial Paramountcy over all Aspects of Public Retirement Insurance -

This possibility has not been canvassed as extensively in the C.C.O. The federal delegation is of the view that provincial paramountcy would allow the maximum of freedom and diversity for provinces in the development, should they so desire, of distinctive public retirement insurance plans. But it is felt that such an arrangement could leave the door open to divergencies that would in their effect hinder the portability of benefit rights and hence the mobility of Canadians. There would not be any ultimate means of ensuring the portability of entitlement to benefits. While it would of course be possible to achieve portability by agreement among all the provinces with public retirement plans, this would be equally true in a situation where there was concurrent powers and federal paramountcy - but in this latter case there would be the ultimate means of ensuring portability should agreement be impossible.

3. Constitutional Obligation to Harmonize Retirement Insurance Plans -

This would involve an obligation on all governments with public retirement insurance plans to make their plans "harmonize" with plans of other governments to the extent required to permit adequate portability. The problem of the enforceability of constitutional obligations generally, and the problem of deciding which plan is "out of harmony" have been considered by the C.C.O.

4. Constitutional Criteria for Portability -

This has been most commonly described as a constitutional statement of criteria (rather than an enactment of criteria by Parliament) with which all public retirement insurance plans (federal or provincial) would have to comply. The problem of spelling out these criteria in detail, presumably including detail as to means by which portability is to be ensured, has been discussed in the C.C.O.

C. Another Possible Means for Consideration

Federal officials suggest that one further possibility be discussed by the C.C.O. for ensuring portability of public retirement insurance benefits. The proposal, a variant of those already discussed, would be for 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 will ensure portability of entitlement to benefits.

The precise wording of such a provision would of course require careful consideration. But it might have some advantages over the other possibilities thus far considered.

- (1) It would avoid the problems associated with paramountcy, federal or provincial, as discussed so far.
- (2) It would involve a single criterion expressed more in the terms of the purpose to be served. This would avoid the detail of criteria for legislation which was contemplated in possibility B. 4. (supra) which might seem inappropriate in a constitution, and might create inflexibility.

D. Suggested Disposition of this Subject

The federal delegation to the C.C.O. suggest that this further possibility, as set out above, should be discussed by the Continuing Committee and then the Secretariat should prepare a report to the second working session of the Constitutional Conference setting out the various possibilities explored and the implications of each. It will then be for first ministers to decide whether they wish to accept or reject any of these possibilities or to direct further study of any of these or other possibilities.