

FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS

Opening Statement  
by the  
Honourable Frank D. Moores  
Premier of Newfoundland

Ottawa  
October 30-November 1, 1978

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HONOURABLE FRANK D. MOORES  
PREMIER OF NEWFOUNDLAND  
at the  
FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION  
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Mr. Chairman:

Discussions on changing the provisions of the B.N.A. Act have been ongoing for decades but for a variety of reasons have not met with success. The Province of Newfoundland welcomes this opportunity to express its views on our constitution and possible changes to it, and it is our hope that success will at last be attainable. Certainly, we approach these discussions positively and in a spirit of cooperation. There are a number of matters which are of fundamental importance to our province just as there are matters of fundamental importance to the Federal Government and other provinces. If we can all recognize that such constraints exist and that we must all work within them, I believe agreement can be reached which will be equitable to all the partners in this great confederation.

While any constitution essentially forms the basis from which social, political and economic activity spring, not all the stresses currently being felt in our nation are caused by problems with our constitution. Many of our problems have little to do with the B.N.A. Act and merely changing it will not solve them. It is worth remembering that the current constitution has served us well for over a century and, if needs be, can continue to do so in the future. In any free country a constitution will only work if there is a collective will to make it

work and even the best conceived set of constitutional arrangements will fail if there is no underlying spirit of cooperation. Unfortunately, there has not always been this spirit of cooperation on the part of the Federal Government over the past few years. On the contrary, we have seen the reasonably flexible provisions of the B.N.A. Act being strained in their application by the federal desire to expand in various resource areas. Concurrent with this we have seen a lack of desire to enforce existing federal powers with regard to free interprovincial trade particularly with regard to hydro-electric power. It is passing strange that energy from Newfoundland is somehow different than energy from other provinces and that the same federal rules do not apply to all provinces to ensure unimpeded transportation of energy across provincial territory.

Mr. Chairman, what we must strive for is a set of constitutional arrangements by which we can all operate independently within our own particular sphere and by which we can effectively cooperate in the many areas where both orders of government have a useful and legitimate role. We must all recognize that there are essential roles for both levels of government and our constitution must be flexible enough to permit variations throughout the nation to meet different needs in different regions at different times.

While the Province of Newfoundland will be putting forward its views and suggestions at this Conference and at subsequent meetings and while some of these are considered vital to us, a fundamental principle to which we fully subscribe is that there must be a strong federal government in this nation. Therefore, while we feel there are many desirable changes to be made in our constitution, it is not our intention to undermine the ability and power

of the federal government to act for all Canadians when it is in the national interest to do so.

By stating this fundamental principle we do not mean to imply that only the federal government should be strong and that the provinces should be weak. Quite the contrary. We feel that within their own sphere, provinces should also be strong and should have the resources necessary to effectively implement their responsibilities. We do not and will not subscribe to proposals which will either create weak provinces which cannot be viable or create a central government which cannot act effectively. What is required is a balance in our nation which will result in a strong, but not omnipotent federal government, and strong provinces. It is obviously not possible to state fully at this time just which arrangements of constitutional powers would achieve this result but our approach to these discussions will be based on achieving this sort of balance in our nation.

Within this general context there are a number of matters of vital concern to my Province which will have to be resolved satisfactorily to make the process of constitutional change meaningful and constructive. It is my Province's belief that a key issue in any constitutional reform is the Division of Powers. It is this factor that will most dramatically effect the balance between the federal and provincial governments and which will ultimately determine whether the fundamental principle I have just stated, of a strong federal government along with strong provinces, will be achieved. The areas of major concern to the Province of Newfoundland are the control over natural resources (in particular, fisheries and the resources of the Continental Shelf), uninterrupted interprovincial trade (in particular with respect to electricity) and items relating to taxing power, communications, spending and declaratory powers.

Discussions on the Division of Powers must proceed at the same time and along with those on institutional changes. Jurisdictional and institutional issues interact with one another in such a way that it is not possible to develop a position on one in isolation from the other. It is imperative, therefore, that a comprehensive approach be adopted with respect to any constitutional reform.

Under the B.N.A. Act, provinces own the natural resources and it is the ownership of these and the exploitation of them which is the cornerstone of provincial rights and viability. Unlike most of the other provinces, however, Newfoundland is constrained in this regard in two vital areas — the fisheries and offshore rights.

At the present time, the Province has virtually no say in the management of the fishing industry even though it is the basis on which Newfoundland was founded and even though it is the basis on which much of our future lies. The current situation is analogous to the Province of Manitoba having no say in agriculture or the Province of Alberta having no say in energy. We recognize that there is a legitimate role for the federal government in our fishery but at the same time we feel the federal government must recognize that the Province has a legitimate role to play as well. We believe strongly that any changes in our constitution must include provision for a real and meaningful input by the Province into the management of our fishing resource and we are prepared to accept the costs proportionate to our involvement as well as any revenues involved. Serious consideration should be given to attaining concurrent jurisdiction in this sector with provincial paramountcy. We do not believe that this is an unreasonable request or that it will in any way undermine the overall power and authority of the federal government to manage the national economy and deal with foreign nations. What

it will do is ensure that the Province will have an effective role in a sector of the economy which is both historic and vital to the development goals of Newfoundland society.

Mr. Chairman, we also believe strongly that in the development of a new constitution, the control of the continental margin should rest with the Province. Again, this is a resource sector where Newfoundland is quite unlike most other provinces. The area of our continental margin is some 500,000 square miles and when combined with the 150,000 square miles of land mass means that Canada gained rights over some 650,000 square miles of territory in 1949. We believe the Province should have control of its total resource area and we believe that if we are to become a strong Province we must have the same degree of control as other provinces.

How can Newfoundland ever hope to reach the same degree of viability as other provinces if it only controls one-quarter of its resource area? How viable would Alberta be if it did not own the tar sands, or Ontario if it did not own the southern half of the Province.

Once again we do not believe that Newfoundland's control of the resources of its continental shelf will in any way decrease the power of the federal government to manage the national economy effectively or perform its other responsibilities. It would still obtain the same benefits that now accrue to it from resources owned by provinces such as onshore minerals, forests, energy, etc., and in our opinion would be fully entitled to them. We

do not believe that the federal government needs to control three-quarters of Newfoundland's resource area any more than it needs to control three-quarters of any other provinces resources. The Province of Newfoundland does need to control 100 percent of its resources, however, if it is ever going to achieve the same degree of viability as other provinces which already have 100 percent control.

Mr. Chairman, in this regard I was extremely concerned over the insertion in Bill C-60 of Clause 32 which states:

"The territorial limits of Canada shall include, in addition to the provinces and territories described in paragraphs 31(b) and (c), all other territory for the time being forming part of Canada but not included in any province or territory described in either of those paragraphs".

The explanatory notes accompanying this states:

"This section would make it clear that Canada includes some territory that is not included in any province or territory, such as territory under the territorial waters of Canada".

This unilaterally asserts federal ownership over the continental shelf surrounding the Province of Newfoundland and, as you know, our position is that the continental shelf is owned by the Province. I believe that no action should be taken on this question of resource ownership by the Federal Government acting unilaterally.

During the next two days, I will be expanding on these matters as they arise. For the present, however, I want to go on record that in these two areas the Province believes there must be an accommodation in any new constitution to meet our legitimate needs, and it will be extremely difficult for my Government to accept any package of reform which does not address these two central issues.

Mr. Chairman, in addition to these central questions, there are quite a few areas relating to the constitution where the Province of Newfoundland wishes to state its general position and make suggestions. These include the question of the role of the Monarchy, reform of the Senate, the Charter of Rights, the Supreme Court and the more general questions of provincial boundaries and amending formulas. I would now like to make some comments on some of these.

As you know, the Province of Newfoundland, along with the other provinces, does not wish to see any changes which will downgrade the existing status of the Monarchy as an institution in our nation. I recognize that your stated intent is to merely reflect the current status of the Monarchy and not to change it. Given this fact, what is essential is to ensure that the relevant clauses reflect this reality. While it appears that many of the provisions do in fact simply state what is now current practice, the fact that the powers of the Governor-General will now be vested in him by Legislation and not through Letters Patent by Her Majesty does represent a change, the implications of which must be looked at more closely. I certainly believe that the Monarchy is one area where no government wishes to have heated debate, and I look forward to seeing this question settled in a satisfactory manner.

Mr. Chairman, I welcomed your decision to refer the question of Senate reform to the Supreme Court to clarify any questions which provinces may legitimately have with regard to federal power to do so under the existing constitution. While this action will clarify the right to make changes, there is still the question of what changes are most desirable and achievable and in this regard, I would like to make several comments. In general, I feel that many of the changes suggested are reasonable. However, I do not feel the proposed method of selecting representatives from each province is workable. I would suggest that serious consideration be given to having fixed terms of office for those chosen and to having the government of each province appoint the provincial share. In fact, consideration might be given to having all representatives chosen by the provinces since a primary function will be to present regional views on issues.

In addition, I do not think that the reformed Senate, whatever its final shape, should in any way undermine the role which federal-provincial conferences play in making our system work. Certainly, it is our view that the development of this instrument, while far from perfect, is a very important feature which provides a necessary and vital mechanism for both orders of government to directly discuss mutual problems and reach workable concensuses.

With regard to the Charter of Rights, the Province of Newfoundland believes there is considerable merit in entrenching certain rights. However, we do have a number of reservations about entrenching some of the rights contained in the proposed Charter, which, as you are aware, goes well beyond that envisaged at Victoria. We recognize

that entrenchment of rights will not in itself protect individuals and groups in our society. Some of the most repressive regimes in the world today have extensive rights entrenched in their constitutions and some of the most humanitarian governments have no guarantees of rights at all in their constitutions. I believe it is true to say that any government bent on abrogating civil liberties will not be restrained by a constitutional bill of rights and any government bent on upholding such liberties will not be deterred by the lack of such a constitutional feature. Nevertheless, while a constitutional bill of rights is not an absolute guarantee of civil liberties, it is one technique for preservation of rights and would tend to have a restraining effect on any democratic government that might at some future date contemplate the limitation of some right.

Aside from the philosophical questions of entrenching certain specific rights which I have already referred to, there are practical implications inherent in entrenchment which will pose very real problems for Newfoundland. I will deal with these in greater detail when we come to that specific topic during this Conference.

The proposed changes with regard to the Supreme Court are generally acceptable to the Province of Newfoundland although we have some reservations regarding certain aspects. For example, the proposal to have only the Quebec judges review questions relating to Quebec civil law may not be as beneficial as the present structure where the common law and civil law systems are enriched by each other. In addition, while there is merit in openness with regard to appointments to the Court, care must be taken to ensure that the independence and impartiality of

judges is not undermined through a process of political and public interrogation. Finally, we see no compelling reason to increase the size of the court nor to have a separate Constitutional Tribunal within it but we do not feel strongly on either of these issues. There is one aspect relating to courts which is not covered in the current proposal but which we have long felt is necessary and that relates to consultation with the provinces with regard to appointments to the provincially constituted court at the Superior, District or County Court level. I would like to suggest that appropriate sections be included in the proposals to take account of this shortcoming.

Mr. Chairman, as I indicated at the beginning, the Province of Newfoundland is dedicated to national unity and to the concept of having a strong central government as well as strong and viable provinces. In a nation such as we have, it is essential to have a central government which can effectively fulfill its mandate particularly with regard to the distribution of income throughout the nation by transfers between governments and directly to individuals.

In this regard, we believe that there should be a strong commitment to overcoming regional disparities in the constitution. We recognize that it would be virtually impossible to write a quantifiable commitment in a constitution and so the best that can be attained is a qualitative statement. Given this fact, we feel that there should be a formal review, by way of a Royal Commission, say every ten years, to report on progress and recommend measures to improve efforts. Mr. Chairman, we believe

that both the commitment to overcoming regional disparities and the periodic review process should be included in the constitution.

The constitution should provide each province the chance to develop its own economy to meet its particular needs. No province should be placed in a position where it will likely always be disadvantaged because of external constraints. I have cited two specific examples with regard to Newfoundland. Unless we have the means to develop our resources on a basis similar to other provinces, it is going to be extremely difficult for us to overcome many of the regional disparities with which we are now faced. However, we have the resources to become a strong viable province and we look to the revamped constitution as a means which will permit us to achieve this objective, which is common to both our governments.

Mr. Chairman, we will support the need for a federal government which has the mandate and the power to effectively manage its national and international responsibilities including its responsibilities to see that all Canadians receive a reasonable standard of public services. In return, we look to the support of the federal government and the other provinces to ensure that we have the same degree of control over our destiny that other provinces now enjoy. I believe you will agree that indeed this is a common goal for the federal government and all the provinces and can be achieved without decreasing the ability of the federal government to perform its responsibilities and without adversely affecting the aims and objectives of other provinces.

We have discussed constitutional change for decades. Now is the time for action.