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19th ANNUAL PREMIERS' CONFERENCE

CONSTITUTIONAL REFORM: THE POSITION OF THE PROVINCES

C O M M U N I Q U E #2

August 10, 1978

Regina/Waskesiu
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I. THE PROCESS OF CONSTITUTIONAL REFORM

For many years, provincial governments have shown concern over constitutional issues and have participated actively in a large number of conferences and discussions. As a result of provincial initiatives and leadership, a great deal of useful progress has been made in identifying problems requiring constitutional action, and achieving a greater understanding of their implications.

Premiers agreed that the division of powers is the key issue in constitutional reform, and should be addressed in conjunction with other matters.

1. The Importance of Constitutional Discussions

The provinces endorse the need for constitutional reform, to provide the basis for all Canadians to achieve a greater measure of economic and social well-being and cultural fulfillment, and to establish more harmonious relations among governments.

2. First Ministers' Conference on the Constitution

The provincial governments therefore look forward to the forthcoming First Ministers' Conference on the Constitution now scheduled for the end of October.

They believe that the Conference should be open.

They believe, further, that the agenda must accommodate all proposals, and should be drawn up jointly by the federal government and the provinces.

The Premiers accordingly have instructed Ministers responsible for the Constitution to continue preparatory work, and to invite the federal Minister of State for Federal-Provincial Relations to meet with them.

3. Proposals

In the view of the Premiers, important proposals from all sources must be given careful and thorough consideration in the constitutional review process. Some of these proposals are:

- the consensus reached by the ten provincial Premiers in October, 1976.
- proposals made, or under preparation, by or for federal or provincial governments, such as the report expected from the Task Force on Canadian Unity, co-chaired by Hon. Jean-Luc Pepin and Hon. John Robarts
- the federal government's Constitutional Amendment Bill

4. The Importance of Agreement

The Premiers firmly believe that significant constitutional reform should have the concurrence of all governments, recognizing the equality of status of all provinces in the process.

It is doubtful whether the federal government has the legal authority to proceed unilaterally with proposed changes to the Senate and the role of the monarchy. In any event, it would clearly be wrong for them to undertake unilateral action in those or other important areas without provincial support.

Constitutional reform must be part of a process that will improve the well-being of all citizens and strengthen intergovernmental relations.

5. A Comprehensive Approach

It was agreed that discussions on constitutional reform cannot be compartmentalized into artificial divisions. Institutional and jurisdictional problems interact in such a way that they must be considered together.

The Premiers agreed that problems involving the distribution of power between the federal government and the provinces have been a major source of friction and have a negative impact on the daily lives of all Canadians. These problems demand equal attention.

6. A Realistic Timeframe

A comprehensive review is unlikely to be successful if arbitrary deadlines are imposed. A fixed and rigid timetable is unrealistic and does nothing to contribute to the harmony and goodwill necessary to complete a process of constitutional review.

II. THE SUBSTANCE OF CONSTITUTIONAL REFORM

1. The Consensus Reached by Premiers in 1976

Provinces agreed to advance, again, the 1976 consensus, which has not received an adequate response from the federal government. That consensus constitutes a useful starting point for discussions with the federal government in crucial areas involving the distribution of powers, and represents a positive contribution toward the resolution of significant problems.

Quebec said that, while committed to its option of sovereignty-association, it could generally go along with the 1976 consensus and most of the other constitutional points raised in Regina. Quebec went on to state that this approach falls within the mandate of the Quebec government to reinforce provincial rights, within the present system, and also illustrates some of the minimal changes required to make the federal system a serious alternative in the forthcoming Quebec referendum.

The 1976 consensus covered a number of areas of concern:

- immigration
- language rights
- resource taxation
- the federal declaratory power
- annual Conference of First Ministers
- creation of new provinces
- culture
- communications
- Supreme Court of Canada
- the federal spending power
- regional disparities and equalization.

2. Other Areas of Consensus

In addition, the Premiers, in the course of their discussion in Regina, have reached agreement on a number of additional substantive matters, on which federal views are invited:

- abolition of the now obsolete federal powers to reserve or disallow provincial legislation
- a clear limitation on the federal power to implement treaties, so that it cannot be used to invade areas of provincial jurisdiction
- the establishment of an appropriate provincial jurisdiction with respect to fisheries.
- confirmation and strengthening of provincial powers with respect to natural resources
- full and formal consultation with the provinces in appointments to the Superior, District and County Courts of the provinces
- appropriate provincial involvement in appointments to the Supreme Court of Canada.

3. Other Subjects

Further, there was a consensus that a number of additional matters require early consideration

- the federal emergency power
- formal access of the provinces to the field of indirect taxation
- the federal residual power
- amending formula and patriation
- the delegation of legislative powers between governments.

4. Elements of the Constitutional Amendment Bill

With regard to the federal Constitutional Amendment Bill, Premiers expressed a number of substantive concerns, in addition to the points noted previously.

Provinces agree that the system of democratic parliamentary government requires an ultimate authority to ensure its responsible nature and to safeguard against abuses of power. That ultimate power must not be an instrument of the federal Cabinet. The Premiers, therefore, oppose constitutional changes that substitute for the Queen as ultimate authority, a Governor General whose appointment and dismissal would be solely at the pleasure of the federal Cabinet.

The provinces regard the House of the Federation, as proposed, as unworkable.

Some provinces support the principle of constitutional entrenchment of basic rights; while others believe that, under our parliamentary system, individual rights are better protected by basic constitutional traditions and the ordinary legislative process.

Provinces are concerned over section 8 of the federal Bill and its potential interference with important provincial legislation respecting land ownership and other matters.

Some Premiers noted that the proposed language guarantees go substantially beyond earlier proposals, and feel that practical difficulties may be encountered in their provinces, particularly in respect of provincial government services and courts.

All Premiers expressed grave concern that section 109 of the B.N.A. Act, concerning provincial ownership of natural resources, has not been carried forward into the proposed new constitution.

Premiers are concerned that section 32 of the Constitutional Amendment Bill is an attempt by the federal government to acquire from the provinces jurisdiction over offshore territories and resources.

Premiers feel that, if there is to be a preamble, it should be short, clear, and precise. A statement of aims, if any, would best be included in the preamble.

Premiers stressed that all these issues, and others, will require careful and detailed discussion with the federal government.