

**RELEASE****COMMUNIQUE**

Date:

February 12, 1979

For Release:

Pour Publication: ~~immediate~~

The Prime Minister made public today the list of eleven subjects which at last week's First Ministers Conference he proposed for study in the second phase of the continuing constitutional review. The Prime Minister said that, in the second phase, work would continue on a number of subjects which had been discussed but not resolved at the Conference. Despite the lack of unanimity on most items in the "first list" of subjects discussed at the Conference, much progress had been made, and it would be important to build further in the coming months on what had already been achieved.

With regard to the eleven subjects he had proposed for this second phase the Prime Minister noted that in general they are items where the present Constitution makes no specific provision, or where it is imprecise and where clarification would be helpful. Seven of the eleven items concern the powers to manage the economy and to maintain an effective economic union. They therefore relate to what the Pepin-Robarts Report calls "the surplus from economic union".

The Prime Minister says he attaches particular importance to the item which concerns the place of Canada's native peoples in a new Constitution. He said he hoped that representatives of the native peoples would participate in the work on this question.

The Prime Minister says it is quite possible that one or more provincial governments may want to propose additions to this "second list".

"SECOND LIST" OF ITEMS FOR STUDY IN
THE CONTINUING CONSTITUTIONAL REVIEW

1. Powers in the economic field to fight inflation, unemployment and regional disparities, and to protect the dollar.
2. The question of non-tariff barriers to inter-provincial and international trade and investment.
3. The question of interprovincial and international movement of goods and services including the right of passage of electricity and oil, gas and other minerals.
4. The question of barriers to the movement of persons for employment.
5. The regulation of competition.
6. Regulation of the Canadian securities market.
7. The question of marketing boards.
8. The problem of jurisdiction over minimum wages.
9. Foreign relations and the role of provinces.
10. The question of the appointment of Superior Court judges, and of the setting up of federal courts for the administration of federal laws.
11. Canada's native peoples and the Constitution.

Explanatory Notes regarding the Eleven Items
on the "Second List"

1. Powers in the economic field to fight inflation, unemployment and regional disparities, and to protect the dollar

The most important issue here is probably not additional federal constitutional powers, but the maintenance of a substantial overall role in the economy for the federal government including something like the current tax powers. This gives the federal government a base level, around which it can vary taxes and expenditures - over time and across regions - in order to respond to cyclical fluctuations in the economy and to regional disparities. Dealing with regional disparities obviously requires continued access to the full range of revenue sources.

Constitutional provisions - It may be profitable for governments to discuss the constitutional authority for Parliament to impose general wage and price controls in at least the private sector. While there is no thought of re-imposing such controls in the foreseeable future, the need for them could re-emerge at some time, and, therefore a discussion would be useful about the possibility of creating more precise powers that would give the necessary authority without giving too much.

2. The question of non-tariff barriers to interprovincial and international trade and investment

It is well known that in a number of cases, tax purchasing and investment policies of various levels of government in Canada have acted to inhibit the free flow of goods and investment through all regions of the country. In some instances these policies also have an impact on Canada's international trade. There is a need to examine methods for better consultation and coordination to reduce, and if possible eliminate, these adverse effects on the Canadian economic union, some of which can produce "beggar thy neighbour" results, or mutually destructive competition.

Constitutional provisions - The Pepin-Robarts Report makes several recommendations such as

- (a) the clarification of Section 121 of the BNA Act, and its extension to include services.
- (b) the prohibition of barriers to the inter-provincial movement of capital.

One may also need to look at the question of provincial regulations which discriminate among buyers and sellers according to the province in which they are located.

3. The question of interprovincial and international movement of goods and services including the right of passage of electricity and oil, gas and other minerals.

Provinces have, through legislative authority or ownership of energy corporations, considerable influence over the terms and conditions of trans-shipment. Provinces can, for example, tax pipelines: conceivably they could do so in a manner which discriminates against other provinces or countries, even if the federal government has signed a non-discrimination treaty with the country in question. Provinces can also effectively prohibit the transmission of electricity across their territories, either by right-of-way restrictions or refusal on the part of a crown corporation to buy or sell electricity.

It is important, therefore to establish a code of conduct in this respect, and to ensure that the federal government's jurisdiction in interprovincial and international trade may be brought to bear effectively in any situation where it is necessary.

4. The question of barriers to the movement of persons for employment

The right of Canadian workers to cross provincial boundaries to obtain jobs is as basic as the right and freedom of movement generally. Any laws, regulations or practices which, in effect, deny that freedom should be sanctioned only in compelling situations. The federal government included in Bill C-60 provisions which would have given sufficient protection to individuals who seek employment in other provinces, but the reaction of provincial governments has so far on the whole not been encouraging. Recent events in this field have shown that the possibility exists meanwhile of difficult and even explosive situations as individual provincial governments attempt to deal independently with problems which have a bearing on mobility.

5. The regulation of competition

The regulation of practices affecting competition has become more complex in the modern world, and the most effective means of regulating these practices are no longer primarily related to the criminal law, yet the extent to which Parliament can regulate competition by other means is uncertain. Thus, there is need for clarification and reinforcement of Parliament's authority in this area. The Report of the Constitutional Committee of the Canadian Bar Association argues at some length that Parliament should have exclusive power in this field. While it is not certain that this would be the best solution, the subject is clearly a candidate for federal-provincial discussion.

6. Regulation of the Canadian Securities Market

This subject has been on and off the federal-provincial agenda for a number of years, during which time substantial progress has been made by provinces in developing generally uniform securities legislation. It is apparent that the primary function of the Canadian securities market, which is the allocation of investment capital to users, has an impact that transcends provincial and even national boundaries. The impending development of an automated system for trading and clearing securities throughout Canada; the increasing internationalization of securities markets generally and especially those of North America; and difficulties of enforcement of securities laws and policies in this context; all suggest that governments together should review the need for an even more closely-coordinated regulation of the Canadian securities market which might well involve the federal government.

7. The question of marketing boards

Provincial agricultural product marketing boards have on occasion created severe impediments to internal free trade, through regulatory activities which discriminated between goods from provincial and extraprovincial sources. The "chicken and egg war" in 1970-71, involving interprovincial trade in eggs and poultry is a case in point.

While cooperative federal-provincial regulatory mechanisms have since been put in place to enable the creation of national marketing agencies designed to avoid such problems, the potential for trade restrictive regulatory activity on the part of a provincial agency still exists.

As suggested with regard to item 2, the constitutional provisions relating to trade barriers could be strengthened.

8. The problem of jurisdiction over minimum wages

Minimum wages fall under both federal and provincial jurisdiction, and there is a wide range, from \$2.50 in Newfoundland to \$3.37 in Quebec; the federal minimum is about half way between, at \$2.90. There are differing government views about the use of the minimum wage. One view is that it should be comparatively high, to assist the low-paid unorganized worker. Another view is that increases in the minimum wage should be restrained, to attract industry. Some provinces are unhappy when the federal minimum is increased, because they see it as pressure on them to act likewise. The difference between the federal

minimum and a provincial minimum wage means that sometimes workers doing identical work get different pay. In the Canada Works program this problem does not arise because all participants receive the provincial minimum. However, there are sufficient problems in this area that governments ought to make a serious attempt to resolve them.

9. Foreign relations and the role of provinces

It is important and necessary in a revised constitution to state how responsibilities for the conduct of Canada's foreign relations including the treaty power and representation abroad are to be exercised in our federal state. The exclusive power vested in and exercised by the federal government derives from British and Canadian constitutional practice. Federal authority in this field is essential for the effective promotion of the interests of all Canadians. It includes a responsibility for ensuring that provincial interests and responsibilities are adequately reflected in Canada's international relations. There is need to give greater precision to this authority because the interests of provinces, and their activities abroad linked with provincial spheres of domestic jurisdiction, have substantially grown in recent years.

10. The question of the appointment of Superior Court judges, and of the setting up of federal courts for the administration of federal laws.

These issues are placed on the second list at the request of the provinces. They arose during the course of discussions by the Continuing Committee of Ministers about the Supreme Court and related proposals. Since there was not sufficient time during those discussions to adequately study these issues, it was recommended by the Committee that both be studied at an early date after the First Ministers' Conference. Provinces wish to explore options for provincial instead of federal appointment of the judges, as well as possible curtailments of Parliament's authority to establish federal courts.

11. Canada's native peoples and the Constitution

The federal government does not wish to abdicate its special trust relationship with native peoples. It does believe, nonetheless, that an important subject for discussion between governments is the place of Canada's native peoples in a new Constitution and the clarification of federal and provincial responsibilities towards these first citizens. The confusion and mistrust which have all too often characterised administration in this area have been unhelpful, particularly to native people themselves. Frank discussions between all the parties concerned are long overdue, and it is hoped that representatives of the native people would agree to participate in this work.

Additions to the Second List
Continuation of Work Done on the "First List"

1. Natural resources: the completion of work on the latest draft; and the extent of natural resources to which the limitation on federal powers over trade and commerce would apply.
2. The second chamber of Parliament.
3. Further work to complete studies on the question of the federal spending power.
4. Further work to complete progress on jurisdiction over offshore resources.
5. The question of constitutional jurisdiction and federal-provincial cooperative administrative arrangements regarding the fisheries.
6. The question of constitutional change for certain telecommunications carriers; and, in other aspects of the communications field, administrative arrangements, where these are appropriate.
7. The formula for amending the constitution, and the question of patriation.

Items from First List
 which are now set
 aside:

Indirect Taxation
 Supreme Court
 Family Law
 Equalization
 The Charter
 The Declaratory Power
 The Machinery