



le 29 janvier, 1981

L'honorable Jean Chrétien
Ministre de la Justice
et procureur général du Canada
Ministre d'Etat au Développement social
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Monsieur,

Vous trouverez ci-joint un document préparé par notre bureau qui saura peut-être vous être utile. Il contient un résumé de la position adoptée par chaque premier ministre provincial sur chacun des sujets discutés lors de la conférence constitutionnelle de septembre, avec à l'appui des citations tirées des transcriptions de la conférence. Les citations ont été choisies dans le but de démontrer quelques-unes des raisons pour lesquelles la conférence s'est soldée par un échec. J'espère qu'elles sauront vous servir pour vos discours.

Veuillez agréer, Monsieur, l'assurance de ma considération respectueuse.

Tom Axworthy
premier conseiller en
matière de politiques

TABLE OF CONTENTS

- I Resource Ownership/Interprovincial Trade
- II Communications
- III New Upper House
- IV Supreme Court
- V Family Law
- VI Fisheries
- VII Offshore Resources
- VIII Equalization
- IX Charter of Rights
- X Patriation and Amending Formula
- XI Powers Over the Economy

RESOURCE OWNERSHIP /
INTERPROVINCIAL TRADE

British Columbia on Resource Ownership/Interprovincial Trade

Premier Bennett indicated general agreement with the position of the federal government on all the major aspects of this issue. The following abstracts from his statement outline the B.C. government's stance on the issue:

"I would like to say that we support this move of strengthening and confirming the provinces' ownership of natural resources. We don't consider it a giving away or giving in on behalf of the federal government, we see it as a confirmation and strengthening of the provincial power." (Bennett, Sept. 8/80, p. 133)

"We ... are willing, although it does not mean a great deal of value to British Columbia, to support the provinces obtaining indirect taxation." (Bennett, Sept. 8/80, P. 134)

"In the case of international trade agreements, the province does not want to have the provinces conducting international agreements but the province does want to continue to have provincial agencies enter into commercial contracts for the sale of resources in international markets. That has always been done with the co-operation in and aid of the Government of Canada, and I must say that in any international marketing we have had good co-operation from the Government of Canada whether it is in a resource such as coal or in other resources through the trade missions or trade part of the embassies, whether it is in Japan or other Pacific rim countries. So it is important to retain that relationship. We certainly don't want to set up a competitive system with the Government of Canada and we are in full agreement in that area." (Bennett, Sept. 8/80, p. 137 - 138)

Alberta on Resource ownership/Interprovincial Trade

Premier Lougheed indicated his acceptance of federal proposals on some aspects of this issue, but characterized the substantive federal concessions as "insignificant" and restated his contention that further increases in provincial control over resources were still necessary. The tone of his statement on this issue was by and large antagonistic; several abstracts convey the flavour and basic substance of his comments:

On Provincial Ownership:

"What are the rights of the owner? Certainly the rights of the owner of a resource is to determine how the resource should be developed, whether it is private or public and what the nature of the royalties are: where the exploration should take place, and as I am sure is concerning a number of provinces, the speed or rapidity of development both in terms of conservation and social and other impact and the extent to which we process before we sell and then, what we sell. Surely with the right of ownership goes the right to receive value for the resource as a commodity," (Lougheed, Sept. 8/80, p. 119 - 120)

On indirect taxation:

"You mentioned, Mr. Chairman, in your opening remarks, on that aspect of (natural resources), the issue of indirect taxation which is not that significant to our province because essentially we are involved primarily with Crown production and the issue of indirect taxation more significantly comes out of the circumstances of freehold or non-Crown production, so that is not a particularly significant move to us." (Lougheed, Sept. 8/80, p. 121)

On international and interprovincial Trade

"You mentioned the opportunity to move concurrently into inter-provincial trade subject to federal paramountcy but in the area that of course is crucial to us the federal government are already in it with the Petroleum administration Act. So, what has been presented and pardon me for responding I suppose is a better word, to concerns of provinces, the response in our judgment is quite limited." (Lougheed, Sept. 8/80, p. 121 - 122)

"We accept the responsibility fo the federal government to control exports, to determine the degree to which they are surplus to Canadian requirements and we may have some argument from time to time as to the magnitude of that but we accept that jurisdiction. We feel also that the federal role in resources is to assure that there is a Canadian common market in the sense that if we sell as you mentionae, Mr. Prime Minister, beyond our borders that we sell, that there is no discrimination in terms of what we do between other provinces and we accept that. We also accept an overriding emergency power by the federal government in terms of supply shortage.

Then, of course, there is the declaratory power which is a procision which is what I would call the colonial aspect if you want to refer to the colonial aspect, and that was contained in the limited provisions of '79 and it has now been withdrawn and we think of course that too is an element that should be reassessed if we are going to have any constitutional renewal." (Lougheed, Sept. 8/80, p. 122)

General comments:

"The history since 1973 has been one of considerable tension arising out of oil and gas and oil perhaps in particular as the Premier of New Brunswick mentioned. We view it as you all know as a steady encroachment by the federal government on our resource ownership. We look on the 1973 oil export tax as a discriminatory action." (Lougheed, Sept. 8/80, p. 120)

"Our basic concern is that if we face constitutional renewal and we try to look at the matter in an effort of goodwill, we can't divorce the other circumstances for which we are all aware, that create a cloud over our head and quite frankly over part of this conference. We are bieng threatened with a mass of expropriation of our provincial resources though the vehicle of a natural gas export tax and we hope and pray that that won't come about. We look upon that as not only discriminatory but in violation of the spirit of provincial ownership." (Lougheed, Sept. 8/80 p. 122 - 123)

"Our two priorities are an amending formula that protects us against the rights of the tyranny of the majority and the second priority is strengthening resource ownership and there seems to be little significant on the table to respond to Alberta's concern." (Louheed, Sept. 8/80, p. 124)

"So when we assess the very limited moves by the federal government in this area and the very large threat that exists to our resources in the way in which I have described we can be said to have looked, to have assessed our position as being one in which we find it very difficult to see the response to the aspirations of the citizens of the province that I am representing here to this priority position." (Lougheed, Sept. 8/80, p. 124)

In his closing remarks on the last day of the conference, Premier Lougheed summarized the discussion on resource ownership/interprovincial trade with the comment:

"There was, of course, here not anything in our view of significance." (Lougheed, Sept. 13/80, p. 1056)

The contrast between Premier Lougheed's and Premier Blakeney's reactions to federal proposals on this issue is worthwhile noting. (See overleaf) Premier Hatfield's perception of federal flexibility on this issue is also at odds with the statements made by Alberta.

Saskatchewan on Resource Ownership/ Interprovincial Trade

Saskatchewan's reaction to the proposals before the First Ministers on this issue was completely divergent from that of Alberta. Premier Blakeney indicated his satisfaction with the general approach of the federal government on this issue, and his agreement with most of the specific proposals:

"Mr. Chairman, I appreciate your opening remarks and your very forthright review of the problem which by and large corresponds with our perception of the problem. " (Blakeney, Sept. 8/80, p. 111)

"The ownership issue I would take it is resolved. The development and management issue I would take it is resolved. The indirect taxation issue with provision for no discrimination with which we fully concur is I think therefore resolved. So far as we are concerned primary production and taxation on first level upgraded, being addressed is just how we mesh these and commerce. Let me say at the outset that the government of Saskatchewan has no particular wish to legislate in the area of interprovincial trade or international trade. ...We have not been making contractual arrangements with any other province let alone any other country with respect to -- treaties or anything of that nature and we think it is quite inappropriate for a province to do that in international trade Canada must speak with one voice." (Blakeney, Sept. 8/80, P. 112 - 113)

On the question of provincial jurisdiction raised by the two Supreme Court cases in Saskatchewan, Premier Blakeney stated his preference for the February 1979 proposal, rather than the current federal proposal.

Manitoba on Resource Ownership/Interprovincial
Trade

Premier Lyon restricted his comments on this issue to a reference to the potential for a tax on resource exports:

"I would remind you, sir, of the communique that was forwarded to you by the Premiers Conference in Winnipeg last month wherein nine of the ten Premiers agreed that any federal tax on the export of provincially-owned resources including electricity would represent a direct attack on provincial proprietary rights over resources as now provided for in the Constitution."
(Lyon, Sept. 8/80, p. 144)

Ontario on Resource Ownership/Interprovincial Trade

Premier Davis' statement on this issue was conciliatory in tone, and he indicated his acceptance of the essence of the federal position. The following abstracts outline certain specific concerns expressed by the Premier:

"Ontario has always been in support of provincial ownership even though we acquiesced that there was federal involvement when it came to uranium as being a natural resource." (Davis, Sept. 8/80, p. 129)

"I would like to say that we support this move of strengthening and confirming the provinces' ownership of natural resources. We don't consider it a giving away or giving in on behalf of the federal government, we see it as a confirmation and strengthening of the provincial power." (Davis, Sept. 8/80, p. 133)

"I think, Mr. Prime Minister, if we can perhaps, combining two or three of these, ensure in fact that there is a common market or an economic union and I think the Premier of Alberta spoke in support of that principle, that perhaps we could find wording to accommodate the concerns expressed by the Premier of Saskatchewan, partially because that is not the only issue, but I think it is fair to state that Ontario would accept the point of view of the Government of Canada on indirect taxation confined to resources with the clear understanding that it has to be worded in a way that there can be no discrimination internally within this jurisdiction. I think in terms of pricing of a commodity within Canada that there cannot be any discrimination and I think we would be prepared to accept it if that is the understanding." (Davis, Sept. 8/80, p. 132 - 133)

Quebec on Resource Ownership/Interprovincial Trade

Premier Lévesque rejected the proposals before the conference on this issue, as granting insufficient control over resources to the provinces:

"Une des aspirations très claires et qui touche les gens, c'est que leurs ressources naturelles, ils puissent avoir non seulement la propriété le plus complètement possible et la-dessus, moi, je dois dire que ce que propose le fédéral, si on essaie d'éliminer là toutes les articulations très complexes, n'est pas satisfaisant et ne rejoint pas ce à quoi on avait le droit de s'attendre." (Lévesque, 8/80, p. 142)

New Brunswick on Resource Ownership/Interprovincial Trade

Premier Hatfield's statement on this issue was one of support for the essence of the federal position. In particular, the Premier took pains to convey his appreciation of the fact that the federal government had made substantial concessions to the desires of the provinces in this area - in stark contrast to, for instance, Premier Lougheed whose position was that the federal concessions were "insignificant":

"Natural resources is an area of importance to us in New Brunswick and the system we have does in fact work." (Hatfield, Sept. 8/80, p. 115)

"We all agree that natural resources are within the jurisdiction of the provinces, and I think you have made considerable movement, you have recognized the current reality of Canada, economically and otherwise, you have taken some steps that will ease the tension that has existed in this area, and I appreciate the movement the federal government has made towards the provinces." (Hatfield, Sept. 8/80, p. 116).

"I think you have recognized that perhaps the provinces don't have sufficient power (over natural resources) and I think that is generally accepted by the other provinces and you have made some movement. I would like to see the movement you have made, which we support in New Brunswick, we support the position taken by the federal government, we think you have made, substantial movement, and we now want to know and make sure that it is sufficient for the protection of a right which we think should belong with the provinces. In return, on the other hand, I think you have demonstrated by the movement with regard to powers over the economy and two or three other things but I think that highlights the example. I am very concerned about the federal proposition with respect to powers over the economy because we live in a province which has no got an established economic base yet, but I am prepared to make some movement and I think we are all as provinces must be prepared to make some movement, toward the federal government making some movement towards the provinces is the kind of thing that will really make this country, believe that we are all serious about a renewed constitution." (Hatfield, Sept. 8/80, p. 116 - 117)

Nova Scotia on Resource Ownership/Interprovincial Trade

Nova Scotia's contribution to the discussion on this issue was limited to Premier Buchanan's statement that he was in agreement with Premier MacLean's remarks on it.

Prince Edward Island on Resource Ownership/
Interprovincial Trade

Premier MacLean indicated his government's support of the proposals before the Conference, with the following brief statement:

"Prince Edward Island is prepared to accept the position as expressed by the federal government with one exception. We do believe that the ability of provinces to levy indirect taxes would exaggerate the disparity between resource rich provinces and resource poor provinces, but in the interests of agreement we will remove that objection." (MacLean, Sept. 8/80, p. 144)

Newfoundland on Resource Ownership/Interprovincial Trade

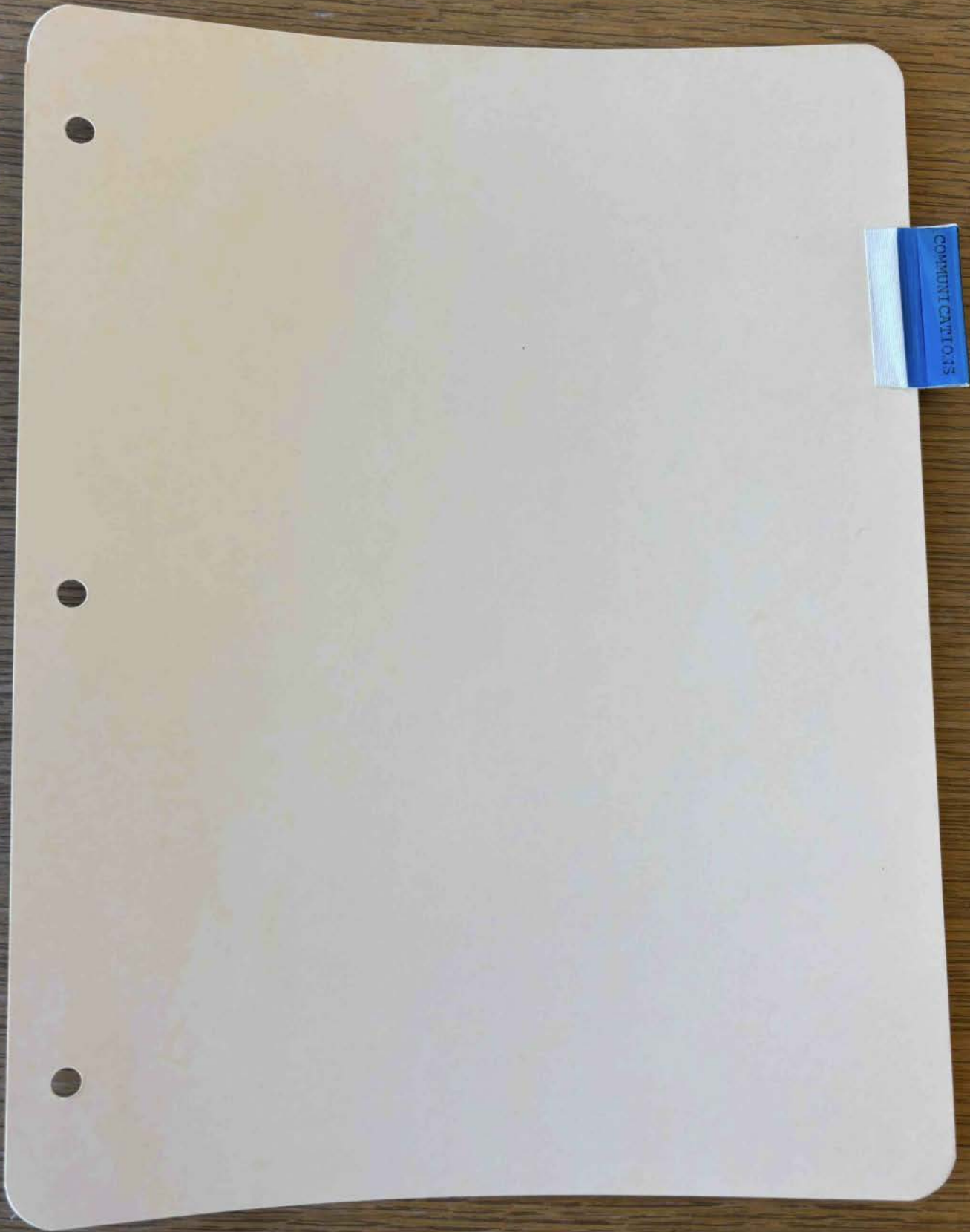
On resource ownership, Premier Peckford contended that Newfoundland's current capacity to raise revenue from resources was insufficient, and that offshore resources should be treated on the same basis as those onshore. On international and interprovincial trade, the Premier indicated his flexibility; on the question of interprovincial trade, however he raised the issue of the transmission of electricity.:

"Right now there is not enough revenue coming from resources." (Peckford, Sept. 8/80, p. 126)

"We don't view the oil and gas on land that is covered by salt water as any different than oil and gas covered by fresh water in an international waterway like Lake Ontario or Lake Erie." (Peckford, Sept. 8/80, p. 125)

"On the views of inter-provincial trade I was coming to that, Mr. Chairman, and international trade. We will, as we do at certain times, take a buy on that right now and indicate our flexibility, being able to help reach some kind of consensus before the weed is out on those two points, both inter-provincial trade and international trade for the sake of making this conference work." (Peckford, Sept. 8/80, p. 127)

"Right now the transmission of electricity is treated different than the transmission of oil and gas and there is no way that is defensible within the advocacy of the principle which says a common market for Canada." (Peckford, Sept. 8/80, p. 129)



COMMUNICATIONS

British Columbia on Communications

James Nielsen voiced the B.C. government's approval for the CCMC draft on communications, arguing that the federal draft would class matters of an inherently local nature under federal jurisdiction:

"We have become more and more restless at excessive federal involvement in matters as we see as principally local concerns, communications being one of these." (Nielsen, Sept. 8/80, p. 169).

"The federal draft appears to be paternalistic. The roles said to be exclusive provincial jurisdiction are in fact so restricted by exceptions and by exclusive federal jurisdiction conferred by Section 91 there is virtually no power a province could exercise without being fettered by overriding federal authority." Nielsen, Sept. 8/80, p. 171).

The Minister gave no reasons for his assertion that communication was primarily a matter for local concern, beyond the statement that:

"The people of British Columbia no longer have to look to the central government for any expertise to handle our technical problems." (Nielsen, Sept. 8/80, p. 169).

He opposed federal jurisdiction over interprovincial telephone services on the grounds that it would create regulatory difficulties:

"It is an established policy of the government of British Columbia that the major carrier in the province, B.C. Telephone should be regulated provincially rather than federally. Perhaps we agree on this. In seeking that jurisdiction, however, we have consistently rejected the administrative nightmare to both company and governments that a split in regulatory authority between intra and inter-provincial aspects could create." (Nielsen, Sept. 8/80, p. 171).

Alberta on Communications

Alberta's position on this issue was one of support for the CCMC draft:

"Alberta agrees with the best effort draft, as the main intent of the draft essentially means local works and undertakings under the control of the provinces in which those works and undertakings are situated." (Webber, Sept. 8/80, p. 180).

Saskatchewan on Communications

Premier Blakeney gave his approval to the CCMC draft on communications. He argued that the CCMC approach of concurrent jurisdiction with respective areas of federal and provincial paramountcy was more appropriate to a field in which technology was developing rapidly than the federal approach of determining areas of exclusive jurisdiction. In particular, he objected to the proposals for exclusive federal jurisdiction over broadcasting, and over the technical aspects of frequency assignment:

"The argument is made that the federal government really must have exclusive control of broadcasting in order to present Canada to Canadians. I know it is easy to criticize but I think one could mount a fair argument for the fact that we have been less than fully successful in this." (Blakeney, Sept. 8/80, p. 178).

"We feel that we have had an encounter with the CRTC in which they attempted to use their control of technical matters to broaden the jurisdiction of the federal government into the area of closed circuit cable, and we felt we were not entirely pleased with that interchange between ourselves and the CRTC. That is history and we don't raise that, except that it does alert us to the potential to use the control of technical standards as an effective control over a large number of other things, and we will be approaching the drafts with that in mind." (Blakeney, Sept. 8/80, p. 179).

On the question of broadcasting, the Premier made no suggestion as to how communication between Canadians would be better achieved under ten separate jurisdictions.

Manitoba on Communications

Premier Lyon endorsed the CCMC Best Efforts Draft on communications. He objected to the federal desire to retain control over the interprovincial aspects of telephone communications on the grounds that this would create an "unnecessary regulatory burden", and that in any case, any interprovincial difficulties in this area were unlikely:

"We were told by the federal government that they must become involved in the long distance aspects of all of Canada's telephone companies in case a dispute between two provinces interrupts Canada's telecommunications network. This argument, Sir, is rather specious if I may use that term. Such a move by the federal government would not only have an impact on the orderly development of telephone communications in our provinces, but would also impose an unnecessary regulatory burden on our telephone companies through two-tier regulation. The Trans-Canada Telephone System has been in existence I am told for 48 years. We are not aware of any breakdown in telecommunication channels through that system. It works, it is there. Why are we tinkering with it?" (Lyon, Sept. 8/80, pp. 173, 174).

The Premier also objected that the federal offer to transfer jurisdiction over telephone systems to the provinces was not a "concession" because several provinces already controlled their own networks:

"You described the federal offer in the area of telephones as an abandonment of jurisdiction by the federal government to the provincial governments. I say with respect, Sir, that this is a bit of an illusion insofar as our province is concerned.

We are being told as indeed our sister Prairie provinces are being told that the federal government will allow us virtually exclusive jurisdiction over our telephone companies. For some 72 years, Sir, we have exercised jurisdiction over our telephone company which is owned by the people of Manitoba and the rates are set by the Public Utilities Board of the people of -- Manitoba, so the so called concession while it may mean something to the Premier of Ontario or the Premier of British Columbia or the Premier of Québec, I should say, it means very little to Manitoba." (Lyon, Sept. 8/80, p. 173).

Ontario on Communications

Premier Davis expressed Ontario's support for the CCMC draft on this issue, noting that "Our main interest, of course, was cable." He also stated that, although several provinces were seeking jurisdiction over telephones within their borders, Ontario would prefer not to acquire such jurisdiction:

"When you say you're prepared to give up any involvement with telephones within a province, are you saying that provinces have a choice? I guess it is a very fundamental question. When Bell's rates go up it is nice to say that that is the government of Canada who did it. In other words we haven't been seeking jurisdiction over Bell, we have enough problems."
(Davis, Sept. 8/80, p. 156).

Quebec on Communications

Premier Lévesque gave qualified support to the CCMC draft as the "minimum acceptable" package for his government, and stressed his view that provincial control over communications was a priority for Quebec:

"A cause de sa situation particulière... le Québec a toujours demandé sans arrêt, avec une instance qui devient de plus en plus consciente des dangers si ça se fait pas, de pouvoir assumer le plus complètement possible, avec le minimum de contraintes extérieures, la plus entière juridiction possible dans le domaine des communications sur le territoire du Québec." (Lévesque, Sept. 8/80, pp. 163, 164).

"Le Québec a souscrit... à ce qu'il considère, quant à lui, quant à nous, comme une position strictement minimale dans le domaine des communications." (Lévesque, Sept. 8/80, p. 164).

Against the Prime Minister's assertion that federal jurisdiction over certain areas of communications provided a healthy counterbalance to provincial jurisdiction over education, Premier Lévesque argued that in order to have complete control over education, control over telecommunications is also needed:

"Le premier ministre fédéral a souligné que les provinces ont un pouvoir fondamental en matière d'éducation... L'éducation est finie assez rapidement, seulement il y a une forme d'éducation quotidienne, qui est évidemment dangereuse à manipuler s'il y a des gens qui en abusent, cette forme d'éducation quotidienne, d'éducation populaire, si on veut, dans tous les secteurs, elle se trouve dans les télécommunications de notre époque." (Lévesque, Sept. 8/80, p. 163).

The Premier also complained that the provinces would gain nothing from the control over telephone systems, unless they also had control over interprovincial telephone connections:

"On nous offre le téléphone, ceux qui l'ont pas déjà jusqu'à un certain point, et puis comme monsieur Hatfield du Nouveau-Brunswick vient de le dire, on offre le contrôle sur le téléphone, le mariage avec la "Bell", comme disait monsieur Davis, mais on voudrait retirer le contrôle de l'interurbain, qui, en fait, créerait non seulement, mais enfin sur l'ensemble des revenus qui dépassent si vous voulez les appels locaux."

He also made the following case for communications as a necessary instrument for the development of a regional identity, seemingly unaware that the same argument could be applied to Canada as a whole:

"Il s'agit encore une fois d'une position constante de tous les gouvernements québécois qui se sont succédés depuis pas mal d'années, je sais que ça rejoint des préoccupations dans d'autres provinces aussi, il y a des identités régionales, il y a des priorités régionales qui ont besoin des communications les plus libres possibles, pour pouvoir développer le genre de prise de conscience régionale qui paraît nécessaire." (Lévesque, Sept. 8/80, p. 164).

New Brunswick on Communications

Premier Hatfield supported the CCMC proposals on this issue, arguing that the federal government had been deficient in its responsibilities in this area, in giving such substantial powers to the CRTC:

"What bothers me is this principle that given this power, the power we acknowledge, you would then pass it to someone else who is not responsible and who is not interested in the national perspective. I think it is important that that be understood and recognized."
(Hatfield, Sept. 8/80, p. 159).

Nova Scotia on Communications

Premier Buchanan expressed his support for the CCMC draft on communications, and interjected also that he considered the Nova Scotia telephone system, and the responsibility for setting interprovincial telephone rates, to already be within provincial jurisdiction:

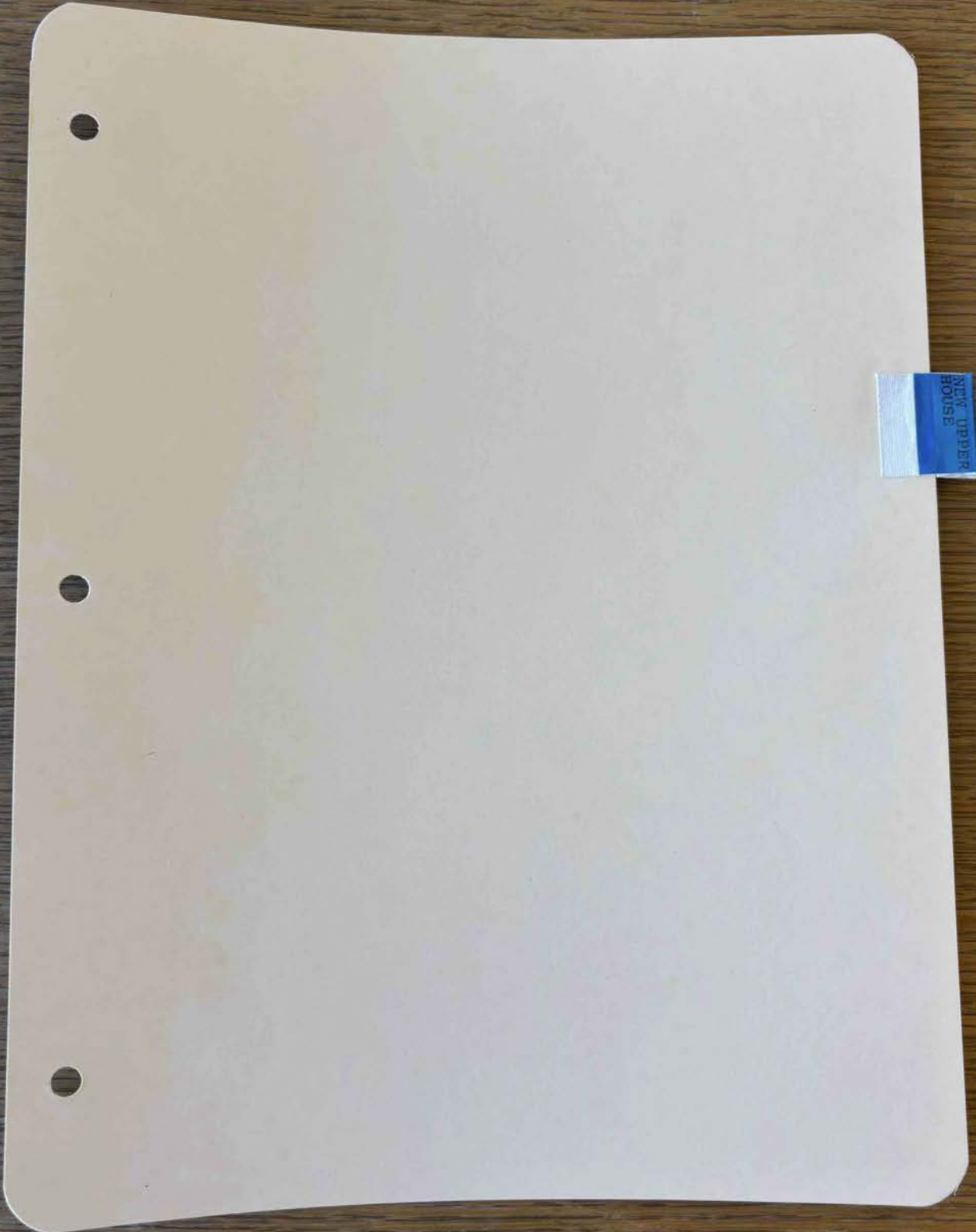
"We have in the past ministers conferences, ministers meetings, objected to the interprovincial intrusion by the CRTC in what we consider to be a provincial jurisdiction and in fact a few months ago when this did occur and the CRTC did interfere and intrude in a rate application or rate setting by the Public Utility Board of Nova Scotia for Maritime Tel and Tel the provincial government did issue a very serious objection at that time.

So we continue to object to what we consider to be a federal intrusion on a provincial jurisdiction insofar as the setting of interprovincial rates by our telephone system." (Buchanan, Sept. 8/80, p. 176).

Newfoundland on Communications

Premier Peckford expressed his concurrence with the statements made by Premiers Lyon and Bennett:

"We support the remarks just made by British Columbia and Manitoba... We think that the concurrent jurisdiction proposition is a fair and reasonable one and does allow for the national concerns to remain with the federal government and local concerns to be with the provinces." (Peckford, Sept. 8/80, p. 175).



NEW UPPER
HOUSE

British Columbia on a New Upper House

Premier Bennett expressed his government's preference for the CCMC Best Efforts Draft as a first step toward a new Upper House. He noted that his government considered this a priority issue, and warned of deteriorating federal-provincial relationships if it were not resolved to B.C.'s satisfaction:

"If you were to ask me the most serious defect in our present constitutional arrangements viewed from a British Columbia perspective, I would state without hesitation it is the inadequacy of the central institutions of the country, and most particularly including the Senate to fully present British Columbia's need and aspirations. Our sense of remoteness rather than being abated by participation in central institutions is in fact aggravated by their inadequacy." (Bennett, Sept. 9/80, p. 213).

"Unless the central institutions are restructured to give British Columbia the kind of representation our people believe it deserves, the frictions and frustrations of federal-provincial relations between both levels of government will continue largely unabated and in fact will worsen." (Bennett, Sept. 9/80, p. 214).

At another point, the Premier went beyond these statements and implied that B.C. would withhold assent from other items in the constitutional discussions if its proposals on a New Upper House were not agreed to:

"So many of the things that are important to us in the context of constitutional talks, and some of the reform of the institutions and protection of provincial power, and giving them input into the centre depends on this mechanism. British Columbia would have difficulty with any constitutional package, whether on the 12 items now or the items that are on lists waiting yet for conferences in the future in coming to agreement because it is part of our whole concept of making the country work for us." (Bennett, Sept. 9/80, p. 226).

The Premier also noted that B.C.'s preference was for regional representation (based on a five-region concept) but that, in the absence of general provincial acceptance of this notion, the province would agree to equal provincial representation.

Later in the Conference, Rafe Mair, B.C.'s Minister of Health, introduced several somewhat unusual reasons for B.C.'s advocacy of provincial government appointments to a new Upper House:

"Two days ago, Mr. Prime Minister, Premier Buchanan made two historical references to underline some of the points he was making and I think that I would like to follow that example and give you if I may a little of B.C.'s history so you can understand, I sincerely hope, why we have been so insistent upon the reforms we have proposed. We were, Mr. Prime Minister, to all intents and purposes a nation of our own when we came into this country in 1871. We had already been amalgamated from two Crown colonies and two other Crown possessions into a virtual self-governing unit. The fact that we were asked to consent to our entry into Confederation I think is ample evidence of the fact that we were to all intents and purposes self-governing." (Mair, Sept. 11/80, pp. 937, 938).

"We can pass through the Rocky Mountains and we can fly over them in a physical sense, but in an historical, cultural and indeed a psychological sense they present a very real and very great barrier and our differences, Prime Minister, are more than just historical and geographical... Our communication links run north and south rather than east and west. Even our time zone isolates us. You know when you don't live out there you forget sometimes just what that does. We don't get the 11:00 o'clock like everyone else in Eastern Canada. We get the 8:00 o'clock news transmitted to us at 11:00 o'clock and there have been a number of significant world events that have happened after the news has been canned in Eastern Canada which we get in our local news. When the Pope died, we got that on our local news along with the weather. These are not complaints. These are just statements of what the situation is in British Columbia in terms of our isolation from Central Canada." (Mair, Sept. 11/80, pp. 942, 943).

Senator Perrault began his response to Mr. Mair's comments with the remark:

"I always feel as a British Columbian that often the British Columbia position is severely damaged by the consistent capacity of certain provincial representatives to overstate their grievances." (Perrault, Sept. 11/80, p. 947).

On the question of regional vs. provincial representation, Mr. Mair made the following comment:

"We cannot at this time convince our colleagues that British Columbia is a distinct region of Canada. We will press that case again I assure you but we know we can't do it now. We can't convince our colleagues of a number of other measures which we think are appropriate for consideration." (Mair, Sept. 11/80, p. 944).

Alberta on New Upper House

Premier Lougheed at first reserved judgement on this issue, but later moved to align himself with the position taken by the B.C. government:

"We prepared our position on constitutional matters and did not include within our list any observations with regard to a senate or other chamber. That, of course, has advantages and disadvantages. I suppose the clear advantage is that we have no committed position. We have recognised the feelings of the Government of British Columbia in the presentations they have made and the eloquence of Mr. Mair's remarks today that this is a very important matter for them.

So we, although not enthusiastically, but we have been moving towards a supportive position of what is being presented by the Province of British Columbia." (Lougheed, Sept. 11/80, p. 952).

The Premier noted his concern that the proposal should not jeopardize the continuation of First Ministers' conferences; and also commented that he would prefer to see any reference to declaratory powers in the proposal deleted.

Saskatchewan on a New Upper House

Premier Blakeney limited his remarks on this issue to the following comment:

"I have been following the discussions this summer and I looked at our discussions on the second chamber and saw what seemed to be a very intractable problem and then saw the rate of progress in the last few weeks, I was very encouraged to think that we may find at least a halfway house, a stepping stone towards some progress and I had hoped that we might be able to move in that direction not at this moment, but as we consider this over the next few days." (Blakeney, Sept. 8/80, p. 222).

Ontario on a New Upper House

Premier Davis expressed his desire to be flexible on this issue, but indicated that he had distinct reservations regarding the amount of power that the Council of Provinces proposed in the Best Efforts Draft would wield:

"I guess our concern is what the powers are and how it might function, whether in fact it has rather absolute powers as we read the draft, and whether this is appropriate; and I think it really comes down to some of the other items on the agenda that really have a bearing on what this body might do." (Davis, Sept. 8/80, p. 223).

"I was prepared in terms of a new Upper House or a restructured Senate to enthusiastically support a proposition whereby the interests of the provinces would be given far greater significance, but I guess where I found it difficult and which was perhaps symbolic of why these negotiations are so tough, I found it difficult to accept the principle whereby a body of totally provincially-appointed people would sit down and have the rights to determine and make judgments on those decisions made by the democratically-elected people from right across this country." (Davis, Sept. 13/80, p. 981).

Quebec on a New Upper House

Premier Lévesque announced his intention to reserve judgement on the proposed representation formula, because of its failure, in his opinion, to come to grips with the Canadian duality. He implied also that a satisfactory proposal would necessarily provide some abridgement of federal powers:

"Toute la discussion que nous avons eue cet été relative au Sénat, nous a montré qu'il y avait en fait deux catégories de problèmes, non seulement d'un côté la forme, la composition et le pouvoir du Sénat, mais aussi la façon dont cette Chambre haute nouvelle traiterait du problème de la dualité canadienne, du fait que le Québec constitue une société distincte, et la grande difficulté aussi résidait dans le fait qu'on n'avait pas jusqu'à maintenant abordé en profondeur l'étude des grands pouvoirs fédéraux d'intervention, ce qu'on appelle les grands pouvoirs horizontaux d'intervention, je pense au pouvoir de taxer, au pouvoir de dépenser et aussi bien sûr au pouvoir déclaratoire en plus des autres." (Morin, Sept. 8/80, p. 219).

"A cause de toutes ces lacunes dans notre discussion, du fait que ça nous paraît pas suffisamment avancé, nous avons décidé, nous, comme délégation de réserver notre jugement en ce qui concerne particulièrement le poids relatif du vote dans la proposition qui nous est faite maintenant, les provinces auraient l'une et l'autre le même poids, ce qui veut dire que le Québec aurait le même poids que les autres provinces, ce qui veut dire donc qu'il y aurait sur dix votes u pour le Québec. Ça nous pose des difficultés, nous pensons aussi que ça n'a pas été suffisamment étudié et nous pensons aussi -- tout en reconnaissant qu'il est nécessaire d'en arriver à une nouvelle Chambre haute -- nous pensons que tant que la question de la répartition des pouvoirs en général et particulièrement l'étude des grands pouvoirs fédéraux d'intervention aura pas été plus avancée, nous pensons que nous devons maintenir cette réserve que je viens de mentionner." (Morin, Sept. 8/80, p. 220).

New Brunswick on a New Upper House

Premier Hatfield declared his support for PEI's proposal to adopt the CCMC draft as an interim solution, and expressed his view of a new Upper House as providing a continuing forum for discussions of the types of issues raised at First Ministers' conferences. He alluded also to the difficulties participants at this conference had encountered in reaching agreement on this issue:

"Having heard and watched the efforts being made to try and find an improvement of the Upper House, I think that I have to declare that it is a great tribute to the present formula for the Senate, because I will tell you we have had a very difficult time reforming it and finding an agreement." (Hatfield, Sept. 8/80, p. 217).

"I like the idea of Prince Edward Island and I have said so before, I like the idea with regard to Prince Edward Island or the proposal of Prince Edward Island with regard to the Senate and I think that we have got to use this because we have wrestled most of the summer, we have not been able to find a way and I think that the proposal that has been come up which is an interim one is a good one and I want to say I support it." (Hatfield, Sept. 8/80, p. 959)

"I agree with the Premier of Alberta about the importance of the First Ministers Conference. I think it has been an extremely valuable improvement to our country in the last 15 years and I think we have made a certain impact but, as we found out this week, you can't resolve some of these problems that are 50 years old and even the problems that are 15 years old. You can't resolve them in two days and you can't resolve them in five days so there has to be a place.

I have been converted to this point of view by the conversations and the discussions that we had all through the summer that there must be someplace here that does add another input into the preservation if you will of the national interest." (Hatfield, Sept. 8/80, p. 958)

Prince Edward Island on a New Upper House

Premier Maclean indicated his acceptance of the CCMC draft on this issue only as a first step towards a much more comprehensive restructuring:

"I wouldn't want it to be thought that a council of the provinces in our mind solved the situation. It at best would only be a first short step in a more wide-ranging restructuring of the Parliament of Canada represented in the Upper House." (Maclean, Sept. 8/80, p. 224).

Fred Driscoll outlined the P.E.I. government's concept of a new Upper House as an institution substantially more powerful than the current Senate, and with both ratification and legislative review functions:

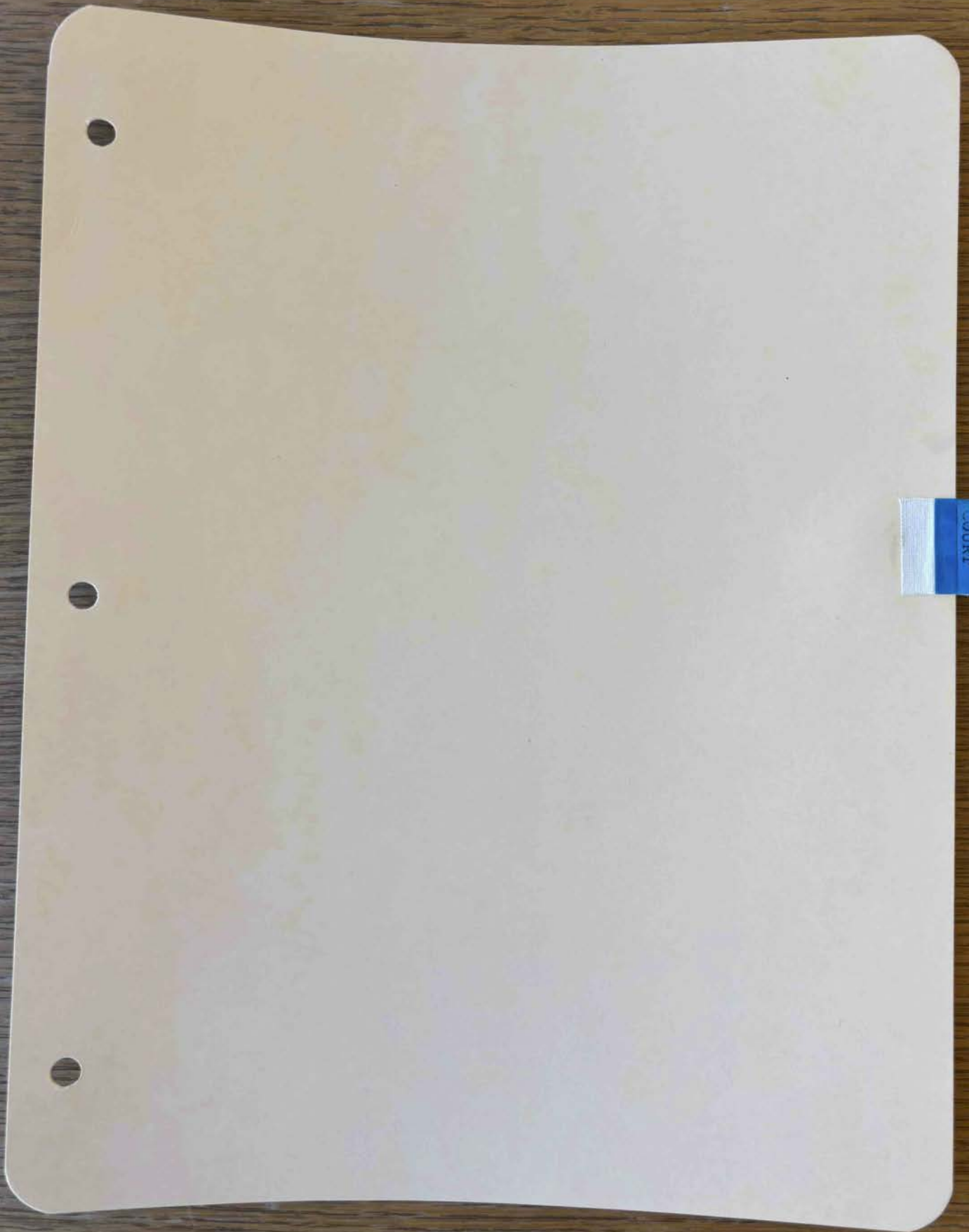
"Our view, I guess, of federalism and what we should really be trying to achieve is based on what I think everyone accepts as the classic notion of federalism, that is that there are two chambers, it is a bi-cameral legislature and there is one legislature based on representation by population and a second one based on the equality of the constituent parts." (Maclean, Sept. 8/80, p. 950).

"We are prepared to accept the fact that there may be two functions, one ratification and one the regular legislative review function. We do place more importance, I think, than some on the legislative review function because although there are a number of things that have been proposed to be subject to ratification by a second chamber, and that they are important, we think that nonetheless it would probably represent roughly fifty per cent of the legislation of the Parliament of Canada, and that the other fifty per cent which is not subject to ratification is extremely important to the provinces; transportation policy, fiscal policy, tariff policy. These items which are the regular legislative responsibility of the Canadian Government are just as important, we think, to the provinces and as significant to the provinces as some of these things which are listed in the list of items that would be subject to ratification. We place a great deal of importance on the second function for the chamber and that of legislative review." (Driscoll, Sept. 8/80, pp. 950, 951).

"If we can't approach something of the kind of federalism which we have just put forward, then I think it is going to be difficult for us to achieve very much else, because that is what a federal system is." (Driscoll, Sept. 11/80, pp. 951, 952).

Newfoundland on a New Upper House

Premier Peckford indicated Newfoundland's willingness to be flexible on this issue, and expressed his hope that the Best Efforts Draft could form the basis for some accommodation:



SUPREME
COURT

B.C. on the Supreme Court

Premier Bennett favoured an entrenched Court with either a 6/3 or 7/4 allocation of judges for Quebec and the rest of the country, depending on workload:

"British Columbia takes the position the Supreme Court of Canada is the national court and should continue to be the final court of appeal in all matters arising from litigation in any of the provinces of Canada and should continue to deal finally with all constitutional issues." (Williams, Sept. 8/80, p. 249)

"I think that at the moment a nine-man court adequately discharges the heavy responsibilities that fall upon the Supreme Court of Canada. If the business of the court increases ... you may need to have an increased composition but I think that is something that should be viewed with care and on experience." (Williams, Sept. 8/80, p. 250)

"I am pleased to note that the federal government will agree that the provinces may make direct references to this court. I think it will help very significantly in the resolution of constitutional matters and the problems the provinces have and I believe that on the question of selection and numbers, leaving the matter as one of federal legislative competence is the way that that can be best resolved." (Williams, Sept. 8/80, p. 252)

Alberta on the Supreme Court

Premier Lougheed indicated agreement with the principle of entrenching constitutional reference to the Supreme Court, and with the need to recognize the Canadian duality in its structure. However, his proposal for two separate bodies - a Supreme Court, and a constitutional panel composed of fifty provincially - selected jurists, to deal strictly with constitutional issues - met with minimal support from other provinces:

"On this matter, first of all with regard to the Supreme Court in non-constitutional matters, it is our view in Alberta that we should be responding to the two different legal systems of the common law and the civil law in some significant way to the Province of Quebec, both in terms of the appointments and also in terms of the specific nature of the Chief Justice and the alternate position as the Premier of Quebec has just described.

However, even despite the views of others, the more we have thought of it on constitutional matters, the more we still hold to the view we have presented on earlier occasions, that in a federal system on constitutional issues, it should more adequately reflect the federal nature of our system. The senior judges and senior jurists are appointed by the federal government and it is our view that from such appointments across the country, there should be determined by the provinces a panel of jurists to consider constitutional issues and that from that panel the federal government would select a jurist to consider a particular constitutional question, and the Supreme Court would then continue with its normal function and normal capacity on matters other than constitutional issues." (Lougheed, Sept. 8/80, p. 245-246).

Saskatchewan on the Supreme Court

Premier Blakeney favoured entrenchment of the Supreme Court, and the consultation procedure proposed in the CCMC draft, but opposed a full-blown recognition of duality in the Court structure, arguing that for many cases it would not be either necessary or relevant. Accordingly, he endorsed either a 6/3 or 7/4 composition for the Court:

"A Supreme Court in a federal state like ours deals with a number of issues... Clearly with respect to some of them, the fact that Canada is a country of two languages, the fact of dualism is important, and that is true with respect to non-criminal matters because we have a civil law tradition and a common law tradition and they are very different... But I am not sure that Canadians would have widely different perceptions depending upon their duality with respect to appropriate limits for freedom of speech or freedom of assembly, I don't know that, but I take the view that that is not so. Accordingly, I am unable to accept the idea of duality in its full flower." (Blakeney, Sept. 9/80, pp. 252, 253, 254).

Premier Blakeney was the only premier to offer support for Premier Lougheed's suggestion of a constitutional panel to deal strictly with constitutional issues:

"We would be attracted to either a constitutional panel or a constitutional court as suggested by Premier Lougheed, to deal with the narrower range of constitutional issues and on which there could be a greater reflection of the duality of Canada than there is in the general Supreme Court." (Blakeney, Sept. 8/80, p. 257).

The Premier made a case for restricting the role of the Supreme Court by giving it only limited areas of jurisdiction:

"People like Premier Levesque, or at least his Minister Jacques-Yvon Morin has pointed out that as soon as we start applying a principle of growth to a constitution, such as developed in the United States and the techniques of interpretation which go along with that principle, you simply have no stability on constitutional matters and no feeling of security, that is the argument... I feel that one way to solve that difficulty is to have as few matters as possible determined by the Supreme Court and to refrain from giving to the Supreme Court very large areas of jurisdiction which are going to lend themselves to this wide-spread judicial law-making. I am well aware that this view is not held by others, and we will have an opportunity to debate

that later, but it is clearly I think the case that the narrower the areas of jurisdiction of the Supreme Court, the easier it will be to balance the need for having a court which responds to the need to grow with the changing world against the need to provide some sense of stability to vulnerable minorities, very possibly the minority in the Province of Quebec, and this I think is our task." (Blakeney, Sept. 9/80, p. 255).

Manitoba on the Supreme Court

Premier Lyon voiced his support for entrenchment of the Court, a 6/3 composition, and federal appointment of judges after consultation with the provinces; he also indicated that he was prepared to be flexible on certain aspects of the Supreme Court issue. However, his was the only province to oppose entrenchment of the tradition of alternating Chief Justices:

"First of all, no problem with the mention of the Supreme Court in the constitution." (Lyon, Sept. 8/80 p. 262)

"On balance we feel the present court, with its present responsibilities has served well the country and its people." (Lyon, Sept. 8/80, p. 262)

"The appointment of judges to the Supreme Court should continue to be made on the nomination of the Government of Canada, we would prefer that, but after meaningful consultation with the appropriate provincial governments." (Lyon, Sept. 8/80, p. 264)

"The court already recognises the existence of the two systems of law in Canada and we see no need for a change in the number of judges from Quebec." (Lyon, Sept. 8/80, p. 262)

"We would prefer to see the Chief Justice continue to hold office during his tenure as judge. We would prefer the alternation of appointment of Chief Justices between civil and common law lawyers to continue as a custom rather than as a requirement of the constitution." (Lyon, Sept. 8/80, p. 263)

Ontario on the Supreme Court

Ontario's Attorney-General, Roy McMurtry, indicated Ontario's agreement with the Prime Minister's comments on this issue. He rejected Alberta's proposal for a constitutional panel. On the composition of the Court, he stated Ontario's preference for a 6/3 formula, with the possible alternative of a 7/4 structure:

"We in Ontario agree with the principle that the Prime Minister outlined in his opening statement. We also believe very strongly that the court has served Canadians well and we object to any significant change in the structure of the court." (McMurtry, Sept. 9/80, pp. 264, 265).

"We think a special constitutional panel would be interpreted by Canadians and of course the court as well as a fundamental vote of non-confidence in the court." (McMurtry, Sept. 9/80, p. 265).

"Insofar as the difficult question of the makeup of the court, the numbers of the court, we have some doubts as to whether it is necessary to entrench the numbers of the court, other than that we would agree that the Province of Quebec should be entitled to not less than one third membership at any one time." (McMurtry, Sept. 9/80, p. 265).

"Our preference has been, as expressed in the past, for a six-three composition, but we are quite prepared to accept the suggestion that perhaps there should be a greater recognition of the duality, and we would be prepared to support the concept of an eleven person court with four members from the Province of Quebec." (McMurtry, Sept. 9/80, p. 266).

"Insofar as the selection process is concerned, we of course agree with the idea of consultation with all of the provinces. We do not favour a complicated selection process." (McMurtry, Sept. 9/80, p. 266).

Quebec on the Supreme Court

Premier Lévesque advocated a 6/5 membership allocation and alternating Chief Justices for an entrenched Supreme Court, noting that these measures would achieve a measure of recognition of the Canadian duality. The premier also emphasized the need for consultation with the provinces in the appointments procedure:

"Au moins si ce six-cinq (6-5) pouvait être accepté, de même que l'alternance, aussi la consultation, nous, on voit pas très bien pourquoi il devrait y avoir un mécanisme d'arbitrage -- je le dis très simplement -- c'est qu'il devrait y avoir moyen de s'entendre entre ministre de la justice ou procureur général des provinces qui sont concernées, quand vient le moment des nominations.

Pour le reste, bien je dirais simplement ceci: c'est important, ça représenterait au moins une sorte de reconnaissance -- je voudrais tout de suite souligner que c'est pas une reconnaissance complète, loin de là -- mais une sorte de reconnaissance de l'élément dualité au Canada." (Lévesque, Sept. 8/80, p. 243).

New Brunswick on the Supreme Court

Premier Hatfield was in agreement with entrenchment of the Supreme Court. In his statement, he emphasized the need for this institution to possess a truly national character:

"I think the important point here is that the Supreme Court of Canada must, in fact, be just that, clearly a court that does represent the interests of the nation as a whole, not the interests of any particular region or any particular interest group in the country. That is why I think it is imperative that the appointments to the court be made by the federal government." (Hatfield, Sept. 8/80, p. 239).

"My concern is that the Supreme Court must not appear to be a court where people, a person from New Brunswick or a person from British Columbia is delegated to represent the people of New Brunswick of Saskatchewan. I think that would not be in the interests of Canadians." (Hatfield, Sept. 8/80, p. 239-240).

"The prerogative of appointment has to be very much the prerogative of the federal government, the Government of Canada." (Hatfield, Sept. 8/80, p. 240)

Nova Scotia on the Supreme Court

Premier Buchanan stated his agreement with entrenchment of the Court, and with the appointment procedures proposed in the CCMC draft. He supported a 7/4 Court composition, arguing that workload was a more important consideration in this respect than cultural duality. Premier Buchanan supported Premier Lougheed's proposal for a constitutional panel:

"We certainly agree with entrenching the Supreme Court in the constitution and we have, at the various conferences, Ministers' meetings, agreed on the procedures for appointing members of the Supreme Court. We have not, at this point, agreed on the numbers. First of all, the position that this province has taken is that the nine-member court is an adequate court, having regard to the workload, but possibly in the future it may not be sufficient numbers and we have opted for a seven/four court, for a total of eleven." (Buchanan, Sept. 9/80, p. 258).

"We believe then when you weigh one against the other that the workload of the court, the total workload of the court is much more important than duality." (Buchanan, Sept. 9/80, p. 259).

"We can reflect cultural and matters relating to duality in other ways, but we have to, I think, recognise that this is a body mainly to decide the issues between citizens in provinces in this country rather than something which reflects a concept of French-English relations in Canada." (Buchanan, Sept. 9/80, p. 260).

"We don't at this point agree with a separate constitutional court for Canada, but certainly we will agree with a constitutional panel made up of members of the court." (Buchanan, Sept. 9/80, p. 259).

P.E.I. on the Supreme Court

Horace Carver expressed his government's support for entrenchment, an alternating Chief Justice, and the 6/5 membership formula:

"We would support the position of Quebec, a six/five court in this matter. We feel that this is a compromise in the sense of the recognition in this country that there are, in fact, two legal systems, a civil law and a common law, away from the concept of a constitutional panel or a special court and we feel that this can be achieved in a six/five arrangement.

We, of course, support the concept that the court be entrenched in the alternating chief justice and we agree with Premier Hatfield that there ought not to be an elaborate system of mechanism of appointment." (Carver, Sept. 8/80, p. 261).

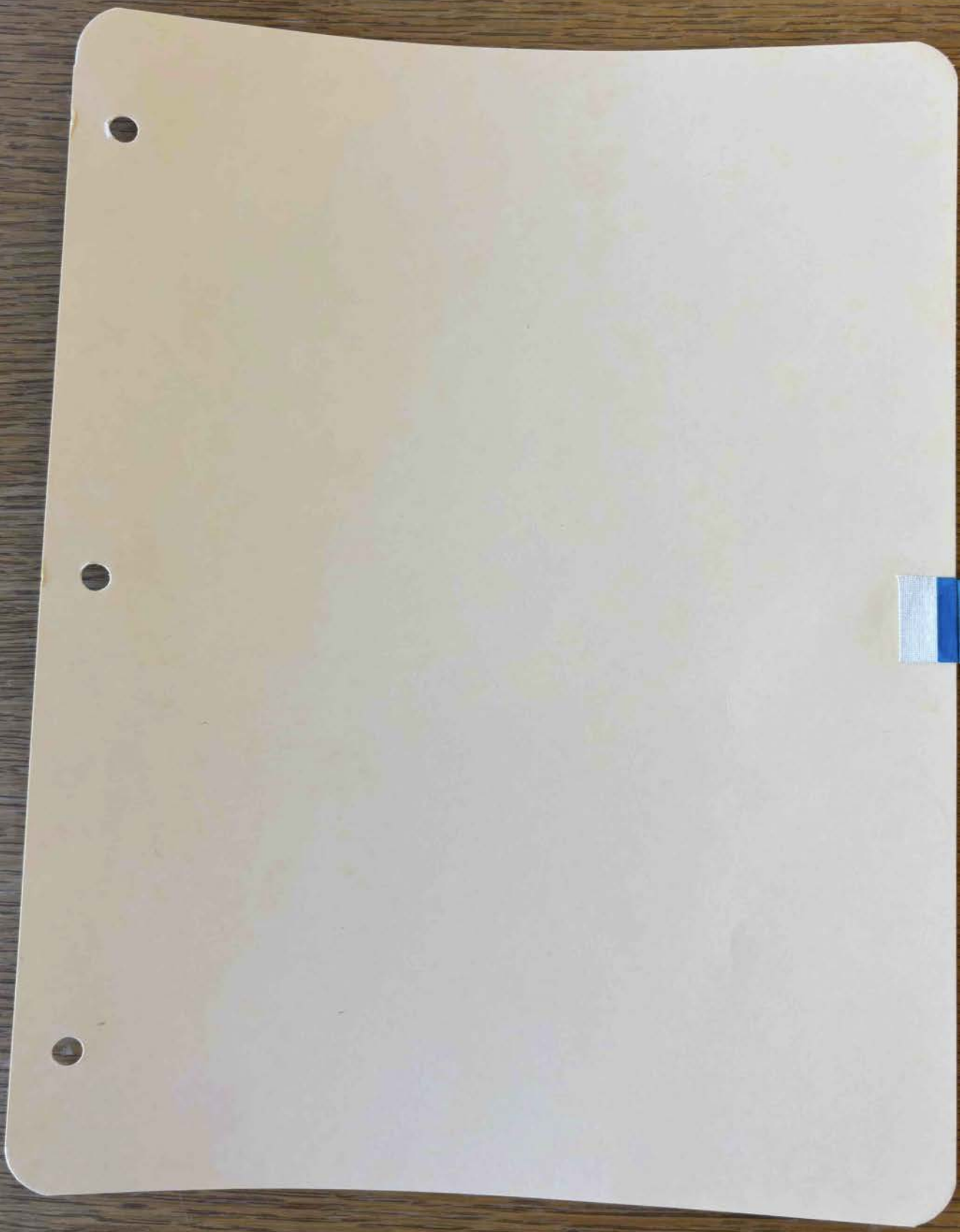
"We do not agree with those who would like to see the court so large that almost in fact each of the common law provinces, or some, as you would say, regions of the country, each be given a member or members on the Supreme Court.

Rather, we would support the concept that the judges ought to be appointed based upon their quality of legal mind." (Carver, Sept. 8/80. p. 261).

Newfoundland on the Supreme Court

Premier Peckford indicated his government's support for entrenchment, and stated a preference for the 6/5 membership formula proposed in the CCMC draft, although remarking that he would be prepared to consider other formulas:

"I think we have, during the summer, indicated fairly clearly that we recognise the duality of the legal system, the common and civil, and have supported the six/five and are even willing to consider other numbers that might be laid on the table on it, but we are supportive of the six/five and the entrenchment of it, recognising the duality and we have no problems with that." (Peckford, Sept. 8/80, p. 245)



FAMILY
LAW

B.C. on Family Law

B.C. expressed general support for the proposals before the Conference:

"Thank you, Mr. Prime Minister. I think perhaps to sum up the position of British Columbia, we want to be able to provide the most effective service we can and get it to where the people are, and I think the draft here largely accomplishes that. (Hon. Garde Gardom, Sept. 9/80, p. 302)

The following statements summarize B.C.'s position on the various aspects of the family law issue.

"The primary constitutional issue in this particular area for us is to ensure that our province can best provincially appoint judges with full jurisdiction to hear and decide the complete range of matrimonial and other family dispute proceedings. We think that only by ensuring that these provincially-appointed judges, as well as those federally appointed, may have this complete jurisdiction, can we ensure in our province all of our residents can have ready access to appropriate judicial remedies that could be reasonably near the place where they live and work." (Hon. Garde Gardom, Sept. 9/80, p. 303)

"I think we place a low priority on the continuing concerns of the provinces to acquire shared jurisdiction with the federal government to enact laws concerning the grounds for granting of divorces. We certainly don't wish to have developed in the country the Reno situation and foreign shopping." (Gardom, Sept. 9/80, p. 305)

"The provincial court orders similarly should have that competence to be enforced right across the country and I think we are very, very pleased and indeed fully support the measures that are proposed to facilitate the recognition and the enforcement of these orders right across Canada. (p. 306).

The middle statement, taken in conjunction with those of Manitoba and P.E.I. on this issue, certainly indicates the inability of the provinces to reach any general agreement on their preferences in this respect, in spite of the federal government's indication that it would accept either alternative.

Alberta on Family Law

Alberta supported the draft proposal before the conference although Mr. Crawford implied (adopting an unusual stance for Alberta) that the province would have preferred a more unified, centralized system:

"We had earlier in the meeting of the Ministers reserved on this particular item. There were good reasons for that at the time in that to a very large extent we have shared the concerns about fracturing of jurisdiction and had certainly had the view that the importance that had always been recognized I think in having the jurisdiction basically established by a central government was a very important consideration. However, I think what has happened in the meantime is that some of the critics to whom my learned colleagues from Manitoba and Prince Edward Island are responding to in their position, some of the critics are not as well informed on the subject as they could and should be. I see no further difficulty and have no disagreement at all in the concept of the federal government continuing to make the legislation in regard to grounds, to the provinces having the opportunity of assuming that area if they wish." (Sept. 9/80, p. 321)

"The supreme advantage of unification is something that we should not allow to escape. If this is in effect a compromise type of proposal, as indeed it is, then in order to reach consensus we have no further difficulty with it." (Sept. 9/80, p. 322)

Saskatchewan on Family Law

Roy Romanow expressed Saskatchewan's support for the draft proposal on family law as a satisfactory compromise between opposing positions:

"I would like to stress that this is really a compromise draft, a compromise draft between those who would argue that there should be no change or indeed greater federal involvement on the one hand and as articulated eloquently by Manitoba, and those who would argue on the other hand there should be, if I can state the extreme, almost exclusive provincial control in this area. It is a compromise. How is the compromise affected? It is affected this way. On divorce, with all due respect to those who have spoken on this issue, there is no transfer of the divorce power. The divorce power remains with the federal government. What is proposed is that the provincial governments if they choose so, have access to that divorce power. That is a compromise.

Another aspect of the compromise relates to enforcement, court jurisdiction and recognition of decrees in divorce are according to this proposal to be left with the federal Parliament. This should answer the question of the divorce havens. Again that is in an effort to compromise between a federal presence and role on the one hand and a provincial say or provincial role on the other hand." (Sept. 9/80. p. 318)

"There are many aspects of this both politically, putting it bluntly about the divorce jurisdiction and substantively which worries Saskatchewan, have no doubt about it, but this is a compromise proposal between those two competing views designed to achieve the objective for all Canadians, helping the family. I think with all due respect if we could get Manitoba and P.E.I. to put emphasis on a restructured Section 5 and an enforcement mechanism for all Canadians it can be done." (Sept. 9/80, p. 321)

Manitoba on Family Law

Manitoba and P.E.I. were the only two provinces to oppose the proposed implementation of a system of concurrent jurisdiction, with provincial paramountcy, over divorce grounds:

"I can summarize quickly Manitoba's position on the proposed transfer of jurisdiction for divorce and such related matters as maintenance and the custody of children from the federal government to the provinces. Manitoba opposed it. We have always opposed it, we will continue to oppose it." (Lyon, Sept. 9/80, p. 293)

Some of the arguments made by Premier Lyon and his Attorney-General in favour of federal retention of jurisdiction in this area could have interesting applications to other issues:

"We are attempting to persuade you and the others around this table that the best interests of Canadians can be served by an expansion of federal jurisdiction over family law so as to provide all Canadians with consistency and uniformity in this critical area of law regardless of where they may be in Canada". (Lyon, Sept. 9/80, p. 294).

"We have talked in our constitutional discussions of the need for people to be able to move freely throughout Canada. To assure that Canadians can move freely throughout this country, while still protecting the family, the basic unit of our Canadian society, it is mandatory that there be a federal divorce law providing uniformity of grounds for divorce, maintenance and child custody orders resulting from the divorce." (Gerald Mercier, Sept. 9/80, p. 299).

"We have examined the arguments in favour of the federal proposal carefully and in our view the need for people across Canada to have uniform and consistent laws with respect to divorce maintenance and the custody of children must override those arguments. The arguments advanced in favour of the federal proposal pale, Mr. Prime Minister, when compared to the very important human rights that are affected by this important body of law, the right of spouses to continued support, the right of parents who have been granted legal custody of children to retain and care for those children, the right of children themselves to have secure and legally-protected homes despite divorce or separation." (Mercier, Sept. 9/80, p. 301).

Manitoba's stance on this issue appears somewhat inconsistent with its position on the Charter of Rights. In addition, it could be argued that there are areas of jurisdiction other than family law which would benefit from "consistency and uniformity across the country." Mr. Chrétien's clarification of the situation, in response to Mr. Mercier's remarks is also relevant:

"I would like to make two points here. Mr. Mercier kept referring to the federal proposition, and it is not a federal proposition. What happened is the provinces on that, Ontario and Quebec, were asking for such a change because they wanted to have a unified family court and so on and we acceded to the requests of the provinces. Of course what we want to make sure is that this system functions better than in the past, and that was the argument of the other provinces, but I object quite strongly to say that we want to divert --- to say it is a federal proposition when it is not. We are trying to accede to the requests of the provinces and if the provinces don't want it, we will keep the jurisdiction and that is your point, but I just want, Monsieur Mercier not to say that it is a federal proposition, it is probably -- the problem is we have too much of a flexible federal government." (p.302).

On other aspects of the family law issue, Manitoba joined with the other ten governments in supporting the proposals for Canada-wide enforcement of maintenance and custody orders (although Manitoba advocated stronger enforcement provisions here), granting of full family law jurisdiction to provincially-appointed judges, and federal retention of jurisdiction over the recognition of divorce and annulment decrees.

Ontario on Family Law

Ontario expressed general support for the Family Law proposal before the Conference:

"Everyone who has worked on this draft is very much aware of the difficult situation that exists now and are all committed to improving that situation and I believe that the proposal that is on the table now does achieve some substantial degree of improvement". (Premier Davis, Sept 9/80, p. 313)

Quebec on Family Law

Premier Lévesque expressed his support for the proposals before the Conference, and the expansion of provincial jurisdiction inherent in them:

"Il nous semble naturel, ... que les champs de compétence qui touchent au droit familial et qui échappe en ce moment aux provinces soient reconnus aux gouvernements provinciaux, ceux qui le veulent avec je pense certaines possibilités d'options pour ceux qui ne veulent pas." (Sept. 9/80, p. 308)

New Brunswick on Family Law

Mr. Hatfield expressed his support, with reservations, for the draft proposal:

"Mr. Chairman, New Brunswick's position is to agree with the mere consensus that was reached in the meeting of the Ministers. However, we do have a very serious concern about the arguments raised by Manitoba with regard to maintenance and custody."
(Sept. 9/80, p. 315)

P.E.I. on Family Law

P.E.I. joined with Manitoba in opposing the proposal, supported by the other nine governments, to extend concurrent jurisdiction, with provincial paramountcy, to the area of divorce grounds:

"Our province has consistently opposed a transfer of divorce jurisdiction to the provinces." (Hon. H. Carver, Sept. 9/80, p. 313)

The province supported the expansion of federal jurisdiction regarding custody and maintenance orders:

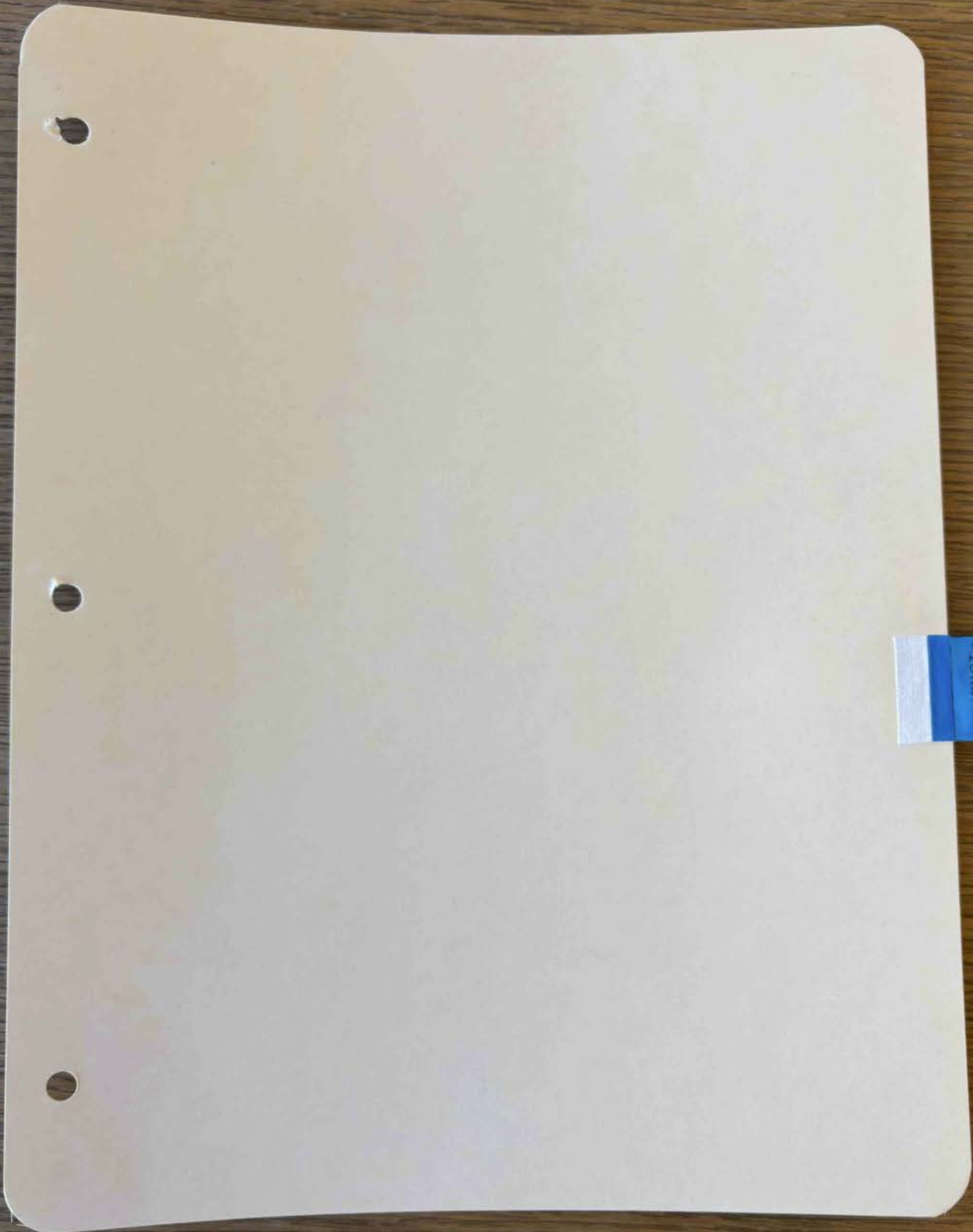
"We believe that federal jurisdiction ought to be expanded with additional concurrent and paramount jurisdiction to deal with the monitoring and enforcement of all custody and maintenance orders issued pursuant to either federal or provincial legislation." (Carver, Sept. 9/80, p. 313)

On the question of provincially-appointed family law judges:

"If provincial jurisdiction is to be expanded to provide provincially-appointed judges or to have jurisdiction over family law matters I would hope that it would be an opting in provision." (Hon. H. Carver, Sept 9/80, p. 314)

P.E.I.'s arguments in favour of nation-wide uniformity on this issue, like Manitoba's, could be applied with interesting results to other areas of the constitutional debate:

"Our position is based on our feeling that family law which affects so many Canadians should be uniform and uniformity is best achieved by one jurisdiction legislating on this matter, namely, the federal government". (Carver, Sept. 9/80, p. 314)



FISHERIES

British Columbia on Fisheries

British Columbia, like Newfoundland, advocated shared jurisdiction over the marine fishery. Together with the nine other provinces, B.C. supported the federal proposal for a transfer of jurisdiction over sedentary species, inland fisheries, and marine and aquatic plants to the provinces.

Among the B.C. statements were the following:

"We view fish as we do our other natural resources, as a resource that can be managed well by the province, although we recognize that while we do not have provincial boundaries there are international boundaries in which the federal government plays a very strong role." (Bennett, Sept. 9/80 p. 337)

"None of us are so rich that we can manage any of our resources in isolation from each other. We must manage on a multiple-use basis recognizing social and ecological needs and economic realities. In short, we support the Newfoundland proposal." (Hon. Rafe Mair, Sept. 9/80, p. 341)

Alberta, Saskatchewan and Ontario on Fisheries

These three provinces advocated adoption of the best efforts draft on fisheries; that is to say, they accepted the federal proposal for transfer of jurisdiction over inland fisheries, sedentary species and aquatic plants to the provinces, but opposed federal retention of jurisdiction over the marine and coastal fisheries, and anadromous species, advocating instead concurrent jurisdiction in these areas.

Quebec on Fisheries

Quebec advocated concurrent jurisdiction over marine and coastal fisheries:

"On est parfaitement d'accord pour cette idée d'avoir les compétences concurrentes."
(Lévesque, Sept. 9/80, p. 349)

New Brunswick on Fisheries

Premier Hatfield supported the federal proposal on fisheries, with the qualification that the provinces should play a more important role in fishery management:

"New Brunswick's position is at this moment in time in the discussion to support the position of the federal government." (Sept. 9/80, p. 344)

"...they -- I am using the actual words of the Minister from British Columbia -- said the provincial governments want a share in the management responsibility and I think that is what has to be understood here. Some way can be found I am convinced whereby that can be done." (Sept. 9/80. p. 345)

Nova Scotia on Fisheries

Nova Scotia was the only province to offer unqualified support for continued federal jurisdiction over the marine and coastal fisheries, and over anadromous species. Edmund Morris, the provincial Minister of Fisheries, made the following arguments in favour of continued federal jurisdiction in these areas:

"The question of fisheries is also of vital importance to the Province of Nova Scotia where the fisheries are the most valuable renewable resource of our people. Our position is that the fishery resources are common property. Ownership is recognized only upon catching. Common property fish do not respect geographical boundaries and it is unrealistic to presume they could be required to wait for the arbitration of jurisdictional disputes. Nova Scotia believes that provincial management of a common property resource like sea fish would be impracticable, would lead to duplicate programs, and to controversy between provinces. It would add to bureaucracy, it would increase costs, it would increase regulation in an industry that is already over-regulated." (Hon. Edmund Morris, Sept. 9/80, p. 334)

"The proposal of shared jurisdiction, so called, is that it would be the provinces who would license all other than the foreign fishing vessels, but since the provinces have various, and to some degree different objectives, if one province issued too many licenses then the pressure would surely evolve to alter the quotas. We tried to be realistic and factual about this, not only emotive, but imagine the situation if the federal patrol vessels, that is to say if the federal government would be so agreeable as to spend millions of dollars to enforce provincial regulations, if the federal patrol vessels might have to attempt to enforce in Atlantic Canada for instance five separate sets of regulations, Quebec included, and if one or more of the provinces should alter their rules under provincial jurisdiction immediately prior to or even during a fishing season for a particular species, imagine the confusion that would result.

The fisheries are properly viewed by contemporary

professionalism in the industry as a system, not five or six or micro sea fishery systems. Nova Scotia's position is that the only logical regime at this time requires the continued federal management of the sea coast fishery and the assurance thereby of continued federal financial involvement in the research, surveillance, enforcement and the provision of wharves, breakwaters, skidways and haul-outs.

Experience of attempted micro-management systems in sea fisheries in the North Sea, the Mediterranean, indeed parts of the United States, are available to us. They have not been satisfactory." (Morris, Sept. 9/80, p. 336-7)

Nova Scotia, like the other nine provinces, supported the federal government's offer to transfer jurisdiction over marine and aquatic plants inland fisheries and sedentary species to the provinces:

"Nova Scotia's position is to support the release by the federal authority to the provinces for their jurisdiction of inland fisheries sedentary species, aqua culture, which although they may not be the major part of the fishery, represent a significant, to my province, advancement in provincial authority." (Morris, Sept. 9/80, p. 337)

P.E.I. on Fisheries

Horace Carver, P.E.I.'s Attorney General, began his statement in support of shared jurisdiction over marine fisheries by recognizing the weight of the arguments in favour of exclusive federal jurisdiction:

"Discussions surrounding the fishery in recent years have featured a spirited argument by the Government of Newfoundland for a formal shared jurisdiction in this area and equally spirited defensive by the Department of Fisheries as to why the jurisdiction must remain a federal responsibility. ... From an administrative and technocratic point of view the arguments of the federal government for sole jurisdiction are impressive. In summary, fish are unaware of the niceties of provincial boundaries, but over and above the sheer logic of the federal argument supported now by Nova Scotia is the reality of provincial concerns in the operation and development of our fishery." (Carver, Sept. 9/80, p. 341)

He indicated P.E.I.'s position that even a constitutionally mandatory obligation on the part of the federal government to consult with the provinces in this area, would be insufficient in terms of providing provincial input:

"There is a very real role for the provinces in this area, a role which must be recognized in constitutional terms as opposed to a mere expression of the obligation to consult." (Sept. 9/80, p. 342)

Mr. Carver completed his statement by reiterating his province's advocacy of concurrent jurisdiction:

"While we cannot accept exclusive federal jurisdiction over the coastal fishery, we remain uneasy with any proposal that would seem to grant residual powers to the provinces. At least I would hope that we could agree that the coastal fishery be a concurrent jurisdiction with assigned paramountcy for the various components of that fishery." (Carver, Sept. 9/80, p. 342)

Newfoundland on Fisheries

Premier Peckford rejected the continuance of federal jurisdiction over the marine and coastal fishery, advocating instead shared jurisdiction:

"On this particular issue we have outlined and we have reflected, we have thought about it an awful lot as a government and we have put forward in good faith a reasonable proposition in our view, and that is the proposition of shared jurisdiction in the fishery, in the coastal fishery. ... We would like the federal government on its part to demonstrate some flexibility on this item." (Peckford, Sept. 9/80, p. 327)

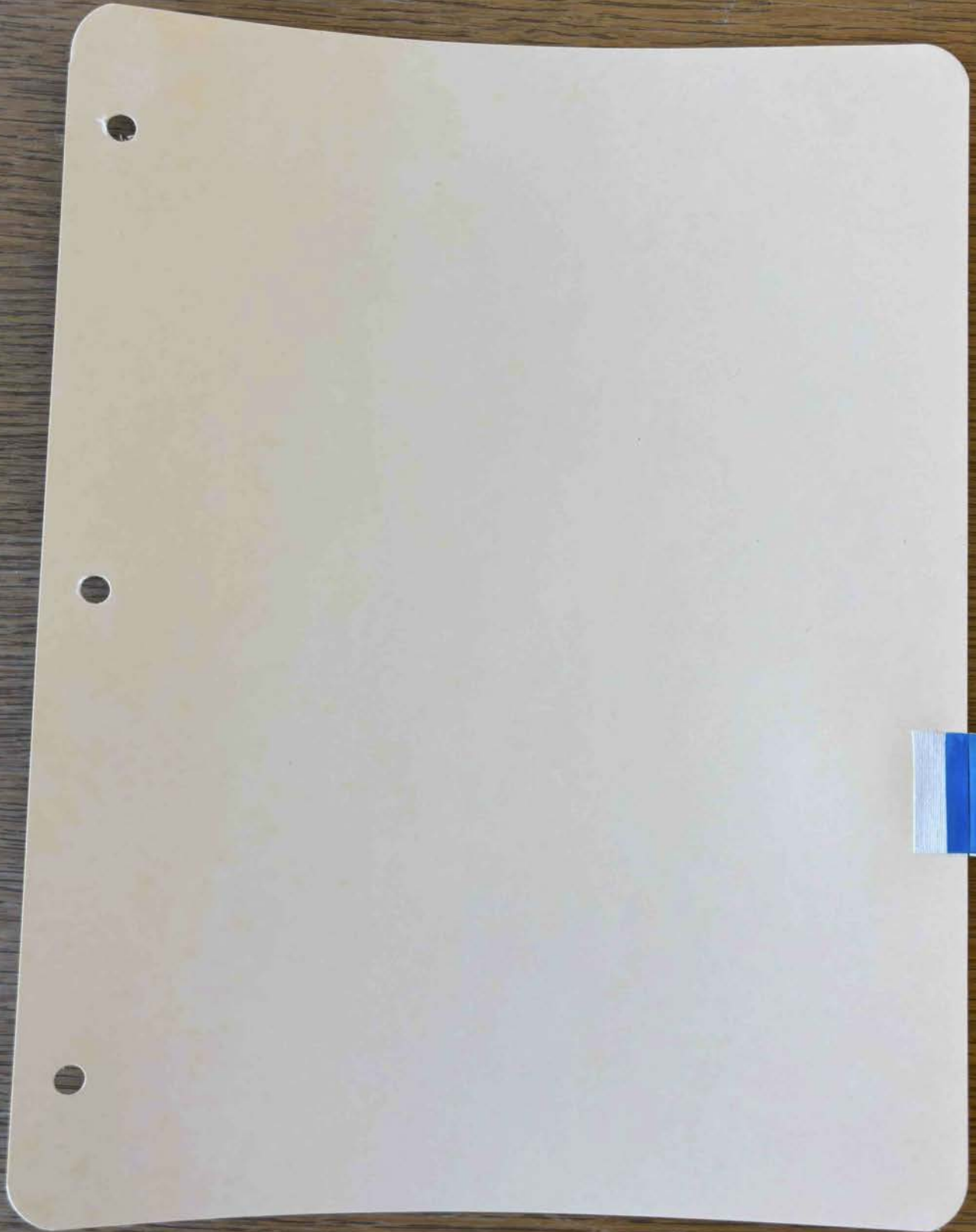
Many of the Premier's statements on this issue were confrontational in nature, ignoring the goodwill demonstrated by the federal government in relinquishing control over inland fisheries, sedentary species and marine and aquatic plants, and in offering to entrench a mandatory consultation process regarding fisheries:

"There has been no flexibility on the federal side at all as relates to fisheries." (Peckford, Sept. 9/80, p. 329)

"The response of the federal government up to now has been to make supposed mostly cosmetic concessions as it relates to our fishery in the inland waters." (Sept. 9/80, p. 328)

"We have to have some say and to say that we have made a concession by putting in the constitution, the new constitution making it mandatory for consultation tells me something. We should never have to put in the constitution of Canada to make consultation mandatory. That goes without saying. That is cosmetic, slick and not important in our view of movement on behalf of the Federal Government on a major enterprise like the fishery for our province." (Peckford, Sept. 9/80, p. 330)

"I think what we involved in right here in this fishery is a classic, a classic kind -- I shouldn't use the word I suppose -- confrontation or a classic kind of philosophical view on how we want different parts of this country to develop." (Peckford, Sept. 9/80, p. 334)



OFFSHORE
RESOURCES

British Columbia on Offshore Resources

Premier Bennett, in his statement on offshore resources, did not address the federal government's proposals for administrative arrangements which would ensure that the coastal provinces have a major say in how these resources are developed, that they receive a reasonable share of revenues from them, and that the major benefits from their development accrue to residents of these provinces. Rather, he addressed only the question of ownership, implying, by his statements and by his refusal to discuss the federal proposals, that B.C. would settle for nothing less than an outright transfer of ownership. His "all or nothing" approach is illustrated by the following statement:

"The reason we are at this conference is to take those measures to make sure that areas in which it does not seem to be working fairly can be redressed and in which we hope we have some positive response, not a series of principles, and not a series of partial offers, of administrative arrangements, but to make an agreement on the great principle of who owns the resource." (Sept. 9/80, p. 417)

Premier Bennett argued, as did Premier Peckford of Newfoundland, that offshore resources should be treated in precisely the same way as those onshore, in spite of the fact that this runs counter to international law which assigns ownership to the national government:

"The Federal Government has never contested Ontario's right of ownership or exclusive right to make laws respecting the minerals on the bed of the Great Lakes. No legal, no moral or equitable arguments have ever been made by the Federal Government in respect of ownership of sea-bed resources in Ontario. No suggestions has ever been made. An inland sea to me, and the principle is the same, Mr. Minister, as any narrow definition you may have introduced to justify that ownership versus the ownership that we say that we have. (Sept. 9/80, p. 387)

He made vague allusions to the possibility of B.C. leaving confederation, viz:

"British Columbia came into the Canadian marriage, presumably we brought the total west coast and all that land, territory underneath the ocean into Canada, just as much as we brought the resources that were in the ground into the Canadian marriage and presumably if we left we would take those same things. However, it is like divorce. Sometimes there is no equity to a marriage until there is trouble." (Sept. 9/80, p. 386)

"I apply the same principle then to the Canadian marriage and I apply the principle before we get to the point of trouble, that all resources, whether they be under water, fresh or sea, are in the ownership of the province, that we have a single standard, and not double standards in this country, and it is for that reason we are in a meeting such as this." (Sept. 9/80, p. 386)

Saskatchewan on Offshore Resources

Premier Blakeney's statement, in favour of provincial jurisdiction over the offshore, was brief. The Premier suggests that the province's position on this issue was adopted primarily to reciprocate support offered by coastal provinces vis-à-vis Saskatchewan's position on onshore resources:

"Our position on this is that we support the position of provincial jurisdiction in this area. We have considered resources for some time and at a number of conferences and the governments of the Atlantic provinces and others have supported the provincial ownership of resources, even when it would mean possibly less money flowing to the federal government, even therefore the government which offered them certain services might be less well able to provide them. There is now a prospect that they may well be enriched, and just as they supported our view that onshore resources were a matter of provincial jurisdiction I support their view that offshore resources ought to redound to their benefit and be within their jurisdiction."
(Blakeney, Sept. 9/80, p. 402).

Manitoba on Offshore Resources

Premier Lyon made the following statement:

"We would indicate we would support the principle that has been espoused of offshore resources being treated the same as onshore."
(Lyon, Sept. 9/80, p. 408).

Ontario on Offshore Resources

Premier Davis expressed support for the federal proposal for treatment of offshore resources, and aligned himself with the statement made by Premier Buchanan on this issue:

"...Mr. Prime Minister, there are two issues as I see it, and we are anxious to be as helpful as we can, and one is the principle of ownership which has been expressed by the Premier of Newfoundland, and I guess it's fair to state as I interpret it, a somewhat more pragmatic point of view expressed by the Premier of Nova Scotia with the statement that they wish control over the regulation, the problems of the environment". (Davis, Sept. 9/80, p. 403).

"I was quite encouraged, Mr. Prime Minister, at the response of the Premier of Nova Scotia when he indicated that perhaps an administrative arrangement whereby the people of Nova Scotia were to be the beneficiaries for that period of time to bring them into this same economic condition at which point in time there would be a national interest and a national contribution, as I understood what he said, I think is eminently fair." (Davis, Sept. 9/80, p. 406).

New Brunswick on Offshore Resources

Premier Hatfield reaffirmed his support for the 1977 memorandum of understanding on offshore resources signed by the federal government and the governments of the three Maritime provinces, which implicitly acknowledged federal ownership over these resources, but yielded a 25%/75% federal/provincial division of revenues:

"I have to tell you that I find this discussion of this issue boring. The reason I find it boring is because I thought we resolved it, as far as New Brunswick is concerned. I thought we worked out a very good resolution, but unfortunately our good intentions were not acted upon fast enough and the political process overcame what I think was a very good arrangement and a very good decision. That was the decision or an agreement we reached in 1977, an agreement which stated that the federal government had jurisdiction over off-shore oil. That was the federal government's position, but it also stated that the Province of New Brunswick had jurisdiction over off-shore oil and it recognised that there was a dispute over jurisdiction and it then said? and as I said at the time I signed that agreement, this is a demonstration of how our country can work." (Hatfield, Sept. 9/80, pp. 390-391).

He suggested that an analogous agreement could be worked out again.

However, he also argued that Newfoundland's position was a unique one, because of its recent entry into Confederation, and advocated recognition of provincial ownership over the offshore in Newfoundland's case:

"Newfoundland came in under a special set of circumstances and I think in the interests of Canada, we must acknowledge the principle of provincial ownership". (Hatfield, Sept. 9/80, p. 394).

Nova Scotia on Offshore Resources

Premier Buchanan expressed concurrence with the basic outlines of the federal proposals on offshore resources. He waived questions of legal ownership, and instead indicated acceptance of a formula whereby the province would share control of offshore development with the federal government, and would receive 100% of resource revenues until such time as it became "have" province. Some extracts from his statement outline the Nova Scotia position:

"Mr. Prime Minister, I am not going to get involved in any discussion this afternoon on the legality of the situation. We decided a while back to set that aside and I concur with your opening remarks that we in Nova Scotia quite a few months ago decided to put in suspense the word "ownership," because we believe we can achieve working co-operatively with Canada, we believe that we can achieve the kind of results that we know are the inherent rights of Nova Scotians by setting that word aside." (p.368).

"We believe we have a right to receive 100 per cent of the revenue to be derived from gas and oil commercial development. We also believe that our province must have a right to enact regulatory controls of what we call a provincial nature and that we should have a large measure of control of these provincial priorities. We want to have a right to control with the federal government because there is a shared responsibility here." (p. 374).

"You mentioned revenues and how long those revenues would accrue to a province. I will put it this way, Mr. Prime Minister: we are Nova Scotians, but we are Canadians. We believe in this country, we believe in the greatness of this country and once the relative economic wellbeing of the people and the Government of Nova Scotia are assured compared to the rest of Canada we certainly as good Canadians are prepared to share a part of the offshore revenues with the provinces that at that time may be "have not" provinces." (p. 375).

Mr. Lalonde responded to Premier Buchanan's statement as follows:

"First of all I would like to say that we appreciate the constructive and fair approach of the Government of Nova Scotia to this particular issue which is indeed a very difficult one for all governments. I believe that the position adopted by the Government of Nova Scotia is indeed opening the door to and forms the basis for reaching an agreement on the administration of offshore resources." (p.409).

P.E.I. on Offshore Resources

Premier Maclean's substantive positions on offshore revenue and provincial decision-making input were not irreconcilable with the federal proposals, however he argued that the best means of achieving these objectives would be via provincial ownership.

On revenues he states:

"...With regard to revenue, we believe if the federal government and provinces ought to share the returns in a manner consistent with what is the practice in those provinces where the resources are on land." (MacLean, Sept. 9/80, p. 396).

This, of course, is consistent with the federal arrangement proposed until such time as the provinces in question become "have" provinces.

On provincial control over offshore development:

"...Because of the dynamic and potentially disruptive nature of offshore development, it is imperative that the provinces be in a position to manage this process in a manner consistent with their own social and economic priorities. ...There is no reason to believe that the management of these resources by the provinces should, in any way, endanger or impair the national interest. To the contrary, we believe that provincial action in this regard will only serve to strengthen the fabric of federalism." (p.396).

This position goes beyond the federal proposal for a substantial measure of provincial control over offshore development.

Premier Maclean's next statement is that:

"With regard to the means whereby these ends can be achieved, we hold that the best and most logical device is for provincial ownership of offshore resources to be indicated in the Constitution". (MacLean, Sept. 9/80, p. 396-397).

He offers no explanation or justification for this conclusion.

Newfoundland on Offshore Resources

Premier Peckford advanced two basic arguments in favour of provincial ownership of the offshore:

"Mr. Chairman, the Government of Newfoundland has consistently asserted its ownership of the mineral resources of its continental shelf. This assertion is founded on the fact that ownership of these resources resided with the Dominion of Newfoundland before Confederation with the Dominion of Canada and was not alienated from Newfoundland in that process". (Peckford, Sept. 9/80, p. 381).

"There is no reason in logic or in equity why Newfoundland's offshore mineral rights should be questioned because the same resources which in the case of some other provinces are located on land, are, in Newfoundland's case, located on the continental shelf." (p. 381).

"The resources of the continental shelf are just as much a part of the Province of Newfoundland and Labrador as the potash is of Saskatchewan and the oil and gas of Alberta or the tremendous mineral and forest wealth, and some gas, of British Columbia. There is absolutely no difference." (Peckford, Sept. 9/80, p. 385).

He argued, offering no justification for the argument, that effective provincial control would not be possible without outright ownership:

"...The federal government has proposed a regime of administrative arrangements as the answer to this question. This suggestion, of itself, is an admission that the coastal provinces have a special interest in the management of these resources but it denies to those provinces the essential regulatory powers which derive only from ownership." (Peckford, Sept. 9/80, p. 383).

On offshore revenues, he completely misinterpreted the federal government's proposal that these revenues be treated like those from onshore resources on an interim basis instead implying that the federal government had misleadingly offered provincial governments 100% of such revenues:

"... The federal government has also suggested that coastal provinces should get 100 per cent of the revenues accruing from offshore resources, but only until they have become "have" provinces.

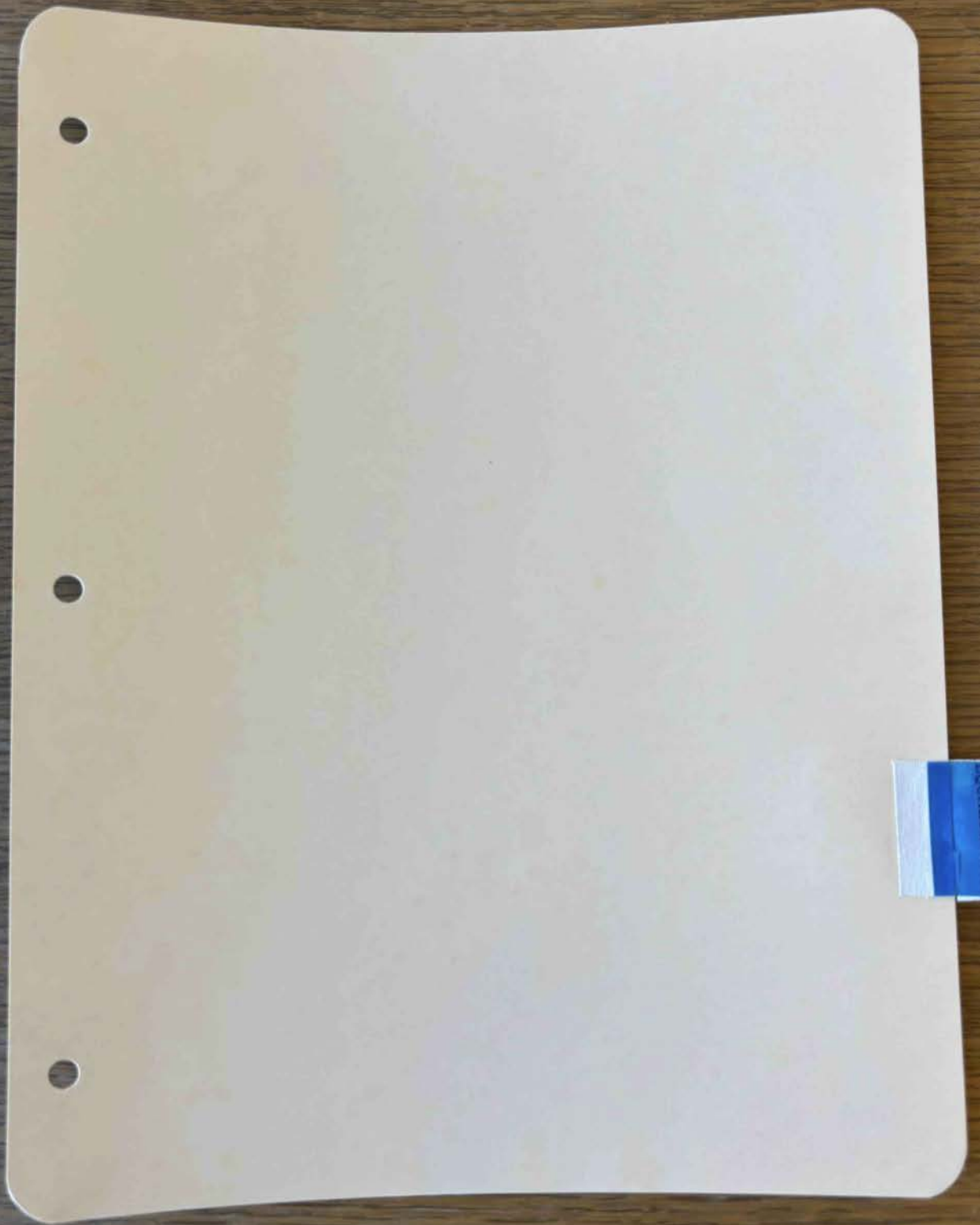
At first glance, this might appear to be a generous gesture but it is terribly misleading. To begin with, even on land no province realizes 100 per cent of the revenue. A large portion goes to the oil companies and a significant portion goes to the federal government through taxes of various kinds. Less than half of the total revenue remains for the provincial government. The offshore would be no different.

Furthermore, the federal proposal would see this sharing continue only until government revenues reach the national average, that being the conventional definition of "have" provinces. This is hardly an adequate response to the citizens of a province who see their fellow Canadians with average earned incomes twice their own." (Peckford, Sept. 9/80, pp. 383-384).

Clearly, too, the logic in the last part of the statement is specious, as it is hardly likely that government revenues could rise substantially unless those of Newfoundland residents did also.

Peckford's stance on this issue was strictly a "no compromise" one, as illustrated by the following statement:

"No solution is possible to the differences between the ten provinces and the federal government on this issue short of a constitutional amendment confirming ownership rights to the offshore resources in the provinces to which the continental shelf appertains." (Peckford, Sept. 9/80, p. 384).



EQUATION

Provinces on Equalization

General agreement existed on the principle of equalization, as it has done since the federal-provincial meetings in 1969. Discussion therefore was limited to determining which of the three drafts before the conference contained the most appropriate wording. Some provinces, and the federal government, indicated flexibility with respect to the choice of draft, but eight provinces stated a preference for the Manitoba/Saskatchewan draft, with Alberta "inclined to favour" the Quebec draft, and B.C. and the federal government preferring the B.C. draft. Thus, this was one issue which came very close to being resolved at the conference.

Following are general statements made by the premiers in favour of the principle of equalization:

B.C.

"British Columbia is committed to the principles and the goals of equity amongst Canadians..." (Bennett, Sept. 9/80, p. 444)

Alberta

"The position of the Government of Alberta is to see this principle enshrined in the Constitution of Canada". (Lougheed, Sept. 9/80, p. 464)

Saskatchewan

"Equalization--this should be entrenched as a basic part of what we mean by Canada". (Blakeney, Sept. 13/80, p. 1046)

Manitoba

"We have supported the proposal that a statement of the equalization principle be included in the renewed constitution." (Lyon, Sept. 9/80, p. 445)

Ontario

"Now, while I am on equalization I want to make it very clear as one of the provinces that has accepted this principle we still stand by it. We happen to think it is basic to this Confederation. Ontario has always felt this was part of not only our responsibility but our opportunity as Canadians to assist in the general development of this nation and I think, Mr. Prime Minister it has been fundamental to what this country is about, has been about, and hopefully will be about." (Davis, Sept. 9/80, p. 461)

Québec

"...Nous sommes tout à fait disposés à accepter la formule du Québec, telle qu'amendée par la Saskatchewan et le Manitoba, telle qu'elle nous est présentée actuellement. Cependant, je tiens à souligner à nouveau que le principe que nous établissons dans la constitution sur la péréquation nous laisse devant des problèmes extraordinairement sérieux quant à la façon dont les transferts du gouvernement fédéral nous sont faits." (Parizeau, Sept. 9/80, p. 452).

New Brunswick

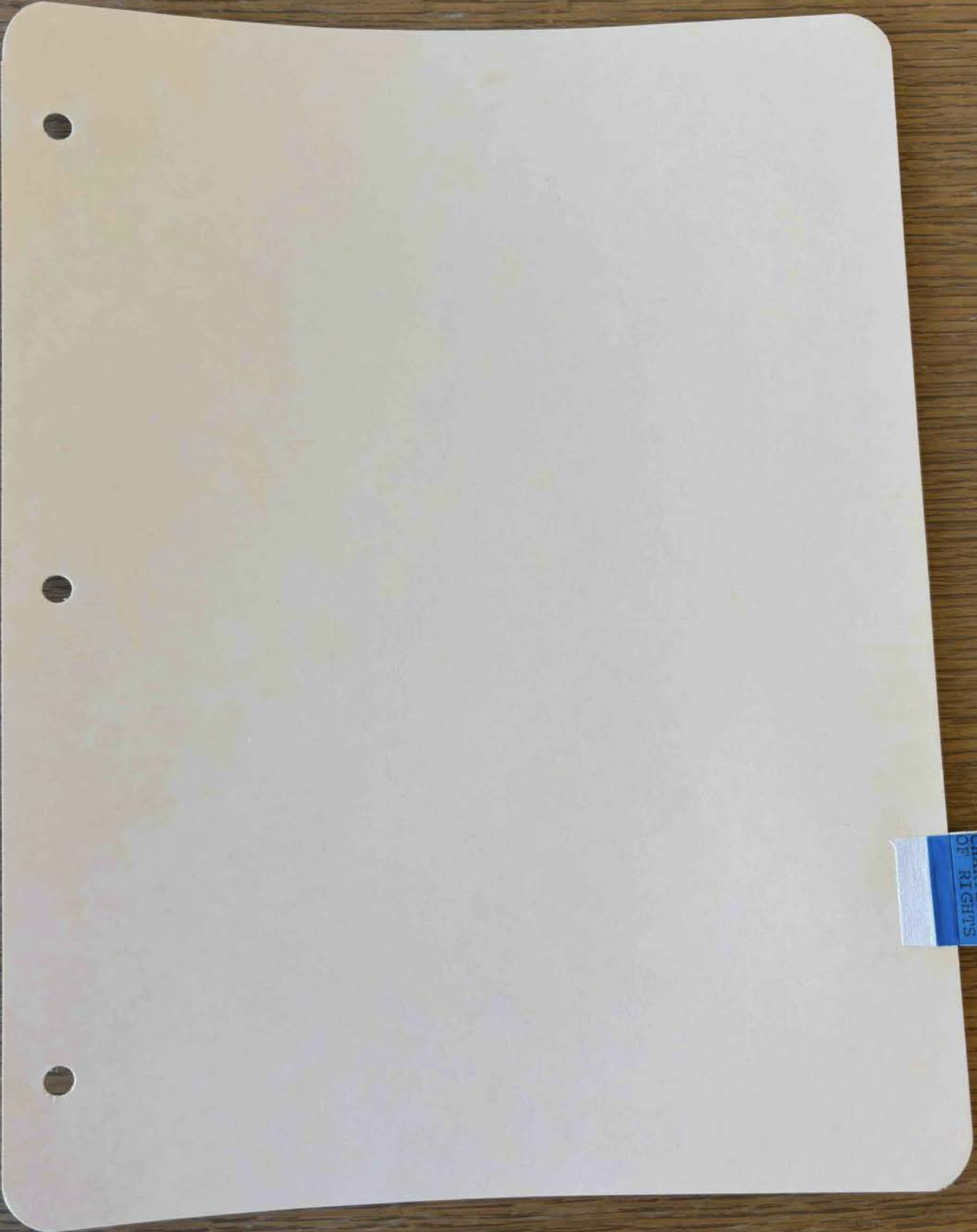
"...What I want enshrined in the Constitution permanently, not subject to five year review but permanently, is a concept that has distinguished our country and distinguished those of us who are part of that country." (Hatfield, Sept. 9/80, p. 459).

Nova Scotia

"...Our position is well known. It is a position that is very supportive of equalization." (Buchanan, Sept. 9/80, p. 454).

Prince Edward Island

"...We simply agree with the principle of equalization and I think everyone else does." (Hon. Fred Driscoll, Sept. 9/80, p. 447).



CHARTER
OF RIGHTS

British Columbia on the Charter of Rights

British Columbia opposed in principle the entrenchment of a charter of rights, (except democratic rights) as it had done previously, on the grounds that entrenchment would not enhance the freedoms enjoyed by Canadians, that these freedoms were already adequately protected, that appropriate wording would be difficult to find, that entrenchment would on the supremacy of Parliament, and that entrenchment of a Charter of Rights would in some way be a coercive action.

Alan Williams, representing B.C., first stated that:

"Fundamental rights do not appear to be in jeopardy today in Canada". (p. 554)

This statement ignores the possibility that these rights may be threatened at some time in the future, and the need to take action now to protect citizens against potential future threats.

He next took the position that entrenchment would not enhance the rights and freedoms currently enjoyed by Canadians, saying:

"When considering the subject of entrenchment in the constitution it seems to me that we have to ask ourselves whether or not, having taken such a step, we will be freer than we are today". (p. 555)

In opposing the entrenchment of language rights, Bennett adopted the rather puzzling position that protecting these rights would in some way be a coercive measure:

"British Columbians, then, I think, are proud to be Canadians and I think they recognise the rights of Canadians in other parts of the country, but I do not think it would be appropriate to force them in a provincial sense". (p. 638)

"Our people respond to the voluntary offering of that type of Canadian opportunity (i.e. French language instruction). I sometimes think they would react against any action that would appear to force them in some way to somebody else's view as to how they should react as Canadians in our part of the country". (p. 638)

The latter statement appears to take in bad faith the willingness of British Columbians to guarantee the rights of Canadians in all of the country.

However, the ultimate vulnerability of B.C.'s argument lies in the fact that the province's opposition to entrenchment of a Charter of Rights is based on the difficulty of finding appropriate wording:

"It is in those areas of the difficulty of draftsmanship, the difficulty of a clear, precise definition of what we inherently know are the freedoms of Canadians, that the basic flow of entrenchment rests". (p. 557, Williams)

The most incisive response is the Prime Minister's own:

"We have heard nothing else when it comes to powers of the provinces or powers of the federal government but put it in the constitution. Suddenly when we get to protect fundamental rights and freedoms of the citizens we say, 'Don't put it in the constitution, the words are too hard to find'." (p. 664)

Alberta on the Charter of Rights

Alberta opposed entrenchment of a Charter of Rights, on the grounds that entrenchment would detract from the principle of legislative supremacy, and that entrenchment would somehow prevent the evolution of new or broadened rights. (The province did, however, support the inclusion of democratic rights in the Constitution). Premier Lougheed stated that he felt basic rights were adequately protected in Alberta by the provincial Bill of Rights, introduced by Lougheed's own government nine years ago:

"It is true that entrenching (a Charter of Rights) has the strength of minimizing the risk that rights would be tampered with, and yet is is my deeply held conviction that there is simply no way that within our province under anything that I can foresee that our Alberta Bill of Rights or the basic fundamental rights that are now established there after nine years, could, in fact be dealt with in any way by elected representatives and watered down or diminished to any extent." (Sept. 10/80, p. 497)

Nonetheless, as the Premier himself points out, this provincial Bill of Rights can be overridden by provincial legislation prefaced by the phrase, "Notwithstanding the Alberta Bill of Rights..."

In defending Alberta's opposition to the entrenchment of language rights, Premier Lougheed takes an unnecessarily antagonistic stance, characterizing entrenched guarantees of language rights as a "constitutional club":

"We have citizens of Alberta, no more than 2.2 per cent of whose mother tongue is French. ... Under 50 per cent of the people of Alberta Anglo-Saxon and that is a very significant mix..."

At this time, from my reading, and in my view of the harmony that we have within the Province of Alberta, it would be set back by creating a circumstance where we brandished that constitutional club." (Sept. 10/80, pp. 633, 635)

Premier Blakeney's response to these statements provides their most effective rebuttal. (See page 3 of "Saskatchewan on the Charter of Rights", overleaf)

Saskatchewan on the Charter of Rights

Saskatchewan opposed entrenchment of a Charter of Rights (except democratic rights) on grounds similar to those expressed by the Manitoba government, namely that entrenchment would involve a transfer of power from elected bodies to the judiciary:

"If we were to decide to place the Charter of Rights in the Constitution we would be taking, as Premier Lyon has said, out of the hands of the voters and their representatives important powers and giving them to the courts important powers to decide some of the country's most significant political issues." (Blakeney, Sept. 10, p. 486)

Premier Blakeney objected to entrenchment also on the basis that those rights which were entrenched would thereafter be insusceptible to change resulting from pressure from lobby groups:

"We in Canada have been schooled in the idea that when people individually or in groups desire change one appropriate way is to petition and to lobby and to badger. This is largely done not by overweening majorities but by minorities. The proposal before us, if adopted, would deprive people of that deeply ingrained democratic avenue on issues about which people feel strongly." (Sept. 10, p. 488)

A case could easily be made that this argument does more to recommend entrenchment than to discredit it; that basic rights and freedoms should not be subject to change or erosion as a result of pressure exerted by organized, frequently well-funded lobby groups which rarely represent the collective Canadian interest.

Premier Blakeney drew several comparisons, of questionable relevance, to the situation in the U.S.:

"Let us look at the United States. We are busy engaging in this discussion, and I go down to visit my people in the United States and I go there at Christmas time and I see all the stores open on Christmas Day. I wonder why all the stores are open on Christmas Day because I don't like to see that. Down there they call it freedom of religion because the state is not permitted to legislate with respect to the holiday of any particular faith. It may be your perception of what Canada should be. It is not my perception of what Canada should be." (Sept. 10, p. 490)

"I also ask you to look at the record of the Supreme Court of the United States and ask whether or not those types of decisions are the ones we wish to see in Canada. We have seen there certainly a very vigorous assertion of rights. We have seen the Supreme Court take the view that the University of California ought not to decide who goes to the University of California, it ought to be the Supreme Court of the United States, the Baake case. We have seen instances where it has been decided that the school boards in Boston shall not decide who shall be in which schools in Boston but rather it shall be the judiciary in that area. I may not object to the decisions made by the judges, but I do most assuredly object to these decisions being made by judges as opposed to elected school boards." (Sept. 10, p. 491-492)

It should be noted that the position adopted by Saskatchewan on fundamental rights and freedoms at the September conference differed from the position taken by the province in February 1979. At the earlier conference, Saskatchewan had supported the entrenchment of fundamental freedoms in a constitutional Charter of Rights.

On language, rights, however, Premier Blakeney's position was supportive of the federal stance, although he made no definitive commitments:

"We are prepared to see new and wider language provisions in the constitution." (Sept. 13, p. 1047)

Responding to Premier Lougheed's contention that the ethnic mix in Alberta provided grounds for opposition to the entrenchment of language guarantees, Premier Blakeney noted:

"Mr. Prime Minister, our province is a good deal like Alberta in its multi-cultural diversity, perhaps even more so, and I believe we are perhaps the only province where the English and French taken together don't make up the majority of the population. ... A relatively small group, under three per cent, are Francophone.

"I do say, however, what I have said on earlier occasions, that this question of language rights is not a question only of responding to the groups within our province, but also is, as I have phrased it on other occasion, part of the confederation bargain. I do not regard this in the same category as other rights, and I have made this point before and I think others know it, and accordingly, while I don't want to go through the paper section by section now, I would simply say that we will be listening to the debate and generally will be responsive to the idea of incorporating some language guarantees."
(Sept. 10, p. 638 - 639)

Manitoba on the Charter of Rights

Manitoba opposed entrenchment, as it has on earlier occasions, arguing that this step would be contrary to Canada's parliamentary tradition under which rights are already sufficiently protected, and that would it undermine the independence of the judiciary. The Manitoba premier was particularly inflexible on this issue, as illustrated by the following quotations:

"We are not going to have any entrenched Bill of Rights, period." (p. 586)

"Speaking on behalf of some of the Premiers, the point was raised...of the dilemma in which some of us find ourselves in terms of the suggestion as it was put forward earlier this morning that we would now be looking at the federal draft of the entrenched bill on a serious basis. Some of us, of course, would find it difficult to be usefully contributing to that debate when we say ab initio, from the beginning that we reject the concept of entrenchment." (p. 581)

He contended that no enhanced protection for Canadians' rights was required:

"We have a working and a functioning system at the present time for the protection of human rights in this country and that is why we don't have to put them in the constitution and entrench them." (p. 691)

"We have one of the most enviable systems on the face of the earth and we merely say, 'Let's not tinker with it'. We have got a better system of protection of human rights now, a better system with respect, sir, than an entrenched charter would give us." (p. 692)

"I believe...that our rights are already better protected by our Parliamentary system than they are in any nation on earth with such a Charter of Rights in its Constitution." (p. 1021)

In arguing against entrenchment, Premier Lyon stated:

"The office of Prime Minister is not mentioned in the Constitution. The offices of Premiers are not mentioned in the Constitution. We are all here and doing a job on behalf of Canadians and we are not entrenched in the Constitution." (p. 691)

His opposition to entrenchment appeared largely based on the fact that an entrenched Charter of Rights would impose certain limits on the legislative freedom of Parliament and the provincial assemblies. He did not ask whether these legislative constraints would not be more than counterbalanced by the additional freedoms that would thereby be guaranteed to citizens:

"We and other provinces in short find entrenchment to be totally contrary to our traditional and our successful parliamentary government and therefore not in the best interests of Canadians." (p. 476)

He suggested that it would be unwise to ask the judiciary to assume responsibility for enforcing the provisions of a Charter of Rights:

"Entrenchment involves a loss of judicial impartiality and judicial independence, again two cornerstones of our present, very respected judiciary." (p. 478)

Regarding democratic rights, Manitoba was the only province not willing to have democratic rights entrenched in the constitution - that is, provisions guaranteeing citizens the right to vote, and obligating the legislative assemblies and House of Commons to hold elections at least every five years. The only reason offered by Manitoba for withholding unanimity on this issue was that similar provisions already existed in the Manitoba constitution - notwithstanding the fact that this constitution can be changed by a simple Act of Parliament. Premier Lyon argued:

"We are bound by it, we feel bound by it, Mr. Prime Minister, and that is why I say I opposed this question at the beginning, it is going into a dilemma, talking about something that may not happen and with the greatest of respect, sir, I think we are seeing the manifestation of that dilemma at the present moment." (p. 591)

Manitoba (with every other province but Québec) supported the recognition of Canada's linguistic duality at the federal level, but opposed the entrenchment of any other language rights.

Premier Lyon opposed the entrenchment of any provision dealing with language rights in the Manitoba legislature on the grounds that these rights were already protected:

"The sections referring to the use of French in the legislature of Manitoba are now the law of Manitoba. We see no need for the federal government to enact that in the Constitution." (p. 640)

Regarding language rights in the field of education, Premier Lyon blithely ignored past abuses of these rights in his own province, and the possibility that such abuses might occur again, and cited recent progress in providing access to French language instruction as adequate grounds for denying entrenchment:

"With respect to education we feel that the process that has been followed by a number of governments in Manitoba before the present government which I have the honour to head and aided and abetted by policies of the present government have been very satisfactory in terms of the treatment of our second official language and the availability of our second official language to school children in Manitoba." (p. 641)

"In all three out of every seven Manitoba students is involved in a French language program of some sort or other. ...All of this has been done without the necessity of any constitutionally entrenched requirement in Manitoba. I think the situation is proceeding satisfactorily and therefore we would not be supportive of those sections that would attempt to mandate educational requirements in Manitoba which are already being provided." (p. 642 - 643)

Premier Lyon even went so far as to refer to a guarantee of language of education rights as a "Damocles sword":

"If a Francophone family comes to Manitoba as he will be aware from the study that was done and presented to the Premiers two years ago schooling in French is available to that family in Manitoba at the present time without any Damocles sword of a constitutionally entrenched mandation or mandatory requirement being there." (p. 641)

Ontario on the Charter of Rights

Premier Davis expressed his clear support for the entrenchment of a Charter of Rights in the Canadian constitution, and outlined the areas he would like to see included in such a Charter:

"We really do support the entrenchment in the new constitution of a Charter of Rights, because we believe that governments and the people must make an explicit commitment to the preservation and enhancement of the liberties of individuals." (Sept. 10, p. 502)

"A statement of our rights should affirm our commitment to the fundamental freedoms and democratic rights that underpin our democracy, declare and preserve such basic legal rights which are best served by inclusion in a Charter of Rights, re-affirm the obligation of the parliament of Canada and the federal institutions to operate in both official languages, ensure the availability of minority language education throughout Canada where the numbers warrant and provide criminal trials in the official language of the accused." (Sept. 10, p. 503)

He discounted the arguments of those Premiers who feared entrenchment would rob elected assemblies of certain powers:

"Despite the fairness of our British parliamentary system, and there have been very few who have been more supportive of that system or the role of the Monarchy, Mr. Prime Minister, in that system, the sovereignty of Parliament, British jurisprudence, a charter of political rights with some legal rights would re-inforce the sense of freedom and protection which all of our people possess, thereby in our view contributing directly to real freedom for all of us." (Sept. 10, p. 504)

"The charter of basic rights, and we have gone through an evolution on this which we were here to consider, represented, I think, a practical and creative balance. It retained the traditions of our parliamentary democracy and the rule of law, and both in our view are indispensable for the protection of our citizens and the restoration of our national unity." (Sept. 13, p. 983)

Premier Davis discussed his support for incorporating mobility rights, in the context of the need to preserve a strong national economic union:

"We believe that this principle of a single Canadian economy should have meaningful force in the law of this nation and that our governments must be disciplined by imperatives of economic need and individual rights outside of our own provincial boundaries." (Sept. 13, p. 982)

"I say without equivocation, and I don't say it with any sense of embarrassment, that the people of Ontario benefit immensely from the unity of this nation. There is no question what the history shows. That being our priority, there are compelling reasons underlying our support for the Government of Canada on several fundamental constitutional issues. It is not just selfish, it is my view that our economic union or the right of people, the rights for goods or services to move freely from province to province, this has to be stated in both legal and political terms." (Sept. 13, p. 982)

The only two areas in which the Ontario premier did not support the federal position on a Charter of Rights were those of language rights in provincial assemblies, and language provisions for provincial statutes:

"This part of the proposed Charter as it relates to the provision of language services within a provincial jurisdiction, as it relates to provincial institutions which some might suggest is really the enforcement of institutionalized bilingualism within the Province of Ontario, we just cannot, sir, find this acceptable. There is no question that there are a large number of Francophones within our Province. There is no debate about this. They have and are making a significant contribution to the economic and social well being of our province.

"I would also point out though that they do constitute in terms of percentages and one doesn't like to deal in terms of percentages, but it is between five and six per cent of the population." (Sept. 10, 628)

Premier Davis has subsequently been sharply criticized by Premier Hatfield of New Brunswick for his position on this issue. In this context it should be noted that the absolute number of francophones in Ontario is substantially greater than the number in New Brunswick.

Quebec on a Charter of Rights

Premier Lévesque opposed the entrenchment of any categories of rights but democratic rights in a renewed constitution. In taking this position, he argued that rights in Canada are already adequately protected and that an entrenched charter of rights would infringe in an unacceptable way on provincial legislative autonomy:

"Première chose, c'est que nous ne croyons pas, dans l'état actuel des choses, que les droits fondamentaux soient en danger au Canada. Est-ce qu'ils seraient plus en sécurité s'ils étaient -- pour employer le terme à la mode -- enchassés, "entrenched", constitutionnellement, moi, je ne le crois pas."
(Lévesque, Sept. 8/80, p. 529).

"Je crois que l'évolution de cette charte comme des chartes qui existent ailleurs, les chartes équivalentes qui existent ailleurs au Canada ... est beaucoup plus prometteuse pour une santé toujours meilleure au point de vue de cette qualité de la vie et du respect des droits que l'enchassement et la rigidité constitutionnelle prématurée.

Je dis que les droits sont pas en danger, bien, pas plus au Québec qu'ailleurs. Je crois que si on regarde simplement ce qui s'est fait, ce qui se fait, ce qui a été consigné dans nos textes, ce qui régit nos lois, ce qui régit le Parlement, qu'il y a une protection qui est unanimement acceptée au Québec comme ailleurs pour les grandes libertés fondamentales, la liberté de religion, la liberté de pensée, la liberté d'expression, la liberté de presse, si vous voulez, de même que, un respect de tous les principes fondamentaux de la démocratie. Ça existe et c'est respecté et c'est protégé au Québec, -- comme j'en suis sûr -- partout de l'Atlantique au Pacifique."
(Lévesque, Sept. 8/80, p. 530-531).

"Le Québec a exigé, dès le début du régime fédéral, d'avoir à lui, exclusivement un Parlement démocratique dont les pouvoirs seraient souverains, intangibles dans les domaines qui paraissent -- à l'époque déjà -- essentiels au maintien et à l'épanouissement de son existence nationale, de son identité, inutile de vous dire que ces pouvoirs -- quant à nous -- sont encore essentiels, et en particulier en ce qui concerne la politique linguistique et l'éducation.

Donc, quant à nous, il ne saurait être question d'en priver d'aucune façon notre Assemblée nationale, ni de les soumettre -- si peu que ce soit -- à des décisions extérieures." (Lévesque, Sept. 8/80, p. 542-543).

"Nous serons contre par tous les moyens, une contrainte qu'on prétendrait nous imposer de l'extérieur même sous la noble forme d'un amendement constitutionnel, dans une charte des droits contre laquelle, dans l'ensemble nous sommes de toute façon." (Lévesque, Sept. 8/80, p. 686).

The Premier objected that the charter of rights applicable to both federal and provincial jurisdiction would complicate intergovernmental relationships:

"Si on enchâssait une charte des droits avec toutes les catégories qui sont là, on pourrait compliquer encore ... le problème des relations entre les niveaux de gouvernements." (Lévesque, Sept. 8/80, p. 532).

Premier Lévesque was particularly adamant on the question of language rights, contending that the Anglophone minority in his province had been adequately protected without constitutional guarantees and that pressures on governments would be a better means for Francophone minorities outside Quebec to assure their rights than a constitutional guarantee:

"Il me semble que quand on regarde la situation réelle de la minorité anglophone au Québec, comme je l'ai décrite, on s'aperçoit que cette situation de fait n'a pas eu besoin de garanties constitutionnelles et il me semble qu'il est important de le rappeler pour que les minorités francophones hors Québec ne se fassent pas d'illusions.

Vous savez, la protection de la minorité anglophone au Québec qui est bien assurée n'a pas eu besoin de garanties constitutionnelles spéciales, et de telles garanties peuvent demeurer des purs mirages et de pures illusions en l'absence d'une volonté ferme de la part des gouvernements concernés." (Lévesque, Sept. 8/80, p. 684).

"Je dirais aux minorités francophones hors Québec: vous seriez mieux de continuer les pressions, d'accentuer si c'est possible, les signes évidents de plus en plus de bonne volonté qui sont là et de pas se fier à l'illusion de la pure garantie sur le papier, d'un principe dont l'application a des chances d'être longue à venir et qui, en fait, pourrait retarder aussi la cause plus que de la faire avancer."
(Lévesque, Sept. 8/80, p. 684-685).

The Premier asserted his preference for a reciprocity agreement over constitutional guarantees of language rights, leading to the following exchange between him and the Prime Minister:

"Nous allons nous en tenir à ce qu'on a appelé la clause de réciprocité." (Lévesque, Sept. 8/80, p. 685).

Hon. Pierre Trudeau: "Est-ce que je pourrais savoir, vous demandez respectueusement ce que vous êtes prêt à mettre dans un contrat de réciprocité, pourquoi ne le mettriez-vous pas dans un amendement constitutionnel?"

Hon. René Lévesque: "Non, monsieur le premier ministre fédéral, parce que quelque geste qu'on accepterait d'inscrire même sous forme d'opting in, etc., mais qui serait, si vous voulez, de mettre le bras dans l'engrenage, quelque geste qui réduisait les pouvoirs souverains depuis cent treize ans (113) du Parlement du Québec en matière d'éducation, d'organisation de l'enseignement nous paraît dès le départ dangereux."

Hon. Pierre Trudeau: "Alors, la réciprocité dont vous parlez serait temporaire, ce ne serait pas une garantie permanente pour votre minorité, pas plus que vous voudriez que les autres garantissent franco-manitobaine."

Hon. René Lévesque: "Si vous permettez, monsieur le premier ministre, je vais vous laisser le dernier mot, si vous voulez, là, je vais vous répondre simplement comme ceci, non, si vous voulez ensuite continuer, c'est que la garantie que donnerait la réciprocité sera aussi le jour venu, sera aussi sûre, aussi solide que seront les progrès et les garanties de progrès qui seront effectués dans le reste du Canada, c'est tout."

Hon. Pierre Trudeau: "Eh! bien c'est comme ça que nous voyons la constitution également." (Trudeau and Lévesque, Sept. 8/80, p. 686-687).

New Brunswick on the Charter of Rights

Premier Hatfield expressed firm support for entrenchment of a Charter of Rights, simultaneously rebutting arguments made by Premiers opposed to entrenchment. Dealing with the contention that protection of rights should not be entrusted to the courts he countered:

"Mr. Prime Minister, I want to deal too with this argument that putting the rights in the court somehow or other restricts rights. Mr. Prime Minister, the fact is that the courts do not take power away from anybody. The courts don't have the power to take power away. All the courts do is say, "This is what you said you wanted. This is what you did." They define power, they define the limits and the limitations of power. That is all they do. They don't move it one way or another."
(Sept. 10, p. 520 - 521)

Addressing the references to the American experience made by Premier Blakeney:

"A number of things have been said about the experience in the United States. Well, you know my view on that. I think it should be considered unlawful for constitutional framers to be looking around the world. What they should be doing is looking at their own country. I said that about the Senate. I am not interested in what they do in Germany. I said that about offshore oil. I am not interested in what they do in Australia. What I am interested in is what kind of a Canada do we want, and what kind of rights do we want for our people."
(Sept. 10, p. 512 - 513)

He effectively made the case that rights are better protected through enshrinement in the constitution than through legislative discretion, using the following example:

"...the issue is not whether or not we have the rights. The issue is how we protect those rights. I want to use a case in point and I want to be specific. The people in Québec believed and they were right that they had a right to the statutes of Québec in English and in French and the Government of Québec -- I am not challenging it. I am only saying this is what happened. The Government of Québec came along and said, "No. You only have that right by the act of the Legislature of Québec. You only have the right to have your statutes in French legally. We will provide you with a translated copy of that legal statute on demand instantly, but you only have the right to have your statutes in French and not in English." So the people of Québec, some people in Québec went to the Supreme Court of Canada and the Supreme Court of Canada said, "No. You have the right in English and French. Your statutes, you have the right to your statutes in English and in French, not just in French." There is the difference, Mr. Prime Minister, and if anybody is confused about it I suggest they go and ask those people in Québec because they have not lost anything. Nothing was in fact taken away from them practically speaking, nothing at all. They have their statutes in English. They could use English in the legislature. They could do whatever they liked with English, but they lost a right, that is all. All they lost is a right and it was not protected by the legislature. It was only protected by being entrenched in the constitution." (Sept. 10, p. 629 - 630)

He argued eloquently for the enshrinement of language rights, proposing an even broader criterion for eligibility for instruction in either official language than that suggested by the federal government:

"I am convinced, if I am convinced of anything, that we have gained more support for an understanding of the need to respect the right of Canadians, the right of Canadians to speak one of the two official languages wherever they may be in our country and I think we have gained respect for the right of a Canadian to be and to work and to do what he wants to do and what he can do, what he is competent to do best wherever he chooses to do it in Canada." (Sept. 13, p. 1019)

"We have two official languages in Canada and that is a right, that is a right, except in Ontario, Saskatchewan, Manitoba, Alberta, British Columbia, Nova Scotia, Québec, Newfoundland and Prince Edward Island. It is not an absolute right even in New Brunswick." (Sept. 10, p. 632)

"I think that it is important that we come to terms with this phrase "where numbers warrant". Mr. Prime Minister, I want to tell you now I cannot support a charter of rights that has that phrase in it. I can't say to the people of New Brunswick in the future, "Yes, you will have the right to minority language instruction as long as you can mount sufficient numbers of people," and I don't believe it is tolerable as a Canadian to know that rights are in fact being denied because someone said, some legislature or some court says, "Sorry, you haven't got sufficient numbers". (Sept. 10, p. 516 - 517)

Nova Scotia on the Charter of Rights

The Nova Scotia government opposed the entrenchment of any but democratic rights in the constitution, unlike the previous provincial government, which had supported the enshrinement of fundamental freedoms.

In his statement, Premier Buchanan exhibited a certain complacency, implying that because there had been no historic challenges to the rights of Nova Scotians, none were likely to occur in the future:

"The rights that we are talking about here today, fundamental rights, legal rights, democratic rights, they have in the past and will continue in the future to be protected by the legal process of our province." (p. 569)

"We are able, in Nova Scotia, to point to a very very long history of human freedoms, fundamental rights, democratic rights, democratic freedoms of Nova Scotia, like the other provinces of Canada, we have inherited the common law rights, the freedoms that have been derived through the common law and from our British past. We see no disadvantage to the present non-entrenchment situation." (p. 568)

"I believe that the rights, human rights, basic rights of Canadians and Nova Scotians in this instance, are now enshrined in the common law, in our legislation of a provincial nature and in our legislation of a federal nature. I think they are almost cast in stone as far as that legislation is concerned." (p. 572)

The third statement quoted above offers no reason why the informal "enshrinement" of rights in common law should not be given the added weight of official sanction.

Premier Buchanan's introduction of the question of provincial powers seems highly out of place in this debate - in the following quote he appears far more concerned with possible encroachment on provincial powers than with the preservation of freedoms for all Canadians:

"It seems to us, however, that the whole issue of an entrenched Charter of Rights may come very hard against the responsibility of the provinces as laid out in the present BNA Act and there is a feeling that the entrenchment of rights in a general Canadian constitution, bypassing the primary role of the provinces in certain areas, may be destructive of the kinds of rights and freedoms that we do enjoy today." (p. 569)

On language rights, he chooses an unfortunate example:

"I (was) present on a platform this summer... for the re-enactment of the landing of the Acadians in Nova Scotia in 1605. ...I said that night, ... that the question is not whether the Acadians of Nova Scotia have a language right, they certainly have. The question is ... how best to protect that right. I can assure you, ... as the Government of Nova Scotia, we have now begun to evolve the process of protecting that right and we have as our aim and objective as quickly as we possibly can to introduce legislation in our provincial house to protect the linguistic rights of the Acadian people in the Acadian districts of Nova Scotia." (p. 572 - 573)

Prince Edward Island on the Charter of Rights

Prince Edward Island opposed the entrenchment of a Charter of Rights in any form (except for democratic rights) on the grounds that entrenchment would weaken the powers of elected assemblies:

"Prince Edward Island's unease on this matter is based on our fear that an entrenchment Charter of Rights would weaken our parliamentary democracy." (MacLean, Sept. 10, p. 567)

"Transferring the definition of our basic social values from our legislatures to the Supreme Court would weaken our parliamentary traditions and weaken, in my opinion, the very rights which now concern us. Entrenchment of rights in the constitution assumes that we have the God-like wisdom not only to determine what are the desired rights of this generation, but the desired rights of future generations as well." (MacLean, Sept. 10, p. 567)

These statements appear to indicate a greater pre-occupation with the rights of legislative assemblies than with the rights of citizens.

The P.E.I. government's position on mobility rights was particularly disturbing:

"I want to throw in the point of view of one who is not a lawyer, something that disturbs me a bit and that is the implication in much of what we are doing that one doesn't acquire any privileges or special status because of domicile in a particular part of Canada, that all Canadians are exactly the same in every spot in Canada. This is patently not so. You must acquire rights by living in some particular area." (MacLean, Sept. 10, p. 610)

"It greatly disturbs me and in the latest draft it has even gone further than all the others before it: "Everyone in Canada has the right to acquire and hold property in and to pursue the gaining of a livelihood in any province"." (MacLean, Sept. 10, p. 603)

It should be noted that the previous provincial government had supported the entrenchment of a Charter of Rights.

Newfoundland on the Charter of Rights

Premier Peckford supported the entrenchment of a Charter of Rights (as Newfoundland had done in February 1979), but one which would protect only fundamental freedoms and democratic rights, not legal, mobility, non-discrimination or language rights.

The Newfoundland position is one riddled with contradictions. To quote from the position paper put forward by the Newfoundland government in August:

"Citizens throughout Canada have traditionally enjoyed the exercise of democratic rights and fundamental freedoms... it is unimaginable that any government in Canada would interfere with the freedom of Canadians. Yet the people of Canada - as elsewhere - live in an age of continuing, almost radical change. Today there is not the same surety as yesterday that values enshrined in the heart and conscience of a people will be universally respected". (page 9, Towards the Twenty-First Century - Together)

This would appear to be an argument in favour of the federal position, not that of the Newfoundland government. It is unclear why the provincial government should take the view that rights in the first two categories may be threatened, but not other types of rights.

Regarding mobility rights, Newfoundland's opposition to entrenchment seemed based on the legitimate concern that the proposed wording might prohibit affirmative action programs, such as preferential hiring of Newfoundlanders in offshore drilling operations. However, Peckford states:

"When we look at talking about national goals and having as a national goal a common market or free flow of goods and services and people across the nation, it is a laudable goal and I think it is a goal that we should have in our national consciousness". (p. 612)

And later:

"I agree with you, Mr. Prime Minister, that as a guidepost and beacon we have no problem with (the concept of mobility rights) but the problem is in the words because the words say more than that and that is what concerns us". (p. 621)

If these statements are a sincere expression of the view of the Newfoundland government, surely the appropriate position for that government to have adopted at the conference was not opposition in principle to the entrenchment of mobility rights, but rather advocacy of a redrafted wording for that section of the Charter.

The Prime Minister's response is appropriate here:

"I am sure Premier Peckford would find words to declare that the offshore is under provincial jurisdiction. I don't think he would be held back by the fact that the words he has found are imperfect... but we are very hesitant to do it when it comes to protect the citizens. The words may not be sure. We may have to redraft them. Let's wait another few years." (p. 621)

As expressed at the First Ministers' Conference, Peckford's primary reason for opposing the entrenchment of rights other than fundamental freedoms and democratic rights seems to be a vague sort of dislike for "standardization", viz:

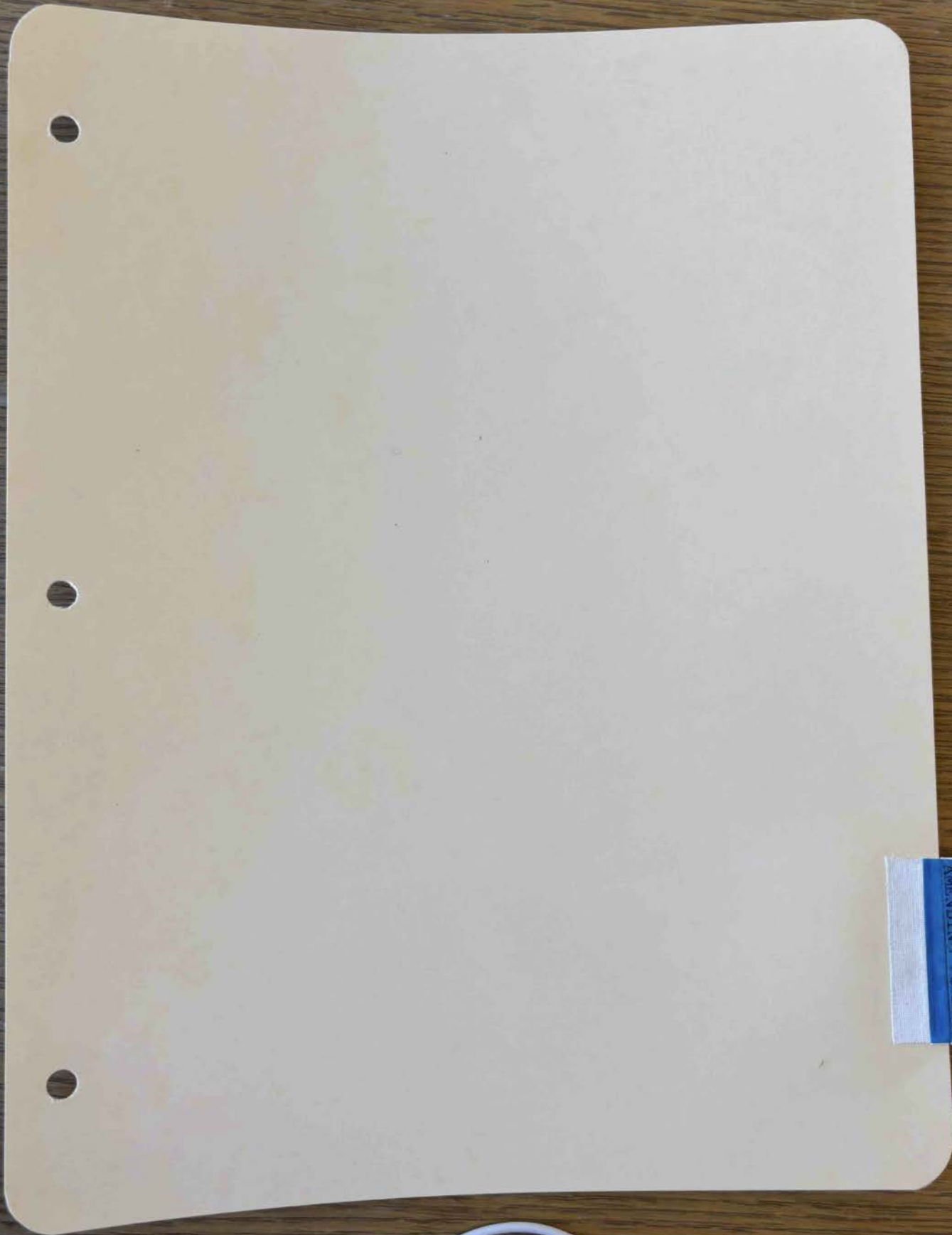
"A federal system like we have operates in this kind of forum rather than entrenching and solidifying almost to the point of standardizing things in a Constitution necessarily". (p. 693)

"The business of renewing our Constitution is one thing but it is another thing to try and put it all down so it becomes a standardized thing for all of us from sea to sea because it can't be done". (p. 694)

Surely when it comes to rights, Canadians want standardization, they want the same protection of their rights from sea to sea.

The statements above contrast sharply with Peckford's dogmatic assertion, on offshore resources, that:

"No solution is possible to... this issue short of a constitutional amendment confirming ownership rights to the offshore resources in the provinces to which the continental shelf pertains". (p. 384)



PATRIATION AND
AMENDING FORMULA

British Columbia on Patriation with an Amending Formula

British Columbia indicated its support for simple patriation, although it expressed a preference for patriation in concert with resolution of other constitutional issues. Premier Bennett stressed this preference on several occasions:

"We have supported simple patriation with safeguards or an amending formula. We have opposed that being done unilaterally...

So, we are prepared to do that, but it is far preferable to us, Mr. Prime Minister, to have a package of agreement on a number of items which we think are important for the future government of this country in order to meet the needs of the people." (Bennett, Sept. 11/80, p. 707 & 708)

"...it is difficult to talk of patriation if it is going to be unilaterally done or done in isolation." (Bennett, Sept. 11/80, p. 725)

"We have said before that patriation is desirable, we say again that patriation with a formula that is acceptable is most desirable. We say again patriation with an acceptable formula and positive change which can encourage our governments to do a better job in the future for the people who elect us is the most desirable of all." (Bennett, Sept. 11/80, p. 726)

"I would like to see the constitution in this country. I would like to see an amending formula on which we can agree, but I also want to see part of that, Mr. Prime Minister, as I am sure everyone does, some of the affirmation of resources ownership, some of the recognition that the original constitution did not anticipate communications and other areas, and some of the positive things on which we can agree would be desirable to provide more efficient government, better government and more responsive government to the people of the country; so I support that we must, in patriation, try to include those other items that are important to Canadians and to others at this conference." (Bennett, Sept. 11/80, p. 727)

On a preferred amending formula, B.C. shifted its choice from the Victoria to the Vancouver formula, in order to try to take into account the concerns of other provinces.

Alberta on Patriation with an Amending Formula

Alberta indicated its readiness to patriate the constitution with or without agreement on other issues, although it declared itself opposed to unilateral patriation. Premier Lougheed stated that Alberta's preference would be for patriation with an amending formula (preferably the Vancouver formula) but that in the absence of agreement on such a formula, the province would be prepared to accept patriation on the terms outlined below.

Several abstracts from Premier Lougheed's statement outline his position on these issues:

"...we believe that the time for patriation in itself is now. That is subject obviously to certain conditions. The most desirable condition is our agreeing on an amending formula, and without going into detail now, and I would perhaps prefer to do so later, but essentially the objective of an amending formula around Vancouver's consensus which reflects an equality of provinces and which does not have a concept of veto and assures the protection of provinces from having rights or assets or jurisdiction taken away from the." (Lougheed, Sept. 11/80, p. 727)

"If we cannot succeed in that, then we could consider patriation, either on well-specified and very carefully drafted approach to unanimity and/or adequate safeguards, ... or, '...in a way that would (not) increase the powers of the federal or of the provincial governments'." (Lougheed, Sept. 11/80, p. 728)

"We have looked at this whole discussion and naturally we have not felt we have gained anything of significance, particularly in resources, but on the other hand looking in an isolated way at the matter of patriation and what it means as a symbol we, with the qualifications I have just made, are prepared to support it."
(Lougheed, Sept. 11/80, p. 728 & 729)

"I would like to urge in the strongest way possible that it would not be good for confederation if there is in any sense a unilateral move on this issue by the Federal Government."
(Lougheed, Sept. 11/80, p. 730)

Saskatchewan on Patriation with an Amending Formula

Premier Blakeney expressed strong support for patriation of the constitution, preferably as part of a package. He declared himself opposed to patriation without consensus, however. On an amending formula, the Premier indicated Saskatchewan's willingness to be flexible, while preferring the Victoria formula:

"I think all governments agree with the objective of patriating Canada's Constitution. Patriation in itself is a symbolic act but to say that it is a symbolic act is not to say it is meaningless. I think all of us agree that patriation of the constitution would be an appropriate affirmation of our nationhood..."
(Blakeney, Sept. 11/80, p. 754)

"I see, our task as one of developing a package of proposals which will include patriation, include an amending formula which will respond to these various regional aspirations."
(Blakeney, Sept. 11/80, p. 756)

"I think it would be counter-productive and that is a carefully chosen word, if there was any proposal for patriation without the broadest consensus."
(Blakeney, Sept. 11/80, p. 757)

"If we are to patriate the constitution, if we are to do it in a manner which responds to undertakings we have given to Quebec, and which some of us expanded to other regions, we will need an amending formula. ... We are prepared in the interest of compromise to consider sympathetically a number of formulae."
(Blakeney, Sept. 11/80, p. 757-758)

Manitoba on Patriation with an Amending Formula

Premier Lyon expressed Manitoba's desire to proceed with early patriation of the constitution, and his own disappointment at the inability of previous federal-provincial conferences to arrive at an acceptable amending formula:

"The constitution should be brought home as soon as possible..."
(Lyon, Sept. 11/80, p. 760)

"I think it is imperative, emerging from this set of meetings that we are having this week, Mr. Prime Minister, that we not only try but that we succeed because we do share the view that patriation of the constitution is long overdue and I think it is within the wit of the present First Ministers and governments of this country to arrive at an amending formula."
(Lyon, Sept. 11/80, p. 759)

"I would ... remind all of us, ... that the Fulton-Favreau formula, ... did achieve a consensus among all of the provinces at that time and consequently the Government of Mr. Lesage saw fit not to accept it but we have come very, very close before. I was a party to one of those sets of negotiations and I understand that in Victoria, for a few days, there was consensus and then the Government of Quebec and one or two other governments dropped away from it." (p. 759)

Manitoba's preference for an amending formula was the Vancouver proposal.

In the earlier stages of the discussion, Premier Lyon indicated that he would be opposed to unilateral patriation, or to patriation without an agreed amending formula, but by the end of the conference, he appears to have changed his mind, as the following quotations indicate:

"I share the view of the Premier of Saskatchewan that a unilateral patriation is totally inappropriate and I suggest no responsible Government of Canada would undertake that course of action.

It would, however, be unwise to allow

future amendments to be made in Canada until, as you have said, sir, there is an agreed amending formula, because to bring home the constitution without an amending formula could result in greater problems than we presently have under the unsatisfactory, but still workable, system that obtains." (Lyon, Sept. 11/80, p. 759-760)

"We understand that one option now is for you to move to repatriate the constitution with an amending formula based on our established convention of unanimous consent by all provinces upon any changes. That is certainly not the amending formula that I, or perhaps any other Premier at this table would recommend, but in the absense of agreement on a better one, and I really think we should still try and agree on a better one, it is all we have." (Lyon, Sept. 13/80, p. 1027)

Ontario on Patriation with an Amending Formula

Premier Davis indicated Ontario's willingness to proceed quickly on patriation with an amending formula. He expressed preference for the Victoria formula, but noted that Ontario was prepared to be flexible on this issue:

"...Ontario is in support of patriation. I said this a year and a half ago, whenever. I believe the people of our province want it. It is something that we should collectively do."
(Davis, Sept. 11/80, p. 716)

"I think it would be important to have an amending formula with patriation and Ontario without getting into a lengthy debate here at the moment is prepared to show some substantial measure of flexibility. If the Premier of Alberta is listening to me carefully, we are prepared to see some measure of flexibility where there is an agreement around this table."
(Davis, Sept. 11/80, p. 716)

"My view, Mr. Prime Minister, is there will never be a perfect amending formula. I am not going to sort of hang out for the political scientists' answer to it. I am prepared to deal with realities that are around this table and Ontario will be relatively flexible when it comes to a detailed discussion of an amending formula and I think quite genuinely we can find something that will work."
(Davis, Sept. 11/80, p. 717)

At the end of the conference, Premier Davis made the following appeal to the other participants to take immediate action on patriation, in order that the conference yield some positive result:

"To demonstrate that this week was not an insurmountable setback, to demonstrate that we retain our determination to see this task through we must not allow this session to conclude without some concrete evidence that some progress has been made.

I return, but with far greater emphasis than before to the proposal I put before this gathering in February of 1979. Let us try to reach agreement on at least one fundamental point. Let us patriate our constitution now. Let us bring our constitution home to Canada and let us make it clear to the world as well as to ourselves that through this very simple act that we have come of age. I have heard the arguments against such a step at this time. In my opinion none of the arguments against are as important as the benefits that will accrue."
(Davis, Sept. 13/80, p. 988)

Quebec on Patriation with an Amending Formula

Premier Levesque stated that Quebec could accept patriation only with a substantial package of agreement on other issues, as to do otherwise would create a false sense of progress:

"Premièrement, on n'a pas d'objection au rapatriement en soi, per se, c'est un objectif normal, c'est un objectif naturel, seulement je dois dire que ça ne répond ni aux besoins ni aux aspirations du Québec, ni à ce qu'on nous a promis au cours du référendum."
(Levesque, Sept. 11/80, p. 719)

"...le rapatriement c'est devenu un geste que le Québec se refuse à poser ou à accepter, tant et aussi longtemps qu'un "package", qu'un ensemble de demandes fondamentales qui représentent des changements, qui représentent si vous voulez un cadre pour le renouvellement qu'on nous a promis, tant que dans le nouveau contrat dont il est question, ces changements n'auront pas été paraphés."
(Levesque, Sept. 11/80, p. 722)

"Pour nous, donc, le rapatriement, ça doit être la consécration d'un nouveau fédéralisme, autrement dit, ça doit pas être simplement un renouveau dans la forme dans l'apparence, un geste neutre, soi-disant neutre, mais ça doit couronner le fait que le renouveau, s'il est pas complètement accompli, mais qu'au moins il soit en marche concrètement ce renouveau et que la volonté soit clairement là."
(Levesque, Sept. 11/80, p. 722)

"Et alors, mon troisième point c'est celui-ci: à notre avis, il serait dangereux, c'est pas un geste neutre, il serait dangereux de rapatrier dans ces conditions, parce que ce geste pourrait être dangereusement illusionniste."
(Levesque, Sept. 11/80, p. 723)

"Il y a une foule de gens qui pourraient se dire: s'il y avait une sorte de rapatriement assaisonnée de deux ou trois autres mesures plus ou moins -- je dirais presque cosmétique -- il y a une foule de gens qui pourraient se dire: bon, bien la question est réglée, n'en parlons plus, parce qu'après toute la propagande qu'il y a eu autour de ça, on aurait l'illusion facilement qu'il y a une constitution nouvelle canadienne, et ce serait absolument faux. Et à ce moment-là, je dois dire, parce que c'est ce que je pense profondément, que toute la vieille frustration, au Québec bien sûr, probablement ailleurs aussi, remonterait vite en surface et pire que jamais."
(Levesque, Sept. 11/80, p. 724)

New Brunswick on Patriation with an Amending Formula

Premier Hatfield indicated New Brunswick's support for early action to patriate the constitution, emphasizing particularly the need to reach agreement on an amending formula in the light of past failures to do so:

"Mr. Prime Minister, it is well known that I want very badly to see the constitution in our country. I want it not because I think it is necessary for the management of our society. I want it as a matter of pride. I want it as a matter of evidence that we do have in Canada political maturity now."

(Hatfield, Sept. 11/80, p. 742-743)

"...this is the fundamental question of our debate, it seems to me, the question of patriation and the question of doing what the Fathers of Confederation couldn't do. They couldn't come up with an amending formula."

(Hatfield, Sept. 11/80, p. 740)

"...we have made attempts from time to time and they have been limited and they have not succeeded and as a result I think we have come to a point when we must compromise and that is the ultimate thing about a Canadian." (Hatfield, Sept. 11/80, p. 741)

He expressed New Brunswick's willingness to accept the Vancouver amendment formula if that became the consensus, although indicating that the Victoria formula was that province's preference:

"...I have to say that I am ready to negotiate an agreement, I am ready to accept the Alberta proposal with regard to an amending formula. I don't really like it, I like the one in Victoria so much better. I truly believe that the one in Victoria was the best one for Canada and the best one for Canadians."

(Hatfield, Sept. 11/80, p. 744)

He also argued that a patriated constitution should contain some recognition of the status and rights associated with both official languages:

"...Part of the Canadian argument, part of Canada, part of returning the trust and returning the respect that the people of Quebec put in our country has to be our respect for the two official languages of our country and it has got to be demonstrated somehow. It cannot be left to administrative arrangements.

Now, Mr. Prime Minister, we have got to come to terms with that because that is the bare minimum before I would dare go to the people of Quebec and say "You have got enough. You have got something for your accepting and supporting the amending formula and accepting and supporting patriation." Those of us from outside the Province of Quebec must recognize and realize and face up to the fact that what the Premier of Quebec is saying, in my view, is what the people of Quebec are saying and that is that there must be some recognition of some of the aspirations of the people of Quebec. I think we have got to come to terms with that.

If it takes another week for us to come to terms with that it will be the best week this country has ever had but we have got to come to terms with that. If we do in the other provinces of Canada, if we do in the other provinces of Canada come to terms and return the trust and return the respect that the people of Quebec put in us then I will feel comfortable in saying to the Prime Minister patriate the Constitution, it may not have the support of a government, but I know it has the support of the people, and that is what counts to me and that is all that counts."

Nova Scotia on Patriation with an Amending Formula

Premier Buchanan indicated Nova Scotia's support for patriation with an amending formula, preferably as part of a package of agreement on other issues -- a point he appeared to emphasize in his statement:

"...we came to this conference with a measure of optimism that we would be able to achieve some success in what has been called a modest package of constitutional change. We came here with I suppose you could say, certain pet projects, pet matters on the agenda of specific importance to Nova Scotia which we believe are vital to the future economic development of our province, including certainly more involvement in a direct sense in the fishing industry equalization and our commitment to equalization, past, present and future; also our conviction that our province is entitled as of right to 100 per cent of the provincial revenues and control of provincial priorities over offshore oil and gas and other energy resources off the coast of Nova Scotia.

Now we now come to an item on the agenda which may not be as provincial in nature as the items I have just mentioned. It is our sincere belief that we should be able to achieve the patriation of the Constitution with a formula by the end of this conference."
(Buchanan, Sept. 11/80, p. 747)

"...I do believe that at the closed sessions we will or should be able to arrive at an agreeable amending formula so that we can then get on with the job of putting together a small and modest package so that this conference will be a success."
(Buchanan, Sept. 11/80, p. 749)

The Premier stated his government's preference for the Vancouver amending formula; he also issued a warning on the potential dangers of proceeding with patriation without consensus on an amending formula.

P.E.I. on Patriation with an Amending Formula

Premier Maclean called for patriation only with unanimous agreement on an amending formula; he expressed his own government's preference for the Vancouver formula. He also suggested that there was no urgency attached to the issue, and that some commitments made during the Quebec referendum were hasty and unwise -- virtually implying that, as the "No" side had won, we were free to renege on our commitments:

"I think we are making, as far as timing is concerned, time limits and putting ourselves in a pressure cooker, making a fatal mistake. I think we are making a serious error by trying to cramp the long vistas of our Canadian evolving history into the narrow horizons of our own transitory political careers.

I think psychological errors were made by many around this table and I don't exclude myself, in the heat of the Quebec referendum, by making commitments as to what they would deliver, or somebody else might deliver if the verdict was different. I think this is a mistake."

(Maclean, Sept. 11/80, p. 762)

Newfoundland on Patriation with an Amending Formula

Premier Peckford stated that Newfoundland would support patriation only if agreement were reached on other issues of importance to the province:

"...we entered this process back a number of months ago under conditions which said that we wanted a new constitution, a renewed federalism. As I indicated in my opening statement, those are the ground rules under which we entered this process, that there would be substantial change to the present way in which we operate in this country."
(Peckford, Sept. 11/80, p. 750)

"That is the mandate I believe I have from the Newfoundland people and the Labrador people, to come here and make a new bargain, not just to bring a constitution from London to Charlottetown or Ottawa or wherever, important as that is.

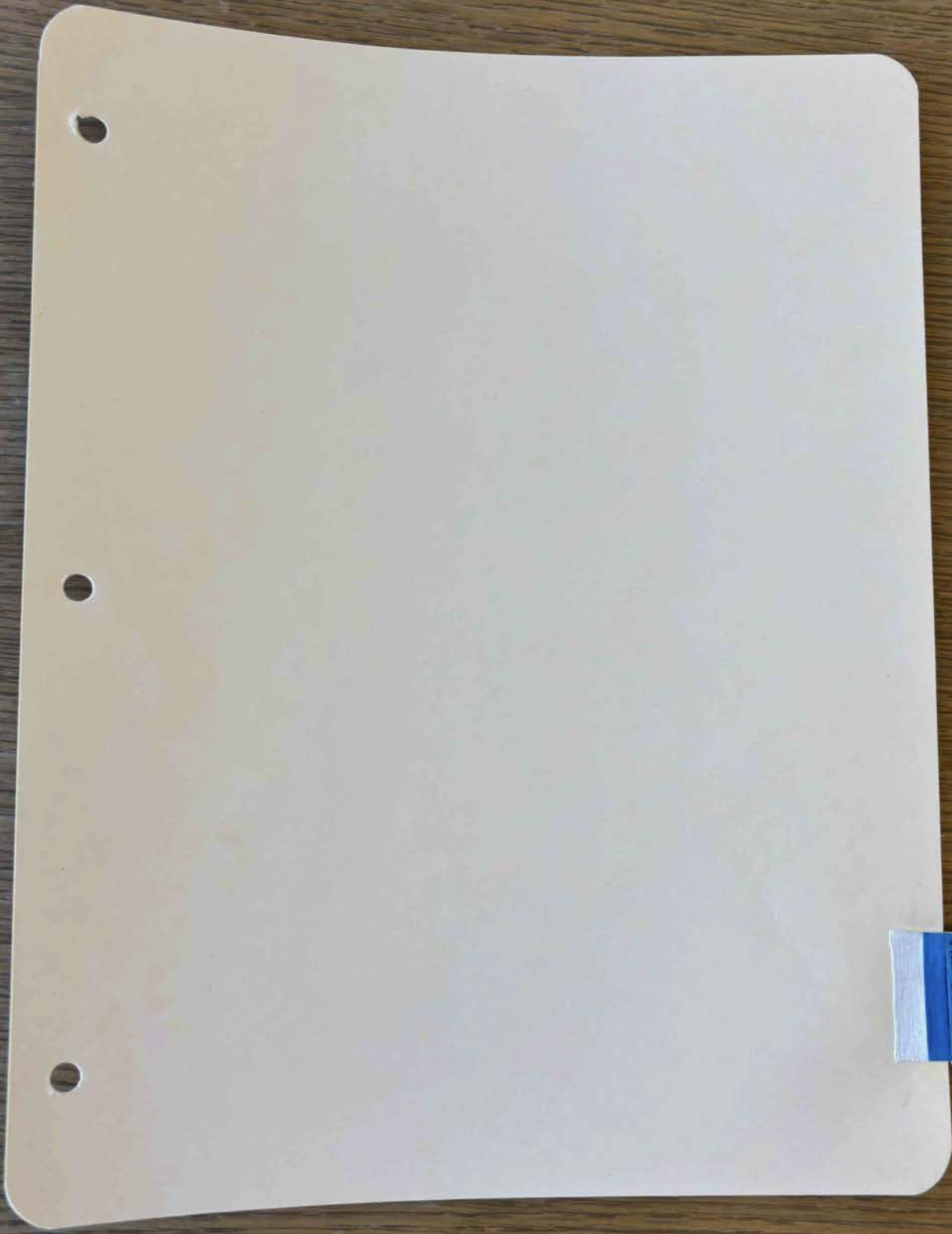
On that note it is a symbolic act, symbolic of what? Symbolizing what? It symbolizes not only our independence the concept of independence, it symbolizes freedom and it symbolizes equality. If it symbolizes those things, then in order for them to be meaningful it must ensure that Newfoundlanders and Labradorians within the context of Confederation have an equal chance at their resources, have an equal chance at the transmission of their energy to participate and contribute new wealth to this country."
(Peckford, Sept. 11/80, p. 751)

"If all we meant at that time was patriation, that was what we should have said, but we didn't say that and we went into a list of 12 meaningful items which were very, very meaningful for me and which mean that Newfoundland had the opportunity, would have the chance to have some equal status within Confederation because it would be treated the same way on its oil and gas. It would get some say, share of say on the fisheries and it would be

treated the same way in the transmission of its electrical, its energy resources as is Alberta being treated and Saskatchewan and British Columbia today. That is what patriation and renewed federalism means to us. It means substantial and major change symbolizing equality, symbolizing fair play from Bona Vista to Vancouver Island. That is what it means."
(Peckford, Sept. 11/80, p. 753)

Premier Peckford also indicated that Newfoundland would consider agreement on an amending formula a necessary precondition for patriation. He stated Newfoundland's preference for the Vancouver formula, and insisted that:

"With regard to the amending formula which must be part of the patriation act, as I said, the formula must reflect the principle that all provinces have equal constitutional status. Therefore any formula which is based on regions is unacceptable."
(Peckford, Sept. 11/80, p. 753-754)



POWERS OVER
THE ECONOMY

British Columbia on Powers Over the Economy

Premier Bennett opposed the entrenchment of guarantees for the free movement of goods, services, and capital, basing his argument primarily on a sense of historic grievance and the suggestion that our current economic union is discriminatory towards B.C.:

"While it may sound desirable and right to embrace the movement, free movement of goods and services and capital and people in the country, largely we are in a position of having to face regional realities rather than a compact country in which this might more easily be attained. It sounds noble in principle, but it poses very serious problems for a regionally-diverse country such as Canada." (Bennett, Sept. 11/80, p. 808).

"I would suggest to you that in the past the economic policy that has been pursued in this country has been discriminatory against the regions of this country in favour of central Canada manufacturing. The Minister said something about reducing tariffs forty-five per cent. I might remind you, or remind the conference, because the Minister needs no reminding, that forty-five per cent will be phased in over a number of years. There is no immediate benefit." (Bennett, Sept. 11/80, p. 809).

"Premier Hatfield says he feels aggrieved and he says Ontario owes him a fine or penalty in the form of equalization for the years that his province has suffered in the higher price of goods and loss of industry. I wonder if he would suggest that the aggrievement of the people of British Columbia is even greater for not only have we paid the higher price in consumer products, and not only have we not had the chance to establish the industries of scale except where the provincial government took the lead and provided the incentive and dealt internationally in very difficult circumstances; but we also pay Ontario's penalty. In fact today British Columbia's position in equalization along with Alberta causes us, those still suffering as you suffer, to start paying a greater percentage of the penalty you say is owed by someone else. If you feel aggrievement, think of the double aggrievement the people of British Columbia may feel." (Bennett, Sept. 11/80, p. 812).

He appears at one point to revive the old protectionist doctrine, implying that economic mobility guarantees would be somehow detrimental to the economic health of individual provinces:

"Mr. Chairman, there are principles here that I could see in concept. But those principles, however noble, cannot be used to stop the legitimate aims of New Brunswick becoming a "have" province or receiving some equity. They can't be used to stop British Columbians from continuing to play a strong economic role in this country." (Bennett, Sept. 11/80, p. 819).

Alberta on Powers Over the Economy

Premier Lougheed declared his government in favour of the principle of economic union and consequently of the free movement of goods and services across the country, and indicated that he might be willing to endorse a constitutional statement acknowledging general acceptance of this principle. However, he was unwilling to accept the federal proposals for specific guaranties which would lend significance to any such statement of principle:

"I believe it has been evident from our performance record in Alberta that we are fully committed to the Canadian economic union and to the free movement of goods and services." (Lougheed, Sept. 11/80, p. 826).

"It is hard for us to see that there exists, except in a few circumstances that have been shown, a real deep concern to the economic union of Canada, to the extent that would warrant the proposals by the Federal Government." (Lougheed, Sept. 11/80, p. 827).

"There is some merit, perhaps, in the concept of an economic union as Saskatchewan, I think, has considered it, in being expressed in any new constitutional document by way of an undertaking or acceptance of that as a concept. However, we would find it is clearly not satisfactory to follow through with the proposals the Federal Government has made in that area." (Lougheed, Sept. 11/80, p. 827).

He explained his opposition to the federal proposals primarily in terms of the effect they would have on provincial autonomy:

"Our concern is that the federal proposals would lead the courts to strike down traditionally accepted provincial social and economic legislation and they would be at odds with the notion of ten unique provinces." (Lougheed, Sept. 11/80, p. 828).

"The authority to decide the balance between national and provincial interests, Mr. Chairman, according to the federal proposal would rest solely with the federal government and we just reject that as a clear weakening of the need for stronger provinces in our confederation." (Lougheed, Sept. 11/80, p. 828).

Saskatchewan on Powers Over the Economy

Premier Blakeney indicated Saskatchewan's general agreement with federal proposals on competition and product standards. On mobility of goods and services, he also indicated agreement with federal objectives, but felt that the proposals put forward left many questions unanswered and required further work and study. The following abstracts from his statement provide a succinct summary of his views on the issue:

"Saskatchewan takes the view that we wish to secure and improve the economic union, to improve the free movement of people and goods and services and capital. We do not wish to do that to the exclusion of all other economic goals, let alone all other social goals." (Blakeney, Sept. 11/80, p. 850).

"I think what we are grappling for is some sort of a code of permissible practices and I don't think we are going to find it at this time by enshrining in the Constitution, by putting in the Constitution a provision which is purely restricted to impediments which are defined in terms of provincial boundaries. That will catch some of our Hog Marketing Commissions and the like which are so defined, but it would not clearly catch some of those other things which are much more intrusive in terms of interrupting free flow.

I think there are just too many questions at this time to put into the Constitution the Section 121 in the terms that have been put forward. It has only been around a few weeks and we have not had a full opportunity to analyze it and some changes have been made in the draft, quite properly so, as a result of the discussions.

So, my position therefore is that we should, if we can, agree that we are pursuing an economic union, as we are pursuing equalization, we are pursuing an economic union and that we put into the Constitution provisions to that effect and if it is deemed advisable we will put into our agreement the further steps which we are going to take in order to refine this process if that seems the sensible thing to do." (Blakeney, Sept. 11/80, p. 854).

Manitoba on Powers Over the Economy

Donald Craik, Manitoba's Minister of Finance, declared his government's opposition to the proposed amendments to Sections 91 and 121 of the BNA Act, and then launched into an eloquent exposition of the difficulties posed by the multiplication of interprovincial economic barriers. His opposition to the proposed amendments was based on the increase in federal powers that they would entail:

"I now move on to the concerns Manitoba shares and that the expansions that are being proposed in federal powers over the economic lives of Canadians would not be in the national interest. We think it is important and Canadians understand that compared to the increases in federal powers that you are proposing here, all of the so-called transfers of powers to the provinces which you have referred to so often throughout this conference are rather insignificant." (Lyon, Sept. 11/80, p. 858).

"Manitoba's concerns in this area are two-fold. Firstly, we are concerned as we know other provinces are that the tremendous increases that you are proposing in federal powers over the economic lives of Canadians would fundamentally reduce the ability of Canadians to act affirmatively through their provincial governments and co-operatively within their regions, Mr. Chairman, to achieve the kinds of economic roles they aspire to for their provinces and their regions within Confederation

Having said that, Sir, I must also say that Manitoba is deeply concerned about the functioning of our Canadian economic union and about what appears to be an unfortunate tendency away from co-operation among governments on economic matters on a nationwide basis.

We are frankly concerned about these so-called barriers to trade that we are going up between provinces. Like our sister Province of Ontario, Manitoba to a large extent can be considered a manufacturing province. We depend on free and fair access to the markets of our sister provinces for our own prosperity. Access to the markets of our sister provinces in Western Canada in particular are the key mechanism whereby we share in the growing prosperity of our western region in Canada. On a broader basis we believe that Manitoba industries are capable of growing and competing successfully in markets across Canada if they are permitted to do so freely. That is not the case at the present time, just as by way of example there have been examples referred to here today. B.C. made a very strong case earlier today, this morning.

One example there, our equipment manufacturers in some heavy equipment related to hydro machinery face a ten per cent barrier to try to bid into the British Columbia market. Ten per cent is really an impossible barrier in a competitive business like that. We have a number of bus manufacturers in Manitoba. In some cases they are not even allowed to bid in the Province of Quebec. We have professional associations that act in the case -- a good example is in the case of Alberta, it is not the Alberta Government but the architects in Alberta put up a pretty significant barrier. It is very difficult for the professions in that area, architecture, engineering and so on, to capitalize and gain from the current economic expansion boom in an easy way that they could have access to otherwise." (Craik, Sept. 11/80, pp. 859, 860, 861, 862).

"It is important to begin by understanding that virtually every one of those things we describe as barriers to trade began as positive and affirmative economic development efforts on behalf of the people of specific provinces or regions, efforts to achieve different and broader economic roles for themselves than seem to have been assigned to them by federal policy. ...Now it is true that many of these actions have had the effect of creating barriers to the free movement of goods and people and capital within Canada, but because they do address legitimate regional, social and economic concerns I do not think we can realistically suggest that they can be removed and replaced with no equivalent mechanism to address those same concerns and achieve those same objectives. The need, Prime Minister, is not simply to remove barriers. The need is to devise better, more co-operative ways in which provinces and regions can work together with the leadership and support of the federal government to achieve the economic goals that we want in the regions and in the nation. But we must do that, Sir, without removing the ability of people in any part of this country to use their provincial governments in an affirmative way to achieve their objectives and your proposals for increased federal power over the economic lives of Canada would, we feel, impair that ability." (Craik, Sept. 11/80, pp. 863, 864).

"To our mind, our efforts should not be in the first instance to make all of the so-called barriers to trade illegal. We should begin to work to make them obsolete.

The problem you have identified in the functioning of our economic union is a real problem, Prime Minister, and we share your concern about it, but the solution proposed and the potentially very significant increase in federal powers over the economic lives of Canadians that you suggested may be a great deal worse than the problem and could reduce the ability of people in any part of this country to make their own choices and their own efforts with respect to their economic lives." (Craik, Sept. 11/80, pp. 865, 866).

Ontario on Powers Over the Economy

Ontario adopted a position very much in concert with that of the federal government on this issue. Some abstracts from Premier Davis' statement illustrate this:

"I think that without getting into the semantic debate as to whether or not we are talking about powers, whether we are talking about distribution or people packages, it is really a fundamental principle that relates to people, the ability to work in various parts of this country, to provide services in various parts of this country and to supply goods without being hindered by provincial boundaries. In other words, a very simple principle of an economic union. We suggest and support, Mr. Prime Minister, the entrenchment of that principle in the Constitution." (Davis, Sept. 11/80, p. 773).

"Any time one erects barriers between provinces, whether it is short-term, it does have effects and it ultimately means less economic benefit for all of us." (Davis, Sept. 11/80, p. 775).

"...there must be the recognition that there has to be this free flow across the country, certainly as it relates to people and, Ontario is very much on the side of having in the Constitution the statement of principle of an economic union..." (Davis, Sept. 11/80, p. 776).

"I don't know whether it has to be as tight as is being suggested but I certainly think the principle, which surely has to be fundamental, that there are economic benefits for all of being part of Canada in terms of an economic union is really a rather simple principle to have in what may be a new Constitution." (Davis, Sept. 11/80, p. 885).

Quebec on Powers Over the Economy

Mr. Parizeau's criticism of the federal government's proposals on this issue was perhaps the most categorical of that of any of the provinces, and was based on the arguments that the Canadian economic union is currently functioning adequately, and that the federal proposals would seriously constrain the capacity of provincial governments to take action in the field of economic development:

"Je soumets simplement que nous avons une union économique au Canada, à l'heure actuelle, qu'elle fonctionne fort bien dans l'ensemble, qu'en tout cas si on la compare à ce qui se passe ailleurs, on n'a pas à se livrer à cet exercice très canadien qui consiste invariablement à se donner des coups de pieds à notre propre derrière!" (Parizeau, Sept. 11/80, p. 785).

"Alors, quand Monsieur Chrétien disait ce matin, mais inévitablement ça provoque des représailles ces politiques de protection, ces politiques de discriminations, ça peut provoquer des représailles, mais, nous ne sommes pas des hommes déraisonnables, quand on voit que ça va trop loin, on a trouvé depuis pas mal de temps, des moyens de discuter de cela." (Parizeau, Sept. 11/80, p. 875).

"Alors, dans ce sens, l'esprit des changements de 121 et de 91-2, nous semble, à toutes fins pratiques, mené de façon stricte, si on l'appliquait dans la première version proposée par le fédéral, au fond, un peu à l'abolition des pouvoirs de développement économique par les provinces, poussée à la limite, ça pourrait être ça." (Parizeau, Sept. 11/80, p. 786).

"Dans ce sens, Monsieur le Président, je voudrais, je pense encore une fois affirmer que, quand on utilise le mot de discrimination qui est un mot péjoratif, on se trouve en fait à mettre en cause des politiques provinciales de développement qui auront un peu partout au Canada, joué un rôle massif et important depuis vingt ans." (Parizeau, Sept. 11/80, P. 875).

"Le problème ne consiste pas seulement à se dire: il y a certains types de discriminations à l'égard de non-résidents. Nous vivons comme gouvernement de discriminations et nous en faisons toujours et nous en ferons toujours tant que nous gouvernerons." (Parizeau, Sept. 11/80, p. 779).

"C'est trop facile -- comme le faisait remarquer monsieur Craik -- de transformer "l'affirmative action" pour l'un en discrimination pour l'autre." (Parizeau, Sept. 11/80, p. 876).

New Brunswick on Powers Over the Economy

Premier Hatfield's position on this issue was similar to that of Premier Blakeney - one of basic support for the principle of economic union combined with an unwillingness to commit himself to the support of specific guarantees of free movement because of fears as to the implications this would have for provincial economic development policies:

"Mr. Chairman, if we do have, as you so often say, a free exchange of goods and services and people across this country then that very act is going to endanger and threaten the industrial and economic development of our province. It is going to do so in the areas of mining, in the areas of agriculture;..." (Hatfield, Sept. 11/80, p. 794).

"I think what the people of New Brunswick are saying to me is don't set up barriers, don't aggravate the thing that caused the problem but work to try and reduce barriers and I am prepared to do that. I am prepared to come out in full support for a common market across our country with a minimum of restrictions, a very minimum of restrictions, but before we agree any further than the enunciation of the principle, we must sit down, as they did in Europe, and it may take years, as it did in Europe, but we must sit down and we must identify every aspect of our economy in New Brunswick and of the economy of Ontario and the economy of British Columbia and we must see what happens when we try to impact this concept of free movement of goods, services and people." (Hatfield, Sept. 11/80, p. 797).

"We support free movement of goods and services and people, but we don't support it at the expense of the economy, an economy that is fragile." (Hatfield, Sept. 11/80, p. 799).

Nova Scotia on Powers Over the Economy

Premier Buchanan expressed his agreement with the principle of economic union in theory, but argued that in practice preferential policies were necessary to regional development:

"Certainly we agree with the principles that are rather inherent in the draft so-called economic union, the principle of free movement, goods, services, and people throughout this country. That is rather motherhood and we have no difficulty in agreeing with that, but I think it also must be recognised and I think it has been said many times around this table, it must be recognised that there are a lot of regional differences that have got to be taken into consideration in any form of economic union." (Buchanan, Sept. 11/80, p. 829).

"I want to just spend a few minutes on the free movement of goods and services throughout Canada which is a principle we agree with, but I want to equally tell you that in Nova Scotia we do have a ten per cent preference policy for Nova Scotia goods, services and contractors, et cetera, et cetera and we will continue to have that because it is the only way we can compete with the kind of dumping that occurs from Central Canada." (Buchanan, Sept. 11/80, p. 835).

"The point is, Mr. Prime Minister, we do have the ten per cent preference and I know I am not speaking out of turn to tell you that we also have a preference through our Council of Maritime Premiers for goods and services and products manufactured in the Maritime area for use in the Maritime provinces. We are rather pleased to say we have that because it is a protection to our Maritime suppliers and our Maritime producers and our Maritime manufacturers.

Having said that we still agree with the principle of free passage of goods and services subject to that and subject to that kind of safeguard as far as Nova Scotia is concerned." (Buchanan, Sept. 11/80, pp. 836, 837).

Prince Edward Island on Powers Over the Economy

Fred Driscoll, P.E.I.'s Minister of Finance, associated P.E.I.'s position on this issue with that taken by B.C., New Brunswick and Quebec. He essentially argued, first, that no danger exists to our current economic union, and, second, that the federal proposals would constrain provincial governments in the implementation of economic development strategies:

"Now I suppose it could be asked what is to prevent the country from breaking up into ten economies? I guess the answer is first of all that that will be prevented if we all have mutual respect and goodwill and fair-mindedness. The answer I think also is that it hasn't happened yet and therefore we are not convinced that there is such a problem as the federal government is suggesting there is." (Driscoll, Sept. 11/80, p. 821).

"The provinces have common interests, but they also have their identities and it is useless to proceed as if those identities can be dissolved in an economic union... I believe the concept of an economic union is in itself discriminatory. It discriminates in favour of the economically powerful and against the weak." (Driscoll, Sept. 11/80, pp. 821, 822).

"Mr. Chretien said a few moments ago in defence of the proposal of course that affirmative action is permitted, but the courts decide what is permissible and we find that much too uncertain for our purposes." (Driscoll, Sept. 11/80, p. 822).

Newfoundland on Powers Over the Economy

Premier Peckford opposed the proposals for guarantees of the free movement of goods and services, arguing that our economic union is adequately protected by existing constitutional provisions:

"The province does not believe that a constitutional provision for the protection of the economic union as proposed by the Federal Government, which would give to the courts the power to make critical economic decisions vitally affecting provincial economies is either necessary, warranted or desirable." (Peckford, Sept. 11/80, p. 847).

"The fundamental principle underlying our position on this item on the agenda is that in our view the federal government presently has sufficient powers to deliver on the goal that is inherent in this agenda item." (Peckford, Sept. 11/80, p. 838).

"The province maintains that the judicious use of affirmative action programmes and local preference policies do not unduly impede the operation of the Canadian economic union. Such policies are necessary instruments in a province like ours." (Peckford, Sept. 11/80, pp. 846, 847).

