

SECRET

Resources and Powers Over the Economy

Over the first three weeks of the constitutional negotiations, the federal government succeeded in linking the issues of natural resources and powers over the economy (which may be referred to as "economic union"). From the beginning of the negotiations it was made very clear to the provinces that progress on resources was completely dependent upon progress on constitutional entrenchment of an operative ^{PROVISION SAFEGUARDING} economic union.

The initial federal position on resources was to withdraw much of what was offered in February 1979 in the "Best Effort Draft". We accepted the confirmation of provincial ownership and management of resources and offered the provinces the power to levy indirect taxation on resources. We withdrew the previous federal offer to give the provinces concurrency in interprovincial and international trade and also withdrew the offer to restrict the federal declaratory power.

During the fourth week of negotiations in Ottawa, the federal government made a new offer on resources which, in addition to indirect taxation, included giving to the provinces concurrency with unrestricted federal paramountcy over the export of resources to another province. It should be noted here that the offer is less than concurrency over all of interprovincial trade as it is restricted ^{to} ~~for~~ the "export" from a province and does not include imports into a province.

This offer was well received by the provinces but there was a lot of pressure to extend the concurrent jurisdiction ~~for~~⁺ certain aspects of international trade but not including international trade agreements.

It is clear that no agreement will be possible at the First Ministers Conference without extending concurrency with federal paramountcy to certain aspects of international trade in resources. Acceptance of this principle will most probably mean an agreement with almost all provinces and will still be very much less than what was offered in February 1979.

As far as Alberta is concerned, it will probably continue to seek limitations on federal paramountcy over inter-provincial trade. But Alberta may very well find itself isolated in this matter.

With respect to economic union, the federal government has made very great progress over the summer. We have insisted that the entrenchment of an operative economic union is a fundamental aspect of constitutional reform. There is no question that the federal position on economic union has captured public support and has thereby put the provinces very much on the defensive.

The first weeks of negotiations were devoted to heated debate not only about the federal proposal but also about the propriety of the federal government's introducing the subject matter at all. During the last week, the debate had shifted - at least at the officials level - ~~to~~⁺ the best mechanism of enforcing the principle of economic union. The principle has now been accepted by all governments.

The federal government has maintained its position that the new Section 121 must be enforced by the courts. At the same time we have steered the discussions towards finding a combined judicial and political mechanism which would permit some flexibility in dealing with derogations ~~for~~^{from} the principle of economic union.

It became apparent at the end of the final week that there is a strong possibility of agreement by most if not all provinces on a new Section 121 as long as there is some type of ~~political~~^{enforceable} mechanism (either a revised Upper Chamber or some sort of intergovernmental body) to ensure some needed flexibility in dealing with derogations.

The possibility of an agreement is even stronger as the provinces know that the status quo on resources will remain if they do not accept a revised Section 121.

E. G.

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