

CANADA'S CONSTITUTIONAL FUTURE

A RESPONSE BY
THE BUSINESS COUNCIL ON NATIONAL ISSUES
TO THE GOVERNMENT OF CANADA PROPOSALS
“SHAPING CANADA’S FUTURE TOGETHER”

JANUARY
1992



CONTENTS

THE OPPORTUNITY BEFORE US	1
THE COUNCIL AND THE CONSTITUTION	2
PROPOSALS PART ONE	
SHARED CITIZENSHIP AND DIVERSITY	
Canada Clause	5
Charter of Rights and Freedoms	6
Quebec As A Distinct Society	7
Canada's First Peoples	8
PROPOSALS PART TWO	
RESPONSIVE INSTITUTIONS FOR A MODERN CANADA	
Parliamentary Reform	10
Reform of the Senate	10
Senate Ratification of Appointments	12
Council of the Federation	13
Constitutional Amendment	15
PROPOSALS PART THREE	
PREPARING FOR A MORE PROSPEROUS FUTURE	
Economic Reform and Social Policy	16
The Canadian Common Market	17
Positive Economic Integration	19
Macroeconomic Harmonization/Co-ordination	21
More Efficient and Accountable Government	22
The Federal Spending Power	25



Canada's Constitutional Future

THE CHALLENGE AHEAD	26
----------------------------------	----

APPENDICES:

• Business Council on National Issues	29
• Business Council on National Issues Task Force on the Canadian Constitution and Political Reform	31
• Business Council on National Issues Policy Committee	33



THE OPPORTUNITY BEFORE US

The reform of Canada's constitution provides citizens across this land with an historic opportunity -- an opportunity to improve and modernize institutions that have helped to make our country -- politically and economically -- one of the highest achievers in the world.

Seizing this opportunity is the responsibility of every Canadian, a responsibility that we owe not only to ourselves, but to our ancestors who made Canada what it is today, and to our children and grandchildren for whom we hold the country in trust.

It is in this spirit that we, as members of the Business Council on National Issues, join with many others in contributing to the debate about Canada's future. Our commitment is two-fold: as individuals we want to strengthen the values that bind us together as a people -- values characterized by a commitment to tolerance, equality of opportunity, social justice, and the rule of law. As business leaders we want to ensure that Canada remains one of the most prosperous societies in the world.

Accordingly, we welcome this opportunity to comment on the Government of Canada's recent constitutional reform proposals, **Shaping Canada's Future Together**. The federal government proposals are an important and positive contribution to the national debate about Canada's future. Building on a rich history of existing constitutional arrangements and on a variety of ideas for reform from throughout Canada, the proposals offer the potential for far-reaching improvements in how we govern ourselves.



We recognize that in their present form, the proposals will not win universal agreement. Changes will be suggested and clarifications will be needed. The goal must be to have a final set of proposals that reflects the broadest possible consensus among Canadians -- a constitution, in other words, that encompasses our values and our will as a people to live together. It is in this spirit that we, the members of the Business Council on National Issues, offer our comments.

THE COUNCIL AND THE CONSTITUTION

On April 26, 1991, the Business Council on National Issues tabled a public declaration entitled **Canada and the 21st Century -- Towards a More Effective Federalism and a Stronger Economy**. The declaration was the product of over six months of intensive work which included studies prepared for the Council by 15 of Canada's leading constitutional authorities; consultations with numerous individuals and groups from across Canada; and the contribution of a Council Task Force composed of senior business leaders drawn from Canada's major regions.

The Business Council's constitutional declaration pointed to the remarkable political and economic achievements of Canada in the 20th century and to the advantages of the federal system. But at the same time we warned that changes in the attitudes and institutions of Canadians were needed if we were to count on the advantages of political stability and economic prosperity in the future.

We set out in our declaration a vision of Canada, ..."of a strong union of peoples of great diversity...that honours and draws strength from its rich history, extraordinary achievements, and common values...of a generous and compassionate society...of a federal state which balances the desires for effective economic and political



association on the one hand, and for adequate expression of cultural, economic and political diversity across Canada on the other".

We expressed our conviction that such a vision of Canada can best be attained within a federal system, and that an abandonment of federalism in favour of a radically different political organization of the Canadian state, would not only be a serious mistake, but carry with it potentially catastrophic consequences that have yet to be understood by the vast majority of Canadians.

In our declaration we said that a number of fundamental political and economic principles must form the cornerstone of constitutional change, prominent among them:

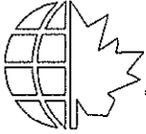
- **a recognition of Canada as a nation made more vibrant by the diversity of its citizens and regions, the advantage of its two official languages, and the cultural and linguistic distinctiveness of the people of Quebec;**
- **central institutions of federalism that will give Canadians from the West, the Atlantic, and the North, a stronger voice in shaping national decision-making;**
- **a recognition of the right of aboriginal peoples to preserve their cultural identities and to a just settlement of issues of concern to them;**
- **a more effective federal system with an appropriate balance of power and influence between the central government and the governments of the provinces with the overall objective of establishing more efficient and accountable government for Canadians; and**



Canada's Constitutional Future

- **a strong common market encompassing all of Canada with an unimpeded flow of labour, capital, goods, and services protected under the Constitution.**

With these principles in mind, we offer a brief commentary on each of the three principal chapters of the federal government proposals.



PROPOSALS PART ONE

SHARED CITIZENSHIP AND DIVERSITY

1.1 We are largely in agreement with the analysis of Canada's character and achievements contained in this first chapter of the federal proposals. "From its beginnings -- in democracy, freedom and the rule of law -- Canada has developed its own unique way of governing, its own special relationship between citizen and state", the proposals say. "Whether out of genius or necessity, the architects of Canada provided a framework which has allowed us to build a country on the basis of what appear to be universal values -- freedom, equality, compassion and community -- in a distinct Canadian way." We share this positive vision of Canada and remind all Canadians that these accomplishments have been attained within a constantly evolving federal system.

Canada Clause

1.2 The constitution of a people is a special thing because in its most perfect form it embodies our common values, our fundamental beliefs, and our shared aspirations. It has a legal meaning, to be sure. But as important, it has a powerful symbolic meaning as well.

Given the legalistic nature of the Constitution Act, 1867, it is not surprising that its words have not been a source of inspiration to succeeding generations of Canadians. The preamble to the Canadian Charter of Rights and Freedoms, which introduces the Constitution Act of 1982, contributes little to a definition of what it means to be a Canadian.

The federal government proposes to remedy this situation by adding to the body of the Constitution a so-called "Canada clause" with a list of defined values and



characteristics. While the list does not take the form of a draft legal text, in large measure it does capture, in our view, what a commitment to Canadianism means. The contents of the list, moreover, are highly compatible with the "vision of Canada" enunciated in our Council's April 26, 1991, declaration. We support the contents of the proposed "Canada clause" but would suggest one addition to it. Given Canada's distinguished record in the international political and economic domains, and the contributions of Canadians to global peace and security, we propose that a commitment to international political and economic co-operation and to peace and security be included in the "Canada clause".

Charter of Rights and Freedoms

1.3 The **Canadian Charter of Rights and Freedoms** enacted in 1982 ensured that the protection of Canadians' fundamental rights was entrenched in the Constitution. The current federal proposals suggest two initiatives that would strengthen the protection of these rights: the amendment of the Charter to guarantee property rights, and stricter conditions for Parliament or a provincial legislature when seeking to invoke the override clause of the Charter (i.e. from a simple majority to 60 percent).

The Business Council first expressed its support for a property rights amendment to the Charter when it endorsed the unanimous resolution of the British Columbia Legislature in 1982 calling for a constitutional amendment adding "enjoyment of property" to section 7 of the Charter. Subsequent governmental initiatives were launched which had the Council's support, namely the resolution of the Ontario Legislature in 1986, and that of the House of Commons in 1988.

We are concerned, however, that in the current federal proposals, no attempt is made to explain the precise nature of the rights to be protected, nor, disappointingly, the rationale for this latest initiative. We also are aware that there is a great deal



of misunderstanding in Canada about property rights entrenchment and fears are being expressed about its potential negative impact on environmental protection, matrimonial claims, and aboriginal rights.

The Council's support for having property rights entrenched is straight-forward and fundamental -- we want to be sure that the principles of due process and compensation, beyond those that might already exist in Canadian law, are respected where real property rights are affected by government actions. The Special Joint Parliamentary Committee obviously needs to address this issue and provide a well-understood and broadly-based rationale for entrenchment in its final report.

Section 33 of the Canadian Charter of Rights and Freedoms, which allows Parliament and the provincial legislatures to override certain provisions of the Charter, has been a subject of considerable debate in Canada. Convincing arguments have been marshalled by those who believe, on the one hand, that section 33 should be repealed, and by those, on the other hand, who believe that elected and accountable representatives should have the final say on matters of public policy. The federal proposals do not re-open this debate but rather seek to make an invocation of the override more difficult. We agree with this step and base our support on a simple proposition -- that the provisions of the Charter should not be tampered with except in the most extraordinary of circumstances and only when supported by a convincing majority of Parliamentarians or legislators.

Quebec As A Distinct Society

1.4 The federal proposals devote considerable attention to the issue of diversity in the Canadian federation. That this should be a major preoccupation of constitutional reform, should surprise no one. Constitutions, particularly those of federations made up of diverse peoples and regions, are meant to safeguard unique



circumstances arising from such diversity. Constitutional tradition in Canada has long acknowledged the principle of uniqueness. This has manifested itself, for example, in the form of special arrangements affecting numerous provinces and touching areas as diverse as language, education, natural resources, and transportation.

Recognition of the distinctiveness of Quebec society is an important element of the federal proposals. The federal government suggests that the **Canadian Charter of Rights and Freedoms** be amended to provide for such recognition, and "distinct society" is defined as including a) a French-speaking majority, b) a unique culture, and c) a civil law tradition. In addition, the federal government proposes that the "Canada clause" contain a recognition of the special responsibility borne by Quebec to preserve and to promote its distinct society.

The Business Council supports these provisions. The distinctiveness of the French fact in Quebec has been acknowledged repeatedly in statutory enactments for over two hundred years, and constitutional entrenchment, as contemplated in the federal proposals, is a contemporary acknowledgement of this reality. But in supporting these provisions, the Business Council is going well beyond a mere recognition of the French fact in Quebec. We are applauding it as a source of strength, as an integral part of our Canadian identity, and as a major factor in what makes Canada unique among the family of nations.

Canada's First Peoples

1.5 In the Council's April 26, 1991, declaration, we said that a number of fundamental political and economic principles must form the cornerstone of constitutional change, and that prominent among them is "a recognition of the right of aboriginal peoples to preserve their cultural identities and to a just settlement of issues of concern to them."



Canada's Constitutional Future

The federal government proposals go some considerable distance in acknowledging the constitutional aspirations of aboriginal peoples -- Indian, Inuit and Metis. We support the federal government's commitment to ensuring that aboriginal peoples participate in the current constitutional deliberations, and that a constitutional process be entrenched to address aboriginal matters that are not dealt with in the current constitutional negotiations. We also support the principle of a general justiciable right to aboriginal self-government within the Canadian federation and subject to the **Canadian Charter of Rights and Freedoms**.

We also are aware that differences exist among aboriginal peoples, Canadians at large, and various governments about what "aboriginal self-government" should mean. The federal proposals appear to suggest that it could encompass jurisdiction over "land and resource use, language and culture, education, policing and administration of justice, health, social development, economic development and community infrastructure." These are complex issues that will require time, patience and great care to resolve. We would not presume to suggest a definition of aboriginal self-government but would offer this advice. The aboriginal question deserves the serious attention of all Canadians. And we must recognize that the full political and economic potential of the aboriginal peoples will be enhanced by constitutional arrangements that encourage maximum autonomy and responsibility in the management of their lands and their affairs. When this goal is achieved, justice will have been served, and aboriginal peoples together with all Canadians will be stronger for it.



PROPOSALS PART TWO
RESPONSIVE INSTITUTIONS
FOR A MODERN CANADA

2.1 In its declaration of April 26, 1991, the Business Council stated that "the reform of the central institutions of the federation offers Canadians a wide variety of ways to strengthen the effectiveness of the federal system". The proposals contained in this second chapter of the federal government's constitutional initiative, are very encouraging in this regard.

Parliamentary Reform

2.2 We endorse the commitment of the federal government to enhance the role and effectiveness of Parliament by giving individual Members more free votes and by reducing the application of votes of confidence. These reforms, and others contemplated by the federal government, are consistent with recommendations offered by the Business Council a decade ago in its study **Parliamentary Democracy in Canada: Issues for Reform.**

Reform of the Senate

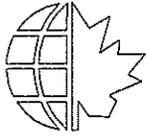
2.3 For over a decade as well, the Business Council has been an advocate of Senate reform. This commitment was echoed again in the Council's April 26, 1991, declaration. "A reconstituted Senate", we said, "would sensitize the federal government to regional needs and demands and enhance the influence of the regions in national decision-making. We believe that an elected Senate is the preferable choice with an array of effective powers and representational weighting that would provide a stronger voice than is now the case to Canadians living in the West, the Atlantic, and the North."



The idea of Senate reform has been alive in Canada for many years. Indeed, over a dozen specific proposals have been put forward in the last twenty years by the federal and provincial governments and by a variety of non-governmental organizations. They have tended to focus on one or other of three broad kinds of reform: a) ways of permitting increased provincial participation in the selection of senators; b) ways of enhancing direct provincial government power in the second chamber; and c) an elected Senate with or without equal representation from each of the provinces.

The current federal proposals advocate "a directly-elected Senate, designed both to improve regional representation and to increase responsiveness to individuals ...". Noting that the original distribution of Senate seats was based on equal representation of the three regions of Canada in 1867 -- the Maritimes, Ontario and Quebec -- the federal government opts, in its proposals, for a different approach. It recommends Senate representation based on each individual province rather than on the regions. It then asks the Special Joint Parliamentary Committee to recommend the most appropriate number and distribution of Senate seats "to ensure a much more equitable provincial and territorial representation ..."

On the issue of both election and representation, the Business Council's views are broadly compatible with those of the federal government. We wish to emphasize once again, however, how critical it is that the position of numerical disadvantage facing Western Canada be dealt with as a matter of high priority. We also wish to make a point on the issue of Senate powers. One of the objectives of Senate reform is to ensure that the elected second chamber has real powers -- powers that not only provide an opportunity for "sober second thought" in legislative matters, but for a decisive say when regional or minority concerns are at stake. This recognizes that in a federal system, characterized by many diverse interests, there can be serious problems with allowing a simple majority of the national electorate to prevail on all issues. Recognizing this, the federal government has proposed that as a



general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required as at present, and that in matters of language and culture, the Senate should have a double majority voting rule. We support this.

We also are of the view that the primacy of the House of Commons should be respected in any reforms, and that unlike the House of Commons, the Senate should not be a confidence chamber where legislative defeat could lead to the resignation of the government. The federal proposals also suggest that in a limited number of areas of "particular national importance, such as national defence and international issues", the Senate should have a six-month suspensive veto, following the expiry of which the House of Commons would be required to repass the legislation for it to become law. We are generally in accord with this recommendation, as well, but believe it is important that the Special Joint Parliamentary Committee articulate a careful definition of what would constitute subjects of "particular national importance". In addition, we believe that it would be prudent for the Committee to examine how deadlocks between the two Houses would be dealt with, should they arise.

Senate Ratification of Appointments

2.4 The Government of Canada proposes that the Senate be given a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, as well as the heads of regulatory boards and agencies. The Business Council supports this recommendation.

2.5 The federal government also is prepared to introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments. Such appointments would be made by the federal government



from lists of nominees submitted by provincial and territorial governments, the individual being acceptable to the Queen's Privy Council of Canada. Such an initiative is consistent with others that would strengthen the legitimacy of federal institutions and that would contribute to an improved spirit of partnership in intergovernmental relations within the federation. The Business Council supports this recommendation.

Council of the Federation

2.6 The federal government proposes the entrenchment in the Constitution of a Council of the Federation, composed of federal, provincial and territorial governments that would decide on issues of intergovernmental co-ordination and collaboration. The idea of such a council is not new. Various models of co-ordinating councils have been part of constitutional discourse in Canada in the past. And such bodies are well-established in some other federations.

The driving force behind the federal proposal is a recognition that the current practice of so-called executive federalism -- whereby First Ministers meet on an ad hoc basis, largely in the absence of established procedures, and often behind closed doors -- is facing severe criticism. A Council of the Federation, as outlined, would be composed of ministerial representatives from the federal government and each provincial government, and would act (with one vote) on behalf of the government they represent. The Council would have the mandate a) to vote on proposed legislation to enhance the functioning of the economic union; b) to vote on common guidelines for fiscal harmonization and co-ordination; and c) to make decisions on the use of the federal spending power on new Canada-wide shared cost programs and conditional transfers in areas of exclusive provincial jurisdiction. All decisions of the Council would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.



The case for a constitutionally entrenched Council of the Federation is a compelling one, particularly if it would lead to more effective and accountable management of the federation and if, as the federal government assures us in its proposals, it "would not be another layer of government". Moreover, the Business Council is on record as favouring much more disciplined and productive co-operation among federal and provincial governments. We are uncomfortable, however, with the paucity of detail surrounding a proposal of such importance, and particularly so, given the recommendation that it be entrenched in the Constitution. Because we believe that the Council of the Federation has the potential to play an important and positive role, we urge the Special Joint Parliamentary Committee to explore its merits further and to invite detailed suggestions from the federal and provincial governments, and other interested parties, as to how such a body might operate.

Failure to reach a consensus in support of a Council of the Federation likely would mean having to fall back on some mechanism for intergovernmental co-ordination and collaboration under the aegis of First Ministers. This approach has not worked well in the past and major improvements to the process would have to be made before it could become effective and gain the support and confidence of the Canadian electorate. The improvements, at the very least, in our view would require the following: a) regular meetings with a public agenda; and b) in a number of pre-agreed areas of policy initiative, the willingness of First Ministers, with the concurrence of Parliament and their respective legislatures, to make binding decisions (we favour the proposed 7/50 formula), with a limited period for non-participating governments to opt-in. [A number of recent proposals have outlined ways of improving intergovernmental co-ordination, particularly on economic matters, without constitutionally entrenching the process. One such proposal, which is worthy of consideration, was presented recently to the Special Joint Parliamentary Committee by the Quebec-based Regroupment Economie et Constitution, with the support of several members of the Business Council whose enterprises are headquartered in Quebec.]



Constitutional Amendment

2.7 Most of the federal government's current constitutional proposals, including the reform of the Senate, could be enacted with the support of the seven provinces representing 50 percent of the population. When it comes to amending the Constitution itself, this is not the case. Failures during the last decade to obtain agreement among all the provinces on an amending formula (the patriation initiative in 1981 and the Meech Lake Accord) have contributed significantly to constitutional deadlock and the political malaise gripping the country. We offer no formula in this paper -- formulas and different approaches already exist in abundance. We register instead a plea. This deadlock must be resolved, and we are convinced that it can be resolved by acts of positive leadership on the part of our First Ministers and parliamentarians and legislators across Canada.



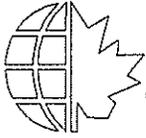
PROPOSALS PART THREE

PREPARING FOR A MORE PROSPEROUS FUTURE

3.1 One half of the federal government's twenty-eight proposals for constitutional reform fall under the heading "Preparing for a More Prosperous Future". The Business Council strongly welcomes the emphasis contained in these proposals collectively. They acknowledge the vital linkage between economic prosperity and good government, and rightly stress the advantages of a more efficient economic union, more accountable and limited government, the need to reduce overlap and duplication in the operations of governments, and the imperative of improved co-ordination among all economic actors.

Economic Reform and Social Policy

3.2 Prior to commenting on these proposals, many of them economic in nature, we would like to make one point very clearly. Economic reforms, constitutional or otherwise, do not automatically carry with them a social cost. Indeed, we would argue on the contrary that good economic policy and good social policy go hand-in-hand. With this general observation made, the Business Council believes that the social underpinnings of the Canadian federation need not be threatened by the proposed constitutional reforms. Section 36 of the Constitution enshrines the responsibility of the federal government for the redistribution of resources in the form of equalization payments. Section 36 also commits both the federal and provincial governments to promote equal opportunities for the well-being of Canadians, to further economic development, to reduce disparities in opportunity, and to provide essential services of reasonable quality to all Canadians. The Business Council supports these principles unequivocally. Indeed, the Council believes that the principles enshrined in section 36 of the Constitution are compatible with a broad



set of social values which are shared by Canadians and which could provide guidance in the constitutional reform process.

The Canadian Common Market

3.3 In its constitutional declaration of April 26, 1991, the Business Council stated that "the reforms to our federal system must ensure that the Canadian common market is established in fact and that the Canadian economic union is strengthened. The free movement of labour, capital, goods and services must be guaranteed under any new constitutional arrangement..." The federal proposals recognize the economic benefits that will flow to all Canadians through the improved operation of Canada's internal market -- a market already bound together by a monetary union and a free and convertible currency. We welcome these proposals as positive and significant.

Specifically, the federal government proposals call for a broadening of section 121 of the Constitution Act, 1867 to enhance the mobility of persons, capital, services and goods within Canada by prohibiting any laws, programs or practices of the federal or provincial governments that constitute barriers or restrictions to such mobility. A revised section 121 in the Constitution would empower private parties (individuals as well as firms) to challenge, through the courts, the actions of governments that are inconsistent with the principle of free mobility within the internal market. The proposal suggests that this new section come into effect on July 1, 1995. It also allows for exceptions "for reasons of national interest, and would not apply to legislation promoting regional development or equalization".

It is important to recognize that the existing so-called "common market clause", section 121 of the Constitution Act, 1867, applies only to explicit interprovincial trade barriers, and not to non-tariff barriers. It also applies to goods, but not to



services, capital or labour. It also has been suggested that the existing clause binds only provinces but not the federal government.

The current situation is archaic and clearly inconsistent with the requirements of a modern industrial state characterized by high levels of mobility of its workforce, its capital, and the products of work, namely goods and services. Moreover, the maintenance of existing barriers carries an unacceptable cost in jobs, investment and production and are an impediment to achieving badly needed improvements to productivity growth -- without which, there cannot be real expansion of incomes and wider prosperity.

The urgency of moving ahead with these reforms is highlighted by a number of developments. Canada, for example, along with other countries throughout the world, has pursued successfully policies that have led to the reduction or elimination of external barriers to trade and to factors of production. This we have done for several decades while ignoring the barriers in our own country and their costs to Canadian consumers, taxpayers and firms. In addition, our international competitors, notably the countries that make up the European Community, are moving quickly towards the elimination of internal barriers in favour of fully integrated markets.

The inadequacies of section 121 become even more pronounced when one considers the arguably restrictive judicial interpretations given in the past to the federal government's trade and commerce power contained in section 91 of the **Constitution Act, 1867**. There have been various attempts to deal with these inadequacies in the past. A federal government constitutional initiative in 1980 failed, and subsequent attempts at agreement through intergovernmental co-operation have produced meagre results. Clearly, the time for resolving this untenable situation is now, and we urge all governments to give this a high priority in the coming months.



We have several concerns about this proposal as currently drafted. One is the implementation date of July 1, 1995, to allow for transitions and adjustments. Given that action on this front is long overdue, we are disappointed with the prospect of further delay and urge governments to set an earlier implementation date. Whatever implementation date is chosen, the intervening time should be used to maximum advantage. For example, governments might agree a) on a complete inventory of existing barriers; b) not to introduce new ones; c) on those barriers that should be eliminated prior to the implementation date; d) those barriers that should be reduced over time and thus exempt from court action; and e) appropriate adjustment measures.

A second concern is the proposed exceptions to an amended section 121, namely, for reasons of national interest, and in the case of legislation promoting regional development or equalization. While we would concede that exceptions in these categories may be justifiable, we believe they should be narrowly construed. What is needed here is a careful definition of when and how such exceptions would apply.

Positive Economic Integration

3.4 The federal government provisions dealing with the economic union also suggest that an amendment be enacted to the **Constitution Act, 1867**. The new section 91A(1) would read "Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may make laws in relation to any matter that it declares to be for the efficient functioning of the economic union".

Subsequent subsections stipulate that an act of Parliament under this provision would have no effect unless approved by the governments of at least two-thirds of the provinces that have, in aggregate, at least 50 percent of the population of all the provinces, and that a province may "opt-out" for a period of three years if 60 percent



of the members of its legislature vote that the act of Parliament should not apply in the province.

The rationale for such a proposal is to provide the federal and provincial governments with a co-ordinated means for designing and implementing policies and initiatives that would lead to greater harmonization and efficiencies in Canada's economy. Sometimes referred to as a form of "positive integration", the idea is a good one and consistent with steps already taken in other federations and common markets. The Business Council strongly endorses the concept. It is in keeping with long-standing Council positions favouring strengthened intergovernmental co-operation that would lead to enhanced competitiveness.

We are concerned, however, about the means discussed in the federal proposals for effecting this positive integration. The new federal power being suggested has given rise to considerable fears in various provinces that it is too sweeping in scope and that it invests the federal government with unnecessary authority. Its purpose, according to the federal government, is to provide for a mechanism for shared management of the economic union by the federal and provincial governments, and to create a vehicle for the establishment of Canadian objectives, norms and standards in a number of areas essential to the efficient operation of the economic union.

In considering how this discomfort about the federal government's perceived role might be dealt with, we have developed the following ideas. First, it is critical to accept that acts of positive integration must flow from a partnership of the federal government and the provinces, with either level of government having the right to take the initiative. Second, if such a power of positive integration is to be entrenched in the Constitution, then it should be a shared power. This would mean shifting it from the suggested section 91A to perhaps a new section, 95A, following the list of concurrent powers. [Alternatively, if the power is not to be entrenched,



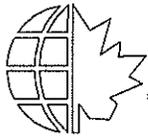
then it may be necessary to fall back on an institutionalized and effective system of First Ministers Meetings. In section 2.6 of this paper, we already have outlined our views on the minimal requirements necessary to make an institutionalized system of First Ministers Meetings work.]

Whichever course of action is taken, and our preference is for entrenchment of a new, shared power, we believe that acts of positive integration must have an authoritative base, they must be capable of being binding on a critical mass of governments (we favour the proposed 7/50 formula), and they must allow for a limited period for non-participating governments to opt-in.

Macroeconomic Harmonization/Co-ordination

3.5 Among the most constructive suggestions in this chapter are the measures aimed at strengthening the co-ordination and harmonization of macroeconomic policies. These include joint development among the provinces and the federal government of an annual timetable to allow for more open and visible budget-making processes, federal-provincial guidelines to improve the co-ordination of fiscal policies, and the harmonization of fiscal policies with Canada's monetary policies.

The record of Canadian governments in managing the co-ordination and harmonization of macroeconomic policies has been far from satisfactory. Indeed, we believe that failures on this front have contributed in a major way to many of the serious economic problems Canadians face today. A soaring national debt, high overall government debt levels, punitive real interest rates, overdependence on foreign borrowing, the misalignment of monetary and fiscal policies, a heavy burden of taxation, and conflicting taxation policies -- these are the costly and painful results of failure. Canadians deserve better. Moreover, Canada has little chance of remaining among the leading economic powers unless our First Ministers recognize the urgency of this challenge.



We are largely in accord with the specific proposals in this chapter. We question, however, whether it is appropriate, within the context of a constitutional reform exercise, to attempt to amend the **Bank of Canada Act** in order to clarify the Bank's mandate. Let there be no misunderstanding, here. The Business Council strongly endorses the principle that the Bank of Canada's overriding mandate must be price stability. But it is our preference that this proposal be dropped and that this issue be dealt with outside of the constitutional context.

The question remains: how will a much improved and urgently needed macroeconomic harmonization and co-ordination happen? Obviously, it should be a prime candidate for positive integration initiatives on the part of the federal and provincial governments. Whatever the vehicle, we are counting on First Ministers to make it happen.

More Efficient and Accountable Government

3.6 In its constitutional proposals, the federal government acknowledges that there is a need to adjust the distribution of powers between federal and provincial governments in certain areas and to clarify the responsibilities of each level in other areas. The target is "costly and disruptive overlap and duplication" and the federal government argues that all governments must better respect the division of responsibilities within the existing Constitution.

The subject of overlap and duplication has been a source of frustration and confusion to many Canadians, and for more than a decade, the Business Council has called for more determined action by the federal government and the provinces to deal with the problem. Many studies have been carried out by governments and by other bodies on the overlap and duplication issue and the conclusions have a certain similarity: there is too much of it, and improvements are sorely needed.

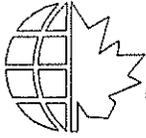


Attempts over many decades to tackle the fundamental issue of the division of powers and the conflicts inherent in the interplay of the two jurisdictions have been singularly unproductive. The fact is that new realities and circumstances have arisen which raise questions about the appropriateness of constitutional powers that were assigned by the Fathers of Confederation in 1867. And it is time that we faced up to this.

The federal proposals are a modest attempt to revisit this issue and some of the suggestions are encouraging. However, we would have preferred a more thorough treatment with suggestions on how the division of powers issue might be tackled and how jurisdictional responsibilities might be more effectively reassigned -- both from the federal government to the provinces, and from the provinces to the federal government. Let's be perfectly clear as to what is at stake here -- Canadians, weary of debt-ridden governments and rising burdens of taxation, are rightly demanding greater efficiencies in both the organization of our political system and in the ability of the system to deliver value for money in the form of services to taxpayers.

In four specific areas -- training, immigration, culture and broadcasting -- the federal government suggests varying degrees of devolution. Generally speaking, these are sound suggestions and have our support. Where training is concerned, however, the national competitiveness dimension must be kept in mind. We believe that it is important that responsibility at the provincial level be buttressed by a strong commitment to national standards and Canada-wide competitiveness goals.

The federal proposal to transfer to the provinces authority for non-national matters not specifically assigned to the federal government while reserving to itself the Peace, Order and Good Government clause, in principle, is a constructive step. So is the federal government's readiness to support a constitutional amendment to



Canada's Constitutional Future

remove the declaratory power set out in section 92 (10)(c). More information on these two proposals is necessary, however.

In an effort to reduce intergovernmental conflicts, the federal government is prepared to recognize the exclusive jurisdiction of the provinces in tourism, forestry, mining, recreation, housing, and municipal/urban affairs. It is also prepared to discuss with the provinces, the rationalization of government programs and services by reviewing which level of government can best deliver them. As a starting point, the federal government proposes to discuss the following areas with the provinces: drug prosecutions; wildlife conservation and protection; transportation of dangerous goods; soil and water conservation; ferry services; small craft harbours; some aspects of financial sector regulation; some aspects of bankruptcy law; some aspects of unfair trade practices; and inspection programs.

The above initiatives are consistent with the Business Council's April 26, 1991, constitutional declaration. "One guiding principle governing the allocation of powers, responsibility and accountability", the Council said, "might be called the 'common sense test' -- what programs and services can be delivered most effectively by the appropriate level of government, in the most efficient way, and at the lowest cost to taxpayers."

In the Business Council April, 1991, declaration, we also pointed to **administrative delegation** as a method of achieving significant program rationalization and harmonization. The federal proposals point out that through administrative delegation, the federal and provincial governments can transfer programs or activities to each other, to local governments, or to the private sector. Some of this happens already; for example, most provinces delegate to the federal government the authority to collect personal and business income tax on their behalf. The use of administrative delegation is not in reality a constitutional question. It is, rather, a potentially effective tool for improved management in intergovernmental relations.



The Business Council urges both the federal and provincial governments to explore its advantages more fully.

The federal proposals raise the prospect of **legislative delegation** as another way of allowing for greater flexibility and responsiveness on the part of the two levels of government in adapting to changing circumstances. Delegation could flow two ways -- from Parliament to the provincial legislatures or vice-versa. It would require mutual consent and it could be narrow or wide in scope.

Legislative delegation has significant merits in that it could overcome the rigidities of the existing division of powers arrangement and the requirement for formal constitutional amendment. Critics, on the other hand, fear that its extensive use might lead to "patchwork federalism" where some provinces might exercise more legislative authority than others.

Legislative delegation, while an intriguing subject having interesting potential, cannot be implemented under the **Constitution Act, 1867**. A constitutional amendment would be required as was recently recommended by the Beaudoin-Edwards Joint Parliamentary Committee. The Business Council urges the Special Joint Parliamentary Committee to consider the merits of this idea further.

The Federal Spending Power

3.7 The exercise of the federal spending power has led to a number of important national programs and initiatives that have helped shape the face of modern Canada. It also has given rise to a multitude of intergovernmental conflicts, particularly when applied in areas of exclusive provincial jurisdiction. The concerns about the federal government's use of the spending power are not without some justification. Perhaps the most powerful political argument for its curtailment is in its impact on political accountability. Given the federal government's incursions into



areas of exclusive provincial jurisdiction through shared-cost and conditional transfers, Canadian taxpayers are often confused as to which order of government is providing what and, accordingly, who is to be held accountable. The negative implications of this for fiscal policy and efficiency are plain for all to see.

The federal government, in its proposals, is taking a sensible step. It is prepared to commit itself not to introduce new Canada-wide shared cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population. This provision would be entrenched in the Constitution and also would provide for reasonable compensation to provinces that choose not to participate in new Canada-wide programs, but which establish their own programs meeting the objective of such new programs.

While we support this curtailment of the federal spending power, we strongly urge the Special Joint Parliamentary Committee to consider ways of bringing further discipline and accountability to this complex and controversial area.

THE CHALLENGE AHEAD

Having offered our views on the important question of how, as Canadians, we should govern ourselves, we are mindful that the constitutional debate is taking place at a time when the country is suffering the effects of a deep recession. The casualties of the recession are visible and painful -- high levels of unemployment, soaring bankruptcies, rising welfare costs, and heavy losses among many of Canada's companies. The recession, in turn, is in part a symptom of profound changes that are affecting the fundamentals of the Canadian and global economies.

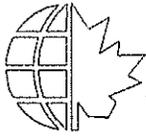


Canada's Constitutional Future

In the midst of all of this, Canadians are deeply worried about immediate concerns such as jobs, the preservation of social programs, and the need for economic revival. In the context of real life concerns, many are wondering whether we can afford the luxury of an all-preoccupying constitutional debate. Canada's business leaders share these concerns.

Surely, the message here is very clear, and one that our political leaders would be well-advised to recognize. As the constitutional debate proceeds, it had better take into account that Canadian citizens care little about intergovernmental conflicts but a great deal about good and efficient government. It had better recognize that stable and effective government institutions are a key determinant of economic growth and social progress. So, too, should it recognize that the vast majority of Canadians are proud of what we have built collectively, and that we want to continue to live and work together to make Canada a leading force in the 21st century.

As we said at the outset of this paper, constitutional reform provides us with an opportunity to improve in an important way how we govern ourselves and how we will shape our destiny. Seizing this opportunity, intelligently and dispassionately, is the real challenge facing Canadians in the year ahead.



BUSINESS COUNCIL ON NATIONAL ISSUES

The Business Council on National Issues is the senior voice of Canadian business leaders on public policy issues in Canada and abroad. A non-partisan, non-profit organization, it is composed of the chief executives of 160 leading Canadian companies. The Council carries out an active program of research, consultation, and advocacy in four principal areas: the national economy and competitiveness; foreign affairs and the global economy; the environment and sustainable development; and political governance.

The member companies of the Business Council are active in every major sector of the Canadian economy. They employ over 1.5 million Canadians, manage over \$1 trillion in assets, and have an annual turnover of approximately \$390 billion.

For over a decade, the Council has been engaged in work on the political governance issue. In 1979 and in 1981, the Council published studies on parliamentary government in Canada, including a widely-read book, **Parliamentary Democracy in Canada: Issues for Reform**. During the constitutional debates at the beginning of the 1980s, it published a **Citizen's Guide to the Constitution**, and was active in putting forward its views. Studies on senate and public service reform followed, and most recently, the Council participated in the debate surrounding the Meech Lake Accord.

In April, 1991, the Council issued a constitutional declaration, **Canada and the 21st Century: Towards a More Effective Federalism and a Stronger Economy**. Prepared under the supervision of the Business Council Task Force on the Canadian Constitution, and benefitting from the contributions of members of the Council's Policy Committee and Council members from across Canada, this statement was endorsed unanimously by the Business Council on National Issues Membership at the Council's Annual General Meeting in Toronto, April 10, 1991. It has formed the basis of the Council's response to the current federal government constitutional proposals.



**BUSINESS COUNCIL ON NATIONAL ISSUES
TASK FORCE ON THE
CANADIAN CONSTITUTION AND POLITICAL REFORM**

CO-CHAIRMEN

John F. Fraser
Chairman and Chief Executive Officer
Federal Industries Ltd.

Guy Saint-Pierre
President and Chief Executive Officer
The SNC Group

William W. Stinson
Chairman and Chief Executive Officer
Canadian Pacific Limited

MEMBERS

Peter J. G. Bentley
Chairman and Chief Executive Officer
Canfor Corporation

Angus A. Bruneau
Chairman, President,
and Chief Executive Officer
Fortis Inc.

Jacques A. Drouin
Chairman and Chief Executive
The Laurentian Group Corporation

Arden R. Haynes
Chairman of the Board
and Chief Executive Officer
Imperial Oil Limited

R. John Lawrence
Chairman and Chief Executive Officer
Burns Fry Holdings Corporation

Ronald N. Mannix
Chairman
Manalta Coal Ltd.

David Morton
Chairman of the Board and
Chief Executive Officer
Alcan Aluminium Limited

Bertin F. Nadeau
Chairman of the Board
Provigo Inc.

Alfred Powis
Chairman
Noranda Inc.



POLICY COMMITTEE
BUSINESS COUNCIL ON NATIONAL ISSUES

Matthew W. Barrett
Chairman and Chief Executive Officer
Bank of Montreal

Peter J. G. Bentley*
Chairman and Chief Executive Officer
Canfor Corporation

André Bérard
Chairman of the Board and
Chief Executive Officer
National Bank of Canada

Robert D. Brown
Chairman and Senior Partner
Price Waterhouse

Angus A. Bruneau
Chairman, President and
Chief Executive Officer
Fortis Inc.

Marshall A. Cohen
President and Chief Executive Officer
The Molson Companies Limited

Purdy Crawford
Chairman and Chief Executive Officer
Imasco Limited

David M. Culver
Honorary Chairman
Business Council on National Issues

J. V. Raymond Cyr*
Chairman and Chief Executive Officer
BCE Inc.

Thomas P. d'Aquino*
President and Chief Executive
Business Council on National Issues

Jacques A. Drouin
Chairman and Chief Executive
The Laurentian Group Corporation

John F. Fraser*
Chairman and Chief Executive Officer
Federal Industries Ltd.

Charles H. Hantho
Chairman, President and
Chief Executive Officer
Dominion Textile Inc.

Kenneth W. Harrigan
Chairman and Chief Executive Officer
Ford Motor Company of Canada, Limited

Arden R. Haynes
Chairman of the Board and
Chief Executive Officer
Imperial Oil Limited

R. John Lawrence
Chairman and Chief Executive Officer
Burns Fry Holdings Corporation

Jack M. MacLeod
President and Chief Executive Officer
Shell Canada Limited

Gerald J. Maier
President and Chief Executive Officer
TransCanada PipeLines

Ronald N. Mannix
Chairman
Manalta Coal Ltd.

John D. McNeil
Chairman and Chief Executive Officer
Sun Life Assurance Company of Canada



Canada's Constitutional Future

David Morton

Chairman of the Board
and Chief Executive Officer
Alcan Aluminium Limited

J. Edward Newall*

President and Chief Executive Officer
NOVA Corporation of Alberta

Paul J. Phoenix

Chairman and Chief Executive Officer
Dofasco Inc.

Guy Saint-Pierre

President and Chief Executive Officer
The SNC Group

William W. Stinson*

Chairman and Chief Executive Officer
Canadian Pacific Limited

Jeannine G. Wood

Chairman of the Board and
Chief Executive Officer
Guillevin International Inc.

Bertin F. Nadeau

Chairman of the Board
Proviso Inc.

Ronald W. Osborne

President and Chief Executive Officer
Maclean Hunter Limited

Alfred Powis

Chairman
Noranda Inc.

Thomas H. Savage

Chairman and President
ITT Canada Limited

Allan R. Taylor*

Chairman and Chief Executive Officer
Royal Bank of Canada

*Executive Committee Member

**This list includes only voting
members of the Policy Committee