CANADA'S CONSTITUTIONAL OPTIONS

Ottawa

The Business Council is the senior voice of Canadian business on public policy issues in Canada and abroad.

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The Council's special project on Canada's constitutional options is directed by Mr. d'Aquino, and the Council's Politics and Government Group, which is overseeing the initiative, is chaired by Mr. Stinson.

With the failure of the Meech Lake Accord, Canada is bracing itself for the opening of another chapter in the debate about the country's constitutional future. Conscious of the fundamental importance of this debate and its outcome for the political and economic life of Canadians, the Business Council on National Issues has initiated a special project on Canada's Constitutional Options.

The Council's principal objectives in undertaking this work are to examine from a private sector perspective viable constitutional options open to Canadians. While a full range of options will be considered, a more effective federalism politically, and an enhanced Canadian common market economically, are the Council's underlying goals in undertaking this initiative.

The study, which was initiated in early August, has two phases: first, the consideration of broad, strategic options (the enclosed paper is part of this first phase); and second, the analysis and elaboration of these options with the aim of producing recommendations by early January, 1991. The principal findings of the full study will be discussed on January 16, 1991, at a special Business Council symposium in Toronto on Canada's constitutional future.

To assist the Council with its initiative, the Council is sponsoring a range of independent studies on various aspects relating to the options for Canada's constitutional future. These will be coordinated by the Institute of Intergovernmental Relations at Queen's University led by its Director, Ronald L. Watts and involve a team of economists, political scientists, lawyers, and constitutional scholars drawn from Queen's University and other parts of Canada. The Council also will be assisted by the Honourable Gordon Robertson P.C., former Clerk of the Privy Council and Secretary of the Federal Cabinet.

As the study progresses, Canada's business leaders, through their involvement in the Business Council on National Issues, look forward to achieving an improved understanding of how creative institutional reforms can better meet the political and economic aspirations of all Canadians.

J. Edward Newall
Chairman

Thomas P. d'Aquino
President and Chief Executive Officer

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CANADA'S CONSTITUTIONAL OPTIONS
A PAPER PREPARED FOR THE BUSINESS COUNCIL ON NATIONAL ISSUES
SEPTEMBER 1990

1. INTRODUCTION

With the demise of the Meech Lake Accord, Canada as a federation enters a critical phase. The relatively tranquil immediate aftermath may suggest that current constitutional arrangements will continue, requiring only minor incremental adjustments. But it is more likely that the next two or three years will be a period of tension and uncertainty with the future of Canada as a whole being questioned and constitutional issues dominating the political agenda. The debate over the Accord and its demise has introduced new political dynamics: growing French-English polarization over the status of Quebec; preparation by Quebec to bring back more radical demands in the spring of 1991; challenges by Western Canada to the dominance of central Canada; and a weakened ability of the national political parties to aggregate and integrate regional interests. Canada is about to embark on a discussion about its constitutional future more critical than any in its history. The continuity of Canada may be threatened but this may also be an opportunity to negotiate a new constitutional structure which will deal more satisfactorily with the changing concerns of Canadians across the country.

Three sets of questions are outlined in this paper:

(1) strategic factors affecting the consideration of constitutional options, i.e. the main driving forces that will shape or constrain the outcome;

(2) options for the constitutional review process, since the processes employed themselves will be a critical element in determining the outcome; and

(3) options for future institutional structures.

2. STRATEGIC FACTORS

(a) The Global Context:

(1) Global interdependence: Increasing global interdependence in economic and security matters has perforated the reality of political sovereignty and made the

concept of the nation state as the ultimate political entity increasingly obsolescent.

(2) Concurrent pressures for integration and disintegration: Canada is not alone in facing political pressures both for integration and disintegration. This is a global phenomenon of the late 20th century. There have been potent concurrent pressures: for larger political units capable of fostering economic unity and enhancing security and, at the same time, for smaller political units more sensitive to their electorates and capable of expressing regional distinctiveness and ethnic, linguistic or historically derived diversity. The result has been a variety of forms of federalism (many of them varying considerably from the older traditional models) each attempting to reconcile the apparently contradictory dual pressures. In dealing with our own contemporary Canadian problems, we may benefit from an understanding of these dual pressures and the variety of political institutional forms that have been developed in response elsewhere.

(3) The impact of the global information society: The rapidity of information dissemination and the role of the electronic media now makes elite accommodation and brokerage politics as a means for achieving political accommodation more difficult.

(b) The Canadian Context:

(1) Economic factors:

- Regional and interprovincial trade patterns in goods, services, investment and migration will provide the incentives and disincentives for the positions taken by different provinces and groups (e.g. Premier Peterson's statement, 10 August 1990, that Ontario in 1989 exported $35 billion worth of goods to other provinces, including $16 billion to Quebec, and imported $13 billion from Quebec). An important aspect is where the control and ownership of businesses is concentrated.
- Important is the orientation of the regional economies to southern markets enhancing north-south pulls sometimes at the expense of east-west ones, and the impact of the operation of the Free Trade Agreement with the United States.

- International pressures and constraints upon trade elsewhere also will have a bearing upon the perceived benefits and requirements for economic integration.

(2) Social and demographic factors: The predominantly English-French duality of 19th century Canada, is now cut across, as a result of more recent immigration, by regional and ethnic diversity and hence by a much greater variety of interests and values within the Canadian mosaic of the 1990s.

(3) The erosion of uniting beliefs: Traditionally Canadians have emphasized the importance of compromise and the recognition of diversity as essential elements in continued federal unity. The past decade, however, has seen the emphasis instead on issues of rights and equality. Not only has the Charter emphasized the predominance of individual rights at the expense of collective ones (although it does contain collective rights), but recently provincial equality has been emphasized at the expense of asymmetry (of which there were elements in the original 1867 constitution, e.g. ss.93(2), 94 and 133 relating to Quebec). For its part, Quebec has been preoccupied with asserting its own rights and equality as a province in relation to the rest of Canada. Thus, of the traditional political ideals of Liberalism, Equality and Fraternity, preoccupation with the first two has led to a neglect of the compromises necessary for achieving the third.

(4) The Charter: Since 1982 there has been an insistence by a host of new constitutional actors -- women, aboriginals, visible minorities, official language minorities, the disabled and others -- upon their participation in constitutional reform processes in order to protect their constitutional identities. This "constitutional minoritarianism" complicates the processes for constitutional change.

(c) Immediate Conditions:

(1) Growing polarization between Quebec and the Rest of Canada:

- Since 1980, Quebec has expected a new constitutional deal. The rejection of the Meech Lake Accord has changed many attitudes there, arising from an emotional sense of rejection. Previous supporters of federalism are disillusioned and opinion surveys indicate a growing majority favouring political independence. There is little indication yet of consensus on what "sovereignty"

might mean in practice, but it is clear that there will be pressure for a radical change from the status quo.

- The rest of Canada has become increasingly less supportive of Quebec's aspirations. There is growing opposition to demands for the recognition of its "distinct society" interpreted as a "special status," a feeling that Quebec has had more than its fair share of influence in Ottawa, and increasing acceptance of the idea that Quebec eventually will separate. Some of this opposition in the rest of Canada comes from centralists who see devolution in Quebec as undermining central jurisdiction, and some comes from decentralists who insist that devolution should apply equally to all provinces.
- The hardening of attitudes on both sides of the divide between Quebec and the rest of Canada will make a resolution even more difficult than in the 1987-90 period.

(2) Regional attitudes:

- The post-Meech Lake attitudes in the various regions and provinces will affect what is achievable.
- Some recent surveys have suggested an increasingly centrifugal character of attitudes across Canada in terms of increased regional identification, decline in the importance Canadians attach to various symbols of Canadian identity, general preference for reduction in areas of federal government jurisdiction, and widespread dissatisfaction of citizens in most provinces with their share of the national pie. How much this is derived from hostility to the federal government of the day and how much from changes in fundamental attitudes to the federal regime is difficult to determine.
- Countering this evidence of centrifugal attitudes is the fact that much of the opposition to the Meech Lake Accord was expressed in terms of opposition to any weakening of the central government.

(3) Aboriginal land claims and self-government: As events during the summer of 1990 have made amply clear, the issues of aboriginal land claims and self-government can no longer be left out of consideration in any major constitutional deliberations. This will make more complex any efforts to resolve the shape of Canada's constitutional future, and will have important implications for the appropriate processes by which constitutional revision is to be carried out.

(4) The decline in the aggregative capacity of national parties: The increasing difficulties which all three national parties, the Liberals, the Progressive Conservatives and the NDP, are currently having in embracing regional views across Canada, and the rise of new parties and groups such as the Reform Party and the Bloc Québécois is likely to undermine the ability of Parliament to achieve a resolution.

(5) Short-run economic conditions:

- The fiscal difficulties and the deficit of the federal government will limit its ability to use financial incentives to induce intergovernmental agreement on constitutional revision.
- A major economic slow down or negative signals from the international business community might temper the drive for independence in Quebec or the willingness of English Canadians to contemplate weakening the central government.

(d) Strategic Objectives:

- The primary task for Canadians will be to devise a constitutional framework 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.
- A basic choice that will have to be made is whether the primary objectives are to be solely economic, i.e. continuing and strengthening the common market and internal trade within the space which is currently Canada, or to include wider objectives embracing shared political and cultural values while recognizing diversity. The debates over the Free Trade Agreement and the Meech Lake Accord indicate that broader values are important to many Canadians.
- The choice of objectives will have an important bearing on the selection of appropriate processes for constitutional change and the central institutional structures favoured.

3. PROCESSES FOR CONSTITUTIONAL CHANGE

(a) Issues:

The processes adopted will be critical in determining the outcome. Consideration must be given to such issues as forum, nature of consultation, public discussion, consensus-building, the dynamics of discussion within Quebec and within English Canada which is itself diverse, and timing.

(1) Incremental versus comprehensive negotiations: Should constitutional revision address specific issues that cry out for change, item by item, or be an omnibus reordering of constitutional arrangements?

- There is a better chance under the former of retaining Canada's corporate entity, and less risk of losing the whole relationship in zero-sum confrontations. Furthermore, recent Swiss experience suggests that by comparison with piecemeal resolutions of constitutional issues, comprehensive revision is much more difficult.
- The debate over the Meech Lake Accord showed, however, how difficult it is to isolate specific constitutional issues from other concerns. Comprehensive bargaining may enable creative trade-offs between issues: it might prove possible to obtain more effective arrangements for the economic union and central institutions in return for devolution to Quebec of powers over matters of most concern to it such as immigration and training.

(2) Pressures for public participation: The discrediting of politicians and intergovernmental executive negotiations following Meech Lake means that pressures for more extensive public participation earlier in the process will be unavoidable. This will make the process more complex, and make it vulnerable to interest group and media manipulation affecting outcomes. An important issue to be addressed is how the public participation process should relate to the political-decision making process.

(3) Dynamics of discussion in Quebec: The demise of the Meech Lake Accord has produced an apparent public consensus favouring some form of "sovereignty" but there are a variety of views about how this is to be implemented. The newly established Quebec Constitutional Commission will have to resolve these differences, taking into account the impact of various institutional options upon

the economic and social welfare of Quebec, and the possibilities of securing agreement with the rest of Canada.

(4) Dynamics of discussion in "English Canada": Quebec spokespersons have declared that future negotiations should be bilateral between Quebec and English Canada. But "English Canada" has no corporate existence as such. Moreover, it is not simply English. It has difficulty therefore, in responding. This raises a number of questions: "Who speaks for the rest of Canada?" Can the federal government, composed of representatives from both Quebec and the other nine provinces? Can national party leaders, themselves based in Quebec? Can individual premiers in the other nine provinces given the differences among them? Will an institutional framework need to be established for this purpose?

(5) The role of the Federal government: The federal government will have to play a dual role: (a) as broker of the different interests within Canada, and (b) as fighter for its own survival and power. This will complicate its role.

(6) The role of national parties and Parliament: The weakened capacity of each of the national parties to aggregate interests across regions will affect the ability of Parliament to serve as a major forum for resolving constitutional issues.

(7) The role of commissions: In what way would provincial, federal, federal-provincial or non-governmental commissions help or hinder the process? Should such commissions be composed of legislators, prominent citizens, or experts?

(8) Timing of federal and provincial elections: The timing of federal and provincial elections will affect the governmental players on the scene and provincial positions. In the case of Quebec and of the federal Government, there will be pressures for a definitive resolution before the next elections which in both cases will have to be held before 1993.

(9) Legal requirements for constitutional revision: Unless the constitutional amendment procedure is itself first revised, any constitutional revision will have to meet the legal requirements of the Constitution Act, 1982, ss. 38-48.

- These leave only limited room for major constitutional revisions through bilateral negotiations between Ottawa and Quebec under s.43.
- Most major constitutional amendments inevitably affect other provinces and will require their assent through the "7 + 50" rule or unanimity. A role for the

premiers and legislatures of the other provinces will be unavoidable if comprehensive, rather than more limited, revisions are sought. As the Meech Lake debate has shown, comprehensive change and acceptance of Quebec "sovereignty" is likely to have little chance under these requirements.

- Problems with the current procedures might encourage Quebec to declare its independence unilaterally as the first step of negotiating a new arrangement. That in turn might produce a negative emotional reaction in English Canada, and hence failure to agree on any subsequent association.

(10) Adjudication processes: If the federal structure is radically altered or Quebec unilaterally declares independence and a negotiated settlement is not reached, what sort of processes will there be for the adjudication of conflicts over assets, liabilities, boundaries, interests of aboriginal peoples, and transportation and communications?

(b) Basic Options for Constitutional Revision Process:

(1) The Status Quo: First Ministers' Conferences can facilitate the prior multilateral negotiation of agreed proposals for subsequent ratification by Parliament and provincial legislatures as required by the *Constitution Act, 1982*, ss. 38-49. In the aftermath of Meech Lake, the process has become publicly discredited. Furthermore, it has been rejected by Quebec.

(2) Bilateral Quebec-Ottawa Negotiations: Some bilateral formal constitutional amendments can be achieved under the *Constitution Act, 1982*, s.43, and some adjustments to meet Quebec concerns could be made in this way. The scope for the major restructuring, likely to be desired by Quebec, would be limited under this procedure however.

(3) Parallel negotiations: The federal government might attempt to conduct simultaneous negotiations with Quebec on the one hand and collectively or individually with the other nine provincial governments on the other. The complexity of such a process would probably make an ultimate resolution difficult.

(4) Commissions: Any of the processes above might be supplemented by the establishment of commissions to facilitate the input of public views prior to intergovernmental negotiations. Commissions might take the form of:

- provincial commissions (already established in Quebec and announced in Ontario, Alberta and New Brunswick);
- a federal commission (e.g. precedents of Rowell-Sirois, Pepin-Robarts, Macdonald);
- a federal-provincial commission of legislators (as proposed for Senate reform in the First Ministers' agreement of 9 June 1990);
- a non-governmental commission composed of prominent Canadians of such distinction and balance that some provincial governments and even the federal government might choose to support it rather than create their own. This would require a neutral third party or parties to set up the organization, nominate members and solicit funds.

(5) A two-stage process: Given the difficulties of achieving substantial constitutional reform using the existing apparently "unworkable" procedures for constitutional amendment adopted in 1982, a two-stage process might be established. The first stage would concentrate upon changing the way in which the Constitution is amended, and then the second would deal with the changes in the institutional structure. Past experience indicates, however, how difficult it is to get the required unanimous agreement of the federal and all provincial governments for any change to the amendment procedure.

(6) A Constitutional Convention: This might be modelled somewhat on the 1787 Philadelphia Convention in the United States or precedents in the establishment of other federations. A convention composed of delegates selected by the provincial legislatures and Parliament would have the responsibility for drafting a new constitution. The recommendations would then have to be ratified by the formal process for constitutional amendments provided by the existing *Constitution Act, 1982.* Issues of composition and voting procedure would have to be decided in advance and would be contentious. At Philadelphia each state had one vote, but different arrangements might be devised. Another variant would be ratification of convention recommendations by a referendum requiring special regional majorities. This would broaden the sense of popular participation.

(7) Unilateral Declarations followed by bilateral or multilateral negotiations: Quebec or another government might declare independence unilaterally in order to force the negotiation of a new political structure or association. This would involve risks both for Quebec and the rest of Canada: such unilateral actions often provoke sharp emotional responses and unpredicted consequences; moreover, without agreement upon a new structure, no ongoing federation or association would remain. This pattern has occurred in the disintegration of several federations, even where the seceding unit expressed strong desires for a continued association.

4. FUTURE INSTITUTIONAL STRUCTURES

(a) Basic structural options:

One may identify in broad terms a continuum of alternative structural models. These range from various federal forms, where sovereignty is constitutionally divided between central and provincial governments, to confederal forms where sovereignty ultimately resides with the constituent political units but a superstructure is established to deal with common policies subject to the assent of the constituent units.

- A basic choice to be made is which of these forms of political association is to provide the future framework for political institutions within the geographic space that is now Canada. The strategies of political negotiators will vary according to whether they are seeking some form of revised federalism or some form of confederalism.
- Of the nine options listed below, (1) to (5) represent different forms of federalism, options (6) to (8) different forms of confederalism, and (9) complete separation:

(1) Status Quo Federalism: The Canadian federal structure devised in 1867 has for over a century and a quarter proved remarkably effective and flexible through many changing conditions. Nevertheless, the post-Meech Lake conditions and the factors outlined in section 2 above suggest that the existing federal structure is unlikely to be tenable for more than an interim period of a few years. At the very least it is no longer acceptable to a majority in Quebec, and in addition, is

the source of much dissatisfaction not only in Western Canada but also in the Atlantic provinces.

(2) *A Modernized Federalism:* The distribution of jurisdiction and the structure of central institutions might be adjusted for more effectiveness in contemporary conditions. Central powers might be increased in some areas and decreased in others. Federal jurisdiction might be enhanced to ensure the freer movement of people, goods and services (the European Community is often cited, even in Quebec, as a superior example to Canada in this respect). At the same time jurisdiction over some other areas where centralization is not a prerequisite for effectiveness might be devolved, going a significant distance towards meeting the concerns of Quebec and some other provinces. Central institutions and structures (e.g. the Senate) might also be modernized.

(3) A More Decentralized Federation: This solution would involve a devolution of some programs and responsibilities (e.g. industrial development, training and communications) and of some taxing powers (in place of shared cost programs). This alternative has the advantage of some continuity from the present structure and would accord with the apparent centrifugal trends in Quebec and in Canadian opinion elsewhere. It is unlikely, however, to be supported by centralists within the rest of Canada or by those in the Atlantic provinces and Manitoba concerned that a weaker central government would be unable to undertake effective redistribution of resources through regional development and equalization programs. Nevertheless, the Western premiers at their post-Meech Lake meeting in July 1990 appeared to give some support to this alternative. If there were sufficient devolution, such a model might be acceptable to Quebec. A critical issue would be identifying the degree of central jurisdiction required to maintain an effective federal system.

(4) A More Radically Asymmetrical Federation: The 1867 Constitution included some elements of asymmetry. A more radical asymmetry would enable concerns of centralists outside Quebec to be reconciled with the desires in Quebec for greater devolution. Efforts to increase moderately the degree of asymmetry within the Canadian federation as proposed in the Meech Lake Accord failed to receive

the support required for ratification. Nevertheless, faced with the realization of a potential break-up of the federation, a more radically asymmetrical federation might be accepted. The clearest example of such an arrangement is the Malaysian Federation where there is a marked greater autonomy for the two Borneo states. The experience of that Federation indicates both that such an arrangement is feasible and that there may be limits to how far such arrangements can go (e.g. Singapore's departure). A more asymmetrical federal structure in Canada might take the form either of "opt-out federalism," (through a more extensive variant of s.7 of the Meech Lake Accord) or of "opt-in federalism," starting with greater devolution but providing a more extensive variant of s.94 of the *Constitution Act, 1867.* Inevitably there would be serious questions about the appropriate representation in the central institutions for those constituent units having greater jurisdictional autonomy.

(5) A Bipolar Federation: This would involve a federation of which the constituent units would be Quebec and the rest of Canada, the latter taking either a unitary form or more likely existing as a federation within a federation. There have been examples elsewhere of a federation within a federation, but such experience also suggests that bipolar political unions are notoriously unstable. Furthermore, the population ratio of 3:1 between the two units would raise major problems in arriving at agreement on appropriate representation within the institutions of the superstructure. A Quebec proposal of parity (e.g. P.Q. proposals 1979-80) is unlikely to be acceptable to the rest of Canada.

(6) A Confederalism of Regions: In this model there would be a loose confederation of 4 or 5 regional units with the prairies and the Atlantic provinces (or at least the Maritimes) each constituting a single unit. The grouping of the smaller provinces into larger units would enable each of them to match the capacity of Ontario, Quebec and possibly British Columbia to exercise extended powers. A difficulty with this solution is that it would depend upon the willingness of the smaller provinces to coalesce. The central superstructure would have responsibility for coordinating policy relating to economic, monetary and a number of other agreed policy areas. It would be necessary to assess at what point devolution hinders effective economic and monetary union to the detriment of all the

constituent units. It would be ironic, just at a time when Europe is evolving from confederalism, because of its inadequacies, towards its own unique form of federalism, for Canada to go in the opposite direction.

(7) Sovereignty-Association Confederalism: This solution, advocated in various forms by many in Quebec, would take the form of a loose confederation in a bipolar form combining Quebec as one unit and a federation of nine provinces as the other. The bipolar superstructure would be responsible mainly for the common market and a common currency, and for common armed forces and a few other programs. Such proposals have often suggested that the two components should have parity within the central superstructure (e.g. P.Q. proposals in 1979-80). It will be difficult, however, to convince the majority in the rest of Canada, representing 75 percent of the total population, to accept a veto by Quebec on all policies dealt with by the superstructure. A further possible problem is that the operation of such a superstructure with only two constituent units is almost certain to produce repeated deadlocks, thus hampering international competitiveness.

(8) A Common Market: This might consist of 5 to 10 constituent units with only the minimal central structures and powers necessary for a common market and possibly a monetary union. While avoiding the problems of a bipolar superstructure, such an arrangement, even with the increasingly centrifugal attitudes throughout Canada, is unlikely to meet the desires among most Canadians outside Quebec for effective coordinated national action in a range of policy areas.

(9) Quebec's Complete Economic and Political Separation: This solution may be seen by some as cleaner and neater than many of the complex alternatives listed above. It does raise questions, however, of the need to deal with such issues as the allocation of assets and liabilities, the adjustment of boundaries (by referendum?) to meet the wishes of minorities otherwise left on each side, and of transportation corridors between Ontario and the Maritimes. For the rest of Canada it raises the spectre of "Pakistanization" and the permanent dominance of Ontario. How radically would the structure of "the Rest of Canada" have to be revised?

(b) Variations within the basic options:

While one may identify in broad terms basic alternative models for future institutional structures, it is worth noting that within each basic approach outlined above there are infinite possible variations in the elements composing them. There are no pure ideal models. Variable elements are:

(1) The appropriate constituent units:

- A bipolar federation or confederation: There have been examples elsewhere of bipolar (e.g. Belgium and Pakistan) and tripolar (e.g. Nigeria, East Africa and Central Africa) federations or economic associations. Balancing representation of different-sized units in their central institutions has usually proved contentious, and most examples have proved unstable.
- Federations within federations: Germany within the European Community and Russia within the U.S.S.R. are examples. Spain within the European Community is moving in the same direction as internal regional autonomy is developed.
- Equality or asymmetry of provincial autonomy: In most but not all federations the states have equal constitutional status. Malaysia provides an example, however, of radical asymmetry in terms of degree of state autonomy.
- Relative size of units: Disparity of size and wealth of constituent units in federations have generally contributed to instability. The most extreme examples of disproportionately large units have been Prussia in prewar Germany, Ontario, and Northern Nigeria prior to restructuring. In a federation of nine provinces without Quebec, Ontario would represent 49 percent of the population and 54 percent of the GNP.
- Smaller more numerous units: Two of the more stable federations contain 50 states (United States) and 26 cantons (Switzerland). Restructuring to create a larger number of provinces might recognize the political role of major metropolitan centres (e.g. Toronto and Montreal) which are already politically more influential than some provinces. Restructuring of existing units has occurred in some federations (e.g. Germany, India and Nigeria), but no doubt there would be strong resistance within existing Canadian provinces.

- Units of aboriginal self-government: The establishment and status of political units appropriate for aboriginal self-government will need to be considered.

(2) The Distribution of Jurisdiction:

- There are variations among federations, and also among different confederal structures, in the allocation of legislative, executive, fiscal and monetary jurisdiction to central institutions. In some cases (e.g. Germany) there is a higher degree of legislative centralization combined with a larger degree of administrative decentralization than in the current Canadian structure.
- A key issue is where the minimum thresholds of effective central jurisdiction lie in federations, in confederations, in economic unions, in monetary unions and in common markets.
- Depending on some basic decisions about the appropriate role of the central government, some areas of jurisdiction might be transferred in one direction or the other for greater effectiveness and to accommodate political concerns. We need not assume that ss.91 and 92 adopted in 1867 represent the optimum solution in current circumstances.

(3) Central Institutional Structures:

- Should Canada continue with its parliamentary institutions? There are variations among federations between those employing parliamentary cabinets (e.g. Canada, Australia and Germany) and those with separate fixed-term executive bodies (e.g. United States Presidency and Swiss Federal Council). The latter provide more checks and balances and are less majoritarian in their operation.
- Do legislative institutions need strengthening? The dominance of the executive and bureaucratic branches has produced concerns in a number of countries and particularly in the European Community about "the democratic deficit" and the need for reforms to ensure more accountability.
- What is the appropriate role of the Senate in representing regional and minority interests (inevitably limited within parliamentary institutions)?
- If an asymmetrical assignment of jurisdiction to provinces is adopted, what is to be the role in the central institutions of the representatives of the more autonomous provinces? Will special decision-making rules (e.g. special or concurrent majorities) be required for specified subjects?

(4) Intergovernmental Machinery:

- This may take the form of predominantly executive intergovernmental negotiation (e.g. Canada, Australia, European Community), of accommodation through deliberations in the central legislative institutions (e.g. United States), or both (Germany). The Germans have succeeded in building integration by establishing bridging institutional structures.
- Intergovernmental institutions may be informal (e.g. Canada) or formal (e.g. the E.C., Germany). Confederal models often require formal voting rules (e.g. E.C.).

(5) Umpiring Institutions: These may take the form of supreme courts (e.g. United States, Canada and Australia), constitutional courts (e.g. Germany), or of referenda (e.g. Switzerland).

(6) Constitutional Revision Procedures: Ratifications of constitutional amendments in federations have usually required either special majorities of the state or provincial legislatures (e.g. United States and Canada) or special regional majorities in national referenda (e.g. Switzerland and Australia). No other federation has required unanimity, although confederacies have.

(7) Protection of Individual and Collective Rights: A number of federations and confederations, including the European Community, have included constitutional provisions or charters for protecting and advancing rights of individuals and minorities. A closely related issue is whether language policies are to be determined federally or, as advocated by Quebec, territorially (Switzerland is an example of the latter alternative).

5. CONCLUSIONS

The increasing polarization within Canada in the post-Meech Lake era will probably require substantial constitutional change. The direction of this change will be significantly affected by the particular form of negotiating processes used, and this must be clearly borne in mind in establishing them. There are a variety of options for future institutional structures which might be considered. A fuller research and analysis of these options and their implications needs to be undertaken in preparation for the constitutional deliberations which are likely to come to a head in the period 1991-93.

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ITT Canada Limited

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

John M. Thompson
Chairman and Chief Executive Officer
IBM Canada Ltd.

R. James Wright*
Chairman
Canadian Manufacturers' Association

* Ex-Officio Member
** Jeannine G. Wood also represents the Conseil du Patronat du Québec on the Policy Committee
*** Executive Committee Member

**** Appointments effective January 1, 1991