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## The Canadian Constitutional System and Unresolved Community Issues

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# Canada's Constitutional System and Unresolved Community Issues

## Introduction

The political answer to the complex question of our identity as a people has never been static; nor have Canadians reached agreement in this matter. Yet governments, through institutional and legislative changes, must represent and respond to the pluralism of Canadian society even as the components of that pluralism shift in response to factors, often international, over which governments have little control. In 1985 there are pressing community issues on our agenda, several of which Commissioners consider below, together with proposed reforms.

Commissioners intend these reforms to produce a closer fit between the social dimensions of community and the institutional arrangements that express and incorporate them. The way we govern ourselves must reflect the national and provincial communities and the ever-emerging social cleavages within them. The reforms we propose reflect our understanding of the existence of a single Canadian people. A common citizenship brings together people divided by language, ethnicity, sex, province, life-style, income and other sources of diversity. We would like to help encompass these many groups in an institutional framework that does not smother distinctions or stifle conflict, but that does facilitate co-operation and the recognition that Canadians are one people.

The Constitution Act, 1982, with its Charter of Rights, its amending formula and its natural resources clause, was a compromise influenced, notably in the case of the Charter, by citizens' input. Although the Government of Quebec was not a signatory to the agreement that led to the Constitution Act, the Act's provisions are applicable to, and judicially enforceable in, that province. The Government of Quebec, the province that is home for over 80 per cent of French Canadians, does not view the Act as a legitimate part of the Constitution. Its concerns involve both the Charter and

the amending formula. Other political forces in Quebec share these concerns in modified ways. The ground of division, therefore, is not going to go away.

Patriation and the Constitution Act are, accordingly, incomplete achievements. Quebec's unwillingness to agree to the constitutional changes recently introduced is the major unresolved community issue in Canada today. Given the apparent decline in "nationalism" in Quebec, Commissioners suggest that a sympathetic and sensitive response to the province might lead to constitutional *rapprochement*, and we make proposals with the intent of achieving that objective.

In general, the harmonious co-existence of French- and English-speaking Canadians, which would include appropriate institutional and constitutional recognition, requires effort at three levels. First, there must be recognition of the essential role played by the Government of Quebec in cultivating a flourishing French-speaking majority population. Secondly, the national government must reflect Canada's linguistic duality in its overall operations. Thirdly, Canada as a whole, in both its national and its provincial dimensions, must be responsive to, and supportive of, the official-language minorities, francophone outside Quebec and anglophone within.

In addition to institutional questions relating to Quebec and to French-speaking Canadians, other institutional questions arise that relate to Canada's northern territories, to aboriginal self-government and to municipalities. Several significant proposals for change in the organization and structure of governments in Northern Canada have been under consideration for some time. It is appropriate, in Commissioners' view, to encourage the continuation of the processes that are presently under way, with the intent of bringing the governmental arrangements of the Northern territories more into line with practices across the rest of Canada; at the same time, Canadians should implement measures that are sensitive to the distinctive social, economic and cultural features of the region.

In the matter of aboriginal self-government, Commissioners support the introduction of measures to increase the influence and control exercised by Native peoples over their social and economic affairs. This objective is based on the distinctive place aboriginals hold in Canadian society as the first peoples of Canada, and on the constitutional recognition which they now enjoy. It is by no means clear, however, that the implications and consequences of aboriginal self-government as they might affect Canada's overall governing arrangements have been examined with sufficient care. Indeed, there are several areas where further reflection is required.

Canada's local government arrangements vary significantly across the land. This diversity corresponds to differences in size and financial resources and to the fact that local government is constitutionally the responsibility of the provinces. Commissioners note, nevertheless, significant developments in the size, complexity and responsibility of local governments, and we believe that there are a number of measures to consider that would strengthen the capacity of municipalities to make the fullest contribution possible to Canadian society and economic development.

## **The Place of Quebec in Confederation**

Since the beginning of the 1960s, the debate about Quebec's place in Confederation has given rise to considerable discussion in Canada. It is not surprising, therefore, that following the 1980 referendum and set against a backdrop of economic crisis, some Canadians concluded that the dispute had monopolized too much time, and that it should be set aside in favour of the study of other important questions of interest to all Canadians. In fact, with the coming into force of the Constitution Act, 1982, the argument about Quebec faded so far into the background that some Canadians concluded that the problem could solve itself, given an active policy which guaranteed each and every citizen equal linguistic rights. Later attempts to revive the debate seemed not only futile, but also hazardous. Yet, in a matter of a few years, the issue of Quebec's place in Confederation was back on the constitutional agenda. Indeed, circumstances had seldom seemed more propitious for the issue's resolution. The Government of Quebec and the federal government have clearly stated that they wish to reach an agreement. In addition, some provincial premiers have indicated their support for such an initiative. Such demonstrations of good will, while they do not reduce the complexity of the problems involved, at least offer hope that in the near future, a decisive step in the right direction may be taken.

### **Quebec as a Distinct Society**

In order to reach a lasting agreement between Quebec and Canada, one which ensures Quebec's place in Confederation and contributes both to the prosperity of the province and to that of the country as a whole, it is essential from the outset to go beyond the traditional clichés about the unique nature of Quebec. In this way, a realistic interpretation will emerge of the facts which apply to Quebec in 1985. However, two specific pitfalls must be avoided. The first mistake would be to seek a cultural homogeneity which embodies Quebec's distinctiveness: if such homogeneity ever existed, it is certainly no longer characteristic of the province. The second error would be to overlook the collective aspect of the Quebec issue and to view it as a straightforward question of individual rights which could be exercised everywhere in Canada. Since the matter concerns living, working and thriving in a mother tongue, the collective dimension is not to be underestimated.

The period between the beginning of the 1950s and the present has witnessed a fundamental transformation of Quebec society; indeed, a comparison of the report of the Quebec Royal Commission on Constitutional Problems (the 1956 Tremblay Report) and its description of Quebec society with the present reality creates the impression of two entirely different worlds. In 1956, the Tremblay Report described a Quebec which was culturally distinct and essentially rural, and which was characterized by its regard for religious values, its opposition to economic materialism, and its fundamental political conservatism, that is, its opposition to the development of the machinery of government. Behind this facade, however, ideas were

evolving which had not yet attracted a great deal of attention. Various groups and movements were questioning the traditional concept of authority, debating the secularization of the state, and, most notably, considering new economic, social and cultural trends. The end of the Duplessis era and the advent of the 1960s saw the introduction of a major change in Quebec, which took the rest of Canada by surprise: the old structure was crumbling; the traditional power of the clergy was rapidly becoming a thing of the past; and the state was emerging as an instrument of social and economic reform. Quebecers continued to develop and to refine this new instrument up to the beginning of the 1980s: the education system was overhauled; the social security system was thoroughly reviewed; and a pension regime was introduced. Several provincial Crown corporations were established, notably in the economic sector; and, finally, various measures were adopted which had been designed to open Quebec to external influences. The unprecedented defence and recognition of bureaucratic and political machinery as a significant element in the reinforcement of Quebec nationalism were also to give rise to repeated requests for greater provincial constitutional powers.

At the beginning of the 1980s, however, and after the referendum on Quebec's sovereignty, a new situation developed. In the public sector, on the one hand, escalation of the political debate between Quebec and the federal government was blocked. To the extent that Quebec's independence, hypothetical though it was, was set aside as an objective, the ongoing debate about Quebec came to centre on the province remaining in Confederation. Moreover, the apparatus of provincial government was being perceived in a new light: increasingly cumbersome and costly, it was no longer seen as the sole instrument of development for Quebec society. In these circumstances, the quest for expanded constitutional powers abated to some extent, especially since it was quite difficult to exercise fully powers which had already been recognized. On the other hand, and in tandem with these political changes, a new attitude developed concerning the role of the private sector in the economy. Spurred by the increasing number of francophone entrepreneurs making their mark in the traditionally anglophone business world, Quebecers discovered a new interest in business: the old demon of materialism had been exorcised. Indeed, in 1985, nearly 40 per cent of all students seeking Masters' degrees in Business Administration at Canadian universities are Quebecers.

Throughout this period, moreover, the self-image of Quebecers and the social reality of the province underwent substantial changes. Those who had previously described themselves as "French Canadians" took to defining themselves, with increasing frequency, as "Quebecers". A new nationalism appeared, which was less preoccupied with survival, increasingly forward looking, and fundamentally linked to the territory of Quebec. When the Parti québécois came to power, this new nationalism was hailed as the manifestation of the vitality of a society which had at last discovered its identity. Paradoxically, however, the more the provincial government sought the support of a majority of all Quebecers, the clearer it became that ethnic origin could not be the corner-stone of the new nationalism. Indeed, Quebec culture, deeply influenced by common historical experience, has been losing its homogeneity little by little as increasing numbers of immigrants settle in

the province. Moreover, it has been evolving along with Quebec political life, to which it is indissolubly linked. Thus, during the 1960s and 1970s, Quebec culture was oriented around the assertion of a new collective identity. With the arrival of the 1980s, not only has the province's culture become more open and pluralistic but, in the opinion of some observers, its very existence is threatened by the overwhelming influence of American culture. In fact, Quebec's culture has evolved and adapted. Formerly, Quebec defined itself in terms of its opposition to English Canadian culture; increasingly linked to language rather than to ethnic origin, however, the province now seeks a new identity in the North American and international settings.

Another significant change occurred when the position of Quebec's anglophone minority was eroded within a 20-year period by the Quebec government's increased involvement in the linguistic sphere. Quebec anglophones—economically powerful, politically influential and solidly entrenched on the basis of a network of well-developed institutions largely under their control—had traditionally identified themselves as part of the Canadian majority. However, they gradually came to recognize their minority status within the province of Quebec. Moreover, the exodus from Quebec of a considerable number of anglophones, because of the combined effects of Bill 101 and the economic recession, contributed to the further weakening of the position of this minority. Such a trend was not, in fact, new: Quebec's anglophone population, standing, in 1981, at approximately 11 to 12.5 per cent of its total residents, has been constantly decreasing for a hundred years. At the turn of the century, for example, the population of Quebec City, the Eastern Townships and certain rural districts had included substantial anglophone minorities; but the numbers of these minorities have decreased over the years. What is new is the acceleration of this trend: between 1971 and 1981, there was a decrease of 10 per cent in the anglophone population of the province, which is now largely concentrated in the city of Montreal.

At the beginning of the 1980s, the anglophone minority sensed that its survival in Quebec was threatened in much the same way that francophones had perceived that their survival was threatened 20 years before. Quite soon, however, a new consciousness of its affiliation to Quebec appeared. On the anglophone minority's conviction that it had contributed to the province's development in the past was superimposed the awareness of a new role to be played and of added responsibilities to be assumed. Increasingly bilingual and influenced by organizations such as Alliance Quebec, the anglophone minority defined its new identity in Quebec, thus contributing to the transformation of Quebec society as a whole. A new image of Montreal gradually emerged: that of a city with a majority francophone population, but also a multi-ethnic and bilingual city, rich in its diversity, vigorous in its culture and economy, and open to the world.

Nevertheless, some problems remain unsolved. Bill 101 in particular, to the extent that it projects the image of a unilingual Quebec, is the object of repeated attacks by the anglophone minority. The members of this group will not accept second-class status. Under the terms of the Constitution Act, 1867, the province is officially bilingual with respect to its legislative and judicial institutions. That stipulation does not make either Quebec's refusal to

recognize English as an official language in the province or the restrictions imposed on the use of English in the sphere of communications more acceptable to the anglophone minority. The very severity of some of their attacks on Bill 101 is worrying and, unfortunately, is sometimes perceived as an indication that what is sought is a return to the situation which existed prior to 1960. In the changing Quebec of the 1980s, reciprocal trust has perhaps begun to emerge between the francophone majority and the anglophone minority, but it must become more firmly established.

In view of all these changes, Canadians may well wonder what is left of Quebec's uniqueness. To answer this question, we must return to basics. At the outset, Quebec's chief characteristic is the presence within its boundaries of a majority francophone population which controls and determines the orientation of its political and social institutions. The fact of the majority status of francophones in Quebec as compared to their minority status outside that province is fundamental. As the editor of *Le Devoir* wrote recently, "If it is true that the Canadian duality transcends geographic boundaries, it is equally true that it would lose all its meaning if Quebec were to disappear tomorrow."<sup>1</sup> Behind this observation, however, lies a still more basic reality which defines the very essence of Quebec society. As the principal, though not the exclusive, centre of politically structured French life in Canada, Quebec society remains fundamentally and linguistically isolated, an island of French life in the anglophone mainstream. Once outside Quebec, living and working in French and, in more general terms, flourishing in French, becomes difficult, except in some parts of New Brunswick and Ontario which border Quebec. This difficulty continues, despite the significant progress in the provision of bilingual education and public service realized during recent years. A Statistics Canada study based on final census data for 1981 has recently confirmed some researchers' conclusions that the French language is losing ground everywhere in Canada with the exception of Quebec.<sup>2</sup>

Because of its isolation, Quebec is unavoidably committed to never-ending negotiations and accommodations with its external environment. For nearly two centuries, Quebec dealt with the world around it by turning inward and rejecting external values. More recently, following the Quiet Revolution, a new basis for accommodation was set out in the sovereignty-association proposal of the Parti québécois. Considered too radical by a majority of citizens, this proposal was rejected in favour of a kind of renewed federalism with the rest of Canada. This development, however, has not materialized. As a result, Quebec remains constitutionally isolated, in the sense that the provincial government has not yet accepted the 1982 constitutional accord. It is encouraging that the recent *rapprochement* between Quebec and the federal government indicates a mutual desire to end this isolation.

The arrangement which is likely to be worked out will be especially important from a symbolic point of view. As a response to Quebecers' clear expression of their wish to associate with the rest of Canada, as indicated in the 1980 referendum, the new compromise will be all the more meaningful if constitutional recognition is given to the counterpoint of Quebec's uniqueness and its right to retain its differences. Above and beyond this recognition of the distinctive nature of Quebec society, it is the existence of the whole



francophone community; in other words, of Canada's basic duality, which is at stake. Notwithstanding such recognition, the fundamental linguistic isolation of this community will endure. The essential question for Quebec and for francophones outside Quebec will remain unchanged: How can the French element of our populations retain its identity in North America? If a satisfactory answer is to be worked out, some important problems will have to be resolved in practice. If, for example, Quebec's economy does not provide the opportunities for employment which francophones need in order to thrive in their language, if the francophone intellectual contribution finds no outlet outside of Quebec, and if the efforts of Quebec to develop economic and cultural links with the outside world are discouraged, then Quebec society, confined as it is, will be in danger of stagnation. The recognition of Quebec's unique character and of Canada's dualistic nature, however, constitutes an affirmation that with the support of the rest of Canada, solutions to these problems can be found. Above all, both Quebecers and francophones outside of Quebec must themselves, individually and collectively, find these answers in the economic and cultural spheres. The new element will be that this search for answers will take place in a context of recognition and affirmation of the cultural complementarity which is, after all, at the heart of the Canadian experience.

There is, therefore, an unforeseen opportunity to conclude a new agreement between Quebec and the rest of Canada. At the outset, what is required in principle is a statement in the preamble of the Constitution which might be worded along the following lines:

*Recognizing the distinctive character of Quebec society as the principal though not the exclusive centre for Canadian francophones and accepting as fundamental the duality of the Canadian federation . . .*

At the time of the 1980 constitutional negotiations, participants in intensive discussions on this subject came close to reaching consensus. Commissioners believe that in 1985, on the basis of a text such as the one we have just suggested, such an agreement could be reached quickly enough.

Thereafter, the problems arising from Quebec's distinctive character could be considered. Precisely because they are specific to Quebec and interest the rest of Canada only indirectly, their solution would not, for the most part, necessitate constitutional changes. Some problems could be adequately dealt with through intergovernmental agreements, others through delegation of power. The compilation of a complete list would be impossible, as new problems continue to arise. However, one issue which Canadians must address without delay and in some detail is that of fundamental guarantees, since it relates directly to the constitutional agreement of 1982.

## **Fundamental Guarantees**

When the Constitution Act, 1982 came into force, Quebec once again found itself in the position of saying no to the rest of Canada. This resistance, however, unlike Quebec's earlier opposition to the Fulton-Favreau formula and to the Victoria Charter, did not result in an escalation of the debate with

the rest of Canada, for the ultimate threat, that of independence, had been dissipated two years earlier. From that time on, the issue of the recovery of the right of veto in Quebec, or rather of the concession of a right of veto (for the right which the province believed it had was denied by the Supreme Court several months later), became an essential condition for the resumption of the dialogue. For a minority group within the Canadian collectivity—as Quebecers were frequently told they were—the possibility of saying no and of exercising a veto inevitably assumes fundamental significance in the face of the firm will of the majority. It should not be surprising that this issue recurs. Deeply rooted in Quebec's political culture, the veto right effectively provides the guarantee that basic foundations will not be undermined.

Clearly, however, to revive discussion of the right of veto is not an easy matter. At the end of 1982 and the beginning of 1983, the possibility of guaranteeing a right of veto for Quebec had been considered, but it had to be set aside when some provinces expressed reservations about the resumption of negotiations on this subject. No doubt it was still too early to initiate such a discussion. With the perspective of several years, however, and with the benefit of a clearer appreciation of the necessity for resolving the issue of Quebec's adherence to the Constitution Act, 1982, to disentangle the elements of viable solutions certainly no longer appears to be an impossible undertaking.

The ultimate goal would be to act so that in the future, Quebec would not have a constitutional amendment imposed upon it which would, in its view, affect its essential interests as a distinct society. To accomplish this objective, two approaches are possible. The first is that of the right of veto as such, which permits a province to block the general adoption of a constitutional amendment. The second is the right to opt out, which does not preclude the adoption of an amendment; rather, it shelters those provinces which exercise the right to opt out from the effects of that amendment. It is widely believed, however, that in order for the opting out provision to be perceived as the equivalent of the right of veto, the former provision must entail full compensation for supplementary costs incurred. Such costs will differ according to circumstances and will often prove difficult to estimate. It cannot be claimed, for example, that a province which refuses to relinquish an element of its jurisdiction will assume new costs directly; rather, the penalty will result from the fact that citizens in the province will eventually find that they are being taxed for federal services which are not being provided there. On the other hand, where a straightforward regulatory power is relinquished, these costs may be insignificant as, for example, in the hypothetical case where an amendment grants the federal Parliament the exclusive right to incorporate companies or to establish safety standards applicable to consumer goods. The current amending formula recognizes the right to opt out with compensation when provincial legislative responsibilities in the fields of "education and other cultural matters" are transferred to Parliament. In effect, Quebec has the equivalent of a veto in these spheres. It remains to be seen whether the same formula can be extended to other jurisdictional sectors which devolve on the provinces from the Constitution. To respond adequately

to this question, however, we must first consider the advantages and disadvantages of adopting such a course.

The main advantage of a general right of opting out with full compensation is found in the formula's marked flexibility. Those provinces which favour a constitutional amendment, provided that there are enough of them, can achieve their goal without interference from those which disagree. The latter group can express its opposition without being penalized for doing so. Moreover, the formula respects the principle of the equality of provinces, each of which has the right to opt out. However, it also has disadvantages which are far from insignificant. In particular, it entails the very real risk of a proliferation of special status arrangements. This danger is inherent even in the current formula, which provides the right to opt out without compensation; extension of that formula to include an entitlement to generalized compensation obviously entails a greater risk. Having said this, we should not overestimate the risk. Constitutional amendments requiring a transfer of jurisdiction from provincial legislatures to Parliament are still quite rare, and, in the last resort, the federal government is always entitled to delay presentation of an amendment until it is certain of the support of the majority of provinces. Another difficulty arising from this formula is that it requires negotiation on the extent of compensation; in the case of disagreement, we might assume that for the time being, the federal government's offer would prevail unless the matter is eventually appealed to the courts. In other respects, it is possible that the exercise of the right to opt out would, in certain circumstances, have practically the same effect as a right of veto. This would apply especially where the objective was to find a uniform solution for the whole of Canada. Finally, it should be stressed that the formula of opting-out with full compensation would not apply to amendments affecting national institutions; the Constitution Act, 1982 explicitly precludes the right of opting out in such instances. Bearing in mind these factors, it may now be interesting to consider whether a right of veto as such meets Quebec's need for protection in a more satisfactory manner.

Like the possibility of opting-out, that of the right of veto presents both advantages and disadvantages. Since the right of veto leads directly to the rejection of a proposed amendment, it can in no sense result in a proliferation of special status. Moreover, if this right of veto were granted on a broader basis, as in the Victoria Charter formula, no exclusive advantage would accrue to Quebec. The Victoria formula required the agreement, not only of a majority of provinces, but also that of each province which had ever had a population constituting 25 per cent of the country's total population, a provision which applied to Quebec. This formula also required the assent of two of the Atlantic provinces and of two of the Western provinces, provided that the combined populations of the latter totalled at least 50 per cent of the entire population of the four Western provinces. On the negative side, the right of veto allows one or several provinces, depending on the formula used, to obstruct the course favoured by the majority. If this right is granted to Quebec, it might be perceived as placing an unwarranted restraint on constitutional change, in light of Quebec's traditional stance. Finally, the

right of veto, even granted on a regional basis in accordance with the Victoria formula, would create an imbalance between those provinces which can exercise it individually and those which can only do so by aligning themselves with others. The only solution to this problem would be to grant the right of veto to each one of the provinces, thereby risking a constitutional impasse.

Could the provision of a right of veto to the Province of Quebec alone be acceptable in certain circumstances? An interesting hypothesis, recently put forward,<sup>3</sup> would modify the current amending procedure so that when changes to national institutions or transfers of provincial legislative powers were proposed, but no compensation was offered, Quebecers would retain a collective right of veto, to be exercised by means of a referendum. In recognition of the importance of such a decision, a designated special majority might be required. The responsibility for deciding whether such public consultation was necessary would rest with the Government of Quebec, whose task it would be to choose between the opting-out formula, where applicable, and the right of veto subject to confirmation by referendum. This concept has the fundamental advantage of substantially retaining the present amending formula while still protecting the essential interests of Quebec. The referendum would also introduce an element of participatory democracy, which tends to make the use of a right of veto more acceptable. A variant of this formula might delegate to the Quebec National Assembly the responsibility for deciding whether or not to invoke the right of veto, provided that such a decision was supported by a majority of two-thirds or three-quarters of the members.

Another proposal, which was put forward by the Government of Ontario several years ago, would require, as a prerequisite for any constitutional amendment, the approval of two-thirds of the provinces, representing 85 per cent of Canada's population. In effect, such a formula would give Quebec a right of veto, since that province's population is scarcely likely to decline to less than 15 per cent of the total population of Canada. This proposal was rejected, however, because it meant, among other things, that the opposition of three of the four Atlantic provinces would not suffice to defeat an amendment.

Still other solutions could be considered. From whatever vantage point Canadians examine the problem, it must be acknowledged that the granting of a minimal guarantee to Quebec entails, in one sense or another, a political cost. If resolution of the situation requires, at all costs, the retention of the principle of provincial equality, there are concurrent risks: special status arrangements could multiply if the right of opting out with full compensation is generalized; or the Canadian Constitution could remain fixed in its present form if all the provinces are given an identical right of veto. Alternatively, to grant the right of veto either on a regional basis, in accordance with the Victoria Charter, or only to the province of Quebec would inevitably undermine the principle of provincial equality, a principle which was hard won by the Western and Atlantic provinces during recent constitutional negotiations.

In these circumstances, which solution should be chosen? For a number of people, the Victoria amending formula is still the one which seems to go

furthest towards reconciling the concerned parties' interests, including those of Quebec. It is unfortunate that at present, it seems hardly possible to return to the Victoria formula, given the unequivocal opposition of some provinces during the 1981 constitutional negotiations. Moreover, since the effect of the current amending formula will not be clear until after it has been tested, it seems unlikely that a return to the Victoria formula can receive serious consideration prior to the constitutional conference which must, by 1997 at the latest, re-examine the whole issue of constitutional amendment. In the meantime, the simplest way of providing Quebec with the guarantee it requires, without jeopardizing the principle of provincial equality, is to give each province the right to opt out with full compensation in every case. This solution, which had the support of eight of the ten provinces in 1981, still seems to be the most acceptable to all of them. Furthermore, most of the pitfalls inherent in this formula are also found in the current amending formula. Commissioners therefore recommend this second formula as the preferred solution with regard to jurisdictional transfers from the provincial legislatures to Parliament.

Where changes in national institutions are concerned, the opting-out formula is inapplicable by virtue of the Constitution Act, 1982. The only way to afford Quebec protection would be to grant it a right of veto. If we assume, once again, that a return to the Victoria formula is impossible in the short term, the only other possibilities would be to grant a right of veto either to all the provinces or exclusively to Quebec. Clearly, the easiest solution would be to grant a right of veto to all the provinces as now pertains, for example, in the matter of determining the composition of the Supreme Court of Canada. This solution might prove costly, however, since it could immobilize our institutions for a prolonged period. To grant a right of veto to Quebec alone would be more difficult politically, but at the same time, it would conform more closely to the desired objective insofar as we acknowledge and seek to protect the distinctive character of Quebec society. From this perspective, every constitutional change which reduces the constitutional guarantees granted to Quebec and related to its special nature could be the object of a right of veto. Thus, if a double-majority formula were introduced in the operation of the Senate for certain defined purposes, Quebec's right of veto would prevent a reduction of this protection without that province's consent. Indeed, the introduction of the double-majority formula in the Senate could itself serve as a right of veto. One possible way to accomplish this would be to change section 47 of the Constitution Act, 1982, to grant the Senate an effective right of veto in cases involving changes covered by the double-majority rule. Whatever solution is chosen, however, Commissioners believe that it is important for Quebec to have protection in the matter of any amendment to institutions described in section 42(1) of the Constitution Act, 1982, insofar as such amendments call into question the special character of Quebec and the duality of Canada.

Both the guarantees relating to the amending process and the recognition in the Constitution's preamble of Quebec's uniqueness should facilitate Quebec's approval of the 1982 constitutional accord. Nevertheless, in order for a lasting agreement to be concluded between Quebec and Ottawa, other

issues must be resolved, some relating to national institutions, others to the division of legislative powers. We do not intend to examine every one of these matters here: to do so would be to exceed the mandate of this Commission. It may be useful, however, to consider briefly the means for ensuring that the fundamental interests of Quebec are taken into consideration within federal parliamentary institutions.

We have mentioned the possibility that the Senate might be granted a veto in relation to language matters. Such an idea is not new. In 1978, Bill C-60 and, more recently, the Report of the Special Joint Committee on Senate Reform supported the proposal that any bill with linguistic implications should require the endorsement of a double majority in the Senate, that is, a majority of all Senators and a majority of francophone Senators. Such a measure would positively contribute to reassuring Quebec and francophones outside Quebec that the French language would be protected. In effect, apart from the right of veto granted, the mere fact of having to decide in certain cases whether legislation has linguistic significance would inevitably draw attention to this particular aspect of federal legislation. The new visibility thus accorded to the linguistic dimension of federal interventions would provide a supplementary means of protection for Quebec and for all francophones in the rest of Canada. As was pointed out in the Report of the Special Joint Committee, such a double-majority formula could not be adopted without creating certain problems, particularly with regard to the development of conflict-resolution procedures, the identification of francophone senators, and the criteria to be used for determining which bills should be subject to the double-majority rule. The advantages, however, seem clearly to outweigh the disadvantages. Commissioners are therefore prepared to recommend the adoption of a proposal that "legislation of linguistic significance", or, more precisely, every legislative Act concerning the French language and related cultural questions, should require the ratification of a double majority in the Senate.

As far as the House of Commons is concerned, Quebec's relatively large population has always assured it a significant influence in this elected Chamber. However, the birth rate in Quebec has now declined to such an alarming extent that there is talk of a day when the province might no longer represent 20 per cent of the population of Canada. It is only a single step from that point to considering a provision which would guarantee Quebec a given proportion of seats in the Commons. Such a step, however, must not be taken too hastily. In effect, such forecasts are long-term ones, and many circumstances can change in the short term. On the other hand, the remaining Canadian provinces, with the exception of Prince Edward Island, the smallest one, have always accepted the consequences of representation proportional to the size of their population, and it is unlikely that they would now agree to exempt Quebec from the principle. If the position of Quebec were to become truly critical in the future, there would always be an opportunity to reconsider the matter. For the moment, the protection accorded by the double-majority rule in the Senate, as suggested above, seems adequate, since it would operate regardless of the actual number of francophones in Canada.

## Problems Related to the Division of Powers

The problems related to the division of powers, on the other hand, raise more immediate problems, which will require for their resolution not only considerable imagination but also a real willingness to compromise. The experience of the last 15 years has tended to show that where real compromise is sought in an essentially functional perspective, as with Family Allowances and immigration, solutions can be found: agreements may be defined in bilateral accords or in some form of delegation, two methods of co-operation be formally recognized which this Commission has recommended earlier for inclusion in the Constitution. Alternatively, agreements may be defined by the more complex process of constitutional amendment. In either event, the long-term results will more often than not reflect both parties' desire for co-operation. This does not mean, of course, that points of disagreement will not arise. The several problems cited below, insofar as can be determined, are of interest to other provinces as well as to Quebec. There is no doubt, however, that they are matters of special importance to Quebec.

Quebec will always regard certain sectors, such as education, as highly sensitive. Thus, with regard to the question of minority-language education, the Government of Quebec continues to believe that the coming into force of the Charter deprived it of an important part of its jurisdiction. Before Quebec endorses the Constitution Act, 1982, it may seek certain changes in section 23. Access to English-language education for the brothers and sisters of a child who has received part of his or her education in English in another province is stipulated in section 23(2). It seems to be feared that this arrangement could quite easily be used with the sole aim of side-stepping the linguistic regulations imposed by the province in the field of education. However, the Supreme Court has already ruled that the Quebec clause decreed by Bill 101 is unconstitutional with respect to section 23(1)(b) and section 23(2) of the Charter. It will undoubtedly prove difficult now to reopen discussion of the Canada clause, the more so because, as even the Government of Quebec admits, this clause does not threaten the linguistic balance in the province. Furthermore, under section 41 of the Charter and subject to section 43, which concerns amendment of provisions relating to some, but not all provinces, any amendment to the Constitution of Canada pertaining to the use of the English or the French language requires the unanimous consent of the provinces. One possible way to re-open the debate might be to broaden the issue so as to include the discussion of section 23(1)(a), which accords the right to minority-language education to Canadian citizens "whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside." This section remains to be ratified by Quebec under the procedure of section 59. Whatever the approach used, however, it will be difficult to negotiate a satisfactory arrangement without at some point involving the linguistic minorities themselves.

If we proceed beyond this question to consider a much more far-reaching problem, such as the establishment of "national standards" in education, we can readily imagine Quebec's reaction: such a project will be viewed *a priori*

as a serious attack on its exclusive jurisdiction. This attitude, we must recognize, is not new. During the 1950s, Premier Duplessis refused to accept federal government subsidies for the province's universities. More recently, in 1984, the universities of Quebec took a similar stand concerning some subsidies provided by the federal government for the development of centres of excellence. In co-operation with the Government of Quebec, these institutions had submitted a list of proposals with an assigned order of priority. The federal government changed this order of priority. Because this change was considered an act of unwarranted interference, the universities agreed to accept the funding offered, but announced that they would place it in trust until an agreement was reached between Quebec and the federal government. The change of government in the autumn of 1984 resolved this problem, for the new federal government accepted the Quebec universities' original order of priority in its entirety. Canadians should not conclude from this disagreement, however, that Quebec is opposed to any co-operation with the federal government and the other provinces in the search for national standards in education. Nevertheless, education is clearly a field where Quebec believes that it has very special interests to protect, and where it will agree to consider itself bound only by formulae which do not threaten what it views as its own ultimate responsibility. Bearing in mind the serious concerns about the quality of education in Canada which many Canadians have expressed to this Commission, it seems highly desirable to seek without delay means of reaching agreement between Quebec and the federal government. In this manner, the excellence sought by all concerned Canadians may be achieved.

Similarly, it is foreseeable that in such fields as international affairs and communications, Quebec will continue to assert its traditional views in order to gain more room to manoeuvre. Isolated on a predominantly anglophone continent, Quebec has no choice but to seek contact with the outside world and, in particular, with the international francophone community. However, efforts made in that direction during the last two decades have provoked some adverse reactions in the federal government: Quebec's aims have not always been considered compatible with federal responsibility in the field of external affairs. At present, a certain *modus vivendi* seems to have been reached. Sooner or later, however, the real question will have to be considered, that is, the issue of Quebec's role in this field in relation to that of the rest of Canada. Similarly, there is the matter of Quebec's role in communications, an especially critical field for the future of Quebec's culture. Major developments that have taken place in the last 15 years in the communications field, such as cable television, computer technology and video films, afford a glimpse of the increasingly important penetration into Quebec of the English language. Determined efforts must be made, in close co-operation with other francophone countries, to halt this process by further encouraging both the development of original French material and the translation into French of material in other languages. Otherwise, there may be serious consequences for the future of the French language and French culture in Quebec and Canada. In these two areas, working solutions can easily be developed by



recourse to the previously mentioned instruments of delegation or intergovernmental agreements.

Finally, in the economic realm, the major problem will be to provide employment for a population whose mobility is restricted because of language. The unrestricted movement of people which is now guaranteed by the Constitution may be a reality in the rest of Canada, but it remains theoretical where francophone Quebecers are concerned. Between 1976 and 1981, whether because they did not speak English or because they wished to avoid assimilation, fewer than 1 per cent of francophone Quebecers left the province temporarily or permanently to settle elsewhere in Canada.<sup>4</sup>

To recognize the problem is one thing; to find a solution is another. In the wake of *The Report of the Commission of Inquiry on the Position of the French Language and on Language Rights in Quebec* (the Gendron Report) and in direct application of the principles set out in the white paper entitled *La politique de la langue française*, published several years ago, the Government of Quebec launched an extensive campaign designed to enhance the position of French as the language of work. While it is undeniable that the status of the French language and of francophones in Quebec has improved considerably in recent years, it has not been conclusively shown that the recent language legislation is the principal source of such improvement. Nevertheless, it is certain that these measures have had an effect,<sup>5</sup> most notably in the form of initiatives taken by the business community whether indirectly, in anticipation of legislative changes, or directly, in response to the introduction of language legislation. However, other factors, too, have played a part. These include the growth of francophone-controlled businesses and the development of the private sector within the province. A complete picture should also reflect the loss of jobs resulting from the movement of head offices, a shift caused by the implementation of these provincial language policies, even though, in some instances, the real reasons for these relocations may have been quite different. Whatever the degree of effectiveness of these policies, it is doubtful that they could be entirely abandoned in the immediate future. In some respects, they can be viewed as affirmative-action programs designed to improve employment opportunities for Quebec's francophones. In the long run, however, the economic prospects of Quebec's francophones will depend much more on the vitality of Quebec's private sector. The new entrepreneurship which has developed in Quebec in recent years provides good reason to be hopeful on this point. Because of its outward-looking perspective, this new entrepreneurship could contribute not only to the development of Quebec's economy, but also to its greater involvement both in the Canadian economy and in the North American economy as a whole.

## **Francophone Communities outside Quebec**

The problem becomes much more complex when we turn to the situation of francophone communities outside Quebec. Admittedly, the Canadian Charter of Rights and Freedoms has afforded these communities certain individual guarantees in the fields of education and government services. It must be

acknowledged, however, that the ability to flourish as communities remains inextricably linked to the development, in various provinces, of active and diversified institutions which contribute to the establishment and meet the underlying needs of a genuine francophone milieu for francophones. In this regard, the situation varies dramatically from one province to another. In New Brunswick, which is well equipped from this point of view, francophone communities enjoy a relatively favourable position with a very low assimilation rate. The farther one goes from Quebec, however, the more difficulty public and private institutions experience in consolidating scattered communities which offer progressively fewer opportunities to work in French. The latest report of the Commissioner of Official Languages and a recent study by Statistics Canada agree that the assimilation rate is so high in some provinces that the affected francophone communities are in danger of disappearing completely in the foreseeable future. Indeed, the situation can, in certain respects, be considered critical.

Can this trend be arrested? Or must we Canadians resign ourselves to the sight of francophone communities outside Quebec disappearing one after another? Such a result would document the defeat not only of a government policy, but also of a vision of Canada shared by a great many citizens: that of a country in which linguistic and cultural communities are valued to such a degree that they are accorded constitutional protection. Clearly, prompt action is required.

For a start, it is essential to reaffirm Canada's commitment to the principle of linguistic duality. In order to do so, it is necessary, on the one hand, to recognize the dual nature of Canada in the preamble of the Constitution as suggested above and, on the other hand, to promote the acceptance of French and English as official languages in the greatest possible number of provinces. In this regard, there is no doubt that if Ontario should decide to make such a move, the effects would be felt not only in that province, but throughout the rest of Canada, and that these effects would increase support for the principle of linguistic duality. Commissioners cannot stress sufficiently the importance we attach to the extension of the principle of bilingualism in Ontario, which has the largest francophone minority. If it is unrealistic in other respects to believe that all the provinces will someday demonstrate the level of commitment assumed constitutionally by Quebec and New Brunswick, it is certainly not unreasonable to hope that, given conditions appropriate to each of them, basic guarantees will be offered to their linguistic minority.

Beyond the principles and symbols, however, lies the reality. Whereas very real progress has been made in the last 15 years in affirming the bilingual character of Canada, these results nonetheless vary greatly, depending on the sector or region involved. In general, they clearly fall somewhat short of true equality. Another part of this Report, which deals with equality, provides an analysis of the situation of bilingualism in Canada. Generally speaking, however, it suffices to consult the reports of the Commissioner of Official Languages to determine how difficult and delicate a process the implementation of bilingualism in the federal public administration has proved to be. Similarly, at the provincial level, recent problems encountered in Manitoba

and New Brunswick attest to the complexity of any strategy designed to make linguistic equality a reality in Canada.

Must we then conclude that the introduction of official bilingualism in Canada proceeded too quickly, and that there is now a need to mark time in this area? Some Canadians, who object to the considerable costs entailed by such a policy, and who fear the emotional reactions to which it gives rise, would favour such delay. In our view, however, such a solution would call into question the gains already made. On the contrary, the need is to seek to do more for bilingualism and, especially, in a more effective way.

A first means by which this end may be accomplished is the judicial one. Under section 133 of the Constitution Act, 1867, section 23 of the Manitoba Act of 1870, or sections 16 to 23 of the Canadian Charter of Rights and Freedoms, individuals could go to the courts to seek a judgement upholding their fundamental linguistic rights. In fact, during the past ten years, several such judgements have reminded the various governments concerned of their duties in the matter of linguistic rights. But this solution requires a long and arduous journey, and, unfortunately, one that sometimes fails to achieve results. Moreover, in the Ontario Reference Case, based on section 23 of the Canadian Charter of Rights and Freedoms, the Ontario Court of Appeal held that the judicial authority is not the only custodian of Canadians' constitutional rights, and that Parliament and the legislatures also have responsibilities in the field of linguistic rights. The court added: "Minority linguistic rights should be established by general legislation assuring equal and just treatment to all, rather than by litigation."<sup>6</sup>

In view of this comment, we Commissioners believe that above all, it is up to Parliament and the federal government to set the example if only because of the experience they have gained in the application of the Official Languages Act. More specifically, the Commissioner of Official Languages should be encouraged to pursue vigorously the job of educating the public, as well as overseeing the implementation of the pertinent acts and regulations. In this connection, the recommendations put forward by the Special Joint Committee on Official Languages should be seen as evidence of the need to upgrade the Commissioner's position in terms of both mandate and resources. These various recommendations should, insofar as possible, receive government support.

The fact remains that despite all these efforts, the scattered nature and small populations of francophone communities outside Quebec make the survival of some of them as French-language environments very problematic. *La Fédération des francophones hors Québec*, especially sensitive to this aspect of the problem, published a report several years ago, entitled *Une espace économique à inventer*, in which it presented recommendations designed to strengthen the economic underpinnings of francophone communities outside Quebec. Shortly afterwards, in 1982, the Federation organized a national symposium on the economy. More recently still, another conference on the subject "From Linguistic Protection to Economic Development" was held at the University of Moncton. What emerged from the Federation's report, as well as from the symposia, was a clear sense of the

importance of establishing an economic "space" where it will be possible for Canadian francophones outside Quebec to live, work and develop their culture in French.

This orientation bears out the conclusions of some research undertaken on this Commission's behalf, which found that the survival of Canadian francophone communities outside Quebec depends on establishing centres of activity structured around public and private francophone institutions. Here again, it would be unrealistic to believe that all francophone communities outside Quebec could develop such centres of activity by using a single model. For some provinces, such centres would have a basically cultural orientation: they would develop to the greatest extent by successfully integrating the largest possible number of Canadians who now have a working knowledge of French and those who have attended French-immersion courses. In other provinces, notably Ontario and New Brunswick, the economic component, which enhances the cultural aspect, will necessarily be more important. Just as in Quebec, however, it is, above all, the individual initiative of francophones themselves which will bring about such a development. Government support, however useful it may be, will never take the place of individual initiative. Commissioners believe that there must be movement in this direction if the long-term survival of francophone communities outside Quebec is to be ensured.

## Conclusions

Beyond all the problems to which Commissioners have alluded, and which are in some ways inherent parts of Canada's political development process, we must emphasize our country's inestimable richness embodied in the complementary relationship between its two chief linguistic groups. It is now time to turn the page which records the past history of Quebec's relations with the rest of Canada and to begin another to record the new era of co-operation. With the recognition of the duality of Canadian society and the distinctive character of Quebec society, it seems inevitable that problems will continue to arise in the future, but it also seems likely that these problems will be solved as a by-product of the search for the parties' common interest.

## Notes

1. Jean-Louis Roy, *Le Devoir*, October 6, 1984, p. 11.
2. Jean Laponce, "The French Language in Canada: Tensions Between Geography and Politics", *Political Geography Quarterly* (1984): 91-104.
3. Jacques Frémont, *Le Devoir*, May 9, 1984, p. 11.
4. Mireille Baillargeon, "Évolution et caractéristiques linguistiques des échanges migratoires interprovinciaux et internationaux de Québec, 1971" (Quebec: Conseil de la langue française, 1983), Table 4.
5. See François Vaillancourt, "Statut du français et des francophones au Québec: 1960-1980" (Montreal, 1984).
6. Reference Re Education Act of Ontario and Minority Language Education Rights, (1984) 10 D.L.R. (4th): 491-547.

## **The Northern Territories**

While this Commission has looked, in general, at the problems facing Canada from a national rather than a regional perspective, the situation of Canada's Northern territories merits special attention because it is unique within the federation and within the Canadian economic union, and because most Canadians lack a full appreciation of the challenges facing Northerners. The North is of inestimable significance to the future of the Canadian economy. Although the high cost of developing non-renewable resources will probably prevent dramatic growth over the medium term, the vast northern territories have untapped resources that will help to supply Canada's industrial raw materials and energy fuels long into the next century. They are also the homeland of Canadians of many origins and of a rich blend of cultural characteristics. The interests and aspirations of Northerners must be accommodated within any strategy for the development of Canada's economic wealth.

In some ways, the success with which political leaders integrate competing national and regional interests in the Northwest Territories (NWT) and Yukon will be one of the most important tests of our Canadian federation over the next two decades. The fundamental issues of collective rights versus individual rights and of national unity versus regional diversity are crystalized in the North today. The mistakes made elsewhere in the federation over many years can be avoided in the North because there the slate is almost clean. The opportunity remains to find solutions to many of the dilemmas that plague the politics of southern Canada and to make the northern jurisdictions a symbolic demonstration of the kinds of creative solutions possible within the context of Canada's institutional framework.

Before commenting on and making recommendations about the special issues and problems of the Northwest Territories and Yukon, Commissioners wish to review some general background about the North: its people, its economy, its politics and its special constitutional relationship to the rest of Canada.<sup>1</sup>

### **Background: Society, Economy and Culture**

#### ***Northern Society***

As we Commissioners learned from our hearings and discussions in several northern communities, to understand Northern issues requires an appreciation of the internal diversity of the North. The Northwest Territories and Yukon are dissimilar in many respects, and even within the Northwest Territories there are significant differences among the Mackenzie Valley, the Mackenzie Delta-Beaufort Sea, Kitikmeot, Keewatin, Baffin and high Arctic regions. Hence, while this Commission will make some generalizations, it recognizes the North as a vast and diverse area.

About 47 000 Canadians live in the Northwest Territories and approximately 23 000 in Yukon: a mere 70 000 souls scattered across an area comprising approximately 40 per cent of Canada's land mass. Not only is our

Northern population small, it is also extremely diverse culturally and linguistically. In the Northwest Territories, the Inuit comprise 35 per cent of the population; they live in the north and east, beyond the tree line. They share a common language, with several regional dialects, and have retained close cultural ties with the Inuit of Alaska and Greenland. The Indians of the Mackenzie Valley and the Great Slave Lake region, the Dene, comprise 17 per cent of the territory's population and speak several languages, all of which share the Athapaskan root. Most of the Métis live in the same regions as the Dene, sharing the same communities and lands. The Métis make up an estimated 6 per cent of our Northern population. The remaining 42 per cent are non-Natives, often temporary residents or transients who work for government departments, in schools or on resource-development projects. In the Great Slave-Mackenzie Valley region, growing numbers of non-Natives are permanent residents who view the Northwest Territories as their home.

In Yukon, the Indian people comprise approximately one-quarter of the total population. Most speak Athapaskan dialects; a few, in the south-west, speak a dialect of Tlingit-Haida. There are no Inuit in Yukon, and most non-status Indians identify with the status Indians and are counted as "Natives" in territorial statistics. Some non-Natives in Yukon are transients and temporary residents, but most are long-term or permanent Yukoners, many with family connections in the territory going back several generations. The long-term residence of non-Native Yukoners and the minority status of the Native population has produced conflict, but both sides desire a mutually acceptable accommodation of Native and non-Native interests, recognizing that political development of the territory depends on that compromise.

### *The Northern Economy*

To understand the economy of the North, we must look at the Northwest Territories and Yukon in relation to the economies of Canada and the world, and examine them in terms of economic relations within the two territories. The Northern economy is based on the production of staples, and the most significant of these are non-renewable resources. The North exports these staples to the South in raw or relatively unprocessed form. Because the export price of non-renewable resources depends largely on world prices in markets over which our Northern economy has no control, the North suffers from virtually complete economic dependence, from economic instability, and from "boom-bust" cycles. Thus, while the future wealth of the North probably lies in developing its non-renewable resources, that sector is extremely volatile. For this reason, it may prove too fragile and too unstable to support long-term employment.

The large scale of most Northern development projects and their extraordinarily high production costs require the use of development capital from non-Northern sources. Accordingly, governments and multi-national corporations dominate the financing of most such projects. Moreover, while the North possesses a strong, if not stable, primary sector and a large and comparatively stable service sector (chiefly owing to governments' activities),

secondary manufacturing is virtually non-existent. Transportation, production and labour costs inhibit growth in labour-intensive manufacturing and make it, too, an unlikely source of long-term employment. (See Table 24-1.)

**TABLE 24-1 Distribution of Labour Force by Industry, 1981**

Industry	Yukon	NWT	Canada
Agriculture	0.64	0.13	3.92
Forestry	0.53	0.38	0.82
Fishing/Trapping	0.30	1.19	0.30
Mining (including oil and gas)	10.00	10.88	1.71
Manufacturing	2.26	2.08	18.09
Construction	6.88	4.98	6.13
TCU <sup>a</sup>	11.99	10.60	7.63
Trade	12.82	10.65	15.96
FIRE <sup>b</sup>	3.76	3.51	5.06
CBPS <sup>c</sup>	23.31	24.02	27.71
Public Administration	19.21	25.29	7.23
Undefined/N.A.	8.42	6.28	5.44

Source: Statistics Canada, 1981 Census of Canada.

- a. TCU = Transportation, Communications and Utilities.
- b. FIRE = Finance, Insurance and Real Estate.
- c. CBPS = Community, Business and Personal Services.

The Northwest Territories and Yukon have three distinct economies. Only Native peoples participate in the traditional or subsistence economy. The pure subsistence economy, while based on staple production, does not depend on export of the product. Very few Natives are involved exclusively in the subsistence economy; most supplement their hunting and fishing activities with frequent, if temporary, forays into the wage economy. Generally speaking, the traditional economy is healthier in remote communities than in larger and more accessible centres, and many Inuit, because they live in remote areas, continue to subsist mainly on "country food".

The North's second economy is an extension of Canada's Southern wage economy. Many Northern non-Natives participate in this economy, and growing numbers of Natives, too, work for governments in resource-development projects, and in other enterprises in the private sector. Natives are not more fully involved in the wage economy of the North because of their lower skill levels, their place of residence, their unwillingness to relocate, and the importation of Southern non-Native workers. The most important reason, however, is that the wage economy undermines the traditional Native economy. Regular employment in the wage economy allows no time for hunting, and many Native people are unwilling to give up that way of life to earn a stable income.

In addition, the North has a social-assistance or "welfare" economy. Most of the beneficiaries are Native, though few exist entirely on this income. They

use the money primarily to buy food staples, rifles, ammunition, snowmobiles, outboard motors, and other equipment and supplies, thus buttressing the traditional economy.

The three economies interact, and many Native people occupy a place in each of them from time to time. For instance, seasonal employment clearing brush can be supplemented by trapping, hunting and fishing, and all these sources of income are ultimately supported by social assistance. Thus, while the greatest potential for job creation in the Northwest Territories and Yukon is in the non-renewable/resource sector, any analysis of our Northern economy must recognize and allow for the importance of subsistence hunting and fishing as a complement to the wage economy.

### ***The Political Culture of the North***

Political institutions, attitudes and debate in the Northwest Territories and Yukon are all rooted in the liberal democratic values of Southern Canada, but not exclusively so. The traditional values of the Native community interact with the basically liberal values of Northern non-Natives to produce a distinctive political culture. For instance, Natives place a far higher value than non-Natives on the collectivity: the community. This "collectivism" derives from the precarious nature of life in traditional hunting and gathering societies, where the survival of the tribe, the clan, the extended family or the community is more important than the fate of any one individual. Individualism is a luxury that traditional societies often cannot afford.

A corollary of this collectivist concept of society is the absence or weakness of the notion of private property in both the Indian and the Inuit cultures. The concept of individual possession, a cornerstone of liberal societies, is replaced by the principle of community sharing. Thus individuals are not perceived as owning things but, rather, as using them; and, when a particular item is not in use, it automatically reverts to a "common" status where it is free to be used by some other member of the group. Nowhere does this concept appear more clearly than in Native attitudes to the land.

Members of the Indian and Inuit cultures hold the land and its resources in reverence, for the community depends on the land for survival. The Native peoples feel a oneness with the land, for they believe that the people and the land are extensions of the same Being, and the traditional Native religions foster respect for the land and for the plants and animals that share it with humans. Native persons view the world around them as a homeland given to them, to which they must adapt in order to survive. This concept contrasts starkly with the "Southern" notion of the "frontier", which sees the environment as essentially alien and hostile. This view holds that humans must adapt the Northern environment to their own use: they must conquer or domesticate it and make it useful.

The Native concept of the land has led to conflict over development of non-renewable resources in the North. There is a very practical fear that such projects may do irreparable damage to the environment, and so destroy the renewable resources on which the Native economy and the traditional way of life depend. In addition, extraction of non-renewable resources is alien to the



Native culture. The Native economy uses the fruits of the land, extracting only renewable resources and never permanently alienating any of its wealth. Thus, while Natives are gradually coming to accept development of non-renewable resources, they continue to be concerned about the effect on their traditional economy and on their way of life.

Collectivism appears also in decision making by consensus. As a result, the entire community has a right and even an obligation to participate in such decisions. This collectivist concept of society enabled Northern peoples to govern themselves in an orderly and systematic fashion centuries before the arrival of the first European explorers.

Consensual decision making does not eliminate the need for leadership, but, unlike Southerners, the Dene and the Inuit do not see political power as monolithic. Liberal political theory links the concept of political authority to that of sovereignty. Patterns of authority in the modern liberal state are basically unitary and hierarchical. In contrast, Native society is characterized by more diffuse political authority: its communities follow different leaders for different kinds of activities. The form of decision making varies for hunting, spiritual matters, family matters, settlement of internal disputes or punishment of wrongdoers. Consensus determines who is most suited to lead in any given situation. Thus, there is a functional division of labour: the best hunters will dominate in one area, a shaman in another, and the tribal elders in still others. Institutional transplants from the South have ignored these basic political principles, and as a result, many have failed.

### ***Political Economy and Political Culture***

The wage economy too, does not mesh easily with Native values, and the incongruity makes it difficult to integrate Native workers into the Northern labour force. Indians or Inuit entering the wage economy must abandon collectivist values and set aside the sense of community so integral and so essential to their way of life, since their work in the wage economy is not for the collective good of the community, but for individual gain. The change of values represented in this experience contributes to aboriginals' alienation from their culture which, in turn, undermines traditional social structures and patterns of authority. Consequently, Native people come to see power and influence in terms of income or monetary wealth, rather than in terms of traditional skills. Elders who remain within the traditional economy may clash with younger people who have chosen non-traditional employment.

The wage economy forces Natives to uproot themselves and their families from their homes in order to find work. This disruption, coupled with the fact that most wage employment is found in relatively urbanized settings, can cause alienation, serious social disorientation, and a loss of the sense of community. While informing young Natives entering the wage economy about its pitfalls can moderate these negative effects, the basic dilemma lies in the incompatibility of the wage economy and traditional Native values.

The wage economy, particularly that tied to the extraction of non-renewable resources, alienates Native people from the land. All aspects of a traditional hunting and gathering society – its social values, political culture,

art, legends, religion, social structure — reflect its central purpose of survival through the use of renewable resources. To remove this central purpose and to replace it by either a wage or a welfare economy could destroy the core of Native culture and ultimately threaten its survival.

Northern Native peoples have recently begun to adapt to the development of non-renewable resources. They are balancing traditional priorities with the pressures of mega-projects and Southern encroachments on their communities, and they are setting up corporate mechanisms such as locally-controlled development corporations. These institutions, coupled with the older community-based co-operatives, permit Natives to participate in the wage economy through institutions which they themselves control, and which are therefore sensitive to the traditional economy and way of life. All Canadians hope that such “bridging” methods can be further developed.

The economic and cultural factors outlined above interact with one another and shape political and constitutional issues in the North. Economic development will affect the fate of the Native culture. It is a fragile culture under siege, not because of deliberate attack from non-Natives, but because of rapid development in the North. Thus, economic and cultural changes, as well as pressures from the South, set the agenda for political discourse.

## **Issues and Recommendations**

Long-term economic growth in Northern Canada depends on the exploitation of non-renewable resources. The Northwest Territories and Yukon represent over one-third of Canada’s land, and their petroleum and mineral resources have scarcely been touched. For these reasons and because of the continuing, though reduced, importance of resource development to our national economy, the futures of Canada and of the North are inextricably intertwined. However, while development of non-renewable resources may be essential for Northern development, it is not the only important issue in the region.

There are cultural, economic and political issues in the North that clearly distinguish it from the rest of our country. One of the North’s most significant distinguishing features is its Native people. The plight of Native Canadians is of concern throughout Canada, but in the North, Native issues actually dominate political discourse. Ultimately, these and other controversial matters with institutional dimensions will affect the nature and pace of development in the region. Canadian decision makers must deal with all these issues quickly and sensitively, not only to ensure development, but also to arrange for the Native and non-Native people of the Northwest Territories and Yukon to enjoy the same rights and benefits as other Canadians.

### ***Native Northerners and Political and Economic Change***

#### ***Aboriginal Claims***

Most Canadians now accept that Native people in the North have a legitimate claim to lands used traditionally in subsistence hunting and fishing,

as well as a right to financial compensation for past alienation of their lands and resources. Most support the concept of fair and prompt settlement of the aboriginal claims of Native Northerners, and the federal and territorial governments have committed themselves to negotiating such a settlement with representatives of the four main Native groups. Unfortunately, ten years of negotiations have settled only one of the four major claims, that of the Inuvialuit, the people of the Mackenzie Delta-Beaufort Sea region. Failure to settle the other three claims has retarded economic development, blocked constitutional change, and prevented creation of a separate territory in the Eastern Arctic. It is high time to conclude negotiations, ratify settlements, and proceed with economic and political development of the North for the benefit of all Northerners and of Canadians generally.

Negotiations on aboriginal claims hang on two issues: extinguishment of claims and political rights. The former has produced a stalemate between the governments and Native organizations. Natives have argued that the claims settlement should guarantee aboriginal rights in perpetuity, while the federal and territorial governments argue that statutory and constitutionally entrenched protections should replace traditional aboriginal rights. Since much of the dispute hinges on semantics, abandoning the term "extinguishment" in the deliberations would help to eliminate this obstacle. The settlement should "affirm" the specific aboriginal rights being recognized and acknowledge that the lands and moneys involved are being ceded in perpetuity.

Special political rights for aboriginal peoples have been a prominent issue in recent years in all parts of Canada. There is growing willingness to consider "special status", or "Native self-government" for Native Canadians: institutional arrangements that would allow Native people more control over their cultural affairs, education and social services, and that might even guarantee them representation in national institutions such as the Senate. While the liberal values of individualism and universality have so far dominated our Canadian political culture, we should certainly feel free to seek other means of accommodating the special interests of collectivities in our federal institutions. Land-claims negotiations, however, are an inappropriate forum for developing such mechanisms. Because these mechanisms would affect the rights of both Native and non-Native Canadians, Parliament, the legislatures of the Territories, and constitutional conferences would be ideal settings for discussion. In this Commission's view, Natives should participate on boards and commissions dealing with matters directly affecting their lands and renewable resources, but they should not attempt to use the claims process to entrench either legislative jurisdiction or special representation in legislative bodies pertaining to any order of government.

The federal government might wish to consider negotiating a deadline for settlement of Northern aboriginal land claims, after which funding of Native negotiating teams would cease. The federal government, Commissioners believe, should state unequivocally that legislative powers, sovereignty and special political status will not be part of any claims settlement, but that such settlements will not in any way restrict the power of Native peoples to take advantage of special political rights defined by other forums at some time in

the future. While the agreements, in our opinion, should be seen as affirmations of aboriginal rights rather than as extinguishments, they should also be final and binding on Native groups, the territorial governments, and the federal government. Certainly, further delay in reaching final settlements will serve no one well.

### *The Renewable Resources Sector*

While all Northerners have a stake in the future of renewable resources in the two Territories, these resources constitute the economic base for Native people. The renewable resource economy contains commodity production and subsistence. The most important component of the renewable resource sector is the traditional economy of the Native people. The key problems in commodity production revolve around the fur industry. At the best of times, this industry faces severe market fluctuations, and the recent European boycott and the increasingly powerful lobby against leg-hold traps have left it in a state of virtual collapse. This decline has meant significant losses in revenues for Northern Natives and has put additional strain on Northern social services. While the fur trade is no longer a major component of the Canadian economy, it has, until recently, supplemented other sources of income, and it complements the subsistence activities of Native people, particularly in Northern Canada. While it is unlikely that the fur trade will ever again be a major part of the Northern economy, Commissioners suggest that the federal and territorial governments should continue to explore means of countering the anti-trapping lobby, of finding new markets, and of developing alternatives to the fur industry.

One possible alternative to the fur industry is Northern commercial fishing, for the northern seas offer potential for the commercial harvesting of fish and other seafood. This possibility requires further study. In the meantime, the federal government should ensure that regulatory agencies and marketing boards dealing with the fishing industry do not unintentionally retard or block development of a Northern fishery through exclusive concentration on the problems and interests of the Atlantic- and Pacific-coast or inland fisheries.

The subsistence portion of the traditional economy is quite healthy. Subsistence hunting and fishing, particularly in more remote communities, are not disappearing; indeed, they are a significant part of the Northern economy. A tendency among analysts to dismiss the traditional economy stems from the difficulty in measuring it and from the view that hunting and gathering are outmoded activities. In the North, however, approximately 30 per cent of the real income of Northern Natives comes from the harvesting of country food, and that harvest provides a significant percentage of the protein needs of Northerners.

Thus, in the North, the subsistence economy has a place analogous to that of agriculture in the South. Accordingly, the framers of policies and programs aimed at bringing Native people into the wage economy should recognize that like farming, subsistence hunting and fishing are an occupation. The territorial and federal governments should therefore explore the possibility of

developing means to upgrade and strengthen the subsistence component of the North's economy by, for instance, allowing tax breaks for full-time hunters comparable to those available to farmers in the South. They should also ensure that training and development do not focus on development of skills marketable only in the non-renewable sector. Such programs should take account of the cyclical participation of Native Northerners in the Northern wage economy and in production of country foods for personal and family consumption. Some funds earmarked for training might usefully be devoted to upgrading traditional skills, as well as to improving employment prospects in the wage economy.

### **Constitutional and Institutional Development in the Northwest Territories and Yukon**

Three basic constitutional issues dominate the political agenda within and about the North. Two of these issues, responsible government and devolution of power from the federal to the territorial level, are of equal concern in both Territories. The third, the division of the Northwest Territories into two separate jurisdictions, is of direct concern only to the people of that Territory.

Commissioners believe that responsible government and continued devolution of federal responsibilities to the territorial government should occur with or without division of the Northwest Territories. Nevertheless, it is unlikely that such constitutional development will take place before the issue of division is settled. Creation of two new territories may require different rates of constitutional development in order to accommodate local priorities and different administrative and employment capacities. In this connection, Commissioners wish to emphasize several points: governments should not let the issue of division of the Northwest Territories frustrate the aspirations of the people of Yukon for full responsible government; our recommendation of responsible government should be taken to apply equally to an undivided Northwest Territories or to the two new territories that might emerge following division; our recommendations concerning devolution of authority to the territorial governments should apply equally to the territories that might emerge after division. In addition, the federal government timetable for devolution should not be imposed on the new territories, and the elected representatives of those territories must participate in setting the priorities for transfer of power. It must be recognized, however, that there is urgency to resolve the issue of division so that constitutional evolution in the Northwest Territories can proceed.

### ***Responsible Government***

In Canada responsible government has three main features. The Cabinet, or executive council, can be "the government" only if it has the support of a majority, that is, the "confidence", of the legislature; the Cabinet exercises the powers of the Crown; and the executive is responsible to the legislature for the "public purse", that is, for all matters of supply and "ways and means".

Yukon has achieved *de facto* the first two of these features of responsible government. Its Commissioner acts in a manner analogous to that of a Lieutenant-Governor in a province, and the Legislative Assembly has the power to vote non-confidence in the government. In this Commission's view, the federal government should amend the Yukon Act to reflect this reality.

The Commissioner of the Northwest Territories still exercises some policy-making power in the day-to-day operations of government, and it is not clear whether the Legislative Assembly can vote non-confidence in the Executive Council. The Northwest Territories is the last jurisdiction in Canada without responsible government, and we Commissioners believe that there is no justification for continued denial of this right. The federal government should, in our opinion, grant the Legislative Assembly powers commensurate with those of Yukon's Assembly.

Some Canadians will argue that responsible government cannot exist without a well-developed party system, and that the Northwest Territories, unlike Yukon, lacks political parties at the territorial level. The expectation of executive authority, however, will ultimately motivate the loose and shifting coalitions of non-party governments to transform themselves into disciplined parties. The federal government should therefore amend the Northwest Territories Act to give that area responsible government.

The third requisite for full responsible government is, of course, complete control of the public purse. With the current system of funding, the federal government must still agree on a basic set of spending targets for each of the Territories. If a Territory has had financial troubles, the federal government has usually provided additional support. The territorial governments desire a system of formula financing which would give them both greater fiscal autonomy and corresponding responsibility. Such a system would make federal transfers predictable over long periods and allow for long-range budgetary planning. Hence, the federal and territorial governments should negotiate financial arrangements to give the territorial governments full power over the public purse and to impose genuine responsibility and accountability for expenditure.

### ***Devolution of Authority***

Over the past two decades, the Northern Territories have evolved from virtual colonial status to the acquisition of responsibility for a wide range of "provincial" services. The logical end of this process is provincehood, although four barriers might delay progress towards provincial status for a decade or more. These are the Territories' small populations, their uncertain revenue base, their unresolved internal disputes, and the practical considerations of a national interest in the North. Our new constitutional amending formula specifies that creation of a new province requires the consent of at least two-thirds of the existing provinces, representing 50 per cent of our population, and of the federal parliament; to secure agreement might prove a formidable task. Existing provinces might oppose creation of new provinces simply because it would alter the balance of the amending formula. (For instance, if there were 13 provinces, two-thirds (9) of the provinces with more

than 50 per cent of Canada's population could amend the Constitution without the approval of any of the four Western provinces.) Nevertheless, though even territorial leaders who aspire to provincehood are not demanding it immediately, the people of the North are making a legitimate request for *de facto* status. Commissioners believe that the federal government should indicate its commitment to some form of provincehood for the Territories as an ultimate goal and should grant Northerners all the benefits of Canadian citizenship.

The North will probably overcome the first three barriers to provincehood mentioned above. Population, now growing largely through increase of the resident population, will expand through migration as economic development proceeds. Similarly, as the Northern economies evolve, the revenue base will expand, and the Territories will develop a more adequate tax base. The internal problems, settlement of land claims and division of the Northwest Territories, will probably be settled within the next few years.

The fourth barrier to provincehood will be the most difficult to surmount. It is represented in the question: Is it appropriate for 70 000 residents of the Northern Territories to assume control over approximately 40 per cent of Canada's land? The question implies its own answer, and that answer leads Commissioners to believe that there should be continuing national interest in the development of Northern Canada. Few, even of the most strident of Northern autonomists, would dispute this conclusion. As one Northerner stated in our hearings, "The North is the future of Canada." Because we accept the validity of that statement, we consider that the future of the North should be the concern of Northerners and of all Canadians. The federal and territorial governments must find a means of sharing responsibility for development. The people of the Territories must have some influence on decisions that affect them and their homeland, and so too must the federal government in its role of representative for all Canadians.

Where there is no demonstrable national interest, territorial governments should have powers like those of the provinces. Thus the federal government, in consultation with the territorial governments, should establish a timetable for the transfer of provincial-type responsibilities in areas such as health, the institution of criminal proceedings, labour relations, inland waters and renewable resources. Joint-management arrangements might prove to be valuable transitional tools. Timetables might vary from territory to territory and from one type of jurisdiction to another, but devolution to the Territories of most aspects of these matters should be completed within five years. Opponents of such a proposal may raise the issue of costs, but the federal government is presently bearing the costs of performing these functions, and the territorial governments could perform them just as efficiently. While there might be marginal additional costs because of negative economies of scale in such small jurisdictions, savings from the dismantling of parts of the Northern program of the Department of Indian Affairs and Northern Development will at least partially offset them.

There is a clear national interest in non-renewable resources and ownership, and control over land for their development. Various approaches could facilitate co-operative federal-territorial sharing of these responsibili-

ties: delegation of powers to the territory, but with a federal veto in matters of an overriding national interest, or concurrent jurisdiction with federal paramountcy. Joint management similar to that of the offshore resources agreement between the federal government and Nova Scotia or Newfoundland is also a possibility. It is important, however, for the federal and territorial governments to devise mechanisms to involve the territorial governments more fully in decisions affecting development of non-renewable resources. Moreover, any such arrangement should define the circumstances where there could be a federal override.

It probably would not be in the national interest to transfer all lands in the Territories to the territorial governments in a single action. However, once the mineral and petroleum potential of territorial lands becomes known, and once such issues as aboriginal land claims and national parks and park reserves have been settled, the federal Crown could begin to transfer large parcels of land to the Territories. Such transfers, if made gradually, would in no way compromise the national interest and would give the territorial governments both increased revenue potential and greater effectiveness in development of renewable resources, tourism, municipal affairs and territorial parks. The governments should begin negotiations to transfer to the Territories the surface rights to Crown lands that do not directly bear on the national interest and that have not been ceded to the Native people through the settlement of claims.

In the short term, at least, ownership and control over non-renewable resources will rest with the federal government. However, the people of the North should enjoy a fair share of the revenues and royalties generated by resource-development projects. The federal government should consider arrangements for sharing resource revenues with the Territories; these arrangements could be similar to those negotiated with Nova Scotia and Newfoundland. The Government of Canada would have to integrate such an arrangement within the formula for federal-territorial financial transfers so that windfalls from non-renewable resources would result in automatic prorated reduction of transfer payments. Moreover, there should be an overall ceiling on revenues accruing to the Territories from non-renewable resources.

Provincial status is normally a prerequisite for full participation in federal-provincial conferences. However, although provincehood is not in the immediate offing for the Territories, Commissioners are of the opinion that the federal government should provide for direct participation of their governments in such deliberations. This involvement is particularly important for discussions of matters directly concerning Northern residents. It does not require a constitutional amendment, and it could occur immediately.

Finally, one important symbolic step for the Territories would be to remove the provision in section 42(1)(e) of the Constitution Act, 1982 that allows for extension of existing provinces into the Territories without agreement of the people of the Northwest Territories and/or Yukon. The federal government should initiate an amendment requiring agreement of the legislative assembly of the territory concerned before existing provincial boundaries could be extended north of the sixtieth parallel.



## *Division of the Northwest Territories*

In the period since 1979, the Legislative Assembly, a territorial plebiscite, and Liberal and Conservative federal governments all have supported in principle division of the Northwest Territories and creation of a new territory of Nunavut in the eastern Arctic. Unfortunately this goal still seems distant. Difficult issues remain: location of the boundary and of seats of government, the form of government, and the timing of the division. Of these, the boundary is the most difficult issue to resolve.

Members of the Constitutional Alliance of the Northwest Territories are still discussing the boundary. The Nunavut Constitutional Forum (NCF) has been arguing for a line that runs diagonally, southeast to northwest, roughly following the treeline. The Western Constitutional Forum (WCF) generally favours a north-south boundary from the sixtieth parallel to the Arctic Ocean, west of the community of Baker Lake and east of the Committee for Original Peoples' Entitlement (COPE) communities. The two forums have reached a tentative agreement, but have not yet ratified it.

Two sub-issues delay settlement of the boundary. First is the issue of community: Will the people of the Western Arctic (Inuvialuit) and those of the Central Arctic join Nunavut or the Western Territory? Geography and transportation and communication links suggest that they would choose to join the Western Territory, but cultural and linguistic ties with the Inuit of the eastern Arctic point to the likelihood of their joining Nunavut. Choice of a boundary involves human considerations, particularly the wishes of the people affected. The January 1985 agreement between the NCF and the WCF would have left the Inuvialuit communities in the Western Territory and allowed the Central Arctic communities to make their choice by referendum. However, the NCF withdrew its support for the boundary agreement at the end of February 1985, and the issue remains unsettled.

The second issue derives from the implication of the boundary for access to natural resources. To be economically viable, both Nunavut and the Western Territory must have a sound resource base. The dispute is centred on control of the western Keewatin—the unpopulated lands between Great Slave Lake and Baker Lake, with their potentially rich resources—and the Mackenzie Delta-Beaufort region, with its petroleum resources. The ideal boundary would leave each territory with sufficient renewable resources to maintain the subsistence economy and sufficient non-renewable resources to provide an adequate revenue base. Unfortunately, each side is reluctant to compromise.

Since all orders of government and most residents favour division, the federal government should press the Constitutional Alliance to act. Uncertainty about division colours all aspects of northern development, and doubts about the fate of the territory have slowed economic growth, hampered settlement of land claims, and retarded devolution. Hence, Commissioners recommend that the Government of Canada give the Constitutional Alliance an early deadline for establishing the boundary internally. Failing an internally-generated and ratified agreement, we believe that the federal government should establish an independent boundary

commission. This body would hear arguments from the two constitutional forums and make recommendations concerning a boundary. Although, ultimately, it would be the duty of federal and territorial governments to ratify any boundary chosen, no division should be forced on the people of the Northwest Territories.

Ownership and control of resources in western Keewatin and the Beaufort-Mackenzie Delta region would no doubt remain temporarily with the Crown in right of Canada. A long-term solution would probably involve agreement between Nunavut and the Western Territory to share resource revenues and/or to accept transfers of federal revenues in place of revenues from non-renewable resources. For renewable resources, such as wildlife and fish, the two territories should work out joint management and harvesting strategies. Such resources, particularly caribou, migrate annually over a wide area and exhibit a particularly irreverent attitude to political boundaries in the course of their wanderings.

After territorial division, the WCF and the NCF should decide the structure of government, respecting, of course, the Charter of Rights. Ideally, institutions should reflect the political values of all Northerners, protect aboriginal rights, and represent minority interests fairly. The federal government should encourage creativity and innovation in the development of new and uniquely northern institutions, although the Charter of Rights will necessarily set the broad guidelines for the range of legitimate options.

It appears reasonable to approve a longer residence requirement for voters to protect the fragile social structure of the Northwest Territories and Yukon from the harmful effects of massive immigration of temporary residents to work on development projects. Commissioners suggest, however, that the requirement should be two or three years of residence, not ten. Similarly, while special political status might protect ethnic and cultural minorities, such status should not compromise the basic democratic principle of representation by population. The federal government must ensure that the new institutional arrangements do not contradict the spirit of the Canadian constitutional tradition.

Creation of two new territories will make Canada's North "more governable"; will give considerable satisfaction to the region's inhabitants, particularly the Inuit of the eastern Arctic; and will better accommodate different rates of political and constitutional development in the various areas of the region. However, the new institutions that division will require will cost more than those of the present system, at least in the beginning. The Government of the Northwest Territories and the two constitutional forums must therefore accept federal involvement in institution-building where federal appropriations will be affected.

When division of the Northwest Territories would occur would depend on several factors: a boundary settlement, cost of the transition and the provision of federal funds to pay for it, and availability of public servants and infrastructure to support the new government of Nunavut. To staff the public service would take time, and the process might delay establishment of Nunavut. The predominantly-Inuit Eastern Arctic wants a government sensitive to the cultural needs of Native residents and able to conduct its

affairs in the Inuktitut language. Thus an imported bureaucracy, even one that would serve only for the first years of the new territory's existence, would defeat one of the main goals of the creation of Nunavut. The hard reality, however, is that few Inuit have the background or training to staff senior management and technical positions in the public service. The federal and territorial governments should therefore evaluate existing educational, training and development programs for Northerners with a view to creating a comprehensive program to prepare Native people to staff Nunavut's public service. The same type of program could also increase the number of Native Northerners in senior positions in the Western Territory.

## **National Issues and Northern Perspectives**

Some issues of national concern have distinctive northern dimensions and special significance in the North. Commissioners review three of these in order to emphasize that all Canadians must be sensitive to the distinctive character of Northern aspects of national policy.

### ***The Northern Ecology***

The Canadian North constitutes one of the last unspoiled ecosystems in the world. It is not simply a Canadian treasure, but part of the world's natural heritage. Sections of this Report have noted the need for caution in developing non-renewable resources. Commissioners have warned against destroying the base for the traditional Native economy, emphasized preservation of renewable resources, despite the desire to develop gas, oil and mineral resources, and urged protection of endangered species, habitats and ecosystems. Over and above all these considerations, however, Canadians must recognize the intrinsic value of the northern ecosystem. We must all learn to value wilderness – the unspoiled aesthetic virtue of the North – in the way that Northerners do. There are convincing practical arguments for respecting the northern environment, and they supplement the awareness, particularly strong among Native peoples, that the environment is the very ground of our existence and intrinsically worthy of our respect and even of our awe. We Canadians must never allow short-term economic strategies, however attractive, to destroy our North, which we hold in trust for the future.

### ***International Trade***

Much of this Report has looked at Canada's international trade prospects. More specifically, it has concentrated on Canadian relations with our closest trading partner, the United States. Northerners have a common interest with all Canadians in trade with the rest of the world, but two issues may be of special concern to them: trade with Alaska, and trade with the entire circumpolar region.

The major flow of Canada-U.S. trade is between Canada and the continental United States, but trade between Alaska and Yukon is of great

importance to Northerners. The Yukon government and a number of interest groups have suggested freer economic relations with Alaska. Commissioners recommend research on a special bilateral trade agreement affecting the far northwest. Yukon's only access to ocean is through the Alaskan ports of Haines and Skagway. Some Canadians have suggested that Skagway, which has land links with the rest of Alaska only through highways in British Columbia and Yukon, could become a "free port".

Some Northerners would like to further relations with other parts of the circumpolar region. The Inuit of Canada share linguistic and cultural ties with Greenland, Alaska and the Soviet Union. They have formed the Inuit Circumpolar Conference to maintain cultural ties and to address problems of common Arctic concern. Spokespersons for the Canadian Inuit have indicated a desire to see these links sanctioned officially. They want to foster international efforts to protect the Arctic environment, and they wish to facilitate economic and cultural exchange among the circumpolar peoples.

### ***Technological Innovation and Arctic Sovereignty***

There are urgent reasons for Canadians to develop technology suitable for the Arctic. Given our oil and gas exploration in the Beaufort Sea and our permafrost studies relating to pipelines, we should be developing a comparative advantage in such fields. Even more important, Canada must affirm legal and technological sovereignty over the Northwest Passage and other Arctic waters. Indeed, it is essential to maintenance of Canadian sovereignty in the Arctic that federal and territorial governments support research and development in technologies appropriate to the region. As one participant pointed out in a seminar sponsored by this Commission, the former is meaningless without the latter:

*If Canada is to exercise the necessary control to maintain the sovereignty it claims to have acquired over the waters of the Northwest Passage, it must develop a full range of sea- and land-based services to ensure that its control is factual and effective . . . it should be able to provide the following services: marine navigational aids; icebreaking and escorting; marine search and rescue; marine emergencies/pollution control; marine mobile communications services; ports, harbours, and terminals; vessel inspection services; vessel traffic management; marine resupply administration and support; pilotage; and training.<sup>2</sup>*

### **Conclusions**

There are many issues of concern to Northerners that Commissioners have not specifically addressed in this section. We consider these issues as among national priorities, and we address them elsewhere in this Report. We wish to emphasize here, however, that the distinctive interests of Northerners, both Native and non-Native, must receive the same consideration as those of Canadians in the provinces. Canada must integrate the Northern territories into the federation so that their people can enjoy the rights and privileges

enjoyed by other Canadians. The Northern territories must gradually be granted powers equivalent to those exercised by provinces in the South. In this way, we can foster the distinctiveness and diversity of the North, thus enriching the Canadian cultural fabric, while giving Northerners the opportunity to participate equally in the full benefits of the national community.

### *Notes*

1. Background information on the North is contained in the volume *The North*, vol. 72, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985). Commissioners are also grateful for the enthusiastic response of Northerners in the hearings process and for their informative submissions.
2. Donat Pharand, "Sovereignty and the Canadian North", in *The North*, vol. 72, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).

## Aboriginal Self-Government

As Commissioners have noted, issues emerge from time to time concerning the status of particular groups within the Canadian community. At such times Canada has used institutional and constitutional mechanisms to help resolve these concerns. The experience of aboriginal peoples reveals how difficult it is to accommodate their aspirations for enhanced status and social and economic improvement within the existing constitutional and institutional framework.

Many actors in many forums have tried to improve the conditions of aboriginal peoples and to increase their influence on decisions that affect their lives. There have been federal-provincial discussions, land-claims negotiations, court cases, direct appeals to the Crown, and representations to international bodies such as the United Nations. Issues involved have included: recognition of aboriginal and treaty rights, the vote, provision of health and housing services, facilities for aboriginal people in urban Canada, compatibility of resource development and environmental protection, and, most recently, aboriginal self-government.

Self-government is the most prominent aboriginal issue today. Some aboriginals claim an inherent right of sovereignty, in which they include self-government. Others see self-government as a pre-condition to solving the social, cultural and economic problems facing aboriginals. The primary official forum for discussion of aboriginal self-government has been the series of constitutional meetings instituted as a result of section 37 of the Constitution Act, 1982.

Discussion of self-government has not fully taken into account the implications of various reform proposals for the Canadian constitutional order. Proposed models of aboriginal self-government vary in their compatibility with the overall structure of Canadian government and the rights and obligations of Canadian citizenship. Therefore, the outcome of the debate over aboriginal self-government will affect relations of aboriginal peoples, not only with the governments of Canada, at the federal, provincial and municipal levels, but also with other Canadians. Commissioners believe it important to ensure that the approach ultimately taken conforms broadly with the institutional and constitutional structure of Canada, particularly with Parliament, federalism and the Charter of Rights.

The position of aboriginal peoples in Canada also has international implications. Canadian aboriginals have established, and will undoubtedly further develop, contacts with aboriginal groups in other lands to exchange information and to improve their understanding of matters of common interest. Moreover, international organizations have demonstrated significant interest in aboriginal affairs, and this interest extends to the condition of aboriginal peoples in Canada. Since these matters will remain of interest to some members of the international community, this country's record will be subject to review and criticism. No transfer of decision-making authority in the form of self-government, however comprehensive, will relieve our national community from its ultimate responsibility for the well-being of aboriginal people, as for all Canadian citizens. The discussions under way, therefore, deeply affect each of us.

Commissioners' primary focus is the compatibility of aboriginal self-government with the Canadian constitutional system. We believe that it is important, however, to consider aboriginal goals and aspirations for self-government, and the social, economic and historical circumstances out of which they have developed.

Social and economic statistics gathered by Statistics Canada and other agencies are disturbing. Life expectancy for aboriginal Canadians—status Indians, non-status Indians, Métis and Inuit—is ten years less than for non-aboriginal citizens. The incidence of alcoholism among aboriginal people in 1982 was 13 times that for non-aboriginals. About 10 per cent of the prison population is Native, a proportion that represents about five times the ratio of Native people to Canada's overall population.

The 1981 Census of Canada reported that four in ten aboriginal people had never attended high school; for non-aboriginal Canadians the figure was two in ten. The proportion of aboriginal income made up of government-transfer payments was more than double that for non-aboriginals. The percentage of aboriginal families headed by single parents was almost double that of non-aboriginal families. More than 16 per cent of aboriginal homes were in need of major repairs, and one in six was overcrowded; the figures for non-aboriginal homes were 6.5 per cent and one in 43, respectively.

The 1984 Royal Commission Report on Equality in Employment<sup>1</sup> found aboriginal people concentrated in low-paid, low-skill jobs, with aboriginal men earning 60.2 per cent of the average income for non-aboriginal men, and aboriginal women earning 71.7 per cent of the average income for non-aboriginal women. In this Commission's hearings in Victoria, the United Native Nations, a B.C. provincial organization representing off-reserve, non-status Indians and Métis, told us that 60 per cent of Native people living in Victoria were unemployed, 82 per cent lived under the poverty line, and 95 per cent had not completed Grade 12.<sup>2</sup>

Many aboriginal groups argue that census and survey statistics such as these reflect the fact that Native peoples live in a culture not their own, where important decisions affecting their lives and their children's futures are beyond their control. Witness after witness appearing before the House of Commons Special Committee on Indian Self-Government in Canada (the Penner Committee) in 1983 spoke of a "legacy of injustice, exploitation, bureaucratic insensitivity and non-Indian self-interest".<sup>3</sup>

Although relations have evolved between status Indians living on reserves and the Government of Canada, they remain circumscribed by the Indian Act which was first enacted in 1876. The Indian Act is based on federal jurisdiction as laid out in the Constitution Act, 1867, section 91(24): "Indians, and Lands reserved for the Indians". Until the end of the Second World War, the Indian Affairs Branch took a custodial approach to its responsibilities for Indians. Indeed, benign neglect and indifference often characterized the administration of Indian affairs. However, several factors led to gradual changes in attitudes and policy toward Indians after the war: there was increased acceptance of a positive role for the state in promoting the economic and social well-being of its citizens; governments acquired greater administrative capacity; citizens became more conscious of their

rights; and the end of formal European colonialism in Africa and Asia helped to focus attention on the conditions of indigenous peoples elsewhere.

The federal government revised the Indian Act in 1951. Then, in 1960, it extended the vote in federal elections to all Indians; prior to that date, status Indians had usually been required to give up their status to obtain the right to vote in federal elections. The tempo of policy change quickened during the 1960s. The federal government made groping attempts, reflected in policy initiatives, policy reversals and new programs, to come to terms with the long history of neglect toward Indians under federal jurisdiction. It set up community-development programs and Indian advisory boards, increased its grants to Indian bands, and transferred some responsibilities to provincial governments. These steps met with mixed success.

In 1966, a thorough examination of the conduct of Indian affairs, *A Survey of the Contemporary Indians of Canada* (Hawthorn Report),<sup>4</sup> recommended rejection of assimilation or integration as a policy option in favour of retaining special status for Indians. The report suggested that Indians should be regarded as “citizens plus”: they should possess general rights and duties of citizenship, and additional rights as charter members of the Canadian community. The report recommended that the Indian Affairs Branch ensure that the “plus” aspects of Indian citizenship be respected. In its 1969 *White Paper on Indian Policy*, however, the federal government adopted a different approach, recommending repeal of the Indian Act and the special status it afforded Canadian Indians. The Indian people resisted the 1969 proposals, and the federal government subsequently dropped them.

A policy of devolution, or the transfer to individual bands of responsibility for managing and delivering services, began in the late 1960s and continued through the 1970s. Funds from the budget of the Department of Indian Affairs and Northern Development, administered by bands, increased steadily from \$34.9 million in 1971 to \$526.6 million in 1982–83, a fifteen-fold increase. Although the federal government passed responsibility for delivery of services to the Indians, it kept control of programs and budgets.

During the 1970s, grants and contributions to bands and associations, as well as to provincial governments, more than doubled as a percentage of the Department’s budget designated for Indian and Inuit affairs. This is testimony not only to the transfer of responsibility but also to increased federal funding of Native associations. Extensive government financial support for political organizations, channelled primarily through the Department of Indian Affairs and Northern Development and the Secretary of State, eventually allowed status and non-status Indians and Métis to articulate their demands for reform. This politicization has made both aboriginals and non-aboriginals much more aware of the needs of Canada’s Native peoples.

Financial support for political organizations helped mobilize aboriginal peoples. Métis and non-status Indians became increasingly visible in political life in the 1970s as the concept of “aboriginal” evolved and grew to encompass a much larger population than just status Indians. This broadened understanding of aboriginal ethnicity led to the inclusion of Indian, Inuit and



Métis peoples in the constitutional definition of "aboriginal peoples" contained in section 35 of the Constitution Act, 1982.

The enlarged definition of aboriginal peoples has compounded the difficulties in thinking about their many problems and grievances. It is difficult, for example, even to define and assess the size of the component groups. The constitutionally recognized categories of Indian (status and non-status), Métis and Inuit are ambiguous. Status, or registered, Indians are persons accorded status by the Indian Act whose names are recorded on a register kept by the federal government. The 1981 Census reported approximately 290 000 status Indians. However, Department of Indian Affairs and Northern Development 1985 population projections place the number of status Indians at 366 000. The Inuit, approximately 25 000 in number, live beyond the tree line. They comprise a distinct cultural group, and a substantial majority of them speak Inuktitut.

The boundaries of the remaining two categories of aboriginal peoples overlap and are indistinct. Non-status Indians are formerly registered Indians who lost their status through enfranchisement, Indian women who lost their status through marrying non-Indians, or descendants of members of these two groups. The core Métis population are descendants of people of mixed aboriginal and European ancestry who lived in Western and Northern Canada and possessed a distinct socio-cultural identity in the nineteenth century. However, there is no universally accepted definition of "Métis". The term is sometimes used to refer to all people of mixed aboriginal and non-aboriginal ancestry who lack legal Indian status. As a result, non-status Indians sometimes identify themselves as Métis and vice versa. Using self-identification, the 1981 Census counted approximately 173 000 Métis and non-status Indians; but other estimates range as high as 300 000 to 435 000. Métis and non-status Indian organizations, in particular, dispute the 1981 Census figure. For instance, in Ontario alone, the political organization for Métis and non-status Indians claims to represent 185 000 people. In addition to the core population of Métis and non-status Indians, between 400 000 and 600 000 others identify themselves for certain purposes as part of this group.

If and when Parliament passes Bill C-31, a bill to amend the Indian Act, it will cast into a state of flux the categories of status and non-status Indians. The federal government estimates that the amendment would permit 68 000 non-status Indians to apply for registration under the Indian Act and for the rights and benefits associated with this status. This estimate includes 16 000 women who lost their status because they married non-Indian men and 6000 people who were enfranchised under a particular section of the Indian Act for reasons now deemed unfair, such as joining the armed forces or completing university. The other 46 000 people who could apply to have their status reinstated are first-generation descendants of these people. The enlarged category of aboriginal peoples, and the fluidity of their component groups, raise complicated and serious policy questions, in particular about self-government.

Aboriginal claims for self-government are an understandable response to social, economic and historical circumstances and are in accord with the

political awakening evident in aboriginal populations around the world. Commissioners recognize the need to enhance aboriginals' decision-making capacity and autonomy, based on the distinctive place of aboriginals in Canadian society as the first peoples of Canada, and on the broadened constitutional recognition they now enjoy.

According to a research study done for this Commission,<sup>5</sup> aboriginal peoples in Canada seek greater self-determination and social justice, economic and social development, and protection of aboriginal cultures through self-government. They want greater control over their own destiny and an end to their subordination to political and bureaucratic authorities outside their own ethnic group. They seek economic development to end their poverty and unemployment, and they expect self-government to contribute to that result. They also consider self-government to be an important prerequisite in addressing social problems.

Many Canadians, who deplore the historical and continuing injustices visited on Canada's aboriginal peoples, recognize and support aboriginal goals for self-government. But while the goals are clear, the way to realize them is not. Commissioners doubt that aboriginal self-government, which remains an ambiguous concept, is the surest means of achieving all aboriginal goals. Indeed, we are concerned that the single-minded pursuit of self-government might unwittingly delay the massive effort which is needed to solve the major social and economic problems of aboriginal communities. Nevertheless, the process of defining self-government has already begun within the framework of constitutional discussions; and Canadians must assess it in terms both of its capacity to meet aboriginal aspirations and of its compatibility with our system of government.

## **Models of Aboriginal Self-Government**

The concept of aboriginal self-government does not imply any single model or form of institutional arrangements. It is therefore exceedingly difficult both to assess the capacity of self-government to satisfy aboriginal goals and to assess the compatibility of what is still an abstract concept with the Canadian system of government and the principles of Canadian citizenship.

We should think of a continuum of models, based on the origins or derivation of authority. Near one end of the continuum is the model contained in the federal government's 1969 *White Paper on Indian Policy*: bands would acquire municipal status under provincial jurisdiction. Nearby on the continuum is the proposed legislation for band government developed by the Government of Canada following abandonment of the *White Paper* policy: a band was to be a federal municipality operating under enabling legislation and exercising delegated authority. These and similar proposals have a legislative, rather than a constitutional, foundation: on this basis, aboriginal governments would exercise delegated authority.

In contrast are proposals which give aboriginal governments a constitutional basis, with guaranteed jurisdiction similar in principle, although not necessarily in scope, to that of provincial governments. The Penner

Committee made such a proposal, recommending the establishment of Indian First Nation governments. The committee recognized the symbolic importance of the term "First Nation" to Indian aspirations for self-government and used it in its report, in order to make it more familiar to the Canadian public.

*In recent years indigenous peoples have given new expression to their distinctiveness and their origins. Names have assumed a special significance . . . Indian peoples in Canada have thus extracted from history an English term that had been used in the Royal Proclamation, in treaties and in major legal decisions in the United States—the word 'nation'. Together they refer to themselves as 'First Nations', a term with historical and political significance.<sup>6</sup>*

Although the terms of reference of the Special Committee had restricted its mandate to the study of band governments on Indian reserves, the form of self-government it recommended could be extended to any aboriginal community with a land base.

The Penner Committee recommended that "the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada." The Report stated emphatically:

*The surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First Nation governments would form a distinct order of government in Canada with their jurisdiction defined.<sup>7</sup>*

The extreme position at this "constitutional" end of the continuum views self-government as an aboriginal right based on the Royal Proclamation of 1763, which in organizing governments for Britain's newly acquired North American territory had recognized aboriginal rights to lands not formally surrendered. According to this concept, aboriginal sovereignty was never relinquished, and it is the basis of self-government; the right to self-government is therefore already present in the Constitution Act, 1982, as an integral part of the aboriginal rights protected under section 35. At the Constitutional Conference of First Ministers on Aboriginal Constitutional Matters, in March 1984, for example, Chief David Ahenakew of the Assembly of First Nations stated:

*The federal government cannot give us self-government. It has never been yours to give. It has always been ours. You can recognize it, enhance it, facilitate it, but if you were to give it to us or devolve it to us or permit it to us it would not be self-government.<sup>8</sup>*

Aboriginal associations and councils participating in the current discussions have shared the position that true aboriginal self-government must have a constitutional, rather than a legislative, foundation. Prime Minister Trudeau's promise at the 1984 First Ministers' Conference to include in the Constitution the right of aboriginal peoples to self-governing institutions represented the federal government's acceptance of a constitutional basis for aboriginal self-government. However, seven provinces at the 1984 Conference did not support constitutional entrenchment.

At the April 1985 First Ministers' Conference on The Rights of Aboriginal Peoples, Prime Minister Mulroney sought support for a constitutional amendment from the required number of provinces and the participating aboriginal associations. Seven provinces seemed to be prepared to support a compromise constitutional amendment which would affirm, in principle, the right of aboriginal Canadians to self-government, within the context of the Canadian federation; it would, however, leave to a political accord any further commitment to negotiate terms of self-government. The support of a number of these provisionally supportive provinces was conditional on the acceptance of the amendment by the aboriginal associations, but this agreement was not immediately forthcoming. The Conference therefore adjourned without reaching agreement, and the question of how to implement self-government remains unresolved. A number of provinces expressed concern about how aboriginal government would be integrated into the existing institutional and constitutional structure. Nevertheless there is now a greater sense that the federal and provincial governments are prepared to accept the goal.

### **Implementing Aboriginal Self-Government**

Everyone engaged in the debate about aboriginal self-government recognizes that if and when agreement is reached on the basis of authority for aboriginal governments, legislation will have to provide for the recognition and implementation of this new status. Such legislation must state how membership in self-governing aboriginal communities will be determined, stipulate the means of recognition, and define the powers to be exercised.

There have been discussions between the federal government and Indian representatives on legislation to establish the framework of Indian Nation governments. Bill C-52, which dealt with self-government for Indian Nations, died on Parliament's order paper in June 1984; it was a first attempt to formulate such a framework. Although this draft legislation pertained only to Indians and not to the wider aboriginal community, it did not settle the form and substance of self-government for even this one component group. Proponents of self-government recognize, moreover, that since the varying aspirations and diverse circumstances of different Indian and other aboriginal nations throughout Canada may require different types of arrangements, each aboriginal government could possibly exercise a unique set of powers. The Penner Report, Bill C-52 and Prime Minister Mulroney, in his call to proceed on a case-by-case basis, have each recognized this possibility.

Most discussion of self-government assumes the existence of a land base or a territorially defined jurisdiction. However, aboriginal self-government which requires a land base would exclude a large heterogeneous segment of the aboriginal population: most non-status Indians, those Métis living outside communities where they form a majority, and the approximately one-in-four status Indians who do not live on Indian reserves or Crown-land settlements. Their interests might be overlooked by an approach to self-government which concentrates on a land-based model.

The size and wealth of existing status-Indian and Métis communities (which differ greatly in population, extent of land base and natural resources, level of community and personal wealth, and geographic remoteness) impose additional constraints on land-based self-government. Seventy-two per cent of the status-Indian population, approximately 216 000 individuals, lives on more than 2000 reserves. There are 579 bands, which are generally recognized as the principal units for self-government; their average population is 516 members, but 48 per cent of the bands have fewer than 300 members. The large number of relatively small communities poses many problems for self-government, including serious diseconomies of scale. Nevertheless, administrative complexities, distance between communities, cultural diversities and distinctive histories reduce the prospect of amalgamating bands.

Many of the existing communities have only weak fledgling economies. Even after receiving land-claim settlements, resource revenues and any additional land grants from governments, many communities will need ongoing financial assistance. Most of the local communities that might receive powers of self-government are, in effect, small villages with limited resources.

It is difficult to conceive of a form of self-government that is not territorially based. However, if our goal is to provide greater autonomy for all the aboriginal people of Canada, we cannot ignore the fact that many of them (perhaps 75 or 80 per cent, according to one estimate)<sup>9</sup> lack a land base or live outside communities where aboriginals represent a majority. Indeed, aboriginal leaders, especially some Métis, have tentatively begun to explore possible forms of self-government which are not territorially based. Self-government premised on jurisdiction over individual dispersed citizens could, for example, grant taxing powers or make unconditional transfers to one or more pan-Canadian aboriginal authorities which, in turn, could deliver services or make transfer payments to individual aboriginal Canadians. Once constitutional discussions have more clearly defined the aboriginal and treaty rights which are recognized by section 35 of the Constitution Act, 1982, pan-Canadian aboriginal authorities could assume some form of responsibility based on any, or all, of these rights. Commissioners remain sceptical, however, that Canadians can develop workable models which would be both acceptable to the Canadian aboriginal community and reasonably efficient, and which would respect Canada's constitutional order. Accordingly, while we do not entirely reject the idea of limited self-government without a land base, we believe that other solutions will have to be found to solve the problems and satisfy the aspirations of the large majority of the aboriginal population who cannot look forward to a territorial jurisdiction.

How would self-governing, land-based aboriginal communities relate to federal and provincial governments and to the intergovernmental system? Aboriginal governments might exercise either constitutionally based authority or delegated authority. Such governments would almost certainly differ from one another in the extent of their jurisdictions and might also differ in their respective mixes of national and provincial jurisdictional powers: under

section 91(24) of the Constitution Act, 1867, Parliament could delegate jurisdiction that was otherwise provincial to such self-governing communities. Moreover, it could do so in varying degrees for different communities and in combination with varying amounts of delegated federal jurisdiction which would continue to apply to other Canadians. In its report, the Penner Committee proposed that "Parliament should move to occupy the field of legislation in relation to 'Indians, and Lands reserved for the Indians' and then vacate these areas of jurisdiction to recognized Indian governments." The report recommended that this be done "in all areas in which Indian First Nations wished to exercise jurisdiction."<sup>10</sup>

Although the legal and constitutional situation is complex, the federal and provincial governments might be able also to delegate special mixes of powers to those aboriginal communities which are not covered under section 91(24) of the Constitution Act, 1867. The complexities would be further compounded if particular self-governing aboriginal communities were to bridge the gap between their jurisdictional authority and their actual administrative and fiscal capacities by arranging for either level of government to provide programs.

There are complex practical issues relating to the manner in which such governments, with their potentially distinct mixes of powers, could fit into the structure of Canadian federalism. Self-governing communities that exercise powers delegated by the federal government pose fewer problems; presumably, the federal government could act on behalf of such aboriginal governments in the intergovernmental arena. The matter might not be so simple, however, in the case of aboriginal governments which possess constitutionally recognized authority. There could develop a very large number of sovereign self-governments representing a distinct order of government. The intergovernmental complexities of federalism could not successfully accommodate even a small proportion of these governments, either at the federal-provincial bargaining table or in more focused arenas where the governments of the federal system meet.

This problem cannot easily be overcome by accepting aboriginal associations as substitutes for the leaders of self-governing communities because participants in intergovernmental arenas must possess executive authority, and must be capable of delivering on their commitments. In order for aboriginal associations to be able to negotiate and accept agreements without worrying that individual community governments might repudiate them, they would themselves have to possess the status and authority of governments. If this were so, however, the widespread premise that the local community is the essential unit of self-government would be invalidated. Accordingly, Commissioners recommend that future discussions of aboriginal self-government clearly address the issue of how to fit such governments into the intergovernmental arena.

Several problems immediately become apparent. Given that aboriginal self-governments possessed sovereign authority, the legitimacy of their members' exercising the federal and provincial franchises would be questionable if the jurisdiction of self-governing communities overlapped significantly with that of either or both orders of government. It would not be easy to resolve this

dilemma by having representatives of aboriginal constituents vote only on those matters where aboriginal governments did not wield jurisdiction; in virtually all instances, aboriginal voters are intermingled in particular constituencies with non-aboriginal voters. While all functioning political systems contain anomalies, their multiplication should not be an unthinking consequence of policy directed to other objectives. Commissioners recommend, therefore, that discussions of aboriginal self-government address its compatibility with the possession of the federal and provincial franchise.

Self-government entails recognition of the collective rights of particular aboriginal communities. This raises difficult questions about the individual rights of members of those communities. Some observers have suggested that if self-government is given a constitutional basis, then section 25 of the Constitution Act, 1982, dealing with aboriginal rights and the Charter, is relevant, and it follows, therefore, that the Canadian Charter of Rights and Freedoms does not apply. However, the federal government's draft legislation enabling the establishment of Indian Nation governments through the delegation of authority explicitly provided for Indian Nation constitutions to be consistent with the Charter. Further, it stipulated that an Indian Nation government could not pass legislation in conflict with the Charter, and that the Governor in Council would hold powers of disallowance over laws of Indian Nations.

Commissioners believe that aboriginal Canadians, even as residents of self-governing communities, must retain the rights of Canadian citizenship. This entails the full application and protection of the Charter.

In conclusion, Commissioners sympathize with the aspirations of aboriginal peoples to achieve self-government. The existing situation is clearly unacceptable, and aboriginal peoples must have a larger say in determining their own priorities and governing their own affairs. The fact remains, however, that proposals for aboriginal self-government raise issues of great complexity. A solution involving land-based self-government is inapplicable to most aboriginals. Where it could be instituted, local resources and fiscal capacity are minimal, and extensive intergovernmental transfers would be necessary.

The complexities of integrating self-governing communities into the larger Canadian federal and parliamentary systems are intimidating. We understand the revived ethnic identity that stresses differences rather than a full application of the benefits and obligations of Canadian citizenship. Nevertheless, Canada must not reverse a policy which makes available to aboriginals full citizenship rights, of which status Indians in particular were long deprived. We must respect the Charter and avoid forms of self-government which would weaken the legitimacy of aboriginal Canadians' continued participation in the wider Canadian political process. Enhancement of aboriginal autonomy must not jeopardize aboriginals' continued enjoyment of the rights of Canadian citizenship.

Commissioners do not view realism as comprising a disservice to aboriginal peoples. The complexities and difficulties of self-government warrant a more detailed consideration than they have so far received.

## Notes

1. Canada, Royal Commission on Equality in Employment, *Report* (Ottawa: Minister of Supply and Services Canada, 1984).
2. United Native Nations, Brief, September 20, 1983, p. 1.
3. Canada, House of Commons, Special Committee on Indian Self-Government, *Indian Self-Government in Canada: Report of the Special Committee* (Ottawa: Queen's Printer, 1983), p. 40.
4. Harry B. Hawthorn, ed., *A Survey of the Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies* (Ottawa: Information Canada, 1966).
5. Roger Gibbins and J. Rick Ponting, "An Assessment of the Probable Impact of Aboriginal Self-Government in Canada", in *The Politics of Gender, Ethnicity and Language in Canada*, vol. 34 (Toronto: University of Toronto Press, 1985).
6. Special Committee on Self-Government, *Indian Self-Government in Canada*, p. 11.
7. *Ibid.*, p. 44.
8. Federal-Provincial Conference of First Ministers on Aboriginal Constitutional Matters, March 8-9, 1984, Transcript (Document 800-18/004), p. 32.
9. Gibbins and Ponting, "An Assessment of the Probable Impact of Aboriginal Self-Government in Canada".
10. Special Committee on Self-Government, *Indian Self-Government in Canada*, p. 59.



## Municipalities

Local governments in Canada are, to use a well-worn phrase, the “creatures of provincial governments”. Section 92(8) of the Constitution Act, 1867 gives the provinces authority over “municipal institutions in the province”. Under this constitutional head, provincial legislatures have exclusive authority to legislate on municipal matters; they cannot delegate this authority to local government or to the national government. They can, however, legislate the establishment of municipal institutions and assign to them responsibilities. Legislatures can also eliminate municipal institutions, combine them, separate them, give them added or reduced responsibilities, and increase or decrease their financial support. Strictly speaking, then, there is no constitutionally distinct municipal level of government.

But Canadian local governments are very robust “creatures” indeed. Despite their lack of constitutional status and the fragile legal basis on which they rest, they have proved an enduring feature of Canada’s governing system. Many cities existed – albeit as much smaller settlements – before the provinces or, indeed, Canada existed as governmental bodies and the provinces grew around these settlements. The most obvious example is St. John’s, Newfoundland, North America’s oldest city and the capital of Canada’s youngest province.

Local government, as this Commission was told repeatedly during our hearings, is big government. Canada’s two largest cities, Toronto and Montreal, constitute almost half the populations of Canada’s two largest provinces, Ontario and Quebec. Toronto has more people than eight of the ten provinces, Montreal more than seven. Montreal has the fourth-largest government budget in Canada, Toronto the fifth largest. Some 21 Canadian cities have more people than the smallest province, Prince Edward Island. Half of Canada’s population is now concentrated in ten cities. In terms of procurement – buying goods and services – local governments, collectively, now spend more than the federal government.

In terms of the lives that Canadians lead and the concerns they have, local government is a third order of government. To many, it is the most important order, dealing with matters of the most direct and immediate concern, and providing the most accessible and effective way to take advantage of many federal and provincial programs. Indeed, a fourth order of government has emerged: regional and metropolitan governments and authorities provide common services to citizens residing in a number of neighbouring local jurisdictions. This order, too, is a creature of provincial governments.

There is immense variety in the way in which local government is carried out in Canada. No standard rule applies. Each province has authority to make laws for municipal institutions. Each legislature is supreme in the way it uses or does not use that authority. Each province has chosen its own approach to local government, producing great diversity of approaches, both among provinces and within them. Nevertheless, the provinces have tended to be very sensitive to the successes and failures of approaches taken elsewhere. Amid variety, there is a broadly shared approach to local government from province to province. The details vary, but the general direction has been

similar. In different ways, for example, provinces have assumed the once-local responsibility for health, education and welfare.

If this system has not proved tidy, it has proved creative: each province effectively serves as a laboratory for every other province. The system has permitted a sensitive and flexible approach to local conditions. Relations between cities and provinces have been dynamic. There are, however, problems within this system. The obverse of flexibility is uncertainty. Provincial legislation affecting municipalities can, and often does, change unexpectedly. The instruments available to local governments, such as zoning, have been primarily negative or preventive rather than positive. Positive policy-making instruments rest with the provinces. Moreover, local government has become increasingly complex, because of both civic expansion and more sophisticated provincial legislation.

The federal government affects—on occasion decisively—the capacity of civic governments to carry out their tasks. Federal policy on interest rates is a critical factor in local finance. The federal government is a major landholder, landlord and developer in many cities. Moreover, local decisions can enhance or diminish the effectiveness of federal policies such as those relating to housing. Thus local-federal relations are critical both for municipalities and for the federal government.

To a significant degree, municipal governments depend on federal understanding of local needs and conditions; at the same time, the national economy is becoming more dependent on cities. Relations between local and federal governments are difficult to develop, however, because of the provinces' exclusive jurisdiction over local government. There are political and constitutional limits on the way federal and local governments can accommodate to their interdependence.

Canadian cities do face problems. Nevertheless, the vigour and dynamism of local governments and the communities they serve have created tremendous opportunities. Commissioners will deal with these problems and these opportunities in light of what we heard from representatives of local government and other concerned parties, and what we have learned from our own research.<sup>1</sup>

Canada has developed some of the most liveable cities in the world. They are clean, safe and well-equipped. Since the Great Depression, when a number of cities, as well as provinces, fell into financial difficulty, our municipalities have been well administered and financed, under provincial control and guidance.

There were many obstacles and challenges to such a happy outcome: the massive shift of people from rural to urban areas, expanded use of the automobile and resulting growth of suburban areas, a general increase in population, and the need for infrastructure to support large, complex urban societies. In addition, post-Second World War development of the welfare state complicated the picture by shifting to senior governments responsibility for matters once considered local: relief for the unemployed, welfare, health and education.

Commissioners are conscious that Canadians have been doing something right at the level of the local community, be it village, town, city or

metropolis. We make suggestions and recommendations below with this fact very much in mind. We shall look at issues that we find are of general concern throughout Canada: the constitutional status of local government; intergovernmental relations, at both local-provincial and local-federal levels; revenues and responsibilities; urban policy; and the local role in economic development. These issues are closely interconnected. Indeed, many of the possibilities in the final four areas of concern turn on the approach taken to the issue of constitutional status. We shall therefore start there.

## **The Constitutional Status of Local Government**

The fact that local governments are the “creatures” of provincial governments has far-reaching effects. The most important of these are uncertainty and legislative and institutional complexity of municipal government. Simple acts of the provincial legislature can change local government, and frequently do. Because of judicial interpretation which has prevented delegation of power to local governments, municipal acts must set out specifically what local governments may and may not do in administering policies approved by provincial legislatures. The resulting highly detailed legislation has added great complexity to local administration. “This circumstance”, Marion Dewar, the Mayor of Ottawa, told us, “is a far cry from the brief division of responsibilities between the federal and provincial governments as set out in the Canadian Constitution.” (City of Ottawa, Brief, November 31, 1983, p. 10).

One immediate consequence is that municipal councils must approve every administrative action that implements a policy and often are bogged down in administrative detail that might be better delegated. While this makes decision making more open than it is at the federal and provincial levels, it also diverts time and attention from broader questions that may affect far more of a community’s citizens.

The provinces have used their authority to create not only local governments, but also a whole range of special-purpose commissions, boards and authorities. The City of Toronto, for example, has within its borders some 101 provincially created authorities. Some of the provincially created boards provide means for local citizens to appeal decisions made by local councils or other administrative boards, but such appeals are complex and expensive.

The very confined nature of municipal planning powers sharply constrains the capacity of local governments to plan in a positive way, that is, to set out development goals and standards. In effect, provincial law and judicial interpretation have confined local governments to negative approaches to the control, rather than the stimulation, of urban development. Zoning, approving subdivisions, and making land-use plans are activities typical of this approach. Such devices allow a city to prevent certain uses of property by private owners. They prevent some of the worst abuses in development, but they are very cumbersome; in fact, they may discourage and occasionally prevent some of the best types of development.

Discretionary forms of control such as spot zoning, holding zones, development reviews, and “minor” adjustments approved by committees of

adjustment have circumvented this limitation. However, as our research indicates, this tendency has transformed zoning from a system based on clearly defined rules to one based on political bargaining. Municipal councils find themselves squeezed by provincially established limits on their powers to direct development toward approved goals, private developers' plans for the use of their property, the need to expand the main basis of municipal revenue, the property tax, and the resistance of property owners adversely affected by development.

In our hearings, we Commissioners heard proposals to resolve some of these problems by giving local governments explicit constitutional status as a distinct order of government, with clearly defined powers and responsibilities. For instance, Mayor Elizabeth Kishkon of Windsor put to this Commission the City's recommendation that:

*In light of the importance of local government to the majority of Canadian citizens, both in terms of direct provision of service and as a major force in the economy, municipalities be formally recognized in the Canadian Constitution as the third level of government with a guaranteed right of existence.*

(City of Windsor, Transcript, Windsor, October 13, 1983 [vol. 25], p. 4721.)

Mayor Dewar of Ottawa went even further, suggesting that a number of Canada's major cities should become "provinces".

Commissioners did not detect, or expect, great enthusiasm from the provinces for providing the cities with clear and constitutionally based powers. We observed no enthusiasm whatsoever for transforming any major city into a province in its own right. While we agree that constitutional status could resolve a number of concerns of local governments and might simplify provincial administration by placing urban policy in the hands of the governments most sensitive to cities' needs—that is, local governments—we heard a number of cautionary voices. Dr. John Graham told us in Halifax: "We don't want another layer of jurisdiction with certain sovereign powers unto itself. Surely we have a complicated enough system." (John Graham, Transcript, Halifax, June 6, 1984 [vol. 6], p. 1275.)

Although constitutional status for municipalities might rather simplify Canada's governmental system than complicate it, Commissioners heard others question the proposal, not so much for cautionary reasons as for practical ones. Paul Godfrey, representing the Municipality of Metropolitan Toronto, put the practicalities to us this way: "We have gone through that process before . . . I do not want . . . to come out and call for a role in the Constitution because I do not believe that will happen." (Municipality of Metropolitan Toronto, Transcript, Toronto, December 1, 1983 [vol. 55], pp. 11525, 27.)

Others focused their attention and energies on matters they considered of higher priority. Michael Harcourt, Mayor of Vancouver, argued that Canada is changing from an Atlantic-based economy to a Pacific-based and more urban economy. These trends, he said, are important "whatever our Constitution says—and the Constitution is almost irrelevant in that context." (Michael Harcourt, Transcript, Vancouver, June 11, 1984 [vol. 9], p. 2123.)

Commissioners deduce from these comments and others made by representatives of other cities and by intervenors at our hearings that some local leaders favour a secure status in the Constitution. Even these leaders, however, do not expect to obtain what they wish and are inclined to seek other, more attainable objectives. Because we concur in this general assessment, we do not recommend explicit constitutional status for municipal governments. We do, however, suggest that each provincial government systematically examine relations between itself and its local governments. Together with municipal leaders, provincial governments should address the growing complexity of those governments, the insecurity of financing, and the mismatch of revenues and responsibility. Together they should look for ways to harness the undoubted capacities of municipal administrations. Such constructive discussions may well indicate that in some provinces, both municipal and provincial governments would benefit from an enhanced or a constitutional status for major cities. Should that prove so, Commissioners see no impediment to a single province seeking an amendment to the Constitution Act that would specify the constitutional status of one or more cities within its boundaries. Alternatively, a province could enter into a binding arrangement under the intergovernmental agreement clause we have proposed for the Constitution. In any case, such examination and discussion seem essential in order to improve relations between local governments and both provincial and federal governments.

To deal with the uncertainty which local governments feel about possible alterations to their powers, Commissioners recommend that provinces consider adopting special procedures for changing local responsibilities. The most straightforward mechanism would be a regulation that changes to municipal acts or city charters require approval of two-thirds of the members of a provincial legislature. In most provinces at most times, this would necessitate that the government and the opposition agree on proposed changes. An alternative, affording even stronger protection, would be a referendum either on a province-wide basis or in the municipalities affected by a major change.

## **Intergovernmental Relations**

For much of the last quarter-century, intergovernmental concern has focused on the state of federal-provincial relations. There are two other intergovernmental relationships, however, that are of increasing importance. The first is the relationship between provincial governments and local governments, and the second is the relationship between the national government and local governments, in particular the governments of Canada's largest cities.

As we have remarked, one of the social changes of the post-war years has been the urbanization of Canada. Three-quarters of Canada's citizens live in urban areas, with most concentrated in a few cities. The non-urban economic sectors, agriculture and resources, have declined in relation to the urban sectors of manufacturing and services. This trend appears likely to continue for a time.

All of these factors suggest to Commissioners that interdependence among governments will increasingly involve issues of concern to local governments. The fact that local governments have no status under the Constitution, however, impedes improvement of relations among the three orders of government. To promote the best delivery of government programs, many of them related to job creation, the federal government has preferred to deal directly with local governments. The potential advantages of a direct federal-local relationship are significant: the shorter the lines of communication between national and local leaders, the better their understanding of one another is likely to be and the greater the probability of joint success. The provinces, however, have insisted that in accordance with the Constitution, federal relations with local governments be conducted through provincial offices. They argue that even where local governments are administering federal programs or spending federal money, direct federal relations with those governments constitute an intrusion into an area of provincial responsibility. Constitutionally, this contention is correct, even if the activity in question is clearly in the federal jurisdiction. Thus conflict arises between what is practical and what is constitutional.

Since it is unlikely that the Constitution will be amended to change this situation, governments of all orders must find an alternative means to improve their relationships with one another. In fact, they have already tried a number of means. One was the tri-level conference, attended by federal, provincial and local representatives. Such conferences took place in the 1970s, but none has been held recently. Various representatives of municipalities suggested to this Commission the possibility that such conferences might be held in the future. Commissioners endorse this approach as a useful way for each level of government to appreciate the situations faced by the others. It might be advantageous on occasion, to schedule tri-level meetings in conjunction with federal-provincial First Ministers' meetings.

Another attempt to improve intergovernmental relations was the creation of a federal Ministry of State for Urban Affairs. This ministry, created in 1971, was disbanded in 1979. A number of spokespersons for local governments suggested that the federal government re-establish such a department to provide a forum for direct dealings between municipal authorities and the federal Cabinet and senior bureaucracy. While Commissioners believe that this idea has some merit, there are grounds for hesitation. The proliferation of advisory ministries within the federal administration has contributed to the growth of government, increased its complexity, and reduced the capacity of any particular advisory ministry to be either fully aware of, or to represent the interests of, those whom it was intended to represent. In addition, most matters affecting local government also affect provincial interests. The creation of a federal ministry of urban affairs, therefore, might simply improve federal-municipal communication at the cost of making federal-provincial communication more difficult. Commissioners conclude that the municipal interest lies in better communication with those ministers whose responsibilities directly affect local interests: for example, the Ministers of Finance, Transport, Public Works, Regional Industrial Expansion, and the minister responsible for housing policies.

An alternative to the creation of a new ministry might be the use of parliamentary processes to anticipate and to monitor the effect of federal measures on local administration. This means could provide a forum for the expression of local concerns and needs. It has the significant advantages that it is more open to public participation and scrutiny, including the scrutiny of provincial governments, and that it could serve to heighten ministerial sensitivity to local problems. Commissioners recommend that this task be assigned to the parliamentary committee on intergovernmental relations that we considered in Chapter 22.

Commissioners believe that local administration of a number of federal responsibilities would prove more responsive to local needs and conditions. Given Canada's Constitution, such responsibilities cannot be delegated directly to local governments, but must be routed through provincial governments. Since, however, the latter may be just as far removed from local concerns as the federal authorities, Commissioners do not believe that to delegate administration to provincial governments would always produce the beneficial effects desired. Decentralization of federal administration to federally-appointed bodies operating in the local areas is a preferable approach. Such a step has already been taken, for instance, in the management of harbours. Federal Port Authorities, established under federal legislation, are providing local administration in a manner that appears to be considerably more sensitive than that of the previous centralized administration.

Commissioners believe that similar approaches should be considered in two areas of considerable concern to municipalities. One of these areas is that of land management, where federal powers to expropriate, hold or develop land often produce development that is at variance with local priorities. In our hearings, some intervenors suggested that local authorities should have some responsibility for the management of federal properties in urban areas. We agree that local authorities, appointed by the federal government, could manage properties in a manner more sensitive both to local preferences and to local market opportunities.

A second area of concern is airport management, where the federal responsibility for air transportation has a direct effect on, and is directly affected by, local government development. Commissioners believe that in some instances, the establishment of local airport authorities might considerably improve sensitivity to local conditions, provide a more effective and integrated air-transport system, and improve service to air travellers. In Chapter 22, Commissioners recommended a Constitutional amendment to allow the delegation of constitutional authority among governments. This change would enable the federal government, through agreement with the relevant province, to delegate to local governments the responsibility for siting, developing and administering some designated airports. This arrangement differs somewhat from the federally established local authority model we considered for the management of federal lands in urban communities, but it offers a means to achieve a similar objective: greater responsiveness to local needs and conditions through decentralized administration of federal responsibilities.

Provincial-local relationships are also an issue of intergovernmental affairs. Because provincial governments must provide a legislative basis for all local government action, the provincial-local relationship involves considerable difficulty and requires considerable sensitivity. In the absence of constitutional amendments, which would allocate responsibilities to local governments, provinces should give high priority to examining, clarifying and simplifying the relationships each has with local governments. This action would serve to lighten the burden of both local and provincial administration. Most important, in Commissioners' opinion, it would be of significant benefit to taxpayers who find local concerns complicated by a maze of provincially created boards, agencies and public authorities dealing with poorly defined and shifting responsibilities.

## Revenues and Responsibilities

In 1982, municipal government expenditures rose to \$33 billion, representing, as Table 24-2 shows, over 9 per cent of the nation's gross national expenditure. Nevertheless, municipal leaders throughout the country are concerned that the anticipated expenditures they must make are vastly greater than their available resources. Municipalities have repeatedly sought sufficient fiscal autonomy, through access to sources of revenue other than the property tax, to finance the responsibilities of local government. Provincial governments, however, have steadfastly withheld that power, and so municipalities remain dependent on transfers or subsidies from the two other levels of government. Commissioners are concerned with the ways in which local governments are funded. They spend more than twice as much as they raise from taxes. This expenditure results in a dependence on revenue sources beyond their control and, consequently, uncertainty about the amount of funding provided in any given year. Long-term financial planning and budgeting is therefore extremely difficult. Moreover, municipal residents are uncertain of their ability to hold government accountable for taxing and spending.

**TABLE 24-2 Sources of Local Government Revenue, 1982**

	Billion \$	%
Property tax	10 840.9	32.1
Corporate tax	1 237.4	3.7
Other tax	282.2	.8
Total taxes	12 361.4	33.6
Grants in lieu of taxes	945.0	2.8
Self-generated revenues	4 832.5	14.3
Government subsidies	15 608.1	46.3
Grand Total	33 747.0	100

Source: Jacques L'Heureux, "The Division of Powers and Municipalities", in *Intergovernmental Relations*, vol. 63, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).



For a variety of reasons, Canada's tri-level transfer system makes accountability very difficult, because of the size of the expenditures by one order of government that are funded from taxes raised by another. This problem of accountability is compounded for local governments by the way in which provincial subsidies are provided. In all provinces, in recent years, more and more provincial grants to municipalities have been conditional: that is, they have been provided on the express condition that they be spent in particular ways. In effect, these conditions reduce the choice available to local governments in the matter of expenditures, which means that municipal authorities cannot be held accountable for the allocation of a large portion of their budgets.

Local governments have expressed concern about the detrimental effects of the conditional grant system on the accountability and, consequently, on the discipline of Canada's public financing system. Their more immediate concern, however, is the rigidity of the system. In Charlottetown, Alderman George MacDonald told this Commission:

*Very often, the federal [grant] programs are such that we have to start saying, "Here is the money. Start reading all the guidelines and try making up a story to get it" rather than [the Federal government] saying "What are your needs? Can we help you?"*

(City of Charlottetown, Transcript, Charlottetown, September 19, 1983 [vol. 10], pp. 2468-69.)

While Mr. MacDonald's comments point to the problems of federal-provincial-local relations and to the need for improved communication among all three orders of government, they also indicate the inflexibility that conditional grants, whatever their source, impose on local governments, particularly given the degree of municipal dependency.

There are a number of ways to balance local revenues with local responsibilities and, consequently, to provide more flexibility to local governments and to reduce the need for, and thus the rigidities of, conditional grants. One method transfers certain responsibilities from local to provincial governments. This shift has already been made, in large part, however. In 1913, for example, net expenditures by local governments amounted to almost \$14 per capita, while those made by the provinces amounted to \$7 per capita. In 1980, by contrast, local expenditures had reached the sum of \$696 per capita, while provincial expenditures had multiplied to \$2219 per capita.<sup>2</sup> These figures reflect increased provincial responsibility for health, education and welfare, and increased local spending, after the Second World War, for infrastructure and local schools. Provincial governments have also begun to assume responsibility for local school costs. Four provinces now accept virtually complete responsibility for school financing. Because many local responsibilities have already effectively become provincial, however, the possibility of further major transfers of responsibility from local to provincial governments is limited.

To change the structure of local revenues offers more possibilities for correcting the imbalance. The largest portion of local revenues, aside from grants from other levels of government, comes from property taxes. Despite

the significant advantages of these taxes, their regressive and relatively inelastic character presents considerable difficulties to local government. For this reason, sales taxes and income taxes are often suggested as means to increase local revenues; but these taxes raise other problems: administration, the taxation of non-residents, inter-urban equity, and great variations in the tax bases among communities.

This Commission believes that it would be preferable for the provinces to dedicate a specific portion of income- or sales-tax revenues for local government financing. We recommend that each province look for appropriate ways to carry out this action. While this arrangement would subject municipalities to some of the vagaries of economic conditions that beset federal and provincial revenues, a designated percentage share of these tax revenues would, in our opinion, enable municipalities to make their own economic assessments of their likely revenues as a basis for long-term planning and budgeting. Local governments would still depend to some extent on provincial grants. Commissioners also recommend that, to the extent possible, provincial governments shift their municipal financing arrangements to provide increased unconditional funding rather than conditional grants.

We believe this arrangement would enable greater flexibility and greater effectiveness in terms of local expenditures, in that local governments are better placed for, and by and large, have greater expertise in, judging what types of expenditures will best meet the community's needs and best take advantage of the unique opportunities it has. This approach is at variance with the one we take to federal-provincial transfers. However, unlike the federal-provincial relationship, in which basic responsibilities are allocated by the Constitution, the provincial-local relationship is determined by a province. That is, provinces have already established the "conditions" for municipal spending of provincial grants by establishing the responsibilities local governments must meet. To add conditions to conditions, we believe, merely increases complexity.

## **Urban Policy**

Although municipal governments are often seen to exercise the power to plan and establish urban policy, their control of planning is, in reality, constitutionally limited and their role primarily reactive. Private property owners and developers initiate development, often working along with senior governments; provincial governments control, review and generally dominate the planning process. Municipal governments can, however, determine the course of development through their decisions on services and infrastructure, such as streets and transit systems. Nevertheless, their dependence on the provinces for financial assistance limits their capacity to initiate and promote development. Municipal capital spending is scrutinized by provincial governments; and most municipal planning and urban-policy decisions are subject to provincial review.

This Commission believes that effective urban planning or policy recognizes that local governments, more than federal or provincial governments, are aware of urban issues and better able to deal with them. We

believe that in general, local governments can most effectively establish and carry out urban policy. Therefore, while acknowledging that the provinces have different systems for dealing with urban issues, we recommend that they grant greater and more general authority to local government. Commissioners also believe that a considerable reduction is desirable in the number of special purpose bodies, such as planning boards that are created by the provinces to act independently of local governments. These bodies should consolidate their functions as far as possible so that elected politicians are accountable locally rather than provincially. An increase in local authority depends, of course, on establishing greater, more secure and unconditional sources of financing, and on developing greater federal and provincial sensitivity to local needs and to the local effect of senior-government policies.

### **The Local Role in Economic Development**

This Commission believes that local government, particularly the major cities, will play a significant role in Canada's economic evolution. When deciding whether to move to a particular city or country, companies often look at more than the traditional bases of development, such as location relative to markets, available rail or air transportation, land availability and tax structure. They look also at the safety and cleanliness of a city, the quality of its restaurants and shopping facilities, and the presence of amenities such as parks, art galleries, symphony, opera, theatres, and major league-sports facilities. Canada has many advantages to attract business and investors, and the reputation of our cities is growing. At the same time, however, the attractiveness of a city—its capacity to act as a magnet for able people, particularly those with the scarce skills around which companies, industries and local employment are built—is relative and changing. Canadian urban communities must compete to remain relatively more attractive than other cities throughout the world.

Since we expect economic development to become still more urban, it is vital for provincial and federal governments to recognize that the quality of urban life in Canada is an economic asset of prime importance. The hearings and research of this Commission, however, reveal a build-up of entanglements, irritants, unnecessary restrictions and complications, and undesirable complexities, all of which may dampen the remarkable dynamism that has marked Canadian urban development in the post-war years.

This Commission recommends that each province examine and modify its own municipal government system to provide greater discretion to local governments, to simplify legal, institutional, and constitutional arrangements, and to develop clear and direct lines of communication between local and provincial decision makers. We believe that these changes would allow city governments to exploit fully their capacity to improve economic and social conditions for their citizens, for the provinces, and for Canada as a whole.

## **Notes**

1. For Commission research studies on municipal issues see: Stanley M. Makuch, "Urban Law and Policy Development in Canada: The Myth and the Reality", in *Labour Law and Urban Law in Canada*, vol. 51; Harry M. Kitchen and Melville L. McMillan, "Local Government and Canadian Federalism", and Jacques L'Heureux, "The Division of Powers and Municipalities", in *Intergovernmental Relations*, vol. 63 (Toronto: University of Toronto Press, 1985).
2. Kitchen and McMillan, "Local Government and Canadian Federalism".

## **Conclusions and Recommendations**

The more government Canadians have, the more democratic we must become. The institutions of responsible parliamentary government remain the key to keeping government our servant rather than seeing it become our master. Commissioners regard Parliament as the principal forum for public debate and intend our recommendations to contribute, in general, to the strengthening of this institution.

To restore Parliament as the principal forum for national debate, we must not only bolster its democratic processes, but we must also improve its capacity to reconcile national and regional interests. We wish neither to reassert the dominance of the national government in line with the prevailing opinion at the time of Confederation, nor to establish the provincial order of government as an integral part of national government.

With regard to federalism and intergovernmental relations, two basic needs influence Commissioners' general objectives. First, it is desirable to clarify where possible, by constitutional amendment, by delegation or intergovernmental agreement, or by more clearly defined policy directions, the responsibilities distributed between federal and provincial governments. Secondly, recognizing the complexity of modern government and the interdependence within our federation, it is desirable to introduce greater certainty and stability into existing intergovernmental processes. We seek neither to eliminate intergovernmental conflict nor to further the development of non-accountable institutions. Rather we seek to secure and give greater public recognition to minimal processes and structures that will moderate the excesses and costs of unresolved conflict and channel creative solutions to common problems.

Commissioners view the Charter of Rights and Freedoms both as a guarantee of specific rights and freedoms of citizens and as an important element of the framework within which Canadian society can evolve. This is consistent with our view that constitutional law should be responsive to social change and evolving values and attitudes, and that it should stabilize the pace and direction of such change.

### **Responsible Government and Public Accountability**

- The Canadian practice of party government has restricted the opportunities for Members of Parliament to participate in the development of public policy outside the confines of party caucuses. Organized special interest groups now challenge MPs as representatives and frequently bypass them.
- MPs could gain more influence over public policy if members in committee could investigate and debate matters of public interest on which party positions have not yet been established or fully determined. The separation of legislative committees from investigative committees would help to achieve this end by serving to provide Parliament and the government with policy

analysis and guidance distinct from that which is received from administrative officials or extra-parliamentary sources.

- Parliament need not diminish the activities of interest groups, but it should provide the principal public forum for these interests to define their concerns. Parliament should encourage these groups to present their positions and demands for an open examination in relation to general interests. There should be a small number of parliamentary committees focusing on comprehensive policy matters—the budget, regulatory policy, Crown corporations, and federal-provincial relations, for example—and these would be ideal forums for such scrutiny.
- Agencies such as the Public Service Commission, the Office of the Commissioner of Official Languages, the Privacy and Information Commissioners and the Office of the Auditor General have important functions, but receive insufficient direction and control from our elected representatives in Parliament. In order to ensure accountability of these agencies, Parliament must define their procedures and basic strategies. Commissioners suggest that the Public Service Commission, the Office of the Commissioner of Official Languages, and the Privacy and Information Commissioners review their work before a Parliamentary Committee on the Public Service. This committee would study the success of these agencies in meeting the various criteria set by Parliament. The same committee, since it would be familiar with the performance of these agencies, should review their financial estimates. The Public Accounts Committee would perform this role in relation to the Office of the Auditor General.
- The federal government has formalized Cabinet structures, processes and support services in recent years, in order to restore ministerial and parliamentary control over an expanded and complex administrative structure. Although central agencies have partially checked the dispersal and diffusion of power to public servants, they can do so effectively only when under the close direction of ministers; otherwise, central agencies themselves become yet another layer of bureaucracy to be controlled.
- We have given too much autonomy and discretion to non-departmental forms of government organization such as Crown corporations and regulatory agencies. Such autonomy has undermined the principles of responsible government. To correct this situation, Commissioners recommend that greater “control” of Crown corporations be defined in the context of a reformed competition and regulatory environment, and not just in the framework of administrative accountability, in accordance with the current trend. Especially for commercial Crown corporations, governments need greater strategic control, not day-to-day interference in management decisions. Moreover, Cabinet

should strengthen its review of regulations formulated by regulatory agencies.

- Although some prominent political appointments have violated the ideal of a neutral public service, it is not true that the senior bureaucracy has become politicized. The system of appointments by Order-in-Council based on professional merit on the recommendation of the Clerk of the Privy Council has worked well. However, political advice to the Prime Minister has traditionally been the basis of appointments to a large number of boards and agencies. This category may be too large; the public might be better served if more of these appointments were based exclusively on merit. An all-party group designated by the proposed Parliamentary Committee on the Public Service should review the current use of Governor-in-Council appointments to boards and agencies, the foreign service, high levels in departments, and Ministers' staffs, in order to help distinguish between two categories of positions: those where partisan sensitivity justifies political appointments, and those where partisan sensitivity is not at issue and where professional merit should prevail. Commissioners' opinion is that this general review process should be continuous, and that appointments of no clear partisan value should be made on a basis of "merit".
- In light of the accelerating challenge to democratic controls presented by the increasing international responsibilities of the state, Commissioners believe it is desirable to provide secure foundations for parliamentary ratification of international treaties and for other measures to ensure parliamentary review of executive action in the international domain. □

### **Representative Government and National Socio-Economic Interests in Economic Policy Formation**

It is important to facilitate more direct and continuous involvement of representatives of Canadian interest groups in public decision making, especially in economic policy. Those interests need to interact more with one another and to take greater account of the broader concerns and conflicts within Canadian society for the resolution of which Parliament itself is ultimately responsible.

In comparison with the formal structures that have developed in some Western nations, Canadian consultative practices tend to be fragmented, informal and episodic. Current practices may be inadequate in light of recent Canadian experience and anticipated needs, such as the continuing pressures of economic adjustment. However, we do not recommend a corporatist or tripartite style of government/private sector relations.

- Although substantial secrecy is necessary in relation to the preparation and release of the budget, Commissioners recommend that guidelines are needed to allow less comprehensive budget

secrecy than now exists. We urge the House of Commons to initiate a change in the convention of comprehensive budget secrecy in order to set in motion steps towards more effective advance discussion and consultation arrangements.

It would be desirable to seek federal-provincial agreement on the timing of budgets, so that their presentation could be co-ordinated, with the federal budget either preceding or following most provincial budgets by two or three months. Pre-budget consultation should occur in several forums, but particularly in the House of Commons.

A continuing national dialogue on general directions for economic policy requires a permanent national forum. This Commission favours establishment of a permanent Economic Policy Committee of the House of Commons. The Committee would hold an annual series of pre-budget hearings timed to allow its work to influence budget preparation. It would take testimony about the nation's economic prospects from the Department of Finance, the Bank of Canada, and the Treasury Board, as well as from agencies such as the Economic Council of Canada; it would also gather the views of major groups, including national representatives of business, labour and other associations.

- The Committee would scrutinize the government's performance and the revenue and expenditure implications of the positions of key interests. It should schedule its budget review to co-ordinate with its other responsibilities and with the timing of the annual First Ministers' Conference. Moreover, it would be necessary to adjust the internal priorities and planning cycle of the federal government in light of the accepted federal-provincial cycle.

- Continuation of sectoral and industry-by-industry dialogue on improving Canada's economy is essential. Discussions should bring together representatives of business and labour, and federal, provincial and municipal governments and other groups, as necessary. Government participation may not always be required. In light of these conclusions, Commissioners recommend that such sectoral discussions be developed within the following guidelines:

- Consultative mechanisms should focus on clear, specific objectives. This approach will make them more likely to be successful.
- Consultation should be a continuing process with reasonably predictable arrangements. Permanent or standing groups may be required in some cases.
- Governments must make a firm commitment to any consultative process they undertake. Effective consultative arrangements require that non-government participants have some influence on the agenda and decision-making schedule. Responsibility for the overall policy-making process, however, rests with the government of the day.



- Consultative processes aimed at consensus building must be supported by fair representation from many groups in society and, normally, by parity between business and labour.
- Sharing and refining of information are prerequisites to these consultative processes. □□

## **National Institutions and the Representation of Regional Interests**

Commissioners believe that the federal principle requires that the House of Commons, chosen on the basis of representation by population, be balanced by a second chamber based on representation by region. Our institutions should recognize the federal principle, provide greater regional representation, and respond to regional interests in national policy making and administration.

- Commissioners recommend that the Senate embody the federalist principle and provide the regional representation lacking in the House of Commons.
- A reformed Senate must build on our practice of party government in its elections, caucuses and discipline. The Senate must be elected, and election to the two Houses should take place at the same time.
- In the Senate, representation should be weighted in favour of the less populous regions. All regions need not be considered equal, for the Senate should only temper, not obstruct, representation by population.
- The Senate should be elected by a system of proportional representation. The governing party is more likely to have elected representatives from all regions within its parliamentary caucus, even if, for one or some regions, they secure places only in the Senate. A Senate elected on this basis should ensure that the governing party will usually be able to constitute a Cabinet that includes members from all regions.
- We recommend that Senators be elected in six-member constituencies. This number is large enough to effect the intended proportional representation and yet to allow for some recognition of the regions within provinces. Yukon and the Northwest Territories could elect their Senators on simple plurality. Existing numbers of Senators would be modified and distributed as follows:

	<b>Existing</b>	<b>Proposed</b>
British Columbia	6	12
Alberta	6	12
Saskatchewan	6	12
Manitoba	6	12
Ontario	24	24

Quebec	24	24
New Brunswick	10	12
Nova Scotia	10	12
Prince Edward Island	4	6
Newfoundland	6	12
Yukon	1	2
Northwest Territories	1	4
	104	144

- The Senate does not require a veto to temper, on regional grounds, the legislative majority of the House of Commons. Commissioners believe that the Senate should have a six-month suspensive veto, except in relation to legislation with linguistic significance; such legislation would require approval of a majority of francophone Senators, as well as of the Senate as a whole.
- If Senate reform along the lines proposed here is not adopted within a reasonable time, efforts should be made to reform the electoral system of the House of Commons to enhance regional representation. In that event, Commissioners favour the proposal of the Task Force on National Unity to add 60 members to the Commons, distributed to parties on the basis of their share of the national popular vote and allocated to provinces on the basis of the degree to which the parties were “underrepresented” in seats won, or not won, in relation to their share of the popular vote in each province. □

Many federal departments and agencies have not assumed responsibility for regional development within their mandates. This failure has lessened the executive branch’s capacity to be regionally responsive and has undermined the effectiveness of regional representation in Cabinet.

- This Commission therefore recommends that:
  - The central administrative agencies should be structured so as to provide more regional information upon which the Cabinet can base policy decisions. This requires that regional offices be part of the central agency apparatus supporting the Cabinet and the Prime Minister.
  - The Cabinet should decentralize departments and agencies for purposes of policy planning and development. Sectorally organized departments should incorporate the regional dimension fully in departmental planning and policy development. There should be regional officials in the central administrative decision-making of departments.
  - Regional representation should receive consideration in nominations to the boards of Crown corporations and regulatory agencies. If the Senate becomes an elected body, appointments of the heads of major Crown corporations and

all members of the governing boards of major regulatory agencies should be subject to the approval of a Senate committee to be established for this purpose. □

## **Barriers within the Canadian Economic Union**

Despite recent expressions of concern that the Canadian economic union is becoming increasingly balkanized and fragmented, goods, capital, services and people now move relatively freely within the Canadian common market.

While lost economic output from impediments to free movement and distortions of the common market appears small, private economic actors have indicated that the policies in question create considerable difficulties for them. Even more than the economic rationale, the political rationale for the national right to free movement is a powerful idea for most Canadians.

The effect of these distortions – and the need for effective co-ordination of economic policy – are likely to increase as Canadians face greater competition from the outside world. We should create incentives to international competitiveness, and we should facilitate appropriate adjustments.

The economic union implies elimination of internal barriers and positive measures to facilitate operation of the market, to overcome market imperfections and to pursue effective stabilization, industrial and social policies. All regions must share in the benefits of economic integration.

Internal barriers may be the response of governments to local preferences, and often reflect our commitment to redistribution of income and opportunity. Thus, the challenge, in particular cases, is not simply to eliminate the barriers through constitutional prohibition or other means, but rather, how to balance the economic benefits of free movement against other goals to which Canadians aspire. The trade-offs to be made are not exclusively between economic efficiency and political diversity or provincial autonomy within the federation: Canadian federalism also involves a national community with its own requirements. Moreover, as the Canadian Charter of Rights and Freedoms makes clear, individual rights have implications for the economic union.

The goal of regional development requires that Canadian economic policy must seek not only to maximize aggregate national income, but also to encourage the economic development of individual regions.

■ Commissioners urge that a broad view be taken of the scope of section 121 of the Constitution Act, 1867, consistent with an interpretation that section 121 covers services as well as goods and non-tariff barriers as well as tariffs. However, in light of existing controversy and uncertainty, it may be prudent to seek eventual clarification by constitutional amendment.

■ We would recommend a limited amendment to include services to reflect current conceptions of the nature of interprovincial trade. On the issue of non-tariff barriers to trade in goods and services, we recommend as an interim step that governments agree to a Code of Economic Conduct.

- The governments of Canada should develop a Code of Economic Conduct to spell out acceptable practices, set out the principles of the economic union, and provide for enforcement. We advance a series of general guidelines for consideration:
  - The code should confirm general principles of the economic union applicable to both the federal and provincial governments:
    - Reduction of barriers to the allocation of capital, labour, goods and services throughout Canada
    - Non-discrimination against persons (individuals and organizations) based on province of residence
    - Commitment to minimizing the costs of provincial programs that might fall on the residents of other jurisdictions, and to prior consultation for this purpose
    - Recognition of the need for a transportation, communications and information infrastructure to support national economic development with significant regional benefits.
- The burden of demonstrating that a barrier did not violate the principles of the Code should lie with the authority imposing the barrier.
- The Code should identify major areas where reduction of barriers to internal trade should begin. Attention should focus not only on the form of the barriers, but also on the anticipated effects. The possibilities of substitution between types of barriers are extensive, and provinces vary in economic development and in their potential to inflict injury on other jurisdictions or the residents of those jurisdictions. Those drafting the Code might first consider barriers that prevent Canadian enterprises from being internationally competitive.
- Initially governments should set up the Code, and public and governmental pressure should enforce it. The intergovernmental process would provide the appropriate forum for dealing with the politically sensitive issue of internal barriers to trade. After experience with the operation of the Code, we should move to entrench its principles in the Constitution and to enforce the Code through some other form of binding intergovernmental agreement.
- To develop the Code of Economic Conduct, monitor the state of the economic union, and explore methods for co-ordinating policies, the First Ministers' Conference should create a Council of Economic Development Ministers.
- To initiate the process of identifying and controlling internal trade barriers, Commissioners propose the following procedure. The Council will ask each government to list barriers imposed by other governments that they believe harm its provincial economy or its residents. Next, each government would be required to explain and defend those of its policies identified at the first stage. A Federal-Provincial Commission on the

Economic Union would receive this material, and would analyse the barriers, their probable consequences, and the justifications declared. The Commission would identify violations of the principles of the economic union and make recommendations concerning specific terms for the proposed Code. It would send this report to the Council for action.

- A Federal-Provincial Commission on the Economic Union which would serve the Council of Economic Development Ministers would have responsibility for preparing materials for the Council as directed:
  - Analysing the first round of barriers identified by the Council's initial inquiry
  - Initiating research on the state of the economic union and methods for improving it
  - Receiving complaints from groups, individuals and corporations affected by government actions threatening the economic union, investigating them, and reporting on them, with recommendations, to the public and the Council.

If a Code is eventually made legally enforceable, the Commission could become a regulatory agency, but one that regulates governments. □

## **Economic Management**

In several specific areas related to our concern with the international environment, the Canadian economic union, and economic adjustment, Commissioners believe that constitutional changes are desirable for more effective economic management; Canada requires a procedure which would allow treaties, once concluded, to be binding and enforceable on both federal and provincial authorities within Canada.

■ We recommend a constitutional amendment to provide that where a proposed treaty contains provisions that require implementation by provincial legislatures or affect rights within areas of provincial jurisdiction, the relevant sections should be ratified by provincial legislatures. We propose the application of the amendment formula for this purpose so that sections of a treaty imposing obligations on provinces would come into effect on the passage of resolutions in the legislatures of two-thirds of the provinces, representing at least half of Canada's population. We do not see this recommendation as having immediate application to negotiations with the United States on a free-trade agreement. We would recommend, however, that a constitutional solution be in place before the proposed trade agreement would come up for review in the 1990s.

■ To clarify jurisdiction and roles in the field of telecommunications, we recommend concurrent jurisdiction with federal paramountcy.

■ To clarify responsibility regarding certain aspects of overall regulation of trade and commerce, we propose that section 91(2) be amended to provide explicitly for federal regulatory power over competition and product standards.

■ If intergovernmental agreement is not reached soon on the harmonization of regulations respecting interprovincial trucking, we recommend that serious consideration should be given to bringing this matter under federal jurisdiction. □

## **Equalization**

The principle of equalization, an essential element of Canadian federalism, represents a commitment to all provinces that economic misfortune will not undercut their constitutional role. It contributes to a true decentralization of government functions, in spite of the differing economic capacities among provinces.

Commissioners stress the distinction between equalization payments and regional development programs. The former are intended to offset economic disadvantages, while the latter are intended to reverse this disadvantage. Equalization payments are necessary only because of our lack of success in combatting regional economic disparities. In practice, this means that regional development financing must be added to equalization disbursements; the federal government should not cut one in favour of the other.

■ The federal government's responsibility for interregional redistribution gives it a leading role in designing and operating the equalization scheme. Commissioners recommend that the following changes to the equalization system be discussed with the provinces:

- Canada should return to a representative tax system that includes all 10 provinces in the base. The present five-province calculation base allows too much room for distortion, strategic behaviour and unintended side-effects.
- Equalization payments should include some portion of resource revenues. There is no magic figure here, but the 20 to 30 per cent range seems an appropriate compromise, since it approximates the amounts that would accrue to provincial treasuries in the form of tax revenues if natural resources were in private hands.
- The concept of including needs as part of the entitlements calculation is attractive. Commissioners recognize, however, that this can develop only slowly, given the amount of data required and the serious practical difficulties involved. The inclusion of needs in the calculation will be especially important if the Northern territories enter the scheme. □

## **Regional Development**

This Commission believes that regional development must remain an essential component of Canadian policy and, indeed, of the Confederation bargain as now reflected in section 36 of the Constitution Act, 1982. It must be recognized, however, that policies intended to promote regional development have often hindered the overall efficiency of the national economy in that they impeded inter-regional adjustment and distorted regional development. Canadians need to reconsider the way in which we look at regional economic disparity, what we do to overcome it, and the institutional mechanisms we bring to the task.

- We recommend a new federal-provincial system of sharing regional development expenditures and responsibilities.
- The federal government should direct regional development programs toward improving regional productivity and the efficiency of the labour market. To these ends, such programs should include measures to improve worker and management skills, enhance research and development efforts, ensure a high level of infrastructural support, and supply assistance for intra- and inter-regional mobility. The federal government should not only provide such programs on a national basis, but should also make a special effort in the less developed provinces. While it might make sense, too, for the federal government to provide assistance for plant modernization as a means to enhance regional productivity, we believe that it should provide this type of assistance on a national basis, if at all, or that the provincial governments should take on this responsibility on a regional basis.
- Under this arrangement, the federal government would end all explicit and direct regional employment-creation programs. While national schemes would continue, federal subsidies, tax breaks, and so on, intended only to generate jobs in, or attract firms to, a particular locale, would be eliminated. Similarly, the federal government would terminate regionally differentiated unemployment-insurance programs, tax credits, and other measures that tend to distort regional labour markets. Funds formerly allocated to these types of programs would instead become the source of Regional Economic Development Grants.
- Provinces that qualify for equalization payments would be eligible for Regional Economic Development Grants. The amounts of the grants would be determined by a formula on a per capita basis, and they would be proportionate to the degree of fiscal disparity identified by the equalization formula. As noted earlier, equalization payments are necessary to offset economic disparities, while the purpose of these new grants would be to reduce future disparities. They would be re-negotiated every five years.

- Provinces would assume full responsibility for local or place-specific employment measures as part of their own approach to regional development. They would be free to use the Regional Economic Development Grants for this purpose, subject only to two conditions:
  - Each recipient province would sign an Economic and Regional Development Agreement (ERDA) with the federal government, which would set out a broad economic development plan for the province (and for each other province) and would indicate the measures to be carried out by both orders of government. Some elements of these packages might take the form of shared-cost programs or federal contributions to provincial activities; in general, however, Commissioners recommend that under the ERDA umbrella, each government remain responsible for the implementation and delivery of its own programs, in order to enhance accountability.
  - The recipient province would be required to sign the proposed Code of Economic Conduct to improve the functioning of the Canadian economic union.
- While recognizing the immediate need for financial prudence at the federal level, Commissioners believe that the total federal financial commitment to regional development – combining the Regional Economic Development Grants and other funds spent through ERDAs – should increase significantly over the next few years.
- The federal government would continue to play an important role in other development efforts which have significant regional impacts such as:
  - A reformed equalization system
  - The proposed Universal Income Security Program and the Transitional Adjustment Assistance Program
  - Sectoral policies, such as those pertaining to fisheries, agriculture, and forestry. These should be designed according to criteria for good sectoral policy (see Parts III and IV of this Report) but they ought to also be developed in close consultation with provincial governments where these are affected to an important degree.
- A sustained federal commitment to regional development requires that a single central agency be responsible for injecting regional concerns into the programs of individual federal departments, and for co-ordinating federal efforts. It would appear to Commissioners that the Federal-Provincial Relations Office (FPRO) reporting to the Prime Minister, would be the appropriate existing body. We believe also that the Federal Economic Development Co-ordinator (FEDC) or other senior officials resident in each province could help to co-ordinate federal activities within each province, interacting with the provincial government and establishing links with local



economic interests. The federal government should enlarge the responsibilities of such federal regional officials, who should report directly to FPRO. □

## **Fiscal Arrangements**

### ***Tax Collection Agreements***

The Tax Collection Agreements have served Canada well. They are convenient for both citizens and governments, and they help to maintain harmony and contribute to the strength of the economic union. They should be retained. Nevertheless, the agreements are presently under considerable strain, and are in some danger of disintegrating. This Commission's proposed reforms are based on the desire to maintain the agreements, but not at an excessive cost either in terms of the accountability of legislatures or in terms of the flexibility which exists in the system.

■ Commissioners therefore recommend that:

- The agreements be amended to place the personal income tax on the same footing as the corporate tax, applying the provincial rates to the common, federally determined base. This measure would not only reduce provincial vulnerability to federal tax changes, but would also enhance provincial autonomy, since it would become easier for provinces to decide how progressive their own tax rates should be.
- The federal government consult with provinces before introducing any tax change which would have a significant effect on the federal-provincial relationship. This recommendation is consistent with Commissioners' larger concern to reduce budget secrecy for federal and provincial governments and to ensure that federal budget proposals receive wide discussion in Parliament.
- To provide greater consultation on taxation matters of a more fundamental nature, Commissioners recommend that a new federal-provincial Tax Structure Committee be given the following mandate:
  - As part of the regular process of the quinquennial review of federal-provincial fiscal arrangements, the Tax Structure Committee would re-examine the definitions of taxable income, basic exemptions, marginal tax rates, and the like. This is really an endorsement and extension of a consultation process which is already in effect. The Tax Structure Committee would also monitor the division of tax room between the two orders of government, in light of anticipated revenue and expenditure needs, and of the difficulties of managing restraint.

- As part of the overall concern for the economic union, the Tax Structure Committee could also discuss the implications of federal or provincial tax credits and subsidies. It would thus assist the Council of Economic Development Ministers which, we propose, be responsible for the development of an overall intergovernmental Code of Economic Conduct. This Committee would be composed of representatives of all governments, including those now outside the agreements. □

### **The Spending Power and the Impact of Fiscal Restraint on Intergovernmental Transfers**

Although Commissioners do not recommend formal limitations on the spending power, we consider that this power has important consequences for federalism and therefore should be exercised with special restraint and subject to certain guidelines concerning its use.

- Commissioners thus recommend that the spending power be retained as a vital instrument for flexible responses to changing definitions of the national interest, subject to the conditions that:
  - The judicial distinction between federal legislation providing grants or gifts and federal legislation involving direct regulation in fields of provincial jurisdiction is appropriate and should be further refined.
  - As a matter of principle within the federation and for purposes of accountability and clarity of roles, the federal government regard new shared-cost programs as a last resort in pursuing its objectives.
  - The use of the federal spending power in areas of provincial jurisdiction be supported by broad national consensus. In addition to the contribution to consensus which an elected Senate with stronger regional representation will make, consultation through the Federal-Provincial Ministerial Councils and, ultimately, the First Ministers' Conference is essential, not only in relation to new programs, where it will occur in any case, but also in relation to the proposed alteration or termination of a program by the federal government. Designated periods of operation of, say, five years, could be considered for program renegotiation.
  - In order to retain a desirable degree of federal flexibility and accountability to Parliament while assuring provinces some stability for planning and protection against rapid unexpected variations in federal spending, we recommend that:
    - Federal-provincial transfers be subject to a review on a five-year basis.
    - During that period, the federal power to make adjustments be limited to, say, 5 per cent in any given year, without provincial approval. □

## **Intergovernmental Relations and the Institutions of the Federation**

The intense intergovernmental conflict Canada experienced in the 1970s may be partly attributed to institutional limitations. Interdependence in modern federalism is inescapable and needs to be managed, as do the excesses of intergovernmental competition.

This Commission's goal is to encourage a more functional approach to federalism, one not oriented towards centralization/decentralization, but one which emphasizes the potential contribution of Canada's federal arrangements to the well-being of Canadians. Canadians should create political institutions to co-ordinate activities involving both orders of government.

While greater co-ordination of federal-provincial affairs would be desirable, Commissioners believe that the diversity of government action inherent in a federal state is also a positive contribution to society. Thus we have tried to strike a balance between encouraging institutional diversity or competition and proposing new measures of federal-provincial co-ordination.

■ Commissioners do not recommend comprehensive constitutional amendment as a means to modernize the division of powers. Instead, we urge the use of more flexible instruments to clarify or transfer the location of responsibility. To this end, we recommend that:

- The power of intergovernmental delegation be expanded so that, on a particular matter, law-making authority could be delegated to another jurisdiction. Such delegations should be approved by the legislatures of all jurisdictions involved
- Constitutional amendment be used to establish a procedure that would permit the Parliament of Canada and provincial legislatures to enter into intergovernmental agreements that would be binding on their successors
- The powers of reservation and disallowance, now by convention virtually "dead letters", be formally interred by means of an appropriate constitutional amendment.

■ To provide essential recognition of the need to manage intergovernmental interdependence, and the need to co-ordinate policies and activities, the First Ministers Conference should be established in the Constitution with the requirement that it meet at least once each year. Such an institution must in no way encroach on the principles of responsible government.

■ First Ministers may eventually wish to consider the creation of a body comparable to the Advisory Commissions on Intergovernmental Relations in the United States and in Australia. "Third parties" of this nature may facilitate behind-the-scenes resolution of intergovernmental conflicts and contribute to improving the context of information, analysis and public opinion to which the intergovernmental process will need to respond.

■ Despite a plethora of federal-provincial bodies, current intergovernmental discussions are sporadic and lack co-ordination. Our purpose is to suggest a core framework of federal-provincial mechanisms which, in a more streamlined way, would support the First Ministers in their collective and individual responsibilities. Commissioners propose that the First Ministers' Conference appoint a network of Councils of Ministers to serve in major functional policy areas and to be supported by continuing committees of officials. We believe that three central Ministerial Councils should be established in the fields of Finance, Economic Development, and Social Policy. We therefore recommend that:

- The *Council of Finance and Treasury Ministers* which now exists and meets from time to time regarding fiscal arrangements, economic projections, and macro-economic policy be formalized to encourage greater regularity of assembly, better co-ordination of budgetary preparations, and to receive the findings of the new Tax Structure Committee, which would monitor tax developments
- The *Council for Economic Development* seek agreement on common objectives in economic development and trade policies and identify opportunities for mutually beneficial links among regions. The Council would be responsible for monitoring and assessing the state of the economic union and would serve as the vehicle through which to develop a "Code of Economic Conduct".
- The *Ministerial Council on Social Policy* consider all facets of social policy, especially in the fields covered by Established Programs Financing and the Canada Assistance Plan. Consultation with practicing professionals and interested groups and individuals is particularly important in this area. We would encourage Parliamentary Committees to play a stronger role in this activity.
- To ensure that governments are held accountable for their conduct of intergovernmental affairs, Commissioners recommend that Parliament and the provincial legislatures should establish permanent standing committees responsible for Intergovernmental Relations. □

Differing provincial regulations create inconvenience for those who wish to operate nationally. The impetus for interprovincial efforts towards harmonization must arise through the pressure of groups adversely affected by interjurisdictional variations. Commissioners therefore propose no specific institutional changes designed to enhance harmonization of provincial laws.

## **The Charter of Rights and Freedoms**

### ***The Charter and Constitutional Government in Canada***

The Charter of Rights and Freedoms signals a significant transformation of the relationship between citizens and the state in Canada. Most noteworthy are the important limitations imposed on the constitutional authority of legislatures and the elevated role of the judiciary as guardians of the constitutional rights and freedoms of individuals. The Charter will also further the rights of citizens to review and assess government actions, and it will contribute to a fuller and more regular discussion of citizen rights in Parliament. Its guarantees will probably become the basis for individuals and groups to introduce issues to the national and provincial political agendas.

The scope and application of the Charter will be tested constantly through both the legal and political processes. The Charter is not, however, a springboard for unlimited claims of citizen rights, for there are reasonable limits to its guarantees. Ultimately, its effectiveness in protecting the rights and freedoms of citizens and in enhancing democracy will be determined by the way in which citizens use this document.

■ This Commission believes that the changes recorded and introduced by the Charter should be given a broad scope in interpretation and application. Departures from its guarantees should meet stringent tests and conditions, justifying the circumstances of exception.

■ The Charter's general override provision should contribute to public awareness of legislation limiting the constitutional rights of citizens in Canada. Overriding legislation should include a declaration of intent to legislate, notwithstanding a provision of the Charter, and should include not only reference to the specific rights being overridden, but also an indication of the purpose of such legislative action. Such a statement of purpose would help the courts to ensure that limitations do not exceed what is necessary to achieve their objective; it could also be a useful reference point in discussions on whether to extend the override after the five-year period.

■ Commissioners do not suggest constitutional amendments to change and improve upon the Charter's words. Rather we consider various interpretations of the Charter which we think will serve to maximize the desirable impact it can have on Canadian society. Two examples illustrate our approach:

- We favour a broad and flexible application of the Charter at the periphery of government activity, as well as in its more visible legislative forms.
- Similarly, in the matter of the Charter's guarantees of personal mobility rights, we conclude that preferential provincial employment schemes permissible under the Charter should be

strictly limited to the socially and economically disadvantaged within a province. Such programs should not preclude the federal government from simultaneously pursuing employment-opportunities programs in that province. □

Inherent in the Charter of Rights and Freedoms is an attempt to overcome some of the problems of national unity that have pre-occupied Canadians since the mid-1960s. This is especially evident in the Charter's provisions respecting mobility rights, official languages and minority official-language education, as well as multiculturalism.

With regard to ethnic diversity in Canada, Commissioners believe that multiculturalism policy should seek to create circumstances that permit all Canadians to preserve and enhance their cultural heritage within the broader Canadian tradition of individual equality. Multiculturalism is not a justification for cultural or racial discrimination. For visible minorities, in particular, racism must be addressed through more than multicultural policy. There is a systemic aspect to racial discrimination in Canada. As with other patterns of systemic discrimination affecting groups such as women, the handicapped and other identifiable groups, the Charter plays an important role as both an educative and legal instrument in enhancing equality.

The Charter's equality-rights guarantees embody a broad definition and understanding of equality. These guarantees reflect contemporary notions of substantive equality in giving assurance of equal benefit of the law and equality under the law. By enabling affirmative action programs, the Charter responds to contemporary concerns about discrimination against various groups in society.

■ Commissioners believe that governments have a leadership role to play in breaking down these patterns of discrimination and we believe, too, that affirmative action is a valuable tool for this purpose. Accordingly, we view the provision in the Charter enabling governments to pursue affirmative action programs as a valuable reinforcement of government's role. Equality, however, must ultimately relate to individuals, and affirmative action must be supplemented with other programs designed with individual equality as the ultimate goal.

■ The Charter both contains guarantees of individual equality and elsewhere recognizes special rights of various groups, such as official-language minorities and Canadian aboriginals. We believe that when group rights are inconsistent with rights of individual equality, the latter, as a general rule, should prevail. □

## **The Supreme Court of Canada**

The members of the Supreme Court of Canada do not perform representative functions in the Canadian institutional and constitutional system. Judicial merit alone is the criterion by which the Court's membership and performance should be assessed. Accordingly, Commissioners reject arguments that the composition of the Supreme Court should be regionally representative.

Existing provision in the Supreme Court Act for the appointment of Quebec members is based on the distinctive legal traditions of that province. We also reject socio-economic representational claims about Supreme Court of Canada membership, which we anticipate may emerge as the Court addresses complex Charter litigation involving citizen-state relations.

The central issue in the appointments process is the perception that it does not adequately involve the constituencies ultimately affected by Supreme Court decisions. Although the existing informal procedures followed by the Prime Minister before making appointments to the Supreme Court do involve extensive discussions, they are sometimes perceived as not taking sufficient account of concerned interests or advice. Measures to shift responsibility from the Prime Minister to some designated group or institution necessarily involve replacing one political process with another. If a broadly based political process of consultation is to be replaced by alternative arrangements, an elected Senate has much to commend it.

- The constitutional status of the Supreme Court and, in particular, the independence of the Court, should be clarified by entrenchment, although there is no reason to remove responsibility for the administration of the Court from the federal government.□

## Quebec

### *The Distinctive Character of Quebec Society*

Quebec is characterized by the presence within its borders of a largely francophone population which controls and gives direction to its own political and social institutions. The existence of this institutional framework which reinforces the distinction between the majority status of francophones within Quebec and the position of francophones elsewhere in Canada is central to *la spécificité du Québec*. The very essence of Quebec society lies in the fact that it is the principal, though not the exclusive, focus for the political dimensions of French life in Canada. To a large extent, Quebec remains a linguistically isolated society, an island of French in an overwhelmingly anglophone sea. For Quebec and for francophones outside the province, the central challenge will always be how to remain French in North America.

This challenge entails practical problems in the cultural and economic domains for whose resolution Quebecers and francophones outside Quebec, individually and collectively, are, themselves, ultimately responsible. But constitutional recognition of Quebec's distinctiveness and of Canada's duality would provide an affirmation that answers to the practical economic and cultural problems of French life can be pursued within the Canadian context and with the support of the rest of Canada. The necessary compromises could thus be worked out in a clearly understood context of recognition and affirmation of a cultural complementarity which is at the very heart of the Canadian experience.

- The initial requirement at the level of principle to secure a renewed understanding between Quebec and the rest of Canada is

a statement in the preamble to the Constitution along the following lines:

*Recognizing the distinctive character of Quebec as the principal, though not the exclusive, centre for Canadian francophones and accepting as fundamental the duality of the Canadian federation . . .*

### ***Fundamental Guarantees***

As a consequence of Quebec's uniqueness, steps should be taken to ensure that no future constitutional amendment as noted below be imposed on Quebec which that province might consider to affect its fundamental interests as a distinct society:

- Concerning transfers of legislative powers from the provinces to Parliament, the simplest means to provide Quebec with the necessary protection, without putting the principle of equality of the provinces in question is to grant each province the right to opt out of any general arrangement with full compensation in all cases.
- In relation to reforms of national institutions which are not covered in the present opting-out formula, the only means to protect the interests of Quebec is through the right of veto. An obvious solution would be to grant all provinces such right in conformity with the equality principle. In the long run, this move could, however, freeze the natural development of our national institutions. Although granting Quebec the right of veto is an arrangement politically more difficult to obtain, it is closer to the intended objective, for it is the distinctive character of Quebec society for which protection is sought. It is important that Quebec have a right of veto on any amendment to the institutions described in section 42(1) of the Constitution Act, 1982, if such an amendment touches on the special character of Quebec and the duality of Canada. One method of implementing such veto would be to amend immediately section 47 of the Constitution Act, 1982, in order to grant French-speaking Senators the right to block proposed amendments affecting Quebec under the double-majority formula described below.

### ***The Senate and Quebec***

- With regard to federal legislation, any proposed bill with linguistic implications, before becoming law, should require a double majority of the Senate: that is, the approval of a majority of all Senators and of a majority of francophone Senators. Such veto would be a full rather than a suspensive veto. In light of the protection offered by this double-majority proposal, Commissioners see no need for specific guarantees to Quebec of a certain proportion of seats in the House of Commons.



## ***Division of Powers***

- Because of Quebec's distinctiveness, the most obvious fields where conflicts may arise between that province and the federal government are education, external relations, immigration, communications and culture. There are ways in which Quebec could participate in dealing with these areas. While we make no recommendations, we do suggest that legal mechanisms such as delegation and inter-governmental agreements may provide a better means of accommodating the specific interests of Quebec than would constitutional amendment.

## ***Francophones Outside Quebec***

- The diverse communities of Francophones in Canada outside Quebec are currently in a state of crisis. If they are to survive and flourish, prompt action is required. Commissioners suggest that beyond recognizing the principle of duality in the Preamble, governments should make efforts to extend the recognition of French and English as the official languages of individual provinces. Ontario in particular, with its large French-speaking population, should proceed promptly to implement official bilingualism. Such a step would set an example for other provinces.
- Scattered French-language communities outside of Quebec face difficulties in developing a French-language working environment. Efforts to solve this problem should be geared towards the development of French-language centres of activity. These centres would vary from province to province, depending on the population and geographic concentration of francophone Canadians. In some areas, the centres would be of an essentially cultural or educational nature, and in other areas, such as in New Brunswick, they could include a strong economic component.
- Furthermore, this Commission wishes to point out that implementation of language rights has not kept up with the intended policy of bilingualism. We believe that litigation, while generally useful, is not the proper tool for making improvements in this direction, since it is a lengthy and costly method of dealing with these problems.
- Instead, we recommend that stronger support be given to the role of the Commissioner of Official Languages. □

## ***Aboriginal Self-Government***

Measures to increase the influence and control exercised by aboriginal people over their social and economic affairs are desirable. Our commitment to this objective is based on the distinctive place of aboriginals in Canadian society

as the first peoples of Canada and on the constitutional recognition they now enjoy.

Institutional reforms to enhance the autonomy of aboriginal peoples focus on the idea of self-government. Implications of aboriginal self-government for Canada's overall institutional framework and, in particular, for the three pillars of the Canadian constitutional order, Parliament, federalism and the Charter, have not yet been clarified. Indeed, many important issues have been avoided and should be addressed more squarely. The fundamental changes to our national and provincial institutions that are now being contemplated need broad Canadian understanding if they are to be acceptable in the long run. The pace of discussions, as well as the comprehensiveness of debates in Parliament and the legislatures should reflect this concern.

## **The Northern Territories**

The economic, social and environmental challenges of development in Northern Canada will remain of continuing concern to Canadians. From an institutional perspective, significant questions must be addressed—some of these in the near future.

■ No Canadians—Natives and non-Natives, Northerners and Southerners—can be well served by further delays in the settlement of aboriginal land claims. Final agreements affirming and delimiting aboriginal rights should be actively encouraged. If necessary, deadlines should be established by the parties, and discussions could proceed without reference to the issues of legislative powers, sovereignty and special political status, which could be dealt with subsequently in other settings.

- The Yukon Act and the Northwest Territories Act should be amended to reflect the current practices of responsible government in Yukon and to encourage comparable evolution in the Northwest Territories. In both territories, new formula-based financial arrangements should be negotiated, to increase the predictability of transfers and to promote genuine responsibility and accountability for expenditures.
- On the basis of federal commitment to the ultimate goal of some form of provincehood in the Northern territories, the governments involved should establish a timetable for the transfer of provincial-type responsibilities in areas such as health, labour relations, inland waters, renewable resources and the institution of criminal proceedings. Additional measures should be taken to:
  - Advance the process of transferring to territorial governments responsibilities for Crown lands that do not bear directly on the national interest and that have not been ceded to the Native people through claims settlements

- Institute resource-revenue/sharing arrangements comparable to the types of agreements worked out with Nova Scotia and Newfoundland
- Confirm participation of the territorial governments in federal-provincial forums where matters of direct concern to Northern residents are being discussed. Joint-management arrangements may be valuable transitional procedures.

■ Failing an internally generated and ratified agreement on division of the Northwest Territories, the federal government should establish an independent boundary commission to recommend a boundary on the basis of arguments from the two constitutional forums. Subject to the spirit of the Canadian constitutional tradition and the need to recognize the essential quality of Canadian citizenship, the structure of post-division government should be left to the discretion of the respective constitutional forums. □

## **Municipalities**

Local governments are an enduring and important feature of government in Canada, despite their lack of constitutional status. Variations in approaches to local government in different provinces have permitted sensitivity, dynamism and creativity in the city-province relationship. Existing arrangements have contributed to the development of some of the most liveable cities in the world. Local governments have experienced uncertainty and frustration because of limited policy-making instruments and their relations with provincial and federal governments, but responses to current concerns must begin from the premise that we have been doing something right. Canada's major cities should be provided with the legal, financial and institutional means to fulfill their economic development role. By and large, this involves removing constraints that prevent their involvement in development.

■ Although Commissioners do not recommend changing the constitutional status of local governments, the federal and provincial governments should increase the involvement and responsibility of local authorities. The federal government should review with the provinces the possibility of occasional tri-level conferences; improve communications between municipalities and ministers whose responsibilities affect local interests; assign responsibility to investigate the significance of local concerns in national policy to the proposed Standing Committee for Intergovernmental Relations; and explore opportunities for the decentralization of specific responsibilities, including airports and federal urban properties to federally-appointed local agencies. The use of the delegation amendment, as Commissioners have earlier proposed, may become a means to delegate directly to local

governments responsibility for such questions as siting, development and administration of some airports through agreement with the relevant province.

■ The provincial governments should continue to assess possibilities for assuming financial responsibility for requirements greatly exceeding local revenue sources. Commissioners also recommend that the provinces examine ways to designate a specific portion of income or sales-tax revenues for local government financing. Commissioners believe that revenues to local governments should be increasingly unconditional. □

## COMPENDIUM OF CONCLUSIONS AND RECOMMENDATIONS

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*For the convenience of the reader, the "Conclusions and Recommendations" from each part of this Report are collected here.*





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## Global Outlook

### Conclusions and Recommendations

As we peer into the future, there is only one central fact about which we can be reasonably certain: there are powerful forces loose around the globe that will profoundly affect the lives of all of us here in Canada. The global outlook is full of danger signals; a majority of the world's citizens are facing very troubled prospects.

Commissioners have noted two very distinct trends in world affairs which are disturbing when viewed together. The world today has become more interdependent in economic, social and technological matters. We all share problems and opportunities as global citizens. However, the political will and international institutional machinery have not kept pace with this growing interdependence. While Commissioners are not alarmed by this divergence, we are concerned that it be recognized, and that steps be taken to rebalance altruism and self-interest on the international stage.

In entering what may well be a very turbulent period, Canadians occupy a privileged position that may make the prospective problems of the global community appear quite remote. We enjoy a comparatively high standard of living; we possess abundant natural and human resources; and we have in place a political fabric and institutions that up to now have proved themselves reasonably capable of providing the framework of laws and regulations, policies and programs required to serve our national interest best.

But "no man is an island, entire of itself", as John Donne astutely observed more than three and a half centuries ago. As Commissioners noted at the outset, Canada is more exposed than most nations to developments taking place in the world, because of far-reaching links of trade, aid and diplomacy. Canadians are highly vulnerable to adverse impacts, both direct and indirect, but we are also in a favoured position, in many ways, to seize opportunities as they arise.

In addition, however, the very breadth and depth of Canada's involvement in affairs around the world appear to impose upon Canadians a special responsibility to take up the important role that may be available to us: to contribute to a resolution of some of the more critical global problems that will arise in the years ahead. This view is based on Commissioners' deep belief that the major problems facing the global community are rooted in social, political and institutional structures, values and norms. In part, Canada's contribution might be made in material forms and by way of education, training and technology. Conceivably, however, we could play an even more important role as a catalyst, in bringing other nations together to work in concert for the resolution of global challenges and problems.

As Commissioners stressed at the beginning of this section, and as we reiterate now, we can at best perceive only dimly how the future will unfold. Undoubtedly, many current projections of prospective developments and their likely consequences will prove wrong in degree or in kind. It is crucially important, however, that Canadians should carefully search out the primary forces in play around the world, constantly monitor their action and interaction, and stand ready to respond, as circumstances require, either alone or in combination with other nations. While many future developments abroad will certainly have a direct impact on our nation, in many instances we may well have greater cause for concern about the indirect consequences for us of global impacts on other countries.

This Commission underlines the importance of recognizing five critical features of the global system:

- The degree of interdependence will continue to increase in the foreseeable future, causing the domestic policies of any one country to be significantly affected and, in some instances, dominated by global forces and the policies of larger countries.
- While the eradication of poverty and famine is within the grasp of most developed nations and certainly of Canada, it is not even on the horizon for most of the world's peoples.
- The dangers and challenges identified in the physical, economic and political global environment are so significant that the general increase in well-being of all dwellers on the planet is at risk.
- The principal limits to growth are not physical, but political, social and institutional. The major challenge thus lies in the fruit of technological and institutional ingenuity.
- Global interdependence demands that decisions be based on long-term goals and be made in the broadest possible context.

■ In view of this assessment of the global environment, Commissioners urge that the fundamental global priority within the context of peaceful co-existence become the general increase of the well-being of all nations and peoples, and the urgent eradication of malnutrition and starvation.

- Given the high degree of global uncertainty that this Commission has identified, it is important that Canadians understand both the privileged position we occupy on this planet and the



human imperative this places on Canada to provide leadership in those areas of critical concern to the world, where our nation has a capacity to provide that leadership. Commissioners recommend that as a matter of high priority, Canada pursue a more activist foreign policy based on the concept that Canada now occupies a more responsible position as one of the principal powers. Combining humanitarian and pragmatic interests, Canada should:

- Seek to broaden Canadian and world understanding of the meaning of interdependence and the threats and opportunities which confront civilization. This approach includes giving higher priority to issues relating to the natural environment and especially to the implications for global well-being of the continuing population explosion.
- Vigorously support reform of the multilateral system represented by the United Nations and its specialized agencies to bring the institutional machinery into line with the substantive problems and opportunities of the future.
- Pursue bilateral and regional initiatives where these are appropriate and essentially outward-looking in a multilateral context.

■ This Commission has reviewed the broad sweep of global interdependence in an effort to identify those areas where Canadians will be offered both challenges and opportunities over the next quarter century. We Canadians must take account of this interdependence in designing our own national policies. In particular, Commissioners recommend that:

- In the decades ahead, Canada's policy makers integrate environmental decisions with those on economic development. This policy will be essential, for there is, in this Commission's view, no ultimate trade-off between economic development and the preservation and enhancement of a healthy environment and a sustainable resource base.
- Canadian economic policies be developed increasingly in a global context. This process requires a fuller recognition of the long-term and structural changes evolving, particularly in the areas of trade, technology and the role of governments, in the struggle for competitiveness. The incentives for work effort and productive contribution should be enhanced in a more flexible market environment.
- Canadian social support mechanisms and programs be designed more efficiently to accomplish the feasible task of removing the blight of poverty within Canada and to establish our national economy on a flexible, but secure, social infrastructure
- Parliament be reinforced as the principal forum for national debate and reconciliation of international, national and regional interests. □





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## Canadian Opportunities in an Open World

### Conclusions and Recommendations

The global environment presents Canada with enormous challenges and opportunities. Rapid growth of imports from the developing countries, a changing trade-policy environment and domestic pressures on our trading partners for new protection imperil Canadian jobs. By contrast, growth and technical progress abroad offer us new export opportunities and chances to benefit from access to cheaper and higher-quality products than we can produce. As Commissioners noted at the beginning of this Part, the challenge is one of change, adaptation and adjustment; the opportunities may be unlimited. In light of these developments, however, the choices Canadians must make are difficult.

We Commissioners have been frequently reminded, in the course of our task, that Canada's domestic economy is largely defined by its relationship to the wider global economic system. Canada's last Royal Commission on our economic prospects captured this point:

*Something of Canada's essence is defined by its external relations. Much of its economic structure can be explained only in terms of its external trade . . .*

*The ships loading lumber on Vancouver Island or aluminum ingots on the Saguenay are reminders of how deeply our material well-being is involved in the prosperity of other countries, even outside the boundaries of North America.<sup>1</sup>*

Canada's economic development, then, as well as our government's economic development policies, are significantly affected by conditions beyond our borders. As a relatively small, "open" economy, Canada is particularly vulnerable to outside influences on its trade and economic performance. In order to foster stability and predictability in some of these external forces, successive Canadian governments have sought to develop formal rules for conducting relationships with our trading partners. The pursuit of this

objective has always involved an essential problem: How are we to reconcile conflicting priorities among national objectives and the requirements of a stable international economic system? To resolve inherent conflicts has required a continual process of negotiation and compromise at both the domestic and the international level. Governments have often had to adjust and put to positive use the constant tension between the forces of economic protection and trade liberalization.

For almost forty years, Canada has pursued a largely multilateral approach to its foreign economic policy; indeed we have been one of the strongest supporters of the multilateral system centred on the GATT and the International Monetary Fund. This approach was the most effective way to improve and secure access for our products and to instil order, stability and predictability into that process. Even on the import side, we have found that we must negotiate multilaterally to open our own market, in exchange for access to foreign markets. This action has proved a useful tool of industrial policy and has allowed for orderly adjustment of the economy through foreign competition.

To a great extent, Canadian trade policy has been, and will continue to be, developed as a trade-off between the business objective of securing improved access to foreign markets, the economic need to promote efficiency and competitiveness in the domestic economy, and the political need to maintain our sovereignty and freedom of action. The international trade and payments system largely determines the design and use of particular policy instruments. For Canadian producers and investors, there are several tests of this international system. Can our government successfully improve market access for those sectors where Canadian production is, or can be, competitive in world markets? Will it maintain current access available to Canadian producers? Will it protect producers from unfair or injurious foreign competition? Because private sector investment is necessary for growth and job creation, Canadian producers need to be confident that their access is secure, and that foreign governments will not move to frustrate the efforts to market Canadian goods abroad.

The multilateral system of rules is intended to facilitate decisions favouring adjustment and to penalize decisions favouring protection, but it needs political will to make it work. Between 1973 and 1979, the Tokyo Round of trade negotiations provided a framework for organizing political will. The negotiators sought to reduce trade barriers and to move the ongoing management of trade relations in the direction of freer trade. For the past six years, however, there has been no such framework.

A new round of GATT negotiations may be initiated, to concentrate on elaborating world trade law and removing remaining barriers to world trade, and to provide a basis for organizing political will to resist protection. The results of a future GATT negotiation are not certain, however, nor are they just around the corner. A new round of negotiations requires complex co-ordination and revolves largely around the interests of three or four players: the United States, the European Community, the less-developed countries (LDCs) as a group, and, perhaps Japan. Canada can make an important contribution, but we cannot control either the agenda or the outcome. Even to

influence the outcome requires adroit negotiators. The Community is reluctant to come to the table. The United States is eager, but as yet has no negotiating authority. The LDCs are willing, but insist on some problematic pre-conditions and do not agree on the agenda. Japan is willing, but largely because a new round would facilitate management of its trade relations with the United States and the European Community.

Canada's economic growth is critically dependent on secure access to foreign markets. Our most important market is the United States, which now takes up to three-quarters of our exports. More, better and more secure access to the U.S. market represents a basic requirement, while denial of that access is an ever-present threat. We are extremely vulnerable to any strengthening of U.S. protectionism. Early bilateral negotiations with the United States could provide opportunities for the two countries to negotiate reduction or elimination of tariff and other barriers to cross-border trade, at a pace and on a scale not likely to be achieved multilaterally in a further GATT round. Such negotiations could also be used to win agreement on rules designed to deal with special or unique problems affecting cross-border trade; they would provide a more secure shield against a U.S. policy of protection.

The pursuit of Canada-U.S. free trade is not at odds with efforts to strengthen and improve the existing multilateral framework. Rather, Commissioners see it as a complementary approach, involving concentration of our efforts and scarce resources on our most important market. We see multilateral negotiations proceeding in parallel. In our view, such a two-tiered approach is the best way to ensure that Canadian industry will win sufficient access to foreign markets to invest and grow with confidence. At the same time, it will allow us to open our market in an orderly fashion and thus ensure that trade policy does its part in encouraging the development of a more competitive and more productive economy.

Commissioners see negotiations with the United States as neither panacea nor disaster, but as a prudent course which will help to make us richer and, by making us richer, strengthen the fabric of our country and increase our self-confidence. While this course may initially make Canada more dependent on the U.S. market, it will offer our nation a more secure relationship and thus make us less vulnerable. Ultimately, it should strengthen and diversify our economy, achieving for us goals that we have long sought, but which have eluded us, largely because our domestic manufacturing sector has been too weak to attain them.

Negotiations leading to freer trade, whether pursued bilaterally or multilaterally, will be of little use if they are not supported by the right domestic policies. Our support for freer trade, therefore, depends in no small way on the recommendations Commissioners develop later in this Report. These recommendations should contribute to strengthening the competitiveness and productivity of Canada's domestic economy. Trade policy alone will not be enough.

Commissioners, like others who have enquired into Canada's relations with developing countries, see a need for Canada to take more positive action to help these countries through aid and trade measures. We have reached this conclusion, not only on humanitarian grounds, but also on the basis of our

perception of Canada's own interest. Development of stronger links with these countries through aid and trade will pay dividends to future generations of Canadians, by contributing to a more stable world environment and by nurturing future trading partners.

We believe that the approaches we recommend below will help to strengthen our country. They will allow Canadians to pursue the gradual transition from a staple economy to a fully-industrialized modern economy, living in harmony with, but distinct from, our friends and allies.

## **Recommendations**

- Having carefully considered the analyses presented above, Commissioners make the following general recommendations:
- Canadians have benefited from and contributed to the multilateral system of trade and payments developed primarily in the last 40 years, and we should continue to support that system as the mainstay of our foreign economic policy. Canada is sufficiently strong and independent, however, to pursue bilateral initiatives, including better economic relations with the United States, within the framework of multilateral relations.
- Canadian import policy in general should be based on a recognition of its costs to consumers and the costs of delaying adjustment. Canada should minimize any new protection, reduce protection gradually as part of bilateral or multilateral negotiations, and accelerate adjustment processes.
- Export promotion should be pursued aggressively and with greater reliance on private sector mechanisms, but the degree of subsidization this may involve should be within internationally accepted rules and practices.

## ***International Trade***

International trade is the life-blood of the Canadian economy. It is a major contributor to Canadian growth, jobs and real incomes. In view of the changing nature and patterns of international trade, Canadians are now confronted with several options in formulating trade policy. This Commission has identified three major approaches, each of which has several variations. Canada might:

- Maintain its present policy. It might keep to the level and type of protection currently in place, but make selective efforts both to improve access abroad and to protect Canadian industry on a limited case-by-case basis.
- Participate actively in a new round of multilateral trade negotiations under the auspices of the GATT, in order to improve and secure our country's access to foreign markets, to open up our own market, and to strengthen the legal framework for international trade.

- In addition to taking the initiative for the elimination of trade barriers at the multilateral level, open negotiations with the Government of the United States to reach an agreement on a substantial reduction of barriers, tariff and non-tariff, between Canada and the United States.

This Commission rejects any generalized move toward greater protection or toward import substitution as a general policy to insulate Canadian producers from the international economy. This approach, while perhaps the most comfortable in the short term, would lead, in the longer term, to major inefficiencies in the national economy, a loss of jobs and lower incomes, and would contribute to an erosion of the multilateral system. In our view, a policy of maintaining the *status quo* would carry the serious risk of taking Canada backwards to a more protectionist position.

■ Commissioners recommend that multilateral trade negotiations under the GATT remain a central theme of Canadian trade policy; thus Canada should move quickly to define its objectives for the forthcoming round. The GATT has served Canada well, and our nation's participation in further strengthening this international system of co-operation is a general insurance policy for the future. Broadly stated, Canada's objectives should include:

- A more ordered world trading environment: that is, sufficiently stable, predictable and transparent international trade relations to instil a degree of business confidence that will lead to job-creating investment
- More secure access to our major markets, particularly the U.S. market
- Improved opportunity for the further processing of our natural resources before export, by reducing foreign barriers to manufactured goods
- Improved access and trading conditions for agricultural and fishery products
- An improved framework of international rules which will encourage orderly adjustment in the Canadian economy.

■ Commissioners recommend that the Government of Canada, at the same time it undertakes an initiative at the multilateral level to eliminate trade barriers, open negotiations with the Government of the United States to reach agreement on a substantial reduction of barriers, tariff and non-tariff, between Canada and the United States. Such an agreement would have to stand within the terms of Article XXIV of the GATT, and it would provide for a reduction of barriers between the two countries, but would leave each country with freedom of action to maintain separate trading policies with other economic partners. We do not recommend a more intensive arrangement such as a common market or an economic union, where even closer integration would take place between these two economies.

- Commissioners recommend that Canada negotiate a legal arrangement with the United States which incorporates strong safeguards to limit spill-over from the arrangement and thus to protect substantive policies, such as those pertaining to culture and defence, which are functionally unrelated to trade in goods and services. Indeed, a policy that creates no linkage should be explicitly confirmed in order to avoid surprises if the Government of Canada, as we recommend, were to pursue a more aggressive policy of support for indigenous cultural expression as a concomitant of a bilateral trade initiative.
- Commissioners recommend that this legal arrangement attempt to regulate three general types of barriers that currently restrict trade between the two countries. We recommend that:
  - Tariffs be phased down to zero over a period of perhaps ten years. Effective rules of origin must be developed.
  - An approach should be developed to use measures of contingent protection as follows:
    - For measures governing “fair” trade (such as safeguard action) and “unfair” trading practices (such as anti-dumping and countervailing-duty proceedings), enforcement would be shifted from national administrative tribunals to a new Canada-U.S. intergovernmental body established under the arrangement; this body would be known as the “Canada-U.S. Trade Commission” (CUSTC).
    - Detailed codes of national conduct would be required to govern resort to other non-tariff measures such as discriminatory federal and state-government/procurement practices, product standards and federal customs, classification rules and administrative procedures. Again, these matters should be subject to review of the CUSTC.
- This Commission holds that a free-trade arrangement should incorporate explicit provisions which reflect the proportionately greater costs of adjustment that Canadians will face. The Canadian economy needs more time for adjustment than does the U.S. economy. We therefore recommend a two-track approach to phasing in the tariff cuts to allow U.S. rates of duty generally to be reduced either at a faster rate or earlier than Canadian tariffs. The Canadian government should quickly develop strategies for adjustment which are compatible with the framework of adjustment assistance proposed in Part V of this Report, that is, the new Transitional Adjustment Assistance Program. The emphasis of government programs should be on assisting workers to adjust to new employment opportunities. In addition, a reoriented industrial policy, as set out in Part III, will encourage the flexibility and growth orientation required by a freer-trade environment.
- This Commission recommends that the Government of Canada urge the Government of the United States to implement the



free-trade arrangement by amending U.S. federal and, if necessary, state legislation to conform to the arrangement, and that they do so under a “fast track” procedure which would require Congress to pass implementing legislation within 90 days of the President’s formal declaration that he intends to sign an international agreement binding the United States. We also recommend, however, that a formal treaty eventually be struck once both governments have had sufficient experience with the arrangement.

- This Commission recommends that negotiations in Canada proceed on the basis of a broadly based, federal-provincial consensus, and that provinces be prepared to give legislative assent to the provisions of the arrangement, in keeping with the high degree of consultation that will be required to achieve federal-provincial consensus. We also recommend that in the longer term, Canadian governments establish a federal-provincial constitutional procedure: sections of the treaty that impose obligations on provinces would come into effect across Canada when two-thirds of provincial legislatures, representing at least half of Canada’s population, passed resolutions in support of the treaty.
- This Commission recommends the formation of a three-tiered Canada-U.S. intergovernmental institution to provide basic executive and administrative decisions; technical staff services; adjudication of complaints and appeals under the agreement. We further recommend the following mechanisms:
  - A committee of national officials at the ministerial level to be responsible for the enforcement of the agreement’s obligations
  - A supporting body of officials known as the “Canada-U.S. Trade Commission” (CUSTC) to manage non-tariff barriers, but subject to appellate review by the Ministerial Committee
  - A standing arbitral panel with binding powers as a board of last resort, to resolve disputes arising from conflicting interpretations of the agreement. Such a panel would consist of two Canadians, two Americans and one neutral member to be chosen by the members of the panel.
- International trade and industrial policy are inextricably linked. In Canada, there is the added dimension of cultural and social implications. To undertake successful negotiations on freer trade with the United States will require an extraordinary management effort by the Government of Canada. The Commissioners, while making no specific recommendation on how best to prepare the way for the negotiations, wish to express concern that the current federal departmental structure does not appear to provide the degree of integration required to carry out a major negotiation of this kind. It may be that an Office of the Special Trade Negotiator should be established, and that the incumbent should report directly to the Prime Minister.

## *Development Assistance*

■ The motives of altruism and long-term national interest coincide in this Commission's recommendations for Canadian objectives pertaining to Canada's relations with developing countries. In pursuing these objectives, Canadians should be aware that the primary responsibility for development rests with the nations in question, and that although greater international efforts are required, difficult intranational, social and institutional issues are often the fundamental impediments to progress, just as they are in all nations. Commissioners recommend:

- An improvement in both the quantity and the quality of Canada's aid performance. Canada should advance to the Lima target of 0.7 per cent of GNP, not by 1995, but by 1990, and aim to achieve 1 per cent of GNP by the year 2000. The Canadian government should reduce the fraction of our aid which is tied, and to facilitate this reduction, we should rely more on multilateral than on bilateral aid.
- That Canada work within global institutions to improve the receptivity of these bodies to proposals helpful to developing countries. Canada should, for instance, systematically seek ways to involve developing countries more fully in a future round of GATT negotiations.
- That the Canadian government be ready to consider proposals for mitigating some of the more harmful effects of the international debt crisis on developing countries. Canadians should resist pressures for economic protection that would apply to exports from these countries. A more constructive and conciliatory approach to developing countries and their problems will not only help these countries, but also yield longer-term dividends for all countries. □

## *Note*

1. Canada, Royal Commission on Canada's Economic Prospects, *Final Report* (Ottawa: Queen's Printer, 1957), p. 17.



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## Growth and Employment

### Conclusions and Recommendations

#### General

Canada's growth and employment prospects depend heavily on developments in trade and in the use of our human and natural resources. Regional development policy and the institutional framework of our federal form of government also affect our growth and employment prospects. Part III of this Report addresses other components that affect these prospects: the role of capital, technology and management; the choice of industrial policy; the demand management or setting of monetary and fiscal policies; and the flexibility of wages and prices in responding to the vagaries of the business cycle. While the following recommendations are addressed separately, their strength depends significantly on their integration with the recommendations in the rest of this Report.

Governments must be prepared to vary their role in the allocation of human, capital and natural resources in response to changes in external and domestic pressures. In general, however, governments should endeavour to facilitate the operation of the market mechanisms of our economy, rather than to seek occasions for further intervention.

■ In the management of the economy, governments must acknowledge the considerable international and domestic constraints on policy. They cannot provide quick solutions to every economic difficulty. Rather, they should set the medium- and long-term framework within which solutions can be worked out.

Although economic growth is a key means of increasing the welfare of all members of society, Commissioners do not advocate the pursuit of maximum growth at all costs. The claims of growth must be balanced against those of equitable income distribution, employment security and environmental quality. □

## Recent Performance and Prospects

Canada's post-Second World War performance was strong until 1973; after that date, inflation began to climb rapidly, and productivity growth declined. Since the 1981-82 recession, unemployment has been our most serious policy concern.

This Commission has examined four independent projections of Canada's likely economic performance in the absence of major policy changes. These forecasts suggest that Canada's growth rate in real gross national product over the next two decades will closely parallel the U.S. rate. Annual real growth in Canada should average 3 per cent during the late 1980s, and decline to about 2.5 per cent during the 1990s, in keeping with a decline in the rate of labour-force growth. The growth prospects for natural resource-based production seem weak, especially in mining and forestry.

■ Most analysts predict that unemployment will remain at relatively high levels in Canada throughout the 1980s. Current high rates of unemployment are associated with insufficient total real demand relative to total supply. In addition to this critical problem, there are major structural problems which, unless addressed, will not allow unemployment to drop below 6.5 to 8 per cent over the long term. This level is unacceptable by this Commission's standards, and the problem of reducing the structural unemployment rate must be addressed. □

Employment growth and productivity growth are essentially independent. Growth in the labour force is the principal cause of employment growth. Productivity growth increases both the supply of output and real demand to roughly equivalent degrees. Thus, growth and employment goals are not in substantial conflict over the longer run. We can improve productivity without harming long-run employment growth; more generally, technological unemployment is unlikely to become a major problem. Rather, increased productivity and technological change are the key to longer-term growth in real income and economic welfare.

Some fields have experienced an increase in the rate of technological innovation over the past two decades, but the overall rate is difficult to estimate. The decline in productivity growth since 1973 might suggest a decline in the pace of technological innovation. However, the recent increase in the share of gross national expenditure spent on research and development (R&D) in the United States and Canada will raise the pace of technical change and contribute to a recovery in productivity growth.

## Industrial Policy

Canada's industrial policy has shifted since 1945, emphasizing, in turn, nationalistic goals or trade liberalization, development of the manufacturing sector or development based on natural-resource wealth.

Industrial policy in Canada incorporates a wide range of policy instruments, some of which have purposes related to trade or to general economic

policy. Neither the federal government nor the provinces have blueprints for industrial policy. This omission reflects a fundamental reliance on market forces and private-sector enterprise as the engine of growth.

Commissioners' review of foreign industrial policy indicates that policies that work in some countries may not work in others. Despite Japan's low expenditure on R&D, that country has been successful in the knowledge-intensive industries. France and Germany have very different industrial policies, despite being members of the European Community. France has a highly targeted interventionist approach, while Germany's approach is more market oriented. There would seem to be no particular mix of industrial policy instruments that ensures success.

Canadians differ on the proper role of government in promoting economic growth and employment. The polar extremes of a strictly hands-off approach and a highly interventionist, targeted, industrial policy appear to overlook the complexities of policy formation and practice.

■ Relative to current practice, Commissioners favour a more market-oriented industrial policy. More particularly, we favour letting the market work and placing less emphasis on government intervention to protect declining industries. We have reviewed the possibility of a more specifically targeted approach – the strategy of “picking winners” – but we believe it unlikely that such a highly interventionist approach would meet with greater success overall than would a more neutral policy.

For several reasons, some modes of intervention make sense; hence Commissioners do not favour a strictly hands-off approach. Furthermore, while there is little evidence in Canada or abroad that a targeted industrial policy is more effective than a market-oriented approach, other countries will continue to experiment. Canada should monitor these experiments carefully and consider strategic ways of strengthening its areas of comparative advantage. In our judgement, however, Canada has relied on intervention too often, too extensively and in too *ad hoc* a fashion.

Canada's industrial policy should emphasize broad-based support programs that work in tandem with basic market forces. To the extent that government involvement is required as, for example, in R&D support, benefit/cost criteria should guide it.

This Commission does not propose a blueprint for industrial development; indeed, to attempt a detailed formulation would be counter-productive. We believe, however, that consistent with our emphasis on market mechanisms, there should be a clearly stated framework for industrial policy. Such a framework would facilitate both private-sector decision making in Canada and the co-ordination of government policies and programs. This stated framework should express the strategic objective for industrial policy. Commissioners believe that the productivity of Canadian industry should predominate over other concerns, and that we should concentrate on improving our competitive position.

Commissioners believe that industrial policy should fortify incentives for excellence, for the efficient allocation of resources, and for adjustment to new economic realities. Such a policy would produce increases in real income, fuller employment and the means to address income distribution.

To improve the productivity of Canada's human, capital, and natural resources, and the competitive position of Canadian industry, industrial policy should include the following elements:

- A supportive macro-economic framework that while controlling inflation, promotes growth of output and employment at a reasonably even pace, in accordance with the economy's capacity
- A commitment to freer trade and the freer flow of investment. We favour both multilateral freer trade and bilateral free-trade negotiations with the United States.
- A commitment to strengthening Canada's labour, capital, technology and management resources.

### ***Capital, Technology and Management***

Recommendations respecting education and training are addressed in Part V of this Report.

- With respect to capital, technology and management, this Commission makes the following recommendations.

#### ***Capital Formation***

- International comparisons suggest that Canada has not suffered from any serious lack of investment over the last two decades. However, some recent economic analyses indicate that the tax treatment of savings and investment may result in a capital stock (that is, national wealth) that is too small.
- While this Commission has not reviewed the tax system in detail, it does appear to us that government should examine the effect of this system on savings and capital formation. This examination should consider the adequacy of the current allowances for inflation in the tax treatment of savings and investment. It should also consider the desirability of altering the current personal tax system by substituting an expenditure base for the income base.

#### ***Domestic R&D***

The effectiveness of R&D expenditure is more important than setting a target level in relation to GNP.

- To increase the effectiveness of domestic R&D, governments should consider the following measures:
  - Ensure the availability of existing incentives to all business through some type of refundability of tax losses.
  - Broaden the definition of R&D while lowering the rate of tax subsidy, even though we recognize that such a broadening could give rise to administrative problems.
  - Ensure that adequate resources are devoted to obtaining information about foreign technological developments and to disseminating information on technological developments to domestic industry.
  - Encourage excellence by concentrating Canadian effort on projects, research and development of world-scale value through “networking” between experts within Canada, as well as internationally.
  - Reduce protection of domestic industry and encourage it to be more competitive internationally.

### *Technological Acquisition*

New technologies are increasingly shared on a global basis, and the originating country has little lead time over others to exploit its advantage. Canada draws extensively from the world pool of new technologies, in part through investment in Canada by multi-nationals. New manufacturing technologies spread more slowly in Canada than they do in other countries.

- A potential solution is to liberalize trade and to reduce the existing barriers to the flow of equity capital.
- Public policy in education and the gathering and dissemination of information could improve technological adaptation in Canada. Post-secondary institutes should place more emphasis on science, engineering and business courses. Universities should be more active in the commercialization of inventions. The National Research Council’s initiatives on information gathering and dissemination could be a model for other agencies. Technology brokers, contract-research organizations and think-tanks have assisted technology acquisition in other countries. Both the private and public sectors in Canada should consider more activity of this nature.

### *Management and Entrepreneurship*

- Increased international competition demands that Canada draw on world-class management. We should have greater exposure to competition, a reorientation of small-business/assistance programs, and strengthened business schools. Closer bonds between business and the arts community would improve product design.

- Entrepreneurship is another key component of national economic development. While small business is a vital source of entrepreneurship, other sources also require encouragement. Governments should consider changing regulations to stimulate equity investment by financial intermediaries in small and medium-sized firms, and change the tax system to make equity ownership more attractive.

### ***Framework Policies***

Another element that is needed to improve Canada's economic position is a commitment to framework policies that encourage the private sector to adapt to change and the efficient allocation of Canada's human, capital and natural resources. Framework policies include tax policy, competition policy, general regulatory policy, foreign investment and adjustment policy.

- Our recommendations in each of these areas are as follows.

#### ***Tax Policy***

- While Commissioners have not undertaken a comprehensive review of tax policy, they have investigated the issue in general terms and looked at some specific problems. Tax policy has a fundamental influence on economic and social choices.
- We recommend a thorough review of the influence of the tax system on decisions that distinguish work and leisure, and consumption, savings and investment. Policy makers must become more aware of the efficiency costs of the tax system. In addition, Canadian tax policy must recognize the fluidity of capital flows.
- There appears to be merit to building on recent changes that moved personal income tax in the direction of a personal consumption tax.
- Governments should review non-neutralities in the corporate tax structure and consider indexing of capital assets for inflation. Alternative accounting methods of defining the corporate tax base, such as the cash-flow approach and the refundability of negative taxes, are also worthy of review. Such provisions could replace fast write-offs of exploration and development expenses in the resource sectors, and accelerated capital-cost allowances in the manufacturing sector.

#### ***Competition Policy***

Canadian industry appears to have become more concentrated at the producer level over the past decade. However, trade liberalization and deregulation have reduced concentration at the seller level. Mergers and conglomerates can result in undue concentrations of economic power; they can also improve efficiency and competitiveness internationally.



- Canada's competition policy should better reflect both of these realities. Commissioners recommend that Parliament empower the Director of Investigation of the Combines Investigation Act to report on all developments that impede competition in Canada, including trade protection and regulatory provisions. We recommend further that governments exercise greater discretion respecting mergers and conglomerates, directing restraining provisions to those cases where a clear threat to competitive practices is evident. With increased trade liberalization, the primary area of concern could be the non-internationally trading sectors of the economy. Canadian firms should retain the right to co-operate with one another in export markets, provided that they do not reduce domestic competition, and clarification should be offered through advance rulings. All large corporations, public and private, Canadian owned and foreign owned, should be required to file annual reports with the government.

### *The Regulatory Framework*

Commissioners do not accept the simplistic notion that regulation should always be kept to a minimum. Some current problems, such as those associated with the environment, can probably be addressed only through an increase in regulatory activity. In many other areas, however, a reduction in regulation, and a concomitant increase in competition, would substantially increase economic efficiency. Even where regulation is necessary, it could in many cases be made simpler and more responsive to changing conditions.

- We recommend that government undertake to review and reform the regulatory framework as a whole. Regulatory agencies should be subject to closer Parliamentary scrutiny than they are at present, and their mandates should be more clearly and closely defined. Whenever possible, regulatory activity should be subject to a "sunset clause": that is, it should be limited in advance to a specific term.

### *Crown Corporations and Privatization*

- The sale of some Crown corporations to the private sector would be a logical adjunct of deregulation, since it would enhance competition. By the same token, the federal government and the provinces should arrest the tendency toward nationalization or mixed enterprises, particularly insofar as this tendency is associated with industry bail-outs. Both levels of government should reassess the functions of these Crown corporations and mixed enterprises. If the functions or objectives of a given Crown corporation could be met more effectively by other means, the enterprise in question should be either phased out or

sold to the private sector. If a Crown corporation is to be privatized, foreign buyers should not normally be excluded from bidding for the assets. Exceptions to this rule include cases where purchase by a foreign buyer would result in barriers to entry by other competitors, or where the industry in question should be reserved for Canadians.

### *Foreign Investment*

Over the past 15 years or so, Canadian ownership of our industries has increased substantially. It is now appropriate to re-examine mechanisms for monitoring foreign investment in Canada. Bill C-15 provides some useful guidelines, but further innovations are required to balance the need for international equity funds and the need to foster good corporate citizenship.

- The review of foreign investment proposals should be conducted by a quasi-judicial tribunal to ensure full public disclosure and political accountability. Fast-track procedures and practices for the handling of commercial confidences would need to be developed. Commissioners believe that new foreign investments need no longer be reviewed; the tribunal should review acquisitions only. The threshold for review should be raised from \$5 million in gross assets to at least \$50 million in order to focus resources on the larger and more critical take-overs. The review process should emphasize the competitive and technological conditions surrounding the proposed foreign take-over. The government should clarify the standards governing the post-entry behaviour of foreign investors by promulgating a general code of conduct applicable to all major firms, domestic and foreign, operating in Canada. To promote compliance with the code of conduct and to improve our understanding of the consequences of foreign control, the government should legislate an annual reporting requirement for all major firms or for corporate groups operating in Canada with assets in excess of \$50 million. Firms should be required to disclose specified types of information relevant to their observance of these guidelines. Canadian directors should be required to file an annual statement detailing their firm's efforts to achieve the objectives of enterprise performance set out in the proposed code of conduct.

### *Adjustment Policy*

- Whenever possible, adjustment assistance should be provided to workers rather than to firms. Commissioners recommend the institution both of tougher international agreements and of mandatory reference to a neutral agency, such as the Tariff Board, in order to make it more difficult for governments to

resort to protection of declining industries. By the same token, we also recommend that it be made more difficult for governments to resort to the use of firm-specific subsidies; this could be done by attaching conditions to the recipients, and by requiring the costing of off-budget subsidies. If firm-specific subsidies are given in declining sectors, the assistance should go to the most viable, and not the weakest, firms. Part V deals at length with our recommendations regarding labour adjustment policies. Declining single-industry communities require special labour-adjustment assistance.

If the economy is flexible and adaptable, adjustment will probably be much easier, and involve less unemployment. In addition, real income levels will be improved. Flexibility in prices and wages—or, more generally, the development of successful incentives—is the key to achieving a flexible and adaptable economic structure.

### *Infrastructure Support Services*

This Commission views policies regarding transportation, communications and infrastructure generally as vital components of an industrial policy designed to enhance Canada's productivity growth and overall competitiveness. Commissioners note with concern the shrinking share of government expenditure devoted to such infrastructure.

■ We urge both the public and the private sector to view investment in the transportation and communications field as a priority. While Commissioners recognize that a strong public role in this field is both inevitable and desirable, we conclude that deregulation and a more market-oriented approach is desirable.

The private sector should be encouraged, through the tax system and government programs, to adopt the technological and other measures necessary to establish a first-rate transportation and communications network across the country. Canada needs better mechanisms for accommodating divergent regional-investment policies and regulatory policies that have national implications.

### *Government Intervention*

■ Government should provide itself with a clear set of guidelines to determine the nature of its intervention at the sectoral or firm level. Given the difficulty of measuring the costs and benefits of intervention, Commissioners recommend that selective intervention be used sparingly. Few cases warrant special attention, and the burden of proof should be on those that propose intervention at the sectoral or firm level. A strict limit on the funds budgeted for intervention is essential. Intervention should be undertaken only where there is clear evidence of market failure, or in industries that exhibit substantial economies of scale, or where high risk and

large size make it difficult for market forces to operate adequately. Where these considerations prevail, the following guides should apply:

- The benefits of intervention must demonstrably exceed its costs.
- If efficiency is not the overriding objective, the objective should be achieved at the least cost.
- There must be sufficient consultation with business and labour to ensure that the chosen means of intervention are appropriate.
- International obligations must not be jeopardized.

### *The Economic Union*

■ A commitment to a strengthened economic union is a vital element of a healthy Canadian economy. Barriers to the free flow of labour, capital goods and services should be minimized, and integration of policies should be harmonized. □

### **Stabilization and High Employment**

For structural and institutional reasons, the rate of unemployment consistent with stable inflation in Canada is in the range of 6.5 to 8 per cent. Expansionary monetary and fiscal policies cannot sustain levels of unemployment below this range over the longer term. A permanent reduction in such "structural" unemployment would require structural changes, by which we mean such policies as freer trade, labour-market adjustments, and new mechanisms for labour-management relations.

The current rate of unemployment (about 11 per cent) is well above the rate consistent with stable inflation. This unacceptably high rate is the result of an insufficiency of total demand relative to total supply. Impediments to reducing unemployment by even 3 to 4.5 percentage points are the large federal government deficit, the high real current rates of interest and the extraordinarily complex role played by expectations.

Limitations in forecasting and lags in the effect of policy action argue against moderating short-run fluctuations in economic activity through discretionary action. The federal government should use stabilization policy to achieve non-inflationary growth in demand in the medium term, while preserving automatic fiscal stabilizers. However, economists disagree about the strength of the self-righting forces in the economy, that is, the forces that will drive unemployment toward its "natural" or full-employment level. Commissioners believe that discretionary stimulus or restraint can help in periods of major extended divergence in demand from a non-inflationary growth path.

Global interdependence, especially in capital markets, limits the degree to which policy can insulate an open economy such as Canada's from foreign developments. Given our flexible exchange rate, we can choose our inflation rate in the long run, and to that extent, we can have a made-in-Canada macro-economic policy. But the influence that we can hope to have on real

demand in our own economy is likely to be short term in nature and rather limited in scope.

■ To preserve independence in domestic policy for Canadian authorities, this Commission recommends a flexible exchange rate. We do not recommend exchange controls or an interest equalization tax to control capital outflows.

Commissioners share the widespread concern about the size of the federal government's deficit. We recognize that if the government does not reduce the current structural deficit, it will have to increase taxes just to pay interest costs and will find its flexibility seriously constrained.

■ Commissioners recommend a strategy of gradual deficit reduction, given the current outlook of slow recovery. To stabilize or decrease the debt/GNP ratio, the government will need to reduce the deficit by about 1.5 per cent of GNP, which would be equivalent to \$10 billion by 1990–91. The practice of laying out an explicit medium-term fiscal plan, introduced in the December 1979 budget and continued since, is useful. We favour using a combination of tax increases and rather broad expenditure reductions to reduce the deficit. The precise means of achieving this reduction are a matter for shorter-term government policy, but Commissioners offer one possible means for consideration. This would be to set the indexing factor for the personal income tax and for some transfer-payment programs at  $x$  percentage points below the rate of inflation and to hold the price factor for all other expenditure programs—except foreign aid and national defence—at  $x$  percentage points below the rate of inflation. Setting these annual indexing factors three percentage points below inflation for a period of three years would generate a reduction in the deficit of about 1.5 per cent of GNP, thereby reducing the deficit and by that amount the deficit/GNP ratio from the 6 to 7 per cent range projected for the late 1980s.

■ Under present circumstances of high unemployment, a shift to a less expansionary fiscal stance, so as to reduce the deficit, should be more than matched by a temporary shift to a less restrictive monetary stance. A moderate increase in the projected growth of demand, which might significantly reduce unemployment and strengthen investment, should still be consistent with a further reduction in inflation.

While Commissioners recognize that adherence to a steady monetary-growth guideline can help to ensure that a stable, non-inflationary environment will be maintained, shifts in the demand for money during the past few years have made this approach difficult to apply. Furthermore, such an approach might lessen governments' ability to adjust the mix of monetary and fiscal policy in order to balance consumption and investment, and to balance the sectors of the economy that are strongly influenced by the exchange rate and the sectors that are not.

■ As a compromise solution, the government could relate demand-management/policy targets to the growth of nominal GNP. This policy would require a willingness to adjust both monetary-growth targets to nominal GNP, in the event of significant shifts in relation of the money supply, and monetary and/or fiscal policy in the event of severe prolonged departures of nominal GNP from a steady growth path. Commissioners recommend that the joint setting of monetary and fiscal policy be consistent with non-inflationary growth of nominal demand.

Commissioners have also considered potential adjustments to lessen the distortions and damage that any continuing inflation imposes. We share what seems to be a general preference that has emerged over the last few years, to emphasize low and stable inflation rather than structural adjustments that would make it easier to live with inflation.

■ Despite the preceding conclusion, Commissioners believe that serious consideration should be given to indexation of financial assets, accounting systems and tax systems. To adjust the tax system to take inflation into account would improve its neutrality in general and lessen the incentive to rely on debt financing in particular.

In Commissioners' judgement, permanent wage and price controls or even a permanent tax-based incomes policy would probably not prove acceptable to Canadians and would not be consistent with our general approach of promoting a flexible, adaptable and growth-oriented economy.

■ We do, however, recommend the temporary use of controls or incentive-based incomes policies if the country needs to reduce inflation again. Furthermore, the use of temporary controls could bring about a more rapid reduction of unemployment than presently seems to be in prospect. Such temporary controls should be the subject of negotiation with business and labour groups.

Commissioners believe that a formal voluntary incomes policy, which would involve commitments to respect common guidelines for wage increases and for price or profit patterns, will be difficult to achieve, given the structure of labour and product markets in Canada.

■ We recommend, however, continued informal and formal consultation on a broad range of economic issues, and increased openness about the bases of economic policy formation. Such an approach might assist public understanding and encourage realistic attitudes about wages and prices. It might also contribute to lower unemployment.

■ Commissioners believe that gain sharing—that is, making compensation more dependent on the current performance of the firm or industry—offers the most promising approach to achieving greater cyclical stability in employment and productivity growth.

Gain-sharing would be viable only in an environment of greater trust and openness, and thus we tie our recommendation for its use to our position on consultation noted above.

Commissioners recommend to labour, business and governments that they consider some form of incomes policy, coupled with supportive monetary and fiscal action, to increase employment. Without such a comprehensive approach, reduction of unemployment to the level of 6.5 to 8 per cent may be a lengthy and difficult process. Furthermore, without such a demonstration of political will by all major groups in society, and by individuals as well, the prospects for undertaking major structural changes to reduce unemployment below 5 per cent would appear to be less bright. This basic challenge of political will is the central determinant of improved economic performance. □







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## Natural Resources and Environment

### Conclusions and Recommendations

The natural resource sector's contribution to Canada's economic well-being, cultural life, and political traditions and institutions has been immense. Because natural resources have been so important to Canada's past, however, we tend to exaggerate their importance to our future. In fact, the resource sector has not grown at a rate commensurate with the economic expectations we have developed in the years since the Second World War; nor does its projected growth match our hopes for the decades to come.

It has become clear in recent years—if it was not clear before—that Canada's natural resource endowment is not unlimited. We are losing our agricultural land to suburbs and shopping centres. Our stands of readily accessible, high-quality timber are largely gone, and our richest and most accessible deposits of ore and fossil fuels are already in production. Our mismanagement of the fishery has meant that we have not been able to reap the potential benefits of the designation of the 200-mile offshore zone in 1977. These problems of supply are compounded by prospects of lower demand in world markets for forest products and most non-fuel minerals. Moreover, our forestry and minerals industries can expect increasingly stiff competition from countries with lower production costs, and this competition will be made all the more difficult by the rapid advances in products and process technology.

These problems do not mean that our basic resource industries will disappear. Relative to other nations, Canada remains well endowed with natural resources. The outlook for oil and gas, a few minerals, hydro-electricity, and Western grains is favourable. The dollar value of production in the resource sector will continue to grow. Nevertheless, the share of output in this sector will decline, relative to the share of output in other sectors of our economy, although the decline will not be as rapid as it was in the first two post-war decades. Total exports of resource products will continue to

expand, and the terms of trade are unlikely to turn against us in any dramatic fashion. Increasingly, however, we shall have to supplement resource exports with exports of more highly processed products if we are to maintain our capacity to buy the goods and services of other nations. The pattern of relative decline will mean that we can generally expect no net gain in resource-sector employment in the future: a growing proportion of Canadians will find their jobs in factories or offices. Indeed, the decline in the resource sector's share of total employment is the clearest indication that the sector will not be the engine of economic growth that it was in the past.

The prospect of a decline in the relative importance of the resource sector in relation to our national economy is no reason to neglect that sector's problems or its claims. Resource industries are still essential to the economic life of many regions of Canada. Moreover, we have an obligation to pass on to future generations a variety of viable resource industries founded on a natural endowment that is as secure and as healthy as we can make it. Canada's success in resource production owes as much to human ingenuity as it does to the resource endowment itself, and many of the problems of the sector can be overcome, or at least diminished, by appropriate applications of that ingenuity. We must apply new methods, new processes, new public policies, and new thinking to the problems of maintaining both the competitiveness of the resource industries and the integrity of the natural environment that is their base.

■ Chapter 12 set out this Commission's detailed recommendations for the individual resource sectors. The thrust of our recommendations for dealing with the challenges ahead in each resource sector is as follows:

- For agriculture, we recommend a range of measures, from expansion of foreign markets, to increased R&D, to reform of national supply-management marketing boards, planned to enhance the efficiency of a sector which has great potential over the long term.
- For forestry, we recognize a legacy of mismanagement and recommend significant changes in the way the forest sector operates, as well as a major infusion of public and private investment.
- For the fishery, what has been lacking is political will, and we recommend measures to build on the fundamental reforms of the Kirby and Pearse Reports to shift the balance in public policy toward building a viable economic base in Canada's coastal regions.
- For minerals, we recognize generally the more limited possibilities. We recommend a more realistic approach to adjustment and a movement towards a profit-based tax system.
- For energy, we recommend a new framework based on the principles of efficiency, fairness and predictability, and a complete overhaul of the fiscal regime for oil and gas.

- For the environment, we recognize the growing challenge and the need to integrate decisions related to environment and economic development. We recommend a series of measures to correct the incentives which are aimed at protecting the environment; and, in general, we propose strengthening the regulatory framework.

Commissioners believe that it is important, however difficult, to assess the problems and opportunities of the resource sector in a more comprehensive way, just as, for example, governments focus from time to time on the general issues of the manufacturing sector.

■ The following general principles briefly relate Commissioners' detailed recommendations to the management of the resource sector as a whole:

- We conclude that in Canada, with all its rich resource heritage, there is no conflict, in the long term, between the stewardship, preservation and enhancement of the natural resource base and growth prospects for the traditional resource industries. Consequently, we perceive a vital need to integrate environmental decisions and decisions related to economic development, and our proposals for action in each of the particular resource sectors reflect this perception. Thus we recommend a study of the loss of prime farm land to non-agricultural uses and emphasize our concern about the problem of soil deterioration and soil salinity. We support the infusion of large sums of both public and private monies into reforestation and silviculture, and we recommend that the duration of leasing agreements between governments and forest companies be increased in order to provide an incentive for long-term management of forest tracts. Finally, in recognition of the fact that natural resources belong to the Canadian people and must be passed on to future generations, we believe that private developers should continue to pay governments a royalty based on production for oil and gas and minerals.
- In many other places in this Report, we call for less government intervention; in the area of environmental regulation, however, we are obliged to call for more. Over the long term, the task of environmental regulation promises to be immense. We shall have to deal with growth in the number and size of projects that may adversely affect the environment, with an increasing number of pollutants and hazards, with the irreversible, and sometimes unquantifiable, effects of a growing range of industrial substances and processes, and with the emerging international aspects of our environmental responsibility. Consequently, we recommend that governments increase their spending to provide the analytical resources needed to support

the long-term regulatory task. We further recommend that federal environmental processes be put on a statutory basis, and that federal and provincial review processes be brought into greater harmony.

- Changes in the pattern of world trade have offered new opportunities and new challenges to the Canadian resource sector. Our ability to realize the opportunities—and to survive the challenges—will depend on our ability to design resource strategies suited to a global context. This consideration has led us to recommend that the grains sector and the fishery sector pursue marketing and production strategies that will give them access to the new and rapidly growing markets in the developing countries. Whether it is a question of expanding our markets or of beating the competition, we believe that it is within Canada's interest to work for free trade, both at the multilateral level and at the bilateral level, with the largest purchaser of Canadian resource products, the United States. The adjustment problems that would derive from freer trade and the bargaining tactics that would be necessary to bring it about would vary with each resource.
- We believe that in many instances a stricter adherence to market principles and an increase in the incentives to the private sector would brighten the prospects of Canada's resource industries. Thus we consider that a commitment to market pricing for both oil and gas would provide the incentive essential to increased exploration and development. For oil and gas and minerals, we believe that the establishment of a taxation scheme based largely on profits rather than on output volumes would both promote the development of marginal supplies and allow the industry to make more rational resource-allocation decisions. Although we do not advocate transferring ownership of forest tracts to private industry, we do suggest that such modifications to the land-tenure system as increasing the duration of leasing agreements would promote more responsible forest management. Finally, we recommend a phasing-out of national agricultural-supply/management marketing boards and their replacement by an income-stabilization scheme designed to moderate large fluctuations in farmers' incomes.
- We believe that there is room for significant improvement in the efficiency of both the regulatory framework and the handling, licensing and transportation infrastructure that supports the resource sector. We underline the important effect of the Crow Rate on the transportation of all bulk commodities, especially Western grains. We support further movement in the direction of market-rate principles when the Western Grains Transportation Act comes up for review, but we leave it to the Committee of Inquiry on Crow Benefit Payment (Hall Committee) to advise on specific adjustments to the payment of the Crow

Benefit. In the minerals area, we recognize that the regulatory structure is cumbersome and slow, and we recommend that governments undertake a systematic review of their regulatory processes with a view to streamlining them. We would also draw attention to the fact that fisheries management has all too often led to overcapacity, unnecessary tensions, uneven product quality and, thus, lost opportunity. For oil and gas, we recommend a simpler taxation regime and a simpler pricing formula, both of which would decrease medium- and long-term uncertainty.

- The resource sector has undergone far-reaching adjustments since the Second World War. Further adjustment will be both essential and unavoidable, although perhaps less dramatic than it has been in the past. We believe that if a given operation has failed to realize a profit over a sustained period, adjustment is inevitable and should be allowed to take its course; governments should not intervene to support uneconomic activity. Mines that can no longer produce an ore competitively should be phased out, and we believe that in general, the same principle holds for the fishery. As we pointed out above, however, government action is necessary in some areas to guard against deterioration in the quality of our renewable resource base. In particular, we recommend a substantial increase in both public and private expenditures for the renewal of the Canadian forest.

There must be and can be a balance in the adjustment process between efficiency and fairness to people whose livelihoods or communities have long depended on traditional resource industries. In the case of the family farm, we recognize the special problems created by farmers' limited access to equity capital, by the volatility of farm prices, and by the principle that the land is to be passed to future generations. We therefore support the retention of special credit schemes for agriculture and, as mentioned above, we urge consideration of an income-stabilization scheme to replace national supply-management boards. By the same token, we support replacement of Unemployment Insurance for fishermen by a new production-bonus and income-stabilization program, a scheme that would promote more efficient behaviour without reducing total benefits. Fishermen would also be eligible for income supplementation under the Universal Income Security Program (UISP) proposed in our recommendations on social security. In the minerals sector, we recommend the provision of adjustment assistance for communities and individuals affected by mine closures.

- Research has a large pay-off, but often the benefits seem too distant to the producer of the resource to justify the expenditure. We recognize that there must be renewed Canadian effort in fundamental research, especially in the traditional resource

industries, if Canada is to match progress in competitor countries. Research into soil deterioration and new crop varieties warrants long-term funding by government. So does research related to aquaculture and to maintenance and improvement of the forest base. We have also called for an increase in expenditure on training in forestry. Finally, we support a stepped-up research effort in the field of environmental management, where we believe that the institutional capacity to provide scientific advice on a systematic basis is essential.

- In view of the importance of resources to Canada's future economic prospects and of the need to take a more integrated view of the problems and opportunities in the resource area as a whole, we recommend the establishment of a Council of Resources Ministers to provide leadership for increased federal-provincial co-operation. We recognize that various ministerial groups (for example, on agriculture and mines) now exist, but we believe that it is important for a co-ordinated strategy across the range of resources to be developed, based on the principles we have outlined above. We also recommend the development within the federal government of a greater capacity to analyse the contributions and problems of the resource sector as a whole. □



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## Human Resources and Social Support

### Conclusions and Recommendations

This Commission wishes to make a number of general observations concerning some of the issues we have reviewed in this part of our Report. Several of the major recommendations proffered in this section are best considered as a package. Thus the reforms Commissioners propose for Unemployment Insurance (UI), the new Universal Income Security Program (UISP) and the new Transitional Adjustment Assistance Program (TAAP) would have maximum efficacy if they were implemented together. The savings generated by the UI changes would finance the TAAP, and the UISP would provide financial assistance if some incomes were lowered by the adjustments. The TAAP would support the effect of changes in the UI system that would promote economic adjustment, while the UISP and some elements of TAAP would cushion any resulting difficulties experienced by individual Canadians.

Since the overall level of social policy expenditures in Canada is low by OECD standards, there is no strong general case for attacking the deficit by reducing social expenditures. However, reallocation and restructuring could greatly improve the system and would be valuable in providing help to those who most need it, while containing overall costs.

Looking forward, Commissioners can see no trends that will inevitably undermine the fundamental viability of social programs. Such factors as the aging of the Canadian population or the demands imposed by technological and economic change require careful planning, but none is likely to prove so large as to make our programs unsustainable, particularly if the reforms suggested in this part of our report are carried out.

We Commissioners are of the opinion that tax and transfer systems cannot be given valid consideration in isolation from each other. Thus, major reform of our income-security programs also requires reform of some aspects of personal taxation.

## **Labour Markets and Unemployment Insurance**

After considering Canadian labour markets, Commissioners are of the view that Canada's most important goals are to create more jobs and to improve the situation of individual Canadians by eliminating any inappropriate incentives in current programs. We undertook our analysis on the assumption that current trends in participation rates will continue, bringing a steadily increasing proportion of women into the labour force. While these trends are basically manageable, particularly given our assumption, detailed in Part III, that labour supply itself creates demand for labour, they do portend continuing high levels of unemployment—and continuing preoccupation of policy makers with that problem—for the next five to eight years, and they do add significantly to the training requirements Canadians must face.

We note in our analysis of labour markets that the highest proportion of current unemployment is either created by deficiency of aggregate demand or by structural factors such as mismatches between available job requirements and skills. A significant amount of unemployment is also created by “frictional” effects, that is the inevitable lags and delays as workers move from one job to another. We have dealt in Part III with aggregate demand deficiency. Here we recommend several measures to facilitate adjustment and training, thus reducing structural unemployment. We also recommend changes in unemployment-insurance and income-security programs which will lower frictional unemployment. Without undertaking changes such as those we are recommending, it will be almost impossible, even in the long run, to reduce unemployment below 6.5 to 8 per cent of the work-force, the current non-accelerating inflation rate of unemployment (NAIRU). Since we consider even those levels to be unacceptably high, we lay great emphasis on these types of reform.

Some increase in unemployment is also engendered by our existing UI programs. First, by making unemployment relatively “cheaper” for individuals, it has, in some cases, a negative effect on job search. Secondly, by providing, through its benefit structure, that individuals in some areas may qualify for 40 weeks of benefits by 12 weeks of work, it encourages regular cyclical unemployment; a feature taken advantage of by both employers and employees. Again, by providing extended benefits in some areas but not others, it discourages labour-force adjustment, while providing no extended benefits to large numbers of unemployed Canadians. Moreover, because its premium structure is unrelated to the risk of unemployment, it penalizes steady employers and employees and shifts benefits towards firms and employees with unstable employment patterns.

■ With respect to Unemployment Insurance, Commissioners recommend that the federal government consider a package of changes such as the following:

- Experience rating which establishes premium rates that are proportional to the risk of unemployment. These rates should generally be calculated on a firm-by-firm basis.
- A reduction of the benefit rate to 50 per cent of insurable earnings



- An increase of the entrance requirement to 15-20 weeks of insured work over the preceding year
- Tightening of the link between the maximum benefit period and the minimum employment period; for example, establishing a ratio of two or three weeks of work as qualification for one week of benefits
- Elimination of the extended benefit period based on regional unemployment rates.

These changes would reduce UI benefit costs by at least one-sixth in respect of the reduction in benefit rates and approximately one-sixth in respect of the elimination of regional extended benefits. The cost reductions that could be achieved by the other changes are too sensitive to behavioural change even to be estimated by methods available to this Commission. However, total savings of at least \$4 billion at April 1985 rates of unemployment are probable.

- Commissioners therefore recommend that:
  - The savings in respect of the first three UI reforms be passed along as reductions in overall premium levels. (The regional extended benefits are financed from consolidated revenues.)
  - Personal and corporate taxes be raised by an amount equivalent to premium reductions to create a Transitional Adjustment Assistance Fund. The government savings from termination of extended benefits should be added to the fund.

■ This Commission recommends that the Transitional Adjustment Assistance Fund be used to finance a Transitional Adjustment Assistance Program. This program would provide adjustment assistance for Canadians who have exhausted their UI benefits, or whose lay-offs appear permanent, provided that they were willing to move or to undertake retraining to improve their employment prospects. The program would provide greatly expanded support for:

- Portable wage-subsidy programs
- Mobility grants
- Training programs
- Early retirement.

In addition, the TAAP could be used to provide compensation for losses in assets, such as housing, which occur as a result of the decline of communities. It should also be possible for TAAP funds to be used on a pooled basis to assist workers to purchase equity in plants which would otherwise shut down or in other forms of local economic development projects. In general, the extent of entitlement of workers to TAAP funds should be proportional to their length of attachment to the labour force, since older workers will typically experience greater transitional difficulties than younger workers.

■ Commissioners recommend that existing policies promoting equal pay for work of equal value should be maintained. However,

these may involve some negative consequences. If they are used apart from affirmative action programs, for instance, they may actually result in reductions of employment opportunities for disadvantaged groups. Moreover, they can serve to move Canadians too far away from a market-determined to an administered wage system. Commissioners therefore recommend that legislation emphasize creation of equal employment opportunities through affirmative action, rather than the principle of equal value. Commissioners generally approve the approach put forward by Judge Rosalie Abella. This would involve:

- Legislated requirements for affirmative action by all employers covered by the Canada Labour Code
- Encouragement of all provincial jurisdictions to follow suit
- Contract compliance action by the federal government and Crown corporations.

We are not convinced, however, that sufficient attention has been paid to the costs of equal employment-opportunities programs or, particularly, to the issues of equity among the various disadvantaged groups in Canadian society.

- We therefore recommend that the program be phased in following:
  - A three year experimental program of affirmative action in Crown corporations
  - Extensive consultations with the private sector to ensure effective but least expensive implementation to begin in three years' time.

This Commission believes that the programs are more likely to be effective if they are supported by legislation and backed by an adequate enforcement agency.

- We therefore recommend:
  - Legislated equal employment-opportunities provisions, rather than guidelines
  - Establishment of fully adequate levels of funding for the federal Human Rights Commission and equivalent provincial institutions.

■ Work schedules are necessarily established on the basis of understandings between employer and employees that will express a balance between the requirements of the work process and the desires of the employee. This Commission has found, however, that some factors exist which may interfere artificially with the achievement of this understanding. Any such factors should be eliminated in order to achieve fuller flexibility of labour-market arrangements, thus enhancing both employee satisfaction and productivity.

- Commissioners therefore recommend such changes as:
  - Basing Unemployment Insurance, Worker's Compensation and CPP premiums on hourly earnings, with a ceiling on contributions that applies to hourly rates rather than to weekly or annual compensation
  - Eliminating the bias against some categories of reduced hours in creating eligibility for paid holidays or termination notice
  - Encouragement of pro-rating of fringe benefits. □

## **Immigration**

In the past decade, Canadian immigration policy has become more restrictive than our historical norm, both with respect to numbers of immigrants and with respect to the criteria for admission. We Commissioners do not believe that this narrowing is necessary or appropriate, given the long-term projections for Canada's population growth. We are concerned, however, about the overall implications of a more open immigration policy.

■ We therefore recommend:

- A major examination of Canadian demographic trends and their implications for our government's future immigration policies
- That the same study examine, by means of open debate and other methods, the cultural, linguistic and racial implications of other forms of immigration policy
- Establishment of a long-term plan for immigration that, depending on the results of the study described above, will move to higher numbers of immigrants over a number of years. This new plan should place less emphasis on narrow occupational requirements and more emphasis on broadly skilled and generally capable immigrants. □

## **Labour/Management Relations**

■ This Commission notes the very great importance of the labour movement in Canada and throughout the developed world in improving the pay and working conditions of workers. To this end, we wish to recommend generally that all Canadian governments provide a supportive legislative environment for the labour movement and for collective bargaining.

The adversarial system of union-management relations needs to be re-examined. Management must respond to employee concerns about job security and job satisfaction, and to the often-untapped capability of all employees to contribute to improved productivity and product quality. Unions must find new ways to facilitate and to participate in this process; they should have and take the opportunity to do so, not by relinquishing their representation of

employee interests, but by adding to it a responsibility for helping to achieve the levels of competitiveness essential to the survival of the enterprise.

Since reductions in strikes and lock-outs could be achieved by the following measures, Commissioners recommend that:

- Labour-relations boards be permitted to create multi-employer and multi-union bargaining units when this is likely to facilitate the bargaining process. Such units should not be imposed but, rather, could be permitted on the application of one or both sides.
- More information be shared by the parties to industrial disputes.

Commissioners are not persuaded that shorter contracts or forced centralization of bargaining structures are likely to improve labour-management relations significantly. Changes in these areas should therefore proceed on a voluntary basis. The right to strike or lock out must be rationally limited by the need to maintain the health and safety of the public.

Employer-employee relations in Canada seem likely to be most responsive to improvement at the level of individual firms, plants and union locals. Overall solutions proposed at the provincial or national level seem unlikely to be as effective as local solutions.

- Commissioners therefore recommend that governments support, on a local and voluntary basis, such features as:
  - Preventive mediation programs
  - Quality-of-working-life programs
  - Gains-sharing/compensation arrangements.
- Occupational Health and Safety is an area of important and growing concern. Since great improvements can still be made, this Commission recommends:
  - Greater emphasis on these issues at higher levels of corporate management. Management failure in this area is bound to result in higher levels of government intervention.
  - More complete experience rating of worker's compensation premiums in order to provide direct financial incentives for firms to minimize health and safety problems, in order to ensure that the full social costs of hazardous work environments are reflected in prices.
  - Continued and increased reliance on the internal responsibility system rather than increased government intervention. This requires:
    - Mandatory, joint health-and-safety/labour-management committees in all eleven jurisdictions, such as currently exist in nine
    - Vesting real responsibility in those committees rather than leaving them with only an advisory role

- Continual revision of standards by governments as new information about hazards becomes available. This is most important in dealing with occupational health problems. At a national level, these standards could most appropriately be developed by the Canada Centre for Occupational Health and Safety. The appropriate jurisdictions would then apply the standards.

Commissioners are particularly concerned with occupational health issues. Because occupational diseases typically have long incubation periods, it is often difficult to evaluate the effects of industrial processes on workers. That same factor makes it difficult to establish a direct link between occupational factors and specific diseases, and therefore current worker's compensation programs are not well adapted to handling occupational disease.

- In addition to our recommendation of continual development of standards and monitoring of processes, Commissioners also urge that:
  - The federal and provincial governments consider the immediate implementation of a comprehensive social insurance disability plan to deal with the longer-term effects of occupational health problems, as well as with other forms of disability in the working-age population. This plan could be implemented either by expanding worker's compensation into a comprehensive disability scheme or by extending the present disability provisions of the Canada and Quebec Pension Plans. A federal-provincial working party is currently considering this measure, but progress in developing this idea has been slow. □

## **Education and Training**

In Canada education and training programs discharge multiple functions. They constitute an important way in which young Canadians learn to live together in our community, and they are the most important means by which labour-force skills and knowledge are adjusted to labour-market demands. They also provide a major means of upward mobility. Our post-secondary educational institutions are also the major source of basic research and of much applied research, and they are important repositories of our culture.

Commissioners anticipate no diminution in the general importance of post-secondary education and training. Indeed, PSE is likely to increase in importance as the demand grows for high levels of knowledge and research. Training programs, particularly those relating to industrial training, are likely to become more important as Canadians adjust to the shifting realities of the labour market. The Transitional Adjustment Assistance Program, by providing greatly increased support for training, may be a particularly important factor in this adjustment.

Commissioners are concerned about several features of our educational and training system. In particular we are convinced that:

- Higher levels of excellence are desirable and achievable.
- More flexibility is desirable.
- Use of the PSE system by low-income Canadians is insufficient.
- The current federal-provincial transfer arrangements are inappropriate.
- The current balance between industrial and institutional training is still tilted too far towards the latter.
- There is inadequate provision for retraining and re-education in adult years.

With respect to post-secondary education, Commissioners believe that it is desirable to consider substantial changes in financing mechanisms in order to create a more competitive, dynamic and diversified system. The current EPF transfer arrangements are quite inappropriate for achieving those objectives. They should be changed to encourage reform of the system, but in a way that will minimize direct federal intervention in this area of provincial jurisdiction, while still allowing for the achievement of national objectives.

There has been very considerable informal discussion of the intergovernmental transfer arrangements for post-secondary education over the last five years, but there have been no formal federal-provincial negotiations. Commissioners believe that it is important for federal and provincial governments to enter immediately into serious discussion of other methods of funding than the current mechanism both because the present arrangements are less than satisfactory, and because the uncertainty about possible future arrangements may be impeding necessary reforms to the sector. Several broad options are available. Our federal government could:

- Withdraw completely from this sector and cede enough tax points to the provinces to cover its current contributions
- Return to the pre-EPF funding formula
- Provide an amount equal to provincial "own source" funding, exclusive of the tax points transferred under EPF
- Freeze its basic contributions at current or slightly lower-than-current levels while matching on a 50/50 basis incremental provincial spending on education. Alternatively, incremental funding could be earmarked to support high-level university-based research.
- Undertake a form of direct-to-student financing, allowing for variable PSE fee schedules.

This Commission does not recommend federal withdrawal from PSE involvement. Many of the benefits of post-secondary education are national in scope, and provincial governments might tend to undersupply this sector unless there were some federal presence, particularly if they believe that graduates are likely to leave the province. Many representations and briefs emphasized the importance of involvement of the Government of Canada in this field.

Among the cost-sharing options are:

- A return to pre-EPF arrangements. This would be a step back to a basically unsatisfactory system.
- Provision by the federal government of amounts equal to provincial "own source" funding. This move would constitute a massive cut-back by the federal government, part of which would probably be passed on by provincial governments to already hard-pressed institutions.
- Freezing of basic federal contributions with cost-matching of increments. This stance would exert relatively little "leverage" on provincial government expenditures in this sector and would mean starting from a basically unsatisfactory base point. However it is probably the most desirable of the cost-sharing options, particularly if some of the incremental funds are used to support research.

With the possible exception of the final choice, none of the cost-sharing options seems likely to be satisfactory. None is likely to improve the incentives for institutions to achieve the flexibility and excellence which Commissioners think desirable. We believe that the complex institutional arrangements for PSE have created very considerable inertia in the system, to the detriment of the student and society as a whole. We therefore believe that the direct-to-student/funding option, although it is the most radical and thus difficult for PSE institutions and governments to accept, may be a preferable approach. In order to institute that approach, the following changes would be required:

- The federal government should terminate the PSE cash portion of its EPF grants to the provinces, ceding the EPF tax points plus further equalized tax points in an amount equivalent to the Quebec abatement. All of the cash portion of EPF, including transitional adjustment payments, should be replaced with an education-expense tax credit or grant, to be increased annually at a rate equal to nominal GNP increase.
- Provincial governments should be encouraged to deregulate the fee structure of post-secondary institutions.
- Provincial transfers to institutions might appropriately be based on an equal per-student figure, without differentiation for particular programs, and be related directly to enrolment.
- Students should be responsible for a portion of education costs. Beyond that point, the federal credit should vary with the amount of expenses and tuition fees, up to a limit. The amount of the grant should vary only with fees and expenses directly related to education, and no attempt should be made to direct students into "demand" programs by means of a variable grant structure.
- A portion of the current EPF transfer (and some additional funding) should be reallocated to granting councils, which should begin to cover overhead costs of funded research.

A variant of this approach would provide much higher grants to graduate students than to undergraduates. This approach would greatly increase the "value" of graduate education for institutions and thus encourage specialization and excellence.

■ Commissioners strongly recommend that federal-provincial discussions aimed at rectifying an unsatisfactory situation should begin immediately, that they should consider a range of options such as we have suggested here, and that they should proceed with all urgency toward a conclusion. We believe that close further attention is merited for the options which:

- Replace intergovernmental transfers with direct-to-student transfers. Careful consideration should be given to the variant which makes much larger transfers to graduate students.
- Freeze current federal cash contributions. The federal government would match provincial expenditure increases on a 50/50 basis.
- Freeze current federal cash contributions while redirecting considerable amounts (perhaps one-half) of what would have been the incremental amounts into funding of university-based research. The rest of the funds should be used to match, on a 25/75 federal-provincial basis, larger provincial government contributions to universities.

■ With respect particularly to primary and secondary education, this Commission recommends the formation of an independent national commission to monitor quality and standards in primary and secondary education and to conduct and record research in related areas. We urge that the private sector take the lead in establishing and financing this commission. With respect to occupational training programs, Commissioners believe that the direction of reform presently being followed by the federal government is generally appropriate. Increased attention to on-the-job and job-related training is to be encouraged.

■ This Commission also recommends that the federal government:

- Provide a special wage subsidy for labour-force entrants who have not had other forms of vocational training or post-secondary education. The subsidy would normally be provided to persons 15 to 18 years of age and to women entering the labour force after discharging family responsibilities. The subsidy could be financed by eliminating other job-creation programs for young people.
- Provide, under the Income Tax Act, for a Registered Educational Leave Savings Plan which workers could use to help finance the cost of training. Careful consideration must be given to the type of program eligible for RELSP financing and to the possibility of requiring completion of any training or education undertaken in order to qualify for the advantage.

Commissioners wish to point out that the TAAP described earlier might significantly increase training requirements in Canada.



Access to higher education by low-income students should be an important avenue of upward mobility in Canada. However, for a variety of reasons, low-income students make far less use of higher education than do middle-income students, thus impeding both their own upward mobility and Canada's labour-force efficiency. Several of the barriers faced by low-income students are not susceptible to immediate government reduction. Family-socialization patterns and peer pressures can be influenced only very indirectly. But governments can and should ensure that undue financial barriers are not blocking the educational prospects of low-income students.

■ This Commission therefore recommends strongly that further attention be paid to improving access for low-income students. At the least, therefore, we recommend continued support for the Canada Student Loans Program and its provincial equivalents, and we recommend that loan limits be changed in consonance with other policy changes proposed in this Report, to remove any financial barriers that might exclude otherwise-qualified low-income students. We also wish to emphasize the importance of continuing to grant scholarships for students who excel, no matter what their income level, and of offering bursaries for low- or moderate-income students with above-average grades who might otherwise be reluctant or unable to continue their education.

Commissioners are concerned, however that the CSLP is increasingly unable to deal with the issue of student independence of parental support. Therefore we do not reject the concept of contingent-repayment loan schemes, and we recommend that governments continue to consider that possibility. □

## **Income-Security Programs**

While this Commission does not view Canada's problems over the next quarter-century as unmanageable, Commissioners do believe that many—perhaps most—Canadians will have to face the need to make adjustments that will maximize their own opportunities in the face of the effects of economic change. For most Canadians, these adjustments will not be severe, but for some they will be very difficult. This is particularly true for low-income Canadians, families with children that lack income adequate to meet family needs, and workers in peripheral regions or peripheral jobs. Economic change has always caused these Canadians more difficulty than middle-income Canadians, and it will continue to do so. Moreover, even without the impact of change, there are over one million Canadian families whose incomes are inadequate to cover any but the barest necessities, and many of these can be considered the “working poor”: families where one or more breadwinners are employed all or most of the year, but where incomes are still inadequate to meet their needs.

Middle- and upper-income Canadians get a great deal of public and private support as they adjust to economic change. They receive tax-supported

education and training, and their employers often foot a substantial portion of their adjustment costs. Low-income Canadians receive relatively little such support. In general, it often seems true that the poorer one is, the more one is left to one's own devices to cope with the forces of change or destiny.

For these reasons, among others, Commissioners believe that all Canadians have a duty and a right to share the costs of adjustment and to provide help to those who need it. That has always been the basic rationale for many of Canada's income-security programs, and it should remain so.

We Commissioners are also persuaded that there is enough money in our current personal tax-expenditure and transfer-payment programs to provide a comprehensive program of support for all deserving Canadians, but that current programs are often fundamentally flawed so that the current safety net is inappropriate. We believe that Canada can do much better than it has done in providing income support for our working poor and for those undertaking adjustments in their own lives in order to build a better future for themselves and their children.

■ The Transitional Adjustment Assistance Program would go some way towards providing assistance, but other reforms, too, are required. Thus Commissioners believe that the provision of a Universal Income Security Program with a universally available income guarantee, subject to reduction at a relatively low "tax-back" rate, constitutes the most appropriate foundation for Canada's income security programs.

■ We therefore recommend that the UISP replace existing federal tax and transfer programs including:

- GIS
- Family Allowances
- Child Tax Credits
- Married Exemptions
- Child Exemptions
- The Federal Share of CAP Social Assistance Programs
- Federal Social Housing Programs

■ The replacement of these programs would make possible a universally available guarantee, in 1985, of approximately \$2750 per adult (and for the first child in a single-parent family) and \$750 per child with benefits reduced at a 20-per cent rate as other income was available. The elderly should receive an enriched option. A substantially larger guarantee of \$3825 per adult could be provided if the personal income-tax exemption were also included.

■ The UISP should be put in place at the same time as the broad Unemployment Insurance reforms described above. The entire package should be in place in 1988. The package should be phased in, however, with a two-stage approach. In the first stage, which should begin immediately, the Family Allowance, Child Tax Credit, and Child Tax Exemptions should be eliminated and replaced with a single demogrant or tax credit of

approximately \$1000 per year in 1985, payable monthly. The total amount should be available to families with a total annual income of up to \$26 000. Beyond that level, benefits might be reduced at a 25 per cent rate. Experience rating for UI should also begin immediately, and social assistance payments under the CAP should be restructured to replace the present pre-emptive reduction of benefits above the current work-related/expenses level with a 50 per cent reduction rate. At the second stage of implementation, to be completed by the beginning of 1988, the full range of UI, UISP and TAAP changes outlined above should be in place.

Commissioners wish to emphasize that recommended benefit levels and structures are indicative only. While we believe them to be correct and appropriate levels in mid-1985, they will change with time. Moreover, the interrelationship among such features as basic guarantees and tax-back levels can be varied to achieve a number of effects.

We also wish to emphasize that while the federal government could implement most parts of this proposal unilaterally, these reforms are likely to be far more effective if they are carried out in co-operation with provincial government changes. The major reason for this is that provincial governments automatically receive larger tax revenues whenever the federal government eliminates tax exemptions and deductions. If the full value of these programs is to be maintained for the social policy sector, it will be necessary for the provincial governments either to provide harmonized transfers or to cede some tax points back to the federal government in return for delivery of the income-transfer arrangements.

- Commissioners recommend therefore, that these proposals be the subject of urgent and serious federal-provincial discussion. We urge the Government of Canada to introduce them to the federal-provincial agenda at an early federal-provincial ministers' meeting and to move forward quickly towards implementation.

The UISP is not intended to provide fully adequate benefits for all Canadians who have no other earnings or income; it is primarily a supplementation program intended to compensate for the fact that there is often a considerable mismatch between earnings and needs. Commissioners therefore recommend that provincial governments continue to provide needs-tested social assistance as a top-up to UI and UISP benefits where these do not fully meet pertinent needs. The equivalent of the current provincial share of social assistance payments should be adequate for this purpose. In addition, provincial governments could reap a substantial increase in tax revenues from some of the tax changes which would accompany the inception of the UISP. It is desirable that these funds should also be used to support income-security programs; that arrangement would make provision of topping-up arrangements financially easy.

The UISP seems to Commissioners to be the essential building block for social security programs in the twenty-first century. Should governments not

be able to implement it, a series of less complete reforms would at least ameliorate some of the worst features of the existing systems.

- Thus, failing the implementation of the UISP, Commissioners recommend:
  - Reform of the family-benefits program to reduce or eliminate the child tax exemption and the family-allowance program and to increase the child tax credit, which should also be made payable on a monthly basis
  - Reform of social assistance provisions of the Canada Assistance Plan to eliminate pre-emptive taxation of social assistance benefits as other income from employment, training allowances or similar sources is received. □

We wish to emphasize that these are partial reforms only, and that the more comprehensive UISP is a preferable choice.

## **Social Services**

This Commission did not undertake an extensive review of Canada's social service programs. We did, however, receive many representations about them, and we did develop several recommendations.

■ Commissioners support the continuing devolution of responsibility for delivering social services to the community level and to non-profit associations. We strongly recommend, however, that this devolution not be handicapped by a reduction in funding, and that governments retain sufficient staff to exercise their monitoring responsibilities. The maintenance of funding is particularly important, since we could see no evidence whatsoever that social services, which include support for children, the elderly, the disabled and those with shorter-term social problems, are overfunded. Indeed, considerable evidence of underfunding was presented to us in our hearings.

- The major social services will also benefit from:
  - Further forms of assistance which will help users to become more self-reliant
  - Better integration of various forms of social and medical services at the community level

Access to many social services in Canada is now impeded by the "needs-based" approach of the Canada Assistance Plan. Only those "in [financial] need or likely to become in need" have free access to services, so that many Canadians just above the poverty level are effectively precluded from receiving such important support as family, marital and financial counselling or child-support services.

■ This Commission recommends that the current federal-provincial financing arrangements be severed from social

assistance financing and renegotiated to provide Canadians with broader access to these services.

■ This Commission is not persuaded that extensive delegation of responsibility for social services to the profit-seeking part of the private sector is likely to improve significantly the services provided to Canadians. Where such privatization is practiced, we recommend that it be done in the context of very careful government regulation of the provision of services. Profit maximization, in our view, is not always the best motive whereby to govern human transactions.

There are currently two major task forces working at the national level to review day care in Canada; therefore this Commission has not conducted research in this area. Commissioners do, however, wish to note that the current CAP day-care guidelines actually serve to make access to publicly supported day care quite difficult for middle-income Canadians, and that the current \$2000 tax exemption for child-care expenses is much more valuable to upper-middle/class Canadians than to the majority of Canadian families. Both these provisions require reform.

■ Finally, Commissioners wish to pay tribute to the hundreds of thousands of Canadians who work through the voluntary sector to help their fellow citizens. We recommend that all levels of government should continue to support and nurture such activity by providing fully adequate support and supervision for the programs dispensed through the voluntary sector. □





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## The Institutional Context

### Conclusions and Recommendations

The more government Canadians have, the more democratic we must become. The institutions of responsible parliamentary government remain the key to keeping government our servant rather than seeing it become our master. Commissioners regard Parliament as the principal forum for public debate and intend our recommendations to contribute, in general, to the strengthening of this institution.

To restore Parliament as the principal forum for national debate, we must not only bolster its democratic processes, but we must also improve its capacity to reconcile national and regional interests. We wish neither to reassert the dominance of the national government in line with the prevailing opinion at the time of Confederation, nor to establish the provincial order of government as an integral part of national government.

With regard to federalism and intergovernmental relations, two basic needs influence Commissioners' general objectives. First, it is desirable to clarify where possible, by constitutional amendment, by delegation or intergovernmental agreement, or by more clearly defined policy directions, the responsibilities distributed between federal and provincial governments. Secondly, recognizing the complexity of modern government and the interdependence within our federation, it is desirable to introduce greater certainty and stability into existing intergovernmental processes. We seek neither to eliminate intergovernmental conflict nor to further the development of non-accountable institutions. Rather we seek to secure and give greater public recognition to minimal processes and structures that will moderate the excesses and costs of unresolved conflict and channel creative solutions to common problems.

Commissioners view the Charter of Rights and Freedoms both as a guarantee of specific rights and freedoms of citizens and as an important

element of the framework within which Canadian society can evolve. This is consistent with our view that constitutional law should be responsive to social change and evolving values and attitudes, and that it should stabilize the pace and direction of such change.

## **Responsible Government and Public Accountability**

- The Canadian practice of party government has restricted the opportunities for Members of Parliament to participate in the development of public policy outside the confines of party caucuses. Organized special interest groups now challenge MPs as representatives and frequently bypass them.
- MPs could gain more influence over public policy if members in committee could investigate and debate matters of public interest on which party positions have not yet been established or fully determined. The separation of legislative committees from investigative committees would help to achieve this end by serving to provide Parliament and the government with policy analysis and guidance distinct from that which is received from administrative officials or extra-parliamentary sources.
- Parliament need not diminish the activities of interest groups, but it should provide the principal public forum for these interests to define their concerns. Parliament should encourage these groups to present their positions and demands for an open examination in relation to general interests. There should be a small number of parliamentary committees focusing on comprehensive policy matters—the budget, regulatory policy, Crown corporations, and federal-provincial relations, for example—and these would be ideal forums for such scrutiny.
- Agencies such as the Public Service Commission, the Office of the Commissioner of Official Languages, the Privacy and Information Commissioners and the Office of the Auditor General have important functions, but receive insufficient direction and control from our elected representatives in Parliament. In order to ensure accountability of these agencies, Parliament must define their procedures and basic strategies. Commissioners suggest that the Public Service Commission, the Office of the Commissioner of Official Languages, and the Privacy and Information Commissioners review their work before a Parliamentary Committee on the Public Service. This committee would study the success of these agencies in meeting the various criteria set by Parliament. The same committee, since it would be familiar with the performance of these agencies, should review their financial estimates. The Public Accounts Committee would perform this role in relation to the Office of the Auditor General.



- The federal government has formalized Cabinet structures, processes and support services in recent years, in order to restore ministerial and parliamentary control over an expanded and complex administrative structure. Although central agencies have partially checked the dispersal and diffusion of power to public servants, they can do so effectively only when under the close direction of ministers; otherwise, central agencies themselves become yet another layer of bureaucracy to be controlled.
- We have given too much autonomy and discretion to non-departmental forms of government organization such as Crown corporations and regulatory agencies. Such autonomy has undermined the principles of responsible government. To correct this situation, Commissioners recommend that greater “control” of Crown corporations be defined in the context of a reformed competition and regulatory environment, and not just in the framework of administrative accountability, in accordance with the current trend. Especially for commercial Crown corporations, governments need greater strategic control, not day-to-day interference in management decisions. Moreover, Cabinet should strengthen its review of regulations formulated by regulatory agencies.
- Although some prominent political appointments have violated the ideal of a neutral public service, it is not true that the senior bureaucracy has become politicized. The system of appointments by Order-in-Council based on professional merit on the recommendation of the Clerk of the Privy Council has worked well. However, political advice to the Prime Minister has traditionally been the basis of appointments to a large number of boards and agencies. This category may be too large; the public might be better served if more of these appointments were based exclusively on merit. An all-party group designated by the proposed Parliamentary Committee on the Public Service should review the current use of Governor-in-Council appointments to boards and agencies, the foreign service, high levels in departments, and Ministers’ staffs, in order to help distinguish between two categories of positions: those where partisan sensitivity justifies political appointments, and those where partisan sensitivity is not at issue and where professional merit should prevail. Commissioners’ opinion is that this general review process should be continuous, and that appointments of no clear partisan value should be made on a basis of “merit”.
- In light of the accelerating challenge to democratic controls presented by the increasing international responsibilities of the state, Commissioners believe it is desirable to provide secure foundations for parliamentary ratification of international treaties and for other measures to ensure parliamentary review of executive action in the international domain. □

## **Representative Government and National Socio-Economic Interests in Economic Policy Formation**

It is important to facilitate more direct and continuous involvement of representatives of Canadian interest groups in public decision making, especially in economic policy. Those interests need to interact more with one another and to take greater account of the broader concerns and conflicts within Canadian society for the resolution of which Parliament itself is ultimately responsible.

In comparison with the formal structures that have developed in some Western nations, Canadian consultative practices tend to be fragmented, informal and episodic. Current practices may be inadequate in light of recent Canadian experience and anticipated needs, such as the continuing pressures of economic adjustment. However, we do not recommend a corporatist or tripartite style of government/private sector relations.

■ Although substantial secrecy is necessary in relation to the preparation and release of the budget, Commissioners recommend that guidelines are needed to allow less comprehensive budget secrecy than now exists. We urge the House of Commons to initiate a change in the convention of comprehensive budget secrecy in order to set in motion steps towards more effective advance discussion and consultation arrangements.

It would be desirable to seek federal-provincial agreement on the timing of budgets, so that their presentation could be co-ordinated, with the federal budget either preceding or following most provincial budgets by two or three months. Pre-budget consultation should occur in several forums, but particularly in the House of Commons.

A continuing national dialogue on general directions for economic policy requires a permanent national forum. This Commission favours establishment of a permanent Economic Policy Committee of the House of Commons. The Committee would hold an annual series of pre-budget hearings timed to allow its work to influence budget preparation. It would take testimony about the nation's economic prospects from the Department of Finance, the Bank of Canada, and the Treasury Board, as well as from agencies such as the Economic Council of Canada; it would also gather the views of major groups, including national representatives of business, labour and other associations.

The Committee would scrutinize the government's performance and the revenue and expenditure implications of the positions of key interests. It should schedule its budget review to co-ordinate with its other responsibilities and with the timing of the annual First Ministers' Conference. Moreover, it would be necessary to adjust the internal priorities and planning cycle of the federal government in light of the accepted federal-provincial cycle.

Continuation of sectoral and industry-by-industry dialogue on improving Canada's economy is essential. Discussions should bring

together representatives of business and labour, and federal, provincial and municipal governments and other groups, as necessary. Government participation may not always be required. In light of these conclusions, Commissioners recommend that such sectoral discussions be developed within the following guidelines:

- Consultative mechanisms should focus on clear, specific objectives. This approach will make them more likely to be successful.
- Consultation should be a continuing process with reasonably predictable arrangements. Permanent or standing groups may be required in some cases.
- Governments must make a firm commitment to any consultative process they undertake. Effective consultative arrangements require that non-government participants have some influence on the agenda and decision-making schedule. Responsibility for the overall policy-making process, however, rests with the government of the day.
- Consultative processes aimed at consensus building must be supported by fair representation from many groups in society and, normally, by parity between business and labour.
- Sharing and refining of information are prerequisites to these consultative processes. □

### **National Institutions and the Representation of Regional Interests**

Commissioners believe that the federal principle requires that the House of Commons, chosen on the basis of representation by population, be balanced by a second chamber based on representation by region. Our institutions should recognize the federal principle, provide greater regional representation, and respond to regional interests in national policy making and administration.

- Commissioners recommend that the Senate embody the federalist principle and provide the regional representation lacking in the House of Commons.
- A reformed Senate must build on our practice of party government in its elections, caucuses and discipline. The Senate must be elected, and election to the two Houses should take place at the same time.
- In the Senate, representation should be weighted in favour of the less populous regions. All regions need not be considered equal, for the Senate should only temper, not obstruct, representation by population.
- The Senate should be elected by a system of proportional representation. The governing party is more likely to have elected representatives from all regions within its parliamentary

caucus, even if, for one or some regions, they secure places only in the Senate. A Senate elected on this basis should ensure that the governing party will usually be able to constitute a Cabinet that includes members from all regions.

- We recommend that Senators be elected in six-member constituencies. This number is large enough to effect the intended proportional representation and yet to allow for some recognition of the regions within provinces. Yukon and the Northwest Territories could elect their Senators on simple plurality. Existing numbers of Senators would be modified and distributed as follows:

	Existing	Proposed
British Columbia	6	12
Alberta	6	12
Saskatchewan	6	12
Manitoba	6	12
Ontario	24	24
Quebec	24	24
New Brunswick	10	12
Nova Scotia	10	12
Prince Edward Island	4	6
Newfoundland	6	12
Yukon	1	2
Northwest Territories	1	4
	104	144

- The Senate does not require a veto to temper, on regional grounds, the legislative majority of the House of Commons. Commissioners believe that the Senate should have a six-month suspensive veto, except in relation to legislation with linguistic significance; such legislation would require approval of a majority of francophone Senators, as well as of the Senate as a whole.
- If Senate reform along the lines proposed here is not adopted within a reasonable time, efforts should be made to reform the electoral system of the House of Commons to enhance regional representation. In that event, Commissioners favour the proposal of the Task Force on National Unity to add 60 members to the Commons, distributed to parties on the basis of their share of the national popular vote and allocated to provinces on the basis of the degree to which the parties were “underrepresented” in seats won, or not won, in relation to their share of the popular vote in each province.

Many federal departments and agencies have not assumed responsibility for regional development within their mandates. This failure has lessened the executive branch’s capacity to be regionally responsive and has undermined the effectiveness of regional representation in Cabinet.

- This Commission therefore recommends that:
  - The central administrative agencies should be structured so as to provide more regional information upon which the Cabinet

can base policy decisions. This requires that regional offices be part of the central agency apparatus supporting the Cabinet and the Prime Minister.

- The Cabinet should decentralize departments and agencies for purposes of policy planning and development. Sectorally organized departments should incorporate the regional dimension fully in departmental planning and policy development. There should be regional officials in the central administrative decision-making of departments.
- Regional representation should receive consideration in nominations to the boards of Crown corporations and regulatory agencies. If the Senate becomes an elected body, appointments of the heads of major Crown corporations and all members of the governing boards of major regulatory agencies should be subject to the approval of a Senate committee to be established for this purpose. □

### **Barriers within the Canadian Economic Union**

Despite recent expressions of concern that the Canadian economic union is becoming increasingly balkanized and fragmented, goods, capital, services and people now move relatively freely within the Canadian common market.

While lost economic output from impediments to free movement and distortions of the common market appears small, private economic actors have indicated that the policies in question create considerable difficulties for them. Even more than the economic rationale, the political rationale for the national right to free movement is a powerful idea for most Canadians.

The effect of these distortions – and the need for effective co-ordination of economic policy – are likely to increase as Canadians face greater competition from the outside world. We should create incentives to international competitiveness, and we should facilitate appropriate adjustments.

The economic union implies elimination of internal barriers and positive measures to facilitate operation of the market, to overcome market imperfections and to pursue effective stabilization, industrial and social policies. All regions must share in the benefits of economic integration.

Internal barriers may be the response of governments to local preferences, and often reflect our commitment to redistribution of income and opportunity. Thus, the challenge, in particular cases, is not simply to eliminate the barriers through constitutional prohibition or other means, but rather, how to balance the economic benefits of free movement against other goals to which Canadians aspire. The trade-offs to be made are not exclusively between economic efficiency and political diversity or provincial autonomy within the federation: Canadian federalism also involves a national community with its own requirements. Moreover, as the Canadian Charter of Rights and Freedoms makes clear, individual rights have implications for the economic union.

The goal of regional development requires that Canadian economic policy must seek not only to maximize aggregate national income, but also to encourage the economic development of individual regions.

■ Commissioners urge that a broad view be taken of the scope of section 121 of the Constitution Act, 1867, consistent with an interpretation that section 121 covers services as well as goods, and non-tariff barriers as well as tariffs. However, in light of existing controversy and uncertainty, it may be prudent to seek eventual clarification by constitutional amendment.

- We would recommend a limited amendment to include services to reflect current conceptions of the nature of interprovincial trade. On the issue of non-tariff barriers to trade in goods and services, we recommend as an interim step that governments agree to a Code of Economic Conduct.
- The governments of Canada should develop a Code of Economic Conduct to spell out acceptable practices, set out the principles of the economic union, and provide for enforcement. We advance a series of general guidelines for consideration:
  - The code should confirm general principles of the economic union applicable to both the federal and provincial governments:
    - Reduction of barriers to the allocation of capital, labour, goods and services throughout Canada
    - Non-discrimination against persons (individuals and organizations) based on province of residence
    - Commitment to minimizing the costs of provincial programs that might fall on the residents of other jurisdictions, and to prior consultation for this purpose
    - Recognition of the need for a transportation, communications and information infrastructure to support national economic development with significant regional benefits.
- The burden of demonstrating that a barrier did not violate the principles of the Code should lie with the authority imposing the barrier.
- The Code should identify major areas where reduction of barriers to internal trade should begin. Attention should focus not only on the form of the barriers, but also on the anticipated effects. The possibilities of substitution between types of barriers are extensive, and provinces vary in economic development and in their potential to inflict injury on other jurisdictions or the residents of those jurisdictions. Those drafting the Code might first consider barriers that prevent Canadian enterprises from being internationally competitive.
- Initially governments should set up the Code, and public and governmental pressure should enforce it. The intergovernmental process would provide the appropriate forum for dealing with the politically sensitive issue of internal barriers to trade. After

experience with the operation of the Code, we should move to entrench its principles in the Constitution and to enforce the Code through some other form of binding intergovernmental agreement.

- To develop the Code of Economic Conduct, monitor the state of the economic union, and explore methods for co-ordinating policies, the First Ministers' Conference should create a Council of Economic Development Ministers.
- To initiate the process of identifying and controlling internal trade barriers, Commissioners propose the following procedure. The Council will ask each government to list barriers imposed by other governments that they believe harm its provincial economy or its residents. Next, each government would be required to explain and defend those of its policies identified at the first stage. A Federal-Provincial Commission on the Economic Union would receive this material and would analyse the barriers, their probable consequences, and the justifications declared. The Commission would identify violations of the principles of the economic union and make recommendations concerning specific terms for the proposed Code. It would send this report to the Council for action.
- A Federal-Provincial Commission on the Economic Union which would serve the Council of Economic Development Ministers would have responsibility for preparing materials for the Council as directed:
  - Analysing the first round of barriers identified by the Council's initial inquiry
  - Initiating research on the state of the economic union and methods for improving it
  - Receiving complaints from groups, individuals and corporations affected by government actions threatening the economic union, investigating them, and reporting on them, with recommendations, to the public and the Council.

If a Code is eventually made legally enforceable, the Commission could become a regulatory agency, but one that regulates governments. □

## **Economic Management**

In several specific areas related to our concern with the international environment, the Canadian economic union, and economic adjustment, Commissioners believe that constitutional changes are desirable for more effective economic management; Canada requires a procedure which would allow treaties, once concluded, to be binding and enforceable on both federal and provincial authorities within Canada.

- We recommend a constitutional amendment to provide that where a proposed treaty contains provisions that require

implementation by provincial legislatures or affect rights within areas of provincial jurisdiction, the relevant sections should be ratified by provincial legislatures. We propose the application of the amendment formula for this purpose so that sections of a treaty imposing obligations on provinces would come into effect on the passage of resolutions in the legislatures of two-thirds of the provinces, representing at least half of Canada's population. We do not see this recommendation as having immediate application to negotiations with the United States on a free-trade agreement. We would recommend, however, that a constitutional solution be in place before the proposed trade agreement would come up for review in the 1990s.

■ To clarify jurisdiction and roles in the field of telecommunications, we recommend concurrent jurisdiction with federal paramountcy.

■ To clarify responsibility regarding certain aspects of overall regulation of trade and commerce, we propose that section 91(2) be amended to provide explicitly for federal regulatory power over competition and product standards.

■ If intergovernmental agreement is not reached soon on the harmonization of regulations respecting interprovincial trucking, we recommend that serious consideration should be given to bringing this matter under federal jurisdiction. □

## **Equalization**

The principle of equalization, an essential element of Canadian federalism, represents a commitment to all provinces that economic misfortune will not undercut their constitutional role. It contributes to a true decentralization of government functions, in spite of the differing economic capacities among provinces.

Commissioners stress the distinction between equalization payments and regional development programs. The former are intended to offset economic disadvantages, while the latter are intended to reverse this disadvantage. Equalization payments are necessary only because of our lack of success in combatting regional economic disparities. In practice, this means that regional development financing must be added to equalization disbursements; the federal government should not cut one in favour of the other.

■ The federal government's responsibility for interregional redistribution gives it a leading role in designing and operating the equalization scheme. Commissioners recommend that the following changes to the equalization system be discussed with the provinces:

■ Canada should return to a representative tax system that includes all 10 provinces in the base. The present five-province



calculation base allows too much room for distortion, strategic behaviour and unintended side-effects.

- Equalization payments should include some portion of resource revenues. There is no magic figure here, but the 20 to 30 per cent range seems an appropriate compromise, since it approximates the amounts that would accrue to provincial treasuries in the form of tax revenues if natural resources were in private hands.
- The concept of including needs as part of the entitlements calculation is attractive. Commissioners recognize, however, that this can develop only slowly, given the amount of data required and the serious practical difficulties involved. The inclusion of needs in the calculation will be especially important if the Northern territories enter the scheme. □

## **Regional Development**

This Commission believes that regional development must remain an essential component of Canadian policy and, indeed, of the Confederation bargain as now reflected in section 36 of the Constitution Act, 1982. It must be recognized, however, that policies intended to promote regional development have often hindered the overall efficiency of the national economy in that they impeded inter-regional adjustment and distorted regional development. Canadians need to reconsider the way in which we look at regional economic disparity, what we do to overcome it, and the institutional mechanisms we bring to the task.

- We recommend a new federal-provincial system of sharing regional development expenditures and responsibilities.
- The federal government should direct regional development programs toward improving regional productivity and the efficiency of the labour market. To these ends, such programs should include measures to improve worker and management skills, enhance research and development efforts, ensure a high level of infrastructural support, and supply assistance for intra- and inter-regional mobility. The federal government should not only provide such programs on a national basis, but should also make a special effort in the less developed provinces. While it might make sense, too, for the federal government to provide assistance for plant modernization as a means to enhance regional productivity, we believe that it should provide this type of assistance on a national basis, if at all, or that the provincial governments should take on this responsibility on a regional basis.
- Under this arrangement, the federal government would end all explicit and direct regional employment-creation programs. While national schemes would continue, federal subsidies, tax

breaks, and so on, intended only to generate jobs in, or attract firms to, a particular locale, would be eliminated. Similarly, the federal government would terminate regionally differentiated unemployment-insurance programs, tax credits, and other measures that tend to distort regional labour markets. Funds formerly allocated to these types of programs would instead become the source of Regional Economic Development Grants.

- Provinces that qualify for equalization payments would be eligible for Regional Economic Development Grants. The amounts of the grants would be determined by a formula on a per capita basis, and they would be proportionate to the degree of fiscal disparity identified by the equalization formula. As noted earlier, equalization payments are necessary to offset economic disparities, while the purpose of these new grants would be to reduce future disparities. They would be re-negotiated every five years.
- Provinces would assume full responsibility for local or place-specific employment measures as part of their own approach to regional development. They would be free to use the Regional Economic Development Grants for this purpose, subject only to two conditions:
  - Each recipient province would sign an Economic and Regional Development Agreement (ERDA) with the federal government, which would set out a broad economic development plan for the province (and for each other province) and would indicate the measures to be carried out by both orders of government. Some elements of these packages might take the form of shared-cost programs or federal contributions to provincial activities; in general, however, Commissioners recommend that under the ERDA umbrella, each government remain responsible for the implementation and delivery of its own programs, in order to enhance accountability.
  - The recipient province would be required to sign the proposed Code of Economic Conduct to improve the functioning of the Canadian economic union.
- While recognizing the immediate need for financial prudence at the federal level, Commissioners believe that the total federal financial commitment to regional development – combining the Regional Economic Development Grants and other funds spent through ERDAs – should increase significantly over the next few years.
- The federal government would continue to play an important role in other development efforts which have significant regional impacts such as:
  - A reformed equalization system
  - The proposed Universal Income Security Program and the Transitional Adjustment Assistance Program

- Sectoral policies, such as those pertaining to fisheries, agriculture, and forestry. These should be designed according to criteria for good sectoral policy (see Parts III and IV of this Report), but they ought to also be developed in close consultation with provincial governments where these are affected to an important degree.
- A sustained federal commitment to regional development requires that a single central agency be responsible for injecting regional concerns into the programs of individual federal departments, and for co-ordinating federal efforts. It would appear to Commissioners that the Federal-Provincial Relations Office (FPRO) reporting to the Prime Minister, would be the appropriate existing body. We believe also that the Federal Economic Development Co-ordinator (FEDC) or other senior officials resident in each province could help to co-ordinate federal activities within each province, interacting with the provincial government and establishing links with local economic interests. The federal government should enlarge the responsibilities of such federal regional officials, who should report directly to FPRO. □

## **Fiscal Arrangements**

### ***Tax Collection Agreements***

The Tax Collection Agreements have served Canada well. They are convenient for both citizens and governments, and they help to maintain harmony and contribute to the strength of the economic union. They should be retained. Nevertheless, the agreements are presently under considerable strain, and are in some danger of disintegrating. This Commission's proposed reforms are based on the desire to maintain the agreements, but not at an excessive cost either in terms of the accountability of legislatures or in terms of the flexibility which exists in the system.

- Commissioners therefore recommend that:
  - The agreements be amended to place the personal income tax on the same footing as the corporate tax, applying the provincial rates to the common, federally determined base. This measure would not only reduce provincial vulnerability to federal tax changes, but would also enhance provincial autonomy, since it would become easier for provinces to decide how progressive their own tax rates should be.
  - The federal government consult with provinces before introducing any tax change which would have a significant effect on the federal-provincial relationship. This recommendation is consistent with Commissioners' larger concern to reduce budget secrecy for federal and provincial governments and to ensure that federal budget proposals receive wide discussion in Parliament.

- To provide greater consultation on taxation matters of a more fundamental nature, Commissioners recommend that a new federal-provincial Tax Structure Committee be given the following mandate:
  - As part of the regular process of the quinquennial review of federal-provincial fiscal arrangements, the Tax Structure Committee would re-examine the definitions of taxable income, basic exemptions, marginal tax rates, and the like. This is really an endorsement and extension of a consultation process which is already in effect. The Tax Structure Committee would also monitor the division of tax room between the two orders of government, in light of anticipated revenue and expenditure needs, and of the difficulties of managing restraint.
  - As part of the overall concern for the economic union, the Tax Structure Committee could also discuss the implications of federal or provincial tax credits and subsidies. It would thus assist the Council of Economic Development Ministers which, we propose, be responsible for the development of an overall intergovernmental Code of Economic Conduct. This Committee would be composed of representatives of all governments, including those now outside the agreements. □

### **The Spending Power and the Impact of Fiscal Restraint on Intergovernmental Transfers**

Although Commissioners do not recommend formal limitations on the spending power, we consider that this power has important consequences for federalism and therefore should be exercised with special restraint and subject to certain guidelines concerning its use.

- Commissioners thus recommend that the spending power be retained as a vital instrument for flexible responses to changing definitions of the national interest, subject to the conditions that:
  - The judicial distinction between federal legislation providing grants or gifts and federal legislation involving direct regulation in fields of provincial jurisdiction is appropriate and should be further refined.
  - As a matter of principle within the federation and for purposes of accountability and clarity of roles, the federal government regard new shared-cost programs as a last resort in pursuing its objectives.
  - The use of the federal spending power in areas of provincial jurisdiction be supported by broad national consensus. In addition to the contribution to consensus which an elected Senate with stronger regional representation will make, consultation through the Federal-Provincial Ministerial

Councils and, ultimately, the First Ministers' Conference is essential, not only in relation to new programs, where it will occur in any case, but also in relation to the proposed alteration or termination of a program by the federal government. Designated periods of operation of, say, five years, could be considered for program renegotiation.

- In order to retain a desirable degree of federal flexibility and accountability to Parliament while assuring provinces some stability for planning and protection against rapid unexpected variations in federal spending, we recommend that:
  - Federal-provincial transfers be subject to a review on a five-year basis.
  - During that period, the federal power to make adjustments be limited to, say, 5 per cent in any given year, without provincial approval. □

### **Intergovernmental Relations and the Institutions of the Federation**

The intense intergovernmental conflict Canada experienced in the 1970s may be partly attributed to institutional limitations. Interdependence in modern federalism is inescapable and needs to be managed, as do the excesses of intergovernmental competition.

This Commission's goal is to encourage a more functional approach to federalism, one not oriented towards centralization/decentralization, but one which emphasizes the potential contribution of Canada's federal arrangements to the well-being of Canadians. Canadians should create political institutions to co-ordinate activities involving both orders of government.

While greater co-ordination of federal-provincial affairs would be desirable, Commissioners believe that the diversity of government action inherent in a federal state is also a positive contribution to society. Thus we have tried to strike a balance between encouraging institutional diversity or competition and proposing new measures of federal-provincial co-ordination.

■ Commissioners do not recommend comprehensive constitutional amendment as a means to modernize the division of powers. Instead, we urge the use of more flexible instruments to clarify or transfer the location of responsibility. To this end, we recommend that:

- The power of intergovernmental delegation be expanded so that on a particular matter, law-making authority could be delegated to another jurisdiction. Such delegations should be approved by the legislatures of all jurisdictions involved
- Constitutional amendment be used to establish a procedure that would permit the Parliament of Canada and provincial legislatures to enter into intergovernmental agreements that would be binding on their successors

- The powers of reservation and disallowance, now by convention virtually “dead letters”, be formally interred by means of an appropriate constitutional amendment.
- To provide essential recognition of the need to manage intergovernmental interdependence, and the need to co-ordinate policies and activities, the First Ministers’ Conference should be established in the Constitution with the requirement that it meet at least once each year. Such an institution must in no way encroach on the principles of responsible government.
- First Ministers may eventually wish to consider the creation of a body comparable to the Advisory Commissions on Intergovernmental Relations in the United States and in Australia. “Third parties” of this nature may facilitate behind-the-scenes resolution of intergovernmental conflicts and contribute to improving the context of information, analysis and public opinion to which the intergovernmental process will need to respond.
- Despite a plethora of federal-provincial bodies, current intergovernmental discussions are sporadic and lack co-ordination. Our purpose is to suggest a core framework of federal-provincial mechanisms which, in a more streamlined way, would support the First Ministers in their collective and individual responsibilities. Commissioners propose that the First Ministers’ Conference appoint a network of Councils of Ministers to serve in major functional policy areas and to be supported by continuing committees of officials. We believe that three central Ministerial Councils should be established in the fields of Finance, Economic Development, and Social Policy. We therefore recommend that:
  - The *Council of Finance and Treasury Ministers* which now exists and meets from time to time regarding fiscal arrangements, economic projections, and macro-economic policy be formalized to encourage greater regularity of assembly, better co-ordination of budgetary preparations, and to receive the findings of the new Tax Structure Committee, which would monitor tax developments
  - The *Council for Economic Development* seek agreement on common objectives in economic development and trade policies and identify opportunities for mutually beneficial links among regions. The Council would be responsible for monitoring and assessing the state of the economic union and would serve as the vehicle through which to develop a “Code of Economic Conduct”.
  - The *Ministerial Council on Social Policy* consider all facets of social policy, especially in the fields covered by Established Programs Financing and the Canada Assistance Plan. Consultation with practicing professionals and interested groups and individuals is particularly important in this area. We would

encourage Parliamentary Committees to play a stronger role in this activity.

- To ensure that governments are held accountable for their conduct of intergovernmental affairs, Commissioners recommend that Parliament and the provincial legislatures should establish permanent standing committees responsible for Intergovernmental Relations. □

Differing provincial regulations create inconvenience for those who wish to operate nationally. The impetus for interprovincial efforts towards harmonization must arise through the pressure of groups adversely affected by interjurisdictional variations. Commissioners therefore propose no specific institutional changes designed to enhance harmonization of provincial laws.

## **The Charter of Rights and Freedoms**

### ***The Charter and Constitutional Government in Canada***

The Charter of Rights and Freedoms signals a significant transformation of the relationship between citizens and the state in Canada. Most noteworthy are the important limitations imposed on the constitutional authority of legislatures and the elevated role of the judiciary as guardians of the constitutional rights and freedoms of individuals. The Charter will also further the rights of citizens to review and assess government actions, and it will contribute to a fuller and more regular discussion of citizen rights in Parliament. Its guarantees will probably become the basis for individuals and groups to introduce issues to the national and provincial political agendas.

The scope and application of the Charter will be tested constantly through both the legal and political processes. The Charter is not, however, a springboard for unlimited claims of citizen rights, for there are reasonable limits to its guarantees. Ultimately, its effectiveness in protecting the rights and freedoms of citizens and in enhancing democracy will be determined by the way in which citizens use this document.

■ This Commission believes that the changes recorded and introduced by the Charter should be given a broad scope in interpretation and application. Departures from its guarantees should meet stringent tests and conditions, justifying the circumstances of exception.

■ The Charter's general override provision should contribute to public awareness of legislation limiting the constitutional rights of citizens in Canada. Overriding legislation should include a declaration of intent to legislate, notwithstanding a provision of the Charter, and should include not only reference to the specific rights being overridden, but also an indication of the purpose of such legislative action. Such a statement of purpose would help the courts to ensure that limitations do not exceed what is necessary to achieve their objective; it could also be a useful reference point in discussions on whether to extend the override after the five-year period.

■ Commissioners do not suggest constitutional amendments to change and improve upon the Charter's words. Rather we consider various interpretations of the Charter which we think will serve to maximize the desirable impact it can have on Canadian society. Two examples illustrate our approach:

- We favour a broad and flexible application of the Charter at the periphery of government activity, as well as in its more visible legislative forms.
- Similarly, in the matter of the Charter's guarantees of personal mobility rights, we conclude that preferential provincial employment schemes permissible under the Charter should be strictly limited to the socially and economically disadvantaged within a province. Such programs should not preclude the federal government from simultaneously pursuing employment-opportunities programs in that province.

Inherent in the Charter of Rights and Freedoms is an attempt to overcome some of the problems of national unity that have pre-occupied Canadians since the mid-1960s. This is especially evident in the Charter's provisions respecting mobility rights, official languages and minority official-language education, as well as multiculturalism.

With regard to ethnic diversity in Canada, Commissioners believe that multiculturalism policy should seek to create circumstances that permit all Canadians to preserve and enhance their cultural heritage within the broader Canadian tradition of individual equality. Multiculturalism is not a justification for cultural or racial discrimination. For visible minorities, in particular, racism must be addressed through more than multicultural policy. There is a systemic aspect to racial discrimination in Canada. As with other patterns of systemic discrimination affecting groups such as women, the handicapped and other identifiable groups, the Charter plays an important role as both an educative and legal instrument in enhancing equality.

The Charter's equality-rights guarantees embody a broad definition and understanding of equality. These guarantees reflect contemporary notions of substantive equality in giving assurance of equal benefit of the law and equality under the law. By enabling affirmative action programs, the Charter responds to contemporary concerns about discrimination against various groups in society.

■ Commissioners believe that governments have a leadership role to play in breaking down these patterns of discrimination and we believe, too, that affirmative action is a valuable tool for this purpose. Accordingly, we view the provision in the Charter enabling governments to pursue affirmative action programs as a valuable reinforcement of government's role. Equality, however, must ultimately relate to individuals, and affirmative action must be supplemented with other programs designed with individual equality as the ultimate goal.



■ The Charter both contains guarantees of individual equality and elsewhere recognizes special rights of various groups, such as official-language minorities and Canadian aboriginals. We believe that when group rights are inconsistent with rights of individual equality, the latter, as a general rule, should prevail. □

## **The Supreme Court of Canada**

The members of the Supreme Court of Canada do not perform representative functions in the Canadian institutional and constitutional system. Judicial merit alone is the criterion by which the Court's membership and performance should be assessed. Accordingly, Commissioners reject arguments that the composition of the Supreme Court should be regionally representative. Existing provision in the Supreme Court Act for the appointment of Quebec members is based on the distinctive legal traditions of that province. We also reject socio-economic representational claims about Supreme Court of Canada membership, which we anticipate may emerge as the Court addresses complex Charter litigation involving citizen-state relations.

The central issue in the appointments process is the perception that it does not adequately involve the constituencies ultimately affected by Supreme Court decisions. Although the existing informal procedures followed by the Prime Minister before making appointments to the Supreme Court do involve extensive discussions, they are sometimes perceived as not taking sufficient account of concerned interests or advice. Measures to shift responsibility from the Prime Minister to some designated group or institution necessarily involve replacing one political process with another. If a broadly based political process of consultation is to be replaced by alternative arrangements, an elected Senate has much to commend it.

■ The constitutional status of the Supreme Court and, in particular, the independence of the Court, should be clarified by entrenchment, although there is no reason to remove responsibility for the administration of the Court from the federal government. □

## **Quebec**

### ***The Distinctive Character of Quebec Society***

Quebec is characterized by the presence within its borders of a largely francophone population which controls and gives direction to its own political and social institutions. The existence of this institutional framework which reinforces the distinction between the majority status of francophones within Quebec and the position of francophones elsewhere in Canada is central to *la spécificité du Québec*. The very essence of Quebec society lies in the fact that it is the principal, though not the exclusive, focus for the political dimensions of French life in Canada. To a large extent, Quebec remains a linguistically isolated society, an island of French in an overwhelmingly anglophone sea.

For Quebec and for francophones outside the province, the central challenge will always be how to remain French in North America.

This challenge entails practical problems in the cultural and economic domains for whose resolution Quebecers and francophones outside Quebec, individually and collectively, are, themselves, ultimately responsible. But constitutional recognition of Quebec's distinctiveness and of Canada's duality would provide an affirmation that answers to the practical economic and cultural problems of French life can be pursued within the Canadian context and with the support of the rest of Canada. The necessary compromises could thus be worked out in a clearly understood context of recognition and affirmation of a cultural complementarity which is at the very heart of the Canadian experience.

■ The initial requirement at the level of principle to secure a renewed understanding between Quebec and the rest of Canada is a statement in the preamble to the Constitution along the following lines:

*Recognizing the distinctive character of Quebec as the principal, though not the exclusive, centre for Canadian francophones and accepting as fundamental the duality of the Canadian federation . . .*

### ***Fundamental Guarantees***

As a consequence of Quebec's uniqueness, steps should be taken to ensure that no future constitutional amendment as noted below be imposed on Quebec which that province might consider to affect its fundamental interests as a distinct society:

- Concerning transfers of legislative powers from the provinces to Parliament, the simplest means to provide Quebec with the necessary protection, without putting the principle of equality of the provinces in question is to grant each province the right to opt out of any general arrangement with full compensation in all cases.
- In relation to reforms of national institutions which are not covered in the present opting-out formula, the only means to protect the interests of Quebec is through the right of veto. An obvious solution would be to grant all provinces such right in conformity with the equality principle. In the long run, this move could, however, freeze the natural development of our national institutions. Although granting Quebec the right of veto is an arrangement politically more difficult to obtain, it is closer to the intended objective, for it is the distinctive character of Quebec society for which protection is sought. It is important that Quebec have a right of veto on any amendment to the institutions described in section 42(1) of the Constitution Act, 1982, if such an amendment touches on the special character of Quebec and the duality of Canada. One method of implementing such veto would be to amend immediately section 47 of the

Constitution Act, 1982, in order to grant French-speaking Senators the right to block proposed amendments affecting Quebec under the double-majority formula described below.

### *The Senate and Quebec*

- With regard to federal legislation, any proposed bill with linguistic implications, before becoming law, should require a double majority of the Senate: that is, the approval of a majority of all Senators and of a majority of francophone Senators. Such veto would be a full rather than a suspensive veto. In light of the protection offered by this double-majority proposal, Commissioners see no need for specific guarantees to Quebec of a certain proportion of seats in the House of Commons.

### *Division of Powers*

- Because of Quebec's distinctiveness, the most obvious fields where conflicts may arise between that province and the federal government are education, external relations, immigration, communications and culture. There are ways in which Quebec could participate in dealing with these areas. While we make no recommendations, we do suggest that legal mechanisms such as delegation and inter-governmental agreements may provide a better means of accommodating the specific interests of Quebec than would constitutional amendment.

### *Francophones Outside Quebec*

- The diverse communities of Francophones in Canada outside Quebec are currently in a state of crisis. If they are to survive and flourish, prompt action is required. Commissioners suggest that beyond recognizing the principle of duality in the Preamble, governments should make efforts to extend the recognition of French and English as the official languages of individual provinces. Ontario in particular, with its large French-speaking population, should proceed promptly to implement official bilingualism. Such a step would set an example for other provinces.
- Scattered French-language communities outside of Quebec face difficulties in developing a French-language working environment. Efforts to solve this problem should be geared towards the development of French-language centres of activity. These centres would vary from province to province, depending on the population and geographic concentration of francophone Canadians. In some areas, the centres would be of an essentially cultural or educational nature, and in other areas, such as in

New Brunswick, they could include a strong economic component.

- Furthermore, this Commission wishes to point out that implementation of language rights has not kept up with the intended policy of bilingualism. We believe that litigation, while generally useful, is not the proper tool for making improvements in this direction, since it is a lengthy and costly method of dealing with these problems.
- Instead, we recommend that stronger support be given to the role of the Commissioner of Official Languages. □

### **Aboriginal Self-Government**

Measures to increase the influence and control exercised by aboriginal people over their social and economic affairs are desirable. Our commitment to this objective is based on the distinctive place of aboriginals in Canadian society as the first peoples of Canada and on the constitutional recognition they now enjoy.

Institutional reforms to enhance the autonomy of aboriginal peoples focus on the idea of self-government. Implications of aboriginal self-government for Canada's overall institutional framework and, in particular, for the three pillars of the Canadian constitutional order, Parliament, federalism and the Charter, have not yet been clarified. Indeed, many important issues have been avoided and should be addressed more squarely. The fundamental changes to our national and provincial institutions that are now being contemplated need broad Canadian understanding if they are to be acceptable in the long run. The pace of discussions, as well as the comprehensiveness of debates in Parliament and the legislatures should reflect this concern.

### **The Northern Territories**

The economic, social and environmental challenges of development in Northern Canada will remain of continuing concern to Canadians. From an institutional perspective, significant questions must be addressed—some of these in the near future.

- No Canadians—Natives and non-Natives, Northerners and Southerners—can be well served by further delays in the settlement of aboriginal land claims. Final agreements affirming and delimiting aboriginal rights should be actively encouraged. If necessary, deadlines should be established by the parties, and discussions could proceed without reference to the issues of legislative powers, sovereignty and special political status, which could be dealt with subsequently in other settings.
- The Yukon Act and the Northwest Territories Act should be amended to reflect the current practices of responsible government in Yukon and to encourage comparable evolution in the Northwest Territories. In both territories, new formula-

based financial arrangements should be negotiated, to increase the predictability of transfers and to promote genuine responsibility and accountability for expenditures.

- On the basis of federal commitment to the ultimate goal of some form of provincehood in the Northern territories, the governments involved should establish a timetable for the transfer of provincial-type responsibilities in areas such as health, labour relations, inland waters, renewable resources and the institution of criminal proceedings. Additional measures should be taken to:
  - Advance the process of transferring to territorial governments responsibilities for Crown lands that do not bear directly on the national interest and that have not been ceded to the Native people through claims settlements
  - Institute resource-revenue/sharing arrangements comparable to the types of agreements worked out with Nova Scotia and Newfoundland
  - Confirm participation of the territorial governments in federal-provincial forums where matters of direct concern to Northern residents are being discussed. Joint-management arrangements may be valuable transitional procedures.
- Failing an internally generated and ratified agreement on division of the Northwest Territories, the federal government should establish an independent boundary commission to recommend a boundary on the basis of arguments from the two constitutional forums. Subject to the spirit of the Canadian constitutional tradition and the need to recognize the essential quality of Canadian citizenship, the structure of post-division government should be left to the discretion of the respective constitutional forums. □

## **Municipalities**

Local governments are an enduring and important feature of government in Canada, despite their lack of constitutional status. Variations in approaches to local government in different provinces have permitted sensitivity, dynamism and creativity in the city-province relationship. Existing arrangements have contributed to the development of some of the most liveable cities in the world. Local governments have experienced uncertainty and frustration because of limited policy-making instruments and their relations with provincial and federal governments, but responses to current concerns must begin from the premise that we have been doing something right. Canada's major cities should be provided with the legal, financial and institutional means to fulfill their economic development role. By and large, this involves removing constraints that prevent their involvement in development.

■ Although Commissioners do not recommend changing the constitutional status of local governments, the federal and provincial governments should increase the involvement and responsibility of local authorities. The federal government should review with the provinces the possibility of occasional tri-level conferences; improve communications between municipalities and ministers whose responsibilities affect local interests; assign responsibility to investigate the significance of local concerns in national policy to the proposed Standing Committee for Intergovernmental Relations; and explore opportunities for the decentralization of specific responsibilities, including airports and federal urban properties to federally-appointed local agencies. The use of the delegation amendment, as Commissioners have earlier proposed, may become a means to delegate directly to local governments responsibility for such questions as siting, development and administration of some airports through agreement with the relevant province.

The provincial governments should continue to assess possibilities for assuming financial responsibility for requirements greatly exceeding local revenue sources. Commissioners also recommend that the provinces examine ways to designate a specific portion of income or sales-tax revenues for local government financing. Commissioners believe that revenues to local governments should be increasingly unconditional. □