



CANADA WATCH

Practical Analysis of Constitutional and Other Key National Issues

ROCKY ROAD AHEAD FOR CONSTITUTIONAL PROPOSALS

Fall Referendum May Be Used to Break Logjam

by Patrick Monahan

Even as Prime Minister Mulroney announced a meeting with the premiers for June 29, the spectre of unilateral federal action loomed large on the horizon.

An official "Status Report" on the talks, released by the negotiators on June 11, suggests that there has been very significant progress in a number of areas, most notably aboriginal self-government, changes to the division of powers, and recognition of Quebec's distinct society. (See "Constitutional Proposals at a Glance," page 4.)

But it is clear that large areas of disagreement remain. The primary trouble spots include:

Senate reform: While it has been agreed that the Senate should be elected, the allocation of seats and the precise nature of the Senate's powers remain undecided.

The amending formula: There is no agreement yet on whether Quebec (or the other provinces) should get a veto over changes to national institutions; the "veto" issue appears to be linked to prior agreement on Senate reform.

The common market: There is no agreement on a legally binding commitment to eliminate trade barriers between the provinces; all that has been agreed to is a *non-binding* state-

ment of the "policy objectives" underlying the social and economic union.

Aboriginal self-government: Ottawa and a number of the provinces are reportedly uncomfortable with the aboriginal package and are seeking changes that would clarify the jurisdiction of aboriginal governments.

SENATE REFORM STILL ELUSIVE

The tabling of a compromise Senate proposal by Saskatchewan on June 11 appeared to hold the promise of resolving the provincial differences on the issue. Under Saskatchewan's proposal, each province would elect eight Senators, but on most issues a system of "weighted voting" would apply, giving more votes to Senators from larger provinces. All provinces expressed some interest in the proposal, and the federal government has reportedly drafted a Senate scheme that incorporates the idea of weighted voting. The federal plan is said to be the mirror image of the Romanow proposal — while larger provinces would have more seats, on certain issues the votes would be weighted so that each province had an equal number of total votes.

But close analysis of the Saskatchewan and federal proposals suggests that they are an unlikely

VOLUME 1, NUMBER 1
JULY/AUGUST 1992

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basis for long-term peace on the Senate front. Not only are the proposals extremely complicated, they seem to highlight provincial inequality rather than reduce it. The basic problem with any system of weighted voting is that it offends the basic democratic principle that one person's vote should count for as much as anyone else's.

Even if most governments around the table buy either of the weighted voting schemes on offer, the idea of weighted Senate voting would appear to be a tough sell in the country as a whole. In any event, it seems unlikely that either of these proposals will secure unanimous provincial consent. Although Senate reform only requires the consent of seven provinces representing fifty percent of the population, the dissenting provinces could (and probably would) block the proposal to grant Quebec a veto over future changes to national institutions. Securing this veto has been a "bottom line" demand of Quebec's Robert Bourassa since the Meech negotiations began in 1986.

COMMON MARKET CLAUSE ESSENTIAL TO PACKAGE

Agreement on a legally-binding common market clause has also remained elusive. But it is an essential component to a balanced package, the quid-pro-quo for any transfer of powers to the provinces.

The current package contemplates the transfer of powers to the provinces in areas such as labour market training, housing, mining and culture. A

common market clause would provide a balance to this decentralization. It would ensure that provinces exercising enhanced constitutional powers will not abuse them to the detriment of Canadians in other parts of the country. Thus the failure to include a legally-binding commitment on the

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common market would be an important omission, leading to an imbalance in the whole package.

NATIONAL REFERENDUM TO BREAK LOGJAM?

With Parliament scheduled to return to debate a constitutional package on July 15, perhaps the only ace up the federal government's sleeve is the threat of a national referendum to go "over the heads" of the premiers and appeal directly to the people of the country. The idea would be for Ottawa to table its own set of compromise proposals in the House of Commons on July 15 and hold a national referendum at the end of September.

There are numerous problems with the strategy, but one of the most significant is that it is entirely dependent on the federal proposals being approved in the national vote. The thinking in Ottawa appears to

be that the public is so tired of the national unity issue that it will approve virtually anything in order to get the issue off the political agenda. But it seems more likely that the public will recoil when asked to vote on a very complicated and unpredictable package of constitutional reforms, particularly if they are opposed by premiers such as Clyde Wells and Don Getty.

What then? A "no" vote on a unilateral federal package would almost certainly put an end to the current "Canada round" effort to amend the constitution. But it would not necessarily be fatal to the country, particularly if the vote in Quebec was identical to that elsewhere in the country.

The choice for Quebecers would then be relatively clear. The effort at *comprehensive* constitutional renewal would be in tatters. The most that could be hoped for at that point would be some kind of incremental or limited package of constitutional amendments.

The choice for Quebecers would be between the existing constitution (perhaps with some modest, incremental adjustments) or else taking the plunge toward full sovereignty. Given that choice, it is not at all clear that Quebecers (or Canadians in general) would be prepared to reject the status quo out of hand.

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INTRODUCING CANADA WATCH

Welcome to the inaugural issue of *Canada Watch*, a publication that provides timely and practical analysis of the country's continuing national unity debate. This publication tells you what is happening, analyzes why it is important and discusses what it will mean for the future of the country. The editorial board also provides authoritative analysis of other key national issues as they emerge on the political agenda — such as the possible North

American Free Trade Agreement currently being negotiated with the U.S. and Mexico. Whether you are in government, universities, the private sector, the legal community or the media, we believe that *Canada Watch* is the indispensable publication that will help you make sense of constitutional and national affairs.

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