


from the talks, that its concerns have not been met and the consensus reflects English Canada's agenda.

In point of fact, the consensus does seem to fall short of even Premier Bourassa's conditions for a renewed federalism, let alone the far more sweeping demands of the Quebec Liberal Party's Allaire Report. Bourassa has stated that renewal must include all the elements of the Meech Lake Accord plus a significant devolution of powers to the Quebec government. Yet, a key element of the Meech Lake Accord, the "distinct society" clause has been considerably reined in. And a veto for Quebec, and the other provinces, over constitutional change involving federal institutions is not assured. As for the multilateral consensus on the division of powers, it

merely reinforces existing provincial jurisdictions rather than adding to them. In effect, it falls within the parameters of the Beaudoin-Dobbie parliamentary committee's report, which Premier Bourassa felt compelled to rebuke publicly in March.

Clearly, francophone public opinion in Quebec will expect a substantial modification of the areas of consensus in order to meet Quebec's objectives. Such changes might well require formal negotiations between the Quebec government and the various parties to the multilateral talks. Yet in all likelihood these parties will be most resistant to renegotiate with Quebec the matters upon which, often with considerable difficulty, they managed to come to terms. Even if they were prepared to do so, public opinion in English Canada probably would not stand for it.

In short, even if in the coming days Ottawa should tease a complete consensus out of the multilateral talks, such an agreement would face two major hurdles: finding legitimacy in Quebec and securing public ratification by referendum. Moreover, the effort to clear the first hurdle might well weaken its hope of clearing the second. Alternatively, going to a national referendum without a prior agreement from provincial and aboriginal leaders would be a risky venture for such an unpopular government. Papering over Canada's constitutional cracks has become a daunting exercise indeed.

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CONSTITUTIONAL PROPOSALS AT A GLANCE

by David Johnson

HIGHLIGHTS OF THE FEDERAL STATUS REPORT

The Status Report summarizes the results of the Multilateral Meetings on the Constitution which began on March 12 and concluded on June 11. The Meetings were chaired by the Right Hon. Joe Clark, Federal Minister of Constitutional Affairs and were attended by Intergovernmental Affairs Ministers from nine provinces (excluding Quebec), the two territories, and leaders of four national Aboriginal organizations. Generally, these proposals had support from at least seven provinces representing fifty percent of the population and the federal government. With respect to Aboriginal issues, consensus was considered to have been achieved only where there was substantial support from Aboriginal delegations.

CANADA CLAUSE

The constitution should be amended to recognize fundamental Canadian values and characteristics such as: parliamentary government, federalism and provincial equality; Aboriginal rights; Quebec's distinct society; linguistic duality and multiculturalism; the equality of men and women.

DISTINCT SOCIETY

An interpretative clause should be added to the Charter to ensure that future Charter review takes into account Quebec's existence as a distinct society within Canada, and the vitality and development of the language and culture of French- and English-speaking minority communities throughout Canada.

THE SOCIAL AND ECONOMIC UNION

A constitutional provision should describe the commitment of all governments to the policy objectives underlying the social and economic union, including: maintenance of the current health care system; provision of reasonable access to housing, food and other necessities; protection of the environment; the free movement of persons, goods, services and capital nation-wide; the goal of full employment.

All these commitments, however, would be non-justiciable and thus could not be legally enforced should a government depart from them.

THE SENATE

The Senate should be elected with all Senators elected at the same time

to fixed terms of five years. Senatorial elections should be based on proportional representation, with the system designed to reflect the diversity of Canada's population. The Senate should not be a chamber of confidence; it should possess a 30-day suspensory veto only over revenue and expenditure bills.

THE SUPREME COURT OF CANADA

The federal government will name judges to the court from lists provided by the provinces and territories. If such lists are not provided on a timely basis, the Constitution should provide for the appointment of interim judges.

FEDERAL SPENDING POWER

The federal government must provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared cost program in an area of exclusive provincial jurisdiction provided that the province carries on a program or initiative compatible with national objectives.

THE DIVISION OF POWERS

The following subject matters should be identified in the Constitution as matters of exclusive provincial jurisdiction: labour-market training; culture; forestry; mining; tourism; housing; recreation; and municipal and urban affairs. In these fields provincial governments may

require that the federal government withdraw from program delivery. In such cases, reasonable fiscal compensation is to be negotiated with the provinces. Alternatively, provincial governments may request that federal initiatives and spending be maintained in such fields.

Nothing in these proposals is to limit federal responsibility for the administration of unemployment insurance or for the maintenance of national cultural institutions.

ABORIGINAL SELF-GOVERNMENT

The inherent right of self-government of the Aboriginal peoples of Canada should be recognized in the constitution. This amendment would also contain a "context clause," which would describe the nature of Aboriginal governments' legislative authority. Aboriginal governments would be described as one of three constitutionally recognized orders of government.

The Charter should apply immediately to Aboriginal governments, but Aboriginal governments should have access to s. 33 of the Charter.

The inherent right of self-government should be capable of being justiciable upon entrenchment, but justiciability should be delayed for a three-year period.

In order to clarify the relationships among governments there should be a constitutional commitment by governments and Aboriginal peoples to negotiate the details

of self-government, including the issues of jurisdiction, lands and resources, and economic and fiscal arrangements.

UNFINISHED BUSINESS

A significant number of issues remain as yet unsettled, including:

Veto Power: No agreement has been reached regarding whether Quebec is to be granted a veto over amendments affecting national institutions. Such an amendment would require the unanimous consent of all governments.

The Senate: The allocation of representation among the provinces remains as yet undecided. This issue pits the advocates of a Triple E Senate against those in support of a more equitable institution.

The precise nature of the powers which a reformed Senate may exercise over ordinary pieces of legislation from the lower house have also to be resolved.

The Common Market: While there is consensus on the principle of the free movement within Canada of persons, goods, services and capital, there is no agreement on expanding the current s. 121 of the *Constitution Act, 1867* into a justiciable statement of this principle.

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