

BUSINESS COUNCIL ON NATIONAL ISSUES

1235 Bay Street Suite 304 Toronto Canada M5R 3K4 (416) 964-8019

*file 4/1/81*  
*186 - will send 30 copies*  
*to the Const. Question*

November 25, 1980

Joint Clerks  
Special Joint Committee on the  
Constitution of Canada  
Postal Box 1044  
South Block  
Parliament Buildings  
Ottawa, Ontario K1A 0A7



Gentlemen:

The Business Council on National Issues is an association of about 140 chief executive officers of major corporations across Canada, formed to make a constructive contribution to public policy.

We respectfully submit for your consideration the enclosed documents:

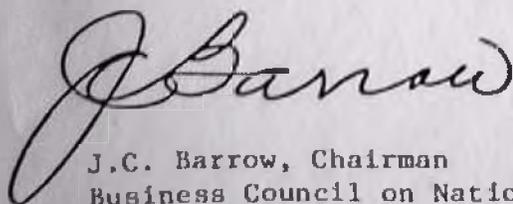
1. A letter and statement delivered to all First Ministers prior to the beginning of their conference, September 8 - 12, 1980;
2. A publication entitled "A Citizen's Guide to the Constitutional Question" which we commissioned and which has just been published.

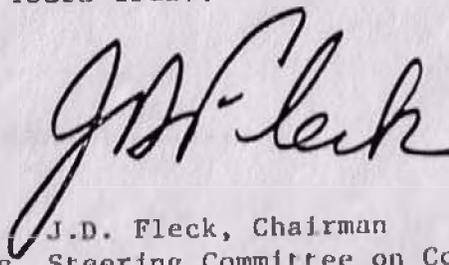
In our statement to the First Ministers we expressed our concern to preserve an open, strong and dynamic common market, whether this common market is protected by the Constitution and the courts or through coordination of both orders of government. We believe in particular that free movement of capital, manpower and services, as well as goods, should be entrenched.

We also indicated our belief that a renewed Constitution should protect a number of personal rights, especially the rights of ownership, and the right not to be deprived of these rights except by due process of law.

We request the opportunity to appear before the Committee to elaborate on these and other concerns raised by the Resolution now before Parliament.

Yours truly,

  
J.C. Barrow, Chairman  
Business Council on National Issues

  
J.D. Fleck, Chairman  
Steering Committee on Constitutional Reform

# BUSINESS COUNCIL ON NATIONAL ISSUES

1235 Bay Street Suite 304 Toronto Canada M5R 3K4 (416)964-8019

September 2, 1980

The Right Hon. P.E. Trudeau  
Prime Minister of Canada  
Office of the Prime Minister  
Langevin Block  
Ottawa, Canada K1A 0A2

Dear Prime Minister:

For more than a decade, the two levels of government in Canada have been engaged in a struggle for power that has led to increasing discord, bitter confrontation, and polarization among the different parts of the country. It is a matter for regret that this has resulted in our national energies being channelled in directions that have accentuated the forces that tend to divide us, rather than those that unite us.

We do not underestimate the difficulty of achieving a new constitutional understanding in a country as vast and complex as Canada, but we believe that the time for accommodation is overdue. We want to convey to you the sense of urgency and concern that we share, concern that a continued lack of resolution of constitutional issues will in the future, as it has in the past, cause us to lose opportunities for investment and jobs. Decisions have not been taken, investments not made, jobs not created, because of the uncertainty and unpredictability of the economic climate in Canada.

We have prepared the attached statement on constitutional reform to assist the deliberations you will soon be resuming. The same text is being forwarded to the provincial premiers, and it will shortly be made public, along with a copy of this letter.

continued.....

We urge you to build together the practical compromises that will produce a new Canadian constitution; and we hope that, by the manner of your reaching that goal, you will set a new standard of intergovernmental cooperation. We look to our First Ministers to demonstrate that a new Canadian constitution can, and before too long will, be negotiated.

Yours sincerely,

*J. Barrow*  
J.C. Barrow  
Chairman, BCNI

*J.D. Fleck*  
J.D. Fleck, Chairman  
Steering Committee on Constitutional Reform

Steering Committee on  
Constitutional Reform:

*I.A. Barclay*

Mr. I.A. Barclay, Chairman  
B.C. Forest Products Limited

*M.F. Bélanger*

Mr. M.F. Bélanger, Pres. & CEO  
National Bank of Canada

*R.J. Bilodeau*

Mr. R.J. Bilodeau, Chairman  
Honeywell Limited

*J.T. Black*

Mr. J.T. Black, President  
The Molson Companies Limited

*A.S. Cartwright*

Mr. A.S. Cartwright, Chairman  
Canadian General Electric Co.

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Mr. S. Curry, President  
Revelstoke Companies Ltd.

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Mr. G.R. Heffernan, President  
Co-Steel International Ltd.

*P. Paré*

Mr. P. Paré, President  
Imasco Limited

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Honeywell Limited

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Canadian Manufacturers' Association

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Southam Inc.

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Canadian General Electric Company Limited

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Union Carbide Canada Limited

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*J.E.M. Newall*

*J.P. Gordon*

*S. Curry*

*A. Powis*

*A.J. de Grandpré*

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Business Council on National Issues

# BUSINESS COUNCIL ON NATIONAL ISSUES

1235 Bay Street Suite 304 Toronto Canada M5R 3K4 (416)964-8019

## STATEMENT ON CONSTITUTIONAL REFORM

### The Business Perspective

The Business Council on National Issues (BCNI) is an association of the Chief Executive Officers of some 140 major corporations across Canada. The Business Council was formed to enable its members to make a constructive contribution to public policy, especially economic policy.

BCNI members, as corporate citizens, take a continuing interest in the whole range of constitutional issues. But what concerns us most are the consequences of governments' responses to these issues, for the Canadian economy and particularly for the private sector.

Conflict between governments over their respective powers and procrastination on the resolution of differences have imposed a tremendous cost on the Canadian economy. Because of uncertainty about the use and management of Canada's diverse resources, business has been operating for years in an unpredictable environment. Of necessity, corporate decisions have been postponed and projects have been delayed, pending successful negotiations between governments. Repeatedly the issues have remained unresolved.

The climate of uncertainty has intensified in the past twelve months, and the implications of further delays are grave to contemplate. Already Canada has lost countless jobs and opportunities for growth; the country is now beginning to lose its capital resources as well.

The business community, which is responsible for generating much of Canada's wealth and prosperity, is deeply concerned that governments should together resolve the constitutional question, including agreement among the governments about the division of powers, and thereby stabilize the economic environment in which future development will take place.

### Interprovincial Trade and the Integrity of the Canadian Economy

Canada's domestic market is very small by comparison with that of the world's major economic blocs. It needs to be as free as possible of internal barriers in order to permit Canadian firms the broadest possible base from which to compete internationally.

A particular concern of BCNI is to preserve an open, strong and dynamic common market, whether this common market is protected by the constitution, by the courts, or through the institutionalized coordination of both orders of government. In order to preserve and strengthen the integrity of the Canadian common market, the BNA Act should be reformulated to entrench free movement of capital, labour, and services as well as goods. In addition, there should be clear confirmation of the federal Parliament's exclusive jurisdiction to regulate interprovincial and international trade and commerce, and that of the provinces to regulate intraprovincial trade and commerce.

#### Other Powers Affecting the Economy

The federal government already has many instruments for exerting control on the economy. These powers, wisely used, ought to be sufficient to provide for healthy development of the national economy, given reasonable standards of federal-provincial consultation and cooperation. However, in order to facilitate coherent economic policy decisions in areas of potential overlap or conflict, adequate machinery should be developed for intergovernmental cooperation. Such machinery should be entrenched in the new constitution.

#### Conflict over Natural Resources

BCNI has already made its views known on energy policy in its Statement on National Energy Policy, issued in November, 1979.\* Canada's future prosperity depends heavily on how the federal and provincial governments resolve the present conflict over management of all natural resource development.

Governments, which are financed by taxpayers, including corporate taxpayers, should not jeopardize their revenue sources. They should not compete with each other in taxing and regulating otherwise viable sectors to the point where Canadian business is at a competitive disadvantage operating in Canada, and investment capital is attracted to other countries.

The question to ask is: Does the present (or planned) intergovernmental arrangement project a predictable, competitive business climate sufficiently far into the future to match the decades of commitment that a massive capital program for resource development will require of investors, Canadians and others, in the private sector?

#### Principles, Patriation, Institutions, and Rights

Uncertainty arising from a lack of intergovernmental agreement on the statement of principles, patriation, the upper house and the Supreme Court affects the general climate of confidence in Canada and its institutions, and thus in its economy. Prolonged failure to resolve such questions must have an unfavourable economic impact.

Progress towards making the Supreme Court truly an institution of the federation is welcome, because the Court, in interpreting the respective powers of the federal and provincial legislatures, will assume an increasingly crucial role in the Canadian economic structure.

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\*Statement sent at that time to First Ministers and Ministers responsible for energy.

We are of the view that governments should be restrained by the Constitution from adopting legislation or regulations that would have the effect of restricting the mobility of persons in pursuit of a legitimate livelihood; or of unjustly depriving a person of the rights of ownership; or of limiting a person's right to have, where numbers warrant, access to government services in either official language; or of depriving a person of any of these rights except by due process of law.

### Conclusion

Business, in serving people through the marketplace, prides itself on its adaptability to changing circumstances. But these are times in which business requires a more predictable business environment. In particular, it requires resolution of constitutional uncertainty.

The health of the economy depends on a clear and functional division of powers, on the preservation of personal rights and freedoms, on unobstructed movement of goods, capital and manpower, and on strong and effective institutions. Equally, it depends on reasonable exercise of constitutional powers. Federal-provincial conflict can undermine constitutional principle, and with it the level of confidence in Canada (and its business sector).

There is, now, a unique opportunity to build a strong economic foundation into a new, genuinely Canadian, constitution. We urge that this be accomplished expeditiously. If governments waste time, many Canadians will lose faith in the process, and much-needed reforms will be unjustifiably delayed. Undue haste, on the other hand, could threaten the tranquility, stability and orderliness that are the essence of a democratic constitution. The need for significant constitutional change has been demonstrated; the manner of realizing the change will prove the ability of our elected governments.

September 2, 1980

*consultation*  
*to you*

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## STATEMENT TO THE SPECIAL JOINT COMMITTEE ON THE CONSTITUTION

Ladies and Gentlemen:

We are grateful for this opportunity to share with you today some of our concerns as businessmen regarding the Resolution before you.

Let me first explain that the Business Council on National Issues is an association of Chief Executive Officers of approximately 140 major corporations across Canada representing well over \$125 billion in annual sales. The Business Council was established four years ago to enable its members to make a constructive contribution to public policy.

Since the last federal election and the referendum in Quebec the pressures on governments to reform the Constitution have been increasing rapidly. We are convinced that substantial revision to the Constitution is indeed required.

As private citizens the individual members of the Business Council hold a wide range of views about the urgency of the task, and about how sweeping the revision needs to be. But we are united in the view that if there are to be revisions certain provisions should appear in a truly Canadian Constitution.

With this in mind, we wrote to First Ministers before their September 8th Conference expressing our concerns and encouraging them to work together to end constitutional uncertainty.

Before proceeding any further, we should like to table copies of those documents before this Committee now.

In addition we should like to table a recently-published booklet which the Business Council commissioned, entitled "A Citizen's Guide to the Constitutional Question". (Our written submission to this Committee included copies of the English text for each member of the Committee. A French version will be available very shortly.)

Our purpose in commissioning this booklet was to set the constitutional debate of 1980 in context, to examine the issues, to clarify the alternatives, and thus to help citizens decide where they stand on the issues being debated.

Let me now return to the concerns of the business community in regard to the constitutional debate and to our comments relating to the Resolution before Parliament.

Since September the situation has deteriorated further. Not only has the gap widened between the federal government and the provinces as to who should control what, but also the governments, preoccupied with each other, seem to have ignored the negative impact this is having on Canada in terms of lost business opportunities and jobs.

Nor has much, if any, attention been paid in this debate to creating a Constitution which will allow the Canadian private sector to develop its potential to compete effectively both at home and abroad. And yet the well-being of the Canadian economy surely depends on having a healthy and successful private sector.

#### ECONOMIC RIGHTS

If the principle of parliamentary supremacy is going to be abridged by the introduction of a Charter of Rights and Freedoms - and many of us feel that it should be - then such a charter should deal adequately with economic rights.

We advocate protection of three kinds of economic rights:-

First, like the Canadian Bar Association, we believe that most Canadians would want their property rights protected - both the right to possess and enjoy ownership rights over real and other property - and the right not to be deprived of such rights of ownership except by due process of law and not without just compensation.

When we speak of "due process of law", we have in mind both protection against enactment of prejudicial administrative procedures, as well as maintenance of open and independent processes of litigation with respect to particular laws. Bill C-60, 1978, touched, though inadequately, on these rights.

Second, we believe that to protect the kind of Canada most Canadians believe in, certain rights should extend, not just to individuals or citizens, but to all persons, including corporate persons. The rights just mentioned - property rights and rights to due process and to just compensation - are examples that illustrate this point. For instance, due process of law should cover the development of regulations which affect the conduct of business in Canada.

Third, and this is reflected in rudimentary fashion in the Government's present proposal for a charter, we believe that the good of the Canadian economy requires broad protection of mobility rights - not just the mobility of citizens in search of a livelihood but the right of persons to move goods, services, capital, entrepreneurship, freely within the territorial boundaries of Canada.

### THE CANADIAN COMMON MARKET

We believe that economic efficiency requires that we distinguish between maximizing the size of the nation's economic pie and distributing that pie equitably among Canadians. We further believe that steps towards more equitable distribution should be carefully calculated so as to minimize the necessary trade-offs in terms of failing to achieve the maximum possible national output.

It can't be stressed enough that Canada's domestic market is very small by comparison with that of the world's major trading blocs. In fact, with a population of less than 25 million people, it is one of the few advanced economies without free trade access to markets in excess of 100 million people.

It needs to be as free as possible of internal barriers in order to permit Canadian firms the broadest possible base from which to compete internationally.

If large economies like the United States and the European Economic Community need free internal movement of economic factors in order to be competitive, how much more must a small economy like Canada need that freedom? And yet provinces have increasingly during the past several years taken measures designed to interfere with the economic free flow of goods, services, labour and capital in the hope of boosting the local economy and generating additional employment.

This trend seems likely to continue. But this progressive fragmentation makes it more difficult for Canadian firms to develop in the most efficient manner, and as a result jeopardizes the very basis of our position as a high-income industrial nation.

Of course regional development can be a legitimate political objective. All we would argue is that where governments wish to interfere with the natural processes of regional economic change, they be required to reach specific agreements amongst themselves and treat such agreements as exceptions to the general constitutional rule.

Even though such exceptions will occur, it still is our contention as representatives of the business community that the preservation of relatively free inter-provincial trade within the Canadian federation is essential to the economic welfare of all Canadians.

However, the common market can be protected in many ways, either by the Constitution, by the courts or through co-ordination of both levels of government, as long as the economic system is acknowledged and protected.

We believe that it would be a short-sighted policy indeed to have a commitment to equalization - to sharing Canada's wealth - without a parallel commitment to generate wealth. As a result, we advocate that "generating the wealth" be put side by side with "sharing the wealth" in stating principles for an amended Constitution.

#### THE PROCESS OF CONSTITUTIONAL CHANGE

The Business Council fully supports the federal nature of Canada. However much any of us might wish for a simple, efficient governmental system, we recognize that Canada is too widespread, too varied, and too complex for that.

A federal system, in the modern era, necessarily requires intergovernmental exchange. No Constitution, however felicitously drafted, will succeed in keeping one government from colliding with another.

Canada must be a federation. Equally, that federation must rely on intergovernmental cooperation. Our governments must be ready to make, and keep, bargains with each other.

In our letter to First Ministers before their September Conference we were critical of the progressive deterioration in federal-provincial relations over the past decade.

The present Constitution cannot work to the benefit of ordinary Canadians without reasonable federal-provincial relations. No future Constitution will be able to do so either. As long as the present kind of intergovernmental strife continues, this country will be in a state of constitutional crisis. No Supreme Court can solve that for us.

Naturally, then, the Business Council does not favour the federal government's attempt to achieve substantial constitutional change by unilateral action. This initiative has spread consternation throughout the country and abroad, further eroding Canada's reputation for stability which has been suffering as a result of prolonged federal-provincial discord.

Certainly the Constitution should be patriated. But the federal government should not be seeking to impose an amending formula unilaterally, and certainly not by attempting to persuade the British Parliament to endorse an amending procedure that cannot be agreed in Canada.

If there are to be amendments to the letter or the customary tradition, it should only be with substantial provincial agreement. There is time for a First Ministers' Conference on an amending formula if need be.

In addition, we reject the idea of using a referendum to break intergovernmental deadlock. In no other referendum in Canada has the result been binding on the government of the day. The referendum is an unfamiliar mechanism in Canada, even in an advisory role. So a constitutionally binding referendum on an amending formula would be too radical a departure. It is going too far for the federal government to attempt not only to take that step unilaterally, but also to control all aspects of timing, wording and presumably, interpretation.

As we mentioned in our September statement, the private sector, which is responsible for generating much of Canada's wealth and prosperity, deeply believes that governments should resolve the constitutional question together and thereby take a significant step towards stabilizing the economic environment.

As business leaders, and as Canadians, we are hoping this Committee will be able to make recommendations that will lead to substantial federal-provincial agreement on the next step towards a Constitution made in Canada.

We hope that we have made a helpful contribution today. We wish the Committee well in its deliberations.

Thank you.

January 7, 1981