

Report

Royal Commission on the Economic Union and Development Prospects for Canada

VOLUME THREE

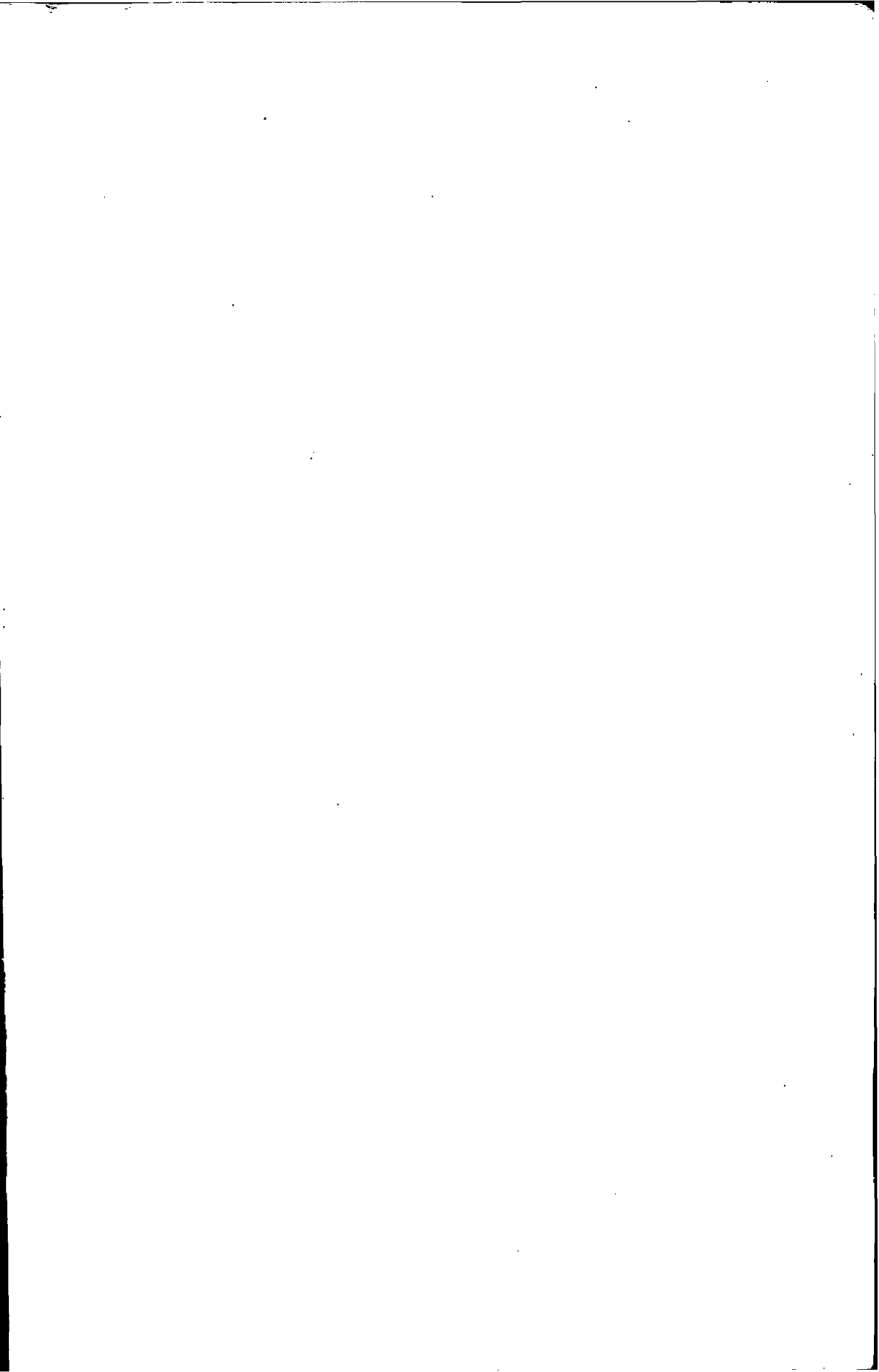
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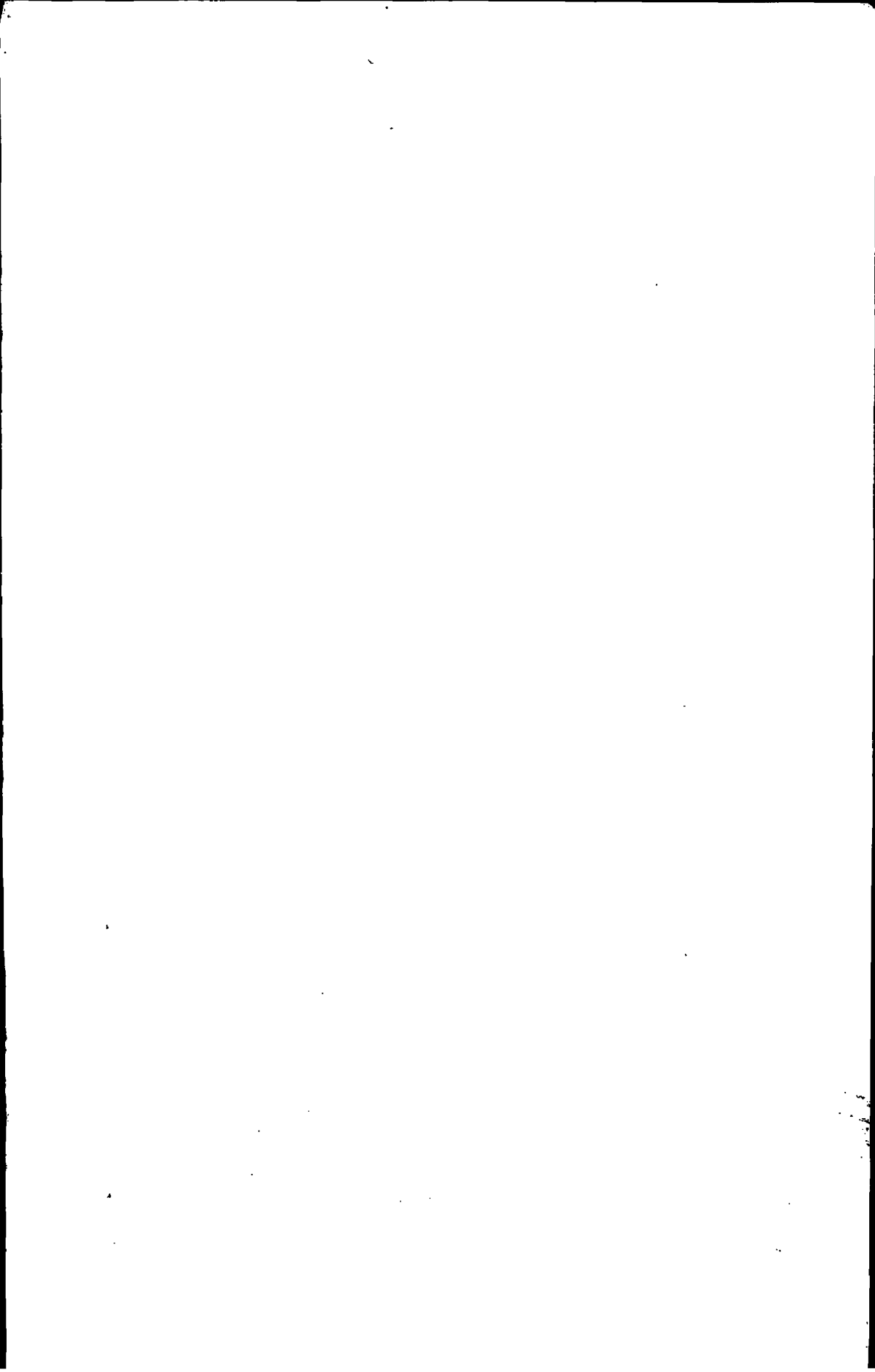
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***Report of the Royal Commission on the Economic
Union and Development Prospects for Canada***





Report

*Royal Commission on the
Economic Union and
Development Prospects
for Canada*

VOLUME THREE

Minister of Supply and Services Canada

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PART VI



The Institutional Context: *Citizenship, Parliament* *and the Federation*

PART VI

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Introduction

The Canadian Constitutional Heritage and Directions for Reform

The three essential elements of Canadian constitutional government—responsible parliamentary government, federalism and citizens' rights, which culminated in the recently adopted Canadian Charter of Rights and Freedoms—are not disposable pieces of machinery to be subjected to narrow instrumental calculations based on cost efficiency. These three pillars represent the historic arrangements through which we govern ourselves, formulate economic policy, preserve social peace, shift the boundaries between the public and the private sector, and make claims on one another as individuals, as members of communities, and as residents of distinctive regions. That subtle blend of institutions and norms, fashioned over more than a century of our existence as a nation, defines our political identity, shapes our collective existence, and helps us to address problems that require our collective response. Our institutional arrangements must be both true to our evolving concepts of ourselves as a people and useful for the collective tasks we have taken on and will take on in the future.

The institutional arrangements bequeathed to us by history are not, therefore, a burden to be borne. Rather, they represent a heritage that we must nurture and refine in response to successive challenges emerging from the domestic and international environments. Canada's institutional arrangements are part of a living Constitution that evolves and that we continuously reshape. Canadians have challenged the particulars of these arrangements for their biases, insensitivities and inefficiencies, and we shall continue to do so.

Profound transformation has taken place in our institutions of government, in response to a sequence of changing pressures. Yet the transformations in

responsible government, federalism and citizens' rights have occurred within a recognizable line of development. If Sir Georges-Étienne Cartier or Sir John A. Macdonald were alive today, they would sense much that was reassuringly familiar along with much that was disorienting, the result of cumulative and incremental change.

Political systems change in complex and obscure ways. Change is partly the result of deliberate and conscious choice, but much change is subtle and informal, the result of slow modifications of behaviour. The constitutional order engages in a constant dialectic with its environment. Political institutions are a meeting point for the diverse social forces that affect the modern state. These forces include international economic interdependence and international tensions, popular expectations of government's responsibilities, social and economic change and the evolving aspirations of diverse internal communities. These forces, along with numerous other factors, change the working nature of institutions and the functions they perform.

Even deliberate change often produces unanticipated and sometimes perverse results. Except at the founding of nations, changes in political systems are typically piecemeal and rarely comprehensive. The cumulative effects of these changes can unbalance the structure of interdependent institutional arrangements and can thus lead inadvertently to a departure from basic values. Our task as Commissioners requires us to consider the institutional adjustments that Canadians have made in response to changing circumstances. Continuing on the path of *ad hoc* gradual change has consequences for the components of constitutional government that we in Canada must address.

As we look back on the transformations in our system of government since the end of the Second World War, the picture that emerges is neither one of chaos, nor one of serenity, but of something in between: a somewhat disorderly procedure evolving piecemeal, in response to pressures of the day, options available and partial visions of the future. The basic institutional framework remains, but there are also discontinuities, false starts and deviations from the principles of constitutional government that we have inherited.

The modifications in our processes of government since 1945 testify to the system's flexibility. These adjustments are remarkable in light of the common view that federal systems are rigid, and of the absence, until 1982, of a comprehensive procedure for amending the Constitution. Commissioners have concluded, nevertheless, that while parliamentary government, federalism and the Charter are appropriate to Canadian values and to the handling of future demands, our institutions since 1945 have not yet successfully adapted to major changes in the environment. Indeed, there have been such significantly negative effects that co-ordinated reform is required to ensure that Canada's constitutional order is both effective in managing the nation's collective affairs and sensitive to the values of liberal democracy.

These are large claims, and Commissioners, in making them, do not wish to be misunderstood. We believe that the essential components of our constitutional system—responsible government, federalism and the Charter—continue to provide firm foundations for the Canadian constitu-

tional order. We also believe, however, that the variety of *ad hoc* accretions that we have inherited or recently added to the system have distorted it. In particular, we fear that some recent developments threaten the function of governments as servants of the people.

Commissioners' proposals for institutional reform are directed toward three basic and closely related objectives. We wish to secure the democratic foundations of Canadian government. We hope to strengthen the capacity of Canada's institutional arrangements to accommodate the internal social, economic and political diversity found within Canadian society. We seek to increase the responsiveness and effectiveness of public policy making in a changing domestic and international environment. Each of these objectives has implications for the operation of responsible government and the federal system, and for the recognition of citizens' rights.

Commissioners' first objective—securing foundations for democracy—derives, in part, from the historic tradition in which Canadians have participated. We are citizens of one of the oldest enduring systems of constitutional government in the world. Maintenance of that heritage is an important task and an essential element of the “institutional and constitutional arrangements to promote the liberty and well-being of individual Canadians” (P.C. 1982-3438) to which our terms of reference directed us. In a complex and uncertain world, where domestic and international actions of the state in the social and economic realm affect each one of us, it is essential that our basic institutions—the three pillars of the Canadian constitutional order—enhance the quality of Canadian democracy.

To strengthen the foundations of democracy, Commissioners' concern is to reinvigorate the practice of responsible government. That form of government is the democratic vehicle by which Canadians keep legislative bodies sensitive to their values, render them accountable for their actions, and install and dismiss governments at periodic intervals. Because of the enhanced role of the state today, a healthy system of responsible government is more important than in the past, when a narrower state agenda, a smaller bureaucracy, and a stronger sense of personal ministerial accountability made the norms and practices of responsible government easier to sustain. The challenges we face are two-fold: first, to strengthen our elected legislatures as forums for legislative debate and scrutiny and for holding governments responsible for their conduct of public affairs; secondly, to ensure that the political executive, the Cabinet, is able to control the bureaucracy so that it operates as the instrument of citizens' representatives.

In any consideration of the democratic tradition in Canada, we must also address the implications of federalism, in particular the relation of federalism to responsible government. Our operational definition of Canadian federalism is a two-level system of responsible governments. To strengthen responsible government at the national and provincial levels, as Commissioners would wish, is therefore to flesh out federalism, and not to undermine it. Through interdependent responsible governments, federalism enhances opportunities for democratic participation by increasing the avenues through which citizens may express their policy preferences.

Although federalism and parliamentary government have co-existed in Canada for more than a century, relations between them have produced tension and will continue to do so. Federalism, with its division of powers, constrains legislative majorities and, in emergent policy areas where clearly defined jurisdictional limits are absent, it also raises questions about which majority, federal or provincial, should take precedence. Frequent resort to intergovernmental bargaining also contributes to the tension between federalism and responsible government, involving consequences for democracy. Intergovernmental bargaining tends to take place among executives, to involve complex agreements and tax-transfer arrangements which blur accountability and, on occasion, to confront legislatures with a *fait accompli*. The intergovernmental process, with its closed sessions and its stress on the interests of governments themselves, lessens the already-limited capacity of legislative bodies to control the political executive and is generally hostile to citizens' involvement. In the complex trade-off required here, Commissioners would favour the enhancement of the parliamentary side of our existence in both orders of government.

Intergovernmental relations are not the essence of federalism. Their undoubted significance is a by-product of the operations of contemporary federalism and reflects the co-existence of two orders of powerful government. That these governments exercise some of their responsibilities interdependently does not change the essential nature of Canadian federalism as a system of 11 responsible governments. The situation, does, however, raise major issues about managing that interdependence. We must address these issues within the context of the primacy of responsible, that is, accountable, government. Competitive elections to determine the partisan composition of legislatures through open discussion and freedom of association are an essential means whereby we keep government the servant of the people. This, our historic method of calling governments to account, will depend increasingly on the public availability of the information upon which decisions can or ought to be based. The availability of that information is often limited by our complex of institutions.

Commissioners' second objective is to strengthen the capacity of Canadian institutions to accommodate and reconcile Canada's internal social, economic and political diversity. We emphasize here arrangements for representing these varied interests and perspectives in public decision making.

Commissioners have sought to keep distinct the issues of regional representation in the national government and the machinery of intergovernmental relations, although these topics have occasionally been linked. For example, in the flurry of constitutional proposals leading up to the Constitution Act, 1982, there were calls for a reformed Senate to be made up in whole or in part of delegations appointed and controlled by provincial governments. In ways that were never fully explained, this second chamber was to perform some of the functions of intergovernmental conferences and simultaneously to compensate for regional insensitivities of the national government to matters directly under its jurisdiction. Commissioners distinguish these two functions, believing that the influence of provincial governments on national policies is best left to the intergovernmental arena.

Reform of the institutions of federalism concerns the questions of how responsibilities should be divided among governments, and how those governments should manage their inevitably overlapping relationships. It does nothing to ensure the legitimacy and representational capacity of national institutions in fulfilling their obligations to Canadians. Equally, reform of national institutions can do little to meet the need for co-ordinating the actions of two strong orders of government. We need both an appropriate relationship among governments and a regionally responsive central government. We believe, therefore, that the best way to inject the concerns of regional and provincial communities into the national Parliament is through the direct representation of their citizens, rather than through representation of provincial governments. Both electoral reform and Senate reform have been suggested as means to this end.

The electoral system appeared on the institutional reform agenda in the 1960s as the Liberals proved less and less able to obtain representation from the West and the Conservatives from Quebec. Some Canadians saw these failures as threatening the legitimacy of the federal government at a time when provincial governments were becoming more prominent in the federal system. Provincial governments, stressing a provincialist definition of Canada, presented themselves as the most legitimate representatives of Canadians, and elaborated this claim in proposals for reform of central-government institutions. Some argued for a reformed Senate appointed primarily or wholly by provincial governments. The opening up of the constitutional issue itself and the noticeable influence of provincial governments on that process gave prominence to provincial views on institutional reform.

Although the Government of Canada accorded priority to the Charter in its constitutional objectives, it also responded to the growth of provincialism. If the constitutional system were to respond to the prevailing view of the relative strength of social forces in the country, there would have to be either devolution of authority to the provincial governments or greater sensitivity at the centre to provincial concerns. Two choices were available to accomplish the latter option: express provincialism at the centre through provincial-government appointments, or incorporate provincial sentiments more directly. Electoral reform was one example of the latter approach.

The debate over the form of provincial participation in national institutions was an elemental controversy about the appropriate relations between the governments of the federal system and the national and provincial communities on which they are based. It was a debate, also, about the definition of the national community. Advocates of inserting a provincial component into Parliament, especially by means of a reformed Senate, were implicitly criticizing the historic principle of representation by population and the insensitivity, particularly to the smaller provinces, which that principle involved.

Commissioners' view of federalism accepts that the national government must have a capacity to represent and to respond to regionalism and provincialism. We believe that either reform of the Senate or, our second choice, reform of the electoral system of the House of Commons is necessary to accomplish these objectives. We prefer Senate reform, as we believe that

the most successful accommodation of regional interests in the formation of national policy requires a modification of the majoritarian principle of representation by population. We propose a Senate elected by proportional representation, with distribution of seats weighted toward the smaller provinces. This change, the significance of which we do not underestimate, would modify the basis of political power in the national government: it would supplement representation by population in the House of Commons with the more federalist principle of representation by region in a democratically elected Senate. We believe that our proposal would make every political party more representative, in caucus and in Parliament, of the provinces and regions. Better regional representation in national institutions should not only contribute to reconciliation of regional and national interests within the national jurisdiction, but should also increase the legitimacy of the national government in intergovernmental affairs.

The third general objective of Commissioners' proposals, that is, responsive and effective economic policy making in a changing domestic and international environment, involves a more direct focus on the function and operation of Canada's institutional framework. Canadians have a number of economic objectives including growth, high employment and low inflation. We cannot, however, divorce pursuit of these goals from the political process of governing and the institutional arrangements that channel it. Our economy, including its international dimensions, is a political economy. Political institutions have economic consequences. Changes in governing arrangements can influence our economic performance and prospects, just as can technological advances, the emergence of new markets, and changes in the international competitive environment.

Commissioners' attitude to conflict—its positive functions and its negative features—is central to our position on the making of policy, economic and other. We neither expect nor seek to achieve the elimination of disagreement, controversy and competition. In an open pluralistic society where state policies deliberately or inadvertently distribute advantages and disadvantages, conflict and competition among private actors seeking to influence governments are inevitable and functional. These actors provide governments with the information necessary for devising new policies and modifying old ones.

Regulated conflict among partisan adversaries is the essence of our parliamentary system. We appreciate the significance of the phrase "Her Majesty's Loyal Opposition", which would be incomprehensible in political systems where imprisonment rather than honour greets those who oppose the government. Moreover, we believe that the expression of choices and alternatives through this mechanism increases the quality and acceptability of the public policies that emerge. Our system of adversarial politics, linked to elections and freedom of speech and assembly, allows the people, however imperfectly, to rule.

The competition between government and opposition parties is only one example of institutionalized conflict within the Canadian state. Competition takes place, also, between governments in the federal system and within each of the governments of that system, for no government is monolithic. On the

contrary, government in Canada, as elsewhere, is comprised of competing and co-operating departments, bureaus and agencies.

Conflict, in other words, is inherent in our system and reflects real differences. We Commissioners, however, neither worship conflict nor view all its manifestations as healthy. A Darwinian jungle is not our ideal nor that of Canada. Our common existence means that we are connected to one another. We must therefore regulate conflict and frame rules to limit its destructive effects and enhance its constructive consequences. Commissioners are searching for a new balance. We wish to see more effective policy making. We wish to see policies that are sensitive to the concerns of the affected interests, that are practicable and feasible, and that can be integrated with other programs of the state. Conflict, appropriately restrained, can help Canadians to achieve responsive government.

To be more specific, Canadians should look carefully at the way our governments make economic policy, in order to make that process more responsive and effective. We must consider relations between citizens and the state and relations between governments. We should look first at leadership, information and consent, key features of effective policy making. We should then look at federalism: we might form better economic policies by introducing more flexible arrangements and clearer regulation of intergovernmental conduct.

Commissioners' concern for democracy does not ignore the consideration that Canada has representative, not direct democracy. There is an accepted and appropriate division of responsibility between citizens and the legitimate wielders of public authority. Citizens do not govern, and governors must make hard choices: *Gouverner, c'est choisir*. Accordingly, in our desire to keep governments accountable and responsible, we must not forget the functional necessity for executive leadership to set goals and to confirm clear directions and encourage their pursuit. Canadians adopted the British system of responsible government and rejected the American doctrine of separation of powers and the suspicion of government on which that doctrine is based. Responsible government was to sustain an "energizing executive", able to lead in the creation of a new country. Similarly, the executive at the provincial level came to act vigorously as provincial aspirations, power and administrative capacity expanded.

Commissioners believe, also, that effective policy making requires a continuous flow of information between the democratic state and its citizens. Sensitivity to the interdependence of issues and thus to the ideas and experience of those caught up in their complexities is essential. Democracy can serve economic performance by providing the state with the information necessary to ease the constant adjustment that economic change requires. The state is so deeply involved in the market-place that the functioning of the economic change it initiates depends heavily on the quality of the information on which it acts. We make recommendations concerning consultative arrangements designed to improve the exchange of information between governments and private actors.

It is true, also, that the state cannot successfully implement public purposes by issuing orders without the consent of the public. Successful implementation requires not only compliance, but also co-operation. We can no longer take these for granted as the growing underground economy indicates. Commissioners' goal is to harness the creative energies of the Canadian people in the process of economic policy making, for we deny that government has a monopoly on relevant knowledge and expertise.

Canadians and their governments live in an international environment which is the source of both economic growth and dislocation, and from which ideological, technological, scientific, military and other forces impinge on us. Citizens and their governments need to communicate effectively if they are to manoeuvre together successfully in the world system. This requires consultation about citizens' needs and expectations, and discussion of governments' plans as they unfold. Moreover, the growing international responsibilities of the state threaten democratic controls by strengthening the power of the executive. We seek to check that development. In general, therefore, we seek an enhancement of democratic citizenship.

Economic performance depends on effective management of relations between the federal and provincial governments. In our concern to establish means by which to manage more effectively the inescapable interdependence among governments, we Commissioners do not anticipate or seek perfect harmony and equanimity as the chief goals for the federal system. The two orders of government are legitimate representatives of different constellations of interests and concerns. With this in mind, Commissioners wish to encourage a more functional approach to federalism. Rather than focusing on centralization or decentralization, or on increased federal or provincial power, discussions should stress responsiveness to citizens' needs and effective management of social and economic policy. We propose recommendations, therefore, to increase flexibility of response to problems introduced by governmental interdependence.

Concerning barriers within the Canadian economic union, Commissioners do not consider formal constitutional change other than the extension of section 121 of the Constitution Act, 1867 to cover interprovincial trade in services. Other decisions to be made concerning the economic union involve sensitive trade-offs between economic and political considerations; we believe that intergovernmental forums can best handle these trade-offs at this stage. Clearly, Canadians must establish rules to control barriers to interprovincial trade, in order to check government behaviour that is inconsistent with more open world trade and the need for a more flexible and efficient economy. We propose formulation of a code governing interprovincial trade, the principles of which might ultimately become part of the Constitution. To advance this effort and to render it more visible to Canadians, we suggest, below, institutional procedures for governments.

These, then, are our fundamental goals for institutional reform: to enhance the quality of Canadian democracy, and to strengthen the linkages between citizens and their state; to improve the capacity of our institutions to reflect, accommodate and reconcile the divergent interests in Canadian society; to

enhance the capacity of our governing institutions to generate and implement economic and social policies and programs through which Canadians can achieve policy goals such as those set out throughout this Report.

Confederation

The Canadian state is a complex assemblage of institutions and norms. To understand it, we must look at the principles underlying its institutional features. These principles include, most notably, the three pillars of the constitutional order: responsible parliamentary government, federalism and, more recently, the Canadian Charter of Rights and Freedoms. They provide the framework through which we govern ourselves and shape collective goals. It is through that framework, modified by historical evolution and made more important by the recent dramatic growth of state responsibilities, that the relations of state, society and economy play themselves out. The institutional framework defines what we can achieve through state action. It facilitates the achievement of some purposes and frustrates others.

Our federal arrangements distribute different jurisdictional capacities to two orders of government. We employ both orders to pursue goals, sometimes as members of a provincial community and at other times as citizens of a national community. The selection of goals depends, in part, on which order of government has jurisdiction in a given field. Provincial boundaries determine the relevant population base for policy responses to specific matters under provincial jurisdiction, according to prevailing constitutional interpretation. Decisions of the past affect the existence of political communities today; and our decisions may do the same in the future. Thus, the federal government's arbitrary division of the former Northwest Territories into the Provinces of Alberta and Saskatchewan, in 1905, determines today's beneficiaries of the Alberta Heritage Trust Fund and the Saskatchewan Heritage Fund. So, too, any contemporary division of the Northwest Territories may affect our descendants many years hence. The new Charter of Rights and Freedoms also affects our capacity, through the state, to pursue particular goals.

All political systems are tied to the past, including those that attempt a revolutionary departure from it. Commissioners' starting point for understanding the Canadian system of constitutional government is, therefore, the Confederation agreement of 1867, although it, too, was the product of previous experience.

Federal systems with written constitutions develop from a particular set of decisions reached at a precise moment in history. The act of founding necessarily requires one set of choices about institutional arrangements that foreclose the possibility of others. If the arrangements withstand the battering of future challenges, they deny basic options to future generations. Just as the decision to become a ballet dancer or a nuclear physicist eliminates the possibility of pursuing other careers and determines a lifestyle that may last for years, so the consequences of basic institutional choices remain in force over lengthy periods, for such choices cannot be made, unmade or remade in

response to every passing fancy. As the German sociologist Max Weber observed, once we toss the historical dice to determine basic social arrangements, we cannot easily throw them again. The founding act of constitutional choice establishes the structure of state power and basic relations among core institutions, and initiates the rhetoric of subsequent political debate. It defines the boundaries of community within which we make claims on one another and respond to such claims. It shapes the language we employ in defending those claims, and the arrangements we employ to fulfil them.

The first pillar of constitutional government in Canada, responsible government, is an inheritance from Great Britain. The British North American colonists had begun to achieve representative and responsible government prior to Confederation. In such a system, the Cabinet, or executive council, is responsible for its actions to a representative elected legislature. This system structures the relations between legislature and executive in both federal and provincial governments. It is intended to ensure that government is servant rather than master and, at the same time, to endow the political executive with the capacity for leadership necessary to mobilize resources in the pursuit of agreed objectives.

The bias toward executive authority following Confederation was implicit in the link between the Cabinets and the legislatures. There was a convention that the Cabinets in office would remain as long as they were supported by a majority of the members of the House of Commons or of the provincial legislative assemblies. As the national party system developed, there emerged a convention that support in the legislature would be based on partisan majorities.

The absence of distrust or fear of executive authority was, in part, a product of the monarchical tradition: power flowed from the Crown rather than from the people. Most Canadian politicians of the 1860s, including the Fathers of Confederation, were not "democrats" as that term was popularly understood in the United States, and were anxious to stress the "Britishness" of Canada and hence its distinctiveness from our American neighbours. The United States was just recovering from a Civil War, which some of the Fathers of Confederation attributed to the excesses of democracy and to the American conception of the rights of the people. They believed that these arrangements fatally weakened governing authority. Accordingly, they envisaged that representative and responsible government would more effectively combine democratic control and executive leadership.

The Fathers of Confederation had inherited responsible parliamentary government. To it they added the second pillar, federalism. Federalism was an appropriate institutional response to the existing colonial diversities in the Maritimes and the Province of Canada. In Lower Canada—the future Quebec—a francophone majority had its own civil code, language, culture, history and religious background. It insisted on and received significant powers of self-rule at the provincial level in matters pertaining to cultural survival and growth. Upper Canada—later Ontario—with its British heritage, also required a federal arrangement. The Maritime colonies of Nova Scotia and New Brunswick also had distinctive traditions and histories, and joined

the federation with their own recently established systems of responsible government.

The Act of Union of 1840 had united Upper and Lower Canada. Its implementation had proved to both French and English that collaboration of both language groups within the framework of a single colony with one government would produce recurrent stalemate and deadlock. The British North America Act of 1867 (now renamed the Constitution Act, 1867) brought together into one constitutional system Nova Scotia, New Brunswick and the united Province of Canada, and at the same time, divided that Province. It thereby disentangled the local affairs of the respective francophone and anglophone majorities in the new provinces of Quebec and Ontario. By providing for both disengagement and consolidated action, federalism was, from the beginning, essential to the harmonious co-existence of the French- and English-speaking peoples within a common country.

Confederation, of course, not only created four new provinces out of three British colonies, but also established a new national government. That government would preside over and, indeed, build the new nation, extending its jurisdiction to the Pacific, populating the prairies and integrating the expanded country by means of railways. While creation of the provinces protected existing diversities and community arrangements, creation of the federal government was a response to the challenge of building a new nation. No national community existed in 1867, and there was relatively limited intercolonial trade and exchange. Only a common experience of constitutional development within the British tradition originally united the colonies. Provincial communities, or at least their colonial antecedents, predated Confederation. Sections 91 and 92 of the Constitution Act, 1867 set out most of the powers of the two levels of government. The new constitutional arrangements were based on separate systems of responsible government, each with generally distinctive jurisdictional authority.

French Canadians in Quebec tended to assess federalism in terms of the powers assigned to provincial governments. Many English Canadians, though by no means all, supported a strong central government and its expansionist ambitions. In our post-Confederation history, national policies, especially concerning foreign affairs and conscription, deeply divided the two linguistic communities, and the general insensitivity of the political majorities and provincial governments of English Canada to the francophone minorities in their midst reinforced that division. By the 1970s, these two developments had led to the emergence of a government in Quebec committed to sovereignty-association. Commissioners will return in a subsequent section to French-English relations and their effect on Canadian federalism, and to our proposals concerning a *rapprochement* with the government of Quebec, which has not accepted the Constitution Act, 1982.

Another aspect of the original understanding of 1867 requires emphasis in the light of recent constitutional controversies. Originally, the federal Cabinet was to represent the regions: ministers would speak for their provinces when national policy was being determined. Nevertheless, representation by population was to be the basis of the House of Commons; the Senate, with

federally appointed membership based on regional equality, was to be weak, and has become progressively weaker. From the beginning, therefore, we have had a national government in which citizens are represented on the basis of population. Yet the inevitable consequence of weighting voters equally is to weight provinces unequally. The overriding premise has been that the House of Commons, and the Cabinet power derived from it, represent and make laws for all Canadians as members of a national community.

The third pillar of the Canadian constitutional order, citizens' rights, was also part of our British heritage. The founders of Canada did not reject that heritage of civil liberty. The preamble to the British North America Act of 1867, which established the new nation, stated that Canada was to have a "constitution similar in principle to that of the United Kingdom." Such a constitution was to include responsible government and the civil liberties and freedoms that had come to be viewed as the rights of British subjects. In Britain, no formal written constitution enshrined the ancient and highly-valued rights of persons or limited the powers of Parliament; nevertheless, those rights were not only considered compatible with the tradition of parliamentary supremacy, but were deemed best protected by it.

In keeping with the concept of parliamentary supremacy and the fact that Confederation was the achievement of a small Canadian élite, no ringing declaration of the rights of citizens accompanied the birth of our nation. The Fathers of Confederation attributed no sovereignty to the new Canadian people, who were to exercise their influence through elected representatives. The British Parliament passed the British North America Act; there was no popular ratification of Confederation. Canada remained linked to Europe by virtue of Britain's continuing role in Canadian affairs. Yet, subject to continuing imperial ties, we Canadians had significantly adjusted the arrangements by which we governed ourselves. We had responded to the imperatives of space, of linguistic and cultural duality, and of distinctive colonial histories by establishing provinces. We had also set ourselves the demanding task of building a nation, and we were commencing a journey in the course of which we would gradually shed our links with Britain. The Constitution Act, 1982, by which we set up a comprehensive procedure for amending our Constitution here in Canada, has further reduced the significance of the British connection which earlier had been central to the identity of many English Canadians.

Protection and expression of provincial and regional diversities were never the sole concern of Canadian federalism. From the beginning, federalism was intended also to facilitate emergence of a new national community. That community emerged as successive generations of Canadians and their governments proceeded to build a nation. The choice of federalism presupposed and permitted the evolution of a complex, interdependent relationship between provincial and national communities.

Responsible government, with clear lines of accountability between Cabinets, legislatures, and electorates, logically assumed a type of federalism with little interdependence of policies between governments, a reasonable assumption in 1867. The national government had large and impressive responsibilities, for which it received appropriate powers; provincial

governments were to play a more limited role and therefore had less extensive powers. In general, at least by our contemporary standards, direct government intervention had little effect on society and the economy. Although partisan politics was often heated, and patronage was significant for party supporters, for most Canadians, government was a distant affair.

The social context in which the Constitution was drafted did not involve the pervasive presence of government. The Constitution Act, 1867 inevitably reflected prevailing attitudes about the function of government, assumptions long since gone. Canadians have built the massive bureaucratic apparatus of the modern state on the foundation of a formal division of powers that has changed little since Confederation. One out of five Canadians now works for some level of government. There are few areas of our lives untouched by the state in its performance of its many responsibilities. As one consequence, rather than governments that function independently of each other, we have intimate, and often discordant, interdependence.

The growth of the state and of interdependence gives rise to new requirements for managing relations between governments. It also complicates the working of responsible government, which is central to our Canadian practice of democracy, by blurring the chain of accountability that stretches from Cabinets to legislatures to citizens. The widened involvement of the state in new areas of social and economic regulation also raises new issues with respect to the status of citizens in the constitutional order.

Clearly we need to reassess the principles of responsible government, federalism and individual rights in the light of the complex co-existence of big governments in Canada today. The accomplishments of the Fathers of Confederation constitute a heritage that we must both honour and adapt.

The Evolving State in a Changing World

Since the Second World War, two new primary forces have challenged our traditional constitutional arrangements: the growth of the state and the increased impact of the international environment. Given the multiple functions of the modern state, Commissioners see no evidence that a significant overall decrease in government activity is possible. We see, in particular, a high probability that Canada's international involvement will increase, and that external forces will have an increasing effect on the quality of Canadians' lives. These assumptions will shape our analysis of Canada's constitutional arrangements. We wish to determine, in the light of these assumptions and of the continuing evolution of Canada's social composition, how to provide government that responds democratically to Canadians' wishes and efficiently manages our collective affairs.

The dialectic among state, society and economy, domestically and internationally, defies easy comprehension. Yet we Canadians must understand the many functions performed by governments in our federal state if we are to have informed discussion about the appropriate division of labour between the state and the economy, and about the other functions of the state in Canada. It is essential to keep in mind that government itself is far from being a single-minded actor.

Since the Great Depression of the 1930s, many people have believed that domestic economic management is one of government's major responsibilities, second only to preservation of civil order. Management of the welfare state derives from, and is closely integrated with, the task of economic management. The welfare state is government's response to the failures of the economic system to distribute equitably income, risk and life chances. It is the product of evolving concepts of social justice and citizens' rights, worked out through political processes. Although it is also related to economic stabilization, we can logically consider it the equity side of government's responsibilities in economic management. The two functions are complementary: the state is held responsible both for performance of the economy and for the social consequences of fluctuating patterns of economic activity. These two interrelated tasks require a complex division of labour: although the state must seek to steer the economy, most basic, day-to-day, economic decisions must be taken in the market-place. The state intervenes to adjust the distributive consequences of the market in accordance with evolving criteria of social justice. The welfare state preserves social stability by collectively compensating for inequalities generated by the market.

In addition to discharging its responsibilities in economic management and social welfare, the modern state seeks to maintain social cohesion, symbolizes the community's unity and diversity, and operates on the international stage. It has a responsibility to foster social integration. This "social role", as we have termed it, includes government responses to issues of sexual equality, ethnicity, language, regionalism, Native rights, alternative life-styles and ecology. While the relevant government policy responses clearly affect the economy, the issues derive their impetus from the social pluralism and multiple divisions characteristic of "post-industrial" society. We are witnessing the extension of concepts of equality to new spheres and a consequent willingness to use governments to resolve problems that those concepts define.

A healthy political and social order requires symbolic official affirmation of our identity as Canadians. Official recognition and confirmation of the diverse characteristics of a national society through representative practices and in government policies is essential to that society's definition and perception of itself as a people. Canada's official languages policy, for example, symbolizes our linguistic dualism. Our policy of multiculturalism is a recognition of the contribution of all ethnic groups to Canadian society. The appointment of women to the offices of lieutenant-governor and governor general speaks to sexual equality. Special constitutional conferences on aboriginal rights affirm that Canada's aboriginal peoples are a distinctive component of our modern society.

To dismiss these symbolic functions of the state would be a grievous mistake. The social and symbolic roles of the state have a special capacity to excite the passions of each of us as citizens, for they address our moral beliefs, our feelings of self-worth, and our identities. With its prominence in recognizing status, as well as distributing income, the state must seek to enable citizens to identify with the moral, symbolic order of a highly politicized society. This is no easy task. The emotionally divisive issues of the

last quarter-century in Canada have not been concerned only with class divisions or labour/management conflict, but have frequently emerged from the symbolic and social realms.

The Canadian state also has major international functions and responsibilities. These responsibilities are so much greater than they were before the Second World War that they represent a qualitative change. Since 1945, there has been a proliferation of new states with varying degrees of control over territory and populations. A small club of actors has become a crowd, thus complicating the international system by increasing the number of participating states. Simultaneously, international organizations have become important forums for the attainment of domestic goals. Canada, as a trading nation, depends heavily on a liberalized international order to encourage the flow of goods, capital and services. Various institutional arrangements, which involve the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), and other bilateral and multilateral accords, manage this international economic system. Conversely, the international arena also provides ground for the arms race and the playing out of international political rivalries. Canada is not merely an observer of all these developments: we have taken and shall continue to take a prominent part in the resolution of international problems.

The breadth and complexity of the state's relations to its domestic and international environments defies easy comprehension. The domestic and international context is so exceptionally complex that historic patterns of thought—communism, capitalism, socialism, liberalism, conservatism and other intellectual ordering devices of yesterday's politics—do not provide coherent answers to the range of issues that agitate us. Several of those traditional perspectives may help to guide policy in selected areas, but if our concern is for the whole, as it must be, we must be creative.

No consensus exists in today's intellectual and political milieu for Commissioners to ratify and adopt. The frequently lamented decline of political parties and the resulting tendency of interest groups to deal directly with governments are in part a product of that lack of consensus. Without some coherent framework of ideas, it is difficult for political parties to offer direction, integrate the multiple divisions in Canada and deal with the vast demands put upon the state.

The International Environment, Responsible Government and Canadian Federalism

Increased international interdependence in the modern world involves new challenges for Canadians. It also puts new or stronger pressures on Canada's institutional and constitutional arrangements. For instance, a crucial problem throughout the world involves the appropriate relations between the global political structure of geographically fixed states and the international forces—economic, cultural, ideological, scientific, technological and military—within which they exist. States cannot move, and neither can peoples. Accordingly, this Commission has been deeply concerned about Canadian responses to the many external forces that shape our private and

public lives, and that may even alter the delicate balance between federal and provincial governments. The manner in which we Canadians respond can affect the quality of Canadian democracy and the effect of our institutions on economic performance.

There is an inherent contradiction in administering foreign affairs within a parliamentary democracy. International negotiations, participation in complex alliances, and the need for quick responses to international crises may encourage, even require, prompt executive action with little or no public or parliamentary consultation. Some matters, such as deliberate adjustment of the exchange rate, require secrecy for their effective implementation. Executive branches usually have more expertise at their disposal than have legislatures, and legislatures enjoy access to more expertise than citizens. The imbalance is much greater in international matters than on purely domestic issues. Our treaty-making practices, which do not require parliamentary debate, accentuate the imbalance of information and expertise.

Commissioners do not intend to suggest that the executive acts with ease and precision and without institutional controls in the international domain. Managing international economic policy is difficult for the federal government, for example, because it involves blending the "low politics" of economic life with the traditional "high politics" of war and peace. Significant internal reorganizations to achieve that blending have been constantly on the agenda of Western states, including Canada, in recent decades.¹ Bureaucratic politics pervades the making of international economic policy because the process involves numerous departments and agencies with foreign economic interests or responsibilities.² Thus the state is far from being a unitary actor, even in foreign affairs. The internal controls on government resulting from this situation are undoubtedly powerful, but they are qualitatively distinct from the discipline of responsible government in our domestic constitutional tradition.

Global interdependence is often viewed primarily from the perspective of economics, a field where it is defined in terms of liberalization of international trade and the flows of international capital. Economic interdependence, however, is only one of the external forces that play on people and states. Many contemporary social movements reflect the interaction between domestic and international forces. Movements seeking to enhance the status of women and aboriginals and to protect the environment, and groups favouring new or "alternative" life-styles are simultaneously national and international. Social movements gain strength from their international counterparts and have an increasing influence on domestic affairs.

The traditional concerns of Canadian foreign policy—war and peace, military contributions to the Western alliance, and procurement to sustain the infrastructure of defence—are major responsibilities of the national government. These responsibilities are relatively immune from fluctuations in the federal-provincial balance in domestic areas.

The federal government is the primary regulator of our growing social and commercial transactions with the rest of the world; it creates policy on tariffs, exchange rates, immigration, citizenship and culture. It is responsible for our

national borders, and their defence, and for the regulation of transactions across them. It may execute this responsibility through domestic legislation, such as the Foreign Investment Review Act (FIRA), or by means of international treaties on tariffs. The media, particularly electronic media, can easily penetrate national borders. Most Canadians live within 300 kilometres of our border with the United States, with which English-speaking Canadians share a common language. Our national government is the only institution in Canada with the ability to regulate the flow of U.S. electronic media into our country. This is one reason for its major role in the fostering of Canadian culture.

The national government's greater involvement in the international arena makes it more sensitive than the provinces to a variety of international concerns and to the interdependence of international and domestic interests. This difference in exposure and awareness complicates the intergovernmental process within Canada as various parties emphasize different concerns in domestic discussions. This situation has been evident in our experience with acid rain, for example, and in provincial adherence to Canadian commitments in international trade.

The provinces obviously lack international contacts equivalent to those exercised by the national government. Nevertheless, in response to international events affecting their residents or businesses within their jurisdiction, provincial governments have become actively involved in international matters. Provincial activity in the international sphere focuses largely on trade. Quebec has, in addition, extensive cultural contacts with France and *la francophonie*.

Manoeuvring in the international political economy on behalf of domestic economic interests, therefore, has become a functionally shared responsibility, and provincial governments have become prominent in international trade missions. Because many non-tariff barriers (NTBs) of key interest to our trading partners are under provincial jurisdiction, federal-provincial co-operation is essential if Canadians are to participate effectively in this aspect of international relations. Given the new importance of NTBs, provincial agreement and compliance are essential if the terms of treaties negotiated by Canada are to be fulfilled. At the moment, no arrangement exists to achieve such agreement. That gap in our institutional machinery is a major impediment to negotiation and implementation of bilateral and multilateral arrangements to reduce international trade restrictions.

The need for federal-provincial co-operation in international trade is parallel to the need for federal-provincial co-operation in domestic matters for which both levels of government have a measure of responsibility. We can apply some of the principles governing co-operation in domestic matters to the international realm. The provinces would wish international economic policy to be as sensitive to regional and provincial interests as is domestic policy. And, of course, it is desirable that the provinces be sensitive to the national interest and respect the federal government's international responsibilities.

Growth of the State and Canadian Federalism

The growth of the state in Canada at both federal and provincial levels has generated an additional set of problems: managing the interdependence of governments in the federal system. Interdependence was a concern in 1867. Disallowance, reservation, the declaratory power and federal appointment of the provincial lieutenant-governors—early drafts called them “Superintendents”—all indicated that the national government could intervene directly in provincial affairs.

These federal instruments were not manifestations of intergovernmental partnership. Disallowance and reservation were essentially negative. They could prevent provincial governments from proceeding with particular measures. The declaratory power allowed the federal government to remove certain “works” from provincial jurisdiction. The federal government applied these instruments unilaterally and frequently in the early years. The Constitution Act, 1867 also provided for federal payments to the provinces to compensate for their relinquishment of tariff powers and to bridge the gap between their revenue-raising capacities and their expenditures. Relative to the present situation, however, the interdependence of governments in the federal system was minimal in 1867 and remained so into the twentieth century.

The modest elaboration of the conditional-grant technique between the two World Wars brought the two orders of government into closer collaboration in pursuit of common purposes. Even in the Depression of the 1930s, however, prevailing opinion held that the division of powers was the defining element of Canadian federalism. Flexibility was to come, not from transcending the division of powers by co-operative arrangements, but by constitutional amendment. That amendment, unfortunately, was more easily advocated than accomplished. Hence a constitutional impasse emerged in the 1930s. Many Canadians came to see an inflexible federal system as an obstacle to a leading role for the national government, especially in economic management, which they considered essential in those desperate times.

Wartime conditions after 1939 gave the federal government the dominant role that had been impossible for it to assume in the Depression. In the post-war period, the constitutional impasse was circumvented by means of a growing network of fiscal agreements and conditional grants, especially in the various programs that constituted the welfare state. In the interdependent federalism of the late 1940s and early to mid-1950s, the federal government was still the dominant player. Provincial governments, however, began to enhance their bureaucratic capacity and to amplify the number and increase the subtlety of the governing instruments at their disposal. Seeing themselves as entrepreneurs developing their own economies, they began to challenge the national government's leadership. Nation-building and province-building had to find ways to co-exist.

Provincial governments continue to occupy a prominent place in the nation's public life. Commissioners consider this situation an unalterable feature of the foreseeable future. The co-existence of two orders of government actively involved in the same society and economy has created a

high degree of interdependence among governments. Managing the federal system has thus emerged as a new and difficult responsibility for governments that wield much more power than they did in 1945.

A complex network of intergovernmental agreements and machinery testifies to the shared responsibilities of the two orders of government, and to their inability to pursue their objectives in isolation from each other. The division of powers proves an imprecise guide in determining where responsibility resides when new areas of activity emerge. Thus there are always intergovernmental skirmishes at the margin. These conflicts deflect attention from the ongoing process of working out *rapprochements* in other areas.

The intergovernmental process is both political and bureaucratic. There is no hierarchy. Participants can make demands, strike postures, and threaten and use unilateral action. There is no price system to regulate competition, nor is there any invisible hand to transform competition into a universally recognizable version of the public interest. Nevertheless, there is self-restraint. There is recognition of the legitimacy of other governments. There is a common citizenship linking governors and electorates that distinguishes intergovernmental relations from those among independent states in the international system. Furthermore, there has been a halting development of intergovernmental machinery to manage federal-provincial interdependence. In recent years, both levels introduced departments, bureaus, and agencies of intergovernmental affairs—a number of which they have since disbanded—to manage interdependence.

Be this as it may, Commissioners see considerable room for improvement in intergovernmental relations. We accordingly recommend new institutions to manage interdependence. We suggest the need for a more highly developed sense of constitutional co-existence and of comity, to moderate the excesses of rivalry and competition. Over time, governments, like other organizations, do acquire interests of their own that are divorced from the purposes they were originally intended to serve. Thus the concerns of government often come to override the interests of citizens.

Citizens sometimes see themselves as pawns in the hands of contending governments, neither of which represents their views of how and by what policies they should be governed. Squabbling and rancour can frustrate our desire as citizens for a sense of security that our affairs are well handled in intergovernmental discussion and negotiation. Therefore, Commissioners seek more effective handling of relations between the governments of the national and provincial communities that co-exist as the base of the federal system. We Canadians all belong to both types of community. These communities are alternative manifestations of one people, which is provincial for some purposes and national for others. Governing ourselves within the federal system is thus a more complex task than in a unitary state. The activist role of government at both levels enhances this complexity.

Growth of the State and Responsible Government

Responsible government is the primary vehicle by which Canadians hold governments accountable. Despite the difficulty of encompassing and

controlling the activist state, the institutions of responsible government remain the key to keeping government our servant, rather than allowing it to become our master. The increasing activities of government complicate the functioning of responsible government in several ways.

As we have already noted, intergovernmental networks linking federal and provincial governments weaken the ability of legislatures to control executives and hence of the electorate to control governments. The proliferation of regulatory agencies and Crown corporations outside executive control lessens accountability. The many and increasing activities of the state in the international arena are less subject to influence by legislatures and electorates than are its more domestic functions.

We have seen as well the effect of changes in economic theory. New ideas have emerged about the management of inflation, growth and employment. These ideas influence not only the function of the state and the division of labour between state and economy, but also the relative power of institutions within government. Such influences may affect democratic institutions. Monetarist ideas, for example, enhance the role of the Bank of Canada, which is highly independent of direct government control, and thereby lessen the ability of the electorate and of Parliament to hold the government responsible for an important instrument of economic policy.

More generally, the state's agenda is extensive; the imbalance of expertise and resources between cabinets and legislatures is pronounced. Limitations of time are extreme, and incentives for secrecy are strong. Public exposure, scrutiny, debate and discussion of policy are inevitably spotty and haphazard. The vast apparatus of the administrative state continues to apply earlier policies around which programs have been built, agencies constructed and relations with clienteles established. There is considerable scope for discretion, and policies evolve in the nooks and crannies of the bureaucratic structure, far from the gaze of parliamentarians and voters, but often closely monitored by interest groups. Even Cabinet ministers who are responsible for managing vast bureaucracies, cannot claim to monitor everything their departments do. To assert greater political control over the bureaucracy we have created a host of "central agencies". These, too, are bureaucracies which must also be controlled.

Political parties have not been able to eliminate these difficulties. Canadian parties have a limited capacity to draw interests together effectively and to provide the coherence derived from an integrated party philosophy. With the growth of government, parties have faced even greater challenges to encompass the full range of affected interests. Interest groups therefore interact directly with the bureaucracy. Demands on the state, accordingly, come from many directions, and the absence of an effective system to discipline them means that interest groups have no need to make compromises with other interests, public or private.

Commissioners have no panacea for these ills, but we have suggestions for alleviating them. The direction of our proposals is straightforward. The bias in favour of executive dominance in our system has gone too far and needs redress. We must secure the foundations of responsible government through which Canadians practise democracy in both the federal and provincial spheres.

However desirable it may be to disentangle federal and provincial functions and responsibilities, interdependence and interaction between the two orders of government will continue. This is an unavoidable consequence of vastly increased government intervention since 1867. It often reflects a beneficial competition among governments as politicians vie with one another to satisfy the expectations and demands of citizens and to secure the political recognition this brings. Commissioners would prefer to see interdependence managed well. We would like a system that helps to clarify disputes over jurisdictional boundaries, renders intergovernmental processes more visible and therefore more accountable, and moderates the excesses of competition. We intend our proposed reforms to increase the ability of national institutions to represent and respond to regional concerns, and to increase the capacity of those institutions to integrate national and provincial concerns in the intergovernmental arena.

We Commissioners advance our proposals for institutional reform in the belief that the more government we have, the more democratic we must become. We believe, also, that in a complex society in which the state, the economy and society are closely linked, effective government is incompatible with the isolation, secrecy and aloofness of our governors. Both idealism and realism suggest that the Canadian state requires more democracy, not less. Those who argue to the contrary must come to grips with the consequences of unchecked state power and an uninformed citizenry.

We Commissioners base this essentially democratizing position on a fundamental distinction between markets and governments. Although markets need a secure environment of rules and property rights, and the support of a complex infrastructure, they do not require central direction of the innumerable decisions of individual economic actors: co-ordination of economic activity takes place with or without individuals' understanding the market's overall functioning. Individuals respond to cues from the market as they pursue their particular economic goals; there is co-ordination without hierarchy.

With governments, it is otherwise. In government, sensitivity, trade-offs and co-ordination do not occur automatically. Governments intervene directly in society and the economy. Those participants in government who would alter social and economic arrangements in pursuit of public objectives should be knowledgeable and sensitive. Democratization, therefore, is a prerequisite to effectiveness in the long term. We must strengthen the processes of democratization through parliamentary institutions, both federal and provincial.

Political Community in Canada

The image that a people has of itself has a major influence on the way it lives. No Royal Commission can pronounce *ex cathedra* what that image is to be. Commissioners can explore the critical issue of our collective identity, hoping to clarify the debate and contribute to discussion. In the final analysis, however, Canadians will work out their own answer, within an institutional and constitutional framework, the evolution of which is, in part, a response to the changing pressures of community.

The complexities of community in Canada have grown, not diminished, from the time of Confederation. With the addition of new territory, the original four provinces based on distinctive communities have become ten, and the number may further increase as the North develops.

Canadians emerged as a distinctive people in the post-Confederation process of nation building. For many English Canadians, that evolving sense of collective self fitted comfortably with continuing, but slowly declining, allegiance to Britain. French Canadians were politically less oriented to Europe and identified more with North America; almost all were descendants of the *habitants* who settled Quebec in the seventeenth and eighteenth centuries. The different orientation of English and French Canadians toward Europe sometimes produced French-English tensions over foreign policy, most notably those inherent in the conscription crises of the two World Wars. Extensive immigration from central and eastern Europe to the West, in the years preceding the First World War, laid the foundation for the multicultural heritage which our nation recognized in later years.

The evolutionary maturation of Canada from colony to nation as portrayed by liberal nationalist historians of English Canada, and the concomitant transformation of Empire into Commonwealth are well-known staples of Canadian history. The Balfour Declaration of 1926 and the Statute of Westminster, enacted in 1931, need no elaboration here. Continuing internal development of a Canadian political identity after the Second World War was codified in the Canadian Citizenship Act of 1946, the abolition of civil appeals to the Judicial Committee of the Privy Council in 1949, domestication of a formula for amending part of the Constitution in the same year, and appointment of the first Canadian Governor General in 1951.

In 1951, the Report of the Royal Commission on National Development in the Arts, Letters and Sciences in Canada (the Massey Commission) argued that the state should foster Canadian culture, in part to counter "Americanization". This concern was to recur in numerous areas of policy as the capacity of the British connection to differentiate Canadians from Americans diminished. Although we Canadians were acquiring an autonomous international presence, we were simultaneously becoming, both practically and psychologically, a North American people. The nature of our co-existence with the United States was a recurrent concern for Canadian policy makers. How to combine political autonomy and a distinctive identity with the increasing integration of the North American economy continues to be a fundamental dilemma for Canadians. The difficulty transcends purely domestic concerns and requires delicate handling of our international role. The United States is the world's strongest military and industrial power, and leads the network of alliances arrayed against the Soviet Union and its allies. In these circumstances, the dilemmas and difficulties of Canadian statehood and nation-building are permanent features of our national condition.

In the first decade after the Second World War, Canadian nationalism and elaboration of a national community developed rapidly. Links with Britain, no longer an impressive imperial power, became weaker. While many other nations struggled to recover from war or to emerge from colonial dependence, Canada was becoming a middle power. The federal government, building on

foundations of its authority laid down during the Depression and the war, assumed a leading role in the processes of demobilization and reconstruction. The shared experience of depression and war had changed public expectations of government: the federal government, working closely with the provinces, became the central actor in the evolution of the welfare state.

The Government of Quebec was defensive, concerned more with defending provincial powers generally, and Quebec's specifically, than with the search for enhanced status and jurisdiction pursued by its successors. The Report of the Quebec Royal Commission on Constitutional Problems (the Tremblay Report), tabled in 1956, was a vigorous sociological and philosophical defence of federalism and of its special virtues for Quebec. It described Quebec society as spiritual, anti-materialist, rural and anti-statist. Quebec, it argued, preferred to handle important functions, including education and welfare, primarily through private religious institutions, although industrialization, urbanization and secularization were already undermining the Commission's analysis.

In the mid-1950s, the Canadian state at the national level remained symbolically and practically an expression of English Canadians, and primarily of those of British background. A complex set of domestic pressures, however, accompanied increasing autonomy from Britain. The non-British component of English Canada asserted itself. Prime Minister John Diefenbaker, who held office from 1957 to 1963, made his Cabinets more ethnically heterogeneous than had his predecessors; he also named Canada's first woman Cabinet minister. His government gave status Indians the vote in 1960, even though many status Indians opposed the franchise, and appointed an Indian, James Gladstone, to the Senate. Diefenbaker had a vision of "One Canada", derived from the ethnic mosaic of life in the West, his own German and Scots ancestry, and a commitment to parliamentary tradition. His major effort to translate his vision into practice was the Bill of Rights of 1960.

A dramatic change in the role of Quebec's provincial government followed the death of Premier Maurice Duplessis in 1959. The election of Jean Lesage's Liberals in 1960 furthered the transformation that came to be called the "Quiet Revolution". During the 1960s, the provincial government dramatically increased the scope of its activities, replacing the church as the directing force in the evolution of the French-speaking majority in Quebec. Links between francophones in Quebec and elsewhere in Canada eroded as the former came increasingly to define themselves as Québécois. The political allegiance and identity of the Québécois focused on their own province. French-speaking Quebec became increasingly secular and materialist as well as nationalist. This provincial nationalism of Quebec's francophone majority revealed the inadequacies of the federal government's representation of French Canada and the insensitivity of the national community to the needs of French Canadians inside and outside Quebec.

One element of the federal government's response to Quebec's discontent was the creation, in 1963, of the Royal Commission on Bilingualism and Biculturalism. In response to its *Report*, which began to appear in 1967, the federal government, in 1969, enacted the Official Languages Act. Prime

Minister Trudeau's government pursued a vision of a Canada of two linguistic communities, in which French-speaking Quebecers would see both the federal and Quebec governments as their own, and all of Canada as their country. The implementation of this vision required state support to ensure the survival of official-language minorities, francophone outside Quebec and anglophone within. With the redefinition of Canada as officially bilingual, significant increases in the use of the French language developed in the federal bureaucracy. Many Canadians of non-French background saw these transformations as threatening. The federal government responded with the policy of multiculturalism, which recognized Canadians of all ethnic origins as contributors to and participants in a Canada that was to be multicultural as well as bilingual.³

In this period, Canadians could not assume the continued presence of Quebec in a united Canada. The people of Quebec engaged in a passionate debate over whether to sunder political links with other Canadians and the national government; the Parti québécois proposed a relationship of "sovereignty-association", an economic association of Quebec and Canada. The basic issue was whether Quebec could be accommodated within a framework of "renewed" federalism.

The Quebec referendum of 1980 resolved the issue of separation. It was won by those opposed to independence, including a small majority of French-speaking voters. The language provisions of the Canadian Charter of Rights and Freedoms followed, along with patriation and an amendment process, as part of the Constitution Act, 1982. The language provisions of the Act obliged the provinces to provide education in their own language for official-language minorities in specified circumstances. These constitutional provisions, an objective of the federal government from the late 1960s, required provincial governments to provide services they were assumed to be unwilling to provide as a matter of choice. In the interest of the evolving definition of the national community the Constitution Act, 1982 thereby foreclosed certain provincial diversities in language policies, based on the division of powers and on different views of the nature of provincial communities.

The obligation to provide education in the languages of official-language minorities results from a prolonged evolution of relations between the two orders of government and the national and provincial communities. It is essential to comprehend that evolution in order to become fully aware of our national identity.

While the federal government was refashioning the image of Canada at the national level to provide for linguistic dualism and multiculturalism, provincial governments were becoming more powerful actors in Canadian federalism. In the constitutional discussions undertaken after the victory of the Parti québécois in November 1976, a number of provincial premiers stressed their view that provincial communities shared parity with the national community. Some even spoke of the priority of provincial communities.

Initially, the four founding provinces of the Canadian federal system consisted of historic, territorially grouped, diverse communities. The

allocation of powers to provincial governments was an appropriate response to these sociological facts. Assigning the more significant responsibilities to the new national government was not a response to a pre-existing national community; rather, this act represented a practical response to a set of nation-building tasks best undertaken in common by that new government. The national community was to emerge as the process of nation building proceeded.

The post-confederation growth of the state at both levels has profoundly affected the evolution of the national and provincial communities. At a time when the public sphere had few functions and the private sphere was comparatively large, the federal/provincial division of powers was irrelevant for most social and economic activity. In federal systems, expansion of the state's role does not merely displace the private by the public sphere. Rather, there occurs a more complex parcelling out of formerly private interests to a public sphere divided between two orders of government. Thus expansion of the state in Canada has meant that the division of powers now affects society and the economy much more deeply than it did in earlier years. As the private sphere contracted in proportion to the more extensive use of national and provincial jurisdictional capacities, the practical significance of provincial and national communities correspondingly increased.

Canadians belong to national and provincial communities whose significance in their lives increases with every increase in the activity of government. In these conditions, citizens can no more divide their national and provincial identities and concept of community than they can expect a classical division of powers to create watertight compartments for the two orders of governments.

The national community that federalism fosters and sustains limits the potential distinctiveness of the provincial societies that are also fostered and sustained by federalism. Membership in, and identification with, the national community are, in part, products of our common life and history as Canadians. In addition, modern conditions tend to erode differences among the provinces. But identification with the national community also results from the efforts of federal leaders, who have often tried to protect and nourish an expanding sense of "Canadianism" against what they have viewed as provincial threats to the integrity of a common citizenship.

In the last decade, in particular, the federal government has attempted to deter the process of "provincialization" of the Canadian community, a process that results from the more prominent provincial government role of recent years. With the emergence of a more active provincial state, inducements developed for the federal government to set common national standards. The federal government encourages provincial compliance in areas of provincial jurisdiction where national standards and relatively uniform performance seem appropriate for the citizens of a common country.

Federalism does not imply that provincial jurisdiction, provincial governments and provincial communities are immune from the imperatives of Canadian citizenship. The national government, representing all Canadians, has a clear responsibility, which is not confined to the areas over which it has explicit constitutional authority, to play a leading role within the federal

system on behalf of the Canadian community. Commissioners do not intend these remarks to provide the national government with a rationale to undermine the obligation of the provincial governments to respond to their own communities. We do not sanction unconstitutional means to gain national ends. Nor do we intend these remarks as criticism of provincial governments, which cannot, of course, undertake national leadership. We simply note that to deny the contribution of federal leadership and initiative is to deny the history of the last 50 years.

During the last half-century, federal-provincial fiscal agreements have produced relatively co-ordinated tax and transfer systems. The welfare state has reduced interprovincial differences in the availability of social benefits. The Canadian Charter of Rights and Freedoms, particularly through the provisions for minority-language/education rights, has helped to set Canada-wide standards of performance. Provincial support or acceptance was critical to the attainment of each of these developments, but without the catalytic efforts of the national government, our tax system, our welfare program, and our rights would be much less integrated than they are.

Our national government has sought to preserve and foster national objectives and common treatment for Canadian citizens, not only within its own jurisdiction, but also in matters within provincial jurisdiction. Commissioners believe that it will continue to do so. Provincial governments will continue to provide different packages of services outside the areas in which those standards operate, and will apply them in different ways. As Canadians question the appropriateness of national standards already in place, relaxation will occasionally occur. Bilateral agreements between the federal government and particular provinces, most notably Quebec, will, as in the past, facilitate differences of treatment. Our basic point, however, remains. The provinces of Canada are not independent states. They operate within a constitutional order the integrity of which depends on recognition that governments are responsible to citizens whose preferences and expectations derive from membership in both national and provincial communities. The provincial diversities of policy that federalism encourages are subject to the constraints of membership in a national community, and the national community is not indifferent to the policy preferences of provincial communities.

In addition to reconciling the multiple social cleavages to which the modern world gives rise—a task equally applicable to the government of a unitary state—the national government of our federal system must also represent and respond to the provincial dimensions of our collective existence. Just as provincial governments and communities cannot ignore national citizenship and the national community, so the national government cannot be oblivious to the provincial dimension of our existence. The psyche of citizens of a federal country is not compartmentalized in terms of the division of powers. The average citizen is simultaneously and comfortably both a Canadian and, say, a British Columbian or a Nova Scotian. Many Canadians therefore find very unsettling overt federal-provincial conflict, particularly that based on primarily governmental concerns. They are disturbed that the co-existence of national and provincial communities, to which they are generally accustomed,

is often not reflected by the interaction of the governments which represent them in the intergovernmental arena.

The subtle interdependence between the federal system and the national and provincial communities which that system reflects and moulds has an additional important dimension that must be understood if we Canadians are to govern ourselves effectively. The individuals who make up the national community differ by sex, ethnic origin, age, economic status and province of residence. Commissioners have already noted the historic French-English dualism of the country and the move to recognize Canada's multicultural character. Our nation's developing multi-racial composition is now on the national agenda. These various cleavages also have provincial manifestations, and Canadians must bridge and reconcile these gaps within provincial communities, as well as within the national community. We have made remarkable progress: 40 years ago, an observer could have mistaken the national government—and by inference the society it represents—as the government of a British, white and male community. The federal government's representation of the real composition of the Canadian people has broadened, but much remains to be done.

Canada, like other internally diverse societies, must try to accommodate those diversities and bind them together in common enterprises. Contemporary states seek to foster an inclusive citizenship and a comprehensive sense of nationhood. While the state must provide leadership, consent is the basis of its legitimacy. As the state makes use of more representative structures and policies, it must become more finely tuned to the complexities of a heterogeneous society.

Commissioners have surveyed the evolution of Canada's national and provincial communities, the emergence of diversity, and the roles of both levels of government in the federation. This survey confirms the importance of making appropriate institutional arrangements for the national government. In a diverse national community, the political process and institutional arrangements, especially their representative elements, should encourage the national government to take broad views.

To complete Commissioners' picture of the Canadian community, we must approach the subject from the vantage point of a new institutional development. Canadians now have a Charter of Rights and Freedoms. For more than a century of government in the parliamentary tradition, we put our trust in political authority and the federalist dimensions of the Constitution. We saw little need to define various categories of rights as beyond the reach of Cabinets and legislatures, and little necessity for such rights to be protected by the courts. We regarded that conscious choice of parliamentary supremacy by our predecessors as a symbol of our political distinctiveness from the United States. The decision to adopt a Charter constitutes a transformation of that tradition.

Antecedents of the Charter are significant. Critics often underestimate the historical import of the Bill of Rights of 1960. Its provisions did not apply to the provinces. The bill itself was a statute of Parliament and not constitutionally entrenched. It contained a clause that allowed Parliament to by-pass its

provisions by simple declaration. Moreover, the Supreme Court of Canada did not use it as vigorously as some Canadians had hoped to defend citizens' rights. Nevertheless, the Bill of Rights represented a significant advance. The Canadian Charter of Rights and Freedoms is a logical next step in the process that the Bill of Rights began.

In the 1960s and 1970s, the national government sought to provide a compelling official definition of Canada responsive to our ethnic pluralism and linguistic dualism. John Diefenbaker was concerned with our ethnic pluralism, and he hoped that the 1960 Bill of Rights would help to include those outside the circle of founding peoples. His successors were anxious to refashion the national government and national community to express our French-English duality. Although the Official Languages Act of 1969 accomplished much, only provincial action, particularly in official-language education, could provide opportunities for French Canadians outside Quebec. The language provisions of the Constitution Act, 1982 were the product of lengthy and bitter constitutional struggles following Quebec's 1980 referendum. They give judicially enforceable positive rights to official-language minorities in education.

The Charter also recognizes the rights of individual Canadians who, as citizens, are a fundamental element in the constitutional order. It recognizes, too, the community dimension of our diversity: in particular aboriginal rights, language rights and multiculturalism.

Over time, a people possessed of a charter will come to view their rights differently from a people without a charter. For a parliamentary people, tradition and practice are the basis of rights; it is not easy to catalogue these rights, and citizens may not be particularly aware of them. For such a people, the protection of rights occurs in the interstices of judicial and political processes; citizens' rights are less likely to be central to its self-definition.

A charter creates a different set of circumstances. It identifies rights that people hold in common. Unless the rights are a dead letter, they become one of the standard ingredients of political rhetoric. In Canada, over time—and adaptation to the Charter will take time—the focus on rights will contribute to a clearer understanding of the meaning of political community and of the citizen's place within it. The Charter, and federal and provincial codes of human rights, with which we have had longer experience, reflect the involvement of the state in relations among citizens and groups as well as between citizens and their governments. The courts, unless they ignore their obligations under the Charter, will have to spell out a clearer philosophy of citizen-state relations and community. In so doing, they will draw on legal commentaries, legal precedents—Canadian and foreign—the academic community more generally, and public opinion, to assist in their deliberations. The long-term consequence of the process set in motion by the Charter should be a much more specific comprehension and a much more subtle sense of citizenship and community in Canada.

In the years to come, interpretation and implementation of the Charter's principles, through judicial decision or parliamentary action, will alter our understanding of the institutional framework through which we Canadians

govern ourselves. Already, the Charter is a fundamental addition to the instruments that govern citizen-state relations. It elevates the status of citizens symbolically and practically by carving out a sphere of rights. It imposes obligations on the state with respect to language rights. It authorizes affirmative action by the state to ameliorate the conditions of disadvantaged individuals or groups. Thus the Charter links citizens with the constitutional order much more explicitly than ever in our history.

Canadian government links cabinets and legislatures, federal and provincial governments, politicians and regulatory agencies and Crown corporations, interest groups and the state, and citizens and the state. Citizens are the ultimate source of authority in a representative democracy such as Canada's, and we must all give sustained attention to these complex interdependencies if we are to govern ourselves democratically and efficiently into the twenty-first century.

Canadians cannot implement the reforms Commissioners propose automatically or easily. There is no "clean slate" on which reformers can write as they wish. They must pursue change through the existing network of institutional relationships and power, and the interdependencies between state and society produced by past policies. Reform will emerge from the interaction of compelling analysis and the political process. We Canadians must involve ourselves and harness the skills and dedication of politicians and bureaucrats to achieve the ends we hope to accomplish.

Notes

1. See Robert Boardman, "The Foreign Service and the Organization of the Foreign Community: Views from Canada and Abroad", in *Selected Problems in Formulating Foreign Economic Policy*, vol. 30, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
2. See Gerald Wright, "Bureaucratic Politics and Canada's Foreign Economic Policy", in *Selected Problems in Formulating Foreign Economic Policy*, vol. 30, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
3. See Raymond Breton, "Multiculturalism and Canadian Nation-Building", in *The Politics of Gender, Ethnicity and Language in Canada*, vol. 34, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).



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The Institutions of National Government

National Institutional Reform: Introduction

This Report has previously described the uncertainty of institutional transition in the post-Second World War period: it was a feature that reflected the absence of a clear and consistent sense of direction. There was no broadly based consensus as to the nature of the new patterns of institutional arrangements that were to emerge. Today, demands both for greater co-ordination of public policies and for more decentralization exist simultaneously. Similarly, Canadians seek a number of other paradoxical developments: decisive leadership together with increased public participation and consultation; regional representation alongside national integration; reduced party discipline in the legislature at the same time that proposals are being made for increased executive responsibility. And other examples are not far to seek. In some important aspects, of course, these demands do not exclude one another; rather, the test of effective institutional arrangements is the balance of their political values.

We Commissioners, having regard to our mandate to respect the spirit of the Constitution of Canada, focus our consideration of the national institutions of government on the performance of the parliamentary system in relation to the constitutional norms of representation and responsibility. Thus we give particular consideration to the structures and processes of Parliament: the House of Commons and the Senate; legislative/executive relations; the structures and processes of the Cabinet and the public service, including Crown corporations and regulatory agencies; the place of political parties within the system of parliamentary government. We are concerned, too, with state/citizen relations, including the roles of organized interest groups.

This Commission's public hearings and debates revealed considerable public concern about the present state of Canada's national institutions.

Three major areas for reform are identifiable: responsible government and public accountability; representative government and interest groups; national government and regional interests. These areas we now address.

Responsible Government and Public Accountability

Responsible government is the fundamental basis of democracy within a parliamentary system. In Canada, this system has two essential requirements: first, that Cabinet be effectively in control of the federal government in all its organizational forms, and secondly, that Cabinet be accountable to Parliament for all executive actions, including the management of the administrative state. Logically, the latter requirement depends on the former. A number of factors associated with the growth of government and the operation of modern political parties make it increasingly difficult to meet these two requirements of responsible government, on which our democracy depends.

The requirement that Cabinet be accountable to, and thus maintain the confidence of, Parliament has been interpreted by Canadians to mean that the former body must have the confidence of a legislative majority in the House of Commons. To secure this support, our parties have functioned in a highly disciplined manner: adherence to party policies and positions has permitted little independence for members of the House of Commons. There are those who support the practice of party discipline on the grounds that it serves to promote party unity and thus to establish clear alternatives between our governing and opposition parties; nevertheless, the practice has come under increasing criticism in recent years. This criticism is not new; since the emergence of party government, there have been concerns about the effects of party discipline, as well as occasional efforts to curb and even eliminate, the practice. Such concerns were especially widespread in the various agrarian movements and parties on the Prairies before the Second World War. The supporters of these movements perceived party discipline as a device to subordinate their regional economic interests to central-Canadian majorities in the privacy of caucus.

Responsible government which includes a cabinet accountable to the legislature can be defined narrowly or broadly. From a narrow, technical perspective, it simply means that a Cabinet which loses the confidence of the House of Commons either must resign and be replaced by an alternative Cabinet which secures the confidence of a House of Commons majority or must go to the people. A broader perspective goes beyond this view of responsibility and raises questions about the quality of the accountability relationship. From this vantage point, responsible government is seen as healthy to the extent that Members of Parliament bring to their assessment of the executive's performance an adequate knowledge of the diversity of interests extant in our national politics and an effective capacity to represent that diversity. This in turn, requires some relaxation of party discipline in selected areas so that the representative role of MPs can have public expression. It also requires that Parliament serve as a central forum for the interaction of interest groups and governments. If the former, however, view

Parliament as an irrelevant arena and deploy their resources in private settings with ministers or public servants, much of the substance of responsible accountable government is eroded.

Commissioners prefer a broad construction of the meaning of responsible government. This broader construction requires that the legislature have a greater capacity to represent openly the multiplicity of interests which exist in an advanced industrial society such as Canada. It also requires the legislature to serve as an arena in which organized interests bring their expertise to policy discussions and, in turn, are challenged to represent their particular interests in the context of the competing interests of others and the larger interests of the nation.

From Commissioners' perspective, there have been, in recent years, both negative and positive developments in the representative capacity of our government. The increased significance of relations between governments in which participants are confined almost exclusively to ministers and public servants, weakens the relative status of legislatures in Canadian federalism. The proliferation of interest groups, more and more of which have bypassed both political parties and legislatures, further contributes to that relative weakening. But there are positive signs, as well. At times, particularly fairly lately, parliamentary committees and task forces have provided opportunities for private members to function relatively independently of party discipline and to investigate subjects of national importance, set out policy options, and recommend policy responses to issues of public concern. These instances provide a model for those calling for parliamentary reform. Reformers also hope that party discipline, more generally, could be restricted in its application to major issues of partisan dispute, including, of course, the major policies of the government. This restriction, they believe, would provide greater scope for independent action by individual MPs and their parliamentary committees and task forces, and would enhance the representative capacity of parliamentarians.

Commissioners recognize that Cabinet leadership is an essential component of responsible parliamentary government and, consequently, we accept the need for party discipline. We believe, nonetheless, that there are important roles to be performed by Parliament in holding the government accountable and in representing the diversity of interests in national politics that exists in Canada. Moreover, in our view, Parliament is not only a forum in which Cabinet is held accountable, but also a forum for national debate. Conflicting demands, which the policy process is intended to accommodate and reconcile, should be publicly debated in Parliament. Parliament must be a national body for deliberation, for open and public consultation, and for scrutiny of executive action.

The second requirement of responsible government is effective Cabinet control of the bureaucracy. The development of an "administrative state" poses a direct challenge to our concept of a responsible executive. In some instances, departmental bureaucracies have had too much influence in determining public policy and too much discretion in its implementation. Moreover, the institutional response to this situation has been to create another level of bureaucracy, in the form of "central agencies", which, when

unchecked, can have excessive influence in the management of Cabinet decision making. Consequently, political direction and responsibility for the management of government may be further reduced. If the Cabinet does not control the administrative state, it can be held accountable neither by Parliament between elections nor by the public at elections.

Concern about the perceived power of the bureaucracy is by no means unique to Canada. The Canadian reaction, however, is compounded by three distinct circumstances. First, our national government has been characterized by an administrative system that is highly centralized in its decision making, despite the fact that a large number of its employees operate outside the national capital region. For this reason, the reaction against it is reinforced by the regional alienation which is, to some degree, unavoidable in a far-flung federal state. Secondly, many Canadians perceive our national administrative system to be the creation of the dominant governing party of recent decades. For this reason, the reaction against it is buttressed by the criticisms of those who have considered it to be less than neutral in its policy orientation. This reaction occurs despite the fact that merit-based processes govern most of the senior appointments in the public service. The same criticism is also directed at Crown corporations and regulatory agencies, the governing boards of which are appointed by Cabinet, and which comprise a significant part of our administrative state. Thirdly, the proliferation of Crown corporations and regulatory agencies has produced a growing component of the public sector, whose factual or legal independence seems to symbolize public authority which is beyond the effective control of Parliament and the executive. The irony here, of course, is that while opposition parties have been critical of the dominance of partisanship in effecting appointments to such boards, even members of the governing party—until recently the Liberal Party—have been critical of the independence of those agencies which are governed by its appointees. Whether this concern will be shared by the present Progressive Conservative government, with respect to those whom it appoints to such boards remains to be seen.

There are those who argue that as a consequence of the complexity of public administration in the modern state, we Canadians must reduce our expectations with respect to this dimension of responsible government. Commissioners believe, however, that reforms can be introduced to ensure that the administrative state is subject to tighter Cabinet direction and control. We remind Canadians that the basic concern, to preserve and strengthen the practices of responsible government, is not an abstract preoccupation with principles devoid of meaning for citizens. Rather, responsible government is the means through which Canadians practise democracy and maintain respect for fundamental values in our society. Responsible government therefore deserves our attention and must be constantly nurtured if it is to thrive.

Parliament and Public Accountability

As we have noted, the accountability function of Parliament has led to the emergence of disciplined parties and, in turn, has been compromised by them,

at least to some extent. Our institutional design of responsible government has assumed that parties would constitute the mechanism whereby this accountability would be secured. At the same time, however, the actual operation of parliamentary government as party government has led to the increasing cohesiveness of legislative parties and the virtual elimination of independent MPs. Central to these developments has been the enhancement of party discipline, a feature of party government within the parliamentary system which was, and still is, often misunderstood as consisting in nothing more than the exercise of power by legislative party leaders over their legislative colleagues. Although it is usually recognized that this exercise of power involves both positive incentives and negative sanctions, the focus on "power" more often than not misses what has probably been the essential feature of party discipline. That discipline has been, first and foremost, a function of organized parties in pursuit and maintenance of power; it is a discipline which has been accepted by leaders and followers alike as a prerequisite to success in party competition in a parliamentary system. The positive incentives and negative sanctions which are available to party leaders, especially but not exclusively to the leaders of the party in power, have merely served to supplement the general acceptance of the need for party discipline. They rarely have been effective when this general acceptance was lacking. When a common partisanship was not sufficient to maintain unity within a legislative party, discord and thus independence have soon appeared.

In recent years, a number of features of Canadian politics and parties, separate from the need for the governing party to maintain the confidence of the House of Commons, have contributed to the strengthening of party discipline. It is important to understand these developments, as we wish to suggest means of improving accountability and the representation of diverse interests while accepting the basic role of party discipline in our parliamentary system.

The pre-eminent position assumed more and more by party leaders, partly reflecting the attention given to leadership by the mass media, has enhanced party discipline. The selection of party leaders through extensive campaigns and nationally televised conventions contributes to the prominence of the leader. Furthermore, the mass media treat national elections as contests between party leaders, whether or not the parties have campaigned on leadership. Wider separation of the federal and provincial wings of the two leading parties has limited the number of elected members with independent regional power bases. Thus, in fact, Prime Ministers, whose prestige is enhanced by media exposure, have had greater opportunity to exercise discretion in their leadership roles, even though the formal powers of the office are essentially as they were in the original constitutional design. An additional factor is the tremendous growth of the state in terms of organizational scope and structure which has resulted in a situation where only Prime Ministers are well briefed on all aspects of public policy. Their access to information affords them an advantage not possessed by their Cabinet or caucus colleagues.

Prime Ministers—indeed, any popular party leaders—thus develop a national constituency and can use this base to strengthen their position in the

party. Party leadership, therefore, looms large in Canadian politics. The increased autonomy of national leaders not only makes our parties more oligarchic and personal, but also increases the need for party discipline. Because of the discretionary authority derived from their pre-eminence, party leaders, especially Prime Ministers, need not accommodate all the factions within their caucuses, as they play to a national constituency which is the ultimate basis of their leadership. Since the need for party unity is in no way reduced as a consequence—indeed it is increased, given the need to project a strong leadership image as an element in electoral success—party discipline is essential.

The second factor contributing to stronger party discipline has been the rapid growth of the national state and its consequences for the operation of parliamentary government. The broader scope of government intervention has increased the work-load of Parliament, necessitated longer sessions, and led to the imposition of time constraints on parliamentary debate. As a result, party discipline has received greater emphasis.

A comprehensive system of legislative committees has evolved in the House of Commons over the last two decades. Through committee work, Members of Parliament are now more deeply involved than formerly in debate and in scrutiny of legislation and expenditures. While the new system has enabled the government to accomplish more, it has been accompanied by an extension of party discipline from the floor of the House of Commons to the legislative committee room. An arrangement that many parliamentarians hoped would constitute a break from the strictures of such discipline has failed to materialize. The reason is that legislative standing committees are simply an extension of the House, and the principles of party government and partisanship apply there as well.

The pervasive electronic mass media, particularly television, have encouraged party discipline and perhaps have increased the need for its exercise. They have become the principal vehicle by which government and parties communicate with the public and, in particular, with the electorate. They have promoted visible partisanship and competition among the parties, for they demand drama, conflict and controversy. With media in search of news and politicians in search of exposure, party competition has occurred on a regular, even daily, basis: the bearpit of Question Period reveals it all.

The media have often criticized party discipline, primarily because it has restricted their access to controversies within parties, particularly within the governing party of the day. However, precisely because the electronic media pursue all breaches in party discipline instantaneously and nationally, parties have had every incentive to pay strict attention to discipline.

The factors outlined above have enhanced and reinforced the need for party discipline in the conduct of parliamentary government. Legislative parties have used party caucuses to meet this need, and as a result, over the past two decades, the caucuses have become important influences on party policy. Paradoxically, relaxing the strictures of party discipline in private settings strengthens that discipline in public. The caucus has served as a forum for considering regional and other interests, not all of which can always be fully accommodated within the parameters of party policy. Discussion within

caucus is more frank about the relative winners and losers on a particular policy issue than the party's public treatment of the same questions. The caucus has thus been more than simply a safety valve for the expression of discontent with party policy. It also has provided the mechanism that enables its members to ensure that party policies are developed in full recognition of their political implications, both in the strategic sense and in accord with the fullest expression of political representation within the constraints of party government. This Commission's research indicates that caucus has become more active and influential in recent decades; party MPs argue vigorously in the privacy of caucus for regional and other interests in matters of policy, though they may have to suppress their personal views in public in the interest of party discipline.¹

Given all these features of modern party government, the capacity of Parliament to hold the Cabinet to account requires that parliamentary structures and processes be organized in ways that enable MPs to perform their representative responsibilities, while recognizing the essential demands of party government. The ability of Parliament to hold the Cabinet accountable and to serve as a national forum for public debate and representation of concerns depends on individual MPs. Members of Parliament must have adequate opportunities to deliberate on issues of national significance, to consult special interest groups and discuss policy options with them openly, and to scrutinize executive and bureaucratic actions.

The need for party discipline has restricted the opportunities for MPs to participate independently and publicly in policy deliberations. In addition, organized special interest groups have not only challenged Members in their roles as representatives of the body politic but have often bypassed them completely.

Despite a comprehensive committee system and increased support in terms of personnel, office facilities and research services, restriction on the involvement of MPs in policy-making deliberations has occurred. Members have limited scope for policy initiatives outside the strictures of party discipline largely because the legislative committee system has evolved as a mirror image of the Commons itself. Only rarely have committees been able to function in a non-partisan manner. The exceptions, however, show how MPs, in committee, could help to provide Parliament and the government with policy analysis and guidance in addition to that given by administrative officials or extra-parliamentary sources.²

To enable Members of Parliament to perform a greater public role, investigative committees could be established to study emerging matters of public interest before party positions have been determined. In committees, MPs could investigate, deliberate and make recommendations free of party considerations. Legislative committees should be distinguished from the investigative committees we Commissioners propose to encourage. This distinction is required because legislative committees must be subject to party discipline as they are examining and debating the merits of government legislation and spending intentions. Experience to date with parliamentary investigative committees and task forces does not suggest that partisan

considerations will be totally absent. Nevertheless, it does indicate that if parties are willing to use parliamentary committees for the purpose of investigating matters which have not yet become subjects of partisan division, they can achieve serious and productive results.

Another development has become an important limiting factor in enabling MPs to maintain accountability: an increasing number of interest groups now claim to be the legitimate representatives of large parts of the political community. Their representations have tended to focus on the Cabinet and the bureaucracy, however, and not on Parliament, thus indirectly weakening Parliament's control of the executive. Nevertheless, in recent years, the regular parliamentary proceedings and special public hearings of parliamentary committees have induced many of these groups to participate more fully in public debate. For many interest groups, parliamentary committees impose unwelcome demands on scarce resources of time, money or personnel by requiring them to participate in activities which are not always considered influential in determining government policy. Moreover, even though committee hearings are conducted in public, they rarely result in the media exposure such groups often seek for the purpose of communicating their views to a broader audience. Only rarely, in instances where committee enquiries are held on future policy directions and options, for example, are the demands that parliamentary participation makes on interest groups considered to be worth the effort that would be required to meet them.

If elected representatives are to be in a position to hold government accountable on the basis of the public interest and the expectations of citizens, then Parliament should be the principal public forum within which interest groups are challenged to define their special interests and to explain their particular policy preferences in light of broader interests in national policy development. To the extent that partisanship dominates committee proceedings and hearings, however, MPs, and therefore Parliament as an institution, will be constrained in their efforts to resolve the conflicting demands of special interest groups or to pursue the attempt to reconcile their concerns with the general public interest. To further this process of reconciliation, rather than to reduce or eliminate the activities or interest groups, is Parliament's role.

To reassert the primacy of Parliament as Canada's principal forum for public debate, while acknowledging that partisan considerations will not be entirely eliminated from parliamentary discussion of issues which affect competing special interests, requires structures and procedures whereby major interest groups will be involved in public examination and discussion of their demands. Such proceedings should not be confined to standing committees structured along highly differentiated policy lines. Instead, this process of discussion and examination should occur not only within the investigative committees we propose, but also within a small number of committees which focus on several comprehensive policy matters that do not ordinarily come under scrutiny by committees: the budget, regulatory policy, Crown corporations, and federal-provincial or intergovernmental relations, for example. We would expect the media to be more likely to cover the proceedings of these committees, further increasing the potential for such

parliamentary activity to broaden general understanding of the issues and to increase public awareness of particular concerns.

These committees would certainly not be uninfluenced by party considerations, since they would concern themselves with subjects relating to important political issues on which the parties will have general positions if not detailed policies. Thus in questioning representatives of major interest groups, they would not be free of partisan perspectives. However, critical examination of witnesses is not foreign to our parliamentary process and may appropriately be used with interest groups which seek, through political activities, to influence public policies.

Such public processes offer several benefits. Interest groups will become more aware of the constraints within which public policies are developed. Parliamentarians will become better-informed decision makers as a result of more regular access to the special expertise which interest groups possess. More thorough exposure of the complexities of policy formation will help to advance the education and understanding of the public at large. With an enhanced knowledge base, legislatures will enjoy an increased capacity to advise, challenge and control Cabinets.

Even if interest groups achieve a more visible and open relationship which will help them to bring their views forward, consideration should be given to the use of advanced technology to ensure that Members of Parliament always have the opportunity to be familiar with their constituents' concerns and with broad patterns of public opinion. To date, party and special interest-group politics have created a much wider distance between government and citizens than was originally intended. Our system of representative, party government does not always provide the party in power with sufficient information about the views and preferences of citizens on the broad range of issues of the day. New means of communication between elected representatives and members of the public, made possible by modern technology, could make Parliament a more effective entity in its relations with the bureaucracy and the executive, and thereby help to improve the responsiveness and accountability of government.

Commissioners believe that if Parliament is to have the authority to hold the Cabinet and individual ministers accountable for their administration of public affairs, there must be a reassertion of the primacy of elected representatives over various administrative bodies. In principle, these bodies are meant to assist Parliament in maintaining accountability, and administrative institutions that have been established to help Parliament to hold Cabinet responsible for its exercise of authority should be servants and not masters of Parliament. A number of agencies reporting to Parliament, including the Public Service Commission, the Office of the Commissioner of Official Languages, the Privacy and Information Commissioners, and the Office of the Auditor General, investigate, appraise and audit implementation of legislation, and program management. We Commissioners consider that our elected representatives in Parliament have not always given sufficient direction to, and retain inadequate control of, these agencies. Thus, an important order of bureaucracy, much of which has developed in recent decades, operates independently of the executive, which it is meant to

scrutinize, and of the legislative branch, which it is meant to serve in performing this function of executive scrutiny.

To ensure that accountability is, and is seen to be, an integral function of parliamentary government, our elected representatives must more clearly define the criteria, the procedures, and the basic strategies that these agencies use in fulfilling their responsibilities. To put MPs in a position where they can establish the necessary guidelines will require sustained forums in Parliament. Accordingly, Commissioners suggest that a new Parliamentary Committee on the Public Service should consolidate review of the work of the Public Service Commission, the Office of the Commissioner of Official Languages, and the Privacy and Information Commissioners. The new committee would study reports of these agencies about the performance of the public service in meeting various criteria, which politicians themselves would define and rank in importance. This same committee would review the spending estimates and approve the budgets for these parliamentary agencies. The Public Accounts Committee should provide guidance to the Office of the Auditor General and review its estimates, in order to promote the effective operation of this office.

A further consideration if Parliament is to be able to maintain Cabinet accountability for executive actions is associated with the state's expanded international responsibilities. The growing complexity and scope of international treaties and agreements, and the influence of international forces on domestic issues have conferred more influence on the political executive than it has ever had before. The executive exercises this influence, through foreign policy and foreign affairs initiatives, on the overall range of political decision making in Canada. A process of internationalization of domestic policy making is under way. It is vital that Parliament's role in reviewing foreign policy initiatives and international agreements be strengthened.

The act of ratification represents formal acknowledgement by a state of its consent to be bound by treaty or international agreement. Present arrangements do not require parliamentary involvement, although as a matter of practice, the government of the day often seeks parliamentary approval prior to ratifying an agreement. In light of the accelerating challenge to democratic controls presented by the increasing international responsibilities of the state, Commissioners believe that it is desirable to provide secure foundations for parliamentary ratification of international treaties and for other measures to strengthen parliamentary scrutiny of executive action in the international domain. The international arena is increasingly important to Cabinets and senior public servants. This expansion of the scope of executive action must be matched by Parliaments whose vision has become equally broad. This development, in turn, will help to educate Canadians in the international realities which will increasingly influence our future.

Responsible Government and the Administrative State

Canada's system of responsible parliamentary government requires that ministers, collectively and individually, exercise authority in the administration of public affairs. This necessity, in turn, requires that ministers control

the vast administrative apparatus that is the Government of Canada. Past concern that Cabinet has had less than the desired degree of control over the bureaucracy has already resulted in changes. Cabinet structures and processes have been altered and formalized, and various support services have been added in recent years, in response to the challenge of the modern administrative state. A brief review of reforms to the executive arm of government will promote consideration of further measures intended to assist the Prime Minister and Cabinet to control the expanded and complex administrative arm.

A chief executive officer (CEO) at the apex of any complex organization is essential if there is to be overall executive control and direction of the organization's activities. Government, like other organizations, can be effective only if it embodies principles of integration and coherence; to promote these, the Prime Minister has assumed characteristics of the CEO function. The expansion of state activity has made public policies and programs increasingly interdependent. Planning and co-ordination thus assume more importance in the context of executive responsibilities. By constitutional convention, the Prime Minister has the ultimate authority and responsibility for planning and co-ordination at the executive level. Recent Prime Ministers have responded to this challenge in three ways: by reinforcing their authority through a more hierarchical Cabinet structure; by reducing their span of control in working primarily through an inner Cabinet; and by expanding their staff support to assist them in discharging their responsibilities as chief executive officer.

There has also been a steady evolution of Cabinet structures. This process was put in motion to deal both with the complexities of policy making in the modern state and with the problem of achieving political control over the state's large administrative bureaucracies. The use of *ad hoc* Cabinet committees can be traced back to the years before the Second World War, and the committee structure was formalized during the mid-1960s. Prime Ministers have always had smaller groups of very close advisers among their senior staff, and this arrangement, too, became increasingly formalized during the 1960s and 1970s as the Priorities and Planning Committee became the real centre of executive power, second only to the Prime Minister. Although, in theory, the full Cabinet may still have the final word over executive action, the full Cabinet has come to accept the decisions of the "inner Cabinet", the Priorities and Planning Committee.

As party leader and the government's Chief Executive Officer, the Prime Minister requires some independence even of the Priorities and Planning Committee. Prime Ministers from the time of Lester Pearson to the present have therefore relied heavily on their advisory staffs in the Prime Minister's Office (PMO) and the Privy Council Office (PCO), devolving considerable influence to a small number of senior officials in these two offices. The PMO and the PCO constitute, in effect, the Prime Minister's "departments" for conducting political strategy, on the one hand, and for determining policy priorities and developing administrative co-ordination, on the other.

Besides providing assistance with the Prime Minister's increasingly complex and difficult responsibilities as chief executive officer, an hierarchi-

cal Cabinet structure built on an elaborate support base was to serve other purposes. This structure and the introduction of a formal committee system congruent with policy fields were intended to ensure that all ministers would be better informed about policy options and better able to co-ordinate initiatives in related policy fields and agencies. These organizational changes were expected to help Cabinet members to retain control of the interdependent policies for which they are collectively responsible.

In some respects the committee system decentralized Cabinet decision making. Within the framework of the priorities and plans established by the "inner Cabinet", Cabinet committees now, in effect, may make decisions on behalf of the full Cabinet. The various committees, including the Priorities and Planning Committee, also introduced checks on some elements of the exercise of power within the executive system; in particular, they strengthened the processes of collective decision making and checked the independence of individual ministers. The committee system has provided an opportunity for the ministers involved to assess their colleagues' proposals more thoroughly than they could do in meetings of the full Cabinet. In large measure, indeed, it was introduced for this very purpose. The rationale was that given the increased interdependence of national policies and programs, individual ministers should not have the sole power to make decisions when a more co-ordinated government response would be more effective.

Formalized Cabinet committees were intended to check the influence on their ministers of departmental officials, as much as to reduce the discretion of individual ministers and thus strengthen the means for the political executive to scrutinize bureaucratic conduct. In Cabinet committees, Cabinet colleagues assess one another's proposals as, indirectly, do colleagues' departmental officials. These assessments can provide ministers with a measure of independence of their own officials and of the "client" groups associated with particular departments. Similarly, the central agencies, such as PMO, PCO, FPRO, Treasury Board, Finance, and, from 1979 to 1984, MSERD, MSSD, were expected to provide the Prime Minister and the Cabinet with administrative support and expertise to counter the institutional autonomy of the departmental bureaucracies and to assist in the process of policy integration. These "super-bureaucrats" can, in theory, check and co-ordinate line departments and agencies in order to permit ministers collectively to assert political control over the administrative state.

The Cabinet's increased formalization, its committee system and the support provided by central agencies have improved the ability of ministers to manage public affairs. These developments, however, have not fully brought under control an increasingly complex and, as some Canadians have described it, unmanageable bureaucracy, nor have they proved to be without their own costs. In Commissioners' view, there is a limit to the degree of support that agencies can give to the processes of Cabinet decision making and co-ordination. Bureaucratic structures and mechanisms are no substitute for effective political direction and control. They do not create the elusive "political will"; they can only reinforce it if it is already in place. We acknowledge that the central agencies constitute a necessary, if not a sufficient, check on the inevitable dispersal and diffusion of power to

bureaucrats in the modern administrative state. They make an important contribution to integrated control over the vast range of government departments, agencies and Crown corporations. Central agencies, however, can serve their purpose effectively only under the close direction of ministers and, particularly, under that of the Prime Minister. In the absence of such ministerial direction, they become another layer of bureaucracy to be controlled. Furthermore, central agencies with overlapping mandates often compete with one another. In short, individual ministries or departments of government must also be organized to ensure that they are shaped by the required degree of internal political direction and control.

The use of junior ministers or ministers of state has sometimes enabled the Cabinet to exercise more effective control over various specific aspects of public policy and administration. However, the appointment of such ministers has been, at best, unsystematic. Commissioners believe there may be merit in adopting and formalizing a more complex ministry system, comprising a smaller number of senior ministers to whom a larger number of junior ministers would report. At a minimum, clarification is needed to reduce the present uncertainty about the relation of junior ministers or ministers of state to the senior ministers with whom they are affiliated and to senior ministers in general. Some observers have expressed concern about the growth of the Cabinet over the past two decades, a growth to which the use of junior ministers has contributed. Given the complexity and scope of the organization comprising the Government of Canada, however, the achievement of genuine political control with the concomitant accomplishment of a reasonably coherent set of government policies requires a relatively large Cabinet with some degree of hierarchical structure, both among committees and within each large portfolio headed by a senior minister.

Such steps as the appointment of junior ministers, taken to increase the control of political representatives over departmental bureaucracies, have had a measure of success. Insufficient progress has been made, however, in securing greater control over Crown corporations and regulatory agencies. These bodies, particularly major regulatory agencies, have assumed political importance in many vital areas of Canada's economic activity. Not only has the scope of regulatory activity broadened considerably since the Second World War, but such areas as broadcasting, telecommunications and transportation, which have been federally regulated for a longer period, have become more important. Successive governments have commissioned studies and prepared legislation to control such agencies. They have not yet, however, found a fully satisfactory resolution. Without adequate executive direction and control, these non-departmental forms of government organization threaten to undermine our principles of responsible government. Canada has erred in the direction of allowing these bodies too much autonomy and discretion, and they have become virtually separate branches of government.

Admittedly, it is difficult to establish appropriate instruments or procedures to direct and control Crown corporations and regulatory agencies. They are not all alike. They are not departments of government, and they serve different purposes that require different management regimes.

Commissioners are concerned, as we noted in Part III of this Report, that there has been a tendency to manage Crown corporations in a strategic vacuum, without a well-formulated rationale for continuing public participation. Thus, more effective management systems and governmental control can only be assessed within the broader framework of competition and regulatory reform. In our view, the call for greater control has been translated too simplistically into a tangle of bureaucratic red tape surrounding Crown corporations, rather than into the development of a more effective strategic management system serving both the government and its holding operations once it has been determined that those operations are key instruments of public policy.

It is essential, especially for commercial Crown corporations, that the zeal for accountability not lead to a "paper war" among bureaucracies, leaving ministers on the sidelines and Parliament still wondering just what it is that these corporations are expected to be doing. Commissioners have not investigated alternative management systems in any great depth. We would encourage the government to experiment with models which may be closer to private sector holding companies.

In particular, we recommend that the executive have appropriate statutory powers to issue policy directives to Crown corporations and regulatory agencies, except where Parliament, for cogent reasons, explicitly prohibits such powers, as it might, for example, in the case of certain cultural bodies. We also endorse the practice of making capital budgets of Crown corporations subject to Cabinet approval. In addition, we suggest that Cabinet continue to seek means to strengthen its review of regulations formulated by regulatory agencies.

This description adopts as its perspective the traditional concept of public servants as the implementors of public policy, but the public service has been the object of policy as well. The one-fifth of working Canadians employed in the administrative state have rights that must be preserved and, perhaps, expanded or clarified.

In the 1960s, the introduction of collective bargaining at federal and provincial levels represented increased recognition of the public servant as citizen and employee. However, collective bargaining rights in the public sector never equalled those of the private sector. For most of the 1960s and early 1970s, there was no apparent conflict between the responsibility of government as manager of the public service and as manager of the economy. From then on, however, the conflict between the two functions increased greatly. Public servants became the object of new economic management policies which, in some instances, were intended to end or reduce their rights. Although extensive debate about public sector wages and strikes began before the mid-1970s, direct wage controls came into effect only with the 1975-77 anti-inflation program and the 1982-83 "Six-and-Five" program. The former imposed controls on the public sector, as well as on major sections of the private sector, and sought to control both wages and prices. It applied at both the federal and provincial levels. The "Six-and-Five" program applied only to federal public servants. The federal government sought, however, to extend its coverage to other sectors through exhortations directed at recipients of federal grants.

These measures should be related to a series of other steps by means of which governments also sought to reduce bargaining rights previously granted. The Treasury Board took more stringent views about the numbers of workers designated as essential during strikes. This action weakened the efficacy of strike action in the public sector, and the courts later upheld the Board's practice. Some provinces resorted more often to "back-to-work" legislation. Bargaining rights were maintained only if they were not exercised too often or too vigorously. Certain provincial retrenchment and restraint programs further eroded the position of public workers.

Commissioners conclude that since, over the last two decades, the bureaucracy has grown at the same rate as the labour force, and since public sector wages are responsive to economic forces, there is no reason to regret the existence of rights to bargain collectively in the public service, subject to the overriding right of the community in matters of public health and safety.

Issues surrounding political rights, as well as collective bargaining rights, of public servants are also being debated, for in some circumstances these, too, are properly related to the scrutiny of bureaucratic conduct that is central to the general principles of responsible government. Commissioners believe that senior government-policy officials in the permanent public service should have no right to engage in partisan political activity. Other public servants, however, should be free to engage in the full range of political expression, except where conflict of interest could arise. The degree of difficulty in distinguishing senior from junior officials for this purpose is no greater than that of devising criteria for selecting persons who may or may not strike, and a similar means could be used to distinguish the two groups.

"Merit" and "patronage" are two different grounds of appointment. Each helps politicians to achieve some measure of control over the bureaucracy, boards, agencies and Crown corporations. It has been suggested, however, that the upper ranks of the federal public service have become too heavily politicized. Although there have been instances where prominent political appointments violated the ideal of a neutral public service, the argument that the senior bureaucracy has become politicized is misplaced when it is used as a general criticism. The system of appointments based on merit and subject to the recommendation of the Clerk of the Privy Council has worked well.

On the other hand, appointments to a large number of boards and agencies have traditionally been made on the basis of political advice provided to the Prime Minister. This category of appointments may be too large, and 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 practice of Governor-in-Council appointments to boards, agencies, foreign posts, top-level departmental positions, and ministers' staffs, in order to identify positions where the advantage of partisan sensitivity is clear. Commissioners believe that this general review process should be continuous, and that appointments where partisanship is of no clear value should be made on the basis of merit. Further, Governor-in-Council appointments of a non-traditional public service nature should be made in a more open manner. In a parliamentary system, the right of the executive to make these appointments is beyond dispute, but the Cabinet could first inform a parliamentary

committee about potential appointments. Open discussion of the criteria used to guide selection would seem particularly useful in filling senior policy advisory positions.

Notes

1. See Paul G. Thomas, "The Role of National Party Caucuses", in *Party Government and Regional Representation in Canada*, vol. 36 (Toronto: University of Toronto Press, 1985).
2. See Peter Dobell, "Some Comments on Parliamentary Reform", in *Institutional Reforms for Representative Government*, vol. 38, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).

Representative Government and Interest Groups

Representation by population and representation by region shape parliamentary government in Canada. These principles do not, however, determine what is represented or how. Canada's political parties have traditionally competed to represent citizens. Parties, at the national and provincial levels, present citizens with various definitions of the public interest and various means of achieving it. Implicitly, therefore, they signal the ways in which socio-economic interests should be represented. The way in which parties formulate their choices reflects the internal structures of their decision-making processes. Public funds support certain party activities, and laws regulate some, but parties themselves decide their own positions on public policy and choose their own leaders, candidates and officers.

In recent decades, representatives of numerous groups affected by state intervention and public policies have become more directly involved in government decision making. Such groups make vigorous efforts to represent and articulate their views on policy issues, both general and specific. Their involvement in public decision making has implications for party, Parliament and Canadian constitutionalism in general.

Parties, Interest Groups and Political Representation

The dominance of parties has made Canadian politics highly organized. Government by party has disciplined Canadian politics, extensively in Parliament and less so in the various levels of party organization. Our parties are not centralized organizations, but party members share a common collective interest in the pursuit and attainment of governmental power. This collective interest in securing electoral support introduces discipline to party organization. However, several developments have affected the organization and operation of parties and the capacity of the party system to function as the exclusive instrument of political representation in Canada.

First, televised politics has accentuated the personalized character of our parties. Party leaders, particularly the Prime Minister, have become more significant than their colleagues and the party in general because electoral competition, as presented and viewed on television, has focused on leadership. Secondly, public opinion surveys and polls have assisted governments to design policies in response to the preferences of various interests, be they region, class, sex, religion, age or general ideology. Television and the use of polls have significantly undermined two of the most important roles of rank-and-file party members. Television undermines their role in communicating party policies to the voter; polling undermines their role in communicating grass roots opinion to party leaders. Thirdly, well-organized special-interest groups have involved themselves in the processes of political representation. Taken together, these three developments have had important consequences for party government.

Technological change in the form of television and the means of recording public opinion has profoundly affected politics. Established parties have adjusted to it, perhaps because this change does not challenge their place in the institutions of representative government. Indeed, parties have begun to

use the media and polling results to "target" particular sections of the population through selective broadcasting and direct mailing. They have not adapted successfully, however, to the proliferation of organized special-interest groups: such organized advocates of particular interests present a challenge to parties and party government.

Reference to "interest groups" calls to mind widely divergent images. On the one hand, they can appear as essential building blocks of democracy. They provide the opportunity for citizens to articulate their views. They allow like-minded people to combine their resources to ensure a hearing. They provide the regular avenues for participation in general elections. They are also essential for effective policy making.

The other image is that of the "special interest". It suggests narrow, selfish, self-interested concerns at odds with the "public interest", or powerful, wealthy groups which use the "inside track" to gain special privileges for themselves and frustrate the popular will. The term also suggests a cacophonous fragmented chorus of limited, sometimes self-righteous groups which frustrate the building of consensus and paralyse effective decision making. Both images, of course, are partly right and partly wrong. In evaluating fundamental institutional reform, it is necessary to come to terms with the emergence of interest-group politics and with the need for more effective means of consultation between governments and private interests.

Political parties in Canada have, of course, attracted differential electoral support from the broad range of socio-economic and regional interests found in the country. Ideology has been a factor in political success and failure, but leadership and positions on policy and political issues have clearly been more critical, especially for the Liberals and Conservatives. However, except for the relationship of organized labour to the New Democratic Party, organized interest groups and parties have not established formal associations. Interest groups have functioned largely in a non-partisan way, pursuing their aims through contacts with the government, the public service and Parliament. Prolonged periods of one-party dominance have contributed to this pattern. One-party dominance has discouraged particular interests from fostering close attachments to parties consigned to long spells on the opposition benches; links with the party in government are based on its possession of office, rather than on its partisan complexion.

Organized Interests and Political Representation

Organized interests pursue their goals in a wide variety of forums. Many special-interest groups have often forged particularly close relations with the administrative structures of the national government. Increasing state intervention has contributed to the proliferation and, in some instances, to the fragmentation of these organized interests. Indeed, the state has encouraged a number of such interests to organize in order that they may assist in the development and implementation of national policies. Various mechanisms facilitate consultation in relation to this process. Consultative committees,

advisory committees and councils, all comprised of interest-group representatives, have flourished over the past two decades. These forums generally have the effect of linking groups to the administrative branch, and not directly to individual ministers or the Cabinet.

Some interest groups advance their positions in a more public manner, through the mass media, although they may also approach individual Members of Parliament or the Cabinet. Representatives of interest groups often compete with opposition-party spokespersons in criticizing government actions. More and more interest groups seek closer relations with the Cabinet itself. In part, those developments may be explained by the frustration which many groups have experienced in their dealings with administrative agencies.

Public visibility and private access are thus alternative routes to greater influence on policy making. Most groups pursue both "public" and "private" strategies: the full-page advertisement in the daily paper, the press conference, the delegation to the minister, the private phone call between lobbyist and official are all employed. In general, however, groups with wide social acceptance which pursue limited, material goals, and which have a permanent bureaucratic structure of their own prefer the "quiet diplomacy" of well-tended private networks and personal contacts. "Outsider" groups with less legitimacy, more controversial positions, and goals which are more symbolic or ideological tend to pursue the more public strategies, from marches to petitions. Some groups, of course, make a successful transition from "outsider" to "insider". Ministries and other agencies are created to respond to their interests; they become more integrated into the administrative processes of government.

Governments, however, are becoming less able to satisfy the many conflicting demands made on them by special interests. The increasing complexity of society is reflected in an increasing fragmentation of interests which become more and more difficult for "normal" political processes to accommodate. Efforts to restrain government expenditures have increased the problem: the politics of "zero sum" are inherently more conflictual than the politics of growth. At the same time, there are demands for comprehensive policies to encompass broader interests and concerns. These demands take the form of calls for greater stability in financial and economic policies; for reduction of the discretionary powers of ministers, administrative officials and regulatory boards to make decisions without advance notice to the affected parties; and for greater coherence in policies and practices that affect large segments of the public. These trends are frequently at odds with a political process geared to incremental responses to a shifting set of discrete special interests.

What measures and procedures, then, will best facilitate involvement of Canadian interest groups in public decision making, especially as it concerns economic policy? Commissioners wish to encourage those interests involved to interact with one another more frequently and more openly and visibly, and to take greater account of the broader concerns and conflicts of Canadian society. We look to Parliament itself to determine the final resolution of those conflicts.

The Contributions of Consultation

In all modern industrial societies, the representation of private-sector interests in public decision making has become an important issue. Pervasive interdependence between the public and private sectors has created a situation in which what major economic interests can achieve depends not only on their own initiatives, but also on the sensitivity of the state to their concerns. Conversely, the success of government policies depends heavily on the response of private interests to them. This fundamental interdependence has produced intense pressures for new mechanisms for consultation between the public and private sectors, inevitably involving business and labour, but extending, to an even greater degree, to other organizations in the social and voluntary fields.

Canada has not gone as far as some countries in the direction of comprehensive national consultations. Our consultative practices tend to be fragmented, informal and episodic. Are such practices adequate in light of recent Canadian experience and anticipated future needs, such as the continuing pressures of economic adjustment? Commissioners' terms of reference invite us to examine and report on "means for improving relations between governments, business, labour and other groups". This mandate reflects a widespread perception that these relations have involved unnecessary conflict, and that failure to resolve the tension has incurred undue costs. Relations between the federal government and the Canadian Labour Congress have been seriously strained for almost a decade, and intense disputes between government and labour have erupted in recent years in several provinces. Contact between business and government has been less generally antagonistic, but consultation has been irregular. Sharp disagreements have occurred in some sectors, and there has been evidence of continuing frustration and suspicion.

The tensions of the last decade are at least partly a consequence of fundamental disagreements about the appropriate directions for Canadian economic policy to take. No amount of consultation would have resolved these disagreements. Nevertheless, representatives of business, labour and the general public expressed to this Commission strikingly similar sentiments about their sense of exclusion from economic policy formation. They repeatedly emphasized the need for more effective consultation. The Voluntary Planning Board, for instance, stated:

We see consultation, during conception, planning, implementation and evaluation of programs and policies as crucial to effectively dealing with our economy.

(Voluntary Planning Board, Brief, October 19, 1983, p. 3.)

No one expects new mechanisms alone to produce an all-embracing social consensus. Many Canadians hope; however, that these mechanisms might contribute to more common understandings of our economic problems and shared expectations about our prospects. This could increase the effectiveness of government economic policies, to the advantage of all concerned.

Consultation refers to a wide range of practices, from casual telephone conversations to elaborate institutions for formal decision making. To clarify

what is meant by consultation in any particular context and what is expected of any consultative process will help to prevent disappointment and recrimination.

Basic consultation consists of the exchange of information and opinion about issues of common concern. Participants can learn about one another's views, explore areas of agreement, and clarify areas of disagreement. Consultation involves common education: while it may not result in agreement, it can influence decisions taken by participating groups. An important objective of consultative processes, therefore, is better-informed decision making at all levels.

Consultation can go further and seek to build consensus among parties. Consensus building requires a concerted attempt to agree on the nature of problems and on policy options available. Such a common understanding will usually require common analysis. It is not easy to accommodate divergent and often firmly held interpretations of issues important to participants. Forming consensus is no mean feat; maintaining consensus is equally demanding.

Elaborate consultation can ultimately involve formal co-operative decision making. Representatives of government and of major private interests can negotiate among themselves to establish a compromise position which becomes the basis of public policy and of compliance by other parties. This form of consultation, which is often described as "corporatist", clearly requires highly centralized interest groups and close integration of those interest groups and government. It is a characteristic element in countries with a tripartite incomes policy and a broad social contract among business, labour and government. Corporatist or tripartite arrangements can extend to joint management of administrative agencies responsible for implementing accepted policies.

In Canada, the scope for consultative bodies with decision-making power is generally quite limited. Fragmentation and dispersal of authority in public and private sectors and the complexities of our federal system reduce the applicability of the tripartite model. Moreover, tripartite decision making would circumvent our parliamentary institutions in ways that most Canadians would reject. Corporatism also involves the potential danger that the interests of non-participating groups would be ignored.

Nevertheless, we Canadians need more effective consultation and consensus building in economic and social policy. As Commissioners have argued throughout this Report, Canada faces crucial new challenges, and responding to them will require sometimes painful adjustments. Many groups possess considerable capacity to block or impede these changes; they cannot and should not be imposed coercively. There is a crucial need for agreement on the manner in which the burdens and benefits of the necessary changes will be shared. All these factors demand that maximum efforts be made to reassure all groups that they will be treated fairly, and that they will participate in the collective choices which must be made.

Consultation can help to create shared perceptions of our nation's economic and social problems. Without such contact, disagreements over basic data on economic trends can deepen conflicts unnecessarily; public policy may fail to incorporate information and expertise from the private sector; and the sort of

broad consensus that would stabilize policies beyond the term of a single minister or government will not be formed. Government commitment to consultative procedures can reassure the private sector that the basic ground rules of public policy will not change suddenly and without warning. In this way, consultation can help to reduce uncertainty and co-ordinate expectations about economic prospects. Broadened participation by all sectors, including groups directly concerned with social aspects of economic policies, will help to balance economic benefits and social costs.

Formal consultative mechanisms seem especially important in a large regionalized country such as ours. Informal communication networks do not always extend across territorial, linguistic and cultural boundaries. Moreover, distances between the national capital and the major centres of commerce and industry prevent members of the public and private sectors from interacting easily. As the Task Force on Business/Government Interface observed:

In London, Paris, Rome or Tokyo, cross-fertilization takes place naturally. In Ottawa, the number of flights from Toronto and Montreal is only one tangible reflection of how much has to be done to create a structure where exchange can occur more readily and to leaven the 'company town' atmosphere of our national capital.¹

Recent developments appear promising. For example, special investigatory committees, sub-committees and parliamentary task forces have travelled across Canada to hold hearings. This mobility has given government access to a much broader range of public information and opinion. Teleconferencing offers further opportunities for communication and consultation among representatives of government and private sector interests.

Consultation aimed at consensus building is not without dangers. In industrial policy, for example, some critics insist that elaborate consultative mechanisms would impede adjustment. They would over-represent older troubled industries, tying government even more firmly to those seeking protection from change. Existing industries are often well organized politically; almost by definition, there is no political organization for "emerging" industries. Consultation, therefore, can become a protective barrier to the process of adjustment that furthers economic development. Perhaps competition or conflict would achieve greater economic flexibility than would consensus. Such warnings do stand as a caution against the construction of overly powerful bodies, especially those with quasi-decisional powers over specific areas of public policy.

Despite such concerns, however, the economic case for more-structured, continuing consultation among business, labour and government seems sound. There is no doubt that during the last decade, much of the acrimony of public debate over the economy has been the result, rather than a primary cause, of Canada's economic difficulties. If national consultation can ensure greater understanding of the social and economic problems confronting us, it will be well worth the effort it involves.

Consultation would also affect the quality of political life. The arrangements we use to conduct consultation must enhance, not undermine,

democratic processes. A powerful, institutionalized, tripartite system would constitute an alternative method of representing and accommodating the claims of one particular set of social interests, but this system would be in continuous tension with the principles of responsible government. Even if the sovereignty of elected bodies were not undermined by such corporatist practices, the centralization of authority required to operate tripartite institutions encourages élitist politics, accentuating the dominance of the executive over the legislature in the political realm and the power of central leaders over members in private economic institutions. While some democratic societies have long traditions of reliance on such élite accommodation, in other societies, including Canada, the image of powerful groups striking deals with government in private sessions evokes an uneasy response.

More modest consultative mechanisms can channel the inevitable and continuous interaction between public and private sectors and contribute to informed public debate. They can balance the pressures that groups put on government. A common criticism of pluralist democracy is that not all interests are equal. Some interests have far greater resources to devote to consultation with government, and informal *ad hoc* consultation favours the well organized and well funded at the expense of the poorly organized. Because formal structures of consultation require decisions about which groups should be heard, a more equitable balance of voices is likely to result.

Public consultative processes can contribute to more broadly informed debate over economic issues. If consultation takes place exclusively through private contacts between interest groups and senior officials and ministers, essential information and judgements remain hidden from the public, and the quality of parliamentary debate and media scrutiny is thereby impoverished. Public exchanges over economic issues can enhance the quality of debate, raising public awareness and improving media commentary, sharpening the critical perspectives of legislators, and exposing recommendations of interest groups to public scrutiny. Moreover, the opening of these debates to public scrutiny reinforces the ultimate control of the citizen over policy decisions and government operations. Private consultations would continue, of course, since they are clearly essential if certain aspects of relations among business, labour and government are to develop; but the consequences of modern economic policy are too far-reaching to be shaped exclusively in private. Effective consultation can assist in the economic and political affairs of a modern nation. Canada, however, has some distance to go in this direction.

Consultation in Canada: The Case of Business and Labour

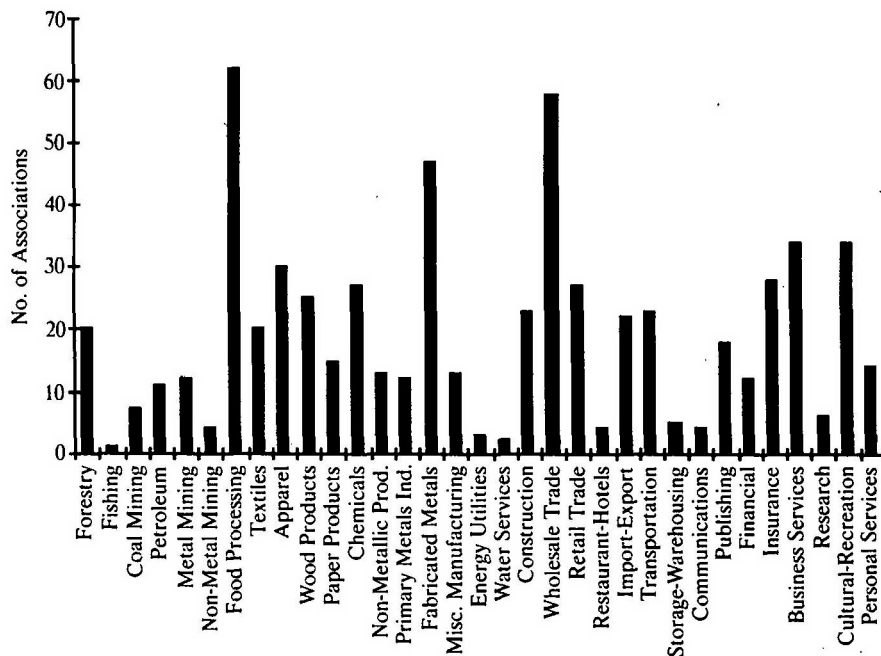
In comparison with the elaborate, centralized, consultative structures in some Western countries, Canadian consultation has two striking characteristics. First, our consultative practices have tended to be fragmented, informal and episodic. There have been few attempts to sustain a structured, comprehensive dialogue between the public and private sectors. Secondly, we have, until recently, encouraged separate representation for each interest, with business and labour associations operating through different channels. We have placed little emphasis on bringing the representatives of different perspectives into

touch with government so that they can develop a common understanding of important economic issues. Indeed, the very term "three social partners", so common in Europe, is relatively unfamiliar to Canadians.

The fragmented competitive nature of consultation is obvious in relations between Canadian business and government. There is much contact between the public and private sectors. Managing the relationship has become a sizeable industry: it involves some 480 business associations and a growing army of professional consultants and specialized legal personnel; it requires officials responsible for government relations in major corporations; and it demands an increasing portion of the time of most chief executive officers. Many of these people are in almost daily contact with public officials. Figures 21-1 and 21-2 illustrate the growth of linkages between the public and private sectors.

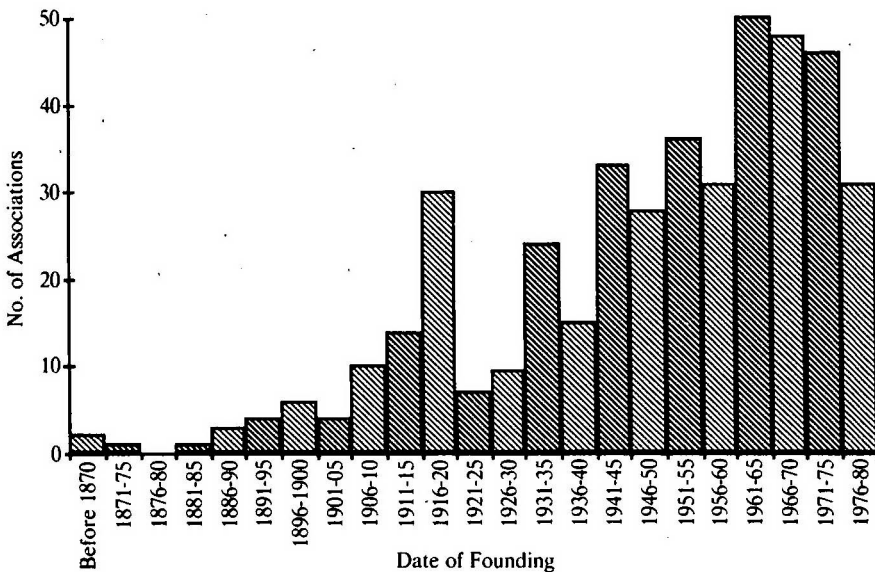
The decentralized approach to consultation at the national level has strengths and weaknesses. It is a sufficiently diverse and flexible process to accommodate an endless series of specific issues created by the growing interdependence of business and government. Most contacts concern the administration of existing policies and regulations, and relate to fairly specific problems facing particular sub-sectors of the economy or even individual firms. In these instances, the consultative process works reasonably well.

FIGURE 21-1 Distribution by Sector of Associations Representing Business



Source: William D. Coleman, "Canadian Business and the State", in *The State and Economic Interests*, vol. 32, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).

**FIGURE 21-2 Period of Founding of Existing Associations
Representing Business**



Source: William D. Coleman, "Canadian Business and the State", in *The State and Economic Interests*, vol. 32, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).

Disagreements abound, but communication networks are in place to maintain the relationships.

Most business associations represent special-product interests. There is no umbrella association to speak authoritatively for business as a whole. The Canadian Chamber of Commerce, the Canadian Manufacturers' Association, the Business Council on National Issues, the Canadian Export Association, the Canadian Federation of Independent Business, and the Canadian Organization of Small Business represent different constituencies or compete to represent some element of the business community. National business organizations do not yet present a broadly based position on major economic issues. Differences are inevitable between small businesses and major manufacturing enterprises, between Canadian-owned firms and multi-nationals, and between those firms which profit from exports helped by a low value for the dollar and those which are supported by subsidies and tariff protection.

An additional reason for poor consultation on broad economic issues is the continued reliance on informal, unstructured relations between government and business. During the Second World War and the immediate post-war period, contact between these two sectors was often based on personal relations which "worked" the more readily because leaders of both groups had relatively similar backgrounds and social views. Such relations, however, appear less prevalent today. Greater government activity in economic affairs

has generated many more points of friction. Changing social values have subjected all institutions to closer scrutiny. Consumer groups, environmentalists, nationalist organizations and organized labour all actively challenge the views of the business community. Changes in the federal bureaucracy, especially the growth of strong central agencies, have disrupted traditional contacts between businesspeople and line departments close to their immediate concerns. The growing importance of Cabinet committees and central agencies has reduced the autonomy of individual ministers and their departments, and made the task of all interest groups more difficult. According to one former participant in the process, the chief executive officer "who believes that a trip to see the minister or the deputy will solve his problem is operating on a false premise."²

Since traditional links have been eroded, the lack of formal consultation over broad economic policy becomes more important. Flurries of consultation—dialogue in crisis—occasionally fill the gap. For example, waves of private consultations initiated by the federal government preceded and followed the 1982 federal budget and the "Six and Five" program that it launched. *Ad hoc* discussions in the middle of a crisis, however, are not as effective as a sustained predictable relationship. Moreover, to rely on private contacts alone is to ignore the importance of consultative mechanisms in enhancing public debate.

Other groups, too, experience the same difficulties, in terms of internal structure and mechanisms for consultation. The Canadian union movement is characteristically decentralized, regionally diverse and occasionally subject to differences of view between public sector and private sector union leaders. The voluntary community, involved in social issues related to economic policy, is also diverse in outlook. It has strong traditions of local autonomy and participation, and the provinces have responsibility for many of the programs in which it participates.

Until recently, there has been little interest in building consensus among "social partners". Organized labour has traditionally participated through separate channels from those of business. Labour representatives have never liked the procedures. In their view, labour has never had close relations with national policy makers and has never participated fully in the formulation of national economic policy. Various advisory bodies were established after the Second World War, but labour has seen the results as mixed, at best. In protest against the Anti-Inflation Program of 1975, the Canadian Labour Congress severed formal consultative links with government, leaving the Economic Council of Canada and the short-lived Canada Labour Relations Council. A decade later, it has not re-established those links, and significant parts of the labour movement remain sceptical about the value of collaborative bodies.

In the past decade, however, there has been greater emphasis on consensus building among business, labour and government. Canadian governments have experimented with mechanisms involving all three groups or just business and labour. The Economic Council of Canada, founded in 1963, had a wide membership. In 1977, the federal government established 23 task forces to investigate the major sectors of Canadian manufacturing and the

Second Tier Committee to consolidate their work. The next year saw the setting up of the Consultative Task Force on Industrial and Regional Benefits from Major Canadian Projects; the purpose of this Task Force, co-chaired by a business leader and a labour leader, was to examine benefits from large-scale resource projects. In 1984, the Canadian Labour Market and Productivity Centre was founded to advise on labour resources and productivity. Several provinces have created consultative committees on economic policy or industrial relations. Quebec has been particularly active, holding sectoral conferences and *grands sommets* on its provincial economic problems.³ Not all of these mechanisms have been successful or equally well regarded, and none has fundamentally altered Canadian economic policy. Nevertheless, they have all sought to involve business and labour in a search for common understanding on important economic issues, and they have provided experience that may help Canadians to develop more elaborate mechanisms for building consensus. Overall, Commissioners strongly urge that dialogue continue within sectors and industries on how to improve Canada's economic prospects. Discussions should bring together both business and labour representatives with representatives and officials from the federal, provincial and municipal levels of government, as well as with representatives from other groups as necessary. We Commissioners believe that prolonged discussions of this nature on a relatively narrow agenda are vital.

In developing an overall strategy for consultation between the public and private sectors on major issues, it is essential to build on Canadian experience in ways which are compatible with the institutional framework of business and labour, and with our parliamentary traditions. More effective consultation requires adjustments both in the private sector and in government. Intensive consultation would place severe demands on the national organizations that represent business and labour. To shape national consensus on major economic issues would require participating groups to develop clear positions and priorities. They could not leave the hard choices and decisions about trade-offs to government as has happened in some earlier advisory exercises. As a study of consensus mechanisms in Europe made very clear, the role of organizations representing business and labour is critical. Conflicts among employers and among employees are inevitable, but "their internalization and management by peak organizations makes the task of building national consensus that much easier for governments."⁴ This concern led the Science Council of Canada to recommend that "the private sector seriously consider the need to build much stronger organizations" to participate in the formation of economic policy.⁵

To strengthen representation of the private sector forms only one side of the equation, however. More formal and continuous dialogue would also require establishment of new consultative mechanisms through which business and labour could communicate with government. The preceding review and recent Canadian experiments suggest possible directions. The new trend to establish business/labour and business/labour/government advisory bodies deserves support and encouragement. Such bodies can moderate conflicts and build common awareness in critical areas. In many fields, the interests of business and labour overlap significantly, although in some, their

interests are directly opposed, and this limits prospects for government to act on the basis of consensus. Moreover, lasting consensus on economic and social policy or economic management is unlikely, since transitional costs may be high for some sectors, and the international situation may change.

Recent Canadian experience suggests that it would be useful to develop guidelines to shape such initiatives. Commissioners are mindful of the caution expressed by a representative of the Canada West Foundation:

I am not convinced that it is possible to legislate meaningful consultation. I think it has to be a state of mind, a sense of confidence in [each] other that you are both trying to achieve the same goal.

(Canada West Foundation, Transcript, Calgary, November 8, 1983 [vol. 42], p. 8618.)

Acknowledging the validity of that caution, Commissioners believe the following considerations can enhance the success and usefulness of consultative arrangements:

- Consultative mechanisms are more likely to be successful when they focus on clear, specific objectives.
- Consultation should be a continuing process facilitated by reasonably predictable arrangements.
- Governments must make a firm commitment to maintain any consultative processes they undertake. Everyone's time is valuable. Effective consultative arrangements require that non-governmental participants be accorded some influence over the agenda and the decision-making schedule. Responsibility for the overall policy-making process, however, must rest with the government of the day.
- Consultative processes aimed at consensus building require fair representation among many groups in society and, usually, parity between business and labour.
- Effective consultation requires general awareness of appropriate information and governing assumptions. Sharing and co-operative refining of information are prerequisites to the consultative processes which we seek to encourage.

The matter of funding also arises in connection with consultation. The claim is sometimes made that public support is needed for the research, communications and travel associated with participation in various forms of consultation. This Commission itself received inquiries from prospective participants (including major national associations) in its hearings and consultations about the availability of financial assistance. We sympathize with the needs of individuals and small groups anxious to be involved in ongoing consultation, and we are aware that the tax treatment of expenses differs among groups. But we have no guidelines to offer on the weighting of competing claims for limited resources. Those responsible for consultation should respond to financial needs in accordance with their own general operations and the principle that diverse participation should be encouraged.

Commissioners believe that a network of special-purpose bodies would offer greater advantages to Canada than would a single, broad, advisory council. As one intervenor remarked in our hearings:

Public administration involves a collective decision process whose essential feature is the resolution of conflicting interests. This process rests on acceptance of a wide variety of institutions for mediation, negotiation and reconciliation.

(Rod Dobell, Brief, September 21, 1983, p. 35.)

For the purpose of consultation centred on specific industries or economic sectors, the guidelines we have suggested for business/labour/government involvement are appropriate. Where representatives of particular industries and economic sectors are to be consulted, relations between public and private representatives will largely involve contacts with the executive branch of government, will frequently be ongoing, and will emphasize specific and relatively short-term actions. Where consultation is intended to serve other functions, however, different institutional arrangements must be considered.

Parliament and Consultation

Canadians need a national consultative forum or process for determining general economic directions. The arrangement should permit representatives of business, labour, the voluntary sector, and government to exchange information and views about the state of the economy, to survey forecasts of medium-term prospects, to examine difficulties in various sectors, and to consider policy options. Any such forum should also help to inform public and parliamentary debate on the economy.

Commissioners have considered several approaches. One possibility would be to arrange a national economic summit like the one which was held in Australia in April 1983, or like the National Economic Conference held here in Canada in March 1985. A summit offers a number of advantages, including flexibility of agenda and membership. In a Canadian summit, provincial government participation should be encouraged. We suspect that on the grounds of tradition, provinces would regard their participation here as more appropriate than in a parliamentary forum, although this did not prove to be their attitude in the National Economic Conference. It is important to form realistic expectations of such meetings. The Australian conference ratified a detailed incomes policy and agreed to a fiscal framework for the government. Such consensus is unlikely in Canada. A Canadian summit is more likely to serve as a forum for debate than an instrument of consensus.

While a national summit seems to provide an ideal means of initiating intensive consultation, it has its limitations. Annual summits might prove cumbersome and, indeed, inadequate: a continuing dialogue requires a permanent forum. Furthermore, summits, like mechanisms for sectoral consultation, emphasize government involvement at the executive level. A possibility that this Commission finds more attractive is the formation of a permanent Economic Policy Committee of the House of Commons. The Committee would hold annual pre-budget hearings; take testimony about the nation's economic prospects from the Department of Finance, the Bank of Canada and the Treasury Board, and from related agencies such as the Economic Council of Canada and the Science Council; and gather the views of major groups, including business and labour associations. In addition, the

committee could hold hearings on other important economic issues throughout the year. Its hearings should be televised and should become part of the annual cycle of economic policy formation.

Such a committee could inform public and parliamentary debate, and become an instrument for collective debate about the economy. One brief to this Commission addressed this point:

Ultimately the skill of the Federal Government to give and share leadership in goal setting with Canadians and not for Canadians will determine its effectiveness in carrying out its mandate.

(National Council of YMCAs of Canada, Brief, November 30, 1983, p. 17.)

A permanent Committee would integrate economic interests into the policy-making processes of the House of Commons, the central representative body of Canadian life. In moving from specific problems to the more general issues of economic policy making, it becomes increasingly appropriate to link consultative mechanisms to Parliament, through which the government is ultimately responsible for its decisions.

This Commission's concerns about participation in consultative arrangements are also closely related to the subject matter or issues under consideration. Where discussions focus on sectoral issues with relatively clear objectives and defined scope, it is desirable to involve representatives of business and labour who are familiar with the detailed circumstances. When the object of consultation is broader and less constrained, taking into account the general directions of economic policy, representatives of other groups and constituencies should also be involved.

Commissioners believe that consultation through Parliamentary or legislative forums is most likely to further the ongoing process of public education about the nature of the issues involved in economic policy making and the need for negotiating difficult trade-offs. The greater visibility of legislative forums is an important advantage in this respect.

Reform of the Budget Process and Parliamentary Consultation

The participation of interest groups in the consultative process has particularly important implications for the preparation of the federal budget. Since interest groups both benefit from and bear some of the costs of the various components of the budget, it is desirable to make their demands more visible. Reform of the budgetary process should be viewed in a broader context than it has been in recent years.⁶

Canadians elect the members of the House of Commons and the provincial legislatures, making these the most legitimate political institutions in our constitutional system. Private interests make a different democratic claim on society, and it is less easy to define their legitimacy, which has always been in tension with parliamentary democracy. Today, established and emerging interests, now coming to the fore in a more rights-oriented society, make many claims on government. Yet while Parliament exists to hold the executive to account, there are no formal institutional arrangements or

governing principles to hold accountable the private interests, which are major beneficiaries of the national tax and expenditure system.

National bodies representing big and small business, labour, consumers, agriculture and other sectors present views on fiscal, monetary and social policy, privately and in ritualistic consultation before the Budget Speech. They often present views in such a way as to convey what they would do if they were the government; that is, they present their own views in the guise of the national or public interest. At the same time, they are unhampered by the responsibility for governing or the need to relate their own claims to those of others.

The democratic right of interest groups to express their views is undeniable. Indeed, the quality of the state's economic decisions depends on the continuing exchange of information with private sector interests. However, although the views of interest groups have considerable significance for all Canadians, they are not examined on a sustained basis. The contrast between our treatment of the government's positions and those of opposition political parties is clear: whereas we hold the government responsible for its actions, we do not hold private interests responsible for their actions in the public realm. Commissioners believe that this distinction requires some reconsideration, notably in the context of preparing the budget, where more extensive advance discussion with interests throughout society would be advantageous.

This Commission's research and hearings suggest that there have been changes in the part the budget has in setting national goals.⁷ First, because the aims of elected politicians, both federal and provincial, have broadened greatly, budgets now reflect a wide range of social, as well as economic, goals. They permit governments to communicate priorities and to indicate that they share the values of various segments of the electorate; they also reflect the open and hidden claims on the tax and expenditure components of the public purse, which are made by interests in the political system. Secondly, the capacity of federal budgets to indicate major national goals clearly has been reduced by the breadth of objectives inherent in the budgets and the increased frequency of their presentation. Thus, their release has often represented tactical occasions, rather than presentations of coherent signals about the state of the economy. Bombarded by specific demands from interest groups and by persistent detailed criticism from opposition parties, governments have often wished to be seen as "doing something" in response.

Thirdly, the contribution which the national budget can make to goal setting is affected by the legacy of successive approaches to budget reform. Often-conflicting norms and principles, which are linked, in turn, to political ideologies, are the remnants of these approaches, which have included balanced budgeting, Keynesianism, monetarism and various versions of managerial rationality. Indeed, experts who have a specialized knowledge and perception of budgetary matters are increasingly involved in the process of preparing the budget. Their involvement has, to an extent, given the process a life of its own, independent of governmental direction.

Commissioners regret that federal budgets are being introduced with increased frequency, since their capacity to provide economic direction to the country has consequently been reduced. One could ask, for example, whether

the process of setting national goals has been improved: budgets now reflect a wide range of social and economic policy objectives, yet more goals imply more trade-offs and, accordingly, less clarity. From a democratic perspective, however, this proliferation of goals is not inherently undesirable. Indeed, Commissioners welcome the incorporation of micro-economic realities into the budgetary agenda. Nevertheless, we believe discussions of the budget must be restructured to permit scrutiny and debate in this more complex context.

Commissioners are convinced, too, that inadequacies in current practices of scrutinizing taxation and spending should be addressed through reform. Both taxation and expenditure are scrutinized to some extent: by Parliament, as it debates legislation; and by private interests, as they watch over their stakes in the fiscal process. However, whereas the Auditor General's Office monitors government spending at the federal level on a continuing basis, there is no similar agency to monitor taxation. This institutional imbalance needs to be addressed, a point which the 1984 annual report of the Auditor General's Office stresses.

Aside from this imbalance, there are other problems to be addressed in the monitoring process. The adoption of certain auditing practices by recent Auditors General indicates distortion in our system of financial accountability. In a comparatively short period of time, for example, the Auditor General's Office has received a vast increase in its resources to scrutinize spending. An Auditor General may not, however, direct his office to scrutinize policy *per se*, since the position is not an elected one. The office has therefore used "value-for-money" auditing to focus instead on "systems" of information and decision making. Meanwhile, elected members of Parliament lack adequate resources to scrutinize policy as their job demands. The practice of "comprehensive" auditing indicates another aspect of the problem; Commissioners believe that it is incorrect to equate the duties of the Auditor General's Office with those of Parliament itself. Recent statements to the effect that only the Auditor General can hold the government accountable indicate a need for change.

Commissioners would prefer to see the Office of the Auditor General focus on the more traditional auditing functions, that is, checking honesty, probity and efficiency in government finances. Broader aspects of policy and program should be the concern of elected members of Parliament. These politicians should emphasize social and political values, as well as fiscal values, while looking at the political goals which underlie spending and taxation, and while maintaining financial efficiency as a primary criterion.

In this way, while the Auditor General's Office examines financial efficiency as such, Parliamentarians, equally backed by analytical resources, would complement this analysis and other analyses. Both the Auditor General's Office and the Economic Council of Canada would provide analysis and research support for the House of Commons Economic Policy Committee as it scrutinized policy on taxes and expenditures. Elected politicians, backed by analytical support, would then be able to scrutinize proposed tax decisions before the introduction of the budget and throughout the year. Parliament could speak about programs plainly and directly, rather than keeping to the

indirect and convoluted language of "comprehensive" auditing employed by the Auditor General.

The broad contours of a reformed budget process would be along these lines: a standing House of Commons Committee on Economic Policy would hold an annual series of pre-budget meetings timed to allow its work to influence budget preparation. During televised hearings, it would analyse the government's performance. Although ten million Canadians will not suddenly become avid fans of fiscal-policy television, the complex issues involved in preparing the national budget will become more directly accessible to the citizens affected by the outcome. In addition, interest groups will have a better opportunity to learn the positions others are taking on questions of general concern. We believe that similar procedures to increase public involvement in, and understanding of, budget making would also be appropriate at the provincial level.

Other aspects of the budget process should also be changed in order to permit broader discussion and debate of the issues. Commissioners advocate departing once and for all from the rigid practice of budget secrecy. Such secrecy limits full internal discussion of the budget within the Cabinet; thus it not only reduces collective Cabinet responsibility for what is arguably the government's most important set of decisions, but also increases the probability of major errors, such as occurred in the 1981 Budget. Moreover, budget secrecy is out of step with current practice: such extreme secrecy does not accompany other decisions, despite comparable possibilities for private gain. Finally, tradition requires that the Minister of Finance resign when a breach of budget secrecy occurs. Although this step is no longer taken automatically in all instances, there remains an expectation fostered by the competitive political process that perhaps it should be. Confusion between evolving practice and historic expectation has thus produced a situation in which the practice of a basic convention of Parliament lacks clarity.

Commissioners are not arguing for the elimination of secrecy as such; Cabinet secrecy, for example, encourages frank debate within the executive. Secrecy also has important implications for financial issues. It prevents untimely disclosures of possible government decisions which could seriously affect financial markets, and it limits situations where "insiders" could use advance knowledge of economic decisions, or even of the possibility of such decisions, to their own financial gain. In addition, secrecy ensures that any major government decision is announced in an orderly way, rather than revealed unintentionally in bits and pieces. Nevertheless, these considerations certainly do not require the comprehensive budget secrecy that governments have attempted to secure in the past.

We believe that the convention of comprehensive budget secrecy must be reformed in order to begin a movement towards more effective advance discussion and consultative arrangements. Since the principal obstacle to a less comprehensive practice of budget secrecy is Parliamentary convention, we urge the House of Commons to initiate such a change.⁸ This reform will have to include a more precise understanding of the circumstances in which strict budget secrecy must continue to apply and of those when its relaxation is appropriate.

Another issue to consider in the matter of reforming the budget process is the timing of budget presentations at both federal and provincial government levels. Commissioners believe that a reasonable case can be made for the two levels to agree to co-ordinate the presentation of revenue and expenditure budgets in all legislatures, adopting an arrangement whereby the federal budget would either precede or follow most provincial budgets by two or three months. Since provincial governments generally present their budgets in the spring, the federal government should attempt to align its practice with theirs; this would require some adjustments to its internal budget and planning cycle. Concurrent debate in all legislatures would serve to focus pre-budget consultation between federal and provincial governments and between the public and the private sectors. An obvious difficulty with this type of synchronization is that finance ministers do not readily give up the tactical flexibility that an uncertain budget date permits; and even an agreed date can always be circumvented by an "economic statement". However, by co-ordinating the presentation of the eleven budgets, a kind of nation-wide discussion of federal and provincial economic goals and priorities could be created. In our view, such an opportunity to discuss these priorities is much needed.

Overall, consultation among governments and between public and private sectors should complement parliamentary scrutiny of the federal budget. Commissioners are not proposing that any single institution can fulfil the need for wide-ranging budgetary consultations and debate which we believe Canada needs. Federalism, parliamentary government and the right of interest groups to associate freely and to lobby are central to our political life. Discussions about the economic goals and priorities of governments will therefore continue to take place: in intergovernmental settings, in discussions with ministers of finance and their officials, and in the proceedings of parliamentary and legislative bodies. Nevertheless, we believe that a parliamentary forum would provide the best means of address to right the two imbalances in our current budget process: the relative lack of scrutiny of taxation as compared with spending; and the failure to examine openly and thoroughly the fiscal, tax and spending proposals of major private interests. The changes we propose would strengthen the role of the House of Commons, Canada's primary democratic, representative institution, in making economic policies.

Notes

1. Canada, Task Force on Business/Government Interface, *Report*, prepared for the Department of Industry, Trade and Commerce (Ottawa: Minister of Supply and Services Canada, 1976), p. 25.
2. James Gillies, *Where Business Fails: Business Government Relations at the Federal Level in Canada* (Montreal: Institute for Research on Public Policy, 1981), p. 109.
3. Pierre Fournier, "Consultation in Canada: Case Studies and Perspectives", in *The State and Economic Interests*, vol. 32, and Ken G. Waldie, "The Evolution of Labour-Government Consultation on Economic Policy", in *Labour-Management*

Co-operation in Canada, vol. 15, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).

4. M. Cooper, *The Search for Consensus* (Paris: OECD, 1982).
5. Science Council of Canada, *Canadian Industrial Development: Some Policy Directions* (Ottawa: Minister of Supply and Services Canada, 1984), p. 52.
6. See G. Bruce Doern, "The Politics of Economic Policy: An Overview", in *The Politics of Economic Policy*, vol. 40, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
7. Allan M. Maslove, Michael Prince, and G. Bruce Doern, *Federal and Provincial Budgeting*, vol. 41, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
8. A number of recent studies review specific possibilities. See Conference Board of Canada, *Consultation and Budget Secrecy: Reforming the Process of Creating Revenue Budgets in the Canadian Federal Government* (Ottawa: The Board, 1985).

Parliamentary Government and Federalism: The Reconciliation of National and Regional Interests

National Institutions and the Representation of Regional Interests

Democratic government requires that all citizens be fairly represented in the governing councils where decisions are made on their behalf and where divergent interests must be reconciled. Representation takes many forms. At its heart is the equal representation of individuals, expressed in the term "one person, one vote", but it also covers the social and regional groupings into which any complex society is divided. Effective means of representation are not only requisites of democracy; they are also the foundation of effective government. As a practical matter, policy making will fail if the views of all relevant groups are not considered. If large sections of the population believe government to be unrepresentative, then its capacity to promote compromise, to provide dynamic leadership, and to secure the consensus necessary for voluntary compliance will be eroded.

History, culture, economics and the design of our political institutions have all ensured that within the national framework, Canadians think of representation in regional or provincial terms, in conjunction with, but in partial tension with, the equal representation of individuals. Thus representation in national institutions must be thought of not only as the representation of individuals, but also as the representation of regional or provincial interests. The creation of an appropriate system of representation, therefore, is not a straightforward issue to be determined by a simple formula.

Federalism is one primary means through which we Canadians structure our institutions to represent regional interests. Federalism responds to regional interests through its premise that for some purposes, provincial communities have the right to make their own decisions and to enact their own preferences or priorities, without being blocked by national majorities and without the need to secure national consent. For other purposes, federalism assumes that the relevant community is the whole country, and that the will of the national majority represented by the national government should prevail.

The growth of government and its changing roles have seriously blurred the distinction between provincial and national. Today the national government acts in a multitude of areas of local import and concern; provinces do much that is vital to national purposes.

The practice of contemporary federalism also suggests that one means – but not the only one – of reconciling national and regional interests is through the processes of intergovernmental relations. Indeed, that reconciliation is an essential purpose of what we know as "executive federalism". Commissioners do not, however, accept a model which sees the provincial governments as the sole representatives of matters of regional or provincial interest, and the federal government as the sole articulator for all matters of national interest. Rather, the logic of federalism assigns to provincial governments responsibility for representing the interests of their residents

within areas of provincial jurisdiction; and to the national government it assigns the responsibility for articulating the interests of Canadians in areas of federal jurisdiction.

The federal government, therefore, has a national role that requires sensitivity to provincial and regional interests. However well the institutions of federal-provincial relations work, they can be no substitute for a regionally representative federal government. As the one set of political institutions in which all Canadians are represented, the federal Parliament has a fundamental responsibility to serve as the arena in which we reconcile, accommodate, balance and compromise the interests of each and every region in national policy.

The national economy includes important regional variations in natural resources, size of local markets, access to international markets, and infrastructure for economic development. These variations are as significant now as they were at the time of Confederation. Recent experience with energy, industrial restructuring or reform of the Crow's Nest Pass Freight Rates confirms the persistence of regional dimensions in national policy. Commissioners' assessment of future policy issues arising from Canada's deepening involvement in the international environment and from pressures for continuing industrial adjustment suggest that Canada will require ongoing reconciliation of diverse regional perspectives. Equally, the federal government must be able to define and promote a national interest which is more than the sum of these regional parts, a national interest which transcends our provincial and regional selves.

Both these roles—responding to regional needs, and defining the national interest—require that the national government have the confidence of citizens throughout the country. Without a nation-wide base, the federal government's claim to be a national government is weakened. Its ability to act in the name of all Canadians will be seriously flawed. In a country as regionally divided as ours, the national government must be "regionally representative".

Regional representation has a number of possible meanings which need to be distinguished. First, in a formal sense, Canadians do enjoy equal representation as individuals, regardless of area of residence. A vote cast in British Columbia, for instance, carries approximately the same weight as one cast in Newfoundland. In the House of Commons, each province's number of seats is, with limited exceptions, proportional to its population. However, Canada's parliamentary system concentrates political power in the governing party and in the Cabinet. It is these institutions, therefore, which must be representative.

At one level, we can think of regional representation in a proportional sense: that is, a province or region will be fairly represented if its weight in the governing councils is proportional to its weight in the country as a whole. A province with 5 per cent of the population should carry 5 per cent of the weight in Cabinet and the caucus of the governing party. In a federal system, however, this proportion may be considered insufficient. We may wish to think of provinces as collectivities which, themselves, deserve equal representation or a weight of influence close to it. This view argues for a

departure from the proportional representation of Canadians as individuals; it suggests, instead, that a province with 5 per cent of the population might require more than 5 per cent of the influence in the national government. In the extreme, it can lead to arguments for equality of representation for provinces as provinces. The striking variations in the populations of Canada's provinces mean that in a system of representation based on majority rule and the equality of individual voters, the electoral power of the citizens of a few larger provinces will swamp that of the smaller provinces. If, therefore, our national institutions are to reflect the federal dimension of Canadian society, the dominance of majority rule based on the equal representation of individuals must be tempered.

There is an inherent tension between the concept of equal representation of individuals and those criteria of representation which suggest that the provinces with the smaller populations should have representation in excess of their proper percentage of the Canadian population. Moves to accommodate the latter notion inevitably encroach on the integrity of equal representation of Canadians as individuals. To give extra representation to smaller provinces is to deny equal representation to the individual citizens of the larger provinces. This dilemma of representation is inherent in federal systems where the provinces or states have unequal populations.

The questions raised by these issues are complex and difficult. The fact remains, however, that in recent years, by any measure of regional representation, our national institutions have been seriously flawed. It is not an exaggeration to speak of an institutional failure which has had profound consequences for the governance of Canada.

What are the dimensions of this failure? Despite the importance of regional differences in Canada, the present design of our national institutions gives remarkably little attention to regional interests. Federal systems around the world typically represent regional interests, not only through the division of powers between central and state or provincial governments, but also through the representation of provinces or states within the national government. In the original U.S. constitution, for example, states had equal representation in the Senate, and Senators were named by state legislatures. In West Germany, the second Chamber, the *Bundesrat*, is made up of ministers of state governments.

In Canada, where we draw on the British tradition of parliamentary government, we have built our federalism primarily on the division of powers. Our nation is, perhaps, unique among federal systems in our relative exclusion of the representation of regional interests from the centre.

Canadians have not, however, entirely ignored the need to represent regional interests in national institutions. One of the major issues in the debates leading to Confederation was the design and role of the Senate. Unlike the House of Commons, which was constituted on the basis of representation by population, the Senate reflected the new Dominion's regional composition by giving equal representation to Ontario, Quebec and the Maritimes. This arrangement was later extended to include the West. The Senate initially enjoyed legislative powers virtually equivalent to those of the House of Commons, but its potential to act as the regional body within the

national government and to temper the effect of majority rule in the House of Commons, was fundamentally compromised by the method of appointment to its ranks, and by the logic of responsible government. The federal Cabinet's power to appoint Senators deprived the appointees of effective links with provincial and regional communities and thus undermined their capacity to represent those communities and to be seen to do so. Responsible government meant that the Cabinet would be responsible to the elected House of Commons, rather than to the appointed Senate. Despite its broad formal powers, the Senate would therefore become a residual body—valuable in providing “sober second thought”, in studying policy problems which had not attracted the attention of the Commons, or in dealing with certain technical non-partisan matters; but it would not become an effective forum for the articulation of regional interests.

The task of accommodating regional interests within the operation of national government would fall, instead, to the political parties, to the Cabinet in particular, and to the House of Commons. In many respects, these arrangements worked well. The model of party government developed in Canada has sometimes been called the “brokerage” model. Each national party would win support across the country: it would represent a coalition of regional interests, wielding considerable strength in party councils through politicians with strong bases of local and provincial support. The parties themselves, therefore, would serve as the arenas within which regional interests would be articulated and compromised. This model carried through into the structure of the Cabinet. From the first days of Confederation, federal Cabinets have been carefully built to ensure representation of all regions and of other interests as well. Our national government also developed the tradition of “regional ministers”: powerful regional leaders within Cabinet, who would both press the interests of their own region and also serve as the government's primary regional spokespersons and dispensers of patronage.

Such a system is predicated on the ability of national parties to win support across the country, and to act as forums for balancing interests. Canadians can no longer have confidence in this process. The capacity of parties—the basic instruments of responsible government in a parliamentary system—to perform their intended role, has been called into question, and with it, the capacity of the central government to act as a national government.

The Institutional Failure of the Centre

The results of the federal election of 1980 tell the story in stark terms. Tables 21-1A and 21-1B illustrate that story. By 1980, our federal parties had become regionally polarized; no party had effective representation from across the country. The victorious Liberal Party won 52 per cent of all the seats in Canada, but they won only two seats in the West, both of them in Manitoba. By contrast, the Liberals won all but one of Quebec's 75 seats. They were thus required to govern with almost no representation from Western Canada. The reverse was true for the Progressive Conservatives in

TABLE 21-1A 1980 General Election Results: Seats and Popular Vote by Province

Province	Total Seats	Progressive Conservative		Liberal		NDP	
		% Vote	# of Seats	% Vote	# of Seats	% Vote	# of Seats
Newfoundland	7	36.0	2	47.0	5	16.7	0
Nova Scotia	11	38.7	6	39.9	5	20.9	0
New Brunswick	10	32.5	3	50.1	7	16.2	0
P.E.I.	4	46.3	2	46.8	2	6.6	0
Quebec	75	12.6	1	68.2	74	9.1	0
Ontario	95	35.5	38	41.9	52	21.9	5
Manitoba	14	37.7	5	28.0	2	33.5	7
Saskatchewan	14	38.9	7	24.2	0	36.3	7
Alberta	21	64.9	21	22.2	0	10.3	0
British Columbia	28	41.5	16	22.2	0	35.3	12
Yukon/Northwest Territories	3	30.6	2	37.2	0	31.5	1
Total	282	32.5	103	44.3	147	19.8	32

TABLE 21-1B 1984 General Election Results: Seats and Popular Vote by Province

Province	Total Seats	Progressive Conservative		Liberal		NDP	
		% Vote	# of Seats	% Vote	# of Seats	% Vote	# of Seats
Newfoundland	7	57.6	4	36.4	3	5.8	—
Nova Scotia	11	50.8	9	33.6	2	15.2	—
New Brunswick	10	53.5	9	31.9	1	14.1	—
P.E.I.	4	52.0	3	41.0	1	6.5	—
Quebec	75	50.2	58	35.4	17	8.8	—
Ontario	95	47.6	67	29.9	14	20.8	13
Manitoba	14	43.2	9	21.8	1	27.2	4
Saskatchewan	14	41.7	9	18.2	—	38.4	5
Alberta	21	68.8	21	12.7	—	14.1	—
British Columbia	28	46.7	19	16.4	1	35.0	8
Yukon/Northwest Territories	3	49.1	3	24.3	—	22.2	—
Total	282	50.0	211	28.0	40	18.8	30

Source: Canada, Office of the Chief Electoral Officer, *Thirty-Second General Election 1980: Report of the Chief Electoral Officer* (Ottawa: Minister of Supply and Services Canada, 1980), and *Thirty-Third General Election 1984: Report of the Chief Electoral Officer* (Ottawa: Minister of Supply and Services Canada, 1985).

their minority victory of 1979: they won three-quarters of the seats in the West, and only two in Quebec. In each election, one region considered itself excluded *de facto* from the governing councils of the nation. The sharp differences in regional party representation are misleading as an indication of party support. This becomes clear if we look at the proportions of the vote, rather than at seats won: the Liberals were able to gain significant support in the Western provinces; the Conservatives won some support in Quebec. But even at this level, the claim of any party to be truly "national" was not entirely persuasive.

The 1980 election result provided an extreme example of representational anomalies, but by no means a unique one. Region has long been a prime determinant of voting patterns. The Progressive Conservatives had been weak in Quebec since the conscription crisis of the First World War. The Liberals had been relatively weak in the West since the historic realignment of the vote engineered by John Diefenbaker in 1958. Only in Ontario and Atlantic Canada has there been roughly equal competition among the major parties. Governments with truly national mandates — those of 1958, 1968, or 1984, for instance — seemed to be the exception rather than the rule. This regional polarization was especially marked in each of the federal elections that took place between 1972 and 1980. The Progressive Conservative electoral success of 1984 dramatically demonstrates that it is still possible for a party to secure nationwide representation in the House of Commons. It is by no means clear, however, that prolonged periods of regionally imbalanced representation will not recur.

What accounts for the regional polarization of the party system so evident before 1984? Undoubtedly, the chief reason is to be found in the nature of the issues which divided Canadians. It is not so much that the ability of national institutions to bridge divisions declined, but that the river the bridges had to span grew so much wider. Thus, beginning in the 1960s, linguistic divisions revived conflicts deeply rooted in Canadian history. The national government's need to devote significant effort to language issues and to respond to Quebec's search for a larger role found relatively little sympathy in the West, where voters believed that federal concentration on Quebec led to the neglect of matters of more direct concern to Westerners. The later emergence of conflicts over energy pricing and development also divided the country regionally: any national government would have extreme difficulty, for example, in reconciling the interests of Ontario and Alberta in the matter of oil pricing and revenues in a period of world energy-price and -supply upheaval. The recent abatement of interest in such issues leaves Commissioners more optimistic about reconstituting a more integrated national politics. Even if this hope can be realized, however, the future will continue to present Canadians with renewed and unforeseen challenges which will pose fundamental regional dilemmas for those seeking national reconciliation.

The growth of governmental responsibility for all forms of well-being increases the difficulty of accommodating divergent regional interests, simply because national governments are held more responsible for economic conditions than they were previously. Again, in a highly regionalized economy, the challenge of successful balancing and integration becomes more

difficult for national institutions to meet. Expanded government also means that Ministers are more deeply involved in their administrative and policy-making roles, and so have less time and energy to devote to their more "representative" duties, including that of regional representation.

Recent change in the "technology" of politics has perhaps reduced incentives for parties to reorganize and thereby to integrate local, regional and national concerns. For example, television has contributed to a concentration of power in the Prime Minister's hands and seems to have detracted from the role of regional party leaders in shaping party policy. Television allows party leaders to communicate directly with voters on a country-wide basis. Similarly, sophisticated public opinion polling reduces the role of party rank and file, Members of Parliament and local leaders in communicating regional opinion to the national leadership. Recent reforms, such as public funding of elections, have also tended to weaken the relationships between national and provincial parties.

The electoral process also contributes to regional polarization of the party system. In 1980, the Liberal party won 22 per cent of the vote in British Columbia, 22 per cent of the vote in Alberta, and 24 per cent in Saskatchewan, yet it did not secure a single seat in the House of Commons. In the same election, the Progressive Conservatives won 13 per cent of the vote in Quebec, but achieved almost equally meagre returns in seats. Our electoral system of awarding the seat to the candidate with the largest number of votes provides no pay-off in terms of representation for votes cast for other candidates. In any given region, one party could have a very slim overall lead in votes, yet win every one of the seats. Unless a party thinks that an effective campaign will secure a significant number of seats, it has little incentive to try to win electoral support in regions where it is weak. Hence weakness is likely to reinforce weakness.

The interaction of our electoral system and voting patterns has resulted in regions being seriously over- or under-represented in governing parties. In the Liberal governments that held office between 1963 and 1984, the Western provinces had an average of only 8.3 per cent of the seats in the governing party. In the same period, Quebec was significantly over-represented in the Liberal caucus. In 1979, when the Progressive Conservatives came into power, the situation was reversed. Details are found in Table 21-2.

Another indication of the regional character of our party system is the sharp distinction between party adherence at the provincial and national levels: few provincial legislatures reproduce the party balances found in the federal government. In 1983, the Liberals, though in power in Ottawa, did not form the government in any province. As Table 21-3 shows, of a total of 698 seats in provincial legislatures, only 130 were Liberal. Moreover, irrespective of whether federal and provincial parties of the same name are simultaneously strong in both arenas, they have become increasingly autonomous: they are often supported by different organizations, are financed by different sources and aim at different goals. In recent years there has been relatively little movement of politicians from the provincial level to the national, or vice versa. Thus, in strong contrast to other federal countries such as Australia, Germany and the United States, and despite extensive

TABLE 21-2 Regional Composition of Government Caucus and House of Commons, Canadian General Elections, 1945–1984

Election	Governing Party	Regional Composition of Government Caucus				Regional Composition of House of Commons			
		West	Ont.	Que.	Alta.	West	Ont.	Que.	Alta.
1945	Liberal	15.2	27.2	43.2	14.4	29.4	33.5	26.5	10.6
1949	Liberal	22.6	29.5	34.7	13.1	27.5	31.7	27.9	13.0
1953	Liberal	15.9	29.4	38.8	15.9	27.2	32.1	28.3	12.5
1957	Prog. Conservative	18.8	54.5	8.0	18.8	27.2	32.1	28.3	12.5
1958	Prog. Conservative	31.7	32.2	24.0	12.0	27.2	32.1	28.3	12.5
1962	Prog. Conservative	42.2	30.2	12.1	15.5	27.2	32.1	28.3	12.5
1963	Liberal	7.8	40.3	36.4	15.5	27.2	32.1	28.3	12.5
1965	Liberal	6.9	38.9	42.7	11.5	27.2	32.1	28.3	12.5
1968	Liberal	18.1	41.3	36.1	4.5	26.5	33.3	28.0	12.1
1972	Liberal	6.4	33.0	51.4	9.2	26.5	33.3	28.0	12.1
1974	Liberal	9.2	39.0	42.6	9.2	26.5	33.3	28.0	12.1
1979	Prog. Conservative	43.4	41.9	1.5	13.2	28.4	33.7	26.6	11.3
1980	Liberal	1.4	35.4	50.3	12.9	28.4	33.7	26.6	11.3
1984	Prog. Conservative	28.9	31.8	27.5	11.8	28.4	33.7	26.6	11.3

Source: Canada, Special Joint Committee of the Senate and of the House of Commons on Senate Reform, *Minutes of Proceedings*, June 28, 1983, p. 10A:3, and information supplied to the Commission.

Note: Rows may not add up to 100% because of rounding.

TABLE 21-3 Party Membership in Provincial Legislatures, 1983

Province	Governing Party	Progressive Conservative	Liberal	Other	Total Seats
Newfoundland	Prog. Conservative	43	9	0	52
Nova Scotia	Prog. Conservative	38	12	2	52
P.E.I.	Prog. Conservative	21	11	0	32
New Brunswick	Prog. Conservative	39	18	1	58
Quebec	Parti québécois	0	46	76	122
Ontario	Prog. Conservative	70	33	22	125
Manitoba	New Democrat	23	0	34	57
Saskatchewan	Prog. Conservative	56	0	8	64
Alberta	Prog. Conservative	75	0	4	79
B.C.	Social Credit	0	0	57	57
		359	130	209	698

Source: *Parliamentary Guide*, 1984 (Ottawa, 1984).

interdependence of federal and provincial governments, the Canadian party system does not provide an effective means of bridging and integrating politics at the two levels. This is one reason why executive federalism, sometimes reminiscent of international negotiations, has become the dominant mode of intergovernmental relations.

Canadians have focused their attention on the regional polarization of political parties because it is parties which energize the whole political system. There are additional ways, however, in which the capacities of the institutions of the federal government to represent and accommodate regional interests have been attenuated or less than fully developed.

The first is party discipline. United disciplined parties are essential to the effective operation of party government. However, the ability of individual Members of Parliament to act as spokespersons for their province's interests is sharply limited. As a consequence of party discipline, the MPs regular advocacy of regional interests largely takes the form of participation in party caucuses and in private representations to ministers. It is equally difficult for MPs from the same region, but different parties, to form cross-party alliances to push their regions' interest. This difficulty contrasts with the situation in the United States, where, in a congressional system, weak party discipline gives Representatives and Senators wide scope to act as local representatives and encourages state politicians to build coalitions within national institutions for state interests, rather than to resort to negotiations at the executive level.

Another impediment to regional representation at the national level is the structure of the federal bureaucracy. Most ministries are organized around functions, such as Health and Welfare or Transport, or, like Veterans Affairs or Labour, around clienteles which are not primarily "regional". Of course, there are exceptions. The Department of Regional Economic Expansion (DREE) had a specific regional mandate, and its merger with Industry, Trade and Commerce to form the Department of Regional Industrial Expansion (DRIE) is an attempt to inject a more regional cast into the formation of

economic policy. The Federal Provincial Relations Office, reporting to the Prime Minister, is equally an attempt to ensure that regional and federal-provincial sensitivities are reflected at the highest levels of policy making. Nevertheless, administration in the central bureaucracy has not systematically given attention to the regional dimension of policy.

The prominence of federal Crown corporations and regulatory agencies has increased with the rise of the administrative state. These, too, have been criticized for insufficient sensitivity to regional considerations. These bodies vary significantly in their "independence" of policy direction and management control exercised by the political executive and the central agencies. In general, however, this component of the administrative state is furthest removed from the institutions intended to reconcile regional and national interests in national policy. Although the governing boards of these corporations and agencies are appointed by Cabinet, and although some attention is given to their regional composition, they are largely insulated from the political and policy environment of national government. Many Canadians believe that this autonomy fosters an insensitivity to regional concerns.

Some regulatory agencies, such as the Canadian Transport Commission (CTC), the Canadian Radio-television and Telecommunications Commission (CRTC), and the National Energy Board (NEB), have major regional concerns at the heart of their mandate. However, there are no explicit regional considerations either in the terms of reference of several such agencies or in the selection of the members of regulatory tribunals. While some of these bodies have made extensive efforts to take into account regional interests and to work with their counterpart provincial agencies, this has not been a consistent pattern.

Finally, as Commissioners have noted, the Senate has not been able to provide effective regional representation. The fact that its members are appointed has simply prevented it from playing such a role.

Commissioners conclude, therefore, that Canada's national institutions of government are not well designed to provide regional representation or to encompass the regional diversities of Canadian life within the process of national decision making. The principles and practices of representation by population, Cabinet government, party discipline, and majority rule have not encouraged an adequate response to the regionalism of a federal society. In addition, the limitations of regional representation in national institutions have been accentuated, in recent years, by the regional polarization of the party system.

The consequences of this institutional failure have been severe. They have significantly undermined the ability of the central government to act as the national government in either of the senses presented above: the federal government has become less able to articulate and defend a concept that the national interest transcends regional interests; it has become less able to promote reconciliation of competing regional interests in a fair and balanced manner. It has lost some of its legitimacy, thus experiencing reduction of its capacity to act decisively and effectively.

Public opinion data show that Canadians identify strongly and positively with both national and provincial communities. Indeed, in all provinces except Quebec and Newfoundland, the national community is valued slightly more highly than the provincial. Assessments of the national government are much less positive, however. Many Canadians, when asked about major areas of policy, state their belief that the federal government has the responsibility to act in the national interest. They see that government as having an ever greater effect on their lives.¹ Their views about the level of government which should be responsible for particular functions accord closely with the existing division of powers. Clearly, Canadians value a strong, effective, central government.

At the same time, many Canadians believe that provincial governments affect citizens' lives more significantly than does the federal government. Strong majorities feel themselves "closer" to the provincial governments and consider them more responsive. In the West and, to a lesser extent in the East, large numbers of Canadians believe that their regions have been unfairly treated by national authorities, and that they have been ignored and under-represented in national politics.² There is thus a wide gap between what citizens want and expect of their national government and their confidence in its ability to perform its roles fairly and effectively. The challenge inherent in the process of national institutional reform is to close this gap.

If we Canadians do not meet this challenge, the sense of exclusion from the governing councils which was evident in the 1970s and early 1980s will undoubtedly recur. Without strong regional representation in the caucus of each party—especially the party in power—governments' ability to be sensitive to each region is undermined. Correspondingly, their ability to communicate party policy to voters is reduced. In the absence of balanced regional representation, parties and governments run the risk of appearing, not as advocates of the national interest, but of the ill-disguised interests of particular regions. The power of governments to act will be inhibited, not by lack of constitutional authority, but by lack of political authority. Their ability to be fair redistributors of resources will be weakened by the belief held in under-represented regions that their concerns receive inadequate attention. Persistent regional imbalances in national institutions can ultimately strain the very fabric of Confederation.

Moreover, the less able national institutions are in providing forums for regional reconciliation, the more that role will fall to federal-provincial relations. The less credibly the national government can claim to speak for a region, the more credible become the assertions of provincial premiers that they are the appropriate advocates, not only for matters under provincial jurisdiction, but for matters of federal responsibility, too, and the more citizens will turn to their provincial governments. Indeed, the regional polarization of national politics, is related in complex ways to the growth of provincial government assertiveness and federal-provincial conflict.

For all these reasons, Commissioners believe that to reform national institutions so that they better represent the whole country in its regional dimensions is a fundamental requirement. The 1984 election of a new

government with nation-wide support is encouraging: it shows that even with unchanged political institutions, regional polarization is not inevitable, and that through their own internal processes, political parties can overcome the institutional hurdles. Canadians must recognize, however, that these results were not facilitated by our institutions themselves; indeed, they occurred in spite of our institutional arrangements. It is therefore essential to address the larger institutional issues.

Directions for the Reform of our National Institutions of Government

With this analysis in mind, let us set out our goals and explore the ways to achieve them. We wish to ensure that Canada's national institutions of government will, and will be seen to be, representative of, and responsive to, the interests and concerns of all regions and provinces in Canada. We wish to ensure that Canadians in all regions can be confident that through their representatives, they are present in the forums that make critical decisions, the most important of which are the Cabinet and our two Houses of Parliament. These are the most visible sites for representation. While the principles of representation of individuals and the majority rule it produces are the fundamental underpinnings of responsible government, Commissioners believe that in a federal system—and especially in one where the populations of provinces vary so greatly—Canadians must temper the practice of majority rule to accord relatively greater weight to smaller provinces and regions.

In the matter of representation in Parliament, Commissioners wish to emphasize two essential considerations. In terms of the House of Commons, representation as such is not at issue, for all regions and provinces are now represented in that body. The first issue is the representation of regions and provinces within particular parties to a degree more closely related to their electoral support. The second issue is better balanced provincial representation. Here Commissioners view the Senate, our second chamber and the body which, in federal systems, typically bears the responsibility for representing state and provincial communities, as the appropriate site for reform. We do not wish to modify the basic principle of representation by population, on which the House of Commons is properly constituted. On the other hand, we do seek to make the parliamentary caucus of our parties more representative of Canada's regions. Our proposed solution attempts to meet both these concerns by moving to an elected Senate where membership is weighted towards the smaller provinces, and where election is based on proportional representation. This change will simultaneously strengthen the position of the less populous provinces in the joint Senate-House of Commons caucus of the parties, and also contribute, through proportional representation, to a distribution of those caucus members in each party which is closer than the present arrangement to their actual electoral support in the regions.

These modifications must be made in ways consistent with the tenets of responsible government. This means that the Cabinet must remain

responsible to the House of Commons which, itself, must continue to be chosen on the basis of population. It also means that reforms must be consistent with the concept of cohesive, disciplined, political parties. Finally, Commissioners believe that the achievement of a regionally representative central government, or the building into national institutions of the concept of representation by region, must not and need not undermine the ideal of a national government which is responsive to national constituencies and which pursues comprehensive national goals. Regional representation is a precondition of national government, not a substitute for it.

Four possible areas for reform are present. All have been extensively canvassed in recent years, as many groups have sought to strengthen the regional responsiveness of the national government.

Reform of Political Parties

The most visible of the institutional failures described above are the regional polarization of political parties and, with occasional exceptions such as that provided by the election of 1984, the recurring inability of any party to achieve a nation-wide constituency. The first advice, then, to political parties must be to "heal themselves". The onus should be on party leaders and party members to ensure that their parties develop a comprehensive vision of Canada and put forward programs and policies which can command broad support across the country. Electoral strategies which cultivate the interests of some regions over others, or which "write off" whole sections of the country, must be recognized as inimical to the long-term interests of both country and party, even if they should offer short-term electoral advantage. Macdonald, Laurier, King were able to make their parties the "governing party" for extended periods precisely because of their ability to build sustainable national coalitions.

Internal party reform—including, Commissioners believe, the desirable strengthening of links between national and provincial parties—is primarily a matter for the parties themselves to undertake. We have seen in recent years worthwhile and important, though not always successful, efforts by all parties to overcome their regional biases in support and representation. Beyond approving continuing efforts in this direction, however, we do not presume to suggest how parties should order their internal affairs.

The view that national parties are the principal cause of the failure to reconcile national and regional interests ignores the basic fact that even with a nationally representative governing party in power, our parliamentary system does not provide any mechanism by means of which the regional interests of the less populous provinces are able to temper those of more populous provinces. A nationally representative governing party, such as that elected in 1984, is still subject to domination by the elected representatives of the more populous provinces. There are good reasons to doubt, therefore, that even nationally representative governing parties can reconcile national and regional interests to the degree Commissioners consider necessary.

The Electoral System

Party strategies, however, are more than a product of the aspirations of leaders and tactical advisers. They are also shaped by the powerful framework of rules within which the electoral game is carried out. The most important of these is the electoral system.

As we have seen, Canada's "first-past-the-post" electoral system has the effect of dramatically reinforcing the regional disparities in party support at the level of representation. The party caucus is far less regionally representative than is the party's electoral base. Moreover, this situation creates incentives for parties to strengthen their regional bastions, and not to "waste" time and money on a region where they are in a minority.

As a result, there have been a number of recent proposals to reform the electoral system to counter these effects. Most such proposals aim to introduce a greater element of "proportionality" into the system so as to bring a party's percentage of seats more into line with the percentage of votes it is able to win in each province or region. Full proportionality ("PR") on a provincial basis, employing what is known as the "list system", would constitute each province as a single constituency. Voters would cast ballots for a party rather than for an individual candidate. Each party would be allocated a number of seats proportional to the votes it won, and MPs would be drawn from party-compiled lists. There are myriad variations on this fundamental theme, but they need not concern us here.³

Proposals for such a comprehensive list system have never achieved wide support in Canada. They would constitute a major departure from our existing system. The direct link between citizen and member, achieved by casting votes for an individual candidate in a single constituency, would be broken. Party organization, which would select candidate lists, would be given more power than most Canadians would wish. Moreover, complete PR would render minority—or perhaps coalition—governments the norm in Canada. In the 25 elections that have been held since 1900, the victorious party has won a majority of the votes cast only seven times. That has happened only twice since 1945: in 1958 and 1984. Full proportional representation would also almost certainly make it easier for new parties to enter the political fray: indeed, there would be considerable possibility of creating a fragmented multi-party system, one which would strongly encourage the emergence of narrowly focused parties, including regional parties. Pure PR would thus ensure a match between seats and votes, but at the cost of denying ourselves the benefits of stable majority governments and of forgoing our traditional relationships with our elected representatives.

Another standard method of proportional representation, which involves multi-member constituencies, could also, if comprehensively applied, produce almost complete proportionality between seats and votes on both a national and a provincial basis. Such a system would preserve the link between voters and candidates, since Canadians would still vote for individual candidates and thus would not contribute to the same enhancement of power of the party organization as does a list system. It would, therefore, be less destructive of our traditions. On the other hand, if comprehensively applied, it, too, would

result in the election of minority governments, an outcome which Commissioners consider undesirable. Accordingly, we do not recommend such a wholesale change of electoral arrangements for the House of Commons. We are attracted, however, to such a system for the Senate, where its effect would not undermine stable majority government, for government would continue to be determined by party majority in the House of Commons.

Such considerations have led most proponents of electoral reform applicable to the House of Commons to suggest that we introduce some elements of proportionality, without going the full distance. The most common suggestion is for some form of "topping-up" mechanism to operate in the House of Commons. The present electoral system would continue to determine the allotment of most of the seats, but after a certain point, the "topping-up" arrangements would come into effect. Each province or region would have a pool of party candidates: if party members, elected directly under the present system, fell short of the number needed to supply representation proportional to the popular vote, additional MPs would be selected from the pool in accordance with clearly formulated rules to supply more proportional representation. West Germany uses such a system, effectively combining single-member districts with full proportional representation in the *Bundestag*.

In Canada, the Pépin-Robarts Task Force on Canadian Unity suggested increasing membership in the House of Commons by "about 60". The additional seats would be awarded to candidates selected from party lists announced before the election and would be distributed on the basis of percentages of the popular vote.⁴ In 1980, a report for the Canada West Foundation⁵ suggested reducing the number of single constituencies in the Commons from 282 to 255 and adding 75 new MPs, who would be chosen from party lists. Each voter would cast two ballots, one for a constituency candidate and one for a party. On the basis of the latter votes, seats would be allocated proportionally among the parties.

These "partial" PR systems have the virtue of keeping most of the current system intact. Most are also designed to minimize the risk of producing minority governments. By the same token, of course, they can go only part of the way to matching seats and votes. An important cost of such proposals is the addition of considerable complexity to our electoral system. Two types of members would sit in the House of Commons, selected in different ways; and it is not clear what the effects of the change would be on the internal dynamics of the parties and on citizens' expectations.

Commissioners conclude that reform of the electoral system for the House of Commons is not practicable at the present time. Such proposals have received little evident public support. A movement to full PR, whatever the PR system employed, would introduce unpredictable, but potentially far-reaching, changes into our party system and the functioning of responsible government. While it would solve the immediate problem of balancing seats with votes, the cost might be large. "Add-on" systems would have fewer possible consequences for majority government, but they would only partially solve the problem of improving regional representation within the parties in Parliament. In our view, then, electoral reform is a second-best solution.

Commissioners do think, however, that it is time for Canada to explore the potential effects and benefits of proportional representation in Parliament. We shall present our position in the context of Senate reform.

The House of Commons and Regional Representation

A third area for change, and one closely linked to parties and the electoral system, is the House of Commons. It may be possible, by modifying this element of our system of government, to give greater freedom to individual MPs to act as "regional" spokespersons. Considerable progress has recently been made within all parties to develop a more extensive system of regional groupings within the party caucus, and Commissioners endorse these developments. There are, however, two limitations to the expression of regional interests within the caucus: first, it presumes that the caucus as a whole is regionally representative, a condition which we have seen all too frequently does not obtain. Secondly, this expression takes place in the privacy of the caucus room; when the Members emerge, party discipline imposes itself. This custom means that however vigorous the expressions of regional opinion in caucus, it is not easy for voters to see the process in action.

The proposal most often discussed as a possible resolution of this problem is to lift the strictures imposed by party discipline and allow MPs full rein to act publicly as regional spokespersons. Commissioners' proposal to provide a more important role for parliamentary committees, especially before party positions become fixed, is a step in this direction. We do not wish, however, to go further. Party discipline, we have observed, is deeply entrenched in our parliamentary tradition. Moreover, it is a vital device for ensuring policy coherence and for achieving responsible government. We do not wish to tamper with such a fundamental element of the present system. Again, if MPs came to define themselves primarily as regional advocates, they might indeed express regional interests, but they might not be able to reconcile and accommodate differences. Party leaders, with an eye to national success, are more likely to balance regional interests than are individual MPs with an eye to success in their own constituencies.

The possible reforms Commissioners have reviewed so far are designed to deal with the way in which Canadian voters select members of the House of Commons and, by extension, the Cabinet. Such reforms could ensure that each region has at least some voice in the governing councils, and that each party and the Cabinet have an elective base in every part of the country. We believe, however, that it is essential to address another dimension of the problem: the need to temper majority rule by giving greater weight to smaller areas.

The Senate and Regional Representation

In most federal systems, the second chamber of the national parliament reflects the federal character of the country. Typically, second chambers allot more influence to smaller regions than their population would warrant: in the United States, for example, each state has two Senators, despite huge variations in population.

What is the potential for Senate reform in Canada? As we have seen, the composition of the Canadian Senate reflects the regional character of our nation. The way in which Senators are selected, however, decisively undercuts the Senate's role as a regional counterweight to a House of Commons where seats are based on population. There are many functions a second chamber can perform and many issues in Senate reform. Commissioners wish, however, to emphasize the potential of Senate reform to bring greater regional responsiveness to central institutions. Commissioners are not alone in this view. Beginning in the mid-1970s, as regional conflict intensified, as the regional polarization of political parties increased, and as provincial governments responded with proposals for decentralization and requests for a greater voice in federal policy making, attention turned more and more to the alternative response of reform at the centre. The Senate was the most frequently chosen vehicle.

In assessing the possibilities and objectives for reform of the Senate, Commissioners have been mindful of a more extreme option which some critics have put forward from time to time: abolition of the second chamber. In our consultations, one of the provincial premiers proposed abolition. In the winter of 1984-85, when the Senate took, some thought, undue time to consider a money bill, there were new and serious cries for abolition. Commissioners understand this view and believe it to be based on two quite valid criticisms: that the present appointed Senate is illegitimate in the modern sense of "representation", and that it is ineffective in its duties of regional representation. For these reasons, we do not favour retaining the *status quo* for the Senate.

This Commission proposes radical reform of the Senate, but not its abolition. We take this position for three reasons. First, our priority is to promote Parliament as the principal forum for public debate in Canada; to abolish the Senate would be a move in the wrong direction. Secondly, we wish to see the reconciliation of national and regional interests in Parliament, and we believe that the Senate can make a major contribution to that end. Thirdly, although there have been endless suggestions for reform of the Senate and a good deal of public support for reform, political and institutional self-interest has prevented the public will from being done. We think that this situation may be changing. We are of the opinion that there is renewed interest on the part of all the institutions concerned. Thus we are persuaded that, practically speaking, serious Senate reform is no longer a "non-starter", and we are convinced that for a more effective Parliament, it is essential.

Issues in Senate Reform

The design of a reformed Senate depends on the purposes that we wish it to serve. To determine those purposes, we must answer several questions. What should be the basis of representation? How should we select members? What powers should the Senate have? What should be its relation to political parties and the House of Commons?

Commissioners wish to incorporate the concept and practice of regional representation more clearly within the structure of national institutions. The Senate is the institution that should embody the federalist principle at the centre. The House of Commons will continue to represent individuals on the basis of population. Should each province, then, have equal representation in the Senate? We do not go so far: our objective is simply to establish a greater weight of influence for less populous regions relative to the more populous. In intergovernmental relations, provincial governments are, and should be, equal, a state which reflects their juridical equality and their responsibility for governing their respective provinces. Yet our institutional arrangements also recognize differences among the provinces to serve certain purposes. For some constitutional amendments, for example, size and numbers of provinces are combined to establish a voting formula. In our national government, where representation by region takes place within a single jurisdiction, a comparable adjustment is also appropriate. We wish to temper, not overrule, representation by population.

The Senate is part of Parliament, and Parliament is pre-eminently a representative body. For that reason, and because a reformed Senate must build on Canada's practice of party government, we join those who have argued that the Senate should be an elected body. Appointment of members by the national executive is inappropriate in our democracy. Numerous proposals for reform or replacement of the Senate have suggested an alternative method of appointment, by provincial governments or legislatures. The Senate would become a House of the Provinces or a Council of the Federation. According to some proposals, Senators would be direct delegates of provinces, casting their votes as a bloc under instruction from provincial governments. Provincial ministers might head delegations. The model for such proposals is the West German second chamber, the *Bundesrat*. Under this model, the Senate might become the chief arena for the conduct of intergovernmental relations.

Commissioners reject this model on the ground that it is inconsistent with the democratic principle mentioned above. It would mix oil and water in that it would inject into our representative parliamentary process members of provincial governments with executive responsibilities. We must keep separate the executive function and the representative function of the legislature. Moreover, such a model represents an erroneous view of Canadian federalism. It supposes that provincial governments are appropriate spokespersons for regional interests in the national arena. On the contrary, federalism implies that provincial governments are the instruments of their populations for provincial purposes, and that federal MPs and Senators are equally provincial representatives for national purposes. Senators, therefore, should certainly represent provinces, but not provincial governments. We should not convert Parliament into an instrument for managing the interdependence of different orders of government.

If Senators are to represent the citizens of their various regions, those citizens must choose Senators directly. The only legitimate way to do this in a democracy is by means of the franchise. But how is this to be done? One possibility is to apply the first-past-the-post system used for House of

Commons elections. There would be many fewer constituencies, as the Senate would be smaller than the House of Commons. The constituencies, of course, would be correspondingly larger. In this way, election of Senators could achieve Commissioners' objective of giving greater influence to small regions, but it would not guarantee more regionally representative caucuses. The distortions of the current electoral system would reappear in the Senate. Indeed, the larger the constituency, the more potential there is for distortion. Thus representation in the Senate would likely be even more unbalanced than it is in the House of Commons. A Senate whose members were elected by simple pluralities in single-member constituencies would not represent a useful change; such a reform might even be a counterproductive move.

For these reasons Commissioners suggest election of Senators by proportional representation. This method is likely to supply the governing party with elected representatives (MPs or Senators) from all regions for its parliamentary caucus. The governing party would have to be more responsive to representatives of the less populous provinces because these would be given extra weighting in a reformed Senate to enable them to secure passage of legislation. Regional interests would not override party interests, but they would most certainly temper them. A Senate elected by proportional representation would usually permit the governing party to constitute a Cabinet that included representatives from all regions because it would contain men and women from all regions capable of assuming Cabinet positions.

Commissioners recommend that Senators be elected in six-member constituencies. This number is large enough to realize the intended effects of proportional representation, yet allows for some recognition of the regions within provinces. On this basis, given a Senate composed of 144 members, Prince Edward Island would have one six-member constituency, Quebec and Ontario would have four such constituencies, and all other provinces would have two six-member constituencies. Yukon and the Northwest Territories together would share six Senators. The design of these constituencies, whether single or multi-member, would have to await division of the Northwest Territories.

Commissioners believe that a Senate reformed along the lines we have proposed would implement the federalist principle in our national institutions. It would improve regional representation in Parliament, and thus in the Cabinet and in the caucuses of all parties. To elect the Senate as we have recommended can strengthen democratic processes and enhance the position of Parliament in relation to the executive. (See Table 21-4.)

Adoption of proportional representation for the Senate would also provide a useful test of that system more generally. It could have some important consequences. In the long run, citizens might come to see Senators elected by proportional representation as more legitimate than MPs elected by the first-past-the-post method, and this view might have interesting implications for relations between the two Houses. Under proportional representation, the governing party would rarely have a majority of Senate seats, though it is highly unlikely, either, that a non-governing party would have a majority in the Senate. Simultaneous elections of both Houses and party organization of

**TABLE 21-4 Projected Distribution of Senate Seats (144)
under Proportional Representation as Determined
by 1984 Election Results**

Province	Progressive Conservative		Liberal		NDP	
	% Vote	No. of Seats	% Vote	No. of Seats	% Vote	No. of Seats
Newfoundland	57.6	7	36.4	4	5.8	1
Nova Scotia	50.8	6	33.6	4	15.2	2
New Brunswick	53.5	6	31.9	4	14.1	2
Prince Edward Island	52.0	3	41.0	3	6.5	0
Quebec	50.2	13	35.4	9	8.8	2
Ontario	47.6	12	29.9	7	20.8	5
Manitoba	43.2	6	21.8	3	27.2	3
Saskatchewan	41.7	5	18.2	2	38.4	5
Alberta	68.8	9	12.7	1	14.1	2
British Columbia	46.7	6	16.4	2	35.0	4
N.W.T. and Yukon ^a						
Totals	50.0	73	28.0	39	18.8	26

Source: Canada, Office of the Chief Electoral Officer, *Thirty-Third General Election 1984: Report of the Chief Electoral Officer* (Ottawa: Minister of Supply and Services Canada, 1985).

Note: Table 21-4 shows the provincial distribution of the 144 Senate seats in the 1984 election, assuming the use of proportional representation on a province-wide basis, if voters had expressed the same party preferences for Senate candidates as for House of Commons candidates.

- a. The distribution of the six seats allocated to the Northwest Territories and Yukon has not been projected because the issues of choosing an electoral system and dividing the Northwest Territories remain to be resolved.

elections should reduce the danger of such an impasse and of the paralysis that might follow.

Party organization represents an important principle. A number of proposals have sought to insulate Senate elections from party politics, and from the allegedly short-run electoral considerations that dominate the House of Commons. They would do so by eliminating party labels and having candidates run as individuals, by separating Commons and Senate elections, by instituting lengthy terms for Senators, or by holding elections for the Upper House on fixed dates. The Joint Committee on Senate Reform,⁶ for example, called for nine-year, non-renewable terms, in order to give Senators credibility as regional representatives and "a significant degree of independence of party". Commissioners believe, on the contrary, that it is undesirable to attempt to compartmentalize and separate the Senate and the House of Commons in this way. Party is the organizing device for political representation in Canada, and Canadians should not deny that fact. Moreover, it is our aim to ensure, through the Senate, regional representation in the caucuses of

all national parties. A reformed Senate must strengthen party government, not undermine it.

Except in the passage of money bills, the powers of the present Senate are formally co-equal with those of the House of Commons. Restraints on the Senate's exercise of its powers are political and conventional: the House of Commons is the democratic body, and the Cabinet is responsible to it. Giving the Senate an electoral base necessitates rethinking its powers. How much authority does the Senate need to achieve the goals we have set? Our aim is to ensure regional sensitivity and to temper majority rule. It is not to override the vital principle of responsible government.

An elected Senate which actually used the powers of the present Senate to initiate, veto and amend legislation could indeed complicate responsible government. Moreover, a government with a majority in the Commons might seldom have a Senate majority. Commissioners believe, accordingly, that with the exception noted below, the Senate should have a suspensive veto of six months on all ordinary legislation. This period should prove ample for it to consider fully the regional viewpoint and give pause to unrestrained majorities in the House of Commons. Yet it would be clear that ultimately, the will of the majority in the House of Commons would prevail.

Other supporters of a suspensive veto power for the Senate have explored variations in the procedures for its application. It has been suggested, for example, that a bill passed by the House of Commons and subsequently rejected by the Senate should require a second adoption by the House of Commons before it could be presented to the Governor General.⁷ Detailed procedures relating to timing, to the use of special majorities and to different classes of legislation will require careful attention. The objective must be to structure a balance between the principles of regional representation in a reformed Senate and of majority power in the House of Commons, without producing deadlock or otherwise rendering the parliamentary process too unwieldy.

To this point, Commissioners have emphasized the Senate's role as a regional or provincial body. We also believe that a reformed Senate can contribute to representing and reconciling the interests of French- and English-speaking Canadians. The Senate can be both a regionalist and a dualist chamber. Thus, we propose that on matters of special linguistic significance, passage of a law would require the support of both a majority of the Senate and a majority of francophone members. The Senate veto in such matters would be absolute, not simply suspensive.

Commissioners believe that an elected Senate such as we have described would enhance the representative element of the national government by ensuring strong representation from all regions in the caucus of each party and in the Cabinet. We believe that it would strengthen the voice of the smaller provinces and give their people greater confidence that national majorities in government would pay special attention to their interests. Moreover, it would do so by strengthening, rather than weakening, responsible party government.

In analysing the potential role of a reformed Senate, Commissioners have emphasized the regional dimension of Canadian life, and the capacity of

national institutions to represent that dimension and blend it with other concerns in the making of policy. With that perspective in mind, we have concentrated on regional concerns because, as our recent experience eloquently testifies, national institutions have had great weaknesses in that respect. We now wish, however, to pause and remind Canadians that we take for granted that the more regionally elected Senate we propose is to do more than bring a regional focus to its appraisal of policy. The Senate should continue to perform its useful role of applying basic "sober second thought" to all legislation and of generally improving legislation. There is an indispensable role for a second chamber in the national parliament, independent of regional representation. The conduct of inquiries, the control of the modern administrative state, the public airing of issues and other functions will continue to be responsibilities of a reformed Senate. Commissioners do not wish these responsibilities to be forgotten in the concentration on regional concerns, where a reformed Senate has much to offer.

Regional Representation and Responsiveness in the Executive Branch of Government

Commissioners believe that we Canadians must also consider additional measures to strengthen the political legitimacy of the central government. A final critical area for improvement is the sensitivity of the executive branch to regional concerns.

Commissioners wish to look first at the Cabinet and, specifically, at the function of regional ministers. The influence of certain powerful regional ministers has been evident in relation to such highly visible government activities as grants, contracts, projects and subsidies awarded on a regional basis. But government secrecy and the complexity of the administrative state have limited clear understanding of the regional minister's role.

The status of regional ministers has varied, depending on a number of factors, including the leadership style and political strengths of the Prime Minister. In recent years, moreover, regional ministers have had to cope not only with increasingly complex Cabinet decision-making processes, but also with a cumbersome administrative system. In addition, the functions of the regional minister have extended into federal-provincial relations. Regional ministers have often found themselves constrained both by the general environment of federal-provincial relations and by the elaborate machinery that manages and controls those relations.

The implications of these changes for regional representation in Cabinet decision making have been two-fold. First, regional ministers, who in addition to discharging their portfolio responsibilities articulate the interests of their region in Cabinet deliberations, have a more difficult task because of the increased complexity of these structures and processes. They cannot intervene as easily as they used to do, to press the case for their regions or to operate their portfolios in the service of their regions. Secondly, the composition of the Cabinet's committee structure has generally taken into account the requirement of regional representation that applies to the Cabinet itself. Recently, too, the Cabinet Committee for Economic Development Policy

became the Cabinet Committee for Economic and Regional Development. From 1982 to 1984, a central agency, the Ministry of State for Economic and Regional Development (MSERD), served this committee; the Ministry was unique among the central agencies in that it had a series of regional offices in each province, headed by a senior official. These institutional features enhanced regional responsiveness in Cabinet decision making.

It is surprising that the Cabinet has not done more to strengthen administrative support for regional ministers. As the demise of the short-lived MSERD suggests, regional representation is an essentially political function which ministers perform primarily through administrative inputs and policy analysis. Representation of regional interests in the Cabinet decision-making process is part of Canadian politics, but the institutional design of our decision-making systems has not actively promoted this element. We wish to strengthen this dimension of our institutional arrangements.

In a few notable instances, ministers have used their departmental authority to promote regional interests, despite departmental organizations that largely ignore regional policy development and exclude policy planning and development from their regional offices. With few exceptions, policy planning and development take place at departmental headquarters, while regional offices focus on program delivery and line operations. When Ministers promote regional interests, the result is often partisan. This political intervention seldom takes place within well-designed national policies promoting regional development. This situation will remain the norm until line departments stress regional policy planning and development at both central and regional offices.

Organizational arrangements to facilitate representation of regional interests have emerged only slowly within the executive branch and have met with opposition from a number of quarters. Not surprisingly, those hesitant about, or even opposed to, the promotion of regional interests in the development of national policies become more numerous as one moves closer to the heart of central Canada and the national capital. Yet most areas of public policy affect regional interests directly or indirectly. The appointment of the Cabinet Committee on Economic and Regional Development in 1982 constituted the most explicit acknowledgement of this reality to date. This committee is one of the most important within the Cabinet. It represents the culmination of a quarter-century of evolution that has seen the executive give increased organizational attention to the regional dimension of national policy. For the first time, the Cabinet officially acknowledged that all ministers, departments and agencies of economic development were responsible for regional development.

The record of the last three decades is one of slow but steady progress, as the executive branch has made changes in the administrative structures and processes of the national government. Three conclusions arising from this experience stand out as critical.

First, to be regionally responsible a national organization must establish a unit that focuses on the regional dimension of its policies and programs. Without this focus, the organization will respond to regional concerns only at the insistence of its minister, the Prime Minister, the Cabinet or interest

groups. In those cases, moreover, the outside pressure will limit its capacity to react as required. Secondly, to be regionally responsive, most organizations must carry out some decentralized policy planning in regional offices. Notwithstanding the ease with which we can transport information and personnel, planning based on regional views, needs and opportunities requires personnel who are active in the field full time. Thirdly, the Cabinet must decentralize the central agency that supports its decision making on regional development, in order to facilitate co-ordination in the regions among departmental and agency officials involved in policy planning.

Lessons learned over the past quarter-century include appreciation of the degree to which organizations will resist restructuring for purposes that their personnel consider external to their central mission. Only rarely have departments and agencies of economic development responded to the objectives of regional development by way of the organizational changes noted above. Too often they regard regional development as nothing more than a political imperative to which they must give lip-service to the degree on which Ministers insist. Many considered the Department of Regional Economic Expansion (DREE) a nuisance and the Ministry of State for Economic and Regional Development (MSERD) a threat to the sectorally oriented missions of other departments.

Resistance to regional responsibilities has lessened the capacity of the executive branch to be as regionally responsive as it should be and has thus undermined the effectiveness of political representation of regional interests in the Cabinet. The policy effectiveness of the national government has suffered because ministers must rely primarily on their political officials and their political contacts, who possess neither the expertise nor the experience of administrative officials. Accordingly, it is essential to overcome this resistance to regional responsibility.

Reform of the Senate along the lines Commissioners recommend should affect the priority attached to regional representation and responsiveness within the executive branch of the national government. The ways in which the Prime Minister and the Cabinet organize the executive branch will, of course, depend on other factors as well. Nonetheless, we have concluded that the Cabinet should give more attention to the organizational capacity of the executive branch to respond to regional interests.

First, Commissioners recommend that the central agencies be so structured as to secure more accurate information on regional dimensions for the Cabinet to use in making policy decisions. This requires regional offices like those established in 1982, with the reorganization of the central agency that served the Cabinet Committee on Economic and Regional Development. These offices still exist, but outside the central administrative apparatus that serves the Prime Minister and the Cabinet. We think it desirable to re-establish such offices within the Cabinet secretariat.

Secondly, Commissioners recommend increased decentralization of departments and agencies for the purposes of policy planning and development. Ministers with sectorally organized departments must incorporate the regional dimension fully in departmental planning and policy development.

This step, in turn, requires the inclusion of regional officials in departmental decision making.

These two recommendations are mutually supportive. Only decentralized policy planning and development can produce regional information adequate to support Cabinet decision making. At the same time, regional officials in line departments and agencies must be aware of the Cabinet's priorities and decisions, and this requires continual interaction with other departments and agencies in a region, as well as with the region's central agency officials.

Thirdly, Commissioners recommend that a reformed elected Senate establish a committee to approve all appointments of the heads of major Crown corporations and all the members of major regulatory agencies. Some significance must be attached to appointees' region of origin. Those nominated by the Prime Minister and the Cabinet should be subject to parliamentary scrutiny because these boards exercise powers delegated by Parliament. In our view, a reformed Senate with strengthened regional representation is the appropriate chamber of Parliament to undertake this scrutiny.

Although some Canadians would argue that Senate approval would do little to improve our present practice, Commissioners believe that it would help to achieve better regional representation on these bodies. It would promote greater public confidence that the appointments meet the regional criterion. Such a public process would force the Cabinet to give greater attention to the merits of those whom they nominate because nominees would be subject to public scrutiny. This open process should make Crown corporations and regulatory agencies more sensitive to regional considerations in conducting their operations and coming to their decisions.

Notes

1. Richard Johnston, *Public Opinion and Public Policy in Canada*, vol. 35, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
2. *Ibid.*
3. For more detail, see William Irvine, "A Review and Evaluation of Electoral System Reform Proposals", in *Institutional Reforms for Representative Government*, vol. 38, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
4. Donald V. Smiley and Ronald L. Watts, *The Reform of Federal Institutions*, vol. 39, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
5. David Elton and Roger Gibbons, *Electoral Reform: The Need Is Pressing, the Time Is Now* (Calgary: Canada West Foundation, 1980).
6. Canada, Special Joint Committee of the Senate and of the House of Commons on Senate Reform, *Report* (Ottawa: Queen's Printer, 1984).
7. *Ibid.*, p. 30.



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Federalism and the Economic Union

Introduction

Two themes dominated the preceding review of national institutions: the need to strengthen responsible representative government in the face of the growth of the administrative state and the need to reform the institutions of national government to reflect provincial and regional diversities more fully. These themes are central to Commissioners' analysis of the institutions of federalism and to our assessment of the Canadian economic union. We must ensure that federalism – the institutional framework that assigns authority to two orders of government – works democratically and promotes reconciliation of national and regional interests.

"Government" in Canada is the result of the activities of both federal and provincial orders, and of their interactions. Canadians thus continue to ask how well federalism serves our economic and social needs. The functional approach taken by Commissioners to the reform of federalism and to the concept of the economic union reflects our mandate: "To respond to the challenges of rapid national and international change . . . and to secure sustained economic and social progress, it will be of importance to achieve . . . greater support for the Canadian economic union". We are to consider "the integrity of the Canadian economic union as it relates to the unity of Canada and the ability of all Canadians to participate in increased economic prosperity". We are asked to suggest institutional changes to "encourage the further development of the Canadian economic union."

These instructions emphasize the breadth of the concept of economic union. At its narrowest, that concept implies a concern to reduce or eliminate barriers or impediments to the ability of Canadians to live, work, trade and invest anywhere in the country. Indeed, a major reason for appointing this Commission was a concern that policies of both levels of government were eroding this aspect of the economic union and reducing the efficiency of the

national economy. In a federal country, however, "economic union" has other meanings as well. The expression implies active policies to foster and facilitate trade and exchange among Canadians. It implies common economic and social policies, and the building of institutions to develop them. It also implies the need for institutional mechanisms to ensure that the benefits that flow from the economic union are distributed throughout the country. Moreover, it requires that governments co-ordinate their use of public revenues and the performance of their responsibilities so as to meet the needs of Canadians. The concept of the economic union includes all these dimensions: all the relationships relevant to the economic well-being of Canadians and to the maintenance of a strong, competitive economy.

The economic union is also a political concept that captures something vital about Canadian citizenship and the existence of our country. If we were to calculate the benefits in terms only of efficiency and incomes, we would have less concern with distribution and sharing, and little desire to ensure the use of some common standards across the country. We would be content with free movement of goods and worry little about the rights of citizens to live and work in locations of their choice. Economic union within Canada would be like economic union with any other country. Somewhere, sometime, a purely economic calculus would no doubt lead some Canadians to choose to "go it alone". The objective of building a Canadian economic union has meaning because we are first a national political community. Threats to the economic union are threats to the national community because they erode the ties of affinity and interest that bind Canadians together.

Commissioners have organized this examination of federalism and the economic union around four key concerns:

- Has federalism balkanized or fragmented the Canadian economic union? Have internal barriers to trade reduced efficiency or lowered incomes? As many critics have suggested, are the costs of existing barriers to the Canadian economic union too high?
- Does federalism frustrate or enhance our ability to manage the economy? Do the complexities of federalism account for some of the weaknesses in current policies? Is federalism likely to inhibit achievement of some of the economic goals that this Commission has set out?
- Has the practice of Canadian federalism resulted in an unfair sharing of the benefits and costs of participation in Confederation? Sharing has always been fundamental to our sense of Canadianism and to the success of the Confederation arrangements. The federation could not long survive if citizens in different regions felt the rules were systematically stacked against them, and that policy was systematically biased. Yet perceptions of unfairness among regions run through Canadian history, and these perceptions persist.
- Do joint use of the common financial base and the system of transfers between governments respond to the needs of taxpayers and the need for flexibility?

Federalism has proved a flexible, adaptable instrument in the past and is likely to do so again. We require, not dramatic transformation, but ordered

change rooted in specific needs and objectives, and sensitive to the underlying principles of Canadian federalism.

How best, then, are we to reconcile intergovernmental co-ordination and management of intergovernmental conflict with the norms of democracy and accountability? Institutions – the division of powers, the amending process, the mechanisms of intergovernmental relations – are vital. If they can respond to citizens' needs, manage conflicting interests and facilitate decisive action, we Canadians can have confidence in our ability to face the future.

In this chapter Commissioners look at the instruments through which Canadians can balance often-conflicting values and concerns: federalism, parliamentary government and the Charter of Rights; national versus provincial majorities; aggregate national income versus regional development; freedom of movement versus community preservation; uniformity and diversity; and others. Such balancing is the essential task of all our institutions, national and federal.

Numerous forces at work today make a reconsideration of federalism especially desirable. Increased international competition necessitates reassessment of our domestic institutions to make sure that they facilitate rather than frustrate successful adaptation. The emergence of new demands and new social groups, and the call for more effective mechanisms for consultation between governments and citizens pose additional challenges. We should take stock of the cumulative effects of incremental changes in federal institutions since the end of the Second World War, and make sure that these institutions can serve us in future.

Maintaining the Economic Union: The Problem of Internal Barriers

The sections which follow assess the Canadian economic union. Commissioners look first at some statistical evidence concerning the patterns of trade within Canada in order to provide an overview of the country as an economic union. This is an essential preliminary to describing and analysing the character and effects of internal barriers. Next we identify policies which might distort trade and the flow of labour and capital. We then examine the cost of these distortions and speculate on some of the economic and political consequences. And finally, we draw conclusions about the significance of internal barriers for Canada's economic union and propose a number of institutional reforms to reduce the costs and promote greater internal integration.

Trade and Factor Flows

Table 22-1 provides an overview of Canadian production and trade. Total traded output in 1979, the most recent year for which detailed information is available on interprovincial¹ trade, exports and sales within the provinces, was nearly \$444 billion. Slightly more than half of this production consisted of services. Manufactured products made up another third, with primary goods

TABLE 22-1 Destination of Goods and Services, Canada, 1979

	('000 \$ and per cent)							
	Total		Within Province		Rest of Canada		Exports	
	Value	Per Cent of Total Output	Value	Per Cent	Value	Per Cent	Value	Per Cent
Primary	44 036 860	10	19 950 220	45	10 069 840	23	14 016 800	32
Manufacturing	158 804 590	36	69 652 570	44	43 796 010	28	45 356 010	28
Total goods	202 841 450	46	89 602 790	44	53 865 850	27	59 372 810	29
Services	241 029 450	54	198 478 140	82	33 598 080	14	895 230	4
Total	443 870 900	100	288 080 930	65	87 463 930	20	68 326 040	15

Source: Statistics Canada, Input-Output Division, Interprovincial Trade Flow Data, 1979.

constituting only 10 per cent. The first lesson to be learned from these data is the striking importance of the local provincial market. Nearly two-thirds of everything produced in Canada in 1979 was first sold in the province in which it was produced. One-fifth of total output moved across provincial boundaries within Canada, while 15 per cent was marketed abroad.

When we exclude trade in services, the picture changes. Since many services can only be traded or provided locally, the elimination of the service category from the statistical picture reveals more clearly the significance of trade, within Canada and abroad, for provincially produced goods and resources. Only 44 per cent of total output of goods was initially marketed within the province of origin. More than one-quarter of goods—nearly \$54 billion-worth in 1979—was shipped interprovincially. This figure is only slightly less than the \$59 billion-worth of exports recorded in that year. For the Canadian economy as a whole, therefore, interprovincial trade is about as important as foreign trade. In comparing broad commodity groups, we note that primary products tend to be aimed more for the export market than for other provinces (32% as compared to 23%), while producers of manufactures rely equally (28%) on sales to other provinces and to the export market.

These are general observations. There are many primary products, mineral fuels among them, for which markets outside the province dominate, and others, such as dairy products, that are produced almost exclusively for local markets. Similarly, there are some manufactured products that find their main markets outside Canada, and some services that trade extensively across regions.

Patterns of trade among provinces, which are summarized, for 1979, in Table 22-2, are especially important to understanding the economic union and the policy issues associated with it. As might be expected, the two central provinces dominated trade. Ontario accounted for nearly 40 per cent of all interregional shipments in Canada, and Quebec for another 25 per cent. Most of the total for each province consisted of shipments to the other, a factor which made their trade dominance even more significant. Alberta contributed 17 per cent of interprovincial Canadian trade in goods, largely in the form of energy. No other province recorded more than 6 per cent of the interprovincial total. Given existing trade patterns, barriers to interprovincial trade within Canada could therefore most significantly affect interprovincial trade between Ontario and Quebec. In comparison, if almost any other bilateral trade between provinces—except for oil and gas—were to be halted altogether, the cessation would not noticeably affect national totals.

Aggregate trade flows do not tell the entire story, however. It is equally necessary to assess the importance of participation in the economic union to the economic well-being of each province. If, for example, a small province is highly dependent on sales to other regions, and if these transactions are threatened by internal barriers to trade, that province has every reason to be concerned even if, in total, the economic impact will appear to be small. We must therefore look at the economic union from the viewpoint of each member.

The significance of provincial, national, and international markets varies for each province. Table 22-2 shows the destination of goods by province and

TABLE 22-2 Destination of Goods by Province 1979

	('000 \$ and per cent)							
	Total		Within Province		Rest of Canada		Exports	
	Value	Per Cent	Value	Per Cent	Value	Per Cent	Value	Per Cent
Newfoundland	2 312 630	100	638 090	28	495 260	21	1 179 280	51
P.E.I.	367 170	100	147 800	40	143 120	39	76 250	21
Nova Scotia	4 114 910	100	1 650 180	40	1 400 920	34	1 063 810	26
New Brunswick	3 923 590	100	1 148 770	29	1 116 090	29	1 658 720	42
Quebec	45 969 900	100	21 922 850	48	13 115 810	28	10 931 230	24
Ontario	84 700 930	100	40 001 260	47	20 920 730	25	23 778 930	28
Manitoba	6 149 200	100	2 142 550	35	2 503 720	41	1 502 930	24
Saskatchewan	6 644 170	100	1 681 270	25	1 900 400	29	3 062 500	46
Alberta	26 259 410	100	10 186 630	39	9 056 800	34	7 015 990	27
British Columbia	21 742 550	100	9 882 080	45	3 158 520	15	8 701 950	40
Yukon & N.W.T.	656 990	100	201 310	31	54 480	8	401 200	61
Canada	202 841 450	100	89 602 780	44	53 865 860	27	59 372 790	29

Source: Statistics Canada, Input-Output Division, Interprovincial Trade Flow Data, 1979.

Note: Totals may not add to a hundred because of rounding.

territory. For six of the provinces, the provincial market is more important than interprovincial sales or exports: Quebec (48%), Ontario (47%), B.C. (45%), P.E.I. (40%), Nova Scotia (40%), and Alberta (39%). Three provinces, Newfoundland, New Brunswick and Saskatchewan, as well as the northern territories, find their largest markets outside Canada. The export market is the destination for 51 per cent of Newfoundland's output of goods. For New Brunswick and Saskatchewan, exports account for 42 and 46 per cent respectively of goods sold. Only Manitoba's sales to other provinces (41%) are greater than sales within the province (35%) and sales abroad (24%). The importance of secondary markets varies significantly for each province.

For the purpose of considering the secondary markets, we turn first to those provinces for which the internal provincial market is the largest of the three destinations for goods. In Ontario and Quebec, where about half of the output is first sold within the province, the remainder is evenly divided between shipments to other provinces and exports (25% and 28%, and 28% and 24% respectively). British Columbia's exports (40%) are nearly as important as its intraprovincial sales (45%), and its shipments to other Canadian provinces and the northern territories (15%) are relatively small. For the three other provinces in this group, Prince Edward Island, Nova Scotia and Alberta, British Columbia's pattern for secondary markets is reversed: the interprovincial Canadian market is the destination for more provincially produced goods than the export market.

For the three provinces for which the largest markets are outside Canada, again, the relative importance of the secondary markets is varied. For New Brunswick and Saskatchewan, intraprovincial markets and shipments to other Canadian regions are approximately equal in importance. Newfoundland's intraprovincial markets (absorbing 28% of production) are more significant than markets in the rest of Canada (21%). This pattern is even stronger for the northern territories, where internal sales (31%) are significantly more important than shipments to the rest of Canada (8%).

Only for Manitoba and Saskatchewan do sales to other provinces exceed sales within the province, although Saskatchewan is significantly more export oriented than Manitoba. In this one sense then, Manitoba's economy seems to be the most directly bound up with the future of the Canadian economic union. Yet intraprovincial sales (29%) and interprovincial trade (29%) are of equal significance for New Brunswick. Prince Edward Island, Alberta and Nova Scotia depend almost as much, relatively speaking, on sales to other provinces as they do on their internal provincial markets, so one should probably group these provinces with Manitoba as well.

An alternative view of the Canadian economic union may be formed by examining a province's sources of supply of goods and services. Table 22-3, which details the source of goods by province for 1979, distinguishes among internal supply, purchases from other provinces, and imports from abroad. With some interesting differences from production of goods, similar patterns are apparent. Ontario and Quebec dominate in an absolute sense as they did in relation to the destination analysis shown in Table 22-2, although not by as wide a margin. Together these two provinces receive half of all goods shipped

TABLE 22-3 Source of Goods by Province, 1979

	('000 \$ and per cent)							
	Total		Within Province		Rest of Canada		Imports	
	Value	Per Cent	Value	Per Cent	Value	Per Cent	Value	Per Cent
Newfoundland	2 576 130	100	638 090	25	1 526 240	59	411 800	16
P.E.I.	601 020	100	147 810	25	391 900	65	61 340	10
Nova Scotia	5 786 830	100	1 650 170	29	2 156 050	37	1 890 620	33
New Brunswick	5 109 040	100	1 148 780	22	2 197 990	43	1 762 880	34
Quebec	50 593 240	100	21 922 860	43	12 564 480	25	16 105 890	32
Ontario	87 302 180	100	40 001 260	46	14 797 690	17	32 503 300	37
Manitoba	7 092 600	100	2 142 540	30	3 214 940	45	1 735 110	24
Saskatchewan	6 400 660	100	1 681 270	26	3 339 230	52	1 380 170	22
Alberta	21 555 330	100	10 186 620	47	7 047 430	33	4 321 280	20
British Columbia	22 085 430	100	9 882 070	45	6 238 300	28	5 965 050	27
Yukon & N.W.T.	664 730	100	201 310	30	391 640	59	71 780	11
Canada	209 767 190	100	89 602 780	43	53 865 850	26	66 298 620	32

Source: Statistics Canada, Input-Output Division, Interprovincial Trade Flow Data, 1979.

Note: Totals may not add to a hundred because of rounding.

interprovincially, as compared to the 63 per cent of goods they ship out. Alberta and British Columbia account for another one-quarter of such sales. The rest is distributed among the remaining, smaller economies.

While nationally, 32 per cent of goods were imported, international suppliers are not the principal source of goods for any province. Ontario, Quebec, British Columbia and Alberta supplied the largest portion of their goods locally. The other six provinces and the northern territories purchased more goods from other parts of Canada than from abroad or from suppliers in other provinces.

The preceding information can be combined to calculate interprovincial and international trade balances for each province. The results of the calculations for 1979 are reported for goods alone in Table 22-4, and for goods and services combined in Table 22-5. In these tables we can more clearly see the implications of what the Canadian economic union means for each province. The tables also provide some insight into the debates over how "fair" Confederation is to individual regions.

A trade deficit, denoted in the tables by means of a minus sign, indicates that a province is consuming more than it is producing; that is, its consumption exceeds its output. In the long-run, this deficit must be off-set by transfers of funds from other parts of the country. Conversely, an overall trade surplus means that the region must either be accumulating financial claims on non-residents, or there must be a policy-induced transfer of funds out of the region. Thus the trade aspects of the Canadian economic union are directly related to the fiscal transfers reviewed in a later section of this chapter.

As Table 22-4 indicates, only Alberta and Saskatchewan show a surplus on overall trade in goods. Alberta shows a positive balance on both internal and external transactions, while Saskatchewan's success in international markets offsets a deficit in trade with other provinces. In 1979, all other provinces in Canada consumed more in the way of primary and secondary products than they produced. For three of these, Nova Scotia, New Brunswick and Manitoba, this was true for both interprovincial and international trade. In Newfoundland, Prince Edward Island, Saskatchewan, British Columbia and the northern territories, a positive balance with foreign nations partially offset a deficit with other Canadian regions. For central Canada, the situation was exactly the reverse. Large external deficits were covered, in part, by a surplus of sales over purchases from other provinces.

In Table 22-5, which adds trade in services, the picture alters somewhat. Now all four Western provinces show a surplus, selling more than they import. Alberta does so both nationally and internationally. British Columbia and Saskatchewan sell more in export markets than they import from abroad, but buy more from other provinces than they sell to them. Manitoba reverses the record of British Columbia and Saskatchewan. Nova Scotia shows a deficit both internationally and interprovincially.

As to trade within Canada, four provinces, Quebec, Ontario, Manitoba and Alberta, were net sellers of goods and services to the other six. In international trade, Newfoundland, Prince Edward Island, New Brunswick, Saskatchewan, Alberta and British Columbia produced surplus trade

TABLE 22-4 Trade Balances on Goods by Province, 1979

	('000 \$)		
	Balance with Other Provinces	Balance on External Trade	Overall Balance
Newfoundland	- 1 030 980	767 480	- 263 500
P.E.I.	- 248 780	14 910	- 233 870
Nova Scotia	- 755 130	- 826 810	- 1 581 940
New Brunswick	- 1 081 900	- 103 560	- 1 185 460
Quebec	551 330	- 5 174 660	- 4 623 330
Ontario	6 123 040	- 8 724 370	- 2 601 330
Manitoba	- 711 220	- 232 180	- 943 400
Saskatchewan	- 1 438 830	1 682 330	243 500
Alberta	2 009 370	2 694 710	4 704 080
British Columbia	- 3 079 780	2 736 900	- 342 280
Yukon and N.W.T.	- 337 160	329 420	- 7 440

Source: Calculated from Statistics Canada, Input-Output Division, Interprovincial Trade Flow Data, 1979.

TABLE 22-5 Trade Balances on Goods and Services by Province, 1979

	('000 \$)		
	Balance with Other Provinces	Balance on External Trade	Overall Balance
Newfoundland	- 1 174 790	878 400	- 296 390
P.E.I.	- 275 790	24 140	- 251 650
Nova Scotia	- 850 880	- 871 870	- 1 722 750
New Brunswick	- 1 264 960	173 380	- 1 091 580
Quebec	218 660	- 4 294 840	- 4 076 180
Ontario	7 463 330	- 7 357 420	- 105 910
Manitoba	108 350	- 55 790	52 560
Saskatchewan	- 1 862 010	2 087 500	225 490
Alberta	1 710 800	2 984 310	4 695 110
British Columbia	- 3 683 430	4 114 790	431 360
Yukon and N.W.T.	- 389 280	343 790	- 45 490

Source: Calculated from Statistics Canada, Input-Output Division, Interprovincial Trade Flow Data, 1979.

balances, as did the northern territories. The other four provinces produced deficits.

This pattern of overall trade imbalances has changed since 1974.² Ontario moved from a large surplus to a small deficit in 1979. This shift reflects the dramatic change in energy prices and the consequent large outflow of funds to the oil-producing provinces. The only other notable changes are shifts in Manitoba and British Columbia from deficit to surplus. While British Columbia's surplus reflects energy developments, the shift in Manitoba's trade pattern is more difficult to explain, although it, too, probably reflects spin-offs of Western energy development.

Two general conclusions from this brief overview of the pattern of production and trade within the Canadian economic union help inform subsequent sections of this chapter. First, interprovincial movements of goods and services are a small portion—about one-fifth—of the total activity of the Canadian economy. As Commissioners explain subsequently, we do not believe that these movements are restrained significantly by existing barriers. Secondly, the position of individual provinces within the economic union varies significantly, most notably in the discrepancies between sales to other provinces and purchases from them.

Market Integration and the Concept of the Economic Union

An economic union represents an advanced stage of economic integration. It involves the removal of customs duties among participating jurisdictions, the creation of a common external tariff, the elimination of barriers to the free movement of goods and the factors of production (labour and capital), and the harmonization of economic policies. In addition, in an economic union, certain policies which were previously the responsibility of the participating jurisdictions are transferred to, or co-ordinated through, a central authority.

Canada was intended to be, and has clearly become, much more than an economic union. It is useful, nevertheless, to employ the concepts and principles associated with the theory of economic unions to analyse interprovincial economic and political linkages within the Canadian federation. Accordingly, we must be concerned with the internal flows of goods, services, labour and capital, as well as with government policies in the form of distortions and barriers that affect those flows, and with the purposes or justifications for those policies.

The concept of distortion is very broad, including any policy which interferes with the resource-allocation functions of the market, thereby preventing the free flow of capital, labour or goods and reducing the advantages that can be gained from specialization and exchange. We shall concern ourselves here with those government interventions that distort interprovincial trade or factor flows in the sense that observed exchanges are different from what they would be in a totally unfettered environment. We shall not examine intraprovincial distortions which may affect the nature of economic activity within provinces.

Some policies, appropriately termed "barriers", restrict transactions among provinces; when this happens, the economic costs can be identified as

unexploited gains from trade. These gains constitute the traditional concerns of economic unions. Other types of policies may have the effect of augmenting interprovincial trade. Sometimes this outcome is intentional, as, for example, the decision in 1973 to divert Western oil supplies from U.S. markets to Eastern Canada. Sometimes it is only an incidental effect of a policy directed to other ends. Tariffs, for instance, are used to promote industrial development, but in a country of specialized regional economies, external tariffs increase the volume of internal trade. In these instances, it is much more difficult to identify the economic costs, as these costs are a complex mixture of diverted trade, extra transportation charges and the like. Typically, there is also an interregional distribution effect which, politically at least, often dominates efficiency concerns.

The concern about "maintaining", "protecting", "preserving" or "ensuring" the Canadian economic union is not new. As early as the 1930s, the concern about an emerging Canadian "tax jungle" was paralleled by concerns about "obstacles" to trade within Canada. The *Report of the Royal Commission on Dominion-Provincial Relations* (the Rowell-Sirois Commission) addressed the issue directly:

The member states of a federation at the outset are likely to be states which have imposed tariff barriers and, perhaps, other obstacles as well, to their trade with one another. These states or provinces after federation are apt to reach a stage of development at which there is bound to be political pressure in favour of some form of local protectionism. The desire to maintain and to augment the provincial revenue, to develop new industries, to ensure employment during a period of depression, to protect wage levels and working conditions against "unfair competition" or "social dumping", may all, at one time or another, contribute to this demand for local protectionism, which may appear even in municipal politics.³

As the range of governmental concerns has broadened, and as the resources and policy instruments available to governments have increased in the post-Second World War period, the potential for such protectionist policies has grown dramatically.

The current interest in the integrity of the economic union emerged prominently during the constitutional discussions of 1979 and 1980. Debate was fuelled by a number of dramatic examples of provincial protectionism and by reaction to more aggressive provincial economic development strategies. The focus on internal barriers to trade united two developments: the political concerns of the federal government and some provinces about the implications of provincial protectionism, and the renewed interest among policy makers in the importance of the free market as the engine of growth. The latter concern was as much related to federal intervention in the economy as to that of the provinces.

The anticipated benefits of forming an economic union are the potential gains from specialization and trade, based on the theory of comparative advantage. In the Canadian context, the varying economic bases in the different regions of the country create different comparative advantages and hence the opportunity for mutually profitable interregional trade. Where

economies of scale in production are important, and the individual regions are small, the gains from trade can be that much greater. The greater the harmony in such policy areas as product standards, labelling requirements and consumer-protection laws, the larger will be the gains. Further gains are possible if the participants in the economic union, by exploiting some bargaining power that no member alone possesses, can shift the international terms of trade in their favour.

By preventing trade flows that would otherwise occur, internal barriers preclude the gains from specialization and exchange. The region that imposes them will have to produce products or services itself, thereby using more resources than necessary because of its comparative disadvantage. The costs of the barrier, then, are equal to the difference between what could be produced or supplied if resources were allocated optimally and what actually is produced. This represents an economic loss in the sense that it involves real output forgone which can never be recouped. The greater the volume of trade suppressed by these barriers, the more the potential benefits of an economic union will be dissipated.

Trade liberalization within Canada does not mean that every possible combination of interregional exchange will generate a surplus. Nor does it imply that even where a surplus results, it will be the largest possible for any given member. Benefits are critically dependent on the nature of the economies of members of the economic union, relative to the economies of non-participating jurisdictions, and on the most likely option to the existing or proposed arrangement. Economic gains, or "trade creation", occur when the opening of trade results in production being shifted from high-cost local suppliers to lower-cost sources elsewhere within the economic union. The larger market also allows producers to take advantage of the economies of scale associated with larger production runs. However, if imports switch from lower-cost external sources to higher-cost sources within the economic union, trade is said to be "diverted". The fact that some members may be internationally cost competitive in their main outputs, while others are not, suggests the possibility that an internal market with a common external tariff can produce unequal regional advantages for its members.

The second facet of common-market economic integration deals with factor markets: labour and capital. Interregional factor mobility can also add to national output. At any given moment, a nation has a fixed supply or endowment of capital and labour, distributed among its various regions. Total output will be at a maximum when the values of the contributions of the last units of capital and labour employed are identical across regions. Under certain conditions, free mobility will generate this optimal interregional distribution of factors. If capital and labour are paid the value of their contribution to output, any differences in productivity across regions will be reflected in wages or rates of return. Assuming that at least some workers or owners of capital perceive the potential gain and react to it, the reallocation will be made. As migrants leave a region, the contribution of those remaining rises, since there is a greater supply of capital and resources per worker. For the corresponding reason, the relative contribution of workers falls in the destination area. Since these changes will be reflected in factor rewards, the

theory is that migration should continue until all wage differences, and hence all real productivity differences, are removed. If there are real costs to migration, a gap will remain, but the result will still represent an optimal factor distribution, provided that prices and wages are flexible.

The potential cost of barriers is also evident in relation to the integration of factor markets. Barriers which stop migration short of the point where factor prices are equalized prevent some economically efficient movements. Total national output will be lower than it might be, since factors which could be more productive in another region are prevented from relocating. The difference between actual gross national product (GNP) and its potential in a free factor-flow situation represents the economic cost of the impediments. Whether these costs are justified in terms of overall well-being depends on the values attached to the maintenance of local communities and their preferences for a distinctive pattern of life, including distinctive public services.

An additional, though indirect, contribution of free factor mobility to aggregate output comes about through the role that mobility plays in the interregional adjustment process. Regional economies will grow at different rates because of the uneven effects of such developments as technological change or shifts in the terms of trade. Individually, each region would have to adjust to such dislocations internally, generally through some combination of changes in prices, incomes and employment. Adjustments through the exchange rate are impossible because of the absence of regional currencies. Since wages and prices are typically "sticky" downwards, the brunt of the adjustment in declining areas will be in the form of unemployment.

If factors are free to relocate between regions, however, there is a further avenue of adjustment to external shocks which reduces the extent of internal adjustment required. Migration provides the opportunity for residents of regions adversely affected to benefit directly from some of the gains of those more favourably situated. If it is possible for people to relocate, there is less need to worry about diversifying employment possibilities in each region. Free factor mobility provides a type of employment insurance, permitting the fullest possible gains from interregional specialization and trade. Those unlucky enough to be caught in a declining industry in one region can move to expanding industries located in another. This insurance feature is even more pronounced if the economic union provides, as most do, for regional adjustment assistance. Thus interregional mobility, like freedom of trade, is an integral feature of any economic union, permitting optimal allocation of resources within the national economy and easing the costs of adjustment to economic shocks.

These, then, are the basic concepts to be derived from the theory of economic integration. They illustrate the conditions under which integrating product and factor markets across regions can increase aggregate output and thus, by inference, how interprovincial barriers can obviate such gains.

This economic perspective is reason enough for Canadians to be concerned about the state of the economic union. To the desire to maximize economic well-being, however, must be added the political objectives of an economic union. Barriers to mobility and trade may weaken our sense of national identity. From this perspective, Canadians would oppose fragmentation of the

economic union, even if we were assured that the direct economic costs were negligible.

Political opposition to fragmentation has several dimensions. It is derived, in part, from a sense of common citizenship, which involves both individual and commercial expectations of a broad stage on which to pursue economic opportunity and personal development:

Just as all Canadians should be free to seek work and operate freely anywhere in the country, Canadian businesses should be allowed to compete on an open and fair basis anywhere in the country.

(Maclean Hunter Limited, Brief, November 14, 1983, p. 6.)

The political arguments for economic union also involve a sense of national community, perhaps a sense of place in a complex international environment, and an appreciation of the necessity for sharing risks and opportunities amongst its members:

The Economic Council of New Brunswick retains the vision of an independent Canada and of a society with a distinct identity. For us, to be Canadians is to recognize and support free trade across the whole of Canada, unimpeded by barriers imposed by the law or by big business; but it is also to recognize the necessity for a fairer sharing of the rewards of this efficiency which we expect to attain.

(Conseil économique du Nouveau Brunswick Inc.,
Brief, September 13, 1983, p. 6.)

Political criteria lead Canadians to think somewhat differently about the economic union than pure market criteria would suggest. The only market justification for a barrier is its correction of an already existing one. Moreover, economic theory does not distinguish between Canadian economic union and any other kind. Indeed, its logic asserts that the larger the market, the better. It argues, too, that multilateral free trade would make our worry about the domestic market less pressing. In contrast, the political view of the market is explicitly concerned with the Canadian economy and its health. It was a political view of the Canadian economic union which produced the national policy and which justified the decision to build a railway across a continent. An economic view of the economic union asserts that integration within Canada is merely a "second-best" alternative to involvement in a multi-national market. A political view argues that building economic linkages among Canadians is of value in itself, and that it increases personal contacts and relationships among Canadians which contribute to a sense of shared identity and common citizenship. It also adds a great many other considerations, such as equality, social justice, a clean environment and other social goals, to the assessment of well-being. Thus, it potentially justifies a much wider variety of what economists call "distortions" including, most notably, policies such as equalization that are intended to ensure a fair regional distribution of benefits and regional economic development policies designed to enhance the contribution of regional economies to the national welfare.

The previous reference to a political concern for provincial/regional economies and communities makes it clear that the political criteria

applicable to the evaluation of barriers and distortions differ from economic criteria in supporting two distinct perspectives. These perspectives reflect the values that Canadians place on the national community, on the one hand, and on provincial communities, on the other. From the perspective of the national community, barriers which may be trivial in economic terms may be politically significant if they offend against our sense of Canadian citizenship. From the provincial perspective, barriers which many would oppose for economic reasons because they generate significant economic costs for Canadians, may be considered politically desirable by others because they strengthen provincial communities. These alternative political criteria not only differ from economic criteria in the policies to which they lead, but also differ from each other. This tension between national and provincial political criteria with respect to evaluating the economic union is inherent in federalism.

With these considerations in mind, Commissioners turn to the legal dimensions of the economic union.

Constitutional Protections

The basic elements of the Canadian economic union are found in the Constitution Act, 1867. Section 121 eliminated customs duties and other similar duties among the provinces: "All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces."

The Courts have interpreted this section as a general principle applicable to both orders of government, forbidding the erection of tariff barriers to the free circulation of goods among the provinces. The actions of the central government have tended to be less rigorously examined, since that government is presumed to act in the national interest. Furthermore, section 121 applies only to trade in goods; it does not apply to factors such as capital and labour, and it is uncertain whether it would apply to services and non-tariff barriers.

In spite of the existence of section 121, it has been more common for the Courts to use section 91(2)—the regulation of trade and commerce—to invalidate provincial legislation restricting interprovincial trade of goods. To maintain the appropriate balance between Parliament and the legislatures, however, the Supreme Court has recognized the provincial power to regulate some aspects of trade within the province, even in cases where the interprovincial flow of goods was affected by provincial production controls, marketing schemes, the creation of monopolies, and the like. The efficacy of sections 121 and 91(2) has been further limited because these sections can more easily be employed to focus on legislative and regulatory interventions of governments, rather than on administrative aspects such as purchasing policies and grant giving. On the other hand, the exclusive jurisdiction of Parliament over interprovincial and international transport systems greatly reduces the likelihood that policies would be formed in the field of transportation which could be detrimental to the free movement of goods within Canada.

The provisions for the free flow of goods in the economic union have recently been augmented by provisions with respect to the mobility of labour. Section 6 of the Canadian Charter of Rights and Freedoms assures the individual of the right to settle and earn a living anywhere in Canada. This provision of the Charter which deals with the mobility of labour automatically deals in part with the issue of constitutional protection for interprovincial trade in services. However, there are qualifications on the constitutional protection of personal mobility. Moreover, section 6 of the Charter does not clearly address the issue of services that may be provided across provincial borders without the need for personal mobility. Technology makes it possible for such services as information processing, counselling and professional advice of a legal or financial nature to be provided almost anywhere in Canada from a fixed location. This component of the service economy within the Canadian economic union does not now enjoy a secure constitutional safeguard.

The possibility that section 121 may be interpreted as applying to services and to non-tariff barriers is suggested by the opinion of Justice Rand of the Supreme Court of Canada in *Murphy v. CPR*.⁴ Justice Rand used the words "fetters" and "impediments" rather than the traditional language of customs duties or taxes. He emphasized the importance of the free flow of "commerce" within Canada, rather than the narrower concept of articles, goods or products:

I take section 121, apart from custom duties, to be aimed against trade regulation which is designed to place fetters upon or raise impediments to or otherwise restrict or limit the free flow of commerce across the Dominion as if provincial boundaries did not exist.

Commissioners would favour a broad reading of section 121 that includes protection from tariff barriers for the free flow of services within the Canadian economic union. Present uncertainty regarding the interpretation of section 121, however, inclines us to support in principle a constitutional amendment to clarify the situation. As an interim measure, guidelines developed through intergovernmental discussion and negotiation are desirable to preclude the development of tariff barriers to internal trade in services. We examine shortly procedures for responding to the problems of non-tariff barriers applicable to both goods and services within the Canadian economic union.

The Constitution deals with the free flow of capital through the division of powers; it gives the federal government primary jurisdiction, including responsibility for currency and exclusive power to regulate the banks, comprehensive power in the field of taxation, and other general powers applicable to capital flows. Provinces have regulatory authority over "near-banks": institutions such as trust companies and credit unions. Provinces also have some power to control capital inflows, derived from their jurisdiction over resources, local enterprises, land use, and their extensive regulatory and other authority pertaining to property and civil rights; this last includes control over securities markets, pension funds and insurance.

Internal Barriers to Trade

As the preceding section has shown, the constitutional framework, while providing the essential guarantees of an economic union, has some important gaps and ambiguities which have permitted a wide variety of impediments to grow up. Here Commissioners identify a few distortions that significantly affect the free flow of goods and factors in Canada.⁵ A survey of the policies involved may give the impression that any and all deviations from pure free movement of goods and factors of production are inherently bad. If that were so, our job would be simple: we would write a cast-iron constitutional provision which would rule out all such deviations. If we were to do that, however, we would probably also be recommending an end to federalism or to any federal regional policies. In fact, of course, a great many barriers, federal and provincial, are justified on political or economic grounds.

Federal Government Policies and Interprovincial Trade

It is a common assumption that impediments to the free flow of trade are primarily, if not solely, a result of provincial government activity. Substantial distortions also result, however, from federal government actions. Historically, the most controversial federal distortion—one which “artificially” inflates trade among provinces and distorts the interregional terms of trade—is the tariff. The tariff has allowed manufacturers to sell greater volumes of domestically produced goods to consumers at higher prices than would otherwise be possible. Since production of manufactured goods has been concentrated in central Canada, while consumption is dispersed throughout the national market, the tariff results in an interregional redistribution of income.

Although these traditional concerns have been attenuated by the general drop in tariffs, they remain important. The recent voluntary restrictions on automobile imports and the continuation of import quotas on clothing give a further advantage to the manufacturing economies to the detriment of consumers. Such measures have stimulated strong misgivings in some regions.

Federal transportation policies, particularly the structure of rates, can also create economic distortions in the volume of interregional trade; nevertheless, there have been strong reasons to favour such policies in order to develop outlying regions. The subsidization of freight rates for the movement of statutory grains, which was in effect more or less continuously from 1897 to 1983, meant that Prairie farmers received a greater return per acre for growing those grains than they would otherwise have done.⁶ Less grain was produced in other parts of Canada because of this statutory advantage, and as a side-effect, development of the livestock and food processing sectors in the West was discouraged.

The Western Grain Transportation Act, passed in 1983, allowed Canadian National and Canadian Pacific Railways to charge more for moving grain and to receive an annual subsidy. However, because the subsidy is still paid to the railways rather than to farmers, freight rates remain below the actual costs of moving grain; therefore there continues to be a disincentive to

diversify. Freight rates in Eastern and Atlantic Canada have also been subsidized, in an effort to promote interregional trade, although in recent years, this subsidy has been progressively reduced.

Certain features of Canadian energy policy in the last decade—price and export controls, and subsidies to energy exploration—are also relevant to the present review. Price controls have kept energy prices below world-market prices, thereby encouraging excessive consumption and hence interprovincial shipments of oil and natural gas. Export restrictions have diverted output from destinations in adjacent areas of the United States to locations in Eastern Canada. Subsidies for exploration have favoured frontier areas over established ones, thereby distorting the sequence and location of resource development. Recent energy-policy announcements are likely to attenuate such distortions.

Another source of federally induced distortions is government purchasing policy. In contrast to the examples cited above, purchasing policies have had the effect of restricting interprovincial trade. For this reason, the efficiency costs are more easily identified with the operation of the economic union. Federal government procurement is decentralized through the Regional Supply Centres of the Department of Supply and Services (DSS). These regional offices solicit bids from suppliers within specific “geographic bidding areas”, subject to such considerations as cost and availability of competent suppliers. Bidding practices are intended to ensure “. . . equity of opportunity to compete for government business by all competent suppliers in the area or region.” In addition, when the purchase is made by DSS headquarters, but the product is to be used in the Western or Atlantic provinces, purchases are to be made from suppliers in those regions, subject to cost factors.⁷

Other federal policies could be discussed in light of their significance for the operation of the economic union. As federal governments have increasingly used tax laws, grants and other provisions to stimulate particular sectors or activities such as research and development, the possibility of regional distortions has grown, since these activities are often regionally concentrated. The granting of industrial subsidies to promote regional development has been an explicit attempt to influence the locational decisions relating to projects.

Federal-Provincial Policies

On occasion, both orders of government act together to create policies that impede interprovincial trade. National agricultural marketing boards, for example, create barriers by introducing rigidity into patterns of production or imposing restrictive regulations.

National supply-management boards are of particular interest. Such boards are established pursuant to the Farm Products Marketing Agencies Act. Products come under the scheme if there is substantial agreement among producers, and the Minister of Agriculture acts. Once a product is brought within the scope of legislation, the relevant federal agency can delegate authority to designated provincial bodies. Overall quotas are allocated to each

provincial body, which then sets out quotas for specific producers. Currently, the production of eggs, chickens, turkeys and tobacco is regulated under these arrangements.

Such market sharing contributes to rigidity in production patterns. Low-cost producers are effectively prohibited from selling into neighbouring areas. Regional quotas are allocated in proportion to total Canadian production over the previous five years. Quotas are not altered, even if the costs of production change, unless the governing bodies decide to vary them. The Act requires that the agency consider the principle of comparative advantage in allocating quotas, but for the production of chickens, eggs and turkeys, the emphasis is on provincial self-sufficiency rather than economic efficiency. In effect, producers cannot produce more than their assigned quotas, and the market is closed to new producers.

Provincial Policies

One of our intervenors described a general concern about provincial policies:

Each province, in an effort to enhance the position of its own producers, engages in practices which tend to limit the free movement of goods within Canada. Examples are product promotions, tendering preferences, marketing legislation. Each of these and similar instances may be quite laudable in themselves. But the number and the frequency is growing. The result will be a fragmenting of the Canadian marketplace—a marketplace that is greater than the sum of its provincial parts.

(Canadian Meat Council, Brief, October 27, 1983, p. 14.)

Provincial governments create distortions by imposing provincial trade barriers. By examining major provincial barriers, Commissioners can try to distinguish deliberately discriminatory policies from those incidental to the pursuit of legitimate provincial social or economic objectives.

Provincial governments, as buyers of goods and services, have shown a tendency to favour local producers of those goods and services. In 1981, purchases of goods and services by provincial and local governments, and hospitals, amounted to the equivalent of 15.2 per cent of gross national product. A preferential purchasing policy may be implicit or explicit, a matter of practice or of law. The usual methods of preferential procurement involve selective or single tender instead of public tender; inadequate publicity or information on bidding, through the use of local source lists; short time limits for the submission of bids; performance requirements tailored to what local businesses can provide; residence requirements for vendors; and preferential margins for local suppliers.

These policies may reach beyond purchases made by governmental agencies and departments to include purchases made by hydro companies, municipal public transit, school systems, railways, airlines, telephone companies, and resource industries characterized by provincial ownership or involvement. A recent study by the Canadian Manufacturers' Association (CMA) indicates the kinds of problems that can emerge. The four Canadian firms manufacturing wire and cable for use in telecommunications, for

example, operate 16 plants, located in every province except Prince Edward Island and Newfoundland. They must establish a regional presence to qualify as suppliers to provincial telephone companies. In the CMA's view, three or four plants would be more efficient and better able to compete internationally.

All provinces have a public monopoly in the sale of liquor. Three types of liquor policies create barriers to interprovincial trade. Provinces may discriminate against out-of-province producers by supporting local products. This discrimination may include preferences in advertising support, in shelf-positioning at retail liquor outlets, in listing requirements, and in pricing policies. Preferential pricing, for instance, has the same function as an internally applied tariff. Furthermore, governments may limit private purchases from other provinces by imposing a quota system or by levying taxes on purchases. Finally, a province may have special packaging requirements that make it too costly for out-of-province products to enter the market. One surprising consequence of provincial regulation of alcoholic beverages, for example, is that consumers in the state of Washington can buy Old Fort beer from Prince George, B.C., and New Englanders can buy New Brunswick's Moosehead, but many Canadian provinces sell neither.

Provincial industrial policies designed to promote economic development often include subsidies and incentives that can harm out-of-province producers. Incentives to direct investment have included financial assistance through grants, loans, tax holidays and loan guarantees; direct equity participation; and provision of infrastructure at public expense. A host of federal programs of industrial assistance have similar, but much broader, effects, though they are often implemented jointly with provinces.

Provincial governments have established a vast range of regulations that also affect interprovincial trade. They have done so, primarily through their jurisdiction over "property and civil rights" and trade within the province. Among these regulations are standards for building or construction, for products and for the environment, and of commercial contract law. This Commission heard of the following case:

[An example of problems in interprovincial trade] is the situation that arose when the local tomato crop in Essex County was ready for harvesting and packed in litre baskets according to the new federal legislation for shipment to the Quebec market, which takes a rather substantial amount of the Essex County crop, only to have it refused there on the grounds that the province of Quebec still insisted on the old measurement methods and insisted on bushel baskets rather than litres.

(Windsor-Essex County Development Commission, Transcript, Windsor, October 18, 1983 [vol. 27], p. 5258.)

In addition, some professional licensing practices affect trade in services. All these measures can impose additional costs on buyers and sellers operating across provincial boundaries, and they may well inhibit the development of markets across Canada that would otherwise occur.

In all the above ways, federal and provincial policies, amounting to the imposition of non-tariff barriers (NTBs), can operate detrimentally to affect

the operation of the Canadian economic union. When the volume of interregional trade is reduced by NTBs to a level below what it would otherwise be, the costs to the economic union equal the extra resource costs of failure to exploit fully the gains from trade and specialization.

The Costs of Interprovincial Barriers to Trade

Economic analysis typically shows that distortions of the sort we have described have a small effect on output costs. Various calculations estimate that welfare losses for 1974 fell between a low of \$130 million, or 0.11 per cent of gross national product (GNP) and a high of \$1750 million, or 1.54 per cent of GNP, depending on the assumptions made.⁸ More recent work for this Commission reinforces the conclusion that the economic costs are small.⁹ This is a field, however, where estimates are imprecise and controversial. In the foreign-trade field, for example, some recent estimates suggest that the gains from international trade liberalization may be much greater than earlier models suggested. The newer models attempt to take into account the significance of economies of scale. They might have equally dramatic effects if applied to the domestic market. Moreover, the question arises: How small is small? As one participant in our hearings observed, 1 per cent of GNP is "equivalent to the GDP of Newfoundland, not a trivial sum." (Anthony Scott, Brief, December 12, 1983, Appendix, p. 1.)

The explanation for the apparently low costs of barriers is straightforward. Table 22-2 shows that just slightly more than one-quarter of Canadian goods (27%) moves interprovincially. Barriers directly affect little of that portion; most products move quite freely. For those subject to restrictions, distortions in the form of preferences are typically quite small. The combination of generally small distortions applying to a subset of products that in turn make up only a quarter of the total national output, together with the economic methodology underlying the calculations, explain the low numbers.

As presentations made to this Commission have argued, however, measurable economic costs are not the whole story:

Discrimination based upon province of origin is not a basis upon which to make commercial awards of business when provincial governments or their agencies are involved . . . we would like to be able to compete freely and equally from St. John's to Vancouver with no impediments. We are quite happy with an open market competitive bid system. What we are not happy with is what we consider discriminatory and artificial constraints to [our] doing business within Canada . . . The bottom line is that it is easier to do business in the United States than it is in some of our provinces within Canada.

(J.D. Smart, Transcript, Toronto, December 7, 1983 [vol. 63], pp. 13173-74.)

This quotation suggests that the costs of barriers to trade may be extremely significant for individual firms, even if aggregate costs for the national economy do not appear to be large. Do these barriers seriously frustrate some individual firms as they buy and sell in the Canadian market? The presence of "economic union" in this Commission's mandate clearly invited private-sector groups to comment on barriers. Participants who did so in our hearings

were primarily engaged in the manufacturing sector, and principally from central Canada.

A survey of 651 manufacturing industries, conducted by the Canadian Manufacturers' Association, found that one-fifth had encountered difficulties in selling goods as a result of provincial restrictions. Larger firms seeking to serve the whole national market complained most. Restrictive policies may, in theory, help small firms, but the same survey showed that only 7 per cent of all firms and only 6 per cent of small ones reported any benefit from procurement rules. The CMA itself believes that proliferation of barriers slows growth in interprovincial trade. A CMA *Position Statement* declares that "we urge all governments to reverse the protectionist trend". Internal barriers, it argues, "cause firms to become increasingly dependent on government". Smaller firms can "fall into a vicious circle where they cannot compete outside the local market". In the CMA view, "our small, fragmented domestic market must be strengthened if Canadian industry is to optimize its efficiency to maximize its competitiveness".¹⁰ If internal barriers scatter production over many small plants, how can we create the large, efficient firms which will succeed internationally? If sellers find that they cannot even count on access to the Canadian market, how can we expect them to be aggressive competitors on world markets?

Mobility of Capital

Although numerous controls pertaining to the transfer of assets or of corporate property have been established through the years, including regulations on certain public utilities and financial institutions, there have been few barriers to the free flow of capital in Canada. However, a number of incidents in the 1970s focused attention on the issue. In one case, the government of British Columbia blocked the take-over of MacMillan-Bloedel, a major forest-products firm, by Canadian Pacific Ltd. In another, the Quebec government moved to prevent acquisition of a trust company by extra-provincial interests. Both cases seemed to imply a concept of "provincial" capital versus "outside" capital, and both suggested that provincial governments wanted to protect strategic provincial interests just as the federal government acted towards foreign investment.

Could a province prevent capital from moving into its territory? In a legal direct sense the answer is probably no. But the provinces, like other governments, possess many levers which could be used to manipulate such movement. For example, provincial governments control access to provincial forest resources, and British Columbia could have used this leverage. Comparable issues have arisen with respect to land ownership. For example, Prince Edward Island wished to prevent properties along its shoreline from falling into the hands of non-residents and to keep prices from passing out of reach of provincial residents. Accordingly, it passed the Prince Edward Island Lands Protection Act to require non-residents purchasing such land in excess of 10 acres to gain prior approval of its Cabinet. Similarly, in order to preserve family farms, the Saskatchewan Farm Ownership Act limits the amount of farmland that can be held by non-residents or by "non-agricultural corporations".

Government attempts to restrict capital inflows have attracted a good deal of attention, though they are rarely a major concern. Far more important than these high-profile take-over bids are provincial measures to encourage capital either to enter or to remain in the province; these are designed to stimulate local growth. The chief concern is that provinces will embark on a bidding war for a limited supply of capital investment. It is not at all clear, however, whether any of the inducements provinces might use would lead to a misallocation of capital and thus to investments in activities less productive than other possible uses. As long as Canada remains open to international capital markets, provincial government inducements will rarely stand in the way of potentially productive projects in other regions. They might, nonetheless, lead to investment in projects that would not otherwise be financially possible.¹¹ From the perspective of the economic union, restrictions on capital mobility appear to be of comparatively limited significance, even though efficiency costs within a region might be substantial. In general, there are few restrictions on the mobility of privately held investment funds across provinces, and in an open economy such controls are unlikely to be imposed.

More important, perhaps, are the pools of investment capital that provinces can control more directly. These include the pools of capital created by the Alberta Heritage Savings Trust Fund, and by a similar, smaller, trust fund in Saskatchewan. Other provinces could create such institutions, depending on, for example, the success of oil and gas development off the shores of Newfoundland and Nova Scotia. In addition, provinces control the use of the money in their public pension funds. The most important such instance is Quebec's *Caisse de dépôt et de placement*, which manages both the money generated by the Quebec Pension Plan and that generated by the pension fund of Quebec public employees. Outside Quebec, funds associated with the Canada Pension Plan are allocated provincially.

Provincially-owned Crown corporations create additional pools of capital. In varying degrees, all of these promote development within the province. However, there are conflicts between advocates of a policy of investing accruing funds at market rates and thus allowing the Crown corporation to achieve a "good track record" and advocates of investing at lower rates in pursuit of specific policy goals, and a related conflict between viewing the agencies as autonomous bodies and considering them as instruments of government policy. If these agencies acquire control of major corporations, they could induce these corporations to locate facilities within the province or otherwise act to prejudice their other shareholders – in effect to "beggar their neighbour". Such concerns underlay the proposed federal Bill S-31, the Corporate Shareholding Limitation Act, which would have limited shareholding of provincial agencies in federally regulated transportation companies. Such dangers, however, seem more potential than actual. Provinces using their holdings in private corporations to "divert" activities to themselves might face not only the discipline of the market-place, but also retaliatory action by the federal or other provincial governments.

Why should provinces not use revenues generated by their own resources, such as Heritage Funds, to promote development? They may provide infrastructure or invest in activities not otherwise able to attract funds. The

investment policies of the Alberta Fund though much criticized, have husbanded revenue for the future and stimulated economic activity. Similarly, the *Caisse*, together with a network of other Quebec investment institutions, has helped to develop a strong, self-confident, francophone, business community which is now playing a larger role in Canada. Such developments, it can be argued, tend to strengthen Confederation, not weaken it. However, as Commissioners have noted earlier, if such funds are used to provide subsidies for local firms, they can harm out-of-province producers.

Another provincial activity that can impede mobility of capital and might contribute to a misallocation of funds is provision of inducements to private investors, through tax concessions, loan guarantees, grants and the like. All provinces use a wide variety of such incentives; all seek to encourage investment through provision of infrastructure and various services. Complementing such provincial programs is a similarly wide range of federal programs. Alberta claims that it withdrew from the Tax Collection Agreements to collect its own corporation income tax so that it could offer tax inducements to capital. Other provinces have considered such a move. Among the measures introduced or contemplated by various provinces are several that distort allocation of capital and the operation of the common market. In 1979, for example, Quebec introduced a program that allows its residents a tax deduction equivalent to the cost of purchasing new share issues in Quebec-based companies.¹² Provincial governments also have programs to stimulate small business. For most such programs, the amounts involved are limited; therefore, assuming open capital markets, their effect is likely to be over-investment in subsidized activities, rather than insufficient investment in productive uses elsewhere.

This last point suggests that our chief concern should be not with barriers to capital mobility, but with managing our capital markets to ensure an effective national market. Those seeking funds should be fully informed about potential capital sources, and those with capital should have the means to know about investment opportunities across the whole country.

Personal Mobility

Canada is a nation of immigrants, from the first aboriginals who crossed the Bering Strait, to the first French settlers of the St. Lawrence Valley, to the United Empire Loyalists, to the eastern Europeans and others who settled the West at the turn of the century, to the immigrants who have entered the country since the Second World War. We Canadians have also been mobile within our borders: eastern Canadians helped to populate the West; after the Second World War, prairie farmers moved to urban areas; more recently, Newfoundlanders have found jobs on western oil rigs. We have also been mobile across national borders: until the United States introduced strict immigration quotas in the 1960s, it often proved more of a lure to mobile Canadians than did other parts of Canada.

The 1981 Census, as Table 22-6 shows, indicated that just over six in ten Canadians more than five years old lived in the province in which they were born; one in eight Canadians were immigrants; the remaining quarter had

moved from another province. There are huge variations among provinces. Newfoundland, with 83 per cent of its residents born there, and Quebec with 88 per cent of provincially born residents, had the most stable populations. In the Maritime provinces, in Manitoba and in Saskatchewan, from 56 to 66 per cent of residents live in the province of their birth. In British Columbia and Alberta only about one-third of residents are native to the province, in the Northwest Territories, one-quarter and in Yukon, one-tenth.

TABLE 22-6 Proportion of Population 5 Years and Over Living in the Same Province as at Birth, 1981

	At Birth (%)	Born Abroad (%)
Canada	61.1	13.3
Newfoundland	83.0	2.4
P.E.I.	56.0	5.5
Nova Scotia	59.7	6.8
New Brunswick	63.0	5.0
Quebec	87.9	6.4
Ontario	62.8	19.5
Manitoba	60.2	8.4
Saskatchewan	66.4	6.2
Alberta	35.0	11.8
British Columbia	37.9	18.6
Yukon	10.6	11.4
N.W.T.	23.1	8.6

Source: Calculations made using data from Statistics Canada, *Mobility Status*, Cat. No. 92-907 (Ottawa), vol. 1, table 6, pp. 6-1 to 6-6.

Between 1972 and 1984, an average of 380 000 persons a year moved across provincial boundaries: that is, about 15 for every 1000 Canadians.¹³ Such figures conceal large variations in population flows in the past few years. As Table 22-7 shows, between 1971 and 1983, five provinces—Newfoundland, Quebec, Ontario, Manitoba and Saskatchewan—and the northern territories experienced net out-migration. During this period, the overall statistical record contradicts the traditional image of the Maritime provinces as a source of population for other regions. Conversely, Ontario, traditionally a magnet for mobile people, was a net loser of population through internal migration for most of the period 1971–81. Quebec experienced net population decline on the balance of internal migration in every year. On balance, Manitoba lost population to other provinces every year but one. Saskatchewan had a similar record for most years, though it gained more people from other provinces in the mid-1970s than it lost through out-migration.

Throughout the 1970s and early 1980s, Alberta and British Columbia experienced rapid population growth from internal migration, gaining 278 153 and 227 247 residents, respectively. These two provinces, as Table 22-8 records, were the destination for 40 per cent of all migrants from 1971–

TABLE 22-7 Balance of Internal Migration for Provinces and Territories, 1971-72 to 1982-83

Year	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon and N.W.T.
1971-72	910	290	-371	612	-20 461	14 080	-8 311	-19 207	3 575	27 044	1 840
1972-73	-537	923	4 276	2 077	-20 072	960	-5 770	-16 164	5 564	27 333	1 410
1973-74	-3 316	502	1 274	1 448	-15 135	-2 886	-1 596	-11 604	2 235	30 496	-1 418
1974-75	495	1 390	2 233	6 103	-9 299	-29 535	-6 912	378	22 576	11 831	739
1975-76	591	649	3 895	6 561	-12 643	-21 179	-4 238	5 845	24 621	-4 419	317
1976-77	-4 149	154	-799	-82	-26 366	-6 402	-3 531	3 182	34 710	5 016	-1 733
1977-78	-4 311	700	-416	-1 348	-46 429	8 510	-4 674	-1 719	32 543	17 576	-432
1978-79	-3 374	-74	-357	-1 171	-30 884	-4 325	-10 746	-2 878	33 426	22 005	-1 622
1979-80	-3 597	-358	-2 732	-2 761	-29 976	-22 362	-13 864	-4 493	41 435	40 164	-1 456
1980-81	-3 552	-1 251	-2 836	-4 989	-22 841	-33 247	-9 403	-3 808	44 250	37 864	-187
1981-82	-5 693	-856	-1 936	-2 842	-25 790	-5 665	-2 625	-323	36 562	8 705	463
1982-83	1 665	209	1 428	2 491	-22 568	15 112	389	2 660	-3 344	3 632	-1 664
Total	-24 814	2 278	3 668	6 099	-280 464	-86 939	-71 281	-47 951	278 153	227 247	-3 743

Source: Statistics Canada based on data from *International and Interprovincial Migration in Canada*, Cat. No. 91-208 and Cat. No. 91-210 (Ottawa, various years).

**TABLE 22-8 Percentage Distribution of Interprovincial Migration
by Province of Origin and Destination, Average for 1971-72
to 1982-83**

Province	Origin	Destination
Newfoundland	3.3	2.7
Prince Edward Island	1.0	1.0
Nova Scotia	5.6	5.7
New Brunswick	4.5	4.6
Quebec	13.9	7.6
Ontario	25.8	23.4
Manitoba	7.8	6.3
Saskatchewan	6.9	6.2
Alberta	15.8	22.5
British Columbia	13.6	18.3
Yukon and N.W.T.	1.8	1.7
Total	100	100

Source: Statistics Canada, based on data from *International and Interprovincial Migration in Canada*, Cat. No. 91-208 and Cat. No. 91-210 (Ottawa: various years).

72 to 1982-83. These patterns of internal migration reflected larger economic trends in the period. In 1970-71, for example, only 12.4 per cent of migrants leaving Ontario went to Alberta; but for the period 1970-71 to 1981-82, an average of 24.9 per cent entered that province. In 1971-72, fewer than 3000 Atlantic Canadians moved to Alberta; in 1981-82, over 14 000 did so. Following the slow-down in western resource development in 1982, these patterns reversed. In 1983 and 1984, Alberta was a net loser in interprovincial population movements. A return flow was evident, and Ontario and the Maritimes were once again recording net gains in in-migration.

Thus while we Canadians are a nation of regions and of settled communities, we are quite mobile. This mobility facilitates economic adjustment as individuals move from areas of lower to higher economic opportunity. It also spreads ideas, thus contributing to mutual awareness and understanding, and to a sense of citizenship. In addition, it allows citizens to respond to intergovernmental competition in policy by "voting with their feet", thus taking advantage of one of the virtues of federalism.

The British North America Act of 1867 did not formally enshrine the principle of the free circulation of persons within the Canadian economic union, although on occasion, the courts have found support for this principle in the common law. For example, in a decision¹⁴ handed down in 1951, in the case of *Winner v. S.M.T. (Eastern) Ltd.*, Mr. Justice Ivan Rand of the Supreme Court stated that:

A province cannot, by depriving a Canadian of the means of working, force him to leave it; it cannot divest him of his right or capacity to remain and to engage in work there: that capacity inhering as a constituent element of his citizenship status is beyond nullification by provincial action.

Section 6 of the Charter of Rights and Freedoms recognizes the right of all Canadian citizens and all permanent residents of Canada to move freely throughout the country and to earn a living in any province. This clause binds both Parliament and the Canadian government, as well as the provincial legislatures and governments. Yet there are limits to these rights of mobility, which we shall consider in Chapter 23 in the context of a more extended discussion of the Charter.

Economic incentives are the main forces shaping migration flows, particularly for Canadians in the labour force. Not surprisingly, there are more moves over relatively short distances than there are journeys across the entire country. People also tend to move from lower- to higher-income areas, and to be influenced by prospects for higher wages and better job opportunities.

Other factors or personal characteristics are also important. Better-educated citizens, for example, are more mobile. Language differences exercise a major influence over decisions to move: French-speaking Canadians now seldom move to English-speaking areas; and there is little movement of English-speakers into Quebec. Data indicate that on balance, French-speaking Quebec is gaining francophones as a result of interprovincial migration. Between 1971 and 1976, for example, net in-migration to Quebec was 4.5 per cent for francophones and 0.4 per cent for anglophones. Knowledge of English seems to be an important determinant in the contemporary decision either to stay in Quebec or to move to another province. A unilingual anglophone is much more likely to make such a move than a unilingual francophone. This is one reason why Quebec is gradually becoming a more French-speaking society. These data suggest that mobility depends largely on personal decisions, based on the expectations of individuals and families, and on their own cultural and linguistic characteristics.

Government policies, too, may influence the decision to migrate. For example, high levels of taxation at the provincial and municipal levels may encourage some people to move or deter them from doing so. Variations in "net fiscal benefits", a combination of levels of taxation and levels of services, appear to have encouraged migration to Alberta during the resource boom, independent of the relative decline in the Ontario economy and rapid development in the West. This type of influence may well become more decisive if provincial variation in taxation rates and government services continues to grow, especially in such highly visible areas as taxes on income and retail sales. To the extent that equalization and other transfers restrain divergence in tax rates, personal mobility will more likely respond to other economic signals and individual preferences.

As Commissioners have concluded earlier in this Report, there is also evidence that Unemployment Insurance benefits reduce the incentive for citizens to move in search of new job opportunities. The effect of other differences between provinces—licensing requirements for professionals, different school systems, and the like—is not easy to assess.

Finally, cultural factors themselves may be influenced by policy. The size and distribution of the population of francophone Canadians outside Quebec reflects, to a considerable extent, the relative absence throughout much of

Canadian history of sympathetic approaches to French-language minorities by the other provincial governments and their electorates. More recently, the federal government has sought to ensure rights of minority-language education and to provide its services in minority languages across Canada, partly in order to make it possible for French-speaking Canadians to be mobile outside Quebec without giving up their language.

To evaluate fully the effect of barriers to personal mobility in Canada, it would be necessary to know both the proportion of the labour force affected by those restrictions and the degree of their severity. The costs of such barriers would include the costs to individuals of relocating, despite restrictions, as well as the reduction in overall economic performance resulting from any labour shortages that can be attributed to the barriers. The complexity of the process of analysing certain types of mobility barriers accounts for the lack of data on the costs of existing restrictions on labour-force mobility. We can, however, provide illustrations of barriers to interprovincial mobility, and speculate generally on their implications for the economic union.¹⁵

A number of provinces have introduced guidelines or restrictions giving preference in employment to local residents. Some of these rules apply to private employers; others operate in the public sector. For example, regulations introduced in 1978, under Newfoundland's Petroleum and Natural Gas Act, provide that: "It is deemed to be a term of every permit or lease that a permittee or lessee shall give preference in his hiring practices to qualified persons normally resident in the province." The 1985 offshore-resources agreement between Canada and Newfoundland calls for "first consideration" to be given to goods and services provided in Newfoundland, where these are competitive in price, quality and delivery. Newfoundland residents are to receive "first consideration" for training and employment opportunities, "consistent with the Canadian Charter of Rights and Freedoms."

Other jurisdictions, too, have imposed restrictions. Mobility restrictions in the Quebec construction industry became the subject of interprovincial controversy a few years ago, even though the government had introduced them in response to problems within the provincial industry. Quebec and Nova Scotia extend preferences to provincial residents in hiring for the public service. The federal government has set down comparable requirements to promote employment opportunities for Northern residents in resource development. By extending procurement policies from goods to services, governments have created further restraints on labour mobility.

Some Canadians see licensing and certification requirements for certain trades and professions as threats to labour mobility:

Two closely inter-related problems pervade the area: lack of uniformity of standards between the provinces and lack of reciprocity (i.e. recognition of out-of-province training or experience).¹⁶

Provincial governments confer licensing authority on professional associations in order that they may safeguard the public from injury or abuse. In turn, these associations may create barriers to exclude other professionals from

encroaching on their jurisdiction. It is not always easy, however, to distinguish requirements which ensure competence from those which discriminate against non-residents seeking entry. In trades, licensing and certification requirements are often simply voluntary; provisional certification is frequently available, and the provinces may soon agree to recognize trade qualifications obtained under an Interprovincial Standards Examination.

Lack of portability of private pension plans deters labour mobility and thus may affect interprovincial mobility and transfers of workers among employers. As the loss of accumulated pension benefits has already attracted attention in other studies, Commissioners do not pursue this issue. Loss of entitlement to social services during a period of requalification and provincial income-support schemes may also inhibit interprovincial mobility. In provinces where municipalities administer such programs, local practices may limit eligibility for benefits in ways that deter mobility. The conditions established for the shared-cost Canada Assistance Plan, however, ensure a high degree of protection against such discriminatory measures as residence requirements.

Differences in educational systems across Canada may also deter potential migrants concerned about disruption of their children's education. Limited studies of this difficulty suggest that incompatibilities among educational systems are not a major deterrent to interprovincial mobility. Indeed, differences in educational criteria and standards can occur within a province, as well as among provinces.

Established social, cultural and community ties inhibit interprovincial labour mobility in Canada. Of the cultural ties, language appears to be the most significant. Quebec's Charter of the French Language may well deter the relocation to Quebec of Canadians who do not speak French, or of those who, because of the combined effects of the Quebec Charter and the Canadian Charter of Rights and Freedoms must forgo the right to have their children educated in English if that is their preference. In addition, the tendency of francophone Quebecers to become increasingly unilingual restricts their mobility outside the province, where there are few jobs for unilingual francophones:

However painful it may be, workers from the Maritimes have only to change their location if they move to Toronto. Such mobility does not endanger the survival of the English Canadian community in general. For Quebec, however, [such] a move virtually corresponds to expatriation.

(Conseil Exécutif National du Parti Québécois, Brief, December 7, 1983, p. 30.)

Official bilingualism in other provinces, generous minority-language education and a network of French-language/communication services across Canada would facilitate mobility for French-speaking Canadians. Commissioners have no illusions that it is possible to establish throughout Canada, fully bilingual cultural milieux in which francophones would find permanent cultural and linguistic security. Nevertheless, both ongoing adjustment to economic change and the securing of social justice require provision of official-language services and related institutional support across Canada.

This development is needed to facilitate at least temporary movement by francophone Canadians to employment opportunities in various regions of the country if they so wish. Similarly, corresponding language facilities in English and better training in French will facilitate movement of anglophones into Quebec.

Migration can ease interregional adjustment and smooth out disparities in employment and wages. The persistence of such disparities might suggest that the mechanism is not working well. Some of these differences, however, reflect location preferences and migration costs, and thus do not represent disparities in the true sense of that term. Moreover, we must qualify the view that movement should tend to equalize wages. Migration rates are higher among the young, the best-educated and the most productive workers. To the extent that these phenomena occur, movement out of a province might reduce, rather than increase, the average per capita incomes of the smaller population which remains. As tax receipts drop, tax rates might increase, or public services might decline. Thus, while interprovincial migration might not completely eliminate persisting disparities, given these and other qualifications, it can probably still be concluded that the levels of mobility we do experience have made regional disparities smaller than they might otherwise have been.

Just as important as the economic consequences of interprovincial barriers to personal mobility are the effect of barriers on citizens' ability to relocate for personal advancement and satisfaction. The existence and maintenance of a national Canadian community requires that such ability be as great as possible. In this context, Commissioners conclude that the onus for justifying barriers to personal mobility should fall on the governments introducing them.

Competition Policy

One of the fundamental reasons for setting up an economic union is to enhance economic competition among member states. It stands to reason, therefore, that competition policy would be an integral part of the debate on the barriers to trade. Indeed, this is the approach adopted in the Treaty of Rome,¹⁷ which reflects a clear intention to link the development of the European Economic Community not only to the conduct of the member states, but also to that of private business. Article 85 prohibits agreements between firms that affect trade among the member states and restrict competition among firms. Article 86 prohibits abuse by one or more firms of a dominant position. In practice, these provisions prevent private companies from imposing restrictions on trade analogous to those imposed by public authorities, such as import duties, quantitative restrictions and comparable trade barriers.

Thus competition policy in the European Community is, first and foremost, a tool of economic integration. Viewed from that perspective, it appears to have been fairly successful, as indicated by the large number of decisions of the European Commission and the European Court of Justice which strike down reciprocal exclusive-dealing agreements, agreements on market-sharing,

the fixing of production or sales quotas and of prices, and various practices that amount to “an abuse of a dominant position”. Canadians have not approached competition policy as a tool of economic integration: in the context of the economic union, we have not focused on the possibility that the private sector might erect barriers to trade.

Nevertheless, as one study of Canadian federalism and the theory of economic integration has concluded, an effective competition policy is necessary to realize gains from the common market.¹⁸ Because economic activity ignores provincial boundaries, and labour, capital and technology are mobile, it is difficult for provincial governments to regulate anti-competitive practices successfully: such regulation must be federal if it is to be effective. Mr. Justice Brian Dickson of the Supreme Court of Canada stressed in his concurring judgement, handed down in *Attorney General of Canada v. Canadian National Transportation Ltd.*, that

[A] scheme aimed at the regulation of competition is . . . an example of the genre of legislation that could not practically or constitutionally be enacted by a provincial government . . . If competition is to be regulated at all it must be regulated federally.¹⁹

Justifications for Barriers

So far Commissioners have treated barriers and distortions primarily as if they were inherently undesirable: mechanisms incompatible with a sense of Canadian citizenship, inconveniencing citizens, misallocating resources and lowering economic efficiency. Does this definition always fit? Would Canadians, even in principle, wish to do away with every policy that might operate as a barrier? The answer is clearly no! There are many justifications for barriers and distortions.

Some of these justifications are themselves related to the economy. Some barriers may, in fact, correct for or counteract other barriers. A great many industrial policies are aimed at altering incentives and directing investment into areas that the market itself would not select. Other distortions are justified by a wide variety of social and cultural goals, all considered as contributing to our well-being. Thus social policies redirect resources on grounds of equity, and Canadian-content rules are aimed at protecting our sovereignty or cultural distinctiveness. Within a federal system, the goal of interregional sharing expressed by means of equalization payments and regional development implies non-market allocations essential to the Confederation bargain. Therefore, to determine which barriers are or are not justified involves a complex economic and political calculus, in which different interests will contend.

In principle, distortions imposed by the federal government may be more defensible politically than those imposed by provinces. If the federal government has the interests of the whole country in view, presumably provinces concern themselves with the interests of their own residents. In theory, at least, the Government of Canada, drawing members from across the whole country, makes the trade-offs and balances the concerns of winners

and losers. The national electorate can hold that government accountable, and it cannot pass off the costs of its actions to another jurisdiction. In contrast, if a discriminatory action by one province has harmful or costly consequences for residents of another province, residents of the latter have no means of holding the government of the other province to account, although they may demand that their own province retaliate. A final reason to take a more sympathetic view of federal distortions is that the stronger richer provinces may use distortions to increase their advantages over the smaller and poorer. Federal actions may be able to restore the balance.

The obvious rejoinder to such an analysis is that it depends critically on the degree to which the federal government is nationally representative; electoral politics may make it otherwise. It is, in part, such concerns that led Commissioners to recommend when we considered national institutions, that regional balance be strengthened at the centre.

Should we take a different stand in the matter of provincially imposed barriers? Many such barriers are implicit in the nature of Canadian federalism, with its multiple governments. In many instances, creation of impediments to trade or mobility is a by-product of legislation designed to meet appropriate provincial goals and to respond to the varying legitimate demands or preferences of provincial electorates. For example, provinces may formulate legislation on product standards to protect consumers. These standards may well vary from province to province, taking into account regionally significant factors from climate to culture. It remains difficult, of course, to judge whether a provincial regulation serves local needs or constitutes disguised discrimination against producers in other provinces. For example, stricter consumer-protection laws in one province may inhibit trade; they are not discriminatory, however, as long as the same rules apply to domestic and out-of-province producers. The situation requires examination on a case-by-case basis, and Commissioners will propose a mechanism to undertake this activity. Such examination must take into account and balance such factors as the comparative value of uniformity and diversity, and the object of the regulation as compared with its effect.

More generally, provincial variations in requirements touching education, health care or product standards can impede interprovincial movement of goods, capital and labour. For businesses that operate in several provinces or whose operations include both provincially- and federally-regulated activities, the very existence of numerous sets of regulations, even if there were no substantive variations, would have some costs. For example:

C-I-L is a typical national employer . . . Employment relationships within C-I-L thus are subject to twelve of the thirteen [including territorial] jurisdictions which legislate labor law. The transfer of an employee from one Province to another, or from one segment of our business to another even without a geographic relocation, can significantly change the rules. In C-I-L's view, this adds unnecessary cost and complexity to running our business with no advantage to employees and much disadvantage to productivity.

(C-I-L Inc., Brief, October 27, 1983, pp. 6-7.)

Most provincial barriers represent efforts to promote provincial economic development. The Constitution envisions such activity, and the provinces have been involved in it since the first days of Confederation. Voters expect provincial governments to promote economic development within the province: to encourage new industries, support diversification and maintain employment. This is the sense in which we speak of provincial economies, as well as a national economy.

Much more problematic are policies designed to overcome or counteract federal policies, or those designed to discriminate against residents of other provinces. Provinces with greater resources may be in a far better position to compete for capital and investment than those less well endowed. To the extent that investors can play off one government against another, they may obtain uneconomic subsidies or bid wages and protection of the environment down to the lowest common denominator, an international, as well as a domestic, phenomenon.

The result may be the classic "prisoner's dilemma": all provinces have an interest in co-operative effort, in this instance to harmonize policies, but each has an incentive to "cheat" to its own short-run advantage. Provinces may obtain mutually beneficial arrangements when each abstains from actions that might be individually advantageous if others do not retaliate, but mutually destructive if they do. Such arrangements, however, are notoriously unstable. There is always the lure of the short-run advantage and the illusion that other parties might not notice one's actions.

Commissioners' recommendations are intended to reduce the likelihood that governments will form such patterns of behaviour. Federalism justifies variation among provinces in response to local preferences; it does not justify outright discrimination against other provinces. The need to accommodate diversity of preferences, which argues for decentralization, must be balanced against the objective of gains from trade, which calls for greater centralization or uniformity of policies. As almost all of the above examples suggest, conflicts arise between interpersonal and interregional considerations. Commissioners recommend a political process to enable Canadians to distinguish between legitimate preferences and outright discrimination, and to help weigh the benefits of legitimate practices against the costs they may impose on the economic union.

Assessing the Effect of Barriers

We do not ignore the political realities behind these barriers but if they are instituted as solutions to certain problems, they must also be recognized as the problems they are for others and as trends in the wrong direction.

(J.K.C. Mulherin, Brief, August 2, 1983, pp. 4-5.)

Commissioners agree with this statement, but in doing so we do not accept the view that Canada has already become hopelessly balkanized. The direct costs of existing interprovincial trade barriers appear to be small. There are many barriers to interprovincial trade and factor mobility, but their

quantitative effect on the level of economic activity in Canada is not sufficient to justify a call for major reform. There is also—at least at present—substantial harmonization across provinces in areas such as taxation, insurance and securities regulation, where economic efficiency strongly suggests the importance of such co-ordination. Nevertheless, there has been recurrent concern about the state of the Canadian economic union from at least the era of the Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois Commission) in the 1930s. We must address the nature of such concern and consider institutional responses to it.

There are at least two possible explanations for apprehension about the effect of internal barriers to trade. First, costs are small because barriers are limited, and interregional co-operation and co-ordination are still substantial. Economic costs could easily and quickly become much larger. The unravelling process, once begun, could proceed a considerable distance. The validity of this concern is not easy to assess. Certainly, economic losses would multiply as barriers proliferated, and the losses could become quite significant. The important question is whether Canadian governments would ever allow themselves to be caught up in such a process of mutual destruction. The small open nature of most provincial economies constrains this type of behaviour because the costs of most barriers are ultimately borne by the residents of the province imposing them. Nevertheless, this kind of behaviour is certainly possible, even when participants have certain knowledge that in the long term, everyone will suffer as a result.

Secondly, some observers may suspect that economic studies have failed to measure all the costs of market fragmentation. No one, for example, has measured the extra compliance costs associated with the existence of many labour or building codes rather than one. Similarly, we have little detailed knowledge about the extent to which such factors as the non-portability of pension plans inhibit, or even prevent, personal mobility, with resulting costs to the economic union. On the surface, these items seem small. In fact, they may well be quite large, particularly for producers who market goods and services across the country. Most affected are producers who principally supply or service provincial governments, their agencies or institutions under provincial regulation.

This pattern is consistent with the evidence obtained in this Commission's hearings. Though relatively few intervenors raised the issue of barriers, those who did regarded that issue as crucial, describing the great difficulty of overcoming hurdles that inhibit sales across the country. Some intervenors claimed that it sometimes seemed easier to develop foreign markets than those in Canada. We do not know how many others have made no attempt to overcome the barriers or have been reluctant to develop an active presence in other Canadian provinces because they lacked assurance that they would have continued access to those markets. Research to date does not tell us whether existing barriers have kept firms smaller and less efficient than they would otherwise have been, although logic suggests that to some extent this must indeed be so.

Commissioners hope that effective operation of the Canadian economic union can improve Canada's position in a competitive international economy.

If this is to occur, further analysis will be necessary. It may be, as analysts of the "experience curve" in relation to manufacturing have suggested, that firms able to expand quickly their output of new products will achieve significant advantages, on the assumption that some unit-production costs will decline as output increases. A research paper prepared for this Commission, describes some of the considerations involved:

The speed with which [a firm] can keep doubling its output depends upon how far ahead of the competition it is, the size of the market and how easy to serve it might be. A small market limits the speed with which output can be increased, and places a severe limit on the ultimate size of output that can be achieved. If the firm is competing against foreign firms that have access to a much larger market and are able to accumulate output much faster, it may find that the small market represents an impossible hurdle to international competitiveness.²⁰

Thus gains forgone or to be forgone in the future also justify continuing vigilance over interprovincial barriers to trade. Finally, not all the costs of such barriers are economic. For a Canadian producer to find it easier to sell in the United States or in other foreign markets than in another province is inconsistent with the full development of our national community.

Responding to Barriers: Towards a Code of Economic Conduct

Through preceding considerations, Commissioners have come to some important conclusions about the state of internal barriers and Canada's economic union. First, despite recent expressions of concern that the economy is becoming increasingly balkanized and fragmented, the Canadian economic union generally functions effectively. Goods, capital, services and people move relatively freely within the Canadian common market.

There are, however, a large number of impediments to free movement, and many distortions affect the common market. While, in aggregate, the lost economic output from these distortions appears quite small, we Commissioners do not believe that this lost output represents the full measure of the problem, and many Canadian companies and individuals indicate that in fact, the policies in question create considerable difficulties for them. Above the economic rationale, the political rationale for the national right to free movement has a powerful attraction for most Canadians. For a producer to find it easier to sell in another country than in another province offends our sense of Canadianism.

Commissioners consider, too, that 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. Under these circumstances, we Canadians should make internal arrangements that stimulate international competitiveness and facilitate adjustment.

The barriers that exist are often justified in the name of important values. Federalism and the response of governments to local preferences necessarily imply that policies will often differ among jurisdictions. Some lack of harmonization will result, particularly when innovative solutions are introduced by different Canadian governments in response to emerging

problems. Important economic, social and cultural goals may justify government interventions that directly or indirectly affect the free movement of factors. Commitment to redistribution of income and equality of opportunity – both emphasized in this Report – justify some federal barriers. Thus, in particular cases, the challenge is not to eliminate a barrier, but rather to balance the economic benefits of free movement against other goals which Canadians hold. The trade-offs are not exclusively between economic efficiency and political diversity or provincial autonomy within the federation, for Canadian federalism also involves a Canada-wide community that has its own requirements. Moreover, as the Canadian Charter of Rights and Freedoms makes evident, the rights held by individuals have implications for the economic union.

The existence of our Canadian economic union implies not only that the free market should be allowed to operate, but also that governments should take positive measures to facilitate the operation of that market, to overcome market imperfections, and to pursue stabilization and effective industrial and social policies; it also calls for a broad regional sharing of the benefits of economic integration. This factor, in turn, suggests the need for positive measures of co-operation and co-ordination as much as for effective policing of barriers to movement. All these considerations govern this Commission's suggestions for the future.

Section 121

Section 121 of the Constitution Act, 1867 provides important basic support for internal freedom of trade in goods. It can be regarded as a customs-union clause rather than as a common-market provision. Remarkably few cases have cited this section, and its applicability to interprovincial non-tariff barriers (NTBs) and to trade in services is uncertain. Stronger wording of the section would emphasize the fact that formal, legally enforceable, constitutional provisions are the bed-rock on which more political and administrative arrangements are built. In recent years, this rationale has led others to make several specific proposals along these lines.

Commissioners believe, also, that constitutional protection of the economic union should eventually be strengthened; this should be done by amendment of the Constitution if future judicial interpretation does not confirm a broad reading of section 121. In particular, constitutional protection against tariff barriers should encompass trade in services as well as in goods. In recommending this modernization, we support several other previous commissions and task forces that have sought to enhance the effectiveness of the economic union. However, we are sensitive to the need to balance efficiency in the Canadian economic union with other interests in the federation. We are conscious also of the limitations facing courts in their deliberations on economic matters. The difficulties or limitations are particularly significant in relation to non-tariff barriers where complex economic and political considerations arise simultaneously. In the light of these considerations and of the current uncertainty about the scope and significance of NTBs, we suggest that this aspect of formal constitutional amendment should be preceded by

the development of guidelines in the form of a Code of Economic Conduct. This amendment itself might also take the form of an addition to section 121 to cover non-tariff barriers to goods or to services.

A Code of Economic Conduct

To respond to the challenge of making productive trade-offs between competing values, the governments of Canada should take steps to develop a "Code of Economic Conduct" which will begin to identify the policies and practices that are, and are not, acceptable in the Canadian economic union. For several reasons, however, Commissioners do not propose that this code be incorporated into the Constitution Act. For one, we have reservations about placing further responsibilities on the courts in an area where complex economic and political trade-offs often seem to be required. Many practices that have attracted attention in relation to the economic union fall into grey areas that even a strengthened section 121 cannot easily reach. Allegedly discriminatory government actions often take place at the administrative level or in informal practices not covered by law. These are hard to identify and to monitor through judicial mechanisms. We believe a Code of Economic Conduct could cover these areas more effectively.

Commissioners have emphasized the need for complex and sensitive trade-offs: "barriers" are not black and white. Countries like Australia, with very strong constitutional rules governing the common market, have found governments at both levels frustrated. However wise, judges are ill-equipped to make these trade-offs. They must decide whether a given act is right or wrong: they cannot easily suggest compromises or alterations in the policy. Judges have no mandate to make policy proposals to promote the positive development of the economic union that we believe to be necessary. Nor can courts initiate cases: they can only respond to cases brought before them. In addition, our legal traditions have not emphasized the kind of evidence and analysis that would be relevant to the decision making we foresee.

A Code of Economic Conduct is a relatively new concept. There are many important questions to be explored, and we would need considerable experience to "get it right". This argues for a cautious and incremental process. In Commissioners' judgement, it would not only be undesirable to try to write and constitutionalize a code now, but the exercise would almost certainly founder in the constitutional amendment process. A constitutionalized code formulated today would probably include so many opting-out, *non obstante* and exemption clauses that it would perhaps only legitimize what it was designed to prevent. Nor would it be easy to modify and adapt a constitutional code in the light of changing circumstances. Thus we recommend a more informal, negotiated Code of Economic Conduct. The governments of Canada should develop a Code that would spell out the principles of the economic union, begin to identify and describe practices that are and are not acceptable, and provide mechanisms of enforcement. We believe that it would eventually be appropriate to entrench the principles of the Code in the Constitution, although we have concluded that the enforce-

ment of the details of the Code would be carried out most effectively with the assistance of an expert Commission on the Economic Union.

It would not be appropriate for Commissioners to put forward a detailed proposal for a Code of Economic Conduct. Nevertheless, on the basis of our consultations and research, and in the context of our conclusions about development prospects for Canada, we suggest general guidelines for consideration:

- The starting point should be that the "burden of proof" lie with the authority imposing the barrier. Our assumption is in favour of the economic union. Deviations from that model ought to be publicly justified.
- The code should confirm general principles of the economic union applicable to both the federal and provincial governments. These principles should encompass:
 - Reduction of barriers to the movement 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 residents of other jurisdictions and to prior consultation for this purpose
 - Recognition of the need for an effective transportation, communications and information infrastructure to provide positive support for national economic development that would confer significant regional benefits.
- The code should also begin to identify the major policy areas where reduction of barriers to internal trade can best be effected. Attention should focus not only on the form of the barriers (procurement, subsidies and so on), but also on the anticipated effects or consequences. Commissioners base this conclusion on our observation that the possibilities for substitution between types of barriers are extensive, and on the great disparities in the size and economic development of the provinces and in their potential to inflict injury on other provinces or their residents. For immediate consideration, we suggest looking at barriers that inhibit the capacity of Canadian enterprises to achieve international competitiveness.

Initially, governments should negotiate the Code, and public and governmental pressure should enforce it. The intergovernmental process (involving, ultimately, the reformed national institutions Commissioners recommend) would provide the appropriate forum for dealing with the politically sensitive issue of internal barriers to trade. After Canadians have gained experience with the operation of the code, we should entrench its principles in the Constitution, and enforce the details of the code itself through some form of binding intergovernmental agreement which an expert commission appointed by federal and provincial governments would enforce.

The principal vehicle both for initiating the development of a Code of Economic Conduct and for implementing it should be a federal-provincial Council of Ministers for Economic Development, established under the umbrella of the First Ministers' Conference. This ministerial council would be assisted by a Federal-Provincial Commission on the Canadian Economic

Union consisting of a group of experts appointed by the Council. The commission would have responsibility for preparing materials for the Council as directed; initiating research to explore the state of the economic union and methods for improving it; receiving complaints from private actors, including groups, individuals and corporations affected by government actions which threaten the economic union; investigating and reporting on such alleged actions, and making recommendations to the public and the ministerial council.

As a start to the process of developing the Code, Commissioners propose the following procedure. The Council would ask the federal and provincial governments to list any barriers imposed by other governments that it believes harm individuals, a provincial economy, or the national economy. Each government would then defend those of its policies so identified. The expert Commission on the Canadian Economic Union would analyse barriers and their justifications, identify violations of the principles of the economic union, and recommend specific contents of the proposed code. The Council of Ministers of Economic Development would proceed to act on this report. Such a process would parallel working methods of the General Agreement on Tariffs and Trade (GATT).

There are several advantages to this procedure. To develop the Code should show governments the character of one another's policies and the mutually destructive effects of barriers that create a situation in which no one actually gains. Practical experience with the Code should lead to further sensitivity in its application. Continual discussion of the issues involved should help to convince governments of the potential advantages of co-operation. Incentives to "cheat", or to introduce new discriminatory policies, should prove less attractive when parties realize that they would be returning to the table time and again to deal with infringements on the Code. Moreover, the Council would provide a forum where the two goals of policing barriers and co-ordinating positive policies would be integrated.

Balancing the economic union against other goals is an essentially political process that should take place in a political forum. Because the policies at issue are those of both orders of government, the appropriate vehicle is an intergovernmental body. For several reasons, however, this body should receive advice from the expert Commission on the Economic Union that Commissioners have proposed. First, much research and investigation remains to be done. This would be best accomplished by a group with particular expertise who are nevertheless closely tied to the political process. The Federal-Provincial Commission on the Economic Union would be made up of independent experts, appointed by the Council of Ministers. Members would not be officials of federal or provincial governments; nor would they act as delegates or representatives. Secondly, the involvement of those whose primary commitment was to explore ways to improve the economic union would introduce to the process participants without vested interests as governments. Their freedom from involvement in government responsibilities should enhance their capacity to "blow the whistle". More important, they would be a group with a strong incentive to search for creative alternatives

and new solutions which governments, sometimes tied to their own bureaucratic interests and client groups, might find it difficult to do.

The commission's role in receiving complaints and conducting enquiries would be fundamental. It would open the process to individuals and groups outside government, and bring their concerns directly to bear on a matter of intergovernmental relations. In this way, impediments to the union could be fully explored. The fact that the commission would report its findings publicly would enhance its accountability. Governments which practice discriminatory policies would be much more regularly subject to the glare of publicity. At a minimum, the arrangement would force governments to justify their activities. Commissioners believe that this circumstance in itself would provide more effective policing than do existing arrangements. If, after a probationary period, the principles were eventually entrenched, the proposed commission could take on a more formal adjudicative role. It could, for example, become a regulatory agency, but one which regulates governments. This would constitute an experiment in administrative law with few precedents in Canada. For that reason, it might be viewed as more appropriate and more consistent with our traditions to have the Supreme Court enforce a formalized code. Commissioners believe, however, that a specialized body is to be preferred, and that such a body would avoid some of the problems with judicial decision making identified earlier.

Finally, Commissioners note that the federal government has a distinctive role to play in safeguarding the economic union. Its role as the national government means that its primary focus must be on the health of the whole, and that it must continually foster the development of positive linkages of all kinds among Canadians. In other sections of this part of our Report, we discuss in more detail how this can be accomplished. Here we simply note some of the instruments available. Conditions in shared-cost programs such as the Canada Assistance Plan or Canada Health Act can ensure portability, accessibility and non-discrimination against residents of other provinces. Such provisions could also be used in other shared-cost programs more directly related to employment, such as training, job creation, and Economic and Regional Development Agreements (ERDAs). Federal assistance to bilingual education and enhancement of its own capabilities to provide French-language services are important means of facilitating mobility. Federal administration of provincial income taxes under the Tax Collection Agreements is also an effective tool. More generally, development of the federal power over interprovincial trade and commerce could help to ensure the effective operation of the economic union. Commissioners turn to these and related economic policy concerns in subsequent sections of this Report.

Notes

1. For the purposes of our discussion, we refer to trade between provinces and trade within Canada involving Yukon and the Northwest Territories as 'interprovincial'.
2. John Whalley, "Induced Distortions of Interprovincial Activity: An Overview of Issues", in *Federalism and the Canadian Economic Union*, edited by Michael J. Trebilcock *et al.* (Toronto: University of Toronto Press for Ontario Economic Council, 1983), p. 175.

3. Canada, Royal Commission on Dominion-Provincial Relations, *Report*, Book II, *Recommendations* (Ottawa: King's Printer, 1937), p. 62.
4. *Murphy v. C.P.R.* [1958] S.C.R. 626, 15 D.L.R. (2d) 145.
5. For a more extensive survey, see John Whalley, *Regional Aspects of Confederation*, vol. 68, prepared for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
6. John Whalley, "The Impact of Federal Policies on Interprovincial Activity", in *Federalism and the Canadian Economic Union*, edited by Michael J. Trebilcock *et al.* (Toronto: University of Toronto Press for Ontario Economic Council, 1983), pp. 211-13.
7. Canada, Supply and Services Canada, *Supply Policy Manual*, Directive #3052, December 30, 1983, pp. 7, 9.
8. See Whalley, "Induced Distortions of Interprovincial Activity".
9. Wayne R. Thirsk, "Interprovincial Trade and the Welfare Effects of Marketing Boards", in *Perspectives on the Canadian Economic Union*, vol. 60 (Toronto: University of Toronto Press, 1985).
10. Canadian Manufacturers' Association, "Interprovincial Trade Restrictions", a CMA Position Statement (Toronto, 1984).
11. See Philip Mathias, *Forced Growth* (Toronto: James Lorimer, 1971), for case studies of unproductive projects induced by special incentives.
12. An Act respecting stock saving plans and to amend again the Taxation Act and to amend the Securities Act, S.Q. 1979, chapter 14, as amended.
13. These and the following figures are drawn from Statistics Canada, *Current Demographic Analysis: Report on the Demographic Situation in Canada, 1983*, by Jean Dumas (Ottawa: Minister of Supply and Services Canada, 1984), pp. 46 ff.
14. See *Winner v. S.M.T. (Eastern) Ltd.* [1951] S.C.R. 887, 919 (S.C.C.)
15. A fuller treatment of these questions is provided in Michael J. Trebilcock, John Whalley, Carol Rogerson, and Ian Ness, "Provincially Induced Barriers to Trade in Canada: A Survey", in *Federalism and the Canadian Economic Union*, edited by Michael J. Trebilcock *et al.* (Toronto: University of Toronto Press for Ontario Economic Council, 1983), pp. 243-351.
16. *Ibid.*, p. 273.
17. The treaty establishing the European Economic Community, executed in Rome, March 25, 1957.
18. A.E. Safarian, *Canadian Federalism and Economic Integration* (Ottawa, Information Canada, 1974), pp. 58-73.
19. *Attorney General of Canada v. Canadian National Transportation Ltd.* (1983), 3 D.L.R. (4th) 16 (S.C.C.)
20. F.J. Chambers, "Internal Constraints in the Evolution of International Economic Policy for Canada", in *Selected Problems in Formulating Foreign Economic Policy*, vol. 30 (Toronto: University of Toronto Press, 1985).

Economic Management and Federalism

The Canadian economic union consists of far more than the essentially negative role of government presented in Commissioners' discussion of internal trade barriers. Governments discharge a variety of functions in managing the economy. The regional character of the Canadian economy and the distribution of powers in the Constitution decide which governments exercise these functions and the values and goals which they pursue. How have the federal dimensions of our society and our institutions affected the ability of the Canadian state to manage the economy and to promote sustained economic performance? How do we reconcile the realities of divided and shared authority with the economic and social needs of the country and its regions? Do we foresee economic challenges that will require us to modify the institutions and practices of federalism?

This Commission has concluded that the international environment will press ever closer on Canadians, increasing competition and creating major issues of adjustment for workers, firms, sectors, and regions. The emergence of an ever-wider range of claims for rights, many of them for economic entitlements, may introduce new constraints on the formation of economic policy.

Commissioners have also identified some basic policy directions which we believe essential to Canadian success in an interdependent world. We wish to secure Canada access to the world economy and to project Canadian interests more vigorously. We emphasize the overwhelming imperative of continuing adjustment, which will require flexibility, innovation and adaptability throughout the economy. Canadians, we believe, must rely on the incentives and disciplines of the market more fully than in the past, placing less weight on some forms of government intervention, especially in the allocation of scarce resources to productive tasks. Commissioners emphasize also the necessity for effective social policies to cushion the costs of adjustment for individuals and to equip Canadians better to take advantage of new opportunities.

Macro-economic policies are essential for providing a more stable framework within which individual enterprises can grow. Industrial policy must facilitate adjustment and adaptation, through responsive systems of education and training, financial and labour markets, and technological innovation. Canadians must moderate and contain the inevitable political pressures that have too often made industrial policy a process that obstructs, rather than facilitates, change. Thus the long-standing governmental roles of allocation and stabilization remain. So, too, does the traditional concern with distribution, not only among groups identified by class, age or sex, but also among those bounded by region and province. In a period of rapid change and uncertainty, the ways that Canadians share the burdens and benefits of adjustment are a fundamental political issue.

Newer responsibilities are likely to add to the importance of Canadian governments. International forces will require more effective articulation of Canadian national interests abroad. Meanwhile, we shall have to work harder to manage the domestic effects of international developments. Governments

will also face greater pressures to accommodate the social divisions attendant on the increased complexity of industrial society. In the face of a society at once more fragmented internally and more open internationally, Commissioners believe that governments ought to try to reinforce Canadians' sense of national community and of the mutual obligations that are the counterpart of the rights of citizenship.

Canadians can pursue these political, social and economic ends through our federal and provincial governments as they work individually in their own areas of jurisdiction and co-operatively in areas of co-ordinated action. Policy debates within federalism are simultaneously debates about what should be done and who should do it. Increasingly, too, they have become debates about how both orders of government can exercise their formal power in such a way as to increase policy coherence and reduce the costs of duplication of services.

Federalism and the Economy: The Record

How well equipped are we Canadians to adapt federalism to present and future challenges? We can find part of the answer in the record of the past. During the Depression and into the post-Second World War period, many observers considered that federalism was perhaps an obsolete institution, and that it was certainly an impediment to the ability of the state to respond to major new concerns in the modern industrial economy. The failure to cope with the massive dislocations of the Depression era seemed proof enough of the validity of their view.

First, critics argued, federalism emphasized territorially based communities and cultural differences; it seemed at odds with the modernizing trends then eroding the significance of such differences, stressing national values and cultures over local ones, and focusing political divisions on economic, rather than territorial, distinctions. Secondly, changes in economic organization, notably the development of large corporations operating nationally—and, to an ever greater extent, internationally—exceeded the capacity of small political units to ensure that they served the public interest. Thirdly, and most important, the new functions of government both in managing the economy and in building the welfare state seemed to require centralization. The new emphasis on stabilization policy, for example, implied to some analysts that fiscal powers should rest in the hands of one political authority, rather than be dispersed among many. The welfare state, with its ideal of national standards, seemed to imply a similar need for concentration; only the federal government could mobilize sufficient resources to overcome the disparities in the capacities of provincial governments to assume responsibilities in the welfare field. Only the federal government, many concluded, could act as an effective redistributor among persons and regions.

The experience of the 1930s convinced many Canadians that the rigidities of our federal system made government incapable of undertaking these new tasks. Much of the criticism was directed at the courts, which struck down innovative government efforts—such as Prime Minister R.B. Bennett's 1935 New Deal—to respond to the new needs. Others accused the provinces of

using federalism as a screen for the parochialism of leaders and the defence of vested interests. There were calls for fundamental constitutional revision to reform federalism.

And reform it we did, but in ways which were essentially faithful to the spirit of federalism and to the retention of regional identities and interests. The 1945 White Paper on Employment and Income¹ enunciated Ottawa's fundamental commitment to stabilization and demand management, and to an open international economic order; it established the federal government's dominant position in economic management. The relative centralization of post-war fiscal arrangements underlined this position. Through constitutional amendment—as with Unemployment Insurance in 1940 and Old Age Pensions in 1951, or through use of the spending power, as with Family Allowances, as well as through the development of shared-cost programs in health, social welfare and other fields, the federal government established its predominant role in the Canadian social security system. Through equalization and, later, through regional development programs, the federal government extended its responsibility for interregional redistribution.

Despite the growth of federal responsibilities, the provinces have also been principal actors in many areas of vital importance for economic management, such as education, health, social services, occupational health and safety, and labour/management relations. Provincial governments often acted imaginatively and effectively to meet new needs. They developed schools, universities and hospitals, and the infrastructure necessary to support the huge growth of cities and suburbs. Throughout much of the post-war period provincial revenues and expenditures grew at a much faster rate than those of the federal government. Thus governments grew at both levels.

Much of what we did involved a creative blending of federal initiative and financial support with provincial administration. This development allowed provincial governments considerable freedom to respond within the framework of broad conditions established by the federal government to maintain national standards. The shared-cost program was the hallmark of this co-operative federalism.

Economic management and administration of welfare affected the character of Canadian federalism. At the same time, the federal dimensions of the Canadian state powerfully influenced the ways in which we undertook these new tasks. We proved that with minimal formal change we could adapt the practice of federalism and achieve great flexibility in the use of the institutions we inherited.

In the 1960s, federal-provincial collaboration became more complex. We saw a continuation of federal initiatives—in regional development, in the Canada Pension Plan, enacted in 1965, and in medicare, initiated in 1968; all of these steps required provincial co-operation. Provinces, having acquired greater strength and self-confidence, bargained for bigger shares of fiscal resources and became more active in economic and social development. This was especially true of Quebec, where the reforms of the Quiet Revolution led the provincial government to organize many of the major social and economic functions of government around the provincial state. Quebec opted out of a number of shared-cost programs by means of the Established Programs

(Interim Arrangements) Act and established its own contributory pension plan.

By the 1970s, several developments had strained federal-provincial collaboration in economic and social management. The economic difficulties of those years called into question the effectiveness of post-Second World War techniques of economic management. The widespread consensus among citizens and governments about the policies began to erode. Much of this growing dissension expressed itself through rival economic policies; effective co-ordination became at once more important and more difficult to achieve. Provincial and federal governments began to search for new approaches, developing more comprehensive industrial policies and making more aggressive use of subsidies, procurement policies, public enterprise and other instruments.

These developments exacerbated regional divisions, muted during the Second World War and the early post-war period, which re-emerged forcefully in Quebec after 1960, and in the West after 1970. In the 1970s, there was renewed concern with the persistence of regional disparities, which had not disappeared with aggregate national growth in the late 1950s. Regional differences in economic matters reached their apex in the interregional and federal-provincial battles over energy. These shaped the pattern of conflict in the federation and foreshadowed much of the subsequent constitutional crisis.

Increased provincial activity in economic management, dubbed "province-building", was not a new phenomenon. Dynamic provincialism had emerged in the late nineteenth century, especially in the recessions of 1874–79 and 1886–96, when the promised benefits of Confederation were slow to materialize. As central Canada industrialized in the early twentieth century, many of the essential underpinnings of development—roads and urban services, for example—were provincial responsibilities. Provincial ownership of resources (extended to Alberta, Saskatchewan and Manitoba only in 1930) acted as a further basis for provincial activism: hydro-electric power developed under provincial ownership, and the provinces promoted the processing of resources. In the 1930s, as Canadians sought answers to the crisis of the Depression, several provinces experimented with new forms of economic policy and political organization. Social Credit in Alberta and the Co-operative Commonwealth Federation (CCF) in Saskatchewan were prime examples. These experiments produced conflicting programs and federal-provincial tensions, many of which ended up in the courts. In all of them, federal and provincial governments tended to advocate the interests of different groups and industries. All had involved both conflict over federal and provincial jurisdiction, and regional grievances about the exercise of federal powers.

The province building of the 1960s and 1970s had similar sources. Provincial governments sought to diversify their economies to mitigate the "boom-and-bust" cycles associated with economies based on world trade in natural resources, and to provide a wider range of economic opportunities for their inhabitants. During the Quiet Revolution, Québécois sought to use an activist provincial state to redress the historic under-representation of

francophones in the ownership and management of the provincial economy. The instruments that they used included *Hydro-Québec*, the *Caisse de dépôts et placements*, the *Société générale de financement*, and sweeping reforms to the education system. In many respects these efforts proved successful. The growth of the private sector which they encouraged later helped to create and sustain a more self-confident, aggressive, francophone private sector, which has become an innovative force in the Canadian economy.

In the West, notably in Alberta and Saskatchewan, shifting international terms of trade propelled the province-building drive. The new situation opened the possibility of bringing about a permanent shift in economic power, which would reduce the historic dependence of the West on external economic and political forces. Resource development complemented the historic sense of grievance. As in Quebec, province building in the West presupposed a high degree of confidence in the ability of citizens, through their governments, to alter their economic circumstances.

Province building, in both its political and economic dimensions, has been one of the most striking recent features of Canadian federalism. The reverse side of the coin has been a high level of federal-provincial conflict. Yet we should not exaggerate the significance of province building. Federal fiscal, monetary and tariff policies remained critical determinants of regional, as well as national, economic development. The federal government continued to be responsible for the great proportion of industrial development expenditures. Moreover, while all provinces became more active in economic development, only a few had either the inclination or the capacity to pursue ambitious development "strategies". For many provinces, regional development could be achieved only with extensive federal participation.

As a result of expansion of activity by both levels of government, interdependence among governments increased significantly. As each level responded to new concerns, using whatever constitutional levers were available, policies were intermingled. The situation became less compatible with the classic "watertight compartments" model of the division of powers. The contemporary categories within which we thought of economic and social policy were rarely congruent with the categories set out in the British North America Act.

Each order of government found that to achieve its goals it needed to take account of resources and instruments belonging to the other. The process of "intrusion" worked both ways. Policies at one level often spilled over to affect policies at the other. In addition, the expansion of government responsibilities for economic well-being sharpened the concern with "fairness" in the federal system because Canadians increasingly perceived distributional outcomes as the products of government policies, for which governments should be held accountable, rather than as the products of impersonal and uncontrollable market forces.

Federalism and Economic Management

The challenges that federalism produces for economic management arise at two levels. The first focuses on the regionalized nature of our economy and

society. Virtually every national economic problem is simultaneously a regional problem. Regional needs and interests will differ; policies well suited to the needs of one region may well be unsuitable for others. This would be true even if Canada were a unitary state. The regional constraints on federal economic policy making come not only from provincial governments, but also from the interests of regions as articulated by their representatives in the federal caucuses and the Cabinet.

Federal institutions themselves are also the source of economic management concerns: the interests and policies of the two orders of government, the division of powers between them, and the means through which they interact. Each government responds to a different set of constituencies, and thus is likely to articulate different economic concerns and different responses to them. The existence of ten provincial governments probably accentuates natural regional differences. This division tends to shape discussion of economic policy into a "regional" mould, minimizing or blurring issues defined in alternative ways.

Further complicating economic management is the fact that the two orders of government divide or share the levers or instruments for policy making. The Constitution Act, 1867 created this overlap, but the change in our views of economic management has accentuated the complexity of the situation. Both orders can claim a wide range of powers to justify policy initiatives. The federal government has the broadest range of economic powers: the power to levy both direct and indirect taxes; control over currency and banking, interprovincial and international trade and commerce, and interprovincial transportation; and the general powers under "Peace, Order, and good Government". But the courts have consistently refused to grant plenary economic powers to the federal government, and have instead sought to ensure the integrity of the provincial powers. The courts have ruled that broad interpretation of such ideas as "inherent national concern" and "general trade" would potentially embrace such broad scope that "provincial jurisdiction based on property and civil rights, regulation of the local social environment, and the administration of justice would not survive except in radically diminished form". The courts have been wary of permitting any "unbalancing extensions" to federal constitutional powers related to the economy.²

There are many alleged consequences of this state of affairs. Some say that federalism unduly complicates the process of policy making. Decision-making costs increase, as 11 sets of political authorities must co-ordinate their activities. The result in shared fields often seems to be immobility and indecisiveness; substantial policy change often seems to require a high degree of consensus or a massive exertion of political will. Citizens who seek responses and decisions from governments face a complex process and must put up with the duplication, uncertainties and delays of divided jurisdiction. Governments must devote considerable effort to working with one another, and may have greater difficulty responding to demands for consultation with interest groups whose interests are expressed in non-territorial terms. Federalism seems to be the enemy of policy that is planned, comprehensive, coherent, uniform and consistent.

This list of the costs of the federal system might lead to a prescription for sweeping centralization under the unifying hand of a strong central government. But Commissioners disagree that such a prescription is required. First, as the Rowell-Sirois Royal Commission on Dominion-Provincial Relations emphasized when it confronted the same question, it is contrary to the respect for provincial diversity that is inherent in federalism. Secondly, it is not only the existence of two orders of government that makes economic management complex; it is also the existence of underlying economic and social differences among regions, which would confront a unitary government as much as a federal one. Indeed, the centrifugal pressures associated with federalism are only one aspect of the larger centrifugalism in our political institutions. Even within the federal government, economic policy makers have different viewpoints, represented by different departments and agencies, each oriented to its own set of policy objectives. Hence there is little reason to assume that coherent planning would result from centralization alone.

Modern governments face an almost impossible range of demands. The “reach” of the state has in many ways outrun both our administrative and technical capacities, and our capacity to ensure democratic accountability. One approach to minimizing this problem is to try to limit the range of state interventions: to encourage the state to do less, but to do it better. Another is to recognize the advantages of sharing power and responsibilities among governments. No one government has to try to do everything, or to be responsible for everything. No one set of institutions has to be the focus for all the demands and expectations of citizens, or to try to resolve all the divisions and conflicts of society. In a country as diverse as Canada, centralization would be a recipe for paralysis.

Federalism, then, offers some major advantages for economic management: it is not simply a problem to be overcome as best we may; it is a strength. It provides greater stability by diffusing conflict and expectations throughout the system. It offers the opportunity to tailor economic policies to the specific needs and concerns of citizens and groups in different parts of the country. It minimizes the ever-present danger of the spectacular failure that can result when all the eggs are put in one basket. In a world of uncertainty and rapidly shifting economic challenges, where there is little understanding of what is likely to work best, it provides the opportunity for experiment and learning, for flexibility and inventiveness. It enhances sensitivity to different viewpoints and permits canvassing of multiple sources of information and intelligence in different settings. We can try different models for improving labour relations, for integrating education and training, for stimulating the flow of investment, and for diffusing technology. Indeed, economic development in federations is likely to exceed that in centralized states as a result of the beneficial effects of competition in the public sector.

Federal and Provincial Roles

These considerations shape Commissioners' views about improving on Canada's record of economic management in the federal system. The challenge is to get the greatest benefit from the diversity that federalism

encourages, while at the same time seeking to overcome or reduce the effect of the inevitable tensions and complexities that federalism engenders.

We must all recognize that both federal and provincial governments have legitimate and important functions in managing the economy, and that these functions are not identical: there is a real division of labour between the two orders of government, partly as a result of our constitutional tradition and partly as a result of our needs. The federal government must concern itself first and foremost with the needs of the whole national economy. This responsibility derives both from its political mandate as the only government elected by all Canadians and also from its powers and resources. The provincial governments, in turn, will focus on the needs of their own economies.

First, the federal government is, and must be, primarily responsible for Canada's presence in the international world, and for mediating between that world and domestic economic and political life. This requires a predominant federal role in the negotiation and ratification of treaties, in co-ordinating federal and provincial activities abroad, and in managing the domestic adjustments that follow from international activities. Secondly, the federal government must be the advocate and catalyst for the effective functioning of the economic union. It must minimize the effects of federal and provincial barriers to interprovincial trade, and maximize the benefits of the economic union. Thirdly, the federal government is primarily responsible for stabilization policy. Fourthly, the federal government is primarily responsible for redistribution between regions and provinces, between social and economic interests, and among individual citizens.

Thus the federal task is to provide a unified national framework for private economic activity and provincial initiatives to encourage economic development. The federal government also has an immediate and direct role in the lives of citizens. In its various functions, the federal government must be sensitive to the effects of its policies on various regions, and to the necessity of balancing and reconciling regional preferences. The forces demanding change may be national in character, or even global, but individual citizens, living in particular places and conscious of their own needs and concerns, must cope with the effects of change, and the federal government must help them to do so.

Commissioners' view does not imply that in all these areas the federal government need have a monopoly. We use advisedly such words as "predominant". In most of these areas, provinces, too, have a role. To the extent that international obligations require implementation within areas of provincial jurisdiction, provinces must concern themselves with the international domain. The very scale of provincial taxing and spending, along with the interdependence of federal and provincial fiscal systems, means that they must be involved in stabilization policy. Provincial preferences with respect to social policy supplement and modify federal activity in redistribution. And since legitimate provincial activities in response to local preferences account for many of the provincially induced barriers to trade, the provinces must participate in negotiating and implementing codes of conduct concerning the economic union.

Similarly, the provinces in their own right have important functions relating to economic development. Their political base requires them to concern themselves with the economic well-being of their region, as do the powers allocated to them under section 92 and other parts of the Constitution Act, 1867. Many of these powers and responsibilities appear vital to satisfactory economic performance in the future.

Just as federal activity in management of the economy does not preclude provincial involvement, so there is, and must be, an awareness of the national interest in the conduct of many of these provincial responsibilities. The federal government can provide this element in a variety of ways. The courts could broaden the general economic powers already allocated to the federal government, notably trade and commerce, "Peace, Order, and good Government", and the power to enact criminal law. Canadian courts have not followed the American example and defined these powers as plenary ones, which would confine provincial legislation to those areas in which the federal government has chosen not to act. In Canada the courts have conditioned, restricted or frustrated sweeping assertions of federal economic powers. Constitutional amendment is an alternative means to extend the federal role, as occurred with unemployment insurance in 1940. But, as we have seen, we have used this device rarely, especially in the field of economic powers.

The federal government can use co-operative action for the same purpose, especially through its spending power. It can set up various contractual arrangements, such as purchase of specific "places" for training purposes in provincial technical colleges. The network of such arrangements is now immense.

Finally, the federal government, through its own activities within its own jurisdiction, can set a tone, establish priorities and promote new ideas or approaches. Thus highly visible consultation, the conduct of research and publicity on an issue such as forest management, and use of the public forum provided by a parliamentary committee can provide economic leadership that alters the climate of ideas within which both orders of government act. The federal government can act as catalyst and innovator without designing and delivering programs.

Transcending all these considerations of powers and mechanisms is the need for a common sense among all Canadians about what we want governments to do. If, through the recommendations that Commissioners have made in previous chapters, we have been able to clarify that point, the requisite adaptations of the institutions of federalism should follow. The words of Samuel Beer, a leading student of American federalism, apply also to Canada: "The lesson of the future is that role follows purpose. If we are to design a new federalism, we must first restore our sense of national direction."³

Within this broad conception of a division of responsibilities among governments, Commissioners approach specific issues from a functional problem-oriented perspective. We believe that effective economic management is, in general, much more than a matter of making the appropriate division of constitutional authority. Contemporary decision making requires the co-operation of numerous actors, both public and private. No one can

force that co-operation except within very narrow limits. Hence we must have institutions that reflect diverse viewpoints, give them access to the decision-making process, and work out accommodations among them.

Commissioners do not minimize the realities of federal-provincial conflict over economic management. We believe, however, that it is essential to qualify interpretations of federalism and economic management that emphasize conflicts. While some governments have been more interventionist and others less so, all are part of, and responsive to, the same broad domestic and international climate. There are a great many areas of common interest. The performance of the national economy is essential to the performance of each provincial economy. Each province, therefore, has a positive interest in co-operating with the federal government in order to manage overall growth successfully. At the same time, overall national development depends on the economic performance of the provinces, for the provinces are essential participants in the process of national economic growth.

We can also learn from experience. By the early 1980s, it had become clear to all participants that the hostility and confrontation over energy and other issues had gone too far. The resulting climate of uncertainty and confusion was harming investment and confidence. Governments have reacted, and now appear willing to seek more co-operative relationships in economic management.

Economic Management for the Future

In previous chapters, this Commission has spelled out its goals for economic and social policy. It is time to recapitulate these objectives and to show how we propose to achieve them within the context of the Canadian federal system. How will federalism affect our ability to achieve these goals? How, in turn, might their achievement affect our practice of federalism in the future? In some areas we shall suggest changes in the operation of the federal system so as better to achieve the objectives we seek; in a few others we shall temper and modify the objectives in the light of values and concerns intrinsic to Canada's federal and regional character.

Federalism and Canada's International Stance

There is no alternative to making our way in the open and competitive international environment, but the necessity of doing so also presents us with unparalleled opportunities. Specifically, Commissioners have urged Canadians to seek freer trade with the United States and to continue to extend multilateral free trade. More generally, we have urged Canadians to accept a more activist international stance on a wide range of issues.

Does the structure of powers within Canadian federalism inhibit or impede our ability to achieve these objectives? Does it affect our ability to make the necessary adaptations and adjustments at home? To answer these questions we must explore some features of the division of powers with respect to foreign affairs, especially within the economic sphere. We do indeed have

some serious lacks in our institutional armoury which, if not supplied, may seriously weaken our effectiveness.

Section 132 of the Constitution Act, 1867 dealt with the management of Canada's external relations at Confederation:

The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

The treaty-making power itself remained with the British Parliament at Westminster. This arrangement reflected the way that most Canadians saw themselves at the time: as citizens of the wider British Empire, rather than as possessors of a distinctive Canadian nationality. As a result, our Constitution included no clearly considered treaty power compatible with the existence of a federal state.

As Canada matured as an independent country, it became increasingly plain that diplomatic representation by another country, however friendly or experienced, could not secure Canadian interests. Our participation in the First World War showed us and our Allies that Canada was a distinct political community, and that we Canadians should be able to conduct external relations for ourselves. The aspiration for independence became a legal reality with passage of the Statute of Westminster in 1931.

From that point on, Canada was a sovereign state for purposes of international law, and the Government of Canada had the right to represent the nation on the international stage. Federal leaders believed that this authority extended to the negotiation and implementation of treaties. In the *Labour Conventions Case* (1937), however, the Judicial Committee of the Privy Council, then Canada's highest court, held that the federal power to implement treaties referred only to those matters that fell within federal jurisdiction under section 91 of the Constitution Act, 1867. The federal mandate did not extend to the acceptance or enforcement of obligations within provincial jurisdiction under section 92. Thus the division of powers prevented the Parliament of Canada from enacting a law to carry out an international treaty on a matter within provincial competence.

In the intervening half-century, Canada has adopted an increasingly active role in the international scene, entering into a large number of treaties covering a wide range of subjects. Nonetheless, recognizing the limitations on its ability to implement at home some aspects of undertakings to which it might commit itself abroad, the Government of Canada has been hesitant to assume international obligations that require provincial legislative action.

As long as international trade relations focused primarily on the tariff, a matter clearly under federal jurisdiction, the *Labour Conventions Case* did not prove a major constraint on Canadian participation in forums such as the General Agreement on Tariffs and Trade (GATT). However, as these international discussions have come to focus more and more on non-tariff barriers such as subsidies, discriminatory purchasing policies, and product standards designed to exclude competition, the constraint has become a great

deal more serious. Many of the practices addressed in these discussions fall within provincial jurisdiction.

International law largely assumes the existence of unitary sovereign states; it has little sympathy with, or understanding of, the sharing of power within those states. A number of international agreements contain "federal state" clauses, in which the federal state commits itself to its best efforts to secure compliance from sub-national governments, while the other states involved acknowledge the limits imposed by federal constitutions. Still, such clauses clearly do not solve the problem. Unless the negotiating parties in international negotiations can fully commit their own countries to abide by the agreements signed, they will have only limited ability to secure concessions. Informal undertakings made by provinces or states to comply with negotiated international agreements will not solve the problem. The Tokyo Round of the GATT negotiations saw discussion of the pricing policies of Canadian provinces on imported wine and spirits. Ontario signed a "statement of intent" committing itself to a change in policies, but under pressure from domestic producers, it soon found ways to circumvent the agreement, claiming that the statement of intent was not legally enforceable.

This constitutional gap in the treaty-making power promises to cause increasing problems for Canada in the future, significantly hampering our ability to work out effective agreements and constraining our full participation in the international community. In Commissioners' view, the federal government is, and must remain, the principal representative of Canada abroad. It is the Government of Canada that must negotiate treaties. Nevertheless, this broad federal power must recognize the reality of the federal division of powers within the Constitution. This is why Commissioners reject the notion of granting unrestricted authority to the federal government to conclude and enforce implementation of any treaties that contain provisions lying outside federal jurisdiction.

We must seek a procedure whereby treaties, once concluded, are binding and enforceable on both federal and provincial authorities within Canada. That necessity, in turn, requires the involvement of provincial governments. We must distinguish two stages in this process: negotiation and implementation. Again, Commissioners turn to trade for an example. During the Tokyo Round negotiations, there emerged a very successful procedure to involve provinces in the adoption of Canada's negotiating position. This procedure permitted formulation of trade-offs among the complex interests of different regions. The federal negotiators became fully aware of provincial concerns, and provincial governments became more familiar with the larger issues. Canadian negotiators could then carry on discussions with representatives of other countries without fear of provoking conflict at home.

Commissioners believe, as we said in Part II, that a consultation procedure of this type should become a regular feature of Canadian international negotiations, especially those pertaining to free trade with the United States. If provincial consultation at the negotiating stage works successfully, it should ensure that any resulting treaty will receive provincial support. Federal-provincial consultation should also extend to co-ordination of treaty implementation.

Provincial representatives may appropriately be members of the Canadian bargaining team itself in some instances, especially when the main issues fall under provincial jurisdiction. It is vital, however, that Canada be able to speak with a single voice in any discussions, and therefore that domestic disagreements be resolved early. Commissioners believe that informal consultation will be sufficient for the process that we have set out for movement toward freer trade with the United States. It is unnecessary to complicate this process with a simultaneous debate about the Constitution and the division of powers with respect to treaty-making, ratification and implementation.

For the longer run, however, Commissioners believe it essential to give serious consideration to resolving the constitutional situation. International forces will press even harder against our institutional capacities and will challenge our constitutional values. In Commissioners' discussion of national institutions, we noted the necessity of helping Parliament to hold the executive accountable for its conduct of international affairs and, accordingly, recommended that the practice of parliamentary ratification of international treaties be securely established.

Commissioners now extend this principle to encompass federalism. In situations where a proposed treaty imposes obligations on provinces that lie within areas of provincial jurisdiction, provincial legislatures should approve the relevant sections. Two possible mechanisms suggest themselves; a general constitutional amendment concerning treaty ratification could embody either one. On the one hand, provinces could accede to treaty provisions individually. The relevant provisions would come into effect in a particular province only when ratified by its legislature. This method has a serious flaw: an international agreement made by Canadian negotiators might have effect in some provinces but not in others. The result would almost certainly prove confusing and unacceptable, and it could mean that a small number of provinces could vitiate the benefits of a particular arrangement for the whole country.

On the other hand, as Commissioners set out in Part II, the constitutional amendment formula could come into play. 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 the Canadian population. Some observers might object that this solution might involve an undesirable restriction on the federal government's ability to negotiate for Canada abroad. Commissioners would reply, however, that the federal government does not now have the power to implement provisions of treaties within provincial jurisdiction, and that provincial agreement to an amendment giving unrestricted authority in this field to the Government of Canada is virtually inconceivable. We note, also, that this formal recognition of the provincial role in ratification carries with it the benefit that it can facilitate the enforcement of a treaty. Once implemented in this way, commitments made by the central government would be the law of Canada. The provinces would be under obligation to adhere to the terms of such agreements and could be challenged at law if they did not. We believe that

the procedure represents the best compromise between the imperative of effective participation in international discussions and the imperative of respecting the federal Constitution.

There is further uncertainty surrounding the treaty-making power. Can provinces themselves conduct international activities? At least one province has argued that provinces have the same legal power to conclude treaties under section 92 of the Constitution Act, 1867 as the federal government has under section 91. The argument is far from conclusive. Nevertheless, in the past 25 years, provincial activities outside Canada have proliferated, ranging from formal and informal agreements, to representation abroad, to membership in international organizations. For a number of years Quebec has had a Department of External Trade, and it recently split its Ministry of Intergovernmental Affairs into a Canadian section and a Ministry of International Relations. In February 1985, British Columbia created a Ministry of International Trade and Development, and international trade matters are an important focus of ministries of industry, development and trade in several other provinces.

Provincial international activities take many forms. Perhaps the most contentious have involved Quebec's desire to establish an international presence in accordance with its perception of itself as a distinct national community and the primary representative of francophones in Canada. In the 1960s and 1970s, a large number of well-publicized disputes took place in which Quebec sought agreements with countries such as France and Belgium and representation on organizations related to *la francophonie*. The federal government took the position that all such activities must operate under the federal umbrella; Quebec took the position that it had its own independent authority to conclude agreements.

Commissioners believe that it is possible to reconcile these competing positions. One model that might produce reconciliation takes the form of successive agreements between the government of Quebec and the federal government about immigration. Through these agreements, Quebec has received a direct voice in the selection of immigrants, in recognition of its special concern with the linguistic make-up of its population. Under this arrangement, Quebec immigration officials have joined Canadian immigration offices abroad. At the same time, the federal government has retained ultimate authority for selection of immigrants, for establishing levels, and for undertaking similar responsibilities. It should be possible to work out agreements in other fields, whereby, on matters affecting the French language, francophone culture and education, and civil law, Quebec would have the right to conduct discussions with other countries, to acquire direct representation in some international organizations, and to supply members to Canadian delegations.

Other provincial activities abroad pose less difficult political problems. Most fall into two categories: trade promotion and the management of relations with contiguous American states. The tradition of provincial offices abroad dates back to 1868, when Ontario and New Brunswick set up offices in London. Today, provincial governments maintain about 40 offices abroad,

most created since the 1960s. About half of these offices are in the United States, though no province has yet opened an office in Washington. They primarily promote trade and seek investment, though on occasion, they have had more political responsibilities, as when they participated in lobbying in London concerning the federal constitutional initiative of 1980. In addition, provincial governments frequently conduct trade missions abroad.

Such promotional activities have some potential for damaging Canadian interests. They can carry provincial competition for markets and investment into the international arena, although the regional specialization of the Canadian economy is likely to limit this result. They also permit Canada to project a discordant voice abroad, thus undermining our bargaining power. In this Commission's view, however, trade promotion abroad is a natural extension of provincial economic responsibilities at home. As long as the provinces are merely promoting themselves, they are little threat to the integrity of Canada's national interest. Indeed, there is much room for greater federal-provincial and interprovincial co-operation here; the regional expertise of provincial governments can support federal government efforts, and provinces can use the international skills and resources of Canadian trade officials. Interprovincial co-operation is also possible. At this point, then, Commissioners recommend that the federal government monitor and keep informed of provincial activity, without exercising direct control. Responsibility for international trade gives the federal government a clear mandate to regulate and, if necessary, to override external economic activities, undertaken by the provinces, which involve formal agreements with other states or the creation of state-to-state trading relationships.

Finally, the long border between Canada and the United States creates a host of relationships between American states and Canadian provinces. A 1974 study⁴ by the State Department of the United States found 766 existing state-provincial agreements or understandings. A study published in 1978⁵ found that British Columbia was involved in 649 different interactions with both federal and state governments in the United States. Meetings between Premiers and state Governors have become regular events, among them such gatherings as the annual Conference of Eastern Premiers and New England State Governors. Recently, states bordering on the Great Lakes agreed with Quebec and Ontario concerning water diversion from the Great Lakes Basin. Most such interactions involve limited co-operation on mutual problems and pose few questions about Canadian sovereignty. Commissioners are of the opinion, however, that it should be the responsibility of provinces to inform the federal Department of External Affairs about any such agreements, and that the Department should establish procedures for monitoring such undertakings.

Domestic Economic Management

Earlier in this Report Commissioners emphasized the greatly expanded role that government has performed since the end of the Second World War, a development common to all major industrialized countries in the Western world. While many taxpayers appear to consider that government has

overextended itself, few hark back to the 19th century as the "good old days". Today we have a mixed economy in which the invisible hand of the market is still very powerful; but it is not the only hand. Governments do help to manage or give direction to economic activity although the free-enterprise system is self-regulating to a considerable extent.

Continued specialization in economic activity, with its counterpart of increasing interdependence on both a national and a global scale, has meant that decision making has become an intricate and complex process in the private and public sectors. Entanglement and overlapping activities are inevitable; there can be no turning back of the clock.

A central theme of this Report is that relative to current practice, governments should rely more on market forces and less on intervention designed either to frustrate or to anticipate those forces. Commissioners' recommendation for extending the process of international trade liberalization reflects this theme. So, too, does our proposed industrial policy, concerning which we indicate that a targeted approach is unlikely to be more effective than a market-oriented set of broad framework policies. This theme of market competition does not, however, offer a panacea for management of the economy. Governments must still set the rules of the game, both domestically and internationally. Specialization and interdependence will no doubt intensify with technological change, "networking" all economic players, both private and public, into a tighter and tighter web.

This development need not be at all ominous, as long as well-developed lines of communication are in use, and as long as the competition for Canada's human, capital and natural resources results in their employment in highly valued activities. Nevertheless, governments face some very difficult trade-offs. Regional diversity in Canada, for example, makes consensus building an extremely protracted process. Sectors of the economy have regional dimensions which appear to pull in opposite directions, towards protectionism, on the one hand, and freer trade on the other. The federal government, in forging national policies, must recognize these divergent regional interests. At the same time, it must give consistent policy signals to the larger international community, on which 30 per cent of Canada's gross national product depends.

Through their tax, expenditure and regulatory policies and programs, governments in Canada influence the growth in productivity of the whole economy. Various policy and program combinations can affect in different ways productivity growth and, hence, the standard of living of all Canadians. Furthermore, the actions of government influence the competitiveness of domestic industry to a considerable degree.

These observations about the role of government apply in all countries; our particular task is to ensure that Canadian governments function at least as effectively as governments in other countries. It is vital that public administration in Canada be conducted in a highly competent fashion. We Canadians should therefore pursue our broad societal goals in ways that, consistent with those goals, maximize the returns from our human, capital and natural resources.

In this context, our federal form of government poses both advantages and disadvantages for managing the domestic economy. The allocation of constitutional responsibilities between two distinct orders of government lets Canadians match publicly provided goods and services with the preferences of constituent groups across the country. Federalism itself is testimony to the fact that in many instances, we do not need national consensus in order to provide public goods and services. Our educational systems need not, and should not, be uniform, for community views vary greatly across Canada. By contrast, however, there are occasions when national consensus is necessary. National defence provides one obvious example, but some dimensions of managing our domestic economy also require national consensus. Clearly, our position on trade cannot be split in such a way as to respect the protectionist leanings of some Canadians and the free-trade leanings of others. If we are to move toward free-trade on a multilateral or a bilateral basis, a common purpose must prevail.

The advocates of federalism, among whom we Commissioners count ourselves, champion federalism as the optimal form of government: a system that provides more checks and balances against monolithic government than unitary states. Dividing constitutional responsibilities between two orders of government highlights the excesses or inadequacies of any one government. Federalism, in short, is a competitive system of government, which defies tight compartmentalization of constitutional responsibilities.

It is this very competition, however, that many see as being carried to unproductive extremes. Bidding between governments to direct private investment in favour of selected constituents can locate industry where the need is greatest, thereby realizing the broad social benefits associated with private investment. Such competition, however, can go to the point where, through skilful demands of private investors, a firm or group of firms appropriates the entire benefit. Moreover, bidding and competition between federal and provincial governments can fragment an industry, leading to smaller scales of operation and higher costs. Of more general concern, such competition can fracture the Canadian common market through creating barriers to the free movement of goods, people and capital.

These advantages and disadvantages of our federal form of government call for institutional mechanisms tailored to the policy issue at hand. There is no panacea, such as some standard model of co-ordination and co-operation between 11 governments. Co-ordination and co-operation carry their own costs, and it is not obvious that the anticipated benefits always outweigh these costs. This Commission suggests a case-by-case policy approach, beginning with macro-economic demand management and progressing through the micro-level decisions of resource allocation.

Stabilization Policies and High Employment

To counter the vagaries of the business cycle, governments employ demand-management policies designed either to stimulate or to moderate overall aggregate demand for goods and services. The first blush of enthusiasm for Keynes-inspired demand-management policies, however, has gradually faded.

There is now a much greater appreciation than there was during the immediate post-Second World War period of the difficulty of forecasting events and the lags involved in realizing the expected results from policy changes. In addition, economists now recognize public expectations as integral to the economic system, thus challenging the old notion of a trade-off between employment and inflation. Further, the interdependence of national economies and the rapidity of capital movements seriously constrain the latitude available to a small economy like Canada's to counter external "shocks". Independence in domestic policy making is a more modest privilege than most such states/economies appear willing to accept.

In Part III of this Report, Commissioners indicated that the makers of demand-management policies ought to consider the medium to the long term, using discretionary changes in policy only in periods of serious and prolonged recession or "overheating" of the economy. We indicated, too, that structural and institutional features of our economy meant that high levels of unemployment (in the 6.5 to 8 per cent range) were an inevitable adjunct of avoiding inflationary pressures. Until we redress these structural and institutional features by such means as reforming the Unemployment Insurance system and the functioning of labour markets, we should not use demand-management policies to push unemployment below rates of 6.5 to 8 per cent. Control of inflation, we pointed out, is an essential part of good economic management.

In Part III, we outlined several measures for cushioning the employment consequences of the business cycle in order to contribute to the goal of higher employment while maintaining price stability. Wage and price controls and other forms of wage contracts, including "gain sharing", were among the measures we suggested. In some senses these measures are possible substitutes for traditional demand-management policies, but they are also complements. Indeed, wage and price controls are likely to be effective only if demand-management policies are acting in tandem to restrain the economy. Discretionary demand-management policies are less important if gain sharing is widespread, for it is easier to maintain production and employment in periods of depressed markets.

What are the implications of these findings for the constitutional division of powers? And what is the significance of the institutional mechanisms for co-ordination and co-operation between federal and provincial governments? The response depends on the particular instrument employed to obtain stabilization and higher employment.

Fiscal Policy

Its critics often view federalism as fracturing the decision-making system, with the result that governments move in different directions. For many years the exercise of fiscal policy seemed to serve as an illustration of this premise. The provinces, by increasing taxes or cutting expenditures, could frustrate any attempts of the federal government to create more spending, either by increasing federal spending or by reducing taxes. Alternatively, provincial tax cuts or expenditure increases could frustrate attempts by the federal

government to restrain an overheated economy. The potential for this counter-productive behaviour has clearly increased since 1945, with the growth of provincial governments relative to the federal government. Whereas the federal government accounted for 58 per cent of total government spending in 1950, it accounted for only 49 per cent in 1980. The change in the percentage shares is even greater if we express them net of intergovernmental transfers paid to other levels of government.

Paralleling the faster growth of provincial expenditures, provincial tax revenues have also grown more rapidly in recent decades. Retail sales tax is important to most provinces, and some have, on occasion, lowered rates to increase consumer demand in periods of recession. Ontario and Quebec have both used variations in sales-tax rates to help particular sectors of their economies. In 1978, the federal government, in an effort to provide some short-term stimulus, promised to reimburse provincial governments if they undertook to cut their retail sales taxes. In response, Quebec cut its sales tax more heavily than requested, but only for selective products prominent in Quebec's industrial output, initiating federal-provincial conflict which limited the effectiveness of the project.

Despite the potential for divergent fiscal policies, and instances, as in 1978, of poorly co-ordinated fiscal policy, it is not at all clear that our federal form of government hampers effective management of demand. The two orders of government have generally harmonized their tax bases, and federal influence over private-sector spending remains strong through the structure and level of taxation.

Federal and provincial governments do not formally co-ordinate expenditure levels, but this has not proved to be a major problem for federal fiscal policy. Ministers of Finance from the eleven governments usually meet at least once a year to consult on their budget plans, and the Continuing Committee of Officials on Fiscal and Economic Matters, established in 1955, has further facilitated communication. The federal government, in formulating its own fiscal policy, is thus able to give some consideration to the activities of the provincial governments. The size of federal expenditures, although diminishing as a share of total public outlays, has not declined in relation to the gross national product, and its potential for affecting the level of total demand in the economy has not significantly eroded.

Thus Commissioners do not see federalism as a major impediment to the continued effectiveness of federal fiscal policy. Accordingly, our recommendations are relatively small in scale. We believe that consultation among Finance Ministers has proved useful, and we recommend formal recognition of this process, entailing designated times and specified procedures. There should be closer co-ordination of the timing of federal and provincial budgets, in order to reduce uncertainty during the period when federal and provincial governments are formulating their budgets. These more closely co-ordinated budgets should affect the frequency and timing of the formal meetings of the Ministers of Finance. Finally, we recommend ways to help maintain the current level of harmony in the tax base.