Federal Spending Power

Parliament has authority to spend as it chooses moneys collected pursuant to its taxing and regulatory powers (the "federal spending power"). The authority arises from Parliament's power to legislate in relation to "the Public Debt and Property" (*Constitution Act, 1867*, s. 91-1A). Pursuant to the 'federal spending power', Parliament may make gifts to provinces or individuals. If Parliament chooses, it may attach conditions to its gifts. By means of conditional gifts, Parliament may make it very tempting for provinces to follow a particular course of action. This use of the 'federal spending power' has been ruled constitutionally valid by the courts.

Notwithstanding its validity, political complaint has been made that the federal spending power allows Parliament to invade jurisdictions reserved exclusively to the provinces. In consequence, proposals to limit the federal spending power by constitutional amendment wereincluded in both the Meech Lake and Charlottetown Accords (see Meech Lake Accord and Charlottetown Accord). Meech Lake would have disciplined the federal spending power by requiring the Government of Canada to provide "reasonable compensation" to any province that opted not to participate in any new federal shared cost program if the province carried on a program that was "compatible with the national objectives." Charlottetown renewed the failed Meech Lake proposal, and appended a procedure to add detail. Charlottetown committed the federal and provincial governments to establish a framework to govern federal expenditures in areas of exclusive provincial jurisdiction. This proposal expired with the failure of Charlottetown.

In 1986, the federal government took unilateral steps at the administrative level to implement the understandings reached during the Meech Lake and Charlottetown processes. The Speech from the Throne in February 1996 committed that the Government of Canada "will not use its spending power to create new shared-cost programs in areas of exclusive provincial jurisdiction without the consent of a majority of the provinces. Any new program will be designed so that non-participating provinces will be compensated, provided they establish equivalent or comparable initiatives." This commitment requires provincial consent to use of the federal spending power to establish shared-cost programs in areas of exclusive provincial jurisdiction. It also allows provinces to opt out of participating in new shared-cost programs, to establish their own comparable programs and to receive compensation from the federal government for the associated costs.