



# Canada: The State of the Federation 1996

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## PREFACE

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This latest edition of *Canada: The State of the Federation* appears at a time of major change both for the federation and for the Institute of Intergovernmental Relations.

The results of the Quebec referendum in the fall of 1995 demonstrated that, while the federation remains intact, calls for fundamental change continue, especially but not exclusively from residents of the province of Quebec. Notwithstanding a general fatigue and frustration when it comes to "national unity," elites and citizens have been thrown into another round of debate about the future architecture of the federation and of Canada.

The Institute of Intergovernmental Relations at Queen's University has played an important role in informing the seemingly endless debate about the nature and evolution of Canadian federalism and as is true for the federation, the Institute has undergone significant change over the past year.

This edition of *Canada: The State of the Federation* marks the end of Douglas Brown's direct involvement with the series and with the Institute. He served as Executive Director of the Institute from 1992 to 1996, and has served ably as co-editor of the last several volumes in the series. We wish him well in his future endeavours. In January 1997 Harvey Lazar becomes the Executive Director. In 1996 the Institute also formally became part of the School of Policy Studies.

This edition of *Canada: The State of the Federation*, like its predecessor, presents a set of independent analyses commissioned by the editors. It is becoming increasingly difficult to produce collective efforts like this one as we are all asked to do more with less, and I want to thank all of the authors for their cooperation and hard work. Each chapter has been read by at least two independent readers and I would like to thank these readers for their important contribution. Once again the preparation of this collection has been a team effort. Thanks go to Katherine Sharf who copy edited most of the manuscript, to Mary Kennedy and Patti Candido at the Institute, to Valerie Jarus, Marilyn Banting, and Mark Howes in the Desktop Publishing Unit of the School of Policy Studies, as well as to Scott Nelson for cover design and to Micheline Cournoyer and Richard Nimjean for assistance with translation.

Patrick C. Fafard  
November 1996

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# I

## Introduction

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## Of Chess and Heart Attacks: The State of the Federation 1996

*Patrick C. Fafard*

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*Deux métaphores décrivent bien l'état de la fédération canadienne en 1996. D'une part, le Canada est comme la victime d'une crise cardiaque qui reçoit des conseils divergents au sujet de la nature du problème et des soins qu'il faut y apporter. Pour le Canada, une telle crise cardiaque correspond au plus récent référendum au Québec: les canadiens reçoivent des messages contradictoires au sujet du sens à donner aux résultats du référendum de même que de la réponse appropriée pour ces résultats. Mais l'état actuel de la fédération se caractérise par bien plus que les séquelles du référendum. Ce chapitre suggère une deuxième métaphore, celle du jeu d'échecs multidimensionnel. Le jeu d'échecs possède au moins cinq dimensions qui sont: les changements constitutionnel et institutionnel officiels; les changements non-constitutionnels dans les domaines tels que les politiques sociale et environnementale; les événements au Québec; les événements dans les autres provinces; et finalement, la gestion ou non-gestion quotidienne de la fédération. Ces catégories servent à résumer l'état de la fédération canadienne en 1996 et à présenter les chapitres subséquents de ce volume.*

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### OF CHESS AND HEART ATTACKS

Some of our shared assumptions about Canadian political life were fundamentally challenged on the night of 30 October 1995. Not only did Canadians witness a second referendum that might have resulted in the independence of Quebec (with unknown consequences for the rest of Canada), but the tenor of the debate both before and after the vote suggests that our collective understanding of Canada and Quebec may have changed. Not only have Canadians been forced to contemplate the secession of Quebec, voices can now be heard suggesting that Quebec independence may be inevitable, and perhaps may even be a superior alternative to the status quo. Other Canadians have reacted to the referendum result by becoming less rather than more charitable to the

traditional demands of Quebec. Still others call for a significant degree of decentralization of authority from Ottawa to provincial governments.

Metaphorically, Canada is similar to a middle-aged man or woman who — having suffered a major, but non-fatal heart attack — understands that things cannot remain the same and that significant change is required. However, to extend the metaphor, the victim is receiving conflicting advice on the significance of the heart attack and on what to do next. In the case of the federation, we continue to debate the nature of the problem and, before this is resolved, we move on to debate, and in some cases implement, changes we hope will correctly and adequately respond to the results of the referendum. Yet several questions remain unresolved. For example, even though it is predominant, is a focus on Quebec and a future referendum the right way of thinking about the “problem” of national “unity”? Alternatively, are the changes occurring fast enough and are they deep enough to avoid a third referendum? In other words, is the patient so far gone, is the capacity for renewal so inadequate, that Quebec independence is indeed inevitable?

To answer these kinds of questions we need to step back and consider a broad range of issues. A full assessment of the state of the federation requires at least some consideration of the following: the ongoing debates about the place of Quebec in Canada, the challenge of aboriginal self-government, the best way to address the problems of debts and deficits, the future of social programs and medicare, and a myriad of other challenges to the status quo. Moreover, these debates are inextricably linked to one another and to a host of trends such as globalization, the aging of the population, environmental degradation, etc. We are, in effect, witnessing and participating in an elaborate, multidimensional game of chess with individual games being played at several levels simultaneously. In this chess game, the individual chess boards are not separate from each other. On the contrary, what happens at one level has a significant impact on what happens at other, or all levels. The different levels and dimensions of the chess game that is contemporary Canadian politics are similarly connected.<sup>1</sup>

So what exactly is happening at each of the levels of the chess game? For the purposes of this chapter, I have isolated five levels:

- formal constitutional change and major institutional change including the real possibility of a future referendum in which the sovereignty option is victorious (major system change);
- non-constitutional change to the federation in areas such as environmental policy, health care, and labour-market policy (major system change);
- events within Quebec and their implications for the rest of Canada;
- events in other provinces including the growing assertiveness of western provinces and Ontario, the evolution of aboriginal self-government

in British Columbia, and the efforts by the provinces to craft an alternative vision of the federation where power would move from Ottawa to the provinces acting collectively; and

- the ongoing day-to-day management or non-management of the federation as Ottawa and the provinces engage in the “normal” routine of intergovernmental relations (ongoing system maintenance).<sup>2</sup>

Taken together, the chapters in *Canada: The State of the Federation 1996*, cover much of what is happening at each of the levels of the chess game. These chapters constitute a statement, albeit incomplete, of the complex and necessarily transitional state of the Canadian federation in 1996. This chapter introduces the other chapters in the volume, situates them in relationship to each other, and points to issues, events, and debates that have occurred over the past year which may add to the analysis presented in the individual chapters. The overall goal of this opening chapter is to explore the questions identified at the outset: Can the nature of the Canadian federal bargain be amended sufficiently to preclude the possibility of yet another referendum on the independence of Quebec, are these amendments being introduced fast enough or, alternatively, have things reached the point where some form of secession is inevitable?<sup>3</sup>

#### CONSTITUTIONAL AND INSTITUTIONAL CHANGE: PARTIAL, SPONTANEOUS AND IMPOSED

At the first level of the chess game we have actions and debates which focus on the constitution and on the institutional architecture of Canada and Quebec. Since the referendum in October 1995 we have witnessed sustained activity in this area by governments, by academics and, perhaps most significantly, by citizens. For example, the federal government passed two resolutions in November 1995 which sought to recognize Quebec as a distinct society and to provide for a system of regional vetoes to constitutional change. Similarly, there has been a seemingly endless stream of reports and studies suggesting constitutional and non-constitutional change in yet another effort to address “the Quebec question” as well as the many other issues of identity, citizenship, federalism, and national reconciliation. There is also a growing willingness to contemplate the implications of a clear “yes” vote in a future referendum. This arises from the extraordinarily close result of the Quebec referendum in October 1995 as well as the apparent lack of preparedness on the part of the federal government (and indeed Canadians generally) to deal with a vote for sovereignty.

In this volume, formal constitutional change and major institutional change are considered directly in two chapters, the first by Douglas Brown, the second by John Trent. However, the possibility of major system change is a

backdrop to all of the chapters in the volume. The referendum result of October 1995 has served to underline the fact that Quebec independence remains a very real possibility. Thus, whether we like it or not, the relationship between Quebec and the rest of Canada continues to influence strongly almost all other debates, be they about aboriginal land claims, federal-provincial management of cultural policy, or the future of social programs. However, the closeness of the vote in the most recent referendum and the tenor of the debate both before and after (e.g., talk of partition) has caused a fundamental shift in relations between Quebec and the rest of Canada. As I argued at the outset, the basic rules that govern political life in Canada have changed.

In a chapter appropriately entitled "Thinking the Unthinkable," Doug Brown carefully analyzes the ongoing scholarly debate as to the aftermath of a strong "yes" vote in a future Quebec referendum on sovereignty. He organizes the multiple threads of the debate into four strands: first, the contested legitimacy of the referendum and the right of Quebec to secede; second, the feasibility of actually negotiating a separation agreement given the instability and uncertainty which would prevail in the rest of Canada; third, the substantive issues that would have to be addressed in the negotiations; and fourth, the longer term relationships between an independent Quebec and what remained of Canada. However, the value (and the limits) of the analysis may lie in the summary of the positions which seem to have developed among academic analysts of a secession scenario. Brown identifies three very broad groups: the *hard-liners* who believe that Quebec secession either will not happen or should not be allowed to happen; the *sceptics* who have doubts about the viability of a secession scenario, worry about the risks for all concerned, and take the normative position that Quebec independence is not desirable; and finally, the *rationalists* and the *resigned* who accept that secession could occur but disagree sharply about what the terms would be or should be in the subsequent negotiations. The value of this categorization is that it allows for comparisons and contrasts between commentators. However, as Brown himself acknowledges, such a set of categories risks oversimplification and misinterpretation; it is sometimes difficult, and indeed a bit misleading, to "pigeon-hole" a given analyst into one category or another.

A potentially more important limitation of any form of analysis of secession scenarios is that scholarly writing in this area is often a complex mix of scholarly analysis and normative preference. Academic analysis of the possibility of Quebec secession is very often animated by strong views about the merits of the sovereignty project. Yet many of the norms governing contemporary social science encourage a mask of scientific objectivity and strict neutrality. However, as Brown points out, sometimes the mask slips and the underlying normative preferences of the analyst are displayed. This points to a rather fundamental challenge to the "save the country" industry. Those who work in this industry — the academics, journalists, and public servants —

must remain aware of how their normative preference — almost invariably that Quebec remain part of Canada — shapes their analysis of the facts before them. Much the same holds true in Quebec where supporters of the sovereignty option, be they scholars, scribblers, or bureaucrats, must be clear as to how their normative preference influences their evaluations of events as they unfold. In this sense, Canadian scholars who seek to understand the possibility of Quebec secession are similar to scholars elsewhere observing equally momentous events, be they in Northern Ireland, the Middle East, or East Timor. When seeking to understand divisive issues that affect them as citizens, scholars must remain cognizant of how normative preferences may affect one's understanding of the facts, and one's estimate of the potential for resolving basic differences.<sup>4</sup>

The possibility of major institutional change has not only been the preoccupation of academics. The close results of the October 1995 Quebec referendum have galvanized significant numbers of Canadians to "take the matters into their own hands." The dynamic in the 1980s was such that citizen involvement was very often limited to reacting to initiatives of governments, notably the Meech Lake Accord. Although this dynamic began to change during the Charlottetown round citizens were, nonetheless, still limited to reacting to the initiatives of governments whether in the form of pre-negotiation consultations (e.g., the Spicer Commission) or post-negotiation consultations in the form of the referendum. Canadians were allowed to participate based on their provincial identities but not in terms of their identities as women, visible minorities, or environmentalists.<sup>5</sup> The shock of the October referendum would seem to have changed the dynamic such that citizens are now willing to be more proactive and seek to initiate rather than simply to react. Thus a plethora of groups have sprung up seeking to involve Canadians in charting a future course for the country.

In a detailed survey of this activity by citizens' groups, John Trent argues that the initial post-referendum enthusiasm, while admirable, may not be sustained. Many of the unity groups are small, poorly organized, even more poorly funded, and heavily reliant on the energy and enthusiasm of a handful of volunteers. Trent also suggests that the plethora of groups (128 by his count) are divided among themselves. Some of the groups, what he calls Plan A groups, are motivated by a desire to reform the federation and thereby encourage Quebec to remain in Canada. Other groups, based mostly in or near Montreal, are more likely to emphasize Plan B-related issues. They are keen to see the federal government take a harder line in response to the possibility of secession. They argue that the time has come to stop what they perceive to be a pattern of pandering to Quebec nationalism. These same Plan B groups question the legality of secession, emphasize the negative consequences of sovereignty and, in some cases, advocate the partitioning of Quebec should it choose to leave the federation. Trent also identifies a third group who emphasize process and



seek to empower Canadians politically, most often by means of a constituent assembly. This third group works from the assumption that politicians are responsible for the current impasse and cannot be relied upon to keep the country together. Trent's overall conclusion is that Plan B groups are currently ascendant, that many groups from all three categories are likely to fold in the next several months, and perhaps most importantly, that these groups have not, and likely will not, be able to forge a broad citizens' movement.

#### NON-CONSTITUTIONAL CHANGE: THE BUSIEST LEVEL OF ALL

In September 1996 the federal government announced that it was asking the Supreme Court to rule on a series of questions relating to the secession of Quebec. This reference case is the latest in a series of efforts by Ottawa to deal with the possibility of Quebec secession at some unspecified point in the future. However, if there is a Plan B there must necessarily be a Plan A. The reference case and the drama and fear associated with a future referendum should not divert our attention for too long from fact that the federal government is also trying to convince the people of Quebec, and indeed all Canadians, that the federation can be reformed in ways that will make the independence option much less appealing to voters in Quebec. The federal government's Plan A includes a series of measures that are designed to demonstrate that the federation can be reformed in ways that will respond to some of the traditional grievances of the province of Quebec. Thus, on the second level of the multilevel chess game we find the ongoing efforts by Ottawa and by provincial governments to make the federation more efficient and more effective.

With respect to this latter thrust, there are a number of activities and initiatives happening simultaneously. At a general level, two members of the federal Cabinet, Marcel Massé and, more recently, Stéphane Dion, have led an effort within the Government of Canada to see how federal and provincial roles and responsibilities might be rebalanced and rationalized.<sup>6</sup> However, Plan A has also been pursued within specific policy fields, notably with respect to the *environment, labour-market development, and social policy*, the latter by means of a redesign of federal-provincial transfers for health, social assistance and postsecondary education.

With respect to the *environment*, Ottawa and the provinces have been trying to harmonize federal and provincial responsibilities since the early 1990s.<sup>7</sup> In October 1995 the Canadian Council of Ministers of the Environment (CCME) released a series of complex draft agreements that, if finalized and implemented, would have gone a long way to rebalancing and clarifying federal and provincial roles and responsibilities. The Environmental Management Framework Agreement (EMFA), accompanied by its 11 schedules, was innovative insofar as it distinguished among areas of provincial, federal, and

national jurisdiction. The latter was defined as areas of joint federal-provincial responsibility where policy would be made not by Ottawa acting alone but by the federal and provincial governments acting in concert.<sup>8</sup>

The draft agreements were much criticized by environmental groups who argued that, by turning over responsibility to the provinces, the federal government was contributing to a general weakening of environmental regulation in Canada.<sup>9</sup> The agreements were also criticized by business groups who were concerned that federal and provincial governments were not doing enough either to simplify the system of regulation or eliminate overlap and duplication of services and jurisdiction. Finally, the draft agreements were of great concern in Ottawa, first, because the Quebec government was not an active player in the negotiations, and second, because many Liberal MPs, including several members of Cabinet, were concerned that the federal government should maintain a strong role in key areas like health care and environmental protection.<sup>10</sup> In May 1996 federal and provincial ministers abandoned the EMFA and asked their officials to go back to the drawing board and come up with a simpler more focused set of agreements. In late 1996 the CCME Secretariat released yet another set of draft agreements, and in November ministers adopted these drafts with few major amendments. The new texts are comparatively general and vague and may not have any appreciable impact on what each order of government actually does with respect to the environment.<sup>11</sup>

While efforts to rebalance federal and provincial responsibilities with respect to the environment are seemingly at an impasse, the same is not the case for *social policy* and the system of federal-provincial transfers which lubricate the social policy machine.<sup>12</sup> After being announced in the 1995 federal budget, what has come to be known as the Canada Health and Social Transfer (CHST) was amended again in the 1996 federal budget. To recap briefly, in 1995 Finance Minister Paul Martin announced that the existing system of transfers would be simplified — the Canada Assistance Plan (CAP) and the transfers for health care and postsecondary education under Established Programs Financing (EPF) would be folded into a new block transfer, the Canada Social Transfer, later renamed the Canada Health and Social Transfer (CHST). In addition to simplifying Canadian fiscal federalism, the CHST was constructed in such a way that the aggregate level of cash transfers from Ottawa to the provinces will be reduced by approximately one-third, although the amount of the transfer will stabilize over time.

There are at least three ways of interpreting the CHST. The interpretation favoured by the federal government is that Ottawa continues to be a key player in health, education, and social welfare. Not only are the principles of the *Canada Health Act* maintained, Ottawa's financial contribution remains considerable with a shifting mix of cash and tax points being transferred to the provinces. Of course, this assumes that the federal government continues to have responsibility for, and authority over, the tax points that it transfers

for provinces. Provincial governments, on the other hand, see the system differently, arguing that the tax points are theirs and what matters is the cash transfer. Both orders of government acknowledge that, assuming no changes are made, as the economy grows the value of the tax points will grow and the value of the cash transfer will fall, more quickly in some provinces than in others. The third interpretation of the CHST emphasizes this last element. Groups and individuals concerned about the ability of the federal government to enforce the principles of the *Canada Health Act* argue that, in the absence of a sizeable cash transfer, the federal government would no longer have the ability to penalize provincial governments that violate the five principles of the Act. This final concern prompted Paul Martin to amend the CHST in the 1996 budget when he announced that the federal government would set a floor of \$11 billion for the cash portion of the CHST. This, he argued, would safeguard the federal role in health, education, and social welfare.

Clearly, the debate about the merits and weaknesses of the CHST will continue for some time. As part of this debate, the chapter by Daniel Cohn addresses the interplay between government financing and government standard setting with respect to Canadian social policy. He argues that the CHST is not a radical departure in federal government policy and does not represent major change in Canadian fiscal federalism. Rather, the CHST is an incremental change to the system of fiscal transfers. However, given the concerns about the need for basic principles such as those found in the *Canada Health Act*, Cohn agrees with those who would have such principles and associated penalties set by the provinces or by federal-provincial agreement. Nonetheless, he is doubtful that sufficient consensus exists among the various governments to allow for a process of joint standard setting.

Control over *labour-market development* policy has been one of the traditional demands of Quebec governments going back to the 1970s. Both the Quebec Liberal Party and the Parti Québécois are agreed on the need to transfer responsibility for labour-market matters from Ottawa to Quebec City. Thus, it is perhaps not surprising that, as part of Plan A, in the Speech from the Throne the federal government announced its intention to shift responsibility for labour-market matters to the provinces. This was followed, in May 1996, with an announcement that Ottawa would recognize the provinces as having full responsibility for job-training activities and would phase out all of its activities in that area. In addition, the federal government announced that it would allow provinces to become the delivery agents for federal programs in other areas such as job creation and employment counseling. On the face of it, the announcement would seem to be a direct response to the demands of Quebec and other provinces. However, at least three questions need to be asked. First, to what extent is the announcement part of an exercise in reform of the federation as opposed to a desire to reduce federal expenditures and streamline the operations of the federal government? Second, how does the initiative

fit with the parallel efforts within the federal public service to "reinvent" government and introduce new operational and management techniques. Third, is the announcement on labour-market matters real decentralization or does Ottawa continue to exercise control over what provinces can do in this area? In an effort to provide answers to questions such as these, in this edition of *Canada: The State of the Federation* we have included a detailed analysis by Herman Bakvis.

Bakvis makes a perceptive link between the "intergovernmental" dimensions of the issue, that is, which order of government should do what, that which we might wish to call the "new public management" dimensions of the issue — how can labour-market development activities be streamlined, made more efficient, and given a greater client focus. He argues that the initiative by the federal government, while it does respond to a long-standing concern of successive Quebec governments, is by no means guaranteed success. First, because Ottawa is proposing to use funds drawn from the Employment Insurance Fund and to transfer these funds to provincial governments for job creation, inevitably there will have to be conditions attached to the transfers. Bakvis suggests that these conditions may prove unacceptable to some provinces. Second, the federal department responsible for labour-market matters, Human Resources Development Canada, is currently experimenting with a number of initiatives to reinvent itself. Bakvis suggests that there may well be conflicts between these initiatives and the proposed transfer of programs and employees to the provinces. He also observes that, for their part, provincial governments may be reluctant to retain federal employees or to accept a service delivery regime that requires close coordination with the federal government. In other words, labour-market development may be a case where efforts to "reform the federation" may conflict with efforts to "reinvent government."

With respect to the third question, are the changes a case of real decentralization? Bakvis argues that no matter what some federal and Quebec politicians might like, a degree of coordination between Ottawa and the provinces will be required. Perhaps more importantly, the federal proposals include various conditions that must be met if Ottawa is to transfer funds, staff, and overall responsibility over to the provinces with respect to labour-market development. In effect, Ottawa will not be completely vacating the field. So much for the argument that Ottawa and the provinces can and should disentangle their activities in this or any other area.

That there are limits to successful disentanglement is an argument that is taken up and expanded by François Rocher and Christian Rouillard in their chapter on decentralization versus deconcentration. In a detailed and provocative analysis, they argue that most of the recent reform initiatives emanating from Ottawa, including the Charlottetown Accord, the Meech Lake Accord, the 1995 and 1996 budgets, and the changes to labour-market policy, are not examples of real decentralization of power from Ottawa to the provinces.

Rather, Rocher and Rouillard see these initiatives as a form of what they call deconcentration. Under a pattern of deconcentration, there is a very limited delegation of decision-making authority. Thus, for the last ten years or more, the federal government has been willing to restructure the federation but has always sought to retain the right to make decisions in key areas, or when there has been real decentralization of decision-making authority this has only been to confirm what has become standard practice. This pattern of federal behaviour may be why the proposals emanating from the provinces are thought to be so radical. By making a sharp distinction between what is "federal" and what is "national" provinces are challenging the logic of deconcentration of power and are proposing an alternative vision where decision-making authority would be transferred to the provinces or, in some cases, shared by Ottawa and the provinces.

### THE QUEBEC LEVEL OF THE CHESS GAME

Whether we like it or not, the residents of the province of Quebec have, collectively, the ability to alter fundamentally the institutional make-up of Canada and perhaps even cause the break-up of the country. Thus, we sit in wait for another Quebec referendum while debating what, if anything, can and should be done in the interim. However, Canadians are poorly served by the popular media that do not devote much effort to describing and explaining the ongoing debates within the province of Quebec.

The job of analyzing Quebec politics is made more difficult by the fact that the likelihood of another referendum, and indeed the survival of the government of Lucien Bouchard, will be the result. As is true in other provinces, the popularity of the Bouchard government is determined by such things as the overall state of the economy, debates about the state of public finance, the ability of the government to avoid scandals — real and perceived — and, perhaps most importantly, public concerns about cuts to health care, education, and other social services.

In order to try to evaluate Lucien Bouchard's record in these areas, the chapter by Marc Desjardins provides an overview of the first several months of Bouchard's tenure as premier of Quebec. Desjardins' approach is to analyze and evaluate the record of Lucien Bouchard based on the priorities that Bouchard himself set when he was sworn in as premier in February 1996. Desjardins, therefore, emphasizes the actions of the government in three areas: first, efforts to improve relations with the anglophone and allophone communities; second, efforts by the government to improve the economic situation in the province; and third, the more general attempt by the premier to proceed by means of dialogue and consensus rather than confrontation. As with all new premiers, the record of Lucien Bouchard is necessarily mixed.

Desjardins' account of the first months of the Bouchard regime suggests that moderate success in some areas (e.g., the first economic summit, Bouchard's speech to the anglophone community), is offset somewhat by a lack of movement or by sharp disagreement in other areas (e.g., the ongoing debate about the status of language laws, persistently high unemployment).

However, the biggest challenges for Lucien Bouchard as premier may have less to do with the real achievements and failures of his government than with how he and his government are perceived by the general public. Lucien Bouchard began with a somewhat "saintly" reputation. Among Parti Québécois supporters, Premier Bouchard came to be known as "Saint Lucien." However, no politician can maintain a saintly public image, particularly when, as was the case for Mr. Bouchard, they move from the opposition benches directly to the Premier's Office. As Marc Desjardins' account demonstrates, the government of Premier Bouchard has made some difficult and often controversial decisions on such issues as hospital closures and pay equity. This has led to a decline in the premier's popularity. While he remains very popular with the electorate, he is by no means the larger than life figure that so ably boosted the "yes" campaign during the referendum.

#### MEANWHILE, IN OTHER PROVINCES...

Although events in Quebec are arguably central to the future evolution of the federation, it is important not to lose sight of the evolution of other provinces. Over the last 18 months we have witnessed the re-election of the NDP in British Columbia, dramatic cuts in government spending in Ontario, a change in leadership in Newfoundland, a new government in Prince Edward Island, and much more besides. However, three specific changes that have occurred over the past year will probably have a significant, long-term impact on the federation: a growing "Ontario-first" attitude by the government of Mike Harris; collective efforts by the provinces to take charge of the agenda of federal-provincial relations and craft a new vision for federal and provincial responsibilities with respect to social policy; and, third, the negotiation of an agreement-in-principle between the Nisga'a people of British Columbia, and the federal and provincial governments. I wish to consider briefly each of these in turn.

In June 1995 Mike Harris was elected premier of Ontario. During the election Harris and the Conservative party placed great emphasis on their plan for Ontario as summarized in an election platform commonly referred to as the "Common Sense Revolution" (CSR). Interestingly enough, the CSR document is generally silent with respect to federal-provincial relations. However, in the intervening months it has become clear that Premier Harris has abandoned the traditional role of Ontario as a "helpful fixer" of the federation.

Although the Harris government shares some of the policy priorities emphasized by the Liberal government in Ottawa, the premier and his Cabinet have been more than willing to be critical of the federal government when they feel the interests of Ontario are being compromised. For example, the Harris government has been highly critical of the changes to federal transfer payments. Like the NDP government of Bob Rae, the current Ontario government argues that the three richest provinces — British Columbia, Alberta, and Ontario — are being discriminated against since the cap on transfers under the Canada Assistance Plan (CAP) has been carried over into the CHST. As a result, in the fiscal year 1995-96 Ontario will receive per capita cash transfers under the CHST of \$443 while the average per capita transfer for all other provinces is \$539.<sup>13</sup> Similarly, Premier Harris and his government have been unwilling to follow the lead of the federal government on matters of constitutional renewal, and have been quite hostile to the efforts of Prime Minister Chrétien to move on constitutional recognition of Quebec as a distinct society.

Perhaps more importantly, the Government of Ontario is now advocating strongly a significant degree of decentralization of power and responsibility from Ottawa to the provinces and joint actions by the provinces to develop national policies. As expressed by Dianne Cunningham, the Ontario minister of intergovernmental affairs, provinces can assume greater leadership as Ottawa withdraws its funding of social programs. National standards do not have to be federal standards.<sup>14</sup> Not surprisingly, Ontario has also been a leader in the collective efforts by the provinces to redefine federal and provincial roles in the area of social policy. For example, just before the Annual Premiers' Conference in August 1996, the Government of Ontario released a discussion paper authored by Tom Courchene which set out a two-stage proposal for turning over responsibility for social programs to the provinces. National policy, it was proposed, would be made by the provinces acting in concert.<sup>15</sup> The paper has been much debated and Courchene much criticized. What is surprising is that the general tenor of the paper is quite consistent (albeit more far-reaching) with the December 1995 *Report to Premiers* by the Ministerial Council on Social Policy Reform and Renewal, an interprovincial group of ministers created pursuant to the 1995 Annual Premiers' Conference.<sup>16</sup> The Courchene model is also consistent with the work done for environment ministers as part of the harmonization efforts discussed earlier. Courchene's proposals, while provocative, are representative of a broader series of proposals that seek to allow provinces acting together more responsibility and more control over key policy areas. The debate about such a shift in responsibilities reflects, I think, a more fundamental disagreement about the nature of Canadian federalism. On the one hand there are those who are more or less content with a tradition of policy leadership by the federal government and who are often suspicious of the ability of provinces to manage effectively key areas such as health care. On the other hand, there are those who invoke a more

classic definition of federalism which begins with the assumption that each order of government should be able to act more or less independently in those areas for which it is constitutionally responsible. According to this second view, provinces are effectively sovereign in areas such as education, health care, and municipal affairs; and the onus should be on the federal government to demonstrate why intervention by Ottawa is required or desirable.<sup>17</sup>

However, the debate over federal and provincial roles in the area of social policy and the socio-economic union assumes that there are only two orders of government in Canada. While this is generally true, we are moving toward the realization of aboriginal self-government which will mean, perhaps, the creation of a third order of government in Canada. The precise meaning of this concept has yet to be worked out and the definition is, and will continue to be, highly contested. Nevertheless, the aboriginal self-government is being given meaning as the result of the negotiation of individual agreements between Aboriginal Peoples, and the federal and provincial governments. And it is in British Columbia, where most of the province is subject to a land claim, that the precise *de facto* meaning of aboriginal self-government will be established. Thus, we are pleased to include in this edition of *Canada: The State of the Federation* a detailed analysis of the process of land claims in British Columbia prepared by Christopher McKee. McKee argues that the March 1996 Agreement in Principle between the Nisga'a and the federal and BC governments is seen by most First Nations as a benchmark against which all subsequent treaties will be judged. How the parties arrived at the agreement is a long and complex story which goes back to an unfinished treaty-making process initiated in British Columbia in the 1850s. McKee also explains why the agreement was not a significant issue in the BC election even if the deal is seen by some as a sell-out and by others as a major step forward.

## MANAGING THE CANADIAN FEDERATION: SOME EXAMPLES

Many of the chapters in this volume are linked, in one way or another, to the previously mentioned "save the country industry." In this industry, the working assumption is, more often than not, that constitutional and institutional change are required, indeed perhaps imperative. While these debates are very important, they divert attention (and intellectual resources) from understanding how the federation actually functions. In a race to comment on, and participate in, the process of system change, academics, governments, and the media have too often lost sight of the ways in which the federation actually works (or does not work) and of the impact of Canadian federalism on specific policy fields. This is unfortunate because we risk undervaluing and even misunderstanding the current structures and institutions of Canadian federalism. Governments have developed an elaborate and oftentimes effective



machinery to manage intergovernmental relations in Canada. This machinery deserves careful attention and study as part of our larger efforts to "save the country."

So how does the federation actually operate in the twentieth century? How is public policy influenced by the machinery of intergovernmental relations today as compared to ten or twenty years ago? In an attempt to answer questions such as these Robert Williams has conducted a detailed analysis of the intergovernmental management of cultural policy in Canada. His analysis is important in several respects. First, he challenges the general assumption in much of the existing writing on Canadian federalism that there is a high level of intergovernmental activity, particularly in policy areas where the responsibilities and activities of the two orders of government overlap. In the case of cultural policy, ministers rarely meet and when they do the agenda is long, the time available is short, and the discussion highly scripted. Second, Williams' analysis suggests that the pattern of intergovernmental interaction is not immune from cutbacks in government spending. Third, the realm of cultural policy is another area where the position of the federal government has been contradictory. Williams describes how the federal government "contemplated getting out of the business" of cultural policy in the early 1990s but that this view has been overtaken by a new set of priorities which would see Ottawa retain a strong role in Canadian cultural policy.

Williams' analysis appears to add to the evidence which suggests that there are serious disagreements within the federal government on the merits of, and the need for, strong policy leadership by the federal government. These disagreements lead to mixed signals and ambiguity. Certainly this is the case for environmental policy. The minister of the environment and senior officials in Environment Canada are proceeding cautiously and are wary of a wholesale transfer of responsibility to the provinces. At the same time, the Prime Minister's Office and officials in the Privy Council Office routinely single out the environment as an area where more responsibility can and should be shifted to the provinces.<sup>18</sup> In effect, in areas with a high public profile such as cultural and environmental policy, the federal Cabinet is split between a logic of decentralization (or at least deconcentration) and a logic of "national governance" where it is believed that the federal government is obligated to take on a leadership role.

## ASSESSING THE PACE OF CHANGE

Canadian politics in the months after the Quebec referendum of 30 October 1995 have been simultaneously hectic and calm. The pace has been hectic insofar as the federal government has been active in a number of key areas including the drafting of a parliamentary resolution recognizing Quebec as a

distinct society, the addition of Stéphane Dion and Pierre Pettigrew to the federal Cabinet, the agreement-in-principle with the Nisga'a people, and continuing efforts to reduce the deficit and control federal government spending. In comparison with the agenda of other governments, this is a crowded and long list. However, in response to the threat of Quebec secession, possibly the central challenge facing the federal government, the record of achievement is less clear. Apart from the initial flurry of activity with respect to a distinct society clause and regional vetoes, and the subsequent declarations in the Speech from the Throne, many observers feel the government has not done enough on the unity front or, alternatively, that which they have done has been ineffectual if not misdirected. Others argue that Quebec independence is inevitable given the singular inability of the Canadian federation to accommodate the aspirations and concerns of francophone Quebecers. Anything that the current government does is, according to this view, too little too late. Still others reject the assumption that there is a Quebec "problem" that needs to be "fixed" or at least if there is such a problem that decentralization is the appropriate response.

This being said, I would like to return to the question posed at the outset: Is the Canadian federation evolving fast enough to avoid the secession of Quebec at some future date or is the capacity for renewal so inadequate that Quebec independence is inevitable? This is an old question but one that takes on new dimensions and complexities in light of the attitudinal changes brought about by the October 1995 referendum. In effect, formal and informal activity point in two directions simultaneously.

On the one hand, support for sovereignty remains high in Quebec, despite the continuing economic problems. Moreover, discussions, and plans for another Quebec referendum continue, albeit less intensely. The federal government continues to pursue Plan B activities, most importantly evidenced by the recent reference to the Supreme Court of Canada. Less formally, other changes are occurring that may well demonstrate the inability of the federation to reform itself. And because we have no choice but to debate openly what could and should be done in the event of a future referendum on the secession of Quebec, we necessarily keep the prospect of Quebec independence close to the centre of political debate. This further reinforces public frustration and fatigue, which in turn strengthens the hands of those who are quite willing to tell Quebec to "get lost."<sup>19</sup>

On the other hand, the federal government has initiated efforts to reform the federation and several provinces have also sought to initiate a process of change and renewal. The social policy initiatives emanating from the Annual Premiers' Conference and the Courchene paper released by the Government of Ontario point to a strongly felt desire on the part of several provincial governments to pursue serious non-constitutional change, much of which should appeal to public opinion in Quebec. Beyond governments, we have

seen a flurry of citizens' initiatives which, among other things, try to address yet again the "Quebec question" based on the perceived inability of governments to take effective action.

However, all of this activity is uncoordinated, and in some cases is working at cross-purposes. Citizens' groups, think tanks, provincial governments and the federal government often seem to be running in different directions. All too often, we fail to acknowledge that one particular chess game is linked to all the others. Moreover, the solution does not necessarily lie in a renewed effort by the federal government to take charge and lead. If the federation is in fact like a person recovering from a heart attack and if the patient is to survive, a coordinated effort by all members of a caring community is required. However, the medical specialist, in this case the federal government, cannot make every key decision unilaterally. Thus, medicine and renewal of the federation are alike — consultation and cooperation are imperative.

## NOTES

Numerous colleagues have kindly offered comments on earlier drafts of this chapter. I am grateful to Gerard Boychuk, Douglas Brown, Peter Leslie, Katherine Sharf, and Robert Wolfe for their constructive criticism. The usual caveats apply.

1. Readers who are familiar with the television series *Star Trek: The Next Generation* may be able to visualize what a game of multidimensional chess might look like.
2. There is inevitably an overlap between the first, second, and last categories, or if you will between the first, second, and last levels of the chess game. What begins as an exercise in system maintenance sometimes evolves into major institutional and perhaps constitutional change. For example, see the chapter on cultural policy in this volume in which Robert Williams demonstrates how the ongoing management of the policy areas slides into the symbolic politics of national unity.
3. For the purposes of this chapter I set aside the third question introduced earlier which suggests that we have misunderstood the nature of the problem, and that nationalist sentiment in Quebec is not the central issue to be addressed.
4. In this context, see the excellent and sophisticated analysis of the role of the intellectual developed by Edward Said. See *Representations of the Intellectual: the 1993 Reith Lectures* (New York: Pantheon Books, 1994). In a Canadian context, see Alan C. Cairns, "Political Science, Ethnicity, and the Canadian Constitution," in *Disruptions: Constitutional Struggles from the Charter to Meech Lake*, ed. Robert E. Williams (Toronto: McClelland & Stewart, 1991), 161-80; and, in a somewhat different vein see Beverly Baines, "After Meech Lake: The Ms/Representation of Gender in Scholarly Spaces," in *After Meech Lake: Lessons for the Future*, ed. David E. Smith, Peter MacKinnon and John C. Courtney (Saskatoon: Fifth House Publishers, 1991), 205-18. My own normative preference

is for Quebec to remain part of Canada. However, in order for this to happen, I also believe a significant degree of real decentralization is required along with, perhaps more fundamentally, a return to some of the core principles of federalism such as that of non-subordination, wherein no order of government is subservient to another.

5. See Linda Trimble, "Beyond Gloom and Doom: Federalism, Citizenship, and Political Change," in *Federalism and the New World Order*, ed. S. Randall and R. Gibbins (Calgary: University of Calgary Press, 1994), 197-211.
6. For some indication of how this process has evolved, see Gilles Paquet and Robert Shepherd, "The Program Review Process: A Deconstruction," in *How Ottawa Spends 1996-97: Life Under the Knife*, ed. Gene Swimmer (Ottawa: Carleton University Press, 1996), 39-72.
7. For an analysis of the initial stages of the negotiation, see Kathryn Harrison, "Prospects for Intergovernmental Harmonization in Environmental Policy," in *Canada: The State of the Federation 1994*, ed. Douglas M. Brown and Janet Hiebert (Kingston: Institute of Intergovernmental Relations, Queen's University, 1994), 179-99.
8. See Canadian Council of Ministers of the Environment, "Environmental Management Framework Agreement (EMFA)," Mimeograph, October 1995.
9. See, for example, Karen L. Clark and Mark S. Winfield, "The Environmental Management Framework Agreement – A Model for Dysfunctional Federalism?: An Analysis and Commentary." (Centre for Environmental Law and Policy, Mimeograph, February 1996).
10. The disagreement in Ottawa with respect to decentralization and devolution extends far beyond environmental policy. See the chapter in this volume by François Rocher and Christian Rouillard. These authors argue that the federal government is singularly incapable of real decentralization and prefers a more limited process of deconcentration. For his part, David M. Cameron has argued that, with respect to Quebec and Quebec nationalism, the federal government may be working with two competing interpretations of the problem. The first is a structural interpretation that would require real decentralization while the second is a more political interpretation that would allow greater room for Ottawa to retain responsibility for key "national" policy issues, like the environment. See David Cameron, "Does Ottawa Know it is Part of the Problem?" in *Québec-Canada: What is the Path Ahead?* ed. John E. Trent, *et al.* (Ottawa: University of Ottawa Press, 1996), 293-98.
11. For an analysis of the latest draft agreement and the general tenor of federal-provincial relations in the area of the environment, see Patrick C. Fafard and Kathryn Harrison, *Intergovernmental Relations and the Environment* (Forthcoming).
12. An even more elaborate vision for federal and provincial responsibilities with respect to social policy can be found in Thomas J. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," Working Paper Prepared for the Ministry of Intergovernmental Affairs, Government of Ontario (Ministry of Intergovernmental Affairs, Mimeograph, August 1996).

13. Notes for an address by the Honourable Dianne Cunningham, Ontario minister of intergovernmental affairs, to the Council for Canadian Unity, 14 June 1996, 5.
14. *Ibid.*, 7.
15. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems."
16. Ministerial Council of Social Policy Reform and Renewal, *Report to Premiers* (Mimeograph, December 1995).
17. For a discussion of these competing understandings of (Canadian) federalism see *inter alia*, William Kymlicka, "The Paradox of Liberal Nationalism," *The Literary Review of Canada* 4, 10 (1995):13-15, and Samuel V. La Selva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal and Kingston: McGill-Queen's University Press, 1996).
18. At the June 1996 First Ministers' Conference, for example, agreement was reached on pan-Canadian environmental controls. See Anthony Wilson-Smith, Mary Janigan, and E. Kaye Fulton, "Mission Accomplished," *Maclean's*, 1 July 1996.
19. See, for example, Diane Francis, *Fight for Canada* (Toronto: Key Porter, 1996).



## II

# The Aftermath of the Referendum

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## Thinking the “Unthinkable”

Douglas M. Brown

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*Ce chapitre passe en revue les écrits récents d'analystes canadiens hors Québec sur leurs prévisions des événements qui suivraient un vote majoritaire des québécois appuyant la souveraineté. Ces études indiquent que de plus en plus les canadiens se préoccupent moins de sauvegarder la fédération que de “penser l'impensable”, c'est-à-dire concevoir la possibilité de la séparation du Québec. Ce chapitre résume et commente la littérature récente en se concentrant sur quatre aspects du débat: (1) la légitimité du processus référendaire et le droit à la sécession; (2) la faisabilité des négociations avec le Québec; (3) l'ordre du jour de telles négociations au sujet de la souveraineté; (4) le caractère des relations à long-terme entre le Québec et le Canada hors Québec.*

*L'auteur conclut que le consensus acceptant la légitimité du processus référendaire pouvant mener à la sécession s'est détérioré suite aux événements entourant le référendum d'octobre 1995. Les analystes sont toujours d'accord sur l'importance d'inclure à l'ordre du jour des négociations les questions d'actif et de dette, de citoyenneté, de monnaie, des relations commerciales et des peuples autochtones. Peu d'analystes perçoivent les limites territoriales comme étant une question d'importance majeure. Il existe cependant des vues divergentes au sujet de la faisabilité pour le Canada hors Québec de poursuivre de telles négociations.*

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### INTRODUCTION

For a generation, Quebecers have been thinking about, writing about and debating the issues of Quebec secession from Canada.<sup>1</sup> Academics and other analysts in Quebec are actively engaged on both the sovereignist and federalist sides, and many also occupy uneasily a middle ground position, thereby reflecting the ambiguity of Quebec public opinion. Partisans of all sorts use analysts' arguments to lend credibility to their position.

Academics and other analysts in the rest of Canada (ROC) have not, until recently, been so preoccupied, because so few of them thought that the prospects of secession were very likely, and even fewer wished to put their efforts into an issue so contrary to their perceived interests. This reticence has now all but disappeared. Thinking the unthinkable began after the collapse of the Meech Lake Accord in 1990. During the subsequent "Canada Round" of constitutional debate in 1990-92, within the context of a wide-ranging debate over alternative constitutional futures for Canada, there was unprecedented interest in Quebec sovereignty (which tracked the support for sovereignty in Quebec opinion polls). Moreover, this interest, while not confined to constitutional specialists, was also found across a wide spectrum of academic disciplines. Like their counterparts in Quebec, analysts in the rest of Canada often took committed partisan positions in the debate; these positions can have an effect on their analysis.

In any case, the independent research and analysis community in Canada — based for the most part in universities, but also in a few independent research centres — plays a number of important roles in major public debates. This community helps to set the parameters of the debate, provides reasoned argument for a variety of positions, and can have an impact on the direction and tone of public discussion. As such, it constitutes an important set of opinion-makers.

Reconciling these multiple roles presents problems for social scientists, both as players and as observers. As Robert A. Young has recently warned, the whole debate about Quebec sovereignty is "charged with predictions" about what would happen in the event of a separation of Quebec from Canada: "Partisans of both federalism and sovereignty construct and deploy alternative futures, aiming to influence the expectations and behaviour of citizens."<sup>2</sup> It may be impossible, ultimately, to separate empirical observations from normative judgements in writing about the future of Canada, no less for the analysts cited here than for the author of this chapter. And yet one is struck by the significance of this recent move by so many ROC academics and other analysts to tackle what had been, until recently, a more or less taboo subject. It signals a shift from the prevailing and overwhelming bias in the allocation of intellectual resources away from "saving" Canada and towards a future of Canada-without-Quebec.<sup>3</sup>

This chapter provides an overview and comments on the research and analysis of the independent analytical community (mainly academic) in Canada outside Quebec (i.e., "ROC") on issues surrounding Quebec secession. The review is confined to recent works, completed primarily since the election of the Parti Québécois (PQ) government in September 1994. The analyses under discussion do not include the statements of political players, interest groups or professional media commentators, although the chapter does survey the



work of analysts associated with research institutes which have tended to have recognized positions on the issues.<sup>4</sup>

The analysis to follow is organized by two rather simple frameworks. First there is a summary and commentary on the content of recent analysis. In this review the issues are presented according to four chronologically-based concepts concerning the Quebec secession proposals. These are: issues of legitimacy concerning the referendum and the right to secede; issues about the feasibility of negotiating secession with Canada; the key substantive agenda items involved in potential negotiations; and longer-term relations between Canada and an independent Quebec. Second, this chapter includes an examination and characterization of the analytical positions taken as a whole, including overall patterns and divergences.

The characterizations of the positions and analytical conclusions of academic colleagues in this chapter are the author's alone. Inevitably this task carries risks of oversimplification or misrepresentation. Many analysts wear a mask of objectivity while examining a particular issue, thereby hiding an otherwise deeply-held view on the matter. Sometimes the mask slips. At other times one must infer positions where they are not explicit. In still other cases, the arguments and analysis are complicated in themselves and important nuances may be lost in categorizing and summarizing their views. Despite these risks, this chapter attempts to identify patterns of thought and the relationship of ideas to interests. Further information should be obtained directly from the studies or commentaries listed in the references.

## SURVEY OF ISSUES ADDRESSED

The choice of issues addressed by analysts in the ROC reflects a variety of influences and interests. Much of the intervention has been essentially reactive to specific events, such as the election of the PQ government, or the details of the government's plans regarding sovereignty. Their analyses also reflect what the authors consider to be the most problematic concerns with potential secession, such as the debt; the interests of their province, region or ideological group; or the structure of the rest of Canada.

Despite this variety of influences, most of the analysis can be examined in a straightforward framework that corresponds to key stages in the proposed process leading to secession. The key stages are (i) issues regarding the legitimacy of the secession process, including the referendum as a means of triggering secession, (ii) whether and how Quebec and ROC could feasibly reach agreement on the terms of secession, (iii) the agenda for any such negotiation for secession, and (iv) the nature of continuing relations between surviving Canada and an independent Quebec.

## LEGITIMACY ISSUES

The legitimacy of Quebec's seceding after a majority vote in a Quebec referendum has only recently become a strongly contested issue. Indeed, until the actual referendum of 30 October 1995, almost all ROC analysts conceded the political legitimacy of the Quebec government to determine the views of the Quebec population through a referendum on the sovereignty of Quebec. The more extreme views of Professor Stephen Scott of the McGill Law School,<sup>5</sup> who argues that Quebec simply cannot secede legally, do not find much resonance, except among non-academic authors such as William Gairdner.<sup>6</sup> Most of the mainstream analysts concede that Quebec has a right to self-determination and therefore a right as a province to secede.<sup>7</sup> And, until the recent period since the 1995 referendum, there has been a consensus that what matters is not so much the *de jure* ability to secede, as the *de facto* political significance of a vote in favour of secession.

There is increasing concern, nonetheless, that the vote be "free and fair," i.e., based on acceptable democratic rules and on a clear question. Again, until the recent referendum, there was very little doubt that the referendum process was fair (given the experience with previous referendums in 1980 and 1992). However, the alleged lack of clarity of the 1995 question and the existence of voting irregularities have led some ROC commentators to question the legitimacy of the 1995 vote.<sup>8</sup> Academic commentators generally found the question in the draft bill of December 1994 to be acceptable, but this placid reaction tended to break down after the June 1995 agreement among three Quebec political parties that led to the October 1995 question; that question relied on the assumption that a negotiable partnership with Canada could be achieved. Also, there was not much discussion until after the referendum about whether the threshold for sovereigntist victory should be greater than "50 per cent plus one."<sup>9</sup>

The criticism of the June 1995 agreement, and the subsequent referendum question, focuses on assumptions about a continuing association with Canada. The agreement assumed the feasibility of negotiating a partnership with Canada based on maintaining the "Canadian economic space" and on new political institutions in which Quebec would have greater parity. Thus, some ROC analysts examine the scenario of a close "yes" vote hinging upon what they see as questionable assumptions about partnership. Such a referendum result could open the way for the federal government to question the will of Quebecers to secede without such a partnership, and perhaps could lead to a call for a second referendum. This position would have to be accompanied by clear messages from the ROC that a postsecession association on the PQ's terms would not be acceptable. This scenario was sketched by some participants at a conference, organized in Toronto jointly by the Institute of Intergovernmental

Relations of Queen's University and the C.D. Howe Institute, on 15 March 1995.<sup>10</sup>

Following from the issue of the question and the vote, much attention has been given to Professor Patrick Monahan's analysis which focuses on the legal issues related to Quebec actually seceding, either by a constitutionally legal route or by a unilateral declaration of independence, the so-called "extra-legal" route.<sup>11</sup> Monahan does not question the political legitimacy of the PQ holding the vote so much as the feasibility of acting on the outcome of the vote. He raises substantial doubts on this score, and insists on high hurdles for this stage of the process. His view is that legal secession would require the unanimous consent of all provinces for a constitutional amendment to allow Quebec to leave, as well as the consent of the Aboriginal Peoples affected. Alternatively, he suggests, unilateral declaration of independence (UDI) means legal and economic chaos.

Other legal scholars have positions that match Monahan's view of the amending formula.<sup>12</sup> More recently, Alan Hutchinson, a colleague of Monahan's at Osgoode Hall Law School, has taken issue with how the courts might deal with Quebec secession.<sup>13</sup> Other commentators, however, have made similar points to those of Monahan about the legal difficulties.<sup>14</sup> It is important to note that Professor Monahan's most recent post-October 1995 analysis maintains his tough stance; but he is much more forthcoming about the "conditions" by which Quebec could legally be able to secede, which he has advocated should be enshrined in federal "contingency legislation."<sup>15</sup> These conditions include use of the constitutional amending formula to approve secession; a process for appeal on a perceived unfair question in a Quebec referendum; and the need for a second referendum to ratify the terms of secession after negotiation.<sup>16</sup>

Another major issue regarding the legitimacy of Quebec secession is whether Aboriginal Peoples in Quebec also have the right to secede. Most of the hardline commentators who stress the legal difficulties of secession have done so in part because they believe that the aboriginal claim prevents Quebec leaving — at least on the terms suggested by the PQ, if not altogether. Leading aboriginal representatives have been careful not to suggest that Quebec cannot secede, but only to claim a right of self-determination for Aboriginal Peoples that must be satisfied before secession can be achieved.<sup>17</sup> There have not been many interventions by ROC academics on this aspect of the debate, probably in deference to the obvious ability and readiness of the aboriginal communities to speak for themselves. In this latter category, the James Bay Cree weighed in rather heavily with their tight legal analysis of October 1995, which advanced the priority of aboriginal claims, the illegality of secession including Cree territory, the illegality of secession in general, and the continuing significance of the fiduciary obligations of the Crown vested in the federal

Parliament.<sup>18</sup> However, two prominent legal scholars, active in the aboriginal rights movement, have recently taken positions and put them in writing, that buttress the aboriginal position. Further, the Royal Commission on Aboriginal Peoples has released research studies on the topic of the fiduciary obligation.<sup>19</sup> It seems clear that the "aboriginal card" is becoming important among those who would oppose secession.

Related to the aboriginal issues has been the issue of how the international community, or international law in general, would view Quebec secession. Some legal scholars have cast doubt on Quebec's case for secession in international law, while others draw the conclusion that the key factor will be which international states would be willing to recognize an independent Quebec (including, crucially, Canada itself).<sup>20</sup>

As a concluding point on the issue of legitimacy, most political scientists (including Brown, Gibbins, McRoberts, and Young)<sup>21</sup> would not pay as much attention to the legal fine points as to the underlying political legitimacy. Thus their position is that if Quebecers decide to go, Canadians are unlikely to stop them, and will be respectful of their democratic decision. However, the actual result of the 30 October 1995 referendum has clearly hardened positions. It is worth noting, therefore, the generally supportive position (or support by silence as the case may be) of ROC commentators for the federal government's decision to intervene in the so-called Bertrand case, in which the Attorney-General of Canada has argued against the Attorney-General of Quebec to the effect that constitutional law prevails over international law in governing any potential accession of Quebec to sovereignty. Hence the position taken by some analysts that Canadians outside Quebec should refrain from saying anything that would be seen as threatening the democratic process in Quebec, including legal threats, seems increasingly to be a minority view, at least in the literature reviewed here.<sup>22</sup>

#### THE NEGOTIATION PROCESS

There is a sharp divide among analysts on how the transition to Quebec sovereignty would occur. Only two major studies have examined the issue in depth, one by Robert Young and the other by Alan Freeman and Patrick Grady.<sup>23</sup> Both books follow a pattern of describing in some detail what they assume to be the likely path to a peaceful secession. The Freeman and Grady volume presents what they call a straight forward exercise in "contingency planning," within a firmly ROC perspective. The book is aimed at a general audience and does not dwell upon alternative scenarios. It provides a mildly comforting view to readers in the ROC, while punching holes in PQ assumptions about the shape of continuing association. Young's book is more comprehensive and academic. While he delivers some of the same messages, e.g., secession can be accomplished peacefully, he also dwells more extensively on underlying

tensions and alternatives, and on key decision points along the way. He also concludes that the result of secession would differ from PQ assumptions on several important points (see the discussion below on longer-term relations).

There have been also a number of pithier interventions all of which cast doubt on the feasibility of the PQ proposal for a binational partnership, and the implicit assumption of a binational negotiation.<sup>24</sup> The basic issue in these analyses and the two books noted above has been one of political judgement about how the rest of Canada would react to a "yes" vote for sovereignty. The issue is whether the Government of Quebec should expect to have an interlocutor that would assent to legal separation or that at least would not contest a UDI. Taking the literature as a whole, four sets of positions on this key issue are found in the current debate among ROC academics.

First is a set of analyses which see the ROC as a sufficiently coherent entity to withstand the shock of a "yes" vote, and which will find the solidarity to negotiate terms with the Government of Quebec that will be satisfactory to both sides. Into this camp fall those who think of "English Canada" as a unit, whose ideological views lead them to assume the feasibility of a centralized ROC response, who have been sympathetic to binational solutions in any case (trinational when one includes Aboriginal Peoples) and who are thus better disposed to the results that an essentially binational process would yield.<sup>25</sup>

Second are those whose position may be characterized as more provincialist, and who see power flowing to the provinces in the event of a "yes" vote. Gordon Gibson of British Columbia predicts frankly that the ROC would disintegrate rather quickly, but discounts at the same time the notion that in the process Quebec would be prevented from going its own way.

Third are those who doubt the ability of the federal government to deliver alone, but cannot foresee a successful effort to bring along the provinces, Aboriginal Peoples and other interests. These doubts are expressed most strongly by Monahan, but are raised by others as well. In particular, Alan Cairns made an impact in Quebec in January 1995 with his comments at a conference at McGill University to the effect that the ROC was woefully unprepared for a "yes" vote on Quebec secession.<sup>26</sup> Such analysis is no doubt influenced by the difficulties in reaching consensus on constitutional reform in recent years, heightened by the knowledge that the ROC would have its own constitutional agenda to sort out in the post-referendum period.<sup>27</sup>

Fourth are those analysts who take what may be termed a rationalist position. The two recent books by Robert Young and by Alan Freeman and Patrick Grady, as well as a recent article by Ken McRoberts,<sup>28</sup> all take the same line: in the ensuing crisis following a "yes" vote on a clear question, in an atmosphere of high uncertainty and financial cost, support would flow very quickly to a federally-led team with sufficient solidarity to manage the negotiations. The debate over the future of the ROC would be put off, and the negotiations with the Government of Quebec would proceed quickly, enabling secession to

occur more or less according to the timetable envisaged by the PQ. One notes, however, that since the referendum, Robert Young has become much less sanguine about the prospects for a quick and clean secession. His revised view is that the element of surprise has now been eliminated and that positions will harden going into another referendum, making it more difficult to sustain lengthy and difficult negotiations.<sup>29</sup> This leads us to a consideration of the agenda for such negotiations.

#### THE NEGOTIATION AGENDA

As noted there have been two recent studies which provide a comprehensive treatment of the potential negotiations between the ROC and Quebec. In going into such detail, it might be said that these works finally match the detail of proposals from the sovereigntist literature in Quebec. The work by Young is especially comprehensive and summarizes the considerable literature of the 1970s, 1980s and early 1990s by analysts in Quebec and the ROC. Assuming that they pay any attention to views expressed outside Quebec, sovereigntists may take comfort in the idea that ROC analysts take seriously the idea that negotiations could be successfully completed, but the detail of the results of such negotiations as predicted by these analysts will not buttress the PQ position.

Both the Young and the Freeman-Grady books essentially cover the same basic issues, with important differences in emphasis and nuance. The key issues according to Young (which he blithely characterizes as a relatively short list) are: the armed forces and public service, borders, access, debt, assets, environmental management, citizenship, First Nations, minority rights, succession to treaties, commercial and economic relations, currency and monetary policy, mobility and immigration, and social entitlements. The Freeman-Grady list is shorter but no less daunting: territory, Aboriginal Peoples, assets and the debt, currency, trade relations, citizenship, bilingualism, the public service and the armed forces.

As noted, these authors do not foresee any of these issues as being "deal-breakers," but there is an emphasis placed on the most sensitive issues such as the debt, currency, citizenship, and Aboriginal Peoples. The forecasted results differ substantially from the PQ program, notably on the level of economic integration, as both major studies predict economic integration no higher than the current North American Free Trade Agreement (NAFTA). It is worth noting that Freeman and Grady foresee little cost in such a scenario, while Young predicts significant economic loss for both ROC and an independent Quebec. Other important differences from the PQ assumptions are those regarding citizenship where the ROC analysts assume that dual citizenship would be phased out in two-three years, compared with a more permanent arrangement in the

PQ plans. And there are also differences of view with respect to the debt. ROC analysts would not accept anything near the 1991 Bélanger-Campeau proposals for a 16.5 percent share for an independent Quebec.

One must also note the work of David J. Bercuson and Barry Cooper, who published a brief scenario on negotiation issues in 1991 and whose views continue to be quoted in the media.<sup>30</sup> These authors paint a stark scenario which essentially comes down to a set of dictated terms, including some that would be very difficult for the Government of Quebec to accept, such as losing a major portion of the current territory of the province. More credible (although not necessarily more popular) have been the many briefer studies and commentaries in recent months (some of which are reprises from the C.D. Howe series of 1991-92) that focus on individual negotiating points. Almost all of these have dealt with economic issues. Notable among them are those by Gordon Ritchie and Barry Russell,<sup>31</sup> who essentially argue that at an independent Quebec would have to negotiate its own way into NAFTA, and inevitably at a price. David Laidler has also been cited on his study of currency issues in which he concludes that a monetary union would be the best option for both an independent Quebec and the ROC.<sup>32</sup> More recently, however, a C.D. Howe-published commentary by William Robson<sup>33</sup> casts doubt on the survivability of a monetary union. In Robson's view there would be neither the time nor the commitment to make a complicated monetary union work, thus leaving Quebec with no option but to adopt an independent currency.

With the debt being such an important issue in Canada regardless of the Quebec sovereignty issue, not surprisingly there are a variety of current views on how Quebec separation would affect the debt. Monahan uses the issue of the debt to highlight the difficulties of coming to terms with Quebec, given the different regional interests and capacity to bear debt shares, as well as the significant differences between the estimate of what Quebec's fair share should be. On the other hand, Young and Freeman-Grady argue that it is the very urgency of not allowing the debt to remain hanging that would force both sides to the negotiating table. Robin Richardson, whose work was published by the Fraser Institute, and Paul Boothe *et al.* of the University of Alberta, take hardline positions on Quebec's debt share while media reports continue to refer to recent studies which stress the unsustainability of the debt load of an independent Quebec.<sup>34</sup>

Another issue that has received recent attention has been citizenship — again in a commentary published by the C.D. Howe Institute, this one by Stanley Hartt.<sup>35</sup> His analysis buttresses that of Young and of Freeman and Grady who argue that it would be in the ROC's clear interests to restrict the citizenship entitlements of the residents of an independent Quebec. Hartt differs, however, by arguing for a revocation of citizenship determined by a citizen's place of residence on the date of secession.

Media coverage of academic analysis also tends to focus on studies that examine issues of boundaries and territory. The views of Bercuson and Cooper and of Scott Reid are most often noted. The partition of Quebec has, in fact, been heavily debated since the October 1995 referendum. Many analysts have noted the increased support for partition among the anglophone population in Quebec with the apparent support of the federal government.<sup>36</sup>

#### LONGER-TERM RELATIONS

Many, if not most, of the ROC analysts reach some sort of conclusion about the potential longer-term relations between an independent Quebec and the surviving parts of Canada. Sometimes these conclusions are the result of detailed analyses of the dynamics of the potential transition to secession, including the negotiations leading to its achievement. More often, however, the analyses are based on a static analysis of the interests of the ROC or on an institutional or strategic analysis of the feasibility of the PQ proposals. Two major issues emerge overall: first, whether the relations between an independent Quebec and surviving Canada would be close or not (i.e., close enough to meet the PQ goal of an economic association); second, whether Canada without Quebec would in fact survive as an integrated entity, or whether it would experience further disintegration. A unified ROC is seen by many analysts (for example, Brown and Monahan) as a crucial assumption of the PQ, and one that loops back to other assumptions such as the feasibility of negotiations (discussed above). There is also the more specialized debate about the economic costs of secession to both sides, which should be placed briefly in the context of the broader debate.

On the issue of the Quebec-Canada relationship, close economic relations are usually assumed by the left-wing political scientists and sociologists (e.g., Resnick, Drache). These academics would appear to oppose any arrangement perceived as threatening the viability of an independent Quebec (including threats in advance of the referendum). Some analysts in this school see merit in the binational political institutions proposed by Quebec sovereignists (most recently formulated as the proposed Canada-Quebec partnership). It may also be, in some cases, that these analysts discount the economic interests of the ROC. Nonetheless, these analysts' prediction of relatively close economic relations is shared by some economists<sup>37</sup> who foresee at the least a NAFTA-style arrangement between Canada and an independent Quebec. In its simplest form, such an arrangement would amount to Quebec acceding to the actual NAFTA. And other economists endorse a monetary union and arrangements for joint regulation in sectors such as transportation. There do not appear to be any economists who foresee the feasibility of a customs union, given that Quebec secession would expose the divergent interests of the ROC and Quebec on protected sectors such as dairy and textiles.



Other analysts do not foresee very close relationships with an independent Quebec.<sup>38</sup> In their view, the trauma of secession and the implied severance of political ties would force the ROC to put its own political and economic interests first. These analysts argue that Quebec sovereigntists tend to see these questions through rose-coloured glasses, and that even the much vaunted "rationality" of "English Canada" would not sustain the sorts of binational political institutions proposed by the PQ. It is generally argued by these analysts that bipolar institutions of a confederal nature (such as those proposed by the PQ) would be inherently unstable, and that the public in the ROC would never be able to accept institutions which would give parity on major decisions to an independent Quebec.<sup>39</sup>

In a compelling overview of the issues, Daniel Schwanen, writing in a C.D. Howe Institute commentary, stressed the conclusion that Quebec's significant benefits from the Canadian economic union would not be guaranteed in a NAFTA-style free trade area. Only if Quebec were willing to cede substantial powers to binational authorities could current levels of integration be maintained.<sup>40</sup>

This latter analysis also draws on comparative analyses to conclude that increasing levels of economic integration are dependent upon increasing levels of political integration (often citing recent European experience as an illustration). In other words, if there is no will to sustain close political economic integration, then the degree of economic integration attainable is reduced. The orthodox assessment of the linkage between economic and political integration, as in the European case, assumes integration building in stages from a free trade area, first to a customs union, then to an economic union, and, finally, to a monetary union. Robert Young departs somewhat from this view by arguing the possibility of establishing a currency union with an independent Quebec, including Quebec representation in the Bank of Canada, while discounting the possibility of general free trade at a level higher than NAFTA. As a whole, however, these analysts cast grave doubt on the ability of an independent Quebec and the ROC to continue the degree of intensity of economic integration now available under the Canadian constitution, in a context where the analysts also conclude that the political institutions binding the two parties would be minimal.

Most analysts separate their views on the structure of potential relations with Quebec from their views on the costs of secession. Economists differ considerably in their assessment of both short-term (transitional) costs and longer-term losses, even if, on balance, the consensus is that significant short-term costs for an independent Quebec would be a certainty. There have not been any major new contributions from ROC analysts on this issue since the election of the PQ in 1994. This may reflect a general view that the existing studies have covered the ground sufficiently. It may also reflect a reticence by academic economists to enter such a highly charged and essentially political

debate, given the likely reaction in Quebec to negative ROC assessments (e.g., the fate of the Royal Bank study in 1992). Some other ROC analysts have noted that economic studies tallying the costs of separation might be counter-productive (e.g., Monahan) because they are perceived as threats. In any case, even without further intervention from economists on this score, political analysts in the ROC have drawn their own conclusions about the potential costs associated with a disintegrating economic association.

It is important to remember that the costs of secession are not confined to Quebec, and many analysts assume that the costs to the ROC would also be substantial, especially in the short term (e.g., Monahan, Young, Leslie, Brown, Cote and McCallum, and the Royal Bank study).<sup>41</sup> These analyses point to longer-term economic loss resulting from loss of international stature and, most importantly, loss of economic integration. However, there are some ROC analysts who, while conceding transitional costs, argue that separation would be economically beneficial to the surviving Canada. These include western Canadian political commentators such as Gordon Gibson, David Bercuson, and Roger Gibbins, Alberta-based economists Paul Boothe *et al.* as well as Freeman and Grady. These analyses tend to dwell on fiscal balance sheets that point to Quebec as the net beneficiary of current arrangements, and to discount the potential for losses in economic integration.

Such considerations lead to the second big question: What would happen politically to the rest of Canada? Four years ago Keith Banting wrote an extensive assessment of the pro's and con's of what would happen, carefully weighing the centrifugal and centripetal forces.<sup>42</sup> In the end he argued that the ROC would hang together, but the reader would not have been surprised if, in his conclusions, Banting had tipped the other way. Indeed, many commentators stress that the very uncertainty of being able to predict what would happen to the ROC is a factor that threatens the success of the Quebec sovereignty project (see e.g., Clark and Brown). Among those who appear more certain of the potential outcome, Gordon Gibson predicts that Quebec secession would lead to a hugely decentralized Canada, possibly even a set of several separate sovereign states.

On the other hand, analyses by Roger Gibbins, David Bercuson, Philip Resnick and Robert Young — analysts who otherwise take rather different views — contend that “Canada” as a continuing entity would survive the loss of Quebec, and would stay together and prosper. The brunt of the analysis in favour of a sustainable ROC assumes sociological unity, the containment of regional self-interest, and the continuing rise of non-territorial pluralism, for example, a growing attachment to the Charter, the continuation of the “new politics” of environmental and social concerns, and a diminishing attachment to province or region.

Finally, it is important to repeat the distinction made above that some analysts concede the point that Canada could survive the departure of Quebec, but do not draw from that conclusion any necessary connection to the feasibility of negotiations between the ROC and Quebec (notably Monahan and Cairns). Rather, these analysts foresee an intense debate within the ROC, and for which, as Cairns notes, the ROC is completely unprepared. In their view, such a debate would so complicate the post-referendum period as to make effective negotiations with Quebec difficult or impossible.

\* \* \*

In summary, and before getting into a more strategic comparison of the positions of the ROC analysts, it is worth noting the convergences and divergences on the key issues. Until recently there had been a tendency to converging opinion on the political legitimacy of the PQ's referendum process leading to the secession of Quebec. This consensus has eroded because the process has been seen to have been manipulated, particularly since the referendum question was perceived to be too closely tied to unsustainable assumptions about a continuing association with Canada. However, there continues to be convergence around the main agenda items of any potential negotiation with Quebec on the terms of secession, that is, around such issues as the debt, citizenship, currency, trade relations and Aboriginal Peoples. It remains to be seen whether territory (partition) will emerge as a key issue. To date, the mainstream analysts have treated the territorial issue tenderly, and have not wanted to see it raised for discussion. The issue could become a key indicator of the divide between those who foresee, or would desire an "irrational" outcome, versus those who assume or would desire a rational process (more on this below).

Convergence seems to be apparent on the desire for economic association, but when the details are examined, divergences predominate. For example, there is the general recognition that there is at least some linkage between levels of economic integration and levels of political integration, but there is debate over whether sovereignist proposals on political integration could be sustained. Other divergences are more impressive, such as the controversy over the potential solidarity of the ROC in the wake of a "yes" vote, and whether the ROC could deliver on negotiations and consensus with Quebec. There is also controversy, although less clearly drawn, about the longer-term viability of the ROC.

To stop at this point in the analysis would be to leave the reader convinced that ROC academics are all over the map on these issues. However, the patterns of analysis become clearer if one steps back from the detail. Such patterns are described below.

## THE SPECTRUM OF POSITIONS

The overall positions of ROC analysts on the question of Quebec secession may be placed on a spectrum that is divided into three very broad segments:<sup>43</sup>

- the *hardliners*, who take the view that Quebec secession could not be achieved successfully (whether from a normative or an empirical perspective);
- the *sceptics*, who have doubts about whether Quebec secession could succeed, worry about the risks, and in general take the normative view that it should not happen; and
- the *rationalists* and the *resigned*, who accept that secession could occur, although they differ sharply as to what the terms would or should be.

What follows is a somewhat stylized categorization of these three segments of the spectrum, presented not so much for the accuracy of "pigeon-holing" specific individuals as to highlight the strategic differences among various positions, and to suggest how these differences might affect the continuing debate.

### THE HARDLINERS

Several ROC analysts oppose Quebec secession on the grounds that it could not be accomplished successfully, or that it must not happen, and that it ought to be prevented from happening. The work of William Gairdner, while not very sophisticated, does anchor one extreme of the ROC analysts, that is, those who not only deny Quebec a right to secede but who would foresee the use of force to prevent Quebec from doing so. Much less bellicose, and more sophisticated, is the position of Monahan (and, in general, the view of the C.D. Howe Institute) that foresees nothing but economic and legal chaos in Quebec secession. There is no particularly regional base for this view, but in general its proponents are centrist or right-of-centre in their ideological position. It will, of course, be said by the sovereignists that the more moderate in this camp are merely taking a strategic stance in order to ensure that the sovereignists do not win in a referendum, but that after a "yes" vote these hardliners would be much more cooperative. As yet one has not witnessed a dramatic softening of hardline views since the close results of 30 October 1995, although, as noted above, Monahan's views have moderated to the point of specifying the procedural terms by which secession should occur.

### THE SCEPTICS

A large number of analysts occupy the centre of the spectrum. They would not oppose Quebec secession, even though almost all of them have been

advocates of renewed federalism. Their analysis is concentrated on raising doubts about the successful accomplishment of secession, and worrying about the risks, including economic costs. In this general category may be placed many of the economic analysts who assess costs to Quebec sovereignty. This includes Gordon Ritchie on the realities for Quebec to enter NAFTA, or David Laidler on monetary union. Media commentary continues to cite moderate assessments such as those of Paul Boothe or the Economic Council of Canada (1991 report). As well, closer to the "hardliner" end of the sceptical group, would be the more severe forecasts of the Royal Bank and Marcel Côté, and John McCallum.

The most common type of analysis in this centre position is not economic but political and institutional; specialists in Canadian and comparative federalism raise doubts about sovereignist claims, including the institutional feasibility of their assumptions and the stability of the ROC both in the short and longer terms. These analysts are not regionally concentrated, and on the ideological spectrum they tend to be centrists. In this category one might place Cairns, Watts, Leslie, Robertson, Brown, and Cameron, among others.

To the degree to which analysts in the centre position have not taken hardline views, they may, consciously or not, be prepared to accept secession should it occur. Conversely, some of them may merely be seeking to avoid confrontation, and are not willing to draw lines in the sand which they may later regret. They may also remain hopeful that middle ground solutions to accommodate "soft" sovereignists within the federal system may yet be found, and therefore they are not inclined to sever strategic linkages with Quebec.

#### THE RATIONALISTS AND THE RESIGNED

A key crossing point for analysts in the ROC is whether or not they accept that secession can occur. These analysts, in turn, can be divided into those who are rationalists (they may consider themselves realists) who have decided to depart from the position of the sceptic in order to explore just how secession could occur in the best interests of all concerned. Here I label them rationalists, in part to underscore that their scenarios place an emphasis on an assumed exercise of rational interest among the parties concerned, unlike the sceptics who assign more weight to irrationality.

The rationalist part of the spectrum includes the recent work of Gordon Gibson, Robert Young, and Alan Freeman and Patrick Grady. There may be those in all camps who have similar readings of the likelihood of secession, occurring, but the position of these rationalists is generally to assume that if Quebecers vote in favour of secession on a clear question that reason will prevail and a successfully negotiated separation could occur. There are, nonetheless, major differences, in that Young\Freeman\Grady (all based in Ontario) assume that the ROC would stay together while Gibson, writing in Vancouver,

assumes that the ROC would only survive, if at all, in a very decentralized form. The Gibson view probably represents at least one major strand of opinion in British Columbia, and probably in Alberta. Other analysts who have recently taken on the task of rationally sorting out post-referendum issues are University of Alberta economists Ken Norrie *et al*; and Roger Gibbins at the University of Calgary.

Another significant body of opinion is represented by the "resigned." For many in this category their concern about democratic and social values leads them to accept the moral position of the PQ, and mutes any opposition they might have to the economic or legal position of the sovereignists. It includes those who are sympathetic to Quebec nationalism and see merit in Quebec leaving on amicable terms in order to improve the chances of an "English-Canadian" nationalism, which embraces social-democratic values. While this school of thought is not significantly concentrated in regional terms, many of its adherents reside in Ontario.

Finally, there are those who are resigned to Quebec secession — indeed who may welcome it — but who would place what may be considered to be punitive conditions on Quebec for leaving (e.g., Bercuson and Cooper). Their point on the spectrum is at the opposite end from the hardliners, in that they readily say *au revoir* to Quebec, but the result may not be very different in terms of a sharp and irreconcilable definition of ROC interests. This is not the "mainstream" view among academics, for example, it tends to get little support in urban Ontario, but it has resonance in the west and probably among Reform voters. The rationalists would argue that the position of the *au revoir* camp greatly increases the risk of violent confrontation and therefore would be damaging to everyone's self-interest.

## CONCLUSION

One is struck by an ever increasing sophistication and depth of detail of the recent analytical efforts in the ROC with respect to the issue of Quebec secession. Finally, it seems, the issue is getting the kind of attention outside Quebec that it has received for two or three decades within Quebec. This increased sophistication may be no more than the accumulated impact of research, but at least the more simplistic and extreme scenarios have been superseded. If indeed Canadians are peering over the abyss they are doing so through more refined lenses. It remains to be judged whether the increased analytical rigour has a definitive outcome on the debate over secession itself.

There are, nonetheless, some significant differences and similarities that emerge from this analysis, which will continue to influence the debate in Canada as a whole. ROC analysts, until recently, have granted political legitimacy to the referendum process, which has contributed to a more serene

environment for holding the vote. However, if challenges to the process prevail, and the lack of legitimacy within the process becomes the predominant perception in the ROC, one can expect a sharply deteriorated environment for the holding of the next referendum, if there is one.

There has also been a general acceptance of the desirability of economic association with an independent Quebec, although there are important differences concerning the details. ROC analysts are also becoming much more focused on the agenda for potential negotiations, including strategies to pursue ROC's best interests. This may be seen by some as contributing to the perception of the inevitability of secession. Yet it is also reasonable to assume that the genuine interests of the ROC, if communicated in Quebec, will contribute to a more realistic appraisal by Quebecers of their own interests leading to the referendum.

Finally, there is a sharp divergence of views among ROC analysts on the political transition between a referendum and actual secession, hinging on the ability of the ROC to act as a single player. This issue is tied to a somewhat less sharp but still important debate over whether ROC could in fact survive the secession of Quebec. The two issues combined reveal the unhealed wounds of intense Canadian constitutional debate over the last decade. They also lay bare the unstable foundations of a proposed independent Quebec, which would, arguably, need a viable partner in ROC.

As for the overall positions of ROC analysts, I characterize these as lying on a spectrum, ranging from hardliners at one end, to the resigned on the other, and sceptics in between. The positioning of analysts on this spectrum is provisional in some cases; key academics' views have changed over time and may change again as the debate enters a new phase. The largest camp still appears to be the sceptics. This apparent majority posture amounts to being mildly respectful of the smoldering coals in Quebec, while throwing a wet blanket over each fresh outbreak of flames. Nonetheless, this current round of studies and commentaries (1994-96) has witnessed an increase in mainstream analysts who are willing to think the unthinkable and to pursue in detail the PQ proposals.

One concludes from such a spectrum that there is no single view. This could be seen as evidence that, faced with an actual positive vote for secession in Quebec, the ROC would not be able to "get its act together." More certainly, the lack of a single view demonstrates that the issue of Quebec secession has not reached the stage where analysts feel compelled to fall behind a single party line. The debate within Canada is not yet polarized between the ROC and Quebec. A pluralistic debate is still possible. To the extent to which this influences Canadian opinion as a whole, this is a welcome sign, especially if Canadians draw back from the brink to consider a wider range of potential futures for Quebec and Canada. This is another hopeful sign that the current debate over the future of Quebec in Canada will not be the final word.

## NOTES

The author wishes to acknowledge the research assistance of Louise Edmonds and Christopher Adams in the preparation of this article.

1. While there is an extensive literature in Quebec on the secession issue, most of the best analyses and commentaries are collected in a few recent publications. See Jacques Brassard, *L'accession à la souveraineté et le cas du Québec: Conditions et modalités politico-juridiques* (Montreal: Presses de l'Université de Montréal, 1976); Québec, Commission sur l'avenir politique et constitutionnel du Québec [Bélanger-Campeau] *Les avis des spécialistes*, Working Paper No. 4 (Québec: Assemblée Nationale, 1991); Québec, Assemblée Nationale, Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté, *Les implications de la mise en oeuvre de la souveraineté* (Québec: Assemblée Nationale, 1992); Alain G. Gagnon and François Rocher, eds., *Répliques aux détracteurs de la souveraineté du Québec* (Montréal: VLB éditeur, 1992); Parti Québécois, *Le Québec dans un monde nouveau* (Montreal: VLB éditeur and the Parti Québécois, 1993).
2. R.A. Young, *The Secession of Quebec and the Future of Canada* (Kingston and Montreal: McGill-Queen's University Press for the Institute of Intergovernmental Relations, 1995), 1.
3. For comments on this bias as it has prevailed in the rest of Canada over the past two decades or more, see Alan C. Cairns, "Political Scientists and the Constitutional Crisis: The View from Outside Quebec," in *Disruptions: Constitutional Struggles from the Charter to Meech Lake* (Toronto: McClelland & Stewart, 1991), 193-94. For an earlier but similar assessment see David M. Cameron, *Nationalism, Self-Determination, and the Quebec Question* (Toronto: Stoddart, 1974).
4. With a few exceptions, all of the studies cited and listed here are in the public domain. The author has communicated in person with certain individuals who have been prominent in constitutional debate since 1990 to determine the nature, if any, of their participation in the current debate on the Quebec referendum. Silence on this issue is important, especially from persons who would otherwise be vocal and engaged. A significant portion of potentially active analysts have chosen not to be heard on these issues out of fear of contributing to the sovereignist cause by taking it seriously, or from hesitation in entering a debate where the stakes are so high and honest analysis can be easily misinterpreted and misrepresented. There are also certain analysts who have made important contributions in recent years and who may have decided that there is nothing more to add to that analysis in the current phase of the debate.
5. See references to Scott in *Alberta Report*, 16 May 1994, and *Alberta Report*, 13 June 1994.
6. See William D. Gairdner, *Constitutional Crack-Up: Canada and the Coming Showdown with Quebec* (Toronto: Stoddart, 1994).
7. See Douglas Brown, "Quebec Independence: Examining the Assumptions," *Opinion Canada* 2, 4 (August 1994); Brown, "PQ Assumptions and the Independence



Project," in *Constitutional Forum: Perspectives on the PQ Plan for Sovereignty – 'Quebec in a New World'* (Edmonton: Centre for Constitutional Studies, 1994); Joe Clark, *A Nation Too Good To Lose: Renewing the Purpose of Canada* (Toronto: Key Porter Books, 1994); Alan Freeman and Patrick Grady, *Dividing the House: Planning for Canada Without Quebec* (Toronto: HarperCollins, 1995); Gordon Gibson, *Plan B: The Future of the Rest of Canada* (Vancouver: The Fraser Institute, 1994); Gibson, "In Cold or Hot Blood? A Response to the C.D. Howe Forecast on the Post-Referendum World," in *The Fraser Forum* (Vancouver: The Fraser Institute, 1995); R.A. Young, *The Secession of Quebec and the Future of Canada* (Montreal and Kingston: McGill-Queen's University Press, 1995).

8. In particular, concern and criticism about the way in which the question was worded, and the procedures by which the referendum campaign was conducted have led some ROC analysts to concentrate on proposals for ground rules to govern the next referendum. In this regard, see Patrick J. Monahan and Michael Bryant, *Coming to Terms with Plan B: Ten Principles Governing Secession*, Commentary 83 (Toronto: C.D. Howe Institute, 1996); Gordon Robertson, "Contingency Legislation for a Quebec Referendum," unpublished manuscript, 1996; Jeff Rose, *Beginning to Think about the Next Referendum*, Occasional Paper (Toronto: University of Toronto Faculty of Law, 1995).
9. For discussion of this issue since the referendum, see Monahan, *Coming to Terms with Plan B*; Peter Russell, "Can Quebecers be a Sovereign People?"; and Alan C. Cairns, "The Nationalist Dilemma in Quebec," *Canada Watch* 4, 2 (November/December 1995).
10. For press reports and commentary on this conference, see: *The Globe and Mail*, 17 March 1995; *Le Droit*, 17 March 1995; *Le Devoir*, 16 March 1995; *Toronto Sun*, 17 March 1995; *Montreal Gazette*, 16 and 17 March 1995; *Le Devoir* 19 March 1995.
11. See Monahan, *Cooler Heads Shall Prevail: Assessing the Costs and Consequences of Quebec Separation*, Commentary, no. 79 (Toronto: C.D. Howe Institute, 1995).
12. See Neil Finkelstein and George Vegh, *The Separation of Quebec and the Constitution of Canada*, Background Studies of the York University Constitutional Reform Project, Study No. 2 (North York: York University Centre for Public Law and Public Policy, 1992).
13. See Allan C. Hutchinson, "Monahan's Constitution: Dead Branch or Living Tree?" *Canada Watch* 3 (January/February 1995).
14. See Gordon Robertson, *The Montreal Gazette*, 23 June 1994; Richard Jackson, *The Regina Leader-Post*, 18 January 1995.
15. Monahan and Bryant, *Coming to Terms With Plan B*.
16. See also Jeff Rose, *Beginning to Think About the Next Referendum*.
17. See Grand Chief Matthew Coon Come, "The Status and Rights of the James Bay Crees in the Context of Quebec Secession from Canada," in *Constitutional Forum: Perspectives on the PQ Plan for Sovereignty*.

18. Grand Council of the Crees of Quebec, *Sovereign Injustice: Forcible Inclusion of the James Bay Crees and Cree Territory into a Sovereign Quebec* (Nemaska, Quebec: 1995).
19. See Kent McNeil, "Aboriginal Nations and Quebec's Boundaries: Canada Couldn't Give What it Didn't Have," in *Negotiating with a Sovereign Quebec*, ed. David Drache and Roberto Perin, (Toronto: Lorimer, 1992); Mary Ellen Turpel, "The Charlottetown Discord and Aboriginal People's Struggle for Fundamental and Political Change," in *The Charlottetown Accord, the Referendum, and the Future of Canada*, ed. Kenneth McRoberts and Patrick Monahan (Toronto: University of Toronto Press, 1993); Royal Commission on Aboriginal Peoples, *Canada's Fiduciary Obligations to Aboriginal Peoples in the Context of Accession to Sovereignty by Quebec: Volume I – International Dimensions; Volume II – Domestic Dimensions* (Ottawa: Minister of Supply and Services, 1995).
20. On this latter point, see Young, *The Secession of Quebec*. See also Gregory Marchildon "Quebec's Right of Secession Under Canadian and International Law," *Virginia Journal of International Law* 32, 3 (1992).
21. See Brown, "Quebec Independence: Examining the Assumptions"; Brown, "PQ Assumptions"; Young, *The Secession of Quebec*; Gibbins, "Speculations on a Canada Without Quebec"; and McRoberts, "Disagreeing on Fundamentals: English Canada and Quebec" in *The Charlottetown Accord*.
22. For examples of this minority view, see Daniel Drache, "Negotiating With Quebec: A New Division of Powers or Secession?" in *Negotiating with a Sovereign Quebec*; Phillip Resnick, *Towards a Canada-Quebec Union* (Montreal and Kingston: McGill-Queen's University Press, 1991); "Dividing in Two: A Test for Reason and Emotion," in *Negotiating with a Sovereign Quebec; Thinking English Canada* (Toronto: Stoddart, 1994); and Resnick, "Towards a Multinational Federation: Asymmetrical and Confederal Alternatives," in *Seeking a New Partnership: Asymmetrical and Confederal Options*, ed. Leslie Seidle (Montreal: Institute for Research on Public Policy, 1994). For details on the Bertrand case see reports in *The Globe and Mail*, 14 May 1996.
23. Young, *The Secession of Quebec and the Future of Canada*; Freeman and Grady, *Dividing the House*.
24. See Brown, "Quebec Independence"; and "PQ Assumptions"; Cairns, "Suppose the 'Yes' Side Wins: Are We Ready?" *Western Perspectives* (Edmonton: Canada West Foundation, 1995); Monahan, *Cooler Heads Shall Prevail*.
25. In this category one would place Drache, 1992 ; R. Whitaker, "Life After Separation" in *Negotiating with a Sovereign Quebec*; Resnick, 1991, 1992, and 1994; McRoberts, 1993.
26. See Cairns, "Suppose the 'Yes' Side Wins"; see also Brown, "PQ Assumptions"; and "Quebec Independence."
27. See Roger Gibbins, "Speculations on a Canada Without Quebec," in *The Charlottetown Accord*; and "Western Canada Post-1995," in *Quebec-Canada: Challenges and Opportunities*, ed. J. Trent, R. Young and G. Lachapelle (Ottawa: University of Ottawa Press, 1996), 255-62.

28. See McRoberts, "In Search of Canada Beyond Quebec," *Beyond Quebec: Taking Stock of Canada* (Montreal and Kingston: McGill-Queen's University Press, 1995).
29. See chapter by Young in *Quebec-Canada: Challenges and Opportunities*.
30. See David Bercuson and Barry Cooper, *Deconfederation: Canada Without Quebec* (Toronto: Key Porter, 1991); see also references to Bercuson in *The Globe and Mail*, 13 September 1994; for further reading see Bercuson and Cooper, *Derailed: The Betrayal of the National Dream* (Toronto: Key Porter Books, 1994).
31. See references to Gordon Ritchie, *The Montreal Gazette*, 1 September 1994; and Barry Russell, *The Toronto Star*, 6 August 1994.
32. See David Laidler and William Robson, "Two Nations, One Money? Canada's Monetary System Following a Quebec Secession," in *Two Nations, One Money* (Toronto: C.D. Howe Institute, 1991).
33. See William Robson, *Change for a Buck? The Canadian Dollar After Quebec Secession*, Commentary, no. 68 (Toronto: C.D. Howe Institute, 1995); see also references to Robson's views in *Alberta Report*, 13 June 1994.
34. See Robin M. Richardson, *The Public Debt of an Independent Quebec* (Vancouver: The Fraser Institute, 1994); P. Boothe, B. Johnson and K. Powys-Lybbe, "Dismantling Confederation: The Diverse Question of the National Debt," in *Closing the Books: Dividing Federal Assets and Debt if Canada Breaks-Up*, ed. Boothe et al. (Toronto: C.D. Howe Institute, 1991); M. Cote and J. McCallum, *Québec-Canada: Les couts de la Rupture* (Montréal: Group Secor, 1992); Marcel Cote, *If Quebec Goes: The Real Cost of Separation* (Toronto: Stoddart, 1995); Royal Bank of Canada, *Unity or Disunity: An Economic Analysis of the Benefits and Costs* (Montreal: Royal Bank of Canada, 1992).
35. See Stanley Hartt, *Divided Loyalties: Dual Citizenship and Reconstituting the Economic Union*, Commentary, no. 67 (Toronto: C.D. Howe Institute, 1995).
36. For discussion, see Monahan, *Coming to Terms with Plan B*.
37. See Freeman and Grady, *Dividing the House*; and M. MacMillan, K. Norrie and B. Reid, "Canada and Quebec in a New World: The PQ's Economic Proposals," in *Constitutional Forum: Perspectives on the PQ Plan for Sovereignty*.
38. See Young, *The Secession of Quebec*; Peter Leslie, "Asymmetry; Rejected, Conceded, Imposed," in *Seeking a New Partnership*; and *The Maastricht Model: A Canadian Perspective on the European Union*, Research Paper no. 33 (Kingston: Institute of Intergovernmental Relations, 1996); Gibbins, "Speculations on a Canada Without Quebec"; R. Watts, "Canada's Constitutional Options: An Outline," *Options for a New Canada*, ed. R. Watts and D. Brown (Toronto: University of Toronto Press, 1991).
39. On this point in particular see the sustained analysis in Leslie, *The Maastricht Model*.
40. Daniel Schwanen, *Break Up to Make Up: Trade Relations after a Quebec Declaration of Sovereignty*, Commentary, no. 69 (Toronto: C.D. Howe Institute, 1995).

41. See Monahan, *Cooler Heads Shall Prevail*"; Young, *The Secession of Quebec*; and Leslie, 1994 and 1996; Brown, "PQ Assumptions," "Quebec Independence"; Royal Bank of Canada, *Unity or Disunity*; and Cote and McCallum, *Quebec-Canada*.
42. See Keith Banting, "If Quebec Separates: Restructuring Northern North America," in *The Collapse of Canada?* ed. Kent Weaver (Washington: The Brookings Institute, 1992).
43. For a somewhat different but insightful typology, see the review article by Stéphane Dion, "The Dynamics of Secession: Scenarios After a Pro-Separatist Vote in a Quebec Referendum," *Canadian Journal of Political Science* 28, 3 (1995): 533-51. Dion's analysis refers to the "Impossibilist scenarios" versus the "inevitable." His own analytical position has been to demonstrate how rarely secessions actually occur in practice, and to stress how difficult it would be to secede from a modern welfare state. See also Michel Sarra-Bournet, *Le Canada anglais et la souveraineté du Québec* (Montréal: VLB éditeur, 1995), especially the concluding chapter.

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## Post-Referendum Citizen Group Activity

*John E. Trent*

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*Ce chapitre décrit et analyse la composition, les orientations et les activités des groupes de citoyens pour l'unité canadienne pendant l'année suivant le référendum québécois du 30 octobre, 1995. Suite à une période d'expansion extraordinaire, on découvre que le nombre de groupes a fortement diminué; leurs activités ont été largement devancées par celles des groupes d'élites établis; et les groupements en faveur du Plan A ayant comme objectif l'accommodement du Québec ont été devancés par les groupes du Plan B pronant la main forte pour maîtriser le Québec. On cherche à expliquer ces développements en se référant à la théorie récente sur la montée de l'activisme des citoyens ainsi qu'aux conditions canadiennes particulières telles l'influence de facteurs dits "géographiques" et par désir des autorités de contrôler le déroulement des événements.*

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### INTRODUCTION

Much has been made of the many unity groups, both "Plan A" groups for the reform of the federation and "Plan B" groups for a tough response to Quebec, which have been created since the second Quebec referendum of 30 October 1995. In this chapter, I want to describe and analyze the composition, orientations and activities of citizen unity groups in Canada during the year following the Quebec referendum.

After a period of stunned quiescence immediately following the referendum, there was an explosion of citizen activity. But, by the following autumn, unity organizers could barely muster a few hundred people to commemorate the Montreal rally of 27 October 1995 that had inspired their belief in citizen-led politics. During the year following the referendum, it would appear that these activist citizens were motivated by a mixture of desires for accommodation and by anger. At the beginning of that year there was a clear desire to push governments to respond to Quebecers (and to a lesser degree to westerners

and Native Peoples) through a process for renewal of Canadian federalism. By the end of the year, the predominant attitude appeared to be one of attack on the separatists. The events of 1996 concerning the renewal of the federation do not allow us to be too sanguine that many lessons have been learned from Canada's recent past.

In our analysis, we will turn to both theories of citizenship and to specifically Canadian conditions as a means of explaining the seemingly transitory nature of this citizen group activity and its shift from accommodation to opposition. We will find that there are several different types of citizen activity, both elite and populist. Citizenship theory will help to provide the context for understanding the growth of citizen activism in advanced technology countries (still erroneously referred to as the industrialized economies) at the end of the twentieth century. But, we have to turn to Canadian conditions and models of analysis to try to understand the evolution of unity groups this past year. Analysis of the origin and maintenance of associations, of approaches to the management of inter-ethnic relations, of interest group and social movement behaviour, and of spacial relations and self-interest, will help to explain the evolution of citizen group activity.

This chapter begins with a look at recent theory on citizen behaviour before turning to a description of unity groups, including their organization, membership, motivation, objectives, activities, and funding. There follows an analysis of the year's evolution in citizen group activity and a set of tentative conclusions.

## THEORIES OF CITIZENSHIP AND OF CITIZEN ACTIVISM

Participant-observation research has advantages and disadvantages.<sup>1</sup> It provides additional access to research resources but runs the risk of enhancing bias. To limit the latter it is helpful, if even briefly, to set the topic in the context of time and space and of theoretical considerations. How, and in which directions, has the concept of citizenship been transformed in recent years, and how have these modifications been explained? Let us recall, first of all, that in current, everyday acceptance, a citizen is an enfranchized native or naturalized inhabitant of a state who owes allegiance to its government and who enjoys the rights and protection of membership in the country.<sup>2</sup> However, in this chapter the essence of the concept deals with participatory politics by citizens who avail themselves of their rights, responsibilities, and membership, but are not active members of governing or opposition coalitions.

The concepts of citizen and citizenship seem to have regained currency because of concerns about our ability of citizens to maintain effective democratic institutions in a period of globalization when states are losing many of their functions to unrepresentative transnational economic organizations.<sup>3</sup> In

addition, some argue that the "pan-Canadian-political-equality-of-individuals post-World War II" definition of citizenship has broken down and "a search for the proper balance among the three elements of liberty, equality and solidarity is again underway."<sup>4</sup>

We may summarize the changing influences on the concept of citizen in the following manner (while noting that current trends by no means all tend in the same direction). First, there are the neoliberal (or neoconservative if you prefer) attempts to minimize government. These attempts have had the contradictory effect of curtailing social rights while at the same time reemphasizing the independence of the citizen vis-à-vis the state. Thomas Courchene suggests:

as aspects of sovereignty are being passed upwards and, therefore, beyond their control, citizens are focussing more and more on issues and areas where they can still exert some degree of control. As a result, there is a re-emergence of emphasis on the concept of community.<sup>5</sup>

Second, during the past several decades, an increasing number of categories of citizens — including women, aboriginals, people of colour, official language minorities, groups related to Canada's multi-ethnic heritage, the mentally and physically disabled, and the poor — became increasingly conscious that they did not enjoy the same advantages and political opportunities as others in society. The result was a call for a citizen-centred politics which was more inclusive, equitable, participatory, responsive, open, and diversified in its policy content. The Charlottetown process with its consultative task forces and committees, its regional constitutional conferences, and its final devastating referendum, should have served to underline the increased importance of citizens in determining political outcomes.

A third major area of change has been the decline of deference in Canadian citizens or, as Peter Newman has called it, *The Canadian Revolution: From Deference to Defiance*.<sup>6</sup> A similar phenomenon has been noted in most advanced industrial societies.<sup>7</sup> According to this type of analysis, Canadians are now much less inclined to be automatically respectful of authority and blindly obedient to the powers that be. There has been a trend towards independent thought and consent, towards a wider assertion of self-empowerment, to take control of one's own life. Although people are more interested in politics than before and have a greater potential for participation, attachments to traditional political parties have been eroding, levels of voter turnout are not increasing, and there are declining levels of confidence in both governmental and non-governmental institutions as citizens turn to social movements, communal bases of identification, and interest groups. Donna Dasko of Environics Research sees this pattern as part of a general trend towards the rejection of authority.

Higher levels of education, a multi-ethnic society, and the evolving egalitarian and non-hierarchical values of the baby-boom generation challenge the old way of decision-making. Notions of empowerment and inclusion on the part of

previously silent and victimized groups eroded the legitimacy of traditional authority. The political process became more inclusive and diverse.<sup>8</sup>

For these three trends in citizenship there are also three major types of explanation, which we may see as complementary rather than contradictory. Authors such as Alan Cairns and Kathy Brock see the roots of the new behaviour as stemming principally from constitutional debates and in particular from the specific recognition of categories of persons in the *Charter of Rights and Freedoms*.<sup>9</sup> Wider public consultation became increasingly expected and accepted as governments drew these societal groups into constitutional negotiations. Both Ottawa and the provinces sought to legitimize their positions, as well as to draw on the special information and expertise of various groups that were consulted.<sup>10</sup> The perceived need to participate was further reinforced by a growing consciousness of a vested interest in protecting rights.

Cairns and Brock also draw attention to significant nuances and long-term considerations. For example, government business should not be conducted in a clandestine manner and sprung on an unsuspecting citizenry. On the contrary, if public debate is properly managed it "can build on itself: as society defines and evaluates its collective goals ... it becomes better able to mobilize its resources and achieve its goals."<sup>11</sup> Such a managed debate would encompass more open, inclusive and responsive institutions, preliminary hearings and consultations, rational explanation of government initiatives, listening to citizens, continuous information about the progress of negotiations, and coordination among legislators.<sup>12</sup> However, writing almost a decade ago, Cairns cautioned: "Thus, necessary changes are unlikely to come easily or to be granted graciously. Those who govern us may have to relearn the ancient democratic message that they are the servants of the people."<sup>13</sup>

Susan Delacourt's account of the Charlottetown Accord debate confirms that the "Charter citizens" had become fully active.<sup>14</sup> She shows that the failure was caused not just because of politicians ignoring the economy, or anger with "elites," or even hatred of Brian Mulroney. Rather, Charlottetown failed because governments refused to accept debate and dissent, they foisted last minute executive compromises on an unprepared and excluded public, and, most of all, because of a rupture in respect between citizens and politicians.<sup>15</sup> By 1992, Delacourt claims, the public was ready to play a responsible role in decision making and felt they had the right to do so. For their part, the politicians were increasingly worried about being second-guessed on all their decisions.

While by no means denying the importance of the Charter and constitutional politics as an additional lever for what Jane Jenson calls "categorical groups," Jenson highlights a second form of explanation for enhanced citizen activity in Canada, and she makes several claims. First, she contends that demands for social equity actually pre-dated the Charter of Rights. Second,



such demands are by no means limited to Canada. Third, the primary catalysts are social movements. Fourth, these movements have made claims "for expanded democracy and political access as the right of all citizens."<sup>16</sup> As examples, Jenson points to the Action Canada network from 1987 to 1994, and the televised, regional constitutional conferences in 1992. She also points perceptively to one of the great conundrums of citizen movements:

on the one hand, they must restructure institutions in order to reflect and represent their alternative conceptions of citizenship and identity. On the other hand, they must work within the existing institutions and the forums which they provide.<sup>17</sup>

A third type of explanation is provided by Neil Nevitte's sketch of the move away from traditional political institutions and processes. Nevitte's work is based on empirical evidence from the World Values Surveys conducted in 22 countries in 1981 and 40 countries in 1991. His data indicate that the rise of protest behaviour, including new social movements and the welcoming of political change "are related to the very same set of underlying factors — age, levels of education, interest in politics, and the materialist-post-materialist value divide — which in turn are all related to each other."<sup>18</sup> Nevitte maintains that the fundamental reasons why Canadians have become more assertive, less compliant, and more willing to pursue their goals through unconventional forms of political action are structural, and are part of a broad transformation taking place throughout all advanced technology economies.

Substantial structural transformations and changes in economic dynamics include a shift to the service sector and knowledge-based technologies. This has been accompanied by changing social structures, increased education, greater mobility, and two-income families.<sup>19</sup> This turmoil has set the scene for a politics of protest. At the same time we are dealing with a radical generational transformation based on a post-1945 baby-boom generation that has not experienced the Depression or the Second World War, and takes economic security for granted. As hypothesized by Ron Inglehart,<sup>20</sup> this post-materialist generation has moved up the needs hierarchy from economic security and safety needs to desires for belonging, self-esteem, and values related to the quality of life — with consequent impact on a citizen's politics of inclusion and participation.<sup>21</sup>

In summary, Canadians, like the citizens of all other technologically advanced countries, have spent more than a decade in a period of turmoil in which intense pressures have been brought to bear on social structures, values and leadership, and hence the search for a new balance between the competing desires for liberty, equality, and solidarity. Two sources of pressures have come from neoconservatism and globalization: the former reducing the social services available to citizens but increasing their independence; the latter weakening citizen influence over crucial institutions but inciting them to

concentrate more on their national democracy. One response was a growth in movements supporting collective categories of citizens. But, more broadly, there has been a demand for more representative and equitable institutions, openness, responsiveness, participation and a more diversified politics that goes beyond federal and electoral issues.

This background material provides a context within which we may describe and compare the new wave of citizen activity that has erupted since the Quebec referendum. It will also allow us to test out and adjust the explanatory hypotheses in our conclusions. Essentially, we must discover the degree to which these new realities and concepts of citizen politics have incited Canadians to opt for citizen action and responsibility rather than waiting for governments to "fix the problem."

## POST-REFERENDUM CITIZEN GROUP ACTIVITIES

### DESCRIBING THE GROUPS

Let us start with what the groups are not. They are not categorical citizens' movements. That is, they are not protest groups seeking to establish their identity and equity. In fact, they cannot yet be said to constitute a movement (to this we will return). For the most part they do not reject the essential role of government or even assign all blame to politicians,<sup>22</sup> but they are not confident of government institutions. They are not rights groups. Their concern for citizen participation and extended democracy is palpable but peripheral. They are not demanding all power to the citizenry. As of the time of writing they do not seem to reflect or to have elicited broad public interest, although unity issues remained a fairly high priority in public opinion. Nor do the unity groups have much structural integration or solidarity of purpose among themselves.<sup>23</sup> They are non-partisan, in the sense that they have no ties to political parties.

How, then, may we describe these groups?<sup>24</sup> The usual term is to call them "unity groups," although herein hangs a tale. Because of the opprobrium heaped on the federal government's "Unity Information Office" during the 1980 referendum, "unity" became a dirty word, especially among Quebec nationalists. "Unity" became equated with a defence of the status quo. For this reason, many groups prefer to be called "renewal groups," thereby signifying that they perceive reform of the federation as the priority path for cutting the Gordian knot of the seemingly perpetual Canadian constitutional crisis. Nevertheless, aside from differences of perception and tactics, the common link between the groups is that they wish desperately to preserve the union of the Canadian federation.

The citizen groups are new, pro-active, participatory, grass-roots organizations of individuals interested in protecting their country. They are by nature assertive, less compliant towards institutionalized authority, politically interested, and believe in unconventional political action beyond parties and elections. The unity groups expect wider public consultation by governments and believe in political access rights for all citizens. In this sense they very much fit the definition of post-modern politics delineated by Nevitte. For the most part these groups are poor, small, isolated, democratic, independent, personality-bound, and diversified in form and content. Often they are territorially jealous in the sense that they wish to protect their self-perceived unique attributes and believe they must be perceived publicly as locally based if they are to influence opinion in their region. Because they are new, they have had to expend a lot of their time and energy on properly constituting themselves, that is, in defining organizational constitutions (bylaws), membership, and strategies.

No definition is perfect. In the case of citizen groups, the exceptions are legion. While this chapter concentrates on the small, new groups, at least one, the Council for Canadian Unity, has existed since 1964, and Dialogue Canada was founded in 1991 after the failure of the Meech Lake Accord. Nor should we assume the new unity groups cover the universe of citizen activity on the issue of Quebec and federal reform. There has been an outpouring of citizen activity and organization on at least five prior occasions in the recent past — following the “October Crisis” of 1970, the election of the Parti Québécois in 1976, the Quebec referendum of 1980, the Meech Lake Accord of 1987, and the Charlottetown Accord of 1992. Nor should one forget Quebec citizen groups on the other side of the issue, such as the Mouvement national des Québécois, la Société Saint-Jean Baptiste, Impératif français, Le Conseil de la souveraineté du Québec and the Mouvement souverainiste.

In addition, many of the most significant contributions of the year have been made by elite groups acting as citizen assemblies. Within months of the referendum small groups of thinkers were brought together privately by such institutes as C.D. Howe, the Institute for Research on Public Policy, the McGill Institute for the Study of Canada and the Council for Canadian Unity to consider the consequences of the Quebec referendum. Meeting in January 1996 in Ottawa under the auspices of the Société québécoise de science politique and the Canadian Political Science Association, 50 intellectuals from across the country participated in the first public conference after the referendum to analyze future economic, cultural, and political relations in the Quebec-Canada tandem.<sup>25</sup> Some of these same political economists worked together to produce a constructive set of reform proposals presented as the *Report of the Group of 22* in May 1996.<sup>26</sup> In the spring of that year, the Business Council on

National Issues created the Confederation 2000 Conferences, composed in equal parts of senior corporate presidents, academics, and former political and governmental leaders.<sup>27</sup>

The reports of these meetings, along with the Throne Speech of the federal government established a cohesive set of ideas for the renewal of the federation grouped around a hexagon of six major types of proposals. These include: (i) decentralization based on a restoration of provincial jurisdictions and a curtailment of the unilateral use of the federal spending power; (ii) cooperative mechanisms of federal-provincial management, including jointly-operated first ministers' conferences; (iii) constitutional recognition of Quebec's distinctiveness; (iv) non-discrimination in federal spending (i.e., fiscal equality), and strengthening of the socio-economic union including Canadawide securities regulation and a more aggressive elimination of internal trade barriers; (v) a greater role for western provinces in central institutions and progress on native self-government; and (vi) citizen participation. In all areas, specific proposals and mechanisms for action are presented, except in the domain of citizen participation which was confined to words of praise and encouragement.

In addition, the C.D. Howe Institute in Toronto sponsored a number of studies of both the path towards the resolution of Canada's problems and of the analysis of possible post-breakup scenarios.<sup>28</sup> Maureen O'Neil of the Institute on Governance proposed adopting a new American technique called a "deliberative poll," using meetings of random samples of the population to promote a more informed and thoughtful public opinion.<sup>29</sup> By August 1996, the first such poll was organized by the Canada West Foundation in conjunction with the Council for Canadian Unity and the Atlantic Provinces Economic Council. Together they organized "Assembly '96" to provide "a representative sample of Canadians, aged 18-29 years of age, with an opportunity to discuss, assess and propose solutions for Canada's unity problems."<sup>30</sup> The assembly is also an assessment of "deliberative democracy" techniques: a representative sample of the population (in this case youth) is exposed not only to each others' ideas but also to the ideas of opinion leaders, and to information from experts; "the initiative is guided by the belief that the resolution of fundamental policy questions like national unity can be facilitated by the direct involvement of citizens."<sup>31</sup>

Two other significant projects were initiated by the Canadian Bar Association and Environics Research. Working with Roger Fisher of Harvard University and his Conflict Management Group, the Bar Association seeks to set up an optimal process to guide future negotiations for both constitutional and administrative changes in Canada and for dispute resolution to reconcile competing interests. Fisher claims that, to date, a distinction has not been made: (i) between *designing* options and *choosing* between them; (ii) between providing constitutional solutions and informing the public of the consequences of their choices; and (iii) between political negotiations and the optimal crafting

of options.<sup>32</sup> The second proposal, by the president of the Toronto polling firm Environics Research Group Ltd. and a group of "concerned citizens," is the "Scenarios for the Future Project." To overcome an "absence of adequate public dialogue in Canada, and a need to further broaden public understanding and agreement," the idea is to bring 25 exceptional Canadians together for four workshops totalling ten days, with expert facilitation and research, to construct a set of scenarios which will then be shared with Canadians via television, the print media, and dialogue groups. The project is not about short-term solutions, rather it is about redefining the context in which we seek solutions. The project is intended to "enable a wide range of players to think through the implications of possible courses of action and develop a shared language and framework."<sup>33</sup>

There are two other components of what we might call citizens' activities which have been initiated since the referendum. The first are the actions of already existing national associations which have undertaken initiatives specifically oriented towards the unity issue. The Appendix shows that these associations include organizations such as the Canadian Citizenship Federation, Canadian Parents for French, the University Women's Club, the Canadian EthnoCultural Council, B'Nai Brith Canada, and linguistic minority groups such as Alliance Québec and the Société franco-manitobaine. To this list could be added the Unity Committee of the Canadian Legion. Secondly, we also find in the Appendix that some of these national associations (and one may assume the list is by no means exhaustive) have only set up discussion groups on unity.

Together, these groupings give us a broad perspective on citizens' activities since the referendum. To have a complete picture of what is going on in the country it is important to keep this perspective in mind. However, the rest of this chapter will concentrate on those organizations that have been specifically established to deal with the unity question.

#### MEMBERSHIP

The majority, although certainly not all, of the citizens groups are composed of white, middle-class, educated men and women who tend towards the older end of the age spectrum, including a new political force that can be called "recent retirees." In analyzing his polls, Michael Adams of Environics Research has come to the conclusion that these leaders from the baby-boom generation were in fact "flower children" who had always been ahead of trends in their attitudes towards citizen activism, responsibility, and dialogue.<sup>34</sup> Members of this group are concentrated in Quebec, Ontario, and British Columbia, with lighter turnouts elsewhere. Again there are several significant exceptions.

While not great in number, there are several youth groups, including the Society for Youth Creating Canada (Edmonton), UBC Students for United

Canada, the Fédération des jeunes francophones du Nouveau Brunswick, the Groupe des cents, the Toronto Junior Board of Trade, Génération 18-35, the Student Council for a United Canada, Unity Link, and Generation 2000. Unity Link is a small group of university students who have put up one of the most advanced unity web pages on the Internet.<sup>35</sup> Generation 2000 has been sending teams of students to high schools across the country since 1992, to put on plays they have created about current youth issues in Canada.

There are also several groups with significant francophone participation. Le Groupe des cents, the Fédération des jeunes francophones du Nouveau Brunswick, and Citoyens de la nation/Citizens for a Democratic Nation (CDN) are among the larger groups with French-speaking leadership. Citizens Together, the Council for Canadian Unity and Dialogue Canada are other sizable groups with a reasonably balanced French-English participation. However, there appears to be a general feeling among "renewal" groups that it is up to the rest of Canada (ROC) to make the gestures that are necessary to make "soft nationalist" Quebecers feel comfortable in Canada. Most citizens' groups are not surprised that Quebecers have not leapt onto the unity bandwagon since the referendum, but hope that they will do so once practical plans for renewal of Canada are made more concrete.

#### MOTIVATION

There is considerable variety in the motivations that inspire the leadership of the unity groups. For some it is a result of their personal experience and a sense of local involvement. Many are excited by the potential that citizen involvement might help to save the country. For others it is a rational desire for reform. Some are tired of Quebec and the separatists. A large number are motivated by fear and anger. Still others blame politicians and want to supplant or supplement them.

The leadership of the unity groups is both intense and intensely personal. This could have an impact on their capacity for cohesion, mobilization, and longevity. Many of the leaders are relative newcomers to the issue area, so they are often more motivated by their personal experience, impressions, and emotions than by a profound analysis of the history of Canadian unity. This personalized approach provides both their *élan* and their desire for group autonomy. Beyond these very personal orientations, we may categorize a number of common stimuli which both unite and divide the citizens groups among three different basic orientations, which we will call Plan A, Plan B, and Citizen Power. Plan A or "carrot groups"<sup>36</sup> believe the path to reconciliation is to reach out to disaffected Quebecers (and people in other regions) to develop mutual understanding and values that are necessary for the renewal of the country. Plan B groups think that Canadians must never be left unprepared for a referendum again and that Quebecers, especially nationalists, must be dealt

with from a position of strength.<sup>37</sup> Plan B groups have many distinct orientations which we will consider shortly. A third grouping, Citizen Power, for which Plan "B'ers" would have some sympathy, blames politicians for Canada's problems and proposes that citizens must be empowered to repair the damage, preferably by means of a "constituent assembly."

For all the citizens' groups, the process is fundamentally different from the Spicer Citizens' Forum in 1991. The forum was a government-sponsored consultation, whereas the three types of citizens' groupings form a sort of grass-roots movement that seeks to decide the future of the country and tell the governments what the people want. While the forum had a short-term aim of allowing Canadians to air their grievances and frustrations following the Meech Lake debacle, the citizen's groups want to change Canadian politics.

All of the citizens' groups started with a sense of having been excluded from the referendum debate which they perceived to have been bungled by both Prime Minister Chrétien, and by the leader of the Quebec Liberal Party and the No forces, Daniel Johnson. "Leave it to the experts, Canadians outside Quebec were told."<sup>38</sup> But the experts emphasized a narrow, negative economic view of Quebec in Canada and could not adapt rapidly to the *indépendantistes'* change of strategies and leaders. In the closing weeks of the campaign, ordinary Canadians became concerned about the seeming incompetence of the leadership of the No forces.

When the Montreal Rally of 27 October 1995, three days before the referendum, gave them a chance to express their love for a Canada that included Quebec, thousands of concerned Canadians from coast to coast jumped on buses, trains, and planes and headed for Montreal. Having participated in this unprecedented unleashing of citizen feelings and will power, many of the future leaders of citizens' groups became convinced that individuals could make a difference, and had an obligation to do so. They had "had a reprieve" which should not be wasted, said Chris Scouten of Canadians Together/Canadiens Ensemble in Vancouver.<sup>39</sup>

In part, these sentiments take their root in the new citizens' democracy discussed in the introduction to this chapter. "I don't think any individual can save the country. Part of our problem is we've expected our politicians to save the country. We need to take back our responsibility as citizens," said Marian Laberge of People to People — Search for Canada in Vancouver.<sup>40</sup> Thousands of kilometres away Debra Thornington, a founder of Solidarité Outaouais Solidarité (SOS) in Aylmer, Quebec, concurs:

This is purely grassroots. All the groups are non-affiliated with political parties. It seems to be the number one rule. You're average Canadian citizens who love your country. Yes and yes, we've listened to the politicians, but how many opportunities have there been for the average citizen to talk, to communicate? This is really going to take off.<sup>41</sup>

Back in Victoria, BC, Desmond Connor, president of Dialogue Canada's local chapter quotes the noted anthropologist Margaret Mead as saying "Never doubt that a small group of committed citizens can change the world. Indeed, it is the only thing that ever has."<sup>42</sup>

Another source of citizen reaction to the Quebec referendum was straight anger and fear. "Summing up the federalist rally in Low last week can probably be done with three messages that seemed to come out of the meeting: separatists are liars; we love Canada; we're mad as hell and we're not going to take it anymore."<sup>43</sup>

People were outraged by the near loss of the referendum and feared for the possible loss of their country, the present decline of the Quebec economy, and the general brake on investment in Canada.<sup>44</sup> They wanted "to purge themselves of the frustration and helplessness."<sup>45</sup> Although they had lived with the threat for 20 years, the reality caught them by surprise. They could not believe the "best country in the world" could be rejected. Alan Cairns put it very simply: "something snapped after the Quebec referendum."<sup>46</sup> The Canadian agenda was changed. What could not have been said before was now said openly as self-interest exacerbated fear.

We can hypothesize that the closer one is to Montreal the more one is motivated by fear. The farther away one is the more one is stimulated by love of Canada. All the groups outside Quebec are Plan A groups. This is not to say people outside Quebec are not motivated by anger and fear — one need only listen to the open-line radio shows — or that they do not want to develop tactics to stymie the separatists. Rather, spatial and political distance from the Quebec situation makes them feel they have less personal interest in going to the trouble of forming action groups. Plan A groups seek reconciliation and renewal. They believe that Quebec is essential to Canada's pluralism and diversity, and they think corrections to Canadian federalism are warranted to keep Quebec within Canada. Many members of such groups think the Quebec situation is only a symptom of the country's need for institutional reform to respond to the desires of many communities. These persons decry the loss of so many of Canada's east-west links in recent years, and seek to rebuild the bridges of mutual understanding and common interests. Plan "A'sers" are motivated by the greatness of Canada, and by harmony, dialogue, exchange, and fostering common values as the ties that unite.

Plan B groups believe the time has come to stop pandering to Quebec demands and to wield the proverbial big stick. They speak of tough love. They contend that threats are the only thing the Parti Québécois will understand. Plan B groups are all in Quebec, and are concentrated primarily in Montreal. Their sense of aggrieved fear, or "angst" as it has been dubbed, is linked to self-interest. Some of these think Quebec secession is inevitable, hence the need for immediate action. Other groups want to reestablish their sense of



belonging and self-esteem. In part, after years of quiescence, they just want to be heard. A *Globe and Mail* editorial captured these sentiments:

What Howard Galganov does undoubtedly represent is a hardening of attitudes among Anglophones to the separatist project. Given the close call they had in last October's referendum, this is entirely understandable. English-speaking Quebecers have lived for 20 years with a knife at the throat, seeing their homes decline in value, their language banned for years from public signs, their sons and daughters leaving for greener pastures.<sup>47</sup>

The issue of providing "correct information" to combat separatist myths and distortions also divides Plan A and Plan B groups. Many persons who advocate Plan B activities believe that Lucien Bouchard went beyond the bounds of permissible political debate during the referendum by misconstruing the facts about Canada and its history, by misrepresenting the constitutional debates, and by misleading Quebecers about the viability of a hypothetical "partnership." For members of Plan B groups, Bouchard has become the great liar and the great villain. His credibility had to be attacked. They were happy when Pierre Elliott Trudeau and Jean Chrétien struck back, and when Ottawa created the Canadian Information Office to "correct P.Q. misinformation."<sup>48</sup> While agreeing that many Quebecers might have voted for Canada if they had been properly informed, Plan A groups thought the correct counter-measure was to transform attitudes by opening lines of communication to Quebec, by sharing ideas and information, and by facilitating debate.<sup>49</sup>

A final motivation that separates the citizens' unity groups is their attitude towards the politicians. Generally speaking, Plan "A'ers" do not tend to put much blame on politicians for the near loss in the referendum and for current national divisions. "What's the use," asks Paul Lalonde of Aylmer, Quebec, a member of Le Groupe des cents. Robert Richardson, of The October 27<sup>th</sup> Group, says thousands of Canadians need look no further than their own mirrors when assigning blame for the referendum result: "that's the guy who was wrong."<sup>50</sup> For these people, citizens must once again assume their political responsibilities by becoming active. For them, politicians may be part of the problem but they must also be part of the solution. Citizens and politicians each have their roles.

Others, including Robert Johnson of Constituent Assembly NOW (CAN) believe the Canadian people must solve the constitutional problem that has been created mainly by politicians. Canada is at an impasse, citizen power groups think, and sweeping changes are required which necessitate broadly-based, open and thorough debate. Citizens must be empowered. This point of view can be summarized: "having interests to protect and short term electoral goals, politicians are not the ideal group to make decisions that require longer term horizons."<sup>51</sup> Beyond the citizen power groups there are many Canadians who have a fragmented sense of community, of failed expectations and a

questioned identity as a result of economic doomsday scenarios and the Meech and Charlottetown failures.<sup>52</sup> These groups too blame the politicians, especially the Chrétien Liberals, for not having used their legitimate authority to take the bold measures necessary to solve the problems of federalism.

#### OBJECTIVES

Clearly the primary aim of most citizens' groups is to maintain Canadian unity. However, there appear to be many and varied paths that lead towards this objective. Judging by the results of the 45 Plan A groups that met at the Saint Boniface Conference in May 1996, the preferred paths are renewal and dialogue. For these groups, the problem is not one simply of politics and threats but of responding with renewed federal structures to underlying institutional problems. These groups note with confidence the convergence on a new will for accommodation already laid out in the spring of 1996 by such groups as the CBC 24, the Group of 22, and the BCNI Confederation 2000 Conference.

However, to arrive at these solutions citizens must be provided the means to meet, to exchange, to learn, and to participate in both official languages so that they can work in partnership with politicians. Such objectives include opportunities for exchange for youth and seniors; Internet facilities; easily accessible documentation on the renewal of the federation, common values and constitutional issues; a clearing house for unity group coordination; the promotion of official linguistic duality; and opportunities for informed dialogue between Canadians of all regions and particularly with "soft-nationalists" in Quebec on the issue of the renewal of the federation.

Various Plan A groups have more specific objectives. The Council for Canadian Unity (Montreal) traditionally concentrates its activities on research, youth programs, conferences, and publications. By the autumn of 1996 they had not only opened up several offices in other parts of the country but had also started to take direct action to contact and inform federalists across Quebec. The Canada West Foundation (Calgary) has proposed the creation of a Confederation Council made up of federal and provincial legislators. Peak Fires (Ottawa) seeks the creation of a "new society" through dialogue that will transform attitudes and structures. Canadians for a United Canada (Barrie, Ontario) invites Canadians to participate in the promotion of Canadian unity. Festival Canada (Ottawa) wants projects to stimulate pride in Canada. It's Your Country... See It... Share It (Toronto) aims at visits of Quebecers to the rest of Canada; Operation Let's Talk (Winnipeg) seeks to redefine Canada through dialogue; the South Shore Unity Group (Chester Basin, Nova Scotia) promotes conferences and exchanges with Quebec; Le Groupe des cents (Montreal) aims at showing that separatism is an outdated concept by attacking the myths and half-truths that surround it. Citizens/ensemble Citizens Together

(Montreal) wants to convince Quebecers and Canadians about the greatness of the country when joined together. Dialogue Canada has the short-term aim of helping citizens participate in the renewal of Canada and the long-term goal of establishing institutions to promote mutual understanding in a pluralist society.<sup>53</sup>

In addition, we can see from the Appendix that some groups have their objectives right in their titles, for instance: Constituent Assembly NOW, Third Option for Canadian Unity, Canada-Wide Referendum, Cascadia, Healthy Communities Not Powerful Provinces, Canada Indivisible, Citizens' Committee for a New Province, Mouvement en faveur d'une onzième province, and Renaissance Montréal.

As for Plan B groups, one can see the distinctions among them by reviewing their objectives. After the referendum some 25 groups which emerged around Montreal held regular meetings to discuss the socio-economic ramifications of secession. The Canadian Unity Foundation became a sort of umbrella group. But even within the foundation, the groups' objectives are very mixed. Generally, we can speak of four broad categories of Plan B objectives: (i) playing tough as a means of managing high levels of frustration and as a tactic to create fear among *indépendantistes* by displaying the high cost of separation; (ii) trying to destabilize the separatist movement; (iii) seeking to maintain democratic practices founded on the rule of law; (iv) taking action now to remain part of Canada in the event of separation. Even within these categories some groups are more radical than others. And many groups and individuals propound several objectives simultaneously: "Solidarité Outaouais Solidarity believes in a strong and united Canada; that the rules for any possible secession should be established in advance; that the partition of Quebec is not a solution but an option to be examined only in consideration of the unthinkable occurring."<sup>54</sup>

Among the partitionists, one supporter of the Quebec Political Action Committee told *The Globe and Mail*, "We want to break through the separatist myths.... I was searching for some forum where I could rid myself of my frustrations, where I could register my complaints. It's like searching for therapy. It was looking for a quick fix."<sup>55</sup> Roopnarine Singh, told *Actualité* that his project to transform Montreal into an eleventh province, "is a strategy designed to shake up the sovereignists. I hope we will never have to arrive at that."<sup>56</sup> The founder of the Quebec Political Action Committee, Howard Galganov, aims to raise the ante concerning Quebec's language laws in order to set PQ moderates against hardliners and thereby undermine Bouchard.<sup>57</sup>

The Special Committee for Canadian Unity led by Brent Tyler has an executive that includes Equality Party Leader Keith Henderson, and McGill law professor Stephen Scott. Their plan, in the event of a unilateral declaration of independence, is to have Quebec's frontiers redesigned along the plans laid out in William Shaw's book, *Partition, the Price of Quebec's Independence*,

published in 1980.<sup>58</sup> Essentially, Quebec would return to the same territory it had in 1763. Citizens for a Democratic Nation (CDN), led by Guy Bertrand, wants to ensure democratic process under the primacy of the rule of law, and therefore opposes any unilateral declaration of independence as illegal and a grave abuse of democracy that will lead to serious instability.<sup>59</sup> In the Outaouais the United Quebec Federalists support a resolution asking No-voting municipalities to "Affirm and Secure their Canadian Status as being part of one Canada indivisible."<sup>60</sup> The same approach is taken by Gary Shapiro's Quebec Committee for Canada which wants a federal referendum that will state which Quebec regions will remain part of Canada, prior to any other Quebec referendum. SOS, like many other groups, has as its primary goal to demand that the federal government insist on a clear question and a fair process in any future Quebec referendum; and specific, orderly conditions for negotiated secession — allowing individuals and municipal regions to opt to stay as part of Canada.

#### ACTIVITIES

A chronological review of events offers a useful perspective in an assessment of the development process of the citizens' group movement. The months immediately following the Quebec referendum were characterized by the stunned silence of the Canadian citizenry and the angry charges and counter charges of politicians. Nonetheless, the first structured reaction came from academics at the "Quebec-Canada: New Challenges and Opportunities" conference which was organized jointly by political scientists from Quebec and from the rest of Canada at the University of Ottawa in January. This conference held out the hope of rational debate.<sup>61</sup> Also at the end of January, Plan B was expressed loudly and clearly in the form of a rally at McGill University, attended by 1,200 persons, organized by the Special Committee for Canadian Unity. The rally was credited with helping to nudge the federal Liberals towards a tougher stance on Quebec.<sup>62</sup>

The months of November 1995 to March 1996 were a time of building for the citizens' groups. From coast to coast groups started to coalesce via telephone, fax and the Internet. Gradually, through kitchen klatches, local meetings, and community rallies new members were recruited. The groups started to make their views known in politicians' offices, in news releases, in letters to the press, and on open-line talk shows. By February 1996, the 25 groups that had formed in Vancouver started to hold joint meetings and had formed an umbrella group. The 25 groups from the region of Montreal were not far behind them.

And so the public education process began in earnest. In March, 40 law students from across the country came to the University of Ottawa to draft their own new constitution for Canada.<sup>63</sup> In April, Dialogue Canada put on a

panel discussion in Ottawa "for the genesis of a country" to discuss with the public how to go about the process of renewal.<sup>64</sup> Similar panels were held across the country. It then became the turn of the business community. The Business Council on National Issues, worried that the Liberals were not moving quickly enough on the renewal of the federation, held its two Confederation 2000 conferences of national leaders in Ottawa in March and in May. Its report has become one of the focal points of the renewal process.<sup>65</sup>

By May 1996, it was time to call the citizens' groups together. Dialogue Canada and Operation Let's Talk brought together leaders of 45 Plan A groups in Saint Boniface, Manitoba to analyze joint needs and possible cooperation. The self-financed meeting was entitled "A National Assembly of Concerned Citizens."<sup>66</sup> In June, several proponents of Plan B — a coalition of Quebec groups — organized a rally of 1,500 federalists on Parliament Hill. In August, Canada's largest insurance cooperative, The Cooperators, quietly brought 100 students to Hull for a Youth Unity Conference.<sup>67</sup> Not to be forgotten were the extraordinary efforts of citizens from across the country to donate more than \$25 million to the Red Cross to help "their neighbours" who had suffered losses during the floods in the Saguenay region of Quebec during the month of July.<sup>68</sup>

And so we come full cycle. The autumn of 1996 was taken up with organizing commemorations of the 27 October 1995 Montreal rally that had galvanized the federalists. Citizens Together, with allied groups across the country, asked Canadians to meet on bridges in cities across the country at 1:00 p.m. on Sunday, 27 October in a positive show of support for unity and for "bridging Canada." The Canadian Unity Foundation organized a train from Montreal and a "travelling history seminar" to allow people to express their faith in Canada in Quebec City. Two federal politicians, Don Boudria and Mauril Bélanger, organized an all-day concert in Ottawa to raise funds for those charged by Quebec with illegal spending in the referendum, one year earlier! The circle closes. Later in October, still dissatisfied with politicians, the Citizens' Power groups held their "Canada at the Forks" Conference in Calgary to explore the idea of establishing a constituent assembly, but it attracted relatively little participation.

The activities of citizens' groups following the Quebec referendum of October 1995 can be grouped into three categories: institution building, resource development, and specific projects. The most striking aspect of the citizens' groups is that they are almost all completely new. "The result is loud, unfocused and unsettling, at first, in its incoherence."<sup>69</sup> No matter how much energy or drive they exuded, they all had to pass through the usual institutional exercises associated with the founding of new organizations. This step included preparing agreed-upon sets of objectives and statements of principles, constitutions, strategies, membership rules, formulas for fees and funding, publications and brochures; appointing or electing executives and boards of

directors; organizing public conferences; developing projects; handling media relations; and organizing membership activities. Of course, all this activity is normal. However, in the case of unity groups they also had to make strategic choices whether to be local, regional, or national; Plan A or Plan B; autonomous or linked to others; single or multiple objectives; linked to government and business or not. Most of them operated from kitchen tables or borrowed meeting rooms. Few, if any, could afford full-time secretariats but, rather, operated out of the homes of their executive members. Sometimes the normative issues proved insurmountable and led to internecine feuds that, in turn, led to gridlock, breakup or public disputes.<sup>70</sup>

*Organizational resources* available to the unity groups can be grouped roughly under the headings of membership, funding, and communications. Although approximately 150 groups have been created, only 100 or so of these can be classified as new unity groups. Many have fewer than 100 members and, of these, some are no longer being heard from publicly. A winnowing process has already set in. Several of the medium-sized groups (there are no large ones) reported membership in the 500 to 1,500 range. These groups included Citizens Together, Citizens for a Democratic Nation, SOS, United Quebec Federalists, Le Groupe des cents, Operation Let's Talk, Dialogue Canada, Canadians Together, Quebec Committee for Canada, and the Special Committee for Canadian Unity. As a very approximate estimate, this would mean that about 15,000 citizens, or roughly one in every two thousand Canadians, signed up with one of the unity groups.

The unity groups have had to face several dilemmas. It is difficult to create easily saleable membership "products" that express love or concern for country, when Canadians are known not to be flag-wavers at the best of times and when most people do not experience the concern in their every day lives. This last reason is why most of the larger groups are clustered in and around Montreal. But even these groups must deal with the negative consequences of over-radicalization and too many rallies. In Canada, after a brief time in the sun, radical groups are soon marginalized by the media and political leadership.<sup>71</sup> If such groups are too active they risk burning out their members, or giving them an excuse, after a rally or two, to say "I've done my bit, now back to normal life."

During the first half of 1996, media relations were more in the "pull" than the "push" category for unity groups. The media did not seem to be able to get enough of them. Some media were even in the game of promoting citizen action. The editor of *Maclean's* let his feelings be known in many editorials, for example, when he stated on 13 November 1995: "For starters, there should be a series of citizens' conventions organized by local communities — not lobby groups — to start talking about the future of the country ... we need to talk, people to people."

*Maclean's* went on to create a new guest column on solutions to national issues. By January 1996, the *Ottawa Citizen's* editorial board was calling for the "grassroots privatization of Canadian unity" through the creation of a new consensus on the values that unite Canadians. Some of the many surveys of citizen group activities are referred to in the endnotes. *Canadian Living* not only published articles but invited its readers to keep it informed of their activities. Not to be outdone, CBC-TV's *The National* created its own news by showcasing a weekend's debate among 24 "ordinary" Canadian citizens at the beginning of April.<sup>72</sup> In the first part of the year citizens' groups did not have to seek publicity, but by the summer the fad was over and the glare of the media spotlight only fell on hot news stories such as Howard Galganov's trip to New York. Either the media had lost interest or the citizens' groups were not generating news. In addition, there was a significant change in some media attitudes towards Quebec, especially among Conrad Black's Hollinger and Southam newspapers. Confrontation was the order of the day and "soft" editors were let go. The *Ottawa Citizen*, among others, rapidly moved to a Plan B editorial stance: "Fortunately, the federal government knows Plan A is dead. Instead of embracing Quebecers with fraternal love, the predominant approach is to slap them to their senses with some sobering warnings — Plan B."<sup>73</sup>

Many commentators have focused on the degree to which the citizens' groups were aided and abetted by two new communications technologies, the fax machine and the Internet. The fax machine was credited with permitting unity groups to generate more linkages and activity much more rapidly than would have been possible in the past.<sup>74</sup> Several unity debate web pages on the Internet were also developed through the year including Unity Link, National Unity Sites, Dialogue Canada and Inter.Canada.<sup>75</sup> By the autumn of 1996, Dialogue Canada intended to have a full web site on the Internet with pages for federalism news, discussion groups, unity group liaison, constitutional debates, information and documentation, and citizens' articles. Grants were also being sought to expedite automatic bilingual translation on the Internet.

With respect to funding, the situation of citizen's groups is pure asymmetry. The Council for Canadian Unity (CCU), the grand-daddy of unity groups and the only one with charitable status, has stable funding, while most of the others do not. With strong links both to the business community and to the federal government, the CCU reported \$10,578,000 in revenues in 1995. In a normal year it can count on about \$5 million, with approximately half coming from business as donations and half coming from government grants.<sup>76</sup> The second largest and oldest group, Dialogue Canada, reports annual income of approximately \$15,000 from membership dues. The other groups are too new to have established an annual track record. Most groups subsist on the contributions of time, money, and energy of their executive groups, membership

fees (in the \$25 range), donations, collections at events, and sales of unity paraphernalia. Among the exceptions to this pattern are Peak Fires which received a substantial corporate donation, and the Student Council for a United Canada which received a government grant to facilitate a national tour by its leaders. One other source of funding was the Open House Canada program of the Department of Canadian Heritage which gave grants for exchanges to associations ranging from 4H Clubs and the YMCA to the Canadian Student Debating Federation and the Society for Educational Visits and Exchanges (SEVEC).

By the autumn of 1996, neither the business community, nor the foundations, nor the governments appeared to have opened their purse strings to citizens' unity groups. In the case of the federal government, it may be that there was no statutory category available for making grants. However, this has been rectified by the opening of the Canada Information Office (CIO) with a \$20 million budget and a mandate which, in part, gives it a role of "reaching out and building partnerships with groups and individual Canadians, seeking a greater understanding of the diversity of their country and sharing the goal of building a better Canada and contributing to Canadian identity."<sup>77</sup> However, several months after its founding, citizens' groups were being told that although the CIO might take on a partnership role there would be no money for core funding, contributions, or consultations. It also appeared that the CIO's main function, aside from publicizing "correct information," is to help government agencies to communicate their information, for instance, it has opened its own web site on the Internet.<sup>78</sup>

To all appearances we are back in another cycle of unity stress where the federal government takes it upon itself to spend millions of dollars on its own projects such as distributing flags and information, but does not seem willing to provide funding to citizens' groups.

Succeeding governments are, therefore, responsible for the failure of citizen commitment. Each "unity crisis" leads to profligate spending of millions to incite citizen participation, then the tap is turned off as soon as the agenda changes. The fault is not in government spending but in its short-term nature and governments' desire to be the masterminds of its use. Broad-based citizen involvement in a country as vast as Canada cannot come without generous investment, but it need not be by government alone.

Having surveyed the development and funding of citizens' groups, what of their specific projects? In considering projects by unity groups, our goal must be illustrative rather than exhaustive. The CCU launched a new career development plan called "Experience Canada" with \$21 million in new funding from corporations and the Government of Canada. Some 1,000 unemployed or underemployed candidates with at least secondary or technical school diplomas will be given one year's work experience in another province. Participants live with local residents and will be paired with a mentor. In



addition there will be a month-long seminar on Canada and career development.<sup>79</sup> Peak Fires set up its first team of 20 representative Canadians schooled both in Canadian affairs and dialogue facilitation, to be available to go into communities to engage citizens in discussions on problem solving and Canada's future. Dialogue Canada has laid plans for its "Citizen Participation in the Renewal of Canada" project which includes preparatory documentation, local regional and national conferences, and a final "Citizens' Report." Festival Canada put forth plans for future Canada Day parades. Citizens Together organized the mailing of thousands of cards from the rest of Canada to Quebec for Saint-Jean-Baptiste Day and organized the Bridging Canada project. Generation 2000 sent its teams to enact themed plays and engage students in discussion in high schools throughout the country. The Student Council for Canadian Unity travelled across Canada to meet high school student council members and create a national network. One man bicycled across the country, during May to October, to carry the word on unity.

## ANALYSIS

To this point this chapter has presented a chronology of events and a general sketch of the activities of citizens' groups since the October 1995 referendum. What follows is a summary of the situation of these groups in late 1996 and some explanatory hypotheses. We have seen that the citizen leaders are, in many respects, the type of people portrayed by the theories outlined in the introduction. By their discourse and their actions, they can be described as advocates of post-materialist values, citizens' rights, and a new participative democracy. They also believe and intend that Canada should incarnate these qualities.

However, despite the devotion and energy of the citizens' groups, it is equally clear that their great promise at the beginning of the year has not yet been fulfilled. There is no broad-based citizen activity or movement in Canada. Although the evidence is not yet definitive the membership of the citizens' groups is not very numerous. Of the 128 groups listed in the original Directory of the Council of Canadian Unity (Appendix), many were simple discussion groups or one-shot initiatives, while some of the other small ones are no longer able to continue to operate. After two months of repeated requests, only about 30 groups had responded to an invitation to be included in a projected second edition of the directory in November 1996.

As noted earlier, Jane Jenson has observed that much of the growth of citizen activity in the 1970s has been fomented by social movements. Certainly the unity cause, dealing as it does with normative issues of identity and nationalism, could have called forth a widespread movement. While there does seem to be considerable consensus among elites about the path to renewal of

the federation, this has not been translated into a widespread consideration of the issues by citizens. Moreover, Plan B, the "tough love" orientation, appears to have overwhelmed the Plan A approach, which is based on renewal of the federation and respect for Quebec.<sup>80</sup> Why has a broad-based citizens' activity or movement not materialized? Why has the major activity been elite-driven rather than populist? Why does the upper hand seem to have gone to the proponents of containment rather than accommodation?

First, we may note that almost all the journalists covering the citizens' groups in some depth were somewhat sceptical of their potential. Susan Delacourt wrote of their "platitudes" and went on to quote David Elton of Canada West Foundation, "the outpouring of emotion had more to do with self-absorbed angst and helplessness in the rest of Canada than any authentic bridge-building between the two solitudes."<sup>81</sup> Such doubts were shared. *Maclean's* magazine wondered if groups that "seem to share few views" could succeed where elites had failed and where waves of previous groups and even the well-funded Citizens' Forum on Canada's Future had "failed to alter historic currents."<sup>82</sup> *Canadian Living* pointed out that there was, "little evidence yet that groups are making much headway in connecting with Quebecers."<sup>83</sup> Even the Council for Canadian Unity predicted that several of the groups would be dead by the autumn of 1996: "money is rare and several will not find any."<sup>84</sup>

However, all this is still descriptive. How do we attempt to explain the relative lack of scope of the citizens' groups? A number of explanatory hypotheses can be grouped together under the two headings of geography and control, but it should be noted that the explanations are interdependent and none are sufficient by themselves. To start, we may remind ourselves of Mackenzie King's aphorism that Canada has too much geography. This fundamental Canadian condition, with a thinly-based population scattered over large and diverse provinces in a thin line close to the American border, helps to answer all three of our questions. We have seen several references to the fact that even if these are citizens' groups, they feel they must represent their local interests if they are to have legitimacy. In addition, leaders are often highly individualistic persons who believe they have a unique approach. Secondly, there is the factor of time which helps explain why the citizens' groups have not become a widespread movement. The literature on movements tells us they are united by normative goals but almost always have to pass through a fairly long period of fragmented group action until they are forced, by time and circumstance, to consolidate their efforts.<sup>85</sup> In the case of the unity groups, we have seen that this process has commenced in the larger centres such as Vancouver and Montreal. In addition, talks for partnership between Citizens Together and Dialogue Canada, and between the latter and Unity Link, were initiated in September 1996. When these conditions are added to the fundamental differences in approach between Plan A and Plan B, we can see why there is little unity among the unity groups and they have trouble coming

together in a movement. We have also seen that people are activated when their interests are endangered. People outside Quebec can be excused for believing, erroneously, that they live in a fire-proof house, that Quebec's departure may not directly affect them. It is easiest to rally the people in and near Quebec who fear for their present and future.

With regard to the predominance of Plan B, one need only recall that in politics it is much easier to mobilize people to protest rather than to praise, to vent anger rather than to express pleasure. Think of local politics. When do people turn out to assemblies? When their tax rates, environment, or roads are threatened. The same defence mechanism operates in national politics. In addition, some pessimists believe the "ingrained centralism of Ottawa ... the myopic intransigence of the provinces ... and the paralysing ideology of Trudeau" will stop the federalists from undertaking indepth reform, so one might as well opt for Plan B.<sup>86</sup> Even during the past year, Intergovernmental Affairs Minister Stéphane Dion and Prime Minister Chrétien were perceived to have given more visible symbolic support to Plan B groups than to efforts to heal the country.

The problem with Plan B is that it turns the Canadian federal problem on its head. Instead of seeking to heal the roots of Quebec nationalists' dissatisfaction, the federal majority is attacking the symptom, that is, the threat of separation. For 35 years Quebec governments have been pointing to structural problems in the present federal system but the rest of Canada has not yet dealt with what Quebecers consider to be the real issues.

A third type of hypothesis in the geography category has to do with the disappearance of the marginal citizens' groups and the difficulties all groups have in maintaining their vigour. Once again we appear to be confronted by the traditional Canadian situation where great distances and a thin population base require a greater dependence on collective, usually governmental, support for associational activities. Some of the most recent research on the emergence and maintenance of Canadian associations is by Réjean Landry and Marc Pesant.<sup>87</sup> In their survey of the international literature and of 426 Canadian associations they found that the requirements for association development include: common interests, political entrepreneurs, membership products, outside allies and patrons for start-up funding, and tax-free charitable status. It is clear from our survey that, as of the end of 1996, few of Canada's citizen unity groups combine these criteria.

A final set of hypotheses has to do with the issue of control. Traditionally big business and big government like to be able to feel that they have sufficient control of the political process in Canada to assure "peace, order, and good government," and to ensure that the pieces do not go flying apart. There are multiple explanations for this tradition, including hierarchical social patterns and institutions; the ever-present threat of the United States; the fear of potential cultural fragmentation; and the ensuing requirement that Canadians

buttress their own major institutions. Neither business nor government has started to see citizens' groups as potential allies. *"Le danger qui représente la perte de maîtrise du gouvernement sur l'évolution des mouvements d'opinion ou l'incapacité d'indiquer les actions à entreprendre peut l'inciter à ne pas laisser la joute politique lui échapper."*<sup>88</sup>

The result is that, to date, both business and the federal government prefer to give almost all their funding to the Council for Canadian Unity, the membership of which is already co-opted, by close links to major corporations and the federal government. Corporate leaders and politicians then have the sentiment that by giving to the council they have done what is necessary for the voluntary sector. Or, in the case of the federal government, it prefers to establish and fund its own structures and projects such as the Canada Information Office and the distribution of flags. Alternatively, following another long tradition in interest group behaviour in Canada, both government and the private sector prefer to deal with established, elite organizations in the university and research sectors, where there is a known track record and relations of interdependence. In this sense, elite citizens' groups inhibit a more broadly-based, popular citizens' movement.

This explanation of elite behaviour, and also the trend towards support for Plan B, would seem to be corroborated by Ian Lustick's control model of conflict management in divided societies where one group is dominant. According to this model, resources allocated according to the dominant group's interest rather than inter-elite negotiation for common interests. Thus, there are exploitive or penetrative intersegment linkages instead of negotiated bargains. Hard bargaining between elites is missing. Rather than acting as an umpire, the central government acts as an agent of the dominant segment. Legitimation is in terms of the dominant group's values and norms.<sup>89</sup> While many Canadians may find this model objectionable, it does seem to fit the patterns we are trying to explain.

## CONCLUSIONS

It is probably too early to arrive at firm conclusions about the future of citizens' unity groups. The survey of literature in the introduction to this chapter suggests that Canada, like many other technologically advanced countries, is on the verge of citizen-participatory politics and establishes the conditions for the flourishing of citizens' groups. However, we do not yet seem to have arrived at the stage of the "properly managed" public debate that has been proposed. Rather, as Robert Young suggested in early 1996, we were still in a state of confusion: "While there was little support for untried mechanisms like a constituent assembly, there was much agreement that the public had to acquire a 'sense of ownership' of the process. Unfortunately, however, there

was no obvious and simple way to achieve this."<sup>90</sup> This state of confusion continues.

The activities and discourse of the citizens' groups indicate a move to a concentration on national affairs, and also to the independence of citizens vis-à-vis the state as predicted by the effects of globalization. Certainly there has been greater concentration on communal politics. While Charter politics may not have been confirmed this year by any attention to group right, equity, or refusal of government, it does seem to have set the stage for a more citizen-centred politics that demands oneness and participation. Citizens' groups also fit into the post-materialist projection in the sense that they are, by their very nature, more assertive and less deferential, and less attached to traditional political processes. However, we have seen that we cannot yet talk of a more inclusive politics, self-empowerment or a widespread desire by citizens for political control over their own lives. While the year has demonstrated an expanded democratic process, there has been no turning to a citizens' unity movement with any unity of purpose.

Concerning the conditions necessary for a more participatory citizens' politics, it is clear from the effervescence of activity in 1996 that there is a great frustration with the perceived lack of oneness and a demand for more inclusiveness and consultation. There is enough energy in the citizens' groups to lead us to believe that any new federal solutions that are sprung on an unsuspecting and excluded citizenry will be in jeopardy. But both citizens and governments still seem to have a lot to learn before we arrive at a managed public debate where government treats citizens' groups as allies and behaves like a servant of the people rather than as a manipulator of consent. There is little sign that government accepts debate and dissent or that citizens have learnt how to work within institutions. There may be a considerable number of citizens in Canada who are prepared for a more participative citizens' politics, but at the time of writing, it looks like politics as usual in the peaceful kingdom.

## NOTES

1. The author, as well as being a political scientist at the University of Ottawa is also the founding chairperson of Dialogue Canada. While this article is based on first-hand contacts and meetings with many of the groups in question, on documentation prepared by these groups, and on systematic media coverage, there is still room for observational bias. In addition, the research necessarily presents a recent, short-term perspective. There is need for longitudinal, systematic study with the usual paraphernalia of samples, questionnaires, and interviews to assess both the current crop of unity groups and those that have been built up around earlier unity crises.

2. For a brief overview of the notion of citizenship, see T.H. Marshall, "Citizenship and Social Class," in *Class, Citizenship and Social Development* (Garden City, NY: Anchor, 1965 [1949]); and Jane Jenson, "Citizenship Claims: Routes to Representation in a Federal System," in *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*, ed. Karen Knop et al. (Vancouver: UBC Press, 1995), 99-118. For a recent conservative orientation to the question, one may consult Bryan S. Turner, *Citizenship and Capitalism* (London: Allen and Unwin, 1986).
3. See, for example, Gilles Breton and Jane Jenson, "La nouvelle dualité canadienne: L'Entente de libre-échange et l'après-Meech" in *Le Québec et la restructuration du Canada*, ed. L. Balthazar et al. (Sillery, P.Q.: Éditions du Septentrion, 1991).
4. Jenson, "Citizenship Claims," 111.
5. Thomas Courchene, "In Quest of a New "National Policy" in *Quebec-Canada: What is the Path Ahead?* ed. J.E. Trent et al. (Ottawa: University of Ottawa Press, 1996), 143.
6. Peter C. Newman, *The Canadian Revolution, 1985-1995: From Deference to Defiance* (Toronto: Viking, 1995).
7. Neil Nevitte, *The Decline of Deference* (Peterborough: Broadview Press, 1996).
8. Donna Dasko, "Evaluating Canadian Values," in *Quebec-Canada*, 114.
9. See, for example, Alan Cairns, *Disruptions: Constitutional Struggle, from the Charter to Meech Lake*, ed. Douglas E. Williams (Toronto: McClelland & Stewart, 1991) in particular the chapter "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake"; Kathy L. Brock, "The Politics of Process," in *Canada: The State of the Federation 1991*, ed. Douglas M. Brown (Kingston: Institute of Intergovernmental Relations, Queen's University, 1991), 57-88; and "The Demand for Greater Participation," in *Toolkits and Building Blocks: Constructing a New Canada*, ed. Richard Simeon and Mary Janigan (Toronto: C.D. Howe Institute, 1991).
10. Brock, "The Politics of Process," 59; and Michael B. Stein, *Canadian Constitutional Renewal, 1968-1981: A Case Study in Integrative Bargaining*, Research Paper 27 (Kingston: Institute of Intergovernmental Relations, Queen's University, 1989).
11. Robert Reich, *The Power of Public Ideas* (Cambridge, MA: Harvard University Press, 1990), 6.
12. Brock, "The Politics of Process," 77-82.
13. Cairns, "Citizens (Outsiders)," 137.
14. Susan Delacourt, *United We Fall: In Search of a New Canada* (Toronto: Penguin Books, 1994), 1-26.
15. *Ibid.*, 420.
16. Jenson, "Citizenship Claims," 113.
17. *Ibid.*, 100.
18. Nevitte, *The Decline*, 69.

19. Ibid., 42.
20. Ron Inglehart, *Culture Shift in Advanced Industrial Societies* (Princeton: Princeton University Press, 1990).
21. Nevitte, *The Decline*, 12, 28. Both Nevitte and Newman also point to idiosyncratic aspects of the Canadian decline in deference, and Nevitte presents evidence showing that Canadians have become less deferential and more open to change than Americans. However, these factors are extraneous to our third form of explanation which is intended to demonstrate structural causality and a general lack of Canadian exceptionalism.
22. Ken MacQueen, "Fasten your seat belts," *Ottawa Citizen*, 8 March 1996, B1.
23. "Let the people speak," *Maclean's Magazine*, 15 January 1996, 12.
24. In this chapter given our current state of research and analysis, unless empirically referenced all descriptions must be taken as majority trends with possible significant exceptions.
25. Trent *et al.*, *Quebec-Canada*.
26. The Group of 22, *Making Canada Work Better* (Toronto: C.D. Howe Institute, May 1996).
27. Confederation 2000 Conferences, "Today and Tomorrow: An Agenda for Action," (Ottawa: Business Council on National Issues, 1996).
28. John Richards, *Language Matters* (Toronto: C.D. Howe Institute, 1996); Patrick J. Monahan and Michael J. Bryant, *Coming to Terms with Plan B: Ten Principles Governing Secession* (Toronto: C.D. Howe Institute, 1996).
29. "Democracy Needs More Deliberation," *Ottawa Citizen*, 14 February 1996.
30. "Reconfederation Assembly '96, Draft Proposal," (Calgary: Canada West Foundation, May 1996), 1.
31. Ibid., 2.
32. The Canada-For-Tomorrow Committee, "Proposal for a National Dispute Resolution Initiative" (Vancouver: British Columbia Branch, Canadian Bar Association, May 1996), 4.
33. Michael Adams, "Scenarios for the Future," Almonte, Ontario, April 1996, 2.
34. See, Michael Adams, *Sex in the Snow* (Toronto: Viking, 1996).
35. The Unity Link web site can be found at <http://home.istar.ca/unitylink/index.htm>. Other web sites include: *National Unity Sites* <http://www.islandnet.com/pb/unity.html> and *Inter.Canada* at <http://www.naccess.com/-inter.canada/default.htm>.
36. MacQueen, "Fasten your seat belts."
37. Plan B was a term originally coined by the author Gordon Gibson for the title of his book, *Plan B: The Future of the Rest of Canada* (Vancouver: The Fraser Institute, 1994). His quest was to find a "Plan B" for the rest of Canada in the eventuality that "Plan A" for the maintenance and renewal of federalism should fail and the Quebec government should declare independence.

38. MacQueen, "Fasten your seat belts."
39. "Let the People Speak."
40. MacQueen, "Fasten your seat belts."
41. Allan Chambers, "Clinging to Canada: A Fax-fed Federalist Revolution is Sweeping the Gatineau Hills" *Edmonton Journal*, 25 February 1996, E3.
42. MacQueen, "Fasten your seat belts."
43. David Ducharme, "Federalists Find Their Voice at Low: No more myths! No more lies! Confront the Beast; 800 Cheer, Jeer." *The Low down to Hull and back News*, Chelsea, Quebec, 22 April 1996, 1.
44. "Quebec Uncertainty 'Catastrophic': Montreal Business Suffers Huge Drain Because of Politics, Group Says." *Ottawa Citizen*, 31 October 1996, A4.
45. Susan Delacourt, "Unity: The Do-It-Yourself Nation-Builders," *The Globe and Mail*, 30 March 1996, D2.
46. Alan Cairns, "Looking Back from the Future" in *Quebec-Canada*, 77.
47. "The Galganov Question," *The Globe and Mail*, 13 September 1996, A20.
48. Pierre Elliott Trudeau, "I Accuse Lucien Bouchard!" *The Montreal Gazette*, and "J'accuse Lucien Bouchard!," *La Presse*, 3 February 1996.
49. Christine Langlois, "Love Talks," *Canadian Living*, July 1996, 47; Pamela Pritchard, Louise Brissette and Pierre Leblanc, "Feux de sommet: transformer les attitudes," *Le Droit*, 17 juin 1996, 15.
50. MacQueen, "Fasten your seat belts."
51. Statement from invitational brochure to the "Canada at the Forks Conference: Exploring a Constituent Assembly," Constituent Assembly NOW, Calgary, 1996.
52. Janice Kennedy, "Canadians have Become Self-fulfilling Prophets of Doom," *Ottawa Citizen*, 1 March 1996, 7.
53. All objectives are taken from association documents.
54. Solidarité Outaouais, "SOS Position Paper-Partition," Aylmer, Quebec, April 1996.
55. "Partition Backers Aware of the Risk of Raising the Ante," *The Globe and Mail*, 5 February 1996, 1.
56. Carole Beaulieu, "Le grouillement anti-Quebec," *L'Actualité*, 15 May 1996, 46.
57. Jack Aubry, "Anglo Crusader Turns up Heat in Quebec Language Battle," *Ottawa Citizen*, 14 August 1996, 1.
58. Carole Beaulieu, "Le grouillement," 44. Tyler and other participants object to this term. They say their goal is to keep Canada united, that they are "unionists." It is the "separatists" who are "partitionists."
59. Citizens for a Democratic Nation, CDN Movement, Pierrefonds, Quebec, January 1996.
60. Peter Jarvis, "Grassroots Unity Groups Coming Alive in the Outaouais and Quebec," *The West Quebec Post*, 21 February 1996, 5.



61. "Academics doubt unity strategy of federal Liberals," *Ottawa Citizen*, 29 January 1996.
62. "Partition backers," *The Globe and Mail*, 5 February 1996.
63. "Des étudiants en droit pondent leur constitution : venus des quatre coins du pays," *Le Droit*, 2 mars 1996.
64. "Dialogue Canada: peu d'échanges vigoureux," *Le Droit*, 6 avril 1996.
65. "Special Status for Quebec Vital, Joe Clark Says," *Ottawa Citizen*, 10 March 1996, 1.
66. "Issues and Opportunities for the Renewal of Canada," Société franco-manitobaine, Saint Boniface, May 1996.
67. "100 Young Canadians Try Tackling Unity Crisis," *Ottawa Citizen*, 19 August 1996.
68. "Un acte de Dieu providentiel : le cynisme du Ottawa Sun tranche avec l'altruisme du Toronto Star et Dialogue Canada," *Le Devoir*, 25 juillet 1996, A2.
69. MacQueen, "Fasten your seat belts."
70. "Solidarité Outaouais pas si solidaire que ça: première assemblée générale annuelle tumultueuse," *Le Droit*, 1 octobre 1996, 4.
71. "Menace or Messiah? Howard Galganov has Grabbed Quebec's Attention With his Trip to New York; the Question is, Will he Help to Preserve Canada, or Help Tear it Apart," *Ottawa Sun*, 13 September 1996, 1.
72. "We Believe We Can Find Common Ground," *The Globe and Mail*, 2 April 1996. Thomas Berger, "A Few Words on Behalf of Those 24 Canadians," *The Globe and Mail*, 13 April 1996, D5.
73. *Ottawa Citizen*, "Thank Goodness for Plan B," 31 October 1996.
74. See Chambers, "Clinging to Canada."
75. "Unity Web Pages," *Ottawa Citizen*, 22 September 1996, 1.
76. The Council for Canadian Unity, *Annual Report 1995*, Montreal, 1996.
77. Canada Information Office, *Its Mission* (Ottawa, September, 1996).
78. "Quebecers Ignore Web Site: No Francophones Sign Up to Find E-mail Penpals," *Ottawa Citizen*, 31 October 1996.
79. "CCU Launches a New Program: Experience Canada," *Opinion Canada*, 4, 3 (June 1996):6.
80. Gilles Paquet, "Plan A, plan B : B moins d'un miracle, le plan A va mourir cet été et le plan B va se jouer dans des élections générales à l'automne 1996," *Le Droit*, 29 juin 1996, 14; "Hard Line on Separation Popular Outside Quebec," *The Globe and Mail*, 16 November 1996, 1.
81. Susan Delacourt, "Unity," D1.
82. "Let the people speak."
83. Langlois, "Love Talks," 47.
84. Author's translation from Beaulieu, "Le grouillement" 43.

85. Neil J. Smelser, *Theory of Collective Behaviour* (New York: Free Press, 1962). Doug McAdam, John McCarthy and Mayer Zald, "Social Movements," in *Handbook of Sociology*, ed. Neil J. Smelser (Newbury Park, CA: Sage, 1988).
86. Paquet, "Plan A, Plan B."
87. Réjean Landry and Marc Pesant, "Emergence and Maintenance of Canadian Associations," paper presented at the annual meeting of the Canadian Political Science Association, Brock University, June 1996.
88. Gérard Boismenu, "Les valeurs et la joute politique," in *Quebec-Canada*, 108.
89. For a comparison of Lustick's model with the consociational model of Arend Lijphart, see Kenneth D. McRae, "The Meech Lake Impasse in Theoretical Perspective," in *Democracy with Justice*, ed. Alain Gagnon and Brian Tanguay (Ottawa: Carleton University Press, 1992).
90. Robert Young, "Conclusion: The Paths Ahead," in *Quebec-Canada*, 339.

## Appendix

### National Directory

#### Groups and Associations with Special Interest in the Promotion of Canadian Unity

(Source: Centre for Research and Information on Canada,  
The Council for Canadian Unity, Montreal, 1996)

#### Alberta

Bridge Builders Edmonton Committee  
Canada United  
Canada West Foundation  
Celebration Canada Committee  
Constituent Assembly NOW  
People to People Search for Canada  
Society for Youth Creating Canada  
Third Option for National Unity Committee

#### British Columbia

B.C. Citizens for Canadian Unity  
B.C. Old Age Pensioners Organization  
B.C. Unity Interim Umbrella Group  
Canada-for-Tomorrow Committee  
Canada-Wide Referendum-Vote YES for Canada  
Canadian Co-Operative Association/Unity  
Working Group  
Canadians Together/Canadiens Ensemble  
Cascadia Group (the)  
Civitas Forum  
Dialogue Canada-Renewing Canada  
(B.C. Chapter)  
Healthy Communities Not Powerful Provinces  
Let the People Speak  
People to People - Search for Canada  
Stories and Images of My Nation, My Country  
The Eyes of the World are on Canada  
University of British Columbia (UBC),  
Continuing Studies - Unity Projects  
UBC Students for United Canada  
Unity Link

#### Manitoba

Canadian Citizenship Federation  
Canadian Parents for French  
Canadian Unity Poster  
Common Ground Consulting  
Conseil de la Coopération du Manitoba

Fédération des communautés francophones et  
acadiennes du Canada (Winnipeg)  
Independent Living Resource Centre  
Manitoba Chamber of Commerce  
Onchulenko's Group  
Operation Let's Talk/Opération parlons-nous  
Société franco-manitobaine  
Chambre de commerce francophone  
Pro Canada  
Spirit of Canada  
University Women's Club

#### New Brunswick

Canadian Unity Committee  
Dialogue New Brunswick  
Canada 911- Fédération des jeunes  
francophones du N.-B.  
Multicultural Association of Saint-John Inc.  
On Building a Strong Canada

#### Newfoundland

Cornerbrook Unity Group

#### Nova Scotia

South Shore Unity Group  
Nova Scotians for Canadian Unity  
October 27th Group (the)  
Unity Link

#### Ontario

20/20 A Vision for the Future of Canada  
26 Million Canadians Constitution Draft  
Committee (the)  
Assembly of First Nations  
Association of Professional Executives of the  
Public Service of Canada (APEX)  
B'Nai Brith Canada  
Bennett & Associates  
Better Together... Unis Chez Nous

Canada Flag and Unity Centre  
 Canada Team - Seeking Ways to Keep Québec  
 in Canada  
 Canadian Citizenship Federation  
 Canadian Co-Operative Association  
 Committee on Canadian Unity  
 Canadian Ethnocultural Council  
 Canadian Identity Group  
 Canadian Junior Chamber/Toronto Junior  
 Board of Trade  
 Canadian Parents for French  
 Canadian Unity Festival  
 Canadian Unity Forum  
 Canadian Unity Group  
 Canadians for a Unified Canada  
 Canadians for a United Canada / Alliance pour  
 un Canada Uni  
 Citizens for Canada  
 Citizens for Canadian Unity  
 Dialogue Canada  
 Dialogue Canada - Ottawa Chapter  
 Dialogue Canada - Toronto Chapter  
 Dialogue Canada - Kingston Chapter  
 Fédération des communautés francophones et  
 acadiennes du Canada (FCFA)  
 Fédération des aînés francophones de l'Ontario  
 Festival Canada  
 Focus on Canada  
 Forum pour jeunes Canadiens  
 Generation 2000  
 Hamilton's Group  
 Inter.Canada  
 It's Your Country...See It...Share It  
 Lifelong Interest Group  
 October 27th Group (the)  
 Older Women's Network  
 Peak Fires/Feux de Sommet  
 Pearson-Shoyama Institute  
 SearchNet Canada/Éclaireur Canada  
 Speak Out...Canada...Pensons-y!  
 Youth View Canada/Vision Jeunesse

### Quebec

1 Canada-Outaouais  
 65 Intellectuels Anglo-Québécois  
 Action canadienne du Québec (L')  
 Alliance Québec  
 B'Nai Brith Canada (unity discussion group)

Bande FM (La)  
 Bilingual Society/Société bilingue  
 Call me Canadian - Ours to Protect Campaign  
 CanIada  
 Canada \* Ensemble  
 Canada Indivisible  
 Canada Unity Foundation - Westmount  
 St-Henri Chapter  
 Canada Unity Foundation  
 Canadians for a Strong Canada  
 Chelsea Citizens for Canada/Citoyens de  
 Chelsea pour le Canada & Dialogue Canada  
 Citoyens de la nation (CDN)/Citizens for a  
 Democratic Nation  
 Citoyens ensemble/Citizens Together  
 Coalition de conseillers municipaux pour  
 l'unité canadienne  
 Comité québécois pour le Canada/Québec  
 Committee for Canada  
 Comité spécial pour l'unité canadienne/Special  
 Committee for Canadian Unity  
 Committee for a New Quebec in Canada  
 Congrès juif canadien  
 Congrès hellénique du Québec  
 Congrès italien du Québec  
 Council for Canadian Unity  
 Dialogue Canada - Montréal Chapter  
 Fixing Canada, EH! Constituent Assembly  
 Forum Québec  
 Génération 18-35  
 Groupe des cent (Le)  
 Impact'E  
 McCall's Unity Group  
 Mouvement en faveur d'une onzième province  
 Nelligan Unity Process Committee (No Campaign)  
 October 27<sup>th</sup> Unity Movement  
 Outaouais Alliance  
 Regroupement des bois-francs au coeur du  
 Québec  
 Regroupement pour le Canada  
 Renaissance Canada  
 Renaissance Montréal  
 Solidarité Outaouais Solidarity (SOS)  
 Stabilité/Stability

### Saskatchewan

Citizens for a Unified Canada  
 Prince Albert Citizens for Canadian Unity

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## Lucien Bouchard at the Helm: An Assessment of the Premier's First Six Months in Power

Marc Desjardins

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*Dans le texte qui suit nous analysons les six premiers mois au pouvoir du nouveau premier ministre du Québec, Lucien Bouchard. Nous décrivons d'abord les conditions particulières qui ont amené Lucien Bouchard à la vieille capitale et l'équipe ministérielle qui l'entoure. Par la suite, nous examinons les deux grands dossiers qui constituent en quelque sorte les priorités du nouveau premier ministre soit l'amélioration des relations entre communautés et l'économie Québécoise. Peu de temps après son arrivée au pouvoir, Lucien Bouchard a voulu faire preuve d'ouverture envers la communauté anglophone. Suite à une recontre télévisée avec certains leaders de la communauté, il a cherché à assouplir certains éléments de la Loi 101 et à amorcer une réforme des commissions scolaires. Ses efforts ont toutefois été ombragés par certains membres de son propre parti qui craignent un relâchement de la vigilance du gouvernement en matière linguistique et par les nombreux intervenants qui ne voient pas en quoi les propositions de la ministre de l'éducation sauraient corriger les déficiences du système scolaire. Le gouvernement a eu plus de succès en ce qui concerne son agenda économique. Il a rapidement fait de l'élimination du déficit gouvernemental sa priorité et a su obtenir le soutien des milieux d'affaires, syndicaux et communautaires lors d'un sommet économique. En retour, il a promis la tenue d'un sommet sur l'emploi mais tout porte à croire que des mesures efficaces et un consensus seront plus difficiles à établir. Somme toute, le bilan des six premiers mois au pouvoir de Lucien Bouchard est positif mais le plus dur reste peut-être à venir.*

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### INTRODUCTION

Early in his mandate as premier of Quebec, Lucien Bouchard made it quite clear that he did not intend to sit idly by until the next provincial election or another referendum. Bouchard used the first possible opportunity, the swearing-

in of his Cabinet members, to outline his objectives.<sup>1</sup> The priorities of his government, as he stated them then, were to be the battle against unemployment and the improvement of public finances, the reform of the educational system, and a heightened recognition of Montreal's unique place and role in Quebec. Throughout his speech, Bouchard attempted to communicate a sense of urgency and the need for action since, as far as he was concerned, Quebec's future prosperity was threatened if bold actions on a number of fronts were not engaged rapidly, regardless of Quebec's future political status. The speech indicated very clearly that the province's public finances were in such a state that without substantial changes the Quebec government would be unable to meet its current and future requirements. "It would be impossible to launch the Quiet Revolution even if we wanted to" declared Premier Bouchard on that occasion.<sup>2</sup> He also emphasized that the government would be unable to accomplish much if it did not have the full cooperation of all Quebecers. He promised that his government would do its utmost to build consensus.

My purpose is to record, analyze and evaluate what Lucien Bouchard and his government have accomplished between February and June 1996. To do so I will examine the extent to which he was able to pursue the ambitious agenda he defined when he took over the reins of power. The analysis has been structured in three sections. First, I review the conditions under which Lucien Bouchard came to power and the individuals whom he chose to form his government. Under the heading of community relations I analyze his efforts to improve the rapport between the government and the anglophone population, and the primary difficulties that he has encountered in the process, namely the end of the fragile consensus on language and the inherent complexity of any attempt to reform the structures of the province's school boards. The economic agenda of the government is analyzed in a separate section that focuses first on the success of the economic summit held in March 1996, and then itemizes the measures taken to curb the government's deficit.<sup>3</sup>

## THE ROAD TO QUEBEC CITY

The particular circumstances under which Lucien Bouchard became leader of the Parti Québécois (PQ) and premier of Quebec are worth noting even though most readers will be familiar with them. The political odyssey that led Lucien Bouchard to Quebec City began a few weeks before the fate of the Meech Lake Accord was sealed. Bouchard then left his Cabinet post in the Conservative government of Brian Mulroney after having given up any hope that Canada outside Quebec might ever meet Quebec's constitutional expectations. However, he remained a member of the House of Commons, and became the leader of the Bloc Québécois, initially a small group of disgruntled Quebec MPs.

The Bloc won an overwhelming majority of Quebec ridings in the 1993 federal election and Bouchard became leader of the official opposition.

By the spring of 1995, Bouchard's position was sufficiently strong enough to force Quebec Premier Jacques Parizeau to alter the PQ referendum strategy to ensure that the widest possible coalition would be mobilized. There is no doubt that Bouchard was a tremendous asset for the Yes forces during the referendum campaign. He overshadowed his ally Jacques Parizeau (too professorial) and his main opponents: Daniel Johnson (too distant) and Jean Chrétien (identified too closely with the 1982 constitutional process). As soon as Jacques Parizeau announced that he was leaving office, all eyes turned to Lucien Bouchard, who waited only a couple of weeks before announcing his intention to seek the leadership of the PQ. No one challenged him and he became premier on Monday, 29 January 1996. Thus, he became leader of the PQ without having to contest a leadership race, and not necessarily with the unequivocal support of the PQ grass roots.

## THE CABINET

Upon assuming power, Bouchard reorganized the Cabinet, both in terms of its composition and its structure. He surrounded himself with a handful of powerful ministers who control the most important departments, and he created a committee structure meant to reflect the priorities of his government. Six of Parizeau's ministers were not called back to the Cabinet<sup>4</sup> and a large number of new faces appeared. In a move that ran against recent Canadian trends Bouchard increased the number of ministers to a total of 23.

The distribution of ministerial portfolios was organized in such a way as to create three categories of ministers. The first tier is made up of four ministers of state, the second group is the ministers in charge of the traditional line departments. The third tier is composed of six junior ministers<sup>5</sup> who, in all but one case, assist the ministers of state in one of the many portfolios which the senior ministers accumulated. The seemingly complex structure appears to concentrate the most important responsibilities and their commensurately large budgets in the hands of a few key individuals, not unlike the federal Cabinet that Prime Minister Kim Campbell had put in place during her short term in office.

Three ministers of state are seasoned members of the Parti Québécois parliamentary wing and have previous Cabinet experience. Bernard Landry remained deputy premier and became minister of state responsible for the economy and finance.<sup>6</sup> The fact that Landry could have been a challenger for the PQ leadership but instead chose to invite Lucien Bouchard to come to Quebec City might have had something to do with the key responsibilities

which were attributed to him. Louise Harel was chosen minister of state responsible for employment and solidarity. Guy Chevrette was named minister of state responsible for natural resources and regional development. Finally, the premier announced that Serge Ménard would take charge of a new department, the "Ministère d'État à la Métropole." Ménard, a criminal lawyer and former president of the Quebec Bar Association, had been minister responsible for public security under Jacques Parizeau and had handled deftly some difficult issues, including law enforcement at Oka. At the time of the appointment many commentators praised the creation of a department for Montreal and the choice of Serge Ménard. However, following the enactment of the bill defining the responsibilities and powers of the new department many were left wondering if it would have any real impact. The department is meant to encourage and sustain any effort on the part of the private or the public sectors to promote Montreal's economic growth and its social and cultural vitality. The minister will be the main government advisor concerning Montreal, and his opinion and support will be needed before departments submit proposals to Cabinet or Treasury Board. On the other hand, the department will not administer a large budget nor will it have any formal veto over the decisions of other departments concerning Montreal.

Over the last 20 years, each Quebec premier has shaped the Cabinet to fit their individual styles of governing and the priorities of their governments. In 1976, René Lévesque created four standing committees of Cabinet, chaired by different ministers of state, who were themselves also part of an inner Cabinet. When he returned to power, Robert Bourassa preferred a more informal structure and bilateral exchanges with his colleagues. He eliminated the priorities committee and kept only three development committees.<sup>7</sup> By opting to have only a priorities committee, Jacques Parizeau opted for a more traditional style of Cabinet structure, well-suited for a government whose main focus, the referendum, overshadowed everything else. By way of comparison, the structure of the Bouchard Cabinet, with a priorities committee and four standing committees is reminiscent of the first PQ Cabinet. The premier heads the priorities committee, as well as the regional and territorial affairs committee. The finance minister, Bernard Landry, is in charge of the committee for employment and economic development and the social development committee will be presided over by Louise Harel. The minister of education, Pauline Marois, will chair the committee for education and culture. There are important differences, however, between the 1976 and the 1996 Cabinets. Lévesque's ministers of state were not responsible for line departments, but each could rely on an associate secretary general (with a status equivalent to that of a deputy minister) and a secretariat. As indicated earlier, Bouchard's most senior ministers exercise their authority over some of the most important line departments. Moreover, the Lévesque Cabinet had an expansive legislative agenda which called for coordination and planning on the part of the ministers



of state and their respective committees. In the present Cabinet, the task of the committees is now to "to develop strategic plans to make better use of existing resources and future needs of the clientele within the budgetary context being envisaged."<sup>8</sup> This should mean that a priority of all Cabinet committees will be to ensure that the integrity of the budgetary framework is maintained.

## COMMUNITY RELATIONS

After having formed his Cabinet and outlining his priorities, Premier Bouchard's first major public gesture was to meet leading members of Quebec's English community. In early March he went to the Centaur Theatre, an important English-speaking cultural venue in Montreal, and made a speech to approximately four hundred Anglo-Quebecers.<sup>9</sup> At the time, anglophones were still reeling from the result of the referendum and Parizeau's infamous remarks about "money and the ethnic vote." In the weeks that followed the referendum, talk of a massive exodus of English-speaking Canadians from Quebec, as well as the emergence of new organizations dedicated to the partition of Quebec, constituted clear manifestations of the collective anxiety of Quebec's English community.

From the government's perspective, this was a troublesome development for at least three reasons. First because the PQ has worked hard to shed its image of an ethnic movement seeking to achieve the status of an ethnically-based nation-state for Quebec's francophones. For some time the party has stressed the territorial and liberal dimensions of its nationalist ideology,<sup>10</sup> inclusive of everyone living in Quebec regardless of ethnic or linguistic origin, and seeking to form a sovereign state with close links to Canada. French would be the common public language of a sovereign Quebec while the anglophone community would see its existence and existing rights recognized and guaranteed. Parizeau's remarks undermined efforts to convey this message to non-francophone Quebecers. Second, anglophones constitute an integral and important part of the Montréal business community. A loss of confidence on their part could undermine the government's efforts to instill a new sense of confidence in the future of Montreal. Finally, since the leaders of this government still hope to see Quebec become a nation-state one day they do not want any bad publicity of any sort.

In his address, Bouchard dissociated himself from Parizeau's remarks, and declared that "it was perfectly legitimate" for anglophones to have voted no. He also retracted his own earlier comments to the effect that Canada was not a country. Having stressed how anglophones and francophones had cooperated to produce the Quiet Revolution and to promote the Meech Lake Accord he declared that all Quebecers had to "take steps to forge bonds" among

themselves and added: "looking beyond our differences and without denying them, we must be mindful of our social fabric and work to make it strong enough to sustain whatever tension the future might hold." He then reaffirmed the commitment of his government to preserve the rights of the anglophone community including control of its educational institutions, availability of English services from the courts and the government of Quebec, as well as from health and social services institutions. Lucien Bouchard did not intend to make any specific promises and committed himself only to the introduction of linguistic school boards in the near future. He did not address demands from the anglophone community concerning access to English schools for immigrants from English-speaking countries, or to increased representation for non-francophones in the Quebec civil service. While Bouchard's message was generally well received, many felt that it should have been backed up by concrete actions.<sup>11</sup> This bridge-building effort was threatened and ultimately undone because of the renewed agitation of PQ militants and the Quebec Political Action Committee with respect to the one issue most likely to ignite tensions within Quebec language.

#### LANGUAGE: HERE WE GO AGAIN?

Language politics is an excellent barometer for the climate of relations among Quebec's language communities. Since the ban on the use of English on signs<sup>12</sup> had been lifted in 1993 by the Bourassa government, the language issue had not stirred controversy. One might have been excused for thinking that a lasting equilibrium had been reached on the eve of the twentieth anniversary of the Charter of the French Language. But soon after Lucien Bouchard took power the status quo was challenged by PQ militants who argued for continued vigilance, and by anglophones who felt that their rights were being denied. Controversy began when excerpts from a government report on the language situation were leaked to the press. Elements of the report emphasized the shortcomings of Bill 101 and triggered renewed pressures from the PQ grass roots to strengthen the language law. Such pressures were followed by a counter-reaction from the English community. By the spring of 1996, it was becoming clear that linguistic polarization had completely undermined Bouchard's strategy of *rapprochement*.

The report that sparked the furor had been commissioned by the Quebec government during the fall of 1995. Two members of the research team, who apparently feared that the final report might be watered down, were responsible for the leak. Soon afterward some PQ riding associations from Montreal, worried that the government might weaken Bill 101, declared that it might be time for the party to review the situation carefully, and warned the premier that "otherwise a confrontation between the rank and file and the government could become unavoidable."<sup>13</sup>

Eventually the final report was released in late March 1996.<sup>14</sup> It described the evolution of language use in Quebec and assessed the impact of the Charter of the French Language. Bill 101 had been enacted in 1977 by the first Parti Québécois government at a time when the francophone population was in decline and English remained, by and large, the language of business and economic opportunity. The aim of the language law was to improve the position of the French language in the province. One of the cornerstones of Bill 101 had been its educational provisions. In order to increase the proportion of French speakers at a time when 80 percent of all immigrant children went to anglophone schools, the Charter limited enrolment in English schools to families whose members had already received an English education in Quebec.<sup>15</sup> The second key feature of Bill 101 was a package of measures aimed at increasing the use of French in the workplace. A third element of the bill endeavoured to make French more predominant in public spaces.

The report documented tremendous progress over the 20-year period, despite the fact that a number of court decisions had forced successive governments to abandon or modify some parts of the legislation. The proportion of Quebecers who use French at home, which had declined from 82.5 percent to 80 percent between 1951 and 1971, had increased again to 83 percent in 1991.<sup>16</sup> Between 1971 and 1991, the proportion of anglophones capable of speaking French had increased by 22 percent (from 36.7 percent to 59.4 percent), while the share of allophones able to do the same had increased from 47 percent to 68 percent over the same period. A significant part of the increase in the number of allophones speaking French can be attributed to the education provisions of Bill 101; 80 percent of all allophone children go to francophone schools.

The report also indicated the extent to which the workplace has changed in the province since 1976. Among small and medium-sized businesses (50 to 99 employees) and large employers (100 employees or more) 82 percent and 75 percent respectively have obtained their *certificats de francisation*. This has contributed to a phenomenal increase in the number of francophone business executives, and to the elimination of the wide disparities in income between francophones and anglophones which had first been documented by the Laurendeau-Dunton Commission. Finally, 71 percent of all retail outlets give a predominant place to French on their signs, although 42 percent of businesses did not conform to the regulations.

Nonetheless, the report noted in its conclusion three worrying trends. First, even if the use of French at home in the Montreal Metropolitan area<sup>17</sup> had increased from 66.3 percent in 1971 to 69.4 percent in 1991, on the Island of Montreal the use of French at home had diminished (from 61.2 percent in 1971 to 58.5 percent in 1991). The decline can be attributed to the combination of the movement of francophones from the Island of Montreal to the suburbs, and to the influx of immigrants to the Island of Montreal. Since the

proportion of francophones on the Island is diminishing, as well as the proportion of francophone children in the schools, the pace at which immigrants come to use French has been less rapid than may have been expected otherwise. Second, the report's authors felt that in their earnestness to please their clients government agencies were too willing to communicate in languages other than French, and were thus undermining the spirit if not the letter of the Charter. Finally, the efforts to ensure the predominance of French in the workplace had limited impact in the leading sectors of the economy, a trend that could be attributed, in part, to the new technologies of communication and the liberalization of trade.<sup>18</sup>

In early April, the government announced the steps that would be taken "to reinforce and modernize the promotion of French."<sup>19</sup> Among other measures, the government announced more French courses for immigrants, French exams for any new CEGEP students, continued efforts to ensure that French was used in the workplace. Most commentators, however, felt that the measures were rather tepid, since there were no legislative modifications to the Charter of the French language, or any increased funding. The government also declared that temporary residents of Quebec would benefit from the prolongation of the period during which children could be sent to an anglophone school, and that the government would create the position of *commissaire-enquêteur* within the *Commission de protection des droits de la personne* to receive complaints from citizens. These last two initiatives were meant to meet two long-standing demands from the anglophone community: to have a greater pool of students attending English schools, and the curtailment of alleged bureaucratic delays in rendering decisions. Ultimately the government failed to meet the concerns of its supporters while at the same time courting the anglophone community.

In a bid to get the support of the PQ rank and file for the government agenda, senior members of the party had enlisted the support of Camille Laurin, who had been the minister responsible for the introduction of Bill 101 in the first Lévesque government. Even this did not help, and the government felt obliged to support even stronger measures than had been announced originally in order to win the support of the PQ national council. Although the government did not reintroduce unilingual French signs, as stipulated in the party program, the decision to extend the schooling period for temporary residents was rescinded. In addition, negotiations behind the scenes led the premier to announce that the *Commission de la protection de la langue française* would be reestablished to ensure that language laws were implemented, and a sum of \$5 million was made available for the commission's work.

It might seem paradoxical that Bouchard would meet such effective resistance from his own party. The following factors might explain why the PQ rank-and-file decided to challenge the premier on the language issue. First, the relationship between the parliamentary and non-parliamentary wings of

the party has always been tense when the PQ is in power, because the government is unable to implement the party program in its entirety and the militants feel that they are losing control. René Lévesque, the founder of the party, was confronted on numerous occasions by the party when he was in power. Thus the fact that Lucien Bouchard was challenged should not be a surprise. Even though he had rallied the sovereignists during the referendum, he had "come in from the cold" to lead the government and had not faced a leadership convention. The tensions over language policy between the parliamentary and non-parliamentary wings of the party, therefore, can be interpreted as an *épreuve de force*. The tensions can also be seen as a sign of the continuing struggle within nationalist ranks to define the nature of Quebec society, and the relative place of French and English in it. Some militants believe that it is necessary to confine the use of English to the world of continental and trans-continental business, and to other sectors such as scientific research where the English language is absolutely necessary. Otherwise they fear that the power of attraction that English holds, which remains enormous, will doom current efforts to integrate immigrants within a francophone society. Other more moderate party members believe that the position of French is more secure than ever, and that it is more important at this stage to demonstrate that francophone Quebec society is flexible and open.

As Lucien Bouchard dealt with his own supporters, the Quebec Political Action Committee, led by Howard Galganov, launched its campaign to get store owners to use bilingual signs as is allowed under the law. The committee also promised to take further actions to fight what they see as a curtailment of their rights. By the summer of 1996, moderates had been overtaken by more radical elements on both sides of the linguistic divide and had effectively undermined Bouchard's strategy.

## EDUCATIONAL REFORM

The single firm promise made by Lucien Bouchard at the Centaur Theatre was his pledge to reform Quebec's school structures, which everyone took to mean that linguistic school boards would be created. The Premier could hardly have chosen a more exacting objective, given that over the previous 30 years every attempt to reform the system by governments, regardless of their political stripe, have failed. Recent attempts at reform have been motivated by a desire to rationalize the administrative structure of the system, and to reduce its cost. In addition, reformers believed that linguistic boards would facilitate the integration of allophones within the francophone community on the Island of Montreal.<sup>20</sup> For its part, the anglophone community felt that it could better pool its diminishing resources and reinforce its position by merging the Catholic and Protestant school systems.

Quebec's bishops do not oppose deconfessionalization. The main source of opposition has been the *Regroupement scolaire confessionnel* which has controlled the Montreal School Board Commission from time to time. Although isolated politically, the members of *Regroupement scolaire confessionnel*, who are also known as the *intégristes* (i.e., the fundamentalists), have been able to block previous reforms by challenging previous reform proposals in the courts. These challenges have led to a series of Supreme Court decisions affirming the right to confessional school structures for Catholics and Protestants in Montreal and Quebec City, and the right to dissent of Catholics and Protestants minorities outside the two metropolitan cities.<sup>21</sup>

To avoid any further and lengthy court battles, the minister of education presented a plan which could not be challenged on constitutional grounds. The proposal, outlined in June, called for the maintenance of Catholic and Protestant committees within the linguistic boards. These committees would possess the right to oversee the decisions of both schools and school boards. While the proposal satisfied the *Regroupement* everybody else failed to see how any of the objectives pursued by the government — i.e., rationalization of structures, reduction of costs, integration of immigrants — would be furthered.<sup>22</sup>

It has been suggested recently that the Quebec government should seek a constitutional amendment in order to placate the opponents of deconfessionalization. Such an amendment would not involve the abrogation of the right to dissent of Catholic and Protestant minorities in Quebec and/or elsewhere, but would only put an end to the application of the first paragraph of Section 133 of the *Constitution Act* which protects the educational rights that existed at the time of Confederation. Although the Quebec government has argued that a constitutional amendment would be a lengthy and cumbersome process involving a majority of the provinces, it appears that only the federal government (and possibly the Ontario government) might need to get involved since the right to dissent for denominational minorities would be maintained. One can only conclude that the Parti Québécois government is unwilling to do anything which would legitimize the *Constitution Act* and demonstrate the flexibility of the federal system.

## THE ECONOMIC AGENDA

When Lucien Bouchard became premier one would have been hard put to predict what type of economic strategy he would ultimately choose to pursue. Little could be gleaned from Bouchard's speeches and declarations from the time of the 1993 federal election campaign onwards. Leading the only federal party that did not seek and could not form the government he was free to admonish the government for failing to deal with the deficit/debt, while at the

same time he could criticize the fact that medicare, unemployment insurance or the CBC/SRC were underfunded. When Bouchard came to power one of the few clues available to pundits were declarations that if he became premier he would not follow the examples set by Ralph Klein and Mike Harris.

On the other hand, the continued sluggishness of the Quebec economy was difficult to deny. Quebec's economic growth in the 1990s has been lethargic and the mood has not been upbeat. Although in 1994 the Quebec economy grew by 3.9 percent, in 1993 and 1995 growth was limited to 1.8 percent and 2.2 percent respectively. Slow growth has meant little job creation (48,000 jobs in 1995) and a high unemployment rate of 11.3 percent in 1995. Figures released in August 1996 confirmed the slow rate of job creation in the province.<sup>23</sup> Given its size, Quebec is the province with the highest number of unemployed. Whatever growth had been achieved since the early 1990s had been the result of Quebec's exports. Between 1990 and 1995 internal demand for goods and services had stagnated while the value of exports increased dramatically from \$26 billion to \$40 billion.

When the members of Cabinet were sworn in the premier declared that his first objective would be job creation and the improvement of public finances. The removal of Finance Minister Pauline Marois, who had talked about a possible increase of the sales tax, was seen by an editorialist<sup>24</sup> as a sign that the Bouchard government would want to avoid such increases as a means to reduce the deficit. At the time, the Quebec government had done far less than other provinces, except Ontario, to reduce its borrowing requirements.

Thus by 1995 the public debt, which stood at \$75 billion constituted 44.6 percent of the GPP, a ratio exceeded only by Newfoundland and Nova Scotia. In comparison, Ontario's debt represented less than 30 percent of its GPP. One of the effects of this situation was a lowering of Quebec's credit rating by American agencies. Whereas Quebec's rating had been one of the best in the country in 1975, 20 years later it surpassed only Nova Scotia's, Newfoundland's, and Saskatchewan's thereby forcing the Quebec provincial treasury to spend more to borrow on foreign markets. Alongside Ontario, the provincial government of Quebec was expected to be one of only two provinces that would have a deficit representing more than 2 percent of its GPP. If the Quebec government chose to take a course similar to that of other jurisdictions, that is, to cut or eliminate its deficit, it would have to deal with the fact that Quebec taxpayers are among the most highly taxed in the country, and manage the political and economic consequences accordingly.

## THE ECONOMIC SUMMIT

The fog surrounding the government's intentions began to lift as an economic summit scheduled for late March drew closer. Planned as a three-day event,

the government invited business representatives from the manufacturing, financial and cooperative sectors, as well as representatives from Quebec's unions and social movements<sup>25</sup> to discuss the economic and social future of Quebec. Under René Lévesque many similar summits had achieved some limited degree of success.<sup>26</sup>

The government opened the conference by explaining that it planned to eliminate its deficit within two years, and at the same time reduce unemployment. The targets were clear with respect to the deficit, but there were no comparable goals for unemployment. Even though both unemployment and the public deficit were on the agenda, it became obvious that the government was seeking to enlist support for the implementation of a plan to eliminate the deficit. The strategy was not without risk. The conference could fail to produce a consensus, and Bouchard might lose support among unionized workers and the community sector which had contributed to the strong sovereignist vote. Conversely, business confidence could be shaken if it were felt that the government was not doing enough to balance its books.

As the conference unfolded, the unions, which had declared their opposition to such a rapid elimination of the deficit and had proposed alternative strategies to reimburse Quebec's creditors such as the creation of a special trust fund dedicated to paying down the debt,<sup>27</sup> agreed to a revised schedule which would see the deficit eliminated within a four-year period. In return, everyone agreed to a business proposal that an anti-deficit bill be presented to the National Assembly. The representatives of the community sector found solace in the firm commitment on the part of the government to introduce pay-equity legislation.

On the employment front, the participants did not make as much headway. A number of ideas were outlined: a national apprenticeship program, another one for young graduates entering the job market, a five-year plan for infrastructure development, a moratorium on lay-offs among successful businesses. Whereas the deficit-cutting exercise produced firm commitments, discussions regarding employment only allowed the participants to exchange some suggestions and form a number of working groups scheduled to report at a second conference to be held in the fall of 1996.

If a consensus on the employment issue appeared more difficult to reach it is in part because different objectives and strategies had been promoted by the different groups attending the conference.<sup>28</sup> The community groups argued for the implementation and institutionalization of a full employment policy, similar to policies in Scandinavian countries. However, of all the groups sitting at the conference table those representing the community sector remained the weakest. One has to wonder whether a provincial government has the tools necessary, let alone the willingness, to pursue this type of strategy even though it is an integral part of the Parti Québécois program.<sup>29</sup> The business sector has advocated a neoliberal approach by calling upon the Quebec government to



eliminate its deficit, reduce regulation deemed inimical to business interests, and to introduce measures to increase the competitiveness of industries that produce high value-added jobs. Those most critical of this type of approach believe that it has contributed to higher unemployment and a provincial economy marked by an income gap between rich and poor. The position defended by unions which, incidently, remain relatively strong in Quebec if only in comparison with other Canadian provinces constitutes a middle course. While the community sector has advocated a social-democratic approach *à la scandinave* and the business sector takes its inspiration from the neoliberal approach, the union sector would like to see Quebec emulate German neo-corporatism. The model is characterized by a high level of cooperation between unions, businesses and government and has produced a high level of competitiveness, good working conditions and generous endowments for welfare recipients even if it has been unable to stem unemployment in the 1980s.

The intentions of the government regarding public finances are unequivocal. In addition, Lucien Bouchard can claim that his government's approach is quite different from the *confrontational style* of the Harris government, even if they both share the same commitment to eliminating their respective deficits. It is vital for the Bouchard government to define some common ground with businesses, unions, and community groups because businessmen make the investment decisions while union and community representatives were important government allies during the referendum period.

#### PUBLIC FINANCES: VOTING THE CREDITS AND THE BUDGET

The minister of finance, Bernard Landry, confirmed the political agreement reached at the conference when he presented his budget. On 9 May 1996, he announced that the deficit would be reduced from \$3.97 billion to \$3.3 billion in 1996-97, to \$2.2 billion in 1997-98, to \$1.2 billion in 1998-99, and that no deficit would be incurred by the year 2000. To support this was announced that an anti-deficit bill would be presented to the National Assembly.<sup>30</sup> The proposed legislation would commit the government to a zero-deficit target by the year 2000 and would not allow further deficits. If, in any given year, the pre-set targets were not reached the shortfall would have to be made up in the following year. The bill, still under examination when the National Assembly went into recess in late June, also indicated that if exceptional circumstances, such as an economic recession, should hamper deficit reduction plans then the government would have to table a new plan showing how the necessary sums would be collected in the following five years.

To meet its target for the 1996-97 budget year, the government had to find \$3.2 billion without raising existing taxes or creating new ones. The whole exercise was based on the expectation that the economy would grow by 1 percent

in 1996-97 and 1.4 percent the following year, whereas most forecasters predicted a growth of 1.5 percent and 2.2 percent respectively for those two years. Such conservative estimates increase the likelihood that the government will meet its objectives. Although new or higher taxes were not announced, the minister of finance still found ways to extract \$650 million in new revenues. A major proportion of these revenues should come from individuals and corporations who have made illicit gains through tax evasion, failure to declare revenues, or the contraband of alcohol. Revenues are also expected from the creation of a drug insurance plan which will force retirees to pay part of their drug expenses.<sup>31</sup>

Given a decline of \$1.1 billion in federal transfers, new revenues will contribute only partially to the reduction of the deficit. On expenditures of \$35.1 billion on programs and \$5.9 billion to service the debt the Quebec government is attempting to reduce its spending further:

- The health sector represents the largest portion of the government expenses (31 percent). For the second year in a row its budget was reduced. Its budget will stand at \$12.9 billion following cuts worth \$669 million; \$546 million had been trimmed the year before that.
- The budget for the second largest item, education, would be cut by \$553 million to stand at \$9 billion representing 25 percent of all expenses. This is to be accomplished without raising tuition fees, which are among the lowest in Canada.
- Although the welfare rolls are expected to swell and reach almost half a million, its budget is to be reduced by \$225 million. Welfare expenses represent 10 percent of the budget, \$4 billion.
- The bureaucracy itself is to be trimmed. The equivalent of \$275 million in cuts are to be administered, \$150 million from operating expenses, \$100 million from salaries and \$25 million by merging or eliminating some units.

The budget was well received by financial institutions despite the fact that two days prior to the presentation of the Quebec budget, the Ontario government announced deeper cuts and a reduction of income taxes as well. Indeed whereas the Quebec government announced the elimination of close to 2,000 positions out of 58,174 (3 percent) in the civil service, Ontario is supposed to cut 10,600 out of 81,000 (13 percent). Moreover, Harris's government will reduce income taxes by 30 percent over three years. The gap in income taxes between Quebec and Ontario, which had become insignificant in the last few years, will increase again and undermine somewhat Quebec's competitiveness. Despite the increasing discrepancy, most analysts<sup>32</sup> argued that the Quebec government had made the wiser choice given that Ontario will have to borrow

an additional \$20 billion and delay the elimination of the deficit in order to finance the income tax cuts.

## CONCLUSION

How are we to evaluate Lucien Bouchard's first six months in power? To conclude, I propose to assess his performance and compare the government's stated objectives to what the new government has actually accomplished. These objectives were: first, a reduction in both the rate of unemployment and the government deficit; second, improvement in relations between language groups by means of educational reform among others; and third, a commitment to proceed through dialogue and consensus rather than confrontation. Although it is probably too early to fully assess Lucien Bouchard as premier of Quebec some initial evaluations are possible.

The government made quite an impression when it secured the support of business, union, and community sectors for the elimination of the government deficit, and then produced a budget based on conservative assumptions regarding the growth of the Quebec economy. This does not mean that the issues of public finance are unlikely to prove controversial in the future. The government will have to make countless difficult decisions to reduce public spending. Fortunately, the general public appears to be prepared and supportive. The government thus earns top marks for its accomplishments in the battle against the deficit. It has fulfilled its objectives with the support of all parties concerned.

However, this success was acquired at a price. In return for their support, union and community sectors were promised pay-equity legislation and a commitment to battle unemployment. Legislating pay equity will not be easy. The introduction of the legislation has already been delayed once and by September the opposition of the business community to pay equity had spread to some members of the Bouchard Cabinet. An economic summit on employment will be held in the fall, but there is no guarantee that the second summit, which will aim to produce an employment strategy, will have the success of the first summit. Unemployment is a structural problem about which governments are able to do very little. It has been argued that the monetary policies pursued by Western governments, including Canada's, have worsened, some even say provoked, unemployment. Whatever the case, provincial governments simply do not have many tools required to deal with this type of problem. Even a much improved training capacity would not reduce significantly unemployment in the short term. The only hope for the Quebec government is for greater cooperation between employers and employees, but it is doubtful that the business community will listen to proposals that will increase their payroll costs.

Although it might not have been stated explicitly, Bouchard's second major objective was to improve the relations between Quebec's language communities in the aftermath of the divisive referendum campaign. The speech at the Centaur Theatre was meant to signal a new openness vis-à-vis the English community and to recognize its importance to Quebec as a whole. However, in the months that followed, the premier quickly lost control of the situation. More extreme views began to be expressed. Lucien Bouchard was first put on the defensive by the highly public opposition by numerous PQ riding associations to a relaxation of some parts of the Charter of the French Language. At the same time, Premier Bouchard must now respond to new levels of militancy among Anglo-Montrealers. Since a majority of Quebecers support the status quo with respect to language policy,<sup>33</sup> the premier could choose to ignore the more radical opinions expressed on both sides. However, he has felt that it was necessary to toughen up the language law. On this issue, he has appeared weak and indecisive. Moreover, the government announced in September that the creation of linguistic school boards was being postponed. We can only conclude that Bouchard's politics of reconciliation has not borne any substantial fruit.

As for the third objective, dialogue and consensus, the record is mixed. Considering the conditions under which Lucien Bouchard had to take command of the ship of state, and his lack of experience, his record is positive. He has established and communicated his objectives rapidly. He has steered the business, union, and community sectors towards a constructive compromise regarding Quebec's public finances — although this was achieved by paying the price of promises regarding pay-equity legislation and job creation. On the minus side, the government, despite the best of intentions, has not handled community relations well. Despite these shortcomings, the official opposition remains extremely weak and has been unable to capitalize. The Liberal Party of Quebec is in disarray and its leader, Daniel Johnson, is ineffective. On the other hand, the premier, his government, and the idea of a sovereign Quebec are still strongly supported by the electorate.

The Parti Québécois has always believed that Quebecers would not support sovereignty if the party in power was seen as incompetent. Until now, the government has done well despite some growing pains. It could be argued that mistakes have been committed along the way. But so far the government has done nothing that is likely to be remembered when voters go to the polls. That final judgement on the part of the electorate will be based in part on their expectations. By stressing the need to make sacrifices, Lucien Bouchard has been very careful not to raise expectations but at the same time he has promised to tackle structural and in some cases intractable problems such as unemployment, educational underachievement, and the decline of the Montreal economy. The next few months should allow us to determine if he can make some progress in this regard. A failure to make some headway could

spell trouble for the government down the line if this were combined with a resurgence of the Liberal opposition. At the risk of stating the obvious, defeat at the polls — although it appears unlikely at this stage — would foreclose the possibility of another referendum in the near future.

## NOTES

I would like to thank my colleagues at the University of Ottawa, François Houle and Gilles Labelle for their comments on an earlier draft of this paper.

1. Premier Bouchard's speech was reproduced, in part, in *Le Devoir*, 30 January 1996.
2. Ibid.
3. Some other priorities for the Bouchard government are not considered in detail in this chapter. Given space limitations, little is said about changes initiated in areas such as health care, welfare reform, drug insurance, and the efforts to modernize service delivery and public administration.
4. This includes Minister of Transport Jean Campeau, who resigned shortly before Bouchard came to power. The other ministers not called back to the Cabinet were Jeanne Blackburn (Sécurité du Revenu) Jean Garon (Education), François Gendron (Natural Resources), Marcel Landry (Agriculture) and Daniel Paillé (Industry and Resources).
5. *Ministres délégués* is the term used in French.
6. He is also minister of revenue and industry, commerce, science and technology.
7. See Jacques Bourgault, Stéphane Dion and James Ian Gow, "Evolution of the Role of Central Agencies in the Quebec Government, 1960-90, in *Quebec: State and Society*, 2d ed., ed. Alain-G. Gagnon (Scarborough: Nelson, 1993), 224-42.
8. Government of Quebec, "L'organisation gouvernementale et son fonctionnement" (Québec: Ministère du Conseil Exécutif, 1996, mimeographed), 5. Translated by the author.
9. Large portions of the speech were reprinted in the *Montreal Gazette*, 12 March 1996.
10. Marc Desjardins and Gilles Labelle, "De L'Ambiguïté du discours souverainiste," *L'Agora* 3, 2 (1995): 14-15.
11. For reactions to the speech, see *The Gazette*, 12 March 1996, A1, A9, B2-B3.
12. Since 1993 Quebec law only requires that the French language be predominant on commercial signs. The program of the Parti Québécois calls for reinstatement of a ban on the use of languages other than French. The Parizeau government chose not to amend the existing law.
13. "Si le gouvernement décide de passer outre l'opinion du parti, il y aura une confrontation." Pierre O'Neil, "Les péquistes montréalais réclament une nouvelle Loi 101," *Le Devoir*, 25 February 1996, A5. Translated by the author.

14. Comité interministériel sur la situation de la langue française, *Le Français langue commune: Enjeu de la société Québécoise* (Quebec: Direction des Communications, 1996), 319.
15. Following the enactment of the Canadian Charter of Rights and a successful court challenge, Quebec had to allow any Canadian family to send their children to the school of their choice.
16. *Le Français langue commune*, 272, Table 1.2.
17. The Montreal Metropolitan Area covers the municipalities on the Island of Montreal, the south shore, and the north shore.
18. It should be said that the *Office de la langue française* negotiates on a case-by-case basis the extent to which different enterprises are expected to use French, to ensure that their competitiveness will not be jeopardized by stringent language requirements.
19. For a detailed account of the measures announced by the government see *Le Devoir*, 4 April 1996.
20. Paul Cochon, Michel Venne, "Guerre ouverte contre le projet du Centaur," *Le Devoir*, 19 June 1996, A1, A10.
21. Section 93 of the *Constitution Act* protects educational rights in two distinct ways. On the one hand, it guarantees the right to dissent by Protestants and Catholics. Moreover, it also protects whatever other educational rights were enjoyed at the time of Confederation. Since Montreal and Quebec City possessed confessional school structures in 1867, they are protected constitutionally.
22. See the article by a leading expert, Jean-Pierre Proulx, "Le Succès et l'échec," *Le Devoir*, 25 June 1996, A7; and 26 June 1996, A7.
23. Marian Stinson, "July Job Figures Weak, Loan Rates Fall," *The Globe and Mail*, 10 August 1996, A1.
24. Lise Bissonnette, "Trois étages et des rallonges," *Le Devoir*, 30 January 1996, A6.
25. We are referring to women's groups, churches, welfare advocates, etc. In Quebec they are often referred to as constituting the *secteur communautaire*. They will be referred to as community groups in this text.
26. Kenneth McRoberts, *Quebec, Social Change and Political Crisis*, 3d ed. (Toronto: McClelland & Stewart, 1988), 272.
27. Pierre Paquette, "Retrouver le sens de l'État," *Le Devoir*, 15 March 1996, A9.
28. For a more penetrating discussion of the evolution of Quebec's economic strategy and the positions advocated by business, labour, and government, see Alain Noël, "Politics in a High Unemployment Society," in *Quebec: State and Society*, ed. Gagnon, 422-49.
29. Parti Québécois, *Programme du Parti Québécois* (Montréal: Parti Québécois, 1991), 80-97.
30. Alberta, Manitoba, and New Brunswick have already adopted similar pieces of legislation.

31. Additional sources include: \$72 million from the elimination or reduction of tax credits to individuals and retirees in the middle and upper income brackets; \$31 million from union dues which will now benefit from a tax credit rather than a tax deduction; and \$15 million from the application of a capital gains tax to the *Caisses populaires* (credit unions).
32. See, for example, Alain Dubuc, "La tentation ontarienne," *La Presse*, 10 May 1996, B2.
33. Pierre O'Neill, "Une charte renforcée si nécessaire," *Le Devoir*, 3 September 1996, 1.



# III

## Constitutional and Non- Constitutional Change



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## Using the Concept of Deconcentration to Overcome the Centralization/Decentralization Dichotomy: Thoughts on Recent Constitutional and Political Reform

*François Rocher and Christian Rouillard*

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*Traditionnellement analysée à travers la dichotomie de la centralisation et de la décentralisation, l'évolution du fédéralisme canadien gagnerait à être étudiée sous l'angle, emprunté à l'administration publique, de la déconcentration. Nombreuses sont les études qui concluent, avec ferveur ou regret, à sa dynamique centralisatrice. Toutes aussi nombreuses sont celles qui concluent, encore une fois avec ferveur ou regret, à sa dynamique décentralisatrice. Ces conclusions, ne sont contradictoires qu'en apparence. Elles renvoient plutôt à des modes différents d'appréhension des notions de centralisation/décentralisation qui pourraient être réconciliés si la littérature portant sur le fédéralisme canadien faisait davantage place à la notion de déconcentration. C'est ce qu'aborde la première partie de ce chapitre.*

*La seconde partie de notre analyse se penche sur la façon dont certains ont évalué le degré de décentralisation qui caractériserait le fédéralisme canadien. Les méthodes utilisées sont ici contestées dans la mesure où elles confondent les aspects administratifs et politiques de ce processus.*

*La troisième partie de ce chapitre est consacré à une analyse détaillé des deux dernières manifestations du réformisme constitutionnel canadien, nommément les accords du Lac Meech et de Charlottetown. Ces accords ont généralement été perçues comme décentralisatrices parmi bon nombre d'analystes au Canada alors que plusieurs de leurs éléments furent qualifiés de centralisateurs de la part de bon nombre d'analystes québécois. Cette divergence de vue exprime bien plus que des perceptions différenciées du fédéralisme canadien. De la même manière, certaines initiatives du gouvernement fédéral présentées comme la manifestation d'un désir de décentralisation (notamment les plans budgétaires 1995 et 1996 qui incluent entre autres le projet de transfert social canadien [TSC]) mériteraient d'être analysées sous l'angle de la déconcentration.*

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## INTRODUCTION

The evolution of Canadian federalism has traditionally been analyzed using the dichotomy of centralization and decentralization. In this chapter we introduce the concept of deconcentration which, we argue, casts a different light on the never-ending debate on whether the Canadian federation is too centralized or not decentralized enough.

First, we will elaborate on the concepts of centralization, decentralization and deconcentration, demonstrating the multiple meanings of the first two concepts and stressing the distinct nature of the latter. Then we will analyze critically the centralization/decentralization debate in Canada. Finally, we will show that a process of deconcentration, rather than decentralization, was at play in the Meech Lake and Charlottetown Accords, the 1995 and 1996 federal budgets, and the federal proposals to withdraw from the field of labour market policy.

## CENTRALIZATION/DECENTRALIZATION AND DECONCENTRATION: TOWARDS CONCEPTUAL CLARIFICATION

Paul G. Thomas, in his introduction to an issue of *Canadian Public Administration*, noted the absence of a universally accepted definition of decentralization.<sup>1</sup> While anyone interested in the evolution of Canadian federalism cannot avoid the concepts of centralization and decentralization, these concepts are rarely defined in a satisfactory manner. More often than not, people use a definition so general that only the interpretation of an ad hoc event can give it concrete meaning.

Even specialized lexicons are not of great assistance in that the definition of these concepts remains vague. For example, Debbasch *et al.* see centralization as "a tendency towards political unity and the administrative unification (via the supremacy of central institutions) which manifests itself during state formation." It is also "a form of administrative organization in which the state transfers decision-making powers to local institutions relatively independent of the central government" which, moreover, "supposes a judicial personality ... and suitable human, technical and financial means."<sup>2</sup> Right away we see that, on the side of centralization, the concrete significance of the "tendency" to "unity" and "unification" can vary *ad infinitum*. We also see that the "relatively" independent characteristics of local institutions, and the suitability of the human, technical and financial means, are also subject to endless interpretations.

Specialists in public administration constantly use the concept of centralization and decentralization. Some stress the need to distinguish between, on the one hand, political (or territorial) centralization/decentralization and, on the other, administrative centralization/decentralization. Hence, for Barrette:

Political decentralization can take the form of an allocation of the legislative powers of the state through a constitutional document: it thus establishes orders of government, that is federalism. Administrative decentralization establishes administrative structures which are guardians and representatives of a power and a mission established and delegated by a central administration to which they are subordinate.<sup>3</sup>

The concept of decentralization also influenced the Parti Québécois' plans for reorganizing state activities once the sovereignty of Quebec was achieved. The party's green book, offered several models of decentralization, inspired by the distinction between administrative and territorial decentralization. The first was presented as "that in which responsibilities were conferred to an authority possessing a proper legal personality, directed by non-elected people through direct suffrage, and whose responsibilities would be exercised in a specific field." The second implies "a significant transfer of responsibilities to authorities elected through direct suffrage, possessing a legal personality, exercising powers in one field of activity and possessing fiscal powers over the determined territory."<sup>4</sup>

These conceptions are not without their problems. First, the distinction introduced by Barrette implies that a federal state is by definition decentralized, without even qualifying this decentralization. A quick glance at the *Constitution Act* of 1867 (sections 91 and 92) reveals that one can associate Canadian federalism with a certain form of centralization, although at first less than was foreseen, for example, in the American Constitution. Still, it remains that the Canadian federal state was originally so centralized that it is more accurate to speak of quasi-federalism.<sup>5</sup> Second, this distinction leads implicitly to the obsolete dichotomy of politics and administration: only decentralization which emerges from a constitutional clause is political, claims Barrette. This counters the definition offered by the Quebec government, under which decentralization would involve largely an official devolution of powers. Third, this distinction is legalistic and statist, the former because it stresses the legal and institutional aspects of decentralization, and the latter because it overshadows its dynamic dimensions, since decentralization (as well as centralization) is also a process through which power relations between institutional actors are expressed, be they governments or merely administrative units.

In summary, political or territorial decentralization refers to: (i) the capacity for institutions to take independent decisions in officially recognized sectors; (ii) the absence of a hierarchical link between different administrations; (iii) the imputability carried out through democratic control, with the mandate for decision making determined through direct suffrage; and (iv) the fact that these institutions possess the human, technical, and financial means necessary to fulfil their responsibilities.<sup>6</sup>

Decentralization also occurs when units within the central government or administration enlarge their sphere of autonomy. Political centralization, on

the other hand, occurs when the ability to take independent decisions is diminished and a hierarchical relationship between administrative or political units is established, to the advantage of those higher in the hierarchical relationship. Thus there is a difference in nature between political centralization and decentralization. A sector can only be centralized or decentralized. Only those areas under the responsibility of one of the administrative or political units can be measured or qualified in an unpolemical fashion. When authority in a jurisdiction is shared, one must ask who, ultimately, can impose their views. That is to say that the introduction of cooperative mechanisms can alter the decision-making process, and can introduce flexibility without political decentralization. Finally, the centralized or decentralized nature of an administration or a political regime can only be determined in a comparative manner.

To be coherent, the public administration literature should establish an unambiguous distinction between political and administrative decentralization. Unfortunately, this is not the case. For example, for Barrette:

This process involves the transfer of functions, powers and responsibilities of the central administration to an autonomous and distinct administration. In effect, this autonomy, an essential characteristic of a decentralized administration, is based on a distinct legal personality, a decision-making authority, the ability to organize and manage the fulfilment of its mission, the determination of its own policies and being able to proceed with the allocation of its resources within the confines of its mandate. Decentralization involves the rupture of the hierarchical link with the central administration, which does not exercise the traditional management controls on the decentralized administration.<sup>7</sup>

Again, the real extent of decision authority must be clarified. For example, does it refer to strategic or to operational power and management? While the former refers to the ability to establish major directions, principles and/or objectives, the latter refers to the ability to determine the concrete means likely to realize them and/or to realize complementary goals compatible with precedents. In speaking of the limits of the attributed mandate, it seems that there is only operational power/management. In speaking of the rupture of the hierarchical link, however, it seems instead that decision authority is a matter of strategic power/management. Confusion results, given that the imprecise lines of demarcation between political and administrative decentralization remain.

Still, Barrette's definition of deconcentration clarifies the matter somewhat. Reduced to a simple variant of centralization, deconcentration is a delegation of powers which "allows a deconcentrated unit to take some more or less limited decisions, within a framework defined by the central authority, which nevertheless preserves the totality of powers and the general responsibility of the mandate."<sup>8</sup> The concept of deconcentration is used in France to the extent that there exists a Charter of Deconcentration. The notion is defined as "the general rule for the distribution of attributions and means between the different

levels of the state's civil administration."<sup>9</sup> The Charter states that the central authorities administration has the role of conception, orientation, evaluation and control, while regional authorities are to implement policies. Means for implementation are allocated directly by the central authorities, and is authority delegated by the central state, exercised subject to the hierarchical power which could at any moment decide in their place.<sup>10</sup> Insofar as deconcentration, thus defined, refers to what we call operational power/management, it seems fair to conclude that political decentralization refers to what we call strategic power/management.

The ideas of Louis Bernard, former secretary-general of the Quebec government, go in the same direction. Contrary to Barrette, he establishes a distinction between deconcentration and decentralization: "Why do we decentralize? To give the public better service, be it through political decentralization (decentralization in the narrowest sense) or through administrative deconcentration where we are closer to the clientele; in all cases we need to further examine this notion of decentralization in terms of service to the public rather than in terms of the organization of the state and its hierarchy of powers."<sup>11</sup> In stressing the difficulty in distinguishing between decentralization and deconcentration, Kernaghan and Siegel seem to be in accordance:

The difference between the two lies in the amount of real decision-making authority vested in the outlying unit. Decentralization suggests a vesting of real discretionary authority in the outlying unit.... Deconcentration, on the other hand, suggests ... only a very limited delegation of decision-making authority. Obviously, the line between the two is sometimes unclear. Even in deconcentration, there is virtually always some limited amount of discretion vested in field officials just as in decentralization there are always some kinds of decisions that can only be made after consultation with head office.<sup>12</sup>

In stressing the political dimensions of these concepts, namely the real range of delegated decision-making power rather than the institutional dimensions, and the legal personality of the delegator and the delegatee, we can see the pertinence of the concept of deconcentration.

As rare as this is, they are not the first nor the only. For example, many years ago Lajoie cited the existence of a critical current led by Eisenmann which, at the time, questioned the validity of the traditional dichotomy between centralization and decentralization for studying contemporary political and administrative realities. As Lajoie suggested:

In examining the control exercised by decision-makers over the supposedly decentralized authorities, Eisenmann comes to distinguish a third type of administrative relationship between these two poles, which he calls "semi-decentralization." It is characterized principally by the fact that the semi-decentralized local authority is not really subordinate to the "superior" decision-making centre, but collaborates with it, on an equal footing, on decisions for which the agreement of both authorities is required.<sup>13</sup>

Interesting yet nuanced, this distinction loses its clarity and rigour through the use of the term semi-decentralization. This confusion is probably greater than that associated with the term decentralization, its meaning compromised by the specialized literature.<sup>14</sup>

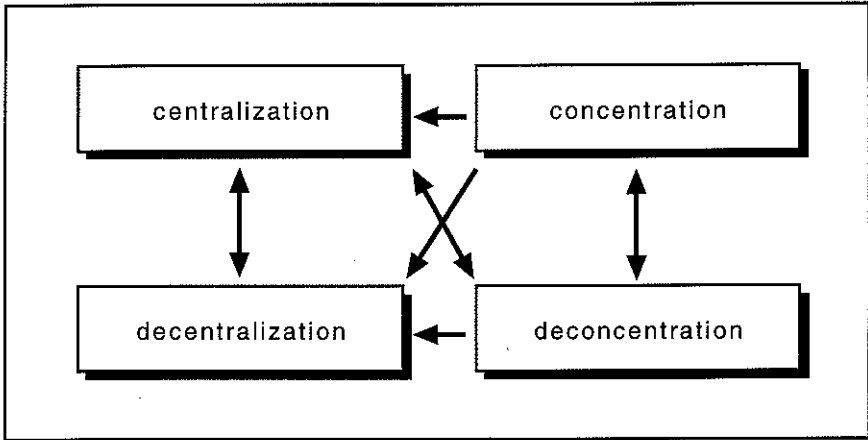
Even if the concepts of centralization and decentralization are borrowed from the public administration literature, they are still used frequently to describe relations between the Canadian federal and provincial governments. Scholars would be ill-advised, therefore, to transpose mechanically the meaning accorded by students of public administration to the study of relations within a unitary state (intrastate relations) to another field of analysis, namely the study of relations between political units in a federation (interstate relations). Centralization and decentralization refer to the types of power relationships exercised in a federation between governments whose prerogatives are outlined — more or less clearly — in a constitution. These concepts take on a different meaning than that which is found, despite the ambiguities already noted, in the public administration literature.

It seems that the transposition of these meanings is the norm in studies of Canadian federalism. Peter Leslie stresses the dynamic aspect of the centralization/decentralization process. Essentially, this process manifests itself when we can observe the increase in influence held by one government over another. Hence, centralization "is a double trend: toward expansion of policy responsibilities assumed by the central government and toward contraction of policy responsibilities assumed by the provinces."<sup>15</sup> Decentralization calls upon a reverse dynamic. This definition ignores the fundamental distinction which must be made between an increase in influence of the provinces within federal institutions (which is not, properly speaking, exactly the same as decentralization) and a formal transfer of authority.

However, David Cameron recently offered a typology of the different forms of decentralization in Canadian federalism, distinguishing between constitutional, administrative and fiscal decentralization. The first is a "[f]ormal constitutional amendment, assigning increased responsibility to provincial jurisdiction." In the second, the federal Parliament delegates "administrative responsibility for the execution of certain federal functions to the provinces." The third involves "the transfer and the withdrawal of federal money," particularly money for which no conditions are attached."<sup>16</sup> Decentralization is particularly problematic insofar as it refers to that which we called operational power/management (accompanied by an increase in public expenditures, which is seen as a reliable indicator of decentralization), without taking into account the provinces having to adhere to the conditions dictated by the federal government, which we called strategic power/management. In effect, using the term decentralization to describe the process is misleading. Even Cameron recognizes that this dynamic has led to a certain form of centralization. Thus

it appears essential to distinguish more clearly and unequivocally that which is a matter of one or the other processes.

**Figure 1: Political-Institutional Dynamic of Canadian Federalism**



Source: Authors' compilation.

As Figure 1 suggests, it becomes imperative to build upon the traditional dichotomy of centralization and decentralization in order to better understand the evolution of Canadian federalism.<sup>17</sup> Hence, within a federation, the process of centralization refers to a growth in the ability of the central government to exercise its authority in the areas defined as provincial jurisdiction, through a transfer from the provinces to the central authority or through the implementation of constraining mechanisms of conception, evaluation, orientation and/or control, to which the provinces are subordinate. The process of decentralization refers to a contrary dynamic in which the central government transfers to the provinces its authority in a given jurisdiction. This can take the form of a constitutional amendment, in which case a formal devolution of powers occurs and which must be considered irreversible, or in the form of administrative agreements, that results in an informal delegation of powers which can be temporary or permanent.

Deconcentration, however, can be seen as *the dynamic process expressing power relations between central and provincial governments in such a way that the participation of the latter in the decision-making process or in operational power/management can be improved without the prerogatives of the*

*former really being affected.*<sup>18</sup> That is, in the process of deconcentration the central government maintains its authority intact, contrary to decentralization, which involves a formal transfer of authority to administrative and political units which are legally and institutionally independent. Finally, concentration in some ways is a residual concept which refers to the reduction or elimination of provincial participation in the decision-making process and/or in their operational power/management. Concentration thus can be seen as the end of deconcentration. Figure 1 illustrates clearly the rejection of the traditional analogy of the continuum which supposes that we must necessarily pass through one process before arriving at another, or that only one such process can follow another. Figure 1 insists, on the contrary, on the contingent and iterative characteristics of these processes. For example, the process of deconcentration can be followed by concentration, centralization or decentralization. Thus, deconcentration does not inescapably lead to decentralization; deconcentration could indeed be the way to avoid decentralization.

We will now use the concept of deconcentration, as we have just defined it, in our analysis of the evolution of Canadian federalism and recent Canadian constitutional events, notably the Meech Lake and Charlottetown Accords, as well as the last two federal budgets and the federal proposal to withdraw from labour market policy.

#### THE CANADIAN FEDERATION: A MODEL OF DECENTRALIZATION?

The subject of an ongoing controversy in which different conceptions of Canadian federalism confront each other, the extent of decentralization is nevertheless not easy to evaluate unequivocally. While some now conclude that the Canadian federation is highly decentralized,<sup>19</sup> others conclude that it has maintained its essentially centralist nature.<sup>20</sup> How can this divergence be explained? It all depends on the criteria retained and how they are weighted.<sup>21</sup>

Stéphane Dion recently suggested three methods for measuring decentralization in the Canadian federation, namely: the degree of fiscal decentralization, the division of powers, and the percentage of conditional federal transfers represented in total provincial revenues.<sup>22</sup> Based on these methods, he concludes that "Canada appears to be the most decentralized federation."<sup>23</sup> Still, are these three methods truly satisfactory? We believe not.

Looking first at the degree of fiscal decentralization, as demonstrated by the portion of autonomous revenues and by public expenditures of the central, provincial (or regional) and municipal (or community) governments, the smaller the portion of the central government, the greater is the degree of fiscal decentralization. The international comparison must not be limited to the autonomous revenues and the public expenditures of central and regional



governments, but must also include those of municipal governments. In other words, the portion of the central government must be compared to the combined portion of regional and municipal governments; the fiscal decentralization of a region or province towards its municipalities would have the same effect otherwise, in an international comparison, as the fiscal centralization of a province or region towards the central government.<sup>24</sup> When the international comparison involves the combined share of regional and municipal governments, the results are less conclusive. In effect, as Dion himself seems to suggest, we are approaching a zero sum game: "the analysis of data from 1959 to the beginning of the 1990s demonstrates that Ottawa and Berne are the two federal governments which control the smallest portion of public revenues and expenditures. The Canadian provinces are far more powerful than the Swiss cantons in this regard, but the Swiss communes beat out our municipalities."<sup>25</sup> The Canadian federation thus does not appear to be incontestably more decentralized than the Swiss federation.

What about the second method, namely the division of powers? Relying essentially on Valaskakis and Fournier, Dion stresses the decentralized nature of the Canadian federation. The strength of this claim depends on the rigour of the comparative study of Valaskakis and Fournier. These two authors are content to enumerate the exclusive jurisdictions of central and provincial or regional governments, as well as shared jurisdictions, and to conclude that "Canada wins the gold medal for decentralization."<sup>26</sup> They simply compare the division of powers as written in constitutional documents, as if political reality corresponded accordingly. Valaskakis and Fournier completely ignore the spending power of the Canadian federal government which severely distorts the division of powers. Thus, it is hard to agree with the conclusion that the Canadian federation is decentralized, based on this method. Again it is necessary to go beyond simple constitutional prescriptions to address the real dynamics of federal-provincial relations.

Finally, there is the third method, namely the percentage that conditional federal transfers represent of the total revenues of provinces and regions. Relying exclusively on data developed by Ronald Watts,<sup>27</sup> the author notes that conditional federal transfers represented 17 percent of the revenues of the American states and Australian states, 16 percent in the German landers, 14 percent in Switzerland and 10 percent in Canada.<sup>28</sup> However, this methodology is not without its problems.

The very notion of conditional transfers is antithetical to that of decentralization, although this is not the only problem with this method. When provinces or regions run budget deficits, the government increases its total revenues through internal or external loans and, consequently, reduces the proportion of conditional federal transfers as a percentage of total revenues without there being a decentralization of the federation.<sup>29</sup> Changes in these proportions do not necessarily lead to increased decentralization. Thus, international

comparisons of these percentages do not allow for the measurement of the degree of centralization in a federal state.

But there is more. We can easily imagine a situation in which the central government reduces the amount of its conditional transfers without reducing the number or scope of the national standards to which provincial or regional governments must adhere. Federal transfers drop, but federal control remains unchanged. Again, variations in the proportion of federal conditional transfers as a percentage of total provincial revenues do not lead necessarily to decentralization. This method, like that measuring fiscal decentralization, does not seem reliable enough to satisfactorily measure decentralization in the Canadian federation. The limits of this type of reasoning, which Laforest ironically enough calls the spirit of geometry, are too often ignored in current academic debates on centralization or decentralization in Canadian federalism.<sup>30</sup> We must recognize once and for all the reductionist and imprecise nature of these bookkeeping style analyses.<sup>31</sup>

However, we must also ask to what extent the Canadian case is truly comparable to other federations. As a multinational federation, Canada can only really be compared to the two other multinational federations, namely Switzerland and Belgium (and perhaps Spain, which is a *de facto* federation).<sup>32</sup> How important is it, regardless of the small size of the sample, that Canada is the most decentralized of federations to have stood the test of time? Does it matter that Canada takes first prize out of a contest of three (or four), if not two? In effect, Belgium only recently became a federation after years of being a unitary state, so it has not stood the test of time and thus should be excluded from the comparison. Can we rejoice, therefore, in the fact that Canada is allegedly more decentralized than Switzerland or Spain?

Again, we must look at the concrete recognition of the multinational nature of these federations, as reflected in the division of constitutional powers between central and provincial, regional and/or municipal governments. For example, Gagnon notes that the Swiss reject notions of majority/minority, favouring instead a formal equality between languages and language groups.<sup>33</sup> This translates into, among other things, cantonal sovereignty in the areas of language and culture. Furthermore, in the case of Belgium, Seymour notes that:

The tri-national character (if you include the germanophone minority) is reflected in the administrative structure itself, and language, education and culture are community jurisdictions. In effect, Belgians passed from a unitary state to a federation, creating a division of powers truer to its community make-up than is the case in Canada, as much in administrative structures as in the division of powers. In this sense we can claim that the Canadian federal government is too centralizing. It does not delegate the appropriate powers to administrative units representing the various national communities in Canada.<sup>34</sup>

In other words, and only if we accept Dion's methods, the true extent of his claim that the Canadian federation is the most decentralized in the world is severely undermined after seeing that Canada is only more decentralized than Switzerland. Moreover, the claim becomes void when we include the constitutional recognition of the multinational nature of the federation.

The preceding discussion addresses the issue of spatial comparison. What of the temporal comparison? Many authors, after having studied the temporal evolution of Canadian federalism, have concluded that the dynamic is essentially decentralizing.<sup>35</sup> They all agree that the central government has been deprived of the most centralizing powers it received in the *Constitution Act, 1867*. Dion, among others, nicely reflects this widely-held view:

At first, the Fathers of Confederation created a centralized system in which the federal government had to keep the provinces in check, thanks to its right to revoke their laws, and where the federal government could do as much due to its declaratory power. The federal government assumed the bulk of the public responsibilities deemed important at the time. Accounting for two-thirds of public expenditures, it dominated the provinces. During the first few decades of the federation, the latter looked like large municipalities. Two-thirds of the financing of their activities depended on federal transfers.<sup>36</sup>

The Canadian federal state was at first so centralized that it resembled a quasi-federation, in which relations between the central government and the provinces were similar to those between a metropolis and its colonies. The federal government's powers of reservation, disallowance, as well as the declaratory power, reveal how centralist it was. Such powers run counter to the spirit and the letter of federalism, which rests on the dual principles of autonomy and participation.<sup>37</sup> In effect, they are so important that they can be considered not simply as principles but as laws. Hence, federalism refers to a state in which the constituent territories (states, provinces, regions, cantons, landers, etc.) participate in the development of laws and the revision of the federal constitution (law of participation) all the while disposing of great autonomy for resolving their own problems (law of autonomy).

In light of these definitions, it is clear that the *Constitution Act, 1867* respected neither the principle of participation nor that of autonomy. Mallory is correct in refusing to accord the label "federal" to the Canadian state of 1867. Indeed, it was so centralized that the evolution of federal-provincial relations could only become more decentralized, to the benefit of provincial governments. Anything to the contrary would have transformed Canada from a quasi-federal state into a unitary state. Speaking of decentralization to describe this temporal process is therefore something of a rhetorical exaggeration. Would it not be better to speak of the provincialization or the federalization of the Canadian state? We believe so, since the latter allows for gradual reconciliation, albeit imperfectly, with the principles of autonomy and participation,

which are both essential to the spirit if not the letter of federalism. And as we mentioned at the beginning of this section, some observers still see the Canadian federal state as centralized. What factors do they consider?

Of course, the spending power and the concomitant imposition of national standards in exclusively provincial jurisdictions remains important. Léon Dion has noted, as have many others, that "the federal government intervenes at its pleasure in all areas, including those of exclusive provincial jurisdiction, to the point where the latter no longer disposes in all reality, of any jurisdiction which is sheltered from the financial or even normative interventions of the federal government."<sup>38</sup> As Leslie reminds us, in a federation "neither order of government is subject to the effective control of the other; the touchstone of a federal system is that each order of government, besides having more or less clearly defined powers or responsibilities, has its own electoral and fiscal base."<sup>39</sup> Does this mean that Canada is not really a federal state, due to the federal control exercised over the provincial governments through the spending power and the imposition of national standards? For now, allow us to add our voices to those who conclude that the federal spending power contributes to the centralized nature of the Canadian federal state.

Yet there is still more. The power of the judiciary, which has played an increasingly important political role since the adoption of the *Charter of Rights and Freedoms* in 1982, certainly does not respect the principles of autonomy and participation. The federal government has the exclusive power to name not only the judges of the Supreme Court of Canada, but also those of the Courts of Appeal and the Superior Courts of each province. We cannot over-emphasize the importance of this seizure of judicial power by the federal government.

At the time of the declaration of the Bill of Rights, the Supreme Court of Canada was strongly supportive of judicial self-restraint, according to Knopff and Morton, but since the adoption of the *Charter of Rights and Freedoms*, we have witnessed a penchant for judicial activism.<sup>40</sup> This is a true about-face on the part of the highest court in the land: "the great volume of cases, the higher success rate, the larger number of nullifications, and the over-ruling of pre-Charter precedents are all indicators of a new era of judicial activism ushered in by the Charter."<sup>41</sup>

This judicial activism has rapidly become an important strategic tool for some pressure groups. The majority of Charter cases heard at the Supreme Court deal with criminal cases. However, for the remainder, pressure groups can exercise their influence not simply on the political and bureaucratic elite but also on the members of the Supreme Court itself. Several groups have indeed succeeded, by claiming protection under the Charter before the courts, to impose their views on the political and bureaucratic elite.<sup>42</sup> This has become easier as the decisions of the Supreme Court have become highly predictable.<sup>43</sup>

Cumbersome as this sometimes may be for political leaders, this judicial activism still offers them an important strategic tool as well. Knopff and Morton call it "issue avoidance," meaning that governments can avoid taking a position on a controversial issue; rather than addressing the value of a public policy and thereby demonstrating political leadership, they can question the constitutionality of the issue by referring it to the courts.

Thus, we can see the importance of judicial interpretation. Despite its pretensions to rationality, impartiality and objectivity, judicial interpretation is a properly political phenomenon, for it is a function not of a universal and timeless legal logic, but rather is a function of the values, beliefs, and preferences of the judges themselves. The exclusive right of the federal government to name judges allows it to select those who are ideologically close or, at the very least, sympathetic to its views. This, of course, leads to a bias in favour of the federal government. It is hard not to see in all of this a second illustration of the centralized character of the Canadian federal state which, far from receding, will grow as long as the judicial appeals invoking the *Charter of Rights and Freedoms* multiply.

For all of these reasons, we cannot share Dion's optimism when he concludes that "the pursuit of decentralization will not be halted by the Constitution Act of 1982. It does not modify the division of powers between governments, if not for reinforcing the control of the provinces over natural resources."<sup>44</sup> Again, need we be reminded that natural resources are an exclusive provincial jurisdiction under the *Constitution Act, 1867* (Section 92A)? Must we be reminded that, with respect to the division of powers, one of the main consequences of the *Constitution Act, 1982* was to subordinate Quebec language policy (Section 24) to the *Canadian Charter of Rights and Freedoms*?

Few jurisdictions escape the influence of the federal government. Julien and Proulx, upon looking at the overlapping of federal and provincial programs, conclude that:

as for the exclusive powers of the provinces, they cannot protect themselves from the overlapping of federal programs. In effect, all provincial jurisdictions are currently also occupied by the federal government. Beyond being able to spend in areas of provincial jurisdiction, the federal government also has other general powers which allow it to act in areas of exclusive provincial jurisdiction, namely when it is to the general benefit of Canada, in emergency situations, or to fully respect the federal jurisdiction.<sup>45</sup>

The indicators offered by those who argue that the Canadian federation is decentralizing confuse the political and administrative aspects of this process. The comparative approach they use does not allow them to discern the extent of the central government's control. The effects of judicial activism are a good example of this. In most cases, it would be more fair to demonstrate how the supposed decentralization corresponds with what we have called deconcentration.

The final component of this analysis will deal with recent attempts to reform Canadian federalism. Do not the failed Meech Lake and Charlottetown Accords, which were abundantly criticized for their decentralist nature, instead lead to the dynamic of deconcentration? The same question can be asked of the 1995 and 1996 federal budgets, as well as the reform of unemployment insurance, presented by the federal government as the manifestation of the desire to see the Canadian federation embark on the path towards decentralization.

## CONSTITUTIONAL AND POLITICAL REFORMISM: DECENTRALIZATION OR DECONCENTRATION?

### THE MEECH LAKE ACCORD

As a means of securing Quebec's signature on the Canadian constitution, the Meech Lake Accord had five elements, namely clauses with respect to distinct society, the amending formula, the Supreme Court, immigration and the federal spending power.

Controversial as it was the notion of the distinct society was only one component of Section 2. Thus, it has to be seen within the context of the entire clause, for the term "distinct society" itself was not defined. Moreover, it was preceded by the clause on the linguistic duality of Canada and Quebec, which was a "fundamental characteristic of Canada" [paragraph (1)(a)]. It was also followed by a clause giving the federal Parliament and the provincial legislatures, including that of Quebec, the role of preserving this fundamental characteristic [paragraph (2)]. Next was the clause giving the legislature of Quebec the role to "preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b)," namely the distinct society clause [paragraph (3)]. Finally, paragraph (2) concluded with an explicit clause stating that "Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language" [paragraph (4)].

The controversy surrounding the distinct society clause must be seen in light of these other components of Section 2, particularly that which stated that the powers and even the rights and privileges of the federal and provincial governments, as well as the Parliament of Canada and the provincial legislatures, would not be modified. Care was even taken to ensure that the area of language did not escape this non-redistribution of executive and legislative powers. Clearly there was no trace of centralization or decentralization. And remember that the Meech Lake Accord was changed on 9 June 1990, in a last ditch effort to make it acceptable to all. A legal opinion, included in an

appendix, confirmed that the distinct society clause did not create new legislative powers for either the Parliament of Canada or the provincial legislatures. At best, the Accord would have allowed the renewal of the constitutional imagination by recognizing the distinct nature of Quebec within Canada and forced the courts to take this reality into account; in other words, it was largely an interpretive guide.

The proposed amending formula would have increased the use of the unanimity rule, already present in the *Constitution Act*, 1982, for matters affecting the Queen, the governor-general and the lieutenant-governors, the representation of the provinces in the House of Commons, the composition of the Supreme Court of Canada, the use of French and English (subject to article 43) and article 41 itself, which deals with the amending formula. Beyond these, unanimity would have applied to the powers of the Senate, provincial representation in the Senate, the means for selecting Senators, provinces annexing parts or all of a territory, and the creation of new provinces.

We can see right away that such changes to the amending formula were faithful to the spirit of the *Constitution Act*, 1982, and to a renewal of intrastate and symmetrical federalism, and thus did not depart from the principle of the legal and political equality of the provinces. These changes were not so much a transfer of powers to the provinces as much as a new deal with respect to future federal-provincial negotiations for modifying the constitution.

In fact, this new deal was not devoid of a major contradiction. While increasing provincial participation in future changes to the powers, representation and legitimacy of the Senate, the required use of the unanimity rule would have made it highly unlikely, if not impossible, for any significant changes to be made to this institution. Again, therefore, we cannot really speak of decentralization. The heightened complexity of the dynamic of federal-provincial relations would have benefited only the House of Commons, whose legitimacy would have remained strong just as that of the Senate remained weak. What is most noticeable here is the conservatism of Canadian constitutional reform.

The Meech Lake Accord would have constitutionalized the long-established convention of having three of nine Supreme Court judges named from Quebec, to ensure the representation of Quebec's civil law tradition. The nine judges would have been chosen by the federal government on the basis of lists of candidates provided by the provinces, with Quebec providing the list of the three civil law judges and the other provinces and territories providing lists for the remaining judges (Section 101B, paragraphs 3 and 4). Constitutional protection is, of course, better than a mere convention, even if it has existed since 1875. Still, only the guarantee of maintaining this representation, after 112 years, would have been gained. Inscribed in the logic of intrastate federalism and true to the spirit of the *Constitution Act*, 1982, the main effect of this clause would have been to strengthen the legitimacy of central institutions

and, thus, that of the federal government. Since it was but a constitutional renewal of an old practice and did not alter the existing balance of powers, we cannot see in this either centralization or decentralization.

As for immigration, the Accord called on the federal government, upon the request of a provincial government, to negotiate an agreement on immigration reflecting the particular needs of that province (Section 95A). Once reached, such an agreement could be constitutionalized (Section 95B1). In the case of Quebec, this clause referred to the constitutionalization of the Cullen-Couture agreement of 1978. It should be stated that Section 95 of the *Constitution Act*, 1867 made immigration a shared jurisdiction. As well, these clauses should be interpreted in light of the entirety of Section 95 which, it must be added, also stated that such an agreement can only have force if it is compatible with "any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens" (Section 95B.2). Beyond this restrictive clause, there was another declaring the primacy of the *Canadian Charter of Rights and Freedoms* over any agreement (Section 95B.3).

Once again, it seems wrong to conclude that this was decentralizing. The restrictive clause allowing the federal government to set broad national objectives to which provincial governments had to adhere, as well as the renewal of the primacy of the Charter, prevents such an interpretation. In fact, it was the symmetrical vision of the *Constitution Act*, 1982 that was renewed. However, the absence of a true redistribution of powers also prevents the conclusion that centralization would have occurred.

Finally, there is the federal spending power. The Meech Lake Accord stated that any province refusing to participate in a new "national" shared-cost program in an area of exclusive provincial jurisdiction would receive reasonable compensation if its own program were compatible with "national" objectives (Section 106A). This begged the question of who had the power, if not the federal government itself, to define the one or the other.

Not only did this section not limit the federal spending power it gave it a legitimacy it never had. Lajoie and Frémont conclude, on this aspect, that,

what at first might be seen as a concession to Quebec and the provinces must be seen upon closer scrutiny as a major victory for the federal government which, by this means, finally achieved what it wanted for many years, namely to acquire the constitutional authority to invest and to control in all practical means exclusive provincial jurisdictions.<sup>46</sup>

Moreover, the range of the spending power remained the same and only its legitimacy was increased. Since the constitutionalization of an established practice does not affect the real distribution of powers, it is again an exaggeration to conclude that centralization would have occurred, as Lajoie and Frémont implicitly suggest.



All in all, the Meech Lake Accord would not have led to increased centralization or decentralization, but what about deconcentration? The principal effect of the Accord on federal-provincial relations would have been an increase in provincial participation in the areas of immigration, the Supreme Court and the reform of central institutions, as well as in the exercise of the federal spending power. However, none of this reduced the primacy of the federal government. Moreover, it must also be understood that an increase in provincial participation is one thing and a real redistribution of powers is another. Being able to express one's position is certainly not the same thing as being able to impose that position.<sup>47</sup> Only the concept of deconcentration allows us to capture this dynamic of federal-provincial relations. While different, this interpretation appears to be fundamentally compatible with that of Monahan, who concludes that the Accord would have had no significant impact on the daily functioning of the Canadian federation, as well as with Leslie's interpretation, which argues that "the Accord makes marginal changes to the Canadian constitutional structure, establishing conditions Quebec can 'live with,' but without altering the principles of the 1982 Act."<sup>48</sup> It also perhaps allows us to clarify somewhat the new deal mentioned earlier.

#### THE CHARLOTTETOWN ACCORD

The most recent attempt at constitutional reform, the 1992 Charlottetown Accord was more wide-ranging than the Meech Lake Accord. For the purposes of this discussion, it contained the following elements: a distinct society clause, reforms to central institutions (the Senate, Supreme Court, and the House of Commons), and the roles and responsibilities of the federal and provincial governments.

As controversial in 1992 as it was in 1987, the distinct society clause was inserted in the broader Canada Clause. Contrary to Meech Lake, the distinct society was defined as referring to "notably a majority of French speakers, a unique culture and a civil law tradition" (Section 2. (1) d). It was only one element of seven (including the recognition of the equality of the provinces (paragraph h), ethnic and racial equality, and multiculturalism (paragraph h), and so its interpretation would have been counterbalanced by these other clauses.

Many were quick to conclude that the true range of the distinct society clause was reduced considerably from the wording of the clause in Meech Lake.<sup>49</sup> This is not our view, however. The Canada Clause concludes, as in the previous case, by stating that it did not derogate "from the powers, rights of privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada" (Section 1. 2. (3)). As with

Meech Lake, the distinct society clause did not introduce a decentralizing agent in the judicial interpretation of the constitution.

The reform of central institutions affected the Senate, the House of Commons, and the Supreme Court. Long desired by the western provinces, the Senate would have become elected and equal (Sections 7 and 8). Elected, because the selection of senators would have passed from the discretionary power of the prime minister to the election of senators either by the population of the provinces or territories or by the provincial or territorial legislatures. Equal, because each province would have had six senators and each territory one, for a grand total of 62. A double majority was also required in which bills would have required the support of a majority of senators, and of a majority of Francophone senators for passing bills affecting "French language or French culture" (Section 12). With respect to the latter event, only the author of the bill could have decided if this were the case (Section 14).

Given that the author of the bill would have been, more often than not, the federal government itself, it would be hard to see it restricting its room to manoeuvre, although it would not really have been increasing it. Moreover, the Senate was to have gained responsibilities for ratifying the nomination of the Governor of the Bank of Canada, as well as those of the heads of national cultural agencies and federal regulatory agencies (Section 15). To balance its loss of senators, Quebec was to receive the guarantee that it would always have a minimum of 25 percent of the seats in the House of Commons (Section 21. (a)).

As with Meech Lake, Charlottetown proposed to constitutionalize the practice of having three of the nine Supreme Court justices representing Quebec's civil law tradition (Section 18), but contrary to Meech Lake it proposed that the nine judges be selected from provincial or territorial lists (Section 19). The Charlottetown Accord no longer distinguished between the list of civil law judges submitted by Quebec and the candidates from the other provinces. True to the spirit of the *Constitution Act*, 1982, symmetrical federalism and the equality of the provinces were implicitly renewed. In sum, the proposed institutional changes would have led neither to further centralization nor to decentralization.

Moreover, the changes affecting the Supreme Court and the Senate would have strengthened somewhat the role of the provinces within these central institutions. And instead of weakening the institutions of Parliament, the new measures would have reinforced the powers and legitimacy of the latter by making them more representative of provincial interests. However, they would have also allowed the federal Parliament to claim that it was better positioned to respond to regional concerns in the evolution of national policies. Thus, in the long term, it was the central power that would have gained, even though in the short term it would appear to have been weakened by the imposition of a

consultative process that had not previously existed, notably with respect to the nomination of Supreme Court justices.

The clarification of jurisdictions in the Charlottetown Accord was problematic in several respects when seen through the prism of decentralization. Beyond the fact that the agreement only granted to the provinces powers that were already granted to them in the *Constitution Act, 1867*, the Accord stated the means for federal withdrawal and the constraints that the provinces had to respect. Hence, it was foreseen that some jurisdictions would be recognized as "exclusive" provincial jurisdictions. This was the case for forests, mines, tourism, housing, recreation and municipal affairs. Still, all that the provinces received was the ability, and then only if they expressed the desire, to limit federal spending linked directly to these jurisdictions. If this were the case, then the federal government would have had to transfer financial resources to the provinces to allow the provinces to execute their responsibilities.

Federal withdrawals would have been subject to bilateral agreements, but would also have been subject to the protection of intergovernmental agreements (Section 26). Once again, these agreements could have been revoked after five years if the federal government deemed it appropriate. In other words, federal "withdrawal" from "exclusive" provincial jurisdictions would not have been guaranteed into the future and the federal government would still have been able to re-enter. Moreover, provincial governments would have faced constraints when acting in their "exclusive" jurisdictions. It was specified that "considerations of service to the public in both official languages should be considered a possible part of such agreements." The federal government would have been able to impose linguistic conditions in the exercise of certain provincial responsibilities and force the bilingualization of provincial services in areas that were reserved "exclusively" for the provinces. All in all, the federal government, far from withdrawing totally from jurisdictions granted exclusively to the provinces since 1867, would not guarantee that its withdrawal would be irreversible and complete. The multiple conditions and constraints clearly demonstrate that the federal government intended to remain present in provincial jurisdictions. Therefore, we cannot see here any future decentralization.

In the same way, the Charlottetown Accord established the parameters for Ottawa's interventions in immigration, labour-market training, and culture. On immigration, the Accord only mentioned the need to add to the constitution a commitment from the federal government to negotiate agreements with the provinces. The Charlottetown Accord no longer granted constitutional protection to such agreements.

Section 28 on labour-market training specified explicitly that federal responsibility for unemployment insurance, income maintenance, and related services should not be changed. Here, federal responsibilities were not shared,

but this was not the case for provincial responsibilities for labour-market training. Provincial "exclusivity" was only to go as far as limiting federal spending. Moreover, the federal government would hold responsibility for setting "national" objectives, taking into account broad matters such as the "national economic conditions, national labour market requirements, international labour market trends and changes in international economic conditions." Yet again, the provinces' manoeuvrability in their "exclusive" jurisdictions was severely constrained. It can be foreseen that "national" and international imperatives in the labour market would have won out over the specific needs of the provinces. Finally, the constraints pertaining to bilingualism remained.

The same type of reasoning can be applied to the recognition of "exclusive" provincial responsibility for cultural affairs. This "exclusivity" did not take anything away from the federal government's current responsibilities with respect to "national" cultural institutions and the subsidies that these institutions received. Again, it is through bilateral agreements that provincial responsibilities were to have been defined, and which would have been harmonized with federal responsibilities. Ottawa again retained the latitude for continuing to act as it wished in the field of culture, and for assuring that provincial initiatives would respect the objectives and standards set by the federal government. Decentralization would have taken the form of constant control exerted by the federal government on provinces who wished to act in their "exclusive" jurisdictions.

All in all, the Charlottetown Accord did not contain the ingredients that would have led to further decentralization. Provinces did not receive new constitutional responsibilities, and the federal government proposed to retain some control in areas long recognized as being of exclusive provincial jurisdiction. The many administrative agreements needed to limit the federal spending power would have lasted only five years and then could have been subject to federal contestation. Moreover, the federal government intended to ensure that bilingualism was retained, even in exclusive provincial jurisdictions. The meaning of the notion of "exclusivity" was asymmetrical. It would have been applicable only when it was in an area of federal jurisdiction. When it was in a provincial jurisdiction "exclusivity" took another form, thereby allowing Ottawa's intervention as the guarantor of "national" objectives, to which the provinces must adhere, or else face the limitation or complete loss of federal financing of provincial initiatives.

One of the major mechanisms for adaptation in the Canadian federation is the federal government's ability to spend in areas of exclusive provincial jurisdiction. Charlottetown constitutionalized this federal spending power. Section 25 specified how this power would work by stipulating that "the Government of Canada must provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the federal government in an area of

exclusive provincial jurisdiction, if that province carries on a program or initiative that is compatible with the national objectives." In this context, we would like to discuss four related issues.

First, the framing of the spending power was limited to "exclusive" provincial jurisdictions. In other words, the limits on the spending power would only have been applied to provincial jurisdictions and would not have affected federal powers. Second, these limits would have affected only new shared-cost programs, not programs already in place. Third, this "withdrawal" was conditional. Provinces wishing to take advantage of this clause would have had to establish programs that adhered to objectives defined by the federal government. Fourth, the definition of "just" compensation was not established. It could very well have been in the form of cash transfers rather than tax points. In which case the federal government could have maintained a retaliatory power if a province did not meet national objectives, as had been the case in the 1980s when some provinces wished to allow extra billing in health care.

The new federal spending power would also have been subject to the protection mechanism for intergovernmental agreements. Defined in Section 26, this mechanism "protected" agreements against all unilateral changes. Nevertheless, it would have lasted for a maximum period of five years, with the possibility of renewal. Thus the "limitation" of the spending power would have been subject to the vagaries of Canadian political life and could have been revoked, for example, in the case of the election of a federal political party unsympathetic to its use by one or more provinces. Moreover, provincial withdrawal was to have been strictly governed by a multilateral agreement calling for an annual review of the management of provincial governments which did not participate in new shared-cost programs established by the federal government. Hence, their latitude for action would have been severely restricted, given the need to adhere to national standards and objectives. It was also risky, given the limits on the ability of provinces to withdraw from such programs or to review Ottawa's contributions to financial programs.

So, would the Charlottetown Accord have increased the federal government's ability to impose new "national" programs or would it have led to a regional diversity in social programs, placing uniformity and perhaps even universality at risk? Some have said that it would have led to decentralization, but their arguments do not take into account the nature of Canadian federalism. Instead, we must see a mechanism that would have increased the federal government's ability to intervene in provincial jurisdictions and that removes any real notion of "exclusive" powers.

Meech Lake was similar. Some analysts feared the potential balkanization of Canada. Canadians were placed on alert against that which historically contributed to the creation and nourishment of a "national spirit," namely the entirety of social programs established following large-scale financing by the

federal government. This concern was based less on a legal interpretation of the Accord than on a political interpretation. The assumption was that the Meech Lake Accord would have diminished the power of the federal government vis-à-vis the provinces when it came time to establish programs comparable to Medicare, old age pensions, postsecondary education, etc. Some feared that opting out with compensation would result in many provinces setting up parallel programs to Ottawa's, with minimal concordance with national objectives. Others pointed the finger at the vague wording surrounding the term "compatible with national objectives," which would also allow for a diversity of programs that would not necessarily be equivalent across the country in terms of accessibility, universality, and quality.

In response, it should be noted that this recognized the legitimacy of the federal spending power, allowing Ottawa to intervene in exclusive provincial jurisdictions. No restrictions were placed on the federal government in establishing new, shared-cost programs, but the "exclusive" nature of provincial jurisdictions set out initially in the *Constitution Act* of 1867 was eliminated, and the latitude for provincial action in their own sectors was limited. This was an explicit and constitutionally sanctioned transfer of responsibilities in the area of shared-cost programs.

It would therefore be wrong to conclude that Section 25 of the Charlottetown Accord favoured unduly the provinces, for it had the potential to subordinate part of the provinces' powers to the Government of Canada. In the same way, the ascendancy of the federal government over the provinces was mitigated by the possibility that the latter would withdraw if the federal programs did not mesh with their interests. Thus, the new federal spending power envisioned in the Charlottetown Accord would have established a new equilibrium between the two orders of government in shared-cost programs, to the advantage of the federal government.

In summary, the various elements of the Accord do not lend themselves either to further decentralization or to centralization. It entailed potentially increased levels of provincial participation, first in shared fields of immigration, labour markets, culture, and regional development; second, in the nomination of Supreme Court justices and the alteration of central institutions; and third, in the exercise of the federal spending power. But, as with Meech Lake, the strategic power/management of the federal government would not have been reduced, although its exercise was counterbalanced. Increased provincial participation is not synonymous with a redistribution of powers at the constitutional level. Only the notion of deconcentration allows us to capture the effects of this Accord on the dynamics of federal-provincial relations, insofar as the federal government could continue to exercise control in exclusive provincial jurisdictions. This is similar to Hogg's analysis, which suggests that the Accord would have had a very limited impact on the distribution of

powers, as well as with that of Frémont, which argues that the Accord was essentially a confirmation of the constitutional status quo.<sup>50</sup>

#### THE 1995 AND 1996 BUDGETS

Presented by the federal government as its favoured instruments for attaining the goals of greater efficiency and effectiveness in a modern Canadian state, the 1995 and 1996 budgets illustrate a key element of the federal vision of intergovernmental relations. Hence, the minister of finance stated, in his 1995 budget speech, "that the restrictions attached by the federal government to transfer payments in areas of clear provincial responsibility should be minimized." He took care, however, to state that "*flexibility does not mean a free for all.*"<sup>51</sup> The primary innovation in the 1995 budget, at least for our purposes, was the new Canada Health and Social Transfer (CHST). Simply put, the CHST is the new block financing mechanism for the three major transfer programs to the provinces, namely for programs in health (Established Program Financing — Health), for programs in postsecondary education (EPF — Postsecondary Education), and for programs in welfare and social assistance (Canada Assistance Plan). Previously given to the provinces in three parallel combinations of money and tax points, they were replaced by a new global transfer, still given in money and tax points. This new transfer offers the federal and provincial governments the following advantages, according to the budget plan:

The new transfer will end the intrusiveness of previous cost-sharing arrangements and will reduce long-time irritants:

- Provinces will no longer be subject to rules stipulating which expenditures are eligible for cost sharing or not.
- Provinces will be free to pursue their own innovative approaches to social security reform.
- The expense of administering cost sharing will be eliminated.
- Federal expenditures will no longer be driven by provincial decisions on how, and to whom, to provide assistance and social services.<sup>52</sup>

By stressing the fact that the provinces are now free to establish their own levels of expenditure in health, postsecondary education, and public assistance, many analysts have concluded that the 1995 budget plan is decentralizing, but is this really the case?<sup>53</sup> Admittedly, there will be greater provincial autonomy with respect to the federal transfers and subsequent value of expenditures in these three program areas. However, Sections 92.7 and 93 of the *Constitution Act, 1867* establish health and education as exclusive jurisdictions of the provinces. Moreover, national standards do not become a thing of the past. The 1995 budget plan cannot be more clear on this point:

The transfer of federal funds to the provinces will safeguard standards:

- The federal government will continue to enforce the principles of the *Canada Health Act*.
- Provinces must continue to provide social assistance without minimum residency requirements.<sup>54</sup>

The control exerted by the federal government through the imposition of national standards thus remains full and complete. In a detailed study of the consequences of the CHST on Canadian social policy, Thomas Courchene even concludes that far from being diminished, the ability of the federal government to regulate social policy should increase.<sup>55</sup> The CHST, he states, is part of the "cleaning up" of public finances and removes the danger of cash transfers being reduced to zero. For Courchene, the ability to control is directly linked to applying financial penalties.

Simply outlining or curtailing the federal spending power to areas of exclusive provincial jurisdiction does not entail a process of decentralization. As for the third advantage set out in the budget plan — namely the elimination of overlapping administrative costs — this has nothing to do with decentralization. It comes simply from the unification of the combinations of money and tax points in a new global transfer. The CHST should not be confused with genuine decentralization, but it should be seen in terms of the drastic cuts it will mean for the provinces.<sup>56</sup>

**Table 1: Federal Transfers to the Provinces under the EPF and the CAP for 1993-94 to 1995-96 and the CHST for 1996-97 and 1997-98**

	1993-94	1994-95	1995-96	1996-97	1997-98
	(billions of dollars)				
CAP	7,719	7,952	7,952	—	—
EPF-Health	15,128	15,299	15,483	—	—
EPF Post-Secondary Education	6,108	6,177	6,251	—	—
Total	28,955	29,428	29,686	—	—
CHST	—	—	—	26,900	25,100

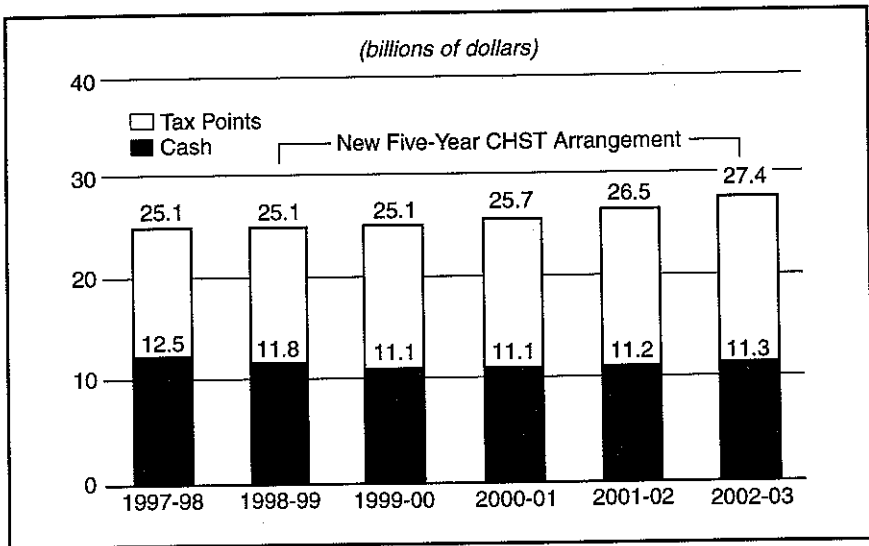
Source: Canada. Department of Finance, *Budget Plan* (Ottawa: Minister of Supply and Services, 1995).



The data in Table 1 indicate that the increase in provincial autonomy with respect to the allocation of federal transfers in these three programs is seriously threatened by the cuts they suffer in the CHST. Cuts total \$2.786 billion in 1996-97, and \$1.8 billion in 1997-98, for a total reduction of \$4.586 billion, or 15.45 percent. The only redistribution attempted in the budget plan does not touch the distribution of powers between the federal and provincial governments, but rather the crisis of public finance which, thanks to the CHST, affects the former a bit less and the latter a bit more. It is useful here to recall the earlier distinction between strategic power/management and operational power/management. While decentralization implies the first, deconcentration implies the second. As with the Meech Lake and Charlottetown Accords, there is deconcentration here, not centralization or decentralization.

The 1996 federal budget plan is the most recent example of the federal desire to rethink the role of the state. However, with respect to federal-provincial transfers, there is simply a renewal of the measures introduced the previous year. Other than formally renaming the CST the Canadian Health and Social Transfer (CHST), the budget plan presents the funding foreseen for this transfer over a period of five years, adding to the two years already announced in the 1995 budget.

**Figure 2: Federal Transfers to the Provinces under the CHST for 1997-98 to 2002-03**



Source: Canada, Department of Finance, *Budget Plan* (Ottawa: Minister of Supply and Services, 1995).

The data in Figure 2 indicate that federal-provincial transfers remain fixed at \$25.1 billion for the years 1997-98, 1998-99 and 1999-2000, and then increase to \$26.5 billion in 2001-02 and \$27.4 billion in 2002-03. Thus, these transfers increase, within the framework of the CHST, \$2.3 billion for the period 1998-99 to 2002-03, an increase of 9.16 percent. Cash transfers will diminish during this period, dropping from \$11.8 billion to \$11.3 billion, or 4.24 percent. The proportion of cash as a percentage of total transfers continues to drop because of the CHST. From 47.01 percent in 1998-99, it will only represent 41.24 percent in 2002-03, a drop of 5.77 percentage points, or 12.27 percent.

The 1996 budget plan contains a floor for federal-provincial cash transfers in this period, namely \$11 billion per year. Thus, the ability of the federal government to impose national standards in exclusive provincial jurisdictions is preserved. This reinforces Courchene's earlier conclusion that "the CHST does deliver a major, but largely anticipated, fiscal hit to the provinces, but it does so in a manner that maintains and potentially enhances Ottawa's leverage over key features of the social policy envelope."<sup>57</sup>

**Table 2: Federal Transfers to the Provinces under the EPF and the CAP for 1993-94 to 1995-96; and the CHST for 1996-97 to 2002-03**

1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03
(billions of dollars)									
28,955	29,428	29,686	26,900	25,100	25,100	25,100	25,700	26,500	27,400

Source: Canada. Department of Finance, *Budget Plan* (Ottawa: Minister of Supply and Services, 1995 and 1996).

But there is more. Combining the data from the two budget plans reveals the scope of the reduction in federal-provincial transfers as a result of the move to the CHST. Table 2 indicates that they will pass from \$28.955 billion in 1993-94 to \$27.4 billion in 2002-03, a drop of \$1.555 billion, or 5.37 percent. The difference, in this same period, between the ceiling attained in 1995-96 of \$29.686 billion and the floor to be reached in 1997-98, 1998-99 and 1999-2000 of \$25.1 billion, is \$4.586 billion, or 15.45 percent.

Many observers have argued that global financing and allowing provincial governments greater latitude in setting their expenditures in health, post-

secondary education and social assistance are indicators of decentralization. This argument rests on a debatable notion of decentralization. In effect, beyond reducing the sums to be given to the provinces for financing these programs, the federal government maintains control over the latter by continuing to impose "national" standards, again bringing these budgetary changes closer to the notion of deconcentration instead of decentralization. In fact, while operational power/management increases, the provinces are still victims of a worsening of the state of their public finances given the reductions in transfer payments. In these conditions, the much-touted provincial autonomy becomes a trojan horse.

#### THE "NEW PARTNERSHIP" IN LABOUR-MARKET POLICY

Shortly after Quebec's referendum on sovereignty, the federal government announced major changes to federal-provincial relations. Three elements were outlined: parliamentary recognition of the distinct nature of Quebec, a bill committing the federal government to never adopt constitutional amendments opposed by four (and later on five) regions of Canada including Quebec, and the federal government's intention to withdraw from labour-market policy. The federal proposals with respect to labour-market matters are of particular interest.

The proposed new partnership between Ottawa and the provinces in labour-market policy was outlined in two documents. In new legislation dealing with unemployment insurance, Bill C-12, the federal government outlined how it intended to act in the area of training as well as the kind of desired cooperation with the provinces. In the same vein, the federal minister for human resource development released, on 30 May 1996, *Getting Canadians Back to Work: A Proposal to the Provinces and Territories for A New Partnership in the Labour Market*. It outlined the federal withdrawal plans and what it would offer the provinces and territories. Presented as a reflection of the flexibility of Canadian federalism, the new policy revolved around two principles: respect for provincial jurisdiction in training, and granting the provinces more responsibilities in the areas of labour-market development. Federal withdrawal from labour-market policy would be attained through administrative agreements with the provinces.

Beyond the stated intentions, the new policy included two major facets which allow for a better understanding of the terms "withdrawal" and "increase in provincial responsibility." First, under the new policy the federal government would end its financial aid in the sector of training by claiming that it was a provincial responsibility associated with education. Hence, Ottawa would withdraw from programs such as the purchase of training courses, aid to educational institutions within the framework of programs linking students and

jobs, workplace training, and third-party training. Provinces could take over these programs but they would not receive financial compensation from the federal government. The second aspect of the policy is more complex. Presented as a new partnership, the federal government offered the provinces the opportunity to run active job measures financed by the unemployment insurance fund (salary subsidies, remuneration supplements, assistance for independent work, partnerships for job creation, and training subsidies) and to offer employment services currently provided by the federal government (job counselling and local placement). At the same time, the policy preserved a federal role in the management of information on the labour market and the processing of the demand and supply of jobs. These were deemed to be pan-Canadian in nature. In other words, the federal government was offering to collaborate with the provinces on the conception, the implementation, and the evaluation of active employment measures.

To receive federal aid, provincial programs would have to respect the seven guidelines set out in Bill C-12. As the federal document states, "results will be based on: priority access for EI claimants, jobs secured for EI clients, with emphasis on EI claimants (persons currently eligible for insurance benefits) and savings to the EI Account through reduced dependency on employment insurance benefits."<sup>58</sup> Moreover, provincial programs would be periodically evaluated to ensure their effectiveness and efficiency. In this context, the increase in provincial responsibilities remains subject to the guidelines (defined unilaterally by the federal government) and the control mechanisms over which provinces have little influence.

While perhaps inspired by the principles of harmonization, cooperation, and flexibility, and presented by the minister as a "new partnership with all levels of government,"<sup>59</sup> it remains that the federal "withdrawal" is neither total, unconditional nor absolute. On the one hand, the federal government could implement support measures for organizations offering assistance to unemployed workers or favouring research and innovation. On the other hand, the application and evaluation modalities would be defined jointly by the federal and provincial governments to determine when provinces could obtain funding for these programs. In the case of disagreement between Ottawa and a province on the evaluation criteria (which for the moment are unknown), it is safe to assume that no agreement will be signed.

Far from being a case of decentralization seen in terms of devolution or the delegation of powers from the federal government to the provinces, Bill C-12 and the labour-market policy are more examples of deconcentration. The federal government has no desire to let go of its responsibilities of conception, orientation, evaluation, and control. The provinces are still called upon to collaborate with the federal government for the implementation of training programs and seeing its management/operational powers increase.

## CONCLUSION

Recent efforts to reform Canadian federalism, be they constitutional, budgetary or legislative, have often been seen as manifestations of an inescapable trend towards decentralization. Since the constitutional setbacks beginning in the mid-1980s, many observers have stressed that the constitutional status quo did not mean that important changes could not be made through existing political mechanisms. Ron Watts has said:

the current need to redefine federal-provincial programs and shared-cost agreements in response to fiscal circumstances will undoubtedly reshape the Canadian federal system fundamentally in the direction of decentralization. We saw this happen, most recently, in Finance Minister Paul Martin's latest budget; Ottawa's transfers to the provinces for health, postsecondary education and welfare will be lumped into one Canada Social Transfer and the provinces given more say in how the funds are used. Considerable progress on many issues, including the much needed rebalancing of federal and provincial roles and reduction where appropriate of unnecessary duplication, can be made by means of ordinary legislative and administrative action and by intergovernmental agreements. What is more, such incremental non-constitutional adaptation may be much easier to achieve when the higher stake deliberations of mega constitutional politics are avoided.<sup>60</sup>

If Watts is right in pointing to non-constitutional means to promote the evolution of Canadian federalism, he compares too quickly an increase in flexibility and cooperation to a process of decentralization. The two examples cited in this text, namely budget plans and training, show that the federal government is engaged in a dynamic of deconcentration, not decentralization. Increasing provincial autonomy in the implementation of these programs does not necessarily correspond to a reduction in the real control powers of the federal government. Calling this process decentralization is misleading because it hides the absence of a transfer in strategic power/management towards the provinces, which is at the heart of true decentralization. One can ask if the recent evolution of federal-provincial relations goes along with the classic definition of federalism offered by Watts, i.e., "a shared government for specified common purposes with autonomous action by constituent units of government for purposes related to maintaining their regional distinctiveness."<sup>61</sup>

Introducing the notion of deconcentration into the analysis of the evolution of Canadian federalism allows us to capture accurately the conservatism of the Meech Lake and Charlottetown Accords. We thereby also avoid the trap of using — too often for partisan or propagandistic ends — the notion of decentralization to account for the consequences of the recent federal budgets and the legislative initiatives on training, on the dynamic of federal-provincial relations, and on the division of powers between the federal and provincial

governments. Paul G. Thomas appropriately refers to the words of Lewis Carroll, when Humpty Dumpty says: "'When I use a word, it means just what I choose it to mean — neither more nor less.' Not to be upstaged, Alice retorts: 'The question is whether you *can* make words mean so many different things.'"<sup>62</sup> Obviously, the answer is no!

*Translated by Richard Nimijean*

## NOTES

1. Paul G. Thomas, "Editor's Note. Twenty-fourth IPAC National Seminar," *Canadian Public Administration* 37, 3 (1994):383-84.
2. Charles Debbasch *et al.*, *Lexique de politique — États, vie politique, relations internationales* (Paris: Dalloz, 1988), 55,128.
3. M. Barrette, "Les structures de l'administration," in *Introduction à l'administration publique — Une approche politique*, ed. J.I. Gow *et al.* (Boucherville: Gaëtan Morin, 1992), 98.
4. This distinction was presented in a 1995 Quebec government document, *Décentralisation, un choix de société*. Cited in P.P. Proulx, "La décentralisation: facteur de développement ou d'éclatement du Québec," *Cahiers de recherche sociologique* 25 (1995): 158.
5. J.R. Mallory, "The Five Faces of Federalism," in *Federalism in Canada: Myth or Reality?* ed. J.P. Meekison (Toronto: Methuen, 1977), 19-30.
6. While referring to relations between the Quebec state and local authorities, Lemieux proposes the same definition. See Vincent Lemieux, "Élections et représentation territoriale au Québec," in *L'espace québécois*, ed. A.-G. Gagnon and A. Noël (Montréal: Québec/Amérique,1995), 200-21.
7. The author's use of the term "process" is noteworthy, in that it tends to confirm our critique of statism towards his distinction between political centralization/ decentralization and administrative centralization/decentralization. Barrette, "Les structures de l'administration," 84.
8. *Ibid.*, 83.
9. Direction générale de l'administration et de la fonction publique, *La Charte de la déconcentration*, Décret no 92 604 du 1er juillet 1992 portant charte de la déconcentration JO du 4 juillet 1992.
10. The same meaning of deconcentration is given in the *Dictionnaire international du fédéralisme*. See F. Saint-Ouen and R. Bermejo, "Centralisation/ décentralisation," in *Dictionnaire international du fédéralisme*, ed. Denis De Rougemont (Bruxelles: Bruylant, 1994), 26.
11. Centre d'études politiques et administratives du Québec (CÉPAQ), "La décentralisation: un effritement de l'État ou un enrichissement démocratique?" (Actes du colloque tenu les 30 mai et 1er juin 1984 au Manoir du Lac Delage,

- Ville du Lac Delage, École nationale d'administration publique, collection «Bilans et Perspectives» no. 5), 10.
12. Kenneth Kernaghan and David Siegel, *Public Administration in Canada — A Text*, 3d ed. (Scarborough: Nelson Canada, 1995), 56.
  13. Andrée Lajoie, *Les structures administratives régionales. Déconcentration et décentralisation au Québec* (Montréal: Presses de l'Université de Montréal, 1968), 7.
  14. At a conference on decentralization, Patrick Kennif said: "I asked myself if the vocabulary of decentralization should be questioned completely. Let me explain myself: this vocabulary came to us primarily from France.... In France, decentralization modified one of the most centralized western regimes. Like all powers emanating from the centre in France (even if the constitution speaks of people), it is normal to speak of 'decentralization' to describe the process for transferring this power to local collectivities." (CÉPAQ op. cit., 114). Once the French reforms were in place, nevertheless, the degree of autonomy of the local collectivities did not even attain that of Quebec municipalities even before the major reforms of the late 1970s. Since municipalities are the exclusive creature of provincial legislatures, as stated in Section 92 (8) of the *Constitution Act* of 1867, the informed reader would recognize that the greater autonomy of Quebec municipalities is due to the decentralization of the Quebec state rather than that of the Canadian state.
  15. Peter M. Leslie, *Federal State, National Economy* (Toronto: University of Toronto Press, 1987), 101.
  16. D.R. Cameron, "Half-Eaten Carrot, Bent Stick: Decentralization in an Era of Fiscal Restraint," *Canadian Public Administration* 37, 3 (1994): 433-35.
  17. Figure 1 offers an illustration of the dynamic processes which characterize the evolution of Canadian federalism, not a static description of the actual state of affairs of federal-provincial relations. In other words, a process of deconcentration is not synonymous with a deconcentrated federal state, no more than the process of decentralization is not synonymous with a decentralized federal state.
  18. Some analysts would claim that such a definition does not really describe deconcentration, since it does not involve the legal personality of the delegatee being subordinate to that of the delegator. We nevertheless believe that we have responded to this criticism by explaining in these pages that only the political dimension is important for our discussion of Canadian federalism, namely the dynamic of power relations between the central and provincial governments. In other words, we are interested in interstate deconcentration, not intrastate deconcentration. Because the legalistic objection reduces deconcentration to its intrastate dimension only, it is not relevant to the definition we propose. Moreover, our definition states clearly that, contrary to the definition of semi-decentralization proposed by Eisenmann, institutional actors are not on equal footing.
  19. T.J. Courchene, *Célébrer la souplesse: Essai interprétatif sur l'évolution du fédéralisme canadien* (Toronto: C.D. Howe Institute, 1995); T.J. Courchene and J.N. McDougall, "The Context for Future Constitutional Options," in *Options*

- for a New Canada, ed. R.L. Watts and D.M. Brown (Toronto: University of Toronto Press, 1991), 33-51; S. Dion, "Explaining Quebec Nationalism," in *The Collapse of Canada?* ed. R.K. Weaver (Washington, DC: The Brookings Institution, 1992), 77-121; S. Dion, "Le fédéralisme fortement asymétrique: improbable et indésirable," in *Seeking a New Canadian Partnership — Asymmetrical and Confederal Options*, ed. F.L. Seidle (Montréal: Institute for Research in Public Policy, 1994), 133-152; S. Dion, *Les avantages du Québec fédéré* (Montréal: IRPP, série Québec-Canada, mai 1995), 4-29; P.M. Leslie, "The Fiscal Crisis of Canadian Federalism," in *A Partnership in Trouble — Renegotiating Fiscal Federalism*, ed. P.M. Leslie, K. Norrie and I.K. Ip (Toronto: C.D. Howe Institute, 1993), 1-86; James Tully, *Let's Talk. The Quebec Referendum and the Future of Canada*, paper presented at the Austin and Hempel Lectures, Dalhousie University, 23 March 1995 and University of Prince Edward Island, 27 March 1995; Kimon Valaskakis and Angéline Fournier, *Le piège de l'indépendance — Le Québec sera-t-il affaibli par la souveraineté?* (Montréal: L'Étincelle Éditeur, 1995).
20. Alain-G. Gagnon and François Rocher, "Faire l'histoire au lieu de la subir," in *Répliques aux détracteurs de la souveraineté du Québec*, ed. A.-G. Gagnon and F. Rocher (Montréal: vlb éditeur, 1992), 27-48, "Pour prendre congé des fantômes du passé," *ibid.*, 469-500; C. Bariteau *et al.*, *Les objections de 20 spécialistes aux offres fédérales* (Montréal: Éditions Saint-Martin, 1992); Guy Laforest, *Trudeau et la fin d'un rêve canadien* (Sillery: Septentrion, 1992); F. Rocher, "Le Québec et la Constitution: une valse à mille temps," in *Bilan québécois du fédéralisme canadien*, ed. F. Rocher (Montréal: vlb Éditeur, 1992), 20-57; F. Rocher and D. Salée, "Logique d'État et fédéralisme canadien: l'improbable décentralisation," *ibid.*, 93-123.
  21. This polemic is, by its very nature, insoluble. While the problems of evaluation criteria can always be solved by integrating all known criteria into the analysis, that of their weighting remains since, whether we admit it or not, it reflects invariably the values and preferences of the analyst. Meekison adds another problem, also insoluble: "It [the division of powers] has changed considerably since 1867 and while certain specific changes can be documented there is not universal agreement or, for that matter, understanding on what an annotated section 91 and 92 would, in fact, look like or should include.... How does one define or refine the various components of say, environment policy? Would there be agreement as to where responsibility rests? The fact of the matter is that too detailed a list would inevitably lead to conflicting jurisdictional claims or attempts to put fresh interpretations on previous court decisions." J.P. Meekison, "Distribution of Functions and Jurisdiction: A Political Scientist's Analysis," in *Options for a New Canada*, ed. Watts and Brown, 266.
  22. The name of this prolific author, now federal minister responsible for federal-provincial relations and president of the Privy Council, surfaces many times in this section, for the simple reason that, more than any other, he has systematized the argument that Canada is the most decentralized federation in the world.
  23. See, S. Dion, "Les avantages du Québec confédéré," 17. Of course, Dion privileges the spatial comparison and not the temporal comparison. For an interesting



discussion of the latter, see Andrew Jackson, "Divided Dominion: Class and the Structure of Canadian Federalism from the National Policy to the Great Depression," in *Federalism in Canada: Selected Readings*, ed. Garth Stevenson (Toronto: McClelland & Stewart, 1989), 192-227.

24. The fiscal decentralization of a region or province vis à vis its municipalities reduces the autonomous revenues and/or the public expenditures of this same region or province. Insofar as the autonomous revenues and public expenditures of the central government remain the same, their comparison with those of a region or province would suggest fiscal centralization, since the relative share of the central government would be greater. Only through the inclusion of the autonomous revenues and public expenditures of municipal governments can this confusion be avoided.
25. Dion, "Les avantages d'un Québec fédéré."
26. Valaskakis and Fournier, *Le piège de l'indépendance*, 62.
27. Note that these data are still unpublished and remain impossible to verify.
28. Dion, "Les avantages du Québec fédéré," 7.
29. For example, when the New Democratic Party formed the government in Ontario, its first budget tripled the budget deficit. The proportion of conditional federal transfers as a percentage of total provincial revenues thus dropped without there being any decentralization in the Canadian federation.
30. Guy Laforest, "Esprit de géométrie et esprit de finesse," *Le Devoir*, 24 février 1995. For an excellent discussion on these limits, see Leslie, *Federal State, National Economy*, 86-103.
31. At the same time, it should be mentioned that the bookkeeping approach is not a useful method for determining the economic benefits of federalism for Quebec or any other province. For example, Gérald Bernier, after examining the impact of federal regional development policies on Quebec for the period 1969 to 1992, concluded that it was impossible to evaluate in a satisfactory manner the true impact of these policies: "without more clarity on the book-keeping protocols used to establish the measures, along with the lack of uniformity in the indicators which are chosen, ... it is not possible to answer the question asked at the beginning of the section in a clear and precise fashion." G. Bernier, "Les politiques fédérales de développement régional au Québec: 1969-1992," in *Bilan québécois du fédéralisme canadien*, ed. Rocher, 290.
32. The cultural diversity and the fragmentation of collective identities which mark multinational federations are by themselves significant factors of decentralization. While they may not be the only ones, they are sufficiently important to invalidate comparisons with the American and German federations, among others.
33. A.-G. Gagnon, "Other Federal and Nonfederal Countries: Lessons for Canada," in *Options for a New Canada*, ed. Watts and Brown.
34. M. Seymour, "La fédération décentralisée," *Le Devoir*, 27 mars 1995.
35. T.J. Courchene, in *Praise of Renewed Federalism* (Toronto: C.D. Howe Institute, 1991), "La communauté des Canadas," in *Les avis des spécialistes invités à*

- répondre aux huit questions posées par la Commission*, ed. Commission sur l'avenir politique et constitutionnel du Québec (Document de travail, 4, Québec, 1991), 199-238, and *Célébrer la souplesse*; Dion, "Explaining Quebec Nationalism," "Le fédéralisme fortement asymétrique," "Les avantages du Québec fédéré"; Donald G. Lenihan, Gordon Robertson and Roger Tassé, *Canada: Reclaiming the Middle Ground* (Montréal: Institute for Research in Public Policy, 1994); Richard Simeon and Ian Robinson, *State, Society, and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990).
36. Dion, "Les avantages du Québec fédéré," 18.
  37. Gilles Rémillard, *Le fédéralisme canadien — Tome I: La Loi constitutionnelle de 1867* (Montréal: Québec/Amérique, 1983), 29; Debbasch, *Lexique de politique*, 164.
  38. Léon Dion, *Le Duel constitutionnel Québec-Canada* (Montréal: Boréal, 1995), 246.
  39. P.M. Leslie, "Asymmetry: Rejected, Conceded, Imposed," in *Seeking a New Canadian Partnership*, ed. Seidle, 65.
  40. While judicial activism is "the disposition to interpret the rights broadly and to enforce them vigorously, [as well as] a readiness to veto the policies of other branches of government on constitutional grounds," judicial self-restraint can be defined as the "judicial predisposition to find room within the constitution for the policies of democratically accountable decision-makers." Rainer Knopff and F.L. Morton, *Charter Politics* (Scarborough: Nelson Canada, 1992), 19.
  41. *Ibid.*, 20.
  42. Knopff and Morton, *Charter Politics*; Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Wall and Thompson, 1994).
  43. Knopff and Morton, *Charter Politics*, 58.
  44. S. Dion, "Les avantages du Québec fédéré," 19.
  45. G. Julien and M. Proulx, "Le chevauchement des programmes fédéraux et provinciaux: un bilan," in *Canadian Public Administration/Administration publique du Canada* 35, 3 (1992): 420.
  46. Cited in D. Robert, "La signification de l'Accord du lac meech au Canada anglais et au Québec francophone: un tour d'horizon du débat public," in *Canada: The State of the Federation 1987-1988*, ed. P.M. Leslie and R. Watts (Kingston: Institute of Intergovernmental Relations, Queen's University, 1988), 154.
  47. Russell illustrates this point well. The federal government sought to increase the legitimacy of its unilateral actions during the 1982 constitutional negotiations by giving a voice to certain interest groups and agreeing to follow some of their recommendations in the development of the *Constitution Act*, 1982 and the *Canadian Charter of Rights and Freedoms*. The federal strategy was alarmingly simple and had a disarming effectiveness: what better way was there than to claim legitimacy on the basis of following the recommendations of interest groups? This is an example that illustrates the need to distinguish between an increase in participation and the increase in real power. Peter Russell,

*Constitutional Odyssey — Can Canadians Become a Sovereign People?* (Toronto: University of Toronto Press, 1993).

48. P.M. Leslie, "Bicommunalism and Canadian Constitutional Reform, *Publius — The Journal of Federalism* 18 (1988):129; Patrick J. Monahan, *Meech Lake: The Inside Story* (Toronto: University of Toronto Press, 1991).
49. Bariteau *et al.*, *Les objections*.
50. P.W. Hogg, "Division of Powers in the Charlottetown Accord," in *The Charlottetown Accord, the Referendum, and the Future of Canada*, ed. K. McRoberts and P.J. Monahan (Toronto: University of Toronto Press, 1993), 85-92; J. Frémont, "The Charlottetown Accord and the End of the Exclusiveness of Provincial Jurisdictions," *ibid.*, 129.
51. Department of Finance, Budget Speech by the Honourable Paul Martin, minister of finance, 27 February 1995. Underlined in the text.
52. Department of Finance, *Budget 1995* (Ottawa: Department of Finance, 1995).
53. K. Banting "Who 'R' Us?" in *The 1995 Federal Budget: Retrospect and Prospect*, ed. T.J. Courchene and T.A. Wilson (Kingston: John Deutsch Institute for the Study of Economic Policy, Queen's University, 1995); Ken Battle and Sherri Torjman, *How Finance Reformed Social Policy* (Ottawa: Caledon Institute of Social Policy, 1995); R. Boadway, "The Implications of the Budget for Fiscal Federalism," in *The 1995 Federal Budget*, ed. Courchene and Wilson; Torjman, "The 1995 Federal Budget: a.k.a. The Real Social Security Review," in *How Finance Reformed Social Policy*.
54. *Budget Plan 1995*.
55. T.J. Courchene, *Redistributing Money and Power — A Guide to the Canada Health and Social Transfer* (Toronto: C.D. Howe Institute, 1995).
56. Courchene's argument for the most part insists that the crisis in public finances affects the provincial governments as much as the federal government. The provincial governments' fiscal and budgetary room to manoeuvre is already reduced, regardless of the method selected by federal government to reduce its budget deficit and the total public debt. He does not compare the CST to the level of federal-provincial transfers which he thinks should be maintained; instead compares it to the level it will inescapably become if the financing of EPF-Health, EPF-Postsecondary, and CAP were maintained. From this perspective, the author concludes that the CST is a creative solution which can help restore the health of public finances while still preserving the federal government's ability to set national standards.
57. Courchene, *Redistributing Money and Power*, 4.
58. Canada. Human Resources Development Canada, *Getting Canadians Back to Work: A Proposal to Provinces and Territories for New Partnership in Labour Market* (Ottawa: Human Resources Development Canada, 1996), 3.
59. See Lloyd Axworthy's statement in the House of Commons, made on the occasion of second reading, 11 December 1995, House of Commons Debates, 17476.

60. R.L. Watts, "What is the Status of the Status quo?" *Policy Options Politiques* 16, 3 (1995):29.
61. *Ibid.*, 30.
62. Thomas, "Editor's Note," 383.

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## Federalism, New Public Management, and Labour-Market Development

*Herman Bakvis*

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*En accord avec les propositions "Verdun" faites par le Premier Ministre Jean Chrétien lors de la campagne référendaire d'octobre 1995, le gouvernement fédéral a annoncé le 30 mai suivant qu'il remet l'entière responsabilité des programmes de formation de la main-d'oeuvre aux provinces. Il a de plus annoncé que les provinces pourront aussi administrer des programmes fédéraux connexes subventionnés par le nouveau compte d'assurance-emploi et reliés à la création d'emplois, le counseling d'emploi, les subventions salariales et l'aide au travail indépendant. Ce chapitre présente, en premier lieu, les défis auxquels le gouvernement fédéral doit faire face en donnant suite à sa promesse de déléguer aux provinces la responsabilité pour le développement du marché du travail. En second lieu, ce chapitre examine comment les récents développements au niveau de la "nouvelle gestion du secteur public", et en particulier le concept d'entreprises fédérales-provinciales, peuvent à la fois aider et faire obstacle aux tentatives d'ententes avec les provinces. Ce chapitre évalue de plus la possibilité que, d'une province à l'autre, se créent des régimes discordants en matière de développement du marché du travail. Finalement, la capacité des provinces à coopérer entre elles afin d'établir des normes nationales en l'absence d'un leadership fédéral est étudiée.*

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### INTRODUCTION

Observers of the federal-provincial scene, and many ordinary Canadians, are about to witness and experience some dramatic changes in the area of labour-market development. Soon recipients of services such as employment counselling and job training may well be receiving them not from a Canada Employment Centre but from a provincial agency instead. Among the broader implications stemming from this shift of responsibilities is that Ottawa may no longer have the same capacity to respond to national or sectoral needs

pertaining to the Canadian labour market. Whether the provinces will, among themselves, be able to develop and coordinate national standards in training programs and to fill the vacuum left by Ottawa will be some of the more significant tests that the new regime will face.

The proposed changes stem directly from Prime Minister Jean Chrétien's "Verdun" proposals made during the October 1995 referendum campaign. Along with commitments to recognize Quebec's distinctiveness and to provide Quebec with a veto over constitutional change, the federal government also promised to turn over to Quebec, and to the other nine provinces, full control of labour-market training. On 30 May 1996 Ottawa took the first concrete step to make good on this last promise: the then minister of human resources development Canada (HRDC), Doug Young, accompanied by Intergovernmental Affairs Minister Stéphane Dion, announced that Ottawa would recognize the provinces as having full responsibility for job training activities, and that the federal government would be phasing out all its activities in this area. In addition, the provinces would be given the opportunity to deliver related federal programs, and would receive federal funding for doing so. These programs would be in the fields of employment creation, employment counselling, wage subsidies, self-employment assistance and other direct job creation measures funded out of the "active measures" or "development uses" portion of what is now the the Employment Insurance (EI) fund — formerly the Unemployment Insurance (UI) fund.<sup>1</sup>

In short, what Ottawa put on the table was a package containing not just labour-market training but almost the entire kit of labour-market development instruments. If the federal government succeeds in signing specific agreements with many or all provinces, this initiative will represent a dramatic transformation in Ottawa's role in labour-market training, and in human resource management more generally. It is a field in which the federal government has long asserted a national interest in terms of its responsibility for economic management and the economic union. It is also a field marked traditionally by sharp intergovernmental conflict since provinces emphasize their competing claim to jurisdiction over all matters relating to education, including job training.

The repositioning of the federal government in this area, however, brings into play another development, in some respects separate from the intergovernmental dimension, but nonetheless having a bearing on the federal government's wish to reduce its role in labour-market training while still maintaining some influence in this area. This development has been characterized by the increasing preoccupation of all levels of government with the streamlining of operations, integrated service delivery, greater efficiency, and a stronger client focus, often through the use of such mechanisms as user-pay, contracting out, or the creation of special operating agencies. In general terms this thrust can be placed under the rubric of the "new public management."<sup>2</sup> In

the case of HRDC, this development has manifested itself in a variety of ways, such as in the consolidation of several HRDC outlets, including Canada Employment Centres (CECs) and Income Security Program (ISP) offices, within a streamlined network of Human Resource Centres Canada (HRCCs), in the increasing use of electronic kiosks and telecentres, and, significantly, in joint ventures with some of the provinces in the co-location of offices and the joint delivery of certain programs. HRDC has also been investigating the use of mechanisms such as service delivery corporations which would be owned jointly by federal and provincial governments.

In intergovernmental terms, recent practices and models arising out of the new public management are important in two respects: first, the continuation and extension of the experiments in co-location and the participation of the provinces in delivering the active measure of EI will require the close cooperation of both levels of government; and second, the preoccupation with service delivery and cost-cutting, combined with Ottawa's wish to respond to Quebec's demand for federal withdrawal from labour-market training, has very likely distracted the attention of all governments away from more substantial questions, such as what should a national strategy on labour-market training look like or should investments in training be targeted towards high-skill or low-skill occupations?

If the provinces accept most of what the federal government has offered, such a shift in responsibilities and resources would entail the transfer to the provinces of a sizable portion of HRDC's National Employment Service, a branch encompassing roughly 7,000 full-time-equivalent (FTE) employees. This in itself would require close cooperation and the investment of considerable time and goodwill by both parties. Whether provinces are willing to take over federal employees at a time when most provincial governments are busy reducing the size of their own bureaucracies, whether they have the administrative capacity to take over these functions, and how much funding the federal government is willing to provide for administrative costs, are major issues that would need to be resolved before the two levels of government were able to sign agreements. And when these issues are resolved and agreements signed, there may not be a lot of energy left to deal with the broader issues.

This chapter examines, first, the challenges faced by the federal government in making good on its promise, that is, to devolve to the provinces responsibilities, operations, and funding in the area of labour-market development. For example, it may be that the use of funds drawn from the Employment Insurance program to be used by the provinces in taking over employment creation measures may require a level of conditionality that will prove unacceptable to many of the provinces. There is also the related issue of federal visibility. Second, the chapter examines how HRDC's current strivings in service delivery may affect efforts to devolve some of its responsibilities and activities to the provinces. There may well be resistance within HRDC,

particularly within the service delivery branch, to see responsibilities for clients fragmented across different levels of government. There is also the issue of fitting portions of HRDC's service delivery network into the often widely varying administrative arrangements currently in place in the different provinces. Provinces may be reluctant either to accept federal employees or practices, or to commit themselves to a service delivery regime that requires close coordination with HRDC. In other words, the question is whether the pressures entailed by various management issues, as well as by developments more generally in public sector reform, will compromise efforts by Ottawa and the provinces to reach agreement on labour-market development. Conversely, it may also be the case that some of the mechanisms developed under the rubric of the new public management for the delivery of services, such as jointly owned federal-provincial Crown corporations, can help to resolve some of the difficulties entailed by joint delivery while preserving the autonomy of governments. Finally, this chapter will deal briefly with the issue of how the overall field of labour-market development may be affected by recent developments. Will we have ten separate labour-market strategies? Or is it possible, as Tom Courchene has recently suggested,<sup>3</sup> that the provinces do indeed have the collective capacity and maturity to cooperate with each other in setting common standards and conditions?

## BACKGROUND

In addition to the specific impetus of the Quebec referendum, at least four other developments in the labour market and social policy field helped give rise to, and have shaped, the present federal proposals: previous labour-market programs, the 1993 Cabinet reorganization, the social security review under Minister Lloyd Axworthy, and the Program Review.

For more than three decades the federal government has visualized its role in labour-market training as an issue of national economic priorities, matters which, in the words of Lester Pearson, "are the inescapable concern of the federal government."<sup>4</sup> The extent to which Ottawa was able to use its spending power in order to achieve objectives in this area was often considerably less than it had hoped for, however. In the 1960s, with the *Adult Occupational Training Act*, the provinces were able to preserve the preeminent position of provincially owned and operated training institutions, primarily community colleges, in the delivery of training programs. The same was true in 1982 with the introduction of the *National Training Act* when Ottawa was essentially unable to shift more federal training dollars directly to private sector employers. Matters began to change, after the Tories were elected in 1984, with the implementation of the Canadian Jobs Strategy in 1985 and the Labour Force Development Strategy in 1989. These programs contained their own



contradictions by virtue of trying to meet simultaneously the needs of the economy for advanced skills and to provide rudimentary skills for those on the margins of the labour market. Nonetheless, both programs, according to Rodney Haddow, with their emphasis placed on private sector leadership and budgetary restraint, were able to break "the web of institutional linkages that had guaranteed provincial influence over federal training expenditures."<sup>5</sup>

In breaking this web, and in focusing on private sector training providers, there was one development that continues to have a direct bearing on Ottawa's present dilemma. In delivering the Canadian Jobs Strategy, CECs played an important role in developing and signing training agreements with either private sector training providers or community colleges. In other words, the design and purchase of training programs became an increasingly important part of the repertoire of services delivered by field offices within what was at that time the Department of Employment and Immigration (CEIC), in addition to services such as unemployment insurance, employment counselling, and placement of clients in training programs.<sup>6</sup>

Three further developments are worth noting. First is the creation of the Department of Human Resources Development Canada in 1993, during Kim Campbell's brief tenure as prime minister. This event came about as a result of the wholesale reorganization of Cabinet and the amalgamation of ministerial portfolios, and involved several departments not just in the human resources area.<sup>7</sup> But HRDC, composed of components from five separate departments,<sup>8</sup> was by far the largest and most significant entity stemming from the Campbell reorganization. While Campbell's organizational slicing and dicing was driven largely by prevailing symbolic politics — the need to show a capacity for downsizing the bureaucracy and the executive, including, for example, the elimination of ministerial perks — in the case of the social policy field there was a compelling rationale for the creation of an omnibus human resources department. Bernard Valcourt and Benoît Bouchard, the respective ministers of employment and immigration, and health and welfare, in the Mulroney and Campbell governments, had openly argued for a single integrated department that would have the capacity to address in a systematic fashion interrelated issues ranging from UI to postsecondary education. Yet while the new HRDC integrated the social policy field in some respects it also reduced the opportunity for building linkages in other respects, specifically with the Department of Industry. Insofar as labour-market issues have a distinct bearing on competitiveness policy and Canada's economic needs more generally, the incentive for addressing this issue in an integrated manner had been much diminished by placing labour-market development and industrial development into separate portfolios.

The creation of HRDC set the stage for the next development under the new Liberal government, namely the launching by Lloyd Axworthy, the minister of HRDC, a wide-ranging social security review that involved not only

the programmatic part of his new portfolio but also the interests of the provinces and of all the other stakeholders in the social policy field. When it gave him scope to pursue his social policy agenda, the federal Cabinet and the minister of finance in particular, extracted from Axworthy a commitment that HRDC would contribute to the government's deficit reduction target. The travails of the Axworthy social security review and the resulting green paper, "Improving Social Security in Canada,"<sup>9</sup> has been well documented elsewhere. Essentially, Axworthy's plans proved to be too ambitious by half. By January 1995 Axworthy and HRDC had lost control of a significant portion of the social policy agenda — for example, postsecondary education.

Further, one of the net effects of the February 1995 Budget Plan was to increase the influence of the Department of Finance over social policy. Under Ottawa's new Program Review, HRDC programs and services would be streamlined and restructured, resulting in a "smaller global budget."<sup>10</sup> The 1995 Budget Plan also reaffirmed the announcement made in the 1994 Budget concerning UI, namely that there would be a minimum 10 percent reduction in the overall size of the UI program, as well as an overhaul of the plan itself.

The 1995 Budget, therefore, set the course for HRDC in three respects: the continuation of UI reform; the streamlining of delivery systems; and the consolidation of several programs into something that was to be called the Human Resources Investment Fund (HRIF). Essentially, the HRIF represented what remained of Axworthy's efforts at social policy reform.

Under the auspices of a Program Review secretariat within HDRC, two teams began tackling, respectively, the "Operational Review" and Program Redesign. The former dealt with revamping the service delivery network;<sup>11</sup> the latter team, responsible for the HRIF, was concerned with items such as the Disabled Workers Program, Older Workers Adjustment Program and what remained of the Canadian Jobs Strategy. It also had responsibilities for the "active labour-market measures" portion of the new EI legislation, which will be discussed below. The Human Resource Investment group faced a difficult task, which was to meld together an alphabet soup of different programs with the active measures of UI reform into a coherent whole. The federal-provincial relations branch of HRDC maintained close links with the group responsible for the HRIF since it was in this area where the need for intergovernmental cooperation and negotiation was most likely to crop up, mainly with respect to labour-market training. The largest portion of UI reform, the insurance program, was handled separately.

Within this three pronged strategy, the group responsible for the Operational Review moved along most quickly. By June 1995 their plans for a streamlined service delivery system were complete. By August, after passing over various internal hurdles, their "New Service Delivery Network," was ready to be announced.<sup>12</sup> UI reform was also proceeding on schedule, and aimed to have the

new EI legislation ready for Parliament by the fall of 1995. Work on the HRIF, however, lagged behind.

While most attention was focused on UI reform, and to a lesser extent on the HRIF, the changes to the service delivery side were significant. By being first out of the gate the new service delivery network helped to shape developments with respect to the HRIF and UI reform. In addition, the network embedded a particular understanding concerning its role in delivering the active measures component of the new EI legislation, in developing and implementing new forms of alternative service delivery, and in striking partnerships with non-HRDC organizations, including other governments. The focus of the network, and of the HRCC managers working within it, was very much oriented towards local community development and small-scale projects.

Thus, the significance of the new system went well beyond the streamlining of operations. Among other things, in designing the new system Axworthy and HRDC officials expended considerable effort consulting with MPs on both sides of the House of Commons. Axworthy himself always had more sympathy for local, grass-roots politics and less feel for federal-provincial relations. Within the Liberal caucus Axworthy and other ministers assured backbench MPs that the new HRCCs would play an active role in delivering new job creation schemes that were to be part of the newly reformed UI and, of course, that government MPs would be consulted at the riding level in the implementation of these schemes.<sup>13</sup> This approach is significant in part because it indicates the nature of the political support at the federal level for UI reform, but also in the fact that MPs were not really focused on the broader issues of labour-market reform. They were concerned primarily with protecting their traditional role at the riding level in the delivery of make-work programs.

Coupled with changes in the basic delivery system, HRDC has also pursued a number of experiments in what it calls alternative service delivery, for example, arrangements with community organizations for the delivery of HRDC services such as employment counselling or taking applications for OAS or CPP. The more critical experiments are the ones involving co-location and single-window service in partnership with provincial governments. For example, under the "Canada/Alberta Service Centre Initiative," HRDC and the two provincial departments of Family and Social Services and Advanced Education and Career Development have committed themselves to an integrated front-end delivery of services in three cities.<sup>14</sup> It is worth stressing, however, that in these experiments in co-location neither level of government has turned over their delivery function to the other level or to a jointly owned but separate agency. So far, while HRDC has been willing to let third parties or, in some instances, municipal agencies, deliver employment counselling, for example, it has not allowed provincial agencies similar capacities. As well, in the case of the co-location experiments with provincial governments, actions have been based on temporary memoranda of understanding among the two levels of government and the relevant public sector unions.

To summarize, there are a number of forces operating within HRDC, not necessarily at odds with each other but not necessarily in harmony either. Certainly those involved in the service delivery network are inclined to favour a fairly prominent role for HRDC in providing services and benefits to Canadians. Those involved in the development of the HRIF and federal-provincial relations are more likely to accept a more active provincial role, even if it means turning over a number of HRDC functions to the provinces. To the extent that one branch or the other becomes more prominent, this would have intergovernmental implications.

## LABOUR-MARKET TRAINING AND THE FIVE ACTIVE MEASURES

In December 1995, when the new EI legislation was announced,<sup>15</sup> most attention was focused on Part I of the Act, which concerned *insurance* benefits and the new provisions targeting seasonal workers. Controversy over these provisions dominated debate in subsequent months, and led to public demonstrations in the regions of high unemployment in Atlantic Canada. Part II of the new *Employment Insurance Act*, however, lies at the core of the proposals made by Minister Young to the provinces. Announced in December of 1995, the new *employment* benefit measures under Part II, essentially the successor to the active measures in the old UI Act, are designed to "provide unemployed Canadians with better opportunities to obtain and keep employment and to be productive participants in the labour force."<sup>16</sup> The five specific measures are as follows:

- Targeted wage subsidies to encourage hiring and provide on-the-job experience;
- Targeted earnings supplements to help with the transition back into employment;
- Self-employment assistance in the form of financial support, coaching and planning assistance to help individuals start businesses and create jobs;
- Job-creation partnerships between provinces, the private sector, labour and communities to create work opportunities in local economies;
- Loans and grants for skills development to provide funding to qualified individuals so that they can seek out the training course that best fits their needs.

When these five measures were being developed in the summer and fall of 1995 it was anticipated that HRDC would have primary responsibility for their delivery. The initial overall costing, never publicly released, was in the order of \$2.2 to \$2.3 billion for 1996-97.<sup>17</sup> The most expensive component was "loans

and grants for skills" at approximately \$1 billion, while job creation partnerships followed at \$500 million, self-employed assistance at \$325 million, and earnings and wage supplements at \$250 and \$200 million respectively. Also announced at the same time was something called the Transitional Jobs Fund, designed to help ease the shift to the new EI regime for those in high unemployment areas. When these measures were announced as part of the new EI legislation the government made clear that the fifth measure, loans and grants for skills, would be implemented in a province only with the agreement of the provincial government, in keeping with the prime minister's announcement of 27 November concerning Ottawa's withdrawal from labour-market training.<sup>18</sup>

An announcement made on 30 May 1996 went a number of steps further. The announcement indicated that not only is Ottawa willing to turn over to the provinces "loans and grants for skills," but will also turn over the other four measures. Furthermore, the federal government offered to let the provinces take over delivery of related services, such as screening of applicants for the active measures programs, employment counselling and local labour-market placement, if they assumed responsibility for the delivery of the active employment measures. Finally, Ottawa spelled out what it meant by withdrawing from labour-market training, namely, that it would withdraw from the purchase of training, apprenticeship training, cooperative education, workplace-based training and project-based training over a three year period, faster if the province wished. In its announcement Ottawa did indicate that in the absence of an agreement the federal government could proceed to implement and operate on its own the first four active measures; the fifth measure, the one that would most clearly intrude on provincial jurisdiction, would only be implemented with the consent of the province in question.

Table 1 indicates the amounts that Ottawa is willing to transfer to the provinces for delivering the active measures. For 1996-97 the amount would be \$1.347 million, rather less than the initial estimates. It includes what is referred to as the EI/UI reinvestment, a portion of the \$2 billion cut or savings from the main EI account. When fully ramped up by 2000-01 the amount will be \$1.9 million. However, as Table 1 indicates, an additional \$500 million would flow directly from the federal EI account to participants in provincially administered active measures programs as income support. Ottawa is holding on to what it calls "Pan-Canadian Activities," which includes youth employment programs, the Atlantic Groundfish Strategy (TAGS) and aboriginal programs, and the Transitional Jobs Fund, which will be delivered through the regional development agencies, possibly in partnership with provincial governments. The total committed under the Transitional Job Fund is \$300 million, with expenditures peaking in what is likely to be an election year. The \$1.9 billion would likely be allocated to the provinces on the basis of past distribution of UI active measures monies, which will favour Quebec and the Atlantic region. It is not likely to be allocated on the basis of the distribution

Table 1: Proposed Labour-Market Arrangements with Provinces and Territories

Funds/Years	1995-96 \$M	1996-97 \$M	1997-98 \$M	1998-99 \$M	1999-00 \$M	2000-01 \$M	2001-02 \$M
<i>Available to Provinces and Territories for Active Measures</i>							
1. EI Development Uses	1,214	1,172	1,150	1,150	1,150	1,150	1,150
2. EI Reinvestment	0	175	380	600	700	800	800
<i>Total - Provincially Administered</i>	1,214	1,347	1,530	1,750	1,850	1,950	1,950
3. Income Support for EI Claimants	500	500	500	500	500	500	500
4. Pan-Canadian Activities	186	228	250	250	250	250	250
5. Transitional Jobs Fund	0	60	140	100	0	0	0
<i>Total - Federally Administered</i>	186	288	390	350	250	250	250
<b>GRAND TOTAL</b>	1,900	2,135	2,420	2,600	2,600	2,700	2,700

Source: Adapted from: Human Resources Development Canada, "Where the Government of Canada is Headed," Federal-Provincial Relations Branch, 1996.

of EI claimants, something that Ontario, in arguing for its "fair share," has favoured.

There are a number of additional features associated with the federal proposals that need to be underscored. First, there is what the federal government calls mutually agreeable "results based accountability frameworks"<sup>19</sup> that are to be part of all federal-provincial agreements. Accordingly, "results will be based on: priority access for EI claimants, jobs secured for EI clients, with emphasis on EI claimants..., and savings to the EI Account through reduced dependency on employment insurance benefits. Results will be informed by changing economic and labour market circumstances."<sup>20</sup> The framework was originally intended to be used to hold HRCC managers accountable at a time when they were seen as the primary agents in the delivery of the five active measures, and the language and approach developed at that time likely carried over into the intergovernmental context. In negotiating agreements, there will be considerable discussion on what the term "results" will encompass.<sup>21</sup> Furthermore, the need for conditionality — and it should be clear that the federal government has no intention of making these transfers completely unconditional — derives from the fact that legislation governing the EI account requires that the uses to which EI funds are put must be consistent with the objectives of the EI program. The program is essentially an insurance program, notwithstanding that the insurance principle in the context of delivering EI/UI has been compromised in various ways over the years. First and foremost among the conditions are that only current or recent EI claimants would be eligible to participate in programs funded through the five active measures. Second, the minister of HRDC remains accountable to Parliament for the EI program. Third, all the financial statements of the EI account must be audited by the federal auditor general; at a minimum the auditor general will want to verify that EI funds are being spent on EI clients only. It is worth noting that the concerns of the accountability framework are largely practical and legal. There is very little in the proposed framework that addresses the broader issue of what kind of labour-market strategy Canadians would like. By implication the proposed five active measures appear to endorse a policy of rudimentary skills enhancement as distinct from substantial investments in retraining.

The federal requirement in transferring responsibility for the five active measures imposes a number of conditions that provinces may find difficult to swallow. On the other hand, the new EI legislation that came into effect 1 July 1996 does provide greater flexibility. Among other things it allows the minister greater leeway in using other agencies, including those of other governments, to deliver EI benefits and programs. It also broadens the definition of clients who are eligible to receive assistance under the active measures, and it will include current recipients of EI insurance benefits and previous recipients up to three years in the past and up to five years in the case of those

on maternity leave. This broadening of the EI client base will increase the overlap with the social assistance client base, for which the provinces are responsible. That is to say, there will now be a greater likelihood that a current social assistance claimant will have drawn EI/UI benefits over the previous three years and hence will be eligible to receive assistance under one or more of the five active measures. At the same time, Ottawa does have a concern over the inherent incentive that provinces would have to place as many of their social assistance clients as possible in EI-funded active measures programs, at the expense of EI claimants. Hence the wish for a guarantee that EI claimants receive priority treatment and that there be some indication of a lowered dependency on the basic EI account.<sup>22</sup>

The issues of conditionality will pose difficulties for Ottawa in reaching agreement with the provinces, but such difficulties are not insurmountable. For example, it may be possible to arrange that provincial auditors general, in lieu of the federal auditor general, inspect the financial statements of provincial governments when delivering EI active measure programs. Such a move might reduce the perception of federal intrusion in provincial activities while still maintaining a level of accountability acceptable to Ottawa. Overall, there is much in the package that makes it attractive to the provinces. Ottawa, in turn, particularly in its anxiety to strike a deal with Quebec over what has been a high profile issue in that province for several years, will likely demonstrate flexibility in interpreting its vision of an accountability framework.

The issue of program conditionality is not the only possible stumbling block, however. There are two other contentious areas, both related to the administration of the five active measures and associated activities. First, turning over to the provinces responsibility not only for the five active measures but also for screening, counselling, and related activities currently handled by the National Employment Service, would make a large portion of HRDC's service delivery network redundant. In particular, assuming that all provinces took up the full offer, roughly 200 HRCCs could be closed since, for the majority, their primary activities centre around labour-market counselling and the like.<sup>23</sup> The logical action would be to transfer the affected HRDC employees to the appropriate provincial departments. Ottawa has indicated that it would be willing to provide compensatory payments to the provinces to accompany these FTEs, subject to provincial willingness to take on HRDC employees, i.e., in addition to the monies for the active measures. Minister Young, in enunciating what he calls Human Resource Principles, emphasized both to the provinces and HRDC employees the need for fair treatment of these employees, specifically that HRDC workers will go with any FTEs transferred to the provinces. There are considerable complications in arriving at estimates of the number of FTEs involved, compounded by the fact that in the context of increasing efficiencies through multiskilling it has become more difficult to ascertain which HRDC employees are spending what proportion of their time in labour-



market development activities. In short, considerable detailed negotiations both within and between governments will be required to reach agreement on these human resource transfers.

The other contentious area concerns the need for close coordination. This involves, on the one hand, the need to bring timely information on labour conditions and EI clients, for whom Ottawa will retain primary responsibility, to those in provincial agencies responsible for labour-market counselling. On the other hand, there is the need to do as much as possible to promote single-window service. That is, Ottawa in particular would like to preserve and extend the practice whereby clients can access multiple programs — EI, Canada Pension Plan benefits, provincial social assistance — from a single point of service. In other words, if many or all of the 300 HRCCs are closed down HRDC would like provincial assurances that its services in these other areas would be available through provincial offices. These imperatives for seamless, single-window service arise most particularly within the new public management paradigm, with its focus on client responsiveness and bottom line results. However, as Fletcher and Walsh have noted in the case of Australia, the “single-government, managerialist principles” inherent in the new public management is distinctly at odds with the conflictual elements of federalism.<sup>24</sup> Similarly, Robert Howse has argued that what he calls alternative mechanisms for “service centred governance ... should not be regarded as a fix for the ‘national unity’ problem ... These mechanisms generally presuppose that a will to work together is already there.”<sup>25</sup> The history of Canadian federalism in recent years does not suggest a strong record of close federal-provincial collaboration in ensuring that client needs are met. These traditions of non-cooperation will need to be overcome to ensure agreements in which client interests are accorded a high priority. At the same time, some of the instruments available under the rubric of the new public management would allow the creation of arm’s length special operating agencies or corporations handling functions for both governments that might reduce the anxieties such governments might have in turning over operational authority directly to another level of government.

So far the only federal-provincial cooperative experiments in service delivery have been the forays in co-location in cities such as Winnipeg, Edmonton, and Calgary. Historically, HRDC has generally shied away from using provincial agencies for the delivery of its services. In the area of labour-market training, the federal government has used provincial services for the delivery of training programs, through the block purchase of classroom spaces in community colleges for example, but the negotiations surrounding these purchases have often been acrimonious, and the results from those training programs have rarely been subjects of effective evaluation.

It is also worth stressing that many of the barriers to more integrated client service reside within HRDC itself. The *Financial Administration Act* (FAA)

and various privacy provisions limit the extent to which an employee of HRDC can serve a client with multiple needs. For example, information from a client's Canada Student Loan application cannot be used or shared in connection with an application for EI by the same client. Similar provisions apply to other programs.

To move more systematically in the direction of more integrated and more efficient service will, at the federal level, require a number of legislative changes, including changes in the FAA. It will also require serious consideration of other models of service delivery that go beyond co-location. A joint task force of HRDC and the Treasury Board Secretariat on Alternative Service has examined a series of options, including special operating agencies and separate service agencies.<sup>26</sup> The latter model emphasizes separating the policy role of the department and minister from the managerial role of the agency in question. In return for agreed-upon levels of performance the agency is given increased management flexibility, and, typically, can take advantage of accrual accounting and multi-year appropriations, and can conduct operations on the basis of an approved business plan. Both models are drawn in good part on the British and New Zealand experiences of executive agencies and operating departments respectively.<sup>27</sup> Both countries, however, are unitary systems where, for obvious reasons, it is easier to achieve what Fletcher and Walsh refer to as a single government perspective.<sup>28</sup>

The model that appears to be most appropriate in the Canadian context is what the HRDC/TBS joint task force has called the Federal Partnership Corporation. This type of arrangement involves joint ownership by federal and provincial governments of the delivery of government programming. Essentially the organization would be a Crown corporation, incorporated under the *Canada Corporations Act* and/or provincial corporate legislation, with representation from all shareholders on the board of directors. The chief executive officer would be responsible to the board of directors. The minister would be accountable to Parliament as the federal shareholder and would also be accountable for the contracts negotiated with the corporation for the delivery of federal programs. The same would apply to her/his provincial counterpart. This model would entail more of a hands-off approach on the part of HRDC and the relevant provincial department(s), but does permit much greater financial and administrative flexibility. Each corporation could be tailored to fit both the federal government's need for national standards and a provincial government's more particular needs. Such an entity could also contract with other bodies such as non-government organizations, for the delivery of particular services. This model has much to commend it. It would spell out the particular services that are to be delivered along with the agency's responsibilities, and would improve accountability. However, such a model does mean that the minister is removed from the day-to-day operations of the corporation (service delivery problems would be dealt with under the terms specified

in the contract). It also requires that the two governments involved share the same basic philosophy. It would be very difficult for a corporation to deliver seamless or closely linked services if the approaches and attitudes towards clients on the part of each government were radically different.<sup>29</sup>

Regardless of the particular mechanism chosen to facilitate the close coordination of federal and provincial activities, much work will need to be done to ensure that the will exists for the coordination to take place. Furthermore, the difficulties in reaching an agreement may lie as much on the intragovernmental plane as on the intergovernmental plane. Will the prime minister and HRDC minister be able to persuade their Cabinet colleagues, and the Liberal caucus, that the gains in federal-provincial harmony outweigh the loss of federal visibility and control in this area? What of the overall impact on the labour-market development field? Before turning to these important issues, an examination of the provincial responses to the federal proposals is worthwhile.

## PROVINCIAL POSITIONS

First and foremost it should be kept in mind that the federal proposals were developed in direct response to Quebec's demands for full control over labour-market training. Furthermore, Quebec's demands have not been unique to the current Parti Québécois (PQ) government. Rather, this long-standing claim represents what has been called the Quebec consensus: "All the major social actors in the province — the separatist Parti Québécois, the federalist Quebec Liberal Party, business and labour — agreed that Ottawa should vacate the field."<sup>30</sup> Ottawa's reluctance to do so has been seen in Quebec as a major symbol of federal intransigence and the unworkability of Canadian federalism.

Of all the provinces Quebec is by far the best prepared to accept the responsibility of labour-market training and development, since it has had in place since 1992 its *Société québécoise de développement de la main-oeuvre* (SQDM).<sup>31</sup> This agency, created by the Quebec Liberal government, has the support not only of the present PQ government but also of organized labour and business. Among its goals is control over unemployment insurance. At the moment, the SQDM is a shell with relatively few employees, but the basic plan and framework is there, ready to be implemented. On 18 January 1996 Quebec submitted its proposed "agreement in principle." In it Quebec suggested taking over not only delivery of unemployment insurance and the five active measures but also any other program in other federal departments — whether it be Industry, Agriculture, or Fisheries — that looked like an active employment measure. It also demanded a federal moratorium on all job creation spending, and that the federal transfer of resources be in the form of tax points rather than cash. The federal government did not embrace the Quebec

position, either then or in the 30 May proposals. The federal government, in seeking to negotiate an agreement with any given province, has resisted "agreements in principle." Rather, it has sought to obtain agreement on a fairly detailed proposal, complete with specific sectoral agreements, before formally committing itself. Ottawa, however, has not ruled out a willingness to negotiate on most of the issues raised by Quebec, but is trying to do so on the basis of substantive and specific proposals rather than ideology.

A number of other provinces have also framed their demands in terms that are not all that different from those used by Quebec, though such proposals may lack the infrastructure that will allow them to absorb easily the new responsibilities for labour-market development, at least as visualized by the federal government. The position of the provinces, other than Quebec, is outlined in the 1995 report to the premiers from the Ministerial Council on Social Policy Reform and Renewal. This report recommended that responsibilities within the federation be clarified and realigned and that commensurate resources be transferred from Ottawa to the provinces; that joint federal-provincial responsibilities be minimized where this would improve the effectiveness of programs; and that use of the federal spending power should not "allow the federal government to unilaterally dictate program design."<sup>32</sup> Composed of provincial and territorial ministers in sectors encompassed by the social policy field, including education, social services and housing, the Ministerial Council reflects most of the thinking of provincial governments on labour-market development. It also reflects some of the intragovernmental diversity at the provincial level — such as between those ministers responsible for community colleges and social services. In general the report pointed to a strong federal role in the provision of income support and a strong provincial role in service delivery.<sup>33</sup> With respect to labour-market programming it stated specifically that "the federal government should not implement its plan for training vouchers, skills loans or grants without the agreement of the provinces," and that "federal and provincial governments clearly [should] define and delineate their respective roles and responsibilities for labour market programming, including apprenticeship and institutional training, adjustment programs, adult basic education and literacy, vocational rehabilitation for disabled persons, employment enhancement, and labour market services."<sup>34</sup> It also recommended that the "Premiers approach the Prime Minister to discuss Unemployment Insurance reform," including the matters of transitional arrangements, "the integration of the income support provisions of the UI program with provincial income support programs, as well as the active support measures delivered by both orders of government."<sup>35</sup> At the same time, the report also struck a slightly diffident note, expressing concern that "for some Provinces, the loss of federal funding for training will reduce the ability to undertake effective post-secondary planning and support infrastructure."<sup>36</sup>

As well, the report did not rule out joint delivery or management in a number of areas.

The federal proposals submitted to the provinces would appear to meet many if not most of the basic demands outlined by the provinces in their 1995 ministerial report. In crafting its proposals, however, the federal government assumed that their offer would likely exceed either the wishes or the administrative capacity of a number of provinces. In essence, Ottawa was proposing for the labour-market field something that J.S. Dupré *et al.* had recommended over 20 years ago, namely the RCMP solution: the larger, richer provinces and Quebec would likely opt to deliver all services themselves, while smaller provinces, or any others so inclined, would see HRDC continue to provide services in this area and perhaps even contract with HRDC to deliver provincial services, much in the way that the federal RCMP contracts with eight of the ten provinces for policing outside metropolitan areas.<sup>37</sup> One suspects that 20 years ago, had the RCMP model been put to the provinces by Ottawa, we may well have seen several of them take up the offer. Over the intervening two decades, however, provinces have matured, particularly so in the case of some of the Maritime provinces. And this fact may explain in part the rather surprising provincial response.

In terms of their response to the federal proposals, provinces can be grouped into three categories. First, the highly decentralized: these provinces wish to take up all that Ottawa has to offer and more. It includes Quebec, Alberta, New Brunswick, and, much to the shock of many in HRDC, PEI. Second, the modified status quo: here, the HRDC infrastructure within the province would remain largely intact but provinces would have much greater control over program design and client selection. The provinces in this category include Newfoundland, Saskatchewan, and Nova Scotia. The last was initially in the decentralized camp, but, at the time of writing, was willing to entertain a hybrid between decentralization and modified status quo. The third category can be described, for want of a better term, as the "laggards"; British Columbia, Manitoba, and Ontario fit here. Essentially these provinces have yet, in the eyes of HRDC, to make a serious response to the federal government's offer. In Ontario's case, negotiations appear to be stuck on the issue of "fair share." Ontario is demanding a share of the "active measures" money based on the Ontario proportion of EI claimants, approximately 34 percent; Ottawa in turn is offering a share based on actual monies spent on active measures in Ontario, roughly 31 percent. The gap is not huge but, as of September 1996, is sufficient to keep talks from proceeding further.

Within these categories there are important differences. For example, while all the provinces in the decentralized category are insisting on full provincial control over delivery and the like, provinces like Quebec and New Brunswick envision an important role for government in delivering services and programs,

while Alberta on the other hand is committed to putting as many of these activities as possible into the hands of the private sector. This points to the potential for considerable fragmentation in labour-market strategies.

Negotiations with the provinces over the labour-market issue had been underway for some time prior to the 30 May proposals. Provinces like Quebec and Alberta have been demanding that they take over all labour-market related activities, including unemployment insurance. Alberta has also expressed dissatisfaction with the experiments in co-location, arguing that there were no evident cost savings, one of its primary objectives in agreeing to participate in the experiments. In part the absence of savings relate to the inability of federal and provincial information systems to communicate and share information. While a front-end service employee could access all three or four separate federal and provincial systems there was no capacity to link client information together from these systems into a single file. Instead, Alberta has indicated that it wishes to have all federal and provincial delivery responsibilities, including EI, turned over to a provincially owned Crown corporation or special operating agency. It has rejected the idea of a joint federal-provincial Crown corporation.

Outside Quebec, the province playing by far the most significant role in the negotiations has been New Brunswick, for two reasons. First, its proposals represent to some degree a philosophical difference with Ottawa and puts to the test Ottawa's commitment to local community-centred delivery. New Brunswick, in asking to take over all five active measures, while not rejecting local delivery, brings a rather more centrally directed economic development perspective to labour-market development. It has also demanded control over those programs that Ottawa has placed under the heading of "pan-Canadian," such as training for youth and disabled workers; and New Brunswick would like to see an integrated EI and provincial social assistance payment system. As a province with an above average proportion of its labour force residing in rural areas and working in marginal occupations, New Brunswick sees little benefit in launching community-based programs that would keep people in rural regions rather than having them shift to urban centres. There is perhaps some irony that a provincial government is promoting measures stressing labour mobility while to a degree the opposite appears to be true of the federal government. Premier Frank McKenna, who has taken a personal interest in the province's labour-market development strategy, would like to see an agreement with as few details as possible, and is willing to use his influence with the prime minister to achieve his objective. It also appears that Quebec may be using New Brunswick as a kind of stalking horse. If New Brunswick succeeds in obtaining a deal largely on its own terms, this would benefit Quebec insofar as its proposals on the five active measures are also quite different from what Ottawa has in mind.

The New Brunswick proposal has also had a definite influence on the negotiating stance of other provinces. For example, both Nova Scotia and PEI, while in the beginning seemingly happy to be on the road to joint delivery with Ottawa, later reversed positions and began following New Brunswick's lead, demanding to take over everything on offer, including the FTEs associated with screening and employment counselling. Nova Scotia, for example, demanded that HRDC open its books on its operations in that province so that provincial government accountants could ascertain the costs of taking over the delivery functions in question, and could therefore better determine how much to demand from Ottawa by way of compensation. During the summer of 1996 Nova Scotia began backtracking from the decentralist position, and as of October 1996 was willing to see more of HRDC's delivery infrastructure remain in place but with greater provincial input into programming. PEI, however, remains committed to a full takeover of the five active measures and associated delivery structures.

Negotiations between New Brunswick and Ottawa are sufficiently advanced that an agreement could be signed virtually at any time. Former HRDC Minister Young was reluctant to do so, however, fearing that any deal signed would have been construed as a sweetheart deal between him, as the federal minister from New Brunswick, and the premier. His preference was to have a deal first with Alberta. Symbolically such a first agreement would have been very potent. Agreements with most if not all Atlantic provinces and possibly Saskatchewan could then have followed quickly. And, of course, there is the biggest prize of all, an agreement with Quebec. It remains to be seen whether the new HRDC minister, Pierre Pettigrew, will feel the same constraints in not having a first deal with New Brunswick. If not, this would provide the new minister with more flexibility and, ultimately, ease the way to an agreement with Quebec.

In brief, HRDC, to its own surprise, faces a far more restricted future in terms of service delivery and presence in the regions than it had anticipated prior to launching its proposals. While the original aim of HRDC might have been "deconcentration" of its own activities rather than genuine full-scale decentralization,<sup>38</sup> the proposals have taken on a dynamic of their own, with several provinces wishing to take up the full offer as well as making other demands, leading to a degree of decentralization far greater than what might have been predicted.

## ANALYSIS

While Ottawa and at least some of the provinces are getting close to striking a deal, much work still needs to be done. Neither level of government really has

a firm grasp of provincial capacities for taking over the various labour-market development functions, in part because these functions at the provincial level have been fragmented across a number of departments, including advanced education and social services. Nonetheless, even provinces such as PEI appear to be quite serious in developing their administrative capacity to take over operations and associated FTEs from HRDC. Ottawa, in turn, has indicated that provinces need not define their labour-market programs in precisely the same manner as outlined under the five active measures; Ottawa is quite willing to accept existing provincial programs if they show a reasonable approximation of Ottawa's preferences.

HRDC, however, may still need to be more flexible in defining the conditions attached to transferring EI monies to the provinces, and to be more straightforward and transparent in calculating the proportion of FTEs associated with labour-market development functions that would need to be turned over to the provinces. In both cases, however, HRDC may have difficulty. As noted earlier, the accountability provisions attached to the EI fund impose constraints; within the service delivery and corporate services branches of HRDC there will be considerable, and understandable, consternation over the department being disemboweled through the wholesale transfer of units to the provinces. Furthermore, much of the new service delivery network of HRDC has been premised on a philosophy that stresses community involvement in delivering the five active measures. Thus, many HRDC staff in the service delivery and corporate services infrastructure have a strong interest in seeing the present framework, and their role within it, maintained. There is also a constituency outside HRDC itself that would like to see the present delivery system maintained — namely MPs, and particularly government MPs including many ministers.

It should be stressed that the main source of support behind the 30 May proposal was not former HRDC Minister Young, but rather Ministers Dion and Massé. They see the proposal as critical in building the Quebec consensus. Young, during his nine-month tenure at HRDC, had allowed the proposal to be developed and the negotiations to unfold but, despite his reputation for decisiveness, had done little to indicate his own leanings. One suspects that the new minister, Pettigrew, shares the commitment of Dion and Massé to meet the expectations of the Quebec consensus. Ultimately it will be Cabinet and, especially, the prime minister, who will decide whether the negotiated agreements are acceptable.

For purposes of caucus management the federal government has created a committee of five government MPs, chaired by Bob Nault, a Liberal MP from northern Ontario, that has been fully briefed on, and indeed actively involved in, the development of the 30 May proposals. A small group of ministers were also brought in to review the proposals. The five member committee of MPs



was tasked with helping to ease the acceptance of the proposal by the government caucus at its August meeting. The MPs have many fears. Several MPs have legitimate concerns about loss of federal visibility and what this might portend for other areas, such as the government's overall capacity to manage a national labour-market strategy and, for that matter, the Canadian economic union. More MPs and ministers are concerned with their loss of perceived influence with respect to job creation programs and the like. Here, however, is where the Transitional Jobs Fund comes into play. It would be unrealistic to pretend that this fund, which is to be run through the regional development agencies with peak spending to occur in a likely election year, is little more than a side payment for MPs, as compensation for losing influence with respect to employment creation programs traditionally run through HRDC and its predecessor, CEIC.

The provinces, in turn, also have their internal dynamics and conflicts. They will have to grapple with and implement the concept of labour-market development, something with which they have only limited or outdated experience. In some respects the provinces remind one of the proverbial automobile chasing canine who, upon finally catching a vehicle, has no idea what to do with it. It is not only that most provinces presently lack the administrative and policy infrastructure — neither social services nor education departments are really equipped to deal with labour-market analysis and development issues or delivery — but they also face internal competition among agencies over which agency will take the lead responsibility. It will be interesting to see, for example, whether in Ontario the educational bureaucracy will be able to reassert its previous influence and direct most of the new resources into the community college system, as distinct from directing it to private sector training providers. And Ontario, which is currently engaged in a complicated downsizing exercise, may be reluctant to accept HRDC employees and the five active measures, both on ideological grounds (e.g., are these programs really necessary?) and in light of the complex set of rules on downsizing negotiated with its public sector unions.

Finally, both levels of government will need to confront the need for close coordination of labour-market information, both on individual clients and on the assessment of labour-market conditions and needs. The provision of labour-market information is one of the main functions of the National Employment Service and is one that HRDC intends to retain, arguing that this area is clearly one that crosses provincial boundaries. Unfortunately, it is also an area where HRDC does not have a strong record.<sup>39</sup> Essentially, its labour-market information systems, never in good shape to begin with, have been allowed to atrophy in recent years, HRDC having been preoccupied with the amalgamation, social security reform, and the reengineering of the EI and ISP information and client processing systems. The slotting of clients into training programs

has often been done on the basis of inaccurate or outdated information, leading to the training of people for jobs that do not exist. Many employers simply ignore or by-pass the HRDC job bank (or labour exchange); private sector firms, in some instances with HRDC financial support, have done much better in matching job seekers with potential employers. Yet with the provinces potentially taking over the screening, counselling, and training functions the need for well-developed labour-market information systems, and the attendant need to have these systems mesh with provincial systems, becomes much greater.<sup>40</sup>

On the face of it the complexities in the information systems area — and they include not only those related to labour market information but also to the need to link and cross reference EI claimants with provincial social assistance recipients — represent but another hurdle blocking the way to successful federal-provincial negotiations. Yet they can also be seen as an opportunity to apply at least some of the recent lessons in alternative service delivery. One possibility is the creation of a single federal-provincial Crown corporation that would be responsible for packaging and delivering labour-market information for both individual clients (i.e., the local and national job banks) and service providers (i.e., those responsible for screening and counselling). In its 30 May proposals HRDC indicated that it “welcomed input from the provinces and territories in maintaining and improving these services.”<sup>41</sup> Having provinces take a direct stake in a jointly owned and managed facility would be the most meaningful way to ensure input from the provinces.

A further possibility might be a facility in which the private sector has its own stake. If packaged and marketed correctly labour-market information can be of enormous value to users on both sides of the labour-market exchange, a saleable commodity, in other words, which could generate considerable cash flow. At the same time, the development of the systems to produce and distribute this kind of information will require a substantial infusion of capital, particularly if the responsibilities of such a facility are to include individual client case management linking provincial and federal information systems. Building functions such as these into a new system, taking into account client security and privacy considerations, will represent a huge undertaking; and the capital to invest in such an enterprise is something that cash strapped governments do not have. The previous HRDC minister, Doug Young, in his preceding portfolio, Transport, presided over the dramatic transformation of that department, changing it from a large operational entity with 19,000 FTEs to a streamlined policy and regulatory portfolio which will have only about 3,500 FTEs by the year 2000. Initially, as HRDC minister, he cited his experience with the commercialization of the air navigation system<sup>42</sup> as a possible solution to the problem of transferring responsibilities and FTEs from HRDC to other entities, governmental or otherwise. This option was never seriously

pursued within HRDC during Young's tenure, but that is not to say that it will not receive more serious attention in the future when officials at both levels of government get closer to dealing with the mechanics of the transfer issue.

The bottom line for the federal government may well be to allow provincial control over the five active measures, with federal funding and only limited conditions. Ottawa would want to see fair treatment for those HRDC employees transferred to provincial bureaucracies, would retain its role in delivering EI insurance and ISP benefits to individuals, and would maintain its role in the provision of labour-market information. Ottawa's essential interests continue to revolve around protecting and enhancing labour mobility, retaining primary responsibility for labour-market information and the labour-market exchange, and retaining a capacity to respond to sectoral and national labour-market development issues and crises. It has, however, indicated that there may well be a role for provinces in the delivery of EI benefits (other than the five active measures). The provinces have also been pressing strongly the view that sectoral programs such as those targeted towards unemployed youth should be turned over to the provinces. In short, in the final outcome, that which many in HRDC consider to be Ottawa's core role in this policy field may well be compromised. Within Cabinet Dion and Massé, and very likely Pettigrew, will press hard for a deal that meets the conditions of the Quebec consensus, even if it entails a fair bit of turmoil within HRDC and possibly the fragmentation of both client services and nationally-oriented labour-market strategies. Ultimately it will be the prime minister, in the face of both caucus pressure and the commitment to make good on the "Verdun" proposals, who will decide whether the trade-offs are acceptable.

In all of this, there has been surprisingly little public debate about the trade-offs that are being made and about what the future role of the federal government should be in the labour-market development area. The changes, certainly on the federal side, appear to be driven not so much by a considered assessment of what Canada needs by way of labour-market policy but more by the exigencies of the Quebec agenda, and of cost reduction and deficit reduction as argued by the Department of Finance. Government MPs, to the extent that they are concerned over a diminished federal role, are interested primarily in protecting EI benefits and the like for constituents. While there may be considerable doubt about the general efficacy of training instruments deployed by governments here and abroad,<sup>43</sup> a critical observer could be forgiven for arguing that federal and provincial governments have abandoned the notion that human capital development enhances economic competitiveness in favour of a *de facto* low-wage, low-skill approach to competitiveness.

On the other hand, it has been argued that even if the federal government retains control over the labour-market instruments it now has, its capacity to engage in a broad labour-market strategy is still limited, that in fact it might

be better to have the provinces take the lead. Tom Courchene, in a recent and well-publicized paper for the Ontario government, has more or less argued this by proposing "A Convention on the Canadian Economic and Social Systems" (ACCESS) in which the provinces would commit themselves to "mutual recognition of skills accreditation and certification so that training becomes fully mobile across provincial boundaries."<sup>44</sup> Such a commitment would extend in more detailed fashion the mutual recognition provisions of the Agreement on Internal Trade struck in 1994. Courchene's hope is that four or five provinces will begin the process of designing and implementing such an agreement and that "contagion" will bring the other provinces along, citing the experiences in Australia as precedent.<sup>45</sup> If the current negotiations over labour-market training are any indication, however, Courchene's hope may well be misplaced.

Current federal-provincial negotiations are essentially bilateral and follow a classic pattern: provinces discuss the federal proposals with each other but only in order to discover what offers have been made to other governments so that they too can try to extract the same or better in their own negotiations with Ottawa. Up to the time of Young's departure as HRDC minister on 4 October, there had been little indication of interprovincial discussions on mutual recognition of skills credentials, interprovincial mobility of labour or enhancement of the social union. If anything, the situation has gone in the opposite direction, with British Columbia threatening to withdraw from the 1994 Agreement on Internal Trade because of New Brunswick's alleged poaching of United Parcel Service telecentre jobs from British Columbia. At the Premiers' Meeting in August the Ontario government did try to put the Courchene proposal on the agenda, but most premiers actively distanced themselves from it and it never reached the discussion stage.

To be sure, the federal government, in offering to turn the five measures over to the provinces, had not set interprovincial cooperation as a condition, sensing that this would entail a multilateral bargaining strategy likely to lead to stalemate. Rather, Ottawa's hopes have resided more in meetings originally scheduled later in the fall between Young and the Council of Provincial Social Service Ministers. The new HRDC minister may need some time to get up to speed with his new responsibilities, but nonetheless, federal leadership will likely remain crucial in promoting the social and economic union and an appropriate level of provincial commitment. But, it should be emphasized, so far Ottawa has dropped broad hints that, in addition to the five measures, there is now under the new EI legislation more flexibility in allowing provinces to become directly involved in the delivery of the EI program as a whole. Thus, many of the conditions conducive to the provinces having direct responsibilities and being able to show initiative are in place. In many respects the onus resides with the provinces to show that they can play an active role in setting and policing national standards.

## OUTCOMES?

What are the prospects for achieving successful agreements? And what are the prospects of any such agreements providing not only decentralization of program delivery but also the coordination of information sharing and overall policies? Quebec has set the stage for the whole debate, and by far the most intriguing question is whether Ottawa can strike a deal with that province. There is division within the Quebec government. Quebec's minister of employment, Louise Harel, is not keen on the federal proposals. Premier Lucien Bouchard, however, has stated that the 30 May announcement is a useful first step, thereby appearing to indicate a willingness to negotiate. Important actors in the "Quebec consensus" such as the Conseil du Patronat have indicated that the federal proposals meet with their approval, and reports on the proposals in the Quebec media, while mixed, are far from uniformly negative. In looking at the elements of a possible agreement one senses that there might be enough there for both sides to claim victory. For Bouchard it will represent an opportunity to implement fully Quebec's vision of labour-market development centred around the SQDM. To reject the proposals would also run against important elements of the Quebec consensus. At the same time, acceptance represents a chance for Bouchard to demonstrate goodwill in welcoming federal public servants now based in Quebec into the provincial bureaucracy. It would be an example of what things might be like on a larger scale under conditions of outright sovereignty, that is, when a good chunk of the federal bureaucracy would presumably be transferred to Quebec. For Ottawa, of course, it would be a demonstration that federalism can work, that it is possible to respond positively and concretely to Quebec demands for greater decentralization.

The other critical players are New Brunswick and Alberta. New Brunswick in particular can act as a path breaker for Quebec; that is, if Ottawa gives way to New Brunswick on some major issues, such as control over some of the pan-Canadian programs, then this would make it easier for Quebec to push further in its own negotiations. New Brunswick is also important in defining the position of the other Atlantic provinces; once it signs it would be natural for the rest to follow. Given Premier McKenna's connections with the prime minister and McKenna's eagerness to gain control over what he considers a crucial area, there is a strong likelihood of agreement. Agreements with Alberta and New Brunswick will also set the tone with respect to the coordination and linking of labour market and labour exchange systems between the two levels of government. While not unimportant, it can be argued that it is less critical that Quebec be fully plugged into the national labour market. For the other provinces, however, and particularly for the citizens and employers in those provinces, it is much more important that people be fully informed as to the opportunities and problems in the labour market within and outside their

region. The extent to which both levels of government are willing to commit themselves to a high level of coordination depends, of course, on the importance they attach to this issue relative to others in negotiating agreements.

Given the extent that the Quebec agenda and cost reductions have been driving priorities, the evidence is that the state of the national labour market is perhaps not receiving the attention it should. The experience with alternative service delivery mechanisms, however, does suggest that there are tools available for achieving reasonable levels of coordination without necessarily compromising the autonomy of the governments involved. Thus the ethos and direct experiences with the new public management may have contributed to the drive for cost reduction and the sense that administrative units can be easily shuffled around between governments. Nonetheless, arrangements such as federal-provincial partnership corporations could fulfill the need for coordination and collaboration while at the same time acting as a buffer between normally competitive governments.

In theory all provinces could avail themselves of the federal offer and take over many HRDC activities and its staff. But there is no guarantee, or even a strong likelihood, that all 12 provinces and territories will be able to work out acceptable terms with Ottawa. We could have the ironic situation, for example, of Ottawa striking a deal with Quebec but being unable to do so with Ontario, so that in the latter province most of the active employment measures, along with services such as screening and counselling, would continue to be delivered by HRDC. In any event, it appears likely that provinces such as Newfoundland and Saskatchewan will wish to retain a strong HRDC presence. The overall result would be a set of highly asymmetrical arrangements. They would be awkward but nonetheless still workable. This asymmetry could in fact also serve to protect all 12 provinces and territories. In its 30 May proposal Ottawa noted that agreements negotiated with the provinces will be for an initial three-year period. Beyond this, Ottawa "is prepared to discuss ... the appropriate duration of new agreements,"<sup>46</sup> implying, rather naively perhaps, that it can simply retrieve its programs and associated responsibilities at the end of the first three years. Realistically, for those provinces taking over HRDC responsibilities, agreements will require at least a three-year transition period, given the scale of employee and program transfers. The greater danger is that at the end of the three-year period Ottawa may decide simply to reduce its monetary commitment, as it has done with other federal-provincial programs, rather than actually retrieving its staff and programs. In other words, by having HRDC physically present while delivering programs and services in at least some of the provinces, Ottawa will be reluctant to withdraw financial support from all provinces.

While the precise configuration of federal and provincial responsibilities in labour-market training and development cannot be predicted with certainty, the final arrangements will likely be highly asymmetrical in character. Some

provinces will have complete responsibility, others will continue to rely heavily on Ottawa. Whether there will be an agreement with Quebec is also uncertain. Nonetheless, in helping to trigger the most recent round of proposals and negotiations, Quebec will have played a major role in bringing about these far reaching changes. Finally, whether this new federal-provincial regime will lead to competing and counter-productive labour-market policies or, alternatively, to a broader consensus on the Canadian economic and social union remains an open question.

## NOTES

Much of the information, and many of the insights, on which this chapter is based were obtained through interviews with officials in Human Resources Development Canada and in a number of provincial agencies. Their help is much appreciated. So too is the support, financial or otherwise, at various stages from various organizations, including: the Social Sciences and Humanities Research Council of Canada, the Canadian Centre for Management Development, the Institute of Public Administration of Canada, and the KPMG Centre for Government Foundation. Revisions to the earlier draft were helped considerably by valuable comments from Patrick Fafard and two anonymous reviewers. All errors of fact and interpretation remain the responsibility of the author.

1. Human Resources Development Canada, *News Release*, "Government of Canada Offers Provinces and Territories Responsibility for Active Employment Measures," 30 May 1996; Human Resources Development Canada, "Getting Canadians Back to Work: A Proposal to Provinces and Territories for New Partnerships in the Labour Market," 30 May 1996.
2. See Peter Aucoin, *The New Public Management: Canada in Comparative Perspective* (Montreal: Institute for Research on Public Policy, 1995).
3. Thomas J. Courchene, "A Convention on the Canadian Economic and Social Systems," working paper prepared for the Ministry of Intergovernmental Affairs, Government of Ontario, August 1996.
4. Quoted in J.S. Dupré *et al.*, *Federalism and Policy Development: The Case of Adult Occupational Training in Ontario* (Toronto: University of Toronto Press 1973), 31.
5. Rodney Haddow, "Federalism and Training Policy in Canada: Institutional Barriers to Economic Adjustment," in *New Trends in Canadian Federalism*, ed. F. Rocher and M. Smith (Peterborough, ON: Broadview, 1995), 343.
6. It should be noted that CECs have always had a role in various employment creation programs delivered by the federal government. The Canadian Jobs Strategy, however, expanded that role specifically in the training area.
7. For details, see Peter Aucoin and Herman Bakvis, "Consolidating Cabinet Portfolios: Australian Lessons for Canada," *Canadian Public Administration* 36 (1993): 392-420.

8. The largest component (85 percent in terms of full-time equivalents [FTEs] in the new HRDC) was the former Employment and Immigration Department, minus the Immigration Branch; the Welfare side of Health and Welfare was the next largest (10 percent of FTEs); all of Labour Canada and smaller components from Secretary of State and Multiculturalism and Citizenship represented the remainder.
9. Human Resources Development Canada, October 1994.
10. Canada, *Budget Plan* (Ottawa: Department of Finance, 27 February 1995), 110-11. The overall savings would be \$600 million in 1996-97 and would reach \$1.1 billion by 1997-98. Part of the savings, \$200 million, would come from a reduction in FTEs, from a base of approximately 26,000 to 21,000 over a three-year period. The remainder, close to \$900 million, was to come from programs funded out of the department's consolidated revenue fund (CRF). Federal-provincial programs that stood to be affected by the shrinkage of the CRF included the Disabled Workers Program, Older Workers Adjustment Program and what remained of the Canadian Jobs Strategy.
11. There were still several issues from the 1993 reorganization left unresolved. HRDC, for example, inherited over 700 separate offices from the founding departments, that is, not only the 450 Canada Employment Centres but also the regional and local offices and processing centres of the Income Security Programs (ISP) Branch (responsible for Old Age Security and the Canada Pension Plan) and the Labour Branch.
12. Human Resources Development Canada, *News Release*, "Services to be more Accessible to Canadians," Ottawa, 2 August 1995.
13. Edward Greenspon and Susan Delacourt, "Liberals lay groundwork for UI overhaul," *The Globe and Mail*, 10 August 1995, A1, A6.
14. This front-end service includes client needs determination, provision of information and dealing with first level inquiries. In the case of the Calgary office it includes non-contentious UI decisions. Front-end staff from the three government departments have access to each others' online information systems (though the information systems themselves are not integrated). A joint management committee structure is in place to oversee the initiative as well as working groups for program design and evaluation, systems design and maintenance and communications.
15. Canada, *A 21st Century Employment System for Canada: A Guide to the Employment Insurance Legislation* (Ottawa: Minister of Supply and Services, 1995).
16. Human Resources Development Canada, *News Release*, "Government of Canada Offers Provinces and Territories Responsibility for Active Employment Measures," 30 May 1996, Backgrounder #1, 2.
17. Bakvis, "Shrinking the House of HRIF," 154.
18. Office of the Prime Minister, *News Release*, "The Prime Minister Delivers on Referendum Commitments with Initiatives for Change," 27 November 1995.
19. Human Resources Development Canada, "Getting Canadians Back to Work," 3.



20. Ibid.
21. One of the problems in any results-based accountability framework is that it is often difficult to define results. While specific outputs, such as numbers of people trained or given grants, can be measured fairly easily, this is not true of outcomes, such as reduction in the unemployed rate or savings to the EI account. These types of outcomes are equally likely to be affected by other factors, such as the state of the local economy, local plant closings or openings etc., in addition to whatever employment creation measures are deployed. It is difficult, and unfair, to managers and/or other government agencies (federal or provincial), to hold them responsible for results when results encompass outcomes of this sort. See Herman Bakvis, "Alternative Service Delivery in Human Resources Development Canada," (Toronto: IPAC-KPMG Case Studies in Alternative Program Delivery Project, 1996).
22. There is also the related concern that provinces may try to use EI active measure funding to support "make-work" projects of limited duration in order to requalify participants for EI, a traditional and all too common practice especially in the Atlantic region. Here the federal proposals have made it clear that, excepting wage subsidies and earnings supplements, payments received under the active measures will not be EI insurable.
23. HRCCs, the replacement for the Canada Employment Centres and other HRDC offices, are divided into parent HRCCs (approximately 100) and satellite HRCCs (approximately 200). The latter lack the backroom processing and support facilities of the former. See Bakvis, "Shrinking the House of HRIF."
24. Christine Fletcher and Cliff Walsh, "Reform of Intergovernmental Relations in Australia: The Politics of Federalism and the Non-Politics of Managerialism," *Public Administration* 70 (Winter 1992): 591-616.
25. Robert Howse, "Alternative Mechanisms of Service Centred Governance," presented to the IPAC-KPMG-Roundtable on Citizen Centred Governance: The Intergovernmental Dimension," Halifax, Nova Scotia, 28 May 1996.
26. Human Resources Development Canada, "Joint HRDC/TBS Task Force Report on Alternative Service Delivery" (Ottawa: Minister of Supply and Services, 1996).
27. See Aucoin, *The New Public Management*; F. Leslie Seidle, *Rethinking the Delivery of Public Services to Citizens* (Montreal: Institute for Research on Public Policy, 1995).
28. Fletcher and Walsh, "Reform of Intergovernmental Relations in Australia."
29. "Joint HRDC/TBS Task Force Report on Alternative Service Delivery." A related model is the Non-Profit (Community) Corporation Enterprise. It can be created under Part II of the *Canada Corporations Act* and would enable the transfer of both specific powers and assets which are aligned with government goals. Recent examples include NavCan (the air navigation system), owned by users, including the airlines; and Canadian Airport Authorities, spun off from Transport Canada, owned and operated by local community organizations. A non-profit corporation can take a variety of forms but generally it provides for even greater flexibility. Rules can be put in place to ensure levels of accountability

similar to those for Crown corporations, but insofar as the federal and/or provincial governments would not be direct shareholders, it reduces the leverage governments would have over these entities.

30. Edward Greenspon, "The Battle to Keep Canada Whole," *The Globe and Mail*, 29 June 1996, A6.
31. Andrew Johnson, "Towards a Renewed Concertation in Quebec: La Société québécoise de développement de la main-oeuvre," paper presented to the annual meeting of the Canadian Political Science Association, Brock University, June 1996.
32. Ministerial Council on Social Policy Reform and Renewal, "Report to Premiers," December 1995, 10.
33. *Ibid.*, 13.
34. *Ibid.*, 15-16.
35. *Ibid.*, 16.
36. *Ibid.*, 15.
37. J.S. Dupré *et al.*, *Federalism and Policy Development*, 235.
38. See François Rocher and Christian Rouillard, "Using the Concept of Deconcentration to Overcome the Centralization/Decentralization Dichotomy: Thoughts on Recent Constitutional and Political Reform," in this volume.
39. See *Report of the Auditor General of Canada* (Ottawa: Minister of Supply and Services, November 1995), ch. 22.
40. The Canadian Labour Force Development Board, a national advisory board established by HRDC with representation from the provinces, employers, and unions, has recently called for the development of a single national labour-market information (LMI) system. Canada, as a member of the International Labour Organization, is obliged to maintain a national employment system. It should be kept in mind that LMI systems are different from the ones used for the case management of individual EI clients. In this area there are a number of intergovernmental working groups examining the issues of links between provincial social assistance information systems and the EI claimant system, the use of common client identifiers, etc. The Federal-Provincial Working Group of Social Security Information Technology Managers has been in existence for close to two decades. The 30 May initiative may well accelerate their work in this area.
41. Human Resources Development Canada, "Getting Canadians Back to Work," 3.
42. The air navigations system with 6,700 FTEs has been turned into a non-profit/non-share corporation and effectively sold by the government for \$1.5 billion to the users of the system (primarily the airlines) who are now directly responsible for operating and maintaining the system.
43. Recent OECD reports on several countries indicate that only very focused, and very expensive, programs have much effect and that the overall impact of government programs have been negligible. "Training and Jobs: What Works?" *Economist*, 6 April 1996, 19-21.

44. Thomas J. Courchene, "A Convention on the Canadian Economic and Social Systems," 20. See also Courchene, *Social Canada in the Millennium: Reform Imperatives and Restructuring Principles* (Toronto: C.D. Howe Institute, 1994).
45. *Ibid.*, 38. Australia, while perhaps demonstrating a greater capacity for interstate cooperation, may not be a very good example. It is a highly centralized federation in which the Commonwealth (federal) government holds the fiscal upper hand. Interstate cooperative agreements often occur under the realization that if the states do not work it out by themselves the Commonwealth will do it for them.
46. Human Resources Development Canada, "Getting Canadians Back to Work," 3.

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## The Canada Health and Social Transfer: Transferring Resources or Moral Authority Between Levels of Government?

*Daniel Cohn*

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*Ce chapitre présente trois thèses reliées au transfert canadien en matière de santé et de programmes sociaux (TCSPS). Premièrement, le TCSPS ne dévie pas d'une façon importante des efforts déjà entrepris par le gouvernement fédéral pour financer l'assurance des soins de santé. Aussi bien du point de vue de sa formulation que de son contenu, le TCSPS s'inspire de modèles bien établis par le gouvernement fédéral dans le domaine des politiques publiques. Cependant, le chapitre affirme que les tensions ayant trait aux relations fédérales-provinciales se sont accrues, parce que le TCSPS avance, par inadvertance, l'idée que le gouvernement fédéral va abandonner son rôle de garant des normes minimales pan-canadiennes au chapitre de la santé et du bien-être social. Finalement, l'article s'intéresse au débat entourant les normes nationales et propose que l'existence de telles normes accompagnées de sanctions financières modestes constitue un facteur institutionnel utile pour favoriser le maintien des politiques en matière de santé et du bien-être social. Rien n'empêche en théorie que de telles normes soient établies par les provinces elles-mêmes ou par les provinces en coopération avec le gouvernement fédéral. Cependant, les vues partagées des premiers ministres provinciaux vis-à-vis l'état providence ainsi que l'élection de gouvernements souverainistes au Québec font qu'une telle option est irréaliste.*

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### INTRODUCTION

The popularity of hospital and medical care insurance (medicare), its importance for the economy, the split jurisdiction, and the regionalized nature of Canadian politics mean that health care poses a unique challenge for the federal government which must balance its interest in national unity and fiscal prudence while shaping health-care policies. Additionally, medicare poses unique problems in Canadian federal-provincial relations.

Of singular importance is the fact that medicare is the most popular component of the Canadian welfare state. In fact, in a ten-country study published in 1990, Blendon *et al.* found Canadians to be the nation most satisfied with their system of health care.<sup>1</sup> Today, as governments impose stringent cost control measures, some Canadians allege that the quality of health care is beginning to suffer.<sup>2</sup> Yet there is still very little support for any change in the basic principles of medicare. Many believe that medicare is both part of Canada's national identity and part of their own individual understanding of what it means to be Canadian.<sup>3</sup> Medicare also delivers substantial distributive benefits to individual Canadian families.<sup>4</sup> Furthermore, there is evidence to indicate that universal public health insurance provides Canada with a competitive advantage over the United States in mature industries such as automotive assembly and parts manufacturing.<sup>5</sup> Aside from its impact on other sectors, health care is also a major engine of the economy itself, accounting for approximately 9 percent of Canada's gross domestic product, and medicare provides most of the money that fuels this engine.<sup>6</sup>

This brings us to the second reason why medicare is one of the central debates in federal-provincial relations: it is expensive. Federal and provincial first ministers have fretted about the costs of public health insurance ever since the idea was first seriously proposed.<sup>7</sup> Although judicial interpretations of the *British North America Act* have defined health care as a matter of provincial jurisdiction, such interpretations have also so narrowly defined the revenue raising powers of the provinces as to make it difficult for the provinces to pay for this responsibility without assistance from Ottawa. Successive federal governments have used this need for assistance to impose their wills on the provinces in the matter of medicare. Yet, fearful of sparking regional tensions, federal governments have generally acted very carefully in exercising this authority to set conditions and assess penalties in relation to this assistance.<sup>8</sup>

The problems that medicare pose for the provinces are different but equally vexing. While they are responsible for meeting the rules that govern the terms of this federal gift of funds and for actually providing health care, they have no official input into the interpretation of the rules they must meet. Further, when tough choices need to be made, it is the province, not the federal government that tends to get blamed by the public.<sup>9</sup> Consequently, the provinces have always wanted more money, as well as fewer federal government restraints on their ability to decide how this money should be spent.

It is within this context and history that we must examine the Canada Health and Social Transfer (CHST) introduced in the 1995 federal budget. This chapter will present three arguments regarding the CHST. First, the CHST is not a radical departure from previous federal efforts at financing health-care insurance. In fact, the case of the CHST supports the argument that Canadian federalism makes it difficult for governments to impose sweeping changes in

public policy over a short period of time, as well as supporting arguments about the legacy effect of current policies.<sup>10</sup> As will be seen below, in both method of formulation and content, the CHST followed patterns well-established in federal government policy making.

With respect to federal-provincial relations, the chapter will argue that the CHST inadvertently sent a message that the federal government might be willing to let the cash component of its funding to medicare dry up, thereby indicating that the federal government was losing its appetite for enforcing the principles of the *Canada Health Act* (CHA) and the interprovincial mobility rights associated with the Canada Assistance Plan (CAP). This set off something of a panic among defenders of medicare and led to federal-provincial tensions, especially insofar as provincial governments felt that the CHST broke federal promises to provide stable funding and to consult them more frequently.

Finally, I will look at the debate surrounding Canada-wide standards that the CHST helped to spawn. It is argued that even though public support is the most important factor in ensuring the continuance of health and social programs, the presence of national standards and even modest financial penalties is a useful institutional variable favouring the preservation of these programs. There is no theoretical reason why standards that are set and enforced by the provinces in cooperation with each other, and perhaps with the federal government, could not perform this role with equal effect. However, it is inconceivable that such standards could be set at present by any means other than unilateral federal action, given the fractured nature of opinion on the welfare state among provincial premiers and the regular election of sovereigntist governments in Quebec.

## CANADIAN HEALTH POLICY FROM WORLD WAR II TO 1994

The first serious proposal for a Canada-wide public health insurance scheme was put forward at the Dominion-Provincial First Ministers' Conference called at the end of the Second World War. The proposal was based on a per capita funding formula and included a cap on the size of future federal payments to ensure that, over time, the bulk of costs would be borne by the provinces. Unable to achieve a wide enough agreement among the first ministers, Prime Minister Mackenzie King let the proposal drop. In 1947 Saskatchewan's social democratic Co-operative Commonwealth Federation (CCF) government decided to introduce its own provincial hospital insurance scheme.<sup>11</sup>

By the mid-1950s the Saskatchewan plan had demonstrated considerable success. This put pressure on the provinces that had not already emulated Saskatchewan to follow suit. Sensing a political opportunity, the federal government of Louis St. Laurent introduced the *Hospital Insurance and Diagnostic Services Act* in 1957. This Act empowered the federal government to pay 50

percent of the costs incurred by those provinces which created hospital and diagnostic services insurance plans that met the following criteria:

1. universal coverage had to be provided (the plan had to be available to, though not necessarily cover, all residents of the province);
2. the plan had to be publicly run on a non-profit basis;
3. the plan had to provide complete reimbursement (no co-payments) and moneys were to be paid directly to the hospital, thereby removing the patient from the financial transaction;
4. the plan had to provide comprehensive coverage for all services listed in the act;
5. coverage had to be portable, meaning that a resident of one province had to be covered for services received in any other province, and services had to be relatively accessible (geographically) to all residents.<sup>12</sup>

From a financial perspective, the most important aspect of this Act was that, unlike the previous federal offer 12 years earlier, the scheme contained an unlimited federal commitment to pay half the cost of insured services. From the perspective of federal-provincial relations, it reconfirmed the federal spending power in areas of provincial jurisdiction. From the vantage point of health and social policy, the Act established the basic criteria that still govern health care today: "first dollar coverage," for all services deemed necessary for all permanent residents of Canada, wherever such services are required. It also reconfirmed the dominance of resource-intensive, institutionally-based curative care over less costly, clinical, and office-based care, as well as preventive health care. The Act provided an insurance scheme to pay for cures, not to pay to keep people healthy, and it prescribed that these cures be provided in the most costly institutional settings available.<sup>13</sup>

In 1966 the federal government, again spurred on by the success of Saskatchewan's social democratic government, introduced the *Medical Care Act*. The Act provided 50 percent funding for provinces that established insurance schemes to cover physicians' bills. The only real difference between the new act and the *Hospital Insurance and Diagnostic Services Act* was that the *Medical Care Act* did not prohibit direct charges to patients or the charging of fees in excess of those stipulated in provincial plans, so-called "extra-billing."<sup>14</sup> The implications for the financing of health care and health policy produced by hospital insurance were replicated with medical insurance.

At about the same time (1966) the federal government also introduced another piece of legislation that was based on its spending power, the Canada Assistance Plan (CAP). The plan offered to pay 50 percent of the costs incurred by the provinces in providing social assistance, services for the disabled and elderly, and some health benefits to the poor, elderly, and disabled (called extended health services). Three conditions governed this grant:

- no one in need could be denied services;
- there had to be an appeal mechanism for those denied help;
- benefits had to be provided to all residents of Canada.

Unlike health insurance, the CAP did not contain any specific list of services that the provinces had to fund, nor did it provide any set benefit levels as long as everyone in need was eligible for assistance. These grants were paid in cash, except in the case of Quebec where part of the grant was paid with a donation of five personal income tax points that would otherwise have gone to the federal government.<sup>15</sup>

Even while the federal government was implementing medicare in the late 1960s, it once again began to have reservations about the costs it had agreed to shoulder. In 1973, at a meeting of health ministers, the federal government produced its first proposals to limit its share of health costs.<sup>16</sup> Meanwhile, the provinces felt that the *Medical Care Act* and CAP, were far too restrictive, preventing them from both improving care and reducing costs. At about this time researchers were also reaching the conclusion that the best way to lower the cost of health care was not to treat illness but to prevent it, and that this could best be done in community settings, not hospitals. They argued that promoting health would require the creation of genuine health systems, not just government funding of institutions and practitioners. Both federal and provincial officials recognized that the adoption of this strategy would require giving provinces increased autonomy so as to tailor services to the needs of each community.<sup>17</sup>

In 1977 an attempt was made to address these concerns by means of a new federal funding formula, commonly called Established Programs Financing or EPF.<sup>18</sup> Unlike the previous arrangements, under the new formula each province received a block of funds (equal to what their payment would have been under the old system) calculated on a per capita basis, which the provinces could decide how to spend. The four general principles which had long been tied to federal funding for health insurance continued to apply. However, this time the specific list of services was replaced with the proviso that insurance schemes had to cover all medically necessary services, so as to allow room for innovation. The grant was designed to grow with gross national product rather than inflation so as to reflect Canada's ability to pay for these programs.

Further, instead of just sending cash to the provinces, Ottawa also paid part of the grant in tax points. Ottawa, in effect, donated a portion of its taxraising powers within each province to the provincial government. For EPF this donation amounted to 13.5 tax points of individual income tax and one point of corporate tax. Quebec received an additional 8.5 tax points for individual income tax in lieu of some of its cash as well. The grant was paid out in the following manner. First, the total entitlement of each province was calculated. Next, the value of each province's tax points was assessed and deducted from



this total. The remainder was then paid in the form of a cheque to each province, except Quebec — which also had its further 8.5 tax points deducted before a cheque was issued.<sup>19</sup>

With EPF the federal government essentially transferred all the risk of rising health-care costs to the provinces. If the provinces could reign in costs, they would have surpluses to redeploy. If the provinces could not limit costs, they would be forced to raise taxes and/or borrow. Unfortunately, the provinces by and large lacked the legislative, organizational, and political resources necessary to control health-care spending or to implement a community-based preventive health-care strategy.<sup>20</sup> As a result, in many cases the provinces' federal EPF and CAP-extended health-care grants soon fell short of the 50 percent level.<sup>21</sup>

One of the most serious problems encountered by the provinces was the control of physician costs. In the first instance the provinces simply tried to impose limits on increases for each item on the physician fee chart. Many physicians responded to this decline in their real incomes by working longer hours.<sup>22</sup> Others joined the minority of physicians demanding co-payments from their patients. Given that extra-billing allowed provinces to duck the issue of cost control in health care (which the provinces accepted as their sole responsibility at the initiation of EPF), concern grew that this practice would become the norm rather than the exception and lead to a deterioration of universal access to care. Consequently, pressure mounted on the federal government to respond.<sup>23</sup> The result was the *Canada Health Act* (CHA) of 1984, passed by unanimous vote in a House of Commons already thinking about the next federal election. The CHA, which replaced the two previous federal health acts, made it an offence for provinces to allow any physician participating in a provincial plan to charge an insured person a fee higher than that stipulated by the provincial plan. The penalty to be imposed on offending provinces was a dollar for dollar decrease in the cash component of their federal EPF grants.<sup>24</sup>

The CHA was passed despite some significant opposition by provincial premiers, finance ministers, and their bureaucrats. This group of opponents felt that the law limited them in dealing with health-care cost inflation and, therefore, contradicted the spirit of the EPF agreements. Many of their successors to the financial portfolios have continued to hold this view, seeing the CHA as a clear invasion of provincial jurisdiction. However, most provincial health ministers and their bureaucrats have quietly supported both bans on user fees and an extra-billing introduced in the CHA, and the penalties applicable to provinces who transgress. From an organizational standpoint the health officials see the law as a shield protecting their budgets from the penny-pinching ways of their colleagues in finance. Meanwhile, as health policy advocates, they accept that the rules are necessary to ensure equality of access to health care.<sup>25</sup> Thus, in the CHA, we can see an important shift in federal health policy making. Although the CHA was endorsed by the health policy-

making community, the CHA lacked the broad overt support that provinces had given to the EPF. As concern moved from building a health system to controlling health-care costs, an increasing reliance on unilateral action by the federal government was perhaps inevitable.

While the CHA unilaterally changed the conditions governing the financing of health care, it did not alter the definition of the services that had to be insured, since it maintained that "all medically necessary services" had to be covered. The definition of what constituted a medically necessary service is left to the provinces. However, there were two important restrictions. First, the federal government could decide that a service not being insured by a provincial plan was, in its opinion, actually necessary and could impose penalties. Second, the courts had a role to play. Perhaps the most famous intervention of the courts occurred in 1988 when British Columbia was ordered to restore full funding for all abortion services.<sup>26</sup> The ambiguity about what services are essential, and hence should be covered by provincial insurance, has never been resolved. With the provinces unable to control health costs, this issue came back to create tensions between federal and provincial governments as funding for health care underwent further downward pressure during the 1980s. Part of this pressure was due to federal efforts to restrain the national deficit and cumulative debt.

Both Liberal and Progressive Conservative federal governments have unilaterally tampered with the EPF and CAP formulas so as to reduce payments to the provinces. In 1983 and 1984 the EPF grants were capped at growth rates of 6 percent and 5 percent respectively.<sup>27</sup> From fiscal year 1986-87 to 1989-90 the EPF per capita transfers to the provinces were based on an escalator of GDP minus 2 percent. From fiscal year 1990 until the first Chrétien budget in 1994, the escalator was dropped and transfers increased only with population growth. While still in power, the Conservatives had also proposed changing the EPF escalator formula to growth of GDP minus 3 percent in 1995-96, although it was left to be carried out by their Liberal successors. In 1990-91, the Mulroney government also applied a limit on the growth of CAP payments to the wealthiest provinces (Alberta, British Columbia, and Ontario) of 5 percent per year.<sup>28</sup> The net result of federal restraint was that the percentage of provincial health-care costs covered by federal transfers continued to decline in most cases.<sup>29</sup>

For health-care interests and health advocates, so long used to seeing Ottawa as the key agent in promoting social welfare, an even more ominous trend was the reduction of federal cash transfers to the provinces. These payments were declining because, as noted above, the EPF formula stipulated that tax points were calculated first and the difference then paid out in cash. In a growing economy (such as that of the mid to late 1980s) these cash payments would necessarily decline as taxation power rose and growth of the overall transfer was limited. For such interests and advocates this was

problematic, as it is the cash component of the transfer that is subject to penalty if a province fails to abide by the conditions of the CHA. Advocates saw Ottawa's ability to enforce national standards, such as universal access, as being in decline alongside the cash component.<sup>30</sup>

As Canada approached the fiftieth anniversary of the first serious efforts to institute public health insurance on a nationwide scale there was something of a "back to the future" air about health-care policy. The federal government had managed to change successfully its funding commitment to the fixed per capita grant subject to no increase as had been proposed initially in 1945 but which the provinces had rejected. The provinces had also managed to assert successfully much of the autonomy which they had claimed in the health-care sector back in 1945. Although the federal government had managed to change funding agreements arbitrarily and yet rally public support for its role as the guardian of the principles of medicare, almost all other aspects of the design and implementation of health-care programs were now firmly in provincial hands and the result was the de-insurance of a number of health-care services across the country.<sup>31</sup>

Furthermore, the unilateral federal change in health transfers spurred many of the provinces to rectify their organizational weaknesses in health-care management and to implement the community and preventive health strategies first discussed nearly 20 years earlier. The provinces were not only establishing policy autonomy over health care at the expense of the federal government, but at the expense of health practitioners and institutions as well. Significant efforts were made in all of the provinces to squeeze savings out of the system through rationalization, tougher bargaining with physicians, and through adopting techniques pioneered in the for-profit American system.<sup>32</sup> Meanwhile as provinces trimmed costs, the share of Canada's health-care costs covered by medicare continued to decline.<sup>33</sup> It was into this environment that the CHST was introduced.

#### FROM THE YEAR OF DREAMING TO THE CHST: THE RETURN OF THE FEDERAL LIBERALS

After winning a majority in the election of October 1993, the Liberal government embarked on what I like to call its "year of dreaming." During this period the various ministers entered into reviews of the policies and operations contained in their portfolios, both from the perspective of organizational efficiency and from that of the value offered to Canadian society. Perhaps the best known exercise in this field was Human Resources Minister Lloyd Axworthy's report, *Improving Social Security in Canada*.<sup>34</sup>

The 1994 federal budget gave support to these efforts by promising not to undertake any fundamental changes until these reviews were completed. For

the EPF and CAP this meant no funding cuts for 1994-95, implementing a decrease in the EPF escalator to growth in GDP minus 3 percent (first proposed by the Conservatives) in fiscal year 1995-96, and allowing for no increase in the CAP beyond its 1994-95 levels. Interested parties were warned that the government was serious about cost restraint in health and social transfers and wanted to see a minimum of \$1.5 billion in savings in this area for FY 1996-97. In announcing these measures, Finance Minister Paul Martin declared that "the federal government believes that social security reform must be pursued as an active, cooperative effort among federal and provincial governments.... To that end, it is important to establish fiscal parameters and a predictable funding environment for reform."<sup>35</sup>

Following through on this promise, and in keeping with the spirit of the "year of dreaming," Health Minister Diane Marleau announced the creation of the National Health Forum, a blue ribbon panel of health policy analysts, academics, and practitioners, in June 1994. To demonstrate the significance that the government attached to the panel, Prime Minister Chrétien chaired its first public meeting on 20 October 1994. However, sometime between this meeting and New Year's Eve, the year of dreaming came to an end. Henceforward, the Department of Finance's objective of reducing the federal deficit would be the principal medium-term objective for the Chrétien government.

The CHST was a direct outcome of this objective of restraint and was created within the Department of Finance itself. The senior officials of other departments were only informed of the scheme about eight weeks prior to the tabling of the 1995 federal Budget.<sup>36</sup> Such a short lead time made it virtually impossible to prepare their provincial colleagues for the federal government's decision. It also effectively broke Paul Martin's earlier promises of cooperation and predictability. The net result was a collapse in federal-provincial cooperation (at least in public) in the health-care arena.<sup>37</sup>

The CHST merged the EPF and CAP into one block grant transfer program. In doing so, it also eliminated two of the rules governing the administration of social assistance programs funded by federal transfers. There is no longer a requirement that these programs be made available to all in need. Furthermore, provinces are no longer required to provide an appeal process for those denied assistance. The only requirement left from the old CAP is the prohibition against programs that discriminate against Canadians from other provinces. All of the rules that formerly governed the EPF funding for health care are still in force. As under the EPF, there are no conditions attached to the postsecondary education services funded by the grant. Finally, in the transition from two programs to one, the federal government removed approximately \$2.5 billion dollars of funding that would have otherwise been made available during the fiscal year 1996-97 and approximately \$4.5 billion in 1997-98, producing a total transfer of \$26.9 billion in 1996-97 and \$25.1 billion in 1997-98.<sup>38</sup>

In order to understand the criticisms that have been made of the CHST we must look beyond the large sum of money being withdrawn and consider how the new transfer is paid. First, the federal government sets a total size for the transfer (\$26.9 billion in 1996-97 and \$25.1 billion in 1997-98). Then, the provinces will be allotted their full tax point share as defined under the old EPF program (13.5 points of individual income tax and one corporate tax point). Next, the remaining funds will be paid out in cash according to the share that each province enjoyed of the total former separate EPF and CAP transfers. Finally, Quebec's special tax abatements are deducted from its cash transfers. Consequently, all of the reductions in federal transfers created by the CHST will come out of the already dwindling federal cash transfers to the provinces.<sup>39</sup>

#### FROM THE 1995 BUDGET TO THE PRESENT: A YEAR OF PROVINCIAL DREAMING?

The CHST does not represent a major departure from the trend of federal policy making in the health and social policy fields in either the way it was created or in its content. It follows firmly in the pattern of unilateral federal decision making concerning the size and conditions of health and social transfers that was first established by the Trudeau government's handling of the CHA, and then by the Mulroney government's handling of spending restraint. With respect to content, the CHST continues the trends established with the EPF arrangements towards reducing federal funding commitments and, in return, offering the provinces more control over the shape and delivery of services. If anything, the case of the CHST demonstrates how difficult Canada's federal structures make it for a government wishing to make a clean break with established policies. The events surrounding the creation of the CHST also point towards the general power of policy legacies as well. It is simply easier and more expedient to do more of the same than to strike out on a new course.<sup>40</sup> When the program reviews undertaken during the "year of dreaming" bogged down, attracted public criticism, or did not appear to offer the necessary savings, Ottawa reverted to its previous policy course and simply speeded up an already-established trend.

Yet the CHST proved remarkably controversial. This controversy can be traced to three issues beyond the absolute size of the cuts involved, dramatic as they were. First, the CHST, as initially designed, gave the appearance of perpetuating the unfairness in the shape of federal transfers that was engineered into the CAP when the Mulroney government limited annual growth in payments to Alberta, British Columbia, and Ontario. These provinces would have received considerably larger portions of the CHST pie if Ottawa had calculated each province's share of the cash fund on a straight per capita basis,

rather than basing it on their share of the previous transfers.<sup>41</sup> The federal government addressed this concern in its 1996-97 budget, at least in part, by announcing that the formula used to calculate the CHST would be altered to take greater account of population.<sup>42</sup>

Second, the way in which the CHST was introduced also created a certain degree of hostility among provincial leaders. British Columbia's Health Minister Paul Ramsey perhaps best summed up provincial feelings when he said, "we think the partnership on medicare is in serious danger of being broken."<sup>43</sup> The extent of the cuts, and the way in which they had been implemented even led some premiers to argue during the summer of 1995 that the Government of Canada had lost its moral authority to set the framework rules governing health and welfare in Canada, such as the conditions attached to the CHST. A year later, these same premiers still held this position.<sup>44</sup>

Third, and more problematic, has been the message sent inadvertently by the CHST that Ottawa might be willing to see its cash contributions to medicare gradually cease, and hence that the federal government was prepared to surrender its powers to enforce the principles of the CHA. The CHST thus created something of a panic among the media, health interests, and advocates, but also led to a new resolve among some of the provinces to test Ottawa's will in this regard. During the committee hearings on the bill necessary to implement the 1995-96 federal budget (Bill C-76), a number of health interest and advocacy groups appeared and warned that the CHST would speed up the demise of federal cash funding to the provinces and that with this would go all federal powers to impose Canada-wide health standards. Many of the presentations focused on the allegedly dire ramifications that would result if this were allowed to happen. Some analysts suggest that the unanimity of this testimony convinced Liberal members of the finance committee to press the government for a minimum floor for the cash component of the CHST.<sup>45</sup> The crescendo continued into the summer and fall of 1995 as a number of newspapers ran "can we save medicare" features and op-eds.<sup>46</sup> By June 1995 the federal government appeared to have taken such concerns to heart. Health Minister Diane Marleau promised action in the next federal budget. Meanwhile, she was telling anyone and everyone who would listen that the federal government had absolutely no intention of either letting its cash contributions to medicare slip to an inconsequential level or in letting provinces evade the principles of the CHA. The 1996-97 federal budget delivered on these promises by placing a minimum floor under the \$11 billion annual cash component of the CHST.<sup>47</sup>

Yet there was little sign of this panic among the general population. In a national survey done shortly after the release of the 1995-96 federal budget, Decima Research found Canadians unconcerned about the impact of CHST. Of the Decima sample, 38.2 percent felt the CHST would have no impact at all on the quality of health care in their communities, while 26.2 percent felt

it would cause only a minor decrease in quality. Only 21.4 percent were concerned that it would cause a major decrease in quality. Within the responses there were regional variations; respondents in the Atlantic and Prairie provinces were more pessimistic, but these variations were not particularly large.<sup>48</sup>

In spite of both the federal warnings and public lack of concern over the whole matter, the provinces continued to press the federal government. For the Parti Québécois government in Quebec and its allies in the Bloc Québécois, the CHST was just one more reason to vote Yes in the 1995 referendum. During the referendum campaign Lucien Bouchard made this point when he claimed that "the rampart against the wave of social program cuts washing across Canada is sovereignty."<sup>49</sup> Rhetoric aside, Quebec's share of the CHST pie posed a serious symbolic problem for national unity. In previous years Quebec had opted out of federal cash transfers for the EPF and CAP to a certain degree, and instead had chosen to accept additional tax room as a substitute for a part of its cash entitlements. This additional tax room is referred to as a tax abatement. What this means is that these tax points do not belong to Quebec in perpetuity as do the transferred tax points.<sup>50</sup> If the size of the cash transfer to which Quebec is entitled (either under the old transfer regime or the CHST) were ever to be smaller than the value of these additional points, Quebec would have to write a cheque to Ottawa refunding the difference. By Quebec's estimates such a situation would have ceased to be hypothetical under the initial formulation of the CHST in the year 2000.<sup>51</sup> Setting the minimum size of the cash pool at \$11 billion conveniently eliminated this problem for the foreseeable future.

For the other provinces the CHST presented a more traditional case of provincial autonomy-building. In spite of Marleau's warnings, the provinces seemed determined to test Ottawa's resolve to maintain a presence in the area of medicare and social program funding. In the summer of 1995, at the annual premiers' meeting, all but the absent Jacques Parizeau voted to condemn the federal government for its unilateral approach to the CHST. However, they were seriously divided on what to do next and, consequently, set up a series of committees to study the matter of Ottawa's appropriate role.<sup>52</sup> The report, which was returned to the premiers for adoption in December 1995, called on the federal government to surrender some of its power to define the conditions under which the CHA operates and is interpreted. It also called for national standards but rejected the status quo in which the federal government holds the unilateral power to impose solutions in health policy. Specifically, the report demanded that provincial health ministers, meeting as a national committee, have the right to decide what constitutes a necessary medical service and that the provinces have an equal say with the federal government in deciding whether a province has violated the terms of the CHA. In the area of social welfare, the report recommended a rationalization of responsibilities; it suggested that Ottawa consolidate its role in income support by taking on

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welfare, allowing this program to be integrated with its pension and unemployment insurance responsibilities. Making Ottawa alone responsible for income maintenance would allow the provinces to take over full responsibility for other social services, such as housing, where Ottawa plays a role.<sup>53</sup>

It should be recognized that the report's recommendations were not particularly innovative or totally opposed to current federal policies and long-standing practices. Much of the consultation requested by the provinces is already the norm in health-care matters. The adoption of the report's recommendations would simply have formalized the regular meetings of senior bureaucrats and ministers that are so much a part of government procedures in Canada.<sup>54</sup> In the matter of social service provision, former Human Resources Minister Doug Young is on record as supporting a division of labour roughly similar to that recommended in the report.<sup>55</sup> The provincial report on the renewal of social policy came up for debate at the first ministers' meeting held in June 1996. When speaking to reporters after the meeting, Prime Minister Chrétien appeared to reject out of hand any provincial role in either altering or interpreting the conditions of the CHA. However, he seemed more than willing to discuss other points raised in the report that would lead to a greater role for the provinces in labour-market training and the provision of other social services.

These deliberations among the provinces in response to the CHST, and the close No victory in the 1995 referendum touched off numerous debates around the whole issue of national standards, their worth, and whether or not they must be decided on and enforced by unilateral action on the part of the federal government.<sup>56</sup> The political and academic debates merged later in the summer of 1996 at the annual premiers' meeting. At this gathering the premier of Ontario Mike Harris unveiled a report penned by Queen's University economist Thomas Courchene. Courchene's paper begins with the assertion that the current system of Canada-wide standards is not sustainable. The paper then goes on to outline a new system called "ACCESS" (A Convention on the Canadian Economic and Social Systems). Courchene presents two versions of ACCESS. The first is an "interim" model that is rooted in the December 1995 provincial paper on social program renewal. The second is a more far-reaching "full" model. The full model would completely eliminate Ottawa's role in health, most areas of social policy, and in large swaths of the economy as well. Among other things it recommends that the remaining cash component of the CHST be converted into a tax point grant, provided that the provinces adopt a Canada-wide standard for health and welfare and a viable enforcement mechanism, based on expert adjudication and quasi-legal remedies.<sup>57</sup>

Although the provinces, with the exception of Quebec, agreed on their goals in the social policy renewal process, they could not agree on recommendations as to how to achieve these goals, and Premier Harris "took the Courchene report off the table" soon after releasing it.<sup>58</sup> Prime Minister Chrétien further

buried the report. He once again flatly refused to consider any formal provincial role either in the interpretation and enforcement of the conditions of the CHA, or with respect to the non-discrimination clause governing social welfare programs funded by the CHST.<sup>59</sup> Nonetheless, given the animosity felt by the premiers towards Ottawa's behaviour in health and welfare, one suspects that other proposals will follow. Thus, it is necessary to ask two questions. First, are Canada-wide standards and penalties for their violation a useful means of protecting health and welfare programs? Second, can these standards be set and these penalties be enforced in any way other than through unilateral federal action?

Recent events seem to indicate that imposition of Canada-wide standards and penalties are not as important as the effects of public opinion in preserving such programs. For example, in the fall of 1994 the federal government decided that Alberta's facility fees violated the CHA prohibition on extra-billing.<sup>60</sup> A year later the federal government imposed a penalty of one dollar for each dollar of facility fees allowed. When Alberta finally capitulated in the spring of 1996, and promised to end the practice as of 1 July 1996, the fines incurred had come to a total of only \$3 million.<sup>61</sup> In the fall of 1995 Ottawa also penalized British Columbia in the amount of \$47 million in response to that province's institution of a residency requirement for welfare claimants. At the time of writing, British Columbia had not yielded, yet this resolution in the face of federal penalties would seem not to have harmed the popularity of the provincial government, which won reelection in 1996 under the new leader, Glen Clark.

Provincial public opinion differed over the appropriateness of each province's breach of federal standards, and it appears that this was the major factor considered by the governments of Alberta and British Columbia when deciding whether to comply or resist. Alberta — which was already facing a home-grown crisis over funding cuts to health care — could muster neither public support for its position nor the resolve to withstand the mounting monthly penalties.<sup>62</sup> In British Columbia, however, the government was able to characterize the affected group as "undeserving," and it was argued that British Columbia's more generous welfare payments were attracting claimants from across Canada.<sup>63</sup> The provincial government then strengthened this theme by eliminating the residency requirement for deserving migrants, specifically refugees and refugee claimants, and the province portrayed the federal government as imposing a burden on British Columbia (i.e., by requiring British Columbia to accept out-of-province welfare recipients).

Yet, dismissing the role played by standards and penalties in shaping provincial policy in too hasty a manner would ignore important aspects of the political context that allows such instruments to be an effective means of protecting health and welfare programs. Essentially, when a province decides to defy these rules they are asking their citizens to pay for the privilege of not

meeting federally-set standards. It is not the value of the standards that must be defended but the value of the violations. As a result, enforceable penalties are useful institutional factors in preserving national standards in that they tilt the terms of debate against those who would violate them. Apparently in recognition of this, Courchene includes recommendations on how to penalize offending provinces in both his ACCESS models.

When we turn to the second question of whether or not such standards and penalties have to be set and assessed by the federal government alone, the debate splits into theoretical and practical components. On the theoretical side, Ottawa could certainly loan its powers to set standards and sanction provinces to a joint federal-provincial, or even a solely provincial agency. However, critics see two practical problems that stand in the way of such a transfer of authority to an interprovincial or joint federal-provincial agency. First, the disagreements among the provincial governments in the areas of health and welfare policy are as severe as in any other policy area where interprovincial cooperation has been attempted and failed to produce meaningful change. Writing of this failure, neoconservative columnist Andrew Coyne even suggested that the Chrétien Liberals could successfully stand for reelection on a platform of recentralization!<sup>64</sup> Second, there is the issue of Quebec. Roger Gibbins brings this matters into focus when he observes that

If Quebec nationalists, ... chaff now under national standards set by a government in which Quebec politicians are the primary actors, then why should they be any happier with national standards largely set by the nine English Canadian premiers. National standards set by interprovincial agreement would constitute a loss of control for Quebec unless we assume such standards would be so innocuous as to be meaningless.<sup>65</sup>

Simply put, sovereignists have no interest in such agreements and non-sovereignists risk, by supporting such agreements, being perceived as having undermined Quebec's autonomy.

It would appear that if one finds merit in Canada-wide standards then one must accept that these standards and their enforcement for the time being must rest solely in federal hands. Even if there were no behavioural barriers to the creation of an interprovincial agreement on Canada-wide standards for health and social welfare, the institutional bias in opposition to change within Canadian federalism would still have to be surmounted. The existing Canadian mixture of taxation powers and policy competence means that any agreement would have to be acceptable to Ottawa since the provinces would still need Ottawa's money (in the form of annual grants or a new permanent transfer of tax points) even if they could escape federal stewardship. Negotiating such a pact could take years. It should be remembered that even though there was broad agreement among federal and provincial ministers over what was needed to update federal transfer policies in the 1970s, it still took three years to negotiate the EPF deal. While it is never wise to too readily predict

the future, the provincial attempts at reconciling further decentralization with the continuance of national standards, something they have been pursuing since the creation of the CHST, will likely amount to nothing more than their own year or so of dreaming.

## CONCLUSION

This chapter began with a discussion of why health care has always been a problem for federal-provincial relations. It seems safe to say that the CHST has done nothing to improve matters, and merely continues the long-standing federal policy under a new name. If anything, the CHST proves how strong the legacy of existing policies truly are and how hard it is to strike out on a new course when dealing with Canada's system of federal-provincial relations and transfers. For the provinces, the CHST was essentially a breach of faith, given the promises made by the federal government to act in a cooperative manner. This introduced a new level of tension into what is always a difficult policy area. Such feelings of betrayal helped to promote the study of ways in which the provinces could go it alone in the health-care field. In looking to the future, this chapter suggests that there are both behavioural and institutional factors that would make it difficult to replace federally-set standards and penalties with ones set by interprovincial action. Given the buttressing that meaningful standards and penalties can give to the preservation of health and social programs, the deterioration of such standards is viewed as detrimental to these same programs. The federal government might have lost its moral authority to set standards for health and welfare, but the provinces have not yet demonstrated the necessary ability to cooperate that would allow them to inherit this authority and exercise it in an effective way.

## NOTES

Data used in this project from the Decima Quarterly Survey was collected by Decima Research and supplied by the Centre for the Study of Public Opinion (CSPO) at Queen's University. Data used in this project from the Gallup Poll was collected by Gallup Canada and supplied by the Canadian Institute for Public Opinion and the Social Science Data Archive of Carleton University. All conclusions and opinions which are put forward in this paper are those of the author alone and should not be seen as representing the opinions of these organizations. The author wishes to thank Patrick Fafard, two anonymous reviewers, and Professor Miriam Smith of Carleton University for their very useful advice and criticisms, as well as Bob Burge of the CSPO at Queen's University and Kathryn T. Mowat of the Carleton University Data Archive. Partial funding for this paper was provided by the Social Science and Humanities Research Council of Canada (Doctoral Fellowship #752951327).

1. Robert J. Blendon *et al.*, "Satisfaction with Health Systems in Ten Nations," *Health Affairs* 9 (Summer 1990):187-92.
2. *The Globe & Mail*, 7 September 1996, D1.
3. Patrick Sullivan, "Focus Groups Confirm that MDs, Public Differ on Role of Private Health Care," *Canadian Medical Association Journal* 154 (15 April 1996): 1247.
4. A study based on data gathered in 1986 indicates that, on average, out-of-pocket spending on health care (including insurance premiums) amounts to 5.6 percent of each American family's consumption of goods and services. The comparable figure for Canada is only 2.2 percent (or less than half). As the age of the oldest member of the family increases so does the discrepancy in spending. For families with members over 75 years of age the amount of consumption devoted to out-of-pocket spending on health care is 17.1 percent in the U.S. and only 3.2 percent in Canada. Barbara Boyle Torrey and Eva Jacobs, "More Than Loose Change: Household Health Spending in the United States and Canada," *Health Affairs* 12 (Spring 1993):126-31.
5. *The Globe & Mail*, 20 September 1993, B2.
6. House of Commons, Standing Committee on Finance, Presentation by Laurent Isabelle, Canadian Hospital Association, (Ottawa, 4 May 1995). Health-care spending is down slightly from the peak of 10 percent of GDP, reached in the early 1990s. Slightly more than 70 percent of this funding is provided by medicare, the rest is paid for by either private insurance or out-of-pocket spending by Canadians. Organization for Economic Cooperation and Development (OECD), *Health System Facts and Trends: 1960-1991*, I, (Paris: OECD, 1993), 108, 252; OECD, *National Accounts Main Aggregates, Volume I: 1960-1994*, (Paris: OECD, 1996), 30-31.
7. Daniel Cohn, *Reforming Health Care in Canada and Sweden: 1975-1990* (Stockholm: University of Stockholm International Graduate School, 1992), 94-95, 98-100; Morris L. Barer, Jonathan Lomas and Claudia Sanmartin, "Re-Minding our Ps and Qs: Medical Cost Control in Canada," *Health Affairs* 15: (1996): 216-34; Confidential interview with a retired federal civil servant, 11 July 1996.
8. For example, when the 1984 *Canada Health Act* imposed dollar-for-dollar penalties on provinces that allowed user-fees, co-payments, extra-billing, etc. for insured services, a clause in the Act allowed provinces up to three years to eliminate these charges and to reclaim any lost money without penalty. See S. Heiber and R. Deber, "Banning Extra Billing: Just What the Doctor Didn't Order," *Canadian Public Policy* 13 (1987): 68. More recently, when the federal government decided that the practice of charging "facility fees" in Alberta was contrary to the Act, warnings were given to the province. *The Globe & Mail*, 19 May 1994, A1; *The Globe & Mail*, 20 September 1995, A3.
9. Miriam Smith, "Retrenching the Sacred Trust: Medicare and Canadian Federalism," in *New Trends in Canadian Federalism*, ed. Francois Rocher and Miriam Smith (Peterborough: Broadview Press, 1995), 333.
10. Keith G. Banting, *The Welfare State and Canadian Federalism*, 2d ed. (Montreal and Kingston: McGill-Queen's University Press, 1987), 213; Kenneth McRoberts,

- "Federal Structures and the Policy Process," in *Governing Canada: Institutions and Public Policy*, ed. Michael M. Atkinson (Toronto: Harcourt Brace, 1993); Paul Pierson, *Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment* (Cambridge: Cambridge University Press), 2.
11. Donald Swartz, "The Politics of Reform: Conflict and Accommodation in Canadian Health Policy," in *The Canadian State: Political Economy and Political Power*, ed. Leo Panitch (Toronto: University of Toronto Press, 1977), 321-22; Malcom G. Taylor, *Insuring National Health Care: The Canadian Experience* (Chapel Hill: University of North Carolina Press, 1990), 57-58.
  12. Morris Barer, Robert G. Evans and Roberta J. Labelle, "Fee Controls as Cost Control: Tales from the Frozen North," *Milbank Quarterly Review* 66 (1988): 15-16; Michael Rachlis and Carol Kushner, *Second Opinion: What is Wrong with Canada's Health Care System and How to Fix it* (Toronto: Harper and Collins, 1989), 15-16.
  13. Eventually provincial payments to hospitals on a fee-for-service basis were replaced with annual global budgets in all provinces. See Barer *et al.*, "Fee Controls as Cost Control," 10.
  14. The federal legislation was following the practice established in Saskatchewan in this matter. When doctors struck in protest over the introduction of public insurance for physician bills in Saskatchewan, this was the compromise that helped end the strike. The ability to bill patients directly and/or charge more than what the provincial insurance scheme was willing to pay was seen as a guarantee of professional autonomy by physicians, though few took up the option. See Heiber and Deber, "Banning Extra-Billing in Canada," 64-65.
  15. Odette Madore, *The Canada Health and Social Transfer: Operation and Possible Repercussions on the Health Care Sector*, Current Issue Review 95-2E, Library of Parliament Research Branch (Ottawa: Minister of Supply and Services, 1995), 5.
  16. "Health Care Reorganization Becomes Vehicle for Federal-Provincial Game," *Canadian Medical Association Journal*, 108, 10 (19 May 1973):1311-1212.
  17. *A New Perspective on the Health of Canadians* (Ottawa: Minister of Supply and Services, 1974); Robert G. Evans, "A Retrospective on the New Perspective," *Journal of Health Politics, Policy and Law*, 7, 2 (1982):325-344, 330; Rachlis and Kushner 27-28; *Canadian Medical Association Journal* 108:1311-312.
  18. The proper name of which is the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*. As the name implies, it was also decided to include the federal funding to provincial post-secondary education in this grant. With respect to funding proportions, 70 percent of the grant was based on the former health transfer, and 30 percent was based on the former education transfer.
  19. Madore, *The Canada Health and Social Transfer*, 2-5.
  20. Cohn, *Reforming Health Care*, 75-80, 108-128.

21. Health Canada, *Canada Health Act Annual Reports* and worldwide web site, <http://www.hwc.ca/>; Statistics Canada, Cansim Data Base: Provincial Government, Revenue and Expenditures.
22. Barer *et al.*, "Fee Controls as Cost Control."
23. Hieber and Deber, "Banning Extra-Billing in Canada," 64-65
24. Smith, "Retrenching the Sacred Trust," 329-30; *Canada Health Act Annual Report 1993-1994* (Ottawa: Minister of Supply and Services, 1995), 4-7.
25. Confidential interview with a former senior federal civil servant, 11 July 1996.
26. *Alberta-Western Report*, 21 March 1988, 11-12.
27. Madore, *The Canada Health and Social Transfer*, 2.
28. *Ibid.*, 3-5.
29. Health Canada, *Canada Health Act Annual Reports* and worldwide web site, <http://www.hwc.ca/>; Statistics Canada, Cansim Data Base: Provincial Government, Revenue and Expenditures.
30. Smith, "Retrenching the Sacred Trust," 332; George K. Bryce, "Medicare on the Ropes," *Canadian Journal of Public Health* 82 (1991): 75-76.
31. Smith, "Retrenching the Sacred Trust," 333.
32. *The Globe & Mail*, 4 March 1996; Ontario Ministry of Health, *Annual Report* (Toronto: Queen's Printer for Ontario, 1992), 17-18; Barer *et al.*, "Fee Controls as Cost Control." One example of these techniques adopted from the United States are "clinical path guidelines," which set standardized routines for diagnosing and treating patients. See, for example, David E. Johnstone, *Guidelines for the Management of Heart Failure* (Toronto: Queen's Printer for Ontario, 1996).
33. OECD, *Health System Facts and Trends*, 108, 252; OECD, *National Accounts Main Aggregates, Volume I: 1960-1994*.
34. Human Resources Development Canada, *Improving Social Security in Canada* (Ottawa: Minister of Supply and Services, 1994).
35. Department of Finance, *The Budget Plan, 1994* (Ottawa: Minister of Supply and Services, 1994), 38.
36. Allan M. Maslove, "The Canada Health and Social Transfer: Forcing Issues," in *How Ottawa Spends, 1996-97: Life Under the Knife*, ed. Gene Swimmer (Ottawa: Carleton University Press, 1996), 284; Confidential interview with a former senior federal civil servant, 11 July 1996.
37. Confidential interview with a former senior federal civil servant, 11 July 1996.
38. Department of Finance, *The Budget Plan, 1995* (Ottawa: Minister of Supply and Services, 1995), 51-54.
39. Michael Mendelson, *Looking for Mr. Good-Transfer: A Guide to the CHST Negotiations* (Ottawa: Caledon Institute of Social Policy, 1995); Madore, *The Canada Health and Social Transfer*.

40. See, for example, Banting, *The Welfare State and Canadian Federalism*, 213; McRoberts, "Federal Structures and the Policy Process"; Pierson, *Dismantling the Welfare State*, 2.
41. *The Globe & Mail*, 14 December 1995, A1.
42. Department of Finance, *Budget in Brief, 1996* (Ottawa: Minister of Supply and Services, 1996), 13.
43. *Ottawa Citizen*, 30 June 1995, A2.
44. *The Globe & Mail*, 26 August 1996, A4; *Ottawa Citizen*, 21 August 1996, A3.
45. *Ottawa Citizen*, 30 June 1995, A1-A2.
46. For a small sample, see *Calgary Herald*, 9-20 June, 1995; *The Globe & Mail*, 15 May 1995, A21; *Ibid.*, 21 August 1995, A19; *Ottawa Citizen*, 30 June 1995, A1.
47. *Ottawa Citizen*, 30 June 1995, A1-A2; Department of Finance, *Budget in Brief, 1996*, 12-13.
48. *Decima Quarterly Survey*, 61 (Spring 1995). According to Smith, Canadians seem incapable of deciphering the details of federal-provincial funding formulas or of identifying the federal role in provoking health-care restraint. The CHST seems to confirm this. Smith, "Retrenching the Sacred Trust," 330-31.
49. *The Globe & Mail*, 28 October 1995, D1.
50. Madore, *The Canada Health and Social Transfer*, 8-9.
51. *Ibid.*, 9.
52. *The Globe & Mail*, 26 August 1995, A4.
53. [Provincial] Ministerial Council on Social Policy Reform and Renewal, *Report to the Premiers* (December 1995).
54. Confidential interview with a former senior federal civil servant, 11 July 1996.
55. *The Globe & Mail*, 19 May 1994, A1; *Ibid.*, 20 September 1995, A3; *ibid.*, 14 September 1996, A6.
56. See, for example, *Policy Options*, Special Issue on National Standards, 17 (June 1996).
57. *Access: A Convention on the Canadian Economic and Social Systems* (Toronto: Ontario Ministry of Intergovernmental Affairs, August 1996).
58. *Ottawa Citizen*, 24 August 1996, A3.
59. *Ibid.*, 26 August 1996, A3.
60. Under this arrangement the private owners of medical equipment charge the patient a fee for the use of this equipment. The physician performing the treatment is paid by the provincial insurance scheme. This practice raises several health policy concerns. First, by encouraging such private investments in additional equipment the practice runs counter to the Alberta government's own efforts to lower health-care costs through the regional planning of health facilities. Second, when such equipment, as in Alberta, is owned by physicians a moral hazard is created. Physicians have a vested interest in channelling patients to their own equipment, even if a lower cost facility or an alternative treatment is available.



In the United States, past abuses have led many states to regulate tightly such self-referrals.

61. *Edmonton Journal (Internet Extra)*, 24 May 1996; Health Canada. "Federal Health Minister Praises Alberta Decision to Preserve Equal Access to Insured Services," Press Release, 30 May 1996.
62. *Edmonton Journal (Internet Extra)*, 5 November 1995, 21 November 1995 and 1 February 1996; *The Globe & Mail*, 23 November 1995, A1.
63. While the policy might appeal to common sense, empirical evidence indicates that few welfare recipients "shop around" for jurisdictions. Gerald Boychuk, "Floor or Ceiling?: Standards in Social Assistance," *Policy Options* 17 (June/July 1996):17.
64. *Ottawa Citizen*, 17 September 1996, A10.
65. Roger Gibbins, "Decentralization and National Standards: 'This Dog Won't Hunt'," *Policy Options* 17 (June/July 1996):9.

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## Without Mysteries or Miracles: Conducting Cultural Policy in the Canadian Federal System

*Robert J. Williams*

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*Tous les niveaux de gouvernement participent à l'élaboration de la politique culturelle au Canada. Ce chapitre examine les relations fédérales-provinciales dans ce domaine. L'article débute en notant qu'il est difficile de définir les limites de la politique culturelle. L'ambiguïté qui en résulte est amplifiée par un manque de précision au niveau du partage des pouvoirs constitutionnels. De plus, l'engagement du gouvernement fédéral et du gouvernement provincial en matière de politique culturelle ne cesse de changer. Les programmes se voient transférés d'un département à l'autre. Le niveau d'intérêt que manifeste le gouvernement fédéral à jouer un rôle important dans le domaine de la politique culturelle n'est pas constant. Le gouvernement actuel, lui, semble très intéressé à jouer un rôle significatif compte tenu des implications pour le débat de l'unité nationale. Ce chapitre traite aussi de la difficulté qu'ont les deux niveaux de gouvernement à coordonner leurs politiques et programmes culturels. Contrairement à ce que l'on sous-entend par le fédéralisme exécutif, les ministres de la culture se rencontrent rarement et lorsqu'ils le font, l'ordre du jour est long, le temps disponible, très limité, et les discussions sont préparées d'avance.*

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### INTRODUCTION

Our Committee believes that the case has been well made that, in the current constitutional discussion, culture and communications are compelling issues of government responsibility, equal to such traditional areas of legislative jurisdiction as economic development, social policy, education or protection of the environment. We believe that all levels of government have vital roles to play in fostering cultural development and preservation of our heritage.<sup>1</sup>

The activities of governments in Canada in the cultural field are far-reaching. The federal government operates museums and galleries, the provinces operate museums and galleries. Scores of municipalities also operate museums and galleries. The federal government, through the Canada Council, supports artists, performers, and creative activities; the provinces support artists, performers, and creative activities. The federal government promotes community arts, especially under the aegis of multiculturalism; the provinces and the municipalities promote community arts. Ottawa argues that "the projection of Canadian culture and learning abroad should be regarded as a fundamental dimension of Canadian foreign policy."<sup>2</sup> The provinces traditionally also include a cultural presence in their bilateral relations<sup>3</sup> and municipalities that have sister-city agreements regularly incorporate cultural activities in their exchanges.

Culture, therefore, is practically a universal component of the public policy responsibilities of most governments in Canada. It is, as these examples suggest, a sector that cries out for "partnerships" and "rationalization," especially in the light of the widespread move to reduce public sector expenditures in the 1990s. Yet the reality is that cultural policy in Canada is not well-coordinated at a conceptual or at an operational level; the notion of a coherent national approach to cultural policy does not appear to have a very high priority, despite widespread pushing by critics and friends alike<sup>4</sup> and avowals from official sources that action is impending. The initiatives of the federal and provincial/territorial governments remain, for the most part, isolated from one another and the professed aim of making culture a tool to protect and promote Canadian values and identity remains unfulfilled.

This chapter will examine federal-provincial relations in the cultural policy field, beginning with a consideration of the "constitutional conundrum" surrounding culture. This will be followed by a review of the federal government's changing perceptions of the importance of the cultural sector within its own agenda and the impact of this ambiguity on intergovernmental relations. The chapter will also examine executive federalism in the cultural field and will conclude with some thoughts about the direction which cultural officials might take to protect and advance the health of the Canadian cultural sector.

## GOVERNMENTS AND "CULTURE"

One of the most difficult tasks for any student of cultural policy is to determine just what the term "culture" means in the public policy lexicon.<sup>5</sup> It is possible to find reflective commentaries on the concept in its largest senses, but these often are remote from the world of practice and policy.<sup>6</sup> On the other hand, the delineation used by Statistics Canada is merely a catalogue: culture includes "performing arts, cultural heritage (which includes museums and

historic sites), libraries, visual arts and crafts, literary arts (including book publishing), arts education, multiculturalism, film and video, broadcasting and sound recording."<sup>7</sup>

In the discussion of the "cultural sector" which follows, the main concern will be with "culture as art,"<sup>8</sup> that is the devising and presentation of creative activities such as literature, drama, music, dance, and the visual arts which, either individually or collectively, reflect, enrich, and shape a society symbolically. This classification distinguishes "the arts" from the so-called "cultural industries"; the latter can be thought of here as enterprises for the development and distribution of mass-produced, entertainment-oriented products.<sup>9</sup> It also arbitrarily sets aside the question of mass communication, and in particular public broadcasting (both pressing issues which have cultural connotations), since this is not a policy area which has an intergovernmental dimension *per se*. Finally, policies for multiculturalism, which can be understood as being aimed at "assisting minorities, immigrants, and ethnic groups in making their own unique contributions to the cultural mainstream"<sup>10</sup> will not be isolated for consideration in what follows.

The role of the Canadian state in the "cultural sector" is ambiguous since the term culture itself is absent from the constitution. As the Standing Committee on Communications and Culture suggested in 1992, "[w]hile the social, economic and political mandates for culture and communications seem clear, the jurisdictional mandate remains complex, and sometimes even obscure."<sup>11</sup> For example, the federal government does not appear to have constitutional jurisdiction over the creative aspects of culture (say, in theatre or the visual arts), but it does sustain such activities indirectly through the power to spend (funding for the Canada Council) and through national cultural institutions (such as the National Arts Centre and the National Gallery). On the other hand, where it does have formal jurisdiction to intervene, say in cultural industries such as sound recording (because of its regulatory role in radio broadcasting) or book publishing (because of its foreign investment controls),<sup>12</sup> its actions are local in their impact on employment, economic investment, and the like.

The jurisdiction of the provinces over many aspects of culture is more generally accepted, but is also implicit rather than straightforward. Provincial responsibility for film censorship originated in an obligation to maintain the safety of the public in movie theatres while financial support for creativity in the performing arts and literature was initiated under the constitutional mandate for education. Financial support for local infrastructure development (performing arts centres, art galleries, and museums and the like) was often compelled by the municipal partnership or sometimes by tourism, especially when lottery revenues became more widely available during the 1970s.

The remarks of the Bovey Task Force in 1986 are apt: "it is difficult to distinguish what is national, regional or local. On the one hand, the so-called

'national organizations' also have a local base and a regional audience, and on the other hand, local and regional organizations often play a national and international role."<sup>13</sup> The state's role in the cultural sector is, in a word, complex; the many responsibilities, as will be seen in this chapter, are interdependent and impact on one another and on the cultural constituency which they are intended to serve.<sup>14</sup>

### CULTURE AND THE CONSTITUTION: BEYOND THE DIVISION OF POWERS

Culture is not a designated obligation of government according to sections 91 and 92 of the *Constitution Act* but is now regarded as a shared responsibility between the federal and provincial governments. In contrast to some other parts of the Canadian federal system where there are "overlapping or complementary missions ... [which are] financially lubricated by numerous conditional grants,"<sup>15</sup> the pattern in the cultural sector is characterized by the rather widespread practice of co-funding arts organizations or cultural infrastructure initiatives by federal and provincial (and sometimes municipal<sup>16</sup>) governments. In other words, many arts organizations rely on support from a number of public funders, each determined independently, so that the actions taken at each level of government "can impact on individual organizations and the whole ecology of cultural communities."<sup>17</sup>

The idea of an activist governmental role in the cultural sector has been accepted only reluctantly by almost all governments in Canada. Up until the 1950s, most cultural activity was primarily viewed as personal entertainment: a part-time, amateur hobby to fill leisure time, not a professional enterprise. Alternatively it was seen as a commercial activity that would pay for itself and did not need or deserve government help. In either event, public financial support for the arts was believed to be politically unpopular and was side-stepped by cautious governments throughout the country.<sup>18</sup>

It is therefore commonly held that governments in Canada did not play a significant role in the cultural life of the country until after the publication of the report of the Massey Commission (1951) and that, indeed, the launch of that inquiry meant that "the activity of the previous several decades began to lose its shapeless, inchoate, and random character."<sup>19</sup>

Part of the difficulty, as noted, is the interpretation of jurisdiction. Despite ratifying the constitution of UNESCO (the United Nations Educational, Scientific and Cultural Organization), the federal government was reluctant in 1947 to establish an "arts board" because, according to Louis St. Laurent, the secretary of state for external affairs, "the provinces' jurisdiction over education created 'constitutional difficulties.'"<sup>20</sup> That same Louis St. Laurent continued to tread warily regarding other cultural initiatives when he became

prime minister, in particular where Quebec's jurisdiction over education might be perceived as threatened.

There was a similar reluctance on the part of many provinces to become active in the field of culture, with the exception of Saskatchewan under the CCF which created an arm's length Arts Board in 1948.<sup>21</sup> The first grants for cultural organizations in Ontario, according to the Macaulay Report, came from the Department of Education in the 1950s because "[i]t was their educational value that was relevant from the government point of view."<sup>22</sup> The Province of Ontario Council for the Arts (later the Ontario Arts Council) was, moreover, established as an agency of that same department in 1963. It was only after the province entered the lottery "business" that a designated ministry for cultural affairs was created, and then primarily as a vehicle to distribute these "tainted" revenues.<sup>23</sup>

Even though there has been a formalized federal role in cultural affairs for nearly 40 years (it is usually dated from 1957 with the creation of the Canada Council), there has never been an attempt to elucidate a rationale for this government intervention in cultural activities or to "address the underlying values which uniformly unite the disparate initiatives taken by the Government of Canada."<sup>24</sup> The latter point is exemplified by the fact that, even though the major cultural agencies were assigned to the secretary of state for the purposes of reporting to Parliament in 1963, an Arts and Culture Branch was not created within the department until 1972. Most — but fortunately not all — provinces are similar to Ontario where guidelines for cultural policy development were not articulated until 1973, but it appears that they have never been re-visited although circumstances have changed dramatically.

In the early 1980s, the problem of federal and provincial arrangements was a serious concern for the Federal Cultural Policy Review Committee (the Applebaum-Hébert committee). In its view, the dominant mood "was one of impatience — amounting at times to exasperation — arising from the sense that pleas of lack of jurisdiction were being used by one or another government to justify inactivity in the face of urgent needs, or that confusion was being caused by the failure of authorities in the various levels of government to consult one another and to harmonize their activities."<sup>25</sup> One of the basic ends of this cultural policy review, however, was to ensure that culture not become excessively dependent on one source of support; interestingly, the same message was re-stated by the Canadian Conference of the Arts in 1996.<sup>26</sup> The political reality of the late 1980s was that the federal government, bent on its goal of free trade, was more preoccupied with the economic circumstances surrounding several of the cultural industries and not its own basic role in relation to the arts.<sup>27</sup>

In 1991, the federal government began to "think out loud" about its role in the cultural sector, partly in response to noises coming from Quebec which advocated greater control over all forms of cultural expression but also as part

of its own avowed aim of reducing public expenditures. The willingness of various ministers in the Mulroney government to speculate publicly about such a fundamental alteration in the role of the federal government was part of a larger agenda in Ottawa-Quebec relations — and in its own fiscal strategy — which others have discussed at greater length than is appropriate here. In this context, though, it is notable that arts organizations and other cultural interests mobilized themselves and their allies for several months to prevent the abandonment of national funding and the emasculation of federal agencies such as the National Film Board.

In the end, the “spectre of devolution” was mostly rumour, speculation, and conjecture.<sup>28</sup> For one thing, “a significant number of Quebec artists and cultural groups opposed ... [the Arpin report’s] recommendation for the transfer of cultural powers from the federal government to the government of Quebec”<sup>29</sup> and therefore the Quebec government itself abandoned the pursuit.

Secondly, the idea met with virtually unanimous resistance from the other provincial and territorial governments. One observer interviewed for this study recalled that Perrin Beatty was “hammered” by his provincial counterparts at the 1992 meeting of the culture ministers and that the message got across forcefully to Ottawa that the federal government had a continuing role to play in the cultural field. Consequently, the federal strategy shifted to focus more on making the system more “efficient,” a concept that was partly philosophical, partly constitutional, and partly financial.

Coincidentally, the House of Commons Culture and Communications Committee attempted to push the federal government firmly in the reverse direction. “In today’s constitutional context, the federal government must continue to be a leader and a policymaker in the area of culture and communications because, as we have seen, culture permeates society and seriously affects the future of the country itself.”<sup>30</sup> The committee went on to suggest that “culture must be recognized as a dominant federal issue that requires intensified policy direction and increased investment of resources.”<sup>31</sup>

In some respects, the creation of the Department of Canadian Heritage in 1993 (to be discussed below) may be one response to these messages, although the federal-provincial (-municipal) cultural riddle remains unresolved. While the Chrétien government has avoided constitutional bargaining per se, it has made ongoing attempts to clarify other selected roles and responsibilities. For example, in its 1996 progress report on renewing the federation, it stated that it is prepared to withdraw from its functions in such areas as recreation because the 1987 National Recreation Statement confirmed provincial primacy in this area. The federal government will, therefore, “propose to the provinces a much strengthened process to work in partnership, focusing on such priorities as ... tourism.”<sup>32</sup> Other departments, such as HRDC, are attempting to devolve funding and various programs to the provinces.

Culture does not appear to be part of these processes, except possibly in the area of Foreign Affairs where the department seeks to work in conjunction

with those provinces which fund artists to tour abroad.<sup>33</sup> As yet, however, there is apparently no government-wide approach to international cultural relations and no known plans to tackle the question of coordinating the work of all governments in this field.

Examining the federal-provincial relationship in culture with an eye to transferring greater responsibility to the provinces is simply not a priority with the present government: if anything, it appears to have recently re-discovered the value of culture to itself in the context of national "unity" and national identity. In the 27 February 1996 Throne Speech one finds the governor general saying: "culture is at the core of our identity as Canadians. The Government is committed to strong Canadian cultural industries. The Government will propose measures to strengthen culture within Canada and will ensure continued access to our own cultural products in order to maintain a balance between Canadian perspectives and those from abroad." These pledges do not necessarily engage the provinces and their responsibilities, especially if the focus is directed mainly to the cultural industries and to communications. They may also need to be viewed warily in the context of the governor general's following statements which talk about the government's support for the viability of the CBC, the NFB, and Telefilm Canada. Reality suggests that these particular pledges are on weak financial foundations.

Obviously these attestations are a far cry from the Mulroney government's musings in 1991 about tossing the whole "burden" overboard. Secondly, the federal assertions about culture seem to be pointing more towards culture's contribution to "patriotism" rather than to culture's own inherent qualities — which are not the same thing.<sup>34</sup> Thirdly, and more pertinent to the "constitutional" environment, these assertions continue to take place without recognizing the "seamless" quality of the creative process and government's place in relation to it, as the Bovey Task Force noted in 1986.

A coherent policy for culture at the federal level and in many of the provinces has yet to emerge, even though there have been numerous institutions created and initiatives taken over the last four decades.<sup>35</sup> Today all governments are engaged in the cultural sector but each of these governments has "its own approach and specific areas of priority."<sup>36</sup> As will be discussed below, this failure to develop a commitment to, and an understanding of, the role of government, in particular the federal government, creates problems for the conduct of intergovernmental relations in the area of culture.

#### INTERGOVERNMENTAL RELATIONS AND CULTURE IN CANADA: THE "SYSTEM" HAS NO "BOSS"

In a literal sense, governments do not create art but they can play a number of overlapping roles to support the arts and other cultural activities, each of which "entails its own characteristic modes of intervention."<sup>37</sup> The Applebaum-Hébert



Committee noted that the federal government is the proprietor of production agencies (the CBC and the NFB), the custodian of Canada's cultural heritage (the National Gallery, the National Aviation Museum), a patron (through the Canada Council), a regulator (the CRTC) and a catalyst which stimulates private investment (Telefilm Canada) or philanthropy.<sup>38</sup> Most provinces play parallel roles in these areas: they are proprietors of production agencies (e.g., Radio-Quebec, the Knowledge Network), custodians (e.g., Royal Ontario Museum, Wanuskewin Heritage Park), patrons (e.g., Yukon Arts Council, PEI Council for the Arts), regulators (e.g., Ontario Film Review Board) and catalysts for private investment (e.g., Nova Scotia Film Development Corporation, British Columbia Film Commission) or philanthropy. In addition, provincial postsecondary institutions play a significant role in arts education and professional training programs.<sup>39</sup>

The instruments which governments have developed in Canada to intervene in the cultural sector range from simple exhortation through direct expenditures or tax expenditures to public ownership.<sup>40</sup> The mixture of roles and instruments reflects the community's traditions and the partisan disposition of the government in power, but it may also be subject to changing circumstances, modified assumptions or new models of governance.

In June 1993, responsibility for cultural policy at the federal level was transferred from the Department of Communications to a new Department of Canadian Heritage which was created from that department and a variety of other units. The new eclectic entity combines responsibilities for art, cultural industries, broadcasting, heritage, museums, amateur sports, multiculturalism, national parks and national historic sites, voluntary action, aboriginal cultures and languages, official languages, state ceremonial activities, and "the promotion of Canadian identity."<sup>41</sup> As Tom Henighan suggested, "the various arts and culture portfolios have been passed from the Secretary of State to the Department of Communications to Canadian Heritage, almost as if no one has known what to do with them."<sup>42</sup> The Canadian Conference of the Arts suggested that the creation of the Department of Canadian Heritage was driven more by a determination to reduce the overall size of government than to provide "a new insight into how to make [government] work more effectively"; in particular, the "constituent responsibilities" of DoCH "are a curious com-  
pote of sundry, diverse and divergent policy areas."<sup>43</sup>

To make this complicated arrangement even more cloudy, the department is also responsible to Parliament for more than a dozen arm's length cultural agencies including the Canadian Broadcasting Corporation, the National Film Board, the National Arts Centre, the National Gallery, the Canadian Radio-Television and Telecommunications Commission and Telefilm Canada. The most important of these agencies in the following discussion is probably the Canada Council, a body charged with the distribution of funds to artists and

arts organizations on a peer review basis, although the CBC has traditionally received the largest share of the funding distributed by this ministry in its various incarnations.

It should also be noted that other federal departments have jurisdictional responsibilities over aspects of cultural policy. The Department of Foreign Affairs and Trade operates an international cultural relations program which finances touring overseas by Canadian artists. A sectoral council for culture (the Cultural Human Resources Council) was among the consultative bodies created in 1995 by Human Resource Development Canada. The Department of Indian and Northern Affairs operates native art programs. Moreover, in exercising jurisdiction over advertising and sponsorship by tobacco companies, the federal minister of health announced changes in November 1996 that could severely restrict access to such funding for arts and sports organizations. This action resulted in a vigorous, and very public, lobbying effort by some arts and cultural organizations who argue, among other things, that government is acting in a contradictory fashion: it is encouraging arts groups to develop more extensive reliance on private sources of support yet imposes intolerable restrictions on a major provider of that support.

While all of the provinces have cultural responsibilities, no two have understood the obligation in the same way and the priorities they place on cultural affairs also vary considerably. Indeed, it would appear that there is no obvious logic to the organization of responsibilities in the administration of cultural activities.<sup>44</sup> To take but one example, the branch with responsibility for cultural matters in Ontario (which usually also includes heritage matters) originally emerged from the Department of Education but has since 1975 been connected administratively at times with one or more of tourism, recreation, communications, and "citizenship" (i.e., the unit with responsibility for multiculturalism). Many of the provinces, like the federal government, provide a number of arm's length bodies to operate various facilities and programs but not all provinces have a funding body that replicates the Canada Council. Some of this variety in the provinces and territories can be seen in Table 1.

Since the powers of governments in the cultural field are not guided by the constitution, some form of cultural partnership among governments — such as those that are found across the rest of the policy spectrum<sup>45</sup> — seems to be "not only the most practical means of approaching Canada's continuing cultural development, but also the most appropriate in jurisdictional terms."<sup>46</sup> To some optimistic observers, such as the Applebaum-Hébert committee, this objective appears to be beguilingly easy: since there is a strong community of interest among cultural agencies and offices, "cultural affairs need never be a contentious item in the agendas of federal-provincial ministerial conferences."<sup>47</sup> The reality, not surprisingly to most students of Canadian federalism, is much different.

**Table 1: Provincial/Territorial Departments Responsible for "Culture" (1993)**

Alberta	Alberta Community Development [Arts and Cultural Industries Branch]
British Columbia	Ministry of Small Business, Tourism and Culture
Manitoba	Ministry of Culture, Heritage and Citizenship
New Brunswick	Ministry of Municipalities, Culture and Housing
Newfoundland	Department of Tourism, Culture and Recreation
Nova Scotia	Ministry of Education and Culture
Northwest Territories	Department of Education, Culture and Employment
Ontario	Ministry of Citizenship, Culture and Recreation
Prince Edward Island	Department of Education [Culture, Heritage and Recreation Branch]
Quebec	Ministère de la Culture et des Communications
Saskatchewan	Ministry of Municipal Government [Arts and Multicultural Branch]
Yukon	Department of Tourism [Arts Branch]

Source: Canadian Conference of the Arts, *Directory of the Arts 1995* (Ottawa, 1995).

At the apex of executive federalism in this sector, there is ostensibly an annual meeting of ministers responsible for culture.<sup>48</sup> In addition, these meetings are paralleled by regular meetings of deputy ministers. There are also ongoing "generalist" committees such as the Interprovincial Council of Cultural Directors (ICCD) and the Interprovincial Heritage Advisory Committee (IHAC), as well as "specialized" gatherings of functional agencies or officers (for example, film classification officers). Somewhere in between lies a relatively new ad hoc body of the general "funding agencies" (e.g., the Canada Council, the Saskatchewan Arts Board, the Quebec Ministry of Culture, the Yukon Arts Branch, etc.), dubbed "the National Arts Funders" by its participants, which has begun to meet occasionally to deal with shared issues in the provision of financial assistance to the cultural community.

Intergovernmental gatherings of arts administrators first occurred on an informal level more than 20 years ago, initially convened by the Canada Council. The Applebaum-Hébert report referred to "a group known as the Assembly of Arts Administrators" which, from the context, appears to be the same entity. It "brings together provincial and federal cultural officials to discuss mutual concerns and exchange information."<sup>49</sup> According to those consulted for this study, meetings were largely devoted to "philosophical" issues in cultural affairs, for example, the role of the national arts institutions (e.g., the National Ballet) and the ever-present "who does what" question.<sup>50</sup> As well, the meetings had a kind of "staff development" function as the then-newly appointed directors and other officials got to know each other and began to address their mutual challenges.

As the various jurisdictions developed ministries or branches devoted to the arts or culture, however, the need to coordinate policy at a governmental level gradually displaced the focus on specifically arts-related issues. The role of ministers and their deputies grew in importance, national meetings began in 1980.<sup>51</sup> Interestingly enough, the convening of meetings of the national arts funders brings this particular process back full circle as funding issues have become more acute in the 1990s and the need, for example, to better coordinate specific aspects of arts funding, such as the application process for government support, became glaringly obvious.<sup>52</sup>

The reality, nevertheless, is that meetings at the highest level (involving ministers, deputy ministers and even cultural directors) are much less regular than in other policy sectors such as health, justice, and education where annual gatherings are routine. The ministers with responsibility for culture and heritage<sup>53</sup> met in Toronto in 1992. At that meeting, responsibility for the planning and convening of the next meeting was assigned to the Government of Saskatchewan but circumstances conspired to postpone the event for several years to October 1996.<sup>54</sup>

It is useful to reflect on why there was such a long interval between meetings at the ministerial level considering the general perception that intergovernmental meetings are a common occurrence in Canada<sup>55</sup> and, moreover, that "[t]here are still major tensions between federal and provincial governments ... in the sphere of arts funding and control."<sup>56</sup> Is it possible that holding intergovernmental meetings is not all that critical to the way this sector operates?

The obvious starting point is that the value of holding a meeting — especially at the ministerial level — must be demonstrated. Ministers need some benefits before they will commit themselves to convening a meeting. Here the institutional arrangements noted earlier immediately come to the fore since most ministers and deputies responsible for culture also have many other obligations and heavy demands on their time. Since meetings at the ministerial level tend to be highly scripted — most ministers and even some deputies are

not terribly knowledgeable about or committed to the cultural component of their portfolio — the value of the gatherings may be mostly symbolic. They were, indeed, described by a former participant as “bring and brag” sessions. It is probably only at the level of “cultural director”<sup>57</sup> that meaningful and productive consultations take place, but even that assertion needs to be tempered by what follows.

To put it another way, the fragmented institutional arrangements are important since smaller provinces tend to be reluctant to see these meetings occur too often if they have to send the same person to three or four different meetings in the course of a year. This is one of the reasons why ICCD and IHAC meetings have sometimes been scheduled back-to-back. Conversely, smaller provinces are reluctant to host the gatherings: it can be a costly undertaking to provide the logistics, entertainment, and other infrastructure needed to operate a meeting (or possibly more than one) for 13 governments. Finally, all cultural units have had to absorb significant reductions in their budgets in recent years and just cannot afford to send representatives to very many meetings. In late 1995, deputy ministers actually convened their first meeting in a couple of years on the “airport strip” in Toronto because it was simply the most cost-effective way to meet. A trip to Regina (where responsibility for the next ministerial meeting resided) was too ostensibly expensive for many of them.<sup>58</sup>

The second factor accounting for the low priority attached to meetings at the ministerial level is the inability of both the host minister and the federal minister to make a commitment to such a meeting. The basic question keeps coming up: “Why do we need to do this?” or “Why do we need this now?” One would almost think that, after 40 years of cultural activity, such questions would not be raised, but the hiatus between ministerial meetings suggests that officials have found it hard to convince key ministers that an intergovernmental meeting is a priority. For the host minister, budget and staffing limitations may be a factor.

Elections in 13 jurisdictions also get in the way, both in the sense of discovering an opportune date to hold a meeting and in the sense that new players are frequently introduced (who must to be convinced of the value of the meetings, etc.). Furthermore, again as noted earlier, ministries seem to get reorganized with regularity and the newly designated ministers need to “get up to speed” in their portfolios before taking the national stage. The major makeover of the federal Department of Communications into the Department of Canadian Heritage in 1993 and a change of government, as well as the replacement of Minister Dupuy by Minister Copps, all occurred between the 1992 and 1996 cultural ministers’ meetings and may be part of the reason for the delay. It is possible that early posturing related to a 1997 federal election may have suddenly moved the meeting towards the top of Minister Copps’s agenda. It may also have been propitious that enough other jurisdictions were

available on a date when the federal minister could combine a ministers' meeting with a mandatory appearance at the annual conference of a major client-group within the minister's portfolio (the Canadian Association of Broadcasters) which was planned for the same geographic region (albeit Edmonton).

It is worth speculating, too, about whether having a permanent secretariat for cultural ministers would make "cultural summitry" more orderly on Canada. The present arrangement is that the government with responsibility for hosting the next ministerial session — working closely with Ottawa — undertakes to serve as the clearinghouse for the agenda and other communications in the intervening period. The job of hosting (and more particularly of planning) must therefore be added to the other ongoing responsibilities in the often provincial cultural bureaucracy and must compete for the time and resources of the cultural director and her/his office. A permanent secretariat would not face these same limitations, but would, of course, probably be isolated from the "front line" of cultural policy delivery. Another downside of the current arrangement is the loss of institutional memory because of the frequent transfer of responsibility from government to government, not to mention the absence of permanent records held in a single location. The brighter side of the present mode of operation, as one participant wryly noted, is that there has been so little turnover — let alone growth — in the arts bureaucracies in Canada in recent years, that the filing cabinets of many of the participants can substitute for a central memory bank. Also, the rotational arrangement means that Ottawa does not set the agenda itself although (as noted below), the federal minister does have a *de facto* veto on holding the meeting. On balance, practitioners interviewed for this study are satisfied with the status quo but the consequences of the near collapse of the intergovernmental framework cannot be overlooked.

The last four or five years, of course, have been unusual in Canadian national affairs, a crisis-ridden era in which other issues have tended to overshadow the "normal" business of the cultural ministers. As noted earlier, at the time of the Charlottetown Accord some officials within the Quebec provincial government demanded total withdrawal from the cultural area by the federal government. For its part, the federal government was sensitive to these matters and floated the idea that it ought to withdraw almost completely from cultural funding. This was a topic for heated discussion at the 1992 ministerial meeting, hosted by Ontario, which may have made federal ministers less enthusiastic about fronting up to future meetings. In any event, Quebec had also not attended many of the previous meetings on cultural issues, highlighting the apparently sensitive nature of the agenda.

In the later period, there was (in the words of one provincial official) a palpable fear, since culture was such a ticklish issue for Quebec in the media, and at the bureaucratic and political levels, that "we could trigger a doomsday button on national unity" if a federal-provincial meeting on culture was

scheduled during this critical time. "Culture is about symbolism; therefore, the folks responsible for it had to take this potential seriously. We needed to avoid upsetting the applecart." Another official acknowledged the reluctance to call a ministerial meeting on culture since culture is so important to Quebec. It was a matter of "optics not content"; it was how such a meeting would look in Quebec that mattered, not what was actually accomplished.

In the post-referendum environment this fear seems to have diminished sufficiently to move forward. Indeed, it appears that the current Quebec government has reluctantly conceded that the federal government has a legitimate role to play in relation to culture and the cultural industries or that, at a minimum, Quebec cannot block cultural initiatives by the federal government or veto the holding of a meeting of culture ministers. In fact, Quebec attended the 1996 meeting in Saskatoon.

The substance of what these intergovernmental meetings actually do is another possible factor for explaining the long postponement. According to some participants, the ICCD has not evolved to the stage of taking independent action; the pursuit of its own agenda (such as investigating economies of scale and effort, or collective advocacy for the arts) has fallen quietly away in favour of serving essentially as an agenda-setting session for the deputy ministers who, in turn, set the agenda for the ministers. Given that, of course, ministers are ultimately accountable to their respective Parliaments and Cabinet colleagues, there cannot be an expectation that such forums lead to firm decisions.<sup>59</sup> Nevertheless, ministers' meetings are driven by bureaucrats who are looking for direction. There are matters that require action on the part of the officials: in effect, they are asking the ministers "Do you want to do this?"

On an even more fundamental level, as one official suggested, "We have to help the Ministers understand the whole basis of the cultural sector. They need to have (or at least to be a captive audience for) those fundamental discussions." It tends to mean that the agendas are bland in the extreme, according to one participant, even for the enthusiast: spending profiles, "harmonizing action" (a code for adjusting to reduced federal expenditures), understanding the economic impact of the arts, cultural statistics, new technology, training in the cultural sector and just "necessary bureaucratic crap in some cases."

The issues of concern from government to government will also vary and it has proven difficult to craft an agenda that is of sufficient interest to ensure the participation of all provinces (the issue of the scale of the province's cultural sector and the maturity of its cultural industries are among the critical factors here). One official argued that "there is less common interest than you would expect," which again influences the enthusiasm that certain governments have for this exercise.

The communiqué issued at the conclusion of the 1996 meeting suggests that the agenda was primarily devoted to a revisiting of issues which had been thrashed out earlier by officials. The summary refers to the ministers reviewing

and agreeing to "specific actions involving cultural sector training, new technologies and cultural heritage tourism," but the subsequent text actually uses terms like "the Ministers direct the Interprovincial Council of Cultural Directors and the Interprovincial Heritage Advisory Committee to review ... to recommend ... to consult," "the Ministers encourage" and "the Ministers have agreed to consult their respective governments."<sup>60</sup> The topics for the ministers (which were all discussed in 90 minutes, by the way) had already been developed in discussion papers from the ICCD and IHAC, later reworked by the deputy ministers. Although the ministers met alone over dinner, it is doubtful that spontaneous initiatives came from that level. Even a separate session devoted to an "action plan" (which essentially entailed a discussion of "guiding principles") was based on prepared materials and took place in the presence of many of the officials who wrote them — and who will carry them out.

It almost appears that the cultural sector works tolerably well without regular ministerial meetings. It was the impression of the members of the House of Commons Committee on Culture and Communications that, in general, things were working well at the program level in culture: "where there are areas of overlap in funding between the federal and provincial governments (for example grants to organizations and museums) there tends to be reasonably close consultation."<sup>61</sup> In British Columbia and Alberta, the more valuable opportunity to move forward on the provincial agenda is provided by the quarterly meeting of the Tri-Level Arts Liaison Group (formed in BC in 1977 and in Alberta in 1980) which brings together federal, provincial, and municipal officials, as well as foundations and arts service organizations.<sup>62</sup>

Finally, as one participant in the ICCD has suggested, "No one has ever found that absolutely common bond [in this area] that binds all governments together — in sports yes, but in culture no." A government official from western Canada agreed that "the issues we are dealing with in the cultural sector are critical and ... certainly managing the federal-provincial relationship is important but whether or not there is a body meeting, we have to keep on with [our own programmes]." For one thing, when the meetings have tried to turn to some critical issues (such as touring or national schools) "the right people are not always in the room (in particular, the Canada Council)." On the other hand, he noted "we are in touch with the Canada Council because we have clients in common, and we work with DoCH on a regular basis on other matters but we are not working that much with other provinces so the absence of a forum is not critical."

The determination of many cultural bureaucrats interviewed for this study appears to be that a formalized network of cultural officials is not absolutely critical to the health of the sector. Staying in touch is issue-related not calendar-driven: a crisis or a simple query prompts a telephone call to one's opposite number in Ottawa or in another province (and with so little turnover most officials are already well acquainted with one another). Furthermore, they



argue, there is a structure of sorts even though it was almost dormant between 1992 and 1996. There were even explicit conventions that kept the process alive. For example, the ministers designated Saskatchewan in 1992 as the host for their next meeting; it was generally understood that until the ministers actually met to sanction another host, Saskatchewan could not just "drop the ball."

In truth, however, it appears to have been primarily the determination and persistence of the Saskatchewan officials themselves that eventually brought about the long-delayed event.<sup>63</sup> On a more basic level, the cultural sector has not been as successful in achieving the conceptual clarity, the national exposure and the political prominence which other policy fields take for granted. Instead of the sharp buzz of intergovernmental activity which is portrayed in so much of the Canadian scholarly literature on executive federalism, the cultural field appears to be more of a tranquil hum! This subdued climate might well be justified if the policy environment is stable and orderly; in fact, it is not.

Consequently, there are many others who see it in a quite different light, for example, the expert panel which considered government's involvement in and support to the arts and culture in Canada in 1996 for the Canadian Conference of the Arts. The consultations carried out on behalf of that panel determined that public funding of the arts and culture is complex and that:

the Canadian "system" of public financing for culture is not a system at all. It is a multifold, diverse, interrelated complex of programs provided by municipal, regional, provincial and federal government departments responsible for culture, arts councils and other independent agencies.... The "system" has no "boss."<sup>64</sup>

The relatively low key nature of cultural summitry, then, masks the clutter and commotion of government's front-line relationship with the culture sector.

### SEARCHING FOR A "BOSS" OR A "SYSTEM"

A proposal to address the dilemma of making effective cultural policy in Canada's constitutional void was addressed in the 1992 report *The Ties that Bind*. A proposal for a comprehensive agreement was held out, one that "could recognize the specific situations and needs of each province — but also ... the potential for a national accord about cultural goals and objectives."<sup>65</sup> The Canadian Conference of the Arts expert panel also advocated comprehensive cultural policies "to provide a visible manifestation of the importance of the arts and culture and to act as blueprints for cooperative measures to support them."<sup>66</sup>

The worth of such a framework should be evident from the discussion provided in this chapter. The actions of one level of government clearly have an

impact on the others. To take but one simple example, the federal government's independently determined budget reductions have, since 1994, weakened — some would say crippled — the capacity of the Canada Council to support artists. One consequence of that decision is to place a greater pressure on provincial — and in some cases municipal — granting agencies to meet the existing needs. The ripple effect, in turn, forces the cultural community into the ever-shrinking pool of resources provided by the corporate/philanthropic sector, part of which was unilaterally ruled off limits by federal restrictions on tobacco sponsorship. As stated in *Arts in Transition 2*: "The funders must appreciate the degree to which their separate, independent actions can profoundly affect (and damage) individual arts organizations and the cultural infrastructure."<sup>67</sup>

The immediate problem becomes how to develop and articulate what *The Ties that Bind* called a "Canada Cultural Accord." Ideally, such a comprehensive statement would involve federal and provincial ministries, the principal cultural agencies and organized cultural interests across the country, including private sector funders. For those in the cultural sector and beyond who would accept that this mission is worthy of the effort, a logical vehicle already exists to begin the process: the ministerial conference.

In their report, the federal MPs recommended that

an institutional process which will help to develop a cultural vision for each community, for each province and for the entire nation ... It would be a process led by governments, but not solely directed or controlled by them.... We suggest the national framework would be set out in a Canada Cultural Accord to reflect the respective consensual commitments, and would be administered by a Council of Ministers for Cultural Affairs in Canada.<sup>68</sup>

Even if the particular vision which this proposal seeks continues to elude culture and heritage ministers, there are compelling reasons to enhance the Canadian intergovernmental cultural forum.

An example of what might be achieved in this sector can be seen in the work of an analogous body in Australia — the Cultural Ministers' Council (the CMC) — which is composed of representatives of the federal, state, and territorial governments, as well as New Zealand. It would be inaccurate to suggest that the CMC is universally praised and valued within Australia, but the fact that a recognized forum exists to bring together ministers and officials on a regular basis yields a range of benefits both to the cultural bureaucracies and the cultural sector itself.

The CMC is a consultative forum, not a formal decision-making body.<sup>69</sup> Like the ministers who sit on it, who tend to be low in the political pecking order, CMC is not dealing with meaty, topical or big dollar items such as those found in social welfare, environment or health policy. As a result, in a time of resource restraint, CMC has deliberately turned to "do-able" but

nagging issues such as sorting out responsibilities, collecting reliable statistics and the like. One tangible achievement was the adoption in 1992 of an international cultural relations strategy, something that assists in this clarification process. The simple action of consultation at the annual CMC meetings and the sharing of information among various governments — on their international cultural relations and all manner of other activities — is beneficial in the promotion of sound policy. As Tom Courchene has argued with respect to Canada, “incompatible policies can exact high penalties on everybody. Hence, mechanisms that allow for information-sharing at a minimum and perhaps some formal coordination are warranted.”<sup>70</sup>

The Australian strategy paper on international cultural relations is indicative of another contribution of the CMC itself. It places “on the public record” evidence in support of the value of these activities to society. Furthermore, the CMC’s work assists informally in promoting the arts within government bureaucracies. The common interests embodied in research papers and other reports send messages to political masters and to competitors for public resources that this policy area is consequential in several respects. Not unimportantly, the status of the cultural portfolio itself is thereby enhanced in many jurisdictions.

The very act of holding a ministerial meeting tends to remind the ministers themselves — let alone anyone else — how important it is to address concerns in a national — rather than a piecemeal — fashion. It may also confer credibility on the enterprise in the national media and may give the ministers some positive prominence.<sup>71</sup> The CMC’s continued presence and its contribution to its members help to bring both legitimacy and political clout to a policy area which has persistently been seen as inconsequential or non-essential.

In the Canadian context, where many of these same conditions are evident, an enhanced role for the cultural ministers is long overdue. This is particularly the case in this sector where the dominant mode of operation seems to be what Richard Zuker labelled “reciprocal federalism,” a concept which

recognizes, at its base, that the provinces need Ottawa to act in certain ways in order that *provincial* policies become more effective. Similarly, Ottawa needs some help from the provinces in order that *federal* policies be more effective. No matter what label one places on such arrangements, it is obvious that there exist plenty of opportunities for mutual gain arising from enhanced coordination, harmonization or even just from greater information sharing.<sup>72</sup>

The call for a comprehensive cultural policy and a forum through which to achieve it is not a call for uniformity or exclusivity; after all, in a federal system, it is expected “that different public funders will place their emphasis on different priorities.” What cannot be tolerated are “out-and-out incompatibilities,” something that seems more probable without an effective intergovernmental council.<sup>73</sup>

## CONCLUSION

Most participants from the cultural bureaucracies have emphasized the symbolic value of the ministerial gatherings which have taken place. Indeed, when tallying the benefits of ministerial gatherings — the major forum for achieving a national cultural strategy — the substantive legacy to the arts is much more fragile, possibly because government's role in the creative process itself continues to be less apparent and more subtle. Yet this is not a reason to shy away from the task of enhancing an intergovernmental cultural assembly; it may be the very reason to attempt it.

There continues to exist in Canada a need for a process through which governments can indeed cultivate the arts and culture, "the substance and reflection of who we are and what we form as a people."<sup>74</sup> In a speech near the end of his remarkable life, Northrop Frye argued that the contributions to the world by Canada's creative talents will be the ones most likely to endure, not those made by our politicians, our entrepreneurs or our sports heroes. It is significant that Frye recognized, however, "that such things do not take place 'simply as mysteries or miracles'."<sup>75</sup> There must be a vision and there must be a means to realize it.

## NOTES

1. House of Commons, Standing Committee on Culture and Communications, *Culture and Communications: The Ties that Bind* (Ottawa: House of Commons, 1992), 26.
2. Special Joint Committee Reviewing Canadian Foreign Policy, *Canada's Foreign Policy: Principles and Priorities for the Future* (Ottawa: Parliament of Canada, 1994), 61. See also Robert J. Williams, "International Cultural Programmes: Canada and Australia Compared," in *Canadian Culture: International Dimensions*, ed. Andrew F. Cooper (Toronto: Canadian Institute of International Affairs, 1985), 83-111.
3. Robert J. Williams, "The Provinces and International Cultural Activities: The Contribution of Ontario," *Canadian Themes/Themes canadiens: Practising the Arts in Canada* 12 (1989):83-92; and "Federalism and Cultural Diplomacy in Canada and Australia," in *Foreign Relations and Federal States*, ed. Brian Hocking (Leicester: Leicester University Press, 1993), 190-201. The outlook for such cultural activities, as with many others across the public sector, is precarious. In 1996, after about a 30-year "run," Ontario's Cultural Exchange Program was dropped from the activities of the Ontario-Quebec Commission for Cooperation.
4. See, for example, the *Report of the Federal Cultural Policy Review Committee* (the Applebaum-Hébert Report), (Ottawa: Department of Communications, 1982), 57-59 and *The Ties that Bind*, 32-38.

5. Raymond Williams, a British expert on the subject, described the word "culture" as "one of the two or three most complicated words in the English language." Quoted by Michael Dorland in the introduction to his edited collection *The Cultural Industries in Canada: Problems, Policies and Prospects* (Toronto: Lorimer, 1996), x.
6. See, for example, the stimulating discussion provided by Peter G. White in "Reflections on Culture," a section of *Art is Never a Given: Professional Training in the Arts in Canada*, report of the Task Force on Professional Training for the Cultural Sector in Canada (Ottawa: Department of Communications, 1991), 109-111.
7. Danielle Cliche and Terrence Cowl, *Cultural Policy Framework and Trends in Canada*, unpublished paper, International Comparative Policy Group, (Ottawa: Department of Canadian Heritage, 1993), 9.
8. White, "Reflections on Culture," 109.
9. Many authors have wrestled with these distinctions. See, among others, Tom Henighan, *The Presumption of Culture: Structure, Strategy and Survival in the Canadian Cultural Landscape* (Vancouver: Raincoast Books, 1996), 2-3, 93-99; *Art is Never a Given*, 8-15; and Dorland, *The Cultural Industries in Canada*, ix-xiii. There is, of course, a connection between "the arts" and "the cultural industries" in that the "products" of the former may be the "contents" of the latter.
10. Henighan, *The Presumption of Culture*, 94.
11. *The Ties that Bind*, 26.
12. See Will Straw, "Sound Recording;" and Rowland Lorimer, "Book Publishing," in *The Cultural Industries in Canada*, ed. Dorland,.
13. Task Force on Funding of the Arts, *Funding of the Arts in Canada to the year 2000* (Ottawa: Department of Communications, 1986), 85
14. Jocelyn Harvey, *Arts in Transition 2: Harmonizing Public Policies with the New Realities* [Report of the Expert Panel] (Ottawa: Canadian Conference of the Arts, 1996), Annex 2 (Report of the Consultations Prepared for the Expert Panel Meeting), 10.
15. J. Stefan Dupré, "Reflections on the Workability of Executive Federalism," in *Intergovernmental Relations*, ed. Richard Simeon (Toronto: University of Toronto Press, 1985), 5.
16. See, for example, The Municipality of Metropolitan Toronto, *Metro's Role in Arts & Culture: A Discussion Paper* (Toronto: Municipality of Metropolitan Toronto, 1992), 7-10.
17. *The Ties that Bind*, 33.
18. See Maria Tippett, *Making Culture: English-Canadian Institutions and the Arts before the Massey Commission* (Toronto: University of Toronto Press, 1990) for an insightful survey of this environment.
19. *Ibid.*, 184. She does note, however (p. 180), that the federal government had "become involved in cultural matters" despite respecting the provinces' jurisdiction.

20. Ibid., 176 and 180.
21. The CCF, provincially and federally, was in the vanguard of support for artists throughout the 1940s. Ibid., 182.
22. *Report to the Honourable Susan Fish, The Minister of Citizenship and Culture, by the Special Committee for the Arts* (Robert W. Macaulay, Chairman) (1984), 2/3-2/10.
23. Some background on this development may be found in James Files, "Smocks and Jocks: The Creation of the Ontario Ministry of Culture and Recreation, 1974," Ph.D. dissertation, Department of History, University of Waterloo, 1989.
24. Keith Kelly, "The Difference Between Cultural Activity and a Cultural Policy," *Blizzard: A Flurry of Canadian Arts and Culture News* 1, 1 (1995/96):1. *Blizzard* is a newsletter published by the Canadian Conference of the Arts. Note that the Applebaum-Hébert committee did focus primarily on the federal role but based its commentary on questionable assumptions. See, for example, its explanation for jurisdictional conflicts between governments (57-58).
25. *Report of the Federal Cultural Policy Review Committee*, 57.
26. Harvey, *Arts in Transition* 2, passim.
27. This occurred in spite of the fervent pledges "to ensure the healthy development of Canadian culture" provided in Department of Communications, *Vital Links: Canadian Cultural Industries* (1987). See also Dorland, *The Cultural Industries in Canada*, passim.
28. The devolution scenario is discussed in the Canadian Conference of the Arts newsletter *Arts News* 2, 5 (1991) and 2, 6 (1991).
29. *The Ties that Bind*, 38.
30. Ibid., 31
31. Ibid.
32. Government of Canada, *Renewing the Canadian Federation: A Progress Report*, background document prepared for the First Ministers' Meeting, 20-21 June 1996, 8.
33. In the assessment of one provincial official interviewed for this study, Foreign Affairs wanted to get the benefits accruing from such activity "although they seem to want someone else to pay for it."
34. Henighen, *The Presumption of Culture*, ch. 7. The appointment of Deputy Prime Minister Sheila Copps to the Canadian Heritage portfolio was seen by some observers as a sign that "culture" had finally arrived in the "upper echelons" of the Cabinet; however, her a subsequent use of that role primarily to promote the rhetoric and symbols (especially flags!) of the federalist cause in the post-referendum environment seemed to take precedence over the "cultural" aspects of the portfolio. This is not to suggest that "a systematic and aggressive communications offensive" is inappropriate, but that "cultural policy" may not be the proper vehicle to deliver it. See David Cameron, "Does Ottawa Know It Is Part of the Problem?" in *Québec-Canada: What is the Path Ahead?* ed. John E. Trent, Robert Young and Guy Lachapelle (Ottawa: University of Ottawa Press, 1996).

35. For a recent critique of the federal government's record on this question see Kelly, "The Difference Between Cultural Activity and a Cultural Policy," 1. See also Joanne Boucher, *Funding Culture: Current Arguments on the Economic Importance of the Arts and Culture*, Current Issue Paper 158 (Toronto: [Ontario] Legislative Research Service, 1995).
36. Harvey, *Arts in Transition* 2, Annex 2, 8.
37. *Report of the Federal Cultural Policy Review Committee*, 72.
38. *Ibid.*, 72-90.
39. See *Art is Never a Given*, passim.
40. These alternatives are spelled out by Steven Globerman, *Cultural Regulation in Canada* (Montreal: Institute for Research on Public Policy, 1983), 6-19.
41. *Cultural Policy Framework and Trends in Canada*, 3.
42. Henighan, *The Presumption of Culture*, 1.
43. Canadian Conference of the Arts, *Brief to the [House of Commons] Standing Committee on Canadian Heritage – C-53* (Ottawa, November 1994), 1.
44. The same dilemma has been observed in Australia, according to a 1993 report by the Cultural Ministers' Council cited by Jennifer Craik, "The Potential and Limits of Cultural Policy Strategies," *Culture and Policy* 7, 1 (1996):195.
45. See the several discussions in Richard Simeon (ed.), *Confrontation and Collaboration: Intergovernmental relations in Canada Today* (Toronto: Institute of Public Administration of Canada, 1979), especially those contributed by Gérard Veilleux and Gordon Robertson.
46. *The Ties that Bind*, 37. The role of municipalities in the discussion that follows is rather limited.
47. *Report of the Federal Cultural Policy Review Committee*, 59.
48. Cliche and Cowl, *Cultural Policy Framework*, 4-5.
49. *Report of the Federal Cultural Policy Review Committee*, 50.
50. According to one participant in these meetings, Ontario tried on a couple of occasions to persuade the other provinces that such organizations as the National Ballet and the National Ballet School were, indeed, "national" and that they ought to be jointly funded by the provinces. A quick perusal of the budgets of these bodies will show that Ontario's efforts were altogether ineffectual.
51. Jody Berland and Will Straw, "Getting Down to Business: Cultural Politics and Policies in Canada," in *Communications in Canadian Society*, 4th ed., ed. Benjamin D. Singer (Scarborough: Nelson, 1995), 337.
52. Harvey, *Arts in Transition* 2, 18-19.
53. As should be obvious from Table 1, the terminology is varied. The best that can be said is that these are ministers "with responsibility for culture," not ministers "of culture."
54. Information about the work of meetings at these levels is unavailable to those outside the process. For a number of reasons related to the confidentiality of

ministerial briefing books and other supporting materials, access to documentation on the work of interprovincial meetings was denied to the author in support of this paper. What follows is based on non-attributable interviews with past and present participants in many intergovernmental meetings. No Quebec officials were interviewed, however. The interpretation of these accounts is my own.

55. Ronald L. Watts, *Executive Federalism: A Comparative Analysis* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1989), 4 writes that "the pattern of executive federalism in Canada" has been marked by "the proliferation of federal-provincial conferences, committees and liaison agencies" and "the frequency with which first ministers, ministers and senior officials have interacted." See also Simeon, *Confrontation and Collaboration*; and Dupré, "Reflections on the Workability of Executive Federalism."
56. Henighan, *The Presumption of Culture*, 1.
57. Again, the terminology varies. By this term is meant the official with dedicated responsibility for "the arts," although in many smaller provinces this might also include "heritage." The informal understanding here is that the senior "arts" official is usually the person who is appointed to serve on the ICCD (but who may also serve on the IHAC)!
58. The "sub-text" here, suggested one close observer, was that Toronto was a more attractive location for such a meeting. Participants could use the opportunity to pursue many more official and personal objectives than if the meeting were in Regina.
59. Andrew Hede, "Reforming the Policy Role of Inter-governmental Ministerial Councils," in *Policy-Making in Volatile Times*, ed. Andrew Hede and Scott Prasser, (Sydney, Australia: Hale and Iremonger, 1993), 193-208.
60. Press Release/Communiqué, 29 October 1996.
61. *The Ties that Bind*, 33. The Federal Cultural Policy Review Committee was also confident that "most cultural agencies and offices need little urging in this direction [i.e., of consultation]" and its members sensed "a strong community of interest with their counterparts in other levels of government — and, for that matter, with those in the private sector who are deeply involved in the support of cultural activity." *Report of the Federal Cultural Policy Review Committee*, 58.
62. *Report of the Federal Cultural Policy Review Committee*, 50. However, Harvey, *Arts in Transition* 2, 13 suggests that tri-level meetings occur "regularly in Manitoba and British Columbia and less regularly in some other parts of the country."
63. One can easily imagine that this tenacity was driven as much by a desire to relieve the long-standing burden from Saskatchewan's shoulders as it was by any policy imperative.
64. Harvey, *Arts in Transition* 2, 8.
65. *The Ties that Bind*, 37.
66. Harvey, *Arts in Transition* 2, 21
67. *Ibid.*, 13.
68. *The Ties that Bind*, 37.



69. The following discussion is drawn from Robert J. Williams, "Australia's International Cultural Relations: Some Domestic Dimensions," *Australian Journal of Political Science* 30 (1995):56-73, in particular 68-70.
70. Thomas J. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," Working Paper Prepared for the Ministry of Intergovernmental Affairs, Ontario (1996), 23.
71. It may be symptomatic of the relative obscurity of the Canadian intergovernmental cultural forum that the 1996 Saskatoon Ministers' Meeting received minuscule press coverage while Minister Copps' pronouncements the previous day at the Canadian Association of Broadcasters conference were widely reported.
72. Courchene, "ACCESS," 22.
73. Harvey, *Arts in Transition* 2, Annex 2, 24.
74. Flora MacDonald, "Preface" to *Vital Links*, 7
75. White, "Reflections on Culture," 125-26. The same point is eloquently made in John Ralston Saul, *Culture and Foreign Policy* (Ottawa: Special Joint Committee of the Senate and House of Commons Reviewing Canadian Foreign Policy, November 1994), 85-86.

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## The British Columbia Treaty-Making Process: Entering a New Phase in Aboriginal-State Relations

*Christopher McKee*

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*Ce chapitre présente l'évolution du processus actuel de signature de traités en Colombie-Britannique. Il détaille les conséquences possibles des traités à venir sur le partage des pouvoirs fédéraux au Canada ainsi que sur les relations entre autochtones et gouvernement en Colombie-Britannique. L'article soutient que les négociations entourant ces traités résultent de facteurs extraparlimentaires, comprenant les décisions judiciaires, les protestations menées par les autochtones ainsi que l'opinion des entreprises de développement des ressources naturelles de la province. Ces facteurs ont contraint le gouvernement de la Colombie-Britannique à poursuivre les négociations avec les groupes autochtones délaissés depuis les années 1850. Ce chapitre suggère de plus que les traités à venir remettront plusieurs pouvoirs aux groupes autochtones de la Colombie-Britannique. Finalement, ce chapitre fait ressortir l'importance des mécanismes de coordination des politiques publiques entre les gouvernements autochtones et non-autochtones dans les domaines de juridiction partagée.*

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### INTRODUCTION

The treaty-making process in British Columbia is a controversial but little understood issue in the province. Since its inception in 1993, the process has generated considerable debate. Opponents characterize the negotiations as secretive, exclusive of non-aboriginal interests, and involving a massive giveaway of British Columbia's land and natural resources to aboriginal groups. Proponents of the process argue that it is a long overdue recognition of aboriginal title and other aboriginal rights, and a means whereby First Nations can secure a measure of self-sufficiency and a return to their original status as complex and self-governing entities. Moreover, there are differences between

and within aboriginal groups and within and between the federal and provincial governments and other parties interested in the treaty-making process.

The purpose of this chapter is to present an overview of how the provincial government arrived at this point in its relationship with aboriginal groups, the process of concluding a treaty, the issues subject to negotiation, and some of the effects the treaties could have on the federal distribution of powers and on the activities of aboriginal and non-aboriginal governments in shared policy fields. In so doing, the chapter offers the following argument: the impetus for the current treaty-making process in British Columbia lies in variables external to the federal and British Columbia governments. Although initiated jointly by both orders of government and the First Nations' Summit, it was made inevitable by the cumulative effect of judicial decisions favourable to native rights and to treaty negotiations, aboriginal protests for government recognition of aboriginal title, and the views of major natural resource development firms that treaties may be necessary if the province's resources are to be harvested unimpeded by land claims. All of these factors worked in tandem to force the provincial government to abandon its long-standing refusal to acknowledge aboriginal title and to negotiate treaties with aboriginal groups in British Columbia. Moreover, although the substantive negotiations have yet to begin, the treaties should have a significant impact on the workings of the federal system in Canada by devolving many powers to aboriginal governments and warranting the increased use of mechanisms of policy coordination between aboriginal and Canadian governments.

This chapter is divided into three parts. Part one presents the variables that worked in concert with each other to induce the British Columbia government to acknowledge aboriginal title in the province and to recommence the treaty-making process left unfinished in the 1850s. The second part considers the vehicle and process with which treaties are negotiated, some of the issues common to all of the negotiating tables, and aspects of the *Nisga'a Agreement in Principle*, initialed in March of 1996. This part will also offer a commentary on the 1996 spring election in British Columbia, and the reason the treaty-making process did not become an election issue. Part three comments on the impact of treaties on the federal distribution of powers, and on the need for policy coordinating mechanisms within the treaties to ensure a measure of aboriginal-state cooperation in policy fields subject to the joint actions of each government.

#### EARLY EFFORTS AT TREATY MAKING IN BRITISH COLUMBIA: THE RECOGNITION AND SUBSEQUENT DENIAL OF ABORIGINAL TITLE

The initial effort by British authorities to negotiate treaties with aboriginal groups in the Pacific Northwest was grounded in a blend of international legal norms and common law doctrine. Underlying these efforts was the assumption that Aboriginal People held pre-existing land rights which should be

accommodated in order to realize the goals of colonial expansion. To do otherwise might have been too time consuming, and perhaps justifiable only on ideological grounds.<sup>1</sup> More to the point, immigration by British settlers to the new land and commercial relations generally could be impeded without this accommodation of native rights.

One of the methods international law provided a sovereign nation to acquire additional lands and thus legitimately assert its sovereignty over the area was known as "cession." This method was used in cases where they encountered a society of indigenous peoples, holding specific territories, subject to cultivation. Acquisition would require the consent of the indigenous peoples to the transfer of portions of their land to the acquiring state. This new relationship would then be set out in a formal treaty. Those acquiring the territory were required to pay compensation to those who had ceded it.<sup>2</sup>

Land acquisition through cession was consistent with the common law doctrine of aboriginal rights. This doctrine holds that the Crown's acquisition of land in North America was governed by the principle of continuity. This means that property rights, customary laws, and the various institutions of governance of the Aboriginal People were presumed to survive and to be protected by British law. Aboriginal People were able to retain their laws, notwithstanding the presence of English law. In this manner different laws could co-exist. English law was not to be applied retroactively to the Aboriginal People, and only when it was suitable.<sup>3</sup>

The spirit of the doctrine of aboriginal rights was embodied in the *Royal Proclamation* of 1763. Issued by King George III of England, and seen by many Aboriginal People as their *Magna Carta*, the proclamation was primarily a response to the prospect of Indian war. Consequently, it set down certain guidelines to which Britain could establish peaceful relations with the Aboriginal People. For example, the continuity of land title was explicitly acknowledged in the proclamation's directive to set aside land for aboriginal groups, and to reserve it for them as their hunting grounds. The continuity of self-government was implicitly authorized as well. Indeed, in the treaties concluded between aboriginal groups and the British Crown in many parts of Canada, the continuity of other aboriginal rights, such as fishing and food gathering, was assured.

It was within this legal framework that the initial treaty-making process was commenced by Governor James Douglas in the 1850s. During his tenure Douglas arranged 14 purchase treaties with aboriginal groups in the southern and eastern portions of Vancouver Island. Significantly, these treaties acknowledged aboriginal groups as the rightful possessors of the land around which they had built houses and cultivated the land. All the remaining land was deemed to be "waste," to be used subsequently for British settlement, and on which Aboriginal People could enjoy fishing and hunting rights.<sup>4</sup>

The Douglas purchase treaties are comparable to other treaties in Canada and to those arranged in other parts of the British Empire. The Robinson treaties of Upper Canada included provision for annuities, reserve land, and the freedom of the native people to hunt and to fish on unoccupied Crown lands. Except for the provision involving annuities and the granting of larger reserve land, those arranged by Douglas contained similar stipulations. Both the Robinson treaties and the Douglas treaties purported to extinguish aboriginal title to large territories, reserving aboriginal title to small tracts. In addition, the text of the Douglas treaties was identical to those used by the New Zealand Company when they purchased land from the Maori — only the names, dates, and the amounts to be paid to the various Maori tribes were different.<sup>5</sup>

Yet by the end of the 1850s the process of negotiating treaties soon began to deteriorate. Notwithstanding non-native protests suggesting that unextinguished aboriginal title posed a serious impediment to settlement, and despite the explicit acknowledgment of the pre-existing land rights of natives by both colonial and Imperial authorities, no layer of government affecting the colony wished to continue to underwrite the costs of further negotiations. The Legislative Assembly in Victoria felt the Imperial government should bear these costs; London argued that such activities were a matter of local government responsibility. Consequently, neither side would budge from their position, and nothing was done. The treaty-making process begun by Douglas died for the want of funds. Indeed, it would not be until 1899 that another treaty would be signed in British Columbia, and not until 1993 that a government of British Columbia would be actively involved in treaty talks with aboriginal groups.<sup>6</sup>

Although the shortage of funds prevented the negotiation of additional treaties, also significant in blocking further progress was the general change in the colony's Indian policy. Rather than seeing aboriginal groups as quasi-independent nations of people under the protection of the British Crown, colonial officials perceived natives in quite unflattering terms. To many officials, natives were lazy, ignorant savages, prone to lawlessness, whose interests would be served best by their conversion to Christianity and their introduction to the civilizing effects of a traditional British education.<sup>7</sup> In addition, and perhaps more important in precluding the need for treaties, aboriginal title was explicitly denied by colonial officials. In an 1870 address to the governor, Joseph Trutch, the leading official charged with the colony's Indian policy, offered the following words:

The title of the Indians in the fee of the public lands, or any portion thereof, is distinctly denied. In no case has any special arrangement been made with any of the tribes of the Mainland [of British Columbia] for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each tribe, as the progress of settlement of the country seemed to

require, the use of sufficient tracts of land for their wants of agriculture and pastoral purposes.<sup>8</sup>

Despite Trutch's denial of aboriginal title, he still faced the problem of the Douglas purchase treaties and their recognition of the pre-existing land rights of native groups. Nevertheless, to this Trutch argued that Douglas had arranged nothing more than:

agreements with the various families of Indians ... for the relinquishment of their possessory claims in the district of the country around Fort Victoria, in consideration of certain blankets and other goods presented to them. But these presents were, as I understand, made for the purpose of securing friendly relations between those Indians and the settlement of Victoria, then in its infancy, and certainly not in acknowledgment of any general title of the Indians to the land they occupy.<sup>9</sup>

Trutch's denial of aboriginal title and, in particular, his depiction of the Douglas purchase treaties as mere friendship agreements would prove to be remarkably enduring as the colony moved into provincehood. To many non-Aboriginal People, Trutch's views were persuasive because they were consistent with their interests and with those of the local government. Significantly, there was no better way to reinforce non-aboriginal interests in the land than to demonstrate that Aboriginal People did not own the land, let alone conceive of owning it. The notion of continuing Douglas' efforts at treaty making was pointless: aboriginal title did not exist and thus there was no interest in the land that had to be purchased. Furthermore, the reserves that were set aside for Aboriginal People were not to be seen as recognition of aboriginal title or that it had been surrendered to the land adjacent to reserves. Reserves were nothing more than gifts to the Aboriginal People from the Crown.<sup>10</sup>

The refusal by government officials in British Columbia to acknowledge aboriginal title and to negotiate treaties with aboriginal groups would continue unabated until the early 1990s. In one sense, this made the province an anomaly in the federation: with the exception of parts of the Maritime provinces, British Columbia was the only province that had not dealt with the pre-existing land rights of the Aboriginal Peoples within its borders through treaties. It would require a combination of judicial rulings and political protests by aboriginal groups to force the hand of the British Columbia government to initiate a comprehensive treaty-making process.

#### FEDERAL AND PROVINCIAL ENACTMENTS OVER ABORIGINAL PEOPLE

During the discussions surrounding the colony's entrance into the Canadian federation, little time was devoted to the Aboriginal People. Granted, there was an attempt to provide them some protection during the colony's transition

to provincial status, but the motion was ultimately defeated. Although apparently written by Trutch, the inclusion of Aboriginal People in the final text of the Terms of Union was completely at the insistence of Ottawa.

Clause 13 of the Terms of Union deals with the native people of British Columbia. It reads:

The charge of the Indians, and the trusteeship and management of the lands reserved for the use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union.

To carry out such a policy, tracts of land of such an extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion.<sup>11</sup>

Whether officials in Ottawa believed the colony's policies on Aboriginal People were indeed "liberal" is a matter of speculation. If anything, there was a considerable measure of confusion among federal politicians as to the substance of the colony's policy generally. One politician thought the reserve allotments were similar to those set aside in Ontario, namely, 80 acres per family; another thought the Aboriginal People had surrendered their territory through treaties. At any rate, one commentator has suggested that Trutch and other colonial officials were probably less than forthcoming in the information they offered to their federal counterparts, taking pains to assure Ottawa that the colony's aboriginal policy was indeed liberal and generous in the allotment of reserve land and other benefits to native groups.<sup>12</sup>

After British Columbia entered the Canadian federation in 1871, the federal government assumed responsibility and attempted to impose direct control over the Aboriginal People in the province. Section 91 (24) of the *British North America Act* of 1867 gave Ottawa legislative jurisdiction in relation to "Indians and lands reserved for Indians." However, the province still held legislative power in other policy fields, which it used to frustrate the ability of native groups to alter their plight. In 1872, the provincial legislature prohibited Aboriginal People from voting in provincial elections, thereby denying them the most fundamental of all democratic rights. And some years later, as a result of the province's title to public lands, provincial officials continued to set aside comparatively small reserves and, in some cases, they reduced even the size of established reserves, without the consent of the aboriginal residents. Because such acts were within the scope of the province's legislative authority, Ottawa could not force provincial officials to recognize aboriginal title. Nor could Ottawa motivate the province to enlarge the size of the reserves beyond the requirement of ten acres per family.

Nevertheless, some decisions of the federal government were important. For example, in 1884 in an amendment to the *Indian Act*, Ottawa outlawed the potlatch, one of the most important political and economic institutions of the coastal people. Moreover, the federal Cabinet held constitutional power to disallow any provincial statute.<sup>13</sup> Between the late 1880s and the mid-1940s, almost one-half of all provincial acts disallowed by Ottawa emanated from British Columbia, most of which involved the so-called "anti-Oriental" laws which had the potential of impeding the construction of the transcontinental railway system. Yet during this time the federal Cabinet exercised its veto power only marginally in respect of provincial legislation that was detrimental to native interests. To a large extent, Ottawa's failure to act reflected overall political priorities. Since native people occupied such a low place on the scale of political importance, it was probably more prudent for the federal government to do very little to jeopardize healthy intergovernmental relations or to alienate the electorate in British Columbia.

#### ABORIGINAL PROTESTS AND POLITICAL ORGANIZATIONS

These kinds of legislative enactments induced Aboriginal People to take a more direct and confrontational approach to their dealings with government. By the late 1870s Coast Salish tribes began to hold demonstrations. The first delegation from Nisga'a traveled to Victoria in 1881 to demand additional reserve land, treaties, and governance. Several years later, a group of Tsimshian leaders went to Ottawa and met with Prime Minister John A. Macdonald, who gave the chiefs his reassurance that the issue of insufficient reserve land would be addressed. These forms of protest had little impact on the actions of government. Ottawa ignored their claims, and British Columbia saw them as nothing more than attempts to garner more land from the province.

In the face of such recalcitrance, new forms of aboriginal political organization arose throughout the province. In 1916, various aboriginal groups along the coast and the interior formed the first provincewide aboriginal political organization, the Allied Indian Tribes of British Columbia (AITBC). The AITBC lobbied both Ottawa and Victoria for additional reserve land and for treaties. In the wake of the AITBC came the Native Brotherhood of British Columbia, which grouped the interests of the north and central coast peoples and advocated not only for a greater recognition in law of their hunting and fishing rights, but for the decriminalization of the potlatch. And as time wore on other aboriginal political organizations emerged in the province, such as the Nisga'a Tribal Council, the Nuu'Chah'Nulth Tribal Council, and the North American Indian Brotherhood. These groups also attempted to press the provincial government to recognize aboriginal title, but they were equally



concerned about improving the socio-economic status of native people. Collectively, these organizations would respond to governmental initiatives and would serve as political forums that reflected aboriginal understandings and perceptions of their identities.<sup>14</sup>

But what was more significant about these organizations was their tendency to use litigation along with lobbying as part of their overall strategy. The reasoning behind their decision to pursue the recognition of aboriginal rights in court was straightforward. After many years it seemed clear that negotiations between Aboriginal People and both orders of government were not going very far. The rights of Aboriginal People in the province continued to be restricted and, despite aboriginal protests, both orders of government worked together to alter the size of reserve land.<sup>15</sup> For these groups, litigation would remove their demands from the political forum and place them in the legal arena, where there seemed to be a greater chance they would receive a fair hearing. A judicial decision recognizing the continuing existence of aboriginal title in the province would draw attention to the illegality of many of the actions of the provincial government since at least Trutch's time and represent a significant bargaining chip for the Aboriginal People in their subsequent negotiations with government. Indeed, the attractiveness of the use of litigation was increased when the Judicial Committee of the Privy Council, in a 1921 case arising in Nigeria, ruled that aboriginal title was a pre-existing right that must be presumed to survive, unless established otherwise by the context or the circumstances in which the right operated.<sup>16</sup> Thus, if an analogous claim from British Columbia could reach the Judicial Committee, then there may be a good chance that the law lords would offer a similar ruling.

#### THE ROLE OF THE COURTS AND FEDERAL AND PROVINCIAL POLICY RESPONSES

The willingness of various aboriginal political organizations to resort to litigation would do much to induce changes to both federal and provincial policies concerning aboriginal title in those areas of Canada absent formal treaties. Indeed, from the early 1970s to the early 1990s, various judicial decisions would not only cause such changes, but in so doing, give Aboriginal People a rather solid foundation on which their negotiations with both orders of government could function.

One of the most important cases affecting aboriginal title in British Columbia was the 1973 Supreme Court of Canada ruling in *Calder*.<sup>17</sup> In this case counsel for the Nisga'a Tribal Council sought a declaration from the courts that aboriginal title was still in effect in the province. Their claim was based on two suppositions: first, that the Nisga'a held aboriginal title to their ancient tribal lands in the Nass Valley, prior to the assertion of British sovereignty; and second, that such title had not been lawfully extinguished. Consequently, the Nisga'a still held aboriginal title to these lands.

Initially, the case was heard by the British Columbia Supreme Court. Counsel for the provincial government responded to the Nisga'a argument by asserting that aboriginal title did not exist in British Columbia, simply because the *Royal Proclamation* of 1763 (which, for the province, was the source of aboriginal title), did not apply to the province. For aboriginal title to have meaning and indeed application in the province, it had to be created, explicitly, by Imperial authorities at the time sovereignty was asserted over the land. Nevertheless, the province's lawyers argued that, even if aboriginal title had existed in British Columbia, before the assertion of sovereignty, it had been extinguished, implicitly, by colonial land legislation prior to 1871.

Although both the British Columbia Supreme Court and the British Columbia Court of Appeal upheld the province's legal argument, the Supreme Court of Canada granted leave to appeal to the Nisga'a. Here the result was somewhat different, even though the appeal was ultimately dismissed by the Court. Six justices found the Nisga'a held aboriginal title before the assertion of British sovereignty. However, on the question of whether aboriginal title continued to exist in the province, the justices split evenly. Three justices held that aboriginal title continued to exist. Three justices ruled that, while aboriginal title may have existed, it was extinguished by the assertion of British sovereignty and by colonial actions prior to 1871. Moreover, and the reason for the appeal's dismissal, four of the seven justices found that the suit by the Nisga'a had been improperly brought before the Court, since they failed to obtain a fiat from the British Columbia government to do so.

The divided ruling of the Court was nevertheless sufficient to induce the federal government to adopt a new policy on aboriginal title. Prior to the Supreme Court of Canada's ruling in *Calder*, the federal government's aboriginal policy was not clearly defined. In 1969, Ottawa introduced the White Paper, which sought the eventual elimination of the various "privileges" of Aboriginal People, with the ultimate goal of "normalizing" their entry into Canadian society. However, the White Paper was condemned by almost all aboriginal groups as racist in its intent and a form of cultural genocide. In 1971, the federal government withdrew it. In its place Ottawa established the Core Funding Program, which provided aboriginal groups with the resources necessary for the promotion of their causes through research, legal channels, and publicity.<sup>18</sup> But it was not until the Supreme Court of Canada's ruling in *Calder* that a common ground emerged between Ottawa and the native community. The federal government then began a process of treaty making in the Canadian North, and commenced negotiations over land in the Nass Valley with the Nisga'a.

In 1984, the Supreme Court of Canada went further in recognizing aboriginal title as an established legal right in Canadian law. Following their earlier view in *Calder*, the Court's majority ruled in *Guerin* that Aboriginal Peoples' interest in their lands was a pre-existing legal right derived from their historic

occupation and possession of their tribal lands. Consequently, pre-existing aboriginal title was a legal right, still having force on reserve land in British Columbia and on traditional tribal lands not subject to treaties with the Crown.<sup>19</sup>

After *Guerin* the courts seemed for many aboriginal groups to be the most effective vehicle with which to advance their interests. In *Martin*,<sup>20</sup> the chiefs of the Clayoquot and Ahousaht First Nations sought a declaration from the courts that any provincial permit which allowed logging or in any other way interfered with aboriginal title was beyond the powers of the provincial government. Accordingly, the chiefs applied to a British Columbia Supreme Court judge for an injunction to halt logging until their claim had been resolved at trial. Central to this application was the desire to preserve evidence of the Aboriginal Peoples' historic use of the natural resources of the area. Although the British Columbia Supreme Court rejected the chiefs' legal argument and thus rejected the application for an injunction, the chiefs appealed to the British Columbia Court of Appeal. The Court divided three to two in favour of granting the injunction. Not only did one of the majority's judgements agree with the chiefs' argument, but the Court was explicit about what was expected of the provincial government. According to Justice MacFarlane:

The fact there is an issue between the Indians and the province based upon aboriginal claims should not come as a surprise to anyone. Those claims have been advanced by the Indians for many years. They were advanced in [the *Calder* case], and half the court thought they had some substance ... *I think it is fair to say that, in the end, the public anticipates that claims will be resolved by negotiations and by settlement.* This judicial proceeding is but a small part of the whole process which will ultimately find its solution in a reasonable exchange between governments and the Indian nations.<sup>21</sup> (emphasis added)

One of the results of *Martin* was the creation of the provincial Ministry of Native Affairs in 1988. Judicial support for the claims of aboriginal groups induced the new Social Credit government to entertain a more accommodating policy on aboriginal issues than previous provincial governments. Yet, like their predecessors, the government still refused to acknowledge aboriginal title and to enter into treaty negotiations. Despite this, several events would work in tandem to force a change in the government's position. By 1989, public support for treaties hit approximately 80 percent, as public knowledge over land claims increased.<sup>22</sup> Several conferences were held between representatives of various tribal groups and senior officials in the natural resource sector, which produced a consensus of opinion that treaty negotiations may be necessary if the development of the province's resource sector was to continue unimpeded.

Under these conditions the new minister of native affairs, Jack Weisgerber, along with his deputy minister, Eric Denhoff, approached the provincial Cabinet and suggested that negotiations with First Nations might be the best

course of action for the government to pursue. Subsequently, and after touring the province to meet with a number of First Nations, Premier Vander Zalm appointed a native affairs advisory committee to consider the government's policy options. In time, a number of the committee's members declared their support for negotiations. And it seemed likely that this would be the policy position recommended to the premier.<sup>23</sup> Soon after, native blockades were erected at Oka and at Kahnawake, not far from Montreal, creating a spillover effect across Canada generally and in Alberta and British Columbia in particular. Various aboriginal groups in these provinces set up their own blockades, both in support of the Mohawk claim to land, and to draw attention to their specific grievances with government.<sup>24</sup> Vander Zalm visited a number of the blockades in the province, and addressed the protesters. By the fall of 1990, the premier announced that his government would commence negotiations with the First Nations.

#### THE BC CLAIMS TASK FORCE AND DELGAMUUKW

With its new willingness to negotiate with aboriginal groups, the provincial government, along with Ottawa and First Nations Congress (later named the First Nations Summit), created the British Columbia Claims Task Force in late 1990. The task force considered the historical background to early treaty making in the province and in other parts of Canada, and covered the issues that should be subject to negotiations. It also sought to develop a process for the negotiations. It consulted with a number of individuals and organizations, and received submissions from a wide variety of interests. In the end the task force put forth 19 recommendations. Two of the most significant recommendations were the establishment of the British Columbia Treaty Commission and a six-stage treaty negotiation process.<sup>25</sup> On 21 September 1992, representatives of the First Nations Summit and the federal and British Columbia governments made a formal commitment to negotiate treaties by signing the *British Columbia Treaty Commission Agreement*.<sup>26</sup>

The recommendation of the BC Claims Task Force to initiate a treaty negotiation process was echoed soon after by the judiciary. In the 1993 ruling in *Delgamuukw*, the British Columbia Court of Appeal was asked to decide whether the Gitksan and Wet'suwet'en peoples of northwestern British Columbia held rights of ownership and jurisdiction (which amounted to a claim to self-government) in relation to approximately 22,000 square kilometres of the ancestral lands. In the alternative, the Court was asked whether the Gitksan and Wet'suwet'en peoples held aboriginal rights other than ownership and jurisdiction. The Court's majority rejected the ownership claim due to a paucity of evidence of exclusive occupation within clear boundaries. They

interpreted the jurisdiction claim as a claim to exercise binding governmental powers, including legislative power that could override provincial laws. For the Court, any such power had ended with the assertion of British sovereignty or with the exhaustive distribution of legislative powers in the *Constitution Act* of 1867. Although the Court noted that not all of the aboriginal rights of these groups had been extinguished prior to 1871, it was careful to make it clear that those aboriginal rights that do remain do not entail the unfettered right to use, occupy, and control the lands and their resources. Rather, they could be exercised concurrently with other non-aboriginal rights over Crown land. However, in both the majority and dissenting opinions, the Court suggested that negotiations would be the best method of determining not only the nature and scope of the aboriginal rights still in existence but the manner in which they could co-exist with other non-aboriginal rights to Crown land.<sup>27</sup>

#### THE BC TREATY COMMISSION AND THE PROCESS OF TREATY MAKING

The British Columbia Treaty Commission (BCTC) was appointed on 15 April 1993, and labeled as the keeper of the process. It is intended to function as an impartial and independent tripartite body to assist in facilitating the treaty negotiations by monitoring developments and by providing, when necessary, methods of dispute resolution. The BCTC also allocates funding to First Nations for their negotiations. The BCTC consists of five commissioners: two appointees of the First Nations; one from each order of government; and a Chief Commissioner agreed to by each of the three principals.

The treaty-making process is conducted entirely on a voluntary basis. No First Nation is compelled to enter into negotiations. Up to stage four of the six-stage process, negotiators from any of the parties are free to introduce to the talks any issue deemed worthy of inclusion. The contents of the six-stage process are included in Appendix I.

#### ISSUES SUBJECT TO THE NEGOTIATIONS

The scope of the issues that will dominate the treaty negotiations is immense. Ultimately, the treaties will have a lasting effect on aboriginal communities, the management of lands and natural resources, and on the nature of the relationship between Aboriginal and non-Aboriginal People in the province. There is no blueprint for the treaties; the contents of each will vary and reflect the unique circumstances and goals of the First Nations to whom they apply. Moreover, as the talks progress into the latter stages of the process, and as each of the parties refine their respective negotiating positions and begin to deal with the operational requirements of the issues before them, new issues will emerge and some may even be discarded at the bargaining table.

Many First Nations and tribal groups have entered the treaty-making process. As of the spring of 1996, a total of 47 aboriginal groups have submitted Statements of Intent to negotiate. Appendix II provides an enumeration of those First Nations currently negotiating treaties.

Yet there are many aboriginal groups who have decided not to enter into negotiations. They offer two reasons for their decision. First, many of the aboriginal groups of the interior region of the province argue that the treaty talks are illegitimate, since they involve rights to land and resources that have never been ceded by First Nations to the Canadian governments.<sup>28</sup> Second, First Nations which belong to the Union of British Columbia Indian Chiefs (UBCIC) do not acknowledge as legitimate the role of the provincial government in the negotiations. To the UBCIC, the treaties that are to be concluded should be done so on a nation-to-nation basis, between the First Nations and the federal government. British Columbia is not a nation and should not be involved in the negotiations. This position has some validity in both history and law, but it is one that is unworkable. The treaty negotiations involve land and resources, items that are within the legislative scope and proprietary interests of British Columbia. To suggest that the province should be excluded from the talks would necessitate separate negotiations between Canada and the provincial government at a later date, and could thus extend and complicate the treaty-making process.<sup>29</sup>

Although most of the negotiating teams have yet to devise detailed positions, there are nevertheless some issues common to all of the treaty talks, including:

- forms of self-government;
- acknowledgment of lands and resources, other than Crown land, which were alienated as a result of rural and urban development and industry;
- economic development initiatives for Aboriginal People, including jobs in resource extraction and management; and
- a greater role for Aboriginal People and communities in the management of fisheries, mining, and forestry.

There are some items that Ottawa considers non-negotiable. The provisions of the *Criminal Code* will continue to apply to Aboriginal People and aboriginal communities will play no measurable role in the formation of international treaties, nor in the development of federal policies affecting broadcasting, national defence, and security. Moreover, the body of the *Charter of Rights and Freedoms* will continue to apply to aboriginal governments and their citizens, although it appears that aboriginal governments will be able to construct their own bill of rights. Consequently, aboriginal governments will not become sovereign entities in any real sense. Both federal and provincial laws of

general application will apply to First Nations, unless provided otherwise in specific treaties. The federal government will retain its plenary powers over legislation designed to maintain "peace, order and good government in Canada," and all self-governing arrangements will be conducted on the presumption of the predominance of the Canadian constitution and the federal form of government. What powers Ottawa appears prepared to assign to aboriginal communities would be those law-making powers seen as internal to aboriginal communities (e.g., social services, membership in the aboriginal community, adoption, child welfare), integral to their cultures, traditions, institutions, and languages, and related to the management of their lands and natural resources.<sup>30</sup>

#### THE NISGA'A AGREEMENT IN PRINCIPLE

To many in the province, much of the uncertainty surrounding the nature and scope of the forthcoming treaties was put to rest with the initialing of the *Nisga'a Agreement in Principle* in March of 1996. Once the Agreement in Principle (AIP) is ratified by the parties, they will move towards negotiating a Final Agreement. The Final Agreement will be legally binding, and constitute a treaty under Sections 25 and 35 of the *Constitution Act* of 1982.<sup>31</sup>

The AIP covers a wide range of items, including: provisions affecting lands and resources, self-government, fisheries, and taxation. To illustrate, Nisga'a Lands — the core treaty settlement area — will encompass approximately 1,930 square kilometres of land, to be owned communally by the Nisga'a Nation, with title vested in the Nisga'a government. This land represents about 4 percent of the traditional territory of the Nisga'a. Nisga'a Lands will also include 56 reserves located outside this core settlement area. Once the AIP is ratified these reserves will no longer be considered reserve land under the *Indian Act* but rather part of Nisga'a Lands.<sup>32</sup> The Nisga'a government will also own subsurface and surface resources on these lands.<sup>33</sup> Wood lot licences and agricultural leases on Crown land within this area will not be classified as Nisga'a Lands but will be retained by the province. The Nisga'a government will control timber harvesting and management on Nisga'a Lands. And the provincial government has agreed in principle to the acquisition by the Nisga'a of 150,000 cubic metres of timber forest licence outside Nisga'a Lands.<sup>34</sup>

The primary institutions of government of the Nisga'a Nation will be the Nisga'a central government and a series of Nisga'a Village governments. The former will be responsible for relations between the Nisga'a Nation and the British Columbia and federal governments. The Nisga'a Constitution will set out the duties, composition, and membership of the central and village governments, and provide a role for Nisga'a elders in the interpretation of the Constitution.<sup>35</sup> The Constitution will come into force once it has been approved by at least 70 percent of those voting in a referendum, and can be

amended only with the approval of at least 70 percent of those voting in a referendum for that purpose.<sup>36</sup> Non-Nisga'a citizens residing on Nisga'a Lands will be consulted by the Nisga'a government over decisions it makes which "directly and significantly" affect them, and be able to participate in and vote for subordinate elected bodies whose activities affect them in a similar fashion.<sup>37</sup> The Nisga'a Constitution may also appoint non-Nisga'a people to various governmental institutions.<sup>38</sup> In terms of its legislative and administrative powers, the Nisga'a government will hold jurisdiction over a wide range of areas, including culture, language, employment, public works, land use, and marriage.<sup>39</sup> Subject to the approval of the British Columbia government, the Nisga'a will have their own police force and court to enforce and to rule on Nisga'a laws on Nisga'a Lands.<sup>40</sup> The rulings of the Nisga'a court can be appealed through the provincial court appellate system. The *Charter of Rights and Freedoms* will apply to the Nisga'a government and its institutions in relation to all matters within its jurisdiction and authority.<sup>41</sup>

As it affects fisheries, the AIP indicates that the Nisga'a will, through an agreement with both orders of government, receive a harvest allocation of 13 percent of the total allowable catch of sockeye salmon, and 15 percent of the total allowable catch of pink salmon for a period of 25 years.<sup>42</sup> This agreement will not be a land claim agreement and will not create any treaty rights under the *Constitution Act* of 1982.<sup>43</sup> Yet non-salmon species, which are used by the Nisga'a for domestic purposes, will be considered a treaty entitlement.<sup>44</sup> Moreover, the federal Department of Fisheries and Oceans will retain overall responsibility for conservation and fisheries management.<sup>45</sup>

Among the many provisions of the AIP which involve taxation, the Nisga'a central government will be tax-exempt and be able to impose forms of direct taxation over Nisga'a citizens for public purposes. Yet these citizens must reside on Nisga'a Lands.<sup>46</sup> Prior to the Final Agreement, the parties will attempt to reach an agreement on a definition and a list of tax exemptions, including Nisga'a government public works, Nisga'a citizen residences, and forest resources.

#### THE 1996 PROVINCIAL ELECTION IN BRITISH COLUMBIA

Contrary to the expectations of many in the province, the treaty-making process did not become an issue during the 1996 provincial election. Only the Reform Party attempted to introduce it into the campaign discourse by suggesting that all such agreements with First Nations be put to a referendum in the region affected. This strategy was to gain voter support in the largely natural resource-based, small communities in the interior of the province, where opposition to treaties and support for the Reform Party was relatively strong. Yet the Reform Party's efforts went unchallenged. Neither the Liberal Party nor the NDP wished to fight the election on the issue of aboriginal treaties. The



Liberal Party was already gathering some support in the interior region, and it would have been folly for it to campaign against treaties and risk losing their greater base of electoral support in the Vancouver area where there is strong support for the treaty-making process. The NDP simply had nothing to gain and everything to lose by raising the issue of treaties during the campaign. Indeed, after the votes were counted, the NDP did surprisingly well in areas where they were expected to do poorly, (even winning the riding of Rupert, the area affected by the Nisga'a AIP) in large measure because they did not discuss aboriginal treaties during the campaign.

### THE IMPACT OF TREATIES IN BRITISH COLUMBIA

Most of the treaty talks are still at an early stage. With the notable exception of the Nisga'a, substantive negotiations will not begin until after the Framework Agreement stage. Nonetheless, little attention has been devoted to the impact of treaties on both the Canadian federation and intergovernmental relations. A variety of questions remain. To what extent will the governance provisions of the treaties alter the distribution of powers in Canada? Will they represent a significant devolution of power from both orders of government so that aboriginal communities will acquire real control over policy areas that affect them? Also, since aboriginal and non-aboriginal governments will have to coordinate their activities in specific policy fields, to what extent have some aboriginal groups incorporated into their bargaining positions mechanisms to accommodate this need for intergovernmental cooperation?

### DEVOLUTION OF POWER TO ABORIGINAL COMMUNITIES

The governance provisions of subsequent treaties will involve some devolution of powers from both orders of government to aboriginal communities, such that aboriginal communities will have greater control over policy areas that directly affect them. Along with this redistribution of power would be the disappearance of much, if not all, of the paternalism that characterizes the band council system of the *Indian Act*. Aboriginal governing bodies could hold legislative powers in relation to employment, public works, and the regulation of traffic and transportation. Aboriginal communities could also continue to provide public services in the areas of health, child welfare, and education, and have their own constitution. However, whether every treaty will include a parallel court system and police force, similar to those of the Nisga'a AIP, will depend on a host of variables including the desire of the community members for such services. For example, some smaller native groups have expressed a greater desire to hold legislative authority in relation to environmental management on treaty lands than in respect of justice.<sup>47</sup> Nonetheless, future

aboriginal governments will be more than simply local governments; indeed, if they follow the precedent set by the Nisga'a AIP, they will govern on both a regional and local basis.

Yet the notion of power devolution is problematic for native peoples. To them, the act of the Crown devolving power to aboriginal communities so that they can become legitimate governing entities rests on the erroneous assumption that native groups never had governing powers of their own. Reinforced by early American jurisprudence,<sup>48</sup> Aboriginal Peoples have argued that, prior to the arrival of Europeans, they were organized into politically autonomous structures, and recognized by the Crown as nations capable of entering into treaties.<sup>49</sup> Moreover, the right to self-government, while certainly restricted over the years, has never been extinguished by treaty or by conquest.<sup>50</sup> Consequently, along with the legal support offered by the recognition and affirmation of aboriginal and treaty rights in Section 35(1) of the *Constitution Act* of 1982, aboriginal groups hold that there are really three orders of government in Canada, or, at the very least, a traditional form of aboriginal government which is separate from the two orders of government that exist within the Canadian federal system.

#### INTERGOVERNMENTAL COORDINATION AND COLLABORATION

The forthcoming treaties in British Columbia will provide the basic framework for identifying the functional, jurisdictional boundaries between native and non-native governments. Yet since many policy fields will be subject to the activities of these governments, a measure of governmental collaboration and coordination will be necessary. For example, in the forest sector, the Nisga'a AIP allows the Nisga'a central government to establish rules and standards to govern forest resources on Nisga'a Lands which meet or exceed provincial standards on Crown land, and that the Final Agreement will provide for "fair and objective" methods to evaluate whether such standards do so.<sup>51</sup> Also, intergovernmental agreements are to be negotiated between the Nisga'a central government and British Columbia in relation to the rate of harvest of timber resources on Nisga'a Lands.<sup>52</sup> Indeed, the same need for coordination between governments is required in respect of subsurface resources. While the Nisga'a central government will own all mineral resources under Nisga'a Lands, it may enter into agreements with the provincial government in relation to the application of provincial administrative systems affecting claim staking, recording, and inspecting subsurface exploration and development of Nisga'a Lands, and Crown collection of Nisga'a royalties.<sup>53</sup>

Just as they contribute to the often conflictual nature of intergovernmental relations generally, divergent policy goals and ideological views will surely shape future relations between native and non-native governments.<sup>54</sup> These factors, combined with shared policy responsibilities, make the need for

governmental coordinating mechanisms of vital importance, especially if the treaties are to fulfill some of their intended functions. Indeed, many aboriginal groups involved in the negotiations have incorporated into their bargaining positions various kinds of policy-coordinating institutions. The Sechelt have established a Liaison Committee, with one appointee from the Sechelt, the federal government, and the British Columbia government, so that there is a continuous stream of communication between each party as it affects all matters relating to the Sechelt.<sup>55</sup> And the Nuw'Chah'Nulth Tribal Council have suggested that while their treaty should be entrenched in the constitution, some parts of it should be susceptible to change through an amending formula, involving the participation and consent of both orders of government. The formula should include a dispute resolution mechanism in case any changes cannot be agreed upon by all three sides.<sup>56</sup> This will allow parts of the treaty to evolve and to meet new and emerging circumstances.

## CONCLUSION

The overall impact of the treaties will not be known for some time. Ultimately, the goals of the treaty-making process are to work out mutually acceptable and beneficial relationships between Aboriginal and non-Aboriginal People and their governments. The treaties should enable aboriginal communities to exercise a greater degree of political autonomy, based on their inherent right to self-government. The treaties should also allow Aboriginal Peoples to participate more in the economy of British Columbia. Only when aboriginal groups become more self-sufficient can the ties that bind them to government be cut. Moreover a decision simply to not conclude treaties will do little to eradicate the factors that gave rise to the initiation of the treaty-making process. Aboriginal rights will remain unconfirmed and unrecognized; injunctions by the courts could continue to be issued, thus impeding natural resource development in the province; and a measure of economic instability will continue. In the end it is hoped that the treaties will produce aboriginal communities that, while more independent, interact meaningfully with the non-aboriginal population of the province, and thereby signal the beginning of a new era in aboriginal-state relations in British Columbia.

## NOTES

1. See D. Sanders, "Getting Back to Rights," in *Aboriginal Title in British Columbia: Delgamuukw v. the Queen*, ed. F. Cassidy (Montreal: The Institute for Research on Public Policy, 1992), 285.
2. This form of acquisition was used often by the British in respect of other colonies, especially New Zealand and the Pacific Island states of Samoa and Fiji.

One should note, however, that in the case of Fiji, the island was ceded to the British not quite voluntarily; it was done essentially as a response to a threat of military invasion by the United States.

3. B. Slattery, "The Hidden Constitution: Aboriginal Rights in Canada," in *The Quest for Justice: Aboriginal People and Aboriginal Rights*, ed. M. Boldt and J.A. Long (Toronto: University of Toronto Press, 1985), 118. It should be noted that the law in British Columbia remains unsettled as regards the doctrine of continuity. In the 1993 *Delgamuukw* case, the doctrine was acknowledged by Justice Lambert in his dissenting opinion, but it was rejected by one of the Court's majority justices, namely, Justice Wallace.
4. See the Letter from A. Barclay, Secretary, Hudson's Bay Company, to J. Douglas, December 1949, cited in D. Pethick, *James Douglas: Servant of Two Empires* (Vancouver: Mitchell Press, 1969), 77-78.
5. For a review of British treaties with indigenous groups, similar to that of the *Treaty of Waitangi* of 1840, see D.V. Williams, "Te Tiriti o Waitangi — Unique Relationship Between the Crown and Tangata Whenua," in *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, I.H. Kawharu, ed. (Auckland: Oxford University Press, 1989), 64.
6. Treaty Eight was signed by various aboriginal groups in the Peace River District and the federal government. The government of British Columbia played no significant role in the conclusion of this treaty. Not only did the province have little, if any, "official" presence in the area, but the belief that the province held clear title to the land, unencumbered by aboriginal title, was firm.
7. In the context of similar efforts by the London Missionary Society in the South Pacific, see A. Moorehead, *The Fatal Impact: An Account of the Invasion of the South Pacific, 1767-1840* (Honolulu: Mutual Publishing, 1966), 79-85.
8. See British Columbia, *Papers Connected to the Indian Land Question in British Columbia* (Victoria: Queen's Printer, 1875); section titled "Report on Indian Reserves," Appendix B, 11.
9. Cited in P. Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: University of British Columbia Press, 1990), 40.
10. *Ibid.*, 41.
11. British Columbia, *British North America Act, 1867, Terms of Union with Canada, Rules and Orders of the Legislative Assembly...* (Victoria: R. Wolfenden, 1881), 66; cited in R. Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: University of British Columbia Press, 1977), 177.
12. *Ibid.*
13. See Sections 55 to 57 and Section 90 of the *Constitution Act* of 1867.
14. For an in-depth overview of the major aboriginal political organizations in British Columbia from the late 1950s to the early 1980s, see Tennant, *Aboriginal Peoples and Politics*, chapters 10, 12, 13 and 14.

15. The reduction or "cut-offs" of aboriginal reserve land was codified in the *British Columbia Lands Settlement Act* of 1920. The legislation was enacted pursuant to some of the recommendations of the McKenna-McBride Commission Report of 1916, empowered "to settle all differences between the Governments of the Dominion and the Province respecting Indian lands and Indian affairs," and to offer a "final adjustment of all matters relating to Indian Affairs in the Province." See British Columbia, Royal Commission on Indian Affairs in the province of British Columbia, *Evidence* (Victoria: Acme Press, 1916). The McKenna-McBride Commission did not, however, consider treaties and self-government.
16. The Judicial Committee of the Privy Council case arising from Nigeria is cited as *Amodu Tijani v. Secretary, Southern Nigeria*, (1921) 2 Appeal Court, 409-10.
17. *Calder v. Attorney General of British Columbia*, [1973] S.C.R., 313.
18. A. Fleras and J.L. Elliott, *The Nations Within: Aboriginal-State Relations in Canada, the United States, and New Zealand* (Toronto: Oxford University Press, 1992), 44-45.
19. See *Guerin v. The Queen*, [1984] 2 S.C.R., 335.
20. *Martin et al., v. The Queen in Right of the Province of British Columbia et al.*, (1985) 3 W.W.R., 583.
21. *Ibid.*, 607.
22. See "B.C. native bands take to the barricades to push their cause," *Maclean's*, 7 August 1995, 10.
23. Tennant, *Aboriginal Peoples and Politics*, 236-37.
24. The blockades in British Columbia were directed primarily at the absence of treaties in the province; in Alberta, where there are treaties with First Nations, the blockade near the Oldman River dam by members of the Peigan First Nation, for example, was directed at Treaty 7 promises allegedly left unfulfilled by the federal government.
25. See *Report of the British Columbia Claims Task Force*, 28 June 1991, 74-75.
26. See *Agreement Between The First Nations Summit and Her Majesty the Queen in the Right of Canada and Her Majesty the Queen in Right of the Province of British Columbia*, 21 September 1992.
27. See *Delgamuukw v. The Queen in Right of the Province of British Columbia and the Attorney General of Canada*, 25 June 1993, 73. Note that leave to appeal was granted by the Supreme Court of Canada on 10 February 1994.
28. See "True self-government vs. The Canadian Government's Proposal for Indian self-government," *Kahtou*, 15 May 1994.
29. It should be noted that the UBCIC has established an ongoing government-to-government relationship with Victoria, in order to resolve a series of policy concerns of mutual interest. Yet the UBCIC has made it clear that such interaction and cooperation does not derogate from the bilateral nation-to-nation relationship between First Nations and the federal government. See *Memorandum of Understanding Respecting the Establishment of a Government to*

*Government Relationship Between the Union of B.C. Indian Chiefs and the Government of British Columbia*, 11 June 1993.

30. Canada, *British Columbia Treaty Negotiations: The Federal Perspective* (Draft), 27 June 1995, 24.
31. *Nisga'a Agreement in Principle*, 15 February 1996. Section 2 (General Provisions).
32. *Ibid.*, Sections 1(a)(b) (Lands and Resources).
33. *Ibid.*, Section 16.
34. *Ibid.*, Section 93.
35. *Ibid.*, Section 19(a) (e) (Nisga'a Constitution).
36. *Ibid.*, Sections 11, 12.
37. *Ibid.*, Section 22 (a)(b) (Relations With Individuals Who Are Not Nisga'a Citizens).
38. *Ibid.*, Section 23.
39. *Ibid.*, Sections 27-74 (Nisga'a Government Legislative Jurisdiction and Authority).
40. *Ibid.*, Sections 2-18 (Police Services) and Sections 26-43 (Nisga'a Court).
41. *Ibid.*, Section 9 (General Provisions).
42. *Ibid.*, Section 17(a)(b) (Salmon Harvesting Entitlements).
43. *Ibid.*, Section 19.
44. *Ibid.*, Section 45 (Harvest Entitlements of Non-Salmon Species).
45. *Ibid.*, Section 62 (Fisheries Management).
46. *Ibid.*, Section 5 (Nisga'a Lands) and Section 1 (Nisga'a Nation Direct Taxation).
47. See community survey of Lheit'Lit'en and Yekooche First Nations. E.V. Christensen Consulting Limited, 1995.
48. See *Worcester v. Georgia*, 6 Peter 515 (1832), p. 542, which referred to Aboriginal Peoples as "divided into separate nations, independent of each other and the rest of the world, having institutions of their own, and governing themselves by their own laws."
49. As regards aboriginal groups' ability to enter into treaties with the Crown, see the comments of Justice Lamer in *R. v. Sioui*, [1990] 1 S.C.R. 1025, at p. 1053.
50. For support see B. Slattey, "First Nations and the Constitution: A Question of Trust," (1992), 71 *Canadian Bar Review*, 271; Royal Commission on Aboriginal Peoples, *Partners in Confederation* (Ottawa: Minister of Supply and Services, 1993). Also note that the *Charlottetown Accord* of 1992 recognized the right of aboriginal self-government, and established an extensive framework for negotiations on self-government and on treaties.
51. *Nisga'a Agreement in Principle*, Section 77 (Forest Resources on Nisga'a Lands).
52. *Ibid.*, Section 78.

53. Ibid., Sections 16-17 (Subsurface Resources).
54. See J. Warhurst, "Managing Intergovernmental Relations," in *Federalism and the Role of the State*, ed. H. Bakvis and W.M. Chandler (Toronto: University of Toronto Press, 1987), 2701; P. Leslie, *Federal State, National Economy* (Toronto: University of Toronto Press, 1987), 64-65.
55. See *Records of Decisions and Commitments* by Sechelt, Canada, and British Columbia, 15 July 1995, 3.
56. *Nuu'Chah'Nulth Ha'Wiih Position on Lands, Waters, Air and Natural Resources* (Nuu'Chah'Nulth Tribal Council, 1995), 3.

## **Appendix I**

### **The Six-Stage Process of Negotiating Treaties in British Columbia**

#### **STAGE ONE: STATEMENT OF INTENT**

The treaty-making process begins once a First Nation files with the British Columbia Treaty Commission a Statement of Intent (SOI) to negotiate. Once the commission accepts the SOI as complete it is submitted to the federal and British Columbia governments. For a SOI to be deemed complete it must satisfy certain criteria. The First Nation proposing to negotiate a treaty must be identified, along with the people it purports to represent. The First Nation must also describe the geographic area of its traditional territory. And it must indicate a formal contact person for subsequent communication between the parties.

#### **STAGE TWO: PREPARATIONS FOR NEGOTIATIONS**

Within 45 days of receiving a SOI the commission is required to convene a meeting with the three parties. Often held in the traditional territory of the relevant First Nation, this initial meeting allows the parties and the commission to exchange information, consider criteria that will determine the parties' readiness to negotiate a treaty, discuss the research that may be undertaken in preparation for the negotiations, and identify in a general fashion the main issues of concern to each of the parties.

Subsequent to the first meeting, the parties begin readying themselves for the third stage of the process. At this point the commission determines the extent to which the parties are prepared to begin the negotiation of a Framework Agreement. Each party must have the following items in place:

- an appointed negotiator, with a clear mandate to negotiate;
- sufficient resources to carry out the negotiations;
- a ratification procedure; and
- an identification of both the substantive and procedural issues to be negotiated.

More specifically, at this stage the First Nation must have identified and indicated a process for resolving any issues involving overlapping territory with any neighbouring First Nation. And the federal and British Columbia governments must have obtained not only some background information on the relevant aboriginal community, its people, and the non-aboriginal interests



that could be affected by the negotiations within the claim area, but they must also have a mechanism for consulting with non-aboriginal and third-party interests.

### STAGE THREE: NEGOTIATION OF A FRAMEWORK AGREEMENT

The Framework Agreement is essentially a negotiated agenda that identifies the issues to be negotiated, the goals of the negotiation process, any special procedural arrangements, and a timetable for the negotiations.

### STAGE FOUR: NEGOTIATION OF AN AGREEMENT IN PRINCIPLE

The substantive negotiations begin at this stage of the process, with the result being a series of agreements to form the basis for the treaty. The Agreement in Principle will also establish the ratification procedure for each party to the negotiations, and submit it to the relevant constituents for their approval, rejection or amendment. The British Columbia government has indicated that Agreements in Principle will be subject to public review before ratification. The completion of this stage provides the parties with a mandate to conclude a treaty.

### STAGE FIVE: NEGOTIATION TO FINALIZE A TREATY

The treaty that is concluded at this stage will formalize the relationship between the parties, and embody the agreements reached in Stage Four. Certain issues of a legal or technical nature will be resolved at this stage, and those issues already settled will not be re-opened. The treaty will be signed and formally ratified at the completion of this stage.

### STAGE SIX: IMPLEMENTATION OF THE TREATY

Steps will be taken at this stage to ensure the long-term implementation of the treaties.

## Appendix II

### Aboriginal Groups Participating in the Treaty Negotiations\*

Carrier Sekani Tribal Council and Cheslatta Carrier Nation  
Cariboo Tribal Council  
Champagne & Aishihik First Nations  
Ditidaht First Nation  
Esketemic Nation (Alkali Lake)  
Gitanyow Hereditary Chiefs  
Gitxsan  
Haida Nation  
Haisla Nation (Kitamaat)  
Heiltsuk Nation  
Homalco Band  
Hul'qumi'num Speaking Peoples  
In-Shuck-Ch  
Kaska Dene Council  
Katzie Indian Band  
Klahoose Nation  
Ktunaxa Nation  
Kwakiutl First Nations  
Lheit-Lit'en Nation  
Musqueam Nation  
Nanaimo First Nation  
Nat'oot'en First Nation (Lake Babine)  
Nazko Indian Band  
Nuu'Chah'Nuulth Tribal Council  
Oweekeno Nation  
Pavillion Indian Band  
Quatsino Nation  
Sechelt Indian Band  
Sliammon Indian Band  
Squamish Nation  
Tahltan Tribal Council  
Taku River Tlingit First Nation  
Te-Mexw Treaty Association  
Teslin Tlingit First Nation  
Treaty 8 Tribal Association  
Tsawwassen First Nation  
Tsay-Key Dene Band  
Tsimshian Nation  
Tsleil Wautulth Nation (Burrard)  
Westbank  
Wet'suwet'en  
Xaxli'p (Fountain Band)  
Yale First Nation  
Yekooche

Source: British Columbia Treaty Commission.

\*As of April 1996

### Appendix III

## Chronology of Events Contributing to the Treaty-Making Process in British Columbia

1774

*Royal Proclamation* of 1763, proclaimed by King George III of England. It is a statement of British policy recognizing Indian lands and rights and prohibiting alienation of Indian land except by cession to the Crown. The *Proclamation* has never been repealed and has the force of law in Canada, recognized in Section 25 of the *Constitution Act* of 1982.

1774

Spanish explorers arrive on the West Coast of Vancouver Island

1778

Captain Cook explores the coast of British Columbia, establishing a British claim to sovereignty in opposition to that made earlier by the Spanish.

1849

Vancouver Island declared a colony of Britain. Britain gives the Hudson's Bay Company a grant over the land and its settlement.

1850-54

Governor James Douglas negotiates 14 treaties with aboriginal groups on Vancouver Island, covering approximately 358 square miles of land. In these "purchases" or "deeds of conveyance," land was exchanged for payments in the form of blankets and the rights to hunt and fish on unoccupied Crown lands. He attempts to set a policy of granting a minimum of ten acres per family for reserve land. These treaties represent some recognition of aboriginal rights.

1858

The Mainland of British Columbia declared a colony of Britain.

1864

Joseph Trutch, a surveyor and developer, is appointed commissioner of land and works. Trutch denies aboriginal title and sets forth a policy of prohibiting rights of preemption to Aboriginal People, and adjusting the size of reserve land.

1866

The colonies of Vancouver Island and British Columbia are unified.

1867

The *British North America Act* of 1867 creates the Dominion of Canada. Sections 91-94 gives the federal government overall responsibility for administering Indian affairs and maintaining British colonial policy. Section 109 gives jurisdiction and ownership of land and natural resources to the provincial governments.

1870

Rupert's Land and the Northwestern Territory are transferred to Canada by Britain after the termination of the charter of the Hudson's Bay Company. Canada accepts responsibility for settling Indian claims in the area.

1871

British Columbia enters the Canadian federation.

1871

Joseph Trutch is appointed Lieutenant Governor of British Columbia.

1871-77

Treaties 1 to 7 are signed on the prairie provinces. Following the practice established in these treaties, British Columbia natives hope that with confederation the federal government will grant reserves in British Columbia on the basis of 160 acres or more per family.

1876

The federal government passes the *Indian Act*, thus consolidating all federal legislation affecting Aboriginal People. Indian status is defined, and the Superintendent General is given sweeping administrative powers over many aspects of Indian life.

1881

A delegation of Nisga'a travel to Victoria demanding additional reserve land. Several years later a delegation of Tsimshian travels to Ottawa. They meet with Prime Minister Macdonald, who gives the chiefs his reassurance that the issue of insufficient reserve land will be addressed.

1884

The potlatch is made illegal through an amendment to the *Indian Act*. The amendment reads: "Every Indian or other person who engages in or assists in celebrating the Indian festival known as the potlatch ... is guilty of a misdemeanor and shall be liable to imprisonment for a term of not more than six months and no less than two months."

1890

The Nisga'a Land Committee is formally organized by Arthur Calder.

1899

Treaty 8 is signed with the Beaver, Cree, and Slave Indians located in the Peace River District of the province.

1906

A delegation from Squamish travels to England with a petition for treaties.

1909

Twenty tribes from southern British Columbia send delegates to London.

1912

A Memorandum of Agreement is signed by Special Commissioner J.A.J. McKenna and Premier Sir Richard McBride, appointing a commission to "adjust" the acreage of Indian reserves in British Columbia.

1913

The Nisga'a petition to the British Privy Council, demanding a legal judgement on their land claim, is formally adopted by the Nisga'a Land Commission. It is the first aboriginal group to assert a legal right to land based upon the *Royal Proclamation of 1763*.

1916

The Allied Tribes of British Columbia (ATBC) is formed, comprising aboriginal groups from the coast and the interior of the province. Mr. A.E. O'Meara is retained as counsel by the ATBC. He pursues the land issues for his clients on a number of legal points until such activity is prohibited by law in 1927.

1916

The McKenna-McBride Commission releases to the federal and provincial governments a report of its findings in relation to Indian reserves in British Columbia. Some existing reserves are confirmed as previously allotted, others

reduced in size, and others eliminated because they are considered to be "no longer required for Indian use and occupancy." The commission's recommendations were not accepted by the provincial and federal government until 1920.

1921

Indian Agent Halliday, supported by Federal Commissioner Duncan Campbell Scott, prosecutes and imprisons Kwakiult Indians participating in a potlatch. Masks, coppers, blankets, and other ceremonial regalia confiscated.

1927

Joint Parliamentary Committee in Ottawa finds that land claims have no legal basis. The committee also recommends a prohibition on the raising of money for land claims. The recommendation is later codified in Section 141 of the *Indian Act*.

1931

The Native Brotherhood of British Columbia (NBBC) is formed in the wake of the ATBC.

1938

British Columbia Order in Council 1036 gives final conveyance of title to Indian reserves in British Columbia to the federal government.

1949

British Columbia Indians receive the right to vote in provincial elections. Frank Calder elected to the provincial legislature.

1951

The *Indian Act* is amended, and laws prohibiting the potlatch and land claim activities are repealed.

1960

Conservative government of John Diefenbaker gives Aboriginal People the right to vote in federal elections.

1969

Ottawa introduces the White Paper, which seeks to eliminate certain "privileges" of Aboriginal People, including: the abolition of the *Indian Act* and federal obligations to Aboriginal People. The White Paper is condemned by many aboriginal groups in Canada as a form of cultural genocide.

1969

Nisga'a Tribal Council launches legal action against the Crown in right of the Province of British Columbia, arguing that, in the absence of a treaty with the Crown, it still holds aboriginal title to its ancestral lands in the Nass Valley.

1973

Supreme Court of Canada rules in *Calder*. Six justices found the Nisga'a held aboriginal title before the assertion of British sovereignty. Three justices rule that aboriginal title continues to exist in the province; three justices rule that aboriginal title had been extinguished by the assertion of British sovereignty and by colonial actions, implicitly, prior to 1871. The appeal is ultimately dismissed, since the Nisga'a failed to obtain a fiat from the British Columbia government to launch the action. The divided ruling of the Court on the matter of aboriginal title in British Columbia induces the federal government to adopt a new policy on Aboriginal People. Ottawa later enters into negotiations with the Nisga'a.

1971

Ottawa establishes the Core Funding Program for aboriginal groups, providing them with the necessary resources to promote their claims through research, legal action, and publicity.

1977

Gitksan-Wet'suwet'en Tribal Council begins research on their land claim.

1981

Federal government outlines a new comprehensive claims procedure in a publication titled: *In All Fairness*. Ottawa accepts only six claims nationally and one in British Columbia. Nisga'a claim accepted formally for negotiation.

1982

Ottawa outlines a new policy on specific claims in the publication titled: *Outstanding Business*.

1982

Patriation of the Canadian constitution. The *British North America Act* of 1867 is amended and renamed the *Constitution Act* of 1867. New provisions are added to the constitution in the *Constitution Act* of 1982; the *Charter of Rights and Freedoms* is also proclaimed into force on 17 April. The *Constitution Act* of 1982 contains the following provisions in relation to Aboriginal Peoples:

Section 25

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, including:

- a.) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b.) any rights or freedoms that now exist by way of land claims settlement.

Section 35

1. The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

2. In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Section 37

1. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

2. The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

1982

First Section 37 conference to define aboriginal rights is held. The first ministers meet with aboriginal leaders.

1983

Report of the Special Committee on Indian Self-Government in Canada (also known as the Penner Report) tables its report and recommends that the federal government "establish a new relationship with First Nations and that an essential element of this relationship be recognition of Indian Self-Government"; this relationship is to be "explicitly stated and entrenched in the Constitution of Canada."



1984

Federal government under Prime Minister Trudeau proposes constitutional entrenchment of aboriginal self-government by way of a constitutional accord at the second Section 37 conference. Western provinces reject the proposal.

1985

Bill C-31 enacted by Parliament, restoring status and band membership to native women, lost under section 12(1)(b) of the *Indian Act*. The bill also restores status to their children but does not give them band membership.

1985

Nuu'Chah'Nulth Tribal Council applies to the British Columbia Supreme Court for an injunction to prevent logging on Meares Island until the question of aboriginal title is settled. Justice Gibbs rules that aboriginal title does not apply to British Columbia. Decision appealed to the British Columbia Appeal Court, which gives the Tribal Council until September 1986 to prepare their case.

1985

British Columbia Court of Appeal in *Martin* grants injunction to the Nuu'Chah'Nulth Tribal Council. Court expresses the opinion that the nature and scope of aboriginal title should be negotiated and not decided by litigation.

1986

Bill C-93, the *Sechelt Indian Band Self-Government Act*, is enacted by Parliament. The Act gives the Sechelt "municipal style" powers of self-government.

1986

Federal Task Force established to review Ottawa's comprehensive claims policy releases its report titled: *Living Treaties, Lasting Agreements*. The report recommends affirmation by the federal government of aboriginal title and suggests that comprehensive claim negotiations need no longer be based on the extinguishment or surrender of aboriginal title.

1987

Gitsan and Wet'suwet'en tribal nations launch a legal action in the British Columbia Supreme Court, claiming a right of ownership and jurisdiction to their ancestral lands. The case is known as *Delgamuukw*.

1988

Social Credit government in British Columbia creates its first Ministry of Native Affairs. Jack Weisgerber is the minister. The government still refuses to recognize aboriginal title in the province.

1990

Meech Lake Accord is defeated due to the failure of the Manitoba and Newfoundland legislatures to pass companion legislation.

1990

Quebec police raid a Mohawk barricade erected at Oka. The barricade was established to block the expansion of a golf course onto Mohawk land. At the nearby Kahnawake reserve, Mohawks blocks the Mercier bridge, thus cutting off a major artery of Montreal. The Oka stand-off becomes a symbol to Aboriginal People across Canada of the failure of government to resolve land claims. Other blockades are set up throughout Canada, with some in British Columbia. Premier Vander Zalm visits some of these blockades and addresses the protesters. By the fall of 1990, Vander Zalm announces that his government will commence negotiations with First Nations.

1990

British Columbia Claims Task Force established.

1991

British Columbia Task Force releases its report. The Task Force recommends the establishment of a six-stage treaty negotiation process and the British Columbia Treaty Commission to facilitate the negotiations.

1991

British Columbia Supreme Court rules in *Delgamuukw*, rejecting the tribal nations' claim. Justice McEachern finds that aboriginal title had been extinguished in British Columbia. The Gitksan and Wet'suwet'en seek leave to appeal to the British Columbia Court of Appeal.

1992

Representatives of the First Nations Summit and the federal and British Columbia governments make a formal commitment to negotiate treaties in British Columbia by signing the *British Columbia Treaty Commission Agreement*.

1992

Charlottetown Accord is defeated in a national referendum. The Accord contained a provision recognizing aboriginal self-government.

1993

British Columbia Treaty Commission is appointed to function as an independent and impartial tripartite body to assist in the facilitation of the treaty negotiations in British Columbia. A number of First Nations indicate their desire to negotiate a treaty by December.

1993

In June, the British Columbia Court of Appeal rules in *Delgamuukw*. The Court rules that not all aboriginal rights of the Gitksan and Wet'suwet'en tribal nations were extinguished in 1871. Those that remain, however, do not entail the unfettered right to use, occupy, and control the lands and resources of the area. The Court also emphasizes that determining the nature and scope of these aboriginal rights and the type of self-government that the Gitksan and Wet'suwet'en shall enjoy, outside the Indian Act, should be done through negotiation.

1995

A number of native blockades are established in the interior of the province to protest the impact of commercial development on nearby reserve land. A stand-off erupts at Gustafsen Lake. The "Defenders of the Shuswap Nation" protest the non-native occupation of their land in the absence of treaties. The blockade is eventually dismantled by the RCMP.

1996

The Nisga'a Agreement in Principle is initialed and signed by representatives of the Nisga'a Tribal Council and the federal and British Columbia governments.



# IV

## Chronology

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## Chronology of Events July 1995 – June 1996

*Andrew C. Tzembelicos*

An index of these events begins on page 275

4 July 1995  
*Health Policy*

Health Minister Diane Marleau promises the provinces the federal government will continue to provide guaranteed funding for health care. She also refuses to waver on a deadline, to be imposed on the 15 October 1995, which would see a cut in transfer payments to those provinces which continue to allow the operation of clinics in the practice of extra-billing for essential medical services.

14 July 1995  
*Aboriginal Peoples*

An impasse is reached in negotiations between the federal government and the province of British Columbia over cost-sharing issues. The dispute concerns a land claims package the provincial government is offering to the Nisga'a band, valued by the province at \$175 million, for which the federal government is only willing to commit \$140 million.

21 July 1995  
*Sovereignty – Quebec*

Alberta Premier Ralph Klein declares his province will not agree to negotiate ties with an independent Quebec under any circumstances.

26 July 1995  
*Sovereignty – Quebec*

Quebec Premier Jacques Parizeau offers a leaked federal document as proof the Chrétien government is engaged in a federalist conspiracy to influence voting in the upcoming referendum. Parizeau's allegations are based on informa-

tion contained in the document outlining plans by the federal government to use subliminal advertising and two non-profit organizations to promote national unity.

27 July 1995  
*Sovereignty – Quebec;  
Aboriginal Peoples*

Rosemary Kuptana, President of the Inuit Tapirisat, says the Inuit that inhabit Northern Quebec will boycott the upcoming referendum because it doesn't address Inuit concerns regarding self-government, or guarantee the province of Quebec will uphold previous land-claims settlements negotiated with the federal government.

15 August 1995  
*GST Reform*

In response to statements made by Prime Minister Jean Chrétien that a new taxation scheme will likely replace the GST in the next federal budget, Alberta Premier Ralph Klein appeals to Chrétien to exempt his province from all new national sales tax incentives.

16 August 1995  
*Aboriginal Peoples*

Indian Affairs Minister Ron Irwin announces a new federal policy for aboriginal self-government which would give aboriginal communities similar powers to those of municipalities. The proposed policy is met with criticism from native leaders, who claim it is too limited and undermines previous government initiatives.

17 August 1995  
*Environment*

In a movement towards the harmonization of environmental policy, Canada's environment ministers agree on proposed legislation to protect endangered habitat on federal lands. The legislation is expected to serve as the foundation for a coordinated national approach to environmental protection by the provinces.

25 August 1995  
*Premiers – Annual  
Conference*

Canada's premiers conclude a two-day annual conference in St. John's. The principal topic of discussion is the need to establish national standards in health care, social assistance, and postsecondary education, and to limit the federal government's role in these areas. In demanding greater input over these areas, the premiers establish three councils of provincial ministers to develop a unified approach by the provinces to the issue of social-policy reform. At the meeting the premiers also send a warning to the Quebec government that a sovereign Quebec will be unable to maintain the privileged trade status it currently holds with the other provinces.

- 30 August 1995  
*Immigration*
- Due to fiscal restraint, Ontario Attorney-General Charles Harnick says the province is no longer willing to provide legal aid for new immigrants and refugees and that the responsibility to provide such services lies with the federal government.
- 7 September 1995  
*Sovereignty – Quebec*
- Quebec Premier Jacques Parizeau tables a sovereignty bill, unveiled a day earlier, and a 43-word referendum question in the provincial legislature. The question, criticized by Quebec Liberal Leader Daniel Johnson as a vague attempt to dupe Quebecers into opting for sovereignty, reads: "Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?"
- 8 September 1995  
*Sovereignty – Quebec*
- In response to a challenge by Guy Bertrand, a Quebec Superior Court Judge rules that the Quebec referendum process is illegal and serves as a threat to rights protected by the *Charter of Rights and Freedoms*. However, he stops short of issuing an injunction to halt the referendum, citing the will of Quebecers to determine their province's future.
- 8 September 1995  
*Health Policy*
- The National Health Forum, established and chaired by the prime minister a year earlier to study the provision of health-care services, releases its first report. The report rejects claims of a funding crisis in the Canadian health-care system, suggesting that in comparison to international standards, Canada's health-care expenditures are high.
- 11 September 1995  
*Elections – New Brunswick*
- The Liberal government of New Brunswick, led by Premier Frank McKenna, returns to power for a third consecutive term. The Liberals get a majority government capturing 47 of the legislature's 55 seats; the Conservatives gain official Opposition status with six seats, and the NDP wins one seat. Seats at dissolution, before a redistribution of seats to a total of 55, were: Liberals, 42; Conservatives, six; Confederation of Regions, six; and NDP one, with two Independents and one vacancy.

- 11 September 1995  
*Sovereignty – Quebec* After months of speculation, Quebec Premier Jacques Parizeau confirms that the province's referendum on sovereignty will be held on 30 October 1995.
- 13 September 1995  
*Sovereignty – Quebec* At a news conference in Ottawa, Bloc Québécois Leader Lucien Bouchard announces that sovereignists will only accept results favouring separation. He insists that if the referendum fails to produce a vote for Quebec sovereignty, then subsequent referendums will be held until a vote for sovereignty is achieved. Bouchard's announcement comes only one day after Referendum Minister Lucienne Robillard's declaration that the federal government will honour the "democratic process" of the referendum, despite the outcome.
- 15 September 1995  
*Federal-Provincial Relations – BC; Aboriginal Peoples* In Victoria, Indian Affairs Minister Ron Irwin and his BC counterpart John Cashore announce that the two governments have negotiated a joint, cost-sharing plan that will allow both governments to contribute equally to settle 44 native land claims in the province.
- 18-20 September 1995  
*Health Policy* A two-day conference involving Canada's health ministers concludes with accusations by provincial ministers that the planned \$7 billion in cutbacks to transfer payments by the federal government threatens the future of medicare.
- 19 September 1995  
*Sovereignty – Quebec* Prime Minister Jean Chrétien declares in the House of Commons that the federal government will not acknowledge Quebec's independence if Quebecers vote in favour of sovereignty by a narrow margin.
- 19 September 1995  
*Aboriginal Peoples; Health Policy* In Calgary, more than 500 Aboriginal Peoples stage a demonstration directed at the federal government to protest the decline of Canada's health-care system, which they maintain affects them more than any other Canadians. The rally serves to launch a two-day "emergency" conference on aboriginal health issues.
- 21 September 1995  
*Sovereignty – Quebec* Leaders from the Bloc Québécois, Parti Québécois, and Parti Action Démocratique unveil their vision of an independent Quebec, with a document entitled "Our Hearts at Work."



- 21-22 September 1995  
*Social Programs*
- Provincial welfare ministers end a two-day meeting in Winnipeg, discussing topics such as Ottawa's new block-funding formula for social services and a \$7 billion decrease in federal government spending in the areas of health, education, and welfare over the next two years.
- 22 September 1995  
*Senate –  
Appointments*
- Prime Minister Jean Chrétien makes four more appointments to the Senate: William Rompkey, a Newfoundland MP and former Cabinet minister; Doris Anderson, a professor from Charlottetown, PEI; Lorna Milne, a politician and community activist from Brampton, Ontario; and Marie-Paule Poulin, a former CBC vice-president and senior federal official from Sudbury. The new standings in the Upper House are: Conservatives, 51; Liberals, 50; Independents, three.
- 25 September 1995  
*Fiscal Policy;  
Budgets*
- Moody's Investors Service of New York commends Canada's provinces, particularly those in the west, for their progress towards realizing the goal of deficit reduction.
- 27 September 1995  
*Sovereignty –  
Quebec*
- Bloc Québécois Leader Lucien Bouchard boasts that the federal government will have to negotiate with an independent Quebec in the event that the referendum results favour sovereignty because the Canadian economy would collapse under the strain of the national debt. Bouchard's remarks come a day after remarks by Federal Finance Minister Paul Martin suggesting that Canada will not negotiate an economic association with an independent Quebec.
- 29 September 1995  
*Sovereignty –  
Quebec*
- Prime Minister Jean Chrétien rejects an opportunity, offered by Quebec Premier Jacques Parizeau, to engage in a pre-referendum debate which would include Chrétien, Parizeau, Bloc Québécois Leader Lucien Bouchard, and Quebec Liberal Leader Daniel Johnson.
- 30 September 1995  
*Sovereignty –  
Quebec*
- Results of a Léger & Léger poll, released one month before the referendum asking Quebecers how they will vote in the upcoming referendum, finds 45.1 percent of Quebecers plan to vote "No" compared to 43.8 percent who plan to vote "Yes," in favour of separation. The survey shows 11.1 percent of Quebecers polled are undecided.

- 2 October 1995  
*Aboriginal Peoples*
- Richard Kahgee, Chief of the Saugeen First Nation, signs a declaration assuming control of nearly 300 kilometres of shoreline around the Bruce Peninsula in southwestern Ontario. Kahgee says the band is not interested in any financial settlements from the federal government, only recognition of the claim by 1997.
- 2 October 1995  
*Economy*
- Newfoundland Premier Clyde Wells tells the St. John's Board of Trade that the federal government should waive taxes for businesses that become established in the province. Wells' arguments for giving tax breaks to businesses emphasize the need to attract investment to the province and offset the economic damage done by the federal government's mismanagement of the fishery.
- 7 October 1995  
*Sovereignty – Quebec*
- Quebec Premier Jacques Parizeau appoints Bloc Québécois Leader Lucien Bouchard chief negotiator for the proposed partnership between Canada and a sovereign Quebec. The goal of the appointment is to exploit Bouchard's popularity with the province's electorate.
- 12 October 1995  
*Sovereignty – Quebec; Aboriginal Peoples*
- The Cree and Inuit of Quebec announce they will not be participating in the upcoming referendum on sovereignty to be held by the Quebec government, but will instead hold separate referendums before 30 October.
- 13 October 1995  
*Sovereignty – Quebec*
- A Léger & Léger poll, taken with just over two weeks remaining until the referendum, suggests that support for sovereignty has increased since a poll taken at the end of September. The poll shows that 45 percent of those polled plan to vote "Yes" in the referendum, while 42.4 percent of respondents plan to vote "No." The results also find 11 percent of respondents are undecided and 1.6 percent have no plans to vote.
- 14 October 1995  
*Party Leadership*
- Alexa McDonough, former leader of the Nova Scotia New Democratic Party, is elected the new leader of the federal party after a weekend convention held in Ottawa.
- 15 October 1995  
*Health Policy*
- Alberta, Manitoba, Nova Scotia, and Newfoundland are the provinces facing financial penalties from the federal government for failing to meet a federally-imposed deadline by Health Minister Diane Marleau to eliminate

extra-billing by private clinics for essential medical services. Temporarily, the Chrétien government decides to tally the penalties without making any deductions from the transfer payments.

15 October 1996  
*Sovereignty –  
Quebec*

In a televised appearance on Quebec's TVA network, Reform Party Leader Preston Manning enters the referendum fray, suggesting a decentralized Canada is a united Canada. He also suggests giving the provinces greater control over bilingualism, but is unwilling to give special status to Quebec in a renewed federation.

16 October 1995  
*Elections –  
Northwest Territories*

After a day of polling, residents of the Northwest Territories elect the last members to the Legislature under the territorial government structure. The territory is scheduled to be divided in 1999, creating the new territory of Nunavut.

17 October 1995  
*Disputes; Federal-  
Provincial Relations  
– Quebec*

The Government of Quebec files a law suit against the federal government demanding compensation for \$127 million in stabilization payments it claims were never made by the federal government in fiscal year 1991-92.

17 October 1995  
*Aboriginal Peoples*

BC Aboriginal Affairs Minister John Cashore releases figures detailing the costs of treaty settlements with the province's aboriginal groups, estimated to cost taxpayers nearly \$10 billion. The figures are based on a combination of land and cash transfers, and will be paid for through a cost-sharing plan between the federal and provincial governments.

23-24 October 1995  
*Environment*

At the conclusion of a two-day meeting in Whitehorse, Federal Environment Minister Sheila Copps announces that she and her provincial counterparts have reached an agreement to regulate vehicle emissions and fuels in Canada. The ministers also take advantage of the opportunity to release a draft framework agreement for public consideration. The agreement, known as the Environmental Management Framework Agreement, is to serve as the foundation for the harmonization of federal and provincial environmental policy.

- 25 October 1995  
*National Unity;*  
*Sovereignty –*  
*Quebec*
- In a televised address to the nation, Prime Minister Jean Chrétien appeals to Quebecers not to vote for sovereignty in the upcoming referendum. Chrétien also says his government is willing to recognize Quebec as a distinct society, and that no changes will be made to the constitution without Quebec's consent.
- 27 October 1995  
*National Unity;*  
*Sovereignty –*  
*Quebec*
- In an effort to inspire support for federalism and to send a message to Quebecers that Canadians want them to remain part of the nation, over 100,000 Canadians join together in a giant rally in Montreal. The rally is interpreted by sovereignist leaders as a last-minute ploy to trick Quebecers, and a violation of referendum laws by the federal government (because it allowed transportation companies to offer cheap fares to Montreal).
- 30 October 1995  
*Sovereignty –*  
*Quebec*
- After an eight-week referendum campaign, Quebecers narrowly vote in favour of the province remaining in Canada, giving the federalist forces 50.6 percent support, the sovereignists 49.4 percent. The results are interpreted by the media as a sign that the federal government underestimated the strength of the sovereignist message, and the ability of Bloc Québécois Leader Lucien Bouchard to sell it to Quebecers.
- 31 October 1995  
*Sovereignty –*  
*Quebec*
- In the aftermath of the referendum, Prime Minister Jean Chrétien announces that Canada's premiers support a plan by the federal government to introduce federal legislation recognizing Quebec's distinct status in Canadian society in the constitution. Chrétien also confirms that he has no immediate plans to open new constitutional negotiations with Quebec.
- 31 October 1995  
*Sovereignty –*  
*Quebec*
- In a surprise post-referendum development, Quebec Premier Jacques Parizeau announces he will resign as premier. Parizeau's resignation is attributed to a number of factors, most notably to statements he made in a concession speech on referendum night in which he criticized "money and the ethnic vote" for the defeat of sovereignty.
- 31 October 1995  
*Education*
- The Newfoundland legislature passes a proposed constitutional amendment granting the provincial government permission to enact changes to the denominational school

system. The amendment will be forwarded on to the federal Parliament for approval, and is expected to be passed before year's end.

1 November 1995  
*Maritime/Atlantic  
Provinces*

In light of the narrow federalist win in the Quebec referendum on sovereignty, Nova Scotia Premier John Savage urges the Atlantic provinces to consider uniting as a single province.

2 November 1995  
*Western Provinces*

Canada's western premiers conclude a three-day annual conference in Yorkton, Saskatchewan. The main topics of discussion at the meeting included: greater decentralization; the \$7 billion in budget cuts to social spending by the federal government; and the state of the federation after the referendum.

3 November 1995  
*Cabinet – Quebec*

Quebec Premier Jacques Parizeau makes changes to his government in a mini-Cabinet shuffle. The most significant change is Parizeau's appointment of Louise Harel as minister of immigration and culture — in addition to her post as employment minister. Harel replaces Bernard Landry, who, in the aftermath of the referendum, was vocal in blaming Quebec's ethnic voters for the sovereigntist loss.

7 November 1995  
*Sovereignty –  
Quebec*

Pierre Côté, Quebec's Chief Electoral Officer, announces he is preparing to investigate charges of voting irregularities in the province's referendum on sovereignty in three Montreal-area ridings with an unusually high number of rejected ballots. The investigation is in response to a request made by Liberal Leader Daniel Johnson.

8 November 1995  
*Federal-Provincial  
Relations – Ontario*

In a letter to federal Human Resources Minister Lloyd Axworthy, Ontario Social Services Minister Dave Tsubouchi rejects a cost-sharing offer from the federal government in support of new day-care centres in the province. Tsubouchi considers the offer to be short term, and not in the interest of the province.

9 November 1995  
*Sovereignty –  
Quebec*

Prime Minister Jean Chrétien distances himself from promises he made in the aftermath of the referendum when he said his government would focus on issues concerning Quebec. Instead, he says job creation is "the first priority" on his agenda.

- 16 November 1995  
*Health Policy* In its ongoing dispute with Alberta over user fees charged by private clinics, the federal government announces that it is deducting \$420,000 from its monthly cost-sharing payment to the province.
- 20 November 1995  
*Environment* At the end of a day-long meeting, federal Environment Minister Sheila Copps finds little support from her provincial counterparts in favour of a stronger role for the federal government in regulating greenhouse gas emissions.
- 21 November 1995  
*Sovereignty – Quebec; Party Leadership* Bloc Québécois Leader Lucien Bouchard announces he will seek the leadership of the Parti Québécois. Bouchard insists he is unwilling to negotiate any new constitutional deals with the federal government. Bouchard temporarily allays federalist fears by saying another referendum is unlikely before 1997 — when a constitutional conference is required, according to the *Constitution Act*.
- 24 November 1995  
*Education* The Council of Ministers of Education releases its first report examining the state of education in Canada. Principal findings show the number of students enrolled in postsecondary education have doubled in the last two decades, while there are fewer available spaces, shrinking budgets, and higher debt loads. As a solution the ministers suggest dismantling barriers between both the provinces and postsecondary institutions, making it easier for students to transfer credits.
- 28 November 1995  
*National Unity* Prime Minister Jean Chrétien unveils his government's new strategy for handling the sovereignty issue by introducing a new veto bill. The bill asserts that the federal government will not make any changes to the constitution without approval from Quebec, Ontario, the Atlantic region, and the west through a "regional veto." Other elements of the strategy include a resolution to grant Quebec status as a distinct society, and a proposal to decentralize control over labour-market training.
- 28-29 November 1995  
*Trade – Interprovincial* Provincial trade ministers, moving to expand on the Agreement on Internal Trade signed in July 1994, attempt to increase interprovincial trade by abolishing a requirement

forcing all companies to register in each province before they can operate.

1 December 1995  
*Social Programs – Reform*

Human Resources Minister Lloyd Axworthy announces that nearly \$2 billion will be cut from unemployment insurance in a new bill aimed at reforming the system. Axworthy says the cuts will help workers in the long term, providing incentives to find jobs and upgrade skills, and creating 150,000 new jobs each year. While he says the bulk of the savings will be applied to reducing the federal deficit, Axworthy maintains that a sizeable portion of the savings will be invested in employment initiatives. These include \$800 million for wage subsidies and loan grants for the unemployed, and \$300 million for job creation in areas of high unemployment.

5 December 1995  
*Federal-Provincial Relations – British Columbia*

Human Resources Minister Lloyd Axworthy decides to withhold \$47 million in transfer payments to British Columbia after the province violates provisions of the Canada Assistance Plan by refusing to pay welfare assistance to applicants who have not resided in BC for at least three months.

7 December 1995  
*National Unity*

Following objections from the province of British Columbia, the federal government declares that BC will also be considered as a "region" in the new legislation providing for regional constitutional vetoes.

9 December 1995  
*Aboriginal Peoples*

In Ottawa at the first meeting of the Sacred Assembly, Indian Affairs Minister Ron Irwin acknowledges a number of suggestions from native people, including protecting native rights from constitutional change and establishing a Council of Reconciliation between native and non-native Canadians.

12-13 December 1995  
*Fiscal Policy; Economy*

A two-day meeting of Canada's finance ministers fails to produce any solutions for deciding how to allocate money for social programs. Despite enduring criticism from several provinces for cutting social programs to finance deficit reduction, Finance Minister Paul Martin and his provincial counterparts agree on the necessity for continued government funding for basic social programs. Other issues on the meeting agenda: reform of the Canada Pension Plan and harmonization of the GST.

- 13 December 1995  
*Social Programs* Human Resources Minister Lloyd Axworthy offers the provinces \$630 million towards a national day-care program over a three-to-five-year period. He also offers \$72 million for day care in aboriginal communities and \$18 million for child-care research.
- 13 December 1995  
*National Unity* After being quickly passed in the House of Commons by a majority vote of 150 to 101, a bill put forth by the Chrétien government giving regions veto power over constitutional change moves to the Senate.
- 15 December 1995  
*Sovereignty – Quebec* Quebec Liberal Leader Daniel Johnson publicly criticizes Prime Minister Jean Chrétien for the narrow federalist victory in the province's referendum. He specifically criticizes the PM for not offering Quebec any constitutional changes until only a few days before the vote.
- 17 December 1995  
*Sovereignty – British Columbia* A new provincial party, the BC First Alliance, is established in British Columbia with the principal goal of promoting BC sovereignty. The party is led by Roger Rocan, a former salesman.
- 18 December 1995  
*Aboriginal Peoples* In a joint agreement, the federal government and the province of Saskatchewan agree to a cost-sharing initiative aimed at educating the province's Aboriginal Peoples about criminal justice.
- 20 December 1995  
*Fisheries* Federal Fisheries Minister Brian Tobin announces a plan to streamline the Atlantic fishery by reducing the number of professional fishers from 24,600 to 13,250.
- 26 December 1995  
*National Unity* In an interview with CTV, Prime Minister Jean Chrétien says Canada is a difficult country to govern because of the divergent number of interests that need to be balanced. The interview runs a day after the prime minister's Christmas message, reminding Canadians not to take the federation for granted.
- 28 December 1995  
*Premiers – Newfoundland* After ten years, Newfoundland Premier Clyde Wells announces he is leaving politics and will resign as premier and leader of the provincial Liberals once his successor is appointed.



- 1 January 1996  
*Maritime/Atlantic Provinces*
- An economist based in Nova Scotia, Ralph Winter, says a union of the Atlantic provinces is not economically or politically feasible in Canada's current environment.
- 3 January 1996  
*Maritime/Atlantic Provinces – Cooperation*
- Prince Edward Island Premier Catherine Callbeck announces that her counterparts in the Maritimes have offered Prince Edward Island full status under a new veto formula created by the federal government to deal with constitutional change.
- 4 January 1996  
*Federal-Provincial Relations – Newfoundland*
- Federal Justice Minister Allan Rock announces the federal government will proceed with constitutional amendments necessary in order to enact substantive changes within the Newfoundland school system.
- 8 January 1996  
*Federal-Provincial Relations*
- BC Employment Minister Glen Clark, whose department is responsible for marine policy, announces his province is interested in assuming control over west coast lighthouses to prevent their automation. The lighthouses are currently maintained by the federal Department of Fisheries and Oceans.
- 8 January 1996  
*Sovereignty – Quebec*
- Guy Bertrand files notice with the Quebec Superior Court seeking an injunction to prevent any further referendums on Quebec sovereignty. It marks the second time he has petitioned the courts to seek an injunction against the sovereignty referendum process.
- 9 January 1996  
*Social Programs*
- The contents of a nine-province report of the Ministerial Council on Social Policy Reform and Renewal, commissioned by the Annual Premiers' Conference in August 1995 (Quebec abstaining), is reported in the media. The report calls for an intergovernmental statement of principles to guide social policy reforms and an agenda for change involving a major realignment of responsibilities, giving the provinces the lead role in social policy.
- 12 January 1996  
*Electoral Reforms*
- As a result of shifts in population, Canada's electoral boundaries are officially changed to accommodate six new seats in the House of Commons — four in Ontario and two in British Columbia — bringing the total number of seats to 301. The new boundaries are based on 1991 census data.

- 18 January 1996  
*Fiscal Policy; Economy*  
Despite opposition from Saskatchewan and British Columbia, federal Revenue Minister David Anderson insists the federal government will continue developing a plan to harmonize the GST with provincial sales taxes. It is estimated the initiative could save more than \$500 million.
- 19 January 1996  
*Trade – International*  
Prime Minister Jean Chrétien, seven of Canada's premiers, and 300 Canadian business people conclude a two-week trade mission to Asia, with stops in India, Pakistan, Malaysia, and Indonesia. "Team Canada" is successful in negotiating potentially \$8.7 billion in commercial agreements.
- 23 January 1996  
*Disputes; Federal-Provincial Relations – British Columbia*  
Unable to reach an agreement with the federal government, the province of British Columbia files a lawsuit demanding \$47 million in transfer payments the federal government has withheld because the province has ostensibly breached provisions of the Canada Assistance Plan..
- 25 January 1996  
*Cabinet – Federal*  
Prime Minister Jean Chrétien announces a major Cabinet shuffle, with a new focus on job creation and national unity. While the prime minister makes more than two dozen changes to his Cabinet, the most publicized are the addition of two new Quebec members: Stéphane Dion, a political science professor, as minister of intergovernmental affairs and president of the privy council and Pierre Pettigrew, a trade consultant and foreign policy expert, as minister for international cooperation and minister responsible for francophonie. With the changes, the Cabinet totals 25 full members.
- 26 January 1996  
*Sovereignty – Quebec*  
Newly-appointed Intergovernmental Affairs Minister Stéphane Dion angers Quebec sovereignists by saying that if Canada is divisible, then so is Quebec.
- 26 January 1996  
*Premiers – Newfoundland*  
Following his election as leader of the Liberal Party of Newfoundland, former federal Fisheries Minister Brian Tobin is sworn in as premier of Newfoundland.
- 29 January 1996  
*Premiers – Quebec; Sovereignty – Quebec*  
Following his acclamation as leader of the Parti Québécois, former Bloc Québécois Leader Lucien Bouchard is sworn in as Quebec's new premier. He promises Quebecers his government is committed to the goals of deficit reduction, education, and regional development.

- 30 January 1996  
*Sovereignty – Quebec*
- Taking a tough stance on Quebec sovereignty, Prime Minister Jean Chrétien insists his government will not recognize an independent Quebec based on a narrow majority if a subsequent referendum is held.
- 31 January 1996  
*Culture*
- A committee appointed by the federal government to study the future of three of Canada's cultural institutions, the Canadian Broadcasting Corporation, Telefilm Canada, and the National Film Board, releases its long-awaited report. The principal recommendation of the committee, chaired by former CBC president Pierre Juneau, is a levy on telephone, cable, and satellite television users which would earn an estimated \$1.1 billion in revenue per year for the federal government once established.
- 1 February 1996  
*Senate – Appointments*
- Prime Minister Jean Chrétien appoints Liberal MP Shirley Maheu to a recently vacated Senate seat. The appointment marks the end of Conservative dominance in the Senate. The new standings in the Upper House: Liberals, 51; Conservatives, 50; Independents, three.
- 2 February 1996  
*Sovereignty – Quebec*
- A day after gaining control of the Senate the Liberals use their majority in the Upper Chamber to pass the government's controversial legislation giving constitutional veto powers to Quebec, Ontario, British Columbia, the Prairies, and the Atlantic Region. The legislation passes with a vote of 48 to 36.
- 4 February 1996  
*Federal-Provincial Relations*
- In Montreal, Alberta Premier Ralph Klein suggests that the federal government might prevent Quebecers from seeking sovereignty if Ottawa were to respect the constitutional division of powers.
- 9 February 1996  
*Social Programs*
- Finance Minister Paul Martin concludes a two-day meeting with his provincial counterparts by announcing the establishment of a joint federal-provincial panel seeking the views of Canadians on reforming the Canada Pension Plan.
- 14 February 1996  
*Sovereignty – Quebec*
- Indian Affairs Minister Ron Irwin angers sovereignists by suggesting that native territory in Quebec does not belong to the province. Irwin's remarks serve as a follow-up to a warning he issued just days earlier, suggesting that attempts

to include Aboriginal Peoples and federalists in a sovereign Quebec could lead to violence.

15 February 1996  
*Aboriginal Peoples;  
Federal-Provincial  
Relations –  
British Columbia*

After lengthy negotiations, representatives from the federal and provincial governments reach a tentative agreement with the Nisga'a Indians in British Columbia. The parties agree to surrender 1,930 square kilometres of land to the Nisga'a, in addition to providing them with \$190 million in remuneration. Among other tenets, the agreement also protects the Nisga'a as Aboriginal Peoples under the *Charter of Rights and Freedoms*.

15 February 1996  
*Social Programs*

Taking a tough stand on unemployment insurance reform, Human Resources Minister Doug Young says the federal government will penalize individuals attempting to take advantage of the welfare system. He also announces two amendments to the initial blueprint for UI reform, unveiled by Lloyd Axworthy in December. The amendments include more favourable provisions for seasonal workers, and an increase in the length of time an employee must work before UI eligibility.

17 February 1996  
*Party Leadership*

Michel Gauthier takes over as Leader of the Bloc Québécois from Lucien Bouchard, and as leader of the Official Opposition in Parliament. In a short speech, Gauthier affirms his dedication to realizing Quebec sovereignty, but also says he respects Canada's Parliament and its institutions.

19 February 1996  
*Agriculture*

Due to the elimination of the western grain transportation subsidy, also known as the Crow benefit, Agriculture Minister Ralph Goodale announces that Prairie farmers will receive \$1.6 billion in compensation, with the largest disbursement going to farmers in Saskatchewan — nearly \$902.7 million. In addition to the compensation package, Goodale also details a \$300 million transition payment to be used for infrastructure purposes.

22 February 1996  
*Premiers – BC*

Following his election as leader of the NDP after a weekend leadership convention, former Finance Minister Glen Clark is sworn in as the British Columbia's new premier.

22 February 1996  
*Elections –  
Newfoundland*

In an overwhelming sweep, Brian Tobin wins a majority government one month after being sworn in as premier. Tobin's Liberals capture 37 of the province's 48 seats. The

Conservatives retain their status as Official Opposition with nine seats, while the NDP continues with one seat; Yvonne Jones garners the lone Independent seat. Standings at dissolution of the legislature were: Liberals, 35; Conservatives, 16; NDP, one, with one Independent.

23 February 1996  
*Aboriginal Peoples*

An interim report by the Royal Commission on Aboriginal Peoples is released suggesting that Canada's Aboriginal Peoples have a constitutional right to establish and control their own justice system. The report is one of a series issued by the commission since its creation in 1991.

23 February 1996  
*Social Programs*

Human Resources Minister Doug Young announces the federal government is scrapping a \$630 million national child-care initiative because it was not endorsed by the provinces. To compensate, Young says the government will negotiate separate cost-sharing, child-care schemes which will address the needs of individual provinces.

26 February 1996  
*Senate –  
Appointments*

Prime Minister Jean Chrétien fills another vacancy in the Senate, appointing New Brunswick businessman Joseph Landry.

27 February 1996  
*House of Commons*

House of Commons Speaker Gilbert Parent announces the Bloc Québécois will remain the Official Opposition in the House, despite being tied with the Reform Party at 52 seats each. The BQ's status as Official Opposition party was questioned by the Reform Party when Lucien Bouchard resigned his seat in the House, leaving both parties with an equal number of seats.

27 February 1996  
*Speech from the  
Throne*

Beginning the second half of his mandate with a Speech from the Throne, Prime Minister Jean Chrétien outlines the direction his government plans to take over the next two years. A predominant theme is the issue of Quebec sovereignty, which the Chrétien government plans to counter through further decentralization of power to the provinces. The speech also suggests Canadians will have an opportunity to participate in deciding Canada's fate. Among other themes discussed in the speech: the establishment of a new social union, subject to provincial cooperation; the federal government's commitment to job creation; and harmonization of the GST with provincial sales taxes.

- 1 March 1996  
*Electoral Reforms*
- In an effort to prevent decreased participation in federal elections, Chief Electoral Officer Jean-Pierre Kingsley proposes staggering voting hours across the nation. In his report Kingsley also proposes holding election results from the Atlantic provinces until the polls close in British Columbia.
- 6 March 1996  
*Budgets – Federal*
- Federal Finance Minister Paul Martin unveils the 1996 budget which emphasizes deficit reduction and predicts the federal government will meet or exceed a \$32.7 billion reduction target in 1996-97. Among other budget highlights:
- announcement of the allocations to provinces for the cash portion of the CHST transfer according to a five-year schedule attempting to steer a middle path between strict equal per capita shares and current allocations;
  - creation of joint federal-provincial agencies in the areas of tax collection and food inspection;
  - the amalgamation of old-age security, the guaranteed income supplement, and tax break incentives into one tax-free Seniors Benefit, to take effect in 2001;
- 7 March 1996  
*Senate –  
Appointments*
- After appointing Liberal Senator Bud Olson Alberta's new lieutenant-governor, Prime Minister Jean Chrétien fills the vacancy in the Upper Chamber, naming former Alberta Liberal Party Leader Nick Taylor to the seat.
- 8 March 1996  
*Health Policy –  
Alberta*
- Alberta Health Minister Shirley McClellan announces the province's intention to create a health charter, which will include a list of essential medical services. McClellan says the province is taking the initiative because it does not want to wait for the federal government to generate a list under the *Canada Health Act*.
- 11 March 1996  
*Sovereignty –  
Quebec*
- In a televised speech in Montreal, Quebec Premier Lucien Bouchard addresses 400 invited members of the province's anglophone community. Bouchard takes the opportunity to invite his audience to participate in determining the future of Quebec.
- 15 March 1996  
*Sovereignty –  
Quebec*
- Although voicing scepticism, Quebec Premier Lucien Bouchard says he will consider serious offers of Canadian unity proposed by the other provinces. However, he

also suggests the only offers he will consider serious will be those that have already been approved by both the federal and provincial governments. Bouchard's remarks come just one day after he suggests that another referendum will only be held after Quebec's next provincial election (which could be held as late as 1999).

20 March 1996  
*Economy;*  
*Fiscal Policy*

In the Bank of Canada's annual report, Governor Gordon Thiessen commends the federal and provincial governments for their efforts at deficit reduction. As a result he predicts an improvement in overall economic performance. However, he also cautions that any political instability could bring economic instability.

22 March 1996  
*Aboriginal Peoples*

In a formal ceremony, members of the federal and provincial governments and the Nisga'a sign a tentative and historic land-claims agreement. A final agreement is expected within two years.

25 March 1996  
*Elections – Federal*  
*Byelections*

In six federal byelections, the Liberals win five while the Bloc Québécois retain the seat of former Leader Lucien Bouchard. Prime Minister Chrétien touts the victories as an indication that the Canadian public is confident in his government's abilities. Conversely, a poor showing on behalf of the Conservative Party leads to increased speculation about a merger between the PC and Reform Parties. The new standings in the House of Commons are: Liberals, 177; Bloc Québécois, 53; Reform, 52; NDP, nine; Conservatives, two; with two Independents.

28 March 1996  
*Social Programs*

Canada's premiers endorse an historic manifesto seeking control of health-care policy from the federal government. The manifesto, prepared by health and social service ministers, involves all provinces except Quebec.

28 March 1996  
*Aboriginal Peoples*

Based upon recommendations from a two-year old report of the Royal Commission on Aboriginal Peoples, the federal government offers Quebec's Inuit \$10 million in compensation for displacing approximately 90 natives to the High Arctic in 1953.

29 March 1996  
*Aboriginal Peoples*

Newfoundland's Innu agree to develop a framework for settling a 48,000 square-kilometre land claim that includes

Voisey's Bay — on Labrador's northern coast — over the next three years. Signatories of the agreement include federal Indian Affairs Minister Ron Irwin and Newfoundland Premier Brian Tobin.

30 March 1996  
*Fisheries*

In response to the decline of west coast salmon stocks, Fisheries Minister Fred Mifflin announces a plan by the federal government to decrease the number of commercial salmon fishing vessels in British Columbia from 4,400 to 2,200. The initiative involves an initial \$80 million voluntary licence buy-back program and new limitations on fishing boundaries.

2 April 1996  
*Social Programs*

Provincial ministers responsible for social programs conclude a two-day meeting in Victoria demanding the federal government clearly define the role of the provinces in the area of social services at a time of increased decentralization and decreased funding from the federal government.

4 April 1996  
*Fisheries*

Federal Fisheries Minister Fred Mifflin is forced to return to the west to contend with opposition to a salmon fishing reduction plan in British Columbia, which the BC government and fishing groups claim is underfunded and financially unviable.

15 April 1996  
*Sovereignty –  
Quebec*

In the House of Commons, Prime Minister Jean Chrétien says he is willing to consider replacing the phrase referring to Quebec as a “distinct society” if there is another phrase more acceptable to Quebecers. Chrétien's comments are in response to a proposal made by Quebec MPs from his party the previous day to refer to Quebec as the “main home” (in French “foyer principale”) of French language and culture in North America instead of as a distinct society.

23 April 1996  
*GST Reform*

Federal Finance Minister Paul Martin announces that three provinces — New Brunswick, Nova Scotia, and Newfoundland — have agreed to adopt a new harmonized tax system blending the federal and provincial sales taxes into one 15 percent sales tax. To initiate the new system, Martin says the federal government will pay approximately \$1 billion to the three provinces over four years to compensate for lost tax revenues. In announcing the new



partnership, Martin admits the Chrétien government erred when it promised to eliminate the GST.

25 April 1996  
*Health Policy*

Federal Health Minister David Dingwall, meeting with his provincial counterparts in Ottawa, says serious consideration is being given to the creation of a new federal-provincial agency to manage Canada's blood supply.

26 April 1996  
*Trade –  
Interprovincial;  
Disputes*

Dan Miller, trade and investment minister for British Columbia, says the province has lodged a formal complaint under the Agreement on Internal Trade against the province of New Brunswick for violating an interprovincial trade agreement. At issue is an \$11.3 million offer that New Brunswick extended to United Parcel Service to relocate its headquarters in the province at the expense of jobs in other provinces, including Manitoba and Ontario.

28 April 1996  
*Sovereignty –  
Quebec*

At a Parti Québécois national meeting in Montreal, leader Lucien Bouchard takes a tough stance against the federal government regarding Quebec sovereignty, suggesting that the federal government will not influence a future referendum process in any way.

30 April 1996  
*Aboriginal Peoples*

The federal government allocates \$150 million for the new territory of Nunavut to establish necessary government structures and to train personnel. The territory's debut is scheduled for April 1999.

1 May 1996  
*Federal-Provincial  
Relations – Quebec;  
Aboriginal Peoples*

A long-term dispute between the federal government and the province of Quebec over funding costs for aboriginal education in the province is resolved when the federal government agrees to pay the province \$100.3 million in compensation.

2 May 1996  
*GST Reforms*

Alberta Premier Ralph Klein sends a letter to Prime Minister Jean Chrétien seeking a 1.5 percent reduction in the GST for his province, since the federal government negotiated a lower rate for the Atlantic provinces as part of a federal-provincial tax harmonization agreement.

6 May 1996  
*Federal-Provincial  
Relations – Ontario;  
Aboriginal Peoples*

Federal Indian Affairs Minister Ron Irwin criticizes the Ontario government for terminating negotiations with 25 groups on aboriginal issues in the province.

9 May 1996  
*Federal-Provincial  
 Relations – Alberta*

Alberta Premier Ralph Klein announces that his province is considering assuming the marketing role for Alberta's grain farmers. The initiative would be considered a contravention of federal law, which requires all Prairie farmers to sell their grain through the federally-operated Canadian Wheat Board.

10 May 1996  
*Sovereignty –  
 Quebec*

Federal Justice Minister Allan Rock, announces the federal government will intervene in the Bertrand case to "protect the integrity of the Constitution and the rule of the law," which he says have been challenged by the Government of Quebec in its efforts to separate from the Canadian federation.

13 May 1996  
*Sovereignty –  
 Quebec*

Quebec's Chief Electoral Officer Pierre Côté announces plans to charge individuals involved in organizing the pro-Canada, pre-referendum rally in Montreal in October 1995. Côté also says charges will be laid against pro-sovereignty scrutineers, who he says rejected improperly a substantial number of referendum ballots in federalist ridings.

14 May 1996  
*Social Programs*

Legislation reforming Canada's unemployment insurance system passes in the House of Commons by a vote of 123 to 80. The bill is opposed by members of the Bloc Québécois and the Reform Party.

14 May 1996  
*Sovereignty –  
 Quebec*

After considering calling a snap provincial election in response to the federal government's intervention in the Bertrand case, the Parti Québécois government of Lucien Bouchard instead decides to intervene in the case, while introducing a motion in the Quebec National Assembly affirming the province's right to self-determination.

15 May 1996  
*Sovereignty –  
 Quebec*

In the House of Commons, Prime Minister Jean Chrétien insists that in any future referendums, the final referendum question will be subject to negotiation — suggesting that he will fight for input by the federal government on future questions. The statement follows remarks Chrétien made a day earlier in the Commons when he threatened to prohibit Quebec sovereignty for contravening Canadian constitutional law and international law.

15 May 1996  
*Fisheries*

British Columbia Premier Glen Clark announces that the federal government is willing to grant his province

additional powers over conservation of the West Coast Fisheries. However, a disagreement between the two governments over Ottawa's plan to reduce BC's salmon fishing fleet by 50 percent remains unresolved.

16 May 1996  
*Senate –  
Appointments*

Prime Minister Jean Chrétien appoints Jean Forest, Chancellor Emeritus of the University of Alberta, to replace Liberal Senator Earl Hastings in the Upper Chamber after Hastings dies. The appointment is an unpopular one with Alberta Premier Ralph Klein who had insisted that Chrétien hold an election to choose a replacement for the seat.

21 May 1996  
*Federal-Provincial  
Relations – Quebec*

In a joint effort to promote foreign investment in Montreal, Quebec teams up with the federal government to create a new agency called Montreal International — with both parties agreeing to share in the initial \$10 million costs, with municipal governments and business picking up the balance.

23 May 1996  
*Fisheries*

The federal government announces restrictions on the commercial and sport fishery of chinook salmon in the Queen Charlotte Islands and the west coast of Vancouver Island. The announcement comes one day after the BC Supreme Court denied the province its request for an injunction against the federal government and its plan to reduce the province's salmon fleet by 50 percent.

23 May 1996  
*Sovereignty –  
Quebec*

Quebec Superior Court Justice Robert Pidgeon denies attorney Guy Bertrand an injunction preventing future referendums on Quebec sovereignty.

28 May 1996  
*Elections – British  
Columbia*

In a narrow victory, the NDP government of British Columbia, led by Glen Clark, returns to power for a second consecutive term. The breakdown of seats in the 75-seat legislature was: NDP, 39; Liberals, 33, Reform, two; and Progressive Democratic Alliance, one. Seats at dissolution were: NDP, 50; Liberals, 14; Reform, four; Progressive Democratic Alliance, two; Social Credit, one; Independents, three, with one vacancy.

30 May 1996  
*Interprovincial  
Relations*

A meeting between Ontario Premier Mike Harris and Quebec Premier Lucien Bouchard in Quebec City results in a number of initiatives between the two provinces,

- including an agreement to grant suppliers in both provinces greater access to public sector contracts. The leaders also agree to explore the feasibility of a high-speed train linking the two provinces, and they agree to work together in demanding compensation from the federal government over sales tax harmonization.
- 30 May 1996  
*Health Policy*
- The government of Alberta announces it will no longer permit private-clinic billing for essential medical services. Since 15 October, when the federal government imposed a moratorium on the practice of extra-billing by private clinics, the province has been penalized nearly \$4 million dollars. The province also agrees to offset the costs of facility fees levied at 40 of the provinces semi-private clinics.
- 30 May 1996  
*Social Programs*
- Human Resources Minister Doug Young announces a new initiative by the federal government to shift responsibility for employment programs to the provinces. Young promises that the Chrétien government will provide a total of \$2 billion in unemployment insurance premiums to those provinces willing to participate in the scheme. And he says the federal government will withdraw from job-skills training over the next three years.
- 31 May 1996  
*Environment*
- At the end of a two-day meeting in Toronto, Federal Environment Minister Sergio Marchi announces that Canada's environment ministers have agreed to harmonize environmental regulations to promote national environmental standards. Towards this goal, the ministers release a statement committing governments at all levels to providing "the highest standards of environmental quality across Canada."
- 4-5 June 1996  
*Western Provinces*
- After a two-day conference in Dawson City, Canada's western premiers and territorial leaders agree on a number of measures they feel could strengthen the social infrastructure. Among them: the need to create a federal-provincial agency to govern the *Canada Health Act*; the need for a national tax collection agency, and a national review of tax policies.
- 7 June 1996  
*Federal-Provincial Relations - Quebec*
- Prime Minister Jean Chrétien meets with Quebec Premier Lucien Bouchard in Ottawa to discuss the province's economy, and a joint federal-provincial initiative in the

area of job creation. The occasion marks the first formal meeting of the two leaders since Bouchard became premier.

7 June 1996  
*Sovereignty –  
Quebec*

Quebec's Chief Electoral Officer Pierre Côté releases a list of 11 businesses and student associations charged with violating Quebec's referendum law. The charges concern the role played by the organizations in the federalist unity rally held in Montreal several days before the sovereignty referendum. Côté also announces that 28 separatist election officials have been charged for rejecting valid referendum ballots.

10 June 1996  
*Language Policy*

Louise Beaudoin, the Quebec minister responsible for language policy, introduces amendments designed to strengthen the province's French-language charter. A key amendment is a plan to reestablish the Commission de protection de la langue française, a body created to govern and enforce the province's sign language laws.

18 June 1996  
*Fiscal Policy;  
Pension Reform*

A day-long meeting of Canada's finance ministers in Fredericton brings agreement on several guiding principles for revamping the Canada Pension Plan. The ministers concede that future CPP premiums will likely be higher, while CPP benefits will be lower. Ministers also discussed at the meeting the harmonization of provincial sales taxes with the national sales tax in New Brunswick, Nova Scotia, and Newfoundland, and a \$1 billion compensation package provided by the federal government to those provinces.

20-21 June 1996  
*First Ministers –  
Meeting*

At the end of a two-day annual meeting of Canada's first ministers in Ottawa, the leaders agree on the need to reduce the role of the federal government in several areas including social housing and tourism. They also agree to harmonize environmental policy, and to cooperate in areas that include social program financing, child poverty, and job creation. The meeting produces substantial support for the creation of a national securities commission, a national tax-collection agency, and a national food inspection service. The first ministers begin the meeting by talking briefly about the constitutional amending formula — thereby satisfying a requirement to review the amending formula by April 1997; they also agree that no further discussion on constitutional issues will take place at the meeting.

21 June 1996  
*Aboriginal Peoples;  
Sovereignty*

Ovide Mercredi, Head of the Assembly of First Nations, holds a press conference outside the building where Canada's first ministers are meeting to protest the exclusion of native groups at the conference. Mercredi also suggests that aboriginal sovereignty will be a topic of discussion at the Assembly's upcoming annual meeting.

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